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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

LINDA ANDERSON,  
*Petitioner,*

vs.

COOS COUNTY,  
*Respondent,*

and

DARCY BOSSHARDT,  
*Intervenor-Respondent.*

LUBA No. 2009-089

FINAL OPINION  
AND ORDER

Appeal from Coos County.

Linda Anderson, Coos Bay, filed the petition for review and argued on her own behalf.

No appearance by Coos County.

David R. Koch, North Bend, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Stebbins & Coffey.

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

REMANDED

12/18/2009

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

**NATURE OF THE DECISION**

Petitioner appeals a county decision that approves comprehensive plan and zoning map amendments.

**FACTS**

The subject property includes two parcels, tax lot 1300 and tax lot 1400. Tax lots 1300 and 1400 each include approximately 8 acres and extend east from the Pacific Ocean onto a headland that is approximately 120 feet above the ocean and higher than the properties to the south and east. Tax lots 1300 and 1400 are split zoned. The comprehensive plan map designation for the eastern one-third of the tax lots is Rural Residential and the zoning is Rural Residential – 5 (RR-5). Neighboring lands to the east and northeast are similarly planned and zoned for rural residential use. Record 141. The comprehensive plan map designation for the western two-thirds of the tax lots is Forest and the zoning is Forest Mixed Use. Property to the north and south of the western two-thirds of the tax lots is similarly planned and zoned for forest use. *Id.* The challenged decision changes the comprehensive plan and zoning map designations for the western two-thirds of the tax lots to Rural Residential and RR-5 so that the tax lots are no longer split zoned.

The challenged decision is based in part on county findings that the western two-thirds of tax lots 1300 and 1400 does not qualify as forest lands and need not be protected for forest uses under Statewide Planning Goal 4 (Forest Lands). That finding was based in large part on a “Forest Suitability Report,” that was prepared for the applicant, intervenor-respondent. The Forest Suitability Report cited a number of factors in support of its conclusion that the subject tax lots are not suitable for commercial forest use, but it did not consider the annual wood production capability in cubic feet per acre per year.<sup>1</sup>

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<sup>1</sup> The Forest Suitability Report relied on a soil survey that identified soil types on the property and concluded they were all “non-resource” soils. Record 79-80. The report also cited “[b]iological and

1    **ASSIGNMENT OF ERROR**

2           Petitioner argues that the county’s decision must be remanded, because in making its  
3 decision the county did not consider the productivity of the subject property in cubic feet per  
4 acre per year or an alternative measure of productivity authorized by OAR 660-006-0010 and  
5 660-006-0005(2). OAR 660-006-0010 requires that a governing body’s inventory of forest  
6 lands “include a mapping of average annual wood production capability by cubic foot per  
7 acre (cf/ac).”<sup>2</sup> OAR 660-006-0005(2) sets out and limits the permissible sources of data that  
8 may relied on in estimating the cf/ac productivity of property.<sup>3</sup>

9           The issue that is presented in this appeal was also presented in our recent decision in  
10 *Just v. Linn County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2009-068, November 9, 2009). We  
11 remanded the county’s decision in that case. We initially explained that in making decisions

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[e]nvironmental issues,” including Swiss needle cast and Spruce tip Weevil. Record 81. The report additionally cited two “[l]ogistical issues:” proximity of dwellings and the presence of Gorse. Finally, the report provided an estimated “Internal Rate of Return from Cash Flow (IRR)” based on an assumed mixed spruce and hemlock stand and a site index of 95. The report estimated an IRR of 3%, which the report concluded “would not be acceptable to a knowledgeable forest investor.” Record 83.

<sup>2</sup> OAR 660-006-0010 provides in part:

“Governing bodies shall include an inventory of ‘forest lands’ as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands or lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken are not required to be inventoried under this rule. Outside urban growth boundaries, *this inventory shall include a mapping of average annual wood production capability by cubic foot per acre (cf/ac)*. If site information is not available then an equivalent method of determining forest land suitability must be used. \* \* \*”. (Emphasis added.)

<sup>3</sup> OAR 660-006-0005(2) provides:

“‘Cubic Foot Per Acre’ means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry’s Technical Bulletin entitled ‘Land Use Planning Notes Number 3 dated April 1998’ and be approved by the Oregon Department of Forestry.”

1 about whether land qualifies as forest land, the cf/ac per year data authorized by OAR 660-  
2 006-0005(2) or the equivalent data authorized by that rule must be considered:

3 “OAR 660-006-0010 describes how local governments are to go about  
4 inventorying forest lands. OAR 660-006-0010 requires that a Goal 4  
5 inventory ‘shall include a mapping of average annual wood production  
6 capability by cubic foot per acre (cf/ac).’ Although OAR 660-006-0010 does  
7 not expressly say so, the required cf/ac/yr information presumably must be  
8 used in determining whether property qualifies as forest land. OAR 660-006-  
9 0005(2) defines ‘Cubic Foot Per Acre.’ OAR 660-006-0005(2) requires that  
10 in determining the wood fiber productivity of soils, expressed as cubic feet  
11 per acre per year (cf/ac/yr), NRCS soil survey information or other  
12 information establishing cf/ac/yr that the state forester finds to be comparable  
13 must be used. Alternatively, if cf/ac/yr data are not available or are  
14 inaccurate, an alternative method that provides equivalent data as described in  
15 a Department of Forestry technical bulletin may be approved by the  
16 Department of Forestry.

