

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

VALYNN CURRIE,
Petitioner,

vs.

DOUGLAS COUNTY BOARD OF COMMISSIONERS,
Respondent,

and

BJORN VIAN,
Intervenor-Respondent.

LUBA No. 2019-033

FINAL OPINION
AND ORDER

Appeal from Douglas County.

D. Rahn Hostetter, Enterprise, filed the petition for review and argued on behalf of petitioner. With him on the brief was Benjamin Boyd, and Hostetter Law Group, LLP.

Souvanny Miller, Medford, filed the response brief and argued on behalf of respondent. With her on the brief was Mark S. Bartholomew and Hornecker Cowling LLP.

No appearance by Douglas County.

RUDD, Board Member; ZAMUDIO, Board Member, participated in the decision.

RYAN, Board Chair, did not participate in the decision.

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REMANDED

06/25/19

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

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NATURE OF THE DECISION

Petitioner challenges a board of commissioners’ approval of a conditional use permit authorizing an aggregate quarry on a 73-acre site.

MOTION TO INTERVENE

Bjorn Vian, applicant and one of the property owners below (intervenor), moves to intervene on the side of the respondent. No party opposes the motion and it is allowed.

FACTS

In the 1950s, a quarry operated on 10 to 15 acres of the subject property, which is an approximately 280-acre tract in the county (the tract). Record 328-29. In 2018, intervenor applied to the county for a conditional use permit (CUP) to reopen and expand the quarry to occupy approximately 73 acres on the tract, which is zoned Exclusive Farm Use - Grazing (FG) (the site). Record 327. The site is listed in the Douglas County Aggregate and Mineral Resources Inventory and is subject to a mineral resources overlay. Surrounding uses include a mix of farm and forest uses, residential uses, and property zoned Tourist Commercial (TC), which includes an RV park on the tract owned by intervenor. The staff report described the property as follows:

“[T]he quarry site is located at the western end of the subject property and is situated on the east-facing slope of a steep ridge that extends north from the North Umpqua Highway. From its easterly base, the ridge rises approximately 750 feet to the north. The nearest affected ownership is located immediately adjacent to the site * * *,

1 with an existing dwelling located approximately 450± feet south of
2 the quarry site. Due east of the quarry site on the north side of the
3 highway is an existing RV park * * * with Forest Acres [Mobile
4 Home] Park lying adjacent to the east of the property. East and
5 south of the quarry site are several residentially-developed
6 properties located adjacent to the North Umpqua River. Another
7 residence is located northeast of the quarry site approximately ½
8 mile.” Record 154.

9 Petitioner and other nearby residents opposed issuance of the CUP. Their
10 concerns included the potential negative impact of (1) an operating quarry on
11 their property values and, (2) their peace of mind given the proximity of blasting.
12 *See, e.g.*, Record 168, 174. The planning commission denied the CUP application
13 based on its conclusion that the applicant had not established that the aggregate
14 mining use would be compatible with uses on adjacent lands. Record 13, 14, 119.
15 Intervenor appealed the denial to the board of commissioners (the board). Record
16 110. After an on-the-record hearing, the board approved the CUP and this appeal
17 followed. Record 1.

18 **FIRST ASSIGNMENT OF ERROR**

19 Findings supporting a decision must “(1) identify the relevant approval
20 standards, (2) set out the facts which are believed and relied upon, and (3) explain
21 how those facts lead to the decision on compliance with the approval standards.”
22 *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). Petitioner’s first
23 assignment of error is that the county’s findings are fatally flawed because it is
24 impossible to know what facts the board of commissioners believed and relied

1 upon and what conditions of approval were imposed. Petition for Review 7.¹ We
2 disagree.

3 In the challenged decision, the board expressly adopted “the findings and
4 interpretations of Staff as set out in Exhibit-FOB to this Order.” Record 3. The
5 findings in Exhibit FOB state that “[t]he Board adopts the findings and
6 recommended conditions of the Staff Report, except as revised or supplemented
7 herein.” Record 8. Exhibit FOB includes findings and conclusions and is attached
8 to the decision and thus easily located. Record 7-14. Conditions of approval are
9 listed in the Exhibit FOC attached to the decision and also easily located. Record
10 15.

11 The decision also adopts by reference the findings and conditions of the
12 staff report, “except as revised or supplemented [in the decision].” Record 8. We
13 agree with intervenor that there is no legal obligation to attach all documents to
14 the decision. Response Brief 2. Rather,

15 “if a local government decision maker chooses to incorporate all or

¹ Petitioner argues that the decision:

“[P]urports to ‘adopt findings and interpretations of staff’ * * * and, in another section ‘adopts the findings and conditions of the Staff Report, except as revised or supplement herein.’ * * * The Decision Document does not, however, attach the referenced ‘findings, interpretations and conditions’ of staff to the Decision Document itself.” Petition for Review 6-7.

1 portions of another document by reference into its findings, it must
2 clearly (1) indicate its intent to do so, and (2) identify the document
3 or portions of the document so incorporated. A local government
4 decision will satisfy these requirements if a reasonable person
5 reading the decision would realize that another document
6 is incorporated into the findings and, based on the decision itself,
7 would be able both to identify and to request the opportunity to
8 review the specific document thus incorporated.” *Gonzalez v. Lane*
9 *County*, 24 Or LUBA 251, 259 (1992)(footnote omitted).

10 The only staff report in the record is provided at Record 144-164 and referenced
11 in Exhibit FOA. Exhibit FOA is attached to the county’s decision. Record 5. The
12 county clearly expressed in its decision its intent to incorporate the staff report
13 and identified the staff report with sufficient specificity for identification and
14 review. The decision explains that if there is an inconsistency with the findings
15 set forth in Exhibit FOB, then Exhibit FOB prevails. Record 8. It is sufficiently
16 clear what the decision is, what facts the board believed and relied upon and what
17 conditions of approval were imposed.

18 The first assignment of error is denied.

19 **FOURTH ASSIGNMENT OF ERROR**

20 ORS 197.835(9)(a)(B) provides that LUBA shall reverse or remand a land
21 use decision if the local government fails to follow applicable procedures in a
22 manner that prejudices petitioner’s substantial rights. In her fourth assignment of
23 error petitioner alleges she was denied an adequate opportunity to present her
24 case because (1) the board did not consider evidence related to allegations of
25 existing land use violations on the tract, and (2) the board did not limit its

1 consideration of land use criteria applicable to the quarry to issues of
2 compatibility. Again, we disagree.

