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

DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
)
Petitioner,)
)
vs.)
)
COOS COUNTY,)
)
Respondent,)
)
and)
)
SCOTT RIDLE and T. HARRY CHU,)
)
Intervenors-Respondent.)

LUBA No. 96-121
FINAL OPINION
AND ORDER

Appeal from Coos County.

Celeste J. Doyle, Assistant Attorney General, Salem,
filed the petition for review and argued on behalf of
petitioner. With her on the brief was Theodore R.
Kulongoski, Attorney General, Thomas A. Balmer, Deputy
Attorney General, and Virginia L. Linder, Solicitor General.

No appearance by respondent.

David B. Smith, Tigard, filed the response brief and
argued on behalf of intervenors-respondent.

GUSTAFSON, Referee; HANNA, Chief Referee, participated
in the decision.

REMANDED 02/21/97

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 Petitioner appeals the county's approval of a
4 comprehensive plan amendment from "Forest" to "Rural
5 Residential" and a corresponding zone change from
6 "Forestry/Mixed Use" to "Rural Residential-5" for two
7 contiguous 20-acre parcels.

8 **MOTION TO INTERVENE**

9 Scott Ridle and T. Harry Chu move to intervene in this
10 proceeding on the side of respondent. There is no
11 opposition to the motion, and it is allowed.

12 **MOTION TO TAKE OFFICIAL NOTICE**

13 At oral argument on this appeal, it was determined that
14 the Board did not have the applicable version of the Coos
15 County comprehensive plan. It was agreed that to the extent
16 the parties could agree on which version applied, they would
17 submit it to the Board. Subsequently, petitioner filed a
18 "Motion Requesting that the Board take Official Notice of
19 Provisions of the Acknowledged Coos County Comprehensive
20 Plan and Proof of Acknowledgment." Petitioner explained:

21 "At oral argument in this matter, the Board and
22 the parties realized that the Board did not have a
23 copy of the acknowledged plan for Coos County.
24 After some discussion, the Board and the parties
25 agreed to accept copies of the applicable portions
26 of the County's comprehensive plan from DLCD's
27 files. Although there was agreement in principle
28 or concept to accept the attached documents, DLCD
29 submits them in the form of a motion requesting
30 that the Board take official notice to ensure that

1 the other parties have an opportunity to review
2 the attached documents and object if they believe
3 DLCD's files are in error." Motion at 3.

4 Intervenors did not object to the motion, and in fact
5 in their reply memorandum acknowledged the validity of the
6 documents. However, in their reply they also asserted a new
7 argument regarding the applicability of one provision of the
8 county's comprehensive plan to this application. This
9 argument is not related to any finding by the county, so its
10 relevance on appeal is doubtful in any event. However, even
11 if intervenors' new argument is relevant to their defense of
12 the county's decision, it could have been but was not raised
13 in their response brief. It is not appropriately raised for
14 the first time in a post-hearing memorandum.

15 Petitioner's motion is granted. However, we will not
16 consider intervenors' new arguments raised for the first
17 time in a post-hearing memorandum.

18 **FACTS**

19 The subject property consists of two contiguous 20-acre
20 parcels located four miles north of the city of Bandon. The
21 property is bordered to the north, south and west/southwest
22 by larger tracts zoned "Forest/Farm." The property is
23 stocked with a mixture of shore pine, Douglas fir, and Port
24 Orford cedar. The record reflects that the property meets
25 the United States Department of Agriculture definition of
26 "prime forest land" and can yield 85 cubic feet of
27 merchantable timber per acre per year.

1 The county approved intervenors' application to amend
2 the designations on the two subject parcels from "Forest" to
3 "Rural Residential" and to correspondingly change the zone
4 change from "Forestry/Mixed Use" to "Rural Residential-5."
5 Both petitioner and the League of Women Voters appealed the
6 county's decision. After the petitions for review were
7 filed, the county moved for voluntary remand, which was
8 granted. DLCD v. Coos County, __ Or LUBA __ (LUBA Nos. 94-
9 230 and 94-235, February 11, 1995). After considering
10 additional evidence, the county adopted revised findings,
11 again approving the requested comprehensive plan and zone
12 change request.

