

BEFORE THE LAND USE BOARD OF APPEALS

JUN 10 12 01 PM '83

OF THE STATE OF OREGON

1
2
3 ELAINE GUNDERSON OLSEN and)
SCAPPOOSE SAND & GRAVEL CO.,)
4)
Petitioners,)
5)
vs.)
6)
COLUMBIA COUNTY,)
7)
Respondent,)
8)
and)
9)
WESTERN PACIFIC)
10 CONSTRUCTION MATERIALS, INC.,)
11)
Intervenor.)

LUBA No. 83-012
LUBA No. 83-015

FINAL OPINION
AND ORDER

12 Appeal from Columbia County.

13 Richard A. Cantlin, Jr., and Janet C. Hanson, Portland,
14 filed the Petition for Review and argued the cause on behalf of
Petitioner Elaine Gunderson Olsen.

15 Frank Josselson, Portland, filed the Petition for Review
16 and argued the cause on behalf of Petitioner Scappoose Sand &
Gravel Company.

17 DeMar L. Batchelor, Hillsboro, filed the response brief and
18 argued the cause on behalf of Intervenor Western Pacific
Construction Materials, Inc. .

19
20 REMANDED

06/10/83

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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24
25
26

7 or LWBA 7
Westbury

1 NATURE OF THE DECISION

2 Elaine Gunderson Olsen filed a notice of intent to appeal
3 on January 25, 1983, challenging a decision of the Columbia
4 County Board of Commissioners entitled "In the matter of the
5 application of Western Pacific Construction Materials, Inc.,
6 for a conditional use permit for mining and quarrying, rural
7 area greenway extraordinary exception, and surface mining
8 permit." On January 26, 1983, Scappoose Sand & Gravel appealed
9 the same decision. The two appeals are consolidated for the
10 purpose of review by this Board.

11 FACTS

12 In August of 1981, Western Pacific, a division of Rydell
13 International, Inc., applied for a conditional use permit to
14 extract and process aggregate materials on 700 acres of land
15 northeast of the City of Scappoose in Columbia County. The
16 land is zoned A-1, Agricultural District, an agricultural and
17 low density residential zone. "Mining and/or quarrying" are
18 conditional uses within the A-1 zone. The property is diked,
19 lies along the Multnomah Channel of the Columbia River, is
20 adjacent to the Scappoose Airport, abutts Honeyman Road and
21 D.F. Freeman Road and is adjacent to Jackson Creek and Evans
22 Slough and Sand Tosh Slough. The soils on the property are SCS
23 Class II and III, and the land is now used for agricultural
24 purposes. Agricultural uses exist to the north, east and south
25 with rural residential uses to the north, west and east. There

1 are two active aggregate mining operations in the area. The
2 property contains three known archeological sites, and includes
3 wetlands which are a habitat for water fowl. See record, p.
4 74, 149-150, 144-145.¹

5 On June 21, 1982, Western Pacific submitted an application
6 for a rural area greenway extraordinary exception to enable it
7 to build a dock and barge loading facility on the Multnomah
8 Channel. Record, p. 647. On August 4, 1982, Western Pacific
9 submitted an amended application which had the effect of adding
10 about 10.2 acres to the project. The new conditional use
11 permit application included Western Pacific's plan for a
12 conveyor belt route from excavation sites to stockpiling and
13 barge loading facilities adjacent to the Multnomah Channel.

14 In October of 1982, the Planning Commission for Columbia
15 County approved the application with 12 conditions. The
16 decision was appealed by Petitioner Olsen to the Board of
17 County Commissioners.

18 The Board of County Commissioners held a hearing on the
19 appeal on November 30, 1982. Petitioner Olsen had requested
20 the proceeding be on the record, however, that request was not
21 granted. Record, p. 281. At the close of the hearing, the
22 Board of Commissioners called for proposed findings from each
23 side to be submitted through December 20. On December 22 the
24 Board of County Commissioners met and approved the conditional
25 use permit with 11 conditions. A written decision followed on
26 December 29, 1982. This appeal followed.

1 The comprehensive plan and implementing ordinances of
2 Columbia County have not been acknowledged by LCDC as being in
3 conformity with statewide land use planning goals. Land use
4 decisions affecting agricultural land in Columbia County are
5 subject to Columbia County Ordinance 80-8. Ordinance 80-8,
6 known as "Interim Measures for Reviewing Land Use Actions on
7 Agricultural Land Pursuant to Statewide Goal 3 (OAR
8 660-15-000(3))," has as its purpose to provide criteria for
9 review of land use decisions on agricultural lands prior to
10 acknowledgment. Pursuant to the ordinance, land use actions
11 are allowed on Goal 3 land if they meet certain criteria. The
12 ordinance includes administrative provisions (Exhibit B) which
13 provide, inter alia, for notice, hearing and conditions that
14 control applications for non-farm uses on agricultural land.²

15 ASSIGNMENTS OF ERROR

16 Petitions for review were filed by Elaine Gunderson Olsen,
17 Scappoose Sand & Gravel Co. and Cindy Kalagidis-Ede with
18 Jeanine K. Wehage. The assignments of error of these
19 petitioners are combined and reordered in this opinion for
20 convenience.³

21 ASSIGNMENT OF ERROR NO. 1

22 The notice and hearing requirements of Columbia County
23 Ordinance 80-8 were not met. An 80-8 hearing was not
held and the county's decision is, therefore, invalid.

24 Petitioners argue Section 2.B(1) of Exhibit B to Columbia
25 County Ordinance 80-8 requires that notice be given in a
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1 particular manner by mailing notice to owners of property
2 within 250 feet of the parcel's property line on which action
3 is proposed. Subsection (c) of that Section requires that
4 notice be mailed to members of the citizen involvement
5 committees and subsection (d) requires mailing of notice to
6 affected agencies. Petitioners claim the notice provided to
7 the newspaper and posted did not mention the fact that an "80-8
8 hearing" was to occur (we take this to mean a hearing pursuant
9 to the provisions of Ordinance 80-8). Petitioner also claims
10 there was no evidence the required notice was mailed to members
11 of the citizens involvement committee or affected agencies.

12 Petitioners next say the notice that was given was not
13 sufficient. The notice spoke of a conditional use permit but
14 did not say the proceeding would involve an application subject
15 to Ordinance 80-8. As we understand the assignment of error,
16 petitioners claim the grant of a conditional use permit is not
17 a substitute for making findings required under Ordinance
18 80-8. Petitioners then claim:

19 "Had all affected agencies been given proper notice
20 and opportunity to respond to the criteria imposed by
21 Ordinance 80-8, additional evidence may have been
22 presented which would have warranted denial of the
23 request under Ordinance 80-8." Petition for Review of
24 Petitioner Olsen at 15.

