BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ORAN THOMAS WOLVERTON and
BEVERLY WOLVERTON,
Petitioners,

vs.

CROOK COUNTY,
Respondent.

LUBA No. 2000-138

FINAL OPINION
AND ORDER

Appeal from Crook County.

Steven P. Hultberg, Portland and Roger A. Alfred, Portland, filed the petition for review. With them on the brief was Perkins Coie.

No appearance by Crook County.

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

AFFIRMED 12/29/2000

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal a county's approval of a nonfarm dwelling on a 21-acre tract zoned for exclusive farm use (EFU).

FACTS

The subject property is located in unit 2 of an unrecorded subdivision known as Riverside Ranch, a former ranch that was legally subdivided in 1972.[1] Units 2 and 3 of the Riverside Ranch contain 178 lots, each approximately five to six acres in size. Eighty different property owners own the 178 lots. The county owns approximately 30 lots, obtained through tax foreclosure proceedings. The county has entered into a memorandum of understanding with the Department of Land Conservation and Development (DLCD) that it will not sell any land that does not further the goal of substantially reducing the potential residential density of units 2 and 3. The memorandum permits sale of county-owned lots in Riverside Ranch only to consolidate lots with other lots or parcels. Fifteen homes have been developed in units 2 and 3 since 1972.

Riverside Ranch and all relevant surrounding lands are zoned EFU. The subject property lies in the interior of unit 2 and is surrounded by a number of five to six-acre lots. Outside Riverside Ranch, at a distance of one-half mile to one mile, lie several large EFU-zoned parcels used for grazing. To the east at a distance of one-half mile from the subject property lies a 500-acre parcel used for grazing. To the northeast within one mile lies a 580-acre parcel used for grazing. To the south within one mile lies a 1,058-acre parcel used for grazing. Petitioners own a large ranch to the southeast of Riverside Ranch, more than one mile from the subject property. Petitioners' ranch is traversed by Conant Basin Road, a county road that provides the only access to Riverside Ranch.

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[1] *See generally Wolverton v. Crook County*, 34 Or LUBA 515 (1998), for a description of the history of Riverside Ranch.

The subject property is composed of four separate lots each approximately five acres in size. Soils on the property are unrated. A pole barn is located on one of the lots, which are otherwise undeveloped. Richard and Verna Johnson, the applicants, own three of the lots. The county owns one of the lots, and plans to transfer it to the applicants for $1 after final approval. The applicants propose to consolidate the four lots into a single parcel, and place a nonfarm dwelling on the consolidated parcel.

On July 26, 2000, the county planning commission conducted a hearing and voted to approve the application. The county court, the governing body, declined to hear any appeals from the planning commission on this matter, because the county owns one of the subject lots. This appeal followed.

ASSIGNMENT OF ERROR

Petitioners argue that the county misconstrued the applicable law, and failed to adopt adequate findings supported by substantial evidence demonstrating that the proposed nonfarm dwelling complies with Crook County Zoning Ordinance (CCZO) 3.010(8), which sets forth the approval criteria for nonfarm dwellings on EFU-zoned land.[2]

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[2]CCZO 3.010(8) provides in relevant part:

> "The County may approve a nonfarm residential dwelling upon a finding that the proposed dwelling:
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> "A. Is compatible with farm uses described in ORS 215.203(2) and is consistent with the intent and purposes set forth in ORS 215.243;
>
> "B. Does not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use;
>
> "C. Does not materially alter the stability of the overall land use pattern of the area;
>
> "D. Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil and land conditions, drainage and flooding, vegetation, location and size of the tract[.]"

A. CCZO 3.010(8)(A): Compatibility with Farm Uses

Petitioners challenge the adequacy of the county's findings of compliance with CCZO 3.010(8)(A). According to petitioners, the county's findings fail to address whether the proposed dwelling is compatible with farm uses described in ORS 215.203 or whether the dwelling is consistent with the intent and purposes of ORS 215.243, the CCZO or the county comprehensive plan, as CCZO 3.010(8)(A) requires. Further, petitioners argue that the county failed to adequately address evidence that their cattle operation is adversely impacted by traffic and vandalism associated with Conant Basin Road.

