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

JAMES JUST, IRINA JUST, HELEN)
COWART, COY COWART, MARK NOFZIGER,))
DANA NOFZIGER, MARGE TUCKER, TOM)
TUCKER, LES GLASSER, JAMES TINNIN,))
ROCHELLE TINNIN, NANCEY WEST,)
TERRI AYERS and ROBERT AYERS,)
)
Petitioners,)
)
vs.)
)
LINN COUNTY,)
)
Respondent,)
)
and)
)
KARL KASER and VAUGHN COFFIN,)
)
Intervenors-Respondent.)

LUBA No. 96-157
FINAL OPINION
AND ORDER

Appeal from Linn County.

M. Chapin Milbank, Salem, filed the petition for review and argued on behalf of petitioners.

Thomas N. Corr, County Counsel, Albany, and Richard C. Stein, Salem, filed the response brief on behalf of respondent and intervenors-respondent. With them on the brief was Ramsay & Stein. Richard C. Stein argued on behalf of intervenors-respondent.

GUSTAFSON, Referee; LIVINGSTON, Referee, participated in the decision.

AFFIRMED 01/24/97

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the county's approval of conditional
4 use permits for a golf course and recreational vehicle (RV)
5 campground.

6 **MOTION TO INTERVENE**

7 Karl Kaser and Vaughn Coffin (intervenors), the
8 applicants below, move to intervene on the side of
9 respondent. There is no opposition to the motion, and it is
10 allowed.

11 **FACTS**

12 Intervenors applied to the county for joint approval of
13 conditional use permits for an 18-hole golf course and a 50-
14 75 space RV campground on an approximately 200-acre parcel
15 in the county's EFU zone. The subject property is composed
16 of predominantly non-high value soils and is characterized
17 as non-high value farmland.

18 The subject property is approximately 6.5 miles east of
19 the City of Lebanon, at the intersection of two county
20 roads, both of which are designated as major collectors.
21 EFU-zoned land to the north, east, and south of the subject
22 property is used for woodland and pasture. EFU-zoned land
23 to the west is developed with a dairy farm and a cottonwood
24 plantation.

25 Following a public hearing, the county planning
26 commission denied the request on the basis that the

1 applicants failed to adequately address the issues of
2 potential interference by the proposed uses with farm
3 practices and the development of farm land. Intervenors
4 appealed to the board of county commissioners (board) which,
5 after conducting a de novo hearing, reversed the planning
6 commission decision and approved the conditional use
7 permits.

8 This appeal followed.

9 **FIRST ASSIGNMENT OF ERROR**

10 Petitioners contend the county impermissibly deferred
11 compliance with mandatory approval criteria by making such
12 compliance conditions of approval. Petitioners specifically
13 allege deferral of compliance with requirements of Linn
14 County Zoning Ordinance (LCZO) 6.050(3) and 6.050(4), but
15 also cite in their argument to LCZO 6.050(6) and allude to
16 deferral of other, unspecified criteria.¹

¹LCZO 6.050 sets out the applicable conditional use criteria as follows:

"Conditional uses permitted in Section 6.030 and 6.040 may be allowed provided the following criteria are met. When decision criteria are specifically cited with a permitted use, then the cited criteria will be applicable.

"(1) The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;

"(2) The proposed use will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use;

(3) The location, size, design and operating characteristics of the proposed development will be made reasonably compatible with and have minimal impact on the livability

1 Petitioners specify six conditions they allege defer
2 compliance with mandatory local approval criteria.
3 Petitioners first contend the county's approval is
4 impermissibly conditioned upon

5 "a future demonstration of sub-surface water to
6 meet projected golf course needs without
7 negatively impacting nearby domestic water wells.
8 This review and approval are delegated to the Linn
9 County Planning Department and director."
10 Petition for Review 5.

11 Petitioners argue that delegating the review and
12 determination of the availability of water to serve the
13 proposed uses to the planning director allows no opportunity
14 for "contrary evidence or debate," no notice to nearby

and appropriate development of nearby property. The proposed use will be reviewed with respect to scale, bulk, coverage, density, the availability of necessary public facilities and utilities, traffic generation, road capacity and safety, and to other related impacts of the proposal

"(4) The development site has the physical characteristics needed to support the use including, but not limited to, suitability for a sewage treatment system and an adequate supply of potable water;

"(5) The development will not be located within a mapped geologic hazard area or within a 100 year floodplain unless it is demonstrated that the proposal can be designed and engineered to comply with accepted hazard mitigation requirements;

(6) The proposal will not have a significant adverse impact on sensitive fish or wildlife habitat;

"(7) If a land division is proposed, then the parcel shall not be larger than the minimum size necessary for the use."

