

APR 1 3 36 PM '88

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

1
2
3 CASE LOOS, MARIE GADOTTI,)
4 COLUMBIA COUNTY FARM BUREAU,)
5 AND OREGON FARM BUREAU)
6 FEDERATION,)
7)
8 Petitioners,)
9)
10 vs.)
11)
12 COLUMBIA COUNTY,)
13)
14 Respondent,)
15)
16 and)
17)
18 FRED BERNET,)
19)
20 Participant-)
21 Respondent.)

LUBA No. 87-103
FINAL OPINION
AND ORDER

22 Appeal from Columbia County.

23 David E. Prange, Edward J. Sullivan and Mark J. Greenfield,
24 Portland, filed the petition for review. With them on the brief
25 was Mitchell, Lang & Smith.

26 Gabriella I. Lang, Assistant Attorney General, filed a
brief pursuant to ORS 197.830(6) on behalf of the Department of
Land Conservation and Development. With her on the brief were
Dave Frohnmayer, Attorney General; William F. Gary, Deputy
Attorney General; and Virginia L. Linder, Solicitor General.

BAGG, Chief Referee; HOLSTUN, Referee; SHERTON, Referee,
participated in the decision.

REMANDED 04/01/88

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

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 On October 28, 1987, Columbia County approved a request to
4 amend the Columbia County Comprehensive Plan. The amendment
5 changes the plan designation for 18 acres of land from Primary
6 Agricultural to Resource Industrial Planned Development
7 (RIPD). The decision additionally authorizes use of three
8 acres of an adjoining RIPD site. The actions result in a 21
9 acre RIPD site limited to wood processing and related uses
10 including wood products remanufacturing.

11 As part of its decision, the county took an exception to
12 Statewide Planning Goal 3, the Agricultural Lands Goal.
13 Petitioners seek reversal of the decision.

14 FACTS

15 The Columbia County Planning Commission conducted a public
16 hearing on this request and recommended to the board of county
17 commissioners (commissioners) that the county approve the
18 change.

19 The commissioners considered the matter on October 7, 1987
20 and tentatively approved the request at that time, subject to
21 submittal of information about whether the facility would meet
22 noise restrictions and road access requirements.

23 The commissioners again considered the matter on
24 October 28, 1987 and approved the request. On November 16,
25 1987, petitioners filed this appeal.¹

26 ///

1 FIRST ASSIGNMENT OF ERROR

2 "The County's adoption of an exception to Statewide
3 Planning Goal 3 (Agricultural Land) to allow the
4 proposed wood processing and wood remanufacturing use
5 of agricultural resource lands (1) improperly
6 construes and fails to comply with applicable law,
7 including ORS 197.732(1)(c), 197.175, 197.835(3),
8 215.416(4), Statewide Planning Goals 2 and 3, OAR
9 660-04-022(3) and OAR 660-04-020; (2) is not supported
10 by substantial evidence in the whole record; (3) is
11 not supported by a decision which meets ORS 215.416(7)
12 and (8); and (4) contradicts the County's own
13 Comprehensive Plan."

14 The subject property is made up of predominantly Class II
15 soils. These soils qualify the property as "agricultural land"
16 within the meaning of Goal 3. In order to convert this
17 property from agricultural use to a use not allowed by the
18 goal, an exception must be taken. Petitioners argue that the
19 county's attempt at a goal exception is flawed, for a variety
20 of reasons.

21 "A. The County Failed To Demonstrate That Areas Which
22 Do Not Require a New Exception Cannot Reasonably
23 Accommodate The Use."

24 Petitioners allege, correctly, that an exception must show
25 that "areas which do not require a new exception cannot
26 reasonably accommodate the use." ORS 197.732(1)(c)(B); Goal 2,
Part II; OAR 660-04-020(2)(b). Petitioners allege that the
county failed to meet this criterion in several particulars.

