BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FRIENDS OF LINN COUNTY,
Petitioner,

vs.

LINN COUNTY,
Respondent,

and

RONALD REIMERS and INGRID REIMERS,
Intervenors-Respondent.

LUBA No. 2006-202

FINAL OPINION
AND ORDER

Appeal from Linn County.

Jannett Wilson, Eugene, filed the petition for review and argued on behalf of petitioner. With her on the brief was the Goal One Coalition.

Michael E. Adams, filed a joint response brief and represented respondent. With him on the brief were Steven W. Abel, Michelle Rudd and Stoel Rives, LLP.

Steven W. Abel, Portland, filed a joint response brief and argued on behalf of intervenors-respondent. With him on the brief were Michael E. Adams, Michelle Rudd and Stoel Rives, LLP.

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

REMANDED 03/06/2007

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

1 Opinion by Bassham.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision adopting an irrevocably committed exception to
4 Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), and related
5 comprehensive plan and zoning map amendments, to allow a 44-acre parcel to be divided
6 into four homesites.

7 **MOTION TO INTERVENE**

8 Ronald Reimers and Ingrid Reimers (intervenors) move to intervene on the side of
9 respondent. There is no opposition to the motion, and it is allowed.

10 **FACTS**

11 The subject property is a rectangular 44-acre parcel that is designated and zoned
12 Farm/Forest (F/F). The predominant soils on the subject property are Class III agricultural
13 soils that according to the staff report also have forest productivity ratings of approximately
14 70 to 80 cubic feet per acre per year. Currently 32 acres of the subject property receives
15 forest tax deferral; the remainder is mowed to prevent shrubs and trees from growing. The
16 property is developed with a single family dwelling in the south-west quadrant of the parcel,
17 accessed via a driveway that connects to Viewcrest Drive, a two-lane paved county road west
18 of the property.

19 Properties to the north, east and west are zoned and largely developed for rural
20 residential use, generally Rural Residential 5-acre minimum (RR-5). A strip of small lots
21 zoned Rural Residential 2.5-acre minimum (RR-2.5) lies southwest of the subject property,
22 although they are not adjacent to the subject property. South of the subject property is a 152-
23 acre tract and two smaller parcels zoned F/F. The two smaller F/F-zoned properties are
24 developed with dwellings. The large F/F zoned tract immediately south of the subject
25 property is forested and actively managed for forest production. The subject property lies on

1 the northern flank of a moderate-sloped hill, Scravel Hill, the topographic crest of which is
2 located on the large F/F zoned parcel to the south.

3 Intervenors filed applications with the county seeking to amend the property's
4 comprehensive plan designation from Farm/Forest to Rural Residential, and to amend the
5 zoning map from Farm/Forest to Rural Residential 10-acre minimum (RR-10). Intervenors
6 seek to divide the subject parcel to allow three additional homesites. The county planning
7 commission recommended approval, and the county board of commissioners voted to
8 approve the applications. This appeal followed.

9 **FIRST ASSIGNMENT OF ERROR**

10 OAR 660-004-0028(1) provides that a local government may adopt an exception to a
11 statewide planning goal when land is "irrevocably committed to uses not allowed by the
12 applicable goal because existing adjacent uses and other relevant factors make uses allowed
13 by the applicable goal impracticable." *See also* ORS 197.732(1)(b) (same). Under
14 OAR 660-004-0028(2), whether land is irrevocably committed "depends on the relationship
15 between the exception area and the lands adjacent to it," considering the characteristics of the
16 exception area, adjacent lands, the relationship between the two, and other relevant factors.
17 The local government need not demonstrate that every use allowed by the applicable goal is
18 "impossible," but must demonstrate that "[f]arm use as defined in ORS 215.203,"
19 "[p]ropagation or harvesting of a forest product" and "[f]orest operations or forest practices"
20 are impracticable. OAR 660-004-0028(3).

