1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON
3
4 JACKSON COUNTY CITIZENS LEAGUE,
5 *Petitioner,*
6
7 vs.
8
9 JACKSON COUNTY,
10 *Respondent,*
11
12 and
13
14 LILLIAN SKILLMAN,
15 *Intervenor-Respondent.*
16
17 LUBA No. 99-147
18
19 FINAL OPINION
20 AND ORDER
21
22 Appeal from Jackson County.
23
24 Robert Beatty-Walters, Portland, filed the petition for review and argued on behalf of
25 petitioner. With him on the brief was Keating, Jones, Bildstein & Hughes, P.C.
26
27 No appearance by respondent.
28
29 John R. Hassen, Medford, filed the response brief and argued on behalf of intervenor-
30 respondent. With him on the brief was Hornecker, Cowling, Hassen & Heysell, L.L.P.
31
32 BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member,
33 participated in the decision.
34
35 REMANDED 07/07/2000
36
37 You are entitled to judicial review of this Order. Judicial review is governed by the
38 provisions of ORS 197.850.
39

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a county decision amending the comprehensive plan and zoning map and taking an exception to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands) with respect to a 5.24-acre parcel zoned exclusive farm use (EFU).

MOTION TO INTERVENE

Lillian Skillman (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to her motion, and it is allowed.

FACTS

The subject property is a 5.24-acre parcel zoned EFU that is unimproved except for a pump house. The parcel is roughly rectangular in shape, and connected by an access strip or "flagpole" to Highway 99, to the west. The Natural Resources Conservation Service survey shows that soils on the subject property consist of 60 percent Medford Silty Clay Loam, Class I irrigated and Class IV unirrigated, and 40 percent Evans Loam, Class II irrigated and Class III unirrigated. A recent independent soil survey shows that soils on the subject property consist of 60 percent Brader, Class VI unirrigated, 25 percent Medford Silty Clay Loam, and 15 percent Evans Loam. The subject property receives a special farm assessment (SFA), has historically been used for grazing cattle and hay production, and is currently used for hay production. The property either possesses or did possess water rights from a nearby creek, although the landowner has filed for voluntary abandonment of any water rights with the state.

Adjoining EFU-zoned properties have Class I-IV soils, receive SFA, and are currently in or have a recent history of farm use. Adjacent to the north is a 6.13-acre parcel, Tax Lot (TL) 1707, which contains a commercial iris propagation farm and a dwelling that was approved prior to adoption of the statewide planning goals (pre-goal dwelling). In 1994, the owner of TL 1707 offered $100,000 to purchase the subject property, but withdrew that

1 offer when he learned that it was not served by the local irrigation district. In 1998, the
2 owner of TL 1707 expressed interest in purchasing the subject property at a price
3 representative of its potential as farmland, which he estimated to be $8,000 per acre. Further
4 to the north lies Exception Area 1-Q, a group of 11 parcels rezoned rural residential (RR) in
5 1994 as part of the county's ongoing periodic review. Of those 11 parcels, six contain pre-
6 goal dwellings, two contain dwellings approved pursuant to the goals, and three are vacant.
7 Nine of the 11 parcels continue to be in farm use and receive SFA.

8 Adjacent to the subject property on the east is an 11.06-acre parcel, TL 1705, with a
9 pre-goal dwelling. Adjacent to the south is a 10.19-acre parcel, TL 400, on which a
10 commercial horse stable is located. TL 400 also contains a mobile home approved in 1985 as
11 a nonfarm use. Nonadjoining lands to the south and east of the subject property consist of
12 large commercial ranch holdings. Adjacent to the west is a 5.14-acre parcel, TL 1713, with a
13 pre-goal dwelling. On the west side of Highway 99, opposite the subject property, lies a
14 group of 15 parcels zoned Farm Residential (F-5), six of which are developed with
15 residences. Further west of these parcels lie extensive holdings zoned for resource use.

