BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

SHELLEY WETHERELL,
Petitioner,

vs.

DOUGLAS COUNTY,
Respondent,

and

W.M. CLINE and JEANETTE CLINE,
Intervenors-Respondent.

LUBA No. 2005-181

FINAL OPINION
AND ORDER

Appeal from Douglas County.

Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf.

No appearance by Douglas County.

Randy C. Rubin, Roseburg, represented intervenors-respondent.

DAVIES, Board Member; HOLSTUN, Board Member, participated in the decision.

BASSHAM, Board Chair, did not participate in the decision.

REMANDED 05/17/2006

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

Opinion by Davies.

NATURE OF THE DECISION

Petitioner appeals a county decision approving a comprehensive plan map amendment from Agriculture (AGG) and Farm Forest Transitional (FFT) to Committed Residential – 5 Acre (RC5), a zone change from Exclusive Farm Use – Grazing (FG) and Farm Forest (FF) to Rural Residential – 5 Acre (5R), and taking an irrevocably committed exception to Statewide Planning Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands).

FACTS

The subject property is a 38.83-acre portion of a 74.7-acre tract that is bisected by a county road, Azalea-Glen Road, and is located west of the rural community of Quines Creek. *See* Diagram A appended to the end of this opinion. Approximately 31.68 acres of the property (Site 1) is located to the north of the road and is zoned Farm Forest (FF). Site 1 is composed of soils identified by the Natural Resources Conservation Service (NRCS) as class III agricultural soils, with a site index for Douglas Fir of 95. Site 1 is composed of four separate legal lots of record and is currently developed with four residences and a truck shop. The proposed comprehensive plan amendment, zone change and exception will allow two additional home sites on Site 1.

Approximately 43.31 acres of the subject tract (Site 2) is located to the south of the road and is zoned Farm Grazing (FG). Site 2 is vacant, contains four lots of record and is comprised of soils in agricultural capability classes II-IV. The northern 7.14 acres of Site 2 is elevated above the floodplain and is relatively wooded; the remainder to the south is flat. Only the northern 7.14 acres of Site 2 is included in the proposed request. *See* Diagram B. The proposal would thus allow for the creation of four split-zoned lots and four additional dwellings on the identified 7.14-acres of Site 2.

Adjacent properties to the north and west of Site 1 are zoned FF. Properties directly to the east of Site 1 are zoned Rural Residential (RR). These properties are used for

residential use and limited farm use, *i.e.*, "small numbers of livestock." Record 123. Properties directly to the east of Site 2 are split-zoned in the same manner the subject proposal would split zone Site 2, with the northern strip along the county road zoned 5R and the remainder of the long, narrow lots zoned FG. *See* Diagram A. These properties contain rural residential dwellings and some agricultural buildings. Record 123-24. To the west of Site 2 are properties zoned RR. Properties to the south are zoned FG.

The Douglas County Planning Commission conducted a hearing on the application on August 18, 2005. The planning commission's decision approving the application was reduced to writing on October 6, 2005. Pursuant to Douglas County Land Use Development Ordinance (LUDO) 6.900.2, the Douglas County Board of Commissioners conducted a hearing and reviewed the planning commission's decision.[1] The final decision of the board of commissioners affirming the planning commission's approval was reduced to writing on December 8, 2005.

This appeal followed.[2]

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the county erred in adopting an irrevocably committed exception to Goals 3 and 4. According to petitioner, the county failed to address relevant issues and based its decision on improper considerations. Certain findings, petitioner argues, are either not supported by substantial evidence or misconstrue applicable law. Finally,

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[1] LUDO 6.900.2 provides, in relevant part:

> "Within 30 days of a signed Plan Amendment decision for which an exception is required under ORS 197.732 or which involves lands designated under a statewide planning goal addressing agricultural lands or forestlands, the Board shall hold a hearing, limited to the record established by the lower authority, at a public meeting unless the Board elects to review the decision on their own motion or Notice of Review has been filed."

[2] Neither respondent nor intervenor-respondent filed response briefs or participated in oral argument.

petitioner contends that the county's findings are inadequate to demonstrate that resource use is impracticable on the subject property.

Irrevocably committed exceptions must be just that--exceptional. *1000 Friends of Oregon v. LCDC*, 69 Or App 717, 731, 688 P2d 103 (1984). ORS 197.732(1)(b), Goal 2 Part II(b), and OAR 660-004-0028(1) all establish the same ultimate legal standard for granting an irrevocably committed exception: "existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable." To implement that standard, OAR 660-004-0028(4) provides:

> "A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of [OAR 660-004-0028(6)] and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area."

