BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FOREST PARK NEIGHBORHOOD ASSOCIATION,
and CAROL CHESAREK,
Petitioners,

vs.

WASHINGTON COUNTY,
Respondent,

and

K & R HOLDINGS, LLC,
Intervenor-Respondent.

LUBA No. 2015-071

FINAL OPINION
AND ORDER

Appeal from Washington County.

Carrie A. Richter, Portland filed the petition for review and argued on behalf of petitioners. With her on the brief was Garvey Schubert and Barer.

Jacquilyn Saito-Moore, Assistant County Counsel, Hillsboro, filed a response brief and argued on behalf of respondent.

Michael C. Robinson, Portland, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was Perkins Coie LLP.

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

REMANDED 04/13/2016

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal Ordinance 801, which adopts code amendments to a natural area buffer required between urban development located within the Metro Urban Growth Boundary (UGB) and agricultural uses outside the UGB.

FACTS

In 2002, Metro expanded the UGB in northeastern Washington County to include four study areas, collectively known as the North Bethany Sub-Area. Condition 6 of the Metro ordinance provided:

> "In Title 11 planning, the city or county with land use planning responsibility for Study Areas 84, 85, 86 and 87 (partial) shall adopt provisions in its comprehensive plan and zoning regulations—such as setbacks, buffers and designated lanes for movement of slow-moving farm machinery—to ensure compatibility between urban uses in an included study area and agricultural practices on adjacent land outside the UGB zoned for farm or forest use."

In 2011, the county adopted Ordinance 739, which included land use regulations implementing Condition 6. In relevant part, Ordinance 739 included a "Natural Features Buffer" along the northern boundary of the Bethany sub-area, which is generally characterized by steep slopes and riparian areas. The Natural Features Buffer included a non-developable setback area between urban development to the south and agricultural practices to the north, with a width that varied based on natural features and terrain from 158 feet to 465 feet. In addition, Ordinance 739 required a five-foot-tall fence along the

southern boundary of the setback area, and an additional five-foot-tall fence along the northern boundary, if an adjacent rural property owner provides evidence that the setback and other measures are insufficient to ensure compatibility.

The staff report supporting Ordinance 739 had considered, and rejected, a setback width of only 20 to 50 feet, based in part on testimony regarding conflicts between residential uses in the UGB and a horse-boarding and training facility, Abbey Creek Stables, which is located to the north of the UGB on an adjacent parcel zoned for agricultural use. The owner of the facility testified that a riding trail on his property is located within 10 feet of the UGB along the North Bethany Sub-Area, and expressed concerns regarding trespass and residential activities within North Bethany within view or earshot of the trail that might frighten horses and thereby endanger riders. Record 175-76.

In 2014, as part of a larger legislative planning process, the county considered a request by intervenor-respondent K & R Holdings, LLC (intervenor) to reduce the northern buffer width to 50 feet. The county board of commissioners directed staff to study the request and return with a recommendation. Staff presented Issue Paper 2015-03, which the commissioners considered at a May 6, 2015 work session. The commissioners directed staff to prepare an ordinance for consideration in 2015 that would reduce the width of the northern buffer to 50 feet.

Planning staff drafted Ordinance 801, the decision challenged in this appeal. In relevant part, Ordinance 801 requires a 50-foot vegetated buffer between urban residential uses within the Bethany area and agricultural practices to the north. The required vegetation consists of a mix of native trees and shrubs at a prescribed density. On planting, evergreen trees must be at least six feet high and deciduous trees must be at least eight feet high, and the trees must be of a type that has a minimum mature height of 30 feet. Ordinance 801 continues to require a five-foot-high fence along the southern border of the buffer area, and allows for a second five-foot-high fence along the northern edge of the buffer if an adjacent rural property owner provides evidence that the standard buffer requirements are not adequate.

The county processed Ordinance 801 under procedures for legislative comprehensive plan and land use regulations amendments. The county planning commission held a hearing on Ordinance 801 on July 15, 2015 and August 5, 2015, and recommended approval. The county board of commissioners held a public hearing on Ordinance 801 on August 18, 2015, and adopted the ordinance on September 1, 2015. This appeal followed.