25 Respondent concedes the record does not show an affidavit
26 of mailing or other direct evidence indicating notices were
27 mailed to those specified in Exhibit B of Ordinance 80-8.
28 However, the record and proceedings before the planning

1 commission show that all of the affected agencies appeared in
2 person or in writing. Respondent asserts petitioners had
3 plenty of time to prepare and present an argument. The county
4 left the time for submitting written evidence open for 15 days
5 after November 30, 1982. Respondent stresses that petitioners
6 have been unable to demonstrate their substantial rights have
7 been prejudiced by this alleged defect. Respondent cites Lee
8 v. Portland, 3 Or LUBA 31, 42 (1981) as follows:

9 "* * * There is no evidence included in the original
10 record submitted to the Board showing compliance with
11 this [a notice provision] of the City Code. However,
12 there has been no allegation that the neighborhood
13 association has been injured or that it or any of its
14 members was denied the opportunity to present views to
15 the city. Indeed, petitioners have participated in
16 this proceeding from the very outset. Oregon Laws
17 1979, ch 772, sec 5(4)(B) does not allow the Board to
18 reverse or remand where there has been no showing of
19 'prejudice [to] the substantial rights of the
20 petitioners.'"

21 We are mindful that notice deficiencies in municipal
22 proceedings may result in the proceedings being overturned. 5
23 McQuillin, Municipal Corporations, Sec 19.33 (3d Ed 1981); 1
24 Anderson American Law of Zoning, Sec 4.11 - 4.16 (2d Ed 1976).
25 However, Oregon Laws 1979, ch 772, sec 5(4)(B), as amended by
26 Oregon Laws 1981, ch 748, does not allow the Board to reverse
or remand a decision without a showing of prejudice to the
substantial rights of the petitioner.

 In this case, there has been no showing of prejudice to
petitioners. Petitioners claim that had other agencies been
given more time through appropriate notice to respond to the

1 application is pure conjecture. Further, were other agencies
2 to have failed to receive notice or had been prejudiced in some
3 fashion, it would be for the other agencies to come forward and
4 make the complaint.

5 Assignment of error no. 1 is denied.

6 ASSIGNMENT OF ERROR NO. 2

7 Petitioners argue:

8 Respondent has, in its ordinance and regulations, no
9 standards for the issuance of conditional use permits,
10 and was, therefore, incapable of lawfully approving
11 this application.

12 Petitioners point to ORS 215.416(5) which provides:

13 "Approval or denial of a permit application shall be
14 based on standards and criteria which shall be set
15 forth in the zoning ordinance or other appropriate
16 ordinance or regulation of the county and which shall
17 relate approval or denial of a permit application to
18 the zoning ordinance and comprehensive plan for the
19 area in which the proposed use of land would occur and
20 to the zoning ordinance and comprehensive plan for the
21 county as a whole." ORS 215.416(5).

22 Petitioners say there are no criteria in the county ordinances
23 and regulations, and therefore the county had no authority to
24 issue the permit. Petitioners also argue statewide Goal 2
25 requires specificity in the land use planning process, and Goal
26 2 has as one of its purposes "to establish a land use planning
process and policy framework for all decisions and actions
related to use of land and to assure an adequate factual base
for decisions and actions." With no standards, petitioners
allege an adequate factual base is not assured.

1 According to respondent, the applicable criteria are
2 Columbia County Ordinance 80-8, along with its requirement that
3 the proposal be in accordance with the comprehensive plan (if
4 adopted), be consistent with applicable statewide goals and
5 meet the requirements of all applicable ordinances or
6 regulations. Further, the proposal is subject to standards and
7 criteria in the Columbia County Zoning Ordinance (Ordinance No.
8 100), the Columbia County Surface Mining Land Reclamation
9 Ordinance, the Columbia County Comprehensive Plan of 1969 and
10 the South County Area Comprehensive Plan, according to
11 respondent.

12 We believe these standards together constitute sufficient
13 guidance for applicants and the public to determine whether, or
14 not the purposes section of the conditional use ordinance is
15 met. See Lee v City of Portland, 3 Or LUBA 31, 57 Or App 798,
16 646 P2d 662 (1982). That purpose is to protect the best
17 interest of the surrounding property in the county. We find no
18 fault with this purpose as an ultimate conditional use standard.

19 Assignment of error no. 2 is denied.

20 ASSIGNMENT OF ERROR NO. 3

21 The county's order is not supported by adequate
22 findings of fact and conclusions of law as required by
23 ORS 215.402 to 215.422 and Columbia County Ordinance
24 80-8.

25 Petitioners' assertion of an ORS 215.402 to 215.422
26 violation is grounded in ORS 215.416.⁴ Petitioners argue the
county simply has failed to meet applicable criteria, including

1 Ordinance 80-8; and, therefore, it is acting in violation of
2 statute. Petitioners add the findings are conclusional and
3 fail to consider conflicting evidence. See Filter v. Columbia
4 County, 3 Or LUBA 345 (1981).

5 The first particular argument made is that Section 1400-1
6 of the county zoning ordinance is not met. That section says
7 every lot in an A-1 agricultural district must abut a street
8 for at least 60 feet or have other legal access. Petitioners
9 argue that the legal owner of the property has not consented to
10 the grant of an option for an easement. Petitioners then say:

11 "Because the necessary consent from the contract
12 seller of the property over which 97 percent of the
13 material is proposed to be transported has not been
obtained, there is inadequate legal access at this
time for the project."

14 Petitioners claim the fact that the land may abut a roadway is
15 irrelevant.

16 We do not understand what petitioners are talking about.
17 Petitioners do not challenge that the property abuts a public
18 roadway for a length of 60 feet. Whether or not options for
19 easements exist for transporting materials on a conveyor belt
20 has nothing at all to do with Section 1400-1.

21 Petitioners next claim Section 1603-1 of the ordinance is
22 not met. Section 1603-1 requires that a request for a
23 conditional use be initiated by a property owner. Petitioners
24 allege that while an individual of Western Pacific made
25 application for the conditional use permit, the owners of the
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1 property are Donald Meier and the Hudson-Rowell partnership.
2 We believe this defect, if it is a defect, is a procedural
3 error which could have been cured at the county level.
4 Petitioners have had ample opportunity to examine the
5 application, who signed it and from that determine who owned
6 the property. Petitioners raising this procedural issue on
7 appeal is a waste of our time. See Dobaj v City of Beaverton,
8 1 Or Luba 237 (1980).

