

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

4 NICK LAURANCE and  
5 WESTERN OREGON DOOR LLC,  
6 *Petitioners,*

7  
8 vs.  
9

10 DOUGLAS COUNTY,  
11 *Respondent,*

12 and

13  
14  
15 SUNDANCE ROCK, INC,  
16 *Intervenor-Respondent.*

17  
18 LUBA No. 2003-050

19  
20 FINAL OPINION  
21 AND ORDER  
22

23 Appeal from Douglas County.

24  
25 Douglas M. DuPriest, Eugene, filed the petition for review and argued on behalf of  
26 the petitioners. With him on the brief was Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock  
27 P.C.  
28

29 No appearance by Douglas County.  
30

31 Stephen Mountainspring, Roseburg, filed the response brief and argued on behalf of  
32 intervenor-respondent. With him on the brief was Dole, Coalwell, Clark, Mountainspring,  
33 Mornarich & Aitken P.C.  
34

35 BRIGGS, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,  
36 participated in the decision.  
37

38 AFFIRMED

09/24/2003

39  
40 You are entitled to judicial review of this Order. Judicial review is governed by the  
41 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners challenge a county decision approving a conditional use permit for a quarry operation on a 76.69-acre parcel.

**FACTS**

The subject property is located approximately one-half mile south of the City of Winston. The property is zoned Farm Forest (FF) and occupies a very steep north-facing hillside that overlooks the adjoining industrial and agricultural lands lying immediately to the north.

Intervenor-respondent (intervenor) also owns a 10-acre parcel that abuts the subject property to the north. That 10-acre parcel is zoned Heavy Industrial (M-3), and is developed with a rock crushing and processing operation. Access to both the subject property and the 10-acre parcel is via a private access road that lies next to property occupied by petitioner Western Oregon Door.

In 1994, intervenor obtained a conditional use permit to conduct mining operations on the 10-acre parcel. The conditional use permit included conditions that (1) limited the hours of operation; (2) limited the hours when blasting is permitted; and (3) required intervenor to notify neighbors of plans to blast within two hours prior to the blast. In 2002, intervenor filed an application for conditional use approval to extend mining operations upslope onto the subject property.

Numerous persons appeared before the county planning commission in opposition to the mining proposal. Opponents argued that the topography of the area caused the sound of mining, blasting and processing to be amplified toward residences to the north. In addition, there was testimony that (1) dust, noise and vibrations generated by mining on the 76-acre parcel would adversely affect nearby agricultural activities; (2) dust, noise and vibrations from blasting have affected and will adversely affect residents in the area, including students

1 attending a school located in nearby Winston; (3) dust and blasting vibrations have affected  
2 and will affect petitioner Western Oregon Door’s business operations; and (4) intervenor’s  
3 frequent violations of the conditions of the 1994 conditional use permit pertaining to hours of  
4 operation, blasting and notice provide evidence that intervenor is unlikely to comply with  
5 conditions of approval that limit mining of the subject property.

6 The planning commission approved intervenor’s application, with conditions of  
7 approval that clarified and amplified the county’s expectations with respect to noise, dust  
8 suppression, hours of operation and notice to neighbors regarding blasting. Petitioner Nick  
9 Laurance, on behalf of himself and several other opponents, appealed the planning  
10 commission’s decision to the board of county commissioners. The board of county  
11 commissioners declined to review the planning commission decision. This appeal followed.

12 **JURISDICTIONAL CHALLENGES**

13 Under ORS 197.825(2)(a), petitioners at LUBA must demonstrate that they have  
14 “exhausted all remedies available by right before petitioning the [B]oard for review.”  
15 Intervenor moves to dismiss this appeal, arguing that (1) petitioners have not exhausted local  
16 remedies; and (2) petitioner Western Oregon Door does not have standing to appeal.