21 ORS 197.732(6)(b) provides that LUBA "shall determine whether the local
22 government's findings and reasons demonstrate" that the standards of an irrevocably
23 committed exception "have or have not been met[.]"[1]

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[1] ORS 197.732(6) provides:

"Upon review of a decision approving or denying an exception:

1 Under the first assignment of error, petitioner argues that the county's findings suffer
2 from two principal flaws: (1) the findings fail to establish that the *relationship* between the
3 exception land and the lands adjacent to it irrevocably commit the subject property to rural
4 residential uses, and (2) the county impermissibly imposed a "commercial" farm or forest
5 operation standard in concluding that farm and forest uses on the property are impracticable.

6 According to petitioner, the "fundamental test" for an irrevocably committed
7 exception is the relationship between the subject property and adjacent uses. *DLCD v. Curry*
8 *County*, 151 Or App 7, 11, 947 P2d 1123 (1997) (to give exclusive or preponderant weight to
9 the characteristics of the exception area alone is contrary to the fundamental test for a
10 committed exception) While the characteristics of the proposed exception must be
11 considered, the focus of the irrevocably committed test is on the relationship between the
12 exception area and adjoining uses, and why that relationship commits the subject property to
13 uses not allowed by the applicable goals. *Jackson County Citizens League v. Jackson*
14 *County*, 38 Or LUBA 489, 504-05 (2000).

15 Petitioner argues that the county's findings fail to establish that the relationship
16 between adjoining uses and the subject property render farm or forest use of the property
17 impracticable.[2] According to petitioner, the county's explanation for why farm or forest use

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"(a) [LUBA] shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

"(b) [LUBA] shall determine whether the local government's findings and reasons demonstrate that the standards of subsection (1) of this section have or have not been met; and

"(c) [LUBA] shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards of subsection (1) of this section have or have not been met."

[2] The county's findings describe the adjoining uses and the relationship between the exception area and adjacent lands as follows:

1 of the subject property is impracticable focuses almost exclusively on the limitations of the
2 subject property, and fails to explain why adjacent rural residential uses render such resource
3 use of the property impracticable.[3]

"Adjacent lands on Scravel Hill are characterized by two land uses: small lot rural residential development in acknowledged exception areas on the north, east, southeast and west sides; and large lot forest use on the southwest side.

"There are 16 tax lots that adjoin the subject property. 15 of those tax lots are zoned Rural Residential and comprise 79% of the boundary of the subject property. One F/F property comprises 20% of the adjoining land.

"The overall land use pattern in the area is best described by the level of parcelization and development of adjacent lands. Within a 1/4 mile of the subject property, there are 94 privately held tax lots. The vast majority of the tax lots (96%) are zoned Rural Residential. The minimum lot size for the proposed zone change (10 acres) is more than twice the average size of these tax lots. Most tax lots (83%) have a dwelling, and owners occupy 96% of the homes. The average lot size is approximately 4 acres.

"There are 4 tax lots in the F/F zone ranging in area from 0.12 to 151.57 acres. Two lots have a residence. The tax lot adjoining the south boundary of the subject property is wooded with trees of uniform height that appear to have been planted 10-15 years ago.

"* * * * *

"All land in the vicinity of the subject property is actively managed. A large percentage of land bordering the subject property and found within 1/4 mile of the subject property is comprised of rural residential homesites occupied by owners. Some incidental farm use, limited to pasturing for horses, occurs to the north. To the east, west, and southeast, rural residential homesites are wooded with mature conifers and deciduous trees. There is no evidence of commercial farm or forest management activities in the rural residential exception areas. Access to rural residential homesites is separate from areas actively managed for large-scale farm and forest uses to the southwest.

"The Farm/Forest parcel to the south is actively managed for forest production. The terrain is such that most of this parcel is situated topographically over the hill from the subject property. The existing homesite on the subject property is situated more than 400 feet from the forested parcel to the southwest. If the proposed map amendments are approved, the subject property could be divided to create three new homesites that are farther away from the forested parcel than the existing dwelling." Record 36-37.

[3] The county's findings regarding impracticability state, in relevant part:

"Whether it is [practicable] to use a site for the intended use depends on operating characteristics of the use and features of the site. One would conclude that it is impracticable to manage a plot of land for farm or forest use if site limitations diminish the ability to carry out accepted practices to the extent that there is no reasonable return on the investment.

