

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DEC 1 4 58 PM '89

MIKE BYRNES, SUE ORLASKE )  
 TSAI Y. CHENG and FRIENDS OF )  
 IMBRIE FARMSTEAD, a corporation, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 CITY OF HILLSBORO, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 PRENDERGAST & ASSOCIATES, )  
 )  
 Intervenor-Respondent. )

LUBA No. 89-065

FINAL OPINION  
AND ORDER

Appeal from City of Hillsboro.

Scott O. Pratt, Portland, filed the petition for review and argued on behalf of petitioners.

Carrell F. Bradley, Hillsboro, represented respondent.

Jack L. Orchard, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Ball, Janik and Novack.

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

REMANDED 12/01/89

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 appeal a decision of the City of Hillsboro  
4 concerning an application for approval for alteration of a  
5 historic site and removal of historic structures.<sup>1</sup>

6 MOTION TO INTERVENE

7 Prendergast & Associates, the applicant below, moves to  
8 intervene on the side of respondent in this proceeding. There  
9 is no opposition to the motion, and it is allowed.

10 FACTS

11 This appeal concerns intervenor-respondent's (intervenor's)  
12 application to relocate and restore one or more of three  
13 structures located on the Imbrie Farmstead. The Imbrie  
14 Farmstead is listed on the National Register of Historic Places.  
15 The three structures at issue in this proceeding include the  
16 Imbrie House, built in 1866; an octagonal barn built in 1913;  
17 and a granary built in 1855. The site is flat and includes  
18 orchard trees and mature deciduous trees surrounding the Imbrie  
19 House. The Imbrie House is currently occupied by the Cornelius  
20 Pass Roadhouse Tavern.

21 The record shows the Imbrie Farmstead is one of a small  
22 number of relatively complete 19th century farm building groups

23 \_\_\_\_\_  
24 <sup>1</sup>Intervenor-respondent contends the challenged city action is not a  
25 final decision to approve the application for cultural resources alteration  
26 but rather only a decision to delay approval. We discuss the nature of the  
city's decision further under our discussion of intervenor-respondent's  
jurisdictional challenge.

1 surviving in the state. The three buildings are significant  
2 architecturally, and there is evidence in the record that the  
3 individual buildings, as well as the site (i.e. the buildings  
4 and plantings collectively), are of historic value.

5 As we explained in our previous order denying petitioners'  
6 motion for stay:

7 "Intervenor submitted a request for approval to  
8 relocate and restore one or more of the structures  
9 currently located on the Imbrie Farmstead. The  
structures will be relocated on the 3.3 acre site or  
moved to another site. The application states:

10 "'This application relates to the  
11 relocation and restoration of one or more  
12 of the structures currently located on the  
Imbrie Farmstead \* \* \*. This application  
13 does not involve a request for a demolition  
of any such structures, although the  
14 applicant reserves the right to request  
demolition in the event that it is not  
15 feasible to alter or move a structure or if  
the structure cannot be made safe through a  
reasonable expenditure for refurbishment,  
repair or renovation.'

16 "On April 11, 1989, the city planning commission voted  
17 to delay approval of the request until June 11, 1989,  
and adopted five conditions of approval. On May 9,  
18 1989, the planning commission adopted findings to  
support its April 11, 1989 decision, and on May 11,  
19 1989, interested parties were provided notice of the  
planning commission's decision.

20 "The planning commission's decision was appealed to  
21 the city council. A hearing before the city council  
was held on June 6, 1989, and the city council voted  
22 to uphold the planning commission's decision. On June  
7, 1989, interested parties were given notice of the  
23 city council's decision." Order on Motion for Stay  
1-2.

