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

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CLYDE HOLLIDAY FAMILY RANCHES,)
INC., KEN HOLLIDAY, CLYDE)
HOLLIDAY, DARREL HOLLIDAY,)
Petitioners,)
vs.)
GRANT COUNTY and RICHARD G. RAY,)
Respondents.)

LUBA No. 83-096
FINAL OPINION
AND ORDER

Appeal from Grant County.

Margaretta Eakin, Portland, filed the Petition for Review and argued the cause for petitioners.

Stephen T. Janik, Portland, filed a brief and argued the cause for Respondent Richard G. Ray. With him on the brief were Ball, Janik & Novack.

No appearance by Grant County.

KRESSEL, Referee; BAGG, Chief Referee; DUBAY, Referee participated in the decision.

REMANDED 02/29/84

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1983, ch 827.

1 Opinion by Kressel.

2 NATURE OF THE DECISION

3 Petitioners appeal Grant County's reclassification of a
4 conditional use permit from temporary (six months) to
5 permanent. The permit authorizes a gravel quarry operation on
6 part of a 40 acre lot. Also challenged is the county's
7 approval of a minor partition dividing the 40 acres from a
8 3,354 acre ranch owned by Respondent Richard Ray.

9 FACTS

10 The quarry occupies about 12 acres of the 40 acre lot. The
11 land in question is zoned F-1 (agricultural use, 40 acre
12 minimum lot size). It is on the north side of the John Day
13 Highway, midway between the City of John Day and Prairie City.
14 Petitioners farm the land to the east. Their feedlot is
15 approximately one half mile from the western boundary of the
16 quarry. Separating petitioners' feedlot from the quarry is a
17 buffer described in the county's order as "a prominent draw
18 containing major vegetative features."

19 Other uses in the vicinity include a quarry operated by
20 petitioners and a gravel storage area owned by the state
21 highway division. The John Day River is north of the land in
22 question. A creek known as Pine Creek flows about 100 yards
23 west of the quarry site.

24 The county attached numerous conditions to its approval of
25 the use and the minor partition. Among them were conditions
26 (1) requiring a 600 foot buffer on the west side of

1 the quarry (2) prohibiting residential use of the land during
2 the life of the permit, (3) requiring additional approval of
3 any uses of the 40 acres other than extraction of aggregate or
4 farming, and additional approval of any expansion of the quarry
5 beyond the 15 +/- acre site and (4) permitting rock crushing
6 only between May 15 and September 30 of last year. Many of
7 these conditions were adopted in response to concerns raised by
8 petitioners about the adverse impacts of the use.¹

9 FIRST ASSIGNMENT OF ERROR

10 Petitioners challenge the adequacy of numerous findings in
11 the county's order. We address each challenge.

12 First, our attention is directed to findings which quote
13 certain comprehensive plan and ordinance provisions.² The
14 county considered these to be standards governing the permit
15 application. The allegation of error is that the findings do
16 not discuss evidence pertinent to the quoted provisions.
17 Specifically, petitioners claim the findings should have
18 discussed evidence of the adverse impact of the quarry on their
19 nearby feedlot and residence.

20 We agree with respondents' observation that petitioners
21 expect too much when they challenge these findings. A finding
22 which simply identifies and quotes applicable plan or ordinance
23 provisions might be challenged for incompleteness or
24 inaccuracy, but such a finding itself requires no discussion of
25 supporting evidence. In any event, we note that other portions
26 of the final order do reflect the concerns raised by

1 petitioners under the cited plan and ordinance provisions.³

2 Next, petitioners challenge another finding which quotes an
3 ordinance section. The section states the county will allow a
4 land use proposal listed in ORS 215.213(2) (uses permitted in
5 exclusive farm use district) only if the proposed use is also
6 listed as allowable in the county zoning ordinance.

7 Petitioners' allegation here is that the county's F-1 ordinance
8 permits a quarry but only as a temporary conditional use.

9 According to petitioners' argument, if the findings had
10 acknowledged this limitation, it would be clear the proposal
11 for a permanent quarry could not be approved.

12 We do not agree the Grant County Ordinance permits only
13 temporary quarries in the F-1 district. Section 3.012(9) of
14 the ordinance, which is quoted in the county's order, allows as
15 conditional uses "operations for the exploration and processing
16 of aggregate and mineral resources or subsurface resources."

