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

SIMMONS FAMILY PROPERTIES, LLC,
Petitioner,

vs.

POLK COUNTY,
Respondent,

and

FRIENDS OF POLK COUNTY
and 1000 FRIENDS OF OREGON,
Intervenors-Respondents.

LUBA No. 2021-007

FINAL OPINION
AND ORDER

Appeal from Polk County.

Wallace W. Lien filed the petition for review and argued on behalf of petitioner.

No appearance by Polk County.

Sean T. Malone filed a response brief and argued on behalf of intervenor-respondent Friends of Polk County.

Andrew Mulkey filed a response brief and argued on behalf of intervenor-respondent 1000 Friends of Oregon.

RUDD, Board Member; ZAMUDIO, Board Chair; RYAN, Board Member, participated in the decision.

AFFIRMED 07/28/2021

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

Opinion by Rudd.

NATURE OF THE DECISION

Petitioner appeals a county decision denying its application for (1) a comprehensive plan text amendment taking an exception to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), (2) a comprehensive plan map amendment from Agriculture to Rural Land, and (3) a zoning map amendment from Exclusive Farm Use to Agriculture and Forestry 10-acre minimum.

FACTS

The 228-acre subject property is located within two miles of the City of Salem's Urban Growth Boundary, in the Eola Hills wine growing region. The subject property is zoned Exclusive Farm Use. The surrounding area has a mix of zoning including Acreage Residential five-acre minimum and Farm Forest.

The subject property includes seven contiguous parcels held in four ownerships. Petitioner owns four of the seven parcels. The parcels and three existing residences were authorized by successful Measure 37 claims and three Measure 49 Final Order and Home Site authorizations.[1] The four parcels owned by petitioner are contiguous and total approximately 120 acres. The other three parcels are 20, 43.7, and 45 acres in size.

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[1] "The Final Orders * * * authorized five (5) dwellings on the parcels vested under Measure 37. Of the five (5) authorized dwellings under Measure 49, three (3) have been built." Record 30.

On December 14, 2018, petitioner and the other owners of the subject property applied for a comprehensive plan text amendment taking an exception to Goals 3 and 4, a comprehensive plan map amendment from Agriculture to Rural Land, and a zoning map amendment from Exclusive Farm Use to Agriculture and Forestry 10-acre minimum. On October 15, 2019, the hearings officer held a public hearing and considered the application. On June 1, 2020, the hearings officer issued a denial recommendation. The recommendation was forwarded to the board of commissioners.

On July 22, 2020, the board of commissioners held a public hearing and initiated an open record period during which additional information was submitted. On December 9, 2020, the board voted to adopt the hearings officer's recommendation and deny the application. On December 23, 2020, the board of commissioners issued its decision denying the application. This appeal followed.

INTRODUCTION

Goal 3 is "[t]o preserve and maintain agricultural lands." Goal 4 is:

> "To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture."

The subject property contains soils suitable for both farm and forest uses and is therefore subject to Goals 3 and 4.[2] Statewide Planning Goal 2 (Land Use Planning) defines an exception as

> "a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that;
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> "(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;
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> "(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and
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> "(c) Complies with standards for an exception."

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[2] The hearings officer found:

> "Based on Polk County's soil report for the subject properties, the subject properties contain approximately 51.7% high-value farmland soils as defined in ORS 215.710. Approximately 61.6% of the soils on the properties are Class I-IV. The subject properties contain soils that are also considered productive forestry soils. Those soils on the subject properties are [capable] of annually producing an average of approximately 154 cubic feet of wood fiber per acre.
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> "During the [application review], [petitioner] submitted two independent soil studies with the applications materials that disagree with the mapped soil units on the NRCS Soil Survey * * *. The first soil study was completed by Joel A. Norgren, CPSS in April and July of 2011. The Norgren soils report was updated in February, 2014 by Andy Gallagher, CPSS. While both soils scientists modified the share of soils in each capability class mapped by the NRCS, and mapped new Witzel soils on the subject properties, the Norgren and Gallagher soils studies both indicate a predominance of agricultural soils (Cass I-IV)." Record 31.