1. Lands Outside Existing UGB's

Petitioners claim the county improperly rejected three
alternative sites identified as the Prescott, Reichhold and
Port Westward sites. The county concluded the sites were not
adequate because there were not proper barge and crane

1 facilities, or if such facilities existed, they were not in
2 close enough proximity to Portland to render the site
3 economically feasible.

4 As a general complaint, petitioners claim the county does
5 not discuss what size barge traffic is required for the
6 proposed plant. Petitioners allege that the county failed to
7 address

8 whether the facility owner will allow Dolphin [the
9 applicant] to use the facility, or (2) whether the
10 Multnomah Channel will support the type of barge
11 traffic Dolphin proposes. In fact, the County never
12 discusses what size barge Dolphin will use. Since the
13 county repeatedly maintains in the findings that the
14 proposed site is significant because it has a barge
15 and crane facility, the county must address these
16 issues." Pet for Rev at 9.

17 The county concluded that there were no adequate facilities
18 to support barge and crane use other than at the chosen site.
19 Petitioners' attack is premised on the notion the county can
20 not reach such a conclusion without first describing the extent
21 of barge and crane facilities necessary. This argument has
22 merit.

23 We agree with petitioners' complaint that the county's
24 findings are inadequate to show what barge and crane facilities
25 are required for the proposed use and that such facilities are
26 available at the approved site. Petitioners do not, however,
27 challenge the county's view that some kind of barge and crane
28 facilities are necessary. Therefore, the county's rejection of
29 a site because it has no barge and crane facilities is not
30 error. Where such facilities do exist, the county's failure to

1 explain exactly what facilities are needed is still not a
2 sufficient basis for concluding the county has failed to comply
3 with the criterion of ORS 197.732(1)(c)(B) and
4 OAR 660-04-020(2)(b) unless the county's finding that adequate
5 barge and crane facilities are not available at an alternative
6 site is critical to its rejection of that site. There may be
7 other valid reasons to reject alternative sites. We decline,
8 therefore, to find the county's decision defective for a
9 general failure to fully describe the barge and crane
10 facilities required for the proposed use.

11 We will consider petitioners' charges with respect to
12 specific alternative sites outside existing urban growth
13 boundaries.

14 a. Presscott Site

15 The county found the Presscott site is not adequate because
16 a nearby railroad line would require extensive fill in order to
17 make it usable. Petitioners challenge this conclusion
18 indirectly. Petitioners allege that the county erroneously
19 adopted a finding (which it later corrected) that a railroad
20 facility existed adjacent to the site.

21 The corrected finding about a railroad facility next to the
22 approved site has nothing to do with the Presscott Site.
23 However, petitioners argue a reasonable decisionmaker could not
24 reject the Prescott site as an alternative only on the basis
25 extensive fill could be required to provide rail access when
26 the site ultimately selected also lacks rail access. We agree.

1 However, the county also found the Presscott site
2 inadequate because it has no crane and barge facilities. The
3 petitioners have not shown there are any barge and crane
4 facilities at the site, and therefore the county's rejection of
5 the site is not error.

6 b. Reichhold Site

7 The county found the Reichhold site is not acceptable
8 because it does not have deep water port, barge and crane
9 facilities. Petitioners claim the findings are not legally
10 adequate because they are inconsistent with the Columbia County
11 Comprehensive Plan's Site Exception Statement. Petitioners
12 point to the following excerpt from the county's exception
13 statement for the Reichhold site:

14 "It is located next to an existing industrial activity
15 and near the Columbia River and the
16 currently-operating marine terminal owned and operated
17 by R.C.I. Raw material or finished products are moved
18 by barge, and extensive engineering design has been
19 done to incorporate a turning basin to allow deep
20 draft ships if a specific use were justified."