16 Intervenor originally applied to the county in 1996 for a plan and map amendment,
17 zoning change, and irrevocably committed exception pursuant to OAR 660-004-0028. The
18 county approved that application on March 19, 1997. Petitioner appealed that decision to
19 LUBA, whereupon the county requested voluntary remand in order to address the
20 assignments of error in the petition for review. On remand, the county planning commission
21 conducted a new evidentiary hearing and, on May 7, 1998, recommended approval of the
22 application. The county board of commissioners conducted an evidentiary hearing on
23 August 10, 1998, and voted to again approve the application on September 16, 1998. The
24 county's final decision was signed on August 17, 1999.

25 This appeal followed.

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

Petitioner argues that the county erred in adopting an irrevocably committed exception to Goals 3 and 4. According to petitioner, several key findings of fact used to support the county's adoption of an irrevocably committed exception are not supported by substantial evidence. Other findings, petitioner argues, are based on the county's misconstruction of the applicable law. Finally, petitioner contends that the county's findings are inadequate to demonstrate that farm use is impracticable on the subject property.

In *1000 Friends of Oregon v. Columbia County*, 27 Or LUBA 474, 476 (1994), we described our approach to reviewing decisions adopting a committed exception under OAR 660-004-0028:

> "[We first] resolve any contentions that the findings fail to address issues relevant under OAR 660-004-0028 or address issues not properly considered under OAR 660-004-0028. We next consider any arguments that particular findings are not supported by substantial evidence in the record. Finally, we determine whether the findings that are relevant and supported by substantial evidence are sufficient to demonstrate compliance with the standards of ORS 197.732(1)(b) that 'uses allowed by the goal [are] impracticable.'" (Footnote omitted.)

We do not understand petitioner to argue that the county's findings fail to address issues that are relevant under OAR 660-004-0028 or that they address issues not properly considered under that rule. The first assignment of error contends that the county's findings regarding irrigation of the subject property and the character of uses on adjacent properties are not supported by substantial evidence. However, there is no need to resolve the evidentiary challenge to those findings, because we conclude that, even assuming that the disputed findings are supported by substantial evidence, the county's findings as a whole are insufficient to demonstrate compliance with the standard at ORS 197.732(1)(b) that "uses allowed by the goal [are] impracticable."[1] *See 1000 Friends of Oregon v. Columbia County*,

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[1] ORS 197.732(1) provides, in relevant part:

1 27 Or LUBA at 476-77 (declining to resolve evidentiary disputes because even if resolved in
2 the county's favor the county's findings fail to demonstrate compliance with OAR 660-004-
3 0028 and ORS 197.732(1)(b)).

4 OAR 660-004-0028(2) requires that a committed exception determination must
5 address certain factors, particularly the characteristics of the subject property, characteristics
6 of the adjacent lands, and the relationship between the exception area and adjacent lands.[2]
7 OAR 660-004-0028(6) sets forth additional factors that must be considered in determining
8 whether the uses allowed by the applicable goal are impracticable in the proposed exception
9 area.[3] In evaluating the county's findings under OAR 660-004-0028, LUBA must determine

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> "A local government may adopt an exception to a goal if:
>
> "* * * * *
>
> "(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable[.]"

[2]OAR 660-004-0028(2) provides:

> "Whether land is irrevocably committed depends on the relationship between the exception area [*i.e.* the subject property] and the lands adjacent to it. The findings for a committed exception therefore must address the following:
>
> "(a) The characteristics of the exception area;
>
> "(b) The characteristics of the adjacent lands;
>
> "(c) The relationship between the exception area and the lands adjacent to it; and
>
> "(d) The other relevant factors set forth in OAR 660-[004]-0028(6)."

[3]OAR 660-004-0028(6) provides, in relevant part:

> "Findings of fact for a committed exception shall address the following factors:
>
> "(a) Existing adjacent uses;
>
> "(b) Existing public facilities and services (water and sewer lines, etc.);
>
> "(c) Parcel size and ownership patterns of the exception area and adjacent lands:

1 whether the standards provided for in ORS 197.732(1)(b) have been met as a matter of law.
2 In performing that review, we are not required to give any deference to the county's
3 explanation for why it believes the facts demonstrate compliance with the legal standards for
4 a committed exception. *Laurance v. Douglas County*, 33 Or LUBA 292, 297-99, *aff'd* 150
5 Or App 368, 944 P2d 1004 (1997), *rev den* 327 Or 192 (1998).

