

DEC 9 5 55 PM '87

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

BEVERLY LOUSIGNONT, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
UNION COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
R-DMAC, )  
 )  
Participant. )

LUBA No. 87-065  
FINAL OPINION  
AND ORDER

Appeal from Union County.

Beverly A. Lousignont, La Grande, filed the petition for review. Edward J. Sullivan, Portland, argued on behalf of petitioner.

Paul R. Hribernich, Portland, filed a response brief and argued on behalf of Respondent R-DMAC, Inc. With him on the brief was Rappleyea, Beck, Helterline, Spencer & Roskie.

No appearance by Respondent Union County.

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

REMANDED 12/09/87

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

1 Opinion by Holstun.

2 NATURE OF THE DECISION

3 Petitioner appeals the county's approval of a conditional  
4 use permit. The conditional use permit allows a one acre  
5 expansion of an existing aggregate extraction operation  
6 conducted on a 32 acre parcel owned by Respondent R-DMAC,  
7 Inc.<sup>1</sup>

8 MOTION TO DISMISS

9 Respondent R-DMAC, Inc. filed a motion to dismiss alleging  
10 petitioner failed to timely serve it with a copy of the  
11 petition for review. On November 6, 1987, we issued an order  
12 denying the motion to dismiss. We adhere to our earlier  
13 decision denying the motion to dismiss for the reasons stated  
14 in that order. Lousignont v. Union County, \_\_\_ Or LUBA \_\_\_  
15 (LUBA No. 87-065, Order Denying Motion to Dismiss, November 6,  
16 1987).

17 In reasserting its motion to dismiss, respondent calls our  
18 attention to page 4 of the petition for review where petitioner  
19 states the decision at issue became final on July 15, 1987.  
20 Respondent notes the notice of intent to appeal was filed 22  
21 days after that date, and on this basis argues the appeal  
22 should be dismissed. Petitioner's misstatement in the petition  
23 notwithstanding, it is clear from the record that the decision  
24 became final on July 16, not July 15. Record 7. The notice of  
25 intent to appeal correctly identifies July 16 as the date the  
26 decision became final. In these circumstances petitioner's

1 misstatement in the petition for review provides no basis for  
2 dismissal.<sup>2</sup>

3 FACTS

4 The excavation site approved by this decision is located  
5 within Township 2S, Range 38, EWM, Section 34, Tax Lot 1200.  
6 Tax Lot 1200 includes approximately 32 acres and contains an  
7 existing aggregate extraction site, areas where the respondent  
8 apparently plans to seek permission for additional extraction  
9 sites in the future and the one acre area approved by the  
10 decision appealed in this case. The approximately one acre  
11 area approved is the western portion of an area denoted "Pit  
12 S-4" and is located immediately west of the Island City city  
13 limits and the existing extraction operation in Pit S-4 which  
14 is located within the city limits.

15 North of the site are additional excavation pits from which  
16 the aggregate has already been removed. Farther to the north  
17 is the Grande Ronde River. Respondent's processing facility is  
18 located north of the Grande Ronde River and aggregate from the  
19 site would be removed to this facility for processing. An auto  
20 and scrap metal salvage yard is located east of the site. The  
21 Union Pacific Railroad adjoins the site to the east. To the  
22 south there are orchard and residential uses. Grazing and  
23 residential uses are located to the west.

24 The property is designated Farm Residential (FR) in the  
25 city's comprehensive plan and zoned R-3. Aggregate removal and  
26 processing is a conditional use in the R-3 zone.

1           The gravel extraction proposed at this site would begin  
2 with removal of approximately 8 feet of overburden which is  
3 stored for later reclamation use. Gravel is then removed in  
4 three lifts of 7 or 8 feet each. The first lift extends down  
5 to the water table at approximately 15 feet below the surface.  
6 Removal of the next two lifts requires concurrent dewatering to  
7 remove groundwater which infiltrates as excavation proceeds  
8 below the water table. Dewatering is accomplished by pumping  
9 water from the lowest point in the pit through a pipe to  
10 adjacent mined out pits where it percolates back into the  
11 ground. Excavation apparently will be discontinued when an  
12 unsuitable clay layer is reached at a depth of approximately 30  
13 to 35 feet. Excavated gravel is transported to a  
14 crusher/washer plant. Spent wash water is discharged into a  
15 mined out pit where the water percolates back into the shallow  
16 groundwater. Record 172 a, Document 6 at p. 2.

