BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

RANDY SPARACINO and CYNTHIA SPARACINO, Petitioners, vs. KLAMATH COUNTY, Respondent, and ANADROMOUS, INC., Intervenor-Respondent.	)	LUBA No. 89-135
ANADROMOUS, INC., Petitioner, vs. KLAMATH COUNTY, Respondent, and RANDY SPARACINO and CYNTHIA SPARACINO, Intervenors-Respondent.	)	LUBA No. 89-142

FINAL OPINION AND ORDER

Appeal from Klamath County.

Bill Kloos, Eugene, filed the petition for review in LUBA No. 89-135 and a response brief in LUBA No. 89-142 and argued on behalf of Randy and Cynthia Sparacino. With him on the brief was Johnson and Kloos.

Robert S. Lovlien, Bend, filed the petition for review in LUBA No. 89-142 and a response brief in LUBA No. 89-135 and argued on behalf of Anadromous, Inc. With him on the brief was Gray, Fancher, Holmes, Hurley, Bryant and Lovlien.

Michael L. Spencer, Klamath Falls, filed a response brief and argued on behalf of respondent.

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

AFFIRMED 02/13/90

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

Opinion by Sherton.

NATURE OF THE DECISION

Petitioners appeal an order of the Klamath County Board of Commissioners determining the compatibility of an existing salmon hatchery and rearing facility with the acknowledged county comprehensive plan and land use regulations.

MOTIONS TO INTERVENE

Anadromous, Inc. (Anadromous) moves to intervene on the side of respondent in LUBA No. 89-135. Randy and Cynthia Sparacino (Sparacino) move to intervene on the side of respondent in LUBA No. 89-142. There is no opposition to the motions, and they are allowed.

FACTS

Anadromous operates a salmon hatchery and rearing facility (hatchery) on approximately 80 acres of land designated Agricultural and zoned Exclusive Farm Use - Grazing (EFU-G), located one mile southeast of Fort Klamath.[1] Adult salmon are held at the facility for egg production. After hatching, the fry are transported by truck to ranch facilities at the Pacific coast. Approximately 14 million fry were raised at the facility in 1988.

[1]On August 6, 1984, the county's comprehensive plan and land use regulations were acknowledged by the Land Conservation and Development Commission (LCDC). LCDC Order 84-ACK-135.

In October 1982, Anadromous received a building permit from the county for construction of a hatchery, as indicated on plans submitted at that time (1982 permit). In November 1982, the Department of Environmental Quality (DEQ) issued to Anadromous a National Pollutant Discharge Elimination System (NPDES) waste discharge permit allowing releases into Fort Creek. Anadromous began operation of the hatchery in March 1983.

On April 25, 1984, Anadromous received a building permit from the county for construction of a hatchery (1984 permit). The 1984 permit is not signed by the county planning department. The hatchery was shut down for approximately six months from spring to fall of 1984. With the exception of the concrete diversion structure on Fort Creek, the entire hatchery was reconstructed during this period. The 1984 improvements are described by Anadromous as follows:

> "The new facility consisted of eight concrete raceways, two pump buildings, chlorination-dechlorination building, vacuum waste pond, larger settling pond, office trailer and combined shop, lab, and storage building." Record 207.

Building permits for additional construction at the facility were issued in 1987 (1987 permits). The additional improvements added to the facility in 1987 and 1988 are described by Anadromous as follows:

> "In the spring of 1987, a large storage building was constructed. Sixteen circular ponds were installed from summer to winter of 1987. An

> incubation building was constructed and in operation by October of 1987. Thirty-eight small circular ponds were installed in the winter of 1988, and a second office trailer was put in the summer of 1988." Id.

The record does not indicate when four circular ponds appearing on the current site plan submitted by Anadromous, each seven meters in diameter, were built. Record 16. The parties agree that Anadromous has not received a building permit for the "second office trailer." However, whether building permits for the 16 circular ponds constructed in 1987, 38 circular ponds constructed in 1988 and four large circular ponds were issued by the county is a matter of contention between the parties.

The expiration date for Anadromous' NPDES permit was November 30, 1987. However, that permit remains in effect until DEQ takes final action on Anadromous' renewal application, which DEQ received on August 27, 1987. Record 100. On July 25, 1987, apparently at the direction of DEQ, Anadromous applied to the county for a land use compatibility determination.

