BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JAMES GILLETTE,
Petitioner,

and

CREED A. ECKERT,
Intervenor-Petitioner,

vs.

LANE COUNTY,
Respondent.

LUBA No. 2006-001

FINAL OPINION
AND ORDER

Appeal from Lane County.

James F. Gillette, Eugene, and Creed A. Eckert, Corvallis, filed a petition for review and argued on their own behalf.

Stephen L. Vorhes, Assistant County Counsel, Eugene, filed the response brief and argued on behalf of respondent.

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

DAVIES, Board Member, did not participate in the decision.

AFFIRMED 06/05/2006

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

Petitioner and intervenor-petitioner (petitioners) appeal a county decision that denies an application for approval of a park.

STANDING

Respondent does not dispute either petitioner's or intervenor-petitioner's standing to participate in this appeal. This appeal was filed by petitioner. Creed A. Eckert (Eckert) separately moved to intervene on the side of petitioner.[1] In an order dated February 14, 2006, we allowed Eckert's motion to intervene on the side of petitioner.[2] In doing so, we noted that "[n]o party objects to the motion [to intervene]." *Gillette v. Lane County*, ___ Or LUBA ___ (LUBA No. 2006-001, Order, February 14, 2006), slip op 1.

Eckert does not claim in his motion to intervene to be an "applicant," or that any of the appearances he made below were appearances he made on his own behalf. If respondent had opposed Eckert's motion to intervene, and if Eckert had failed to allege and demonstrate that he is an applicant or made personal appearances in addition to the appearances he made on behalf of petitioner, we almost certainly would have denied Eckert's motion to intervene. However, as we have already noted, the county does not oppose Eckert's motion to intervene. We decline to raise and resolve this potential standing issue at this late date on

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[1] In that motion to intervene, Eckert alleged:

> "The facts establishing movant's right to intervene are as follows: movant was applicant's representative in making application to Lane County, Respondent, and authored the application materials and was primary contact for Respondent, other parties with questions or comments concerning the proposal. * * *" Motion to Intervene 1.

[2] As relevant, ORS 197.830(7)(b) authorizes the following persons to intervene in an appeal at LUBA:

> "(A) The applicant who initiated the action before the local government, special district or state agency; or
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> "(B) Persons who appeared before the local government, special district or state agency, orally or in writing."

our own.[3] For purposes of this appeal, our February 14, 2006 order stands, and we will assume Eckert has standing to intervene on the side of petitioner.

FACTS

Petitioner owns approximately 505 acres of land. Of that 505 acres, approximately 292 acres are zoned Impacted Forest Lands (F-2) and 213 acres are zoned Exclusive Farm Use (E-40). Over the past 25 years, as petitioner has purchased the individual parcels that now make up his 505-acre holding, he developed interconnecting trails on the property. Record 180. These trails have been used by petitioner's invitees for hiking, mountain biking, "'trials and trail' motorcycle riding, subject to numerous specific restrictions" and for paintball games.[4] Record 612. They apparently have also been used by trespassers for the same purposes.

In 2003, the county denied petitioner's first application for a special use permit to authorize a private park on his E-40 and F-2 zoned property. According to petitioners, the county denied this application, citing a failure on petitioner's part to carry his burden of proof regarding impacts on adjacent resource uses. Petition for Review 7. In February 2004, petitioner prepared another application. Petitioners contend this application was returned to petitioner based on a prohibition in the Lane County Code against parks in EFU zones within three miles of an urban growth boundary. Petitioner submitted the current application in November 2004.

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[3] The petition for review in this appeal is signed by both petitioner and Eckert. Even if Eckert does not have standing to intervene, there is no dispute that petitioner is the applicant and appeared below. Therefore, petitioner has standing to pursue this appeal, and this appeal would therefore go forward even if Eckert does not have standing to intervene.

[4] Petitioners explain that "trails motorcycles" use "soft spongy tires…and…extremely low gears…(with) skilled riders…(who) rely on balance, weight shift, proper gearing and momentum to negotiate trails and obstacles rather than horsepower and knobby tires." Petition for Review 7 n 1. Petitioner contends that these trails motorcycles are the only type of motorized vehicles that would be allowed on the site, aside from forest maintenance vehicles.