17   FIRST ASSIGNMENT OF ERROR

18           "The conditional use permit violates S 21.07 3.(C) of  
19           the Union County Zoning, Partition and Subdivision  
          Ordinance, dated November 2, 1983."

20           Section 21.07 3. (C) (2) provides as follows:

21           "Contamination or impairment of the groundwater table,  
22           streams, rivers or tributary bodies thereto shall not  
          be permitted as a result of the extraction and/or  
23           processing activity. All operations which include  
          some form of washing process must make application  
24           with the Oregon Department of Environmental Quality  
          and comply with applicable laws, rules and  
          regulations."

25           Petitioner alleges Section 21.07 3. (C) (2) is a mandatory  
26

1 standard and the county failed to show the standard is met  
2 because the impacts of the extraction and processing cannot be  
3 predicted accurately due to the variable nature of the  
4 hydrology in the area. Petition for Review 8. According to  
5 petitioner, the record shows there are two aquifers which may  
6 be affected, one shallow and one deep.

7 Petitioner says the county does not dispute that the  
8 shallow aquifer will be affected when extraction reaches 15  
9 feet below the surface and dewatering commences.<sup>3</sup> According  
10 to petitioner the pump test data needed to predict accurately  
11 the rate of movement of the turbid water is not available.

12 Petitioner also argues the evidence in the record shows the  
13 confining beds which separate the deeper aquifer from the  
14 shallow aquifer are variable and "provide only a partial  
15 separation between the shallow aquifer and deeper aquifer."<sup>4</sup>  
16 Petitioner claims heavy equipment to be used in the extraction  
17 process increases chances for potential contamination or  
18 impairment of the groundwater.

19 We interpret petitioner's first assignment of error to  
20 allege (1) the county improperly construed Section 21.07 3.  
21 (C)(2), and (2) there is not substantial evidence in the record  
22 to support the county's conclusion the standard is met. See  
23 Hilliard v. Lane County Commrs., 51 Or App 587, 626 P2d 905,  
24 rev den 291 Or 368 (1981).

25 Respondent's answer to the first assignment of error is  
26 essentially twofold. First, respondent asserts the county

1 recognized Section 21.07 3.C. (2) is a mandatory standard, but  
2 elected to interpret the standard to impose less than an  
3 absolute proscription against any increase in turbidity.  
4 Second, respondent claims the county relied extensively on  
5 expert testimony which in turn establishes a record containing  
6 substantial evidence to support the county's decision.

7 In its brief respondent argues, in part, as follows:

8 "First, the county found that the lateral migration of  
9 any turbid groundwater was limited to a few tens of  
10 feet. (Record 132.) This finding is supported by  
11 substantial evidence in the record. (Record 167 and  
12 242.) \* \* \* Second, the county found that no  
13 turbidity in wells has been reported during the  
14 numerous years applicant has extracted aggregate in  
15 the area. (Record 132.) This finding is supported by  
16 substantial evidence in the record. (Record 242.)  
17 After making factual findings, the county conditioned  
18 approval on the applicant's maintenance of a 200 foot  
19 setback from the south property line. (Record 13.)  
20 This setback is more than five times the maximum  
21 estimated migration of any turbid groundwater in the  
22 shallow unconfined aquifer as found by the county.  
23 (See, Record 167 and 242.)" Respondent's Brief 6.

24 Respondent also points to evidence in the record which supports  
25 the county's finding that activity within the extraction pit  
26 would not result in contamination or impairment of  
27 groundwater.

28 "As part of the applicant's employee training program,  
29 equipment operators are instructed that no waste of  
30 any type, such as garbage, oil or commercial  
31 industrial waste, shall be placed in the proposed pit.  
32 (Record 156-157)." Respondent's Brief 10.

33 The terms "contamination or impairment" are not defined in  
34 the Union County Plan. The terms apparently do not have a  
35 well-defined meaning, at least when used in the context  
36

1 presented by this case. The dictionary definition of  
2 "contamination" is "to make impure or unclean." The term  
3 pollution is listed as a synonym. Webster's Ninth Collegiate  
4 Dictionary, 282 (1983). The dictionary definition of  
5 "impairment" is "to damage or make worse by or as if by  
6 diminishing in some material respect." Id. at 603. The county  
7 explained its view of the standard as follows:

8 "We find that the DEQ water permit is presently in  
9 preliminary draft form and contains a number of  
10 limitations and requirements designed to both limit  
11 any water (and ground water) contamination or  
12 impairment and to provide a monitoring database to  
13 verify that the limitations and requirements of the  
14 permit adequately protect water and groundwater  
15 resources. We find that as a part of this permit  
16 process, the DEQ has presently defined groundwater  
17 contamination or impairment due to due to [sic]  
18 suspended solids (turbidity) as: 'An increase in  
19 turbidity of 10 percent above background levels, as  
20 measured by groundwater monitoring wells.' We  
21 understand that other definitions of 'contamination or  
22 impairment' may be possible, but we find, for purposes  
23 of this conditional use application, that the Oregon  
24 DEQ definition is a reasonable one. We find that  
25 [Section 21.07 3. (C) (2) \* \* \*] was not designed to  
26 prevent all contamination or impairment in water or  
groundwater. We find that such a reading of this  
standard would make it impossible to remove all of the  
alluvial deposits near the Grande Ronde River because  
any disturbance of the resource would create  
turbidity. We further find that such an  
interpretation of this standard is inconsistent with  
the establishment of surface mining zones to the west  
on the Grande Ronde River \* \* \*.<sup>5</sup> Furthermore, we  
find that upland sites might not be able to meet the  
standard if it were interpreted to prohibit any  
contamination or impairment." Record 132-133.

23 While it is not clear from the record, the referenced DEQ  
24 standard apparently is OAR 341-41-725(2)(c).<sup>6</sup>

25 OAR 341-41-725(2)(c) does not use the terms "contamination or  
26

1 impairment." Neither do the statutes implemented in part by  
2 OAR 341-41-725(2) (c) use or define the terms "contamination or  
3 impairment." However, they do define the term "pollution" as  
4 follows:

5 "'Pollution' or 'water pollution' means such  
6 alteration of the physical, chemical or biological  
7 properties of any waters of the state, including  
8 change in temperature, taste, color, turbidity \* \* \*  
9 which will or tends to, either by itself or in  
10 connection with any other substance, create a public  
11 nuisance which will or tends to render such waters  
12 harmful, detrimental or injurious to public health,  
13 safety or welfare, or to domestic, commercial,  
14 industrial, agricultural, recreational or other  
15 legitimate beneficial uses or to livestock, wildlife,  
16 fish or other aquatic life or the habitat thereof."  
17 ORS 468.700(3).

18 The county in its finding quoted supra, and respondent in  
19 its brief, appear to argue that "contamination or impairment"  
20 need not be interpreted to proscribe any increase in turbidity  
21 no matter how small or localized.<sup>7</sup> Presumably under this  
22 interpretation, there is no contamination or impairment as long  
23 as turbidity increase does not exceed 10%. We do not believe  
24 such an interpretation is contrary to the express language in  
25 Section 21.07 3. (C) (2). Fifth Avenue Corporation v.  
26 Washington County, 282 Or 591, 599-600, 581 P2d 50 (1978). We  
27 defer to local governments' interpretations of their own  
28 ordinances when those interpretations are reasonable. Alluis  
29 v. Marion County, 64 Or App 478, 481, 668 P2d 1242 (1983).<sup>8</sup>

30 The county's findings, however, while adopting DEQ's  
31 standard as its own, do not clearly state that the applicant  
32 will meet this standard.<sup>9</sup> The county discussion of this



1 issue shows the county believed the DEQ standard was designed  
2 to prevent water and ground water contamination or impairment  
3 and that the DEQ permit is designed to alert the agency to any  
4 potential contamination or impairment. However, the county  
5 goes on to find that the

6 "applicant has agreed to operate his extraction  
7 operation in conformance of the terms of the DEQ water  
8 permit as it is issued in final form. We further find  
9 that the applicant has expressed a willingness to  
10 adopt reasonable changes to control ground waters as  
11 may be indicated by the DEQ monitoring program. We  
12 find that the applicant's operations must comply with  
13 the applicable laws, rules and regulations of the  
14 Oregon Department of Environmental Quality for the  
15 applicant to continue its operation." Record 133.

16 Rather than finding that the applicant will meet the  
17 contamination and impairment standard as it is understood by  
18 the county, the county leaves it to DEQ and the applicant to  
19 insure that the operation will meet the standard. In other  
20 words, the county finds that there are enforcement procedures  
21 in place which will insure compliance. As Section 21.07 3.  
22 (C)(2) is an approval standard, the county's approach is  
23 impermissible. Margulis v. City of Portland, 4 Or LUBA 89, 98  
24 (1981).

