BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FRIENDS OF THE APPLEGATE WATERSHED, JACK GOLDWASSER, JOAN D. DAVIS and JEAN MOUNT,
Petitioners,

vs.

JOSEPHINE COUNTY,
Respondent,

and

COPELAND PAVING, SAND & GRAVEL, INC.,
Intervenor-Respondent.

LUBA No. 2002-117

FINAL OPINION
AND ORDER

Appeal from Josephine County.

David A. Bahr, Eugene, filed the petition for review and argued on behalf of petitioners. With him on the brief was David Bahr & Associates, P.C.

No appearance by Josephine County.

Frank M. Flynn and Steven L. Pfeiffer, Portland, filed the response brief. Frank M. Flynn argued on behalf of intervenor-respondent. With them on the brief was Perkins Coie, LLP.

HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member, participated in the decision.

AFFIRMED 06/30/2003

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county decision that grants a comprehensive plan amendment to designate the Boersma Site as a "significant" "aggregate resource site," within the meaning of OAR 660-023-0180(3), and to apply comprehensive plan and zoning map designations to allow the site to be mined.

MOTION TO INTERVENE

Copeland Paving, Sand & Gravel, Inc., the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The 67.3-acre Boersma Site is made up of two tax lots, tax lot 2200 and tax lot 1500.[1] Tax lot 1500 was included on the county's comprehensive plan inventory of significant aggregate resources in 1985. The challenged decision amends the Josephine County Comprehensive Plan (JCCP) to list the entire Boersma Site as a significant aggregate resource. The challenged decision also changes the JCCP map designation for the site from "Agriculture" to "Mineral and Aggregate Resource" and changes the Josephine County Rural Land Development Code (JCRLDC) zoning for the site from "Exclusive Farm" to "Mineral and Aggregate Resource."

The site is located in the Applegate River floodplain. The Applegate River adjoins the site on its east and north sides and Slate Creek adjoins the site's west and north sides. The site lies immediately south of a bridge on the Highway 199, which crosses the Applegate River just north of where Slate Creek flows into the Applegate River. Intervenor plans to

[1] Actually the Boersma Site includes only the part of tax lot 1500 that lies south of Highway 199 and the site also includes what apparently is a very small area of highway right-of-way. Differences between the physical characteristics of the individual tax lots and right-of-way parcel are potentially significant in our resolution of the second assignment of error. Otherwise, as far as we can tell, differences between the individual component parts of the Boersma Site are not legally significant, and in this opinion we generally refer to the subject property as tax lots 2200 and 1500 and refer to those tax lots together as the Boersma Site.

mine approximately 35 acres of site and retain approximately 32 acres for setbacks to protect the mining site and preserve riparian habitat.

FIRST ASSIGNMENT OF ERROR

After the application that led to the decision that is the subject of this appeal was submitted on August 18, 2000, the county adopted Ordinance 2000-8 on January 17, 2001. Ordinance 2000-8 adopted JCCP and JCRLDC amendments to bring those documents into compliance with OAR 660-023-0180, the Land Conservation and Development Commission's Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) administrative rule for mineral and aggregate resources. Ordinance 2000-8 also adopted JCCP and JCRLDC amendments that petitioners argue eliminated or relaxed certain criteria that were previously adopted by the county to protect Goal 5 resources in the area of the Boersma Site. Petitioners contend the previously adopted criteria should have been applied to the August 18, 2000 application for a zone change to Mineral and Aggregate Resource, but the county did not apply those criteria.[2]

ORS 215.427(3) establishes a "fixed goal posts" rule for applications for approval of certain types of land use decisions. As we explained in *Rutigliano v. Jackson County*, 42 Or LUBA 565, 571 (2002), the fixed goal posts rule shields "applications for a permit, limited land use decision or zone change" from changes in applicable land use law that are adopted after an application for one of those kinds of land use decisions is complete. Petitioners contend that, because the August 18, 2000 application in this case included a request for a zone change, the county erroneously applied the county land use standards that were adopted by Ordinance 2000-8 on January 17, 2001.

