

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

3
4 YAMHILL CREEK SOLAR, LLC,
5 *Petitioner,*

6
7 vs.

8
9 YAMHILL COUNTY,
10 *Respondent,*

10/03/18 PM 2:16 LURA

11 and

12
13
14 ATTICUS WINE, LLC,
15 and FRIENDS OF YAMHILL COUNTY,
16 *Intervenors-Respondents.*

17
18 LUBA No. 2018-009

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from Yamhill County.

24
25 Damien R. Hall, Portland, filed the petition for review and argued on
26 behalf of petitioner. With him on the brief was Ball Janik LLP.

27
28 Timothy S. Sadlo, Yamhill County Counsel, McMinnville, filed a
29 response brief on behalf of respondent.

30
31 Jennifer M. Bragar, Portland, filed a response brief and argued on behalf
32 of intervenor-respondent Atticus Wine, LLC. With her on the brief was Tomasi
33 Salyer Martin.

34
35 Meriel L. Darzen, Portland, filed a response brief on behalf of
36 intervenor-respondent Friends of Yamhill County. With her on the brief was
37 1000 Friends of Oregon.

1 BASSHAM, Board Member; RYAN, Board Chair; ZAMUDIO, Board
2 Member, participated in the decision.

3
4 AFFIRMED

10/03/2018

5
6 You are entitled to judicial review of this Order. Judicial review is
7 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a board of commissioners’ decision denying its application for a 12-acre photovoltaic solar power facility (the facility).

MOTION TO TAKE OFFICIAL NOTICE

Petitioner moves to take official notice of a recently decided Court of Appeals’ decision, *Crowley v. City of Hood River*, 294 Or App 240, __ P3d __ (2018), issued after oral argument in the present appeal. The county and intervenors-respondents oppose the motion. We will consider the cited additional authority, to the extent it assists in resolving the issues raised in this appeal. However, we do not consider the additional arguments on the merits that petitioner included in its motion.

FACTS

The subject property is a 27.8-acre parcel zoned Exclusive Farm Use (EF-80). The property is located within the Yamhill-Carlton Viticulture Area, and therefore deemed “high-value farmland” pursuant to ORS 195.300(10)(e)(C). Approximately 12 percent of the soils on the property are considered high-value soils; the remaining 88 percent are Class II and III soils that are considered soils of statewide importance, but are not designated as high-value soils. The property is currently farmed in hay and grass seed. The surrounding area is predominantly farmland, with nearby agricultural uses consisting of hazelnut orchards, grass seed, grain crops, hay production, and

1 vineyard land. The properties to the north, west and south are generally higher
2 in elevation than the subject property. Intervenor-respondent Atticus Wine,
3 LLC (Atticus) owns the property to the north of the facility, which is developed
4 with four acres of vineyard and includes a dwelling at which Atticus conducts
5 wine-tastings. The Tualatin Valley Highway borders the property to the east.

6 Petitioner filed applications with the county for conditional use permit
7 and site design approval for a 12-acre solar facility on the eastern half of the
8 property, surrounded by a perimeter fence. The facility consists of solar panels
9 in aluminum frames, mounted on racks set atop thousands of steel posts that are
10 pounded up to 10 feet deep in the soil. The facility includes inverter equipment
11 located in the approximate center of the 12-acre area. The facility has an
12 expected lifespan of 25 to 30 years, after which it would be decommissioned,
13 and the posts, racks, and panels removed.

14 The county planning commission conducted hearings on the application,
15 at which Atticus and others appeared in opposition. Atticus and other
16 opponents raised a number of objections, including concerns that the facility
17 would adversely impact views from surrounding properties and the adjacent
18 highway, and disrupt the local wine-tourist economy.

19 The planning commission approved the application. Atticus appealed to
20 the board of commissioners, which held additional hearings. On January 18,
21 2018, the commissioners conducted deliberations and voted 2-1 to overturn the
22 planning commission's decision and deny the application, and directed staff to

1 prepare written findings. On January 25, 2018, the commissioners adopted a
2 final order denying the application with supporting findings. This appeal
3 followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 During the January 18, 2018 deliberations by the board of
6 commissioners, the commissioners discussed the possibility of future county
7 legislation to limit solar facilities on lands designated as high-value farmland
8 or with high-value soils. The commissioners also discussed a previous county
9 decision approving a solar facility in a location they described as the “West
10 Valley,” on agricultural lands that are not apparently within a viticulture area.
11 Commissioner Starrett commented that it sends a “bad message” to residents in
12 the West Valley to approve a solar facility there, but when a proposed solar
13 facility impacts residents in wine country, then the county will consider
14 developing a different set of approval standards. Petition for Review, App 3.
15 Commissioner Starrett stated that she would vote to approve petitioner’s
16 application because it complied with the current county code standards.

17 Commissioner Primozich, who ultimately voted to deny petitioner’s
18 application, also commented on the West Valley solar facility and the
19 possibility of adopting new legislation to restrict solar facilities on high-value
20 farmland or high-value soils. Commissioner Primozich stated, in relevant part,
21 that:

22 “If in fact we get this—we get the ordinance in place and it [a new
23 application] *still meets the criteria as indicated*, if this isn’t class

1 1, 2 or 3 soil, and there are ways that it falls within the new
2 ordinance, then a new application might be present. But right now
3 I'm not comfortable saying yes to this." Petition for Review, App
4 8 (emphasis added).¹

5 On appeal, petitioner argues that the italicized language in
6 Commissioner Primozych's statement, that if a new application "*still* meets the

¹ Commissioner Primozych's full statement is as follows:

"And I would make—I'd like to make a comment also on the West Valley.

"If you recall, I was present and I did raise several issues. There were concerns I had. Unfortunately I went strictly by what you're saying, This is what's allowed, so this is what I have to follow. And I will take it upon myself that I have not pushed harder to get this ordinance in place that would have probably prevented this from being in front of us today. And I will take responsibility for that.

