

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 BRAD PALMER, CHARLES PENDLETON,)
5 HOWARD DAWSON, CHARLENE DAWSON,)
6 CARL DEMANETT, BERNICE DEMANETT,)
7 WANDA DENNIS, MICKEY TRUE, BERTA)
8 JARRARD, KIRK ADAIR, JEANNIE)
9 ADAIR, RICHARD BAKER, SIDNEY)
10 GONZALES, JAMES COOK, CAROLYN)
11 DEMANETT, RAY GRAVES and BARBARA)
12 GRAVES,)

LUBA No. 96-187

13)
14 Petitioners,)

FINAL OPINION
AND ORDER

15)
16 vs.)

(MEMORANDUM OPINION)

17)
18 LANE COUNTY,)

ORS 197.835(16)

19)
20 Respondent,)

21)
22 and)

23)
24 DONALD OVERHOLSER and RODNEY)
25 MATHEWS,)

26)
27 Intervenors-Respondent.)

28
29
30 Appeal from Lane County.

31
32 Brad Palmer, Cottage Grove, filed the petition for
33 review and argued on his own behalf.

34
35 Stephen L. Vorhes, Assistant County Counsel, Eugene,
36 filed a response brief and argued on behalf of respondent.

37
38 Joeseph J. Leahy, Springfield, filed a response brief
39 and argued on behalf of intervenors-respondent. With him on
40 the brief was Harold & Leahy.

41
42 LIVINGSTON, Referee; GUSTAFSON, Referee, participated
43 in the decision.

44
45 AFFIRMED

03/05/97

1

2 You are entitled to judicial review of this Order.

3 Judicial review is governed by the provisions of ORS

4 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county ordinance changing the
4 county comprehensive plan map designation for 20.4 acres
5 from Forest to Natural Resource and changing the zoning of
6 the 20.4 acres from Impacted Forest Land (F-2/RCP) to Quarry
7 and Mining Operations (QM/RCP).

8 **MOTION TO INTERVENE**

9 Donald Overholser and Rodney Matthews (intervenors),
10 the applicants below, move to intervene on the side of the
11 respondent. There is no opposition to the motion, and it is
12 allowed.

13 **DISCUSSION**

14 The property on which mining operations are proposed
15 has been the subject of two previous opinions of this Board,
16 Gonzalez v. Lane County, 24 Or LUBA 251 (1992) and Palmer v.
17 Lane County, 29 Or LUBA 436 (1995) (Palmer I). In Palmer I
18 we remanded for additional findings on the quantity of the
19 resource and the impact of the proposed mining operations on
20 the county's Major Big Game Habitat. We also required the
21 county to apply Rural Comprehensive Plan (RCP) Goal 5,
22 Policy 7.¹

¹We also sustained an assignment of error pertaining to Lane Code (LC) 16.252(2). However, we concluded that compliance with the Goal 5 planning process and with RCP Goal 5, Policy 7 would be sufficient to show compliance with LC 16.252(2).

1 Petitioners contend in the first and second assignments
2 of error that the county failed to provide adequate notice
3 of the proceedings on remand. The county correctly states
4 that when LUBA remands a local government decision, the
5 local government is not required to repeat the procedures
6 applicable to the initial proceedings unless specifically
7 required by LUBA's remand or the local code itself. East
8 Lancaster Neigh. Assoc. v. City of Salem, 30 Or LUBA 147,
9 154 (1995), aff'd 139 Or App 333 (1996). The notice
10 procedures followed by the county on remand were adequate.

11 In the third assignment of error, petitioners challenge
12 the adequacy of the evidence supporting the county's
13 findings concerning the impacts on Big Game Habitat. We
14 conclude these findings are supported by substantial
15 evidence at Record 175-77 and 358-61, and we reject
16 petitioners' challenge.

17 In the fourth assignment of error, petitioners
18 challenge the adequacy of the evidence supporting the
19 county's findings concerning the quantity and significance
20 of the resource. We conclude these findings are supported
21 by substantial evidence at Record 362-71, and we reject
22 petitioners' challenge.

23 In the fifth assignment of error, petitioners challenge
24 the county's interpretation and application of RCP Goal 5,
25 Policy 7. Petitioners' argument depends on the conclusion,
26 which we reject, that intervenors failed to establish the

1 quantity of the resource. We therefore reject petitioners'
2 challenge to the interpretation and application of RCP Goal
3 5, Policy 7.

4 The balance of petitioners' arguments in these and
5 other assignments of error would expand the issues on appeal
6 beyond the scope of our remand order in Palmer I. We reject
7 them on that basis. Beck v. Tillamook County, 313 Or 148,
8 154, 831 P2d 678 (1992).

9 The county's decision is affirmed.