21 The plan notes that there is a currently-operating marine
22 terminal at the site, and specifically mentions barge traffic
23 serving the site. Given this information in the county's plan,
24 the county's unexplained statement that the facility lacks an
25 adequate port, barge and crane facilities is not sufficient.
26 The county provides no citation to the record showing that
facilities at the site are indeed inadequate. The county's
rejection of this site on this basis is not justified.
petitioner also disputes the county's finding that the

1 Reichhold site is not acceptable because it is "substantially
2 committed to Reichhold Chemicals." Record 31. Petitioners
3 claim there is no evidence in the record to support this
4 finding, and petitioners cite a comprehensive plan statement
5 that there are some 551 acres available at the Reichhold site.
6 Petitioners further quarrel with the county's statement that
7 "fill problems" with the Reichhold site render it uneconomic.
8 There is no discussion, according to petitioners, as to why
9 fill problems render the site uneconomic.

10 These last challenges are well taken. The alleged
11 commitment to Reichhold Chemicals and the "fill problems"
12 identified by the county do not necessarily mean that the site
13 is unavailable. These findings are inadequate to show that the
14 site is not available for the proposed use.

15 We are unable to sustain the county's rejection of the site
16 for the reasons given in the county's order. The county's
17 rejection of this site is not adequate.

18 c. Port Westward Site

19 The county found the Port Westward site was not adequate
20 because it was available only for lease and not for sale. The
21 county found that leasing is not a viable option for this
22 particular wood products remanufacturing facility. The county
23 does not explain, however, why leasing is not a "viable
24 option." Petitioners challenge the county's rejection of the
25 Port Westward site on this basis because the findings lack this
26 explanation.

1 Petitioners' point is well taken. There is no explanation
2 of how and why the applicant's needs could not be met through a
3 long-term lease, and no evidence that a long-term lease would
4 not be adequate.

5 In addition, the county rejected this site because it
6 allegedly lacks an "adequate barging and crane facility."
7 Petitioners claim this finding is not supported by substantial
8 evidence. The comprehensive plan at page 137 states:

9 "Port Westward is unique for several other reasons as
10 well. Most importantly, it offers prospective users a
11 large existing dock facility. Existence of the dock
12 facility reduces the lead time for commencement of
13 operation allowing prospective users to achieve a
14 headstart on the competition."

15 As with our holding under the county's discussion under the
16 Reichhold site, we find the county's rejection of the Port
17 Westward site because of inadequate barge and crane facilities
18 to be not supported by substantial evidence. Given the
19 statement in the comprehensive plan regarding the existence of
20 dock facilities, we believe the county was obliged to provide
21 citation to evidence in the record showing that, indeed, the
22 site would not meet the applicant's requirement. As we are
23 cited to no such evidence, we must sustain this part of
24 petitioners' challenge.

25 Finally, the county's findings reject the Port Westward
26 site because it is "too far from Portland to be an economic
alternative." Petitioners challenge this claim on the ground
there is no explanation or analysis to support the statement.

1 Petitioners' point is well taken. The county has not explained
2 what it believes a viable, economical alternative to be.

3 With respect to the Port Westward site, we find the
4 challenged reasons for rejecting this site to be inadequate.
5 We note, however, that the county found two additional reasons
6 for rejecting the site. The county found the site committed to
7 other uses as identified in the county's comprehensive plan,
8 and the county found the site to be oriented for very large
9 industrial uses. Record 31. Petitioners did not challenge
10 these two reasons for rejecting the Port Westward site.
11 Accordingly, we sustain the county's rejection of this site.
12 Cf. Weyerhaeuser v. Lane Co., 7 Or LUBA 42 (1982). (LUBA will
13 affirm a local government's denial of a request for land use
14 approval if any of the bases for denial are valid).

15 d. Scappoose Airport Site

16 Petitioners claim "one reason the County Findings rejected
17 the Scappoose Airport site was that lumber remanufacturing
18 would not be allowed." Petition for Review at 15. Petitioner
19 claims, however, that the county did not consider rezoning the
20 land as an alternative.

21 We agree. Rezoning properties is an alternative to taking
22 exception to the statewide planning goals. Failure to consider
23 rezoning as an alternative means the county has not adequately
24 considered the Scappoose Airport site unless there were other
25 sufficient reasons to reject this site.