"However, I had serious issues on that one [West Valley]. And we've already seen some concerns from the present residents in that area with all of the issues that they've had and complaints that have come forward with this even get—before it gets up and running. And so because we didn't move forward, get this ordinance in place to limit them, I just don't want to continue to proliferate them. And I am going on record right now saying I will be working really hard to get this ordinance in place before another one of these comes before us. But I still—I'm not going to just continue to let them go without some caution.

"If in fact we get this—we get the ordinance in place and it [a new application] still meets the criteria as indicated, if this isn't class 1, 2 or 3 soil, and there are ways that it falls within the new ordinance, then a new application might be present. But right now I'm not comfortable saying yes to this." Petition for Review, App 7-8.

1 criteria” it would be approved, is a concession that Commissioner Primozich,
2 like Commissioner Starrett, believed that petitioner’s current application before
3 the county met the currently applicable standards. Petitioner contends that this
4 statement demonstrates that Commissioner Primozich’s subsequent vote to
5 deny petitioner’s application was not based upon evidence in the record and the
6 currently applicable standards, and consequently the commissioner exhibited
7 prejudice and bias that deprived petitioner of its right to an impartial
8 decision maker. ORS 197.835(9)(a)(B).

9 Atticus responds, and we agree, that petitioner has not demonstrated
10 Commissioner Primozich was biased or was unable to make a decision based
11 on the evidence and the applicable approval standards. As Atticus notes, to
12 establish bias or prejudice on the part of a local decision-maker in a quasi-
13 judicial land use decision, the petitioner must cite to clear and unmistakable
14 evidence. *Halvorson-Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702,
15 711 (2001); *Nalette v. City of Klamath Falls*, 28 Or LUBA 709, 710, *aff’d* 134
16 Or App 414, 894 P2d 1267 (1995). Further, an elected local official is not
17 expected to have no appearance of having views on matters of community
18 interest when a decision is to be made in a quasi-judicial proceeding.
19 *Columbia Riverkeeper v. Clatsop County*, 267 Or App 578, 602, 341 P3d 790
20 (2014). On the contrary, an elected local official

21 “is expected to be intensely involved in the affairs of the
22 community. He is elected because of his political predisposition,
23 not despite it, and he is expected to act with awareness of the
24 needs of all elements of the county, including all government

1 agencies charged with doing the business of the people.” *Id.* at
2 599 (quoting *Eastgate Theatre v. Bd. of County Comm’rs*, 37 Or
3 App 745, 752-53, 588 P2d 640 (1978).

4 Atticus contends that the commissioner’s isolated and ambiguous
5 statement cited by petitioner, which petitioner construes as stating that the
6 commissioner believes the current application meets the current approval
7 standards, is belied by other statements made by the commissioner during the
8 proceedings and deliberations, when the commissioner discussed the evidence
9 presented to establish compliance with the currently applicable approval
10 standards, and expressed some of the same concerns, for example soil
11 compaction, that were later cited in the county’s final written decision as bases
12 for denial.

13 The isolated statement emphasized by petitioner, that a future application
14 under new legislation might be approved if it “still” complied with new
15 legislation, is not strong evidence that Commissioner Primozich believed that
16 the present application complied with the current approval standards, much less
17 that the commissioner was incapable of determining the merits of the
18 application before him on the basis of the evidence and arguments presented.
19 *Columbia Riverkeeper*, 267 Or App at 602. We agree with Atticus that
20 petitioner has not demonstrated actual bias or predisposition on the part of
21 Commissioner Primozich.

22 The first assignment of error is denied.

1 **SIXTH ASSIGNMENT OF ERROR**

2 The county’s decision denied petitioner’s application for conditional use
3 permit and site design approval based on findings of noncompliance with six
4 approval standards. Two approval standards are based on the requirements of
5 OAR 660-033-0130(38)(f)(B) and (C).² Three are based on Yamhill County
6 Zoning Ordinance (YCZO) conditional use permit standards.³ One is based on

² OAR 660-033-0130(38)(f) provides, in relevant part:

“For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4 or the requirements of paragraph (G) are met. The governing body or its designate must find that:

“* * * * *

“(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. * * *;

“(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. * * *”

³ The three YCZO conditional uses standards at issue include (1) YCZO 1202(B), discussed below in the text, which requires a finding that the proposed use is consistent with applicable comprehensive plan goals and policies; (2) YCZO 1202.02(D), which requires a finding that the proposed use will not alter the character of the surrounding area in a manner that substantially limits the use of surrounding properties for uses permitted in the underlying zone district; and (3) YCZO 1202.02(F), which requires a finding that the use is or can be made compatible with existing uses in the area.

1 a YCZO site design standard, YCZO 1101.02(A)(4), which requires a finding
2 that the use provides for “adequate noise and/or visual buffering from
3 noncompatible uses.” Under the second through seventh assignments of error,
4 petitioner challenges each basis for denial, arguing that the county
5 misconstrued the applicable law, and adopted inadequate findings that are not
6 supported by substantial evidence.

7 Where a local government denies a land use application on multiple
8 grounds, LUBA will affirm the decision on appeal if at least one basis for
9 denial survives all challenges. *Wal-Mart Stores, Inc. v. Hood River County*, 47
10 Or LUBA 256, 266, *aff'd* 195 Or App 762, 100 P3d 218 (2004). In that
11 circumstance, the Board typically does not address challenges directed at other,
12 alternate, bases for denial. Addressing alternate bases for denial once LUBA
13 has affirmed at least one valid basis for denial would result in rendering what
14 are essentially advisory adjudications, which is not consistent with the statutory
15 mandate that LUBA’s review should be conducted pursuant to sound principles
16 of judicial review. ORS 197.805.⁴

⁴ ORS 197.805 provides:

“It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting ORS 197.805 to 197.855 to accomplish these objectives.”