6 For purposes of Goal 3, the relevant use allowed by the goal is farm use, as defined
7 by ORS 215.203(2)(a).[4] The county found that farm uses were impracticable on the subject

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"(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. * * *;

"(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. * * *;

"(d) Neighborhood and regional characteristics;

"(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. * * *;

"(f) Physical development according to OAR 660-[004]-0025; and

"(g) Other relevant factors."

[4]ORS 215.203(2)(a) provides in relevant part:

"As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. 'Farm use' includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. 'Farm use' also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or

property based on two sets of considerations that, in the county's view, limited its agricultural potential: (1) the size and characteristics of the subject property; and (2) the residential character of the surrounding parcels. With respect to the size and characteristics of the subject property, the county concluded in relevant part:

> "The applicant has provided information on the soils and the site-specific limiting factors pertaining to the soils. The non-irrigated soil classification, the presence of excessive subirrigation, and the elevation coupled with the small parcel size make the property impractical to manage as a farm unit. The soils are marginal for production, due in part, to the lack of irrigation water, excessive subirrigation patterns on the property, poor drainage and the elevation above 2,200 feet.
>
> "An adjacent property owner * * * has provided information on the subirrigation patterns of the area in general, and specifically as they relate to the [subject property], with explanations of the visually apparent wet areas. The property contains a very wet area running along the eastern half of the property, resulting from subirrigation flows draining in from the south and draining downhill to the northeast and Hill Creek. The parcel's lack of adequate drainage results in water collecting in the southern half of the property. This has been noted as a relevant limiting factor in the growing of commercial crops, particularly grapes, which require protection from fungus, and results in extensive fungicide spraying. Existence of the subirrigation would contribute to excessive vegetative growth in mature plants, creating a less productive fruiting crop, and requiring increase of labor to manage the growth.
>
> "The potentially productive area of the 5.24-acre parcel, excluding the physical land area of the flag and, as stated by the applicant, an irrigation pond required to farm the property, is less than 3.50 acres in size. This remaining area is significantly impacted by the above discussed subirrigation problems." Record 26.

With respect to the characteristics of the adjacent parcels and the relationship between the subject property and those parcels, the county found:

> "* * * The Board of County Commissioners finds that [the subject property] is not practicable for farm use because [it] is a 5.24-acre parcel, lacks water for irrigation purposes, and 60 percent of the on-site soils are rated Class VI without irrigation. The degree of partitioning and residential development in

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training equines including but not limited to providing riding lessons, training clinics and schooling shows. * * *"

1 the area * * * further limits the farm use potential of this parcel. The adjacent
2 parcels are 5.14, 6.13, 10.19 and 11.06 acres in size, and all four parcels
3 contain single family dwellings. Tax Lot 1705, situated to the east, is not in
4 agricultural usage, and has a flagstrip/driveway with fencing that separates the
5 subject property from a 10.19-acre parcel (TL 400) containing a horse barn
6 with covered arena, where up to 12 horses are stabled at a time. Tax Lot
7 1713, lies on the west, is positioned between the subject parcel and * * *
8 Highway 99, is 5.14 acres in size, contains a 1980 dwelling, and the owner
9 has stated that he does not farm the parcel. Tax Lot 1707, immediately north,
10 is improved with a 1977 single family dwelling, and may contain limited
11 commercial agricultural activities consisting of the growing and sale of iris
12 plants. The owner of TL 1707 has stated * * * that he had initially entered
13 into the purchase of the subject parcel, however upon learning that it is
14 without irrigation, he withdrew an earnest money agreement in 1994.

15 "The isolation of the parcel and adjacent existing residential uses make the
16 agricultural use of the subject site impractical. * * * The dimensions and size
17 of the parcel and the close proximity of residential uses make contiguous
18 forest and farm uses impractical since the subject property is separated from
19 other resource uses and is surrounded by non-resource uses. There are no
20 contiguous parcels which are appropriate for consolidation. An attempt to
21 consolidate the subject parcel with the contiguous EFU-zoned and farmed
22 parcel to the north failed, due to the lack of irrigation water. The Board finds
23 that sufficient information is in the record to show that the subject parcel is
24 not practicable for farm use." Record 25.

