

MAY 13 3 25 PM '83

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

1
2
3 MOUNTAIN AREA CORRIDOR)
CITIZENS/ENVIRONMENTAL)
4 COMMITTEE ON SUITABILITY)
(MACC/ECOS),)
5)
6 Petitioner,)
7 vs.)
8 CLACKAMAS COUNTY, OREGON,)
Respondent,)
9)
10 REAL ESTATE LOAN FUND OF)
OREGON, LTD., a limited)
partnership,)
11)
12 Participant-)
Respondent.)

LUBA No. 83-002

FINAL OPINION
AND ORDER

13 Appeal from Clackamas County.

14 James Hunt Miller, Portland, filed the Petition for Review
15 and argued the cause on behalf of Petitioners.

16 Kris Jon Gorsuch, Salem, filed the brief and argued the
17 cause on behalf of Participant-Respondent Real Estate Loan Fund
of Oregon, LTD.

18 BAGG, Board Member; COX, Board Member; participated in this
19 decision.

20 REMANDED 05/13/83

21 You are entitled to judicial review of this Order.
22 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.
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1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioner appeals Clackamas County's approval of a planned
4 unit development composed of 339 units on 93 acres of land in
5 the Wildwood/Timberline area near Mt. Hood.

6 FACTS

7 The applicant, Real Estate Loan Fund of Oregon, applied to
8 Clackamas County for a planned unit development to be called
9 "Brightwood Glen". The proposed development will be in the
10 Wildwood/Timberline area of the Mt. Hood Corridor. Zoning of
11 the site is Hoodland Residential (HR), a zone which states as
12 its purpose "to maintain and enhance the natural environment
13 and living qualities of those areas within the Mt. Hood
14 community which are recreational in character through
15 conservation of natural resources and carefully controlled
16 development." Record 128. The site is near both the Sandy and
17 Salmon Rivers, and a small portion of the property is within a
18 floodplain. The property is relatively flat and covered with
19 mostly alder trees, some other coniferous varieties and a few
20 grassland areas. The site was clearcut at one time but not
21 reforested. It is within two miles of commercial and service
22 uses. The area is subject to a partial LCDC acknowledgement
23 order that found it to be committed to non-resource use.

24 The subject property includes some wetlands. The county
25 planning staff calculated the wetlands at 9.02 acres. Record,
26 p. 12. Existence of the wetland caused the applicant to make

1 some revisions to the plat to move development away from
2 wetland areas. The impact of the wetlands on the proposal was
3 the subject of some controversy in the hearings before the
4 county.

5 Because the project consists of over 50 units, the county
6 required it to be developed as a planned unit development
7 (PUD). Clackamas County Zoning and Development Ordinance (ZDO)
8 312.09A; 1013.02B(3). PUD's are permitted uses in the subject
9 HR zone. ZDO 312.03; 1013.02A. The county's planned unit
10 development ordinance includes a two-step process. For
11 residential planned unit developments, the county first reviews
12 the application and may approve it preliminarily with
13 conditions or deny it. ZDO 1013.06B.2. At this initial stage,
14 there is a public hearing on the application, and the
15 application is reviewed for compliance with the relevant
16 comprehensive plan and zoning requirements. The initial
17 approval constitutes approval of the feasibility of the
18 development, the general design and layout of the development
19 and other preliminary matters. See Margulis v Portland, 4 Or
20 LUBA 89 (1981). From that preliminary approval, detailed plans
21 are made. Thereafter, the final plat is approved.¹

22 INTRODUCTION TO COMBINED ASSIGNMENTS OF ERROR NOS. 1 and 2

23 Petitioner's first assignment of error is as follows:

24 "The Commissioners' Decision was not supported by
25 substantial evidence in the whole record."

26 The second assignment of error is as follows:

1 "The findings and conclusions adopted by the Board of
2 Commissioners fail to address standards and criteria
3 as required by ORS 215.416 and issues and evidence
4 raised by petitioner."