OAR 660-004-0028(2) provides that an irrevocably committed exception must address certain factors, particularly the characteristics of the subject property, characteristics of the adjacent lands, and the relationship between the exception area and adjacent lands.[3] OAR 660-004-0028(6) sets forth additional factors that must be considered in determining whether the uses allowed by the goal are impracticable in the proposed exception area.[4] In

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

> "Whether land is irrevocably committed depends on the relationship between the exception area 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)."

[4] OAR 660-004-0028(6) provides, in pertinent part:

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

evaluating the county's findings under OAR 660-004-0028, we independently determine whether the standards provided for in ORS 197.732(1)(b) are satisfied, based on the findings of fact that are supported by substantial evidence. We are not required, in performing that review, to defer to the county's explanation for why it believes the facts demonstrate

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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:

"(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. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

"(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. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

"(d) Neighborhood and regional characteristics;

"(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

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

"(g) Other relevant factors."

compliance with the legal standards for an irrevocably committed exception. *Laurance v. Douglas County*, 33 Or LUBA 292, 297-99, *aff'd* 150 Or App 368, 944 P2d 1004 (1997).

A. Third Sub-Assignment of Error

As explained above, OAR 660-004-0028(6) lists numerous factors that must be addressed by the county in determining whether to approve an irrevocably committed exception. *See* n 4. Petitioner argues that the challenged findings do not address these factors or inadequately address them in various respects. The challenged decision adopts the recommendation of the planning commission, which in turn adopts the findings contained in the staff report prepared prior to the planning commission hearing.[5] Accordingly, we review both sets of findings supporting the challenged decision.[6] In general, we agree with

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[5] The decision of the planning commission provides:

> "Based on evidence received, the findings above and the findings contained in the Staff Report, we hereby recommend that the Board of Commissioners APPROVE the request * * *." Record 47.

[6] Staff report provides:

> "The eight existing lots of record which comprise the subject property are considered separate, legal parcels having been created as Cline Tracts by filed survey M7-15 in 1955. In Site 1, the average size of the four lots of record is 6.9 acres; in Site 2, the average size of the four lots of record is 10.5 acres. Site 1 is already developed with multiple single-family dwellings and a truck shop. The applicant states that the overall size of the land is too small to sustain a viable farm or forest use; the limited usable space for farm or forest uses makes such uses impracticable.
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> "The area surrounding the subject property is highly parcelized. Adjacent to the east is Committed Lands Site No. 7, which totals 205 acres zoned Rural Residential – 2 and Rural Residential – 5, and consisting of 36 parcels and 46 dwellings, as well as the remaining lots of Cline Tracts which are designated in the same configuration requested for Site 2 with the fronting portions of the long, narrow lots zoned 5R and the remaining portions, lying in the floodplain, zoned FG. To the south of the subject property lies Cow Creek, which traverses the property's southern boundary, followed by Interstate 5. To the west of the subject property lies Committed Lands Site No. 6, which totals 77 acres zoned Rural Residential – 2 and Rural Residential – 5 and consisting of 18 parcels and 12 dwellings. Barton County Road No. 97 runs parallel to the west boundary of Site 2, connecting to Azalea – Glen County Road No. 12, which runs in an east-west direction between Site 1 and Site 2.
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> "The subject property is located in a rural area where the existing level of rural facilities and services have the capacity to serve the proposed use with no new or extended public facilities required. Sanitation would be provided by on-site septic systems and domestic water by well.

petitioner that the findings are inadequate to address most of the OAR 660-004-0028(6) factors.

For instance, although the findings briefly describe some of the uses on some of the surrounding properties, they concede that there is some farming and forestry use on adjacent lands, but fail to clearly identify those uses and focus instead on the nearby residential uses. Thus, the findings fail to describe the nature of the resource uses on adjacent lands, as required by OAR 660-004-0028(6)(a). OAR 660-004-0028(6)(c) requires a description of the parcel sizes and ownership patterns of adjacent lands. The findings do not appear to address that requirement. Neither do the findings describe the neighborhood and regional characteristics, OAR 660-004-0028(6)(d), or any features or impediments that separate the exception area from adjacent resource lands, OAR 660-004-0028(6)(e).[7] Without first addressing the OAR 660-004-0028(6) factors, or providing a complete description of the uses on nearby and adjacent lands, the county cannot conclude that resource uses are impracticable on the subject property. *See 1000 Friends v. LCDC*, 301 Or 447, 501, 724 P2d