13 This appeal followed.

14 **FIRST ASSIGNMENT OF ERROR**

15 All parties agree that the challenged decision must
16 establish compliance with Statewide Planning Goal 4 because
17 the decision amends the county's comprehensive plan.
18 Petitioner contends the county incorrectly applied Goal 4
19 when it applied a former version of the goal rather than the
20 version of Goal 4 in effect when the application was filed
21 (the current version). Intervenors respond that the county
22 could use the former version of Goal 4 since that version
23 was in effect when its comprehensive plan was acknowledged
24 in 1984 and, in the county's opinion, the former version is

1 "more restrictive" than the current version.¹

2 The county's findings regarding compliance with Goal 4
3 state:

4 "Both DLCD [Department of Land Conservation and
5 Development] and LWVCC [League of Women Voters of
6 Coos County] argue that the current version of
7 Goal 4, adopted in 1990 by the Land Conservation
8 and Development Commission, is applicable to the
9 subject application. The Board disagrees, and
10 finds that the version of Goal 4 applicable to the
11 application is that version quoted above,
12 contained in the County's Comprehensive Plan.

13 "The Board takes judicial notice of the decision
14 of LUBA in Westfair Associates Partnership v. Lane
15 County, [25 Or LUBA 729 (1993)] * * *. In that
16 decision, LUBA held that Lane County had
17 discretion under Clark v. Jackson County, 313 Or
18 508, 836 P2d 710 (1992) to apply to a zone change
19 and plan amendment the same version of Goal 4
20 contained in the Coos County Comprehensive Plan,

¹In 1984, when the county's comprehensive plan was acknowledged, Goal 4 defined "forest lands" as follows:

"Forest lands are (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, windbreaks, wildlife and fisheries habitat, livestock habitat, scenic corridors and recreational use."

Goal 4, as amended in 1990, defines forest lands as follows:

"Forest lands are those lands acknowledged as forest lands as of the date of this [1990] goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest lands shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forest lands that maintain soil, air, water and fish and wildlife resources."

1 because the county found that the version was in
2 effect when its plan was acknowledged. LUBA
3 observed that 'Construing the [Comprehensive] * *
4 * Plan Policy as referring to the prior version of
5 Goal 4 does not allow development of forest lands
6 that would otherwise be prohibited by the current
7 Goal 4 * * *, and, therefore, is not inconsistent
8 with the current Goal 4.' 25 Or LUBA at 736.

9 "The Board finds that the version of Goal 4 in its
10 Plan is the version that was in effect at the time
11 the Plan was acknowledged, and that version
12 continues to be applicable to plan amendments and
13 zone change of forest land brought pursuant to
14 CCZLDO §5.1.400 (1)(a), to include the subject
15 application. The Board finds the arguments of
16 DLCD and LWVCC, that the current version of Goal 4
17 must be applied to the application, are without
18 merit. The Board also notes, as LUBA did in
19 Westfair Associates, that the version of Goal 4 in
20 the County's Plan will not allow any development
21 of forest land prohibited by the current version
22 of Goal 4 . Thus, by showing the application in
23 compliance with the Plan's Forest Lands Inventory
24 and Assessment, Section 1.2, the applicants will
25 show compliance with Statewide Land Use Goal 4 as
26 it currently is written.

27 "DLCD renewed its contention, that the 1990
28 version of Goal 4 must be applied to the subject
29 application * * *. It argued that ORS 197.646(3)
30 and ORS 197.829(1)(d) require this Board to apply
31 the 1990 version of that Goal and to construe the
32 Comprehensive Plan consistent with that version.
33 The Board finds it need not determine whether that
34 version of Goal 4 applies or not, because the
35 Board finds that the evidence submitted in support
36 of the application is substantial, and shows the
37 application shows compliance with both versions of
38 Goal 4." Record 18.

39 Thus, it appears from the language of the county's
40 findings that it determined that the previous version of
41 Goal 4 applies to this application, but that even if the

1 current version applies, the subject application complies
2 with it as well. We disagree in both respects.