"As noted previously, Dupee and Stiewer soils mapped on the site do not have a woodland productivity rating. Mature conifers and deciduous trees are evident on adjacent land but this

1 With respect to farm uses, petitioner notes that the county found that the soils on the
2 property are suitable for grass seed production and pasture. However, the county found that
3 it is "difficult to successfully carry out standard farming practices in such close proximity to
4 rural residential homesites," because "[d]rifting dust, sprays and noise are often
5 objectionable to non-farm residents." Record 37. The county also found that "it is
6 impracticable, if not impossible, to access the property with the heavy equipment and
7 machinery necessary to carry out grass seed farming on the property." *Id.* With respect to
8 pasture or other uses involving livestock, the county found that "[d]rainage, noise and
9 management of animal wastes are difficult to address on a property bounded by so many
10 homes." *Id.*

11 Petitioner challenges these findings, arguing that the findings and evidence indicate
12 that pasturing of livestock occurs on some adjacent parcels to the north, and that a number of

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area is not considered a high productivity area. In conjunction with the pattern of extensive parcelization and homesite development, this is not considered an industrial forest area although isolated stands exist. Roads providing access to the area are suited to traffic generation associated with rural residential development but not for timber management.

"According to the *Soil Survey*, the Dupee and Stiewer soils mapped on the subject property are typically used for grass seed production and pasture. Grass seed production is not uncommon on a moderate slope but it is difficult to successfully carry out standard farming practices in such close proximity to rural residential homesites. Drifting dust, sprays and noise are often objectionable to non-farm residents. In addition, access to the subject property is narrow and steep and traverses a corridor of rural residential homes. The [county] finds that it is impracticable, if not impossible, to access the property with the heavy equipment and machinery necessary to carry out grass seed farming on the property. Because grass seed farms often consist of more than 1,000 acres, the subject property's 44.23 acres is too remote from the nearest grass seed field to be part of a larger farm unit.

"For many of the same reasons, pasturing livestock and horses on 44-23 acres can be equally objectionable to non-farm residents. Drainage, noise and management of animal wastes are difficult to address on a property bounded by so many homes.

"Compatibility with adjoining rural residential uses dictate that the carrying capacity of the subject property for farm use is limited to incidental farming activities associated with rural residential use. Residual land on a rural residential parcel can be farmed to achieve a degree of self-sufficiency. A significant factor that contributes to compatibility is the fact that rural residential neighbors are generally more responsive to resolving complaints associated with incidental farming practices than those associated with commercial production of farm products." Record 37-38.

adjacent and nearby properties zoned for rural residential use receive farm tax deferrals, which indicates that those parcels are currently in farm use. Petitioner contends that the county does not reconcile that evidence with its conclusion that rural residential uses render farm use on the subject property impracticable. Even assuming that some farm uses or practices on the subject property might be "objectionable to non-farm residents," as the county claims, petitioner argues that it is well settled that "people who build houses in an agricultural area must expect some discomforts to accompany the perceived advantages of a rural location." *Prentice v. LCDC*, 71 Or App 394, 403, 692 P2d 642 (1984), *quoting 1000 Friends of Oregon v. LCDC*, 69 Or App 717, 728, 688 P2d 103 (1984). According to petitioner, the 44-acre subject property is large enough for a variety of small agricultural operations, like those that are apparently practiced on several nearby parcels, with moderate equipment and limited off-site effects.

The county apparently viewed existing farm uses on adjoining rural residential parcels to be merely "incidental." *See, e.g.*, Record 36 ("[s]ome incidental farm use, limited to pasturing for horses, occurs to the north"). Elsewhere, the county finds that "[c]ompatibility with adjoining rural residential uses dictate that the carrying capacity of the subject property for farm use is limited to incidental farming activities associated with rural residential use." Record 38. According to the county, rural residential parcels "can be farmed to achieve a degree of self-sufficiency," however, such limited farm use is compatible with rural residential uses, while "commercial production of farm products" is not. *Id.* Petitioner argues that these findings are erroneous and inconsistent. According to petitioner, the ORS 215.203(2) definition of "farm use" does not distinguish between "commercial" and "non-commercial" levels of farming.[4] If farm operations on four 10-acre parcels is

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

> "As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding,

compatible with neighboring residential uses, petitioner argues, it is not clear why the same operations at a scale appropriate for the 44-acre subject property would be incompatible.