3 Land Use Development Ordinance (LUDO) 1.040(2) provides that “[t]he
4 Director shall not approve a * * * use of land * * * developed in violation of this
5 ordinance” unless the violation may be corrected as part of a development
6 proposal. Petitioner argues that she was denied her substantial rights because she
7 was not allowed to present evidence related to allegations of existing land use
8 violations on the subject property. Petition for Review 36.

9 LUDO 2.700(2) provides that on appeal, the board of commissioners’
10 review “shall be a de novo review of the record limited to the grounds relied upon
11 in the notice of review, or cross review, if the review is initiated by such notice.”
12 LUDO 2.500(1) provides that “[a]ny party not filing a notice of review, may file
13 a notice of cross-review within five days after the notice of review is mailed” as
14 provided by the code. The board found that petitioner did not file a notice of
15 cross-review and therefore could not challenge the planning commission findings
16 (incorporated into the board’s ultimate decision) concerning the allegations of
17 existing land use violations. Record 7. As intervenor points out, however, the
18 county set forth two independent rationales for concluding that petitioner’s
19 assertion that the property had existing land use violations was not relevant to its
20 decision. Petitioner did not challenge the board finding that the criteria requires
21 more than allegations and applies only to violations for which an official notice

1 of violations is issued.² Record 13. Petitioner’s failure to challenge this
2 independent finding provides an additional, unchallenged basis for denying this
3 subassignment of error. *Reeves v. City of Wilsonville*, 62 Or LUBA 142, 146,
4 *aff’d*, 240 Or App 563, 249 P3d 166 (2011) (petitioner establishes no basis for
5 reversal or remand where petitioner fails to challenge a responsive finding).

6 The first subassignment of error is denied.

7 Petitioner also argues that the board did not in fact limit its review to issues
8 raised in intervenor’s notice of review and prejudiced petitioner’s rights by
9 allowing the intervenor to go beyond the issues listed in an appeal notice. Petition
10 for Review 37-38. Petitioner asserts that the board improperly addressed the
11 consistency of the application with all applicable criteria because intervenor’s
12 notice of review was limited to issues of compatibility. Petition for Review 37-
13 38. Petitioner argues that based upon the county’s interpretation of its ordinance,
14 the most it could do was reverse the planning commission compatibility finding

² The county held that:

“[t]here is no official notice of violation against [the intervenor] or the Subject Property. * * * Moreover, the only record submittals relating to violations are complaints from neighbors that – by opponent’s admission during the public hearing – have not resulted in any adverse action against [the intervenor]. Such complaints are insufficient to preclude, prohibit or delay development under LUDO 1.040.” Record 14.

1 and remand the decision to the planning commission to address the remaining
2 criteria. Petition for Review 38. We disagree and conclude that the scope of the
3 appeal hearing was appropriate and did not prejudice petitioner.

4 As noted above, LUDO 2.700(3) limits review on appeal to the grounds
5 relied upon in the notice of review or cross review. The notice of review stated:

6 “We propose the following grounds for review: (1) the Planning
7 Commission erred in considering factors beyond the scope of its
8 review authority—factors that do not constitute applicable criteria—in
9 denying the conditional use permit; and (2) the Planning
10 Commission erred in denying the permit because the proposed use
11 meets all applicable criteria and sub-criteria.” Record 110.

12 Subsection (1) of intervenor’s notice of review may be read to challenge
13 the planning commission’s denial based on issues related to neighbor peace of
14 mind and property value (which intervenor argued were not relevant) and
15 subsection (2) of intervenor’s notice of review read to challenge the remainder of
16 the basis for denial.

17 The planning commission found that:

18 “[T]he application lacked conclusive information to demonstrate
19 that adverse impacts to the surrounding neighborhood and
20 immediate area will be minimized.

21 “[T]he Applicant has not adequately demonstrated that the proposed
22 mining and processing operation is, or can be made to be,
23 compatible with existing adjacent permitted uses and other uses
24 permitted in the underlying zone. Compatibility issues have been
25 identified related to: wildlife and fish habitat; water quality impacts
26 to the North Umpqua River affected by runoff; peace of mind for
27 the neighbors; increased traffic and damage to the roadway; noise
28 and water pollution impacts resulting from the mining and

1 processing operation; decreased property values; and loss of farm
2 and forest land.” Record 119.

3 The board stated in its findings that the planning commission denied the
4 application only on compatibility grounds and that it “may not assume that the
5 Planning Commission found reason to deny the application under any other
6 criterion. Record 8. The county concluded that “there is substantial evidence in
7 the record that the proposed use meets all applicable criteria.” Record 8. The staff
8 report and planning commission discussion of compatibility was, however, quite
9 broad and included issues of compatibility with relation to wildlife and fish
10 habitat, water quality impacts, traffic and damage to roadways, noise, water
11 pollution and loss of farm and forest land. As explained in our discussion of the
12 second assignment of error, the compatibility issues were evaluated in the context
13 of the approval criteria in LUDO 3.3.050 and 3.3.150. We refer to those
14 provisions collectively as the farm impacts test. The notice of review placed these
15 criteria at issue and the board properly considered whether the applicable criteria
16 were met. *Laurance v. Douglas County*, 33 Or LUBA 292, *aff’d*, 150 Or App
17 368, 944 P2d 1004 (1997), *rev den*, 327 Or 192 (1998) (board may limit scope of
18 appeal before it).

19 The second subassignment of error is denied.

20 The fourth assignment of error is denied.

1 **THIRD ASSIGNMENT OF ERROR**

2 **A. ORS 215.296**

3 Petitioner raises issues related to ORS 215.296 as implemented in LUDO
4 3.3.150 (the farm impacts test). Petition for Review 33-35. Our disposition of the
5 portion of petitioner’s third assignment of error related to the farm impacts test is
6 included in our discussion of the same statute in the second assignment of error.

7 **B. ORS 215.416**

8 Petitioner argues that ORS 215.416(11)(D) and (E) require that the county
9 hold an appeal hearing allowing petitioner to raise any issues relevant to the
10 application. Petitioner also argues that the county improperly limited the scope
11 of the appeal hearing to issues raised in the notice of review. Petition for Review
12 32-33.