3 First, the county has misconstrued this Board's holding
4 in Westfair Associates, and the county's reliance on that
5 case is misplaced. Westfair Associates does not establish
6 that the county may disregard ORS 197.646 and choose to
7 apply a former version of Goal 4, based upon its own
8 conclusion that the former version is "more restrictive"
9 than the currently applicable version. Westfair Associates
10 involved the county's denial of a Goal 4 exception, based
11 upon language in the county's comprehensive plan that was
12 more restrictive than the current Goal 4 requirements. The
13 county in Westfair Associates acknowledged that the current
14 version of Goal 4 applied to the application, but determined
15 that its comprehensive plan incorporated a more stringent
16 standard that was derived from language in the former Goal
17 4, and that had the effect of requiring consideration of
18 some forest uses that arguably may have not have been
19 required under the current version of the goal. LUBA agreed
20 that the goal requirements are the "minimum" standards, and
21 that local governments can, through their own regulations,
22 adopt more restrictive standards. Id. at 732.

23 The facts in the challenged decision are inapposite to
24 those in Westfair Associates. Here, the county did not rely
25 on its own comprehensive plan standards to impose additional
26 or more restrictive requirements on intervenors'

1 application. Rather, the county decided that the former
2 Goal 4 itself is "more restrictive" than the current Goal 4,
3 and that since the former goal was in effect when the
4 county's comprehensive plan was acknowledged, it could
5 choose to apply the former goal to the subject application,
6 even though the current goal was in effect when the
7 application was filed. We find no support for the county's
8 conclusion.

9 ORS 197.646(3) requires local governments to apply the
10 goals in effect when an application is filed.² We find no
11 authority, in statute or caselaw, to support the county's
12 conclusion that it is free to choose which version of the
13 goal to apply or to disregard current goal requirements
14 based upon its unilateral determination that an earlier
15 version of a goal is "more restrictive." The county in this
16 case was required to apply the version of Goal 4 in effect
17 when the application was filed. To the extent the county's

²ORS 197.646 states, in relevant part:

"(1) A local government shall amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, commission administrative rules and land use statutes when such goals, rules or statutes become applicable to the jurisdiction. * * *

** * * * *

"(3) When a local government does not adopt comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or amended goal, rule or statute shall be directly applicable to the local government's land use decisions. * * *"

1 decision relies on the application of the former Goal 4, the
2 county's decision is in error.

3 The county's error in applying the incorrect version of
4 Goal 4 would be harmless if the county alternatively
5 established that the application satisfies the version of
6 Goal 4 that was in effect when the application was filed.
7 However, the county's summary conclusion that the
8 application complies with the current Goal 4 is insufficient
9 to establish such compliance. Moreover, the county's own
10 decision acknowledges that, in fact, it has not established
11 that the application complies with the applicable version of
12 Goal 4. To reiterate the county's alternative finding of
13 compliance:

14 "Thus, by showing the application in compliance
15 with the Plan's Forest Lands Inventory and
16 Assessment, Section 1.2, the applicants will show
17 compliance with Statewide Land Use Goal 4 as it
18 currently is written." Record 18.

19 However, later in its decision, the county determines that
20 Section 1.2 of the county plan's Forest Lands Inventory and
21 Assessment" does not apply to the challenged decision.
22 Thus, by its own findings, the county has failed to
23 establish compliance with current Goal 4.³

24 The first assignment of error is sustained.

³The merits of the county's determination that Section 1.2 of its Forest Lands Inventory and Assessment is inapplicable to the challenged decision is further addressed under the third assignment of error.

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioner challenges the county's conclusion that the
3 subject property is not forest land as defined in Goal 4.
4 Under the current version of Goal 4, "forest lands" are:

5 "those lands acknowledged as forest lands as of
6 adoption [August 7, 1992] of this goal amendment.
7 Where * * * a plan amendment involving forest land
8 is proposed, forest land shall include lands which
9 are suitable for commercial forest uses including
10 adjacent or nearby lands which are necessary to
11 permit forest operation or practices and other
12 forested lands that maintain soil, air, water and
13 fish and wildlife resources."

14 Petitioner takes issue both with the county's finding that
15 the land is not "suitable for commercial forest uses," and
16 with its finding that the land is not "necessary to permit
17 forest operations or practices on adjacent or nearby forest
18 lands."