Golf courses and RV campgrounds are listed as conditional uses in the EFU zone under LCZO 6.040(A)(4) and LCZO 6.040(B)(1).

1 landowners and "no appeal in the event of a disputed
2 finding." Petition for Review 6. Although petitioners do
3 not clearly reference the applicable code requirement, as we
4 understand the argument, petitioners allege this condition
5 impermissibly defers compliance with the requirement of LCZO
6 6.050(3) that the proposed use will be reasonably compatible
7 with and have minimal impact on the livability and
8 development of nearby property.

9 Intervenors and the county (together, respondents)
10 acknowledge that Condition "A" of the county's approval
11 requires a subsequent determination to be made by the
12 planning director regarding the availability of subsurface
13 water. However, they dispute that this condition
14 impermissibly defers compliance with any mandatory approval
15 criteria. Rather, respondents argue that the county's
16 exhaustive findings regarding the availability of subsurface
17 water establish compliance with LCZO 6.050(3), and the
18 planning director's subsequent review is essentially added
19 assurance that the criterion will be satisfied.

20 The county makes numerous findings regarding the
21 availability of sub-surface water, and concludes in at least
22 two separate findings that it is "unlikely" that water usage
23 from the proposed uses will affect nearby water supplies.
24 Record 10, 13. As the basis for its imposition of Condition
25 "A," the county finds:

26 "To further assure the sufficiency of the water
27 supply for the proposed uses and to demonstrate

1 that its water usage will not negatively impact
2 surrounding uses, a condition of approval requires
3 the applicant to submit a water well impact study
4 prior to the issuance of development permits for
5 the proposed uses." Record 10.²

²The challenged condition states:

"Prior to the issuance of any development permits in conjunction with the golf course and recreational vehicle campground the property owner(s) shall demonstrate that the property has an adequate supply of sub-surface water to meet projected golf course irrigation needs without negatively impacting nearby domestic water wells. The property owner(s) shall submit to the Linn County Planning and Building Department for review and approval a water well impact study, scientifically designed and conducted by a state registered hydrogeologist, which includes the following well design and water study parameters:

- "(1) A draw-down test of the proposed well(s) shall be conducted using normal and accepted measurement techniques, and a distance draw-down curve establishing the maximum radius of influence of the well(s) shall be calculated using a standard and accepted hydro-geologic model.
- "(2) A distance from the well(s) equal to two (2) times the calculated radius of influence shall be computed and designed as the water well impact study. If any property is found to be adjacent to the golf course property, but outside the calculated study area, that property shall also be included within the water well impact study area.
- "(3) Any property owner with property wholly or partially within the study area shall be provided an opportunity for an existing well on that property to be included in the water well impact study. If such well is included in the water impact study, the applicants shall monitor the water levels in said well during the pumping test in order to establish base-line water supply data and further define the zone of influence of the irrigation well(s);
- "(4) If any well included in this initial study experiences water supply problems within five (5) years of the start of irrigation of the golf course property, the owner(s) of the golf course property shall be required to conduct an additional draw-down test on said well(s) to determine

1 Based on the language of the county's finding regarding
2 compliance with this aspect of LCZO 6.050(3), we are
3 unconvinced that the condition of approval is not necessary
4 to establishment of compliance with that criterion.
5 However, a local government need not establish immediate
6 compliance with an approval criterion prior to conditionally
7 approving an application. Rather, as we have previously
8 established:

9 "A local government may properly grant permit
10 approval based on either (1) a finding that an
11 applicable approval standard is satisfied, or (2)
12 a finding that it is feasible to satisfy an
13 applicable approval standard and the imposition of
14 conditions necessary to ensure that the standard
15 will be satisfied." Burghardt v. City of Molalla,
16 29 Or LUBA 223 (1995); Rhyne v. Multnomah County,
17 23 Or LUBA 442, 227 (1992); See Meyer v. City of
18 Portland, 67 Or App 274, 280, 678 P2d 741, rev den
19 297 Or 82 (1984).