26 We note the county findings reject the Scappoose Airport

1 site for other reasons. One such reason is that there is
2 insufficient land area to allow for a 21 acre site, apparently
3 needed by the applicant. The county additionally claims the
4 price is too high for a small operation such as the
5 applicant's. As petitioners do not challenge these reasons, we
6 find no error with the county's rejection of this site as
7 alleged. See Weyerhaeuser v. Lane Co., supra.

8 2. Areas Within Existing UGB's

9 Petitioners attack the county's rejection of land within
10 the Scappoose urban growth boundary as suitable alternatives.
11 Petitioners claim the county rejects land within the urban
12 growth boundary "partly on the basis that these lands are
13 currently designated for light industrial uses, thus precluding
14 lumber remanufacturing operations." Record 32; Pet for Rev 16.

15 While petitioners are correct that failure to consider
16 redesignating these properties is error, the county does
17 include other reasons for rejecting the sites, including that
18 the sites do not have barging and crane facilities, and there
19 is no 21 acre site available. The county found

20 " * * * Scappoose does not have a barging and crane
21 facility immediately adjacent to any industrial area
22 within the urban growth boundary. Most of the sites
23 within the Scappoose Urban Growth Boundary are
24 designated for Light Industrial. This designation
precludes the manufacturing processes used by the wood
products remanufacturing operators and particularly
the use of a kiln. There are no 21 acre sites
available in any Heavy Industrial areas." Record 32.

25 Petitioners do not appear to challenge these reasons for
26 rejecting Scappoose urban growth boundary sites. We therefore

1 sustain the county's rejection of the site. Weyerhaeuser,
2 supra, and McCoy v. Marion Co., ___ Or LUBA ___ (LUBA No.
3 87-063; December 15, 1987).

4 Because we find the county improperly rejected the
5 Reichhold site, we sustain this subassignment of error in part.

6 "B. The County Failed to Demonstrate That The Long
7 Term Environmental, Economic, Social and Energy
8 Consequences Resulting From The Proposed Wood
9 Remanufacturing Facility Are Not More Adverse
10 Than Would Result From the Proposal Being Located
11 In Other Areas Requiring A Goal Exception."

12 ORS 197.732(1)(c)(C) and OAR 660-04-020(2)(c) require that
13 the county demonstrate:

14 "The long-term environmental, economic, social and
15 energy consequences resulting from the use at the
16 proposed site with measures designated to reduce its
17 adverse impacts are not significantly more adverse
18 than would typically result from the same proposal
19 being located in other areas requiring a goal
20 exception."

21 The rule and statute require that the county consider the
22 consequences of placing the use at the chosen site against
23 other sites also requiring exception. Petitioners assert the
24 county failed to show compliance with this requirement.²

25 1. Environmental Consequences

26 Petitioners' claim the county conclusion that the use would
not involve environmental adverse consequences to nearby users
is not adequate because it is conclusional and self-serving.
Petitioners say there is evidence in the record showing that
there are adverse environmental consequences. Petitioners
point to raw data regarding noise and other technical

1 information.

2 The county provides no discussion of the data. It is not
3 up to this Board to interpret the information for the county or
4 guess at its significance. Without a response by the county,
5 we are left with no choice but to sustain petitioners' claim.

6 The county's findings concluding the proposed use at the
7 chosen site will result in "less adverse environmental impacts"
8 than at other potential sites admit there will be some adverse
9 environmental impact. Petitioners argue the county's reference
10 to four other isolated sites outside the urban growth boundary
11 is inadequate because the sites are not identified and the
12 environmental consequences of using those sites are not
13 discussed.

14 The claim is well taken. The county's failure to identify
15 and discuss other possible exception sites, while at the same
16 time recognizing that they exist, violates ORS 197.732(1)(c)(C)
17 and OAR 660-04-020(2)(c).

18 2. Economic Consequences

19 In this subassignment of error, petitioners complain about
20 a county finding that because this application is not "linked"
21 to a declining forest industry, the application will diversify
22 and improve the county's economy. Petitioners claim the
23 finding is a non sequitur. Petitioners also complain that
24 county findings down playing the agricultural potential of the
25 property are erroneous.

