

1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioner appeals the grant of a "community service"
4 designation on certain property in Multnomah County. The
5 property is to be used by the Metropolitan Service District
6 (Metro) for the operation of a regional landfill. Petitioner
7 asks us to reverse the decision.

8 FACTS

9 In August of 1981, Metro applied to Multnomah County for
10 approval of a community service designation for an area known
11 as the Wildwood Site to enable construction and operation of a
12 regional landfill or solid waste disposal facility. In June
13 and August, 1982, a hearings officer employed by Multnomah
14 County heard the matter, and he issued a decision on September
15 13, 1982. The hearings officer's decision denied the
16 application for various reasons. See record, p. 420-485.

17 Metro appealed this denial, and the Multnomah County
18 Commission reversed the hearings officer and approved the
19 application along with a number of conditions. The county
20 issued its order on December 13, 1982, and this appeal followed.

21 The property is a 853.75 acre parcel in rural Multnomah
22 County. It is on the west side of U.S. Highway 30 about 4.7
23 miles north of the Sauvie Island Bridge and 2.85 miles south of
24 Columbia County. It is within a bowl shaped depression which
25 ranges in elevation from 40 feet along U.S. 30 to 850 feet at
26 the northerly property line. According to the county findings,

1 the site supports "a diverse wildlife community." The soils
2 are primarily Douglas Fir Site Class I-III, and the site is
3 suitable for growing timber. There are agricultural
4 enterprises in the vicinity, including a dairy farm.

5 ASSIGNMENT OF ERROR NO. 1

6 "The Applicant Failed to Demonstrate Full Compliance
7 with the Approval Criteria for a Community Service
8 Designation Required by MCC Section 11.15.7015.

9 "(A) The County Emasculated or Ignored its Criteria."

10 In this subassignment of error, petitioner advises that in
11 order to approve the facility, the county must find the
12 standards required for community service designation have all
13 been satisfied. Petitioner points to MCC 11.15.7015, the code
14 section controlling approvals of community service designation
15 requests, and argues the section is stated in mandatory terms.
16 There is no room, according to petitioner, for any finding of
17 only "substantial compliance."¹ According to the petitioner,
18 however, the county found only substantial compliance with
19 applicable criteria, and use of this standard is error.²

20 Respondent Metro argues petitioner has confused the
21 question of whether the standards were applied at all with a
22 question of how they were applied. Respondent Metro, and
23 Respondent Multnomah County, argue it is up to the county to
24 decide how the standards are to be applied through
25 interpretation of its own ordinance. The county and Metro
26 argue the county properly interpreted the ordinance to allow

1 consideration of the qualities of the proposed use when trying
2 to decide how the criteria are to be applied. Respondent Metro
3 points to the preface of the comprehensive plan, Comprehensive
4 Plan Policy 31 and to MCC 11.15.7005, and argues these
5 provisions allow the unusual or special nature of each allowed
6 use in a community service designation to be considered during
7 the approval process.

8 The preface to the plan states:

9 "[t]he burden of providing comformance of a proposal
10 to the plan should vary with a degree of change and
11 impact on the community: the more drastic the change
12 and the greater the impact, the more strictly the
13 criteria should be construed." Multnomah County
14 Comprehensive Framework Plan, Vol. 2., "Preface."

15 The Multnomah County Comprehensive Framework Plan Policy 31
16 is the "Community Facilities and Uses Location Policy." The
17 policy recognizes solid waste management as a community
18 facility category. The "purposes" of this plan section include
19 the following:

- 20 "1. Provide services where and when appropriate;
- 21 "2. Locate community facilities and uses where
22 appropriate access and required services can be
23 achieved;
- 24 "3. Support community identity and development of
25 community centers;
- 26 "4. Reduce auto trips by clustering public services
with other related commerical, office and
industrial uses;
- "5. Minimize adverse impacts on adjacent development
through site location and design guidelines;"

1 Policy 31 itself states:

2 "THE POLICY OF THE COUNTY IS TO PROVIDE FOR THE
3 LOCATION OF COMMUNITY FACILITIES IN A MANNER WHICH
4 ACCORDS WITH:

4 "A. THE APPLICABLE POLICIES IN THIS PLAN:

5 "B. THE LOCATIONAL CRITERIA APPLICABLE TO THE SCALE
6 AND STANDARDS OF THE USE."

7 The policy includes no siting criteria for solid waste
8 facilities but says the issue is a "regional" one. A
9 subheading entitled "Solid Waste Management" states:

10 "Solid waste is a regional concern requiring regional
11 solutions. The County recognizes Metro's
12 responsibility and authority to prepare and implement
13 a solid waste management plan and the Metro
14 'Procedures for Siting Sanitary Landfill' and will
15 participate in these procedures as appropriate."

16 This reference is unlike the other community facility and use
17 categories which list criteria and standards for siting.³

18 The siting criteria used for the various broad community
19 facility categories may be read to modify or, indeed, control
20 the more strict siting criteria in the implementing ordinance
21 (MCC 11.15.7015). With solid waste, however, we are cited to
22 no other siting criteria in the plan or plans. We conclude,
23 then, that the specific siting criteria are in MCC 11.15.7005,
24 et seq.

25 The purpose of the community service designation, MCC
26 11.15.7005, states as follows:

"MCC .7005 through .7030 provides for the review and
approval of the location and development of special
uses which, by reason of their public convenience,

1 necessity, unusual character or effect on the
2 neighborhood, may be appropriate in any district, but
3 not suitable for listing within the other section of
4 this Chapter."

4 These plan and ordinance provisions suggest the plan is
5 applicable not only through zoning ordinance, but also
6 directly. We can agree with the county that it must consider
7 the kind of community service use and its peculiarities in
8 deciding whether or not the use complies with applicable
9 criteria. We can also agree, given the plan's initial
10 statement in its preface, that the plan is designed to be
11 interpreted with the more drastic changes being subjected to
12 more strictly construed criteria than to changes which are only
13 minor. While we agree that the plan and MCC 11.15.7005 are to
14 be read together and allow the county to take into account the
15 "unusual character or affect on the neighborhood" of a proposed
16 community service use, we do not understand the plan and MCC
17 11.15.7005 to tell the county to "ease up" on the standards as
18 written in the plan and MCC 11.15.7015. See footnote 1. As we
19 understand the plan and zoning ordinance, the county is to
20 consider the intensity of the particular community service use
21 in deciding whether or not the use meets all of the approval
22 criteria, but the county is not in a position to change the
23 language of the approval criteria. That is, whether or not a
24 particular community service use is "consistent with the
25 character of the area" will depend, in part, on how intensive
26 and indeed how large the particular proposed use is. However,

1 the use must always be "consistent with the character of the
2 area."