20 In Meyer, the Court of Appeals explained the significance of
21 the word "feasibility," as used in this context:

22 "[B]y 'feasibility' LUBA means more than
23 feasibility from a technical perspective. It

if a relationship exists between said well and the
irrigation well(s). This provision shall be limited to
wells which are part of the initial water impact study.

"(5) The Linn County Planning Director may approve the water
well impact study if the well data from the study
supports the findings from the hydrogeologists report
reviewed in conjunction with this land use approval. The
proposed developments, including accessory buildings,
access road improvements, parking improvements and
landscaping, shall not be established prior to review and
approval of the completed water impact study."

1 means that substantial evidence supports findings
2 that solutions to certain problems * * * posed by
3 the project are possible, likely and reasonably
4 certain to succeed. See Osborne v. Lane County, 5
5 Or LUBA 172, 190 (1982); Van Volkinburg v. Marion
6 County Board of Commissioners, 2 Or LUBA 112, 119-
7 20 (1980)."

8 In this case, the county did not explicitly determine
9 compliance with LCZO 6.050(3). However, it did determine
10 the feasibility of compliance by finding, in part, that the
11 substantial evidence in the record, including a
12 hydrogeologist's report, indicated that any negative effect
13 on nearby wells was "unlikely." Condition "A" requires
14 additional review and approval by the planning director of a
15 study intended to confirm the accuracy of the
16 hydrogeologist's report. The study required by Condition
17 "A" requires documentation of specific, technical data,
18 outlined in detail in the condition. The planning
19 director's required review and approval of that study
20 involves confirming the results of that technical data for
21 consistency with the data already in the record. That
22 review involves no discretionary determination of
23 compliance with LCZO 6.050(3). The county properly
24 determined the feasibility of compliance with LCZO 6.050(3)
25 and imposed Condition "A" to assure that compliance.

26 Four of the other five challenged conditions require
27 that intervenors obtain and verify compliance with
28 independent requirements of specified state agencies with

1 jurisdiction over certain activities proposed for the site.³
2 Petitioners do not contend approval from these various
3 agencies is in any way legally precluded. Rather,
4 petitioners appear to argue that in order to establish
5 compliance with the county's various approval criteria, the
6 county must either withhold its approval until the agency
7 approvals are granted, or independently review the agency
8 requirements to determine whether the application will
9 comply with the various agency approval requirements.

10 The county has no jurisdiction over state agency
11 approval requirements, and petitioners have not established
12 that the challenged conditions are prerequisites to
13 compliance with any local approval criteria. Rather, the
14 county has adopted independent findings of compliance with
15 each of its local criteria, which petitioners have not shown
16 to be dependent upon the challenged conditions. Petitioners
17 have not established the conditions requiring these agency
18 approvals defer compliance with any local criteria.⁴ See

³Conditions of approval require intervenors to obtain State Water Resources Department (WRD) approval over proposed irrigation system and water retention systems; Oregon Division of State Lands (DSL) approval of a wetlands delineation report and mitigation/management plan; Department of Environmental Quality (DEQ) approval of sewer and septic plan; and State Historic Preservation Office (SHPO) approval of a plan to avoid disturbing cultural artifacts if that office determines artifacts to be present on the site.

⁴These challenged conditions are unnecessary to the county's decision, since intervenors' compliance with the specified state agency requirements would be required regardless of their inclusion in the county's decision.

1 Bouman v. Jackson County, 23 Or LUBA 628 (1992).

2 Finally, petitioners challenge the following condition:

3 "Prior to the issuance of any development permits
4 in conjunction with the proposed developments, the
5 property owner(s) shall submit to the Linn County
6 Planning and Building Department a development
7 plan approved by the appropriate governmental
8 agencies for the protection of the riparian zone
9 and wildlife habitat along and including that
10 portion of Hamilton Creek which crosses the
11 subject property. The development plan shall
12 include provisions to minimize negative impacts on
13 big game and other wildlife and measures to
14 control erosion and chemical runoff into Hamilton
15 Creek." Record 4.