The November 2004 application that was denied and led to this appeal seeks county approval for a private park limited to the F-2 zoned portion of petitioner's property. Apparently, petitioner either has or plans to seek separate county approval to allow park operation on the E-40-zoned portion of the property as a non-conforming use or through other land use approvals. However, this appeal is limited to petitioner's challenge of the county's denial of the proposed park on the F-2-zoned portion of petitioner's property.

Petitioner seeks approval for a park on F-2-zoned tax lot 3900, which appears to include approximately 90 acres in the northwest corner of his property. A paint ball park and riding trails are already located on tax lot 3900, and they would remain. The remainder of petitioner's F-2-zoned property is made up of tax lots 202 and 204, which are adjoining tax lots and include approximately 200 acres. Tax lots 202 and 204 are located in the southeast corner of petitioner's property. It appears that tax lot 202 is already developed with trails and additional trails are proposed for tax lot 204. Tax lot 3900 is physically separated from tax lots 202 and 204 by E-40-zoned property that is owned by petitioner. As we previously noted, the existing trails are located throughout petitioner's 505-acre property, on both the F-2-zoned tax lots and the E-40-zoned tax lots.

Because tax lot 3900 is physically separated from tax lots 202 and 204 by E-40 zoned land that is not part of the disputed application, tax lot 3900 and tax lots 202 and 204 each require separate access. Access to tax lot 3900 would be from Lorane Highway, which is located a short distance north of tax lot 3900. That access road would have to cross tax lot 3400 to reach Lorane Highway. Tax lot 3400 is a small .25-acre parcel, which is zoned Rural Residential-5 (RR-5). An existing roadway currently crosses tax lot 3400 and provides access from Lorane Highway to a residence on petitioner's property. That existing roadway has also been used in conjunction with forest operations on petitioner's property. Whether that existing road can be approved to provide safe access to the proposed park on tax lot 3900 is one of the issues that arose during the local proceedings.

Access to tax lots 202 and 204 would be from Isaac Walton Road to the south. Tax lot 202 has frontage on Isaac Walton Road. The adequacy of that access does not appear to be an issue in this appeal. However, existing, interconnected fire access roads cross tax lots 202 and 204 as well as tax lot 3900 and connect with Lorane Highway and Isaac Walton Road. The adequacy of those fire access roads to prevent the park from causing a significant increase in fire hazard was also an issue below.

The disputed application was initially denied by the planning director. That decision was appealed to the Lane County Hearings Official who sustained the planning director's decision. The hearings official's decision was appealed to the Board of County Commissioners who affirmed the hearings official's decision, adopting the hearings official's findings as its own.

INTRODUCTION

One of petitioners' primary complaints in this appeal is the county's refusal to agree with them that certain project details that will need to be resolved to provide access to tax lot 3900 from Lorane Highway and to upgrade the existing forest access roads to county standards may be deferred to later proceedings via conditions of approval. Petitioners contend that the county improperly faulted them for failing to provide those details as part of this application and improperly relied on that failure to deny the application.

Petitioners' view that the county was obligated in this case to impose conditions of approval and defer to later proceedings to resolve access and fire access road concerns appears to be based in large part on our decision in *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). In *Rhyne*, we set out some options a local government has in addressing applicable approval criteria, where a multi-stage approval process is employed and early stage approvals occur in a public planning process but later stage approvals might not include an opportunity for public hearings:

> "Where the evidence presented during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available. First, it may find that although the evidence is conflicting, the evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary. Second, if the local government determines there is insufficient evidence to determine the feasibility of compliance with the standard, it could on that basis deny the application. Third, if the local government determines that there is insufficient evidence to determine the feasibility of compliance with the standard, instead of finding the standard is not met, it may defer a determination concerning compliance with the standard to the second stage. In selecting this third option, the local government is not finding all applicable approval standards are complied with, or that it is feasible to do so, as part of the first stage approval (as it does under the first option described above). Therefore, the local government must assure that the second stage approval process to which the decision making is deferred provides the statutorily required notice and hearing, even though the local code may not require such notice and hearing for second stage decisions in other circumstances." 23 Or LUBA 447-48 (footnotes omitted).