Petitioner and the other owners of the subject property sought an "irrevocably committed" exception to Goals 3 and 4 in order to allow development of additional residences on the subject property.

In *Friends of Douglas County v. Douglas County*, we described the required analysis for irrevocably committed exceptions in detail:

> "Under OAR 660-004-0028, an irrevocably committed exception to applicable statewide planning goals is warranted where, based on consideration of the factors enumerated in the rule, the local government concludes that uses allowed by the goals are impracticable in the exception area. OAR 660-004-0028(1).[1] Whether uses allowed by the goals are impracticable depends on the characteristics of the exception area, the adjacent lands, the relationship between the exception area and adjacent lands, and other relevant factors. OAR 660-004-0028(2).[2] While the local government's findings need not demonstrate that every use allowed by the goals is 'impossible,' the findings must demonstrate that farm uses allowed by ORS 215.203, propagation or harvesting of a forest product, and forest operations or forest practices are 'impracticable.' OAR 660-004-0028(3).[3] Finally, OAR 660-004-0028(6) sets forth a number of factors the local government must consider in taking an irrevocably committed exception.[4]
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> "In evaluating [a local government's] findings and ultimate conclusion under OAR 660-004-0028, we are bound by any finding of fact for which there is substantial evidence in the record. ORS 197.732(2)(6)(a). We must determine, based on a 'clear statement of reasons,' whether 'the local government's findings and reasons demonstrate' that the impracticability standard has been met. ORS 197.732(6)(b), (c). In making that determination, we are not required to give any deference to the [local government's] explanation for why it believes the facts demonstrate compliance with the standards for an irrevocably committed exception. *Laurence v. Douglas County*, 33 Or LUBA 292, 297-99, *aff'd* 150 Or App 368, 944 P2d 1004 (1997).

"[1] OAR 660-004-0028(1) provides, in relevant part:

> "'A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because the existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable[.]'

"[2] 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:
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> "'(a) The characteristics of the exception area;
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> "'(b) The characteristics of the adjacent lands;
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> "'(c) The relationship between the exception area and the lands adjacent to it; and
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> "'(d) The other relevant factors set forth in OAR 660-004-0028(6).'

"[3] OAR 660-004-0028(3) provides, in relevant part:

> "'Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule [* * *]. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:
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> "'(a) Farm use as defined in ORS 215.203;

"'(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

"'(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).'

"[4] As relevant here, OAR 660-004-0028(6) provides:

"'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 makes 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 and uses approved 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 the subject parcels or land adjoining those parcels.
>
> "'* * * * *
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> "'(d) Neighborhood and regional characteristics;
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> "'(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. 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;
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> "'(f) Physical development according to OAR 660-004-0025; and
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> "'(g) Other relevant factors.'" 46 Or LUBA 757, 761-63 (2004).

The board of commissioners denied petitioner's request for an exception. Where a local government denies a land use application on multiple grounds, we will affirm the decision on appeal if at least one basis for denial survives all challenges. *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256, 266, *aff'd*, 195 Or App 762, 100 P3d 218 (2004), *rev den*, 338 Or 17 (2005). With the exception of the first assignment of error, first subassignment, discussed below, we address elements of the first, second, and third assignments of error that concern related issues together in order to determine whether at least one basis for denial survives all challenges.[3]

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[3] OAR 661-010-0030(2)(a) requires that petitions for review begin with a table of contents and authorities. Such tables assist greatly in our review of

FIRST ASSIGNMENT OF ERROR, FIRST SUBASSIGNMENT

Petitioner's first assignment of error, first subassignment, is that the decision failed to address petitioner's motion to strike certain evidence. Petitioner argues that it "made a Motion to Strike certain evidence submitted by opponents. This Motion was never ruled on, and failure to rule on a legitimate motion regarding the submission evidence requires a remand of this matter." Petition for Review 17 (citing Record 635-36). This subassignment of error is denied.