17 **A. Exhaustion of Local Remedies**

18 Intervenor argues that petitioners have not demonstrated that they exhausted local  
19 remedies, because petitioner Western Oregon Door did not participate in the request for  
20 review by the board of county commissioners. According to intervenor, petitioner Laurance’s  
21 representation that he was filing a local appeal on behalf of others, including Western  
22 Oregon Door, was not effective because a person who is not an attorney may not file an  
23 appeal on another’s behalf. Intervenor argues that if petitioner Western Oregon Door had  
24 requested review, the board of county commissioners may have exercised its discretionary  
25 review authority and granted a local appeal.

1           We do not agree that it is necessary for petitioner Laurance and petitioner Western  
2 Oregon Door to have appealed the planning commission’s decision to the board of county  
3 commissioners in order to conclude that petitioners exhausted their local remedies. There is  
4 no dispute that petitioner Laurance filed a local appeal and that local appeal was sufficient to  
5 satisfy the ORS 197.825(2)(a) exhaustion requirement. *Glisan Street Associates v. City of*  
6 *Portland*, 24 Or LUBA 600, 601 (1992); *McConnell v. City of West Linn*, 17 Or LUBA 502,  
7 507 (1989).

8           **B.       Western Oregon Door’s Standing**

9           Intervenor also argues that petitioner Western Oregon Door does not have standing to  
10 appeal the county’s decision, because it did not effectively join in petitioner Laurance’s  
11 appeal. As we have already explained, even if petitioner Oregon Western Door did not join  
12 in petitioner Laurance’s appeal of the planning commission decision to the county  
13 commissioners, there is no exhaustion problem under ORS 197.835(2)(a). The standard for  
14 establishing standing to appeal a local government’s decision to LUBA is set out at ORS  
15 197.830(2):

16           “[A] person may petition [LUBA] for review of a land use decision or limited  
17 land use decision if the person:

18           “(a)   Filed a notice of intent to appeal the decision \* \* \*; and

19           “(b)   Appeared before the local government, special district or state agency  
20 orally or in writing.”

21           Petitioner Western Oregon Door participated during the proceedings before the  
22 planning commission, and its attorney filed the notice of intent to appeal with LUBA.  
23 Therefore, petitioner Western Oregon Door has standing to appeal the county’s decision.  
24 *Miller v. Washington County*, 25 Or LUBA 169, 172 (1993).

25           Intervenor’s jurisdictional challenges are denied.

1 **INTERVENOR’S OBJECTION TO CONSIDERATION OF EVIDENTIARY**  
2 **ARGUMENT PROVIDED BY PETITIONERS AT ORAL ARGUMENT**

3 Following oral argument in this appeal, intervenor filed the following objection:

4 “Intervenor-respondent objects to certain aspects of petitioners’ oral argument  
5 before LUBA on September 4, 2003, namely, petitioners raised two issues for  
6 the first time during rebuttal:

7 “(1) The impact of the proposed mining operation on cattle farming.

8 “(2) The impact of the proposed mining operation on ‘u-pick’ farming.

9 “Neither issue was raised in the petition, nor during petitioners’ first session  
10 of oral argument.

11 “Considering these arguments at this stage of the proceeding would  
12 substantially prejudice intervenor-respondent’s rights, as it has no opportunity  
13 to respond to the new issues.” Objection to Oral Argument 1.

14 We are not sure we understand intervenor’s objection. In petitioners’ first assignment  
15 of error they allege the proposed mining would be incompatible with nearby agricultural  
16 uses. In petitioners’ second assignment of error they allege the proposed mining would  
17 significantly change or significantly increase the cost of accepted farming practices on  
18 nearby lands. While cattle farming and u-pick farming are not expressly referenced in the  
19 petition for review, petitioners are clearly taking issue with the county’s conclusion that the  
20 proposed mining will be compatible with nearby agricultural uses and that the mining will  
21 not significantly change or increase the cost of accepted farming practices.

22 In its response brief, intervenor contends that the petition for review includes  
23 numerous allegations of fact that are not supported by substantial evidence. In response to  
24 that argument, petitioners cited to evidence in the record during their oral argument at  
25 LUBA. Intervenor’s argument may be that petitioners may not, for the first time in its  
26 concluding rebuttal argument, cite to evidence in the record of mining impacts on cattle  
27 farming and u-pick farming. We agree with intervenor, but the question is whether

1 petitioners’ first citations to evidence in the record of mining impacts on cattle farming and  
2 u-pick farming were provided during final rebuttal at oral argument.