24 INTRODUCTION

25 Ordinance 3425, adopted by the city in 1983, amends the  
26

1 city zoning ordinance by adding section 132, entitled "Cultural  
2 Resource Management Ordinance" (CRMO). The city's comprehensive  
3 plan and land use regulations have been acknowledged by the Land  
4 Conservation and Development Commission. See ORS 197.251. For  
5 purposes of this appeal, the most significant subsection of the  
6 CRMO is subsection 5, which provides as follows:

7 "Application for Alteration, Demolition or Moving a  
8 Designated Cultural Resource

9 "(a) No designated cultural resource shall be  
10 altered, demolished or moved without prior  
11 approval of the Planning Commission.

12 "(b) Cultural resource owners desiring to alter,  
13 demolish or move a cultural resource shall  
14 apply for a permit to the Planning Commission  
15 and shall provide all information considered  
16 necessary by the Planning Commission as part of  
17 the application.

18 "(c) The Planning Commission shall hold a public  
19 hearing and shall evaluate the application with  
20 reference to the following actions:

21 "1. the economic or structural necessity of the  
22 proposed action;

23 "2. the extent of visible modification to the  
24 resource;

25 "3. the relationship of the proposed action to  
26 the resource's original character;

"4. the possibility of any alternative action  
which would reduce negative impacts on the  
cultural resource; and

"5. in the case of moving or demolition, the  
scheduling of redevelopment of the resource  
site.

"(d) The Planning Commission shall work with the  
applicant, interested citizens and technical  
staff to minimize the negative impact of the  
proposed action, wherever possible.

1           "(e) Approval of an application for alteration or  
2           demolition may be delayed up to 60 days by the  
3           Planning Commission if it deems additional  
4           information or consideration with the applicant  
5           necessary. Approval of the application may be  
6           conditioned to secure interior and/or exterior  
7           documentation of the site prior to the proposed  
8           action, to preserve selected architectural  
9           features and to preserve site landscaping. The  
10          Planning Commission may, however, approve an  
11          alteration or demolition permit at any time  
12          within the 60 day period if it feels the  
13          applicant has made an effort in good faith to  
14          retain, document, and/or preserve the culturally  
15          significant characteristics of the resource.

9           "(f) The City Council may extend a demolition delay  
10          by an additional 60 days at the request of the  
11          Planning Commission or an interested party.

11          "(g) Applications for alteration, demolition, or  
12          moving permits for a designated cultural  
13          resource which are complete and which are in  
14          compliance with all other City regulations and  
15          ordinances shall not be denied outright. If no  
16          action on an application has been taken by the  
17          Planning Commission within 60 days of submission  
18          of the completed application, the application  
19          shall be considered approved.

16          "\* \* \* \* \*" (Emphasis added.)

17           In its challenge to our jurisdiction, intervenor argues  
18          that the city's decision was simply to delay approval as  
19          provided in CRMO subsection 5(e) and that such a decision is not  
20          a final decision subject to our review.

21           In the first assignment of error, petitioners argue the  
22          city's interpretation of CRMO subsection 5(g) to eliminate  
23          authority to deny an application for alteration of a cultural  
24          resource is erroneous. Petitioners argue such an interpretation  
25          is inconsistent with the CRMO, the city's comprehensive plan and  
26          Statewide Planning Goal 5 (Open Spaces, Scenic and Historic

1 Areas, and Natural Resources). In the second assignment of  
2 error, petitioners argue the city's interpretation of CRMO  
3 subsection 5(g), even if correct, is inconsistent with the  
4 acknowledged plan and Goal 5. Petitioners contend the plan and  
5 Goal 5 control and, therefore, CRMO subsection 5(g) cannot  
6 preclude the city from denying the application at issue in this  
7 appeal. Finally, petitioners contend in their third assignment  
8 of error that CRMO subsection 5(c) establishes review criteria,  
9 and the city's findings are inadequate to show the subject  
10 permit application satisfies those criteria.

