BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ANNIE MCCOY,

Petitioner,

and

PENNE and RICHARD BILYEU, LARRY and PHYLLIS CRENSHAW, DANIEL and KAREN ECKIS, PATRICIA FREDERIC, RICHARD FREDERIC, SYLVESTA LIMBECK, FRANK MCCOY, SHARON PARRISH, and CARL S. YAILLEN,

Participants-Petitioners,

vs.

LINN COUNTY,

Respondent,

and

MERLYN E. BENTLEY, and G & G ROCK QUARRY, INC.,

Participants-Respondents.

LUBA No. 87-046

FINAL OPINION AND ORDER

Appeal from Linn County.

Lee Kersten, Eugene, filed the petition for review and argued on behalf of petitioner and participants-petitioners.

John Gibbon, Albany, filed a response brief and argued on behalf of respondent.

Steven Schwindt, Canby, filed a response brief and argued on behalf of Participants-Respondents, Merlyn E. Bentley and G & G Rock Quarry, Inc. With him on the brief was Summers & Schwindt.

SHERTON, Referee; BAGG, Chief Referee; HOLSTUN, Referee; participated in the decision.

REMANDED 12/15/87

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

Opinion by Sherton.

NATURE OF THE DECISION

Petitioner and Participants-Petitioners (petitioners) appeal Linn County Ordinance and Order #87-221. This ordinance and order (1) adopts a comprehensive plan amendment adding a 25 acre site to Linn County's inventory of aggregate extraction sites; and (2) approves a conditional use permit for aggregate extraction and processing on a 10 acre portion of that site. Petitioners seek reversal of both parts of the decision.

FACTS

In the summer of 1986, participant-respondent Merlyn E. Bentley (participant) began an aggregate extraction and processing operation on a portion of a 70.77 acre parcel in rural Linn County. The parcel is designated Farm/Forest by the Linn County Comprehensive Plan (plan) and is zoned Farm/Forest (F/F).

The land uses surrounding the parcel include grazing, wood lots and residences. There are eight dwellings within 2,400 feet of participant's aggregate resource site. The properties surrounding the subject parcel are designated and zoned F/F or Exclusive Farm Use (EFU).

Aggregate extraction and processing is a conditional use in the F/F zone. On September 24, 1986, the Linn County Planning and Building Department (Planning Department) notified participant that his aggregate mining activities required a county conditional use permit. Participant subsequently filed

an application for a conditional use permit for aggregate extraction and processing on an unspecified portion of the 70.77 acre parcel. Sometime thereafter, the Planning Department informed participant that his proposed mining activities also required a plan text amendment to add the proposed extraction site to the plan's inventory of aggregate resource sites.

The Linn County Planning Commission conducted a public hearing on the plan text amendment and conditional use permit applications and eventually recommended denial of the applications. The Linn County Board of Commissioners, after two public hearings, made an oral decision to approve the plan text amendment and conditional use permit and instructed staff to prepare the ordinance and findings. On May 27, 1987, the Board adopted Ordinance and Order #87-221.

FIRST ASSIGNMENT OF ERROR

Petitioners' first assignment of error challenges the county's compliance with three subsections of Linn County Zoning Ordinance (LCZO) 21.480. LCZO Sub-Article 21.6, "Extraction and Processing of Aggregate Resources," at 21.660.1, provides:

> "Special conditional use permits for aggregate resources extraction and processing shall be issued based on compliance with the criteria in Section 21.480 * * * and the minimum criteria in Section 21.630 of this sub-article and any additional requirements established by the planning commission."[1]

The language of LCZO 21.660.1 quoted above clearly states that the provisions of LCZO 21.480 are approval criteria for conditional use permits for aggregate extraction and processing.[2]

We will address petitioners' challenges to the county's compliance with subsections 1, 2 and 4 of LCZO 21.480 separately below.

A. Adverse Effects

Subsection 1 of LCZO 21.480 provides:

> "the location, size, design and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood;"

Petitioners claim the county misconstrued this subsection and did not adopt findings adequate to demonstrate compliance with the proper interpretation of the subsection. Petitioners maintain this subsection requires the county to make findings that the proposed aggregate extraction and processing operation will have "no adverse effects" on the livability of abutting properties and the surrounding neighborhood. Petitioners argue that the county's findings do not establish there will be no adverse effects on the livability of abutting properties and the surrounding neighborhood with regard to noise, air pollution, traffic, surface water pollution and impacts on groundwater wells. Petitioners assert the findings impermissibly conclude that LCZO 21.480.1 is satisfied because such adverse effects will be minimized or mitigated.

The county makes alternative arguments in response. First, the county contends that subsection 1 of LCZO 21.480 is satisfied if the county determines the proposed use will be compatible with and will not adversely effect either the livability of or the appropriate development of abutting properties and the surrounding neighborhood. The county asserts it complied with this criterion by finding the proposed use would be compatible with and would not adversely affect appropriate development of abutting properties and the surrounding neighborhood, and argues it is not required to find no adverse effects on livability of surrounding properties.