5 Petitioner has split an allegation that the county's findings
6 are inadequate to meet applicable criteria and not supported in
7 the record into separate assignments of error. The discussion
8 in each centers about county criteria and findings on wetlands,
9 wildlife, domestic water supply and natural hazards. We will
10 consider petitioner's allegations as one assignment of error
11 alleging the county failed to show compliance with applicable
12 criteria.

13 A. Wetlands and Storm Drainage.

14 Petitioner alleges that a number of comprehensive plan and
15 ordinance criteria about wetlands apply to the proposal but
16 were not addressed. In particular, petitioner lists the
17 following standards.

18 "Residential Policy 5.2 - 'In the flood hazard areas
19 or wetlands, the following development
20 criteria...shall be met:

21 "b. Maintain water quality and the natural
22 function of the area to reduce or absorb
23 flood runoff and to stabilize water flow.'

24 "Residential Goal (Comprehensive Plan, p 51) -

25 "'Provide for development within the carrying
26 capacity of...environmentally sensitive areas.'

27 "Water Resources Policy 16.0- 'Prevent disturbance of
28 natural wetlands (marshes, swamps, bogs) associated
29 with river or stream corridors...Adjacent development
30 shall not substantially alter normal levels or rates
31 or runoff into and from wetlands.'

1 ZDO 1011.03-'B. "High Priority' open space [including
2 wetlands, see 1011.02B.1.f.] shall be preserved
outright....'

3 "C. 'Second Priority' open space [including wetlands
4 recharge areas, see 1011.02B.2.d.] shall be preserved
to the maximum extent possible....'

5 "ZDO 1013.05 'DEVELOPMENT REQUIREMENTS [PUD].
6 A.1. Site Adaptation. To the maximum extent
possible, the plan and design of the development shall
7 assure that natural and unique features of the land
and environment are preserved.'

8 "ZDO 1002.06B- 'All developments proposed in or near
9 (within one hundred (100) feet) of natural wetlands
shall be designed to:

10 "1. Preserve functions of groundwater recharge,
11 water storage, turbidity reduction, nutrient
filtration, biologic or botanical production, and
12 protective habitat cover.

13 "2. Provide compatibility with the continued
performance of wetland functions...

14 "4. Maintain the runoff coefficient and erosion
15 equilibrium for lands bordering the wetland
substantially the same as if such lands were
16 undeveloped. Pier construction, elevated pedestrian
boardwalks, semi-impervious surfacing...are
17 recommended design methods.'"

18 Petitioner further alleges that the findings on wetlands
19 are not adequate in that they fail to address evidence
20 submitted by petitioner on the detrimental impact of the
21 proposed development on wetland areas. Petitioner argues that
22 the county has made inadequate findings on the nature and the
23 extent of wetlands on the subject site. Petitioner supports
24 its argument by stating the county's own staff report shows the
25 area to contain "extensive wet areas." Record, p. 9.
26 Petitioner then points to an original application for the

1 development showing the existence of no wetlands, record, p.
2 223, and contrasts that with the applicant's later statement
3 that there were four small wetlands on the site. Record, p.
4 199. Petitioner also points to what it believes to be
5 contradictory evidence about species of trees that tend to grow
6 in wetland areas in order to show that the county
7 underestimated or inadequately stated the extent of wetlands.

8 Petitioner claims the applicant's expert, Kenneth Bierly,
9 did not concern himself with mitigation of the impact of this
10 development on the wetlands, as required by county
11 regulations. Petitioner claims the expert's evidence is
12 lacking any "recognizable systematic method for the evaluation
13 of impacts or mitigation measures...." Petition for review at
14 7.

15 The petitioner further complains that conditions regarding
16 erosion, runoff and drainage are improper deferrals of
17 decisions that should have been made at this initial approval
18 stage. See conditions 52 through 56, record, p. 11.