1 In the present case, Atticus argues, and we agree, that the strongest basis
2 for denial articulated in the county’s decision is YCZO 1202.02(B), a
3 conditional use permit standard requiring a finding that “[t]he use is consistent
4 with those goals and policies of the Comprehensive Plan which apply to the
5 proposed use.” The county found, and petitioner does not dispute, that YCZO
6 1202.02(B) requires a “balancing of those goals and policies of the
7 Comprehensive Plan that apply to the proposed use, and require the county to
8 make a finding of consistency,” even though the plan goals and policies
9 themselves are not independent mandatory approval criteria. Record 13. The
10 county adopted 11 pages of single-spaced findings addressing more than two
11 dozen applicable goals and policies in the Yamhill County Comprehensive Plan
12 (YCCP), and determined that a large majority of them weigh against approving
13 the application. Accordingly, the county concluded that the proposed solar
14 facility is, on balance, not consistent with the applicable plan goals and
15 policies.

16 Where comprehensive plan provisions are not mandatory approval
17 standards for a land use application, but the application must be evaluated for
18 consistency with applicable plan provisions, that evaluation may require some
19 weighing and balancing of competing policies directions embodied in the
20 applicable plan provisions. *Waker Associates, Inc. v. Clackamas County*, 111
21 Or App 189, 194, 826 P2d 20 (1992). In that circumstances, the local
22 government’s evaluation, weighing and balancing of competing plan provisions

1 are due considerable deference on review. *See Bothman v. City of Eugene*, 52
2 Or LUBA 701, 706 (2006) (where comprehensive plan policies apply as
3 “guidance” for a rezoning decision, as long as the local government considers
4 all applicable policies and, where different policies compete or point to
5 different results, explains the basis for its choice to give one policy greater
6 weight than another, it is doubtful that that choice will be disturbed on review);
7 *Lowery v. City of Portland*, 68 Or5 LUBA 339, 358 (2013) (balancing
8 competing comprehensive plan policies is inherently subjective).

9 In addition, as the parties recognize, a governing body’s interpretations
10 of ambiguous comprehensive plan provisions are entitled to a deferential
11 standard of review under ORS 197.829(1)(a)–(c) and *Siporen v. City of*
12 *Medford*, 349 Or 247, 243 P3d 776 (2010).⁵ Finally, a local government’s
13 choice among conflicting evidence will not be disturbed on review as long as
14 the decision is supported by substantial evidence, *i.e.*, evidence that a

⁵ ORS 197.829(1) provides, in relevant part:

“[LUBA] shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

“(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

“(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation; [or]

“(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]”

1 reasonable person would rely upon to make the decision, considering the
2 evidence in the whole record. *Younger v. City of Portland*, 305 Or 346, 752
3 P2d 262 (1988).

4 In 14 subassignments of error set out under the sixth assignment of error,
5 petitioner challenges the county's findings that evaluate and weigh various
6 comprehensive plan goals and policies, and the county's ultimate conclusion
7 that, on balance, the proposal is not consistent with the applicable plan goals
8 and policies. Specifically, petitioner argues that the county erred in failing to
9 weigh some applicable goals and policies, and in failing to adequately explain
10 why it gave greater weight to some goals and policies than others. Further,
11 petitioner argues that the commissioners misinterpreted some goals and
12 policies, failed to adopt adequate findings explaining what facts were relied
13 upon in applying and balancing goals and policies, and reached conclusions not
14 supported by substantial evidence. We address petitioner's 14 subassignments
15 of error in turn.

16 **a. First Subassignment: Weighing Process**

17 The introduction to the YCCP states that "[w]here certain goals and
18 policies conflict with others, the final decision will require a weighing of the
19 merits in order to achieve a balanced decision." Because different goals and
20 policies will support or contradict the proposed use, the commissioners
21 determined that it must weigh and balance all pertinent goals and policies in
22 order to make a finding of consistency. The commissioners considered 10

1 goals and 16 policies. It found that only one goal or policy weighed in favor of
2 the proposal, that for various reasons four goals and five policies provided no
3 weight in either direction, and that the remaining 16 goals and policies weighed
4 against the proposal.

5 Initially, petitioner challenges the findings regarding the four goals and
6 five policies that the county found provided no weight in either direction,
7 arguing that the county “declined to consider” these goals and policies.
8 Petition for Review 45. Petitioner argues that had the county fully evaluated
9 these goals and policies, the majority of them would have weighed in favor of
10 the proposed use.

11 The four goals and five policies at issue are YCCP Agricultural Lands
12 Goal 1; Agricultural Lands Goal 2, Policy D; Open Space Goal 1, Policy C;
13 Water Resources Goal 1; Fish & Wildlife Goal 1, and Policies B and C; and
14 finally Air, Water and Land Quality Goal 1 and Policy E. Petitioner also raises
15 specific challenges to findings under many of these goals and policies, which
16 are addressed individually below.

17 For present purposes, we disagree with petitioner that the county
18 “declined to consider” the cited goals and policies. The county adopted
19 findings addressing each cited goal and policy, and explaining in each case
20 why the goal or policy either did not provide any weight in favor or against the
21 proposal, or for other explained reasons was not weighed with the other goals
22 and policies considered. For example, YCCP Agricultural Lands, Goal 1,

1 discussed further below, states that in relevant part that it is the county's goal
2 to ensure that "conversion of farmland to urban use where necessary and
3 appropriate occurs in an orderly and economical manner." The county adopted
4 findings that the proposed use is not clearly either urban or rural, and for that
5 reason concluded that it is unable to find that the goal weighs either in favor or
6 denial of the application. Record 13. That is a reasoned conclusion that the
7 policy is, essentially, neutral with respect to the proposed use. It is not the case
8 that the county "declined to consider" the goal. Further, petitioner has not
9 established that had the county been able to resolve whether or not the
10 proposed use was an urban use that the county would necessarily have
11 concluded that the goal weighed in favor of the application. Indeed, as
12 discussed below, petitioner argues that the facility is not an urban use and
13 therefore YCCP Agricultural Lands Goal 1 is inapplicable. If the goal is
14 inapplicable, as petitioner argues, then it cannot weigh in favor of the proposed
15 use.