17 No durational limit is stated in this provision. References in
18 the record to a six month limitation on quarry activity can be
19 found, but these reflect only the fact that respondent's
20 earlier permit request for a temporary quarry use arose under a
21 different ordinance provision. We conclude the zoning
22 ordinance did not bar approval of this proposal.

23 Next, petitioners allege the county failed to make findings
24 demonstrating compliance with §C.4 of the zoning ordinance.
25 That section includes criteria governing creation of one or
26 more parcels for nonfarm purposes in agricultural areas.

1 Petitioner claims the minor partition proposed by respondent
2 was such a land division, yet the county did not make the
3 findings required by §C.4. Indeed, petitioners assert the
4 record clearly demonstrates noncompliance with these criteria.

5 Respondent Ray urges us to reject this challenge on two
6 grounds. First, he contends the criteria cited by petitioners
7 are not applicable in this case because the 40 acre partition
8 was for a farm use (extraction of aggregate) as that term is
9 defined in the county zoning ordinance. He reminds us that
10 §C.4 applies only to land divisions for nonfarm purposes.

11 Second, respondent insists that if the criteria in §C.4 are
12 applicable, the county's order demonstrates compliance.

13 We do not accept Respondent Ray's first contention.
14 Manifestly, the county treated this proposal as a conditional
15 nonfarm use in the F-1 district.⁴ That interpretation
16 deserves substantial weight. Alluis v. Marion County, 7 Or
17 LUBA 98 (1983). Although a section of the zoning ordinance
18 ambiguously defines "farm use" to include the nonfarm uses
19 listed in ORS 215.213(2), we believe this provision merely
20 identifies the general range of uses allowed in the F-1
21 district. We do not believe, as Respondent Ray suggests, the
22 provision exempts nonfarm uses from the review criteria
23 contained in the zoning ordinance, including the criteria in
24 §C.4.

25 We conclude that §C.4 contains criteria applicable to the
26 proposed land division. We turn next to the adequacy of the

1 findings in relation to those criteria.

2 Under §C.4 of the zoning ordinance, affirmative findings on
3 any seven of 10 criteria must be made in order for the county
4 to approve a land division for nonfarm purposes in the
5 agricultural area. The criteria are as follows:

6 "(a) Is not predominately soils of SCS capability
7 Class I thru VI.

8 "(b) Has no irrigation right.

9 "(c) Not capable or feasible of cultivation under
10 normal agricultural practices.

11 "(d) Would not decrease carrying capacity or
12 productivity of existing farm operations.

13 "(e) Would not adversely [sic] affect existing balance
14 of forage and hay supply.

15 "(f) Does not affect the base for a public grazing
16 allotment.

17 "(g) Not capable or economically feasible of producing
18 a marketable crop.

19 "(h) Would not have significant adverse affect on
20 critical winter wildlife habitat.

21 "(i) Would not aversly [sic] affect surrounding
22 agricultural operations; and

23 "(j) Does not show intent to circumvent partition or
24 subdivision regulations." §C.4, Grant County
25 Zoning Ordinance.

26 After reviewing the final order, we find merit in
petitioners' challenge under §C.4 of the ordinance. The
findings are insufficient. They do not specify, for example,
which seven of the 10 criteria were applied to this proposal by
the county. The order neither identifies the pertinent
criteria nor discusses the facts in terms of the criteria.

1 Respondent Ray insists the findings "refer to the issues
2 raised" by §C.4, and this appears to be true. However,
3 findings which generally refer to issues raised by approval
4 criteria are not adequate findings. To be adequate, the
5 findings in this case must specifically identify which criteria
6 in §C.4 are applicable and explain why the facts support the
7 conclusion those criteria are satisfied. South of Sunnyside
8 Neighborhood League v. Board of Comm. of Clackamas County,
9 280 Or 3, 20-21, 569 P2d 1063 (1977).