#### 11 JURISDICTION

12 Intervenor argues that under ORS 197.015(10) our review  
13 jurisdiction is limited to final decisions. Intervenor contends  
14 the decision challenged in this proceeding is the city council's  
15 June 6, 1989 decision affirming a planning commission decision  
16 to delay approval of the application for 60 days. Intervenor  
17 suggests that the final decision of the city (and presumably the  
18 decision appealable to LUBA) occurred on June 11, 1989, 60 days  
19 after the planning commission's April 11, 1989 decision to delay  
20 its approval for 60 days.

21 We reject intervenor's argument for two reasons. First,  
22 under CRMO subsection 5(e), a decision to delay approval for 60  
23 days is final when made. There is no provision in subsection  
24 5(e) or elsewhere in the CRMO for the planning commission to  
25 take a subsequent action after the 60 day delay has expired, and  
26 no such action was taken in this proceeding. Second, it is

1 clear from the findings that the action taken by the planning  
2 commission and affirmed by the city council is the city's final  
3 decision on the application. The decision does provide the  
4 applicant with the option of returning to the planning  
5 commission, demonstrating compliance with the conditions stated  
6 in the findings, and requesting final approval before the 60 day  
7 delay expires. However, it is clear that if the applicant does  
8 not do so, the city's decision grants final approval upon the  
9 expiration of the 60 days, without further action by the  
10 planning commission or city council.

11 We conclude the decision challenged in this proceeding is a  
12 "final decision" as that term is used in the definition of "land  
13 use decision" in ORS 197.015(10) and, therefore, under ORS  
14 197.825(1) it is a decision subject to our review.

15 FIRST ASSIGNMENT OF ERROR

16 "Respondent misconstrued the applicable ordinance and  
17 violated state statutes, the statewide planning goals  
18 and respondent's own comprehensive plan by approving  
19 the application for cultural resources alteration  
20 which could destroy a cultural resource contrary to  
21 specific mandatory plan policies and Goal 5 policies."

22 Petitioners contend the city misinterpreted CRMO subsection  
23 5(g) to preclude city denial of the application. Petitioners  
24 contend that had the city intended to so limit its authority it  
25 easily could have stated in subsection 5(g) that applications  
26 "shall not be denied." Petition for Review 8. Petitioners  
contend that the qualification in the actual language, "shall  
not be denied outright," must be given some effect. Petitioners

1 offer a number of arguments in support of their position that  
2 the qualifier "outright" means the city may deny applications  
3 under the CRMO. We address those arguments separately below.

4 A. Definition of Outright

5 Petitioners cite dictionary definitions of "outright" as  
6 meaning "completely" or "instantaneously." If "outright" means  
7 "completely," petitioners argue the city could not completely  
8 deny the application, but could deny the application partially  
9 or approve the application with conditions.

10 We agree with petitioners that interpreting "outright" to  
11 mean "completely" is a reasonable interpretation. However, we  
12 disagree with petitioners' suggestion that such an  
13 interpretation is at odds with the city's decision in this  
14 matter. As we explain below, the city's decision can be  
15 interpreted as approving the application with conditions.<sup>2</sup>

16 If outright means "instantaneously," petitioners contend  
17 that so long as the city considers the facts and law applicable  
18 to the request, it could eventually deny the application, as  
19 long as it does not do so instantaneously. We understand  
20 petitioners to contend under this interpretation that the city  
21 could completely deny the application, in the sense that the

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22  
23  
24 <sup>2</sup>In our view, whether it is possible to characterize an approval with  
25 conditions as a partial denial is largely a matter of semantics. As we  
26 explain later in this opinion, CRMO subsection 5(e) allows the city to  
impose conditions of approval to "preserve selected architectural features  
and \* \* \* site landscaping." Such conditions easily could have the effect  
of denying permission for some parts of an application.



1 applicant could not proceed with the requested action unless it  
2 obtained approval of a different application.

3 We disagree with petitioners with regard to this  
4 interpretation of "outright." This type of denial is precisely  
5 what CRMO subsection 5(g) was intended to prohibit. As  
6 explained below, there is no support for an interpretation of  
7 subsection 5(g) as prohibiting only hasty denials.