FIRST ASSIGNMENT OF ERROR

As noted, Condition 6 of the 2002 Metro ordinance that brought the North Bethany Sub-Area into the UGB required the county to adopt provisions, such as setbacks and buffers, in order to "ensure compatibility between urban

uses in an included study area and agricultural practices on adjacent land outside the UGB zoned for farm or forest use."

In its findings supporting Ordinance 801, the county concluded that "[c]ombined with the fence, dense landscaping, and landscaping management the [buffer] tract assures an effective and permanent visual and physical barrier that ensures compatibility between the urban and agricultural uses." Record 121. Further, the county concluded that the plan and code amendments adopted in Ordinance 801 will "promote compatibility and minimize potential conflicts between urban uses in North Bethany and agricultural practices on adjacent rural land outside the UGB." *Id*.[1]

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[1] In related findings, the county explained:

> "Ordinance No. 801 reduces the buffer to a uniform 50-foot width measured from the urban/rural edge of North Bethany. In combination with existing natural features located in the area, Ordinance No. 801 adopts Community Plan and CDC standards to ensure continued compatibility between urban uses within the subarea and farm uses along the northern edge of North Bethany on adjacent rural lands. The types of issues that may impact compatibility between urban and agricultural uses include visual impacts/loss of privacy, noise, trespass and potential stormwater runoff. The urban/rural edge standards are tailored to the adjacent agricultural uses and conditions along North Bethany's northern edge.
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> "The standards require placement of the buffer into a separate, undevelopable tract with a minimum width of 50 feet measured from the urban/rural edge for the purpose of providing screening and physical separation between urban and agricultural uses. Permanent landscape plantings within the 50-foot buffer will

Under the first assignment of error, petitioners argue that the county was required, but failed, to adopt an interpretation of the phrase "ensure compatibility" as used in Condition 6. According to petitioners, the county in 2011 concluded that a 50-foot-wide buffer was not sufficient to "ensure compatibility," but in the present decision the county reached the diametrically opposite conclusion without explaining why. Petitioners contend that none of

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> consist of a layered canopy of native deciduous and evergreen trees and shrubs at specific numbers per 100 lineal feet of the 50-foot buffer. The level of landscape planting, along with existing buffer vegetation, will achieve a dense and diverse native vegetated screen over time and provide a continual screen between urban and rural agricultural lands. The landscaped standards result in an intense landscaped buffer using existing and new trees and shrubs that separates urban and rural agricultural uses and limits view intrusion and noise impacts on adjacent agricultural practices.
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> "The standards also require the provision of trespass-discouraging fencing along the southern edge of the buffer tract and northwestern portions of the North Bethany boundary. Installation of a minimum 5-foot high fence composed of either cyclone, wire mesh, 'no climb,' or wood located along the southern (urban) edge of the 50-foot wide buffer tract provides a physical barrier along with required landscaping to discourage trespassing onto agricultural lands.
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> "A required landscape screening and buffering plan submitted prior to preliminary development approval demonstrates how all screening and buffering standards will be met, including landscaping and fencing. The standards require that the plan be prepared by an Oregon registered landscape architect.
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> "The standards also provide for the maintenance and preservation of the buffer plantings. * * *" Record 119-120.

the relevant facts have changed, so the only explanation for the apparent about-face is that the county has changed its understanding of what the obligation to "ensure compatibility" means. However, petitioners argue, the findings supporting Ordinance 801 do not include any express interpretation of the phrase "ensure compatibility" that explains the county's understanding of that phrase, or that articulates what level of conflict or adverse impact is consistent with "compatibility."

In the absence of such an interpretation, petitioners argue, LUBA should interpret the phrase "ensure compatibility" in the first instance, pursuant to ORS 197.829(2).[2] Petitioners urge LUBA to interpret the phrase "ensure compatibility" in Condition 6 to require the county to guarantee that existing farm uses may "continue uninterrupted at existing levels with little interference from urban uses." Petition for Review 15.