10 Apart from failure of the county's order to identify the
11 pertinent provisions in §C4, and discuss the facts in relation
12 to those provisions, there are some findings in the order
13 which, as argued by petitioners, suggest noncompliance with the
14 land division criteria. For example, §C.4 (a) permits a land
15 division only where the land "is not predominantly soils of SCS
16 capability Class I thru VI." However, Finding 4 (d) in the
17 county's order indicates that the land in question is Class
18 VI's. In addition, a number of the criteria in §C.4 rule out
19 land division approval where the land is capable of
20 cultivation, yet the county's order is ambiguous on the
21 suitability of the property for at least some farm uses. For
22 example, Finding 4 (c) indicates the parcel has been utilized
23 for general agricultural uses, (principally grazing of
24 livestock) and has been under special tax assessment for farm
25 use for 10 years or more. Finding 4 (f) states the soil in
26 question has a "poor to very poor" rating for intensive

1 cropping, suggesting that only intensive cropping is ruled
2 out. The criteria in §C.4, however, make no reference to
3 "intensive cropping."

4 In light of the above, we find it necessary to remand the
5 decision to the county for findings relating the proposed land
6 division to the criteria in §C.4 of the zoning ordinance. The
7 applicable provisions in §C.4 should be identified, and the
8 facts which are considered relevant to those provisions should
9 be discussed. If the ordinance provisions require
10 interpretation, the findings should clearly state the county's
11 position as to the meaning of the provisions in question, and
12 why that meaning is consistent with the purpose of the
13 ordinance.

14 Our decision that the findings are inadequate makes it
15 unnecessary to reach petitioners' additional contention that
16 the record demonstrates noncompliance with the criteria in
17 §C.4. At this juncture we are not even aware of which criteria
18 apply under §C.4, let alone whether the facts demonstrate
19 compliance. Hoffman v. Dupont, 49 Or App 699, 621 P2d 63 rev
20 den (1981).

21 The next attack on the county's findings concerns the
22 requirements of Statewide Planning Goals 5 (Open Spaces, Scenic
23 Areas and Natural Resources) and 6 (Air, Water and Land
24 Resources Quality). However, we discuss the challenged
25 findings later in this opinion, in connection with petitioners'
26 substantive claims that Goals 5 and 6 are violated by the

1 conditional use permit. See Assignment of Error No. 3, infra.

2 Petitioners next direct our attention to Finding No. 8 in
3 the county's order. The finding simply recites the county's
4 belief that petitioners' primary objection to the partition
5 concerned the threat of residential use. Without explaining
6 the legal significance of their objection to the finding,
7 petitioners assert the finding is "clearly erroneous" and is
8 unsupported by substantial evidence. Petition at 16. However,
9 we fail to see how the finding, which merely characterizes an
10 objection to the proposal without reference to any applicable
11 criterion constitutes legal error. In the absence of a more
12 complete discussion of how this finding harmed petitioners, or
13 why its inclusion in the order was improper, we find no basis
14 for our intervention.

15 Finally, petitioners challenge the adequacy of Finding No.
16 9. The finding states the conditions attached to the permit
17 will eliminate or minimize potential impacts or
18 incompatibilities of the use. The claim of error here is that
19 the finding does not discuss how the conditions will accomplish
20 the stated objectives.

21 The Board has reviewed the conditions of approval. In
22 general we find them self explanatory in terms of the means by
23 which they seek to eliminate or minimize conflicts between the
24 approved use and neighboring uses. Illustrative are the
25 conditions limiting the duration of rock crushing and requiring
26 maintenance of buffers between the quarry and adjacent lands.

1 Petitioners have not directed our attention to land use
2 conflicts which should have been addressed by the conditions
3 but were not, or to specific inadequacies of the conditions as
4 adopted. The Board will not attempt to guess the nature of
5 generally alleged error. Under the circumstances, we find no
6 error in the challenged finding.

7 For the reasons stated above we sustain the first
8 assignment of error in part. Although we reject many of
9 petitioners' allegations, we find the county has not adopted
10 adequate findings in connection with the criteria for land
11 division approval contained in §C.4 of the zoning ordinance.

12 SECOND ASSIGNMENT OF ERROR

13 In this assignment of error petitioners resume their attack
14 on the county's findings. Here, however, they direct their
15 attention to the findings as a whole. Violations of various
16 provisions contained in ORS Chapter 215 are alleged.