16 While petitioners identify this condition in their list
17 of conditions that allegedly defer compliance with local
18 criteria, petitioners do not cite to any approval criteria
19 to which this condition relates. Nor do they discuss how
20 this condition defers compliance with any mandatory approval
21 criteria. Without identification of approval criteria to
22 which this condition relates or any argument as to why or
23 how this condition defers compliance with mandatory approval
24 criteria, petitioners' allegation is insufficiently
25 developed for our review and we will not review its merits.
26 Deschutes Development v. Deschutes County, 5 Or LUBA 218
27 (1982).⁵

Nor does the county's decision preclude other state agencies from imposing requirements not identified in the county's decision.

⁵Respondents note the lack of any reference to any applicable approval criterion or argument, then cite to the numerous findings upon which the county based its specific conclusion of compliance with LCZO 6.050(6) which, respondents presume, is the criterion to which this challenge

1 The first assignment of error is denied.

2 **SECOND ASSIGNMENT OF ERROR**

3 Petitioners challenge the adequacy of the county's
4 findings of compliance with LCZO 6.050(3), which requires
5 findings of reasonable compatibility and minimum impact on
6 livability of nearby properties. Petitioners also refer in
7 their argument to LCZO 6.050(1), (2) and (6), and while the
8 allegations are not clear, we understand them to also
9 challenge the adequacy of the findings of compliance with
10 those sections. LCZO 6.050(1) and (2) implement the
11 statutory criteria of ORS 215.296(1) regarding impacts on
12 farm and forest uses.

13 ORS 215.416(9) establishes the standard for adequate
14 county findings, as follows:

15 "Approval or denial of a permit, expedited land
16 division or limited land use decision shall be
17 based upon and accompanied by a brief statement
18 that explains the criteria and standards
19 considered relevant to the decision, states the
20 facts relied upon in rendering the decision and
21 explains the justification for the decision based
22 on the criteria, standards and facts set forth."

23 In LeRoux v. Malheur County, 30 Or LUBA 268 (1996), we
24 reviewed the requirement for adequate findings under ORS
25 215.416 as follows:

26 "The county's * * * findings must (1) identify the
27 relevant approval standards, (2) set out the facts

relates. As respondents state, "requiring a condition of approval is simply in the nature of additional protection to assure protection of the area." Response Brief 13.

1 relied upon, and (3) explain how the facts lead to
2 the conclusion that the request satisfies the
3 approval standards. Sunnyside Neighborhood v.
4 Clackamas Co. Comm., 280 Or 3, 20-21, 569-P2d 1073
5 (1977). See also Penland v. Josephine County, 29
6 Or LUBA 213 (1995); Reeves v. Yamhill County, 28
7 Or LUBA 1234 (1994); Hart v. Jefferson County, 27
8 Or LUBA 612 (1994). In addition, when a party
9 raises issues regarding compliance with any
10 particular approval criteria, it is incumbent upon
11 the local government to address those issues.
12 Hillcrest Vineyard v. Bd. of Comm. Douglas Co., 45
13 Or App 283, 293, 608 P2d 201 (1980); Collier v.
14 Marion County, 29 Or LUBA 462 (1995). When the
15 evidence is conflicting, the local government may
16 choose which evidence to accept, but must state
17 the facts it relies on and explain why those facts
18 lead to the conclusion that the applicable
19 standard is satisfied. Moore v. Clackamas County,
20 29 Or LUBA 372 (1995)." LeRoux, 30 Or LUBA at
21 271.

22 In addition, in establishing compliance with ORS
23 215.296 (or in this case, the identical provisions of LCZO
24 6.050(1) and (2)), the applicant bears the burden to
25 demonstrate that the proposed use "will force no significant
26 change in accepted farming practices or their cost." Berg
27 v. Linn County, 22 Or LUBA 507 (1992); Schellenberg v. Polk
28 County, 21 Or LUBA 425, 434 (1991); Platt v. Washington
29 County, 16 Or LUBA 151 (1987). As we explained in Berg, a
30 local government cannot assume from the absence of
31 information in the record that a proposed use will result in
32 no adverse farm impacts. Rather, the applicant bears the
33 burden to establish, and the local government's findings
34 must affirmatively explain why it believes there are no
35 significant adverse impacts. Berg, 22 Or LUBA at 510-11;

1 see Mission Bottom Assoc. v Marion County, ___ Or LUBA ___,
2 (LUBA No. 96-057, September 26, 1996).