Petitioners misread our decision in *Rhyne* in at least one important way. When potential problems with a land use proposal are identified, and the local government must confront evidentiary uncertainty about whether an applicable approval standard is met, one of the *options* a local government has is to find that "feasible solutions to identified problems exist, and impose conditions if necessary" to ensure that those feasible solutions are later developed and implemented. That is an option that is available to the local government when the evidentiary record supports such findings, but *Rhyne* does not mandate that a local government resolve uncertainty about solutions to identified problems in that way. An equally available option is the second option noted in the above-quoted passage from *Rhyne*, which is to deny the application if the local government concludes the applicant has yet to carry the required evidentiary burden. While the evidentiary record must support the local government's choice of that option, an applicant for land use approval faces a formidable obstacle in overcoming a finding that he has failed to carry his burden of proof regarding a mandatory approval criterion. The applicant must demonstrate to LUBA that he carried his burden of proof before the local decision maker as a matter of law. *Jurgenson v. Union*

County Court, 42 Or App 505, 510, 600 P2d 1241 (1979); *Chemeketa Industries Corp. v. City of Salem*, 14 Or LUBA 159, 163 (1985); *Weyerhaeuser v. Lane County*, 7 Or LUBA 42, 46 (1982).

A local government's choice to select one of the three options noted in *Rhyne* will generally be driven by the local government's assessment of the nature of the solutions that will be necessary to resolve identified problems. *Rhyne* identifies three general options a local government has in responding to identified problems, but it does not mandate any particular option. Specifically, as relevant here, *Rhyne* does not mandate that the county find that it is feasible to resolve identified concerns with the Lorane Highway access across tax lot 3400 when petitioner applies for the access permit that would be required to upgrade the current access road to provide access to the proposed park. Neither does *Rhyne* mandate that the county find that concerns about the ultimate efficacy of the existing fire access roads to address fire hazards can be resolved at a later date, when those roads are improved to the standards required by the Lane County Code (LCC).

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

A. The Lorane Road Access Across Tax Lot 3400

As we noted earlier, the Lorane Highway access must cross an RR-5-zoned .25 acre parcel. Parks are a use that may be allowed by the planning director in the RR-5 zone. LCC 16.290(4)(p). However, LCC 16.290(5)(a) imposes a no "significant adverse impacts" approval standard for parks in the RR-5 zone.[5] The challenged decision adopts the following findings in addressing LCC 16.290(5)(a):

> "Lorane Highway is a Rural Major Collector road designed to carry through traffic (non-local trips). The speed in this area of the Lorane Highway is

[5] LLC 16.290(5)(a) requires than any uses allowed under LCC 16.490(4)(a) through (s):

> "Shall not create significant adverse impacts on existing uses on adjacent and nearby lands or on uses permitted by the zoning of adjacent or nearby undeveloped lands[.]"

posted at 45 mph. Driveway and intersection spacing is required to be a minimum of 400 feet. LC 15.137(5) states that road approaches on County Roads shall be located where they do not create undue interference or hazard to the free movement of highway and pedestrian traffic. Zoning along the area where tax lot 3400 touches the highway is generally Rural Residential.

"The applicant argues that the Planning Director's requirement that a Facility Permit from the Lane County Public Works Department be secured prior to approval of the special use permit for the park is contrary to Lane Code 16.205(3). He notes that this section of the code provides three options for when a facility permit may be issued and that the only option that is applicable in the present case is where the permit is required as a condition of approval in a land division or other land use decision. He further argues that the issuance of a facility permit is purely an administrative decision and does not involve the discretion of the hearings official. Essentially, the applicant is arguing that the issuance of a facility permit is not a land use decision. Finally, the applicant points out that the issuance of a facility permit as a condition of approval is standard practice (as opposed to requiring a facility permit prior to land use approval).

"Under normal circumstances the applicant would be correct and the facility permit issuance procedures of Lane Code 15.205 would require that a facility permit be addressed in the conditions of approval of a land use decision. Unfortunately, the proposal does not represent normal circumstances. Tax lot 3400 is zoned residential and, as noted above, Lane Code 16.290(5) imposes a 'significant impact' test on the proposed use.

"One of the impacts of the proposed use is the need for access onto the [Lorane] Highway. In the present case, there is substantial evidence in the record that access onto the [Lorane] Highway from tax lot 3400 may not meet driveway separation standards and, because of travel speeds and visibility limitations, may not be safe. Transportation planning staff, after reviewing the applicant's submission, determined that the application was inadequate because it did not address the location or width of access point onto the [Lorane] Highway. In a memo to Thom Lanfear, Land Management Division planning staff, Bill Morgan, Lane County Transportation Planner, stated: 'Access from [Lorane] Highway cannot be approved based on the information we have and our review of applicable codes.' The need to have an adequate access point onto the [Lorane] Highway is a matter of safety as the travel speed along the highway in that location is around 45 mph and the access point is a short distance from a curve in the road that limits sight distance for cars traveling eastbound. There also did not appear to be room for adequate separation from other existing access points.