9 Petitioners then claim Section 1601 of the zoning ordinance
10 is not met. Section 1601 allows the planning commission to
11 impose conditions as necessary to protect the "best interest"
12 of the surrounding properties and the county in any conditional
13 use proceeding. Petitioners claim the conditions imposed do
14 not adequately protect the best interest of the surrounding
15 property. One petitioner's property will have a view of the
16 conveyor and the operation. Record 353. Though the applicant
17 has stated it is willing to buffer, berm and screen the
18 operation, it has not stated exactly where it will take these
19 measures. Record 410, 1084. Petitioners acknowledge condition
20 6 of the permit requires "a landscaping plan for the mining
21 site shall be submitted for review and approval by the planning
22 department prior to mining activities," but say it is not
23 adequate. Record 852. Petitioners do not advise exactly what
24 would be adequate to protect their best interests.

25 We do not believe the condition imposed by the county is
26 objectionable in the manner stated by petitioners. Petitioners

1 have not shown how it is that such screening of a view of the
2 project is necessary in order to protect petitioners' "best
3 interests." Petitioners' apparent desire for screening is not
4 explained, and we find no error by the county for failure to
5 impose a condition that has not been shown necessary to meet
6 county ordinance criteria.

7 The petitioners next attack compliance with the county's
8 surface mining land reclamation ordinance. Petitioners
9 complain county findings 4, 5 and 7 addressing the ordinance
10 are not findings but only conclusions stating what Western
11 Pacific proposes to do in the future.⁵ Petitioners claim, in
12 addition, that Western Pacific has not submitted detailed plans
13 for vegetation and does not discuss minimum standards of site
14 improvement during the extraction process as required by
15 ordinance Section 5.020.

16 The regulations in the county's surface mining land
17 reclamation ordinance provide standards for operation during
18 extraction and cleanup. We believe the ordinance is
19 self-executing and does not require findings to show
20 compliance. It is unnecessary for the county to address these
21 standards at this time. The county ordinance exists as a
22 mandate to the applicant to perform in accordance with
23 ordinance terms. Compliance is a matter of enforcement.

24 Petitioners' argument about findings 4, 5, and 7 (supra at
25 footnote 5) is well taken. The county has simply recited the
26 applicant's proposal for restoration in findings 4 and 5.

1 Reciting the proposal without explaining whether the proposal
2 meets the criteria in the ordinance or is otherwise acceptable
3 to the county is not a finding but a mere statement by the
4 applicant. Finding 7 does nothing to explain compliance. The
5 reason placement of facilities will permit compliance is left
6 to the reader's imagination.

7 This assignment of error is sustained, in part.⁶

8 ASSIGNMENT OF ERROR NO. 4

9 The county's order violates ORS 215.203 to 215.263,
10 Statewide Planning Goals 1-3 and 5-15.

11 1. ORS 215.203 to 215.263.

12 Petitioners advise that ORS 215.203 to 215.263 require
13 non-farm uses in agricultural districts to be compatible with
14 the policies of ORS 215.243.⁷ Petitioners claim Ordinance
15 80-8 and ORS 215.203 to 215.263 together require an exception
16 be taken under Subsection 6 of Ordinance 80-8. As with the
17 statewide Goal 2, Part II, Subsection 6 (Ordinance 80-8)
18 requires exception findings showing (1) need, (2) alternative
19 locations, (3) consequences and (4) compatibility with adjacent
20 uses.⁸ Petitioner Olsen specifically rejects Section 3E of
21 Ordinance 80-8 which allows any land use action allowed under
22 ORS 215.213. See Ordinance 80-8, appended to Petitioner
23 Olsen's petition.

24 We agree with Respondent Western Pacific Construction
25 Materials, Inc., that mining and quarrying operations are
26 allowed under ORS 215.203 to ORS 215.213 and specifically

1 allowed as conditional uses under ORS 215.213(2)(b). See
2 Westerberg v Linn County, 7 Or LUBA 7 (1983); SEPA v Washington
3 County, 4 Or LUBA 236 (1981), aff 61 Or App 474, ___ P2d ___,
4 pet for rev den, 294 Or 682 (1983). It is not necessary to
5 take an exception to Goal 3 for a use allowed under ORS
6 215.213(2)(b). To require a goal exception for non-farm uses
7 permitted within farm use zones by ORS 215.213(2)(b) would
8 vitiate the state statute. We see nothing in Ordinance 80-8 to
9 suggest such a restrictive intent.

10 2. Violation of Goal 1.

11 Petitioners argue Goal 1 is violated because the county did
12 not relate the evidence in the record to the applicable
13 criteria. Petitioners take particular issue with the county
14 finding that no person, group, organization, agency or
15 jurisdiction was denied the opportunity to participate (see
16 record, p. 14). Petitioners say the Citizens Planning Advisory
17 Committee of the City of Scappoose asked for an additional
18 meeting to consider items during this process and no such
19 meeting was held. Petitioners also refer to what is described
20 as "gross inequalities in preparation time and presentation
21 time afforded the proponents and opponents of the
22 proceedings." Petition for Review at 29. Petitioners appear
23 to argue these procedural irregularities amount to a violation
24 of Goal 1.

25 We do not believe Goal 1 has any applicability to this
26 proceeding. In this case, notice and the opportunity to be

1 heard was controlled by Columbia County ordinance, and the
2 record indicates petitioners and respondents were afforded the
3 applicable due process protections during all phases of the
4 process. The goal does not have applicability under
5 circumstances in which the participants are afforded due
6 process of law by operation of the statute and county ordinance
7 (as well as a great body of case law).

8 The LCDC Determination issued June 7, 1983, required the
9 following language to be inserted in this opinion:

10 "1. The Commission does not concur with the analysis
11 of the Goal 1 issue. The Commission directs that this
12 portion of the proposed opinion (p. 13, lines 25-26
and p. 14 lines 1-7) be deleted and replaced with
language to the following effect:

13 "'Goal 1 does have application to individual land
14 use decisions prior to acknowledgment and may
15 require procedures beyond the minimum
16 requirements of due process. However, because
the county's decision is remanded for other
reasons set forth below, it is unnecessary to
reach the Goal 1 question.'"

17 3. Goal 2.

18 Petitioners argument regarding violation of Goal 2 is based
19 upon an assumption that the proposed use requires an exception
20 be taken as discussed above. Because we do not believe an
21 exception is required, we do not find a violation of Goal 2 as
22 urged by Petitioner Olsen.⁹ See also discussion under Goal
23 5, infra.