We will uphold a county's interpretation of its zoning ordinance, if that interpretation is reasonable. Alluis v. Marion Co., 64 Or App 478, 481, 668 P2d 1242 (1983). However, the county's interpretation of LCZO 21.480.1 to allow it to avoid addressing the compatibility and adverse effects of a proposed conditional use on the livability of surrounding properties is contrary to the stated purposes of the Linn County Zoning Ordinance's conditional use provisions.

LCZO 20.010, the "Statement of Purpose" for Article 20, "Conditional Use," provides in relevant part:

> " * * * The purpose of review shall be to determine whether the proposed use is * * * compatible with the types of uses existing or proposed in the surrounding area * * * "

LCZO 21.010, the "Description and Purpose" section for Article 21, "Special Conditional Use Review," provides:

> "The purpose of the Special Conditional Use Review Sub-Articles shall be to provide for review and action on certain uses identified in each article that require special consideration prior to their being permitted in a particular zoning district. The reasons for requiring such special considerations, criteria, and conditions of approval include * * * the effect such uses may have on any adjoining land uses, and on the growth and development of the community as a whole." (emphasis added)

The above-quoted provisions indicate the county's conditional use process is intended to require consideration of the compatibility of a proposed conditional use with, and the adverse effects of a proposed conditional use on, surrounding land uses. If surrounding land uses include residences, as in this case, such consideration would necessarily entail consideration of compatibility with and adverse affects on the livability of such surrounding residences.

The county's alternative argument is that its decision does demonstrate compliance with the "will not adversely affect the livability * * * of abutting properties and the surrounding neighborhood" criterion. The county asserts that it "properly utilized conditions to insure that the criteria would not in the future be violated by the use," citing our decision in Sigurdson v. Marion County, 9 Or LUBA 163 (1983) (once a county has decided that a project can meet applicable criteria, imposition of conditions is an appropriate way to insure that the criteria are met). Respondent's Brief 11.

The use of the language "will not adversely affect" in a mandatory approval standard imposes a very stringent standard.

West Hill & Island Neighbors, Inc. v. Multnomah County, ___ Or LUBA ___ (LUBA No. 83-018; June 29, 1983), aff'd 68 Or App 782, 683 P2d 1032, rev den 298 Or 150 (1984). Under such a standard the county must find that proposed development will cause no adverse effects on the protected subject (in this case, the "livability * * * of abutting properties and the surrounding neighborhood"). It is not sufficient for the county to find that any adverse effects will be minimized or mitigated. Id. However, in concluding that a proposed development will cause no adverse effects, the county may rely on the imposition of conditions, so long as it finds the conditions imposed are sufficient to insure the standard will be met. Cf., Sigurdson v. Marion County, 9 Or LUBA at 176.

In sum, to show that a proposed conditional use "will not adversely affect the livability * * * of abutting properties and the surrounding neighborhood," the county must (1) identify the qualities or characteristics constituting the "livability"[3] of abutting properties and the surrounding neighborhood; and (2) establish that the proposed use will have no adverse effects on those qualities or characteristics.[4] If the county relies on conditions to accomplish (2), it must impose conditions it finds are sufficient to insure the standard will be met. For the reasons stated below, we conclude the county's decision does not meet these requirements.

After a conclusory restatement of the language of LCZO 21.480.1, the county's findings on this criterion[5] describe

the locations of neighboring dwellings, describe conditions imposed regarding noise and dust generation, describe zoning restrictions on the development of property adjacent to the aggregate site, and conclude with the following statement:

> "Linn County has determined the conditions of approval attached to the request will minimize the impacts the resource site will have on the neighborhood."

Record 28.

There are several reasons why the county's findings do not demonstrate compliance with LCZO 21.480.1. They do not define or identify the qualities considered in determining the "livability" of surrounding properties. They do not respond to issues presumably relevant to adverse effects on livability, e.g., traffic, water pollution, decreased quality and quantity of groundwater,[6] which were identified in testimony during the county proceedings. See Norvell v. Portland Area LGBC, 43 Or App 849, 852-3, 604 P2d 896 (1979). They do not conclude that the proposed use will have no adverse effects on the livability of abutting properties and the neighborhood, but rather that impacts on the neighborhood will be minimized by the conditions imposed.[7]

This subassignment of error is sustained.

B. Site Characteristics

Subsection 2 of LCZO 21.480 provides:

> "the proposed development site has the physical characteristics needed to support the use such as, but not limited to, suitability for an on-site sewage treatment system;"

Petitioners claim "material in the record indicates that the physical characteristics of the site are deficient." Petition for Review 12. Fairly read, petitioners argue the county's findings of compliance with this criterion are inadequate because they do not address or are not supported by substantial evidence in the record with regard to ambient noise levels, natural vegetative buffers and ground water impacts.

The county asserts that compliance of the proposed conditional use with the requirements of LCZO 21.630, "Standards of Operation and Site Development" (for extraction and processing of aggregate resources), which petitioners have not challenged, is legally sufficient to establish compliance with LCZO 21.480.2. Participants argue that the county's decision complies with LCZO 21.480.2.

LCZO 21.480.2 requires the county to adopt findings demonstrating that the site of the proposed conditional use has the physical characteristics "needed to support the use," i.e., necessary to conduct an aggregate extraction and processing operation on the site. The county's findings on this criterion address quality and quantity of rock resource at the site, geologic stability of the site, flood hazard potential of the site and road access at the site.[8] Record 28. These are characteristics which relate to the ability of the site to support an aggregate mining operation.

