BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JACKSON COUNTY CITIZENS LEAGUE,
Petitioner,

vs.

JACKSON COUNTY,
Respondent,

and

JOE RUTIGLIANO,
Intervenor-Respondent.

LUBA No. 2000-012

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Allison P. Hensey, Portland, filed the petition for review and argued on behalf of petitioner.

No appearance by Jackson County.

Stephen Mountainspring, Roseburg, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Dole, Coalwell, Clark, Mountainspring & Mornarich, P.C.

HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member, participated in the decision.

REMANDED 08/11/2000

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioner challenges a Jackson County ordinance that adopts an exception to Statewide Land Use Planning Goal 3 (Agricultural Lands), amends the county's comprehensive plan map and rezones a 65-acre parcel from Exclusive Farm Use (EFU) to Rural Residential (RR-5). Following approval of the challenged decision, the applicant plans to divide the subject property into 10 residential lots.

MOTION TO INTERVENE

Joe Rutigliano, the applicant below, moves to intervene on the side of respondent in this appeal. There is no opposition to the motion, and it is allowed.

FACTS

While the parties dispute the significance of the facts, the relevant facts are not in dispute. Prior to adoption of the challenged decision, the subject parcel was designated EFU, and all but one of the 65 acres received preferential tax assessment based on their farm use. The record does not show precisely when EFU zoning was applied to the subject property or the basis for the designation. However, the record shows the property was once part of a much larger ranch with the existing dwelling on the property at one time serving as the base of ranching operations. The record does not reveal when the subject 65-acre parcel was created, but the parcel was part of the ranch ownership until the late 1970s. Record 428.

Approximately 80 percent of the subject property is comprised of Class VI and VII soils. As defined by Goal 3, the subject property is not "agricultural land" that is required to be planned and zoned for exclusive farm use under Goal 3.[1] According to the county

[1]As defined by Goal 3, in western Oregon "agricultural land" includes "land of predominantly Class I, II, III and IV soils * * *." Because the subject property is predominately Class VI and VII soils, it does not fall within this part of the Goal 3 definition of agricultural land. Goal 3 also defines agricultural land to include certain "other lands" that are "suitable for farm use," based on a number of factors specified in the goal and other soil classes that are necessary to permit farm practices to be undertaken on adjacent or nearby lands. The

planning staff, the 20 percent of the property containing Class IV soil is on the north slope of a knoll on the subject property. The subject property is not irrigated. Although the subject property was used for seasonal grazing in the past, when the property was managed as part of the properties to the north, it is no longer used for seasonal grazing.[2]

The parcels immediately to the north are also zoned EFU. Tax lot 104 consists of 52 acres, and tax lot 100, owned by the former owner of the subject property, includes 183 acres. This latter parcel remains in farm use (grazing) and is part of a 700-acre farm unit.

A four-phase subdivision, Gold Rey Estates, is located south and west of the subject property, and zoned Farm Residential (F-5) and Suburban Residential (SR-2.5).[3] The subdivision includes approximately 60 lots. Six of the lots in Gold Rey Estates are separated from the subject property by John Day Drive, which runs along the southern boundary of the subject property for approximately 1600 feet. The remaining lots are located west of the subject property. Neither the challenged decision nor the parties' briefs identify how many of the lots in Gold Rey Estates are developed. Jackson County owns 85.28 acres that are maintained as a natural area east of the subject property. Gold Ray Dam is located on Tax Lot 300, which is directly south of the subject property, and is also county-owned. The county-owned properties are zoned Open Space Reserve (OSR).

County planning staff recommended against the requested exception, in part because staff found the "subject parcel is more in character with the EFU parcels to the north * * * and the OSR parcels to the [south and] east." Record 433. Planning staff also concluded, however, that the soils on the subject parcel do not fall within the Goal 3 definition of

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challenged decision finds that the subject property does not fall with the "other lands" portion of the Goal 3 definition of agricultural lands. Petitioner does not assign error to those findings.

[2]Intervenor-respondent's brief states that intervenor acquired the property in 1971 and cites a letter from the former owner. The letter does not discuss the date the parcel was sold. The parties cite to no other evidence of the ownership history of the subject property and do not tell us when it was zoned EFU.

