

1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioner challenges a decision by Marion County

4 "entitled Conditional Use Case No. 82-83, Clerk's File
5 No. 3431-P2, which became final on May 11, 1983, and
6 which involves a decision allowing applicants to
extract gravel from the Greenway Belt, adjacent to
Petitioners' property."

7 FACTS

8 The subject property is in an exclusive farm use zone
9 within the 100 year floodplain and the Willamette River
10 Greenway. It is 30 acres in size and is bordered on the west
11 by the Willamette River and on the remaining sides by property
12 zoned for exclusive farm use. The property is within the
13 Willamette River floodway. There is a gravel removal site to
14 the north of the subject property, and one mile to the north is
15 the Willow Lake Sewage Treatment Plant. The State Highway
16 Department owns property on this same gravel bar to the east of
17 the applicants' property. The Highway Department has extracted
18 gravel from the bar. The plant is on the edge of the
19 Willamette floodway and is within the 100 year floodplain.
20 There is an old river channel crossing the subject property,
21 the path of which is aimed at petitioner's adjacent property.

22 The applicants herein, Douglas and Linda Turnidge, were
23 given a floodplain/greenway development permit to place a farm
24 related dwelling on a high bank in the approximate middle of
25 the property. Thereafter, the applicants filed an application
26 for a conditional use permit to allow gravel extraction and a

1 mix plant along with permission to stockpile extracted gravel
2 on a three acre portion of a gravel bar. The applicants
3 propose to extract some 250,000 yards of gravel from the gravel
4 bar.

5 The conditional use application was denied by the Marion
6 County hearings officer. That denial was appealed to the
7 Marion County Board of Commissioners, and the commissioners
8 granted the application along with conditions on May 11, 1983.
9 This appeal followed.

10 ASSIGNMENT OF ERROR NO. 1

11 "THE MARION COUNTY BOARD OF COMMISSIONERS ERRED BY
12 FAILING TO GIVE PETITIONER ADEQUATE TIME TO REBUT
13 ENGINEERING TESTIMONY SUBMITTED AT THE BOARD HEARING
14 FOR THE FIRST TIME, VIOLATING PETITIONER'S RIGHT TO
15 DUE PROCESS."

16 Petitioner alleges one of the main issues in the proceeding
17 before the county was possible flood damage to adjacent
18 properties, including petitioner's, if this proposal were
19 allowed. Critical to this possible damage was engineering
20 testimony. There was no testimony from a qualified engineer or
21 other expert on this issue before the hearings officer, but the
22 applicants produced an engineer who testified as to the safety
23 of the property before the County Board of Commissioners.
24 Thereafter, the petitioner requested 30 days to submit rebuttal
25 engineering data, but the county granted only 2 days for such
26 submittal beyond the date of the public hearing. Petitioner
complains this time was too short to adequately rebut the
testimony of the applicants' expert engineer. Petitioner cites

1 Fasano v. Washington County, 264 Or 574, 507 P2d 23 (1973) and
2 Lower Lake Subcommittee v. Klamath County, 3 Or LUBA 55 (1981),
3 in support of her view that a "reasonable opportunity" for
4 rebuttal is necessary in order for the proceeding to afford due
5 process. Without this reasonable opportunity, the petitioner
6 says she has been denied due process and the decision must be
7 returned to the county to enable petitioner to submit rebuttal
8 evidence.

9 Respondent county argues that a person who is ill prepared
10 in a proceeding is not entitled to an automatic extension of
11 time for review of evidence presented by the other side. The
12 county argues

13 "[t]he Petitioner should have been prepared to" show
14 that the proposed conditional use did not meet the
15 criteria of the Marion County Zoning Ordinance. The
16 failure to be prepared at the original hearing is the
17 Petitioner's error and cannot be ascribed to the Board
18 of Commissioners." Brief of Respondent County at 3.

19 The county points to the record and argues petitioner
20 submitted no information as to what she intended to present in
21 rebuttal.¹ The Board understands the county to believe
22 petitioner must offer more than a vague request for review by a
23 "professional person" before the county is obliged to delay its
24 proceeding.