13 The county is required to provide at least one public hearing on an
14 application for a statutory permit. ORS 215.416(3). The county may approve an
15 application without a public hearing, so long as the county provides a local
16 appeal, which could be to a hearings officer, planning commission, or governing
17 body of the county. The local appeal must proceed as an initial evidentiary
18 hearing where the applicant and other parties have an opportunity to present
19 testimony, arguments, and evidence.

20 Petitioner relies on ORS 215.416(11)(D) and (E), which provide:

21 “(D) An appeal from a hearings officer’s decision made without
22 hearing under this subsection shall be to the planning
23 commission or governing body of the county. An appeal from

1 such other person as the governing body designates shall be
2 to a hearings officer, the planning commission or the
3 governing body. In either case, the appeal shall be to a de
4 novo hearing.

5 “(E) The de novo hearing required by subparagraph (D) of this
6 paragraph shall be the initial evidentiary hearing required
7 under ORS 197.763 as the basis for an appeal to the Land Use
8 Board of Appeals. At the de novo hearing:

9 “(i) The applicant and other parties shall have the same
10 opportunity to present testimony, arguments and
11 evidence as they would have had in a hearing under
12 subsection (3) of this section before the decision;

13 “(ii) The presentation of testimony, arguments and evidence
14 shall not be limited to issues raised in a notice of
15 appeal; and

16 (iii) The decision maker shall consider all relevant
17 testimony, arguments and evidence that are accepted at
18 the hearing.”

19 ORS 215.416 is not as broad as petitioner argues. ORS 215.416(11)(D)
20 and (E) concern the appeal process following an initial decision made without a
21 hearing. This matter did not involve an appeal from an initial decision made
22 without a hearing. The initial decision in this case was made by the planning
23 commission following a public hearing at which petitioner was provided an
24 opportunity to present testimony, arguments, and evidence. Record 143. ORS
25 215.416 does not apply to the proceeding before the board, and thus provides no
26 basis for reversal or remand.

27 This subassignment of error is denied.

1 **C. Goal 1 (Citizen Involvement)**

2 Statewide Planning Goal 1 (Citizen Involvement) is “[t]o develop a citizen
3 involvement program that insures the opportunity for citizens to be involved in
4 all phases of the planning process.” OAR 660-015-0000(1). Petitioner argues that
5 the county’s exclusion of evidence concerning the alleged relationship between
6 the quarry and adverse impacts on neighbor peace of mind and property values
7 violated Goal 1 as implemented by the comprehensive plan. We disagree.

8 The county’s comprehensive plan Goal 1 element includes a statement that
9 its purpose

10 “is to ensure the opportunity for active participation of an informed
11 citizenry in Douglas County’s Planning Process. Public input,
12 comments, criticisms and recommendations concerning proposed
13 land use plans and land use changes ensures that the needs and
14 desires of area residents are considered in the land use decision
15 making process.”

16 Petitioner cites *Anderson v. Peden*, 30 Or App 1063, 1073, 569 P2d 633 (1977)
17 for the proposition that public sentiment may be considered but provides no
18 authority for the position that public sentiment must be considered. Petition for
19 Review 27. Petitioner provides no legal authority supporting a conclusion that
20 this policy implementing Goal 1 creates a requirement that the county consider
21 any and every issue raised by area residents, including issues of property value
22 and neighbor peace of mind.³

³ The county determined:

1 This subassignment of error is denied.

2 **D. ORS 197.829**

3 The remainder of petitioner’s third assignment of error challenges the
4 decision based upon county interpretations of county regulations. We therefore
5 begin with a discussion of the applicable standard of review. We will review the
6 county board of commissioners’ interpretation of its own regulations under ORS
7 197.829(1) and affirm it, so long as that definition is not inconsistent with the
8 express language of the regulation or its underlying purposes and policies.
9 *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010).

10 LUDO 3.39.050(1) provides that issuance of a conditional use permit
11 requires a determination that “[t]he proposed use is or may be made compatible

“Property values are not part of the compatibility analysis. The compatibility analysis is laid out in LUDO 3.39.050. A separate section, LUDO 3.3.150(b), governs the decisionmaker’s ability to consider the financial impacts of a proposed use in the FG zone, but only financial impacts on farm or forest practices. No LUDO section allows this financial-impact inquiry for residential uses. Thus, any consideration of that factor was beyond the Planning Commission’s review authority and not a valid basis to deny the permit.

“The Planning Commission also identified neighbors’ ‘peace of mind’ as a compatibility issue. ‘Peace of mind,’ is subjective and vague. As such, it is not an appropriate standard or consideration for land use decisions. It is also unrelated to any applicable criterion.”
Record 96-97.

Petitioner does not address these findings.

1 with existing adjacent permitted uses and other uses permitted in the underlying
2 zone.” Petitioner challenges the county’s interpretation of the terms “compatible”
3 and “uses” to exclude consideration of the impact of the proposed quarry on
4 property values and neighbor peace of mind. We deny this assignment of error
5 for the reasons discussed below.

6 In evaluating compatibility, the findings acknowledge language in the
7 LUDO applicable to applications for goal exceptions and the definition of
8 compatible in OAR 660-004-0020(2)(d) to determine that: “‘Compatible’ is not
9 intended as an absolute term meaning no interference or adverse impacts of any
10 type with adjacent uses.” Record 9, 153. Petitioner argues that stating what
11 compatible is not does not explain what compatible is. Petition for Review 28.
12 We conclude that explaining what compatibility is not is a partial interpretation
13 of the term and helpful in evaluating whether compatibility is achieved. The
14 board determined that some amount of interference or adverse impacts to
15 adjacent permitted uses does not necessarily make a proposed use incompatible
16 with those other uses. We agree with petitioner, however, that it is not a complete
17 interpretation of the term.

18 Petitioner posits that the county should have relied upon the dictionary
19 definition of compatible. Petition for Review 30. As intervenor notes, however,
20 the county developed multiple pages of findings discussing why it believed that
21 the quarry was compatible with uses in the area. Record 10-12. Based upon our
22 review of those findings, we are able to identify and accept an implied

1 interpretation of compatible. *Alliance for Responsible Land Use v. Deschutes*
2 *County*, 149 Or App 259, 267, 942 P2d 836 (1997), *rev dismissed as*
3 *improvidently allowed*, 327 Or 555 (1998). For example, the county found that
4 noise will be buffered by the quarry’s 100-foot setback. Record 10. The county
5 also concluded that blasting to the north will direct dust in that direction and
6 provide a buffer between the quarry and existing uses. *Id.* We find that there is
7 an implied county interpretation of “compatible” consistent with its library
8 definition, “**2 a** : capable of existing together without discord or disharmony.”
9 *Webster’s Third New Int’l Dictionary* 463 (unabridged ed 2002).