25 The characteristics of the proposed exception area are among the relevant factors that
26 the county can consider in determining whether farm uses are impracticable. *DLCD v. Curry*
27 *County*, 151 Or App 7, 11, 947 P2d 1123 (1997). However, the focus of OAR 660-004-0028
28 is on the relationship between the proposed exception area and the surrounding area, and
29 whether that relationship renders farm use of the subject property impracticable. *Id.* at 11-
30 12. The impracticability standard is a demanding standard. *1000 Friends of Oregon v.*
31 *Yamhill County*, 27 Or LUBA 508, 519 (1994). Demonstrating compliance with that
32 standard is all the more difficult where, as here, the subject property has a history of farm use
33 and is currently in farm use. Given such circumstances, it is insufficient to rely solely upon
34 long-standing site characteristics or the presence of long-standing adjacent conflicting uses.
35 In such circumstances, an adequate demonstration of impracticability must identify more
36 recent or imminent changes affecting the subject property that, by themselves or in

combination with long-standing factors, render continued farm use on the property impracticable.

The county's decision does not identify any such changes. The fact that intervenor has voluntarily abandoned water rights to the property is not significant, given the county's finding that those water rights were never exercised. The only logical conclusion is that the historical and current farm use of the property was and is not dependent upon exercise of those water rights. The only other evidence of recent change that the parties identify is the 1994 rezoning of the 11 parcels in Exception Area 1-Q for rural residential uses, based on a 1994 exception to Goal 3 adopted as part of the county's unfinished periodic review. That exception area contains six pre-goal dwellings and two nonfarm dwellings approved in 1988. However, the county's decision does not identify anything about that 1994 rezoning that affects the subject property. The findings imply that residential uses in the exception area somehow affect farm use of the subject property, but do not identify any conflicts or other impacts that do so. *Cf. Lovinger v. Lane County*, 36 Or LUBA 1, 10-12, *aff'd* 161 Or App 198, 984 P2d 958 (1999) (county properly considered fact that dogs from adjoining residential property harassed and killed sheep in the proposed exception area). The mere *existence* of residential uses near property proposed for an irrevocably committed exception does not demonstrate that such property is irrevocably committed to nonfarm uses. *Prentice v. LCDC*, 71 Or App 394, 403-04, 692 P2d 642 (1984). Further, as petitioner points out, nine of the eleven parcels in Exception Area 1-Q receive SFA and continue in farm uses, including one commercial farm operation. The county's findings do not explain why residential uses in Exception Area 1-Q are consistent with farm uses on parcels within that exception area, yet those same residential uses are inconsistent with continued farm use of the more distant subject property.

The county's findings are similarly flawed in considering the adjoining EFU-zoned parcels. Three of the four adjoining parcels contain pre-goal or pre-zoning dwellings; one

1 contains a nonfarm dwelling approved in 1985. Two of the adjoining parcels contain
2 commercial farm operations; the other two have histories of farm use. All four receive SFA.
3 The county finds that farm use on these adjoining parcels is "mostly subordinate to
4 residential use." Record 23. In the first assignment of error petitioner challenges that
5 finding, arguing that the three pre-goal dwellings are *farm* dwellings, and the 1985 nonfarm
6 dwelling is associated with a commercial horse stable, a farm use. Petitioner contends that,
7 as a matter of law, residential use of these parcels is an adjunct to farm use, and the county
8 erred to the extent it treated residential use as the predominant use of those parcels.