16 Petitioner also argues that the county improperly construed the law by
17 assigning greater weight to policies promoting preservation of farmland over
18 other policies promoting, for example, renewable energy sources, without
19 providing a sufficient explanation for that unbalanced approach. However,
20 petitioner cites nothing in the YCCP or YCZO or elsewhere that requires the
21 county to give equal weight to all goals and policies. A consistent theme in the
22 county's findings is that goals and policies promoting the preservation of

1 farmland should be given more weight compared to policy considerations such
2 as the promotion of renewable energy, because the proposed solar facility could
3 be located in many places, including urban areas and rural residential areas, and
4 need not be sited on agricultural soils or high-value farmland. In other words,
5 the county balanced competing policy considerations in a way that attempts to
6 give effect to both policy considerations, as much as that is possible.
7 Petitioner's preference for a different balance weighted in favor of renewable
8 energy does not demonstrate any error in the county's general approach to
9 applying YCZO 1202.02(B). The county's findings adequately explain why
10 the county chose to give greater weight to plan goals and policies that favor
11 protection of farmland over plan goals and policies that favor other competing
12 policy directions, including renewable energy.

13 The first subassignment of error is denied.

14 **b. Second Subassignment: Agricultural Lands Goal 1**

15 As partially quoted above, YCCP Agricultural Lands Goal 1 is "To
16 conserve Yamhill County's farm lands for the production of crops and
17 livestock and to ensure that the conversion of farm land to urban use where
18 necessary and appropriate occurs in an orderly and economical manner."
19 Petitioner argues in relevant part that the facility is not an urban use, no
20 conversion to urban use is at issue, and therefore Goal 1 is not applicable.
21 Petition for Review 47. However, if Goal 1 is inapplicable, then it cannot be
22 reversible error to conclude that the goal weighs neither in favor nor against the

1 application, in other words, to give the goal no weight in the balancing of
2 competing policy considerations. Petitioner's arguments regarding YCCP
3 Agricultural Lands Goal 1 do not provide a basis for reversal or remand.

4 The second subassignment of error is denied.

5 **c. Third Subassignment: Agricultural Lands, Goal 1, Policy A**

6 YCCP Agricultural Lands Goal 1, Policy A states that "Yamhill County
7 will provide for the preservation of farm lands through appropriate zoning,
8 recognizing comparative economic returns to agriculture and alternative uses,
9 changing ownership patterns and management practices, changing market
10 conditions for agricultural produce, and various public financial incentives."

11 The county engaged in a multipage analysis that ultimately concludes
12 that Policy A points toward denial of the proposed facility. Record 15. The
13 analysis begins by stating that "preservation [of farm land] under Policy A
14 means that potentially high economic returns for solar facilities should not be
15 elevated above the goal of preservation of farmlands." Record 13. The
16 findings then discuss the value of relatively higher economic returns from solar
17 facilities compared to preserving farm land, particularly high-value farmland,
18 and conclude that given the many other locations in the county on which solar
19 facilities can be sited, removing high-value farmland from production for up to
20 30 years is not consistent with Policy A. Record 14 ("The county is reticent to
21 sacrifice high-value farmland production for the next 20-30 years when
22 industrial and commercial land in urban areas is more suitable for the use, and

1 solar array installation costs are continually falling on those more appropriate
2 sites.”). Similarly, the county found that “this applicant should consider non-
3 high-value agricultural lands for its proposal as more consistent with the
4 county’s comprehensive plan policies.” Record 15.

5 Petitioner argues that the county erred in focusing on a comparison of
6 economic impacts and benefits for solar facilities and high-value farmland in
7 general, and failed to focus on the economic impacts and benefits of the
8 proposed facility, compared to the agricultural production on the subject
9 property. In petitioner’s view, the county’s analysis should have focused
10 narrowly on the value of the lease payments to the property owner, increased
11 county tax revenue, and the 45 temporary construction jobs created, and
12 compared those substantial benefits to the more modest economic benefits of
13 continued hay and grass seed production on the property. Petitioner also
14 argues that the county’s emphasis on the fact that there are many other
15 locations in the county to site solar facilities on lands that are not high-value
16 farmland implies an alternative sites analysis that is not a required
17 consideration under Policy A.

18 Atticus responds that the county correctly recognized that Policy A is
19 concerned with the preservation of farm lands, and argues that the county’s
20 approach in evaluating the economic impacts and benefits of solar facilities in
21 general against the loss of high-value farmland, and also considering the
22 availability of sites that do not require the loss of high-value farmland,

1 represents a plausible interpretation of Policy A. Atticus argues that
2 petitioner's preferred approach to focus narrowly on the economic impact and
3 benefits of this specific solar facility compared to continued agricultural
4 production of the subject property might also represent a plausible
5 interpretation of Policy A, but it is not the one that the commissioners chose,
6 and the commissioners' choice among plausible interpretations cannot be
7 overruled under the deferential standard of review that applies to a governing
8 body's interpretation of local comprehensive plan language, under ORS
9 197.829(1) and *Siporen*. See n 5.

10 We agree with Atticus. The primary policy thrust of Policy A is to
11 "preserv[e] farm lands through appropriate zoning," recognizing various
12 economic considerations. That suggests a higher-level analysis focused on
13 appropriate zoning rather than a narrow focus on the specific economic impacts
14 and benefits of a particular land use application. Given the language of Policy
15 A, the commissioners' choice to conduct a higher-level analysis of the
16 economic impacts and benefits of solar facilities in general, and in siting solar
17 facilities in areas that would avoid impacts on high-value farmland, is not
18 reversible under ORS 197.829(1). Petitioner's remaining findings and
19 evidentiary challenges under the third subassignment are premised on
20 petitioner's preferred interpretation of Policy A, and therefore do not provide a
21 basis for reversal or remand.

22 The third subassignment of error is denied.

1 **d. Fourth Subassignment: Agricultural Lands, Goal 1, Policy B**

2 YCCP Agricultural Lands Goal 1, Policy B states in relevant part that
3 “Yamhill County shall provide for the protection of farmland in large blocks
4 through minimum lot sizes of 20, 40 and 80 acres[.]” The county found that
5 Policy B weighed toward denial of the application, because the proposal would
6 reduce the amount of farmland under cultivation on a parcel from over 20 acres
7 to approximately 15.8 acres.