[2] Petitioners specifically identify changes to JCCP Goal 7, which petitioners argue "severely undercut the protections previously afforded natural resources and historic features in conflict with aggregate resource extraction applications." Petition for Review 12. Petitioners also cite changes to Articles 11, 66, 72 and 91 of the JCRLDC, which amend definitions, setback requirements and protections previously afforded Goal 5 resources under the JCRLDC. *Id.*

Intervenor offers several responses to the first assignment of error. The challenged decision provides an additional response that is not mentioned in intervenor's brief. We address a single dispositive response and deny the first assignment of error.

We considered the fixed goal posts rule at some length in our decision in *Rutigliano*. *Rutigliano* involved an amendment to a unified comprehensive plan and zoning map rather than a multi-part application that includes both (1) a request to amend a property's comprehensive plan map designation and (2) a concurrent and dependent request for a zoning map amendment. Our holding in *Rutigliano* was limited to the unified comprehensive plan/zoning map amendment that was before us in that appeal.

> "We conclude that where a county has a unified zoning and comprehensive plan map, such that the zoning map cannot be amended without that amendment being <u>both</u> a 'comprehensive plan change' and a 'zone change,' the fixed goal post rule does not apply. * * * No plausible argument has been presented in this appeal for construing the term 'zone change' broadly enough to include a change to a unified map that is <u>both</u> a zoning map and comprehensive plan map. * * * While the application at issue seeks a 'zone change,' that is not all that it seeks. *Because petitioner's application seeks more than a 'zone change,' it is not limited to one or more of the three kinds of land use applications described in ORS 215.427(1) and is not subject to the fixed goal post rule.* 42 Or LUBA at 574-575 (underscoring in original, italics added).

However, as the concurring opinion in *Rutigiliano* pointed out, our reasoning in that case logically applies equally to cases where "the plan amendment is necessary to effect the zone change." 42 Or LUBA at 578 (Board Member Bassham concurring). That is the situation that we have here. We conclude that the fixed goal post rule established by ORS 215.427(3) does not apply to an application for a zone change where (1) that application for a zone change is part of, or submitted contemporaneously with, an application for a comprehensive plan amendment, and (2) the zone change is requested to implement the

requested comprehensive plan amendment rather than as a separate request that could be approved independently of the requested comprehensive plan map amendment request.[3]

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Post-acknowledgement plan amendments (commonly referred to as PAPAs) to allow aggregate mining are governed by OAR chapter 660 division 023, section 180. Through adoption of Ordinance 2000-8, which we discussed briefly in our resolution of the first assignment of error, the county has incorporated the rule standards into the JCCP and JCRLDC. The starting point in seeking approval of a PAPA to allow mining is to demonstrate that the site where that mining would occur is "significant." OAR 660-023-0180(3). As relevant here, the rule requires that the applicant collect "information regarding the quantity, quality, and location" of aggregate resource on the site and demonstrate that (1) there are at least 100,000 tons of aggregate material that meets certain Oregon Department of Transportation (ODOT) standards,[4] and (2) Class I, II and Unique Soils, as mapped by the Natural Resource and Conservation Service, do not make up more the 35 percent of the site.[5]

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[3] As we noted in our decision in *Rutigliano*, there is *dictum* in our decision in *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LUBA 558, 563, *aff'd* 123 Or App 642, 859 P2d 1208 (1993) that is arguably inconsistent with our holding in this case. 42 Or LUBA 574 n 9. We now disavow that *dictum*, to the extent it is inconsistent with our resolution of petitioners' first assignment of error in this appeal.

[4] As permitted by OAR 660-023-0180(3)(b), Ordinance 2000-8 reduced the 100,000-ton threshold to 60,000 cubic yards or approximately 90,000 tons. Record 31. As explained later in this opinion, the Boersma Site qualifies under either threshold.