[3]Separate plats for each phase were recorded in 1957, 1965, 1968 and 1976. The first three phases predated county zoning. Record 425.

agricultural land.

The planning commission initially found that a statewide planning goal exception was not necessary, because the subject property did not fall within the Goal 3 definition of agricultural land. The planning commission recommended approval of the requested change in zoning from EFU to RR-5. After the planning commission made its recommendation, the county counsel advised the board of commissioners that an exception to Goal 3 is required under the terms of the county's comprehensive plan.[4] The board of commissioners then remanded the matter to the planning commission to consider whether an exception could be granted.

The planning commission found the proposal met the applicable exception criteria and again recommended approval of the rezoning request. In doing so the planning commission cited Jackson County Land Development Ordinance (LDO) 277.080, in addition to the comprehensive plan, as requiring that an exception be taken when property is removed from a resource designation to a residential designation.[5] The planning commission stressed that the property is composed predominantly of Class VI soils. It found that no irrigation water was available to the subject property, and that the site is rocky and has steep slopes. The planning commission found that even if irrigation water were available, that would not make agricultural use of the subject property practicable, due to the shallow poor soils and

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[4]County counsel relied on language in the Jackson County Comprehensive Plan Rural Residential Map Designations Element. Record 308.

[5]LDO 277.080 establishes standards and criteria for zoning map amendments. LDO 277.080(1) imposes the following requirements:

> "The redesignation conforms to the Jackson County Comprehensive Plan and all applicable Statewide Planning Goals for the area in which the proposed rezoning could occur and for the County as a whole.
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> "Exceptions to Statewide Planning Goals 3 or 4, required for redesignating resource lands for nonresource uses, shall be based upon the amended Statewide Planning Goal 2, Part II (Exceptions) as interpreted by Oregon Administrative Rules (OAR Chapter 660, Division 4), including criteria contained in the Goal Exceptions Element of the Comprehensive Plan."

steep slopes. The planning commission described the property as having a south and southwest exposure with very hot and dry conditions with no relief from the sun. It also found that the property was not needed to permit farming practices to occur on adjoining property and that two fences and a road separated the site from property in grazing use to the north.

Petitioner and others submitted arguments about the proposed exception and land use designation to the board of commissioners. The board of commissioners adopted the planning commission's findings as its own and approved the request. This appeal followed.

INTRODUCTION

In its three assignments of error, petitioner argues the county's findings are inadequate to justify a committed exception to Goal 3 under OAR 660-004-0028.[6] Before

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

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

OAR 660-004-0028(6) sets forth additional factors that must be considered in determining whether the uses allowed by the applicable goal are impracticable in the proposed exception area:

> "Findings of fact for a committed exception shall address the following factors:
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> "(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:
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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

turning to those arguments, we note there are three features of this case that make it unusual. The first of those features is that the soils on the subject property are *not* of the quality that Goal 3 requires to be protected for farm use and the property does not otherwise fall within the definition of agricultural land. Therefore, as far as relevant state land use statutes, statewide planning goals and Land Conservation and Development Commission (LCDC) administrative rules are concerned, no exception to Goal 3 is necessary to plan and zone the subject property for rural residential use.

The second unusual feature of this case is that notwithstanding the facial inapplicability of Goal 3 under state statutes, the statewide planning goals and LCDC administrative rules, the county nevertheless interprets its comprehensive plan and land use regulations to require that an exception to Goal 3 be justified to plan and zone the property for rural residential use. Stated differently, the county apparently interprets its comprehensive plan and land use regulations to require that the soils on the subject property

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> 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. * * *
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> "(d) Neighborhood and regional characteristics;
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> "(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. * * *;
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> "(f) Physical development according to OAR 660-[004]-0025; and
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> "(g) Other relevant factors."

be protected for farm use (even though Goal 3 itself does not), unless an exception to Goal 3 can be justified.