25 The first assignment of error is sustained.

26 SECOND ASSIGNMENT OF ERROR

"Approval of the conditional use permit violates  
Article 20.09 significant Goal 5 resource areas of the  
Union County Zoning, Partition and Subdivision  
Ordinance."

Section 20.09(1) provides as follows:

"Any land use action requiring county zoning of

1 partitioning approval or any activity listed as a  
2 conflict in this ordinance which is within 1320 feet  
of or could have an impact on:

3 "A. Significant historical sites or structures,

4 "B. Significant scientific or natural areas,

5 "C. Significant aggregate resource sites,

6 "D. Big game critical wildlife habitat areas and big  
7 game winter range,

8 "E. Significant avian habitat,

9 "F. Significant wetlands, and

10 "G. Designated scenic waterways identified by the  
11 Union County Land Use Plan, shall be reviewed by  
the planning director for appropriate public  
notification measures and conflict resolution."

12 The only standard contained in Section 20.09 that  
13 petitioner argues was violated is Section 20.09 5.(A) which  
14 provides

15 "The following criteria shall be considered, as  
16 applicable, during the appropriate decisionmaking  
process:

17 "A. ECONOMIC: "The use proposed is a benefit to the  
18 community and would meet a substantial public  
19 need or provide for a public good which clearly  
outweighs retention of the resources listed in  
Section 20.09(1):"

20 Petitioner disputes respondent's finding of a public need  
21 for the aggregate that would be produced. Petitioner claims  
22 the county failed to account accurately for all the operating  
23 costs that would be incurred as well as costs of mitigation.  
24 According to petitioner, the more cost-effective and prudent  
25 course of action for the county would be to examine the Grande  
26 Ronde Valley comprehensively to determine whether there are

1 other more cost-effective sites.

2 Respondent answers first the county found no significant  
3 Goal 5 resources are affected by this application; and,  
4 therefore, Section 20.09 by its own terms does not apply.  
5 While it could be clearer, the county did adopt a finding that  
6 Section 20.09 does not apply. Record 138.<sup>10</sup> Petitioner does  
7 not quarrel with the county's finding that Section 20.09 does  
8 not apply. The county did, however, proceed in the alternative  
9 and apply the standards contained in Section 20.09. Petitioner  
10 only challenges the county's alternative conclusion that the  
11 standards in Section 20.09 5.(A) are satisfied.

12 The county's finding of nonapplicability is not erroneous  
13 on its face.<sup>11</sup> We conclude that petitioner was required to  
14 assign this interpretation as error before proceeding to claim  
15 the county erred in its alternative application of the  
16 standards in 20.09. Because petitioner failed to assign this  
17 interpretation as error, we deny the second assignment of error.

18 However, in case we are mistaken, we will review the  
19 county's findings to determine whether, if Section 20.09 5.(A)  
20 is applicable, the county properly found the standard was met.

21 Petitioner appears to allege the findings of need are  
22 defficient because they are conclusional and based on a  
23 defective economic analysis. Respondent notes correctly that  
24 petitioner does not argue that retention of the resources  
25 identified in Section 20.09(1)(A) outweigh the economic value  
26 of the use proposed by the applicant. Respondent states in its

1 brief

2 "As no significant Goal 5 resources are present, the  
3 county can not weigh public need for the proposed use  
4 against retention of such resources." Respondent's  
5 Brief 16.

6 Respondent also argues as follows:

7 "The county court found that: (1) Aggregate is a  
8 necessary material for road and home building and  
9 other residential, commercial and industrial uses in  
10 Union County; (2) there is a large annual need for  
11 such resources in Union County for both construction  
12 and repair uses; and (3) applicant supplies a large  
13 portion of the necessary materials in Union County.  
14 (Record 141)."

15 Respondent provides citations to the record for each of the  
16 above findings. The record shows the respondent applies 50% of  
17 the county's aggregate supply, approximately 100,000 cubic  
18 yards annually. The site at issue contains approximately  
19 30,000 cubic yards. The record also contains assessments of  
20 need for aggregate in Union County. We believe the record is  
21 sufficient to support the county's finding that Section 20.09  
22 5. is satisfied, to the extent that it applies.