8 Petitioner argues that Policy B is concerned only with minimum lot sizes
9 and because the proposal does not change or reduce the acreage of the subject
10 property in any way, the proposal is consistent with Policy B, and the county
11 should have found that Policy B weighs in favor of approving the application.

12 Policy B is concerned with the protection of farmland in large blocks, to
13 be accomplished through minimum lot sizes. As petitioner argues, Policy B is
14 not directly implicated by a proposal that would effectively reduce cultivated
15 acreage on a parcel from above a 20-acre minimum to 15.8 acres, but that does
16 not reduce the size of the parcel below the minimum. However, few if any of
17 the goals and policies the county considered apply *directly* to the proposed use,
18 or they would constitute independently applicable approval criteria. The
19 county necessarily is attempting to determine whether the proposal is consistent
20 with relevant policy direction embedded in a comprehensive plan provision
21 that itself does not apply directly to the circumstances presented by the
22 proposed land use application. The relevant policy direction under Policy B is

1 to preserve large blocks of farmland for farm use. The county understood the
2 significance of that policy direction, as applied to the present case, is whether
3 the proposal would reduce the area of cultivated farmland on the property
4 below the 20-acre minimum. Petitioner has not demonstrated that that
5 understanding is erroneous or beyond the county's interpretative discretion
6 under ORS 197.829(1). *See* n 5.

7 The fourth subassignment of error is denied.

8 **e. Fifth Subassignment: Agricultural Lands, Goal 1, Policy H**

9 YCCP Agricultural Lands Goal 1, Policy H states in relevant part that
10 "No proposed rural area development shall substantially impair or conflict with
11 the use of farm or forest land[.]" The county found:

12 "The applicant addressed Policy H, with its reference to analysis
13 that the use would not impair or conflict with the use of farmland.
14 The county has questioned whether the applicant met its burden
15 under YCZO 402.07(A) and for that reason questions whether the
16 same justification can be used to suggest that this policy weighs in
17 favor of approval. The county notes, in contrast to the applicant's
18 analysis, that the approval of the proposed use would result in the
19 overall loss of farmland to a non-farm use on land that is currently
20 proven to be suitable for farming. Therefore, the county concludes
21 that Policy H weighs in favor of denial of the proposed use."
22 Record 16.

23 Petitioner argues that this finding is inadequate because it appears to rely
24 on "questions" the county raised under YCZO 402.07(A) to support the
25 ultimate conclusion that Policy H weighs in favor of denial. YCZO 402.07(A)
26 is a conditional use standard implementing ORS 215.296, which requires
27 findings that the proposed use would not force a significant change in accepted

1 farm practices on surrounding lands or significantly increase the cost of such
2 practices. However, petitioner argues, the county found that the proposal
3 complied with YCZO 402.07(A). Therefore, petitioner argues, whatever
4 “questions” the county had under YCZO 402.07(A) do not support a
5 conclusion that Policy H weighs in favor of denial.

6 The county’s findings of compliance with YCZO 402.07(A) include a
7 paragraph expressing concerns about the long-term impacts to soils on the
8 subject property, from soil compaction, long-term exposure to herbicides, and
9 possible aluminum leaching from the solar panel frames. Record 26.
10 However, the county ultimately did not consider these concerns for purposes of
11 YCZO 402.07(A), because that standard is focused on impacts on surrounding
12 lands, not on the subject property. Record 27. It is not entirely clear, but the
13 county’s reference to the “questions” raised under its YCZO 402.07(A)
14 findings presumably refers to this paragraph. Accordingly, the fact that the
15 county ultimately found compliance with YCZO 402.07(A) based on
16 considerations other than stated in the paragraph does not mean that the county
17 cannot cite the concerns raised in that paragraph for purposes of determining
18 consistency with Policy H.

19 The fifth subassignment of error is denied.

20 **f. Sixth Subassignment: Agricultural Lands Goal 2**

21 YCCP Agricultural Lands Goal 2 is “[t]o conserve Yamhill County’s soil
22 resources in a manner reflecting their suitability for forestry, agriculture and

1 urban development and their sustained use for the purposes designated on the
2 county plan map.” The county found that Goal 2 weighed against the
3 application, based on three concerns: (1) heavy construction and cover from
4 natural light could adversely affect the long-term suitability of the soils for
5 agricultural use; (2) chemical runoff or aluminum leaching from the panels and
6 support structures could accumulate in the soils, and (3) soil compaction and
7 herbicide use over the life of the facility could adversely impact the soils for
8 agricultural use after the facility is decommissioned.⁶

⁶ The county’s findings under Goal 2 state:

“The county finds that removing farmland from agricultural production and allowing heavy construction and cover from natural light could adversely affect the long-term suitability of soil resources for agricultural uses. The county heard testimony from project opponents that chemicals associated with the solar panels may cause harm to the long-term use of the soil for agricultural uses. The applicant did not respond to this concern and did not know the chemical make-up or finish applied to the solar PV panels it would be installing. But, even if the PV panels are not chemically finished, one opponent commented that the aluminum used on the PV panels could runoff from the panels and accumulate in the soil over time. This accumulation of aluminum could adversely impact the future use of the soil for agricultural purposes. The applicant had submitted conclusory statements in a presentation that the solar PV panels do not erode, but the record contains no evidence that aluminum particles will not separate from the panels, racking, or other materials used at the solar facility over the 20-30 year life span.

“Further, as referenced above, evidence in the record concluded that compaction and herbicide impacts may prevent the productive

1 Petitioner argues that the record does not include substantial evidence
2 supporting these three concerns. According to petitioner, there is no evidence
3 in the record supporting the first finding, that heavy construction and cover
4 from natural light could adversely affect the long-term suitability of the soils
5 for agricultural use. With respect to the second and third findings, petitioner
6 argues that the evidence cited by the county is outweighed by petitioner's
7 testimony that there is no chemical or aluminum leaching from the solar panels,
8 and that after decommissioning the site would be restored to its former
9 condition. Petition for Review 55-58.