17 The first contention is that the requirements of ORS
18 215.416(3), (5), and (6) are not satisfied by the county's
19 order. ORS 215.416(3) prohibits approval of a land use permit
20 found to conflict with the comprehensive plan or other
21 ordinance provision. ORS 215.416(5) requires permit decisions
22 to be based on the criteria set forth in the zoning ordinance
23 or other regulation. Finally, ORS 215.416(6) requires a permit
24 decision be supported by a brief statement citing the pertinent
25 approval criteria and facts and justifying the conclusion based
26 on the criteria and the facts.

1 In alleging the findings violate these statutory
2 provisions, petitioners do little more than direct our
3 attention to the text of the provisions themselves. As a
4 consequence, we have difficulty identifying precisely what
5 error has been committed by the county. Petitioners do state
6 that there is "...almost a complete failure by the county to
7 discuss facts relied upon in allowing a quarry operation on F-1
8 land...." Petition at 17.

9 Our review of the county's order indicates a good deal of
10 discussion about the facts relied on in approving this use.
11 The findings discuss plan and ordinance criteria, surrounding
12 uses, natural resources on the site, soil quality, and
13 limitations on the use designed to minimize conflicts with
14 neighboring uses. We have previously noted the findings are
15 not sufficient under §C.4 of the zoning ordinance. To the
16 extent they are deficient in that regard, the findings fall
17 short of the requirements in ORS 215.416(6). In the absence of
18 particular references in the petition to other deficiencies
19 under ORS 215.416(3)(5) and (6), we need not go further.

20 Petitioners next claim the county's findings in support of
21 the minor partition are inadequate under ORS 215.243. We note,
22 however, that the cited statute contains no standards governing
23 land divisions. Rather, the statute states legislative policy
24 with respect to agricultural land. In all probability,
25 petitioners intend to rely on ORS 215.263. That statute does
26 pertain to land divisions in agricultural areas and identifies

1 criteria governing those divisions.

2 Regardless of which statute is relied on by petitioners,
3 however, their principal argument that the county has failed to
4 justify the 40 acre partition appears to reiterate points
5 previously discussed in connection with the county's land
6 division criteria. In the absence of specific allegations
7 relating the county's decision to statutory as contrasted with
8 ordinance requirements, we are unable to proceed further.

9 Finally, petitioners assert the county's order contravened
10 ORS 215.213. Again, however, the precise nature of the claim
11 is unclear. The statute lists various uses allowable in an
12 exclusive farm use zone. Notably, the use of agricultural land
13 for the processing of aggregate and other mineral resources is
14 allowable, provided the use "...meets reasonable standards
15 adopted by the governing body." ORS 215.213(2)(d). The
16 statute does not itself establish standards.

17 Petitioners' claim under ORS 215.213 appears to be that the
18 county has failed to adopt "reasonable standards" governing use
19 in the F-1 zone. If that is the claim, however, we cannot
20 uphold it. The county's order identifies various plan and
21 ordinance criteria⁵ applicable to this use. The criteria
22 easily pass the "reasonableness" test in ORS 215.213. Lee v.
23 City of Portland, 57 Or App 798, 646 P2d 662 (1982).

24 THIRD ASSIGNMENT OF ERROR

25 The final assignment of error alleges violations of three
26 statewide planning goals: No. 6 (Air, Water and Land Resources

1 Quality), No. 5 (Open Spaces, Scenic and Historic Areas, and
2 Natural Resources), and No. 3 (Agricultural Lands). We examine
3 each below.

4 Goal 6

5 Petitioners make two claims under Goal 6. First, they
6 claim the findings adopted by the county are inadequate.
7 Second, they claim requirements of the goal were clearly
8 violated by the permit and the minor partition.

9 The alleged deficiency in the findings consists of failure
10 to discuss evidence of water quality degradation in Pine Creek
11 - degradation attributable to the quarrying conducted on this
12 site under the previously issued permit. They argue the county
13 was obligated to discuss this evidence before concluding Goal 6
14 would be satisfied by a permit allowing further mining.

15 The record contains evidence the previously approved quarry
16 was at times operated in violation of regulations imposed by
17 the Department of Geology and Mineral Industries (DOGMI). One
18 notice of violation, dated March 8, 1983, indicates mining had
19 occurred within the beds and banks of Pine Creek without a
20 required permit. Record at 35. However, there is also
21 evidence that as of the May 24, 1983 planning commission
22 hearing concerning the challenged proposal, the violations had
23 been corrected. Record at 50.