One who alleges a governing body failed to adopt findings on a particular issue or adopted findings on a particular issue

which are not supported by substantial evidence in the record is entitled to reversal or remand of the decision only if those findings are required to establish compliance with an applicable criterion. Bonner v. City of Portland, 11 Or LUBA 40, 52 (1984); City of Wood Village v. Portland Metro Area LGBC, 48 Or App 79, 82, 616 P2d 528 (1980).

The findings which petitioners argue are missing or are not supported by substantial evidence relate to the off-site impacts of conducting an aggregate mining operation on the site. Petitioners' concerns about ambient noise levels, lack of natural vegetative buffers and ground water impacts at the site relate to the effect these characteristics will have on nearby residences. Findings on the off-site impacts of conducting an aggregate mining operation on the site are not necessary for compliance with LCZO 21.480.2.

This subassignment of error is denied.

C. Sensitive Fish or Wildlife Habitat

Subsection 4 of LCZO 21.480 provides:

> "the use will not have a significant adverse impact on identified sensitive fish or wildlife habitat."

Petitioners claim the county "failed to make any reasonable investigation of potential significant adverse impacts on account of this decision criteria (sic)." Petition for Review 13. Fairly read, petitioners argue that the county's findings do not adequately address permanent loss of wildlife habitat and impacts of wastewater discharge "over a neighbor's private

land and into Sucker Slough, a public water system monitored by the state." Petition for Review 15. In the alternative, petitioners argue the findings are not supported by substantial evidence in the record.

The county replies that its application of LCZO 21.480.4 is based on "an examination of whether habitats identified through the comprehensive planning process will be impacted by the proposed use." Respondent's Brief 13. In other words, the county argues this ordinance provision applies only to impacts on sensitive fish and wildlife habitat areas identified as such in the plan.

Plan policies and implementation statements refer to, but do not define, "sensitive fish and wildlife habitat."[9] However, the "Open Spaces, Scenic and Historic Areas, and Natural Resources Background Report for the 1980 Linn County Comprehensive Plan"[10] states in its introduction that the report identifies sensitive habitat for fish and wildlife and includes maps entitled "Sensitive Fish Habitat" and "Sensitive Wildlife Habitats." These maps do not identify the subject parcel or Sucker Slough as sensitive fish or wildlife habitat.

We will uphold the county's interpretation of LCZO 21.480.4 if that interpretation is reasonable. Alluis v. Marion County, supra. The county reasonably interprets LCZO 21.480.4 to refer only to sensitive fish or wildlife habitat areas identified as such on these maps. Petitioners do not challenge the county's decision for failure to address adverse impacts on any area

identified as sensitive fish or wildlife habitat.[11]

This subassignment of error is denied.

The first assignment of error is upheld, in part.

SECOND ASSIGNMENT OF ERROR

Petitioners claim "reversal is indicated because no findings were made before the decision," but rather "were adopted after the decision." Petition for Review 19. Petitioners argue the county commissioners "made their decision on other grounds and then signed 'findings and fact' (sic) and conclusions of law which had never been expressed or discussed by them." Petition for Review 17.

We understand petitioners to argue that the county's decision violates the requirement of ORS 215.416(7) that approval of a permit be based upon and accompanied by written findings of fact. Petitioners contend the commissioners made a final decision to approve the plan amendment and conditional use permit orally at their May 13, 1987 meeting, before any written findings to support such a decision had been prepared.

Petitioners further contend the commissioners took their action to adopt the written ordinance, order and findings on May 27, 1987 without expressing or discussing those written findings, and for reasons other than those stated in the findings. Petitioners therefore assert that the county's decision impermissibly preceeded its adoption of findings, citing Heilman v. City of Roseburg, 39 Or App 71, 74-75, 591 P2d 390 (1979).

The county and participants argue the county made a preliminary oral decision at the May 13, 1987 meeting, with direction to county staff to prepare a document approving the comprehensive plan text amendment and conditional use permit, including findings in support of such action. The county and participants contend the county's final decision was made at the May 27 meeting, when the commissioners simultaneously adopted a written ordinance and order and written findings.

We agree with petitioners that the county cannot make a final decision at one meeting and adopt findings to support that decision at a subsequent meeting. However, we do not agree that is what the county did in this case. The decision appealed by petitioners is the county's May 27, 1987 adoption of Ordinance and Order #87-221. Written findings in support of that ordinance and order were adopted simultaneously with the ordinance and order.

Ordinance and Order #87-221 was signed by two county commissioners and provides "the decision criteria, findings, and conclusions" set out in accompanying exhibits are "adopted as the basis for" the comprehensive plan text amendment and conditional use permit approvals. This is sufficient to establish that those written findings and conclusions are the basis for the county's decision. The final decision subject to our review is the written order and findings, not oral statements made by the commissioners during the course of the county proceedings. Citadel Corp. v. Tillamook County, 9 Or

LUBA 401, 404 (1983).