25 The applicant argues petitioner requested an engineer's
26 report in January of 1983 when the proceeding was before the
county's hearings officer. When this case was appealed to the
county commission, petitioner could have used the time to

1 gather engineering evidence or obtain the testimony of an
2 engineer, according to the applicant. The applicant further
3 argues petitioner was present during the testimony of the
4 engineer and had an opportunity to respond to that testimony at
5 the hearing. The applicant finally argues that the county put
6 a condition on the permit requiring another engineering review
7 on the possibility of flooding. The engineer's report was,
8 according to the applicant, also sent to the Army Corps of
9 Engineers which is "obviously an independent party in this
10 case." Brief of Applicant at 4.

11 The application for the conditional use permit submitted to
12 the Marion County Board of Commissioners on March 25, 1983,
13 clearly states that

14 "Mr. Turnidge will offer evidence from a registered
15 engineer to demonstrate that his operation will not
16 increase the flood levels downstream. The Board
17 believes persons interested in land use proceedings
18 have an obligation to apprise themselves of material
19 submitted so that they are in a position to make
20 informed comment whether for or against (or about) the
21 proposal." Record, Exhibit A, page 2.

22 There is no assertion that the application was somehow secret
23 or not available to the petitioner, and the Board believes the
24 petitioner and parties to land use proceedings in general were
25 under an obligation to familiarize themselves with the
26 application and the record of the proceeding. Reliance on the
27 testimony of an engineer was clearly stated in the application,
28 and petitioner should have prepared herself accordingly.

29 The first assignment of error is denied.

1 ASSIGNMENT OF ERROR NO. 2

2 "THE MARION COUNTY BOARD OF COMMISSIONERS ERRED BY
3 FAILING TO REQUIRE CERTIFICATION FROM A REGISTERED
4 PROFESSIONAL ENGINEER OR ARCHITECT DEMONSTRATING THAT
5 ENCROACHMENT SHALL NOT RESULT IN ANY INCREASE IN FLOOD
6 LEVELS DURING THE OCCURRENCE OF THE BASE FLOOD
7 DISCHARGE, IN VIOLATION OF MARION COUNTY ZONING
8 ORDINANCE CHAPTER 178, SECTION J."

9 In this assignment of error petitioner argues MCC
10 178.070(J)(1) requires the "certification" by an engineer or an
11 architect. The "certification" referred to in the ordinance is
12 the same "certification" provided for in ORS 672.020(2),
13 according to petitioner.

14 "All final drawings, specifications, designs, reports,
15 maps and plans issued by a registrant shall be stamped
16 and signed by the registrant. The signature and stamp
17 of a registrant constitutes a certification that that
18 document was prepared by him or under his direct
19 supervision." ORS 672.020(2).

20 Petitioner says the purpose behind the ordinance and the
21 statute is to obtain the best information possible before
22 making a decision such as the one at issue here.

23 Also, petitioner notes the county required additional
24 reports to be submitted on engineering issues, and this
25 condition indicates to petitioner an uncertainty on the part of
26 the county as to safety. This uncertainty should not exist and
27 would not had the county obtained the relevant information and
28 certification in the first instance, according to petitioner.

29 The condition is as follows:

30 "The applicant shall submit to the Department of
31 Public Works a report by an engineer assessing the
32 potential for the proposed excavation to cause the

1 redirection of river flow or increased damage from
2 flooding along the old river channel trending
3 northward just east of the applicant's property. The
4 report shall be submitted to the Corps of Army
5 Engineers [sic] for review. If the Corps finds that
6 there are actions that can be or should be taken by
7 the applicant to preclude damage to other properties
8 the applicant shall sign a performance agreement with
9 Marion County before beginning an excavation which
10 ensures that the recommended actions are
11 implemented." Record 9.