[5] The text of OAR 660-023-0180(3) is as follows:

> "An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:
>
> "(a) A representative set of samples of aggregate material in the deposit on the site meets [ODOT] specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley;

Alternatively, aggregate sites that were already listed "in an acknowledged [comprehensive] plan on the applicable date of this rule" automatically qualify as significant aggregate sites. OAR 660-023-0180(3)(c).

Petitioners present two arguments under this assignment of error. First, petitioners contend that the county failed to consider tax lot 1500 and the highway right-of-way portions of the Boersma Site in considering whether that site is made up of more than 35 percent Class I, II, and Unique Soils. Second, petitioners contend that, under Ordinance 2000-8, the county improperly delegated authority to others to make a critical determination under OAR 660-023-0180(3) that the rule requires the county to make.

A. Failure to Consider Tax Lot 1500 and the Right-of-Way

Petitioners' first argument is based on the applicant's initial approach to demonstrating that the Boersma Site is a significant aggregate site. That initial approach took the existing comprehensive plan designation of tax lot 1500 as an aggregate site as sufficient to establish tax lot 1500 as a significant resource site under OAR 660-023-0180(3)(c). Therefore, the analysis was initially limited to tax lot 2200 and the small portion of right-of-way. That analysis showed that tax lot 2200 and the small portion of right-of-way

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> "(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or
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> "(c) The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan on the applicable date of this rule.
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> "(d) Notwithstanding subsections (a) through (c) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996 had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:
>
> "(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or
>
> "(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule[.]"

includes 1.2 million tons of aggregate and only 21 percent of tax lot 2200 and the right-of-way portion of the Boersma Site is comprised of Class I, II or unique soils. Therefore, viewing tax lot 2200 and the small portion of right-of-way alone, that portion of the Boersma Site has sufficient tonnage of aggregate resources (more than 100,000 tons) to qualify as a significant aggregate site. In addition, viewing tax lot 2200 and the small portion of right-of-way alone, it does not have sufficient Class I, Class II and Unique soils to disqualify that portion of the Boersma Site as a significant aggregate site under OAR 660-023-0180(3)(d). Notwithstanding these findings, petitioners contend that the county cannot assume that when the Boersma Site is viewed as a whole, it does not include more than 35 percent Class I, Class II or Unique Soils.

The short answer to petitioners' first argument is that in response to that argument the applicant submitted additional evidence that the county found sufficient to establish that tax lot 1500 contains approximately 431,000 tons of aggregate and includes no Class I, II or Unique Soils. Record 33, 35. Therefore, whether tax lots 2200 and 1500 are analyzed separately or collectively, the Boersma site includes the requisite tonnage of aggregate resource and does not include more than 35 percent Class I, II or Unique Soils.

This subassignment of error is denied.

B. Improper Delegation of the Representative Sampling Determination

JCCP Goal 7, Policy 1.C(7) is one of the measures the county adopted to align the JCCP and JCRLDC with the detailed OAR 660-023-0180 requirements for considering aggregate resource PAPAs. JCCP Goal 7, Policy 1.C(7)(a), however, deviates from the language of OAR 660-023-0180(3)(a).[6] Specifically, petitioners read the "which in the

[6] JCCP Goal 7, Policy 1.C(7) provides:

> "An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets the either of criterion set forth below in subsections [a] or [b], except as qualified by subsection [c]:

judgment of an Oregon Registered Geologist" language in JCCP Goal 7, Policy 1.C(7)(a) to improperly delegate to registered geologists the *county's* responsibility under OAR 660-023-0180(3)(a) to ensure that the samples upon which the OAR 660-023-0180(3) analysis proceeds are "representative." OAR 660-023-0180(3)(a) includes no such language referring to a registered geologist. *See* n 5.

The challenged decision includes unchallenged findings that respond to this argument as well:

> "[Petitioners' attorney] misreads Ordinance 2000-8 relative to Goal 7, Policy 1.C(7)(a) relative to the responsibility allocated to an Oregon Registered Geologist. * * *
>
> "* * * * *
>
> "Based on [the language of Goal 7, Policy 1.C(7)(a)] no delegation of authority is made. The Board retains full responsibility to determine whether a site is significant and an applicant, as the Board [of Commissioners] finds was done in this case, must provide sufficient information to allow the Board [of Commissioners] to make its determination. The sole reason for the reference to a Registered Geologist is to elicit a professional opinion as to whether the data is based on a 'representative set of samples.' This reference does not end the discussion on even this matter should a contrary professional opinion be presented. * * *" Record 34-35.