3 Petitioners generally challenge the county's findings
4 regarding traffic safety, the impact of the proposed
5 development on the quality of rural life, the impact on fish
6 and wildlife, and the impacts on farm practices and costs.
7 Petitioners do not explain how they believe any of the
8 county's findings are inadequate. Although petitioners cite
9 to the Berg standard for evaluating impacts on farming
10 practices and costs, they do not develop any argument beyond
11 a conclusory allegation that the county cannot assume
12 compliance from a lack of evidence of adverse impacts.

13 As respondents point out, the county did not rely on a
14 lack of adverse impacts to reach its conclusion of
15 compliance with LCZO 6.050(1) and (2). Rather, the county
16 made findings explaining its conclusion that there will be
17 no significant impacts on surrounding farm practices or the
18 cost of those practices. The county also made specific
19 findings of compliance with LCZO 6.050(3) and (6), which
20 petitioners also challenge with only broad, conclusory
21 allegations. Petitioners' allegations do no more than
22 express disagreement with the county's findings.

23 Petitioners also argue that with regard to some issues,
24 the county failed to make any findings. For example,
25 petitioners argue that "the findings fail to discuss the
26 school safety problem, the use of the roads by large farm

1 equipment, the narrowness and winding nature of the roads
2 and the lack of shoulders which prohibits safe passage of
3 vehicles." Petition for Review 10. However, while
4 petitioners may disagree with the county's assessment, a
5 review of the findings reveals that, in fact, they do
6 address each of those issues. Petitioners also fault the
7 county for failure to discuss issues of "traffic safety" and
8 "wildlife criteria" "in any detail." Petition for Review
9 12. Petitioners do not establish what required "details"
10 are missing, or otherwise how the findings regarding traffic
11 safety and wildlife fail to satisfy the statutory
12 requirement for adequate findings.

13 Petitioners' disagreement with the county's findings
14 does not establish that any of the findings are legally
15 inadequate.⁶

16 The second assignment of error is denied.

17 **THIRD ASSIGNMENT OF ERROR**

18 LCZO 6.040(A) allows golf courses as conditional uses
19 in the EFU zone except on "high value farm land," where they
20 are prohibited. Petitioners contend the county improperly

⁶At the end of this assignment, petitioners add "The comprehensive Plan specifically notes the loss of fish habitat by land use activities. * * * Agricultural and farm/forest plan designations shall be used to protect fish and wildlife habitats. * * * None of these concerns were addressed by the findings." Petition for Review 12. If the comprehensive plan provisions to which petitioners allude constitute mandatory approval criteria, which the findings do not address, the failure to make such findings could constitute a basis for remand. However, petitioners have not established these "concerns" constitute mandatory approval criteria, and so we do not consider this argument further.

1 interpreted "high value farm land" to mean "predominantly
2 high value farm land," and therefore improperly concluded
3 that a golf course can be permitted as a conditional use.
4 According to petitioners, if there is any farm land on
5 intervenors' property which is classified as "high value,"
6 the proposed golf course is prohibited as a matter of law.⁷

7 The county interprets "high value farm land" for
8 purposes of LCZO 6.040(A)(4) to mean "predominantly high
9 value farm land," and concludes that because the subject
10 property consists of predominantly non-high value farm land,
11 a golf course is permitted as a conditional use. We defer
12 to the county's interpretation of its own code. ORS
13 197.829(1); Clark v. Jackson County, 313 Or 508, 514-15, 836
14 P2d 710 (1992).

15 This assignment of error is denied.

16 **FOURTH ASSIGNMENT OF ERROR**

17 Petitioners contend the county erred in finding that
18 private golf courses are among the high priority needs of
19 Linn County. Petitioners do not cite to any mandatory local
20 approval criterion that requires such a finding.
21 Petitioners cite only to an aspirational comprehensive plan
22 policy that identifies golf courses as "high priority

⁷Petitioners do not challenge the siting of the proposed RV campground under this assignment of error. Under their fifth assignment of error, however, petitioners allege there is a lack of substantial evidence to support the siting of the RV campground because the county has not determined whether any of the land under or around the area of the campground is high value farm land.