19 **A. Suitability for Commercial Forest Uses**

20 Petitioner challenges the definitions of "suitable" and
21 "commercial" upon which the county based its determination
22 that the subject property is "not suitable for commercial
23 forest uses." The county construed "suitable" to mean
24 "appropriate" and "important in relation to forest tree
25 species." Record 19, 20. It construed "commercial" to mean
26 "profitable." Record 20.

27 Relying on our opinion in Heininge v. Clackamas County,
28 17 Or LUBA 377 (1989), intervenors argue that "profitability
29 is well-settled as an essential component of showing
30 resource uses are 'commercial.'" Response Brief 7. In

1 particular, intervenors rely on our statement in Heininge
2 that "[w]e find no error in the county's interpretation and
3 application of its criterion that property be 'used for the
4 primary purpose of obtaining a profit in money from [farm]
5 activities'." Id. at 381.

6 In Heininge, we reviewed the county's definition of
7 "commercial farm" in the context of the county's denial of
8 an accessory dwelling on the basis that it was not "in
9 conjunction with commercial farm use." The county's
10 definition of "commercial farm" included, in part, that "the
11 land is used for the primary purpose of obtaining a profit
12 in money from [farm] activities * * *." We disagree with
13 intervenor that, in acknowledging the express language in
14 the Clackamas County code regarding its definition of
15 commercial farm, we somehow established that "commercial"
16 equals "profitable." Nor do we find other support for this
17 definition of "commercial."

18 The county in its decision, and intervenors on appeal,
19 leap from their premise that "commercial" forest uses are
20 those that "have profit as a chief aim" to a conclusion
21 that, therefore, "commercial" equals "profitable." We agree
22 that "commercial" forest uses may include those for which
23 profit is a chief aim. However, having profit as a chief
24 aim does not equate to and certainly does not ensure that a
25 use will be "profitable." As the Department of Forestry
26 explained during the proceedings below, such an

1 interpretation of commercial could reward or encourage
2 mismanagement of forest resources. Record 121. Petitioner
3 further elaborated on that concern below, stating:

4 "[W]e do not agree with the applicants'
5 interpretation and connection of 'commercial' with
6 'profitability.' Under the applicants'
7 interpretation, mismanagement or poorly managed
8 land would not be considered forest land even
9 though it maybe highly capable of producing trees
10 at commercial volumes. The * * * Forestry Report
11 states that 'the vast majority of the tract (37.5
12 out of 40 acres) is currently unmerchantable and
13 will be unmerchantable in the future due to
14 extremely poor stocking' * * *. No discussion is
15 provided as to why the land is poorly stocked.
16 Such an interpretation would reward mismanagement
17 of otherwise suitable forest with conversion to
18 rural residential land divisions and development.
19 The courts have ruled in similar cases involving
20 agricultural lands, that consideration whether or
21 not land is suitable for resource use may include
22 whether or not the land can or cannot presently or
23 in the foreseeable future be managed profitably by
24 any reasonable and prudent manager." Record 126.

25 We agree with petitioner that "commercial" does not
26 equal "profitable." Moreover, the county's equating of
27 "commercial" to "profitable" is so vague as to be without
28 meaningful application. For example, does "profitable" mean
29 that a use will be profitable, may be profitable, has
30 historically been profitable, could be profitable? Without
31 a more detailed explanation of what the county means by
32 "profitable," the county's conclusion that commercial means
33 profitable is unacceptably vague and not in accord with the

1 Goal 4 definition of "commercial forest land."⁴

2 Petitioner also challenges the county's definition of
3 "suitable" as used in the Goal 4 context. However, while we
4 find the county's definitions vague, petitioner does not
5 establish how it considers those definitions incorrect and,
6 therefore we do not consider the argument further.

7 **B. Necessary to permit forest operations or practices**
8 **on nearby lands**

9 Goal 4 states that forest lands include "adjacent or
10 nearby lands which are necessary to permit forest operations
11 or practices." The county defined "nearby" to mean
12 "contiguous, and thus considered only lands contiguous to
13 the subject property in determining whether the subject
14 property was "necessary to permit forest operations or
15 practices." It determined that since none of the contiguous

⁴Petitioner urges two different definitions of "commercial forest land" as alternatives to the county's definition. Petitioner argues:

[U]nder the FPA [Forest Practices Act] definitions of "forest practice" and "operation" and this Board's construction of ORS 527.722, it is reasonable to interpret 'commercial' as used in the Goal 4 context to mean for sale in trade or commerce, and to exclude activities for personal use.