On August 14, 1989, the county planning director issued a Notice of Tentative Decision, concluding that the hatchery "is NOT compatible or consistent with the Klamath County Comprehensive Plan because of failure to address environmental impacts on Fort Creek, and because of possible violations of the Land Development Code." (Emphasis in original.) Record 7. This decision was appealed to the

board of commissioners by Sparacino and Anadromous. After a de novo hearing, the board of commissioners adopted the appealed order.[2]

[2]The nature of the board of commissioners' order, i.e., whether it constitutes a determination of compatibility or noncompatibility is an issue in this case.

FIRST ASSIGNMENT OF ERROR (ANADROMOUS)

> "OAR 660-31-040 does not require determination of compatibility with an acknowledged comprehensive plan if the proposed permit (in this case a National Pollutant Discharge Elimination System Permit) is a renewal of an existing permit."

Anadromous argues that the administrative rules adopted by LCDC in OAR Chapter 660, Division 31 ("State Permit Compliance and Compatibility") are applicable only to proposed, not existing, uses and activities.[3] Anadromous also argues that a determination of compatibility with an acknowledged comprehensive plan is not required for the renewal of an existing permit, under the following rule:

> "A determination of compliance with the statewide planning goals or compatibility with the acknowledged comprehensive plan is not required if the proposed permit is a renewal of an existing permit, except when the proposed permit would allow a substantial modification or intensification of the permitted activity." OAR 660-31-040.

According to Anadromous, there is nothing in the county's decision or in the record to suggest the renewal permit would allow "a substantial modification or intensification of the permitted activity." Anadromous asks that the county's decision be reversed or remanded with instructions to the county that a determination of compatibility with the

[3]Anadromous also argues that if an existing use or activity is not compatible with an acknowledged comprehensive plan, there are other remedies (e.g., injunctive relief, mandamus, declaratory judgment) available to ensure that the use is terminated or brought into compliance.

county's acknowledged plan is not required under OAR 660-31-040.

The county points out that Anadromous requested the appealed land use compatibility determination, and has not withdrawn that request. The county argues that even if a land use compatibility determination were not required, making such a determination would not be reversible error unless making the determination is prohibited. The county argues that the requirement for, and effect of, the county's compatibility determination is properly litigated in an appeal of DEQ's ultimate decision on Anadromous' permit renewal application.

Sparacino argues that Anadromous has failed to allege any error which might provide a basis for reversal or remand of the county's decision under ORS 197.835. Shaffer v. Jackson County, ___ Or LUBA ___ (LUBA No. 89-015, July 7, 1989); Lane County School Dist. 71 v. Lane County, 16 Or LUBA 150, 153 (1986). Therefore, according to Sparacino, the issue of whether Anadromous' NPDES permit renewal application falls within the exception recognized by OAR 660-31-040 is properly an issue between Anadromous and DEQ, and is not before LUBA in this appeal of the county's decision. Sparacino argues that this issue was in fact briefed before DEQ, and DEQ decided that the exception does

not apply. Record 102, 269-271.[4]

Anadromous applied to the county for the appealed land use compatibility determination, but does not argue under this assignment of error that the appealed decision itself violates any applicable legal standard. See Sellwood Harbor Condo Assoc. v. City of Portland, ___ Or LUBA ___ (LUBA Nos. 87-079 and 87-080, April 1, 1988), slip op 8; Lane County School Dist. 71 v. Lane County, supra. Rather, Anadromous argues that it is unnecessary to obtain such a determination prior to DEQ renewal of its 1982 NPDES permit.

Whether Anadromous' NPDES permit renewal application qualifies for the exception to the land use compatibility determination requirement recognized by OAR 660-31-040 is an issue properly determined by DEQ, as part of its permit renewal process.[5] We agree with the county and Sparacino that this assignment of error provides no basis for reversal or remand of the county's decision.

The Anadromous first assignment of error is denied.

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[4]However, in case this Board concludes this issue is properly before it, Sparacino argues that Anadromous' NPDES permit renewal application cannot qualify for the exception recognized by OAR 660-31-040 because (1) a determination of land use compatibility was never made with regard to the 1982 NPDES permit; and (2) there has been substantial modification and intensification of the use since issuance of the 1982 permit.

[5]Even if the question were properly presented to this Board, we would be unable to determine, based on the record in this proceeding, whether the exception of OAR 660-31-040 applies.