19 Respondent Real Estate Loan Fund of Oregon, Ltd., argues
20 "[p]etitioner is seeking to try the case anew before LUBA."
21 Brief of respondent at 7. Respondent cites Homebuilders v
22 Metro Service District, 54 Or App 60, 633 P2d 1320 (1981), to
23 support its assertion that a decision is adequate when it is
24 based upon substantial evidence in the record. Respondent
25 claims the county's findings on wetlands below are adequately
26 supported.

1 "3. Opponents of this application have argued that
2 approval of this application will result in the
3 destruction of wetlands on or adjacent to the
4 site of the proposed PUD. The Board finds that
5 the preponderance of the evidence, particularly
6 that produced by Mr. Kenneth Bierly, indicates
7 that the wetlands will be preserved if the
8 property is developed in accordance with the
9 conditions of approval hereinafter stated.

10 "4. The opponents of this application have argued
11 that storm water runoff will be detrimental to
12 the natural ecosystems in the area of the
13 proposed PUD. This Board finds that these
14 concerns are valid, but that the adopted
15 conditions of approval are sufficient to
16 guarantee that such detrimental impacts will be
17 mitigated." Record, p. 1.

18 Evidence supporting these findings includes that of Kenneth
19 Bierly, the applicant's wetland and waterway resource
20 consultant, according to respondent. In a letter, the
21 consultant recognizes a concern that development will change
22 the area but nonetheless claims the development is
23 feasible.² Mr. Bierly concludes

24 "that the policies of the County comprehensive plan
25 and development standards of the zoning ordinance set
26 specific standards for the identification and
27 protection of resources on the Brightwood Glen site.
28 The County standards are adopted and based on solid
29 findings by the staff as a means to allow development
30 and environmental resources to coexist. I feel
31 strongly that the wetland data used in the development
32 of the Brightwood Glen proposal is clearly adequate
33 for a decision on this proposal." Record, p. 24.

34 Respondent cites additionally a wetlands review study prepared
35 by Bierly and Associates in July of 1982 that discusses the
36 wetland areas.

37 As we understand the county's findings, the county has

1 chosen to ensure compliance with the above stated criteria
2 through the use of conditions as follows:

3 "52. Lot 24, Block 6 shall be redesigned so that none
4 of the identified wetland is incorporated within
the lot lines.

5 "53. Lots 2 - 8 inclusive, Block 2 shall be redesigned
6 so that none of the identified wetland is
incorporated within the lot lines.

7 "54. The storm drainage and erosion control plan
8 described in agency response number 48 shall be
designed to assure that storm water runoff is not
9 allowed to drain directly into the wetlands.
10 Detention or sedimentation removal facilities
shall be incorporated [sic] to assure wetlands are
11 not prematurely filled with surface erosion. A
short and long term revegetation schedule shall
be incorporated to assure minimization of surface
erosion.

12 "55. The detention facility proposed [sic] downstream
13 from the wetland contained in Block 10 shall be
sized sufficiently to assure that necessary
14 detention time is achieved to allow settlements
to settle prior to overflowing into the
15 identified wetland.

16 "56. The wetland areas shall be delineated on the
17 final plat, and a note shall appear on the final
plat prohibiting development of the wetland,
18 except as authorized by Section 1002.06."³

19 While we recognize the conditions affecting the development
20 appear to divert development from hazardous areas, these
21 conditions rely on compliance with another condition, condition
22 #48. Condition #48 is about storm drainage and erosion
23 control.⁴ Condition #48 calls for a storm drainage and
24 erosion control plan that does not yet exist. We do not
25 understand how the county can conclude that this development is
26 feasible based upon a set of conditions (condition #48, 52