3 Further, we believe subsection 7015 should be applied
4 consistently no matter what use is proposed. That is, the
5 county has made a legislative determination that sanitary
6 landfills and certain other uses are to be subjected to the
7 scrutiny of the community service designation criteria. Had
8 the county wished to ease one or more criterion for a
9 particular kind of use, it should have said so in the
10 ordinance.⁴

11 "(B) The County Cannot Substitute Subjective
12 Conditions for Proper Findings of Fact."

13 In this subassignment of error, petitioner argues the county
14 has improperly delegated to county staff, decisions that must
15 be made in a quasi-judicial forum. For example, petitioner
16 points to a condition requiring Department of Environmental
17 Quality approval for the proposed use. Petitioner argues in
18 order to receive this approval, the applicant must meet DEQ
19 air, water and noise standards. County Comprehensive Plan
20 Policy 13 requires a statement from DEQ that it can meet air,
21 water quality and noise level standards "prior to
22 quasi-judicial action." Comprehensive Plan at 6-2; Petition
23 for Review at 14. Petitioner reports that the applicant
24 submitted a letter which discussed air and water quality, but
25 the letter did not state the applicant could meet the standards
26 required. Further, there is evidence in the record, from a Mr.

1 Richards, that DEQ noise criteria could not be met. See
2 record, p. 480. The county answered this problem by imposing a
3 condition, rather than the required finding, according to
4 petitioner.

5 Petitioner cites Rockway v Stefani, 23 Or App 639, 543 P2d
6 1089 (1975), and Margulis v City of Portland, 4 Or LUBA 89
7 (1981), for the proposition that the permit may not be issued
8 until there is a showing of compliance with applicable
9 criteria. Here, according to petitioner, no compliance has
10 been shown to several important criteria.

11 Respondent Metro argues the county did not substitute
12 conditions for findings. The conditions were adopted in
13 addition to the findings, according to Respondent Metro, and
14 such conditions are specifically authorized by MCC
15 11.15.7010(E).⁵

16 As we understand the county approval process, the
17 proceedings leading to this approval are the only
18 quasi-judicial proceedings to be undertaken. That is, whether
19 or not the applicant has fulfilled any conditions imposed upon
20 it by the county is a matter for enforcement, not for further
21 public scrutiny in a quasi-judicial approval-like process.
22 Petitioner will not be able to review county staff decisions as
23 to compliance with conditions (except possibly through some
24 sort of enforcement action filed in court).

25 Other than conditions to control actual use of the site,
26 the conditions imposed which petitioner finds objectionable

1 include the following:

2 "(A) The applicant shall have obtained written
3 approval from the Oregon Water Resources
4 Department and the Oregon Department of
5 Envurmental [sic] Quality, for the proposed use.

6 "(B) The applicant shall have performed all Phase II
7 studies and final design. Phase II studies and
8 engineering shall have been performed as proposed
9 in the application.

10 "* * *

11 "(D) The applicant shall have received written
12 evaluation from the Department of Fish and
13 Wildlife for a wildlife and aquatic life habitat
14 enhancement program designed to minimize negative
15 habitat impacts." Record, p. 40.

16 As to the condition requiring project approval by the
17 Department of Environmental Quality, we generally do not find
18 the county to have committed error. The county found the
19 statutes and regulations governing DEQ and DEQ's enforcement
20 procedures to be "adequate to ensure compliance with state
21 standards on air quality, water quality, noise and landfill
22 construction and operation." Record, p. 114. Further, the
23 county found air quality standards would not be violated.
24 Record, p. 108-109. The county based these findings on the
25 testimony of experts, and we do not understand petitioner to
26 challenge the veracity of the testimony. Most importantly,
27 however, there is conditional approval from DEQ in the record.
28 See record, p. 1377. In short, it appears the county correctly
29 concluded that conformity to most DEQ rules and regulations and
30 permit criteria can be achieved. See also record, p. 119-129,

1 and Abrego v Yamhill County, 3 Or LUBA 350, 359 (1981).

2 However, the county did not obtain DEQ approval as to noise
3 regulations. County Plan Policy 13 requires the "agency"
4 responsible to approve projects as to noise before approval.
5 Therefore, the county was without an approval required by its
6 plan at the time it granted the applicant's request. See our
7 discussion under assignment of error no. 8(C), *infra*. Under
8 these circumstances, the county impermissably substituted a
9 condition for a required finding.

10 As to condition I(B), about engineering studies, we find
11 the county to have found the project to be feasible, and we
12 believe that is all that is required. Margulis v City of
13 Portland, 4 Or LUBA 89 (1981). We are not cited to county
14 approval criteria demanding greater finality or detail. The
15 record includes evidence as to landslides, soils, permeability,
16 geology, and other matters critical to a decision on whether
17 the site may be used for the intended purpose. As we
18 understand the condition, the county has only required
19 confirmation of what the county found to be adequate
20 engineering estimates.

21 As to subparagraph D about fish and wildlife habitat
22 enforcement, we note this condition appears to be an addition
23 to general findings on wildlife habitat found at record, p.
24 97-98 and 123-25. The findings recognize a loss of stream as
25 the result of the project along with some loss of wildlife
26 habitat. The county has imposed conditions to mitigate these

1 affects. We note that at page 124, the county recognizes an
2 adequate erosion and sediment control plan is essential to
3 prevent loss of fish habitat, but the county goes on to find
4 that it "is possible to properly design the project to account
5 for the surface water to be diverted from the north fork of the
6 Crabapple Creek and to keep sediment out of the creek below the
7 landfill." These statements constitute findings that the
8 county believes the project may be designed so as to minimize
9 the impact on fish. We do not, then, find the conditions
10 imposed to be substitutes for needed findings.

11 We hasten to add that the question of whether indeed the
12 project meets all plan policy and objective standards is a
13 separate matter. What we hold here is that the county has not
14 substituted conditions calling for future work for findings and
15 it has, therefore, not made an error of method.

16 We sustain this assignment of error, in part.

17 ASSIGNMENT OF ERROR NO. 2

18 "The County Erred In Finding that this Dump Will Be
19 Consistent With the Character of the Area."