8 B. Interpretation of the CRMO as a Whole

9 Petitioners point out that the introductory clauses to the  
10 CRMO acknowledge that certain historic sites in the city are  
11 "worthy of preservation." Petitioners contend that the  
12 introductory clauses also recognize that Goal 5 may mandate  
13 preservation of certain historic sites. Petitioners also argue  
14 that the CRMO subsection 5(a) requirement for prior approval of  
15 a cultural resource alteration application should be interpreted  
16 to imply power to deny such an application. Petitioners next  
17 contend CRMO subsection 5(b) would allow the city to deny an  
18 application if all required information is not provided by the  
19 applicant. Finally, petitioners contend CRMO subsection 5(c)  
20 establishes five approval criteria, and it would make no sense  
21 to require evaluation against these approval criteria if the  
22 city could not deny the application based on failure to comply  
23 with one or more of the criteria.

24 We understand intervenor to argue, and the city to have  
25 concluded in its decision, that the CRMO has either eliminated  
26 or severely limited the city's authority to deny an application

1 to alter or move a cultural resource.<sup>3</sup> In essence, intervenor  
2 argues that upon receipt of a complete cultural resource  
3 alteration or removal application, the city has three options  
4 under CRMO subsection 5(e). First, it may approve the  
5 application as submitted. Second, the city may delay action for  
6 60 days. Third, the city may approve the application but impose  
7 conditions to address the concerns identified in CRMO subsection  
8 5(e).<sup>4</sup>

9 Turning to the CRMO,<sup>5</sup> we essentially agree with  
10 intervenor's construction of CRMO subsection 5(e).<sup>6</sup> That

11 \_\_\_\_\_  
12 <sup>3</sup>The city's findings state, in part:

13 "With the understanding that the [planning commission] does not  
14 have the power at present to deny the application, the decision  
15 of the [planning commission] is to delay the approval for the  
16 maximum allowable period of 60 days without conditions, and to  
impose conditions of approval of the application, requiring  
complete documentation of the site in its present state, and  
preservation of selected architectural features and  
landscaping." Record 244.

17 <sup>4</sup>Subsection 5(e) provides in part that "[a]pproval of an application may  
18 be conditioned to secure interior and/or exterior documentation of the site  
19 prior to the proposed action, to preserve selected architectural features  
and to preserve site landscaping."

20 <sup>5</sup>CRMO subsection 5(e) and other relevant subsections of the CRMO are  
quoted in the introduction to this opinion.

21 <sup>6</sup>We note the approach that intervenor argues the city took when it  
22 adopted the CRMO (i.e., limiting itself to imposing conditions of approval)  
has been recognized in other contexts. For example, in Anderson v. Peden,  
284 Or 313, 316, 587 P2d 59 (1978), the Oregon Supreme Court explained:

23 "Standing alone, the term 'conditional use' can convey quite  
24 different meanings. It could mean that the specified use is a  
permitted use whenever certain conditions exist or are  
25 satisfied. Or, second, it may mean that the use will be  
permitted subject to special conditions attached to the  
26 individual permit. Third, 'conditional use' historically has  
often been employed simply as a device to permit discretionary

1 subsection gives the city the following options: (1) delay  
2 approval for 60 days, (2) delay the approval for 60 days, but  
3 grant approval within the 60 days if the applicant makes the  
4 good faith effort described in the subsection, (3) approve the  
5 application with conditions, or (4) approve the application  
6 without conditions. The city's options under CRMO subsection  
7 5(e) do not include denial, because the provision of CRMO  
8 subsection 5(g), that "[a]pplications \* \* \* shall not be denied  
9 outright," makes it clear that denial is not an option.