10 “Disharmony” is a lack of harmony. *Id.* at 649. Definitions of harmony
11 include a “**7** : the arrangement of parts in pleasing relation to each other.” *Id.* at
12 1035. Through the use of buffers, the county concluded in effect that the uses are
13 arranged in a harmonious manner. We now turn to the county’s interpretation of
14 the term “use” in the context of the express language of the code.

15 Petitioner argues that the county’s exclusion of evidence related to peace
16 of mind and property values in determining whether the quarry is a compatible
17 use is the result of an interpretation of the term “use” which violates the express
18 language of the code.⁴ We disagree. Petitioner has not established that the

⁴ See also *Tucker v. Douglas County* 28 Or LUBA 134, 144 (1994) for a prior board of commissioners’ interpretation of LUDO 3.39.050.1 requirement of compatibility with adjacent permitted uses and other uses permitted in the underlying zone as not requiring compatibility with land values. We held that:

1 county's interpretation is inconsistent with the ordinance's express language or
2 underlying policies.

3 "Use" is defined in the LUDO as "[t]he purpose for which land or a
4 structure is designed, arranged or intended, or for which it is occupied or
5 maintained." LUDO 1.090. The county discussed uses based upon the functions
6 land or structures were used to perform, such as mining and residential use.
7 Petitioner argues that "[b]y rejecting evidence regarding peace of mind of the
8 neighbors, Douglas County effectively changed the [rural residential] zones into
9 transition zoning between dense residential areas and industrial developments
10 such as the proposed quarry." Petition for Review 25-26. The rural residential
11 zones purpose sections make clear that the rural residential areas are expected to
12 provide a transition or buffer area between uses allowed on EFU land and more
13 urban residential development. LUDO 3.8000, 3.9000. The purpose statements
14 do not support petitioner's interpretation that these lands are intended to be
15 shielded from uses on agricultural or forest zoned lands.

16 This subassignment of error is denied.

"Here, no provision in either LUDO 3.39.050 or 3.3.150 specifically refers to impacts on property values. Rather, these provisions refer to compatibility with 'uses' and 'land use patterns' and changes in 'accepted farm and forest practices' or the cost of such practices. Consequently, we believe the board of commissioners is within its discretion under ORS 197.829 in interpreting LUDO 3.39.050 and 3.3.150 not to require consideration of the impacts of a proposed conditional use on the FG zone on property values." *Id.* at 145.

1 The third assignment of error is denied.

2 **SECOND ASSIGNMENT OF ERROR**

3 **A. Preservation of Error**

4 As pertinent here, ORS 197.835(3) provides that issues raised before
5 LUBA shall be limited to those raised by any person before the local hearings
6 body as provided by ORS 197.763.⁵ LUDO 2.700(1) provides that the board
7 review of an appeal will be limited to “the arguments of the parties and the record
8 of the proceeding below.” Petitioner submitted written argument to the county in
9 advance of the appeal hearing. Record 30-38. The county limited its review to
10 arguments raised in intervenor’s notice of review, as explained further under the
11 fourth assignment of error, above. Record 7, 8, 119.

12 Intervenor argues that petitioner failed to preserve issues related to certain
13 matters, as explained further below. For the most part, we find petitioner
14 preserved the relevant issues.

⁵ ORS 197.763(1) provides:

“An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.”

1 Petitioner argues in the second assignment of error that the county's
2 analysis failed to account for all of the surrounding uses and impacts thereon.
3 Petition for Review 20, 34. Petitioner states that preservation of the issues in the
4 second assignment of error is found in the Record at 32 and 35. Petition for
5 Review 7. *See* OAR 661-010-0030(4)(d) (each assignment of error in the petition
6 for review must demonstrate that the issue raised in the assignment was preserved
7 during the proceedings before the local government).

8 Intervenor argues petitioner's objections were limited to impacts on
9 residential uses and that petitioner did not argue that farm or forest uses were not
10 sufficiently identified. Response 13.

11 Petitioner argued below that intervenor failed to list "the adjacent Black
12 residence, Narrows Tavern and the six residences across the highway, as well as
13 many other significant omissions." Record 35. Petitioner's argument includes the
14 statement that: "There have been no studies on the impacts of the sound, dust, air
15 quality, fish and wildlife submitted on the impact of the quarry activities within
16 or beyond the Site 86 boundaries." Record 32. We find the issue of impacts on
17 surrounding uses and failure to identify the extent of Site 86 and all surrounding
18 uses, not just residential, preserved.

19 Intervenor argues that petitioner's argument that the entire 73-acre area is
20 not included in the Mineral Resource Overlay was not preserved. Intervenor's
21 Response Brief 13. Petitioner asserted that intervenor's site map showed
22 intervenor planned quarry activities outside the boundaries of Site 86. Record 32.

1 We find petitioner preserved a challenge to whether portions of the site extended
2 beyond the land identified in the Mineral Resource Inventory.

3 In her comments to the county opposing the conditional use permit,
4 petitioner did not specifically cite ORS 215.296, the farm impacts statute.
5 Petitioner did, however, argue that all of the reasons the planning commission
6 had denied the application should be affirmed. Record 35. Petitioner stated:

7 “The Commission was correct in using [intervenor’s failure to
8 adequately demonstrate compatibility] in concluding its denial of
9 the application. The applicants did not submit **ANY** reports for the
10 Commission to consider. It takes more than the applicants to claim
11 there won’t be any impacts to the areas of concern! They go on to
12 complain, ‘The Commission also cited * * * loss of forest and
13 farmland as concerns.’ All of which are not only logical concerns
14 for the Commission, but are **required** under the Statewide Planning
15 Goals.” Record 35 (boldface in original).