24 The pertinent findings in the county's order quote portions
25 of two DOGMI reports concerning this site. The first, written
26 in August 1982, states "...there should be no affect on the

1 river (i.e., John Day River) quality...there should be no water
2 quality degradation here (i.e., Pine Creek)...." The second
3 report, dated April 28, 1983, states: "as of this date Pine
4 Creek has been put back at a better grade...respreading has
5 begun." Final Order at 8.

6 The question presented is the narrow one of whether the
7 county's findings with respect to Pine Creek are adequate under
8 Goal 6. We conclude they are not.

9 The goal provides, in pertinent part, that discharges from
10 development "...shall not threaten to violate, or violate
11 applicable state or federal environmental quality statutes,
12 rules and standards." OAR 660-15-000(6). Although there is
13 evidence in the record that violations of DOGMI regulations
14 concerning Pine Creek had been corrected in May 1983, the
15 findings adopted by the county four months later do not reflect
16 that evidence. Rather, they simply note Pine Creek has "been
17 put back at better grade" and that "respreading has begun."
18 Final Order at 8.

19 It may well be that the county could have found quarrying
20 at the site did not violate or threaten to violate DOGMI
21 requirements concerning Pine Creek when the final order was
22 adopted. We refuse to speculate on that question, however.
23 Rather, we are required to examine the findings actually
24 adopted to determine whether they adequately address the issues
25 presented under Goal 6. We have concluded above they do not.

26 We next address petitioners' claim Goal 6 was violated by

1 the challenged decisions.

2 Petitioners contend the goal was violated in the following
3 respects: (1) allowance of further rock crushing at the site
4 would generate noise and dust which would interfere with
5 petitioners' use and enjoyment of their land, (2) the county
6 failed to inventory other available sites for quarrying
7 activity, and (3) the county improperly delegated the task of
8 protecting Goal 6 resources to other state agencies. We find
9 none of these claims persuasive.

10 By its express terms, Goal 6 relies on "...environmental
11 quality statutes, rules and standards..." as the yardsticks for
12 measuring resource protection. Petitioners themselves
13 acknowledge this point. Petition at 19. At the same time,
14 however, petitioners fail to direct our attention to any
15 environmental quality statutes, rules or standards violated or
16 threatened to be violated by rock crushing at this site.
17 Indeed, although petitioners did not establish that rock
18 crushing would violate any applicable environmental
19 regulations, the county nevertheless took special steps to
20 minimize adverse impacts caused by this activity. We refer
21 here to the condition of permit approval which limits use of
22 the rock crusher to months when petitioners' feedlot is not
23 operative. At county hearings concerning the permit,
24 petitioners acknowledged this limitation would eliminate their
25 objection, at least, in terms of harm to the feedlot. Record
26 at 97. Under these circumstances, we find no Goal 6

1 violation.

2 Petitioners also claim the county failed to inventory other
3 available sites for a quarry operation. However, we find no
4 requirement in Goal 6 for such an inventory. Petitioners refer
5 to no portion of the goal or other authority establishing a
6 site inventory requirement. In the absence of such authority,
7 we reject this claim of goal violation.

8 Finally, petitioners argue the county improperly assigned
9 the task of evaluating the proposals under Goal 6 to other
10 state agencies. We do not agree.

11 The county concluded as follows with respect to Goal 6:

12 "It is also hereby concluded that compliance with
13 State Planning Goal No. 6 is either evident from the
14 evidence in Findings [sic] No. 6, or that such
15 compliance will be maintained by the regulatory
programs and functions of various state agencies
applicable to the subject proposed operation."
Final Order at 10.

16 We have already noted that Goal 6 sets no standards itself but
17 rather relies on applicable environmental quality statutes,
18 rules and standards. In recognition of this fact, we have
19 previously held localities may find compliance with the rules
20 of relevant regulatory agencies will satisfy the requirements
21 of Goal 6. Eyerly v. Jefferson County, 5 Or LUBA 45, 54
22 (1982); Forest Highlands Neighborhood Association v. City of
23 Lake Oswego, ___ Or LUBA ___ (LUBA No. 83-074, November 29,
24 1983).