10 We find the introductory clauses to the CRMO and the  
11 provisions of CRMO subsections 5(a) and (b) cited by petitioners  
12 to be insufficient to support an interpretation that the CRMO  
13 allows the city to deny an application such as the one submitted  
14 by intervenor. Those sections of the CRMO might be consistent  
15 with a different CRMO subsection 5(e) which did include denial  
16 as an option, but they are not sufficiently inconsistent with  
17 CRMO subsection 5(e) as it is currently worded to override the  
18 clear direction in CRMO subsections 5(e) and (g) that denial is  
19 not an option. As we explain later in this opinion, the city's  
20 failure to provide authority to deny an application based on the  
21 five considerations listed in CRMO subsection 5(c) does not mean  
22 the evaluation called for in that subsection serves no purpose.  
23 Rather, it simply means the evaluation required by CRMO

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24  
25 decisions on certain uses, without much attention to the  
26 meaning of 'conditional.' \* \* \*

1 subsection 5(c) provides the required factual basis for  
2 determining pursuant to CRMO subsection 5(e) whether to approve  
3 the application; delay approval; or approve with conditions,  
4 and, if conditions are imposed, what conditions are justified.

5 C. Interpretation Consistent with Goal 5 and the Plan

6 Petitioners argue that Goal 5 as well as plan policies  
7 require that historic structures, sites and open spaces be  
8 protected and preserved. Goal 5 provides in part:

9 "Programs shall be provided that will (1) insure open  
10 space, (2) protect scenic and historic areas and  
11 natural resources for future generations \* \* \*. The  
location, quality, and quantity of the following  
resources shall be inventoried:

12 \* \* \* \* \*

13 "i. Historic areas, sites, structures and  
14 objects;

15 \* \* \* \* \*

16 "Where no conflicting uses for such resources have  
17 been identified, such resources shall be managed so as  
18 to preserve their original character. Where  
19 conflicting uses have been identified the economic,  
social, environmental and energy consequences of the  
conflicting uses shall be determined and programs  
developed to achieve the goal.

20 \* \* \* \* \*

21 The plan includes the following goal and definitions:

22 "[p]reserve, protect, and maintain for present and  
23 future residents of Hillsboro and surrounding  
community open space, historic sites and structures."  
Plan section 6(I)(A).

24 "(A) Historic area. Land with sites, structures, or  
25 objects that have local, regional, state or  
national historical significance.

26 "(B) Open space. Consists of lands used for

1 agricultural or forest uses, and any land that  
2 would, if preserved and continued in its present  
3 use:

4 \* \* \* \* \*

5 "(e) Preserve historic sites.

6 \* \* \* \* \* Plan section 6(II).

7 The plan includes a policy to "encourage \* \* \* maintenance of  
8 open space \* \* \*." Plan section 6(III)(A)(1). The plan also  
9 includes the following cultural resource policy:

10 "The City shall work closely with the Washington  
11 County Museum, property owners, and all interested  
12 parties to identify and encourage the preservation of  
13 cultural resource sites within the planning area."  
14 Plan section 6(III)(C).

15 Petitioners contend that if the CRMO does not include the  
16 power to deny an application to alter, demolish or move a  
17 cultural resource, "the Comprehensive Plan is nothing more than  
18 words on paper" and "Goal 5 has nothing effective to say  
19 concerning [this] land use decision.\* \* \*" Petition for Review  
20 12-13. Petitioners contend such a construction of the CRMO is  
21 absurd and should be avoided if there is any basis for a more  
22 reasonable interpretation. 1000 Friends of Oregon v. Wasco  
23 County, 68 Or App 765, 686 P2d 375, (1984), modified 299 Or 344  
24 (1985).

25 The CRMO expressly withholds from the city the authority to  
26 deny an application outright. While the goal and plan policies  
27 cited by petitioners encourage preservation and protection of  
28 historical sites and structures, they provide no basis for

1 ignoring the plain language of the CRMO.<sup>7</sup>

2 We conclude the city's interpretation of the CRMO not to  
3 include authority to deny the application submitted by  
4 intervenor is consistent with the express language of the CRMO  
5 and is correct. Fifth Avenue Corp. v. Washington Co., 282 Or  
6 591, 599, 581 P2d 50 (1978); McCoy v. Linn County, 90 Or App  
7 271, 275-276, 752 P2d 323 (1988).