1 through 56) which together simply call for further study and
2 development of plans. The county has failed, as we read the
3 conditions, to show the initial feasibility of this project,
4 particularly with respect to storm drainage and wetlands. It
5 may be that the county has the power to require adequate storm
6 drainage and wetland control, but it does not appear from the
7 conditions attached to the development that the county has an
8 application which is sufficiently detailed to enable the county
9 to say the development meets its wetlands and storm drainage
10 criteria. This conclusion must be reached now, at the initial
11 stage, not at the final plat stage. See Margolis v. Portland,
12 4 Or LUBA 89 (1981).⁵

13 B. Wildlife.

14 Petitioner cites Clackamas County Comprehensive Plan
15 "Wildlife Habitats and Distinctive Resource Areas" Policy 1
16 which states

17 "[c]ooperate with wildlife management agencies to
18 enhance fish and wildlife opportunities and
19 populations. This includes cooperation with the
20 Oregon Department of Fish and Wildlife in its habitat
improvement practices and programs, and wild fish
management policy, and with the U.S. Fish and Wildlife
serviced inventory and classify wetland environments."

21 Policy 5 provides

22 "minimize adverse wildlife impacts and sensitive
23 habitat areas, including deer and elk, winter range
below 3,000 feet elevation, riparian areas and
wetlands. * * * "

24 The comprehensive plan "Residential" policies section
25 includes policy 5.2 which states

26

1 "[i]n flood hazard areas or wetlands, the following
2 development criteria, as well as the specifications in
3 the natural resources chapter shall be met:

4 "* * * *

5 "(c) protect wildlife habitats, significant vegetation
6 and trees."⁶

7 Petitioner challenges the county's conclusion that the
8 development meets policies about wildlife habitat, and
9 petitioner argues the county conclusion that wildlife habitat
10 will be protected is not supported. Petitioner cites to
11 evidence in the record showing that deer are found on the site
12 and claims there are no conditions imposed on the development
13 for mitigation of impact on the deer range. Petitioner further
14 complains the county has failed to explain its choice between
15 petitioner's evidence showing the area to be a wildlife habitat
16 and that of the applicant showing the area is not a significant
17 wildlife habitat.

18 Respondent replies that an open space assessment and a
19 wildlife impacts analysis appearing at pages 227-240 and pages
20 241-242 of the record is adequate to show the county's
21 conclusions about wildlife are well supported. Respondent says
22 the evidence shows the property is not a critical wildlife
23 habitat, and deer use of the property is only slight. Even so,
24 claims respondent, the project has been designed to preserve
25 natural and open areas, and conditions have been imposed to
26 protect wildlife. See condition 42 requiring a vegetative
 cover to be maintained on slopes exceeding 25 percent. Record

1 10.

2 The county's findings about wildlife are contained on page
3 11 of the record with a simple notation on condition no. 58 as
4 follows:

5 "Fish and Wildlife: See Exhibit No. 15."

6 As far as we can tell, Exhibit 15 is a Department of Fish
7 and Wildlife recommendatation about the development. The
8 department does not approve the development, but lists
9 conditions that it believes are needed to assure wetland
10 protection and maintain water quality. There is a special
11 section about big game needs as follows:

12 "Again, we want to point out to you our concern
13 for big game needs in this area. This project will
14 reduce further the big game population in the Salmon
15 River Drainage.

16 "1. The proposed development is in an area we
17 have designated as important habitat for big
18 game. Deer that live in the Salmon River
19 drainage are forced to winter in the Mt.
20 Hood Corridor because of the deep snow at
21 elevations about 2,500'.

22 "2. The food supply in this area is already
23 limited because of the lack of forage
24 producing clear-cuts, and the commercial and
25 residential development that has already
26 eliminated good browse growing areas
formerly used by deer.

"3. In the Clackamas County Comprehensive Plan
we have stated that development along the
Mt. Hood Corridor has been detrimental to
big game, and that development densities are
much greater than recommended. However, we
still hope to maintain a viable deer herd in
the area by having the animals utilize the
remaining habitat as efficiently as possible.