26 We do not understand petitioner to allege an error for

1 which we may reverse or remand. The fact that the county may
2 view the relative importance of the applicant's proposal
3 against farming operations differently than petitioner is not
4 grounds for reversal or remand. Petitioners do not tie what
5 they claim to be erroneous findings to any applicable approval
6 criterion.

7 We note that the county's broad conclusion that the
8 economic consequences of allowing the development will favor
9 the county is accompanied by a reasonably detailed discussion
10 of the new jobs that will be created and a discussion of the
11 county's overall economic needs. We believe the discussion
12 adequately illustrates the economic desirability of the
13 proposed development.³

14 The last charge petitioners make in this subassignment of
15 error is that the economic analysis only considers the subject
16 sites and not the alternative sites.

17 OAR 660-04-020(2)(c) does require the county to compare the
18 economic consequences resulting from the use of the proposed
19 site with the various advantages and disadvantages of using
20 alternative areas. This rule provides in relevant part:

21 "The exception shall describe the characteristics of
22 each alternative areas [sic] considered by the
23 jurisdiction for which an exception might be taken,
24 the typical advantages and disadvantages of using the
25 area for a use not allowed by the Goal, and the
26 typical positive and negative consequences resulting
from the use of the proposed site with measures
designed to reduce adverse impacts."

The rule goes on to note that a detailed evaluation of

1 alternative sites is not required unless the sites are
2 described with facts supporting the assertion that the other
3 sites have significantly fewer adverse impacts. The exception
4 must state, however, reasons why the consequences of the use of
5 the chosen site are not significantly more adverse than would
6 result from the same proposal located in other areas requiring
7 a goal exception. The rule then states

8 "Such reasons shall include but are not limited to,
9 the facts used to determine which resource land is
10 least productive; the ability to sustain resource uses
11 near the proposed use; and the long-term economic
12 impact on the general area caused by irreversable
13 removal of the land from the resource base."
14

15 We do not find the required economic analysis of
16 alternative areas in the county's order, and we sustain
17 petitioners' claim.

18 3. Social Consequences

19 Petitioners attack a county finding that the character of
20 the area will not be affected appreciably because of the
21 relative "isolation from concentrations of rural residences."
22 Petitioners say the statement is contradicted by evidence in
23 the record showing that there will be an adverse impact,
24 particularly on a nearby dairy farm.

25 Petitioners do not identify how this matter is a "social"
26 issue. Rather, the impact of the proposed use on adjacent uses
27 appears to be one of compatibility, a matter to be considered
28 under OAR 660-04-020(2)(d). See our discussion under
29 subassignment C, infra.

1 4. Energy Consequences

2 Petitioners note the county findings refer to adjacent
3 railroad facilities providing certain energy advantages to the
4 site. Petitioners note the railroad facilities are two miles
5 away. Petitioners claim that the county may not rely on its
6 discussion of adjacent railroad facilities to support its
7 discussion of energy consequences.

8 Petitioners also complain that there is no evidence to
9 assume that the facility owner will allow the applicant to use
10 nearby barge and crane facilities. In addition, petitioners
11 say the county failed to consider the cost of trucking the logs
12 to the barge and crane facilities. Because these matters are
13 not addressed to the findings, petitioners' claim the findings
14 are inadequate and the required comparison with other potential
15 sites is lacking.

16 Without some assistance by the county pointing to evidence
17 in the record showing that the county considered facts
18 supporting its conclusional finding that there will be energy
19 savings as a result of choosing this site, we must sustain this
20 claim. While the discussion of energy issues in the findings
21 might be adequate, there must be substantial evidence to
22 support the commentary. We decline to search the record for
23 such evidence without the county's assistance and therefore
24 sustain petitioner's challenge.