1 recreational needs" in the county, and argue that this
2 policy makes high priority only public golf courses.
3 Petitioners cite no legal basis for this argument. Since
4 petitioners do not establish that the county's finding
5 violates any mandatory approval criterion, petitioners'
6 argument provides no basis for reversal or remand. See Day
7 v. City of Portland, 25 Or LUBA 468 (1993) (where
8 petitioners challenge support for a finding, but fail to
9 show the finding is critical to the decision, the challenge
10 provides no basis for reversal or remand.)

11 This assignment of error is denied.

12 **FIFTH ASSIGNMENT OF ERROR**

13 Petitioners contend the county's decision is not based
14 on substantial evidence in the whole record. As we
15 understand the argument, petitioners contend that (1) in
16 some instances that the weight of the evidence compels a
17 conclusion contrary to that made by the county; and (2) with
18 regard to some criteria, there is no evidence in the record
19 to support the county's decision.

20 With regard to the first category of complaints,
21 petitioners cite no countervailing evidence to demonstrate
22 that the evidence upon which the county relied was not
23 substantial. Rather, their argument does nothing more than
24 express their disagreement with the county's assessment of
25 the evidence upon which the county relied in making its
26 findings. Without identifying evidence in the record, and

1 explaining how that evidence compels a conclusion contrary
2 to the county's, such disagreement provides no basis for
3 relief.

4 With regard to petitioners' second complaint, that
5 there is a total lack of evidence to support some of the
6 county's findings, we must look to the record to determine
7 if, in fact, any evidence exists which could support the
8 county's conclusions. See Canfield v. Yamhill County, 142
9 Or App 12, __ P2d __ (1996).

10 Petitioners allege:

11 "There was no evidence in the record that aerial
12 spraying of the cottonwood forest was in any way
13 hampered by current flight restrictions, potential
14 harm to humans, animals or wetlands. * * *

15 "In the face of the pictorial evidence and
16 statements by area farmers of substantial
17 interference, farm vehicles and inadequacy of
18 shoulders there was a total lack of evidence that
19 there would not be a significant impact on
20 surrounding farms and logging.

21 "* * * * *

22 "There is no mention in the findings or evidence
23 in the whole record to support the impact on all
24 the new urban vehicles in this farm area. There
25 is no evidence that the imposition of all the
26 additional vehicles will in any way meet the
27 Energy Conservation Goals of the Linn County
28 Comprehensive plan.

29 "* * * * *

30 "There is no evidence in the record showing that
31 the soils underneath or in the area of the RV Park
32 are not, in fact, high value. There is no
33 evidence that the density of the park (10 RVs per
34 acre does not conflict with the wildlife habitat

1 density requirements or with the use and
2 livability of the surrounding lands.

3 * * * * *

4 "Finally, and most [importantly], there was no
5 showing of what the impact of the removal of 202
6 acres of farm and grazing land would have on the
7 values of the nearby smaller farms and
8 availability of nearby farmers to enlarge or
9 acquire more farmland to expand the farm and
10 forest usage in the Hamilton Creek area."
11 Petition for Review 16-18.

12 The county is obligated to make findings, based upon
13 substantial evidence, for all mandatory approval criteria.
14 With regard to most of the allegations, petitioners have not
15 established that the lack of evidence relates to any
16 mandatory approval criteria. Petitioners have not
17 established that the county's Energy Conservation goals
18 constitute mandatory approval criteria. As we determined in
19 our discussion of petitioners' third assignment of error, we
20 defer to the county's interpretation that "high value farm
21 land" means "predominantly high value farm land," and
22 therefore the county was not required to make findings as to
23 whether any high value farm land exists beneath or in the
24 area of the RV Park. Finally, petitioners cite no authority
25 to require substantial evidence regarding "wildlife habitat
26 density requirements."

27 With regard to the other allegations of a "total lack
28 of evidence," respondents cite to substantial evidence in
29 the record to support each of those findings. Petitioners
30 do not independently challenge the evidentiary support for

1 those findings. Because there is substantial evidence in
2 the record to support the challenged findings, we must
3 reject petitioners' contention that there is no such
4 evidence.

5 The fifth assignment of error is denied.

6 The county's decision is affirmed.