10 Intervenor-respondent Friends of Yamhill County (FOYC) responds by
11 citing to evidence supporting the county's findings, and arguing that that
12 evidence is substantial evidence supporting the county's conclusion that Goal 2
13 weighs against the proposed use. However, FOYC does not cite to any
14 evidence supporting the county's first finding, that heavy construction and
15 cover from natural light could adversely affect the long-term suitability of the
16 soils for agricultural use. That finding, at least, apparently has no support in

use of the underlying farmland after the solar panels are removed because of impacts from compaction and herbicide use over the life of the facility. The county does not find that the soil compaction report or weed control plan adequately addressed long-term impacts to the soil raised by project opponents. The county finds this goal weighs in favor of denial of the project.”
Record 16.

1 the record. FOYC does cite to testimony supporting the second and third
2 findings. FOYC's Response Brief 10-18.

3 We have examined the evidence cited to us by petitioner and FOYC
4 regarding the second and third findings. There is very little evidence
5 supporting the county's findings regarding aluminum leaching into the soils; on
6 the other hand, petitioner submitted very little evidence to the contrary. There
7 is only a little more evidence cited to us regarding impacts from compaction
8 and herbicide use. Based on the evidence cited to us, a reasonable person
9 could have agreed with petitioner that aluminum leaching, compaction and
10 herbicide use are not serious concerns for purposes of Goal 2. However, we
11 cannot say that petitioner has established as a matter of law that a reasonable
12 person cannot conclude that some aluminum leaching is possible over the 20-
13 30 year lifespan of the facility. A reasonable person could also conclude from
14 the evidence in the whole record that it is possible that soil compaction and
15 herbicide use on the subject property could adversely impact the soil's
16 productivity, notwithstanding petitioner's assertion that after decommissioning
17 the site would be restored to its former condition. The second and third
18 findings are therefore supported by substantial evidence.

19 The remaining question is whether the second and third findings are
20 sufficient to support the county's ultimate conclusion that Goal 2 weighs in
21 favor of denial of the application. The parties do not address this question, but
22 as far as we can tell the second and third findings appear to be independent,

1 alternative bases for the county’s ultimate conclusion under Goal 2.
2 Accordingly, the lack of evidence supporting the first finding does not provide
3 a basis for reversal or remand.

4 The sixth subassignment of error is denied.

5 **g. Seventh Subassignment: Agricultural Lands, Goal 2, Policy A**

6 YCCP Agricultural Lands Goal 2, Policy A, states that “Yamhill County
7 will continue to preserve those areas for farm use which exhibit Class 1
8 through IV soils[.]” The county’s findings include three paragraphs setting out
9 three reasons to support its conclusion that Policy A weighs in favor of denial.
10 The first incorporates the reasoning under Goal 2, discussed above. The
11 second engages in a cumulative impacts analysis and concludes that converting
12 12 acres of Class I-IV soils from farm use to a solar facility is, considered
13 cumulatively with conversion of more than 100 acres to solar facilities
14 elsewhere in the county, not consistent with Policy A.⁷ The third paragraph

⁷ The second finding states, in relevant part:

“While a cumulative impacts analysis may not be required under state regulations, the county’s conditional use criteria that examines the consistency of this proposal with the [YCCP] allows the county to consider the conversion of county farmland to nonfarm uses and to determine that in this instance, when more than 100 acres of county farmland has been converted to nonfarm solar facility use and such conversion does not meet the county’s soil preservation goals, another solar facility should be viewed as defeating this policy. Thus, as another proposed instance of converting an additional 12 acres of Class I-IV soils away from

1 notes that solar facilities can be located in many locations, including land with
2 non-high-value soils, in rural residential zones, and in urban areas, and
3 concludes that losing additional quality farm soils to solar facilities would
4 threaten the overall integrity and viability of the agricultural land base. Record
5 17.

6 Petitioner challenges the first finding by repeating its arguments under
7 YCCP Agricultural Lands Goal 2, above. We reject that challenge for the
8 reasons set out above. Petitioner then challenges the second finding, arguing
9 that nothing in the YCCP expressly states that the county can consider the
10 cumulative impact of approving multiple solar facilities on the county's supply
11 of land with Class I-IV soils. While that is probably true, the more pertinent
12 question is whether the commissioners' interpretation of YCZO 1202.02(B) is
13 reversible under the deferential standard of review set out in ORS 197.829(1).
14 We understand that interpretation to be that, in considering whether a proposed
15 nonfarm use of a farm with Class I-IV soils is consistent with a YCCP policy
16 that requires the county to preserve areas for farm use with Class I-IV soils, the
17 county may consider the cumulative impact of similar nonfarm uses on the
18 county's supply of such soils. Petitioner does not argue that the
19 commissioners' interpretation is inconsistent with the express language of
20 YCZO 1202.02(B) or Policy A, or is inconsistent with their purposes and

farm use, this proposal does not help the county meet this policy.”
Record 17.

1 underlying policy. Absent a more developed argument, petitioner does not
2 demonstrate any basis to reject the commissioners' interpretation under its
3 second finding. Petitioner does not challenge, at least in this subassignment of
4 error, the commissioners' third finding.

5 The seventh subassignment of error is denied.

6 **h. Eighth Subassignment: Agricultural Lands, Goal 2, Policy B**

7 YCCP Agricultural Lands Goal 2, Policy B, states that the county will
8 "continue to support ASCS [Agricultural Stabilization and Conservation
9 Service] soil conservation measures and SWCD [Soil and Water Conservation
10 District] best management practices designed to protect and improve forest and
11 agricultural land productivity and to prevent unnecessary losses through
12 excavation, stripping, erosion and sedimentation." The county findings state:

13 "The applicant stated that it would adopt best practices, but offers
14 no specifics on how it will actually accomplish soil preservation
15 over the long-term as set forth in previous findings and
16 reincorporated here. Testimony was received in this matter in
17 opposition to conversion of high-value farmland to non-farm uses.
18 The removal of the most productive and valuable soils in this case
19 is contrary to the county's goals to conserve soil resources.
20 Therefore, the county finds that this policy weighs towards denial
21 of the application." Record 18.