Relatedly, petitioner argues that Goals 3 and 4 protect small-scale or noncommercial farm and forest uses as well as large-scale or commercial uses. That farm use is not capable of supporting a self-sufficient or "commercial-scale" agricultural operation is not a basis to conclude that farm use of the property is impracticable. *Lovinger v. Lane County*, 36 Or LUBA 1, 17-18, *aff'd* 161 Or App 198, 984 P2d 958 (1999). Petitioner argues that the county erred to the extent it applied a "commercial" standard in determining whether farm or forest uses are impracticable.

With respect to forest uses, petitioner cites to evidence that much of the subject property is stocked and receives forest tax deferral, the subject property has been logged in the past, and the subject property has the same soils as the large parcel to the south that is in forest production. Petitioner argues that the county's findings fail to explain why neighboring rural residential uses render continued forest use of the subject property impracticable.

Intervenors respond that it is permissible under OAR 660-004-0028 to give some consideration to the characteristics of the exception area, and argue that the county gave appropriate consideration to the relationship between the subject property and adjoining uses. Intervenors dispute that the county applied a "commercial" level standard in determining that farm or forest use is impracticable on the subject property. Consideration of profitability or rate of return on investment is permissible under OAR 660-004-0028 and ORS 215.203(2),

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breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. 'Farm use' includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. 'Farm use' also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. * * *"

intervenors argue, because the statute defines "farm use" in relevant part as the employment of land "for the primary purpose of obtaining a profit in money."

Intervenors do not defend the county's findings in any detail, but devote most of the remaining response to the first assignment of error to arguing that petitioner fails to assign error to the county's finding that limited access to the subject property from Viewcrest Drive renders farm or forest use impracticable. According to intervenors, that finding is a sufficient basis to support the county's conclusion that that farm or forest use of the subject property is impracticable, and petitioner's failure to assign error to that basis requires that the first assignment of error be denied, regardless of any errors or inadequacies in the county's other findings.

A. Access Via Viewcrest Drive

Turning first to the access issue, as noted, the county found that "it is impracticable, if not impossible, to access the property with the heavy equipment and machinery necessary to carry out grass seed farming on the property." Record 37. The county also found that "[r]oads providing access to the area are suited to traffic generation associated with rural residential development but not for timber management." *Id.* Petitioner does not specifically assign error to either finding. Nonetheless, we decline intervenors' invitation to resolve the first assignment of error based solely on that omission. The two above-quoted sentences are the entire extent of the county's discussion of any limitation on access to the property. Neither sentence is framed in a way that suggests limited access is a sufficient or independent basis to conclude that farm and forest use of the subject property is impracticable. Petitioner advances a number of comprehensive and specific challenges to the county's findings. In our view, petitioner's arguments are broad enough to also challenge the two sentences that intervenor asserts are sufficient or independent bases for a committed exception.

1 As petitioner points out, the subject property has been logged in the past and most of
2 it is currently stocked and managed for timber production. Petitioner also argues that the
3 mere existence of adjacent residential uses is an insufficient basis to conclude that resource
4 use of the subject property is impracticable. Neither the findings nor intervenors identify any
5 evidence of conflicts between existing resource use of the subject property and nearby
6 residential uses with respect to use of Viewcrest Drive.[5] Just as the mere existence of
7 adjacent residential uses is not sufficient to justify a committed exception, the mere fact that
8 access to the subject property is through a county road that also provides access to rural
9 residential uses is also not a sufficient basis, absent evidence of conflicts or similar
10 impediments to use of the road for forestry-related transportation.

11 Similarly, with respect to potential farm use of the property, the finding intervenors
12 cite to is directed only at "heavy equipment and machinery necessary to carry out grass seed
13 farming." That statement does not suggest that Viewcrest Drive is inadequate to provide
14 access for other farm uses. The findings note that farm uses involving livestock occur on
15 rural residential zoned parcels in the area, and indeed claim that similar farm use of the
16 subject property would be compatible with adjoining residential uses once the property is
17 divided into four 10-acre homesites. Petitioner cites to evidence that at least six parcels in
18 the area zoned for rural residential use qualify for farm tax deferral, indicating current farm
19 use, and argues that the county fails to explain why similar uses of the subject property are
20 impracticable. Although there are no specific findings on this point, presumably Viewcrest
21 Drive or other county roads in the area are currently used for transportation related to the
22 "incidental" farm uses the findings cite to and apparently contemplate for the subject