Intervenor responds that petitioners do not identify any legal obligation requiring the county to provide an express interpretation of the phrase "ensure compatibility." In any case, intervenor argues, the county's findings adequately

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[2] ORS 197.829(2) provides:

> "If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct."

However, we note that Condition 6 is not a provision of the county comprehensive plan or its land use regulations.

demonstrate the county's understanding of what Condition 6 requires. According to intervenor, the findings explain that the dense vegetated screen required by Ordinance 801 will limit visual and noise impacts to equestrians and horses on nearby trails, and the required fence or fences will discourage trespassing. Intervenor argues that to the extent an interpretation of the phrase "ensure compatibility" is required, the findings embody an implicit interpretation that is adequate for review, to the effect that compatibility is achieved by limiting and minimizing conflicts, not, as petitioners appear to argue, by eliminating almost all conflict.

We generally agree with intervenor. Condition 6 requires the county to adopt regulations requiring techniques, such as setbacks, buffers, etc., that function to "ensure compatibility" between urban and agricultural uses, but Condition 6 does not prescribe what techniques to use or otherwise assist the county in determining what is sufficient to "ensure compatibility." Given the language of Condition 6, the county has wide latitude in determining what constitutes "compatibility" and what techniques are sufficient to ensure it. In particular circumstances, the application of such a subjective standard as the "ensure compatibility" standard may require some interpretation or explanatory findings, however, we disagree with petitioners that there is an inherent obligation on the county's part to interpret Condition 6, or that the failure to adopt an express interpretation of Condition 6 is in itself a basis for reversal or remand.

We understand petitioners to argue that because the county had previously concluded that a 50-foot buffer would not ensure compatibility, the county cannot now reach the opposite conclusion that a 50-foot buffer will ensure compatibility without first adopting an interpretation that explains its changed understanding of what compatibility means. One problem with that argument is that the 50-foot buffer considered and rejected in 2011 relied solely upon distance to limit visual and noise impacts, and did not include the dense landscaping component that Ordinance 801 includes. In other words, the two conclusions are not diametrically opposed, and the apparent conflict that petitioners perceive between the two conclusions does not obligate the county to articulate a new or different interpretation of Condition 6.

In any case, we agree with intervenors that the county's findings embody an implicit interpretation of the "ensure compatibility" standard that is adequate for purposes of resolving the first assignment of error. The findings explain that the buffer will "reduce" visual and noise impacts, and ultimately conclude that the proposed buffer will "minimize potential conflicts" between urban and agricultural uses. Record 120-21. It is clear that the county does not share petitioners' preferred interpretation of the compatibility standard, which we understand would require few or no adverse impacts on agricultural uses. While the findings do not attempt to articulate precisely what level of impacts are consistent with compatibility, petitioners have not established that a more

refined interpretation of the subjective "ensure compatibility" standard is necessary to resolve the issues raised in the first assignment of error.

Under the second assignment of error, petitioners challenge the adequacy of and evidentiary support for the county findings regarding impacts on Abbey Creek Stables. However, for purposes of the first assignment of error, petitioners have not demonstrated that remand is warranted for the county to interpret Condition 6 in the first instance or to adopt a more detailed interpretation.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that the county adopted inadequate findings, not supported by substantial evidence, regarding the county's determination that the revised buffer would ensure compatibility with the adjacent Abbey Creek Stables.

A. Standard of Review

As noted, the county processed Ordinance 801 as a legislative rather than a quasi-judicial decision. Petitioners do not assign error to the procedures the county employed to process the ordinance. However, petitioners argue that Ordinance 801 is properly characterized as a quasi-judicial decision, pursuant to the three-factor test set out in *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 597, 602-03, 601 P2d 769 (1979). One consequence, petitioners argue, is that if the decision is quasi-judicial the county is obliged to

adopt adequately detailed findings regarding compliance with approval criteria. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992) (adequate findings must identify the relevant approval standards, set out the facts relied upon, and explain how those facts lead to the decision on compliance with the approval standards). Further, petitioners argue that findings supporting quasi-judicial decisions must address and respond to specific issues raised below regarding compliance with applicable approval standards. *Norvell v. Portland Metropolitan Area LGBC*, 43 Or App 849, 853, 604 P2d 896 (1979). Petitioners argue that the county's findings regarding impacts on Abbey Creek Stables are inadequate and fail to address issues raised below.