9 It is unnecessary to resolve that dispute, because even assuming the county correctly
10 characterized the predominant use on the adjoining EFU-zoned parcels as residential, the
11 county's findings fail to identify any conflicts or other impacts between those residential uses
12 and the subject property that would contribute to rendering farm use on the property
13 impracticable.[5] As stated above, the mere existence of such residential uses does not
14 demonstrate that the subject property is irrevocably committed to nonfarm uses. Nor does
15 the county explain why such residential uses are consistent with farm use of the adjoining
16 parcels, yet at the same time inconsistent with farm use of the subject property. Finally, we
17 return to our original point: even if the county had identified conflicts or impacts from these
18 adjoining residential uses, such long-standing uses have apparently co-existed with farm use
19 of the subject property for years. Given the historical and current farm use of the property,
20 such conflicts, while relevant, would not be sufficient to demonstrate that continued farm use

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[5]We generally agree with petitioner's observation that farmers have to live somewhere, and the existence of a pre-goal dwelling on a parcel that is zoned for and currently employed for "farm use" as defined by ORS 215.203(2)(a) would not allow the county to *automatically* conclude that use of the parcel is properly characterized as residential. *But see* ORS 215.203(2)(b)(F) (excluding from the definition of "current employment" of land for farm use "land under a single family dwelling"). However, the proper characterization of uses on such parcels, or which use predominates, is not determinative. What is determinative is whether the uses on or characteristics of adjacent parcels affect the practicability of farm uses on the subject property. For example, it is at least conceivable that, in particular circumstances, use of what is indisputably a *farm* dwelling on an adjacent parcel could conflict with the practicability of farm use on the subject property.

1 of the property is impracticable.

2 Two final matters require discussion. The parties dispute whether the county applied
3 the correct standard in determining that farm uses are impracticable. Petitioner argues that
4 the county's findings reflect an assumption that farm uses on the subject property or
5 adjoining properties that fall short of the scale and profitability of commercial farms are not
6 properly considered "farm uses" for purposes of the impracticability standard. Petitioner
7 notes that Goal 3 protects noncommercial farm uses, and that "farm use" as defined at
8 ORS 215.203(2)(a) and as used for purposes of the impracticability standard includes any
9 employment of land for the production of crops or livestock, etc., that is capable of
10 producing "gross income" or a profit in money. *Lovinger*, 36 Or LUBA at 17-18; *Brown v.*
11 *Jefferson County*, 33 Or LUBA 418, 433 (1997). According to petitioner, there is undisputed
12 evidence that current farm use of the property produces "gross income" or a profit in money.
13 Petitioner argues that the county erred to the extent it applied a higher threshold of
14 profitability in determining whether farm uses are impracticable.

15 Intervenor responds that the county has some latitude in setting a threshold level of
16 profitability in determining whether farm uses are impracticable. *See 1000 Friends of*
17 *Oregon v. Yamhill County*, 27 Or LUBA at 517-18 (advancing that suggestion). Intervenor
18 concedes that current farm use of the subject property produces a "profit in money" as that
19 term is used in ORS 215.203(2)(a), but argues that the county correctly, if implicitly, found
20 that the income derived from farm use of the subject property was insufficient to establish
21 that that farm use is practicable.

22 The county's findings can be read, as petitioner argues, to reflect the view that farm
23 uses less than commercial in scale and profitability do not constitute "farm uses" for
24 purposes of the impracticability standard. However, the county's findings do not expressly
25 attempt to define or apply a threshold of profitability different from that inherent in
26 ORS 215.203(2)(a). Even if the county has some latitude to do so, it has not done so here.

We agree with petitioner that, to the extent the county's findings are intended to apply a different threshold of profitability than the one inherent in the statute, the county's findings are inadequate to do so.

Second, petitioner argues that the county failed to limit future uses of the subject property to avoid committing adjacent resource lands to nonresource uses, as required by OAR 660-004-0018(2)(b)(B). Petitioner concedes that the issue of complying with OAR 660-004-0018(2)(b)(B) was not raised during the original proceedings or in the earlier petition for review. Nonetheless, petitioner argues that during the proceedings on remand intervenor addressed matters that were beyond the scope of remand, and therefore petitioner should be entitled to raise any issue, even if beyond the scope of remand. Intervenor responds, and we agree, that the issue of compliance with OAR 660-004-0018(2)(b)(B) cannot be raised before LUBA in the present appeal. Even if petitioner is correct that intervenor raised matters beyond the scope of remand, and that petitioner is therefore entitled to raise other unrelated issues beyond the scope of remand, a proposition for which petitioner offers no authority, petitioner has not demonstrated that it in fact raised the issue of compliance with OAR 660-004-0018(2)(b)(B) during the remand proceedings.