"While these are certainly issues that are pertinent to the issuance of a facility permit, they are also very relevant to the standard of Lane Code 16.290(5)(a) as they affect neighboring residential uses as well as users of the proposed

> park. A determination of whether safe access can be accomplished is one that includes a significant level of discretion as the aforementioned safety concerns as well as other information (that is not in the record) such as highway capacity, traffic volume, residential density, and vehicle accident information, must be considered.
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> "As land use decision-makers, the Director and the Hearings Official cannot delegate this analysis, through the Facility Permit process, to the Public Works Department without first analyzing the applicant's submission to determine if there is enough evidence in the record to determine whether or not it is feasible for the applicant to satisfy the above-identified standards of Lane Code 16.290(5)(a). The Planning Director concluded that there was not and I concur.
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> "The use of tax lot 3400 for access also presents a serious problem related to emergency vehicle access. The existing access road is roughly graveled and built to provide access to a logging operation. It is deeply rutted, quite steep and impacted by a creek bed. It took a 4-wheel drive jeep with the applicant providing navigation instructions to traverse the road during the February site view of the property. The record does not contain any information regarding whether the road could be brought up to a standard where it would be accessible to emergency vehicles and the general public or what resources would be necessary if that standard could be met. The applicant was advised of this deficiency by the Planning Director before the record closed but additional information was not forthcoming." Record 60-61 (footnotes omitted).

In their first assignment of error, petitioners object that the county never told them they should first secure a facility permit for the access onto Lorane Highway before attempting to obtain approval for the proposed park. Petitioners go further and suggest that the county refused to allow them to seek that facility permit first. Petition for Review 13-14. In their second assignment of error, petitioners contend that the county's finding that they failed to demonstrate that it is feasible to secure an access permit for the Lorane Highway access is not supported by substantial evidence.

Petitioners appear to be correct that county staff led them to believe that the time to apply for and secure approval for the facility permit that will be necessary for the Lorane Highway access is *after* the county grants approval for the park. Record 193, 321. It is perhaps understandable that petitioners are unhappy that when addressing LCC 16.290(5)(a)

the planning director and hearings officer later decided that certain issues that might ultimately be resolved in petitioners' favor in that facility permit proceeding are also issues under the more general Lane Code 16.290(5) adverse impact standard that must be satisfied to approve the RR-5 zoned portion of the disputed park. However, based on our review of the documents petitioners cite in the record, it is not accurate to state that the county refused to allow petitioners to seek approval of the facility permit.

We also agree with the county that it is inaccurate to say the county changed its mind and is now requiring that petitioner seek approval of the access permit for the Lorane Highway access. That may be the indirect or practical effect of the county's decision, but what the county has actually done is find that without the evidence that will likely be needed to secure that facility permit, the county is unable to find that the Lane Code 16.290(5) significant impact standard is met. The county is not required to anticipate and advise a land use applicant in advance of the precise scope and nature of the evidentiary showing that will be required to demonstrate compliance with all mandatory approval criteria. Through pre-application conferences most local governments attempt to do so, but local governments are not required to be clairvoyant in this regard, and it is not the local governments' burden to accurately predict in advance all of the evidence that may ultimately be required to secure approval of a land use permit.

We now turn to petitioners' evidentiary challenge under the second assignment of error. Petitioners do not cite evidence in the record that establishes that the access that will be needed from Lorane Highway can be constructed in a way that will "not create significant adverse impacts on existing uses on adjacent and nearby lands or on uses permitted by the zoning of adjacent or nearby undeveloped lands," as LCC 16.290(5)(a) requires. It may well be that petitioners will be able to establish in a facility permit proceeding that the needed access will meet all relevant county access standards and result in an access road that complies with LCC 16.290(5)(a). It may also be that petitioners will be able to demonstrate

in future proceedings that the roadway that crosses tax lot 3400 can be improved to meet applicable standards under LCC 16.211(6).[6] However, to successfully challenge the county's determination that petitioners have not yet carried their burden concerning LCC 16.290(5)(a), on evidentiary grounds, petitioners must show that they have carried their burden concerning LCC 16.290(5)(a) as a matter of law. *Jurgenson*, 42 Or App at 510; *Chemeketa Industries Corp.*, 14 Or LUBA at 163; *Weyerhaeuser*, 7 Or LUBA at 46. As the record now stands, we do not agree with petitioners that the evidence they cite establishes, as a matter of law, that the Lorane Highway access road will comply with LCC 16.290(5)(a).