Even if Ordinance 801 is properly characterized as a legislative decision, petitioners argue, the Court of Appeals has held that "there must be enough in the way of findings or accessible material in the record of the legislative act to show that applicable criteria were applied and that required considerations were indeed considered." *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002). Petitioners contend that under either standard of review the county's findings regarding compatibility with Abbey Creek Stables fail to demonstrate that the buffer will ensure compatibility.

The county argues, and we agree, that Ordinance 801 is properly viewed as a legislative decision based on balanced consideration of the *Strawberry Hill* factors. The three *Strawberry Hill* factors are whether (1) the process is bound to result in a decision, (2) the decision is bound to apply preexisting criteria to

concrete facts, and (3) the decision is directed at a closely circumscribed factual situation or a relatively small number of persons. The three *Strawberry Hill* factors are weighed together, and no one factor is determinative. *Estate of Paul Gold v. City of Portland*, 87 Or App 45, 740 P2d 812 (1987).

The first factor points toward a legislative decision. Although intervenor requested that the county consider amending the buffer, the county was not obliged to act on that request, and in fact had declined to act on similar requests in the past. Further, the county board of commissioners conducted an initial process to determine whether the county should consider amending the buffer, which does not suggest that the process was one that was bound to result in a decision. As far as petitioners have established, the county was not obliged to proceed with Ordinance 801, and it appears that the county could have chosen not to proceed with the amendments at any point in the legislative process.

With respect to the second factor, whether the decision is bound to apply preexisting criteria to concrete facts, almost all land use decisions, legislative as well as quasi-judicial, involve the application of preexisting criteria, so the "preexisting criteria" element is present in almost all cases. However, the nature of the "ensure compatibility" standard requires some evaluation of impacts between urban uses and agricultural uses, which in most cases will require some evaluation of particular impacts and particular agricultural uses. As discussed below the parties disagree whether the county adequately evaluated the alleged impacts on farm practices at Abbey Creek Stables, and

that disagreement appears to involve fairly concrete facts. We conclude that consideration of the second *Strawberry Hill* factor points a crooked finger weakly toward the quasi-judicial.

The third factor, whether the decision is directed at a closely circumscribed factual situation or a relatively small number of persons, is also a close call. Petitioners argue that Ordinance 801 affects only eight acres owned by intervenor that will comprise the reduced buffer area, and therefore the ordinance is directed at a closely circumscribed factual situation and a relatively small number of persons. However, as the county argues, that narrow view of Ordinance 801 is not quite accurate. Ordinance 801 directly affects four parcels within the UGB totaling over 135 acres, and indirectly affects a number of other parcels outside the UGB. The northern buffer area is linear, and stretches almost one mile from east to west. Ordinance 801 effectively reduces the natural buffer area from 25 acres to eight acres, potentially freeing up additional acreage for urban residential subdivision and development, and potentially involving hundreds of new property owners. Although it is a reasonably close call, we conclude that Ordinance 801, viewed in its broader context, is not directed at a closely circumscribed factual situation or a relatively small number of persons.

In sum, balanced consideration of all three *Strawberry Hill* factors indicates that Ordinance 801 is legislative in character, rather than quasi-judicial.

B. First Sub-Assignment of Error

Petitioners argue that the county's findings are not supported by substantial evidence and fail to establish that the reduced buffer is compatible with Abbey Creek Stables.