FIRST ASSIGNMENT OF ERROR (SPARACINO)

> "The conclusion that the use is allowed, subject to standards in siting design, construction and operation, violates provisions of the applicable law, is prohibited as a matter of law, improperly construes the applicable law, and is not supported by substantial evidence in the whole record."

SECOND ASSIGNMENT OF ERROR (SPARACINO)

> "To the extent that the county order can be read as a finding that the Anadromous use is compatible with the plan and code, the county board erred in making a decision that violates provisions of the applicable law, is prohibited as a matter of law, improperly construes the applicable law, and is not supported by substantial evidence in the whole record."

SECOND ASSIGNMENT OF ERROR (ANADROMOUS)

> "* * * [T]he scope of review applied by Klamath County in issuing its [land use compatibility] statement in this case was in error."

Sparacino points to the following finding in the appealed decision:

> "It is hereby found that the Anadromous, Inc. hatchery and fish rearing facility is allowed by the Plan but subject to standards in siting, design, construction and/or operation. * * *" Record 5.

Sparacino argues the above-quoted finding is incorrect because the hatchery facilities were constructed, and continue to operate, without several required reviews and approvals, including (1) review under Klamath County Land Development Code (LDC) Article 51 (Significant Resource Area Overlay Zone); (2) review under LDC Article 44 (Conditional Use Permits); and (3) approval of a state water permit,

pursuant to requirements of LDC 51.019.B.9 for conducting aquaculture in the EFU-G zone. Sparacino argues that these LDC provisions require discretionary reviews and approvals, which could result in denial. In these circumstances, Sparacino contends the county cannot find that the hatchery "is allowed by the Plan but subject to standards in siting, design, construction and/or operation." Id.

Sparacino argues that the lack of a required county permit, such as a conditional use permit or a discretionary approval pursuant to a plan Goal 5 policy, is a proper basis for determining noncompatibility with the county plan. According to Sparacino, under ORS 197.180(10),[6] if a use requires a discretionary local permit which it does not have, the use is "not allowed under" the plan, because neither the state agency nor the local government can determine the use is allowed and, therefore, compatible, until the local approvals are obtained.

Sparacino believes the county's decision in this case is properly interpreted as a determination of noncompatibility. However, as a precaution, Sparacino argues that if the county's decision is interpreted as a determination of compatibility, it is improper and must be

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[6]ORS 197.180(10) provides:

> "In carrying out programs affecting land use, a state agency is not compatible with an acknowledged comprehensive plan if it takes or approves an action that is not allowed under the plan. * * *"

reversed.

The county argues that, because it has an acknowledged comprehensive plan, OAR 660-10-025 requires it to find that the subject use fits in one of the four categories listed in OAR 660-31-025(2)(a)-(d). The county argues that in this case, where a use is potentially allowable but must receive county approvals in further proceedings, category (c), selected by the county in the above-quoted finding, is the appropriate choice. The county states that its decision concludes the subject use is not in compliance with the acknowledged plan, and argues that its order indicates the board of commissioners considers the terms "compliance" and "compatibility" to be interchangeable.

Anadromous agrees with the county that OAR 660-10-025 requires it to find that the subject use fits in one of the four categories listed in OAR 660-31-025(2)(a)-(d). Anadromous further argues that once category (c) is selected, the county has determined the subject use is compatible with its plan and has no further review to perform. Anadromous contends that if the subject use is in category (c), the local land use approvals required do not have to be granted before the county issues a determination of land use compatibility as part of the state agency permitting process. Anadromous asks that if we interpret the county's decision as a determination of noncompatibility, we remand the decision to the county with

instructions regarding the correct standard of review to be applied by the county.

The parties' arguments under these assignments of error reflect a basic misunderstanding of the role of OAR 660-31-025. OAR 660-31-025 ("Review Criteria for Class A and B Permits") provides, in relevant part:

> "* * * * *
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> "(2) Where the affected local government has an Acknowledged Comprehensive Plan, the state agency or local government review shall address compatibility with the Acknowledged Comprehensive Plan when the activity or use is:
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> "(a) Prohibited by the plan;
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> "(b) Allowed outright by the plan;
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> "(c) Allowed by the plan but subject to standards regarding siting, design, construction and/or operation; or
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> "(d) Allowed by the plan but subject to future goal considerations by the local jurisdiction.
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> "(3) Where the affected local government has an Acknowledged Comprehensive Plan the Statewide Goals shall be a [sic] criteria for permit review after acknowledgment when the state agency finds one of the following exists:
>
> "* * * * *
>
> "(b) The Acknowledged Comprehensive Plan and implementing ordinances do not address or control the activity under consideration;
>
> "(c) The Acknowledged Comprehensive Plan allows the activity or use but subject

> to future goal considerations by an agency; * * *
>
> "* * * * *" (Emphases added.)