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> Septic system installation and maintenance will be subject to the standards and regulations of the Department of Environmental Quality (DEQ). Fire protection is provided by Azalea Rural Fire Protection District. The proposed amendment will not require the extension of any public facilities or services and, because of the low potential for additional development (five to six new home sites), will not significantly increase demand for utilities and services.
>
> "**FINDING NO. 31**
>
> > "The subject property was created as eight lots of record by filed survey in 1955. Site 1 is already developed with multiple dwellings; the amendment on Site 2 would result in the exact land use pattern as the adjacent parcels. The subject property meets the ten aspects of density which justify that a 5-Acre density is rural in Douglas County. The predominant land use pattern of the surrounding area is that of Committed Rural Residential 5-Acre and 2-Acre lands. These reasons support the conclusion that an Irrevocably Committed Exception for Site 1 and Site 2 is justified." Record 124-25.

It does not appear to us that the planning commission decision provides any further findings addressing the factors set forth in OAR 660-004-0028(6).

[7] The challenged decision does appear to identify the physical development on the subject property, pursuant to OAR 66-004-0028(6)(f).

268 (1986) (committed exceptions must be based on facts illustrating how past development has cast a mold for future uses).

B. First and Second Sub-Assignments of Error

Petitioner argues that the challenged findings are inadequate because they rely on findings that the characteristics of the subject property are similar to the surrounding area, and fail to explain why the relationship between the subject property and the adjacent lands supports its conclusion that the subject property is committed to nonresource uses.[8]

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[8] The staff report findings addressing compliance with OAR 660-004-0028(2)(a) through (c) provide:

"Site 1

"The land is approximately 38.61 acres located north of Azalea-Glen Road. The land is southern sloping and contains the following developments: Truck Shop and [multiple single family dwellings]. The adjacent lands east are already zoned RR-5R as requested by the Applicant. The lands west are zoned FF. The lands east are used the same as Applicant with single family dwellings and limited rural farm use. There are single family residences with minimized agricultural usage including small numbers of livestock. The land requested to be rezoned is identical to the adjacent lands. The tracts of land are small in acreage and wooded with a southern slope. The proposed lots are similar in size and used for similar purposes.

"Site 2

"The land is approximately 43.31 acres located south of Azalea-Glen Road. The north portion of the land . . . is elevated. The northwest section is wooded and unusable for grazing or farming. The southern section is flat. The adjacent lands are already zoned as requested by Applicant. The northern portions of the property are zoned '5R' with the southern portion being 'FG.' The lands include single family dwellings and some farm/agriculture buildings. The land requested to be rezoned is identical to the adjacent lands. Portions to the north are wooded and raised in elevation. The proposed lots are similar in size and used for similar purposes.

"FINDING NO. 30

> "The applicant has discussed the characteristics of the exception area, the adjacent lands and the relationship between the two, and has determined that the lands within the exception area are identical in use and character to adjacent lands."

Record 123-24.

The specific findings adopted by the planning commission provide, in relevant part:

> "We found that Site 1 is physically developed with four residences, and a shop on each lot of record with established property lines. This use is preexisting and is not illegal. This property is of such a small size it is no longer available for farm forest use. The surrounding

The "fundamental test" for an irrevocably committed exception is the relationship between the subject property and adjacent uses. *DLCD v. Curry County (Pigeon Point)*, 151 Or App 7, 11, 947 P2d 1123 (1997); OAR 660-004-0028(2). Accordingly, findings supporting an irrevocably committed exception must explain how the relationship between the proposed exception area and the nearby parcels renders the proposed exception area impracticable for resource use. Petitioner is correct that the findings rely, in large part, on the similarity of the subject property to the adjacent properties to the east that are already zoned 5R and divided in the manner intervenors seeks to divide their land. *See* Record 44 ("Applicant desired that the property be divided up into small ranches as is currently the situation for the properties to the east.").

