

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS JUL 21 2 53 PM '89

OF THE STATE OF OREGON

RAZ RASMUSSEN, ROBIN ZACONNE,)
MARY JO ST. CLAIR, WAYNE LOWE,)
BRUCE HONEYMAN, KIFAR YOSEMITE,)
JUDITH FISHER, BOB GOODMAN,)
MIKE HIGGINS, JO BROADWELL,)
WAYNE LOWE, and STEVE BACKSTROM,)

Petitioners,)

and)

COCO FORTE, DONNA HIGGINS,)
and DAVID MADER,)

Intervenors-Petitioner,)

vs.)

BAKER COUNTY,)

Respondent,)

and)

BONNANZA MINING, INC.)

Intervenor-Respondent.)

Appeal from the Baker County.

Douglas E. Hojem, Pendleton, filed the petition for review and argued on behalf of petitioners and intervenors-petitioner. With him on the brief was Corey, Byler, Rew, Lorenzen and Hojem.

No appearance by respondent Baker County.

A. J. Schmeits, Baker, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was Silven, Schmeits and Vaughan.

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

REMANDED

07/21/89

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 Petitioners and intervenors-petitioner (petitioners)
4 challenge the county's decision to approve a conditional use
5 permit in an exclusive farm use zone for a gold placer mining
6 operation.

7 FACTS

8 Intervenor-respondent (respondent) Bonnaza Mining, Inc.,
9 requested a conditional use permit to allow a gold mining
10 operation on 80 acres of Exclusive Farm Use (EFU) zoned land
11 adjacent to the town of Carson.¹ The property adjoins Pine
12 Creek and currently is used for grazing and hay production.

13 The county planning commission approved the requested
14 conditional use permit authorizing respondent to

15 "[c]onduct exploratory seismographic testing and drill
16 test holes and, if the quality of the resource
warrants, conduct open pit placer mining on [the] 80
17 acres * * *." ² Record 291.

18 The planning commission approval of the conditional use permit
19 was appealed to the board of county commissioners. The board
20 of county commissioners affirmed the planning commission's
21 decision, and this appeal followed.

22 FIRST ASSIGNMENT OF ERROR

23 "The County erred in allowing a mining operation in an
24 area found to be excellent farmland contrary to an
25 approval criterion which requires that the land be
generally unsuitable for farming purposes."

26 Baker County Zoning Ordinance (BCZO) 301.B.6 allows mining

1 as a conditional use in the EFU zone. "Standards" and
2 "criteria" concerning such mining operations are specified in
3 several sections of the BCZO.³ Petitioners argue the mining
4 operation violates the "unsuitable land" standard of BCZO
5 301.C.3. BCZO 301.C provides in pertinent part:

6 "Standards for Conditional Uses in the EFU Zone: In
7 addition to other required conditions and to optional
8 stipulations that may be attached to the approval of a
9 Conditional Use as provided by Article 6 of this
10 Ordinance, the following limitations shall apply to
11 all Conditional Uses permitted in Subsection B of this
12 Section.

13 "Conditional Uses permitted by Subsection B of this
14 Section may be established on agricultural lands
15 subject to the criteria set forth in Subsection D of
16 this Section and upon written findings by the
17 Commission that each of the following is either
18 satisfied or does not apply to the use: Applications
19 made under 14.a-c^[4] above at a minimum must satisfy
20 standards 1-6 that follow:

- 21 "1. The dwelling or activities associated with
22 the dwelling will not force a significant
23 change in or significantly increase the cost
24 of accepted farming practices on nearby
25 lands devoted to farm use.
- 26 "2. The dwelling does not materially alter the
stability of the overall land use pattern of
the area.
- "3. The dwelling is situated on generally
unsuitable land for the production of farm
crops and livestock considering the terrain,
adverse soil or land conditions, drainage
and flooding, vegetation and location and
size of the tract.
- "4. The dwelling is situated upon land which can
be approved for sub-surface sewage disposal
or an approved alternative sewage disposal
system.
- "5. The land shall be disqualified from farm
deferral (ORS 215.236).