It is apparent from the title and the language emphasized in OAR 660-31-025(2) and (3) above, that these sections of the rule simply identify <u>when the reviewing body is required to address</u> compatibility with an acknowledged comprehensive plan[7] or compliance with the statewide planning goals, respectively, in reviewing a Class A or B state agency permit application.[8] For instance, under OAR 660-31-025(3)(b), <u>if</u> the acknowledged plan does not address the subject use, the reviewing body must determine compliance with the goals.

On the other hand, OAR 660-31-025(2) says compatibility with the acknowledged plan must be determined <u>if</u> the use falls into certain categories. We believe these categories are intended to include the different ways a subject use might be addressed in the plan. Finding that a use falls under one of these four categories is <u>not</u> equivalent to determining the use <u>is</u> compatible with the plan. It simply means that compatibility with the plan must be determined in

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[7]"Acknowledged comprehensive plan" is defined as a comprehensive plan <u>and implementing ordinances</u> that LCDC has found to be in compliance with the Statewide Planning Goals pursuant to ORS 197.251. OAR 660-31-010(1).

[8]DEQ NPDES permits are Class B permits. OAR 660-31-012(2)(b)(B).

issuing a state agency permit.[9]

"Compatibility with the acknowledged comprehensive plan" is not defined in OAR Chapter 660, Division 31. However, we believe reviewing bodies must be guided by the provision of ORS 197.180(10) which states that "a state agency is not compatible with an acknowledged comprehensive plan if it takes or approves an action that is not allowed under the plan."

We address the parties' specific arguments concerning the challenged decision based on this understanding of the role of OAR 660-31-025 and the nature of a "compatibility with the acknowledged comprehensive plan" determination.

Sparacino's challenge to the county finding that the proposed use falls under OAR 660-31-025(2)(c) ("allowed by the plan but subject to standards regarding siting, design, construction and/or operation") is based on the contention that category (c) does not include uses subject to the types of discretionary reviews which Sparacino argues apply to the Anadromous hatchery. However, because OAR 660-31-025(2) encompasses all instances where the subject use is addressed by the acknowledged plan, we believe category (c) is intended to include all instances where the subject use is potentially allowable under the plan and implementing

[9]Of course, if a use is "prohibited by the plan" (OAR 660-31-025(2)(a)), presumably the only determination possible is that the use is noncompatible with the plan. The opposite would be true of a use "allowed outright by the plan" (OAR 661-31-025(2)(b)).

ordinances, but is subject to review for compliance with standards set out in the plan or code. Category (c), therefore, includes instances where the required local reviews are discretionary and could result in denial of the subject use. Thus, even if Sparacino's identification of the review standards applicable to and approvals which must be obtained by the hatchery is correct, the county finding that the hatchery falls under OAR 660-31-025(2)(c) is correct as well.

Sparacino's second challenge is predicated on the possibility this Board might interpret the county's decision as a determination of compatibility. It is true that the board of commissioners' order refers to "compliance" with the plan, rather than "compatibility" with the plan. See Record 4-5. However, we need not determine whether the board of commissioners used these terms interchangeably, as argued by the county and Sparacino, because the order also incorporates certain determinations by the planning director:

> "The Board of County Commissioners affirms the decision of the Planning Director in regard to items 4, 5, 6, 7, 8, 9, 11, and 12 of that decision, which items are incorporated herein by reference as if fully set out herein. * * *
>
> * * * Anadromous is not in compliance with the site plan review requirements of the [LDC] and for that reason it is not in compliance with the [plan and LDC], and the determination of the Planning Director is upheld as set forth herein. " (Emphases added.) Id.

The portions of the planning director's decision incorporated and affirmed by the above-quoted portions of the board of commissioners' order include the following determination of noncompatibility:

> "THE ANADROMOUS, INC. FISH HATCHERY IS NOT COMPATIBLE OR CONSISTENT WITH THE KLAMATH COUNTY COMPREHENSIVE PLAN AND IMPLEMENTING REGULATIONS * * *" (Emphasis in original.) Record 12.

Accordingly, the county's decision is a determination of noncompatibility and, therefore, we have no basis for sustaining Sparacino's second challenge.