Pursuant to Statewide Planning Goal 2 (Land Use Planning) legislative land use decisions such as Ordinance 801 must be supported by an "adequate factual base," which is functionally equivalent to the substantial evidence standard that applies to review of quasi-judicial decisions. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 377-78, *aff'd* 130 Or App 406, 882 P2d 1130 (1994). Under either standard, the question is whether a reasonable person could reach the conclusion the decision-maker did, considering the evidence in the record. *Id.*

Petitioners submitted testimony below that Abbey Creek Stables operates a riding trail for training and competitive events, which features high-speed riding and jumping over obstacles. Part of the riding trail is located only 10 feet from the UGB/buffer area, and thus within 60 feet of potential urban residential uses, and within 75 feet of potential residential structures and accessory structures that must be set back 15 feet from the UGB. The testimony noted that the riding trail is located downslope of residential development that would be allowed under the amendments, and argued that due to the elevation difference it would take up to 15 years before vegetation planted in the buffer area grew high enough to begin providing some visual screening of upslope

residential activities from a horse's perspective on the trail. Petitioners submitted a diagram from a registered architect illustrating the open line of sight between the trail and upslope residential development in the first year of planting. Record 268.

Petitioners also provided detailed testimony from a veterinary behaviorist, opining that due to the nature of horses and their peripheral vision, and the focused nature of horses riding at speed over obstacles, sudden visual movements from a source that is close by present a significantly higher risk of spooking the horse, potentially endangering horse and rider, compared to visual movements perceived at the distance of several hundred feet offered by the original buffer. Record 226-29. The veterinarian also cited research suggesting that the sight of sudden movement between gaps in the vegetation may be even more alarming to horses than movement in plain view, from which the veterinarian opined that even when the planted trees have grown tall enough to partially block the view, they may not provide an effective visual barrier. Record 228.

With respect to noise, the veterinarian explained that while horses get accustomed to recurring noises, such as traffic on a road, horses react poorly to sudden unexpected non-recurring noises, such as fireworks, backfiring engines, etc. Record 229. The veterinarian also noted that some of the horses involved in competitions that occur on the property are from other stables, and would likely be even less accustomed than the resident horses to sudden visual or

auditory stimuli from adjoining residential development. The veterinarian concluded that the existing physical separation of several hundred feet between the riding trail and urban uses would be "eminently safer than a 50 foot buffer." *Id.*

Also with respect to noise, petitioners submitted an acoustic study comparing noise levels on the riding trail that were generated from a point 50 feet south and another point 250 feet south, representing the approximate locations of the proposed and former buffers. The study found noise levels 19 decibels higher, or 79 times louder, when generated at the closer location. Record 254.

The findings supporting Ordinance 801 do not address the foregoing testimony, and no party cites us to any evidence to the contrary. Specifically the findings and evidence in the record do not appear to include any responses to the specific testimony regarding the particular nature of horses and competitive riding on the trail, the elevation difference between the trail and upslope residential activities, the amount of time it will take for planted vegetation to grow high enough to provide an effective visual and noise barrier, and the risk to horses and riders in the interim.

The county's conclusion that the reduced buffer will ensure compatibility between Abbey Creek Stables and urban uses appears to rest on

only two items of evidence.[3] The first is a letter from a registered landscape architect opining that the buffer area will provide an effective buffer between urban and agricultural uses.[4] However, as petitioners argue, the landscape

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[3] The county's findings state, as relevant:

> "The record contains a July 1, 2015 letter from an Oregon landscape architect, Joe Percival. Mr. Percival reviewed the requirements of Ordinance No. 801 and offered his opinion that the ordinance would provide a buffer to assure compatibility between urban and agricultural uses.
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> "* * * * *
>
> "The owner of Abbey Creek Stables argued that the fifty (50) foot-wide buffer may allow visual and noise impacts to equestrians and their horses on nearby equestrian trails and in pastures. The Board of Commissioners can find that the dense landscaping and landscaping management required by proposed Ordinance No. 801 will have a far more beneficial impact on reducing visual incompatibility between urban and agricultural uses than would mere distance. The level of landscape plantings, along with existing buffer vegetation, will also provide a dense, continual vegetated screen which will reduce noise impacts to equestrians and their horses on nearby trails. Further, the record contains evidence of three urban equestrian facilities which coexist with urban uses and whose operators have said that they are able to operate both stable and equine activities in close proximity to urban uses." Record 110-11.