20 This assignment of error attacks the county's conclusion
21 that the proposal "is consistent with the character of the
22 area" as required by MCC 11.15.7015(A). Petitioner advises the
23 character of the area is rural with a predominance of natural
24 resource uses. Record, p. 93. Petitioner says the county's
25 conclusion that the use is consistent with the area is based
26 upon the county belief that "it will not result in a permanent

1 change from the current rural setting, once revegetated."
2 Record, p. 94. Petitioner argues these findings are erroneous
3 because to have meaning, the consistency requirement under MCC
4 11.15.7015(A) must refer to the life of the use, not the
5 character of the land after the use is gone.

6 Petitioner also argues the county's partial reliance on
7 mitigation measures "emasculates" the standard because many of
8 the impacts of this use cannot be mitigated. These unmitigated
9 impacts include noise levels, scale of the use "and its eyesore
10 effect." Petition for Review at 23. Petitioner cites to the
11 original findings of the hearings officer to support its
12 argument. See record, p. 468-473.

13 Respondent Metro argues the county did find that where long
14 term consistency is shown, short term inconsistencies are
15 permissible if minimized by mitigation measures. Metro claims
16 the county adequately explained the reason for this
17 interpretation. The county recognizes that landfills are
18 always inconsistent with neighborhood uses. There would be no
19 landfills, ever, were the consistency standard an absolute.
20 Further, to read the consistency requirement strictly would
21 ignore MCC 11.15.7020(A)(16) which specifically allows
22 landfills in a community service district. Metro goes on to
23 say the county imposed 20 specific measures which would
24 substantially mitigate inconsistencies with the surrounding
25 area. See record, p. 94-95. Metro adds that mitigation does
26 not require that impacts be totally eliminated. Metro and the

1 county argue the county must be free to interpret the ordinance.

2 The county findings on consistency with the character of
3 the area as required under MCC 11.15.7015(A) appear at pages 91
4 through 95 of the record. The county notes the ordinance does
5 not define the terms "consistency" or "character of the area."
6 The county interpretes the terms in light of the

7 "public nature and benefits of the use in question,
8 the legislative judgment that a rural resource area is
9 not inherently 'inconsistent' with the community
10 service use, and the possibility that the use can be
11 managed so as to reasonably co-exist with neighboring
12 uses." Record, p. 91.

13 The county goes on to explain it believes a distinction between
14 short term and long term consistency is important because the
15 proposed landfill is for a duration of 30 years.

16 Inconsistencies will not last in the long term. The land will
17 be reclaimed for forest use, and the county argues it is simply
18 not productive to debate how many years make a short term use.

19 Record, p. 92. The county also finds that Comprehensive Plan
20 Policy 31 governs landfills and expressly recognizes the need
21 for the facilities. The policy requires a minimization of

22 impacts, not a prohibition on adverse impacts. The county,
23 therefore, concludes that policy 31 controls how this

24 "consistency" requirement is to be read. See Comprehensive
25 Framework Plan at 8-53. We take the county's findings to say
26 this use is "consistent" only in terms of the condition of the
27 land after the use is ended. During its life, the use is

28 "consistent" in that inconsistent conditions are "substantially

1 mitigated." Record, p. 94.

2 We do not read policy 31 to control this particular issue
3 in the manner argued by Metro and found by the county. It is
4 true that the "community facilities and uses location policy"
5 in the plan has as one of its purposes to "minimize adverse
6 impacts on adjacent development through site location and
7 design guidelines...." It is also true that policy 31
8 specifically states that it is county policy to "provide for
9 the location of community facilities in a manner which accords
10 with" the policies in the plan and "the locational criteria
11 applicable to the scale and standards of the use." We do not
12 believe these policies transform a bald requirement in MCC
13 11.15.7015(A) that the community service use be "consistent"
14 with the character of the area" into a requirement that the use
15 be consistent after it is completed. We reject the argument
16 that the county may measure consistency of the use with the
17 character of the area against the day when the landfill no
18 longer is operating and is covered over and replanted. Were
19 that the case, consistency would not be measured against a use
20 but against bare land after the use has gone. We believe such
21 an interpretation is not consistent with the terms of the
22 ordinance and the plan. Fifth Avenue Corp. v Washington Co.,
23 282 Or 591, 581 P2d 50 (1978).

24 There is nothing in the county ordinance to indicate to us
25 that the word "consistent" means anything other than its
26 dictionary definition. That definition calls for harmony and

1 accord, not for a kind of sliding scale of harmony and accord.

2 "2a: Marked by harmony, regularity or steady
3 continuity throughout: showing no significant change,
4 unevenness, or contradiction * * * *" Websters 3d
5 International Dictionary (1961).

6 It is important to note the community service ordinance
7 recognizes that its enumerated uses may be suitable for any
8 district in the county. Whether or not a particular enumerated
9 use is suitable for a particular district depends on whether
10 the use can meet or be made to meet the requirements of MCC
11 11.15.7015. Here, the county has not explained how it is that
12 this use will be consistent with the character of the area.
13 Instead, the county has altered the standard by saying that it
14 can only achieve eventual consistency. For now, the county
15 uses mitigation measures that the county states will
16 "substantially" mitigate the impacts of the fill. There is
17 nothing in the plan or ordinance that says substantial
18 mitigation means consistency. "Mitigate" means "to make less
19 severe, violent, cruel, intense, painful * * * *" Websters 3d
20 International Dictionary (1961). Had the county intended to
21 legislate a substantial consistency standard, based on
22 mitigation of effects, it could have done so.

23 Our view that strict standards apply is supported by the
24 lack of any controlling plan policies on solid waste in
25 contrast to plan policies on siting of other community service
26 uses. See footnote 3, supra. Also, we add that, in part, our
27 holding here is based on our holdings under assignment of error

1 nos. 3, 4 and 6, as these matters touch on overall
2 "consistency" of the use with the area. That is, the criteria
3 under MCC 11.15.7015 all are stated in strict terms and all
4 have bearing on how "consistent" the use is with the character
5 of the area.⁶

6 We conclude, therefore, the county has not met the
7 requirements of MCC 11.15.7015(A), and we sustain this
8 assignment of error.

9 ASSIGNMENT OF ERROR NO. 3

10 "The County Erred in Finding that this Dump Will Not
11 Adversely Affect Natural Resources."