Finally, to the extent petitioners take issue with the failure of the county commissioners to express and discuss the written findings prior to their adoption, petitioners have not demonstrated, and we are unaware of, any legal requirement that they do so.

This assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners claim "the record is so filled with procedural abuses that the entire fact finding procedure in this matter was a priori defective." Petitioners describe and provide references in the record to "examples of the procedural abuses involved in this matter." Petition for Review 19-20.

Petitioners seem to be claiming that the county's decision is subject to remand under ORS 197.835(8)(a)(B) for failure to follow applicable procedures. As we have noted in previous opinions, petitioners who complain of procedural error at the local level must not only demonstrate the existence of error but must also show (1) that a timely objection was made so that corrective measures might be taken; and (2) the error was prejudicial to petitioners' substantial rights. Mason v. Linn County, 13 Or LUBA 1, 4, rev on other grounds sub nom. Mason v. Mountain River Estates, 73 Or App 334, 698 P2d 529 (1985).

It is also petitioners' responsibility to articulate the alleged facts and legal theories in support of their claims sufficiently to inform us of the basis on which we might grant

relief. Deschutes Development v. Deschutes County, 5 Or LUBA 218, 220 (1982). With these requirements in mind, we will review the claims of procedural error which petitioners have sufficiently articulated in their petition for review.

A. Lack of Notice of Applicable Criteria

Petitioners assert they were not given all the criteria applicable to the county's decision, but rather received only LCZO 20.020 (see footnote 5). Petitioners argue this was a deliberate attempt to mislead them and "prohibited [them] from timely addressing all the appropriate criteria for decision." Petition for Review 20.

The county asserts that the criteria applicable to its decision were given to petitioners in the Planning Department staff report dated February 10, 1987. Participants argue that petitioners have failed to demonstrate how they were prejudiced by any lack of notice.

Parties to plan amendment or conditional use permit proceedings are entitled to know what standards will govern the request, so they can "address the import of the standards." See Marbet v. Portland General Electric, 277 Or 447, 463, 561 P2d 154 (1977). See also Morrison v. City of Portland, 70 Or App 437, 442, 689 P2d 1027 (1984). A remand would be warranted if the county's decision was based on approval criteria petitioners could not have known would be applied. Allm v. Polk County, 13 Or LUBA 257, 262, aff'd 75 Or App 578, 706 P2d 208 (1985).

The planning department staff report submitted to the Planning Commission at its February 10, 1987 public hearing, in which petitioners participated, identified as applicable criteria LCZO 21.480 and 21.630 and Section 6.3 of the Linn County Comprehensive Plan Amendment Provisions Ordinance. Record 366-367. The staff report quoted Section 6.3 of the Plan Amendment Ordinance as follows:

> "To approve a plan text amendment findings shall be made that:
>
> "(a) The amendment is consistent with the intent of the applicable section(s) of the comprehensive plan; and
>
> "(b) The amendment is consistent with the statewide planning goals."

Thus, petitioners were on notice that LCZO 21.480 and 21.630, applicable plan provisions and the statewide planning goals would be criteria for the county's decision at least by the time of the public hearing before the Planning Commission.[12] Petitioners took part in two additional de novo public hearings before the county commissioners, at which time they had full opportunity to address these applicable criteria.[13] Petitioners' ability to participate in the county proceedings was not impaired.

This subassignment of error is denied.

B. Incorrect Notices

Petitioners claim "the notices used in the materials sent to interested parties were fatally flawed in that the designation of the quarry varied from one acre to ten acres to

twenty-five acres." Petition for Review 20. Petitioners assert the notice of a proposed post-acknowledgment comprehensive plan amendment which was sent to the Department of Land Conservation and Development (DLCD) indicated the size of the area proposed to be added to the Plan's aggregate resources inventory was 10 acres, whereas a 25 acre area was actually added to the Plan inventory by the county's decision. Petitioners argue that "procedural defects in notification of the size of the project to this extent should thus be fatally defective." Id.

Participants reply that petitioners fail to show prejudice because they had ample opportunity to address the issue of quarry size before both the Planning Commission and Board of Commissioners.

Petitioners have not demonstrated that a procedural error occurred in the proceedings below. The only notice asserted by petitioners to be defective is the post-acknowledgment plan amendment notice filed with the DLCD under ORS 197.610(1).[14] Petitioners have not argued the notice failed to meet statutory content requirements, but rather that the notice was fatally defective because the amendment eventually adopted differed significantly from that described by the notice.

ORS 197.610 to 197.625 do not restrict the ability of a local government to adopt a plan amendment different from that described in the notice of proposed amendment required by ORS 197.610. This issue is addressed in the statutes by requiring

local governments to file notices describing adopted plan amendments and allowing any person to appeal the adoption of a plan amendment to us if the amendment differs from the proposal submitted under ORS 197.610 "to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local government final action." ORS 197.620(2).

In addition, petitioners do not show that their substantial rights were prejudiced by the notice cited. A proposed 25 acre size for both the plan amendment and conditional use permit was discussed in the proposed findings the applicant submitted to the Planning Commission, in the proposed conditions submitted to the Planning Commission by the Planning Department and in testimony at the first public hearing before the Board of Commissioners. Record 92, 195, 200, 286. Thus, petitioners were on notice a 25 acre plan amendment was being considered and had ample opportunity to address this possibility in at least the proceedings before the Board of Commissioners.