1 "6. The use removes minimal land from production
2 with a minimum of 2 acres for residential
3 use; except it shall be 40 acres in an area
4 mapped as an elk winter habitat, antelope
5 habitat, or deer winter habitat. * * *

6 "7. Non farm dwellings: The Goal 5 elk winter
7 habitat protection maps as adopted by Baker
8 County are inventoried as to median
9 ownership size of parcels within the areas
10 to be protected. Where the overall median
11 ownership, expressed in acres, of any Elk
12 Winter Habitat Protection Plan quadrangle
13 map is reduced by ten percent or more from
14 the median size calculated in the spring of
15 1986 and to be calculated by May 1, 1987 and
16 each year thereafter, the following criteria
17 shall be applied to nonresource dwelling
18 applications within the quadrangle map:

19 * * * * *

20 "8. The use complies with such other conditions
21 as the Planning Commission considers
22 necessary."

23 Petitioners contend the statement in the first paragraph of
24 BCZO 301.C that the limitations in the section apply to "all
25 Conditional Uses permitted in Subsection (B)" when read with
26 standards 1-4, which by their terms apply to "dwelling[s]" or
"dwelling[s] or activity associated with * * * dwelling[s],"
creates an ambiguity. Petitioners argue:

"The County resolves the ambiguity by applying this
limitation to all conditional uses as directed by the
first paragraph * * *. This is revealed by the County
Court's Order Affirming Planning Commission's decision:

'The Planning Commission Director determined that
under Section 301.C Directives, 'the following
limitations shall apply to all Conditional Uses
permitted in Subsection B of this Section' that
the word 'dwelling' as set forth in the Criterion
301.C.1, 2 and 3, did not address sufficiently

1 the areas of compatibility, interference and
2 productivity tests all as required by Goal III
3 [of the Comprehensive Plan] so the Planning
4 Director substituted the word 'use' for the word
5 'dwelling' for consideration by the Planning
6 Commission to adequately address those
7 subsections * * * [T]he Planning Commission did,
8 in fact, consider the 'use' as a substitution for
9 'dwelling' so that all of the criteria would be
10 fully considered.'

11 " * * * This construction of the ordinance is the
12 manner in which Baker County resolves the ambiguity of
13 the zoning ordinance.

14 "Baker County has chosen to resolve the ambiguity in
15 its zoning ordinance in favor of imposing the
16 limitations of Subsection (C) on all conditional uses
17 in an EFU zone notwithstanding the insertion of the
18 word 'dwelling' at the beginning of some of
19 them.^[5] This is a reasonable approach for three
20 reasons. First, as found by the County Court, it is
21 the only way to provide proper protection for farmland
22 as required by Goal 3 of the Comprehensive Plan
23 * * *. Second, the ordinance does specifically state
24 that the limitations apply to all uses. Third, in any
25 event Section 301(C)(8) specifically authorizes Baker
26 County to apply such additional approval criteria as
it deems proper. * * *" Petition for Review 14-16.

1 Respondent argues that the "unsuitable land" standard of
2 BCZO 301.C.3 applies only to conditional use permits for
3 dwellings. Respondent maintains that the second paragraph of
4 BCZO 301.C makes it clear that the standards of BCZO 301.C.1
5 through .6 do not necessarily apply to all conditional uses, by
6 requiring findings "that each of the following [standards] is
7 either satisfied or does not apply to the use * * *."

8 (Emphasis added.)

9 We conclude the county's interpretation of BCZO 301.C is
10 neither reasonable nor correct in that it is inconsistent with
11 the plain language of the code.

1 Fifth Avenue Corporation v. Washington County, 282 Or 591,
2 599-600, 581 P2d 50 (1978); McCoy v. Linn County, 90 Or App
3 271, 275-276, 752 P2d 323 (1988).