The challenged decision quotes ORS 215.203(2)(a) and 215.243, and then states:

> "The most significant part of the definition of 'farm use' [at ORS 215.203] embodies the idea of obtaining a profit in money [for] the agricultural activity that can occur on the property. This particular property has no irrigation water rights, and is above 4,000 feet above sea level. As a result of the elevation the growing season is very short, and frost can and does occur during all twelve months. The preponderant agricultural activity in the area is grazing. Productive grazing cannot occur on the 21-acre consolidated parcel. The most ambitious of the BLM allotment formulas, well-known in this community, provides that on dryland farms 233 acres are needed to feed one head of livestock each year. Based on the above analysis, the Planning Commission has to conclude that there is no possibility of obtaining a profit in money by any kind of agricultural activity that would occur on this particular property. The Commission considers this subject property to be land that would not in any way add to the agricultural economy of either the County or the State. Additionally, this land has limited ability to be cultivated as evidenced by extensive rock outcroppings, very uneven topography and shallow soils.
>
> "This is also not an expansion of urban development into rural areas. There are already a significant number of nonfarm related dwellings located in the immediate area and all utility services are already available to the property. As indicated later in this Decision, no additional land is available for further land divisions in Riverside Ranch." Record 7-8.

The above quoted finding primarily examines the subject property and not adjacent or nearby lands in determining whether the proposed nonfarm dwelling complies with the "compatibility" requirement found in CCZO 3.010(8)(A). Petitioners' main argument under this subassignment is that the county erred in not considering farm uses and practices on

nearby lands, and whether the proposed dwelling would impact those uses and practices. However, the county considered such issues under the "noninterference" and "stability" requirements of CCZO 3.010(8)(B) and (C), discussed below. The "compatibility," "noninterference" and "stability" requirements in the county's code and statute obviously overlap to some extent. *DLCD v. Crook County*, 26 Or LUBA 478, 485 (1994). Although the compatibility requirement is not limited to analysis of the subject property, petitioners do not explain why the particular concerns they raise are not adequately addressed by the county in its findings under CCZO 3.010(8)(B) and (C).

Petitioners also argue that the challenged findings do not address ORS 215.243.[3] However, the second paragraph of the above-quoted findings is obviously directed at ORS 215.243(3). Further, the first paragraph appears relevant to the subject matter of ORS 215.243(1), (2) and (4). Although the findings are not expressly directed to the specific

[3]ORS 215.243 provides:

> "The Legislative Assembly finds and declares that:
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> "(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.
>
> "(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.
>
> "(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.
>
> "(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones."

elements of ORS 215.243, petitioners do not identify any aspect of the statute that the findings do not adequately address.

Petitioners next argue that the county failed to explain why the proposed dwelling will be compatible with farm use, and failed to adopt an ultimate conclusion to that effect. However, the clear import of the county's findings is that no farm uses as defined by ORS 215.203 are possible on the subject property and therefore the proposed dwelling satisfies the compatibility requirement.

Finally, petitioners argue that the challenged findings do not identify any applicable CCZO or comprehensive plan provisions and determine whether the proposed dwelling is consistent with those provisions. Petitioners acknowledge that nothing in CCZO 3.010(8)(A) appears to require such a determination, but argue that the challenged decision itself appears to read CCZO 3.010(8)(A) to do so. The planning commission's decision concludes that the application is compatible with farm uses and consistent with the intent and purposes of the "County Zoning Ordinance and Comprehensive Plan." Record 6. However, the decision identifies and addresses no such provisions other than CCZO 3.010(8). The planning commission decision adopts the staff report, which identifies pages 42-49 of the county comprehensive plan, containing requirements for agricultural areas of the county, as legal criteria for the application. Record 5, 64. However, the staff report does not attempt to demonstrate that the proposed nonfarm dwelling is consistent with the identified comprehensive plan provisions.

Inadequate findings of compliance with inapplicable criteria are harmless error, and not a basis to reverse or remand the challenged decision. *Jorgensen v. Union County*, 37 Or LUBA 738, 751-52 (2000); *Gettman v. City of Bay City*, 28 Or LUBA 116, 119 (1994). Because CCZO 3.010(8) does not require evaluation of whether the dwelling is consistent with the comprehensive plan or other CCZO provisions, petitioners have not demonstrated

that the county's inadequate and conclusory findings with respect to other provisions are more than harmless error.