Finally, despite disagreement among the parties during the proceedings below about whether a Goal 3 exception is required in this case, no party questions the county's interpretation of its comprehensive plan and land use regulation as requiring a Goal 3 exception.[7] Therefore, for purposes of this opinion, we accept the county's interpretation of its comprehensive plan and LDO.

Intervenor argues that because the exception that was adopted by the county in this matter is required by local law, we should apply a highly deferential standard of review in considering the county's interpretation and application of the criteria that must be met to approve an exception. ORS 197.829(1); *Clark v. Jackson County*, 313 Or 508, 514-15, 836 P2d 710 (1992).

We do not agree with intervenor. Although the underlying legal requirement that the county adopt an exception in the circumstances that are presented in this case may be a requirement of local law only, the county interprets that local law to require a statewide planning goal exception. The challenged decision does not take the position that the LCDC administrative rule requirements for a statewide planning goal exception do not apply to the exception that is required here by local law. To the contrary, the challenged decision and the cited local law provisions expressly refer to the Goal 2 and LCDC administrative rule exception requirements, which are also stated at ORS 197.732.[8] The board of

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[7]Because no party questions the county's interpretation of its comprehensive plan and land use regulations as requiring a Goal 3 exception here, no party presents a focused explanation for why the county interprets is comprehensive plan and land use regulations in that manner.

[8]The planning commission findings, which were adopted by the board of commissioners, include the following:

> "[LDO] 277.080(1) requires demonstration that the application complies with the Jackson County Comprehensive Plan and all applicable Statewide Planning Goals. Additionally, 'exceptions to Statewide Planning Goals 3 or 4, required for redesignating resource lands for

commissioners' interpretation and application of these statutory, goal and rule requirements is entitled to no deference on appeal.

PRELIMINARY ISSUES

Intervenor raises two other arguments that, if meritorious, would require that the challenged decision be affirmed. We address those arguments below.

A. Petitioner's Arguments are Based on Goal 3 Rather than the LDO and Comprehensive Plan

If we understand intervenor correctly, he appears to argue that petitioner fails to appreciate that the county only adopted an exception in this case because the comprehensive plan and LDO require one. Intervenor appears to argue that because the petition for review is cast in arguments that a Goal 3 exception is not justified, without specifically noting throughout the petition for review that it is the comprehensive plan and LDO that require the exception, we should reject petitioner's assignments of error and affirm the county's decision.

We do not believe intervenor's characterization of the petition for review is accurate. The challenged decision clearly states that the source of the legal requirement for an exception in this matter is in county legislation, and the petition for review specifically recognizes that the exception is required by county legislation. Any lack of explicit recognition in specific portions of the petition for review that the exception is required by local law is not legally significant and provides no basis for rejecting petitioner's assignments of error.

B. Failure to Challenge the County's "Physically Developed" Exception

Intervenor contends that the county took an exception both under OAR 660-004-0028 (land irrevocably committed to other uses) and under OAR 660-004-0025 (land physically

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nonresource uses, shall be based upon the amended Statewide Planning Goal 2, Part II (Exceptions) as interpreted by Oregon Administrative Rules (OAR Chapter 660, Division 4), including criteria contained in the Goal Exceptions Element of the Comprehensive Plan.'" Record 15.

developed to other uses).[9] Intervenor then argues that because petitioner does not specifically assign error to the latter basis for an exception, the county ordinance must be sustained.

We do not agree. Petitioner's challenge goes not only to the exception itself, but to the ultimate conclusions regarding predominate land uses and characteristics of the property and the area. We therefore regard the challenge as sufficiently broad to attack the underpinnings of both a "committed" and a "physically developed" exception.

Moreover, the county's findings only address an exception under OAR 660-004-0028. The findings mention a dwelling on the subject property in support of the OAR 660-004-0028 exception, but it is not readily apparent that this mention is made in support of a "physically developed" exception under OAR 660-004-0025. Indeed, the county's findings do not directly identify OAR 660-004-0025 as a basis for an exception or otherwise specifically address the criteria set out in OAR 660-004-0025. Mention of OAR 660-004-0025 is in two footnotes attached to a finding stating that the site includes a dwelling and adding that the "physical location and access to the dwelling further commits this site to residential use." Record 26. In other words, the finding addresses a "committed" exception under OAR 660-004-0028, notwithstanding the passing reference to OAR 660-004-0025. At

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[9]OAR 660-004-0025 provides:

> "(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.
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> "(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception."

best, one may say the findings address facts that are relevant to both possible avenues for an exception.