This subassignment of error is denied.

C. Other Issues

Petitioner invites us to review the Department of Geology and Mineral Industries (DOGAMI) documents submitted to the county for incompleteness, inconsistencies and lack of supporting evidence. We decline this invitation as petitioners do not provide any legal theory as to why these alleged deficiencies in the DOGAMI documents require reversal or remand of the county's decision.

Petitioners assert "Commissioner Schrock was seriously ill during much of these proceedings and apparently never even was informed of the issues." Petition for Review 21. Petitioners cite no evidence in the record to support these assertions and provide us with no theory as to why these facts constitute grounds for relief. We need not address this issue further.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioners claim that the county's findings are not adequate to show compliance with Statewide Planning Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) in two respects.

A. Need for the Resource

Petitioners argue the Planning Commission's decision and DOGAMI documents in the record clearly indicate there are a sufficient number of aggregate sites in the area, and therefore there is no need for the proposed site or plan text amendment.

The county and participants argue Goal 5 does not require the county to articulate a need for the aggregate resources at the site in order to amend the plan to add the site to its aggregate resources inventory.

Goal 5 contains a list of resources (including mineral and aggregate resources) and states "the location, quality and quantity of [these] resources shall be inventoried." OAR 660-15-000(5). OAR 660-16-000(5)(c) provides the following with regard to the inclusion of resource sites on comprehensive

plan inventories:

> " * * * When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory * * * "

Neither the goal nor its implementing administrative rule provide that need for the aggregate resource is a criterion for adding an aggregate site to a plan inventory. The county is not required by Goal 5 to adopt findings demonstrating a need for the aggregate in order to amend its plan to add the subject site to its plan inventory.

This subassignment of error is denied.

B. Adequacy of the Resource

Petitioners claim that the aggregate resource at the proposed site "is inadequate to meet the [Goal 5] standards necessary to be added to the [plan] inventory of aggregate resources." Petition at 23. With regard to quality, petitioners argue the county's findings are inadequate because they do not consider evidence in the record of the presence of a wide variety of much higher quality rock available in the immediate area. Petitioners also argue the county's determinations that the aggregate resource at the site is of adequate quality and quantity to warrant inclusion on the plan

inventory are not supported by substantial evidence.

The county replies that petitioners' "speculation as to potential limitations to the existence of rock on the site * * * should not be substituted for the County's determination of the existence of the aggragate (sic) resource based on the substantial evidence presented to it." Respondent's Brief 19. Participants argue the record shows that the aggregate from the site which was tested meets State of Oregon specifications for base aggregate and concrete aggregate.

As stated in the preceeding subsection, Goal 5 states "the location, quality and quantity of [mineral and aggregate] resources shall be inventoried." OAR 660-15-000(5). Sections (2) and (3) of OAR 660-16-000 provide in relevant part:

> "(2) A 'valid' inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. * * * "
>
> "(3) The determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of quantity requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or 'obtainable'."

The county's findings on the quality of the proposed aggregate resource site, as found at Record 8, are as follows:

> "The resource material has been identified as hard rock. Tests of the rock samples from the site were made by Northwest Testing Laboratories, Inc. (Attachment #1). The samples submitted were found to be within specifications for Base Aggregate and Concrete Aggregate for the State of Oregon. The Linn County Road Department stated the aggregate is high quality and suitable for road construction material."

The findings do not include any consideration of the site's relative value, as compared to other sites of the same resource within the jurisdiction. Such consideration is required by OAR 660-16-000(3), particularly when the issue of relative quality of resource compared to other sites has been raised as an issue in the proceedings below, as was done in this case. Record 135-137. The findings on resource quality therefore do not comply with Goal 5.[16]

Petitioners also claim the county's determination that there is a sufficient quantity of aggregate resource at the proposed site to warrant inclusion on the plan inventory is not supported by substantial evidence in the record. Petitioners argue the county's findings on the depth of rock resource at the proposed site are not supported by substantial evidence.

The county's findings on the quantity of the resource at the proposed resource site, found at Record 8, are as follows:

> "A 25 acre area of the existing 70.77 acre parcel has been identified as the extraction area for the inventory list (Aggregate Resources Policy #7). Drilling tests show that the topsoil extends to one foot (1') below the surface. Black basalt and blue stone then extend down another 26 feet (26'). A 25 acre area which is 26 feet deep contains more than one million cubic yards of material available for extraction (Aggregate Resources Policy #1)."

Petitioners direct us to a Water Well Report which they assert is the result of the "drilling tests" referred to in the county's findings. Record 146. The report indicates the subject well was drilled on property owned by participant Bentley in Linn County at T10S, R1W, Section 4. The report

does not indicate that the well was drilled within the 25 acre site added to the plan aggregate inventory. Furthermore, the well log contained in the report does not correspond to the facts found by the county with regard to depth of rock resource.[16]

The county and participants direct us to no other evidence in the record to support the challenged findings.[17] Thus, we must determine whether the report is substantial evidence in support of the challenged findings.