Petitioners rely heavily on the fact that there is an existing access roadway across tax lot 3400. The status of that existing access is not entirely clear. Record 518. There also is at least some suggestion in the record that even if that existing access can potentially be used for access for the proposed park, park use of that access will require compliance with certain access standards that were not applied when the existing access road across tax lot 3400 was approved. Record 519. Even if the Lorane Highway access satisfies all county access standards, there would remain the question whether the traffic that will use that access would have impacts that would violate the significant impact standard of LCC 16.290(5)(a). Petitioners believe that the county is assuming that more traffic will utilize that access than will actually be the case. However, based on the existing record, it is far from clear precisely how much traffic might utilize that access and whether that traffic would have impacts that might violate LCC 16.290(5)(a).

B. Internal Fire Access Roads

Parks are allowed as a special use in the F-2 zone, subject to planning director review. LCC 16.211(3)(d). To approve the proposed park in the F-2 zone, the county must

[6] LCC 16.211(8) sets out more than five single-spaced pages of siting and other standards that apply in the F-2 zone. LCC 16.211(8)(e) sets out more than one single-spaced page of "Fire Safety Design Standards for Roads and Driveways." The Lorane Highway access road and internal fire access roads would have to comply with these standards.

find that it will not create a significant fire hazard. LCC 16.211(3):[7] The hearings officer adopted the following findings addressing the fire hazard criterion:

> "The applicant's property can be described as forested, with underbrush, mixed with areas of open space [that] often are occupied with waist-high grass in the early summer. Adjacent properties are similar in nature. The applicant has described the methods by which he means to address fire safety and these include cutting away and spraying underbrush. He has also pledged to fence the property lines if required to do so. A 50' buffer is proposed between the proposed trail system and adjacent residences.
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> "The applicant seems to exhibit a genuine concern for fire safety and has demonstrated knowledge of how fire safety can be maintained. The problem with the application concerns the implementation of that knowledge. For instance, the applicant's site plan shows many unimproved roadways on the property that do not correspond to roads shown on the map and the fire access roads are roughly sketched in. To be able to meet the approval standard each of the fire access roads must be precisely located and located in reference to the off-road vehicle, motorcycle, bike trails that will be constructed. The condition of the access roads must be identified and a work plan must be developed to bring those roads up to all-weather, emergency vehicle standards.
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> "Attachment 'B' to the applicant's submission shows a connecting system of trails throughout the [E-40] property with the F-2 portions of the property to the west and south. There are at least two trail crossings over Spencer Creek which is the dividing line between the F-2 and E-40 zoned portions of the property. The existing area used for paintball straddles the zone boundary. In an acknowledgment that the EFU-zoned land is essential to the provision of adequate fire protection the applicant has proposed not to open the park until the EFU-zoned portion of the park is approved.
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> "The applicant has pledged to build the trails according to the specifications of the fire district but the County may not delegate the determination of whether the fire safety standards of Lane Code 16.211(3) have been satisfied. It is correct to assume that the fire district personnel will have a significant role in the planning and design of the access roads but that input is just one of several that must be weighed. The County decision-maker's analysis is necessarily broader than that of the fire district and must address comments

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[7] LCC 16.211(3) imposes the following requirement:

> "A use in LC 16.211(3)(a) through (s) * * * may be allowed if it * * * will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel."

> from neighbors and the feasibility of the applicant to implement the final design. The first step in this process, and the one that is incomplete, is to provide a detailed map of the access trails and to explain why these trails, based upon the topography that they traverse, their location in conjunction with the use of the park and adjacent property lines, and their design, will satisfy the approval criterion. Since, in the applicant's own words, the riding trails are constantly evolving, the fire access trails, as designed and located, must be shown to be adequate to serve the entire property.
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> "The applicant's proposal fails to demonstrate that the proposed use would not significantly increase fire hazard and the risks to fire suppression personnel. * * *. Record 63-64.