25 This subassignment of error is sustained, in part.

26 C. The County Failed to Demonstrate That The

1 Proposed Use Is Compatible With Other Adjacent
2 Uses, Or Will Be So Rendered Through Measures
3 Designed To Reduce Adverse Impacts.

4 OAR 660-04-020(2)(d) requires:

5 "The proposed uses are compatible with other adjacent
6 uses or will be so rendered through measures designed
7 to reduce adverse impacts. The exception shall
8 describe how the proposed use will be rendered
9 compatible with adjacent land uses. The exception
10 shall demonstrate that the proposed use is situated in
11 such a manner as to be compatible with surrounding
12 natural resources and resource management or
13 production practices. 'Compatible' is not intended as
14 an absolute term meaning no interference or adverse
15 impacts of any type with adjacent uses." See also
16 ORS 197.732(1)(c)(D).

17 Petitioners claim the county failed to adequately comply
18 with this criterion in several respects.

19 1. Noise Compatibility

20 The county record includes reports on noise potential.
21 According to petitioners, the record does not support the
22 county's conclusion the noise levels will be acceptable.
23 Petitioners point to a report in the record suggesting that the
24 operation may not be able to meet particular noise
25 requirements. Record 65-67.

26 As noted previously, the county did not appear in this
proceeding, and we are cited to no evidence in the record which
supports the county's conclusions regarding noise. We must
therefore agree with petitioners that the county failed to
address the issue of noise compatibility, which is relevant to
compliance with OAR 660-04-020(2)(d). We therefore sustain

1 this subassignment of error.

2 2. Traffic Compatibility

3 Petitioners quarrel with the county finding that road
4 facilities at the approved site will not require improvements.
5 Petitioners note that the county relies on the report of its
6 roadmaster, and claim the report lacks analysis and is
7 therefore not sufficient evidence to support the conclusion.

8 We do not agree. The report of the county roadmaster is
9 sufficient to be considered the report of an expert. Meyer v.
10 City of Portland, 7 Or LUBA 184 (1983). The county is entitled
11 to rely on its staff explanations in support of conclusions
12 about compliance with particular criteria, as long as those
13 explanations are reasonable. Meyer, supra.

14 Petitioners also claim the county should have addressed
15 traffic impacts resulting from this development. Petitioners
16 argue

17 "there is no evidence in the record to demonstrate
18 that an increase in traffic on Dyke Road is compatible
19 with surrounding agricultural and domestic uses.
20 Petition for Review at 31.

21 The petitioners go on to note a letter submitted by Marie
22 Gadotti requesting the county consider these issues.

23 The county's failure to consider the issue is error. The
24 letter found on page 51 of the record from Ms. Gaddotti clearly
25 articulates concern over traffic in the area, and the county
26 was obliged to discuss traffic impacts in greater detail than a
simple finding that new road facilities will not be required.

1 Hillcrest Vinyard v. Bd. of Comm. Douglas Co., 45 Or App 285,
2 608 P2d 201 (1980).

3 3. Pollution Compatibilities

4 The county concludes that the proposed facility "will be
5 generally non-polluting." Record 37. Petitioners complain
6 this statement is not adequate as a finding and is not
7 supported by substantial evidence.

8 We agree. It is not clear what the county means by
9 "generally non-polluting," and we are cited to no evidence in
10 the record supporting this conclusion. We will therefore
11 sustain this portion of petitioners' attack.

12 This subassignment of error is sustained, in part.

13 "D. The County Failed To Demonstrate That It Meets
14 Rural Industrial Development Criteria of
OAR 660-04-022(3)."