24 4. Goal 3.

25 Petitioners allege a violation of statewide planning Goal 3
26

1 on the ground the county's findings and conclusions about Goal
2 3 are inadequate. Petitioners take particular offense at the
3 county finding that

4 "the evidence presented demonstrates that the
5 requested use to explore, mine and process aggregate
6 resources on the subject property will not negatively
7 impact surrounding, existing agricultural
8 activities." See record, p. 17.

9 Also, petitioners argue the county did not discuss a U.S.
10 Department of Agriculture Soil Conservation Service report
11 recommending denial of the project. Record, p. 600.

12 The county recognizes this proposed use exists on
13 agricultural land. Record, p. 17-18. Respondent says under
14 215.213(2)(b), a mining and quarrying operation is permissible
15 on agricultural land. What must be shown is that the use meets
16 the requirements in Ordinance 80-8, Section 2(A)(2) and 2(B)(2).

17 Its findings recite that characteristics of the property
18 make it "expensive and difficult to operate farm machinery."
19 The findings also say the proposed use will be performed in
20 conjunction with a dairy operation which will not be impaired
21 by the use and that existing quarries in the area operate
22 without impairing farm uses.

23 Petitioners are correct that the findings are inadequate.
24 There is an absence of any discussion of the contradictory
25 evidence cited by petitioner. As well as discussing the high
26 quality of soils in the project area, the U.S. Department of
Agriculture Soils Conservation Service complained that

1 excavation of the land would "impact upon the ability of the
2 Scappoose Drainage District to maintain the integrity of the
3 remaining and adjacent lands." Record, p. 600. The county
4 needed to address this concern and the general concern of the
5 SCS about loss of agricultural land, Sane and Orderly
6 Development v Douglas County, 2 Or LUBA 196 (1981).

7 5. Goal 5.

8 Petitioners allege a violation of Goal 5 on the ground the
9 county's findings do not specify how or where any conflict
10 resolution required by the goal took place. Further, argue
11 petitioners, the findings do not show the county adequately
12 considered conflicting evidence in the record on Goal 5
13 issues.¹⁰ Petitioners also attack county statements about
14 fish and wildlife, water areas, wetlands, watersheds and
15 groundwater resources as not being findings but only a
16 recitation of evidence. They point with particularity to
17 findings showing that three cultural resource sites have been
18 located on the property, but that a valid inventory for these
19 resources does not exist. Petitioners say a condition required
20 by the county that an archeological survey be conducted is not
21 sufficient to comply with the goal.

22 Petitioners also argue the county failed to conduct an
23 adequate inventory of its aggregate resources as required by
24 Goal 5.¹¹ The purpose of the inventory is to provide
25 information as to which sites can be developed relatively free
26 of conflicting uses and to identify problems. See Osburn v

1 Lane County, 5 Or LUBA 172 (1982); Higginson v Lane County, 2
2 Or LUBA 234 (198_); Mechau v Baker County, 2 Or LUBA 371
3 (1981); Dept of Fish and Wildlife v Deschutes County, 1 LCDC
4 294 (1978). Without such an inventory, the county had no
5 authority to issue this permit. Petitioners go on to argue
6 that of the 12 resources which must be inventoried under Goal
7 5, this application particularly requires an inventory of (1)
8 land needed or desirable for open space, (2) mineral and
9 aggregate resources, (3) wetlands and wildlife habitat and,
10 finally, (4) cultural, scientific and historical resources.
11 Failure to conduct an inventory of these resources of necessity
12 violates Goal 5. Further, without the inventories, balancing
13 between conflicting resources may not be performed.

14 We agree with the respondent that the resource to be
15 protected is the aggregate resource. We do not agree, however,
16 that no balancing is required among the identified Goal 5
17 resources on this site. We do not find that agricultural land
18 is a conflicting resource protected by Goal 5, but we do find
19 that open space, fish and wildlife areas and habitats, water
20 areas, wetlands, watersheds and groundwater resources and
21 historic areas, sites, structures and objects are conflicting
22 resources applicable to this application. Westerberg v Linn
23 County, 7 Or LUBA 7 (1983).

24 The LCDC Determination issued June 7, 1983, required the
25 following language to be inserted in this opinion:

26 "2. Amend the first paragraph on page 17, lines 4

1 through 13, as follows:

2 "We agree with the respondent that the resource
3 to be protected is the aggregate resource. We do
4 not agree, however, that no balancing is required
5 among the identified Goal 5 resources on this
6 site or with resources in other Goals. We do not
7 find that agricultural land is a [conflicting]
8 resource protected by Goal 5. However, OAR
9 660-16-005 states that the requirements of other
10 Statewide Planning Goals must be considered,
11 where appropriate, in any analysis of the
12 economic, social, environmental and energy
13 consequences of conflicting uses."

14 "OAR 660-16-005 defines a conflicting use to be
15 one which, if allowed, would negatively impact a
16 Goal 5 resource site. In this case, agricultural
17 use is a conflicting use with mining, since
18 allowing such use, to the exclusion of the mining
19 operation, would negatively impact the Goal 5
20 resource site. [but] [w]We do find that open
21 space, fish and wildlife areas and habitats,
22 water areas, wetlands, watersheds and groundwater
23 resources and historic areas, sites, structures
24 and objects are conflicting resources applicable
25 to this application. Westerberg v. Linn County,
26 7 Or LUBA 7 (1983). OAR 660-16-005 states that,
where conflicting uses have been identified, the
Goal 5 resource site (in this case, mining) may
itself have an impact on these other uses, and
that these impacts must be considered in
analyzing the economic, social, environmental and
energy (ESEE) consequences."

18 With respect to fish and wildlife life areas and habitats,
19 the county relied on the Oregon Department of Fish and
20 Wildlife's protection plan for Columbia County. The county
21 also claims that it has policies that require steps to be taken
22 to minimize impacts of development on streams in the county.
23 The county's findings state the development will be set back
24 from wetlands and sloughs, that steps will be taken to minimize
25 impacts (unstated), that design features will be added to the
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1 reclamation plan to discourage bird use next to the airport and
2 that the development meets Goal 5.¹² We think this
3 explanation is insufficient to show what conflicts, if any,
4 exist between the known fish and wildlife habitats and this
5 development. The county neither explains what steps will be
6 taken to minimize impacts on fish and wildlife areas and
7 habitats, nor explains the impact of this use on fish and
8 wildlife areas and habitats.