12 This assignment of error is based upon MCC 11.15.7015(13)
13 which requires that the proposed community service use "[w]ill
14 not adversely affect natural resources." Petitioner cites the
15 hearings officer's report finding the dump will cause harm to
16 the area's natural resources. See record, p. 468-473.
17 Petitioner says the county board agreed the facility would
18 adversely affect natural resources, but approved the use
19 because the applicant "can not be strictly held to normal
20 standards of land use siting." Petition for Review at 26;
21 record, p. 95. We understand petitioner's argument to be that
22 there will be adverse effect to natural resources and that such
23 adverse effect is not permitted under MCC 11.15.7015(B).

24 The petitioner also alleges the county prepared its order
25 with "fabricated evidence." The hearings officer found there
26 was credible evidence that the Douglas Fir Site Class on the

1 150 acres to be used as a landfill would be reduced from Class
2 II to Class IV. The reduction in site class would render the
3 land unsuitable for commercial timber production according to
4 petitioner. Yet, the county found the site will be returned to
5 commercial timber production after the fill is completed.
6 Petitioner complains the county based this finding on a text
7 which talks about revegetation of landfill sites, but there is
8 no study or testimony available in the record to show that the
9 property could be returned to Douglas Fir Site Class II
10 soil.⁷ Petitioner complains further that county reliance on
11 testimony by Jim McClinton and Mr. McClure on these matters at
12 record, p. 118, is not supported adequately in the record
13 because there were no such persons ever appearing or testifying
14 or providing material to the hearings officer. Petitioner
15 alleges that the staff made "ex parte" contacts with these
16 individuals in order to get their statements before the county
17 board in the form of a second staff report. See record, p.
18 681. We understand petitioner to complain it did not have the
19 opportunity to rebut this evidence, and the evidence should
20 therefore have been ignored. However, we note petitioner does
21 not say it had no access to the staff report.

22 Metro argues the county realized a strict reading of the
23 ordinance would mean no landfill. The county therefore applied
24 a balancing test and found the landfill would cause impacts on
25 natural resources, but the impacts could be mitigated. Stream
26 loss could be mitigated by use of an alternate channel.

1 Wildlife habitat destroyed is not significant because there are
2 other habitats nearby. Timberlands would be impacted in the
3 short term by loss of land for the dump and associated
4 roadways. See record, p. 98-100. However, the county found no
5 significant loss of timber land because the site would be
6 returned to commercial timber growth.

7 We do not believe the county's findings show the landfill
8 will not adversely affect natural resources. As we held in
9 assignment of error no. 2, the standards imposed by MCC
10 11.15.7015 are stated in absolutes; and, together, they require
11 any proposed community service use to meet very stringent
12 standards. Whether or not the land will be returned to
13 commercial forest production begs the question of the impact of
14 the use now. The ordinance does not allow the county to rest
15 its conclusion about adverse effect on timberland on the
16 eventual end of the proposed use.

17 As to the issue of whether there has been fabricated
18 evidence, Respondent Metro advises that the evidence from Mr.
19 McClinton and Mr. McClure was included in a staff report. The
20 report was issued after the August 5 and 6 public hearing, but
21 the record was left open until September 3. Record, p.
22 1107-1109. Further, the hearings officer allowed staff to
23 submit this report and also gave the parties a week to respond
24 to the report. There was a response filed by petitioner.
25 Record, p. 548. Respondent argues the petitioner may not now
26 complain of a due process infringement.

1 The fact the report was peppered with evidence that did not
2 come out of a public hearing does not mean the report may not
3 be used or the county may not rely upon on it providing there
4 has been a meaningful opportunity to rebut. We believe such an
5 opportunity was presented because the record was left open for
6 comment. Whether or not petitioner availed itself of this
7 opportunity was not the responsibility of the county.⁸ See
8 1979 Or Laws, ch 772, sec 5(B), as amended and Carlson v City
9 of Eugene, 3 Or LUBA 175 (1981).

10 We sustain this assignment of error, in part.

11 ASSIGNMENT OF ERROR NO. 4

12 "The County Erred In Finding that this Dump Will Not
13 Conflict with Farm or Forest Uses in the Area."

14 Petitioner uses the hearings officer's finding that the
15 landfill will conflict with forest uses to support its argument
16 that MCC 11.15.7015(C) has not been met. Forest uses are
17 allegedly adversely affected because of the loss of streams,
18 impact on wildlife habitat, impact on timberland, impact on
19 visual and recreational resources which a forest area provides
20 and increased fire risk. Petitioner argues an increase fire
21 risk will result around the dump area, and the county's
22 findings fail to address fire fighting measures. Petitioner
23 characterizes the county's findings as claims that whatever
24 conflicts may exist during the life of the use are allowable
25 because they may be mitigated by conditions. Petitioner also
26 alleges potential injury to farm enterprises in the vicinity.

1 The county finds that the word "conflict" as used in this
2 section means:

3 "Any result of the proposed action which would cause
4 adjacent farm or forest uses to suffer irreparable
5 damage such that the use is no longer economically
6 feasible for commercial production." Record, p. 102.

7 The county then concludes that the proposed use will not
8 conflict with farm or forest uses in the area because, in the
9 long term, there will be no such "conflict," and such adverse
10 impacts as may occur because of the landfill operation may be
11 mitigated. The findings appear to recognize, however, that
12 there is an increased fire risk and that there will be short
13 term loss and some long term loss of timberland. The county
14 also recognizes a potential secondary impact from birds
15 attracted to the site "which could fly over to the Island
16 (Sauvie Island) and create problems by eating agricultural
17 crops." Record, p. 104. The county finds, however, that bird
18 control will be practiced by covering the fill with dirt daily
19 or even more frequently. In short, the county appears to find
20 there are conflicts but that they will be mitigated.

21 Metro argues the county did not error in finding the
22 proposal will not conflict with farm or forest uses. Metro
23 argues the potential fire hazard noted in the findings is not
24 sufficient to constitute a risk to timberland because on-site
25 fire fighting assistance will be available as will fire
26 fighting from the State Forestry Department. See record, p.
81-82, 102-103, 109, 130, 317.

1 With respect to farm uses, Metro argues the county's
2 findings show a low probability of any contamination of the
3 nearby dairy farm or water contamination generally. The county
4 also found there are control techniques that will prevent a
5 bird population from being attracted to the site in sufficient
6 numbers to affect agricultural activities on Sauvie Island.
7 Metro concludes there are sufficient findings and supported by
8 sufficient evidence in the record to show that no "conflict" as
9 the county understands the term exists with respect to farm
10 uses. See record, p. 68-72, 105, 1326-1328.