8 The first assignment of error is denied.

9 SECOND ASSIGNMENT OF ERROR

10 "In the event that respondent properly construed the  
11 applicable ordinance, this ordinance is contrary to  
12 the comprehensive plan and state law and the ordinance  
13 is therefore not enforceable and the city violated its  
14 comprehensive plan and state law by allowing the  
15 application to alter a cultural resource."

16 Petitioners contend that if the CRMO precludes denial of an  
17 application to alter, move or demolish a historic resource under  
18 any circumstances, it violates the Goal 5 and plan provisions  
19 cited under section C of the first assignment of error and,  
20 therefore, should not be given legal effect. Citing Baker v.  
21 City of Milwaukie, 271 Or 500, 533 P2d 772 (1975), petitioners  
22 contend the city may not rely on a land use regulation that is  
23 inconsistent with the hierarchically superior goal and plan  
24 provisions that the land use regulation is adopted to implement.

25 Petitioners' contention that the language in the CRMO

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26 <sup>7</sup>We discuss, under the next assignment of error, petitioners' argument that inconsistencies between the CRMO and plan policies and Goal 5 require that withholding of authority to deny applications to alter, demolish or remove cultural resources under the CRMO not be given legal effect.

1 precluding denial cannot be given legal effect due to conflict  
2 with Goal 5 is rejected. The city's comprehensive plan and land  
3 use regulations (including the CRMO) have been acknowledged by  
4 the Land Conservation and Development Commission. We do not  
5 understand petitioners to dispute that the CRMO was adopted  
6 specifically to provide the city's program to comply with Goal  
7 5's requirement that historic sites and structures be preserved.  
8 By definition, acknowledgment determines that the city's  
9 comprehensive plan and land use regulations comply with the  
10 goals. ORS 197.015(1); 197.251. Therefore, petitioner may not  
11 assert a lack of compliance with Goal 5 as a means of avoiding  
12 the acknowledged CRMO in this proceeding. Once the city's plan  
13 and land use regulations are acknowledged, the acknowledged plan  
14 and land use regulations, not the goals, apply to decisions such  
15 as the one at issue in this appeal proceeding.<sup>8</sup> ORS 197.835(3);  
16 Byrd v. Stringer, 295 Or 311, 313, 666 P2d 1332 (1983).

17 Similarly, Goal 2 requires in part that

18 " \* \* \* The [comprehensive plan] shall be the basis for  
19 specific implementation measures. These measures  
20 shall be consistent with and adequate to carry out the  
21 [comprehensive plan]. \* \* \* "

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21 <sup>8</sup>We also disagree with petitioners' suggestion that the alleged  
22 inconsistency between the CRMO and the requirements of Goal 5 is similar to  
23 the plan/zoning ordinance conflict at issue in Baker v. City of Milwaukie,  
24 supra. In that case, the plan designation for the property allowed 17  
25 residential units per acre whereas the zoning designation allowed 39  
26 residential units per acre. Such a clear conflict between the plan and  
zoning ordinance is far different from petitioners' contention in this case  
that the city's failure to include an option to deny outright a cultural  
resources alteration application makes the CRMO inadequate to carry out  
Goal 5. It is not this Board's role to consider in this proceeding whether  
such an ordinance was properly acknowledged.

1 Petitioners essentially argue that the CRMO is inadequate to  
2 implement the city's obligations under the acknowledged plan  
3 that the CRMO was adopted to implement. We need not decide  
4 whether a clear plan/zoning ordinance conflict in an  
5 acknowledged comprehensive plan might require that a zoning  
6 ordinance provision should not be given legal effect under the  
7 court's decision in Baker v. City of Milwaukie, supra.<sup>9</sup> We  
8 conclude such a conflict does not exist here. At most, the  
9 petitioners have identified an aspect of the CRMO that they  
10 contend is inadequate to implement plan policies the city  
11 adopted to comply with Goals 2 and 5.