17 “As we explained in *Anderson v. Lane County*, 57 Or LUBA 562, 572 (2008),  
18 the current language of OAR 660-006-0010 and 660-006-0005(2) was  
19 adopted to ‘clarify and limit the types of data that may be relied upon in  
20 determining forest productivity[.]’ We are not prepared to say that the data  
21 described in OAR 660-006-0010 and 660-006-0005(2) are the only data that  
22 can be considered in determining whether property qualifies as forest lands,  
23 but that data must be considered. \* \* \*” *Just v. Linn County*, slip op at 7-8  
24 (footnotes omitted).

25 In our decision in *Just* we noted that the Land Conservation and Development  
26 Commission (LCDC) has not established an objective or absolute standard for the level of  
27 productivity that is required to qualify land as suitable for commercial forest use:

28 “[A]lthough the Land Conservation and Development Commission (LCDC)  
29 requires that cf/ac/yr data be considered in determining whether to inventory  
30 land as suitable for commercial forest use, it has not established a threshold or  
31 thresholds for the level of cf/ac/yr productivity that qualifies land as suitable  
32 for commercial forest use. LUBA’s cases on that question similarly have not  
33 established bright-line productivity standards. \* \* \*

34 “Our cases suggest that land with a productivity of less than 20 cf/ac/yr may  
35 be unsuitable for commercial forest use unless there are factors that  
36 compensate for the land’s relatively low productivity. But land in a middle  
37 range from a low of approximately 40 cf/ac/yr to a high of approximately 80  
38 cf/ac/yr is unlikely to be unsuitable for commercial forest use unless there are  
39 additional factors that render those moderately productive soils unsuitable for  
40 commercial forest use. Rural land with a wood fiber productivity of over 80

1 cf/ac/yr is almost certainly suitable for commercial forest use, even if there are  
2 limiting factors.” *Id.*, slip op at 10-11 (footnote omitted).

3 Finally, the petitioner in *Just* argued that the decision about whether land is suitable  
4 for commercial forest use must be based solely on the data described in OAR 660-006-0010  
5 and 660-006-0005(2) and the petitioner in this appeal makes that same argument. We  
6 rejected the argument in *Just*, and we reject it here for the same reason. Our reasoning in  
7 *Just* is set out below:

8 “Finally, petitioner appears to argue that the decision about whether land  
9 qualifies as suitable for commercial forest use must be based *solely* on the  
10 data described in OAR 660-006-0010 and 660-006-0005(2), and cannot  
11 consider other factors. We do not agree. It may be that the cf/ac/yr  
12 productivity for a parcel using the data required by OAR 660-006-0010 and  
13 660-006-0005(2) could be so high that the parcel is suitable for commercial  
14 forest use as a matter of law or that it could be so low that the parcel is  
15 unsuitable for commercial forest use as a matter of law. But this does not  
16 appear to be such a case, because the evidence in the record suggests the soils’  
17 productivity is approximately 60 cf/ac/yr. If the county on remand determines  
18 that the cf/ac/yr productivity of the 15 acres is not determinative, by itself, the  
19 county may consider the other factors that bear on the suitability of the 15  
20 acres for commercial forest use. Based on the arguments presented in this  
21 appeal, we believe at least some of the factors that the county considered in  
22 reaching the challenged decision can be considered. It seems likely that  
23 LCDC intended that the data described by OAR 660-006-0010 and 660-006-  
24 0005(2) to be the only direct measures of wood fiber productivity that can be  
25 considered in determining whether the subject property is suitable for  
26 commercial forest use. But the suitability of the subject property for  
27 commercial forest use could also be affected by a number of on-site and off-  
28 site physical impacts and limitations that are not accurately reflected in or  
29 accounted for in the data described by OAR 660-006-0010 and 660-006-  
30 0005(2). We see no reason why the county could not consider those impacts  
31 and limitations in making its decision on remand. But the county must first  
32 consider the data that OAR 660-006-0010 and 660-006-0005(2) obligate the  
33 county to consider.” *Just*, slip op at 12-13 (italics in original; underlining  
34 added; footnotes omitted).

35 This case is materially indistinguishable from *Just*, and we therefore must sustain  
36 petitioner’s assignment of error. To summarize, if this application is to proceed further, the  
37 county must consider the wood fiber productivity of the subject property in cf/ac/year. That  
38 cf/ac/year data must be from one of the sources authorized by OAR 660-006-0005(2). If that

1 data is not available or is shown to be inaccurate, equivalent data may be used, as authorized  
2 by the rule and approved by the Oregon Department of Forestry. *Anderson v. Lane County*,  
3 57 Or LUBA at 573. If the analysis required by OAR 660-006-0010 and 660-006-0005(2) is  
4 not conclusive, the county may then consider other factors, provided those other factors are  
5 “not accurately reflected in or accounted for in the data described by OAR 660-006-0010 and  
6 660-006-0005(2).” *Just*, slip op at 13.

7           The assignment of error is sustained.

8           The county’s decision is remanded.