12 The county advises the intent of its ordinance is to insure
13 the planning director will be provided with evidence by
14 engineers or architects that an encroachment into the
15 floodplain will not divert flood waters or raise the
16 floodplain. The county states the condition of approval,
17 quoted above, requires the applicant to submit such a report;
18 and the planning director, under these circumstances, performs
19 only a ministerial function in that he must review the report
20 and then issue or not issue the permit for extraction. The
21 county states it interprets the provisions of Chapter 178 to
22 require compliance as a condition of final approval, not as
23 part of the conditional use process.² That is, requirement
24 for the statement for certification of an engineer or architect
25 is a requirement of the floodplain development permit which
26 follows a conditional use permit. Petitioner has put the "cart
27 before the horse," according to the county.

28 The county goes on to say it has complied with condition 8
29 because two engineers evaluated the potential impacts from the
30 proposed excavation. The letter from Martin Boatwright
31 (Appendix B, Page 15 to County's Brief) addresses the direction

1 of flow and flooding issues, and the letter was transmitted to
2 the Army Corps of Engineers which, in turn, stated there would
3 be no adverse impact on flooding in the area. See Id. at 18.
4 The county posits that the Corps letter, signed by a registered
5 engineer, constitutes the "certification" required in MCZO
6 178.070(J).³

7 The applicant adds MCZO 119.060 allows conditional use
8 permits, and as the matter before the county was a conditional
9 use permit, it was perfectly appropriate for the county to
10 issue a conditional approval.

11 The Board finds the provisions which govern conditional use
12 permits are found in MCZO Chapter 119. Under Chapter 119, the
13 criteria applicable for approving a conditional use are found
14 in 136.040(d). However, there is nothing in Chapter 119 or
15 Chapter 136 of the conditional use ordinance that suggests that
16 the provisions of Chapter 178 are to be used as criteria for
17 the issuance of a conditional use permit.

18 While the Board agrees the floodplain development permit is
19 a separate and distinct permit activity and there is nothing in
20 the conditional use requirements or Chapter 136 that requires a
21 certification by an architect or an engineer, the county's
22 order clearly states that it is approving a conditional use
23 permit and a greenway and floodplain development permit.

24 "VI Order and Conditions of Approval

25 "It is hereby found that the applicants have met
26 their burden approving the applicable criteria and
standards, and therefore it is hereby ordered that the

1 application for a conditional use permit and Greenway
2 and floodplain development permits are APPROVED
3 subject to the following conditions. * * * * " Record
4 8.

5 Also, the county order lists as relevant criteria the
6 Greenway Management Ordinance (Ch 179) and the Floodplain
7 Ordinance (Ch 178) and the county order discusses these
8 ordinances. In addition, the notice of intent to appeal refers
9 to the county's order by its file number and describes the
10 decision as one which allows "applicants to extract gravel from
11 the Greenway Belt, adjacent to petitioners' property.⁴ Under
12 these circumstances, the Board believes the county has granted
13 and the petitioner has appealed not only a conditional use but
14 greenway and floodplain development permits.

15 Because the county has by this order issued a floodplain
16 development permit, the Board believes it was required to abide
17 by the requirements of the floodplain ordinance. Therefore,
18 the county was required to abide by MCZO 178.070(J) in the
19 issuance of the floodplain development permit.

20 The only finding about the certification of an engineer as
21 required in MCZO 178.070(J) is the following:

22 "MCZO Chapter 178, Section J, regarding floodways,
23 requires certification from a registered professional
24 engineer or architect demonstrating that encroachment
25 shall not result in any increase in flood levels
26 during the occurrence [sic] of the base flood
discharge. Applicant offered evidence in the record
which indicates that the proposed excavation would
increase the flood level a fraction of an inch, if at
all. Beardsley Bar provides a physical barrier
deflecting the main flood way from the secondary

1 channel passing through the proposed excavation area.
2 With the conditions imposed the proposed excavation
3 will not increase the danger of flood damage to other
4 property." Record 7.