"In the alternative, it is also appropriate and reasonable to interpret 'commercial forest uses' to mean that the land is capable of producing commercial tree species or other forest products by itself or in conjunction with other lands."
Petition for Review 11.

Both of these definitions are reasonable and would enable a local government to fairly assess whether a given parcel constitutes "commercial forest land." However, we find it neither necessary nor appropriate to determine as a matter of law, that one or either of these definitions constitutes the sole measure of commercial forest land in all instances.

1 properties was presently in forest use, the subject property
2 was not necessary for forest operations or practices on
3 adjacent or nearby lands.⁵

4 Goal 4 specifically includes as "forest lands" those
5 lands which are necessary to permit forest operations or
6 practices on adjacent or nearby parcels. By defining
7 "nearby" to mean "contiguous" the county has effectively
8 eliminated the requirement that it consider not only
9 adjacent or contiguous parcels, but also nearby parcels.
10 The county's definition of "nearby" is expressly contrary to
11 plain language of the goal. The county cannot, through its
12 own definitions, eliminate a goal requirement.

13 To satisfy Goal 4, the county must consider both
14 adjacent properties and nearby properties to determine
15 whether the subject property is necessary for forest
16 operations or practices as either an "adjacent" or "nearby"
17 property.

18 The second assignment of error is sustained.

⁵The county initially determined that this standard was inapplicable to the application at issue since this standard is contained in the current, but not the former Goal 4. The county's findings of compliance with this standard were made in the alternative, in the event the current Goal 4 applies to this application. Intervenor argues on appeal that since the county applied the old goal, it did not need to comply with the current requirements. We fail to understand how the old goal could be "more restrictive" and how compliance with the former goal ensures compliance with the current goal, when that former goal fails to include a specific requirement of the current goal. This is at least an implicit acknowledgment that application of the former Goal 4 could allow "development of forest land prohibited by the current version of Goal 4." Record 18.

1 **THIRD ASSIGNMENT OF ERROR**

2 Petitioner challenges the county's finding that the
3 subject property is not forest land as defined in the
4 county's comprehensive plan.

5 The county's Goal 4 statement reads:

6 "Coos County shall conserve forest lands* by
7 retaining them for the production of wood fiber
8 and other forest uses,* except where legitimate
9 needs for non-forest uses are justified. [*Forest
10 lands and forest uses are defined in the Forest
11 Lands Inventory and Assessment.]"

12 The county's Forest Lands Inventory and Assessment
13 includes a section entitled "Legislative Framework," which
14 is followed by a "Commentary." Section 1.2 of that
15 commentary states:

16 Definition of Forest lands. This definition
17 encompasses not only existing and potential
18 commercial forest lands but also non-commercial
19 forest land supporting forest uses other than
20 timber production, non-forest lands which require
21 protection due to their fragility and forested
22 lands in urban and agricultural areas.
23 'Commercial forest land' is not defined in the
24 Goal. However, the State Department of Forestry
25 publication 'Forestry Program for Oregon' defines
26 it as:

27 "'forest land that is capable of producing
28 crops of industrial wood in excess of 20
29 cubic feet per acre of annual growth.'

30 "This is a standard definition which is also used
31 by the U.S. Forest Plan. It is proposed to adopt
32 this definition in the Comprehensive Plan."

33 Petitioner argues that under the county's comprehensive
34 plan the subject property is defined as forest land because

1 the evidence in the record establishes that the subject
2 property is capable of producing crops of industrial wood in
3 excess of 20 cubic feet per acre of annual growth.