ORS 197.835(9)(a)(B) requires LUBA to reverse or remand the land use decision under review if it finds that the local government "[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner." "Under [ORS 197.835(9)(a)(B)], as under OAR 661-010-005, we believe the 'substantial rights' of parties that may be prejudiced by failure to observe applicable procedures are the rights to an adequate opportunity to prepare and submit their case and a full and fair hearing."[4] *Muller v. Polk County*, 16 Or LUBA 771, 775 (1988). Petitioners do not develop any argument that their substantial rights were prejudiced by the board of commissioners' failure to resolve their motion to strike.

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arguments made in petitions. Although petitioner included a table of contents in their petition for review, they failed to include the required table of authorities.

[4] OAR 661-010-0005 provides, in part, that our rules are intended "to promote the speediest practicable review of land use decisions * * * while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing."

The first assignment of error, first subassignment, is denied.

FIRST ASSIGNMENT OF ERROR, SECOND SUBASSIGNMENT, AND SECOND AND THIRD ASSIGNMENTS OF ERROR

Petitioner's first assignment of error, second subassignment, is that the board of commissioners failed to adopt adequate findings. Petitioner's second assignment of error is that the board of commissioners erred in its interpretation of applicable administrative rules. Petitioner's third assignment of error is that the county's findings that applicable administrative rules and certain local criteria are not met are not supported by substantial evidence. Petitioner makes multiple arguments related to different elements of OAR 660-004-0028 within each assignment of error. In *DLCD v. Coos County*, we pointed out that

> "[t]he characteristics of the proposed exception area are among the relevant factors that the county may consider in determining whether resource uses are impracticable. However, *the focus of OAR 660-004-0028 is on the relationship between the proposed exception area and the surrounding area, and whether that relationship renders resource use of the subject property impracticable.* The county may not give 'exclusive or preponderant weight' to the characteristics of the proposed exception area.
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> "While the parties dispute the evidentiary basis of the county's findings regarding the soils and suitability of the proposed exception area for resource use, even if we were to resolve those disputes in favor of intervenors, the characteristics of the exception area would not justify an irrevocably committed exception. Affirming the challenged decision in this case would require that we give 'exclusive or preponderant weight' to the characteristics of the proposed exception area itself, because the county's findings do not identify sufficient impacts from adjacent properties to support an irrevocably committed exception." 39 Or LUBA 432, 442-43 (2001)

> (emphasis added) (quoting *DLCD v. Curry County*, 151 Or App 7, 11, 947 P2d 1123 (1997)) (citing *DLCD v. Curry County*, 151 Or App at 11-12; *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 489, 505 (2000)).

Said differently, although other factors may lend support to approving an irrevocably committed exception, a county approving an irrevocably committed exception must identify sufficient impacts on the exception area *from adjacent properties* to support an irrevocably committed exception. We will therefore begin by focusing on the board of commissioners' decision as it relates to the lands adjacent to the subject property.

A. Board of Commissioners' Adoption of Hearings Officer's Findings Related to the Size of the Study Area (First Assignment of Error, Second Subassignment)

Quasi-judicial decisions must be supported by adequate findings. *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973). As the court explained in *Sunnyside Neighborhood v. Clackamas Co. Comm.*,

> "[n]o particular form is required, and no magic words need be employed. What is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based." 280 Or 3, 21, 569 P2d 1063 (1977).

Petitioner first argues that the board of commissioners made "no findings of its own, instead it adopted the findings made by the Hearings Officer, without any additional findings to address the new material that was presented to it during its hearing process." Petition for Review 9. As intervenor-respondent Friends of

Polk County points out, petitioner's contention that the board of commissioners did not adopt findings is incorrect. The board of commissioners found that it had considered the additional material submitted by petitioner and concluded that that additional material did not support a conclusion different from that made by the hearings officer:

> "The Board reviewed and considered all of the additional testimony and evidence that were submitted into the record after the Hearings Officer's recommendation was issued and finds that, *even when considering the additional evidence in favor of the application, the Hearings Officer's findings are adequate and the additional evidence does not support a conclusion other than the conclusion of the Hearings Officer*[.] * * *
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> "* * * On December 9, 2020, the Board fully and openly deliberated this matter and having reviewed the testimony and other evidence in the record, and based on the Staff Report, the Hearings Officer's recommendation, the testimony, and evidence in the record, denied the applications[.]" Record 185 (emphasis added).