3 As far as we can tell, petitioners’ final record citation to the mining impacts on cattle  
4 ranching and u-pick farms were first provided during final rebuttal at oral argument.  
5 However, we do not see that our consideration of those record cites makes any difference in  
6 our resolution of any issues in this appeal. Accordingly, even assuming that petitioners erred  
7 in providing those record citations for the first time during rebuttal, we do not see that  
8 intervenor has been prejudiced. Intervenor’s motion is denied.

9 **FIRST ASSIGNMENT OF ERROR**

10 Douglas County Land Development Ordinance (DCLDO) 3.5.100.2 permits “mining  
11 and processing of aggregate and mineral resources” provided the proposed mining activities  
12 comply with general conditional use criteria set out at DCLDO 3.39.050, as well as the  
13 specific standards for nonfarm uses set out at DCLDO 3.5.125.3. DCLDO 3.39.050 provides,  
14 in relevant part:

15 “The Approving Authority may grant a request for conditional use approval if  
16 the following criteria are met:

- 17 “1. The proposed use is or may be made compatible with existing adjacent  
18 permitted uses and other uses permitted in the underlying zone.”

19 The planning commission, relying on a prior interpretation of DCLDO 3.39.050.1  
20 made by the board of county commissioners, interpreted DCLDO 3.39.050.1 to require  
21 consideration of only those uses that exist on adjacent properties, and other *existing* uses that  
22 are permitted in the FF zone. The planning commission concluded that a quarry on the  
23 subject property could be made compatible with those existing uses, provided intervenor  
24 complied with conditions of approval that addressed opponents’ concerns regarding dust,  
25 noise and blasting.

26 In addition, the planning commission interpreted “compatible” as that word is used in  
27 DCLDO 3.39.050.1:

1           “\* \* \* [T]he term ‘compatible’ is not intended to imply that a conditionally  
2 permitted use should have no interference or adverse impact whatsoever on  
3 adjacent uses. This standard of compatibility has been affirmed by [LUBA].  
4 \* \* \* This standard has been codified in [OAR 660-004-0020(2)(d)], which  
5 state[s] in relevant part: ‘Compatible’ is not intended as an absolute term  
6 meaning no interference or adverse impacts of any type with adjacent uses.’  
7 \* \* \* Following this general compatibility standard, Douglas County has  
8 traditionally engaged in a subjective balancing test to determine if the  
9 potential impact of a proposed conditional use is significant enough to be of  
10 justifiable concern to a reasonable person, and whether such potential impact  
11 can be mitigated to the point where it would not constitute a justifiable  
12 concern to a reasonable person. That is the standard the Commission will  
13 apply to the issues of compatibility raised in this matter.” Record 15.

14           **A. Interpretation and Application of DCLDO 3.39.050(1)**

15           Petitioners challenge the planning commission’s conclusion that DCLDO 3.39.050.1  
16 is satisfied. Petitioners argue that the planning commission wrongly interpreted the standard  
17 to be limited to whether the proposed quarry is compatible with existing uses. Petitioners  
18 contend that, under DCLDO 3.39.050.1, the planning commission must also consider  
19 whether the proposed quarry is compatible with other uses that are permitted in the zone.  
20 Petitioners argue that the county’s decision fails to address the impact that mining might  
21 have on permitted uses that do not currently exist in the surrounding FF-zoned land.

22           Intervenor responds that petitioners waived that issue by not raising it below. ORS  
23 197.763(1); ORS 197.835(3). Petitioners point to provisions in the DCLDO that permit  
24 schools and residences in the FF zone. Petitioners then point out that issues were raised  
25 below regarding the impact of the blasting and dust on the school in nearby Winston and on  
26 homes located in the area. Petitioners argue that the impacts of mining on the existing  
27 residences located outside of the FF zone are similar or otherwise indicative of the impacts of  
28 mining on those same uses when they are located within the FF zone. Petitioners contend that  
29 by raising these issues, the planning commission was put on notice that it should have  
30 considered uses permitted in the FF zone, not just existing uses.