11 Again, we do not find the county plan and ordinances to
12 lend themselves to the interpretation the county attaches. MCC
13 11.15.7015(C), as with the other six subsections, imposes a
14 strict standard. The ordinance does not say that the proposed
15 use is not to cause "irreparable damage" to forest and farm
16 uses. The standard is a bald statement requiring "no
17 conflict." Because the county findings recognize short and
18 long term loss of forest land, we must agree with the
19 petitioner that the county has failed to meet the requirements
20 of this subsection.

21 This assignment of error is sustained.

22 ASSIGNMENT OF ERROR NO. 5

23 "The County Erred in Finding that this Dump will Not
24 Require Additional Public Services Not Programmed for
25 the Area."

26 As we understand this assignment of error, petitioner

1 complains there will be increased need for services to provide
2 fire protection, leachate disposal and potable water if wells
3 are contaminated. These service needs violate provisions of
4 MCC 11.15.7015(D). Petitioner also says the county's findings
5 are speculative on these issues.

6 The county found compliance with this subsection in part as
7 follows:

8 "(1) The Zoning Ordinance does not define what public
9 services are to be considered under this
10 criterion. The County finds that the following
11 services are relevant: police and fire
12 protection, power, telecommunications, potable
13 water, and sanitary and storm water disposal.

14 "(2) Metro is a public agency. To that extent,
15 everything it provides is a public service.
16 Also, because Metro is responsible for the
17 programming of public services related to solid
18 waste management, those services it will provide
19 in conjunction with the landfill, including the
20 landfill itself, are hereby found to be
21 programmed for the area, albeit by Metro.

22 "(3) In addition to the above, the public services
23 criteria does not mean that uses cannot be
24 allowed just because they may require such
25 services. Rather, the criteria is intended to
26 restrict urban growth from areas in which urban
facilities and services are not available or
planned. In addition, the purpose of Policy 31,
which governs landfills, expressly provides that
such facilities should be located where 'required
services can be achieved.' As indicated below,
required services can be achieved at the Wildwood
site. Therefore, the proposal complies with the
public services criteria of MCC 11.15.7015(D) in
light of the intent of that criteria, which is
described in Policy 31." Record, p. 105-106.

27 We fail to see how the county has committed an error. We
28 do not understand MCC 11.15.7015(D) to prohibit a development
29

1 simply because it may require additional services. The
2 services have been "programmed" in that the county and Metro
3 are responsible to plan (or "program") for solid waste disposal
4 and Metro has "programmed" the use of the site and the services
5 needed to run it. We believe the city's understanding, as it
6 appears from its analysis at page 106-107 of the record, is
7 correct. Since the needed services are planned for and may be
8 provided, the condition is met.

9 This assignment of error is denied.

10 ASSIGNMENT OF ERROR NO. 6

11 "The County Erred in Finding that this Dump Will Not
12 Create Hazardous Conditions."

13 Petitioner here argues that hazardous conditions will be
14 created in violation of MCC 11.15.7015(F). Petitioner points
15 to what it believes it to be a lack of necessary geotechnical
16 and engineering evidence to show that potential dangers on this
17 property do not exist. Petitioner cites evidence in the record
18 showing the property to have a landslide potential. In sum,
19 petitioner says there is a potential for landslides, fire and
20 contamination that makes it impossible for the county to comply
21 with MCC 11.15.7015(E).

22 Metro argues that landslide potential can be overcome. The
23 county found that sliding would not be a hazard. Record, p.
24 161-165. This conclusion is supported by evidence in the
25 record at 1652-73, 1699-1701, 1694-1697, 1509-1515, according
26 to Metro. Respondent Metro argues that the county is entitled

1 to weigh and choose among conflicting opinions and evidence,
2 and this Board may not substitute its judgment of the county.
3 1979 Or Laws, ch 772, ch 4(7), as amended by 1981 Or Laws, ch
4 748; Tichy v Portland, 6 Or LUBA 13 (1982); Hinson v Jackson
5 County, 1 Or LUBA 24 (1980); Christian Retreat Center v
6 Washington County, 28 Or App 673, 560 P2d 1100 (1977).

7 As to well water contamination and fire hazard, Metro
8 argues the well water problem has been sufficiently addressed,
9 and water will be provided at Metro expense if necessary. Fire
10 has been discussed earlier, but Metro adds that on-site fire
11 prevention and off-site fire suppression will be adequate to
12 prevent hazard.

13 The county appears to recognize that hazardous conditions
14 may be created by this landfill. The county admits to possible
15 leachate contamination, but concludes that there is no public
16 hazard because of "mitigation" measures including furnishing of
17 potable water should contamination occur to groundwater
18 supplies. See record, p. 40, 65-68, 71-72, 73. The county
19 recognizes noise, air or visual problems but concludes that
20 there will be no hazard because DEQ noise regulations and air
21 quality standards can be met.⁹ The county also recognizes
22 the potential for fire. However, the county finds no hazard to
23 exist because there will be fire fighting procedures in force
24 on-site and available fire fighting forces off site. See
25 generally record, p. 108-110.

26 The record reveals considerable conflicting evidence on the

1 matter of leachate contamination, landslide potential and fire
2 danger. The county chose to believe evidence that said in
3 essence that these dangers could be eliminated through
4 available engineering techniques and other controls. The
5 county has the duty to pass on this conflicting evidence and
6 has done so. Norvell v Portland Metro ALGBC, 43 Or App 849,
7 604 P2d 896 (1979); City of Wood Village v Portland Metro
8 ALGBC, 48 Or App 79, 616 P2d 528 (1980). We believe there is
9 substantial evidence in the record from which the county could
10 conclude that the site may be used without landslide hazards.
11 Whatever slide hazard exists can be rendered safe through
12 controls. See record, p. 68-72. As to fire danger, we also
13 find the county to have sufficient evidence from which to
14 conclude that fire danger is low and that fires that do occur
15 can be extinguished without hazard. See record, p. 81-82, 107.