> "(a) Based on a set of samples *which in the judgment of an Oregon Registered Geologist* is representative of aggregate material in the deposit, the material on the site meets:
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> "i. [ODOT] specifications for base rock for air degradation, and abrasion; and
>
> "ii. For material to be used in concrete, Portland cement and asphaltic concrete**,** the [ODOT] specifications for sodium sulfate soundness (ODOT TM 206 test); and
>
> "iii. The estimated amount of material is more than 60,000 cubic yards; or
>
> "(b) The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.
>
> "(c) An aggregate site is not significant if more than 35 percent of the proposed mining area consists of soil classified as Class I, Class II, or of a combination of Class II and Class I or Unique soil on Natural Resource and Conservation Service (NRCS) maps as of September 1, 1996[.]" (Emphasis added.)

The challenged decision goes on to state that it relied on the applicant's geologist's testimony concerning the sampling and points out that opponents presented no differing professional opinion on whether the samples were representative.

We understand the county to take the position that it interprets JCCP Goal 7, Policy 1.C(7)(a) to require that the applicant provide the county with a professional opinion by a registered geologist concerning the representativeness of the sampling done in support of an application for a PAPA under OAR 660-023-0180(3) and JCCP Goal 7, Policy 1.C(7), which the county may then rely on as substantial evidence in the absence of an opposing opinion regarding the required sampling. We agree with the county that, provided JCCP Goal 7, Policy 1.C(7)(a) is interpreted and applied in that manner, it is not an improper delegation of the county's duties under OAR 660-023-0180(3).

This subassignment of error is denied.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

As originally proposed, existing local roads were to be used for access to the Boersma Site. During the local proceedings, that aspect of the proposal was changed. Intervenor now proposes to construct direct access onto state Highway 199 and will therefore use no local roads for access. ODOT has indicated that, compared to the original proposal to use local roads, it prefers the direct access onto Highway 199. Record 227. However, ODOT has not yet issued a permit to allow construction of the direct access. The challenged decision is conditioned on intervenor obtaining an access permit from ODOT and constructing that Highway 199 access and a bridge across Slate Creek to provide access to the Boersma Site. Record 80. Petitioners contend the county has improperly deferred final resolution of access and transportation impact issues to ODOT where there is no right of

public participation. Petitioners argue this improper deferral is insufficient to satisfy the obligation that OAR 660-023-0180(4)(b)(B) imposes on the county.[7]

OAR 660-023-0180(4) requires that the county identify an impact area and identify conflicts within that impact area that may result from a proposed mining operation. However, OAR 660-023-0180(4)(b) limits the required conflicts analysis in a number of ways. OAR 660-023-0180(4)(b)(B), on which petitioners rely, is actually a limit on the county's authority to consider mining conflicts with roads.[8]

Intervenor contends that by virtue of the changed proposal to eliminate any use of local roads for access to the Boersma Site mine, there are no conflicts with local roads to be considered under OAR 660-023-0180(4)(b)(B). We agree. As we explained in *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85, 98-99 (1999), *aff'd* 165 Or App 512, 996 P2d 1023, *rev den* 330 Or 363 (2000), the conflicts analysis that is mandated by OAR 660-023-0180(4)(b)(B) is limited to local roads that are used for access and egress. Because no local roads will be used for access or egress, and access and egress to and from the site will instead be from state Highway 199, the county correctly concluded that there were no conflicts with

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[7] We set out the text of OAR 660-023-0180(4)(b)(B) in footnote 8 below.