5 This finding, while it recites the requirement in MCZO
6 Chapter 178 for certification from an engineer/architect, does
7 not state that the county believes it has received such
8 certification. The finding simply states there is evidence in
9 the record about flood damage, and it makes a conclusion that
10 the excavation will not endanger other property. This
11 conclusion is also based in part on the condition at page 9 of
12 the record (quoted herein at page 6-7) that calls for an
13 engineer's report. The ordinance calls for more. Even if the
14 Board agrees the "certification" called for means something
15 other than the "certification" under ORS 672.020(2), the Board
16 believes the county was required to make a finding that the
17 evidence submitted constituted certification from an engineer
18 or architect. The county has not made such a finding. What
19 the county has done, instead, is to call for a report in the
20 future. The Board does not believe calling for further
21 information on the issue from an engineer satisfies the
22 requirement in the ordinance that there be certification prior
23 to the issuance of any permit. Conditions can not take the
24 place of requirements precedent to approval Margulis v. City of
25 Portland, 4 Or LUBA 89 (1981).⁵

26 The Board does not reach the issue of whether
"certification" by a registered professional engineer or

1 architect has the same meaning as "certification" in ORS
2 672.070(2). However, the county must have attached some
3 significance to the use of the word "certification" or it might
4 simply have required a statement from an engineer or a report
5 from an engineer or testimony from an engineer. Indeed, the
6 dictionary definition of the term suggests just such an
7 official stamp of approval is required.

8 "Certification. 1. The act of certifying or
9 certifying or the state of being certified or
10 certificated 2. a certified statement; CERTIFICATE."

11 "Certificate. 1. a document containing a certified
12 and usu. official statement; a signed, written, or
13 printed testimony to the truth of something."
14 Websters 3rd New International Dictionary (1961).

15 On remand, the Board believes the county should either
16 obtain the certification, as the ordinance seems to require, or
17 explain how it is that its use of the term "certification"
18 means something other than the certification in ORS
19 672.070(2). The Board can only defer to Marion County's
20 interpretation of its ordinance where the interpretation is
21 reasonable. Miller v. City Council of Grants Pass, 39 Or App
22 589, 592 P2d 1088 (1979); Alluis v. Marion County, 7 Or LUBA 89
23 (1982).

24 This assignment of error is sustained.

25 ASSIGNMENT OF ERROR NO. 3

26 "THE MARION COUNTY BOARD OF COMMISSIONERS MADE
INADEQUATE FINDINGS REGARDING MARION COUNTY ZONING
ORDINANCE CHAPTER 178, SECTION J, WHICH WERE NOT
SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD."

Petitioner quotes a policy from the Marion County

1 Comprehensive Plan Policy which allows gravel extraction only
2 when the operation

3 "will not enhance the danger to life and property from
4 natural disasters and hazards associated with
5 flooding." Petition for Review at 7.

6 Petitioner cites to the county order saying the plan is met
7 through application of MCZO Chapters 120, 136, 178 and 179.⁶
8 Petitioner adds the engineer's comments are the only evidence
9 in the record on this matter of safety. These comments are not
10 sufficient because only a certified report only is acceptable,
11 according to petitioner. Petitioner adds there is not
12 substantial evidence in the record to support a finding there
13 is not a flood danger. "It is not enough to require the report
14 after the fact." Petition for Review at 7. The Board
15 understands this comment to be a reference to Condition No. 8
16 quoted at page 6-7, supra.

17 The Board concludes petitioner is correct that the county
18 made inadequate findings to show compliance with Marion County
19 Zoning Ordinance Chapter 178.070(J) for the reasons discussed
20 in Assignment of Error No. 2, supra.

21 The Board wishes to note again, however, that Chapter 178
22 does not appear to apply to the issuance of conditional use
23 permits. Violation of Chapter 178 is not a violation of county
24 conditional use criteria.⁷

25 This assignment of error is sustained insofar as it alleges
26 violation of MCZO Chapter 178.070(J).

ASSIGNMENT OF ERROR NO. 4

1 "THE MARION COUNTY BOARD OF COMMISSIONERS MADE
2 INADEQUATE FINDINGS REGARDING MCZO CHAPTER 179,
3 SECTION 179.050, WHICH WERE NOT SUPPORTED BY
4 SUBSTANTIAL EVIDENCE IN THE RECORD."