[4] The landscape architect's letter states, in relevant part:

> "In my professional opinion, Ordinance 801 as written and revised will provide an effective buffer between urban and agricultural uses. The fifty foot (50') planting strip combined with required fencing will provide noise reduction, adequate visual transition

architect's opinion is entirely conclusory. The landscape architect did not address any impacts on specific agricultural practices, such as the riding trail, or address the significance of the elevation difference and the effectiveness of planted vegetation before reaching full maturity. Given the detailed testimony discussed above, the conclusory statements in the landscape architect's letter regarding the effectiveness of the buffer is not sufficient, in itself, to provide an adequate factual base for the county's conclusion that the barrier will ensure compatibility between urban and agricultural uses, as regards impacts on Abbey Creek Stables.

The second evidentiary item cited in the findings is an exhibit prepared by intervenor's counsel that describes three other equestrian facilities located within the UGB, which the findings cite as evidence that equestrian facilities can coexist in close proximity with urban uses. Record 111. However, petitioners submitted testimony from the owners of the three equestrian facilities, stating that there is 160 to 300 feet of separation between their riding trails and urban residential uses, and that none have residential uses located upslope over riding trails, as would be the case with proposed residential uses near Abbey Creek Stables. The three owners testified that allowing urban

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> between uses, prevent casual encroachment and discourage trespassing. Achieving these results will support the overall intent of meeting the goal of urban/rural compatibility prescribed in Metro's Ordinance No. 02-987A conditions of approval for the North Bethany planning area." Record 520.

residential dwellings within 75 feet of their riding trails would compromise the safety of horse riders and harm their businesses. Record 205-25. Given that detailed countervailing evidence, we do not believe a reasonable decision maker would have relied upon the exhibit prepared by intervenor's counsel regarding the three other equestrian facilities, to conclude that the reduced buffer area is compatible with Abbey Creek Stables.

In its response brief, intervenor cites to other evidence in the record that, it argues, supports the county's finding of compatibility with respect to Abbey Creek Stables' practices. Intervenor notes a fact sheet considered during the county's initial proceedings in 2011 to adopt the original natural buffer area, which summarizes different approaches to buffering urban development and equestrian uses, and which notes that the City of Oceanside, California, uses a 30-foot buffer. Record 140-42. Intervenor also cites to an aerial photograph of the North Bethany area that shows considerable distance between the UGB and farm buildings outside the UGB, presumably including Abbey Creek Stables' buildings. Intervenor also cites to photographs showing that Abbey Creek Stables is located close to two busy roadways to the north, outside the UGB. Intervenor argues that the latter photographs show that there is already significant traffic noise affecting the property, without any discernible impact on equestrian activities.

However, in our view, the other evidence cited in intervenor's brief provides little if any support for the county's finding of compatibility with

Abbey Creek Stables, as it regards impacts on use of the riding trail. The relevant issue is impacts on use of the riding trail, which is located 10 feet from the UGB, not impacts or proximity to horses within farm buildings such as stables or indoor arenas. Similarly, the veterinary behaviorist testified that horses become acclimatized to recurring sounds such as traffic noise on nearby streets, but the real concern is unexpected visual or auditory events, such as fireworks, coming from adjacent urban development that might spook horses engaged in competitive events or training on the riding trail. Finally, that another city has used a 30-foot buffer between urban development and equestrian uses lends little support to the county's findings regarding Abbey Creek Stables, given the particular circumstances of the competitive event riding trail in proximity to urban development, the elevation difference between the two, and the reliance on a vegetation buffer that, until the planted trees grow tall enough to screen the upslope development, may do little to reduce visual and auditory impacts.

