

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

JONEEN CALHOUN,)
)
Petitioner,)
)
and)
)
DALLAS C. ARNOLD,) LUBA No. 92-049
)
Intervenor-Petitioner,) FINAL
OPINION)
) AND ORDER
vs.)
)
JEFFERSON COUNTY,)
)
Respondent,)
)
and)
)
DESCHUTES READY-MIX,)
)
Intervenor-Respondent.)

Appeal from Jefferson County.

Joneen L. Calhoun, West Linn, filed a petition for review and argued on her own behalf.

Dallas C. Arnold, Redmond, filed a petition for review and argued on his own behalf.

No appearance by respondent.

Frank L. Parisi and Ian K. Whitlock, Portland, represented intervenor-respondent.

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

REMANDED 07/01/92

1 You are entitled to judicial review of this Order.
2 Judicial review is governed by the provisions of ORS
3 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision amending the Jefferson
4 County Comprehensive Plan to add a 40 acre site to its
5 Inventory of Mineral and Aggregate Sites.

6 **MOTIONS TO INTERVENE**

7 Deschutes Ready-Mix moves to intervene on the side of
8 respondent in this proceeding. There is no opposition to
9 the motion and it is allowed.¹ Dallas C. Arnold's motion to
10 intervene on the side of petitioner was previously allowed.

11 **FACTS**

12 The subject property is located northwest of Ogden
13 State Park, near Crooked River Ranch, a residential resort
14 community. The site is visible from Crooked River Ranch and
15 is located near the top of Osborne Canyon, between the
16 Crooked River Canyon and State Highway 97.

17 **DECISION**

18 Jefferson County has an acknowledged comprehensive plan
19 which includes an inventory of mineral and aggregate sites
20 showing a total of 38 mineral and aggregate sites. The
21 challenged decision amends that inventory to add the subject
22 property. In adopting the challenged decision, the county
23 adopted findings addressing Goal 5 (Open Spaces, Scenic and
24 Historic Areas, and Natural Resources) and a criterion,

¹Intervenor-respondent Deschutes Ready-Mix did not file a respondent's brief.

1 which we assume is included in the county's comprehensive
2 plan, requiring that there be "a demonstrated need for the
3 proposed change."² Petitioners challenge the adequacy of
4 and evidentiary support for the county's findings addressing
5 Goal 5 and the plan "public need" criterion.

6 Goal 5 requires that the county adopt programs to
7 protect natural resources. Mineral and aggregate resources
8 are among the natural resources identified by Goal 5. Under
9 Goal 5 and OAR 660 Division 16 (the Land Conservation and
10 Development Commission's Goal 5 administrative rule), a
11 three step process is required for the adoption of programs
12 to protect mineral and aggregate resources. First, the
13 county is required to inventory mineral and aggregate
14 resources. OAR 660-16-000. Second, the county must
15 identify uses which may conflict with inventoried mineral
16 and aggregate resource sites and determine the economic,
17 social, environmental and energy (ESEE) consequences of the
18 impacts of such conflicts. OAR 660-16-005. Third, the
19 county must use the ESEE consequences analysis to develop a
20 program to carry out the goal of preserving mineral and
21 aggregate resources. OAR 660-16-010.

22 In performing the first of the above steps, the county
23 adopted the following findings:

24 * * * Quantity: Estimated quantity of the

²We have not been provided a copy of the county's comprehensive plan. Portions of the plan are attached to petitioner's brief.

1 aggregate resource is 1,500,000 cubic yards, with
2 an estimated yearly excavation of approximately
3 12,000 cubic yards.

4 * * * Quality: Los Angeles Rattler test (L.A.
5 Abrasion) = 17.7% loss with a maximum
6 specification of 35%; Oregon Air degradation =
7 13.2% with a sediment height of 0.3" with maximum
8 specification of 30.09% and 3.0"; and Sodium
9 Sulfate Soundness = 1.7% with a maximum
10 specification of 18%.

11 "According to [the Oregon Department of
12 Transportation's] ODOT's specifications, quality
13 resources must meet [the maximum specifications
14 stated in the preceding paragraph].

15 "Based upon the available evidence, it is
16 determined that the quality at the proposed
17 resource site is very good, the quantity is
18 significant and the location of the proposed site
19 is important relative to the location of other
20 sites in Jefferson County, and therefore, the
21 proposed resource site should be included in the
22 Plan inventory." Record 15.

23 Petitioner and intervenor-petitioner (petitioners)
24 argue the above findings are conclusory and inadequate to
25 demonstrate compliance with OAR 660-16-000(2), (3) and (4).³

³OAR 660-16-000(2), (3) and (4) provide as follows:

"(2) A 'valid' inventory of a Goal 5 resource * * * must include a determination of the location, quality, and quantity of each of the resource sites. * * *

"(3) The determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of quality requires consideration of the relative abundance of the resource of any given quality. The level of detail that is provided will depend on how much information is available or 'obtainable.'