This subassignment of error is denied.

B. CCZO 3.010(8)(D): Generally Unsuitable Land

Petitioners contend that the county's findings are inadequate to demonstrate compliance with CCZO 3.010(8)(D), which requires a finding that the proposed nonfarm dwelling is situated upon generally unsuitable land for the production of farm crops and livestock. Petitioners argue that OAR 660-033-0130(4)(c)(B)(ii) requires that subject property may not be considered "generally unsuitable" if the parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch.[4] According to petitioners, the county fails to explain why the subject property cannot be used for grazing in conjunction with one of the three ranches within one mile.

The county's findings state, in relevant part:

> "In addition to being unsuitable for agriculture by [itself, the] subject parcel cannot practicably be used in conjunction with other farms, given the extreme physical deficiency of these parcels, the large distance from any commercial farming operations and limited agriculture in the immediate area." Record 18-19.

Petitioners' argument under this subassignment is based on petitioners' understanding that the subject property is *adjacent* to two of the three ranches within the one-mile study area. That understanding is based on a map of the study area at Record 21, which depicts the outlines of a number of submaps, one of which contains the subject property. Petitioners

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[4]OAR 660-033-0130(4)(c)(B)(ii) provides:

> "A lot or parcel is not 'generally unsuitable' simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, it is not 'generally unsuitable.' A lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use[.]"

appear to read the submap outline containing the subject property to be the boundaries of the subject property itself. However, that is clearly not the case: the subject property is located within the submap at issue along with a number of other parcels, but the submap boundaries are not the subject property boundaries. The map at Record 21 does not contradict the evidence in the record and the county's finding that the subject property is at least one-half mile from the nearest grazing operation.

That misunderstanding aside, petitioners have not demonstrated that the county's finding of compliance with CCZO 3.010(8)(D) is inadequate. There is no dispute that the subject property has very little, if any, value as grazing land. The county has adequately explained why land with little value for grazing, separated from farm uses by a number of small parcels not in agricultural use, cannot be used in conjunction with grazing operations one-half mile away.

This subassignment of error is denied.

C. CCZO 3.010(8)(B): Interference with Farming Practices

Petitioners contend that the county's findings are inadequate to demonstrate that the proposed dwelling will not interfere seriously with accepted farming practices, as required by CCZO 3.010(8)(B). Petitioners explain that the "noninterference" standard requires that the county (1) describe the farm practices on surrounding land devoted to farm use; (2) explain why the proposed use will not force a significant change in those practices; and (3) explain why the proposed use will not significantly increase the cost of those practices. *Gutoski v. Lane County*, 34 Or LUBA 219, 227, *aff'd* 155 Or App 369, 963 P2d 145 (1998). Petitioners argue that the county's findings fail the first prong of this test, by not specifically identifying any farm practices on lands within Riverside Ranch or on any of the surrounding ranch lands, including petitioners' ranch. Further, petitioners repeat their arguments under the first subassignment that the county inadequately addressed the concerns they raised regarding the

impacts of traffic and vandalism associated with Conant Basin Road on their grazing operation.

The challenged decision determines that none of the lots within Riverside Ranch are on farm tax deferral and that the subject property is surrounded by subdivision lots that are not in agricultural use. The decision describes the Riverside Ranch parcels as buffering the three ranches to the east, northeast and south of the subject property. With respect to each ranch the decision states that it is on farm tax deferral, a grazing operation exists thereon, and the owners of each ranch have testified that the proposed nonfarm dwelling will not interfere with their grazing operation.

The decision does not describe any farming practices on lands within Riverside Ranch because it concludes no agricultural activity occurs there. Petitioners are correct that the decision does not describe the specific practices associated with the grazing operations on any of the three ranches within the study area to the east, northeast and south. Such a description is often essential for an adequate determination of whether a nonfarm dwelling will significantly interfere with accepted farming practices on surrounding lands. However, petitioners have not demonstrated that a more adequate description is necessary in the present case. The only potential impacts from the proposed dwelling identified in this case pertain to additional traffic on Conant Basin Road. Petitioners do not identify any conceivable interference, much less serious interference, by the proposed dwelling on the grazing operations of the three ranches, which are one-half mile to one mile distant and are buffered by a number of vacant lots. We cannot say that a more specific description of grazing practices on those ranches is necessary under these circumstances.