The county found that "dense landscaping and landscaping management required by proposed Ordinance 801 will have a far more beneficial impact on reducing visual incompatibility between urban and agricultural uses than would mere distance." Record 110. The parties dispute whether that finding is supported by any evidence in the record, but even if it is, the finding is presumably referring to the period, some years hence, after the planted trees gain enough height to visually screen the upslope residential uses from the

trail. In any case, as noted, the veterinary behaviorist testified that distance and physical separation provides a better visual buffer than vegetation, due to the nature of equine perception, at least until the vegetative screen grows high enough to provide full visual screening. If there is any evidence in the record to the contrary, intervenor does not cite it.

Intervenor argues in the alternative that the lack of evidentiary support for the finding that a vegetative buffer will "have a far more beneficial impact on reducing visual incompatibility between urban and agricultural uses than would mere distance" is at most harmless error, because the finding is not critical to the ultimate conclusion that the buffer "ensures compatibility" between urban and agricultural uses. According to intervenor, the relevant question is not whether a vegetative buffer or a distance buffer is superior at reducing visual incompatibility, but whether the vegetative buffer adopted in Ordinance 801 is sufficient to ensure compatibility. That may be the case, but the county seemed to believe that superiority in reducing visual incompatibility is a relevant consideration in determining whether a proposed buffer ensures compatibility, or the county would not have cited the presumed superiority of a vegetative screen over mere physical distance. Further, as discussed under the first assignment of error, the county adopted an implicit interpretation of the compatibility standard, roughly to the effect that compatibility means reducing or minimizing adverse impacts on agricultural uses. If one buffer method is in fact better at reducing or minimizing adverse visual impacts than another, at

least in the short term, that would appear to be a legitimate consideration under that interpretation. Accordingly, we do not agree with intervenor that the lack of evidentiary support for the county's finding that a vegetative buffer has a "far more beneficial impact on reducing visual incompatibility" compared to a distance buffer is harmless error.

The first sub-assignment of error is sustained.

C. Second Sub-Assignment of Error

Petitioners argue that the county erred in finding compatibility based in part on a five-foot high fence as a means to discourage trespass. The county found:

> "The standards also require the provision of trespass-discouraging fencing along the southern edge of the buffer tract and northwestern portions of the North Bethany boundary. Installation of a minimum 5-foot high fence composed of either cyclone, wire mesh, 'no climb,' or wood located along the southern (urban) edge of the 50-foot wide buffer tract provides a physical barrier along with required landscaping to discourage trespassing onto agricultural lands." Record 119.

Petitioners note testimony that the "no-climb" qualifier does not refer to features that discourage human trespassers from climbing the fence, but rather to features that prevent farm animals from placing their hooves within the fence openings. Record 210. Petitioners argue that there is no substantial evidence in the record suggesting that a five-foot-high fence would be sufficient to deter human trespassers from climbing the fence onto agricultural land. Petitioners also argue that there is no finding or evidence addressing testimony that the

more narrow 50-foot-wide buffer would increase the threat of injury to horses from thrown objects.

Petitioners have not established that the county's findings regarding fencing and trespass lack an adequate factual base. As intervenor notes, staff testified that the five-foot high fence would discourage trespass by residents and their pets from entering the buffer, and would also discourage children from throwing objects. Record 98, 454. That is some evidence supporting the above-quoted finding that the fence would discourage trespass, and petitioners offer no reason to believe that the fence would not function to some extent to discourage children from throwing objects. Further, as intervenor notes, petitioners fail to acknowledge that Ordinance 801 continues to require a second fence along the northern boundary of the UGB, if an adjacent rural property owner provides evidence that the standard buffer is not adequate to ensure compatibility. Staff testified that the additional fence would further discourage trespassing. Record 454. The county's reliance on the fence or fences as part of its conclusion that the buffer ensures compatibility as regards trespass is supported by an adequate factual base.[5]

The second sub-assignment of error is denied.

The second assignment of error is sustained, in part.

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[5] No party argues that the fences, which need be only five feet tall, and can be made of chain-link, function to ensure compatibility with respect to visual or auditory impacts.

The county's decision is remanded.