1 We disagree. Issues raised by opponents regarding the quarry's compatibility or  
2 incompatibility with uses located in urban areas have no bearing on whether those quarry  
3 operations are incompatible with uses that could be permitted in the FF zone, but do not yet  
4 exist. We therefore agree with intervenor that petitioners have not demonstrated that they  
5 raised the issue of the proper interpretation of DCLDO 3.39.050.1. We will disregard  
6 arguments based on petitioners' theory that the county is obliged to consider uses permitted  
7 in the FF zone, regardless of whether they currently exist in the area.

8 **B. Adequacy of Findings that the Proposed Mining Activities Will Not be**  
9 **Significantly More Intensive than Mining on the 10-Acre Parcel**

10 The planning commission's approval with conditions is based in large part on  
11 intervenor's assertions that the proposed mining activity will not be significantly more  
12 intense than the mining that has occurred on the 10-acre parcel. According to intervenor, that  
13 activity includes approximately the same level of extraction, the same amount of blasting,  
14 and the essentially the same noise, dust, and vibration impacts.

15 Petitioners argue that the planning commission's conclusions regarding the level and  
16 intensity of mining on the subject property are not supported by substantial evidence,  
17 because mining the 10-acre site immediately to the south of intervenor's processing site has  
18 fewer impacts than mining upslope and to the southwest. According to petitioners, those  
19 substantially greater impacts that will result from the expansion include (1) the need for  
20 additional interior haul roads to transport the rock from the expanded mining site to the  
21 processing area, which will result in a new source of dust; and (2) louder noises having a  
22 greater sound range, because of the amphitheatre effect of mining up the side of the hill. In  
23 addition, petitioners argue that intervenor's past mining practices included creating a ledge  
24 above the processing area, blasting above the ledge and then pushing the blasted rock over  
25 the ledge into the processing area below. Petitioners contend that pushing the rock over the  
26 ledge produces a significant amount of dust, and that the creation of higher ledges will result  
27 in a greater amount of dust.

1           Intervenor argues that petitioners waived these issues by not raising them below.  
2           Petitioners do not respond to intervenor’s waiver argument. Accordingly, these issues are  
3           waived.

4           **C.     Adequacy of Findings Regarding Compatibility with Western Oregon**  
5           **Door<sup>1</sup>**

6           Petitioners argue that the county’s findings that the quarry operation can or will be  
7           made compatible with petitioner Western Oregon Door’s business are not adequate.  
8           According to petitioners, the county’s decision inadequately responds to issues raised by  
9           Western Oregon Door regarding (1) the effect of dust from the mining and transport of rock  
10          on the existing haul road on Western Oregon Door’s finishing processes; (2) intervenor’s  
11          failure to properly maintain the private access road to minimize dust; (3) the failure of trucks  
12          traveling on the private access road to maintain safe speeds; (4) the impact of blasting on  
13          Western Oregon Door’s computer operations; and (5) intervenor’s failure to provide  
14          adequate notice of plans to blast. Petitioners contend that the proposed mining operation  
15          cannot be made compatible with door finishing, especially where a portion of the subject  
16          property is closer to Western Oregon Door’s operation than the existing 10-acre mining site,  
17          and encompasses almost eight times the amount of area.

18          The planning commission concluded that the amount of dust generated from mining  
19          on the subject property would not significantly increase the dust levels in the area.<sup>2</sup> To

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<sup>1</sup> We address petitioners’ arguments with respect to compatibility with farm uses under the second assignment of error.