4 Although the county is free to determine that Goal III of
5 its comprehensive plan is inadequately implemented unless the
6 standards in BCZO 301.C.1 through .4 are applied to uses other
7 than dwellings, it may not ignore the current code language
8 limiting the application of those provisions to dwellings.
9 Although the first paragraph of BCZO 301.C does state that the
10 standards that follow apply to all conditional uses, the second
11 paragraph makes it clear that not all standards apply to all
12 uses. The second paragraph explicitly states some of the
13 standards may not apply and makes it clear that BCZO 301.C.1
14 through .4 do apply to nonfarm dwellings under
15 BCZO 301.B.14.a-c.

16 Petitioners' third reason for contending the county's
17 interpretation is reasonable, that "BCZO 301.C.8 specifically
18 authorizes Baker County to apply such additional approval
19 criteria as it deems proper," inaccurately describes
20 BCZO 301.C.8. That standard states "the use complies with such
21 other conditions as the planning commission considers
22 necessary." Although BCZO 301.C.8 allows the county to impose
23 reasonable conditions to meet applicable standards or other
24 permissible considerations, it does not permit the county to
25 impose inapplicable approval standards.

26 We conclude that the standard which petitioners allege was

1 violated, BCZO 301.C.3, is not applicable to the appealed'
2 decision. Unless petitioners show that an applicable legal
3 criterion is violated by the county's decision, we cannot grant
4 relief. Lane County School Dist. 71 v. Lane County, 15 Or LUBA
5 150, 153 (1986).

6 The first assignment of error is denied.

7 THIRD ASSIGNMENT OF ERROR

8 "The County erred in granting the applicants' request
9 for a conditional use permit when the applicants did
10 not comply with the zoning ordinance requiring
11 detailed plans and specifications relative to approval
12 criteria relating to the most appropriate use of the
13 land, set back from the property line, protection of
14 fish and wildlife, and rehabilitation."

15 In the third assignment of error, petitioners contend the
16 plans and specifications submitted by respondent lack the
17 detail required by the BCZO. In the second and fourth
18 assignment of error, petitioners contend the county failed to
19 adopt adequate findings showing compliance with a number of
20 BCZO requirements and improperly deferred to other governmental
21 agencies responsibility for compliance with the applicable code
22 provisions. We address the third assignment of error first,
23 before turning to the second and fourth assignments of error.

24 BCZO 603.D provides as relevant:

25 "Mining, quarrying, or other extraction activity:
26 Extraction of resources may be allowed as a
Conditional Use when in compliance with the following:

- 27 "1. Plans and specifications submitted to the
28 Planning Commission for approval must contain
29 sufficient information to allow the Planning
30 Commission to consider and set standards
31 pertaining to the following:

- 1 "a. The most appropriate use of the land.
- 2 "b. Setback from the property line.
- 3 "c. The protection of pedestrians and vehicles
4 through the use of fencing, screening and
setbacks.
- 5 "d. The protection of fish and wildlife habitat
6 and ecological systems through control of
potential air and water pollutants.
- 7 "e. The prevention of the collection and
8 stagnation of water of all stages of the
operation.
- 9 "f. The rehabilitation of the land upon
10 termination of the operation including
consideration of final slope of cut banks
11 and leveling and/or restoration of terrain.

12 " * * * * * ."

13 Petitioners complain the applicant submitted no operating
14 plan:

15 "Though the applicants submitted information, and
16 though they testified at length, the information they
gave was devoid of any specifications or operation
17 plan. In fact, the applicants made it very clear that
they had to do study, research, and exploration,
18 before any plan could be developed. * * * Their expert
said it was 'premature' to develop a plan. * * * A
19 reclamation plan will be developed in the future, it
is promised. * * * The information submitted by the
20 applicants indicates that they will do studies, will
come up with an operating plan, will contact
21 governmental regulatory agencies, will consult with
specialists in the fields of conservation and
22 restoration of riparian areas, will devise a
processing plant, etc. * * * In other words, the
23 County has the applicant's promises, but not his plans
and specifications." (Emphasis in original.)
24 Petition for Review 29.