Substantial evidence is evidence a reasonable mind would rely on in reaching a conclusion or making a challenged finding. Homebuilders Association of Metropolitan Portland v. Metropolitan Service District, 54 Or App 60, 62, 633 P2d 1320 (1981). The report does not meet this standard. We therefore conclude that the county's finding that the resource site contains material suitable for extraction extending from one foot below the surface down another 26 feet is not supported by substantial evidence.

Since the county's finding that the 25 acre resource site contains over one million cubic yards of material available for extraction is a calculation based solely on the previous, unsupported finding that there is suitable rock on the site extending downward a depth of 26 feet, it too is unsupported by substantial evidence.[18]

Because the findings on quality and quantity of aggregate resource at the subject site are either inadequate or

unsupported by substantial evidence, the plan amendment adding the site to the plan inventory does not comply with Goal 5.

This subassignment of error is sustained.

The fourth assignment of error is upheld, in part.

FIFTH ASSIGNMENT OF ERROR

Petitioners claim that the county's findings are not adequate to show compliance with Statewide Planning Goal 6 (Air Water and Land Resources Quality) because they do not address or are contrary to the evidence in the record on noise, water and air pollution.

The county argues that its findings, the conditions it imposed on the conditional use permit, and unspecified mechanisms in its zoning ordinance are adequate to demonstrate compliance with Goal 6.

Goal 6 provides in relevant part:

> "All waste and process discharges from future development * * * shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. * * *"

Goal 6 requires findings that applicable environmental standards will be met by a proposed use, and the goal is not satisfied by findings that applications have been reviewed by state and federal agencies. Olsen v. Columbia County, 8 Or LUBA 152, 168 (1983) (pre-acknowledgment conditional use permit). When applicable, Goal 6 must be shown to be complied with before approval is granted, Spalding v. Josephine County, 14 Or LUBA 143, 149 (1985), unless the approval is conditioned

on mandatory application of the Goal 6 standard in a future proceeding with adequate notice and hearing provisions for interested parties. Panner v. Deschutes County, supra. In Allen v. Umatilla County, 14 Or LUBA at 755, we interpreted ordinance language similar to that of Goal 6[20] as requiring findings that a proposed use will be able to comply with applicable environmental standards, not simply that the use will be required to meet all environmental standards.

The county's findings relevant to the Goal 6 standard provide:

> "The comprehensive plan requires that the resource site comply with all applicable reclamation standards of federal and state agencies (Aggregate Resources Policy #8). A condition of approval requires that operation of the quarry and processing equipment comply with all applicable state agency standards."
>
> * * * * *
>
> "The operation of the resource site is required, through provisions in the comprehensive plan and zoning ordinance, as well as conditions of approval on the conditional use permit, to meet minimum federal and state standards for aggregate extraction. Additional conditions have been included to minimize the resource site's impact on neighboring properties regarding air, water, and land quality. Comments have been received from the DEQ, DOGAMI, and the Water Resources Department."

Record 14 and 15.

Nowhere do the county's findings state that future aggregate extraction and processing operations on the resource site added to the plan inventory will be able to meet state and federal environmental quality standards. Furthermore, the conditions referred to by the county in these findings[21] do

not remedy this deficiency because (1) they apply only to mining operations on the 10 acres of the site for which conditional use permit approval was granted; and (2) they do not require compliance with the Goal 6 standard to be determined by the county, in a proceeding with notice and an opportunity for participation, before mining commences.

The county's findings do not comply with Goal 6.

This assignment of error is sustained.

SIXTH ASSIGNMENT OF ERROR

Petitioners make a general claim of error on the grounds that the county's findings are not supported by substantial evidence in the whole record. Petitioners do not identify any specific findings as not being supported by substantial evidence. Petitioners argue that "the record as a whole contains substantial non-supporting evidence and thus the findings are subject to attack under ORS 197.835(8)(c) [sic] and the ordinance should be reversed." Petition for Review 32.

It is petitioners' responsibility to state which findings it believes are not supported by substantial evidence. A general claim that findings are unsupported, where there are many findings covering many issues, is too broad an allegation to review. Philippi v. City of Sublimity, 10 Or LUBA 24, 34 (1984). We decline to review each finding of fact for evidentiary support in the record.

This assignment of error is denied.

The decision is remanded.

FOOTNOTES

[1] LCZO 21.480 contained decision criteria for non-resource uses other than residences in the EFU or F/F zoning districts. On March 11, 1987, prior to its adoption of the decision appealed in this case, the county adopted Ordinance #87-096 amending the Linn County Zoning Ordinance. Ordinance #87-096 deleted LCZO 21.480, but did not change the reference in LCZO 21.660.1 to compliance with LCZO 21.480 being required for conditional use permits for aggregate extraction and processing Ordinance #87-096 also retitled LCZO 21.435 and added to it a new subsection 5, which contains decision criteria for non-farm, non-forest uses other than dwellings in the F/F zoning district. The approval criteria of paragraphs a through d of the new subsection 5 of LCZO 21.435 are identical to those of subsections 1 through 4 of the former LCZO 21.480. The parties to this case are in agreement that we may treat Ordinance #87-096 as having simply recodified LCZO 21.480 at LCZO 21.435.5, and that the standards of LCZO 21.435.5.a-d apply to this decision in the same manner as those of LCZO 21.480.1-4 would have prior to their deletion. With this understanding, we continue to cite the provisions of LCZO 21.480 in this opinion, as the parties have in their briefs.