23 The second assignment of error is denied.

24 The decision is remanded.

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FOOTNOTES

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1

At oral argument petitioner questioned whether the approval applied to a one acre site or to a larger area. The application in the record describes the property at issue as Township 2S, Range 38, EWM, Section 34, Tax Lot 1900. The map included in the front of the record of this case shows this is a 1.01 acre parcel. However, it is clear that Tax Lot 1900 is not the parcel for which approval was granted. Rather, the site approved is contained in Tax Lot 1200. Record 109. In addition, at oral argument petitioner noted a condition imposed by the county limits excavation on "Site S-4" to 10 acres. Record 7, 230. As no issue was raised in the petition for review regarding the size or location of the site approval, we need not address it. However, we believe it is reasonably clear from the maps in the record at 246 and 172a (Document 18) that the approval is for an approximately one acre portion of what is shown as "Pit S-4." The one acre portion of Pit S-4 is apparently a portion of that excavation area falling outside the Island City city limits.

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The petitioner in this case apparently represented herself up to the time of oral argument and prepared and filed the petition for review. However, she secured the services of an attorney to present oral argument on her behalf. Respondent was unaware that petitioner would be represented by counsel at oral argument and objected. We are aware of no basis upon which we could deny petitioner the right to be represented by counsel at oral argument. We recognize that respondent may have prepared for oral argument somewhat differently had it known petitioner was to be represented by counsel. However, petitioner did not request that oral argument be delayed and elected to proceed with oral argument as scheduled.

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3

Petitioner attributes the following finding to the county:

"It is likely that turbid groundwater conditions could occur where wells are constructed to utilize shallow groundwater above the clay strata underlying the gravel mining operation." Petition for Review 12.

Respondent correctly notes the quoted language does not appear in the finding as petitioner indicates. The

1 language does, however, appear in a report submitted by  
2 the respondent to the county. Record 172a, Document 6 at  
3 p. 6.

4

4 Most of the adjoining wells used for domestic purposes  
5 apparently withdraw water from the deeper aquifer. Record  
6 172a, Document 6 at p. 6.

5

7 We note that aggregate extraction is a permitted use  
8 in the surface mining zone and the no "contamination or  
9 impairment" standard does not apply in that zone. Rather,  
10 the county expressly defers to the Department of  
11 Environmental Quality to protect water quality. Record  
12 172a, Document 3 at p. 52.

6

11 OAR 340-41-725 (2)(c) provides in relevant part:  
12 "Turbidity (Jackson Turbidity Units, JTU): No more  
13 than a 10% cumulative increase in natural stream  
14 turbidity shall be allowed, as measured relative to a  
15 control point immediately upstream of the turbidity  
16 causing activity. \* \* \*"

7

16 While an undeveloped argument is made by petitioner  
17 that equipment operating in the pit might cause  
18 contamination or impairment, petitioners arguments under  
19 the first assignment of error otherwise are exclusively  
20 directed at turbidity. We believe the county's findings  
21 that equipment operation will not result in contamination  
22 or impairment is adequate and supported by the record.  
23 Record 130.

8

21 The county's findings in several places appear to take  
22 a different and impermissible course in applying the  
23 standard.

23 There is language suggesting the county is trying to  
24 achieve by interpretation what could only be achieved by  
25 amending the standard. See, West Hill & Island Neighbors,  
26 Inc. v. Multnomah County, Or LUBA \_\_\_\_\_ (LUBA No.  
83-018, June 29, 1983), aff'd 68 Or App 782 (1984). Some  
of the findings suggest the county believes any increase  
in turbidity is "contamination or impairment" but minimal

1 contamination or impairment is allowable under  
2 Section 21.07 3. (C)(2). If this is what the county is  
3 saying, we disagree. Whatever "contamination or  
4 impairment" is, it is clear that Section 21.07 3. (C)(2)  
5 requires that it "shall not be permitted." If the county  
6 believes it has adopted an impossible standard, the  
7 solution is to amend the standard, not to apply a  
8 substantial compliance standard to approve a desired  
9 project. See, West Hill & Island Neighbors, Inc. v.  
10 Multnomah County, 68 Or App 782, 787, 683 P2d 1032 (1984);  
11 Federation of Seafood Harvesters v. Fish & Wildlife Comm.,  
12 291 Or 452, 460 632 P2d 777 (1981).

13  
14 The county's findings regarding the proper  
15 interpretation and application of Section 21.07 3. (C)(2)  
16 are somewhat inconsistent. The findings in one place  
17 state turbidity must be more than minimal (i.e., greater  
18 than 10%) before it will result in contamination or  
19 impairment. However, the findings also use "increase in  
20 turbidity" interchangeably with "contamination or  
21 impairment" but say some "contamination or impairment"  
22 must be allowed to make the standard workable. Because we  
23 believe the findings, fairly read, adopt the former  
24 interpretation, and that interpretation is reasonable, we  
25 defer to the county.