25 Petitioners contend that until the county has the required
26 plans and specifications and knows what types of equipment will

1 be used and how much noise the equipment will generate, the
2 county is in no position to establish setbacks, set standards
3 to protect fish and wildlife habitat or set standards for
4 reclamation of the site. According to petitioners, the
5 applicant concedes throughout the application material and the
6 testimony in support of the application that its plans are
7 extremely limited or unknown at this point.⁶

8 Although we do not believe BCZO 603.D necessarily requires
9 complete operating plans, fully approved by all affected
10 governmental agencies, it clearly does require information
11 sufficiently detailed to serve as a basis for establishing
12 setbacks, and adopting standards to protect fish and wildlife
13 and reclaim the land. We can certainly appreciate the
14 applicant's desire to defer completion of costly detailed plans
15 until a conditional use permit is in hand. However, the BCZO
16 imposes upon the applicant the obligation to present sufficient
17 factual data to allow the county to impose the required
18 standards. See Hershberger v. Clackamas County, 15 Or LUBA
19 401, 408 (1987); Hopper v. Clackamas County, 15 Or LUBA 413,
20 418 (1987).

21 The information respondent cites in its brief is simply
22 insufficient to allow the county to perform its obligation
23 under BCZO 603.D. Without better information concerning noise
24 and other impacts to be generated by the proposed mining
25 operation, and the nature and operating characteristics of the
26 mining operation itself, it is impossible for the county in a

1 rational factually based manner, to establish setbacks and
2 standards or conditions to protect fish and wildlife habitat.
3 In addition, apparently neither the applicant nor the county
4 has sufficient information to propose or to set standards and
5 conditions concerning reclamation of the property upon
6 termination of the operation.

7 The third assignment of error is sustained.

8 SECOND ASSIGNMENT OF ERROR

9 "The County erred in repeatedly deferring to review by
10 other governmental agencies in place of making actual
findings that its own approval standards were met."

11 FOURTH ASSIGNMENT OF ERROR

12 "The County erred in failing to make factual findings
13 that approval standards for hydrological concerns,
14 noise, wildlife, protection of irrigation ditches,
riparian zone protection, and property values, are
met."

15 Each of the BCZO sections petitioners contend the county
16 improperly applied, together with the findings adopted by the
17 county to address that section, and our discussion of
18 petitioners' contentions that the county failed to adopt
19 findings or improperly deferred consideration of that section
20 to other governmental agencies is set out separately below.

21 A. BCZO 301.D

22 BCZO 301.D provides as relevant:

23 "* * * Some or all of the following may need to be
24 considered by the planning commission:

25 "* * * * *

26 "5. Development compatible with the existing land use
pattern and overall character of the area.

1 "* * * * *

2 "9. Consideration that the use will not be injurious
3 to property and the improvements in the area of
4 the request.

5 "10. Consideration that the use will not be
6 detrimental to the health, safety or general
7 welfare of persons residing or working in the
8 area where the proposed use would be located."
9 (Emphasis added.)

10 The county adopted the following findings to address the
11 above-quoted criteria:

12 "5. * * * * *

13 "* * * The fact that the development is not
14 compatible with the existing land use pattern and
15 overall character of the area is mitigated by its
16 temporary nature and by restrictions imposed on
17 the operation. * * *7

18 "* * * * *

19 "9. * * * Potential injury to property and
20 improvements in the area of the request will be
21 mitigated by restrictions and conditions set
22 forth above, and also by the condition that the
23 applicant shall utilize dust abatement techniques
24 described in testimony to minimize dust problems.

25 "10. * * * The use will not be detrimental to the
26 health, safety, or general welfare of persons
27 residing or working in the area, since the
28 primary concern, which is noise, can be addressed
29 by several methods outlined by the applicant:
30 rubber linings, removal of resident panels, use
31 of electric rather than diesel power, low
32 frequency output, constant tone, noise berms, and
33 use of less equipment and personnel. Moreover,
34 if the applicant violates the noise requirements
35 of DEQ, or if complaints are received that he is
36 not implementing his stated proposals for noise
37 abatement, both the state agencies and the county
38 have the authority to void his permit."
39 Record 15-17.