[8] As relevant, OAR 660-023-0180(4)(b) provides:

> "* * * For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:
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> "* * * * *
>
> "(B) Potential conflicts to *local roads* used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials[.]" (Emphasis added.)

local roads to be considered in analyzing possible conflicts associated with the Boersma Site under OAR 660-023-0180(4)(b)(B).

Petitioners' contention that the county should have considered and made a final decision concerning the feasibility of intervenor's proposal to use Highway 199 for access, because ODOT does not provide a comparable public process to approve such access, is not well taken. Petitioners rely on *Deal v. City of Hermiston*, 35 Or LUBA 16 (1998), for the broad principle that a local quasi-judicial public process is invariably required when a local government approves a permit for development that will also be required to comply with permit requirements of another governmental body, unless that other body will provide a similar public process before issuing any required permits.

We reject the argument. *Deal* involved city approval of a multi-family dwelling development where the relevant question was whether the city had adequately addressed *city* approval criteria that, among other things, required that the city consider whether the proposal would have "adverse impacts on surrounding properties." 35 Or LUBA at 23. The city appeared to have deferred consideration of that requirement due to a lack of evidence about likely impacts. 35 Or LUBA at 22. We fail to see how *Deal* has any bearing on this case, where the conflicts that petitioners contend the county erred by not considering (presumably conflicts that may be associated with direct state highway access) are clearly beyond the conflicts that OAR 660-023-0180(4)(b)(B) permits the county to consider in this PAPA proceeding.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Under this assignment of error, petitioners allege the county erred by approving the disputed PAPA without demonstrating that the proposed mining operation will comply with Goal 3 (Agricultural Lands). Petitioners do not clearly identify precisely what part of Goal 3 they believe applies to the challenged decision or why that Goal 3 requirement is violated.

However, OAR 660-023-0180(4)(b)(E) requires that the county consider whether a proposed mining operation would have "[c]onflicts with agricultural practices[.]" If it will have such conflicts, the county must identify "reasonable and practicable measures that would minimize the [identified] conflicts[.]" OAR 660-023-0180(4)(c). In determining whether "proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed[.]" *Id.*

The county's consideration of potential conflicts with agricultural practices appears at Record 54-60. The county's conclusion that all potential mining/agricultural practices conflicts can be minimized appear at Record 62-66 (farm machinery movement, noise and dust, crop production, grazing, livestock maintenance, flooding and erosion) and Record 71-72 (wells).

Petitioners dispute the county's conclusion that the approved mine will not result in flooding and erosion that is inconsistent with Goal 3. In particular, petitioners submitted evidence below that a rock sill and rip rap that will be installed to protect the mining site, and to protect a northern outlet channel that will connect the mining pit with Slate Creek and the river at the north, will have the ultimate effect of deflecting the meandering main channel of the Applegate River east or west. Petitioners contend that the existing location of the main channel, which the proposal seeks to perpetuate, is causing erosion along the east bank of the river with a resulting loss of farmland. If the channel is deflected further to the east, there will be a greater loss of farmland. If the river is deflected west of the mining pit, petitioners contend there would also result in erosion of adjoining farmlands.[9] Petitioners' experts offered a number of criticisms of the manner in which intervenor's expert used a hydrologic

[9] Petitioners believe a more likely scenario is that the river will ultimately reclaim the main channel it occupied in the late 1960s in the general area of the proposed mining pits. Petitioners are concerned that if such a sudden relocation of the main channel occurs during a flood event after mining commences, the resulting deeper main channel in that location will destroy valuable fish habitat. We note this concern under our discussion of the sixth assignment of error.

model and criticized other data and assumptions used by intervenor's experts in support of their position that the mine will not result in the river relocation and erosion that petitioners fear.[10]

The county rejected petitioners' concerns, based largely on testimony from the Oregon Department of Geology and Mineral Industries (DOGAMI), David J. Newton Associates, Inc. (Newton) and Pacific Habitat Services (PHS). The county explained that reasonable experts may differ over the technical questions raised by petitioners, but the county concluded that it chose to rely on the studies prepared by Newton and the responses that were prepared and submitted by Newton and DOGAMI and PHS to the questions and criticisms that petitioners' experts raised. The county went on to explain:

> "* * * The Board [of Commissioners] finds the Applicant's testimony to be credible and substantial evidence demonstrating that the rock rip rap intended to stabilize the connection to the channel will not cause increased erosion. Among the reasons supporting this finding is the fact that the rock is placed on a different (secondary) channel [rather than] the primary river channel, and that the rock will be placed parallel to the river flow and not perpendicular so flow will not be deflected to the already eroding bank. * * *
>
> "The Board [of Commissioners] also finds that the arguments presented to the Board [of Commissioners] that 'rock sills' installed in some cases about 100 feet from the Applegate River will cause additional [erosion] or prevent a decrease in erosion at the Townsend berry farm [to the east] are not substantiated with sufficient evidence to contradict the Applicant's testimony. The Board [of Commissioners] bases this finding on evidence in the entire record, including credible and substantial testimony provided by the Applicant, in particular, by Newton, and DOGAMI and finds that opposition's testimony on this matter is not persuasive.
>
> "The Board [of Commissioners] finds that the likelihood that the Applegate River will 'capture the mining pit' is low and that such an action is not a significant potential conflict within the meaning of the relevant standard. This finding is based on the record as a whole and in particular on the substantive and credible evidence presented by Newton, PHS and DOGAMI.

[10] Petitioners cite and rely in particular on testimony submitted below by Mr. Richard Nawa of the Siskiyou Project and Dr. Christine Perala of WaterCycle, Inc.

> "The Board [of Commissioners] finds that the mining operation is not likely to influence long term stream migration in a manner that would cause a significant potential conflict to agricultural practices or to other existing or approved uses within the impact area. The Board [of Commissioners] bases its finding on credible and substantial evidence in the record as a whole and in particular on testimony presented by DOGAMI, PHS and Newton." Record 65-66

In its brief, intervenor provides citations to the documents and testimony that are cited and relied on in the above-quoted findings. Intervenor's Brief 17-20.

We have reviewed the evidence cited by petitioners and the county. We do not pretend to fully understand all of that evidence, and both petitioners' evidence and the evidence that the county ultimately chose to rely on has some identified shortcomings. However, on appeal, LUBA does not conduct its own balancing of the evidence, reach its own conclusion about which evidence to believe and substitute that judgment if it differs with the evidentiary judgment of the decision makers. *1000 Friends of Oregon v. Marion County*, 116 Or App 584, 588, 842 P2d 441 (1992). Neither does LUBA remand a land use decision simply because some of the evidence that decision relies on may have some identified shortcomings. The relevant inquiry in considering an evidentiary challenge to a land use decision is whether the evidentiary record, viewed as a whole, includes supporting evidence that a reasonable person could rely upon to adopt the land use decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). Applying that standard of review here, the county's decision is clearly supported by substantial evidence and that decision adequately explains why it rejected petitioners' Goal 3 challenge.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

Although significant aggregate resource sites are among the resource sites that must be protected under the Goal 5 administrative rule, in determining whether to allow a significant aggregate resource site to be mined, the county must consider the conflicts such

mining may have with other Goal 5 resource sites. OAR 660-023-0180(4)(b)(D).[11] Petitioners contend that the county did not adequately consider conflicts with other inventoried Goal 5 resource sites.

Because we deny petitioners' first assignment of error, we must deny petitioners' fifth assignment of error. The only other Goal 5 resources that petitioners suggest the county failed to consider in this matter are Goal 5 resources that apparently were protected by JCCP and JCRLDC provisions that were adopted by Ordinance 2000-3. As we have already explained, Ordinance 2000-3 was repealed by Ordinance 2000-7 and new Goal 5 JCCP and JCRLDC provisions were adopted by Ordinance 2000-8 and became part of the county's acknowledged plan and land use regulations before the challenged decision was adopted. It is those acknowledged Goal 5 JCCP and JCRLDC provisions that applied to the disputed decision, and we do not understand petitioners to allege that the county failed to consider conflicts with the "acknowledged list of significant resources" in the JCCP as amended by Ordinance 2000-8.