9 As to water areas, wetlands, watersheds and groundwater
10 resources, the county findings again are sketchy. The county
11 states that it will protect the wetlands by requiring
12 excavation to be outside wetlands areas.¹³ The county
13 concludes that the development will not affect wetlands and
14 will not affect groundwater. It does not cite any facts to
15 support its conclusions. The county even seems to contradict
16 its conclusions by stating its reclamation plan purposes to add
17 wetland habitat, and reciting that it has an agreement for
18 managing groundwater. We must conclude, therefore, the county
19 has not fully explained how it is this development will affect
20 water areas, wetlands, watersheds and groundwater resources.¹⁴

21 As to cultural areas, the county notes that there is no
22 valid inventory under OAR 660-16-000 of Cultural Resource
23 Sites. The county appears in its finding on cultural areas to
24 adopt a condition recommended by the applicant that a cultural
25 resource survey be done by a qualified independent party.¹⁵
26 However, a county condition requires that archeological finds

1 be recovered within one year. It is not clear from the
2 condition whether that one year is from the date of a find of
3 an archeological site or one year from the date of the grant of
4 the permit. Goal 5 requires that "programs" be developed to
5 achieve the goal where conflicting uses have been identified.
6 The county appears here to have identified a conflicting use.

7 We don't believe the "condition" is a satisfactory
8 "program" to achieve the goal. There is no analysis of the
9 "economic, social, environmental and energy" consequences of
10 the archeological sites versus the mineral and aggregate
11 resource. The condition appears only to protect, temporarily,
12 the archeological resource. Presently, the county is unaware
13 of the value of the archeological resource, and therefore a
14 complete Goal 5 analysis is not yet possible. While it may be
15 possible to fashion conditions that would adequately protect
16 the resource and thus achieve the goal it does not appear to us
17 that the county's condition does so. We believe the county
18 must more completely explore the consequence of the conflicting
19 use and whether or not its condition will achieve the goal.

20 With respect to the issue of whether or not the county
21 should have taken a Goal 2 exception for Goal 5, we note OAR
22 660-04-010 recognizes that some goals have within them the
23 equivalent of an exceptions process.¹⁶ Goal 5 is such a
24 goal. We do not believe an exception to Goal 5 is possible or
25 necessary. Goal 5 does not protect the listed resources
26 absolutely, but requires a balancing test. The emphasis is on

1 the county's analysis of its resources, not whether it is
2 impossible to meet the goal. Indeed, it may be that the county
3 will choose the mineral and aggregate resource over all other
4 resources, but before it does so, it must have appropriate
5 inventories and properly identify the economic, social and
6 environmental and energy consequences of these conflicting uses.

7 6. Goal 6.

8 Petitioners allege a violation of Goal 6 on the ground that
9 the county's findings on air, water and land resource quality
10 are not adequate. Petitioners claim the county's order states
11 only that the application has been reviewed by the Corps of
12 Engineers, Department of State Lands, Department of
13 Environmental Quality (DEQ) and Scappoose Drainage District.
14 As such, it is a mere recitation of evidence, not an
15 affirmative finding that Goal 6 has been met. Petitioners
16 point out no hearing has been scheduled by DEQ, and a finding
17 that the county will rely on DEQ to provide the standards and
18 enforcement does not constitute compliance with Goal 6. A
19 legal requirement to comply with existing laws is not
20 sufficient to demonstrate that the same will be undertaken,
21 according to petitioner. See Federation of Seafood Harvesters
22 v. Fish and Wildlife Comm., 291 Or 452, 632 P2d 777 (1981).

23 Petitioners also say the county also has not adequately
24 considered conflicting evidence. Testimony exists that water
25 quality in domestic wells will be adversely affected. Record
26 152 and 200. The condition of approval requiring the applicant

1 to survey wells in the surrounding area and submit the
2 information to the planning department is not adequate
3 protection, according to petitioner. Petitioners also say dust
4 and noise levels will increase with aggregate extraction. See
5 record 1066, 1067.

6 The respondent argues the issue of well contamination was
7 based on the mistaken premise that the applicant could not use
8 a wet mining process. With this wet mining process, no drawing
9 down of nearby wells would occur. See record 193-194.

10 Respondent argues there was substantial evidence, therefore,
11 from which the board could conclude there would be no risk to
12 groundwater. As to noise, respondent cites the applicant's
13 expert (Mr. Hopkins) who found that the operation could comply
14 with applicable DEQ regulations. See record 1066, 1067.

15 Similarly, evidence exists in the record to show dust emissions
16 would be within state regulations. Record 321.

17 We agree with petitioners. The county's findings on Goal 6
18 only state that applications have been reviewed by the Corps of
19 Engineers, Division of State Lands, Department of Environmental
20 Quality and Scappoose Drainage District. There are findings
21 that waste and process discharges will be minimal, and findings
22 that air emissions will be controlled by acceptable methods and
23 be within adopted standards. There is no finding that water
24 quality and noise standards will be met. We can perhaps assume
25 the county understood that all requirements were met, but the
26 county has not said so. In order for the county to rely on the

1 requirements of other agencies, it must adopt them as its own.
2 Abrego v. Yamhill County, 3 Or LUBA 350, 359 (1981).

3 7. Goal 7.

4 Petitioners argue a violation of statewide Goal 7 on the
5 ground that the county's findings and conclusions about Goal 7
6 are not adequate.¹⁷ The county found there was no objection
7 to the use of the land by the Scappoose Drainage District.
8 Petitioners claim this finding is a mere conclusion without
9 basis in the record. Petitioners argue there is conflicting
10 evidence about Goal 7 and compliance with the goal and the
11 evidence has not been resolved. Petitioners point to evidence
12 about a possible flood hazard (record 1023) and excess water
13 (record 1059).

14 Petitioners are aware that the applicant and the Scappoose
15 Drainage District have agreed Western Pacific will (1) construct
16 dikes, (2) compensate the drainage district for additional
17 pumping costs at the rate of three times the actual excess cost
18 and (3) maintain the liability insurance policy. Petitioners
19 dismiss the agreement and argues that monetary compensation
20 after damages have occurred does not meet Goal 7.

21 Respondent argues that Goal 7 has been met. The agreement
22 with the Drainage District adequately meets the purpose of the
23 goal by insuring the integrity of the drainage and diking
24 improvements. Respondent quotes Osborne v. Lane County, 5 Or
25 LUBA 172, 188 (1982) for the proposition that:

26 "What is required here is enough evidence to show

1 potential problems and to show the problems are
2 solvable." (Citations omitted).