<sup>2</sup> The planning commission’s findings state, in relevant part:

“[T]he Planning Commission finds that, while blasting will produce some level of noise that can be heard by residents who live as much as three-quarters of a mile away from the quarry site, there is no evidence in the record that leads the Commission to conclude that the anticipated level and frequency of blasting will, when regulated through the imposition of reasonable restrictions and limitations on such activity, be incompatible with existing adjacent permitted uses \* \* \*. The Commission has therefore set out specific conditions of approval that will further ensure that blasting at the quarry will not be incompatible with adjacent uses by restricting the days and hours within which blasting can occur, by restricting the amount of

- 1 address concerns regarding the impact of the proposed mining, the planning commission
- 2 conditioned approval of intervenor's mining application to require that (1) intervenor comply

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blasting agent that can be used in a single blast event; by prescribing measures designed to confine the blast effects below the surface of the ground; and, by establishing procedures requiring [intervenor] to give advance notice of all blasts to those persons in the surrounding area who desire such notice. On the basis of the foregoing, the Planning Commission concludes that the proposed conditional use can be made compatible with existing adjacent permitted uses \* \* \*." Record 18.

"Within the scope of the [conditional use] review criteria, the question to be considered by the Planning Commission is not whether the proposed quarry will generate dust, but rather whether the dust produced by the quarry is of such a nature so as to be found to be incompatible with existing adjacent permitted uses; and, if the Commission were to find that the proposed quarry could potentially generate dust that would be incompatible with adjacent uses, can the use be made compatible with adjacent uses through the imposition of special conditions and restrictions on the operation that would be sufficient to mitigate the potential impact of the dust to a point where the quarry would not be incompatible with adjacent uses.

"In considering these questions of compatibility relevant to the issue of dust, the Planning Commission has weighed the evidence contained in the whole record and finds that although the proposed quarry will likely be a source of dust, it will be only one of several other sources of dust that already exist in the surrounding area. The Commission finds that there are a number of wood products manufacturing plants in the \* \* \* area which generate significant amounts of airborne contaminants. Additionally, there are sizable farming operations being conducted on the alluvial flood plain soils of adjacent properties, which when plowed and cultivated during the dry summer months, raise significant quantities of dust. Finally, the Commission takes notice of the fact that there is a large rock quarry located only about one-half mile to the southwest of the subject site which is mining rock from the same ridge as [intervenor's] quarry, and which presently conducts essentially the same kind of activities as those proposed for the applicant's quarry, including drilling, blasting, crushing and hauling of rock. In \* \* \* light of these facts, the Planning Commission would be hard pressed to conclude that the proposed quarry would be incompatible with existing permitted uses on adjacent lands because it produces some amount of dust, when the uses being conducted on those very lands are themselves the source of significant amounts of airborne dust.

"On the basis of the foregoing, the Planning Commission finds that, while there are a variety of activities associated with the proposed quarry operation that will produce some amount of dust, there is no evidence in the record that leads the Commission to conclude that the quarry operation will, when regulated through the imposition of reasonable restrictions and limitations on those activities, generate sufficient dust so as to be incompatible with existing adjacent permitted uses and other uses permitted in the underlying zone. \* \* \* [C]onditions of approval include such measures as requiring the quarry operator to maintain the private haul road with an oil mat, chip seal or asphalt paved surface; requiring periodic washing of the haul road to remove accumulated dirt and dust; requiring application of a dust palliative to the graveled surfaces within the processing area; and restricting the speed limit of vehicles using the private haul road. Within the context of mitigating potential sources of dust, the conditions of approval will also restrict the amount of blasting agent that can be used in a single blast event and prescribe measures designed to better confine the blast effects below the surface of the ground. On the basis of the foregoing, the Planning Commission concludes that the proposed conditional use can be made compatible with existing adjacent permitted uses \* \* \*." Record 19-20.

1 with Department of Environmental Quality (DEQ) clean air standards; (2) intervenor pave  
2 the access road to limit dust from trucks traveling on the road; and (3) the paved surface be  
3 kept clear of dirt and debris. In addition, the planning commission adopted conditions of  
4 approval that limit the hours and days that blasting can occur; and require intervenor to  
5 provide written notice of anticipated blasting 72 hours prior to blasting, and provide  
6 telephone notice not less than two hours, nor more than 24 hours, prior to blasting, to persons  
7 requesting such notice. Many of those conditions of approval were directed at minimizing the  
8 impact the proposed mining activities would have on petitioner Western Oregon Door's  
9 business. Record 108-111.