"4. Besides the complete loss of habitat with

1 the project, the harassment to the deer on
2 adjoining areas would be greatly increased
3 by the sheer number of people in the area.
4 Also, during the winter deer are in a
5 weakened condition and are quite vulnerable
6 to predation and harassment, such as dogs
7 can easily kill weakened deer in late
8 winter." Record, p. 249-251.

9 We do not see that this discussion constitutes a basis for
10 a conclusion that there will be minimal impact on wildlife.

11 C. Domestic Water Supply.

12 Petitioner argues the county has not met its own
13 requirements as to the certainty of domestic water supply. ZDO
14 1013.07 requires the source of domestic water supply to be
15 submitted along with the application for a planned unit
16 development. Petitioner claims the county's treatment of the
17 domestic water supply through a condition that a domestic water
18 supply be provided is not sufficient. One may not substitute
19 conditions for adequate findings, argues petitioner, citing
20 Rockaway v. Stefani, 23 Or App 69, 543 P2d 1089 (1975).

21 Respondent says findings about water and sewer are not
22 applicable now as a final plan has not yet been submitted for
23 approval. Respondent claims the property has sewer service
24 provided by the Hoodland Service District and may be served
25 with water from the Mt. Hood Loop District.

26 We note the findings simply state the property is within
the Mt. Hood Loop Water District. This stating is not a
finding that water service will be provided by the district.
The concluding finding on water in the "public facilities"

1 section of the county order includes this statement:

2 "While the source of water is unclear at this time, an
3 adequate supply must be available at the time the
4 project is developed and the final plat recorded."
5 Record 15.

6 This finding does say the development has a feasible water
7 supply. We believe the water supply must be identified. That
8 there may be problems with the water supply does not mean the
9 development may not be approved, but a statement that the
10 county doesn't know where it will obtain water certainly does
11 affect the feasibility of the project. We note in particular
12 that ZDO 1013.05A(9)(b) specifically requires:

13 "All sewer and water provisions shall be approved by
14 the appropriate agencies before the plans are approved
15 by the planning commission."

16 We do not agree that water and sewer matters are not applicable
17 now. Approval of plans is an act that is properly part of the
18 hearings officer review of the "preliminary planned unit
19 development for compliance with these standards * * * *" ZDO
20 1013.06(B)(2). Water supply plans are part of this preliminary
21 review under ZDO 1013.05A(9)(b). It simply is not sufficient
22 to leave matters specifically required for preliminary approval
23 to later conditions that in effect restate the requirements of
24 preliminary approval.

25 We do not believe the county has adequately demonstrated
26 the feasibility of this development and compliance with the
27 provisions of its own planned unit development ordinance. ZDO
28 1013, et seq. Further, the county does not appear to have

1 followed its comprehensive plan requirements of minimizing
2 affect on wildlife and certain natural features.

3 This combined assignment of error is sustained as explained
4 above. Because the county has not fully explained compliance
5 with applicable criteria, we agree with petitioner that ORS
6 215.416(6) has similarly been violated.⁷

7 ASSIGNMENT OF ERROR NO. 2

8 "The Commissioners Improperly Construed Applicable
9 Law."

10 Petitioner alleges the zoning and development ordinance
11 standard 1013.05A.1 requiring "[t]o the maximum extent
12 possible, the plan and design of the development shall assure
13 that natural and unique features of the land and environment
14 are preserved," was interpreted by the county as though it were
15 equivalent to comprehensive plan Residential Policy 7 which
16 simply requires the county to "encourage retention of natural
17 landscape features...." Petitioner argues the criteria to
18 effect preservation should be explained in the findings and
19 conclusions, citing Springfield Education Association v The
20 School District, 290 Or 217, 621 P2d 547 (1981), and Theland v
21 Multnomah County, 4 Or LUBA 284 (1981). Petitioner does not
22 appear to be certain whether the term is "inexact" or
23 "delegative" under the Springfield analysis, but concludes the
24 commissioners have a duty to explain the application of the
25 term.