3 The county finds no identifiable potential disaster or
4 hazard conditions exist on the site other than those protected
5 by a dike constructed by the Corps of Engineers. The Scappoose
6 Drainage District, the county finds, was formed to insure the
7 integrity of the dike system. The county finds that because
8 the site is within the district, any use must be reviewed by
9 the district; and, pursuant to that review, an agreement has
10 been made between the applicants and the district.

11 As we understand the record in this case, the county's
12 finding about the existence of a hazard and its recognition of
13 the district as "the mechanism for insuring the integrity of
14 the dike system," is correct. Further, the county specifically
15 has found that the agreement "is an acknowledgment by the
16 Drainage District that the potential hazard that currently
17 exists on the site can be mitigated and controlled." We
18 believe the findings are adequate to show compliance with Goal
19 7, therefore. The county has identified a hazard and has
20 identified means of controlling the hazard. We do not believe
21 the goal requires any more. See generally, Fayewright
22 Neighborhood v City of Salem, 6 Or LUBA 167, 173 (1982),
23 (discussing similar points regarding Goal 11).

24 Petitioners then allege Goals 8 through 14 are violated.
25 The allegation is as follows:

26 "Goal 8-14. The county's findings of fact and

1 conclusions of law regarding Goals 8 through 14 are
2 similarly inadequate for the same reasons stated
3 above. Petitioner Olsen's failure to discuss these in
4 detail is not to be interpreted as a waiver of
objections to the adequacy of these findings. See
Petitioner Olsen's proposed findings (R. 79-85)."
Petitioner Olsen's Petition for Review at 40.

5 We do not believe this allegation is sufficiently detailed for
6 us to review. We believe we are under no obligation to find
7 the county in violation of goals where the manner of violation
8 is alleged without detail or explanation. We note the county
9 has made findings on each of the Goals 8 through 14, and there
10 is no allegation as to how the findings or the supporting
11 record is defective. We will not hunt through the findings and
12 the record to discover problems.

13 8. Greenway Extraordinary Exception.

14 Petitioners complain the Greenway Extraordinary Exception
15 adopted by the county is simply an adoption of findings
16 submitted by Western Pacific. The county's findings only refer
17 to the existence of evidence elsewhere, according to
18 petitioners. Petitioners cite applicable criteria as that
19 contained in OAR 660-20-030 and OAR 660-20-025, and these
20 criteria have not been met in the findings.

21 According to respondent, the greenway in this area is 150
22 feet wide. The application seeks approval to extend a conveyor
23 belt through the greenway to the Multnomah Channel together
24 with the destruction of a loading dock to facilitate barge
25 loading. Only the conveyor and the dock are in the greenway,
26

1 according to respondent, and no excavation, processing,
2 stockpiling or truck usage will occur on the greenway. See
3 record 653 through 655. Respondent argues the project involves
4 an insignificant amount of land in the greenway.

5 The county findings recite that for counties without
6 acknowledged comprehensive plans, Goal 15 does not apply but
7 OAR 660-20-005 through OAR 660-20-065 does apply. In Columbia
8 County any development under the rule must be accomplished
9 through a rural area greenway extraordinary exception. The
10 exception is to be used "sparingly for unusual cases only."
11 OAR 660-20-030(1). The criteria, along with the findings, are
12 as follows:

13 "2. The county governing body may authorize any
14 Greenway Extraordinary Exception to 660-20-017 of
15 this Order in rural areas and issue a permit
16 when, using the same procedures provided under
17 660-20-025(3) the county governing body finds
18 from the record;

19 "a. That there is an extraordinary, unnecessary and
20 unreasonable hardship caused by strict
21 enforcement of this Order which can be relieved
22 only by authorizing an Exception to this Order;

23 "As stated in the original application, the
24 company plans to distribute 99% of the material
25 extracted from the 700 acre operational site by
26 barge. To not grant an Exception would cause an
extreme hardship on the applicants because no
other viable or economically feasible location
for the docking facility is available which would
have as little impact on the Greenway itself as
the proposed site. Other sites would impact
additional agricultural land adjacent to the
Greenway, more residences in the area, use of the
Coon Island area of the Multnomah Channel, and
boating originating from the upstream moorages.

"b. There are extraordinary circumstances and

1 conditions applying to the land, building or use
2 which do not apply generally to other such lands,
3 buildings or uses in the Willamette River
4 Greenway;

5 "It has been determined that the amount of
6 material to be distributed from the site and the
7 locational relationships between the source and
8 market areas mandate the use of waterborne
9 transportation. This has been proven by an
10 adjacent operator (Cascade Aggregates) who has
11 actively used barging as a means of transport
12 from the source to the market area for several
13 years.

14 "c. That the granting of the Exception will not be
15 materially detrimental to the Willamette River
16 Greenway in the area affected by the proposed
17 Exception;

18 "Evidence present into the record demonstrates
19 that minimal disturbance of the Greenway area
20 will occur because actual operations and
21 equipment to take place and located within the
22 Greenway will be limited as identified in the
23 application. The limited operations and
24 equipment have been determined to present a
25 minimally detrimental impact on the affected
26 portion of the Greenway.

27 "d. That the granting of the Exception will be in
28 general harmony with the intent and purpose of
29 this Order and will be consistent with the
30 adopted Comprehensive Plan;

31 "The applications in the record indicate that the
32 majority of the total proposed operations will
33 occur outside the Greenway area. The minimal
34 extent of operations and equipment to occur
35 within the Greenway will permit the area to
36 remain in general harmony with the intent and
37 purpose of the Interim Order and the Greenway
38 itself. The adopted county comprehensive plan
39 contains no provisions for the Greenway; however,
40 the county has a proposed Greenway ordinance
41 currently under consideration. Although not
42 required, the application also addresses and
43 complies with the goals and policies of the
44 proposed ordinance as found on pages 27 through
45 34 of the application booklet which is a part of
46 the record.

1 "e. That a copy of any application has been sent and
2 processed in the same manner as is provided in
3 paragraph 660-20-025(5) of this Order; and

4 "Notification of the Department of Transportation
5 of the State of Oregon was provided by Columbia
6 County.

7 "f. That the county makes the final findings as those
8 required under 660-20-025(2)(b)(A), (B) and C of
9 this Order."