The mere presence of residential use on adjacent properties, however, is not adequate to demonstrate that the subject property is irrevocably committed to nonresource use. *See, e.g.*, *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 357 (2000) (in considering residential uses on adjacent properties, the county must identify in its findings the conflicts or other impacts between the residential use and the subject property that make resource use on the subject property impracticable). Likewise, the similarity to the property to the east does not provide a basis to determine that the subject property is irrevocably committed to nonresource use. On the contrary, if the subject property is similar to those properties to the east, which apparently are used as "small ranches" where the property owner "hays and raises cattle," the subject property most likely is not irrevocably committed

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> parcels are already zoned (5R) and developed with houses. Changing the zoning on Site 1 is not going to jeopardize the forest and agricultural lands of Douglas County. Wells and septic systems are already installed.
>
> "We found that Site 2 is already surrounded by (5R) land and the requested change is appropriate in this case. This land has long been established as divided lots of record. Farming as described by applicants is no longer practical or feasible because of the lot size. Applicants' request provides for the ability to locate a single family residence on the north end of each proposed parcel where it is wooded and the ground is rocky without top soil while maintaining the majority of the grazing land. Septic approval has already been granted." Record 46.

to nonresource use. *See* Record 44; *see also DLCD v. Coos County*, 39 Or LUBA 432, 442 (2001) (The mere existence of residential uses near a proposed exception area does not demonstrate that the proposed exception area is committed to nonresource use, especially when most of the nearby properties with residential uses also include resource uses). The county's findings, which rely on (1) the similarity to other properties already zoned 5R, and (2) the mere presence of residences on adjacent lands, are not sufficient to explain why the relationship between the subject property and the lands adjacent to it make the subject property impracticable for resources uses. On remand, the county must identify the conflicts caused by nearby residential uses that render resource uses on the subject property impracticable.

C. Fourth Sub-Assignment of Error

Petitioner argues that the county erred in relying on a "commercially viable" or "economic feasibility" standard in concluding that the property is irrevocably committed to nonresource use.[9] She alleges that in determining whether resource uses are impracticable on the subject property, the appropriate test is not one of commercial viability. *See Lovinger v. Lane County*, 36 Or LUBA 1, 17-18, *aff'd* 161 Or App 198, 984 P2d 958 (1999) (a committed exception to Goal 3 cannot be justified based on a finding that "commercial farming" is impracticable because protection under Goal 3 is not limited to commercial farms). The property need not be capable of supporting a self-sufficient commercial farming

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[9] In summarizing intervenor's testimony, the challenged findings provide:

> "It was further explained that the timber located on Site 1 was minimal and not economically feasible to harvest. * * * It is applicant's position that harvesting timber on this property is not economically feasible. * * * Applicants farmed this land for many years and it is no longer profitable. The cost of feed, irrigation, and the number of animals necessary to make a profit is not cost effective on the size of land." Record 43.

The findings in support of the county's conclusion appear to adopt that reasoning:

> "Farming as described by applicants is no longer practical or feasible because of the lot size." Record 46.

operation. *Id*. at 18-19. We agree with petitioner that the county appears to rely on a commercial viability standard. *See* n 9. To the extent it did so, it erred.

Petitioner also contends that the county relies on the size of the parcel to conclude that resource use on the subject property is impracticable. She argues that the county failed to consider the possibility of using the property in conjunction with adjacent resource lands. OAR 660-004-0028(6)(c)(B) requires the county to consider the use of the subject property in conjunction with contiguous parcels under common ownership in determining whether farm uses are impracticable on the subject property. We have also held that, notwithstanding the ownership of adjoining parcels, a county must explain why an area proposed for an exception cannot be joined with other farm uses on adjacent parcels. *DLCD v. Lane County*, 39 Or LUBA 445, 453 (2001). Accordingly, we agree with petitioner that the findings are inadequate in failing to provide these required explanations.

D. Conclusion

There appears to be no dispute that the subject property is composed of soils that would qualify the subject property as resource land. There also appears to be no dispute that the property has been farmed for over 30 years. While some adjacent properties have been divided and developed with single family dwellings on "small ranches," the desire to conform the subject property to the existing development to the east is not a basis for a determination that the subject property is irrevocably committed to nonresource use. Rather, intervenor's testimony appears to confirm that, even after the adjacent properties were divided and developed with single family residences, farm use continued on the subject property. It is unclear to us whether that farm use occurred only on the southern portion of the property that is excluded from the present request or on the entire subject property. In any event, the challenged findings do not explain how the development on the adjacent properties makes resource use of the subject property impracticable.