4 Intervenor do not dispute petitioner's factual
5 conclusion, but argues that the inventory definition does
6 not apply to this application because it was only "proposed"
7 to be included in the comprehensive plan, and was never
8 actually adopted.⁶ Intervenor argue:

9 "In its findings, the county concluded that 'this
10 [20 cubic feet per acre per year] definition [in
11 Commentary (2)] was not adopted as part of the
12 Comprehensive Plan on the date the subject
13 application was made, and therefore is not
14 applicable to the application.' * * * The
15 petitioner contends this conclusion by the county
16 is inconsistent with its earlier conclusion that
17 'by showing the application in compliance with the
18 Plan's Forest Lands Inventory and Assessment,
19 Section 1.2, the applicants will show compliance
20 with Statewide Land Use Goal 4 as it currently is
21 written.' * * * However, in its findings, the
22 county specifically exempted from applicability to

⁶In their reply to petitioner's motion for this Board to take judicial notice of provisions of the county's comprehensive plan and proof of acknowledgment, intervenors insert a new argument is that, in fact, the reference to the definition of forest lands in the county's Goal 4 statement was intended to be deleted because it is in brackets. The county made no such finding in its decision and we find this new argument both untimely and without merit. The gist of intervenors' argument is that, when the comprehensive plan was acknowledged, everything in brackets was to be deleted. According to intervenors, the fact that the language remains (in brackets) in the comprehensive plan must have been a "scrivener's error." Intervenor's argument provides no explanation for the insertion of asterisks following the terms "forest lands" and "forest uses," nor the asterisk at the beginning of the bracketed reference which states where the definition of "forest lands" and "forest uses" can be found. More plausibly, the bracketed language, preceded by an asterisk, was intended to and remains intended to provide a reference to the two asterisked terms in the preceding sentence.

1 its decision 'Commentary (2), Definition of Forest
2 lands, in the Comprehensive Plan, Forest Lands
3 Inventory and Assessment, Section 1.2, Statewide
4 Land Use Goal #4: Forest Lands.' * * * Thus, the
5 county's findings consistently asserted the 20
6 cubic foot criterion did not apply when it relied
7 on the definition of forest lands in the prior
8 Goal 4 in its comprehensive plan." Response Brief
9 14.

10 We can acknowledge intervenors' conclusion that "the
11 county's findings consistently assert the 20 cubic foot
12 criterion did not apply when it relied on the definition of
13 forest lands in the prior Goal 4 in its comprehensive plan."
14 However, the prior Goal 4 does not apply to this
15 application. Intervenors' conclusion does not establish how
16 the county's findings are consistent when it must rely on
17 the applicable version of Goal 4.

18 The quoted language suggests that intervenors attempt
19 to reconcile the county's two findings regarding the
20 applicability of the Forest Lands Inventory and Assessment
21 by distinguishing between the Section 1.2 of the assessment,
22 which the county found necessary to establish compliance
23 with the current Goal 4, and the "commentary," which the
24 county found was inapplicable because it had merely been
25 "proposed" for inclusion in the comprehensive plan. The
26 problem with this argument is that the Section 1.2 is part
27 of the "commentary." The two findings cannot be reconciled
28 in a manner that allows the county to establish compliance
29 with both Goal 4 and the county's comprehensive plan. If
30 Section 1.2 does not apply, the county may have established

1 compliance with its comprehensive plan, but by the county's
2 own findings it has not established that this application
3 satisfies Goal 4. If Section 1.2 does apply, the county has
4 not established compliance with either its comprehensive
5 plan or Goal 4.

6 The county's two findings regarding the applicability
7 of Section 1.2 of the county's Forest Lands Inventory are
8 inconsistent and irreconcilable, From the record before us,
9 we cannot determine its applicability, and therefore leave
10 that for the county on remand.⁷

11 The third assignment of error is sustained.

12 The county's decision is remanded.

⁷We note the opinion of the county counsel regarding the applicability of Section 1.2 of the Forest Lands Inventory:

"The 20 cubic feed per year standard was contained in the Comprehensive Plan when this application was originally filed. Although it has since been deleted, it remains applicable to this application. The findings correctly point out that the language used in the Plan is *"It is proposed to adopt this definition in the Comprehensive Plan."* The findings therefore conclude that the 20 cubic feed per year standard was never actually adopted by the County. However, I understand that the County has always considered this as an actual standard even to the extent of repealing the provision." Record 94. (Emphasis in original.)

While the opinions of the county counsel are not binding on the county, we find his comments instructive in this instance.