22 It is not clear which previous findings regarding "soil preservation over
23 the long-term" are incorporated by the first sentence of this finding. Most
24 likely the intended reference is to findings at Record 10-11 stating concerns

1 about the long-term impacts of soil compaction.⁸ Petitioner challenges the
2 finding that it offered “no specifics on how it will actually accomplish soil
3 preservation.” Petition for Review 60; Record 80. According to petitioner, the
4 erosion and soil compaction plans it provided include specific details, based on
5 ASCA soil conservation measures and SWCD best management practices, to
6 establish that impacts from construction and installation would be avoided and
7 mitigated.

8 However, as we understand from the county’s findings under Policy B,
9 including its incorporated findings, the county’s concern is not with impacts
10 from construction and installation, but with long-term impacts on soil

⁸ In addressing OAR 660-033-0038(g)(C), the county found:

“In this case, the county has concluded that the site soils are expected to have a mid to high predisposition for compaction. The Soil Compaction Relief Plan submitted by the applicant focused on immediate soil compaction impacts from construction activities. However, the county also has concerns about the long-term impacts of soil compaction on this high-value farmland caused here by the compaction from installation of the stationary piles for the proposed photovoltaic panels that would be driven up to 10 feet into the ground. Testimony in the record supports a conclusion that solar facilities may diminish the productive use of the underlying farmland after the solar panels are removed because of impacts from compaction over the life of the solar facility. The applicant did not carry its burden to establish that soil compaction from installation and use of the solar photovoltaic panels for 20-30 years would not have long-term impacts that would reduce the productivity of soil on the subject property for crop production.” Record 10-11.

1 productivity after the facility is decommissioned in 20-30 years. The county
2 apparently understands Policy B to be concerned with more than supporting
3 ASCA soil conservation measures and SWCD best management practices
4 during construction, but to also be concerned with long-term impacts on soil
5 productivity due to soil compaction from driving thousands of steel pilings into
6 the soil. That concern with long-term impacts on soil productivity is not
7 expressly stated in the text of Policy B. On the other hand, petitioner has not
8 demonstrated that the commissioners' understanding of Policy B to embody
9 that concern is inconsistent with the express language, purpose or policy
10 underlying Policy B. Accordingly, petitioner's challenges to the county's
11 findings under Policy B provide no basis for reversal or remand.

12 The eighth subassignment of error is denied.

13 **i. Ninth Subassignment: Open Space Goal 1**

14 YCCP Open Space Goal 1 is "To insure the continuance of the open
15 space character that has always existed in Yamhill County." The county found
16 that this goal weighs against the proposed use, because:

17 "The open space character is not insured by the industrialization
18 that would occur if this proposal were approved. The county finds
19 that it would be counter-intuitive to achieving the balance of the
20 Comprehensive Plan Goals and Policies by sacrificing farmland,
21 and its aesthetic qualities in favor of industrialization, particularly
22 in the context of continuing the open space character that exists in
23 this area of Yamhill County, as one of the gateways to the
24 [Yamhill Carleton American Viticulture Area]." Record 18.

1 Petitioner argues that the foregoing finding cites no supporting evidence
2 for the conclusion that the proposed facility would be inconsistent with the
3 open space character of the area. FOYC responds by citing to testimony from
4 local opponents expressing concerns that the facility would destroy the open
5 space character of the area. We agree with FOYC that the above-quoted
6 finding is supported by substantial evidence in the record.

7 The ninth subassignment is denied.

8 **j. Tenth Subassignment: Rural Area Development Goal 1, Policy C**

9 YCCP Rural Area Development Goal 1, Policy C states that all proposed
10 rural area development shall be “appropriately, if not uniquely, suited to the
11 area or site proposed for development[.]” The county found that the proposal is
12 not appropriately suited to the area because the site is high-value farmland and
13 “high-value farmland is irreplaceable and should not be sacrificed for
14 industrial-sized solar facilities.” Record 19. The county rejected petitioner’s
15 argument that because the proposed use is listed as a conditional use in the
16 county’s EFU zone, the use is therefore appropriate for the proposed location,
17 finding:

18 “[T]he [EFU] designation does not guarantee approval unless the
19 applicant can meet its burden of demonstrating that the use meets
20 all conditional use criteria. The fact that the county has listed this
21 use as a conditional use does not mean that in every instance that a
22 proposed EFU site will be determined to better accommodate the
23 use than other zones or urban areas.” *Id.*

1 Petitioner contends that this finding misconstrues the applicable law,
2 because the proposed facility is not an urban use, but rather a rural use that is
3 conditionally allowed in many rural zones, including the EFU zone. Petitioner
4 also argues that it submitted evidence that the subject property is suited for the
5 proposed facility, due to its minimal slope and proximity to power lines.

6 However, petitioner has not demonstrated any error in the county's
7 findings. The above-quoted finding does not say that the proposed use is an
8 urban use that is appropriately sited only in an urban area. Instead, it rejects
9 petitioner's broad assertion that because solar facilities are listed as a
10 conditional use in the EFU zone, the proposed facility is presumed to be,
11 without more, appropriately suited for the area or the site. Petitioner has not
12 demonstrated that the county erred in rejecting that broad assertion. As to
13 petitioner's evidentiary argument, the question under Policy C is not whether
14 the *site* is appropriately suited for the proposed use, but whether the *use* is
15 appropriately suited for the site.

16 Petitioner's arguments under the tenth subassignment do not provide a
17 basis for reversal or remand, and the subassignment is denied.

18 **k. Eleventh Subassignment: Economic Development Goal 1, and**
19 **Policy B**

20 YCCP Economic Development, Goal 1 is "To maintain a rate and pattern
21 of economic growth sufficient to prevent recurring high levels of
22 unemployment and under-employment in the county, balance the real property
23 tax base of the various cities, and strengthen local economic bases." Policy B

1 under Goal 1 states that the county will “encourage economic development
2 projects which do not conflict with the predominant timber and agricultural
3 character of the county.”

4 The county found that, to the extent the goal statement and policy are
5 applicable in this context, the proposed use “will not have a significant positive
6 effect on unemployment in the county.” Record 19. The county cites
7 testimony about the potential adverse impact on the county’s tourism and wine
8 industries, and concludes that siting solar facilities on high-value farmland “is
9 not in the short or long-term economic interest of the county,” even though it
10 would provide revenue to the property owner and tax revenue to the county.
11 Record 19-20.