Petitioner's first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Even if the county demonstrates that resource uses are impracticable on the subject property, the proposed exception cannot be granted if doing so will commit adjacent or nearby resource land to nonresource use or if the proposed exception is incompatible with adjacent or nearby resource uses. OAR 660-004-0018(2)(b).[10] Petitioner argues that the county's findings fail to demonstrate compliance with OAR 660-004-0018(2)(b)(B) and (C). The county's findings provide:

> "We found the use will not commit adjacent or nearby land to nonresource use because all adjacent property is either already committed to nonresource use or has already been impacted by nonresource use, due to the prevalence of committed lands and physical barriers in the surrounding area, without its having had the affect of committing such lands to nonresource use; based on these same reasons, the proposed exception is compatible with adjacent resource uses. To ensure the use will not impede the continuation of farm and forest practices on adjacent or nearby lands, we found that a Resource Management Covenant should be applied to the exception lands." Record 47.[11]

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[10] OAR 660-004-0018(2)(b) provides that rural uses allowed by land and zone designations in a proposed exception area must meet the following requirements:

> "(A) The rural uses, density, and public facilities and services will maintain the land as 'Rural Land' as defined by the goals and are consistent with all other applicable Goal requirements; and
>
> "(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
>
> "(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses[.]"

[11] The staff report provides, in relevant part:

> "The use will not commit adjacent or nearby land to nonresource use because all adjacent property is either already committed to nonresource use or has already been impacted by nonresource use, due to the prevalence of committed lands and physical barriers in the surrounding area (see narrative associated with FINDING NO. 31 of this Report), without its having had the affect of committing such lands to nonresource use; based on these same reasons, the proposed exception is compatible with adjacent resource uses.
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> "**FINDING NO. 29**

A. First Sub-Assignment of Error

In essence, the county concludes that because the surrounding area is already developed with rural residential uses that did not commit nearby resource lands to nonresource use, then the proposed exception will not commit adjacent or nearby resource lands to nonresource uses. That analysis fails for several reasons. First, as explained above, the county did not adequately identify the adjacent and nearby resource uses. Accordingly, the county could not determine whether the proposed exception will commit those unidentified resource uses to nonresource use.

Second, the fact that past residential uses did not have the effect of committing nearby resource uses to nonresource use, even if true, does not mean that the proposed exception will not do so. On remand, the county must (1) identify the nearby resource lands and (2) adopt findings specifically explaining why the proposed exception will not commit adjacent or nearby resource lands to nonresource use.

Petitioner further argues that the findings are inconsistent, and notes the

> "inevitable internal inconsistency created by decision which attempts to justify exception to allow rural residential uses due to presence of conflicts with existing rural residences, while at the same time finding that grant of exception for subject property will not contribute further to conflicts that commit further adjacent resources area to nonresource use." Petition for Review 20.

> "The applicant has addressed the Rule criteria of OAR 660-004-0018 (A) – (C). The proposed exception maintains the land as rural, as it is consistent with the acknowledged County Goal 14 Exception which establishes that the 5-acre density *is* rural in Douglas County. The use will not commit adjacent or nearby land to nonresource use because all adjacent property is either already committed to nonresource use or has already been impacted by nonresource use; for these same reasons, the proposed exception is compatible with adjacent resource uses."

Record 122-23 (italics and underlining in original).

The narrative associated with Finding No. 31 provides, in part:

> "The predominate land use pattern of the surrounding area is that of Committed Rural Residential 5-Acre and 2-Acre lands." Record 125.

As petitioner notes, we have recognized the apparent inconsistency identified by petitioner. In *DLCD v. Coos County*, 39 Or LUBA 432 (2001), for instance, we rejected as internally inconsistent a local government's conclusions that (1) adopting an irrevocably committed exception can never commit nearby resource land to nonresource uses and (2) that longstanding rural residential uses that have existed in the vicinity of the property proposed for the exception have been compatible with resource use. We held:

> "The fact that other rural residential uses have existed * * * does not demonstrate that such rural uses necessarily are compatible with adjacent or nearby uses. * * * [S]uch a position is impossible to reconcile with the county's findings that those same rural residential uses have irrevocably committed the proposed exception area to nonresource use." *Id*. at 444.

We agree with petitioner, that for the same reasons provided in *DLCD v. Coos County*, the county's findings are internally inconsistent and not adequate to demonstrate compliance with OAR 660-004-0018.

B. Second Sub-Assignment of Error

Petitioner argues that "[g]ranting the exception will permit densities that do not conform with the proposed zoning or zoning of adjacent properties." Petition for Review 20. While the assignment of error appears to challenge the proposal's conformance with the proposed zoning, the argument under petitioner's second sub-assignment of error seems to be that the challenged decision violates Goal 14 (Urbanization).[12] The challenged decision concludes that "[t]he proposed exception maintains the land as rural, as it is consistent with the acknowledged County Goal 14 Exception which establishes that the 5-acre density *is* rural in Douglas County."[13] *See* n 11, Finding No. 29 (emphasis in original). Petitioner

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[12] Goal 14 is to "provide for an orderly and efficient transition from rural to urban land use."