To be sure, the applicant's proposed findings, which were accepted by the planning commission and the board of commissioners, do include a brief discussion which attempts to justify an exception under OAR 660-004-0025. The county incorporated the applicant's proposed findings as its own, but in doing so the county did not articulate more than a passing claim to a "physically developed" exception. The brief discussion of OAR 660-004-0025 and a "physically developed" exception in the applicant's findings document is essentially conclusional and does little to explain how the criteria for such an exception are satisfied in this case. The applicant's proposed finding says

> "[t]he subject site does include a dwelling. The physical location and access to the dwelling further commits this site to residential use[.] The functional use of the property is residential." Record 161.

A conclusion follows stating "[t]he subject property is built and committed to residential use." *Id*.

We decline to accept the finding under OAR 660-004-0025 as more than an afterthought. It is not sufficient to articulate facts and a rationale to support an exception. That a site of over 65 acres includes a single dwelling does not, on its face, commit those 65 acres to residential use.

We next consider petitioner's assignments of error.

FIRST ASSIGNMENT OF ERROR

Petititioner's first assignment of error includes four subassignments of error and alleges the county failed to address factors that are relevant under OAR 660-004-0028 and addressed factors that are not properly considered under the rule. We address two of

petitioner's subassignments of error here and address the remaining subassignments of error under the first assignment of error in our discussion of the third assignment of error below.[10]

A. Failure to Identify How Adjacent Exception Areas Were Created

OAR 660-004-0028(6)(c)(A) provides that "[r]esource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception." *See* n 6. We understand petitioner to argue that the fourth phase of Gold Rey Estates, which was approved in 1976 and is located closest to the subject property, may itself have been approved pursuant to an exception (an application of statewide planning goals), making reliance on that phase of Gold Rey Estates to justify the current exception inappropriate under the above-quoted language of OAR 660-004-0028(6)(c)(A). *See DLCD v. Yamhill County*, 31 Or LUBA 488, 500 (1996) ("conflicts with rural residential development in exception areas created pursuant to the applicable goals cannot be used to justify a committed exception on [nearby] property").

Intervenor responds that the only exception to the statewide planning goals that was adopted by the county for Gold Rey Estates was adopted in 1982, after all four phases of the subdivision had been approved. Intervenor argues that because petitioner's premise that the fourth phase of Gold Rey Estates was approved pursuant to an exception is erroneous, its subassignment of error is without merit. We agree with intervenor. This subassignment of error is denied.

B. Failure to Adopt an Exception to Goal 14 (Urbanization)

Petitioner argues the county erred by failing to take an exception to Goal 14. As we understand the argument, petitioner believes the county improperly found that a subdivision with approximately 10 five-acre lots does not constitute an urban use. Petitioner asserts the

[10]Those arguments include petitioner's arguments that the county's findings are inadequate to explain what it is about the relationship between the exception area and the adjacent lands that renders continued use of the subject property for seasonal grazing impracticable.

anticipated subdivision of this property will significantly urbanize the surrounding area. Petitioner contends the county's rejection of a Goal 14 exception is not supported by adequate findings or substantial evidence.

We do not agree with petitioner's apparent view that five-acre lots necessarily constitute an urban use. The five-acre minimum lot size in the RR-5 zone does not itself result in an urban use, and the planning staff took the position that the planned subdivision of the subject property would be served with essentially rural services, such as septic facilities and wells. The county's findings appear to incorporate this view. The findings say that septic systems and wells must be used for the residential development. These findings are sufficient to show the instant proposal is unlike the proposal that was discussed in *Brown v. Jefferson County*, 33 Or LUBA 418, 446-47 (1997). In that case, the question was whether a proposed subdivision resulting in lots of two acres within two miles of an existing urban growth boundary with access to a community water system was rural or urban in nature. No such circumstances exist for the subject property. We therefore do not subscribe to petitioner's view of this proposal as one that allows an urban use of rural land, which would require an exception to Goal 14.