16 However, in its discussion under plan policy 16, the county
17 findings acknowledge a risk of groundwater contamination
18 significant enough to require monitoring of wells. If
19 pollution is detected, "replacement water will be provided by
20 Metro." Record, p. 123. We do not believe a provision for
21 substitute water is sufficient to satisfy a standard that
22 requires no hazards be created. Here, the county acknowledges
23 a hazard and provides relief that may satisfy an injured person
24 should the hazard become a present danger, but it does not mean
25 the project is without hazard. See also our discussion of
26 noise under assignment of error 8(C), *infra*.

1 This assignment of error is sustained.

2 ASSIGNMENT OF ERROR NO. 7

3 "The County Erred by Failing to Make a Finding on
4 Comprehensive Plan Policy No. 20."

5 Comprehensive Plan Policy No. 20 is as follows:

6 "ARRANGEMENT OF LAND USES

7 "The county policy is to support higher densities and
8 mixed land uses within the framework of scale,
location and design standards which:

9 "A. Assure a complimentary blend of uses;

10 "B. Reinforce community identity;

11 "C. Create a sense of pride and belonging; and

12 "D. Maintain or create neighborhood long-term
13 stability."

14 The petitioner cites a hearings officer finding that it is
15 difficult to integrate a large regional landfill into a
16 community without creating impacts "in excess of those
17 associated with community level uses." Petition for Review at
18 39. Petitioner argues the county was wrong to say that the
19 policy applies only to a residential or urban area. Petitioner
20 claims there is no support for such an interpretation.

21 Respondent Metro says a community service use must satisfy
22 applicable plan policies. See MCC 11.15.7015(G). Metro agrees
23 with the county finding that policy 20 is inapplicable because
24 the policy does not control the siting of a landfill in a rural
25 area. See record, p. 111. Metro argues the policy promotes
26 increased density levels, and increased density levels have

1 nothing to do with development in rural or forest areas. Metro
2 argues LUBA should defer to the county's interpretation.
3 Alluis v. Marion County, 7 Or LUBA 98 (1982).

4 We read the plan policy to control matters of density in
5 developed or developing areas. The policy does not refer to
6 rural areas or uses. We find nothing in the plan to suggest
7 the county intended these considerations to be applicable to a
8 rural setting, and we therefore decline to find the county
9 erred in failing to make findings in plan policy 20.

10 This assignment of error is denied.

11 ASSIGNMENT OF ERROR NO. 8

12 "The County Erred in Finding that this Dump Complies
13 with Comprehensive Plan Policy Nos. 2, 11, 13, 14, 16,
31, 37 and 38."

14 A. Plan Policy 2

15 Policy 2 is about off-site effects. The policy allows the
16 county to apply conditions where it is necessary to protect the
17 public and fulfill the need for public service demand.

18 Petitioner claims the county improperly substituted
19 conditions for findings in violation of this comprehensive plan
20 policy. This assignment is controlled by our discussion of the
21 conditions imposed by the county under assignment of error 1.
22 We do not find the county to have violated this policy as
23 alleged.

24 B. Plan Policy No. 11

25 Plan policy 11 is the "Commercial Forest Land Area
26

1 Policy." It sets out criteria, including forest site class,
2 for designating commercial forest land. Petitioner argues this
3 policy is violated because that the landfill removes 208 acres
4 of qualifying land from commercial timber production. As we
5 understand petitioner, it is arguing that a landfill is not a
6 permitted use or an accessory use in a forest zone and is
7 contrary to forest uses. If petitioner is arguing that a
8 landfill may never be allowed in a forest zone, we disagree.
9 MCC 11.15.7020(16) expressly allows a landfill in any zoning
10 district providing it meets the criteria in MCC 11.15.7015. In
11 this case, it is the conflict with forest uses, not a conflict
12 with a forest zone per se, that is at issue.

13 C. Plan Policy No. 13

14 Comprehensive Plan Policy 13 is the air and water quality
15 and noise level policy. The policy states:

16 "THE COUNTY'S POLICY IS TO SUPPORT THE MAINTENANCE,
17 AND WHERE POSSIBLE, THE ENHANCEMENT OF AIR AND WATER
18 QUALITY AND THE REDUCTION OF NOISE POLLUTION BY
19 REQUIRING, PRIOR TO APPROVAL OF A LEGISLATIVE OR
20 QUASI-JUDICIAL ACTION, A STATEMENT FROM THE
21 APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH
22 RESPECT TO:

20 "A. AIR QUALITY;

21 "B. WATER QUALITY; and

22 "C. NOISE LEVELS." Comprehensive Framework Plan at
23 6-2.

24 Petitioner claims this policy is violated because the applicant
25 did not present evidence from DEQ about noise levels or any
26 other evidence that it could meet noise level standards.

1 Respondent Metro argues the petitioner ignored the county's
2 findings. Record, p. 119-120 includes findings about noise
3 levels. The county noted there was conflict about noise
4 evidence, and the county explained why it chose the applicant's
5 evidence over that of the opponents. See record, p. 120 and
6 record, p. 1331-1333, 1685-1686.

7 Petitioner is correct that DEQ did not approve the project
8 as to noise levels. The county explains away this omission as
9 follows:

10 "(7) The County finds that the testimony regarding
11 noise vis-a-vis DEQ standards is in conflict.
12 The County finds that the noise impact of the use
13 can comply with the cited DEQ standards regarding
14 noise, based on the data in Vol. I of the
15 Feasibility Report, pp. 5-74, through 5-85. Mr.
16 Richard's testimony in opposition did not
17 demonstrate DEQ noise standards cannot be met;
18 CH2M/Hill staff adequately responded concerning
19 the basis of their methods and conclusions to
20 rebut Mr. Richards.

21 "(8) The County finds, in addition, that even though
22 the DEQ preliminary approval did not expressly
23 address noise, DEQ must, nevertheless, grant a
24 permit before the landfill can operate.
25 Therefore, compliance with State noise standards
26 will be again addressed in that forum and that
27 process will adequately achieve the purpose of
28 Policy 13. To deny this application solely
29 because DEQ did not or would not comment on noise
30 would 'put formality before substance,' since DEQ
31 must review the noise issue in advance of DEQ
32 permit issuance. Also, DEQ testified that the
33 preliminary review is largely a courtesy to local
34 governments and is not a function required by
35 law. If DEQ fails to comment on an issue in a
36 preliminary review, that should not be held
37 against the applicant as long as DEQ must approve
38 the plan at a later time anyway."