16 The staff report presented to the planning commission discussed LUDO 3.3.150,
17 the local incorporation of ORS 215.196, and compliance with its criteria. The
18 staff report states that “[t]he criteria applied to [that] review help to prevent
19 introduction of nonresource uses that are not or cannot be made to be compatible
20 with farm and forest uses in the area.” Record 160. We find that petitioner’s
21 reference to lack of compatibility and loss of farm and forest land related to ORS
22 215.196 as locally implemented and challenges to compliance with this provision
23 were preserved.⁶

⁶ This view of the issue of “loss of farm and forest land” is consistent with our holding with respect to the fourth assignment of error—that intervenor

1 Intervenor argues that petitioner did not preserve certain challenges related
2 to water quality. Response 8. Petitioner’s written argument maintained that the
3 planning commission in its denial correctly raised concerns that the intervenor
4 had not adequately demonstrated compatibility with existing uses. Record 35.
5 Issues identified by the planning commission included “habitat for fish and
6 wildlife,” and “water quality on the North Umpqua river.”⁷ *Id.* We find intervenor
7 preserved issues related to those water quality impacts.

8 Lastly, intervenor asserts that petitioner did not preserve issues related to
9 county reliance on regulatory oversight. Response 11. Petitioner challenges the
10 county’s finding that:

11 “[T]he Board finds that conditions requiring compliance with
12 regulatory agency permits and regulations will make the proposed
13 use compatible with adjacent permitted uses. For instance, air
14 quality, if not appropriately designated as an issue before the Board,
15 will necessarily be addressed by DEQ through its permit process
16 before the quarry is permitted to operate. Similarly, water quality,
17 noise, safety, fire prevention and mining operations are regulated by
18 DEQ and/or DOGAMI.

19 “* * * As a condition of this permit Applicant must obtain any
20 necessary permit or approval from any and all regulatory agencies.”
21 Record 12.

challenged all grounds for denial of his application and a board reference to
compatibility did not narrow the scope of review.

⁷ The potential for water discharge generally, transmission of dirt and fines
during rains and air pollutants from the quarry into the North Umpqua River was
raised by other participants in the proceedings at Record 227, 379 and 380.

1 Petitioner argues in her second assignment of error that the county’s findings on
2 compatibility based upon regulatory oversight are not supported by substantial
3 evidence. Petition for Review 16. Petitioner argues that this future regulatory
4 oversight consists of unknown facts, outside the record and outside the local
5 hearing process, denying interested parties the opportunity to be heard before the
6 county. Petition for Review 18.

7 Intervenor responds that the issue of whether the county could rely on
8 regulatory oversight to ensure compatibility with respect to opponents’ concerns
9 related to blasting and mining is an issue that could have been, but was not, raised
10 before the planning commission and on appeal to the board. Intervenor argues
11 that petitioner’s failure to raise the issue means that it is outside LUBA’s scope
12 of review. We agree.

13 We explained in *DLCD v. City of Warrenton*, 40 Or LUBA 88, 95–96
14 (2001):

15 “Under ORS 197.835(3), our scope of review is limited to issues
16 that are raised below as provided by ORS 197.763 and the
17 corresponding provisions at ORS 197.195 pertaining to limited land
18 use decisions. Implicitly, the raise it or waive it rule in ORS
19 197.763(1) and 197.835(3) applies only where there was
20 opportunity to raise an issue before the close of the record at or
21 following the final evidentiary hearing. Generally, parties are not
22 required to raise issues below regarding the adequacy of findings,
23 the evidence supporting those findings, or interpretations of
24 applicable criteria, when those findings or interpretations appear for
25 the first time in the challenged decision. *Terra v. City of Newport*,
26 36 Or LUBA 582, 595 (1999); *Lucier v. City of Medford*, 26 Or
27 LUBA 213, 216 (1993); *Eskandarian v. City of Portland*, 26 Or

1 LUBA 98, 115 (1993); *Washington Co. Farm Bureau v. Washington*
2 *Co.*, 21 Or LUBA 51, 57 (1991).”

3 The proposed findings and conditions of approval included in the staff
4 report, presented to the planning commission and included in the record before
5 the board, included references to regulatory oversight to satisfy conditional use
6 criteria. Record 148, 164. The staff report states, for example, that the “[i]ssue[]
7 raised” of “[c]ontamination of water supply in the area from hydraulics/fuel and
8 air pollution” can be addressed by requiring “as a condition of approval that the
9 proposed use shall comply with and operate under the Department of Geology
10 and Mineral Industries and Department of Environmental Quality regulations
11 with regard to impacts on air, water and noise quality.” Record 148. The staff
12 report also proposed, as an alternative, that the planning commission could
13 approve the CUP, “based upon the findings * * * which recognize the approval
14 criteria can be met, **subject to the following conditions:** * * * “[t]he mining and
15 processing use shall operate under the permit requirements of the Department of
16 Geology and Mineral Industries (DOGAMI)” and “the Department of
17 Environmental Quality with regard to impacts on air and water quality and noise
18 impacts.” Record 164 (boldface and underlining in original). The planning
19 commission denied the CUP application and, thus, did not impose any of the
20 conditions of approval proposed as alternatives in the staff report. However, the
21 issue of whether the CUP criteria—including the compatibility criterion—did not
22 appear for the first time in the challenged decision; it appeared for the first time
23 in the staff report presented to the planning commission and the board of

1 commissioners. Petitioner could have raised that issue during the proceeding
2 before the planning commission and could have attempted to raise the issue
3 before the board. We conclude that petitioner was provided an opportunity to
4 raise the issue before the close of the record at or following the final evidentiary
5 hearing during the local proceeding, and did not do so.

6 Petitioner did not file a reply brief to respond to intervenor's waiver
7 argument and petitioner has not directed us to any evidence that the planning
8 commission or petitioner, independently or by incorporation, expressed concerns
9 related to the regulatory oversight during the local proceeding. We conclude that
10 intervenor did not preserve the error it assigns to the county's reliance in part on
11 future compliance with regulations administered by various state agencies.

12 **B. Substantial Evidence**

13 The county's decision must be supported by substantial evidence. ORS
14 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would
15 rely upon to make a decision, considering the whole record. *Dodd v. Hood River*
16 *County*, 317 Or 172, 855 P2d 608 (1993); *Younger v. City of Portland*, 305 Or
17 346, 351-52, 752 P2d 262 (1988). Absent evidence that the quarry will be
18 compatible with existing uses, there is not substantial evidence that the applicable
19 criteria is met. As explained below, we conclude that there is not substantial
20 evidence supporting issuance of the conditional use permit.