Petitioner's argument that the board did not adopt findings addressing the new evidence is not supported by the record.

After arguing that the findings are inadequate with respect to local criteria applicable to comprehensive plan amendments, petitioner argues that "[t]he same lack of findings on issues raised after the [hearings officer's recommendation], and critical thereof, relate to the approval criteria found in OAR 660-004-0028(2) for the granting an Exception" and that "[a]rguments raised in response to the [hearings officer's recommendation] relating to the Exception criteria include those listed above as they relate to the Land Use Inventory." Petition for Review

15. Elsewhere, petitioner states that, "[b]efore the Board, petitioner presented facts and arguments clarifying why the size of the study area was appropriate and lawful, and explaining issues raised in the [hearings officer's recommendation]. *Id.* at 12 (citing Record 1131-32, 1134-35). Although petitioner's first assignment of error, second subassignment, is not a model of clarity, we understand petitioner to argue that the board of commissioners' findings as to the appropriate size of the study area, for purposes of evaluating land adjacent to the subject property under OAR 660-04-0028(2), are inadequate.[5] We deny this subassignment of error.

To assist the county in evaluating land adjacent to the subject property, petitioner submitted a Land Use Inventory comprised of eight county assessor maps, analyzing properties located within four square miles of the subject property (the study area). The hearings officer concluded that the study area was too large. Petitioner submitted to the board of commissioners an explanation of why the large study area was selected, arguing that the use of surrounding assessor maps to identify study areas for land use purposes is generally accepted and that doing so avoids allegations of targeted selection of the included properties. Record 1134-35.[6] However, the hearings officer explained:

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[5] Petitioner makes a broad attack on the adequacy of the findings. We focus on the challenge to the study area findings.

[6] In support of this subassignment of error, petitioner also directs us to its board of commissioners submittal at Record 1131 to 1132. Petition for Review

> "In order to characterize lands that are adjacent to the proposed exception area, [petitioner has] provided a Land Use Inventory that comprises approximately 2,571 acres of surrounding land totaling the study area to 4 miles. Based on the original inventory and its update, [petitioner] determined that 71% of the parcels within the study are contain a single-family dwelling, the average parcel size to be 12.07 acres with 77% of the parcels being less than 10 acres in size, and 45% of the parcels to not be in farm or forest use or receiving any tax deferral benefits." Record 250.

The hearings officer concluded "that a Study Area of four (4) square miles (2,571 acres) around the subject properties is too expansive and has the ability to dilute the relevant information that is required to be analyzed by the administrative rules." *Id.* As explained above, the board of commissioners concluded that, "considering the additional evidence in favor of the application, the Hearings Officer's findings are adequate and the additional evidence does not support a conclusion other than the conclusion of the Hearings Officer." Record 185. In *Rosenzweig v. City of McMinneville*, we explained:

> "A petitioner at LUBA must (1) identify the issue raised, (2) demonstrate that the issue was *adequately* raised and (3) establish that the issue is relevant in some way (usually by showing that the issue raises a question regarding an applicable approval standard). Petitioners' undeveloped reference to 86 pages of single-spaced argument is inadequate to (1) identify issues, (2) show that the issues were adequately raised or (3) establish that the issues are relevant." 64 Or LUBA 402, 411 (2011) (emphasis in original).

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12. Those pages address whether the Land Use Inventory contained errors and are not relevant to the issue of the size of the study area.

Petitioner has not identified any argument that it made in response to the dilution concern identified by the hearings officer and, therefore, has not challenged the basis for the board of commissioners' conclusion that the study area was too large. Petitioner has not identified any new material that it presented to the board of commissioners on the size of the study area issue to which the board of commissioners was required to respond with specificity.

The first assignment of error, second subassignment, as it relates to the study area, is denied.