The fifth assignment of error is denied.

SIXTH ASSIGNMENT OF ERROR

Statewide Planning Goal 6 (Air, Water and Land Resources Quality) provides, in relevant part:

> "All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards."

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[11] OAR 660-023-0180(4)(b)(D) limits the county's obligation to consider other Goal 5 resource sites to the following:

> "Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated[.]"

Petitioners contend the challenged decision violates Goal 6 because the mining activities that are authorized by the decision will violate the federal Clean Water Act and Endangered Species Act. Petitioners presented a significant amount of testimony in support of their position that the proposed mine would have significant adverse environmental consequences and would violate the Clean Water Act and Endangered Species Act.

As we explained in *Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 583 (1995), "Goal 6 does not require a local government to demonstrate that its decision will not cause any adverse environmental impact on individual properties." We described the more limited obligation that Goal 6 imposes on a decision maker in considering a request for land use approval for a proposal that will subsequently be subject to state and federal environmental permitting requirements as follows:

> "When a property's comprehensive plan and zoning map designations are changed to allow a particular use of that property, Goal 6 requires the local government to adopt findings, supported by substantial evidence, explaining why *it is reasonable to expect that applicable state and federal environmental quality standards can be met by the proposed use*." *Id*. (Emphasis added.)

The function served by Goal 6 is not to anticipate and precisely duplicate state and federal environmental permitting requirements. The function of Goal 6 is much more modest. Goal 6 requires that the local government establish that there is a *reasonable expectation* that the use that is seeking land use approval will also be able to comply with the state and federal environmental quality standards that it must satisfy to be built.

The applicant submitted an assessment of wetlands and sensitive species habitat on the Boersma Site, which was prepared in part to address Clean Water Act requirements. Record 811-830. The applicant also submitted a biological assessment that was prepared in part to address Endangered Species Act requirements. Record 839-881. Much of the debate below concerned the potential impacts of the proposed mining on endangered salmon habitat. That debate included questions regarding whether the proposed gravel pits that would be created by the proposed mining could be managed to serve as suitable backwater habitat

(cold water refugia). Other issues were raised concerning whether Slate Creek and the Applegate River would be dewatered by the mining operation, and whether the resulting loss of cold groundwater inflow and the introduction of warmer water inflow from the mining pits, might render Slate Creek unsuitable as cold water habitat for salmon. Another concern, which was mentioned briefly earlier, has to do with a possible shift of the main channel of the Applegate River to claim the mined pits (river avulsion), which could have adverse impacts on fish habitat, particularly lower Slate Creek. Other concerns were expressed that the applicant had not adequately documented the potential loss of wetlands associated with the Applegate River and Slate Creek. A relatively detailed statement of petitioner's major concerns appears at Record 1391-1408. A relatively detailed response to those concerns by PHS appears at Record 1535-1543.

From our review of the record it is quite clear that petitioners' experts and the applicant's expert disagree concerning the magnitude of the threat of environmental degradation posed by the proposed mining operation and whether that threat can be adequately managed or mitigated. However, the county is not required to accurately predict at this land use approval stage whether the applicant or the opponents will prevail before state and federal environmental permitting authorities. As we noted earlier, the county is only required to consider the evidentiary and legal arguments advanced by the parties and establish that it is reasonable to expect that the applicant will be able to establish that the proposed mining operation will meet state and federal environmental standards. The challenged decision acknowledges the major environmental issues that were raised by the opponents below and adequately addresses this obligation under Goal 6. Record 86-94. The county's discussion of its obligation under Goal 6 is supported by a great deal of evidence in the record. Petitioners dispute the adequacy and reliability of much of the evidence the county ultimately chose to rely on. However, we agree with intervenor that the evidence that was submitted in support of the application and in response to petitioners' objection is such

that a reasonable person could have relied on that evidence to reach the decision that the county reached in this matter.

The sixth assignment of error is denied.

The county's decision is affirmed.