The challenged decision addresses petitioners' arguments that traffic and vandalism associated with Conant Basin Road are related to Riverside Ranch and seriously interfere with their grazing operation:

> "[T]he testimony of the chief opponents, [petitioners,] was that the actual development of the nonfarm dwelling was not their concern. Implicit from

> their testimony was that they would not object to even a full build-out of Units 2 and 3, if Conant Basin Road were relocated. Their concern was that increased traffic on the county road and public way was impacting their ranch. Their testimony was more to hunters, and recreational persons, who had committed acts of vandalism. The Planning Commission believes, contrary to [petitioners'] testimony, that with the increase of residents in Units 2 and 3, acts of vandalism will decrease as individuals are less likely to commit vandalism if there is a reasonable chance of being seen. This belief is supported by testimony from the County, applicants and [one of the neighboring ranch owners]. The list of reported criminal incidents submitted by [petitioners] also supports the Commission's conclusion. That list shows that the vast majority of incidents occurred in the 1970s and 1980s. As Units 2 and 3 became more populated by residents in the late 1980s and 1990s, the reports of vandalism and poaching have very significantly been reduced.
>
> "The establishment of nonfarm dwellings in the manner proposed by this application, e.g. consolidation of several parcels, will more likely decrease the volume of traffic on Conant Basin Road than to increase traffic. This is because the EFU-1 zone permits as an outright use the recreational use of properties. In that regard, property owners of Units 2 and 3 are permitted to locate a recreational vehicle on their properties two weeks out of every three months. Such permitted use [could if fully utilized generate] significant traffic and of a type likely to have a more significant impact on farming practices than the development of a single family dwelling on four consolidated parcels. To the extent that the number of parcels is reduced by consolidation as in this case, the amount of recreational use of the parcels will be reduced.
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> "* * * * *
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> "Finally, the Planning Commission believes [petitioners] primarily object to the use of Conant Basin Road as a portion of that road traverses [petitioners'] ranch. Conant Basin Road has been in existence since the 1930s providing access to property owners south of the Post-Paulina Highway. In its function and use, Conant Basin Road is the same as other county and public roads. Successful ranches and farm operations throughout Crook County benefit from and coexist with such roads. * * *" Record 9-11.

Thus, the county concludes that the incidents of vandalism petitioners complain of are unrelated to development of Riverside Ranch, and that in fact approval of the proposed dwelling will decrease incidents of vandalism. Petitioners disagree with that reasoning, arguing that notwithstanding reduced incidents of vandalism in recent years, such incidents

still occur. However, that does not demonstrate that the county's finding or its reasoning is inadequate.

Petitioners also take issue with the county's conclusion that allowing a single dwelling on the consolidated lots will yield fewer potential traffic impacts than allowing recreational use of those lots. Petitioners argue that full-time use of a single-family dwelling on four consolidated lots will generate more traffic than part-time recreational use of four unconsolidated lots. That may be correct, but petitioners do not contend that traffic impacts from a single-family dwelling are so much greater than those of recreational use of the four unconsolidated lots that the incremental increase would seriously interfere with petitioners' grazing operation. Nor do petitioners dispute the county's larger point: that Conant Basin Road is a long-established county road that serves the needs of a number of ranches and property owners, including petitioners. The county did not err in concluding that the proposed dwelling on four consolidated lots will not interfere seriously with petitioners' grazing operation.

Finally, petitioners argue that the county erred in rejecting their concern that the proposed dwelling would negatively impact groundwater availability. According to petitioners, the county rejected that concern based on studies that are not in the record. Petitioners contend, therefore, that the county's conclusion regarding groundwater is not based on substantial evidence in the record.