10 We have had occasion to review language such as that
11 appearing in 2(a) above before. A requirement for an
12 extraordinary, unnecessary and unreasonable hardship which can
13 only be relieved by an exception is very much like variance
14 language. The requirements imposed by this standard are
15 harsh. Faye Wright Neighborhood Planning Council v City of
16 Salem, 3 Or LUBA 17 (1981). It has been consistently held that
17 "extraordinary, unnecessary and unreasonable hardship" means
18 conditions so severe as to deprive an individual of beneficial
19 use of his land. Lovell v City of Independence, 37 Or App 3,
20 586 P2d 99 (1978), 3 Anderson American Law of Zoning, Section
21 18.51, 18.22 (2d Ed, 1977). The finding made by the county
22 does not show that the applicant would be deprived of
23 beneficial use of his land.

24 The second of the criteria, there are "extraordinary
25 circumstances and conditions applying to the land" that do not
26 apply to other lands generally is similarly harsh language.
The county finding does not explain how it is that there are
any extraordinary circumstances applying to his property that

1 did not apply to others. Indeed, it is very difficult to do
2 so. See generally, Lovell, supra.

3 Whether the drafters of OAR 660-20-030 were aware of the
4 extraordinary burden required to show compliance with the first
5 of its criteria is not a matter for this board to review. The
6 language chosen, however, makes it incumbent upon the applicant
7 to show, in essence, that he would suffer loss of beneficial
8 use of his property without the exception. That high standard
9 has not been met in this case.

10 We note in passing the remaining findings required by the
11 rule appear to have been adequately made by the county, but the
12 rule requires compliance with all of its criteria, not simply
13 the remaining four criteria.

14 The record in this case is extensive, it may be that on
15 remand, the county need only make more detailed findings based
16 on its existing record. However, we do not pass on the
17 adequacy of the record to support new findings.

18 This matter is remanded to Columbia County for further
19 proceedings not inconsistent with this opinion.

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FOOTNOTES

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3 1
4 The record consists of 5 volumes plus certain exhibits.
5 The record throughout the volumes is numbered consecutively.

6 2
7 The relevant provisions are as follows:

8 "(2) If the application proposes a use other than a
9 farm-related use permitted outright by ORS 215.213,
10 the procedure shall be provided in 2.B below.

11 "B. The procedure for Board hearings under 2 (A)
12 2 shall be as follows:

13 "(1) Notice. The Planning Director shall send
14 notice of the proposed action and hearing at least 10
15 days in advance of the hearing by

16 "(a) publishing notice in a newspaper of general
17 circulation in the county;

18 "(b) mailing notice to the owners of property
19 within 250 feet of the property line of the
20 parcel on which the action is proposed. Owners
21 of property shall be determined by the Assessor's
22 Roll.

23 "(c) mailing notice to the members of the CPAC
24 or CPAC's for the area in which the parcel or
25 affected property is located;

26 "(d) mailing notice to affected agencies.

27 "(2) Hearing. Under 2(A) 2 the Board shall hold
28 a hearing at the earliest regularly scheduled Board
29 meeting and receive oral or written testimony on the
30 relevant criteria for or against the application.
31 After hearing such testimony, the Board shall make
32 findings of fact and conclusions of law whether the
33 proposed land use action

34 "(a) is in accordance with the Comprehensive
35 Plan, if adopted;

36 "(b) is consistent with the applicable statewide
goals, or is consistent with the Comprehensive

1 Plan if both adopted and acknowledged;

2 "(c) meets the requirements of this ordinance
3 and any other applicable ordinance or regulation."

4 3

Petitioner Elaine Gunderson Olsen's assignments of error:

5 "The notice and hearing requirements of Columbia
6 County Ordinance 80-8 were not met. An 80-8 hearing
7 was not held, and the county's decision is, therefore,
8 invalid." 1st Assignment of Error.

9 "The county's order is not supported by adequate
10 findings of fact and conclusions of law as required by
11 ORS 215.402 to 215.422, Columbia County Ordinance
12 80-8, and applicable statewide planning goals." 2nd
13 Assignment of Error.

14 "The county's order violated ORS 215.203 to 215.263,
15 Goals 2 and 3 and Ordinance 80-8 by failing to
16 identify and address the relevant criteria,
17 specifically the requirement of finding need and
18 taking other precautions for the preservation of
19 agricultural and resource lands." 3rd Assignment of
20 Error.

21 Petitioner Scappoose Sand & Gravel Company's assignments of
22 error:

23 "Respondent has, in its ordinance and regulations, no
24 standards for the issuance of conditional use permits,
25 and was therefore incapable of lawfully approving this
26 application." 1st Assignment of Error.

"Respondent failed to analyze conflicting uses, or
their economic, social, environmental and energy
consequences, in violation of statewide goal 5." 2nd
Assignment of Error.

"Respondent failed to conduct an inventory of its
aggregate resources, as required by goal 5." 3rd
Assignment of Error.

"Respondent did not apply goal 5, and took no goal 2,
part II exception." 4th Assignment of Error.

25 Petitioners Cindy Kalagidis Ede and Jeanine K. Wehage's
26 assignment of error:

1 "The Columbia County Board of Commissioners erred by
2 approving the Conditional Use Permit to mine the 700
3 acres, by failing to analyze correctly or fully
4 conflicting uses under Goal 5:"

4

"(6) Approval or denial of a permit shall be based
upon and accompanied by a brief statement that
explains the criteria and standards considered
relevant to the decision, states the facts relied upon
in rendering the decision and explains the
justification for the decision and on the criteria,
standards and facts set forth."

5

Findings 4, 5 and 7 state:

"(4) The applicant proposes to restore and reclaim the
site so that after operations are completed, there
will be two fresh water lakes which have potential
uses for fish farming, recreational areas for fishing,
hunting and other water related activities and
potential lakefront housing.

"(5) The proposed reclamation plan includes provision
for a landscaped screening berm, plantings selected
for noise reducing qualities and visual screening and
a landscaped sublevee berm with plantings selected for
native and naturalizing qualities to compliment the
existing slough area. These general features are
disclosed on Application Exhibit 17, attached hereto.

* * *

"(7) The proposed location of lakes, washing and
processing facilities, stockpiling, conveyor systems
and excavation areas will permit the operator to
comply with the "Site Improvement Standards" and
"Operations Standards" established by Section 5.010
through 5.020 and Section 6.010 through 6.070 of the
Mining Ordinance."

6

Petitioners next attack the county's findings under
Ordinance 80-8. The sum and substance of this assignment of
error is that the requirements of Ordinance 80-8 have not been
met because the county failed to take an exception to this
proposal. This allegation is discussed under assignment of

1 error no. 4(1), infra.

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3 ORS 215.243 provides:

4 "(1) Open land used for agricultural use is an
5 efficient means of conserving natural resources
6 that constitute an important physical, social,
7 aesthetic and economic asset to all of the people
8 of this state, whether living in rural, urban or
9 metropolitan areas of the state.