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[5] Intervenors identify no evidence supporting either finding. Although we need not address the evidentiary support for those findings, the record includes photographs of Viewcrest Drive in the vicinity of the subject property, depicting a paved, two-lane road with wide shoulders, flanked by pastures and forested areas with no visible impediments to heavy vehicle traffic. Record 242-43. Why the county believes it is "impossible" to transport heavy farm machinery along Viewcrest Drive or why the road is not suited for "timber management" is not explained.

1 property. If so, it is not obvious why Viewcrest Drive is unsuited to transportation related to
2 similar farm use of the subject property. Accordingly, we disagree with intervenors that the
3 two above-quoted findings regarding access from Viewcrest Drive constitute a basis to
4 affirm the county's conclusion that the subject property is irrevocably committed to
5 nonresource use.

6 **B. Irrevocably Committed to Nonresource Use.**

7 Turning to petitioner's main arguments, we agree with petitioner that the county's
8 findings and reasons fail to demonstrate that farm or forest use of the subject property is
9 impracticable. ORS 197.732(6)(b). The findings discuss both the characteristics of the
10 exception area and the relationship between the exception area and adjoining uses, and it is
11 not clear that the findings gave "exclusive or preponderant weight" to the characteristics of
12 the exception area. *DLCD v. Curry County,* 151 Or App at 11. However, petitioner is
13 correct that the focus of the irrevocably committed test is the relationship between the
14 exception area and adjoining uses. For the following reasons, the county's findings fall short
15 of demonstrating that the relationship between the subject property and adjoining uses
16 renders resource use of the property impracticable.

17 Other than the access issue discussed above, the county's findings identify nothing in
18 the relationship between the exception area and the adjoining uses that renders continued
19 forest use of the subject property impracticable. As explained, a conclusory statement that
20 Viewcrest Drive is not suited for "timber management" is an insufficient basis to conclude
21 that Goal 4 forestry use of the subject property is impracticable.

22 With respect to farm use under Goal 3, the decision recognizes that soils on the
23 property are suitable for pasture and that pasturing of livestock uses occur on adjacent lands,
24 but concludes that use of the subject property for pasture would be impractical, apparently
25 because such use could be "objectionable to non-farm residents," based on "drainage, noise
26 and management of animal wastes." Record 38. As petitioner notes, the findings rely on a

1 distinction between "incidental" levels of farm use and what the county refers to as the
2 "commercial production of farm products" that is not supported by the administrative rule or
3 the statutory definition of farm use. The fact that (some) residential neighbors may find
4 pasturing of animals objectionable is not a sufficient basis to conclude that the subject
5 property is committed to non-farm uses. *See Prentice*, 71 Or App at 403 (characterizing as
6 "make-weights" objections based on spray drift, field burning smoke, plowing dust and
7 similar residential complaints regarding agricultural use).

8 The first assignment of error is sustained.

9 **SECOND ASSIGNMENT OF ERROR**

10 OAR 660-004-0028(4) requires findings that address all applicable factors of
11 OAR 660-004-0028(6). The latter rule requires that local governments address, among other
12 things, parcel size and ownership patterns of the exception area and adjacent lands, and
13 natural or man-made features or other impediments that separate the exception area from
14 adjacent resource land.[6]

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

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

1 Petitioner contends that the county failed to address or addressed inadequately the
2 factors listed in OAR 660-004-0028(6)(a), (b), (c)(A), and (e).

3 **A. Existing Adjacent Uses**

4 With respect to findings regarding "existing adjacent uses" under OAR 660-004-
5 0028(6)(a), petitioner cites to evidence that six adjacent and nearby properties north and east
6 of the subject property are zoned for rural residential uses but are in farm tax deferral status,
7 which indicates that those properties are currently in farm use. Record 57. Petitioner argues
8 that the county failed to adequately identify these resource uses, other than to adopt a brief
9 statement that "[s]ome incidental farm use, limited to pasturing for horses, occurs to the
10 north." Record 36.