The county's findings state on this point:

> "[T]he Planning Commission finds that [petitioners] have provided no factual basis to believe that the establishment of a single dwelling on [the subject property] would negatively affect the water available for agricultural operations. The Planning Commission is aware of studies performed in the Deschutes Basin, which shows that the consumptive use of ground water by dwellings is minimal * * *." Record 10-11.

The studies cited in the second sentence are not in the record, and petitioners are correct that the county cannot rely upon them as essential support for findings of compliance

with CCZO 3.010(8). However, petitioners do not challenge the county's conclusion in the first sentence: that petitioners have not provided a factual basis to believe the proposed dwelling would negatively affect groundwater. That unchallenged conclusion is sufficient to reject petitioners' concerns regarding groundwater. Petitioners do not explain the basis for their concerns or cite any evidence that would support those concerns.

This subassignment of error is denied.

D. CCZO 3.010(8)(C): Stability of the Overall Land Use Pattern

Petitioners argue that the county misconstrued the applicable law, and adopted inadequate findings not supported by substantial evidence, in concluding that the proposed dwelling will not materially alter the stability of the overall land use pattern of the area.

Under *Sweeten v. Clackamas County*, 17 Or LUBA 1234, 1245-46 (1989), the stability analysis requires (1) selection of an area for consideration; (2) examination of the types of uses in the selected area; and (3) a determination whether the proposed nonfarm dwelling will materially alter the stability of the existing uses in the selected area. The *Sweeten* analysis requires that the county provide a "clear picture of the existing land use pattern, the stability of that existing land use pattern, and an explanation for why introducing [the proposed nonfarm use] will not materially alter that stability." *DLCD v. Crook County*, 26 Or LUBA at 491. An important element of the stability standard is analysis of any cumulative trends toward conversion of the area to nonfarm development and the role of the proposed nonfarm dwelling in those trends. *DLCD v. Crook County*, 34 Or LUBA 243, 254 (1998); *see also* OAR 660-033-0130(4)(a)(D) (setting forth standards for stability analysis).

Petitioners challenge the county's findings under each of the three *Sweeten* elements. We address them in turn.

1. Study Area

The county's findings describe the selected study area:

> "The study area selected consists of an area within a one-mile radius of the subject property. This area is depicted on Exhibit 'A' attached to this decision. This study area is appropriate because it includes property similarly situated. The southern, eastern and northern eastern boundaries include significant portions of Units 2 and 3, and portions of the larger parcels referred to above (Ericsson, 1,000-acre farm parcel, the 500-acre Harmon property and the 580-acre DeLeo property). The study area is appropriate because it is not likely that any impacts from the nonfarm dwelling will be felt beyond these larger parcels." Record 13.

Petitioners argue that the county's justification for this study area is insufficient. According to petitioners, the county fails to explain what is meant by property that is "similarly situated." Further, the county does not explain why impacts beyond the one-mile radius are "not likely," or describe the boundaries of the three large farm parcels partially within the study area.

The selected study area appears to consist of four square miles centered on the subject property.[5] In size it exceeds the minimum requirements imposed by OAR 660-033-0130(4)(a)(D)(i).[6] It is undisputed that the subject property is surrounded by nearly identical lots within Riverside Ranch; petitioners do not explain why further analysis of surrounding

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[5]Although the above-quoted findings describe the area as a one-mile "radius," the map at Record 21 shows a square apparently two miles across centered on the subject property.

[6]OAR 660-033-0130(4)(c)(C) allows approval of nonfarm dwellings in counties outside the Willamette Valley upon a finding that:

> "The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. * * *"

In turn, OAR 660-033-0130(4)(a)(D)(i) requires that for purposes of the stability analysis:

> "* * * The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area[.]"

property is necessary to establish the scope or adequacy of the study area. Nor do petitioners explain why a larger or different scope is necessary in order to address impacts of the proposed dwelling, or why description of the boundaries of the three farm parcels outside the study area is necessary, or even relevant. We conclude that the county's findings adequately justify the scope of the study area and explain why it is adequate to conduct the stability analysis.

This subassignment of error is denied.