[2] The county initially argued that the provisions of LCZO 21.480 are not approval criteria for aggregate extraction and processing conditional use permits because the title of this section indicates its provisions are decision criteria for "non-resource uses." Plan Aggregate Resources Policy 3 states the county considers aggregate extraction as a resource use in the F/F plan designation. The county contended the standards of LCZO 21.480 are applicable to a resource use "only as conditions not as direct decision criteria." The county later withdrew this argument, and we therefore do not address it. However, we note LCZO 21.660.1 specifically makes the criteria of LCZO 21.480 applicable to the issuance of conditional use permits for aggregate extraction and processing. Furthermore, the text of LCZO 21.480 (and that of LCZO 21.435.5) indicates that its criteria apply to "non-farm or non-forest uses." The plan does not identify aggregate extraction as a farm or forest use in the F/F plan designation.

[3] The parties do not identify any definition of "livability" in the plan or Zoning Ordinance.

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[4] LCZO 21.480.1 requires the county to show both that a proposed conditional use "will be compatible with" and that a proposed conditional use "will not adversely affect" the livability of abutting properties and the surrounding neighborhood. We do not imply that consideration of compatibility and adverse effects cannot be combined in some manner in the county's findings, as a determination of compatibility generally would include consideration of impacts caused by a proposed use. However, the county's findings must demonstrate that both standards are met.

[5] The county's findings actually purport to address the general conditional use criteria of LCZO 20.020.2 rather than the specifically applicable conditional use criteria of LCZO 21.480. However, the language of the four criteria of LCZO 20.020.2 is identical to that of LCZO 21.480 (and that of LCZO 21.435.5). No particular, technical form for findings is required. Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 23, 569 P2d 1063 (1977). We therefore consider any county findings which address the substance of an applicable standard in our review for compliance with that standard.

In its findings in support of the comprehensive plan amendment to add 25 acres of participants' parcel to the plan's aggregate resources inventory, the county adopted statements regarding impacts of use of "this resource site" on surrounding properties. Presumably these findings, unless the contrary is specifically stated, refer to potential impacts of use of the entire 25 acre site rather than impacts of the specific 10 acre aggregate extraction and processing operation for which a conditional use permit was approved. Such findings therefore do not address the compliance of the approved conditional use with LCZO 21.480.1. In any case, as a result of the analysis of economic, social, environmental and energy consequences of conflicting uses required by Statewide Planning Goal 5 and OAR 660-16-005, the county reached the following conclusion:

> "Conditions of approval have been placed on operation of the resource site so as to minimize the negative impacts on surrounding properties."

Record 14. This conclusion is essentially the same as that reached by the county in its findings specifically addressing LCZO 21.480.1. See text, infra.

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The county's plan amendment findings, at Record 13-14, do include some statements on impacts on surface and groundwater which are arguably applicable to the proposed conditional use. However, apart from findings on the location and water levels of neighboring wells and a description of the condition concerning domestic well monitoring imposed in its conditional use permit approval (see footnote 7), these statements are not findings of fact by the county, but rather recitations of evidence submitted by the Oregon Water Resources Department and Department of Geology and Mineral Industries. See Hill v. Union County Court, 42 Or App 883, 887, 601 P2d 905 (1979).

7

We note that the groundwater monitoring condition imposed by the county provides:

> "Prior to beginning operation under the auspices of the conditional use permit, the applicant shall establish a ground water testing program acceptable to the planning director. Regular testing of ground water quality and quantity shall be made of the applicant's domestic water well. Testing shall also occur on all domestic wells within 1,500 feet of the quarry. If, in the judgment of the planning director the water quantity and quality are significantly reduced, the quarry operation shall cease. * * * "

(emphasis added) Record 3. This condition would allow a significant reduction in the quantity and quality of water in domestic wells within 1,500 feet of the proposed conditional use. In order to comply with LCZO 21.480.1, the county must demonstrate in its findings that such a significant reduction in the quality and quantity of domestic well water does not constitute an adverse effect on the livability of abutting properties or the surrounding neighborhood.

8

If petitioners had questioned the adequacy of or evidentiary support for these site suitability findings, our review would have encountered a fundamental difficulty in that nowhere in the county's decision does it identify the 10 acres subject to the conditional use permit. The county's order approves a conditional use permit to operate an aggregate extraction and processing activity on "a 10 acre portion of" the subject 70.77 acre parcel. It further provides:

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"This conditional use permit allows aggregate extraction of a 10 acre area as submitted by the applicant. Any increase in area beyond the 10 acres shall require an additional conditional use permit."

Record 1. Plan Aggregate Resources Policy 7 requires conditional use permits for aggregate extraction to "identify an area for extraction." LCZO 21.620.2.k.2 requires the conditional use permit application to include a map of the areas proposed for extraction, processing and storage. We note the area map accompanying the application identifies only an access road and a "pit" approximately 1/4 acre in size.