40 We reject petitioners' allegations of improper delegation

1 or deferral and failure to adopt findings under this
2 subassignment of error for two reasons. First, BCZO 301.D
3 simply specifies factors that "may need to be considered," not
4 approval criteria for which a demonstration of compliance is
5 required. Compare BCZO 301.C, quoted under the first
6 assignment of error; BCZO 603.D, quoted under our discussion of
7 the third assignment of error; and BCZO 602.A quoted below.
8 Therefore, even if the county failed to demonstrate that the
9 project satisfies or complies with each factor of BCZO 301.D,
10 such a failure would provide no basis for reversal or remand.
11 Secondly, as noted above, the county did adopt findings
12 addressing the factors in BCZO 301.D, and petitioners do not
13 explain why those findings are inadequate or improperly defer
14 determinations of compliance to other governmental agencies.

15 This subassignment of error is denied.

16 B. BCZO 602

17 BCZO 602 provides, in part:

18 "To determine whether a conditional use proposal shall
19 be approved or denied, the commission shall find that
the following standards, where applicable, are met:

20 "A. The proposal will be consistent with the
21 comprehensive plan and objectives of this
22 zoning and subdivision ordinance and other
applicable policies of the county.⁸

23 "B. Taking into account location, size, design
24 and operating characteristics, the proposal
25 will have a minimal adverse impact on the
26 (1) livability, (2) value, and (3)
appropriate development of abutting
properties and the surrounding area compared
to the impact of development that is
permitted outright.

1 "* * * * *

2 "D. The proposal will preserve assets of
3 particular interest to the community."

4 The county's findings addressing the above standards are as
5 follows:

6 "[BCZO 602.A] * * * Mining is a permitted conditional
7 use in the EFU zone; therefore this proposal is
8 consistent with the zoning ordinance and comprehensive
9 plan.

10 "[BCZO 602.B] * * * Because approval of this
11 application would be subject to the numerous
12 conditions and restrictions outlined above, and
13 because the operation will be temporary, a majority of
14 the planning commission finds, despite dissenting
15 opinions, that the proposal should have minimal
16 adverse impact on the livability, value and
17 appropriate development of abutting properties in the
18 surrounding area compared to the impact of development
19 that is permitted outright (sites for solid waste
20 disposal, dwellings, harvesting of forest products,
21 farm use, an exploration for geothermal resources).
22 [The county incorporates here the general finding
23 quoted supra at n 7.]

24 "* * * * *

25 "[BCZO 602.D] * * * Jobs and gold recovery are both
26 assets of particular interest to this community which
will be preserved by this proposal." Record 17-19.

Although we reject petitioners' challenge to the county's
findings addressing BCZO 602.B and BCZO 602.D, because
petitioners fail to explain why the adopted findings are
inadequate or impermissibly defer critical determinations of
compliance to other governmental agencies, we sustain
petitioners' challenge to the inadequacy of the findings of
compliance with BCZO 602.A. The finding makes no attempt to
address the plan standards identified in the staff report quoted

1 in n 8, supra.

2 This subassignment of error is sustained in part.

3 C. BCZO 603.D.1

4 As noted earlier in this opinion, BCZO 603.D.1 provides in
5 pertinent part:

6 "1. Plans and specifications submitted to the
7 Planning Commission for approval must contain
8 sufficient information to allow the Planning
9 Commission to consider and set standards
10 pertaining to the following:

11 "a. The most appropriate use of the land.

12 "b. Set back from the property line.

13 "* * * * *

14 "d. The protection of fish and wildlife habitat
15 and ecological systems through control of
16 potential air and water pollutants.

17 "* * * * *

18 "f. The rehabilitation of the land upon
19 termination of the operation including
20 consideration of final slope of cut banks
21 and leveling and/or restoration of terrain."