15 OAR 660-04-022(3) requires as follows:

16 "(3) Rural and Industrial Development: For the siting
17 of industrial development on resource lands outside an
18 urban growth boundary, appropriate reasons and facts
include but are not limited to the following:

19 "(a) The use is significantly dependent upon a unique
20 resource located on agricultural or forest land.
21 Examples of such resources and resource sites include
geothermal wells, mineral or aggregate deposits, water
reservoirs, natural features, or river or ocean ports;
or

22 "(b) The use cannot be located inside an urban growth
23 boundary due to impacts that are hazardous or
incompatible in densely populated areas; or

24 "(c) The use would have a significant comparative
25 advantage due to its location (e.g., near existing
26 industrial activity, on energy facilities or products
available from other rural activities) which would

1 benefit the County economy and cause only minimal loss
2 of productive resource lands. Reasons for such a
3 decision should include a discussion of the lost
4 resource productivity and values in relation to the
5 county's gain from the industrial use, and the
6 specific transportation and resource advantages which
7 support the decision."

8
9 Petitioners say that the county failed to show that the
10 chosen site has barge and crane facilities available, that
11 railroad facilities are available, that the road network is
12 adequate or that the Multnomah Channel can support barge
13 traffic. Petitioners conclude the rule remains unsatisfied.

14 We have already discussed these complaints in earlier parts
15 of our opinion. The cited rule requires the local jurisdiction
16 to justify its decision by appropriate reasons and facts
17 including those listed in a, b, and c. The rule clearly
18 provides, however, that the three examples listed are not the
19 only appropriate reasons for allowing industrial development on
20 resource land outside of an urban growth boundary. We decline
21 the petitioners' invitation to find the county in violation of
22 this rule simply because of a failure to justify its decision
23 on the basis of the noninclusive examples of the "reasons and
24 facts" given under the rule.

25 This subassignment of error is denied.

26 The First Assignment of Error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

"The County improperly construed the applicable law
and violated Statewide Planning Goal 5 (open spaces,
scenic and historic and natural resources), made a
decision which violated ORS 215.416(3) and (8), made a

1 decision not supported by substantial evidence in the
2 whole record, and failed to undergo a Goal 5 analysis
of industrial conflicts with wildlife resources."

3 Petitioners complain that the Columbia County Comprehensive
4 Plan Goal 5 Inventory Statement states that wet agricultural
5 areas near the Columbia River, Multnomah Channel and Sauvie's
6 Island are important winter waterfowl habitats. Petitioners
7 cite to evidence in the record that the soils on the subject
8 property are wet, and conclude the county failed to adequately
9 address Goal 5.

10 The county is not present to explain the significance, if
11 any, of a finding that characteristics of the subject property
12 match those described in the Goal 5 inventory statement as
13 waterfowl habitat. We will not guess at the significance of
14 these facts nor search the plan for policies which show the
15 county's finding to be appropriate and in compliance with the
16 plan.⁴

17 The Second Assignment of Error is Sustained.

18 THIRD ASSIGNMENT OF ERROR

19 "The County improperly construed the applicable law
20 and violated Statewide Planning Goal 6 (Air, Water And
21 Land Resources Quality), made a decision which
22 violates ORS 215.416(7) and (8), made a decision which
is not supported by substantial evidence in the whole
record, and failed to demonstrate that the
requirements of OAR 340-30-035(1)(b)(B) were met."

23 Petitioners correctly state that Goal 6 requires the county
24 to demonstrate that applicable state and federal environmental
25 laws will not be violated by the proposed use. Petitioners
26 then complain that there is testimony in the record that there

1 will be a tremendous increase in noise over that presently
2 existing. We understand petitioners to claim noise standards
3 will be unmet by this proposed facility.

4 We have already discussed the question of the adequacy of
5 the county's findings regarding noise. We concluded earlier
6 that the county did not adequately discuss the noise issue. We
7 sustain this assignment of error.

8 FOURTH ASSIGNMENT OF ERROR

9 "The County improperly construed and failed to
10 consider the applicable law and violated Statewide
11 Planning Goal 14 (Urbanization)."

11 Goal 14 prohibits urban uses on rural lands without an
12 adequate exception. The county took no exception to Goal 14 to
13 allow this industrial use on land outside of an urban growth
14 boundary. Petitioners claim the county mistakenly states
15 that Goal 14 does not apply.