12 We believe such inadequacies are to be resolved at  
13 acknowledgment, not in post acknowledgment decisions concerning  
14 application of the land use regulation standards to permit  
15 approval requests. We do not understand petitioners to dispute  
16 that the CRMO was adopted by the city to implement the cited  
17 plan policies. The issue petitioners raise in this proceeding  
18 concerning the necessity for authority to deny applications to  
19 alter, demolish or remove cultural resources was resolved when  
20 the CRMO, which explicitly gives up that authority, was  
21 acknowledged by LCDC.

22 The second assignment of error is denied.  
23  
24

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25  
26 <sup>9</sup>We note the plan and zoning ordinance at issue in Baker v. City of  
Milwaukie, supra, had not been acknowledged by LCDC.



1        THIRD ASSIGNMENT OF ERROR

2            "Respondent misconstrued the applicable law and acted  
3            in violation of its comprehensive plan and state law  
4            by failing to adopt findings supported by substantial  
5            evidence, by reciting statements contained in the  
          application as its findings and by adopting findings  
          which are not supported by substantial evidence."

6            Our review of this assignment of error challenging the  
7            city's findings concerning CRMO subsection 5(c) is complicated  
8            by ambiguities concerning (1) the nature of the city's decision,  
9            and (2) the nature and purpose of CRMO subsection 5(c). We  
10           address these ambiguities before turning to the assignment of  
11           error.

12           A.    Nature of the City's Decision

13           In its findings, the city explained its decision as  
14           follows:

15           "9)    With the understanding that the Commission does  
16           not have the power at present to deny the  
17           application, the decision of the Commission is  
18           to delay the approval for the maximum allowable  
19           period of 60 days without conditions, and to  
          impose conditions of approval of the  
          application, requiring complete documentation of  
          the site in its present state, the preservation  
          of selected architectural features and  
          landscaping.

20           "10) If the applicant wishes Planning Commission  
21           approval within the 60 day period, the following  
          conditions must be met:

22           "1)    No relocation or restoration of any  
23           structure on [the property] shall be  
24           approved by the Planning Commission prior  
25           to June 11, 1989, unless all the following  
26           conditions have been met by the applicant.  
          If all conditions have been met, the  
          Planning Commission may approve the  
          relocation or restoration prior to June  
          11th.

1                   \*\* \* \* \* \*"<sup>10</sup> Record 244-245.

2                   It is possible to interpret the quoted portion of the  
3 city's decision in more than one way. Intervenor contended at  
4 oral argument that the conditions imposed in the city's decision  
5 applied only during the 60 day delay, and upon expiration of  
6 that period, its application was approved as submitted without  
7 conditions. Finding 10 supports that interpretation.

8                   However, finding 9 suggests, to the contrary, that the  
9 conditions imposed in the decision did not apply during the 60  
10 day delay period, or would apply only if the applicant sought  
11 approval from the planning commission during the 60 day period  
12 or the 60 day period expired without further action by the  
13 applicant.

14                   It is not disputed that the intervenor did not seek  
15 approval during the 60 day delay. However, we cannot determine  
16 from the city's decision whether intervenor obtained  
17 unconditional approval on June 11, 1989, or whether the  
18 conditions specified in the order remain as conditions of the  
19 June 11, 1989 approval.

20                   B.   Nature of the Evaluation Required by CRMO Subsection  
21                        5(c)

22                   CRMO subsection 5(c) requires that the city evaluate an  
23 application to alter, demolish or move a cultural resource with  
24

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25                   <sup>10</sup>The decision sets out two pages of conditions requiring extensive  
26 documentation of the site and structures and imposing requirements and  
procedures to be followed in relocating any of the structures.