2. Description of Land Use Pattern

The county's findings describe the land use pattern within the study area as follows:

> "The study area includes primarily Units 2 and 3 of Riverside Ranch, but also includes portions of the Ericsson (1,000 acres), DeLeo (580 acres) and Harmon (500 acres) parcels.
>
> "Units 2 and 3, which were legally created in 1972 under the laws that were in effect at the time as a partitioning, consist of 178 mostly 5-6 acre parcels, although two 20-acre parcels exist in Unit 2 adjacent to the subject parcel.
>
> "Approximately 80 different property owners own the 178 parcels. Crook County owns approximately 30 parcels obtained through tax foreclosure proceedings. The County has entered into a Memorandum of Understanding with DLCD that provides that the County shall not sell any land that will not further the goal of substantially reducing the residential density of Units 2 and 3. The Agreement permits the sale of Riverside Ranch units only in consolidation with other parcels.
>
> "Twenty-six property owners own a total of 52 parcels, 1 owns 3 parcels, and 2 own 4 parcels each.
>
> "Fifteen homes have been developed in Units 2 and 3. Two applications for nonfarm dwellings on single five-acre parcels were denied by the Planning Commission in 1997. Those denials were upheld by LUBA.
>
> "To the south of Unit 2 almost one mile from the proposed home site is the 1000-acre farm-deferred parcel owned by Robert Ericsson. To the east of Unit 2 more than one-half mile from the homesite is the Harmon 500-acre farm-deferred parcel, and to the north of the Harmon parcel is the 580-acre farm-deferred parcel owned by the DeLeos. These larger parcels were created in 1995 and 1996 from farm partitionings of the former Timberline Ranch.

> Conant Basin Road traverses the Harmon property and is adjacent to the DeLeo property. All three parcels are used for cattle grazing." Record 13-14.

Petitioners challenge the adequacy of this description, arguing that the county fails to determine the location of the 15 developed lots within Riverside Ranch or when those lots were developed. Further, petitioners point out that the staff report identifies a fourth farm parcel, 1,000 acres in size, within the study area to the west of the subject property. Record 62. However, petitioners argue, the county's findings never address this fourth farm parcel.

The county's description of the existing land use pattern, although not as detailed or comprehensive as it could be, is adequate to provide a "clear picture" of that land use pattern. *See* OAR 660-033-0130(4)(a)(D)(ii) (describing standard).[7] Petitioners do not explain why the precise location of the 15 nonfarm dwellings within Riverside Ranch or the exact dates they were constructed are necessary for an adequate description of the land use pattern. The possible existence of a fourth farm parcel partially within the study area to the west is a closer question. However, the county found elsewhere in its decision that the only potential agricultural use in this area is grazing. We have already concluded that petitioners have not demonstrated any error in the county's conclusion that the proposed dwelling will not impact nearby grazing operations. Further, as noted above, the only identified impacts from the proposed dwelling in this case involve Conant Basin Road. That road lies to the southeast of the subject property, and petitioners do not explain how traffic on Conant Basin Road

[7]OAR 660-033-0130(4)(a)(D)(ii) provides that the county's stability findings must:

> "Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph[.]"

associated with the subject property could possibly impact a grazing operation to the west of the subject property.

This subassignment of error is denied.

3. Stability of the Land Use Pattern

Finally, petitioners challenge the county's ultimate conclusion that the proposed nonfarm dwelling will not materially alter the stability of the land use pattern within the study area.

The county's conclusion rests on its findings that no new parcels have been created within Riverside Ranch since 1972, or can be created under current state law, and that no new nonfarm dwellings on five-acre lots within the subdivision can be approved under current state law.[8] The county found that the only potential for new nonfarm dwellings

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[8]The county's findings state, in relevant part:

> "The land use pattern of the area is stable in that no nonfarm parcels have been created since the establishment of Units 2 and 3 in 1972. It is extremely unlikely that any additional nonfarm parcels will be created in this area given the requirements of state law. This case does not involve the creation of new parcels.
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> "Similarly, the approval of this application on a 20-acre parcel will not lead to the establishment of nonfarm dwellings on the 5-6-acre parcels of which Units 2 and 3 primarily consist. Two nonfarm applications for homes on nearby single five-acre parcels have been denied by the Planning Commission, and such denials have been affirmed by [LUBA]. As discussed above, two 20-acre parcels are adjacent to the subject parcels. One of those parcels already has been developed with a home. The approval of this application may lead to the application for a dwelling on the other 20-acre parcel * * *.
>
> "In this vein, only one other property owner owns four parcels, which could be consolidated into a 20-plus acre parcel. Other opportunities do exist for other property owners to accumulate 4 parcels. Tax assessor's records and the map submitted by the County at the July 26 meeting indicate that 27 people own 2 adjacent parcels. It is possible that some of those individuals might purchase 2 adjacent parcels from other people in order to accumulate sufficient acreage, however, only four of those property owners are adjacent to other multiple parcel owners. That type of consolidation therefore appears to be difficult and will not generate any significant number of dwellings. Nevertheless if it did occur, such consolidation of lots and accompanying reduction in parcels and density would be beneficial to the land use pattern of the area and agriculture rather than being detrimental.
>
> "* * * * *

within Riverside Ranch lies with consolidated tracts such as the subject property. The county concluded that only a few such tracts have been or can be consolidated within the ranch, and that only a few additional nonfarm dwellings could thus be created. Based on these findings, the county concluded that approval of the proposed nonfarm dwelling will not materially alter the stability of the existing land use pattern.

Petitioners challenge the county's findings, arguing that they fail to consider the *cumulative* effect of nonfarm development within the study area, as OAR 660-033-0130(4)(c)(C) requires. We disagree. The county considered the history of and potential for new nonfarm development within the study area, and concluded that that potential was so limited that the cumulative effect of any new nonfarm development would not alter the stability of the land use pattern. OAR 660-033-0130(4)(c)(C) does not require more.

Finally, petitioners also argue that the county's conclusion is not supported by substantial evidence. Petitioners argue that the county erred in relying on previous denials of applications for nonfarm dwellings on five-acre lots, to conclude that it is unlikely that such applications will be approved in the future. Petitioners contend that there is no evidence in the record regarding such denied applications, or any reported cases to that effect. Further, petitioners argue that even if such evidence existed, prior denials of applications are no indication that future applications will also be denied. In addition, petitioners argue that the record contains no tax assessor's records or other evidence supporting the county's findings regarding ownership patterns within the study area.

The county's findings regarding previous denials are apparently based on a memorandum submitted by the county court, at Record 44-49. Petitioners do not provide any reason why that memorandum should not be regarded as substantial evidence.

> "Based upon the above reasoning, the cumulative effect of this approval would be to not allow more than a few additional nonfarm dwellings in the entire study area. The reduction in numbers of parcels and density would be to the benefit of agriculture rather than to its detriment." Record 14-17

Petitioners are correct that previous denials of nonfarm development on five-acre lots are not necessarily an indication that similar future applications will also be denied. However, predictions of future development are inherently uncertain, and necessarily based on the history of development in the area and the local government's understanding of the current law. The county's findings express its understanding that new nonfarm dwellings on five-acre lots within Riverside Ranch are unlikely to gain approval, based on recent history and the county's understanding of the law. Petitioners have not demonstrated that the county's conclusion on that point is not supported by substantial evidence.

With respect to ownership patterns, petitioners are correct that no tax assessor's records or other direct evidence of ownership within Riverside Ranch is in the record. The only evidence on that point again appears to be the county court's memorandum, which states that:

> "Review of tax assessor records indicates that only one or two other property owners in Units 2 and 3 presently own 20 acres or more of land. It may be possible for others to accumulate that many acres, however, the opportunities for such accumulation are limited given the large number of property owners that own 5 to 10 acres." Record 47.

Although that testimony does not provide a specific breakdown of ownership patterns within Riverside Ranch, it supports the county's determination that the predominant ownership pattern is that of many property owners with one or two five-acre lots and, given the difficulty of accumulating sufficient acreage for a nonfarm dwelling, it is likely few additional nonfarm dwellings can be approved within Riverside Ranch. That determination is central to the county's ultimate conclusion that approval of the subject application will not materially alter the stability of the land use pattern in the area. Petitioners have not demonstrated that the record must include more detailed evidence of ownership patterns for the county's decision to be supported by substantial evidence.

This subassignment of error is denied.

The assignment of error is denied.

The county's decision is affirmed.