25 Of course, where there is evidence applicable environmental
26 requirements are being violated by an existing use, that

1 evidence must be considered by the local government when it
2 undertakes further permit action concerning the same use.
3 Indeed, we have so held in this case, with respect to
4 violations of DOGMI's requirements at Pine Creek. However,
5 apart from that circumstance, we have no reason to depart from
6 the general rule stated in Eyerly, supra, and Forest Highlands
7 Neighborhood Association, supra.

8 Based on the foregoing, we conclude the county cannot
9 authorize this use in the absence of further findings
10 concerning the impact of the proposal on environmental
11 regulations protecting Pine Creek. Apart from this deficiency,
12 however, we reject petitioners' challenges under Goal 6.

13 Goal 5

14 Petitioners allege the county's findings with respect to
15 Goal 5 are inadequate. They also contend the requirements of
16 the goal were violated by the challenged permit and minor
17 partition.

18 With respect to the findings, petitioners make three
19 arguments. First, they generally assert certain findings are
20 "inadequate" under Goal 5. Second, they claim the findings
21 improperly failed to compare the site in question with others
22 more distant from the John Day Highway (an area of allegedly
23 scenic value) and petitioners' farming operation. Third,
24 petitioners believe the findings inadequately address their
25 concern that allowance of the quarry adjacent to the John Day
26 Highway will be an eyesore.

1 We are unable to respond to the first allegation because it
2 is too vague. A petitioner cannot expect the Board to respond
3 to the general charge that certain findings are "inadequate."
4 Such a charge requires speculation as to the nature of
5 petitioner's legal theory. We decline to examine findings for
6 violations of unstated legal requirements.

7 With respect to the claim the findings should have
8 considered alternative quarry sites, we find no Goal 5
9 deficiency. The goal requires identification of protected
10 resources in a given land use context and the balancing of
11 conflicts resulting from competition between protected
12 resources. Gunderson v. Columbia County, ___ Or LUBA ___
13 (1983) (LUBA No. 83-012, LUBA No. 83-015, June 10, 1983). As a
14 general rule we see no reason why the conflict resolution
15 process should require consideration of alternative sites for
16 locating a use clearly protected by Goal 5. This is such a
17 case. The goal explicitly recognizes the protected status of
18 mineral and aggregate resources.⁶

19 Finally, we do not accept petitioners' claim there was "no
20 discussion" of their concern the quarry would be an eyesore for
21 travelers along the John Day Highway. To the contrary, the
22 record is clear the county imposed screening requirements as a
23 means of resolving incompatibility between the aggregate
24 resource use and the highway. To the extent the highway
25 constituted a protected scenic resource, adequate measures were
26 taken under Goal 5.⁷

1 Petitioners also claim various requirements of Goal 5 were
2 violated by approval of the conditional use and the minor
3 partition. Specifically, they allege the following
4 violations: (1) the challenged decisions did not include an
5 inventory of protected resources (2) conflicts between mineral
6 resource interests and open space, scenic view and "fish
7 interests" were not identified and (3) the record discloses
8 that "...allowing the quarry operation along the highway is a
9 conflict that cannot be resolved...where there are other
10 available quarry sites, the conflict should be resolved in
11 favor of maintaining the scenic resource." Petition at 22.

12 We are not persuaded by these contentions. First, with
13 respect to the inventory requirements of Goal 5, petitioners
14 appear to be claiming the county was powerless to approve this
15 permit because it had not yet developed countywide inventory of
16 protected Goal 5 resources. If this is the claim, it reflects
17 an incorrect understanding of Goal 5. The countywide inventory
18 requirement in the goal pertains to the plan development
19 process, not to individual permit decisions. In the context of
20 this code, the goal requires identification of conflicting uses
21 and the resolution of those conflicts. Gunderson v. Columbia
22 County, supra. This is such a case. We find the general
23 inventory requirement inapplicable here.

24 Petitioners also claim the county breached its duty to
25 identify and balance conflicts between the aggregate resource
26 and other protected Goal 5 resources. The conflicting uses and

1 values are stated to be open space, scenic values and "fish
2 interests." However, the county took the approach that no
3 conflicts were present because the only significant resource
4 was the aggregate resource. The following pertinent findings
5 were made:

6 "3.g) Relative to the references hereinbefore to ORS
7 215.213, 'operations conducted for the mining
8 and processing of...aggregate and other mineral
9 resources...' are a permitted nonfarm use in an
10 'exclusive farm use zone' as provided for in ORS
11 215.213(2)(b).