Anadromous' challenge is based on the contention that finding the subject use falls under OAR 660-31-025(2)(c) is in itself a determination of compatibility and, therefore, the county erred in making the further determination that because the subject use had not yet obtained the required local approvals, the subject use is not compatible with the acknowledged plan. However, as explained above, determining that a use is in category (c) merely establishes that compatibility with the acknowledged plan, as provided in ORS 197.180(10), must be determined. If a use is potentially allowable under the plan, but required local approvals have not been obtained, the use cannot be determined to be "allowed under the plan" and, therefore, cannot be determined to be compatible with the plan.[10] We

[10]If a local government finds that a use falls under OAR 660-31-025(2)(c) and makes a determination of noncompatibility based on

agree with Sparacino and the county that a determination of noncompatibility is appropriate in such instances.[11]

The Sparacino first and second assignments of error and Anadromous second assignment of error are denied.

THIRD ASSIGNMENT OF ERROR (ANADROMOUS)

> "Klamath County Planning Department review and approval of a series of building permits was an acknowledgment of compatibility with the Klamath County acknowledged comprehensive plan for the Anadromous, Inc. Hatchery."

Anadromous argues that the county has approved building permits for each part of its operation, with the possible exception of the mobile home/office. Anadromous contends that the approval of these building permits establishes that

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required local approvals not having been obtained for the use, the state agency for which the determination was issued would have three options with regard to acting on a pending Class B permit application which meets other applicable approval standards:

(1) Deny the application, based on the local government's determination of noncompatibility. OAR 660-31-026(2)(a); 660-31-035(2).

(2) Make its own determination of the compatibility of the use with the acknowledged comprehensive plan, and act accordingly. OAR 660-31-026(2)(a).

(3) Issue the permit conditioned upon the applicant's receiving the required land use approvals from the local government. OAR 660-31-026(2)(b).

[11]Because we determine, under the following assignment of error, that the county did make a determination of noncompatibility in this case, we need not determine whether a determination of noncompatibility is required under these circumstances, or whether a local government could simply inform a state agency that it cannot make a determination on compatibility until it conducts its local review processes. Of course, if a local government did follow the latter course, only options (2) and (3) listed in n 10 would be available to the state agency.

its facilities are either consistent with the statewide planning goals or compatible with the acknowledged plan, depending on the date of approval.

Anadromous points out that LDC 41.001 requires site plan approval for construction and other site improvements. Anadromous argues that under the planning director review procedure of LDC Article 22, the planning director may approve a site plan without public hearing and notice. Anadromous contends the record shows that, since 1983, the planning department has reviewed construction plans for the Anadromous operation. Anadromous argues that planning department review of the extensive plans submitted to the county building department amounts to planning director site plan approval of the proposed construction. According to Anadromous, these site plan approvals are binding and cannot be collaterally attacked in this proceeding.

The county and Sparacino argue that building permit issuance is not equivalent to site plan approval. They point to an unchallenged county finding that prior to the adoption of Ordinance 28.4 on August 9, 1989, amending the county Building Code, there was no requirement that site plan approval be granted by the planning director before a building permit is issued by the building department. Record 4. They also argue there is no evidence in the record that the existing Anadromous facilities complied with the site plan review process.

Sparacino further argues that even if the county did conduct full land use reviews prior to issuance of the Anadromous building permits, that would not establish compatibility of the Anadromous facilities with the acknowledged plan, because much of what exists on the subject property never went through the building permit process. According to Sparacino, in addition to the mobile home/office, other existing facilities for which no building permit was issued include the 16 circular ponds constructed in 1987, 38 circular ponds constructed in 1988 and four large circular ponds of unknown construction date.

Finally, Sparacino argues that even if the county did conduct full land use reviews prior to issuance of the Anadromous building permits, and even if a building permit had been issued for every structure on the subject property, that would not establish compatibility with the acknowledged plan, because the plan and code regulate uses and activities, not just structures. Sparacino contends, as an example, that point source pollution in the riparian zone triggers county review under LDC Article 83, yet the existence, nature and scope of pollution is not dependent on any structure for which a building permit is required.

In Flowers v. Klamath County, ___ Or LUBA ___ (LUBA Nos. 88-112, 88-113 and 88-124, Interlocutory Order on Motions to Dismiss, February 28, 1989), slip op 11, we stated that "[u]nder LDC 41.001 and 41.003, * * * all

determinations involving application of the LDC or other county land use regulations * * * are made in the site plan approval decision."[12] Thus, issuance of a building permit is not itself dependent on a determination that the subject use is compatible with the county plan. The question then becomes whether issuance of a building permit is proof that site plan approval was granted.