B. Interpretation of "Existing Adjacent Uses" (Second Assignment of Error, First Subassignment)

OAR 660-004-0028(1) provides in part that a local government may adopt an exception "when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because *existing adjacent uses and other relevant factors* make uses allowed by the applicable goal impracticable." (Emphasis added.) Petitioner argues that the board of commissioners improperly interpreted this provision. Petition for Review 20. We will reverse or remand a decision where the local government improperly construed the applicable law. ORS 197.835(9)(a)(D).[7] We deny this subassignment of error.

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[7] We afford no deference to the board of commissioners' interpretation of state law. *Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992) (citing *Kenagy v. Benton County*, 115 Or App 131, 838 P2d 1076 (1992); *Ramsey v. City of Portland*, 115 Or App 20, 836 P2d 772 (1992)).

First, petitioner argues that the county erroneously concluded that only the 14 properties contiguous to the subject property could be considered "existing adjacent uses" for purposes of OAR 660-004-0028(1). Petition for Review 21. This argument misstates the county's findings. The board adopted the hearings officer's findings. The hearings officer did not interpret the administrative rule to require that only parcels immediately adjacent to the subject property be considered. Rather, the hearings officer concluded that the 2,571-acre study area proposed by petitioner was too large:

> "[Petitioner] argued at [the] hearing that the size of this study area was important and that when examining the Exception area it should be looked at as if it were a donut, the exception area is the hole in the middle of the donut and the study area was the outer part because what happens in the surrounding area has a direct impact on what can happen in the exception area. * * *
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> "* * * * *
>
> "While it is clear that [petitioner has] spent a significant amount of time and resources researching the large study area, the Hearings Officer finds the Study Area requested by [petitioner] in these applications is too large of a study area given the language in the rules. The Hearings Officer finds that a Study Area of four (4) square miles (2,571 acres) around the subject properties is too expansive and has the ability to dilute the relevant information that is required to be analyzed by the administrative rules. *Given that the information provided by [petitioner] is divided either between all properties within four square miles or the 14 adjacent properties, the Hearings Officer will focus on the 14 adjacent properties to the Exception Area as the Study Area.*" Record 250 (emphasis added).

The board of commissioners did not find that only contiguous properties may be considered under the rule. Rather, the board of commissioners concluded that petitioner provided the county with the information to do the required analysis at two scales. Due to the format of the material that petitioner provided to the county to prove its case, the board of commissioners had two options: (1) review a four-square-mile area or (2) review the 14 parcels located immediately adjacent to the subject property. Because it concluded that the four square miles was not appropriate, it considered the 14 parcels for which petitioner had provided detailed information. The board of commissioners did not make the interpretation asserted by petitioner.

In the alternative, petitioner argues that a comprehensive review of the surrounding area, presumably the four-mile study area, is properly considered as an "other relevant factor." OAR 660-004-0028(2)(d). We affirmed a county decision approving an irrevocably committed exception in *Scott v. Crook County*, 56 Or LUBA 691 (2008). In that case, the petitioner argued that the county should have considered the character of land a mile or more away from the subject property. We explained:

> "The county appears to have focused on the area in the immediate vicinity of the subject property as the relevant neighborhood and region, while petitioner appears to argue for a more expansive view of the neighborhood and region. However, petitioner does not explain why the county must adopt that more expansive view or why the aerial photograph at Record 235 so undermines the evidence the county chose to rely upon that the county's finding under OAR 660-004-0028(6)(d) is not supported by substantial evidence." *Scott*, 56

Or LUBA at 695.

Similarly, petitioner does not explain why the board of commissioners was required to consider the properties within four square miles of the subject property as an "other relevant factor" under OAR 660-004-0028. The extent of petitioner's argument is that,

> "even if one were to assume that 'adjacent' could mean 'contiguous', that certainly does not preclude a comprehensive review of the surrounding area, as one of those 'other relevant factors' in OAR 660-004-0028(2)(d). The OAR includes many references to the need for review and findings on neighborhood and regional characteristics." Petition for Review 22.

The findings address the neighborhood and regional characteristics and OAR 660-004-0028. Record 281. We agree with intervenor-respondent 1000 Friends of Oregon that this argument is inadequately developed for our review. 1000 Friends of Oregon's Response Brief 8. We will not develop petitioner's argument for it. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

The second assignment of error, first subassignment, is denied.