10 We conclude the findings are adequate to explain why the planning commission  
11 concluded that the proposed mining activity, as conditioned, would satisfy the compatibility  
12 standard set out at DCLDO 3.39.050.1 with respect to Western Oregon Door. The findings  
13 recognize that the proposed mining would generate some dust, but conclude that, with the  
14 conditions of approval, it would not result in an increased level of dust that would  
15 significantly impede petitioner Western Oregon Door's operations. We also conclude that  
16 those findings are supported by substantial evidence, including (1) evidence that other farm,  
17 forest and industrial operations in the vicinity produce dust that can affect petitioner Western  
18 Oregon Door's finishing processes; and (2) evidence that other businesses' computer  
19 operations in the vicinity have not been significantly impeded by blasting.

20 The first assignment of error is denied.

21 **SECOND ASSIGNMENT OF ERROR**

22 The county addressed petitioners' concerns with respect to compatibility between  
23 mining and agricultural uses under DCLDO 3.39.050.1, which is set out in our discussion of  
24 the first assignment of error, by applying the standard set out at DCLDO 3.5.125.3(a), which  
25 provides in relevant part, that

1           “The proposed use will not force a significant change in, or significantly  
2           increase the cost of, accepted farming or forest practices on adjacent  
3           agricultural or forest lands[.]”

4           Part of petitioners’ first assignment of error and all of petitioners’ second assignment  
5           of error pertain to petitioners’ contentions that the proposed mining activity is not compatible  
6           with agricultural uses in the vicinity, and will force a significant change in and increase the  
7           cost of accepted farming practices.

8           Petitioner Laurance and others testified that the proposed mining activity would not  
9           be compatible with nearby agricultural activities. According to petitioners, the proposed  
10          mining would result in vibration, noise and dust that is incompatible with farm practices. In  
11          particular, petitioners argue that mining on the 10-acre parcel has resulted in dust settling on  
12          petitioner Laurance’s walnut orchard, making it more susceptible to diseases and limiting  
13          photosynthesis, resulting in lower yields. Petitioners also argue that the dust from  
14          intervenor’s mining activity has negatively affected the health of farm families. Finally,  
15          petitioners argue that the county does not address concerns raised regarding the effect the  
16          proposed mining has on petitioner Laurance’s u-pick business, and inadequately addressed  
17          petitioners’ other concerns about impacts the quarry operation will have on farm practices.

18          The planning commission interpreted the word “significant” as it is used in DCLDO  
19          3.5.125.3(a) to mean that a proposed conditional use may not be approved if it will have  
20          “significant negative consequences for adjacent agricultural \* \* \* lands.” Record 22. The  
21          findings cite to testimony from a farmer located immediately adjacent to the subject property  
22          and testimony from the owner of a nearby commercial nursery that mining on the 10 acres  
23          has not affected their farm operations, and that the proposed mining is unlikely to have an  
24          impact either. The county also relied on other testimony from neighbors stating that the  
25          noise, dust and vibrations have had little effect on their health. Based on that evidence, the  
26          planning commission concluded that, as conditioned, the proposed mining activity will be  
27          compatible with existing uses of adjacent and nearby properties. The planning commission

1 discounted petitioner Laurance’s testimony regarding the impact of mining dust on  
2 Laurance’s walnut orchard, concluding that petitioner Laurance had not sufficiently  
3 established a causal connection between the loss in productivity of the walnut orchard and  
4 dust from intervenor’s quarry.<sup>3</sup>

5 Petitioners do not argue that DCLDO 3.39.050.1 and 3.5.125.3(a) impose materially  
6 different review standards with respect to how the county reviews the impact from the  
7 proposed conditional use on farm practices. In this case, we do not see that they do.