5 Under this assignment of error, petitioner points to four
6 requirements in MCZO 179.050 and complains the county failed to
7 show compliance with them. The first, MCZO 179.050(E) requires:

8 [t]he quality of air, water and land resources in and
9 adjacent to the Greenway shall be preserved in the
10 development, change of use or intensification of use
11 of land within the Greenway Management Zone."

12 The second criterion, MCZO 179.050(F) states⁸

13 "[a]reas of annual flooding, flood plains and wetlands
14 shall be preserved in their natural state to the
15 maximum possible extent to protect water retention,
16 overflow and other natural function."

17 The third criterion, MCZO 179.050(J) states

18 "[a]reas considered for development, change or
19 intensification of use which have erosion potential
20 shall be protected from loss by appropriate means
21 which are compatible with the provisions of the
22 Greenway Management Zone,"

23 The last criterion cited by petitioner is MCZO 179.050(K)
24 which states

25 "[e]xtraction of aggregate deposits shall be conducted
26 in a manner designed to minimize adverse effects on
water quality, fish and wildlife, vegetation, bank
stabilization, stream flow, visual quality, noise and
safety and to guarantee necessary reclamation."

27 The county says the Greenway Management Ordinance criteria
28 cited by petitioner are essentially the same criteria for
29 gravel extraction that appear in the exclusive farm use zone
30 (MCZO Chapter 136). All the criteria challenged by petitioner
31 were addressed in the EFU conditional use requirements and need

1 not be repeated, according to the county.

2 MCZO 136.030(d) provides as follows:

3 "(d) The following criteria apply to all uses in
4 136.030 except (a).

5 "(1) The use is compatible with farm or forest uses
6 and is consistent with ORS 215.243; and

7 "(2) It does not interfere seriously with farming or
8 forest practices on adjacent lands; and

9 "(3) It does not materially alter the stability of the
10 overall land use pattern of the area; and

11 "(4) Adequate fire protection and other rural services
12 are available; and

13 "(5) Will not have a significant adverse impact on
14 timber production, grazing land, watersheds, fish and
15 wildlife habitat, soil and slope stability, air and
16 water quality and outdoor recreation activities; and

17 "(6) The proposed use complies with the purpose and
18 intent of the agricultural policies in the Marion
19 County Comprehensive Plan."

20 The county findings say that the conditional use is
21 governed by MCZO 136.030, the conditional use standards in the
22 exclusive farm use zone. The county order also states than in
23 order to meet EFU zone (Ch 136) standards,

24 "the applicants must demonstrate that their proposed
25 gravel operation will be conducted in accordance with
26 the restrictions set forth in MCZO Chapters 120, 136,
27 178 and 179."

28 The county, then, apparently lumped EFU and Chapter 179
29 requirements together and made findings that it understood
30 would address all criteria. The findings are as follows:

31 "6. MCZO 136.040(d)(5) and the Greenway Management
32 Ordinance Chapter 179 require that the proposed
33 gravel pit will not have significant adverse
34 impact on fish and wildlife habitat, soil and

1 slope stability, air and water quality, and
2 outdoor recreation activities. MCZO Chapter 179
3 requires that the proposed gravel operation
4 protect the scenic and recreational quality of
5 the land and minimize any adverse general
6 environmental impact. These requirements are
7 largely aimed at the river side of a gravel
8 operation. The Board, upon review of applicant's
9 site plan, U.S.G.S. maps of the subject
10 property, aerial photographs and Assessor's map,
11 the testimony on record, and after viewing the
12 site in the field, concludes that the proposed
13 gravel site is compatible with the Greenway
14 Management Ordinance and MCZO 1360.040(d)(5) as
15 follows):

9 "a. The development has been directed away from the
10 river to the greatest possible extent. The
11 gravel extraction is located in the widest
12 portion of the gravel bar and considerable area
13 of the sand bar will be left along the river to
14 provide a topographic vegetative screen. The
15 development provides the maximum possible buffer
16 area, open space or vegetation between the
17 activity and the river. The existing vegetation
18 and natural gravel berms are sufficient sight and
19 sound barriers from the Willamette River and its
20 associated recreational use and wildlife habitat.