1 **C. LUDO 3.39.050(1) Compatibility**

2 **1. Identification of Residential and Other Uses**

3 LUDO 3.39.050(1) provides the county’s general approval criteria for
4 conditional use permits and requires a finding that “[t]he proposed use is or may
5 be made compatible with existing adjacent permitted uses and other uses
6 permitted in the underlying zone.” Petitioner alleges that the county failed to
7 identify existing adjacent uses or other uses permitted in the underlying zone to
8 be evaluated for compatibility with the proposed aggregate mining use. Petition
9 for Review 9.

10 The staff report incorporated into the findings discusses surrounding uses.
11 Record 145, 154. The Forest Acres Mobile Home Park is to the east of the
12 property. Record 154. There is an RV park east of the quarry site. *Id.* There is a
13 large farm livestock operation west side of the ridge. Record 161. There are other
14 surrounding farm and forest uses north and northeast of the tract. Several
15 residential properties are located east and south of the site. Record 154.
16 References in the decision to “other surrounding farm and forest uses north and
17 northeast of the [tract]” and “several residentially-developed properties” east and
18 south of the quarry site lack specificity. Record 154, 161.

19 Intervenor directs us to maps and an aerial photo in the record that identify
20 adjacent property zoning and ownership and argues that evidence sufficiently
21 establishes adjacent permitted uses. Record 357 (zoning map); Record 360
22 (property owner map); Record 361-62 (map of some uses). Response Brief 5.

1 Intervenor also points to Record 365 for an aerial satellite map showing
2 structures. Response Brief 5. The record does not show the date of the aerial
3 photograph. The record does not explain what uses exist or are permitted on all
4 the various properties, whatever their zoning. We conclude that the county did
5 not adequately identify the existing adjacent uses to be evaluated for
6 compatibility.

7 Petitioner argues that it is necessary to understand the characteristics of the
8 neighboring uses in order to evaluate compatibility. It is petitioner's position that
9 the county "[m]erely reciting the distances between some existing residences and
10 the proposed quarry does not constitute substantial evidence that the quarry is
11 compatible with each existing adjacent permitted residential use." Petition for
12 Review 10. We agree with petitioner that understanding the identity and nature
13 of existing uses is part of establishing compatibility between uses (and for
14 determining the appropriate measuring points for distances when evaluating
15 impacts). Because some existing uses were not identified and described, we find
16 there is not substantial evidence supporting issuance of the conditional use
17 permit.

18 LUDO 3.39.050(1) requires a finding that "[t]he proposed use is or may be
19 made compatible with existing adjacent permitted uses and other uses permitted
20 in the underlying zone." Under the heading "The Existing Adjacent Permitted
21 Uses," petitioner includes the following statement:

22 "Having failed to enumerate the existing adjacent permitted uses,

1 Douglas County also failed to set forth facts about those permitted
2 uses that would support the conclusion that the proposed quarry is
3 or may be made compatible with each of the existing adjacent
4 permitted uses. For instance, Douglas County recognizes that
5 [intervenor’s] own property includes an RV park in the Tourist
6 Commercial zoning located immediately adjacent to the quarry (and
7 on the same parcel). *Douglas County made no finding that the*
8 *quarry operation was compatible (or could be made so) with the*
9 *lands zoned Tourist Commercial*, and it cited no facts that it could
10 rely upon to justify any such conclusion, had it come to that
11 conclusion.” Petition for Review 9 (emphasis added).

12 The LUDO defines permitted uses as “a building, structure, or use
13 permitted outright in a zoning district, and which complies with all of the
14 regulations applicable in that district.” LUDO 1.090. The existing RV park is a
15 conditional use in the Tourist Commercial zone. LUDO 3.16.100(1). As a
16 conditional use, the RV park may be considered an existing other use permitted
17 in the underlying zone. Based upon petitioner’s statement that “Douglas County
18 made no finding that the quarry operation was compatible (or could be made so)
19 with the lands zoned Tourist Commercial,” it appears petitioner may be making
20 an argument that the code requires the county to evaluate all uses that could be
21 permitted on adjacent lands under their zoning, as well as existing uses. Petition
22 for Review 9. Petitioner does not develop this argument nor indicate that the
23 argument was preserved. *Deschutes Development Co. v. Deschutes County*, 5 Or
24 LUBA 218 (1982); ORS 197.835(3). Accordingly, we do not address the
25 argument further.

26 This subassignment of error is sustained.

1 **2. Traffic/Access, Air Quality/Dust, Water Quality, Noise, and**
2 **Wildlife Compatibility**

3 Petitioner challenges the county’s compatibility determination with
4 respect to traffic/access, air quality/dust, water quality, and wildlife impacts. We
5 address those arguments in turn.

6 Petitioner argued that the driveway access to the quarry is an unpermitted
7 residential access point and that use of that driveway for quarry access requires
8 approval from the Oregon Department of Transportation (ODOT) for industrial
9 access. Petitioner argues that intervenor may be unable to obtain ODOT required
10 approval. Petition for Review 14. Intervenor provided documentation, however,
11 that ODOT determined that the access is grandfathered and no additional permit
12 is required. Response 10; Record 165, 359. The county found that the traffic, with
13 up to 50 truck trips per day, was a compatible use with direct access to the
14 highway. Record 11. This is the type of evidence upon which a reasonable person
15 would rely and substantial evidence supported the county’s conclusion that the
16 access may be used to serve the quarry. We agree with intervenor that more was
17 not required. Moreover, petitioner has not identified any land use regulation that
18 requires intervenor to establish ODOT access approval. Accordingly, petitioner’s
19 argument regarding access provides no basis for reversal or remand.

20 Petitioner contends that intervenor should have been required to provide
21 relevant reports and mitigation plans and that “[t]here have been no studies on
22 the impacts of the sound, dust, air quality, fish and wildlife, submitted on the
23 impact of the quarry activities within or beyond the Site 86 boundaries.” Petition

1 for Review 7. The county found that blasting to the north will direct dust in a
2 northerly direction and that the planned 100-foot setback will provide a buffer.
3 Record 10. The county also found that conditions requiring that a dust palliative
4 be applied to the haul road, and aggregate stockpiles treated with water would
5 mitigate dust impacts. *Id.* In addressing water quality, the county relied upon the
6 distance between the quarry and water sources.⁸

7 The county relied, in part, on distance and terrain to address noise
8 concerns, finding that blasting to the north will send noise that direction and that
9 the ridge will provide a buffer.⁹ Record 12. The county also relied upon
10 restrictions in operating hours to address noise concerns.¹⁰ With respect to

⁸ The county found that “[t]he Board’s review of the application and site map indicates that the quarry would be separated from the North Umpqua River by the 100-foot buffer, Highway 138, and an expanse of land on the opposite side of Highway 138. These buffers will mitigate potential water quality impacts from the quarry site.” Record 11.