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<sup>3</sup> The planning commission’s findings state, in relevant part:

“The Commission finds that dust from the quarry operation was the principal focus of the testimony given by the owners of the four farm properties referenced above who addressed the issue of compatibility with adjacent farm uses. While the two Laurance families expressed the opinion that dust from the existing quarry was adversely impacting their farm crops, [two other farmers] testified that neither dust or any other aspect of the quarry was interfering with farm uses being conducted on their properties. In weighing the seemingly conflicting testimony \* \* \* the Planning Commission must reach a conclusion about whether or nor the applicant’s proposed quarry operation will force a significant change in, or significantly increase the cost of, accepted farming practices on adjacent agricultur[al] lands. The Commission’s conclusion must ultimately be based on the weight and credibility of the evidence contained in the whole record.

“Joseph Laurance testified that the health of his 45-year old walnut trees has been declining for the past six years, and stated that he believes the problem is attributable to dust from the applicant’s existing rock quarry. Although Mr. Laurance submitted a number of documents [in]to the record[] which he represented as demonstrating a scientific link between ‘road dust’ and horticultural health and performance, the Commission finds that those documents have no direct bearing on either of the two Laurance properties or on the kinds of farm practices being conducted on the two properties, nor do the documents specifically address the issue of dust generated by a quarry operation. Furthermore, the Commission has before it the testimony of two other nearby property owners who state the dust had not caused any kind of problems with their horticultural crops and practices, including the testimony of Mr. Lee, whose farm operation is much closer to the quarry site. So, while the Commission does not dispute the claim that some amount of airborne dust settles on the Laurances’ trees and vegetable crops, the Commission simply has no factual basis to conclude that the problems described are in fact attributable to that dust, regardless of what the source of the dust may be. Consequently, the evidence and testimony given by the two Laurance families must be viewed as anecdotal, and therefore not sufficient to lead the Commission to a logical conclusion that there is a link between quarry–related dust and the decline in crop performance on their properties.

“On the basis of the facts contained in the whole record, the Planning Commission concludes that the proposed use will not force a significant change in, or significantly increase the cost of accepted farming practices on adjacent agricultur[al] lands.” Record 23-24.

1 Therefore, if the county’s findings are adequate to demonstrate that DCLDO 3.5.125.3(a) is  
2 satisfied, then those findings are adequate to satisfy DCLDO 3.39.050.1.

3 The county’s findings clearly respond to the larger issue petitioners raise questioning  
4 the compatibility of the proposed mining with nearby agriculture and whether it would force  
5 changes in or increase the costs of accepted farm practices. The county’s findings do not  
6 specifically respond to the *testimony* that petitioners cited during their rebuttal at oral  
7 argument regarding possible impacts on u-pick operations and cattle.<sup>4</sup> However, there is no  
8 general requirement that the county specifically respond to every item of evidence that is  
9 offered during the local proceedings. *Schwerdt v. City of Corvallis*, 38 Or LUBA 174, 182  
10 (2000) (citing *Douglas v. Multnomah County*, 18 Or LUBA 607, 619 (1990)). So long as  
11 there is other evidence in the record that the county could reasonably rely on to reach the  
12 conclusions that it did concerning the compatibility of the proposed mining with nearby  
13 farms and the impacts that mining might have on accepted farming practices and the costs of  
14 those practices, the county’s failure to adopt such specific findings provides no basis for  
15 reversal or remand. *Id.* We conclude that there is such other evidence here, as discussed in  
16 the planning commission findings quoted at n 3.

17 The evidence of the potential the proposed mining operation presents for impacts that  
18 might negatively affect nearby farming activities is conflicting. However, the findings  
19 addressing the impact the proposed quarry will have on accepted farming practices are  
20 adequate to explain why the planning commission concluded that mining activities on the  
21 subject property, with conditions, will satisfy the standards set out in DCLDO 3.39.050.1 and  
22 3.5.125.3. We also conclude that the county’s choice of which evidence in the record to  
23 believe in this case is one that a reasonable decision maker could have made. *Younger v. City*  
24 *of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988).

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<sup>4</sup> The testimony regarding possible negative impacts on petitioner Laurence’s u-pick operation is also noted at Petition for Review Appendix ER-25.

- 1 The second assignment of error is denied.
- 2 The county's decision is affirmed.