15 "c. Applicant's development plan indicates that side
16 slopes of the pit will be contoured so there will
17 be no safety hazard. When high water inundates
18 the area the pit will be a back water area and
19 gravel and soil deposition will occur. The
20 applicant proposes plantings that will stabilize
21 the soil and provide feed for wildlife. Because
22 water velocity will be slow there should be no
23 significant soil or bank erosion.

20 "d. MCZO 179.050 (f) provides that areas of annual
21 flooding, floodplains and wetlands shall be
22 preserved in their natural state to the maximum
23 possible extent to protect water retention,
24 overflow and other natural functions.
25 Applicant's proposal will increase water
26 retention. Conditions of approval will ensure
that any overflow will follow the same course and
not direct water onto other ownerships. MCZO
179.050(g) requires the natural vegetative fringe
along the river to be maintained to the maximum
extent that is practical in order to assure

1 scenic quality and protections of wildlife,
2 protection from erosion and screening of uses
3 from the river. The proposed pit areas includes
4 no vegetation that would provide screening or
5 habitat.

6 "e. MCZO Chapter 178, Section J, regarding floodways,
7 requires certification from a registered
8 professional engineer or architect demonstrating
9 that encroachment shall not result in any
10 increase in flood levels during the occurrence
11 [sic] of the base flood discharge. Applicant
12 offered evidence in the record which indicates
13 that the proposed excavation would increase the
14 flood level a fraction of an inch, if at all.
15 Beardsley Bar provides a physical barrier
16 deflecting the main flood way from the secondary
17 channel passing through the proposed excavation
18 area. With the conditions imposed the proposed
19 excavation will not increase the danger of flood
20 damage to other property.

21 "7. The application meets those portions of the
22 Floodplain Ordinance which require that any
23 equipment or materials stored or used in a
24 floodplain not be flammable, obnoxious, toxic or
25 injurious to people or property, and that it be
26 readily removable within time available after
forecast and warning of flood dangers. Equipment
and machinery will be readily removable in the
event of flood danger.

"8. The County roads providing access to applicant's
parcel are inadequate to handle the heavy truck
associated with gravel operations. The
conditions imposed will ensure that Chemawa Road
remains adequately surfaced and safe for travel
during the excavation period and that the road
will be restored to its previous condition at the
end of the project."

After review of these findings, the Board does not agree
that the county did not make a finding on MCZO 179.050(E). The
finding labelled number 6, quoted above, discusses water and
land resources. The Board does not believe it is error for the
county to lump findings together to cover different

1 ordinance criteria so long as the criteria are indeed covered.

2 Section 179.050(F) was addressed in the county's findings.

3 The county found that the proposal would increase water
4 retention, and it found its conditions of approval would insure
5 overflow would follow the same river course and not cause water
6 to be directed on other properties. In Finding 6(a) supra, the
7 county found the development has been directed away from the
8 river to the greatest possible extent and there would be a
9 vegetative screen and natural gravel berms forming a barrier
10 from the Willamette River and its associated recreational and
11 wildlife uses. The Board believes, without more clear
12 explanation what is wrong with the findings, that the finding
13 is adequate to show compliance with this criterion. The Board
14 is mindful petitioner has complained there is no finding as to
15 how the policy would be met, but the Board understands the
16 county to say the policy would be met through the imposition of
17 conditions, and the county found that the conditions would be
18 sufficient to insure protection of the qualities granted
19 protection under Section 179.050(F). The Board does not
20 believe it necessary to explain in minute detail how a
21 particular result will be achieved when the findings, taken as
22 a whole, explain that the criteria will be met and explain,
23 generally, the means by which the criteria will be met. Also,
24 once the county has decided the project can meet applicable
25 criteria, imposition of conditions is an appropriate way to
26 insure the criteria are met. Margulis, supra.