[13] The county's Goal 14 Exception provides, in relevant part:

> "The five acre designation is an acceptable rural residential density primarily because : 1) septic system limitations in the County can be satisfied with a five-acre minimum parcel size;

argues that the challenged decision fails to maintain the land as "rural land," even under the county's acknowledged Goal 14 exception, because as explained below, it allows for the creation of parcels smaller than 5 acres.

Site 2 is approximately 43.31 acres and contains four lots of record. The southern portion of that 43.31 acres, 36.17 acres, will remain zoned FG. The remaining 7.14 acres is subject to the proposed exception. We understand petitioner to contend that Site 2 could be divided into four separate lots based on the four existing legal lots of record, each of which would be eligible for a dwelling. In fact, it appears that intervenor intends just such a division. Each of those four lots would be split zoned; *i.e.*, the northern portions would be zoned 5R and the southern portions would be zoned FG.

Petitioner contends that the Douglas County Comprehensive Plan Land Use Element Policy 5 allows divisions of legally created properties along boundaries separating committed areas or exception areas from resource lands.[14] According to petitioner, Policy 5 would allow a further division of the four lots "along boundaries separating committed areas or exception areas from resource lands." *I.e.*, the northern portion of each legal lot, the portion that would be zoned 5R, would be divided from the southern portion of each legal lot. Petitioner contends that the resulting northern residential lots would be 2.0 acres, 1.95

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and 2) larger parcel sizes (i.e. ten plus acres) have historically been shown to be excessive amounts of land for rural residential use." Record 116.

[14] Land Use Element Policy 5 provides:

> "Divisions of legally created properties along the boundaries separating committed areas, exception areas or urban growth boundaries from resource lands shall be allowed, *in spite of the size of the property on either side of such boundary*, providing the zoning of the property within the boundary is a developmental classification. The land division shall be accomplished by utilizing the Administrative Action procedure established in the Douglas County Land Use and Development Ordinance. Property within the boundary shall be permitted to develop in accordance with provisions of the implementing zone as a 'lot of record'. Development of properties outside the boundary shall be in accordance with zoning provisions. Building permit request may be subject to Article 43 or Administrative Policy #1 whichever may be appropriate. Such parcels will be encouraged to be aggregated with other resource parcels." (Emphasis added).

acres, 1.63 acres and 1.54 acres; the four FG-zoned lots would be approximately 10.97 acres, 8.04 acres, 8.32 acres and 8.38 acres. *See* Diagram B.

According to petitioner, the challenged decision therefore would pave the way for the creation of lots or parcels in a rural residential area that are smaller than the 5-acre minimum allowed by the county's acknowledged Goal 14 exception. Accordingly, the county must either make findings of compliance with Goal 14 or take an exception to Goal 14.

While it is not clear to us that Policy 5 operates as petitioner asserts it does, it certainly seems possible that it could be interpreted as petitioner interprets it. If so, it also appears that petitioner is correct that the division along the "boundaries separating committed areas [or] exception areas * * * from resource lands" would result in lots that are smaller than 5 acres, in violation of the county's Goal 14 exception. It is unclear to us whether Policy 5 would allow such a division, notwithstanding the county's acknowledged Goal 14 exception, and notwithstanding the 5-acre minimum lot size provided for in the 5R zone. On remand, the county should adopt Goal 14 findings explaining the applicability of Policy 5, and, if necessary, adopt an exception to Goal 14.

Petitioner's second assignment of error is sustained.

The challenged decision is remanded.