22 The county adopted no findings, as such, addressing BCZO
23 603.D.1. Rather, the county adopted a series of conditions as
24 follows:

25 "* * * A condition of approval shall be that

26 "(1) Limits on mining activity north of the Pine Creek
Ridge shall be established subject to regulations
of the appropriate state agency;

"(2) South of the Pine Creek bridge there shall be a
50' setback from the riparian zone, that is, from
the edge of the vegetation bordering the creek,
except that in no case shall this setback allow
mining within 500' of any residence in Carson.

1 "(3) A condition of approval shall be that the Creek
2 channel shall not be moved south of the Pine
3 Creek Bridge; it may be moved north of the Pine
4 Creek Bridge as regulated by State and federal
5 agencies.

6 "* * * * *

7 "1. The Commission recommends that the applicant post
8 a bond to ensure that there will be compensation
9 for any damages which may be filed because of
10 water loss. The Commission encourages DOGAMI to
11 impose such a performance bond relative to water
12 conflicts in the area, to ensure adequate water
13 in ditches and to address any depletion of ground
14 water supplies.

15 "2. Less than 20% (15 acres) of the total 80 acres
16 involved shall be out of production at any one
17 time.

18 "3. The reclamation of each disturbed five acres, as
19 the mining operation works through the 80 acres,
20 shall be complete and shall have returned that
21 5-acre piece to farm production, including
22 planting, within two calendar years.

23 "4. South of the Pine Creek Bridge, the mining
24 operation shall be limited to daylight hours (one
25 10-hour shift). North of the bridge the hours
26 may be longer, as long as any noise requirements
27 are satisfied and there are no complaints from
28 neighbors.

29 "5. The applicants [sic] method of sewage disposal
30 shall comply with DEQ regulations.

31 "6. The applicant shall provide for solid waste
32 disposal.

33 "7. The applicant shall utilize dust abatement
34 techniques described in testimony to minimize
35 dust problems.

36 "8. The operation shall be constructed, maintained
37 and operated in conformance with the regulations
38 of DEQ, DOGAMI, and other applicable regulatory
39 agencies.

40 "9. To protect riparian values:

1 "A. Limits on mining activity north of the Pine
2 Creek Bridge shall be established subject to
3 regulations of the appropriate State
4 Agencies; and

5 "B. South of the Pine Creek Bridge there shall
6 be a 50' setback from the riparian zone;
7 that is, from the edge of the vegetation
8 bordering the creek, except that in no case
9 shall this setback allow mining within 500'
10 of any residence in Carson.

11 "10. The operation shall set back 60' from the center
12 line of the State Highway and the County Road
13 rights-of-way.

14 "11. Pine Creek Channel shall not be moved south of
15 Pine Creek Bridge; it may be moved north of Pine
16 Creek Bridge as regulated by State and Federal
17 Agencies." Record 20-22.

18 Earlier in this opinion, we concluded that the information
19 submitted by the applicant lacked the detail required by BCZO
20 603.D.1 to permit the county to establish standards addressing
21 the factors set forth in that section. BCZO 603.D specifies
22 authority to impose standards, but does not necessarily require
23 the county to adopt findings explaining in detail the bases for
24 the conditions it may impose. However, during local hearings
25 petitioners disputed the adequacy of the conditions imposed to
26 address the requirements in BCZO 603.D.1. On remand, the
27 county must assure that (1) sufficiently detailed information
28 is submitted to enable it to carry out its responsibilities
29 under BCZO 603.D.1, and (2) its findings provide a sufficient
30 explanation of why the conditions imposed are adequate to
31 address the considerations in BCZO 603.D.1.

32 This subassignment of error is sustained, in part.⁹

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The county's decision is remanded.