11 Intervenors respond that the above-quoted statement is adequate to describe existing
12 adjacent resource uses on RR-5 zoned lands, for purposes of OAR 660-004-0028(6)(a).
13 While OAR 660-004-0028(6)(a) does not require detailed descriptions of adjacent existing
14 uses, in this case there was testimony submitted, with identification of specific tax lots,
15 indicating that adjoining and nearby properties north and east of the subject property are in
16 farm use. As the issues were framed to the county and under the county's analysis, the
17 nature and intensity of that farm use became of considerable importance. We conclude that
18 the county's dismissive finding that "[s]ome incidental farm use, limited to pasturing for
19 horses, occurs to the north" is an insufficient description of adjacent use, under the present
20 circumstances.

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exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

"* * * * *

"* * * * *

"(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[.]"

1 **B. Public Facilities and Services**

2 OAR 660-004-0028(6)(b) requires that the county make findings regarding "existing
3 public facilities and services (water and sewer lines, etc.)." Petitioner argues that OAR 660-
4 004-0028(6)(b) requires the county to determine the extent to which, if any, existing public
5 facilities and services tend to commit resource lands to nonresource uses. According to
6 petitioner, while the county adopted findings addressing the adequacy of public services for
7 purposes of Statewide Planning Goal 11 (Public Facilities and Services), the county failed to
8 adopt findings addressing OAR 660-004-0028(6)(b) or the extent to which, if any, existing
9 public facilities and services commit the subject property to non-resource uses.

10 Intervenors respond that the Goal 11 findings are sufficient to address OAR 660-004-
11 0028(6)(b). We disagree. As petitioner points out, the focus of OAR 660-004-0028(6)(b) is
12 on whether existing public facilities and services on or near the subject property commit the
13 subject property to non-resource uses, not on whether public facilities and services are
14 available to serve the proposed non-resource uses. The county's Goal 11 findings note that
15 there is no public water or sewer service available in the vicinity. Record 32. As far as those
16 public facilities go, consideration of OAR 660-004-0028(6)(b) would appear to indicate that
17 no public facilities or services commit the subject property to uses not allowed by the goals.
18 However, because the county failed to adopt any findings addressing OAR 660-004-
19 0028(6)(b), it is difficult to tell what role the existence or absence of public facilities and
20 services in the area played in the county's analysis.

21 **C. Existing Development Pattern**

22 OAR 660-004-0028(6)(c)(A) requires findings analyzing how the existing
23 development pattern of the exception area and adjacent lands came about and whether
24 findings against the statewide planning goals were made at the time of partitioning or
25 subdivision. "Resource and nonresource parcels created pursuant to the applicable goals

1 shall not be used to justify a committed exception." *Id.* Petitioner argues that the county
2 made no findings addressing OAR 660-004-0028(6)(c)(A).

3 Intervenors respond by citing to a finding that states that a "Goal 14 exception has
4 been taken for rural residential urban influence areas which are zoned RR-2.5." Record 20.
5 Intervenors then cite to a table that lists a number of parcels within one-quarter mile of the
6 subject property that includes two properties zoned RR-2.5. If the finding and table are read
7 together, intervenors argue, it is clear that two RR 2.5-zoned parcels in the area were created
8 pursuant to a Goal 14 exception. We understand intervenors to infer from the finding and
9 table that all of the other parcels in the area, including the RR-5 and F/F-zoned parcels
10 adjacent to the subject property, were created prior to the goals.

11 No findings directly address OAR 660-004-0028(6)(c)(A), and we disagree with
12 intervenors that the above-quoted finding or the table are sufficient substitutes. None of the
13 properties adjacent to the subject property are zoned RR 2.5, and there are no findings
14 addressing how adjacent parcels were created or whether findings against the goals were
15 taken when creating those parcels. We are not cited to anything that would allow us or the
16 county to assume that all of the adjacent parcels were created without application of the
17 goals.