The first, second and third assignments of error are sustained, in part.

FOURTH ASSIGNMENT OF ERROR

Petitioner argues that the county misconstrued the applicable law, and failed to adopt adequate findings supported by substantial evidence in concluding that the application satisfies the provisions of Jackson County Land Development Ordinance (LDO) 277.080.

LDO 277.080 identifies the standards and criteria for minor map amendments, and provides in relevant part:

> "The rezoning of specific properties shall be based upon the following findings:
>
> "1. The redesignation conforms to the Jackson County Comprehensive Plan [JCCP] and all applicable Statewide Planning Goals for the area

1 in which the proposed rezoning could occur and for the County as a
2 whole.

3 "* * * * *

4 "2. A public need exists for the proposed rezoning. 'Public need' shall
5 mean that a valid public purpose for which the Comprehensive Plan
6 and this ordinance have been adopted, is served by a proposed map
7 amendment. Findings that address public need shall, at a minimum,
8 document:

9 "A. Whether or not additional land for a particular use is required
10 in consideration of that amount already provided by the current
11 zoning district within the area to be served.

12 "B. Whether or not the timing is appropriate to provide additional
13 land for a particular use."

14 Petitioner contends that the county's decision does not conform to the Agricultural
15 and Forest Lands elements of the JCCP, as required by LDO 277.080(1), nor does it satisfy
16 the "public need" component of LDO 277.080(2).

17 **A. Agricultural Element**

18 With respect to the Agricultural Element, the county concludes that "[t]he subject
19 property is not suitable for farming and the Agricultural Lands Element of the
20 Comprehensive Plan is not applicable." Record 30. The county's conclusion on that point is
21 based on a word-for-word repetition of the reasons why the county concluded that farm use
22 of the subject property is impracticable.

23 The county's decision, as well as the parties' briefs, treats the issue of conformance
24 with the Agricultural Element as a derivative determination following from and dependent
25 upon the validity of the county's irrevocably committed exception to Goal 3.[6] That being the

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[6]Intervenor argues that, in addition, the county's conclusion with respect to the Agricultural Element constitutes an interpretation of that element to which LUBA must defer, pursuant to ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). However, intervenor does not identify any part of the county's findings that arguably constitutes a reviewable interpretation of the Agricultural Element. The findings simply repeat the same facts used to determine whether farm use is impracticable on the subject property and conclude that the subject property is not suitable for farming and the Agricultural Element is not applicable. We can discern no express or implicit interpretation in those findings, other than a suggestion that

1 case, our conclusion above that the county's findings fail to demonstrate that the subject
2 property is irrevocably committed to uses not allowed under Goal 3 also disposes of
3 petitioner's arguments under this subassignment.
4 This subassignment of error is sustained.
5 **B. Forest Lands**
6 Petitioner argues that the county's findings fail to address impacts of developing the
7 subject property on lands zoned Woodland Resource (WR) approximately one-half mile
8 distant. Further, petitioner argues that the county failed to address use of the subject property
9 for livestock grazing, which is one of the Goal 4 forest uses listed in the JCCP Forest Lands
10 element.
11 The county's findings state that none of the three soils on the property are rated with
12 a forest cubic foot site class, and that no forest uses exist in the surrounding area other than a
13 group of WR-zoned parcels across Highway 99, approximately one-half mile away. The
14 county noted that some of the WR-zoned lands contain single-family dwellings. The county
15 concludes that "[t]he property is not suitable for forest uses and the Forest Lands Element of
16 the Comprehensive Plan is not applicable." Record 31.
17 Intervenor responds, and we agree, that the county's findings adequately explain why
18 rezoning the subject property will not impact forest lands. The county's findings note the
19 distance between the subject property and the nearest forest lands, and note that some of the
20 WR-zoned parcels contain single-family dwellings. The clear implication is that rezoning
21 the subject property will not conflict with or impact forest uses on those parcels.
22 With respect to livestock grazing, intervenor argues that grazing is also a farm use
23 and therefore the issue of whether the subject property is suitable for grazing is resolved by
24 the county's conclusion under OAR 660-004-0028 that farm uses are impracticable on the

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the county understands that the issue of the applicability of and conformance with the Agricultural Element turns on whether the evidence shows that farm use is impracticable on the subject property, for purposes of OAR 660-004-0028.