⁹ The county found that “[t]he natural terrain, consisting of a high ridge immediately to the west, and trees and rock terrain to the north, south and west, will also serve as natural noise buffers.” Record 11.

¹⁰ The findings state in part:

“[T]he operation shall be limited to Monday through Friday 7:00 a.m. to 6:00 p.m., or daylight hours (whichever is less), with no operations, including any loading or hauling from the stockpiles, allowed on weekends or legal County holidays.” Record 154-55.

1 Wildlife and Riparian area protection, the county relied in part upon code
2 protections for big game habitat. Record 158.¹¹

3 These conclusions were, for the most part, not supported by substantial
4 evidence of compatibility. The existing ODOT access was grandfathered and
5 accommodated the change in access use. Access to the highway from the quarry
6 site is direct and therefore will not impact other uses. The county did not,
7 however, identify any evidence supporting its conclusion that only northerly
8 directed blasting would ever occur or that the direction of blasting controls noise
9 and dust to an extent that the aggregate mining use is compatible with

¹¹ The county found that:

“The subject property, including the proposed quarry site, is located in both the Impacted and Peripheral Big Game Habitat areas. The Impacted Habitat area is located primarily along the highway and adjacent to the Glide [Urban Unincorporated Area] UUA. Under the Comprehensive Plan, ‘impacted’ or developed areas are no longer considered to be viable big game habitat. For the [Peripheral Big Game Habitat Overlay] BGHO, LUDO Section 3.32.300 provides standards that are designed to preserve identified peripheral big game habitat areas by providing supplementary development standards which promote an area wide dwelling density consistent with such habitat management, including a density of one dwelling unit per 40 acres. Under the Comprehensive Plan, the mining and processing of aggregate is not considered a potentially conflicting use for the big game habitat areas.” Record 157-58.

1 surrounding uses. Record 10, 11. The county does not discuss how long initial
2 blasting will occur, how long each blasting session will last, how loud blasting
3 will be or how far particulates may be transmitted. The county does not address
4 drilling onsite. The county does not cite evidence of why a 100-foot setback is,
5 along with the dust palliative and water treatments, sufficient to protect air
6 quality/control dust. Record 15. As petitioner notes, the county findings do not
7 explain how *initial* blasting and drilling to the north controls *future* blasting and
8 drilling. Petition for Review 13. The county does not provide facts supporting its
9 conclusion that noise will go in one direction or address petitioner’s argument
10 that the ridge will in fact create an amphitheater effect and amplify the noise.
11 Before relying on an hours restriction to address noise impacts, the county must
12 identify the anticipated noise impacts and explain how the limit on hours will
13 provide compatibility with surrounding uses.

14 The county did not identify evidence supporting its conclusion that the
15 identified distance between uses are sufficient to protect water quality and ensure
16 compatibility with the existing uses. The county did not identify evidence that
17 code provisions protecting big game would also protect other wildlife. Intervenor
18 does not point us to responsive evidence in the record.

19 The county found that the proposed use was similar to other allowed uses
20 and would not significantly impact wildlife in the area because it would have
21 “similar impacts to other resource uses that are permitted within the FG zone.”
22 Record 11. For example, harvesting a forest product would also require the use

1 of heavy machinery and generate noise. *Id.* A conclusory statement that timber
2 harvesting is similar to a quarry use and that there will be adequate mitigation is
3 inadequate to satisfy the conditional use permit criteria that the conditional use
4 “is or may be made compatible with existing adjacent permitted uses and other
5 uses permitted in the underlying zone,” including habitat protection uses. Petition
6 for Review 9.

7 The county’s past reliance on the concept that compatible is not meant to
8 imply no interference or adverse impacts was discussed in the context of LUDO
9 3.39.050.1 in *Laurence v. Douglas County*, 45 Or LUBA 393, 398-99 (2003). In
10 *Laurence*, planning commission findings cited in the decision explained that:

11 “Douglas County has traditionally engaged in a subjective balancing
12 test to determine if the potential impact of a proposed conditional
13 use is significant enough to be of justifiable concern to a reasonable
14 person, and whether such potential impact can be mitigated to the
15 point where it would not constitute a justifiable concern to a
16 reasonable person.”

17 That type of analysis is missing here. The county failed to analyze substantial
18 evidence measuring the extent of the potential impacts. Instead, the county
19 proceeded straight to mitigation measures. Without establishing the extent of the
20 impact through a review of substantial evidence, it is impossible to determine
21 whether the proposed mitigations achieve compatibility.

22 This subassignment of error is sustained.

1 **D. LUDO 3.3.100 Mineral Resource Overlay**

2 LUDO 3.3.100(2)(b) provides that a “[p]ermit for mining aggregate shall
3 be issued only for a site included on the county [mineral resource] inventory.”
4 Petitioner argues that we should reverse the decision due to a lack of substantial
5 evidence that the 73-acre site is in the Mineral Resources Overlay. Petition for
6 Review 19. We conclude that this subassignment lacks merit.

7 Intervenor stated in his application that the proposed quarry site was 73
8 acres and identified as Site 86 in the Mineral Resource Overlay. Record 76. The
9 site is described in maps provided with the notice of public hearing as being a
10 significant mineral resource. Record 309. The decision incorporates the staff
11 report and the staff report explains that “[t]he quarry operation is proposed on a
12 73± acre portion of the property designated under the Significant Mineral
13 Resources Overlay as a protected 3C resource site (Site No. 86).” Record 145. In
14 the context of the whole record, a statement by intervenor that the quarry
15 activities are only proposed “within the previous quarry site” is reasonably
16 understood to mean the previously identified Mineral Resource Inventory site.
17 Record 76. This is substantial evidence upon which a reasonable person would
18 rely.