39 The county does not explain why DEQ would make no comment

1 on noise when the DEQ letter of conditional approval addresses
2 all other criteria. See record, p. 1377-1378. The lack of
3 approval puts the county in violation of policy 13 because the
4 policy mandates the approval from a state agency. We find that
5 without an explanation showing some impossibility to meet the
6 condition, the statement that the standard can be met is not
7 sufficient to satisfy the policy. The policy says the
8 "appropriate agency" must make the statement; it can not be
9 made for it by another body.

10 D. Plan Policy No. 14

11 Comprehensive Plan Policy 14 is about limitations to
12 development. The policy directs development away from areas
13 that have slope exceeding 20 percent, erosion problems, lands
14 within flood plains and other characteristics that would
15 impinge upon the site. The policy does not prohibit
16 development, it simply requires a showing "that design and
17 construction techniques can mitigate any public harm or
18 associated public cost, and mitigate any adverse affects to
19 surrounding persons or properties." Comprehensive Framework
20 Plan at 6-5. Petitioner complains that the applicant has
21 developed only a conceptual plan, and all experts agree that
22 the landslide issue needs more study. Petitioner concludes the
23 applicant has not met its burden under this policy.

24 Respondent Metro states that safety and feasibility have
25 already been shown, and the additional geologic study is not to
26 prove the project safe but to enable "preliminary and final

1 engineering." Brief of Respondent Metro at 38.

2 The county found the use to comply with policy 14 because
3 the design and construction proposed can mitigate harm
4 resulting from development of the site. The county
5 specifically found that the facility has been shown to be safe
6 and feasible from an engineering and geologic standpoint. See
7 record, p. 122. We believe this finding is all that is
8 required now under policy 14. The policy simply requires the
9 county to do what it has done: to determine the feasibility of
10 the project based upon adequate geologic evidence and to ensure
11 that the potential dangers may be mitigated. We do not believe
12 the policy prohibits development that may result in a hazard,
13 and we do not believe the county has approved this development
14 in violation of policy 14.¹⁰

15 E. Plan Policy 16.

16 Comprehensive Plan Policy 16 says:

17 "The county's policy is to protect natural resource
18 areas and to require a finding prior to approval of a
19 legislative or quasi-judicial action that the long-
range availability and use of the following will not
be limited or impaired:

20 "A. mineral and aggregate resources;

21 "B. energy resource areas;

22 "C. domestic water supply water shed;

23 "D. fish habitat areas;

24 "E. wildlife habitat areas; and

25 "F. ecological and scientifically significant natural
26 areas."

1 Petitioner argues the policy is violated because the
2 facility may contaminate domestic wells, will destroy fish
3 habitat and will destroy wildlife habitat. Petitioner
4 recognizes the county has imposed a number of conditions that
5 may mitigate these effects, but mitigation is not sufficient
6 under comprehensive plan standards, according to
7 petitioner.¹¹ Further, petitioner cites evidence about an
8 eagle's nest on the site once destroyed by logging and
9 testimony that eagles from that nest would reestablish
10 themselves in the vicinity. Petitioner claims the county
11 conclusion there would be no adverse affect on the eagles
12 because there are no eagles' nests in the vicinity or on the
13 site, is not true and not supported in the record.

14 Respondent Metro reminds the reader that the policies
15 protect "long-range availability" of natural resources.
16 Respondent points to mitigation efforts that we understand
17 Metro to argue show that no long-range harm will occur to the
18 listed resources. Further, Respondent Metro claims that
19 whether or not an eagle's nest is near the site is not
20 depositive of a violation of policy 16. Whether eagles have
21 been sighted in the area or not, there are none on the site
22 according to Metro. Metro cites evidence including on-site
23 investigations to show that no eagles or nests exist on the
24 site.

25 The county found there will be no long range impairment of
26 the availability of the resources listed in policy 16. See

1 record, p. 122-125. The county's approval rests in large part
2 on the condition of the Wildwood Site many years from now after
3 the closure of the landfill. The policy speaks of long term
4 protection of the listed resources, but the county does not
5 find there will be no long term impairment in all cases. Under
6 "fish habitat areas," the county states there will be loss of
7 habitat. The county does not say it will eventually be
8 restored, but only that "a portion of this [Class I stream
9 areas] could be regained for the future." Record, p. 124.
10 Further, the county explains that wildlife habitat will be
11 reduced forcing some species out of the site and some "will not
12 be able to relocate." Record, p. 124.

13 These findings do not show compliance with policy that
14 demands no impairment. The policy may indeed be unnecessarily
15 strict when applied to needed community service uses, but the
16 policy nonetheless exists and is part of the approval
17 criteria. Roseta v County of Washington, 254 Or 161, 458 P2d
18 405 (1969). The county might wish to consider amending the
19 policy or exempting certain community service uses from it.¹²

20 F. Plan Policy No. 31

21 Comprehensive Plan Policy 31 states that it is the policy
22 of the county to provide for location of community facilities
23 in such a way that accords with applicable plan policies, and
24 "locational criteria applicable to the scale and standards of
25 the use."

26 We understand petitioner to argue that this policy refers

1 to Metro's responsibility to establish criteria for siting of
2 landfills. Those criteria appear at record, p. 132B-132C and
3 call for Metro to conduct a public hearing. Petitioner claims
4 Metro failed to hold the required hearing.

5 We fail to understand how these policies, which are about
6 Metro's responsibility to "consider" certain citing issues and
7 to follow certain procedures, apply to the county. There is no
8 document to which we are cited that makes these considerations
9 and procedural requirements part of the county's responsibility.

10 G. Plan Policy Nos. 37 and 38

11 These policies are about utilities and public facilities
12 including school, fire protection and police protection. We
13 understand petitioner to restate arguments raised earlier about
14 the need for additional services to facilitate the landfill.
15 We believe our discussion under assignment of error 5 answers
16 petitioner's concerns.

17 This assignment of error is sustained, in part.

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

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FOOTNOTES

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3 1

MCC 11.15.7015 states:

"In approving a Community Service use, the approval authority shall find that the proposal:

"(A) Is consistent with the character of the area;

"(B) Will not adversely affect natural resources;

"(C) Will not conflict with farm or forest uses in the area;

"(D) Will not require public services other than those existing or programmed for the area;

"(E) Will be located outside a big game winter habitat area as defined by the Oregon Department Fish and Wildlife or that agency has certified that the impacts will be acceptable;

"(F) Will not create hazardous conditions; and

"(G) Will satisfy the applicable policies of the Comprehensive Plan."