16 We believe the county has committed error. There is no
17 explanation in the county's findings as to why it considers the
18 proposed use to be rural rather than urban. Without a
19 discussion adequately characterizing the use as rural, the
20 county was obliged to take an exception to Goal 14 to allow
21 what is apparently an intensive urban-like use outside an urban
22 growth boundary. See 1000 Friends of Oregon v. LCDC (Curry
23 Co.), 301 Or 447, 502, 724 P2d 286 (1986); Hammack v.
24 Washington County, ___ Or LUBA ___ (LUBA No. 87-037; September
25 11, 1987), affd 89 Or App 40, ___ P2d ___ (1987).

26 The Fourth Assignment of Error is sustained.

1 FIFTH ASSIGNMENT OF ERROR

2 "The County denied petitioners' [sic] a meaningful
3 opportunity to present and rebut evidence, thereby
4 prejudicing their substantial rights."

5 Petitioners claim the county failed to follow the procedure
6 applicable in a manner that prejudiced petitioners' substantial
7 rights. ORS 197.835(8)(a)(B). Petitioners explain that at the
8 first meeting of the board of commissioners, the county
9 requested reports on noise levels and the impact of increased
10 traffic on existing highway facilities. See Record 73. The
11 county agreed to send copies of the reports to all parties
12 notified by October 16. The county provided that written
13 responses must be submitted by October 23. The final hearing
14 on the matter was to be held on October 28. Petitioner
15 Marie Gadotti did not receive the reports until October 24.
16 Ms. Gadotti, therefore, had no time to provide a written
17 response. She asked for an extension to provide such a
18 response, and the extension request was denied.

19 At the hearing on October 28, Ms. Gadotti attempted to
20 present documents concerning road and noise issues to the
21 county board. The county board rejected the documents.
22 Petitioners claim error.

23 We do not find error as alleged. Nothing in petitioners'
24 allegation suggests that Ms. Gadotti was denied the opportunity
25 to comment on the reports, notwithstanding the fact that she
26 was unable to file written responses. Further, the transcript
of the hearing shows Ms. Gadotti read her letter into the

1 county record.

2 Apparently, Ms. Gadotti had to request copies of the
3 reports from the county. She did so on October 23. Why she
4 delayed her request until the date the written responses were
5 due is not explained. It is also unknown why the reports were
6 not provided in accordance with the county's promise.

7 Nonetheless, petitioner was given the opportunity to comment
8 orally on the reports at the county commission hearing; or at
9 least and we are cited nothing showing she could not. We find
10 no error.

11 The Fifth Assignment of Error is denied.

12 The decision of Columbia County is remanded.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

FOOTNOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1

The county and participant made no appearance in this case. DLCD's appearance is limited to simply joining petitioners' argument on the first and fourth assignments of error.

2

We note, however, that we will not find error in the county's conclusion that barge and crane facilities at an alternative site are inadequate without a showing by petitioners that there are barge and crane facilities at the other site.

3

Petitioners add that the county should have considered expansion of urban growth boundaries other than that of the City of Scappoose. While this claim has merit, the county findings say other growth boundaries are too far from the City of Portland, and petitioners do not challenge this finding, therefore we do not find error.

4

Petitioners dispute a county finding concluding that allowing the lumber mill on agricultural land will somehow diversify the economy of the county and state. Petitioners claim it makes no sense to say that the lumber mill will diversify the county's economy when the county is dependent upon wood products.

Again, we find no reason to reverse or remand the county's decision because of this statement of philosophy. The question is whether or not the county complies with applicable criteria, not whether its reasoning in each and every circumstance is correct or in agreement with that of petitioners'.

5

We note the county's acknowledged comprehensive plan appears to rely on state and federal programs limiting conflicting uses in waterfowl habitat areas and on county regulations limiting conflicting uses in identified wetland and riparian areas to protect waterfowl habitat. Plan at 238. The county may well have determined to allow conflicting uses fully in waterfowl habitat areas not identified specifically as

1 wetlands or riparian areas. This analysis, however, is for the
2 county to provide.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

Page