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Diagram A

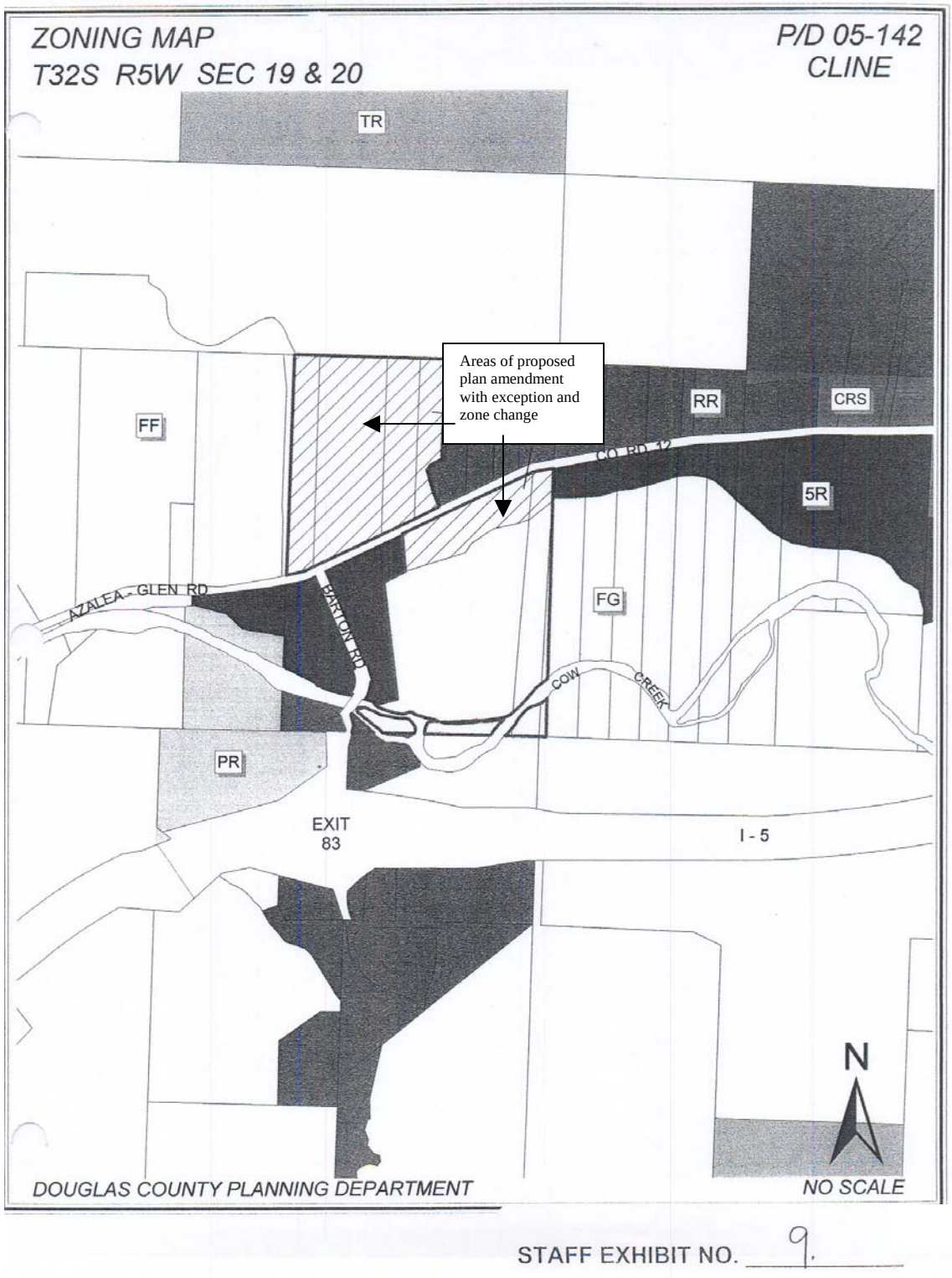
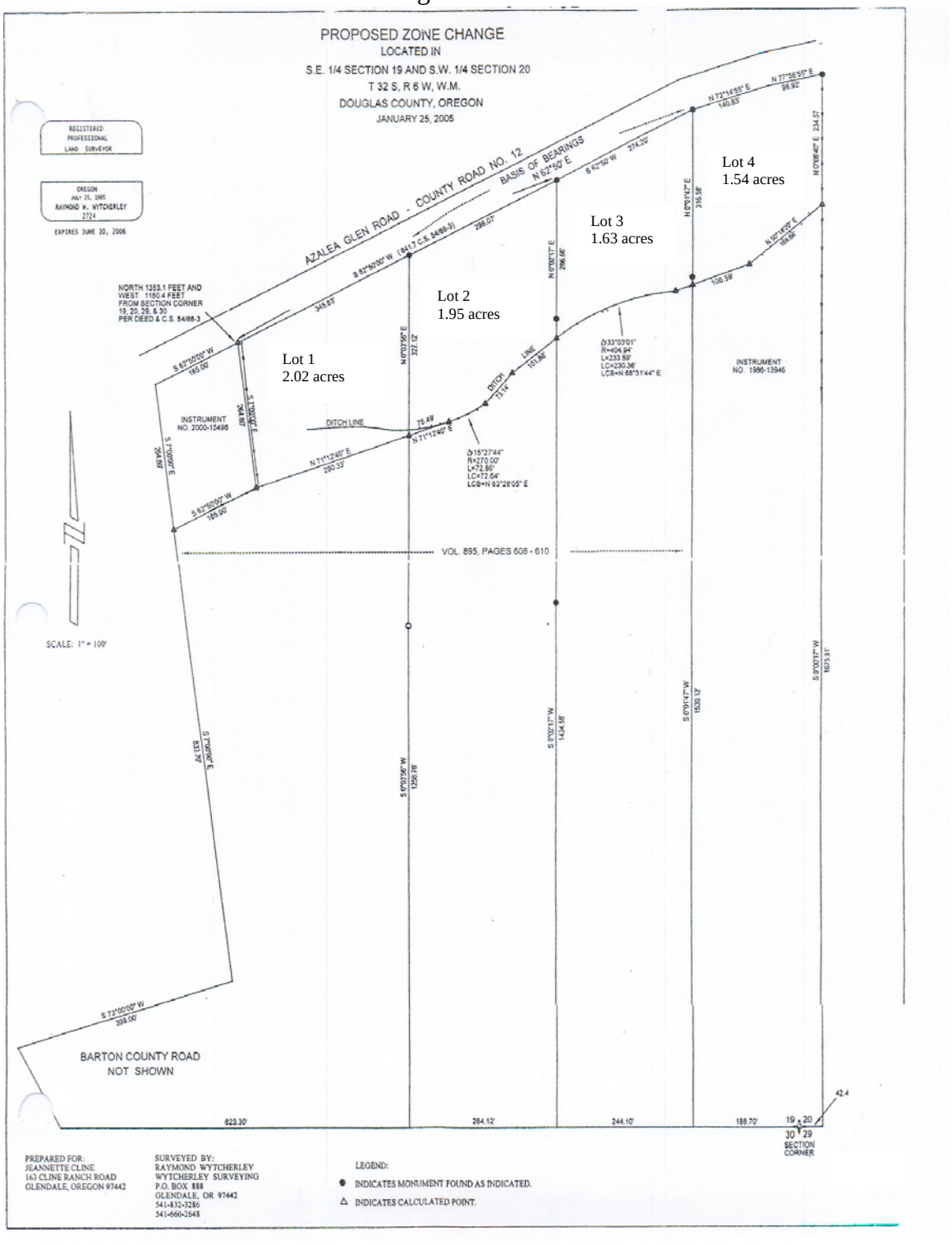