26 In a second part of this last assignment of error,

1 petitioner asserts comprehensive plan Residential Policy 11
2 requires a net density in planned unit developments to include
3 15% of the gross area for roadway.⁸ Petitioner argues the
4 density computation in the instant case did not make this
5 recognition apparently because "ZDO 1012.03B and C require area
6 subtraction for single 'dedicated' roads." Petition for review
7 at 22. Petitioner claims density calculations required in the
8 HR district, the zone in which the property lies, make no
9 distinction between dedicated or private roads. See
10 312.07C.1.c.⁹ Petitioner claims there is a conflict, citing
11 Baker v City of Milwaukie, 271 Or 550, 533 P2d 772 (1975),
12 between the plan and zoning ordinance. The plan must control,
13 according to petitioner, and that means the county has violated
14 the plan by using incorrect density formulae.

15 Respondent discards the proposition that the preservation
16 criteria in the plan requires interpretation or rule making.
17 Respondent claims the term is "exact" under the Springfield
18 analysis. In any event, respondent says the county gave
19 adequate reasoning as to how the PUD would protect the natural
20 environment.

21 As to the potential Baker conflict, respondent advises Plan
22 Policy 11 is only a general statement about densities.
23 Respondent argues the policy is not a specific reference to
24 density computation or a required subtraction because the
25 zoning ordinance states detailed density computation formulae.
26 We understand respondent to say the plan policy is only a

1 general policy and it is up to the implementing ordinances to
2 set specific density formulae. Further, claims respondent,
3 under ZDO 1012.03C, there is reduction for dedicated roadways,
4 and all roadways in this PUD are private. According to
5 respondent, therefore, no dedication for roadways is required,
6 and the county made no error in its density calculations.

7 Reading ordinance provision 1013.05A1 alone does not
8 explain what "to the maximum extent possible" means. We do not
9 believe, however, that the term requires any further analysis.
10 As we understand the PUD ordinance provisions, it is "natural
11 or unique features of the land and environment" that are to be
12 preserved.¹⁰ The method for doing so may be found in the
13 remaining terms of the PUD ordinance. The purposes section of
14 the ordinance, the development requirements including lot
15 arrangement, density and open space, and the specifics of the
16 site and plans for the development, when considered together,
17 provide sufficient detail to identify natural and unique
18 features at this first state of PUD approval. How to preserve
19 them to the maximum extent possible given a particular proposal
20 is a matter for case by case application. Potential applicants
21 and opponents know from the other requirements of the ordinance
22 all that is necessary to evaluate the proposal in light of this
23 policy statement. We believe if an error exists here, it is in
24 the application of the PUD ordinance for lack of sufficient
25 findings, not in the ordinance itself.

26 As to the matter of whether or not a Baker conflict exists

1 between a comprehensive plan recognition of a 15% road factor
2 in density calculation and certain zoning ordinance provisions,
3 we find no conflict. The comprehensive plan does not talk
4 about whether a roadway is public or private, or whether a
5 dedication of private ways for public use is required. The
6 comprehensive plan simply admonishes the county to recognize a
7 15% gross area for roadways. The zoning ordinance provisions
8 speak of a maximum 15% factor for roadways, whether or not the
9 roadway is obtained by dedication.¹¹ We believe the plan may
10 be read as admonishment to the county to be sure to consider
11 the roadway factor up to the 15% maximum specified in both the
12 zoning ordinance and the plan. Use of the word "recognizing"
13 suggests only a caution, not a strict mandate.

