

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

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HILLCREST VINEYARD and)
RICHARD SOMMER,)
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Petitioners,)
)
vs.)
)
DOUGLAS COUNTY,)
)
Respondent.)

LUBA No. 84-013
FINAL OPINION
AND ORDER

Appeal from Douglas County.

David G. Terry, Roseburg, filed the petition for review and argued the cause on behalf of Petitioners. With him on the brief were Terry and Clark.

Paul Nolte, Roseburg, filed a brief and argued the cause on behalf of Respondent County.

Dudley C. Walton, Roseburg, filed a brief and argued the cause on behalf of Respondent Broyhill.

Michael B. Huston, Salem, filed a brief on behalf of the Department of Land Conservation and Development. With him on the brief was Dave Frohnmayer, Attorney General.

KRESSEL, Referee; BAGG, Chief Referee; DUBAY, Referee; participated in the decision.

AFFIRMED 05/31/84

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1983, ch 827.

1 Opinion by Kressel.

2 NATURE OF DECISION

3 Petitioners challenge approval of a 20 lot residential
4 subdivision on a rural agricultural tract of 119 acres in
5 Douglas County.

6 FACTS

7 The land in question is zoned "Rural Residential-5 acre
8 density." The comprehensive plan designation is "Committed-5,"
9 a term defined by the plan as "a committed area where
10 parcelization and potential development should not exceed a
11 density of one dwelling unit on each 5 acres." Record at 3.

12 The site consists of agricultural and forest lands, as
13 those terms are defined in the statewide planning goals.
14 However, the county took an exception to the applicable
15 resource protection goals under statewide Goal 2 when the plan
16 and zoning designations were enacted. The exception, which was
17 based on the commitment of the land to non-resource use, was
18 acknowledged as in compliance with the statewide goals by LCDC
19 on January 18, 1983. The county issued final approval of the
20 challenged subdivision less than one month later, on
21 February 8, 1983.

22 ASSIGNMENTS OF ERROR

23 Petitioners present six assignments of error. Each attacks
24 the county's decision to allow subdivision of the tract under
25 the statewide planning goals, notably Goal 2 (land use
26 planning), Goal 3 (agricultural lands), and Goal 4 (forest

1 lands).¹ Our consideration of these goal violation charges
2 is foreclosed, however, by the fact the challenged subdivision
3 is consistent with previously acknowledged plan and zoning
4 designations. See, Byrd v. Stringer, 295 Or 311, 317, 666 P2d
5 1332 (1983); Fujimoto v. LUBA, 52 Or 875, 878, 630 P2d 364
6 (1981).

7 We recognize LCDC's acknowledgement of the exception taken
8 by the county was based on the test for "commitment" to
9 non-resource use struck down in Marion County v. Federation of
10 Sound Planning, 64 Or App 226, 235, 668 P2d 406 (1983).

11 However, curative action by the 1983 legislature validated the
12 county's exception. ORS 197.732(9) provides "an exception
13 acknowledged under ORS 197.251, 197.625, or 197.630(1) (1981
14 replacement part) on or before August 9, 1983, shall continue
15 to be valid and shall not be subject to this section."

16 Under the circumstances, the decision in question is not
17 subject to review for goal compliance. Since the petition
18 raises only goal compliance issues, it cannot be sustained.
19 Accordingly, the county's decision is affirmed.

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FOOTNOTES

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1 We note that one of petitioners' arguments interrelates certain requirements of Goal 3 with constitutional protections (due process) and statutory requirements (ORS 215.416). However, we read petitioners' underlying theory to arise under Goal 3.