Petitioners repeat their contention that the evidence in the record is sufficient to allow the county find that it is feasible to upgrade the internal fire access roads to fully comply with all standards set out in Lane Code 16.211(8)(e). Petitioners contend that if those roads are constructed to county standards, there will be no significant fire hazard.

As was the case with the Lorane Highway access, petitioners confuse the question of what the county *might have been able to do*, based on this evidentiary record, with what the county *must do*. This record falls far short of demonstrating as a matter of law that the proposed park "will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel," as required by Lane code 16.211(3). While petitioners object that they will incur unnecessary expense if they are forced to more precisely locate where existing fire access roads are located and where proposed fire access roads will be located, we cannot say that the county's concern about the accuracy of petitioners' maps showing existing trails and fire access roads is unreasonable.

A map showing the existing fire access roads appears at Record 653 and 654. A map showing the existing trails appears at Record 652. As the county's findings point out, some of those fire access roads presumably would not connect unless the E-40 portion of petitioner's property is ultimately approved for park use. If that is accurate, the lack of fire access road connectivity pending approval of the E-40 portion of the park might not present a

fire hazard problem, but we cannot be sure that is the case. While petitioners minimize the uncertainty presented by the lack of precision in the maps depicting the existing fire access roads, we are in no position, based on the present record, to say the county's concerns about that lack of precision are unreasonable. The county's findings, fairly read, fault the application for relying in part on fire access roads that are located on the E-40 zoned portion of petitioner's property and fault the application for failing to more precisely identify where the proposed fire access roads will be located without regard to whether they are located on the E-40 zoned property or the F-2 zoned property. We understand the county to have found that this more precise location of the proposed fire access roads that will serve the proposed park is necessary to ensure that they can be built to county standards and will sited in locations that will reduce fire hazards to a level that is consistent with Lane Code 16.211(3).

We also note that while the Oregon Department of Forestry indicated "[t]here is good access to the property in the event of a wild fire," the letter goes on to note that "[t]he land is crisscrossed with several roads and many trails." Record 199. The letter also states:

> "It is necessary to have a clear, detailed map of the property. It is also important to clearly mark the trails and roads on the ground. A dispatch plan should be developed so that emergency vehicles can efficiently find and access a fire." *Id.*

The above seems consistent with the county's expressions of concern about the lack of precision and detail regarding the location of fire access roads.

The first, second and third assignments of error are denied.

FOURTH ASSIGNMENT OF ERROR

The fourth assignment of error challenges the county's finding that the proposal depends on fire access roads that are located in part on E-40 zoned portions of petitioner's property. Petitioners fault the county for not appreciating that the proposal now before the county only includes the F-2-zoned portion of petitioner's property and does not seek approval for a park on the E-40 zoned property. While petitioners cite efforts on their part to

make the county understand that the proposal is limited to F-2 zoned property, the maps depicting the existing fire access roads and trails clearly show portions of those roads and trails that are located on E-40 zoned property. While it is possible the county should have understood the more limited nature of the proposal that was before them, petitioners must share some of the blame for any confusion on this point because they did not provide more precise maps that (1) showed the proposed location of the fire access roads on the F-2 zoned property, and (2) made it clearer that the proposal did not depend on the fire access roads on E-40 zoned property.

Whatever the reason for the confusion about whether E-40 property was included in the park as proposed in the November 2004 application, we need not determine whether that confusion provides a basis for sustaining this assignment of error. Our resolution of the first three assignments of error means there are independent bases that support the county's denial of the application. The county's decision to deny the application must therefore be affirmed even if we were to sustain the third assignment of error. Any confusion on the county's part about whether E-40-zoned property is included in the proposal can be corrected in any future proceedings to address the county's findings concerning Lane Code 16.290(5) and 16.211(3).

We do not reach the fourth assignment of error.

FIFTH ASSIGNMENT OF ERROR

Petitioners contend the county erred by not approving the portion of the park located on tax lots 202 and 204.

It does not appear that petitioners asked for partial approval. Even if they had, the county's findings concerning the inadequacy of the proposal to satisfy the LCC 16.211 fire hazard criterion was not limited to the portion of the park on tax lot 3900. Petitioners' premise that the county found no fault with the portion of the park on tax lots 202 and 204 is incorrect.

The fifth assignment of error is denied.

The county's decision is affirmed.