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The county only finds "it is unlikely that any  
turbidity from waste water discharge or dewatering process  
would cause turbidity or contamination of the Grande Ronde  
River." Record 132. Some of the county's findings on the  
possibility of turbidity impacts on the deep aquifer are  
equivocal. In several instances they indicate that  
information is not entirely complete, and the separation  
between the shallow and deep aquifer is not continuous.  
Record 131.

In our view, the existence of some scientific  
uncertainty and reflection of that uncertainty in the  
county's findings is not necessarily fatal. However, the  
county must reasonably interpret and correctly apply the  
relevant standard, Section 21.07 3. (C)(2). Also, the  
county's findings, taken as a whole, must support a  
conclusion that the standard is met and the evidence must  
support the county's findings and conclusions. Sunnyside  
Neighborhood v. Clackamas Co. Comm., 280 Or 3, 21-23, 569  
P2d 1063 (1977).

While the evidence in the record does not absolutely  
preclude the possibility of some turbidity impacts, the  
record does show there has been no reported turbidity in  
nearby wells during the 15 years the applicant has  
operated in the area. In addition there was expert

1 testimony that the aquifers perform a filtering function  
2 to remove any introduced turbidity. Record 172 a,  
3 Document 5.

3 10

4 The county's finding is as follows:

5 "We find that the County Comprehensive Plan lists  
6 none of the following areas, sites, structures or  
7 habitat as being located within 1320 feet of the  
8 proposed pit that is subject to this conditional use  
9 application: (A) Significant historical sites or  
10 structures; (B) Significant scientific or natural  
11 areas; (C) Big game critical wildlife habitat areas  
12 and big game winter range; (D) Significant avian  
13 habitat; (E) Significant wetlands; and (G) Designated  
14 scenic waterways identified by the Union County Land  
15 Use Plan. We find that the areas for which the  
16 conditional use has been requested is recognized as a  
17 potential aggregate extraction area but has not been  
18 officially designated a "significant" aggregate  
19 resource site. We further find that the area affected  
20 by the conditional use application is immediately  
21 adjacent to the city limits of Island City and in  
22 close proximity to extensive existing aggregate  
23 extraction and processing facilities. In addition, we  
24 find that the area affected by the conditional use  
25 application is connected with, and is an extension of,  
26 an existing active aggregate extraction site located  
in a Surface Mining Zone within the boundaries of  
Island City, Oregon. We find that the proposed  
conditional use does not present a more intense use of  
the land nor any different impact on any significant  
resource areas in the vicinity identified [sic] in the  
Union County Zoning Partition and Subdivision  
Ordinance, if any, than the present extraction  
operations which are immediately adjacent to the  
proposed conditional use site. We find that the  
requested conditional use, gravel extraction, is  
consistent with the designation of the area set forth  
in the Union County Land Use Plan Supplement dated  
June 13, 1984, as a potential aggregate site. We find  
that the discussion related to aggregate sites in the  
Zoning, Partition and Subdivision Ordinance,  
specifically Article 20.09(6)(A), concerns itself with  
minimizing conflicts which would be caused by using a  
proposed aggregate extraction area for the  
construction of residences or other uses listed as  
conditional uses. We find that there is no conflict  
developing a proposed aggregate resource site for  
actual use as an aggregate extraction area. We find



1 that because the site is identified in the County Land  
2 Use Plan Supplement as a potential aggregate site,  
3 proposed conditional use of the site presents no  
4 conflict between development and resource  
5 preservation. Accordingly, and consistent with our  
6 findings and conclusions in Parts II, III and IV  
7 above, we determine that the standards set forth in  
8 Article 20.09 are met to the extent that they are  
9 applicable.

6 "Notwithstanding our conclusion above, in the event  
7 that the individual standards of Article 20.09 would be  
8 deemed to apply to the site, we find that the criteria of  
9 each individual subsection of Article 20.09 are met by the  
10 proposed conditional use action."

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10 Apparently the only possible Goal 5 resources in the  
11 area are significant aggregate resource sites. While the  
12 proposed site is not a designated significant aggregate  
13 resource site, there may be significant aggregate resource  
14 sites in the area. This theory for applying Section 20.09  
15 was presented for the first time by petitioner at oral  
16 argument. We decline petitioner's request to use this  
17 theory as a basis for concluding Section 20.09 should  
18 apply.