12 "5. Findings relative to compliance with State
13 Planning Goal No. 5 are as follows:

14 "a) Subject resource to be generated by the
15 proposed operation is identified as a key
16 resource of the applicable 'goal'.

17 "b) A review of the recently adopted 'new'
18 comprehensive plan for the county, together
19 with the supporting 'background for planning
20 report' clearly reveals that there are other
21 significant open space, scenic, historic or
22 natural resources applicable to the subject
23 property.

24 "c) In a response by the State Department of
25 Fish and Wildlife relative to the proposed
26 partitioning, the following statement is
27 found: '...this is below major wintering
28 deer concentrations...cannot oppose...on the
29 basis of detrimental effects on deer...."

30 Based on the above finding, the county concluded as follows:

31 "5. Compliance with State Planning Goal No. 5 is
32 concluded based on the facts set forth in
33 Findings No. 3.g) and 5; relative thereto, as set
34 forth in said goal, the subject resource to be
35 produced is in direct compliance and none of the
36 other resources subject to said 'goal' are
37 applicable to the subject property." Final Order
38 at 7, 10.

39 We note at the outset that, despite the county's conclusion

1 that aggregate is the only protected Goal 5 resource, other
2 portions of the final order give credence to the idea that
3 scenic qualities of the area are worthy of protection. For
4 example, buffering and screening requirements adopted in
5 conditions of approval are clearly designed to visually
6 separate the quarry from the adjacent highway. At least with
7 respect to scenic values protected by Goal 5, we believe the
8 county properly balanced these values against the aggregate
9 resource.

10 With respect to open space values, we again note some
11 internal inconsistency in the county's order. Although part of
12 Conclusion No. 5 states that aggregate is the only significant
13 Goal 5 resource, the same conclusion implies the agricultural
14 capability of the land is also worthy of consideration under
15 the goal. Indeed, since Goal 5 defines "open space" to include
16 agricultural uses, such an approach is warranted. See also,
17 Gunderson v. Columbia County, supra, (impacts of mining of
18 agricultural lands must be considered under Goal 5). The
19 question then is: Did the county properly balance the
20 aggregate use against the conflicting open space (agricultural)
21 use? We hold it did not.

22 The county's approach on this issue, as reflected in the
23 parts of the final order quoted above, was to consider the
24 question closed by the recognition in ORS 215.213(2)(b) that
25 aggregate extraction is allowed on agricultural land. This is
26 the clear import of the references to that statute in

1 Conclusion No. 5 and Finding No. 3.g quoted above. Evidently,
2 it is the county's view that under Goal 5, the potential
3 allowability of mining on agricultural land makes it
4 unnecessary in a particular case to balance the two resources.

5 We do not agree with this position. Goal 5 requires that
6 where conflicting uses have been identified "...the economic,
7 social, environmental and energy consequences of the
8 conflicting uses shall be determined and programs developed to
9 achieve the goal." We do not find the kind of determinations
10 required by the above language to be reflected in the county's
11 order. Although there are references in parts of the order to
12 the poor agricultural suitability of the soil in question,
13 these references do not discuss the open space quality of the
14 agricultural use and therefore do not constitute the balancing
15 contemplated by Goal 5. The county may well be in a position
16 to justify its decision in this case under Goal 5, but it has
17 not yet done so.

18 We turn next to the contention the county failed to
19 consider "fish interests" in connection with Goal 5. The goal
20 does recognize fish and wildlife areas and habitats as worthy
21 of protection. However, petitioners have not directed our
22 attention to evidence in the record establishing that the land
23 in question includes, or is adjacent to fish and wildlife areas
24 and habitats. The vague reference in the petition to "fish
25 interests" is not sufficient to justify analysis under Goal 5.
26 The county was not required to balance the aggregate activity

1 against all resources listed in Goal 5, only those which
2 existed in this case.

3 Finally, petitioners insist the conflict between the
4 proposed use and the scenic quality of the highway required
5 denial in this case. We disagree. Goal 5 does not prohibit
6 all adverse impacts on protected resources. Westerberg v. Linn
7 County, 7 Or LUBA 7, 21 (1982). Rather, a balance of values is
8 required. Here, as we have already noted, the requisite
9 balancing was undertaken.