18 **D. Natural or Man-Made Features**

19 OAR 660-004-0028(6)(e) requires findings regarding any "[n]atural or man-made
20 features or other impediments separating the exception area from adjacent resource land
21 * * * that effectively impede practicable resource use of all or part of the exception area[.]"
22 Petitioner argues that the county failed to adopt any explicit findings addressing OAR 660-
23 004-0028(6)(e), and that the only pertinent finding appears to be a statement that the large
24 F/F parcel south of the subject property is "situated topographically over the hill from the
25 subject property." However, petitioner contends that that finding is insufficient to address

1 OAR 660-004-0028(6)(e), and in any case the finding fails to explain why topography
2 "impede[s] practicable resource use of all or part of the exception area."
3 Intervenors do not claim that the county adopted findings addressing OAR 660-004-
4 0028(6)(e), or that the topography does anything to impede practicable resource use of the
5 subject property. Instead, intervenors cite to the two findings regarding road access via
6 Viewcrest Drive discussed under the first assignment of error, to the effect that it is
7 "impossible" to transport heavy equipment for grass seed farming along Viewcrest Drive,
8 and that the road is not suited for "timber management." Record 37. Intervenors contend
9 that limited access through a residential neighborhood is a "man-made feature[] or other
10 impediment[] separating the exception area from adjacent resource land" that "effectively
11 impede[s] practicable resource use" of the subject property.
12 Again, we disagree. The county did not adopt findings explicitly addressing
13 OAR 660-004-0028(6)(e), and it is not clear that the county regards the residential
14 neighborhood that Viewcrest Drive passes through as a "man-made feature" that separates
15 the subject property from adjacent resource land. Viewcrest Drive lies west of the subject
16 property, and does not separate the property from the large F/F zoned parcel adjacent to the
17 south. As discussed above, it seems relatively clear that the county views the residential
18 neighborhood through which Viewcrest Drive passes as an "impediment" to resource use of
19 the subject property, but as explained that view is simply not supported by the record.
20 The second assignment of error is sustained.
21 **THIRD ASSIGNMENT OF ERROR**
22 OAR 660-004-0018(2) requires that zoning applied to lands that are subject to
23 "irrevocably committed" exceptions shall limit uses, densities and services to those that "will
24 not commit adjacent or nearby resource lands to nonresource use" and that "are compatible

1 with adjacent or nearby resource uses."[7] Petitioner argues that the county's findings
2 addressing OAR 660-004-0018(2) fail to explain why the RR-10 zoning applied to the
3 subject property or the additional residential uses allowed under that zoning will not
4 "commit" adjacent resource lands to non-resource uses.

5 The county's findings addressing OAR 660-004-0018(2) state simply:

6 "The proposed Rural Residential zone would have a ten-acre minimum lot
7 size. No public services are needed or available to serve the subject property.
8 As discussed elsewhere in this narrative, the proposed use of the subject
9 property will be compatible with adjacent uses. For these reasons, the use of
10 the proposed exception area is an appropriate rural use in terms of intensity,
11 impact and need for public services." Record 38.

12 Intervenors argue that the above-quoted finding refers to other findings that address
13 compatibility with adjacent resource uses, and cite to the following finding as one of those
14 referenced:

15 "The Farm/Forest parcel to the south is actively managed for forest
16 production. The terrain is such that most of this parcel is situated
17 topographically over the hill from the subject property. The existing homesite
18 on the subject property is situated more than 400 feet from the forested parcel
19 to the southwest. If the proposed map amendments are approved, the subject
20 property could be divided to create three new homesites that are farther away

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[7] OAR 660-004-0018(2) provides, in relevant part:

"For 'physically developed' and 'irrevocably committed' exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

"* * * * *

"(b) That meet the following requirements:

"* * * * *

"(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[.]"

from the forested parcel than the existing dwelling." Record 37 (quoted also at n 2, above).

According to intervenors, the above finding adequately explains why the 10-acre parcel size, topography and physical distance between residential uses and the adjacent resource land are sufficient to ensure that those residential uses are both compatible with adjacent resource lands and will not commit those lands to nonresource uses.