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[9] For instance, Open Spaces, Scenic and Historic Areas, and Natural Resources (Natural Resources) Policy 3 states the county will cooperate with various governmental entities to identify areas of "sensitive fish and wildlife habitat." Natural Resources Policy 25 provides that development of major facilities shall not have significant adverse impacts on a "sensitive fish or wildlife habitat." Also, Natural Resources Implementation 1 provides that the F/F plan designation shall be used to protect "sensitive fish and wildlife habitats."

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[10] We take official notice of Linn County Ordinance #80-335, adopted August 27, 1980, which adopted this Background Report as part of the Linn County Comprehensive Plan.

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[11] Petitioners do specifically challenge the adequacy of the county's findings on adverse impacts to Sucker Slough. We note that the county was not required to reconsider its decision not to include Sucker Slough on its acknowledged Goal 5 inventories of significant fish and wildlife habitat (i.e., the Background Report's Sensitive Fish and Wildlife Habitat Maps). See Urquhart v. Lane Council of Governments, 80 Or App 176, 721 P2d 870 (1986). The county did adopt findings addressing impacts on Sucker Slough. Nevertheless, we need not consider petitioners' challenge to these findings. Even if petitioners are correct, there is no ground for remand or reversal, as the findings on Sucker Slough are surplusage, not required for compliance with the criterion of LCZO 21.480.4. Mc Nulty v. City of Lake Oswego, ___ Or LUBA ___ (LUBA No. 86-086; February 20, 1987).

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[12] Petitioners also were on notice that statewide planning goals and county plan policies are criteria applicable to the county's decision because their applicability to post-acknowledgment plan amendments and land use actions, respectively, is a matter of statutory law. See ORS 197.175(2)(a) and (d); ORS 215.416(4); Allm v. Polk County, 13 Or LUBA at 263.

[13] In fact, petitioners did address the statewide planning goals in their testimony to the county commissioners. See Record 98-114.

[14] At oral argument petitioners also asserted that notices given to other state agencies misstated the size of the proposed plan amendment, and that these agencies relied on the incorrect notices in submitting their comments on the proposed amendment. The notice of the Planning Commission hearing is the only notice which the record indicates was sent to state agencies such as the Oregon Departments of Fish & Wildlife and Environmental Quality. Record 433. That notice does not give any size for the proposed plan amendment. Therefore, that notice could not have mislead agencies as to its size. Furthermore, petitioners have not explained how their substantial rights were prejudiced by any incorrect notice given to these agencies. cf. Apalategui v. Washington County, 14 Or LUBA 261, 267, aff'd 80 Or App 508, 723 P2d 1021 (1986).

[15] Because we find that the county's findings on resource quality are inadequate we need not address petitioners' alternative contention that the county's determination of resource quality is not supported by substantial evidence. However, we note the only actual finding of fact with regard to resource quality made by the county is that the resource material is "hard rock." The other quoted statements are not statements of what the county found to be true, but rather are recitations of evidence submitted from Northwest Testing Laboratories and the Linn County Road Department. See Hill v. Union County Court, supra.

[16] The county's findings state the "drilling tests" show topsoil to one foot below the surface and black basalt and blue

stone extending downward another 26 feet. The report notes "brown clay" from 0 to 2 feet, "brown clay and boulders" from 2 to 6 feet, "black basalt" from 6 to 18 feet and "blue stone" from 18 to 25 feet.

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17 When a substantial evidence challenge is made, respondents must direct our attention to evidence in the record that is sufficient to meet the challenge. Grindstaff v. Curry County, ___ Or LUBA ___ (LUBA No. 86-060; October 31, 1986); City of Salem v. Families for Responsible Govt, 64 Or App 238, 249, 668 P2d 395 (1983). The county refers us to testimony by the applicant supposedly concerning tests done on his property to establish the existence of the aggregate resource. However, the hearing minutes to which the county directs us simply state the applicant responded to questions from the commissioners concerning operation of the quarry, and do not describe the testimony. Record 92-93.

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18 We note that even if the record indicated that the well test had been performed on the resource site, and the depth of suitable rock was as stated in the county's finding, the county's calculation would not be supported by substantial evidence unless the record also contained substantial evidence that the depth of suitable rock at this one location is representative of that of the entire 25 acre site.

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19 The county appears to question whether its findings on noise pollution meet the standard expressed by us in Allen v. Umatilla County, 14 Or LUBA 749 (1986), but argues that its imposition of conditions creates a situation analagous to that approved by us in Panner v. Deschutes County, 14 Or LUBA 1, 12-13, aff'd 76 Or App 59, 708 P2d 612 (1985).

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20 The ordinance required that the proposed operation "comply with all applicable air, noise and water quality regulations of all county, state or federal jurisdictions * * * " Allen v. Umatilla County, 14 Or LUBA at 755.

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21 We note the following condition:

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"Operation of the quarry and processing equipment shall comply with all applicable state agency standards. A copy of each state permit shall be provided to the planning and building department within 14 days of the issuance of the permit."

Record 2. This condition does not require a future county determination of ability to comply with environmental standards, rather it simply recognizes that state agency standards will apply to future operations. Furthermore, neither this condition nor any other addresses compliance with federal environmental standards.