10 Based on the foregoing we sustain this assignment of error
11 in part. The county has yet to properly balance the aggregate
12 resource capabilities of this site against its value and the
13 value of adjacent lands for open space (agricultural) use.

14 Goal 3

15 Finally, petitioners contend the county's order violates
16 Statewide Goal 3 (agricultural lands). However, this portion
17 of petitioners' argument simply refers the Board to arguments
18 made in earlier sections of the petition. Petition at 22.
19 That is, no independent issues are raised under Goal 3.

20 The Goal 3 claims as stated in the petition merely
21 reiterate points made in connection with §C.4 of the county
22 zoning ordinance and Statewide Goal 5, without demonstrating
23 why Goal 3 is violated. Under the circumstances, we decline to
24 find any Goal 3 violation.

25 CONCLUSION

26 In most respects, the county's order in this case is

1 sufficient to withstand petitioners' challenge. However,
2 additional findings are required in relation to the criteria in
3 §C.4 of the zoning ordinance and Statewide Goal 5. The former
4 must identify which criteria in §C.4 are applicable and must
5 discuss the facts pertinent to each applicable criterion. In
6 the case of Goal 5, the county must discuss the economic,
7 social, environmental and energy consequences of the conflict
8 between aggregate extraction and agricultural use on this site
9 and on adjacent sites.

10 Accordingly, we remand this decision to Grant County.

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FOOTNOTES

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4 For example, the use of crushing machinery was limited to
5 certain months of the year so as to avoid this activity when
6 livestock was present in petitioners' feedlot.

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7 The cited plan policy states:

8 "a) To preserve....agricultural lands of specific
9 value....agricultural production should be guarded
10 from encroachment by....non-agricultural uses which
11 would inhibit the efficient functioning
12 of....agricultural activities.

13 "b) Cognizant that potentially valuable mineral resources
14 are located in agricultural areas, it is the
15 policy....to encourage full mineral development. Such
16 development, however, must be carried out in a manner
17 which will not hamper the normal use of surrounding
18 land for....agricultural purposes. Furthermore,
19 provisions shall be made to restore....the original
20 surface condition...."

21 Also cited is the following finding concerning §8.020(7) of
22 the zoning ordinance:

23 "Specific standards applicable to the subject proposed
24 'Conditional Use' set forth by Section 8.020(7) of said
25 Ordinance and relate to setbacks, public safety, prevention
26 of the collection and stagnation of water resources, land
27 rehabilitation, and the operation of equipment and access
28 control to eliminate, as far as practicable, noise,
29 vibration or dust which are injurious or substantially
30 annoying to persons or other uses in the vicinity."
31 (Emphasis added by petitioner.)

32 3
33 For example, Finding No. 7 indicates petitioners' property
34 is separated from the quarry by a significant buffer. Finding
35 No. 9 imposes numerous limitations on the quarry, for the
36 express purpose of eliminating or minimizing potential impacts
or incompatibilities. Notable among these is a limitation on
the months during which a rock crusher can be used at the
quarry. The record is clear that this limitation was imposed
specifically to avoid injury to livestock kept in petitioners

1 feedyard. These findings are directly pertinent to the plan
and ordinance criteria brought to our attention in this
2 assignment of error.

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4 Finding 3 E. e)(e), for example, discusses one criterion
for approving nonfarm uses in the agricultural area. The
5 finding makes it clear the county treated the proposal as a
nonfarm use.

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8 Plan and ordinance criteria are quoted in Footnote 2 of
this opinion. Land division criteria are discussed at Page 6.

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10 Although there might be situations where it would be
unreasonable for a locality to disregard alternative sites, for
11 example, when the competing resource is unique and cannot be
protected from the harmful impacts of the proposed resource
12 use, we do not believe this case presents that circumstance.

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14 Finding No. 9 in the final order adopts the conditions of
approval originally imposed on the use by the planning
15 commission. The stated purposes of these conditions are the
elimination or the minimization of potential impacts or
16 incompatibilities. The conditions include the following:
"sites shall be adequately screened from state highway with
17 relatively adaptive vegetation." Record at 136.

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