As petitioner points out, the purpose of OAR 660-004-0018(2) is to ensure that physically developed and irrevocably committed exceptions do not have a cascading effect of committing further resource lands in the area to nonresource use. In addressing OAR 660-004-0028 and OAR 660-004-0018(2), local governments sometimes take what appear to be inconsistent positions. *See DLCD v. Coos County*, 39 Or LUBA 432, 444 (2001) (a finding that rural residential uses are compatible with adjacent or nearby resource use is impossible to reconcile with findings that the same rural residential uses irrevocably commit the exception area to nonresource use). On the one hand, in addressing OAR 660-004-0028 local governments may find that rural residential uses adjacent to the exception area irrevocably commit the exception area to residential use, usually on the basis of specified conflicts between residential and resource use. On the other hand, in addressing OAR 660-004-0018(2) local governments often find that residential use of the exception area will not commit adjacent resource lands to residential uses and is compatible with resource use. Those two conclusions are not necessarily inconsistent, but the local government must provide some explanation, supported by the record, for why residential uses that commit one resource property to residential use will not result in those same residential uses committing other resource lands in the area.

Here, the county apparently relies on the 10-acre minimum parcel size, the distance between dwellings on the property and the adjacent resource lands, and the fact that most of the F/F zoned parcel to the south is topographically separated from the subject property by the crest of Scravel Hill. While not a particularly compelling explanation for why residential

1 use of the exception area is compatible with and will not commit adjacent resource lands to
2 nonresource use, petitioner does not directly challenge that explanation. Absent a more
3 focused argument, we have no basis to reverse or remand under this assignment of error.

4 The third assignment of error is denied.

5 **FOURTH ASSIGNMENT OF ERROR**

6 OAR 660-004-0020(2) sets out standards for adopting a "reasons" exception to
7 statewide planning goals.[8] The county's decision includes findings that address OAR 660-
8 004-0020(2)(b) through (d). Record 39-40. Petitioner contends that the county did not
9 purport to adopt a "reasons" exception, and to the extent the county relied upon the standards
10 in OAR 660-004-0020(2) to approve an "irrevocably committed" exception, the county
11 misconstrued the applicable law.

12 Intervenors agree that the standards for a reasons exception at OAR 660-004-0020(2)
13 have nothing to do with an irrevocably committed exception under OAR 660-004-0028.
14 However, intervenors argue that the findings at Record 39-40 reflect the county's intent to

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[8] OAR 660-004-0020(2) provides, in relevant part:

> "The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:
>
> "(a) 'Reasons justify why the state policy embodied in the applicable goals should not apply': The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;
>
> "(b) 'Areas which do not require a new exception cannot reasonably accommodate the use':
>
> "* * * * *
>
> "(c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. * * *
>
> "(d) 'The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.' * * *"

adopt both an "irrevocably committed" and a "reasons" exception, as independent or alternative bases for the requested comprehensive plan and zone changes. According to intervenors, the county's decision must be affirmed notwithstanding any other errors, because petitioner does not challenge the substance of this independent or alternative basis for the decision.

Other than the findings addressing OAR 660-004-0020(b) through (d) at Record 39-40, the county's decision at no point suggests that the county believed it was adopting a reasons exception in addition to or as an alternative to an irrevocably committed exception. The findings at Record 39-40 are included in a section of the decision captioned "Planning and Zoning for Exception Areas," which begins with a discussion of OAR 660-004-0018. Although it is not clear, the subsequent findings addressing OAR 660-004-0020(2)(b) through (d) appear to reflect the county's belief that those rule provisions function like OAR 660-004-0018 in governing the type of zoning that may be applied once an exception is approved. Significantly, nothing in the decision addresses OAR 660-004-0020(2)(a), which requires that the local government demonstrate that "[r]easons justify why the state policy embodied in the applicable goals should not apply." That demonstration is the *sine qua non* of a reasons exception, and its complete absence is a strong indication that the county did not intend to adopt a reasons exception.

Because it is reasonably clear that the county did not intend to adopt a reasons exception, we decline intervenors' suggestion that we affirm the county's decision on that basis notwithstanding any other reversible errors. The only remaining question is whether adoption of findings addressing OAR 660-004-0020(2)(b) through (d) is harmless error, in an appeal of a decision that does not adopt a reasons exception. It is not clear what role those findings play in the county's decision. Because the decision must be remanded in any event, remand is appropriate under the fourth assignment of error for the county to either delete

1 those findings or explain what relevance they may have to the challenged committed
2 exception.
3 The fourth assignment of error is sustained.
4 The county's decision is remanded.