19 This subassignment of error is denied.

1 **E. Farm Impacts Test**

2 **1. Overview of Goal 3**

3 Statewide Planning Goal 3 (Agricultural Lands) is “[t]o preserve and
4 maintain agricultural lands.” OAR 660-015-0000(3). In furtherance of the goal,
5 “[z]oning applied to agricultural lands shall limit uses which can have significant
6 adverse effects on agricultural and forest land, farm and forest uses or accepted
7 farming or forest practices.” *Id.*

8 Goal 3 is implemented though a variety of statutes which guide local
9 zoning of protected farmland. ORS 215.283(2) provides that a county may
10 approve a mining use on farmland subject to compliance with ORS 215.296. ORS
11 215.296(1) provides that the governing body may only approve the use if it finds
12 that the use will not:

13 “(a) Force a significant change in accepted farm or forest practices
14 on surrounding lands devoted to farm or forest use; or

15 “(b) Significantly increase the cost of accepted farm or forest
16 practices on surrounding lands devoted to farm or forest use.”

17 The county incorporated these provisions into its LUDO at 3.3.050 and
18 3.3.150 and applied them in approving intervenor’s application.

19 Petitioner challenges the consistency of the decision with the farm impacts
20 test in both the second and third assignments of error. In the second assignment
21 of error, petitioner asserts that the county’s “decision does not enumerate what
22 farm and forest practices are currently in use on the neighboring ranch and
23 surrounding lands devoted to farm and forest use.” Petition for Review 20. In the

1 third assignment of error, petitioner argues that the county “did not identify the
2 surrounding farm lands; did not identify the accepted farm practices on those
3 lands; and did not identify the impacts of the proposed quarry on each farm
4 practice on those lands.” Petition for Review 34. We address these assertions
5 here.

6 LUDO 3.3.150 requires a determination that the quarry use would not:

7 “(a) Force a significant change in accepted farming or forest
8 practices on surrounding lands devoted to farm or forest use; or

9 “(b) Significantly increase the cost of accepted farm or forest
10 practices on surrounding lands devoted to farm or forest use.”

11 LUDO 3.3.150(a)-(b) incorporates the farm impacts test found in ORS
12 215.296. Because LUDO 3.3150 implements state law, we review the county’s
13 interpretation of its requirements for legal correctness. ORS 197.835(9)(a)(D).
14 Based upon that review, we conclude that the county did not correctly apply the
15 impacts test and its decision that the test was met was not supported by substantial
16 evidence.

17 The court recently interpreted the farm impact test for the first time in *Stop*
18 *the Dump Coalition v. Yamhill County*, 364 Or 432, 435, 435 P3d 698 (2019).
19 “[H]ow a ‘significant’ change or cost increase in farm or forest practices is
20 determined is a question of law.” *Id.* at 446. The court held “that the legislature
21 intended the ‘significant change’ in a farm practice or ‘significantly increased
22 cost’ of a farm practice standard to apply practice by practice and farm by farm,

1 as the test and context of the farm impacts test suggest.” *Id.* at 458. An applicant
2 must:

3 “[P]rove that the proposed nonfarm use (1) will not force a
4 significant change in the accepted farm practice *and* (2) will not
5 significantly increase the cost of that practice. A ‘significant’ change
6 or increase in cost is one that will have an important influence or
7 effect on the farm.” *Id.* (Emphasis in original.)

8 The county must determine if the cumulative impacts on each farm are significant
9 and whether conditions of approval are appropriate. *Id.* at 459. We agree that the
10 county decision fails to adequately address the farm impacts test.

11 The county found that despite the fact that the area is zoned farm and
12 forest, there are few farm or forest uses in the area. Record 161-62. Although the
13 county concludes that there are only a few, the county does not identify and
14 discuss each farm and forest use in the findings. As a result, it is not possible to
15 determine if the quarry will force a significant change in their accepted farm or
16 forest practices or significantly increase their cost.

17 The closest farm is a livestock ranch to the west. The findings state that
18 livestock “are generally not impacted by aesthetics” and therefore will not be
19 adversely impacted by the sight of the quarry. Record 161. The county found that
20 “[d]ue to the location of the subject property adjacent to and northwest of the
21 Glide UUA, as well as the lack of intense farm uses in the immediate surrounding
22 area, it is not anticipated that the livestock operations on adjoining and nearby
23 properties will be adversely impacted by the proposed use.” Record 162. The

1 operations on each of the referenced properties are, however, not described. As a
2 result, it is not clear whether there are non-livestock related farm or forest uses
3 that may be impacted by the proposed use.

4 Without understanding the scale of impacts such as noise, it is not possible
5 to evaluate compatibility. In its findings that the quarry “will not force a
6 significant change in or significantly increase the cost of surrounding farm or
7 forest use”, the county determined that with respect to traffic:

8 “[t]he quarry’s direct access to the highway, and the fact that all
9 hauling to and from the highway will occur within the subject
10 property * * * reduces any conflict with surrounding farm and forest
11 uses.” Record 13.

12 This supports a conclusion that there is in fact no conflict with surrounding farm
13 and forest uses based on traffic. Generally, however, the county concludes
14 impacts will be reduced but does not identify evidence that significant impacts
15 are avoided.

16 The findings do not cite substantial evidence that significant noise, air
17 quality and water quality impacts violating the farm impacts test do not exist. The
18 county concluded generally that any potential impacts will be mitigated by the
19 limited scope of the project, project condition, natural setting and regulatory
20 oversight. Record 14. As we discussed above, however, the record lacks
21 substantial evidence of the extent of the unmitigated impacts and lacks an
22 explanation regarding that these features will in fact appropriately address
23 impacts which would force a significant change to accepted farm and forest

1 practices and/or significantly increase their cost. The county cited a lack of
2 objection from neighboring farm and forest uses but the acquiescence of
3 neighbors is not a relevant standard. Record 13.

4 This subassignment of error is sustained.

5 The second assignment of error is sustained.

6 **DISPOSITION**

7 The county's decision is not supported by substantial evidence as
8 explained in the discussion of the second assignment of error. The county must
9 identify the surrounding uses, explain the characteristics of the surrounding uses
10 and set forth the substantial evidence establishing that the applicable approval
11 criteria are met with respect to air quality/dust, water quality, noise, wildlife, and
12 farm and forest impacts.

13 The county's decision is remanded.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2019-033 on June 25, 2019, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

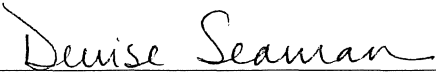
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Dated this 25th day of June, 2019.

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