1 reference to the following:

- 2 "1. the economic or structural necessity of the  
3 proposed action;
- 4 "2. the extent of visible modification to the  
5 resource;
- 6 "3. the relationship of the proposed action to the  
7 resource's original character;
- 8 "4. the possibility of any alternative action which  
9 would reduce negative impacts on the cultural  
10 resource; and
- 11 "5. in the case of moving or demolition, the  
12 scheduling of redevelopment of the resource  
13 site."

14 As noted earlier in this opinion, we agree with intervenor  
15 that under CRMO subsection 5(e) the city may not deny the  
16 application outright. However the city may (1) delay approval  
17 for 60 days, (2) delay the approval for 60 days, but grant  
18 approval within the 60 days if the applicant makes the good  
19 faith effort described in the subsection, (3) approve the  
20 application with conditions, or (4) approve the application  
21 without conditions. The conditions that may be attached under  
22 the third option listed above may be imposed to "secure interior  
23 and/or exterior documentation of the site prior to the proposed  
24 action, to preserve selected architectural features and to  
25 preserve site landscaping." CRMO subsection 5(e).

26 Although the CRMO does not explicitly state that the  
evaluation required by CRMO subsection 5(c) is required to form  
the basis for the city's determination concerning which option  
it will pursue under CRMO subsection 5(e), we conclude that is

1 the purpose for the subsection 5(c) evaluation. Therefore, the  
2 city's findings addressing the considerations identified in CRMO  
3 subsection 5(c) must explain why, based on those considerations,  
4 the city selected the action it did under CRMO subsection 5(e).

5 C. The City's Findings

6 The city's findings addressing CRMO subsection 5(c) are  
7 fundamentally flawed. The findings addressing that subsection  
8 provide in part:

9 "3) The applicant addressed the five criteria  
10 specified in [CRMO subsection 5(c)], in an  
11 application received by the City on February 15,  
12 1989. The applicant's responses to the five  
13 criteria can be summarized as follows:

14 "\* \* \* \* \*" Record 242.

15 The findings that follow the above quoted finding are simply a  
16 summary of the applicant's responses, not findings expressing  
17 the city's determination of the relevant facts. As the Court of  
18 Appeals and this Board have explained, such findings are  
19 inadequate. Hill v. Union County Court, 42 Or App 883, 601 P2d  
20 905 (1979); McCoy v. Linn County, \_\_\_ Or LUBA \_\_\_ (LUBA No.  
21 87-046, December 15, 1987), slip op 31, n 15, aff'd 90 Or App  
22 271 (1988); Vizina v. Douglas County, \_\_\_ Or LUBA \_\_\_ (LUBA No.  
23 89-007, June 16, 1989), slip op 42, n 9. The city's findings of  
24 fact must state what the city finds to be the relevant facts  
25 under CRMO subsection 5(c).

26 A second fundamental flaw in the city's findings is there  
is no attempt to relate the findings under CRMO subsection 5(c)  
to the action the city chose under CRMO subsection 5(e). Thus,

1 even if the city had expressly adopted the applicant's responses  
2 as its own, the findings would be inadequate to explain why the  
3 city reached the decision it ultimately adopted under  
4 CRMO subsection 5(e).<sup>11</sup>

5 On remand, the city must (1) adopt findings setting out its  
6 evaluation of the considerations identified in CRMO subsection  
7 5(c); (2) explain clearly what its decision under CRMO  
8 subsection 5(e) is; and (3) explain why that decision is  
9 justified, based on the evaluation required by CRMO subsection  
10 5(c). Specifically, if the city elects to impose conditions of  
11 approval, the findings must explain how those conditions are  
12 justified by the evaluation required by CRMO subsection 5(c).

13 The third assignment of error is sustained.

14 The city's decision is remanded.

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26 <sup>11</sup>As noted above, we also are unable to determine precisely what kind of approval the city granted under CRMO subsection 5(e).