C. Substantial Evidence of "Existing Adjacent Uses" (Third Assignment of Error, Second Subassignment)

We will reverse or remand a decision if it is not supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely upon to reach a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). As discussed above, the board of commissioners determined that the four-mile study area proposed by petitioner was too large because it would dilute impacts. Petitioner did not

challenge that finding and we focus on the substantial evidence challenge as it relates to the 14 contiguous properties considered by the board of commissioners.

Petitioner contends that "[a]ll of the relationship impacts, field burning smoke, farm noise, irrigation spill over, pesticide application, fire danger and damage from trespass apply to these contiguous parcels, even more so th[a]n in the surrounding neighborhood, and warrant this exception." Petition for Review 42. Petitioner argues that the findings are not supported by substantial evidence because "[t]here is no evidence in this Record that refutes the relationship impacts present here, and no evidence to support the finding that even when considering only the 14 current parcels, that the irrevocably committed exception is not warranted." Petition for Review 43.

OAR 660-004-0028(6)(c)(A) provides, in part:

> "Resource and nonresource parcels created and uses approved 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 the subject parcels or land adjoining those parcels." (Emphasis added.)

By adopting the hearings officer's findings, the board of commissioners found:

> "Of the 14 contiguous properties to the exception area, [petitioner has] identified three tax lots, Tax Lot 600 on Map 7.4.14, Tax Lot 200 on Map 7.4.23, and Tax Lot 500 on Map 7.4.23 that are created without land use regulation. However, of these 3 tax lots; 2 are the product of M37/49 and have yet to be exercised; thus only one tax lot—Map 7.4.23 Tax Lot 500 was established prior to 1970. If only the adjacent properties are examined and only dwellings and tax lots

> that are in existence today, there is one dwelling out of the 10 dwellings (roughly 10%) and 1 tax lot out of 14 tax lots (roughly 7%) that were created without the application of land use regulation. All other resource and nonresource parcels created and uses approved on surrounding lands can be assumed to have been approved pursuant to the applicable Goals. * * * [S]urrounding parcels that were lawfully partitioned and developed pursuant to the applicable goals cannot be used to justify an irrevocably committed Goal Exception for the subject properties.
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> "For these reasons, based on the evidence in the record, the Hearing Officer is not convinced that the relationship between the subject properties and the surrounding lands have committed the subject properties to uses not otherwise permitted by Goals 3 and 4." Record 251.

The board of commissioners relied on the above analysis when denying the application and petitioner does not direct us to evidence, substantial or otherwise, refuting the board of commissioners' above characterization of the surrounding area. As intervenor-respondent 1000 Friends of Oregon points out, "nowhere in [its] analysis does petitioner question whether substantial evidence in the record supports the hearings officer's decision. Instead, petitioner speculates at length about the potential for the development of the contiguous parcels." 1000 Friends of Oregon's Response Brief 47. "LUBA is not required to search the record, looking for evidence with which the parties are presumably already familiar. The identification of the evidence is part of advocacy." *Eckis v. Linn County*, 110 Or App 309, 313, 821 P2d 1127 (1991).

The third assignment of error, second subassignment, is denied.

CONCLUSION

Where a local government's decision denying an application rests on independent alternative grounds, petitioner must successfully challenge each of those alternative grounds. *Yeager v. Benton County*, 42 Or LUBA 72, 80, *aff'd*, 183 Or App 549, 53 P3d 459 (2002). We deny petitioner's challenge to the board of commissioners' action on its motion to strike (first assignment of error, first subassignment) and the board of commissioners' finding relying on the 14 contiguous properties for which petitioner provided data because the four-mile study area was found to be too large (first assignment of error, second subassignment). We deny petitioner's challenge to the board of commissioners' interpretation of the administrative rule as requiring a primary focus on existing adjacent uses (second assignment of error, first subassignment), and we conclude that substantial evidence supports the board of commissioners' conclusion that the uses on the 14 contiguous properties do not warrant an irrevocably committed exception (third assignment of error, second subassignment). Accordingly we need not reach the remainder of the first, second, and third assignments of error.

The county's decision is affirmed.