1 Petitioner's next complaint, that section 179.050(J) has
2 not been met is based upon petitioner's view that the provision
3 calls for three findings; first, whether there is erosion
4 potential; second, how the land shall be protected from loss;
5 and third, that the protective measures be compatible with the
6 Greenway Management Zone. None of the findings were made,
7 claims petitioner.

8 The county found, in 6(c-e) supra, that the side slopes of
9 the pit will be contoured, that there will be plantings to
10 stabilize the soil and that because water velocity would be
11 slow, there should be no significant erosion. The Board
12 believes these findings answer the first two sub-criteria in
13 179.050(J). Whether or not the finding is supported by
14 substantial evidence in the record is a separate question not
15 raised by the petitioner.

16 As to the claim the county failed to find compliance with
17 MCZO Chapter 179, the Board finds the county findings show it
18 was applying the criteria in Chapter 179. That is, the county
19 findings reveal it applied provisions of Chapter 179 to the
20 site and concluded these measures would meet stated provisions
21 of the chapter. See findings 6(c-e), supra. There is no need
22 to mechanically state that one's efforts to apply specific
23 provisions of a county ordinance meet the same provisions. If
24 the county failed to apply some part of Chapter 179, the
25 petitioner needs to explain what part and explain the
26 significance of the error. Petitioner has not done so in this

1 instance.

2 Petitioner next attacks compliance with §179.050(K)
3 requiring that extraction of aggregate have minimal adverse
4 impact on water quality, fish and wildlife, vegetation, bank
5 stability, streamflow, visual quality, noise and safety and it
6 must guarantee reclamation. Petitioner claims that each of the
7 items requires a finding, and the county only made findings on
8 two of the issues, streamflow and visual quality.

9 The Board notes Finding 6 and 6(a) address sight, sound and
10 wildlife habitat. In addition, the county makes findings on
11 vegetation and bank stabilization (Findings 6(c-3)), but there
12 are no findings about fish, water quality and reclamation. The
13 Board believes the county needs to consider these matters and
14 make findings thereon.

15 This assignment of error is sustained, in part.

16 This matter is remanded to Marion County for further
17 proceedings not inconsistent with this opinion. At a minimum,
18 the county must consider whether the "certification" in MCZO
19 178.070(J) is the same as that in ORS 672.020(2). It must then
20 consider whether it has received the "certification" of an
21 engineer or an architect in the form of Mr. Boatwright's
22 testimony and whether that testimony is adequate to meet the
23 requirements of the ordinance. That is, it must state whether
24 there will be any increase in flood levels during the
25 occurrence of the base flood discharge. Further, the county
26 must consider MCZO 179.070(K) and make findings about

1 compliance with its requirements.

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FOOTNOTES

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1 The following is from a letter to the county commission sent in behalf of Mrs. Sigurdson.

"It is impossible for Mrs. Sigurdson to secure adequate professional review of the material presented April 20, 1983 by April 22, 1983. The applicant Turnidge had at least 26 days from the date of appeal letter to prepare this case. The need to review such material will take at least one month. * * * The time period for two days review is too short for any study of the facts presented to approve such an application." Letter of April 22, 1983, Record A-6.

2 The county refers to Chapter 179 at this point in its argument; the Board take the reference to be a typographical error. See Brief of Respondent County at 4-6.

3 It is important to note there that these letters arrived after issuance of the county's order.

4 There were two petitioners on the notice of intent to appeal.

5 See also LaChance v. Josephine Co., 7 Or LUBA 59 (1982).

6 Chapter 120 is about conditional use; Chapter 136 is about exclusive farm use zones; Chapter 178 is the Floodplain Overlay Zone; and Chapter 179 is the Greenway Management Overlay Zone.

7 The Board notes that there is considerable evidence in the record about the safety of this project in the form of testimony by Mr. Boatwright, the applicant's engineer.

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Petitioner also complains that the condition of approval appearing at page 9 of the record and quoted in this opinion at page 7 is an inadequate finding upon which to base an approval. Petitioner argues the county is in essence concluding that the criteria of 179.050 will be met at sometime in the future instead of now as required. The Board has already considered this complaint. See assignment of error no. 2, supra.