1 FOOTNOTES

2
3 1

4 The 80 acres is part of a 493 parcel owned by respondent.

5 2

6 The county imposed a condition that not more than 15 of the 80 acres could be mined at any one time.

7 3

8 Under the first assignment of error, petitioners contend
9 the approved mining operation violates BCZO 301.C (which
10 provides "Standards for Conditional Uses in the EFU Zone"). In
11 the second, third and fourth assignments of error, petitioners
12 contend the county incorrectly and inadequately applied BCZO
13 301.D (which provides "Criteria for Evaluation of All
14 Conditional Uses in the EFU Zone"), BCZO 602 (which establishes
15 standard for conditional uses generally) and BCZO 603 (which
16 establishes specific standards for mining activity).

17 4

18 BCZO 301.B.14.a-c lists as a conditional use in the EFU
19 zone:

20 "Single family residential dwellings not provided in
21 conjunction with farm use:

22 "a. Pursuant to ORS 215.283(3).

23 "b. Dwellings no longer in farm use subsequent
24 to consolidation of contiguous ownerships.

25 "c. Retirement farmsteads."

26 5

The only standard in BCZO 301.C petitioners
specifically identify as violated by the county's decision
is BCZO 301.C.3. Petitioners contend the property
admittedly is suitable for production of farm crops, and
BCZO 301.C.3, therefore, is violated.

6

The materials submitted in support of the application
state, in part:

1 "Bonnanza Mining, Inc. is making application for a
2 conditional use permit in order to start the
3 permitting process and to be in compliance with all
4 governmental regulatory agencies. While the
5 probability of an economically feasible placer or gold
6 deposit on the Bigelow Ranch is good, it won't be
7 conclusive until additional studies and extensive
8 exploration are conducted utilizing seismic surveys to
9 determine the depth, and hardness of the soil and
10 gravel layers, and of bedrock, to determine ore body
11 distribution. That date will determine location of
12 several test pits. Test pit samples will then be
13 taken to the plant that is in use at our location up
14 stream, to be processed to determine whether the
15 values are sufficient to proceed within an operating
16 plan.

9 "This process is expensive, thus it is a wise
10 management decision to acquire the county use permit
11 before testing to ensure that if the results warrant,
12 we can proceed to formulate the plan of operation in
13 accordance with all relevant agencies and will be able
14 to eventually mine the property.

13 "* * * * *.

14 "[We will consult] with specialists in the field of
15 conservation, particularly restoration of riparian
16 areas. We have currently contacted June Bombasi, to
17 contract her services in the reclamation of our mine
18 site further upstream on Pine Creek. * * * June
19 recently made an onsite evaluation of our current
20 operation and is in the process of submitting to
21 Bonnanza a bid to do the restoration there.

18 "In the future, before mining on the Bigelow Ranch
19 would commence, June would be contacted and her
20 services contracted to evaluate and set a plan that
21 would best minimize adverse affects of ground
22 disturbances, and to set into motion as quickly as
23 possible a plan of action and restoration. June works
24 closely with other environmental specialists in the
25 field of fish and wildlife hydrology. We feel because
26 of the sensitivity of the area and taking in
27 consideration desires of the landowner to improve his
28 property and to be consistent with the comprehensive
29 plan, we feel it will be necessary to develop a
30 professional level reclamation plan that will be
31 beneficial to the landowner and the community."
32 Record 561-562.

1 A letter submitted by a resources and environmental
2 engineering firm on behalf of respondent stated:

3 "It is premature to develop detailed mining plans
4 until an ore deposit is identified and determined to
5 be economically viable. Once this determination is
6 made, [Bonnanza] will prepare detailed plans for both
7 operational and environmental considerations.
8 Hydrologic and sediment control will be an integral
9 part of the development of a mine plan. This will
10 include the construction of berms and ditches to keep
11 surface water out of the pit and flowing to adjacent
12 irrigation ditches. Water which enters the pit as
13 ground water will initially be removed by pumping and
14 treated to remove excess sediment. * * *

15 * * * * *

16 The [Bonnanza] reclamation plan is in a conceptual
17 stage and will be formulated under the guidance of the
18 relevant state agencies with local input. The
19 [Bonnanza] reclamation concepts are entirely feasible
20 and would not adversely impact the long term land use
21 of the mined land. In fact, if properly implemented,
22 the final land surface and subsurface may reflect an
23 increase in agricultural productivity." Record
24 515-516.