1 subject property. We agree that petitioner has not identified anything in the JCCP or LDO
2 that compels the county to adopt separate findings regarding grazing as both a forest use and
3 a farm use, for purposes of LDO 277.080(1). However, the county's findings do not take the
4 position, expressed in intervenor's brief, that grazing is considered a farm use and thus the
5 county need not consider it a forest use. Further, as petitioner points out, the county's
6 findings regarding farm use do not address grazing or acknowledge the recent history of
7 grazing on the subject property. It may be consistent with the Forest Lands element to
8 consider grazing as a farm use, as intervenor argues, but the county's findings do not do so.[7]
9 Absent an interpretation or finding that the county need not consider grazing for purposes of
10 the Forest Lands element, we agree with petitioner that the county erred in failing to consider
11 that issue.

12 This subassignment of error is sustained, in part.

13 **C. Public Need**

14 Finally, petitioner argues that the county's findings of compliance with LDO
15 277.080(2)(A) and (B) are inadequate and apply the wrong legal standard. The challenged
16 findings state:

17 "The development pattern in the vicinity of the subject parcel indicates that
18 the existence of rural dwellings and individual smaller lots clearly justifies an
19 irrevocably committed exception from a resource designation to a nonresource
20 designation. If through the evaluation of the mapping criteria and exceptions
21 criteria, the determination is reached that the current zoning designation has
22 been improperly applied to rural lands, then the public need is best met
23 through its correct application.

24 "The issue of timing must be framed in terms of whether it is appropriate to
25 recognize the historic pattern of physical development, usage and parcel size

[7]We note that OAR 660-004-0028(3)(b) and (c) require that the county consider only "[p]ropagation or harvesting of a forest product" and "[f]orest operations or forest practices" in determining whether uses allowed by Goal 4 are impracticable. Thus, the county need not consider livestock grazing for purposes of taking an exception to Goal 4. However, that does not resolve whether the JCCP Forest Lands element requires consideration of grazing as a forest use.

rather than explore the question of if there is a need at this time for additional land in the requested zone." Record 31.

Petitioner argues that there are a number of vacant parcels zoned for rural residential use in the area surrounding the subject property. Petitioner contends that the foregoing findings fail to address whether additional land for a particular use is required, above that already available, and whether the timing is appropriate to provide additional land for that particular use, as LDO 277.080(2)(A) and (B) require. Instead, petitioner argues, the county apparently interprets LDO 277.080(2)(A) and (B) to obviate *any* inquiry into the need for additional lands and timing when the county determines that the subject property is irrevocably committed to nonresource uses, and the county determines that the current zoning designation has been improperly applied. Petitioner argues that the county's implicit interpretation of LDO 277.080(2) is inconsistent with the language of that provision and "clearly wrong." ORS 197.829(1)(a); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 217, 843 P2d 992 (1992).

LDO 277.080(2) requires that "[f]indings that address public need shall, *at a minimum*, document" whether additional land for a particular use is required and whether the timing is appropriate to provide such additional land. (Emphasis added.) Thus, LDO 277.080(2) apparently contemplates that a determination of public need can be based on other considerations in addition to the two elements specified at LDO 277.080(2)(A) and (B). However, LDO 277.080(2) clearly requires that the existence of those two elements, the need for additional land and appropriate timing, be documented. To the extent the county interprets LDO 277.080(2) to not require documentation of those two factors, that interpretation is inconsistent with the language of that provision and "clearly wrong." Even if the county's interpretation to that effect were within the discretion afforded by ORS 197.829(1) and *Clark*, the basis for the county's avoidance of LDO 277.080(2)(A) and (B)—that the subject property is irrevocably committed to nonresource uses—is undermined

1 by our above conclusion that the county has failed to demonstrate compliance with the
2 exception criteria at OAR 660-004-0028.
3 This subassignment of error is sustained.
4 The fourth assignment of error is sustained, in part.
5 The county's decision is remanded.