This subassignment of error is denied.

SECOND ASSIGNMENT OF ERROR

The county found that:

> "[A]djacent lands primarily include the adjoining subdivisions, and, to a lesser extent, the open space lands to the north and east." Record 21.

Petitioner argues that this finding inaccurately characterizes the nature of the lands adjacent to the subject property. Petitioner argues that three-quarters of the property that is adjacent to the subject property is zoned EFU or OSR.

Looking at the maps at pages 96 and 192 of the record, it appears that approximately three-quarters of the property that adjoins the subject property is composed of a portion of

the adjoining Gold Rey Estates subdivision (approximately one-quarter) and the county park and the Kelly Slough areas (approximately one-half). While the disputed finding is of little value in justifying a committed exception, it is technically accurate and supported by the record.

The second assignment of error is denied.[11]

THIRD ASSIGNMENT OF ERROR

In its final assignment of error, petitioner argues the county's findings fail to demonstrate that "existing adjacent uses and other relevant factors make [farm use of the subject property] impracticable." ORS 197.732(1)(b). As we explained in *1000 Friends of Oregon v. Columbia County*, 27 Or LUBA 474, 476 (1994), this Board reviews the county's relevant findings that are supported by substantial evidence to determine whether the county's findings are sufficient to demonstrate that the ultimate statutory exception standard is met.

Here, the county's findings establish the following:

1. Approximately six acreage residential lots are located directly across John Day Drive from the subject parcel. Approximately 54 additional acreage residential lots are located further to the west.

2. Certain public facilities and services support that residential development.[12]

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[11]Under this assignment of error, petitioner also challenges the county's apparent reliance on the "residential" nature of the adjoining properties and the subject property in justifying the committed exception. We address that challenge under the third assignment of error below.

[12]The facilities and services cited in the decision are as follows:

"1. Jackson County owned and maintained public road access via John Day Drive.

"2. PacifiCorp. electrical power serves the property. Additionally, a distribution line crosses the subject property.

"3. US West telephone service is on site.

"4. Jackson County Sheriff and State Police provide police service to this area.

3. A county park adjoins the subject property to the south and east.

4. A preexisting farmhouse is located on the subject 65-acre parcel.

5. The 65-acre parcel was used for seasonal grazing in the past, but has not been used for that purpose since the farm operator sold the subject parcel to intervenor.

6. The former farm operator testified that the subject parcel was never well suited to farm use, because it contains primarily south-facing slopes and poor, dry, thin soils.

7. The former farm operator also testified that an existing road and fences would hamper use of the subject property for seasonal grazing use.

The ultimate legal standard is whether farm use of the subject property is impracticable. Seasonal grazing is a farm use. It is not disputed that the subject property has been used for seasonal grazing in the past. The above-described findings are not sufficient to demonstrate that use of the subject property for seasonal grazing in the future is impracticable.

A. Impacts From Adjoining Uses

The findings described in 1-3 above are clearly inadequate to demonstrate that farm use of the subject property is impracticable. The challenged decision makes no attempt whatever to explain what it is about the adjacent and nearby rural residential subdivision lots that makes continued use of the subject property for seasonal grazing impracticable. Unexplained observations of proximate nonfarm uses are not sufficient to demonstrate that farm use of the subject property is impracticable. *See Jackson County Citizens League v. Jackson County*, ___ Or LUBA ___ (LUBA No. 99-147, July 7, 2000), slip op 9 ("[t]he mere *existence* of residential uses near property proposed for an irrevocably committed exception

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"5. Jackson County Rural Fire Protection District #3 provides fire protection to the subject property which is within the Fire District #3 boundaries.

"6. Jackson County School District #6 provides school bus service to the subject property.