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A general finding is incorporated here and repeated throughout the county's order in its findings addressing various BCZO sections. The general finding is as follows:

"The proposal will not alter the overall land use pattern of the area because:

"A. Agriculture will continue to be the predominant use in the area during the operation and following reclamation;

"B. There are three other mines within six miles of the site, and there is a history of mining in the area.

"C. The operation should not alter the small rural-residential pattern in Carson:

- 1 "1. Testimony indicated that the closest
2 the operation would be to Carson would
be approximately 500 feet.
- 3 "2. Leaves would screen the pit from view
4 of residents of Carson during the
summer months.
- 5 "3. The mine would be shut down in the
6 winter months, when the leaves might
not screen the pit.
- 7 "4. Testimony indicated that the pit would
8 be difficult to see during the
9 summer/spring months from the State
Highway because of the vegetative
screen.
- 10 "5. The applicant testified he would erect
11 a berm which would act to buffer the
noise from surrounding residents.
- 12 "6. Testimony was that this would be a
13 daylight, 10-hour-shift operation
14 unless noise levels could be brought
within acceptable levels for a
15 nighttime operation. It shall be a
condition of approval that mining
16 operations south of the bridge (across
Pine Creek on Bigelow's property),
because they will be close to
17 residences in Carson, shall be limited
to daylight hours (a 10-hour shift).
18 Operating hours for the mining north of
the bridge could be longer, as long as
19 any noise requirements are satisfied
and there are no complaints from
20 neighbors. * * *" Record 15-16.

21 8
22 A planning staff report identifies the following plan
provisions:

23 "Fish and wildlife habitat: Pine Creek is inventoried
24 by ODFW [Oregon Department of Fish and Wildlife] as a
sensitive fish production stream in the Fish and
25 Wildlife Habitat Protection Plan for Baker County.
This plan is an adopted part of the County's
26 Comprehensive Plan. Through the County's review
process, we are urged to

1
2 "'retain riparian vegetation and channel
3 integrity * * * that will protect water quality
4 preserving fish and wildlife habitat (of streams)
5 and provide for a variety of recreational and
6 aesthetic values.'

7
8 "Specifically, the Plan calls for

9 "'compatible land uses to maintain the riparian
10 zone along streams in the flood plain. Stream
11 vegetation along streams outside the flood plain
12 should also be maintained by utilizing
13 appropriate set backs. Removal of streamside
14 vegetation has been a critical problem in
15 agricultural areas where current farming
16 practices and tax assessment procedures
17 discouraged the retention of riparian vegetation
18 * * *'

19 "Another provision recommends against

20 "'development of land uses that require
21 channelization, excessive removal of streamside
22 vegetation, alteration of stream banks and
23 filling into stream channels.'

24 "And finally, 'commercial gravel removal in small
25 streams should be restricted.'" Record 538.

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17 Although we agree with petitioners that the county
18 inadequately explained the basis for the conditions
19 imposed or why those conditions are adequate to address
20 the considerations in BCZO 603.D.1, we do not agree that
21 the conditions improperly defer to other governmental
22 agencies decisions which the county should make.

23 As respondent notes, BCZO Section 603.D.2 provides:

24 "Surface mining equipment, the mining process itself,
25 and necessary access roads shall be constructed,
26 maintained and operated in conformance with the
27 standards and regulations of the Oregon Department of
28 Geology and Mineral Industries and the Department of
29 Environmental Quality."

30 In view of BCZO 603.D.2, the condition imposed by the
31 county that "the operation shall be constructed,

1 maintained and operated in conformance with the
2 regulations of DEQ, DOGAMI, and other applicable
3 regulatory agencies" is appropriate. However, BCZO
603.D.2 does not eliminate the requirement that the county
adopt findings demonstrating compliance with BCZO 603.D.1.

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