ZONING MAP
T32S R5W SEC 19 & 20
P/D 05-142
CLINE
TR
FF
RR
CRS
5R
FG
PR
Areas of proposed plan amendment with exception and zone change
CO. RD. 12
AZALEA - GLEN RD
BARTON RD
COW CREEK
EXIT 83
I - 5
N
DOUGLAS COUNTY PLANNING DEPARTMENT
NO SCALE
STAFF EXHIBIT NO. 9.

Diagram B


PROPOSED ZONE CHANGE
LOCATED IN
S.E. 1/4 SECTION 19 AND S.W. 1/4 SECTION 20
T 32 S, R 6 W, W.M.
DOUGLAS COUNTY, OREGON
JANUARY 25, 2005
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 25, 1995
RAYMOND W. WYTCHERLEY
2724
EXPIRES JUNE 30, 2006
AZALEA GLEN ROAD - COUNTY ROAD NO. 12
BASIS OF BEARINGS
N 62°50' E
S 62°50'00" W (441.7 C.S. 54/88-3)
NORTH 1353.1 FEET AND WEST 1160.4 FEET FROM SECTION CORNER 19, 20, 29, & 30 PER DEED & C.S. 54/88-3
S 62°50'00" W
165.00
Lot 1
2.02 acres
Lot 2
1.95 acres
Lot 3
1.63 acres
Lot 4
1.54 acres
INSTRUMENT NO. 2000-15498
INSTRUMENT NO. 1986-13946
DITCH LINE
N 71°12'40" E
290.33'
S 62°50'00" W
165.00
VOL. 895, PAGES 608 - 610
SCALE: 1" = 100'
BARTON COUNTY ROAD
NOT SHOWN
S 73°00'00" W
398.00'
623.30'
264.12'
244.10'
188.70'
19
20
30
29
SECTION CORNER
PREPARED FOR:
JEANNETTE CLINE
163 CLINE RANCH ROAD
GLENDALE, OREGON 97442
SURVEYED BY:
RAYMOND WYTCHERLEY
WYTCHERLEY SURVEYING
P.O. BOX 888
GLENDALE, OR 97442
541-832-3286
541-660-2648
LEGEND:
INDICATES MONUMENT FOUND AS INDICATED.
INDICATES CALCULATED POINT.