14 Assignment of error no. 3 is denied.

15 This matter is remanded to Clackamas County for further
16 findings not inconsistent with this opinion.

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FOOTNOTES

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3 1
4 The PUD ordinance provisions do not say there is a final
5 plat approval. However, as the ordinance talks about
6 preliminary plat approval, we can summarize there is a final
7 approval much as with a subdivision application. See ORS
8 90.040.
9

10 2
11 In the letter of October 26, 1982, Mr. Bierly notes
12 testimony of petitioner's witness, Harold Winegar. Mr.
13 Winegar's testimony about detrimental effects on wetlands is
14 discussed as follows:
15

16 "While a 'wetlands issue' was alluded to by most
17 speakers, Mr. Harold Winegar spoke exclusively on the
18 subject. I had a difficult time understanding Mr.
19 Winegar's concerns other than the general anxiety
20 about development and regional concern about adverse
21 environmental impacts. The slide show used to
22 illustrate his concerns showed photographs obviously
23 taken early in spring before the alder leafed out and
24 the skunk cabbage was blooming. I could not identify
25 any of the photographs to a specific location on the
26 site and many were obviously taken from locations
outside the site in question. Mr. Winegar, himself,
could not locate where the photographs were taken and
had no direct testimony relevant to the site in
question."

18 3
19 The storm drainage and erosion control plan referred to in
20 Item 54 is as follows:

21 "A storm drainage and erosion control plan shall be
22 submitted to the Department of Environmental Services
23 prior to any on-site construction and prior to final
24 plat approval. The plan shall contain at a minimum:

25 "a. The methods to be used to minimize the amount of
26 runoff siltation and pollution created from the
development both during and after construction.
Site-specific considerations may be
incorporated. The plan shall be consistent with
the specific drainage basin or subbasin plan.

1 "b. An analysis of source controls as an alternative
2 method to control storm water runoff such as
detention and storage techniques.

3 "c. Statement of consistency with the county storm
4 water improvement standards and Comprehensive
Plan."

5 _____
4

6 "A storm drainage and erosion control plan shall be
7 submitted to the Department of Environmental Services prior
8 to any on-site construction and prior to final plat
9 approval. The plan shall contain at a minimum:

10 "a. The methods to be used to minimize the amount of
11 runoff siltration and pollution created from the
development both during and after construction. The
12 site-specific considerations may be incorporated. The
13 plan shall be consistent with the specific drainage
basin or subbasin plan.

14 "b. An analysis of source controls as an alternative
15 method to control storm water runoff such as detention
and storage techniques.

16 "c. Statement of consistency with the county storm water
17 improvement standards and Comprehensive Plan."
18 Condition #48, record, p. 11.

19 _____
5

20 We find it unnecessary to reach the question of whether or
21 not adequate evidence exists in the record from which the
22 county might make such findings of feasibility.

23 _____
6

24 Neither the petitioner nor the respondent cite us to any
25 specific zoning ordinance or other implementing ordinance
26 provisions about wildlife.

27 _____
7

28 ORS 215.416(6):

29 "Approval or denial of a permit shall be based upon and
30 accompanied by a brief statement that explains the criteria
31 and standards considered relevant to the decision, states
32 the facts relied upon in rendering the decision and
33 explains the justification for the decision based on the

1 criteria, standards and facts set forth."

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3 8

Plan Residential Policy 11 states:

4 "Determine the net density in Planned Unit Developments
5 recognizing that 15% of the gross area is for roadways."

6 9

Both ZDO 1012.03B and C and ZDO 312.07C1.e. speak of a 15%
7 "area dedicated" for new roads (ZDO 1012.03B and C) and a 15%
8 "area required for new roads" (ZDO 312.07C1.e.) as maximum area
for such roads.

9
10 10

"A. In considering a proposed Planned Unit Development
11 project, the approval thereof may involve
12 modifications in the regulations, requirements, and
standards of the zoning district in which the project
is located. The following regulations, requirements,
and standards shall apply:

13 "1. Site Adaptation: To the maximum extent possible,
14 the plan and design of the development shall
15 assure that natural or unique features of the land
and environment are preserved."

16
17 11

See ORS 368.073.