16
17 2

"The Board considers a strict interpretation to be inappropriate in this case. This proposal involves a regional landfill sponsored by a regional governmental agency. The Board's review of the proposal is guided by provisions of the Comprehensive Plan which expressly acknowledge Metro's authority and responsibility related to the subject matter of this case. There is persuasive evidence in the plan that the County's intention is to give substantial weight to site selection decisions made by Metro. Strict or literal interpretation of the very general CS approval criteria would make this virtually impossible."
Record, p. 86.

24
25 3

For example, "Major Regional Facilities" include:

1 "COMMUNITY COLLEGE
"PRIVATE COLLEGE
2 "UNIVERSITY
"LIVE-IN TRAINING FACILITIES
3 "AIRPORT
"GOVERNMENT SERVICES
4 "*Adminstrative
 "*Human
5 "*Justice
"HOSPITAL"
6

The criteria for "Major Regional Facilities" are as follows:

7 "1. Scale

8 "A. Access

9 "(1) There is direct access from the site to
a collector street and traffic will not
10 be routed through local neighborhood
streets.

11 "(2) Site access will not cause dangerous
intersections or traffic congestion,
12 considering the roadway capacity,
existing and projected traffic counts,
speed limits and number of turning
13 movements.

14 "(3) There is public transit to the site.

15 "B. Impact of the Proposed Change on Adjacent
Lands.

16 "(1) It is compatible with surrounding uses,
considering scale, character and use.

17 "(2) It will reinforce orderly and timely
development.

18 "(3) Associated lights and noise will not
interfere with the activities and uses
on surrounding properties.

19 "(4) Large scale construction and parking
lots can be buffered from the adjacent
uses.

20 "(5) Privacy of adjacent residential
developments can be maintained.

21 "(6) Community identity can be maintained
through design and site layout which
22 blends the structure into the
residential character of the area.

23 "(7) Buffering can screen the project from
adjacent uses.

24 "(8) The project can be integrated into the
existing community.

25 "(9) There is adequate landscaping to filter
the dust from the site area.

26 "C. Site Characteristics

- 1 "(1) The land intended for development has
2 an average site topography of less than
3 a 10% grade, or it can be demonstrated
4 that through engineering techniques,
5 all limitations to development and the
6 provision of services can be mitigated.
7 "(2) The site is of a size which can
8 accommodate the present and future uses
9 and is of a shape which allows for a
10 site layout in a manner which maximizes
11 user convenience and energy
12 conservation.
13 "(3) The unique natural features, if any,
14 can be incorporated into the design of
15 the facilities or arrangement of land
16 uses."

17 4

18 We treat this subassignment of error only as an
19 announcement of the applicable standards, not as a holding that
20 the county has committed some sort of remandable or reversible
21 error.

22 5

23 "(E) In granting approval of a Community Service Use,
24 the Hearings Officer may attach limitations or
25 conditions to the development, operation or
26 maintenance of such use including but not limited
27 to setbacks, screening and landscaping,
28 off-street parking and loading, access,
29 performance bonds, noise or illumination
30 controls, structure height and location limits,
31 construction standards, periods of operation and
32 expiration dates of approval." MCC 11.15.7015(E).

33 6

34 We are uncertain as to why the county did not enact more
35 liberal standards for siting such uses. From the briefs, it
36 appears the county recognizes the severe problems in locating
37 unpopular and yet necessary uses. It would appear special
38 criteria emphasizing mitigation instead of consistency would be
39 in order.

40 7

41 In other words, commercial timber production equates with a
42 need for Class II soils.

1
8

2 There is a passing reference to a visit by Gladys McCoy to
3 other landfill sites "outside the record." Petitioner
4 complains its due process rights were violated, but it does not
5 explain how. We decline to speculate on how petitioner's due
6 process rights were violated.

5
9

6 We understand Plan Policy 13, "Air and Water Quality and
7 Noise Level Policy" to say that the county adopts DEQ standards
8 as its own. See Multnomah County Framework Plan at 6-1; Abrego
9 v Yamhill County, 3 Or LUBA 350 (1981).

9
10

10 We caution that this holding does not mean specific
11 ordinance limitation on development has no effect. See MCC
12 11.15.7015 and our discussion under assignment of error 2 and
13 6. The plan policy, as we understand it, does not supplant
14 ordinance criteria. See the "strategies" under "Development
15 Limitations Policy," Comprehensive Framework Plan at 6-6.

13
11

14 "(a) Berms to be placed in front of the working face
15 to obscure garbage deposits from view.

16 "(b) Minimal, obscured lighting of the facility.

17 "(c) Landfilling during daylight hours only.

18 "(d) Sequential reforestation and reclamation of the
19 site for forest use.

20 "(e) Use of transfer trucks rather than commercial
21 hauling trucks to decrease traffic volume.

22 "(f) Collection of methane gas to prevent odor and
23 lateral gas migration and to enhance
24 reforestation potential.

25 "(g) Leachate collection to eliminate water pollution
26 and well contamination.

27 "(h) Property devaluation compensation to eliminate
28 financial losses to residential neighbors.

29 "(i) Noise control measures to minimize noise
30 increases.

- 1 "(j) Plantings on residential properties to obscure
2 views from residential areas.
- 3 "(k) Stream diversion channels to maintain habitat and
4 restrict surface water from entering the landfill
5 area.
- 6 "(l) Sedimentation control measures to assure surface
7 water quality.
- 8 "(m) Fire prevention and suppression measures to
9 protect the facility and surrounding forest and
10 residential areas.
- 11 "(n) Daily cover of waste material to eliminate odor
12 and reduce vector and bird attraction. Bird
13 dispersion measures, if appropriate.
- 14 "(o) Improvements to Highway 30 to eliminate traffic
15 hazards at landfill access point.
- 16 "(p) Provision of potable water, if needed.
- 17 "(q) Retention of timbered areas not needed for
18 landfilling.
- 19 "(r) Dust control measures to prevent air quality
20 deterioration.
- 21 "(s) Continuous monitoring of groundwater and
22 environmental impacts, and continuous enforcement
23 of conditions by the County and DEQ.
- 24 "(t) Other measures proposed by the applicant to
25 mitigate off-site impacts resulting from the
26 landfill."

20 12

21 We have the same comment about MCC 11.15.7005, et
22 seq. See footnote 6, supra.