The county's decision states that site plan approval has not been granted for the reconstructed Anadromous facility reopened in 1984, or for the improvements subsequently added. Record 5-7. Anadromous does not challenge the county's finding that prior to 1989, the issuance of a building permit was not dependent on site plan approval, and does not cite contrary provisions found in the county code at the time the building permits in question were issued. Neither does Anadromous identify evidence in the record indicating that site plan approval for its facilities was granted. We conclude that site plan approval for the Anadromous facilities has not been granted.

Accordingly, the issuance of building permits for the Anadromous facilities does not demonstrate compatibility of those facilities with the acknowledged plan.[13]

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[12]LDC 41.001 and 41.003 refer to compliance with the LDC and "other applicable [county] ordinances." In this case, the acknowledged plan is an applicable county ordinance.

[13]However, even if it did, it would only demonstrate the compatibility of those structures for which a building permit was issued. We agree with

The Anadromous third assignment of error is denied.

THIRD ASSIGNMENT OF ERROR (SPARACINO)

> "The county erred in failing to decide all issues raised in this proceeding relevant to compatibility. By failing to consider these issues the county violated provisions of the applicable law, improperly construed the applicable law, and made a decision not supported by substantial evidence in the whole record."

Sparacino argues the county improperly based its determination of noncompatibility on only one issue -- failure of Anadromous to obtain site plan approval for its facilities pursuant to LDC Article 41, even though the county found elsewhere in its decision that other local standards apply to the subject use as well,[14] and Sparacino submitted evidence and argument that the use is not compatible with those standards. According to Sparacino, if the county undertakes to make a compatibility determination, it must address all relevant issues on which evidence is provided.

Sparacino asserts this Board has held that in the approval of discretionary permits, "when a relevant issue is adequately raised by evidence and testimony in the record,

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Sparacino that there is no evidence in the record that certain Anadromous facilities, including the mobile home/office and various circular tanks, have been issued building permits, and that there are aspects of the Anadromous use which are addressed by the acknowledged plan, but do not require building permits.

[14]The county order states "the standards and criteria relevant to review of this matter are found in the [goals, plan and LDC], particularly Article 41, Section 51.019, and Article 83. * * *" Record 2.

it must be addressed in the decision maker's findings." Blosser v. Yamhill County, ___ Or LUBA ___ (LUBA No.89-084, October 27, 1989), slip op 15, citing Norvell v. Portland Metro Area LGBC, 43 Or App 849, 852-853, 604 P2d 896 (1979); McCoy v. Linn County, ___ Or LUBA ___ (LUBA No. 87 046, December 15, 1987), slip op 8, aff'd 90 Or App 271 (1988). Sparacino further argues the county's decision in this case is not equivalent to denial of a discretionary permit, which Sparacino concedes can be justified by addressing only one of several possible grounds for denial. Rather, Sparacino likens the county's decision to a determination of the scope of nonconformity of an existing use.

The county and Anadromous argue that the issues the county declined to decide in issuing its compatibility determination (basically the applicability to the subject use of, and compliance of the subject use with, various plan and LDC standards) are issues which are properly decided in the site plan review process. The county also argues that its decision is similar to a decision to deny a permit application and, therefore, it need not address all issues raised.

As we explained, supra, when a county determines the subject use has not obtained required local land use approvals, it is appropriate for it to issue a determination of noncompatibility with the acknowledged plan based on that fact alone. The county is not required to resolve the

issues which have to be determined by the required local review proceedings before those proceedings are actually conducted.[15] In this case, the county decision recognizes that site plan approval for the Anadromous facility must be obtained. We agree with the county that all issues Sparacino seeks to raise may be addressed in that proceeding.

The Sparacino third assignment of error is denied.

The county's decision is affirmed.

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[15]A county determination of noncompatibility with the acknowledged plan, based on the applicant not having obtained required local approvals, as part of the state agency permitting process, is quite different from the cases involving permit approvals cited by Sparacino. If a relevant issue is not addressed in approving a permit, it will never be known whether resolution of that issue would have required denial of the permit. On the other hand, if the issues sought to be raised in this appeal must be addressed in the required local review process, the subject use will not be finally approved until those issues have been resolved.