"7. Solid waste service pickup is available at the site. John Day Estates presently has this service available." Record 24.

does not demonstrate that such property is irrevocably committed to nonfarm uses," citing *Prentice v. LCDC*, 71 Or App 394, 403-04, 692 P2d 642 (1984)). Here, the findings do not even explain how many of the adjoining lots are developed. Nor do the findings explain why the activities that are carried out on those lots impact the subject property in ways that make seasonal grazing impracticable. The findings make no attempt to explain why the services and facilities that serve Gold Rey Estates have any impact on the subject property.[13] Similarly, the findings make no attempt to explain what it is about the adjoining recreational and open space uses that makes use of the subject property for seasonal grazing impracticable.

B. Characteristics of the Proposed Exception Area Itself

The preexisting farmhouse on the subject property does not commit the subject property to nonfarm use. We reject the challenged decision's suggestions to the contrary without further discussion.[14]

The county's findings that a committed exception may be justified by the poor quality of the soils on the subject property and the limited value of the subject property for seasonal grazing presents a closer question. However, the significance of those findings is largely undercut, because the required focus of an irrevocably committed exception is on the adjoining property rather than the property that is the subject of the exception.

In *DLCD v. Curry County*, 151 Or App 7, 12, 947 P2d 1123 (1997), the Court of Appeals held that "LUBA erred in holding that the characteristics of [a] proposed exception area and its unsuitability for resource use are wholly irrelevant." However, the court qualified that holding as follows:

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[13]There is no obvious reason why such facilities would make seasonal grazing on the subject property impracticable.

[14]Without some additional explanation in the decision, we similarly reject the suggestion in the decision that the existing farm road and fences on the subject property make continued seasonal grazing impracticable.

> "[A]n irrevocable commitment exception to Goals 3 and 4 must take into account the activities on and availability for resource use of surrounding areas as well as the area for which the exception is proposed. For a county to give *exclusive or 'preponderant'* weight to the characteristics of the exception area alone, in performing its analysis, would be contrary to the fundamental test for an irrevocable commitment exception, which requires surrounding areas and their relationship to the exception area to be the basis for determining whether the exception is allowable." *Id*. at 11-12 (emphasis added; citations omitted).

Affirming the challenged exception in this case would require that we give "exclusive or preponderant weight" to the characteristics of the exception area itself, because the county's findings do not identify impacts from adjoining properties that would support the challenged exception.

The county's findings concerning the impracticability of using the subject property for seasonal grazing are somewhat conflicting. The county found, based largely on the testimony of the manager of the grazing operation to the north (the former owner of the subject property) that the thin, dry, rocky soils on the subject property have very little value for seasonal grazing. However, the county also found that notwithstanding the marginal nature of the subject property for seasonal grazing, the property nevertheless has been put to that use in the past. In view of these conflicting findings, both of which are supported by the evidence in the record, and the lack of impacts from adjoining properties that make seasonal grazing impracticable, we do not view this case as an appropriate one in which to question the breadth of the Court of Appeals' admonition in *DLCD v. Curry County* that the "characteristics of the exception area" should not be given "exclusive or preponderant weight." *Id.* at 11.

C. Conclusion

Given the unusual factual and legal context of this case, a similar case is unlikely to arise outside Jackson County. The only reason an exception is required here is because Jackson County interprets its comprehensive plan and land use regulations to require one, notwithstanding the inapplicability of Goal 3. Therefore, while the soils on the subject

property are of insufficient quality to warrant protection under Goal 3, the county's code and comprehensive plan require that the subject property be protected for farm use, absent an exception. Given this local legal requirement, it is inappropriate to use the poor quality of the soils for farm use as the "exclusive or preponderant" basis for granting an exception.

If the county now wishes to allow rural residential development on rural lands that do not qualify for protection under Goals 3 or 4, in situations like this one where there does not appear to be anything about the adjoining property that makes resource use of those lands impracticable, the county must do one of two things. First, it may be possible to interpret its comprehensive plan or land use regulations as not requiring an exception in the circumstances presented in this case.[15] Second, if the comprehensive plan and LDO cannot be interpreted in that manner, the county may amend them to remove the requirement for an exception in the circumstances presented here.

The county's decision is remanded.

[15]Again, because that question is not presented in this appeal and we do not have the benefit of the parties' arguments on the question, we express no view on whether a sustainable interpretation to that effect is possible.