1 Petitioners also contend the findings concerning quality and
2 quantity are not supported by substantial evidence in the
3 record.⁴

4 In considering arguments that a land use decision is
5 not supported by substantial evidence, this Board does not
6 search the record for evidence supporting the decision, but
7 rather relies on the parties to cite evidence supporting the
8 challenged decision. See Eckis v. Linn County, 110 Or App
9 309, 313, 821 P2d 1127 (1991). Our consideration of
10 petitioners' allegations that there is no substantial
11 evidence in the record supporting the estimate of 1.5
12 million cubic yards of aggregate is hampered because no
13 brief has been filed in this matter in support of the
14 county's decision.

15 **A. Quantity of Aggregate Material**

16 The only evidence we have located in the record
17 supporting the finding that the site contains 1.5 million
18 cubic yards of aggregate is a one page document. Record

"(4) The inventory completed at the local level * * * will be
adequate for Goal compliance unless it can be shown to be
based on inaccurate data, or does not adequately address
location, quality or quantity. * * *" (Emphases in
original.)

⁴Petitioner attaches to her brief a one page letter signed by a
geological consultant in which the consultant states that estimating the
amount and quality of rock in volcanic deposits is uncertain and requires
subsurface testing. However, the consultant's letter is not included in
the record submitted by the county in this matter. Our review of the
county's decision is limited to the record, ORS 197.830(13)(a), and we do
not consider the letter in reaching our decision.

1 250A. That document appears to be part of a surface mining
2 reclamation plan application for the subject property. It
3 includes a space for estimating the "total quantity of
4 material available" and "1,500,000 cubic yards" is written
5 in that space. Without some indication of where that figure
6 came from and what it is based on, we agree with petitioners
7 that the county's finding that the subject site includes 1.5
8 million cubic yards of aggregate material is not supported
9 by substantial evidence in the record. See Douglas v.
10 Multnomah County, 18 Or LUBA 607, 617 (1990).

11 **B. Quality of Aggregate Material**

12 Similarly, the county's finding concerning the quality
13 of aggregate on the site is supported by a second one page
14 document, which includes some of the figures concerning
15 quality included in the findings quoted above. Record 250.
16 This document, prepared by Century West Engineering, does
17 not explain the significance of the quality figures given.⁵
18 More importantly, the record does not include comparable
19 information for other aggregate resource sites currently
20 included on the county's plan inventory, so that the
21 required comparison of relative value can be made.⁶ See OAR

⁵The findings do explain that the test results for the subject property are within ODOT's specifications.

⁶The findings do state that the aggregate at the subject property is of better quality than some of the nearby sites. However, we are unable to locate the evidence upon which those findings and conclusions concerning comparative quality are based.

1 660-16-000(3), quoted supra at n 3. This failure is
2 particularly significant, since the county relies heavily on
3 the quantity and quality of the aggregate expected from the
4 subject site in dismissing the ability of nearby aggregate
5 resource sites to fulfill the anticipated demand for
6 aggregate in the southern portion of the county.

7 The findings concerning the quality of the aggregate at
8 the subject property are inadequate to comply with
9 OAR 660-16-000(3), (4) and (5). We therefore sustain
10 petitioners' challenge concerning those findings.
11 Additionally, while the evidence necessary to support the
12 inventory determinations required by OAR 660-16-000 may well
13 exist, as far as we can tell that evidence is not included
14 in the record. Therefore, we also sustain petitioners'
15 challenge concerning the adequacy of the evidentiary record
16 to the county's inventory determination under
17 OAR 660-16-000(3), (4) and (5).

18 Petitioners' remaining challenges essentially fall into
19 two areas of concern. The first area of concern is whether
20 there are other nearby aggregate sites in Jefferson County
21 and adjoining counties which are adequate to supply the
22 demonstrated public need for aggregate in the southern
23 portion of the county and obviate the justifications
24 advanced by the county in its Goal 5 ESEE analysis for
25 extracting aggregate from the subject property. The second
26 area of concern relates to the county's findings concerning

1 the ESEE impacts of mining on the proposed site on nearby
2 properties, particularly the Crooked River Ranch.⁷

3 The findings challenged under the first category of
4 issues, and to some degree the second category as well, are
5 based on an assumption that the subject property includes a
6 large amount of high quality aggregate. Rather than
7 consider petitioners' arguments at this point, with the
8 question of the quantity and quality of aggregate on the
9 subject property unsettled, we believe the county should
10 first adequately establish the quantity and quality of
11 aggregate and perform the comparison with other aggregate
12 sites which is required by OAR 660-16-000. That analysis
13 presumably will verify or dismiss many of petitioners'
14 remaining arguments about the ESEE justifications for the
15 decision and the public need for adding the subject site to
16 the county's inventory of mineral and aggregate sites.⁸

17 The county's decision is remanded.

18

⁷Intervenor-petitioner also alleges procedural errors in the manner in which the county provided notice of its final decision in this matter. In view of our disposition of this matter, we need not address those allegations of procedural error.

⁸We also note that petitioners contend the public need claimed by the county for the subject site is based in significant part on anticipated roadwork within the Crooked River Ranch. Petitioners contend approval of the Lone Pine site in Deschutes County was justified in part on the needs of Crooked River Ranch. Without some assistance from the intervenor-respondent or the county, we are unable to confirm or dismiss petitioners' claim. However, if such is the case, the county must address the issue on remand in considering the public need criterion.