10 "(2) The preservation of a maximum amount of the
11 limited supply of agricultural land is necessary
12 to the conservation of the state's economic
13 resources and the preservation of such land in
14 large blocks is necessary in maintaining the
15 agricultural economy of the state and for the
16 assurance of adequate, healthful and nutritious
17 food for the people of this state and nation.

18 "(3) Expansion of urban development into rural areas
19 is a matter of public concern because of the
20 unnecessary increases in costs of community
21 services, conflicts between farm and urban
22 activities and the loss of open space and natural
23 beauty around urban centers occurring as the
24 result of such expansion.

25 "(4) Exclusive farm use zoning as provided by law,
26 substantially limits alternatives to the use of
rural land and, with the importance of rural
lands to the public, justifies incentives and
privileges offered to encourage owners of rural
lands to hold such lands in exclusive farm use
zones."

27 8

28 Goal 2 Part II - Exceptions:

29 "When, during the application of the statewide goals
30 to plans, it appears that it is not possible to apply
31 the appropriate goal to specific properties or
32 situations, then each proposed exception to a goal
33 shall be set forth during the plan preparation phases
34 and also specifically noted in the notices of public
35 hearing. The notices of hearing shall summarize the
36 issues in an understandable and meaningful manner.

1 "If the exception to the goal is adopted, then the
2 compelling reasons and facts for the conclusion shall
be completely set forth in the plan and shall include:

- 3 "(a) Why these other uses should be provided for;
4 "(b) What alternative locations within the area
could be used for the proposed uses;
5 "(c) What are the long term environmental,
economic, social and energy consequences to
6 the locality, the region or the state from
not applying the goal or permitting the
alternative use;
7 "(d) A finding that the proposed uses will be
compatible with other adjacent uses."
8

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9

10 Petitioner Scappoose Sand & Gravel's allegation of Goal 2
11 violation is considered under assignment of error no. 2,
supra. The allegation is that the county lacks sufficient
12 standards to approve the requested permit. Standards are
required by operation of Goal 2's purpose to

13 "establish a land use planning process and policy
14 framework for all decisions and actions related to use
of land and to assure an adequate factual base for
15 such decisions and actions."
16

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17 "GOAL 5: To conserve open space and protect natural and
scenic resources.

18 "Programs shall be provided that will: (1) insure open
19 space, (2) protect scenic and historic areas and natural
resources for future generations, and (3) promote healthy
20 and visually attractive environments in harmony with the
natural landscape character. The location quality and
quantity of the following resources shall be inventoried:

- 21 "a. Land needed or desirable for open space;
22 "b. Mineral and aggregate resources;

23 "d. Fish and wildlife areas and habitats;

24 "g. Water areas, wetlands, watersheds and groundwater
resources;
25 ***
26 "i. Historic areas, sites, structures and objects;
"j. Cultural areas;

1 ***

2 "Where no conflicting uses for such resources have
3 been identified, such resources shall be managed so as to
4 preserve their original character. Where conflicting uses
5 have been identified the economic, social, environmental
6 and energy consequences of the conflicting uses shall be
7 determined and programs developed to achieve the goal.

8 "Cultural Area - refers to an area characterize by
9 evidence of an ethnic, religious or social group with
10 distinctive traits, belief and social forms.

11 "Historic Areas - are lands with sites, structures and
12 objects that have local, regional, statewide or national
13 historical significance."

14

11

15 Petitioner Scappoose argues that the study by the Oregon
16 Department of Geology and Mineral Industries, the inventory
17 that does exist, is not an adequate inventory because it does
18 not address the quality of the rock and does not access the
19 county's need for the rock.

20

12

21 As to fish and wildlife areas and habitats, respondent
22 summarizes the board's findings as follows:

23 "(a) The Oregon Department of Fish and Wildlife
24 prepared a Fish and Wildlife Protection Plan for
25 Columbia County,

26 "(b) Agricultural lands have feeding value for
27 waterfowl, sloughs and waterways have value for
28 fur bearers,

29 "(c) The site development plan indicates the
30 operations will be set back from and not
31 conducted in wetlands and sloughs thereby
32 protecting the areas,

33 "(d) Design features of the reclamation plan will
34 discourage bird use of the lake that will be
35 created by the operations." See Record, p.
36 118-119.

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38 "(a) Based on a wetlands and waterways study in 1982,

1 U. S. Fish and Wildlife National Wetland
2 Inventory and a groundwater resources study by
3 the U. S. Corp of Engineers and Ogden and Beeman,
4 Engineers (which studies are in the record),

5 "the groundwater level appears to directly
6 reflect local precipitation. (Rec. 790-795).

7 "(b) The identified water areas and wetlands on the
8 site will be protected in that no development or
9 excavation will occur in such areas. (Rec.
10 27)." Respondent Western Pacific Brief at 22.

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We hasten to add that whether or not the development will affect wetlands on the site is not the whole story. The county must consider whether there will be any affect on wetlands in the area, not simply on site.

It may be true that development will not adversely affect such resources, indeed, there is considerable evidence in the record as part of the applicant's permit application (Record, pp. 995-1128) as to the nature of the project, the land, wildlife and wetlands. However, the county findings do not say they accept this material or even reference it. We do not know, in other words what the county believed.

15

"The applicants, their successors and assigns shall commission an archaeological inventory which shall be conducted prior to the beginning of any mining activity. Such inventory shall be conducted by a qualified archaeologist. Any archaeological finds must be recovered within one (1) year and mining will be allowed on those areas not known to contain archaeological sites and caution will be exercised when mining in areas suspected to contain archaeological sites." Record, p. 52.

16

"660-04-010 (1) There are three methods for resolving conflicts between goal provisions and conflicting land uses:

"(a) The exceptions process;

"(b) Use of conflict resolution provisions contained within specific goals; and

1 "(c) The balancing of competing uses and goals during
2 the comprehensive planning process."

3
4 17

5 Goal 7: "To protect life and property from natural
6 disasters and hazards.

7 "Developments subject to damage or that could result
8 in loss of life shall not be planned nor located in known
9 areas of natural disasters and hazards without appropriate
10 safeguards. Plans shall be based on an inventory of known
11 areas of natural disaster and hazard.

12 "Areas of Natural Disaster and Hazards - are areas
13 that are subject to works of man, such as stream flooding,
14 ocean flooding, ground water, erosion and deposition,
15 landslides, earthquakes, weak foundation soils and other
16 hazards unique to local or regional areas."
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