12 Petitioner argues that the county’s findings are not supported by
13 substantial evidence, and that the only factual evidence presented that has a
14 bearing under the goal and policy is petitioner’s testimony that the proposal
15 would generate revenue to the property owner and tax revenue to the county.
16 Based on that evidence, petitioner contends that a reasonable person could only
17 conclude that the goal and policy weigh in favor of the application.

18 FOYC responds by citing to evidence supporting the county’s findings
19 regarding no impact on unemployment and impacts on tourism and wine
20 industries. We agree with FOYC that petitioner has not demonstrated that the
21 county’s findings are not supported by substantial evidence, or that the

1 evidence petitioner submitted is the only probative evidence the county can
2 consider regarding consistency with the goal and policy.

3 The eleventh subassignment is denied.

4 **I. Twelfth Subassignment: Industrial Development Goal 1, Policies**
5 **B and E**

6 YCCP Industrial Development Goal 1 sets out five sub-goals for
7 industrial uses: (1) to concentrate similar industries within existing urban
8 centers; (2) to encourage adequate land for new industrial development within
9 urban growth boundaries; (3) to encourage relocation of existing industrial uses
10 from undesirable locations to eliminate land use conflicts; (4) to attract new
11 industries to achieve a more balanced property tax and employment base, while
12 maintaining a high standard of environmental quality; and (5) to protect
13 industrial areas from incompatible uses. Relatedly, Policy B states in part that
14 “[t]o the greatest extent possible, industrial areas will be located within urban
15 growth boundaries.” Policy E states that “[i]ndustrial uses will be located so
16 that adequate buffer space is provided between incompatible land uses.”

17 The county’s findings under Goal 1 focus on the first and third subgoals,
18 and fault petitioner for failing to address the subgoal of concentrating industrial
19 uses within urban growth boundaries, and for failure to demonstrate for
20 purposes of the third subgoal that the land use conflicts between industrial and
21 nonindustrial uses are eliminated. The county concluded that “[o]verall, the
22 county finds that this goal statement balances in favor of denial of the proposed
23 use.” Record 20.

1 Under combined findings addressing Policy B and E, the county found:

2 “The county finds that the applicant has failed to demonstrate that
3 the proposed solar facility is consistent with this Goal and its
4 policies because the industrial use is proposed outside the urban
5 growth boundary, in an undesirable location, without an adequate
6 buffer to prevent adverse impacts to surrounding properties, and
7 these policies weight in favor [of] denial of the proposed use.”
8 Record 20.

9 Petitioner argues that the county misapplied the language of Goal
10 Statement 1, because the first and third sub-goals the county focused on are
11 inapplicable, and the county failed to address the fourth sub-goal, the only
12 applicable sub-goal, which speaks about attracting new industries to balance
13 property taxes and employment while maintaining a high standard of
14 environmental quality. With respect to the first sub-goal, petitioner argues that
15 it is inapplicable because the county adopted no findings that solar facilities are
16 types of similar industrial uses that are concentrated in urban areas. Similarly,
17 petitioner argues that the third subgoal concerns only the relocation of *existing*
18 industrial uses to eliminate conflicts, and is therefore inapplicable.

19 Petitioner acknowledges, however, that Policies B and E echo the
20 concerns addressed in the first and third subgoals, to locate industrial uses
21 within urban areas and to mitigate incompatibilities between industrial and
22 non-industrial uses. Petition for Review 20. From the way the county’s
23 findings mix the goal and policy language, it seems clear that the
24 commissioners read the goals and policies together to embody a policy
25 preference for locating industrial uses within urban growth boundaries, and for

1 reducing land use conflicts between non-industrial uses and industrial uses that
2 are located outside designated industrial areas. We disagree with petitioner
3 that the county erred in addressing the language of the first and third subgoal.

4 As to the fourth subgoal, petitioner is correct that the findings do not
5 expressly address it, although other findings address similar economic
6 considerations. However, the county's ultimate conclusion with respect to the
7 subgoals is that "[o]verall," the goal statement "balances in favor of denial."
8 Record 20. That suggests that the county in fact considered the other
9 applicable subgoals, but found "overall" that more subgoals pointed toward
10 denial. Given that internal balancing within Goal Statement 1, in the context of
11 the larger balancing of all applicable plan goals and policies, we see little point
12 in remanding for the county to adopt specific findings addressing the one
13 subgoal that petitioner argues supports approval.

14 With respect to Policy E, petitioner cites to the county's conclusion
15 under YZCO 402.07(A) that the facility will not force a significant change in
16 surrounding farm practices or increase costs of such practices as conclusive
17 evidence that adequate buffer space is provided between incompatible land
18 uses. However, "incompatible land uses" is a larger category of conflicts than
19 impacts on farm practices. The fact that the county found compliance with
20 YZCO 402.07(A) does not compel the conclusion that the proposed use is
21 consistent with Policy E. Petitioner provides no developed challenge to the
22 portions of the finding directed at the language of Policy B.

1 The twelfth subassignment of error is denied.

2 **m. Thirteenth Subassignment: Water Resources Goal 1**

3 YCCP Water Resources, Goal 1 is “[t]o conserve and to manage
4 efficiently our water resources in order to sustain and enhance the quantity and
5 quality of flows for all consumptive and non-consumptive uses and to abate
6 flood, erosion and sedimentation problems.”

7 The county found that on balance “this goal does not weigh in favor of
8 approval or denial of this proposed solar facility,” after reciting petitioner’s
9 claims that converting part of the subject property from hay and grass seed
10 production to a solar facility would reduce water consumption. Record 21.

11 Specifically, the county found:

12 “The applicant argued that it would not use water for this proposed
13 solar facility, resulting in an overall reduction in water use for the
14 current grass seed and hay cultivation. The applicant did not
15 provide any evidence about the contended water use offset and the
16 county cannot reach any conclusion about whether water
17 conservation would occur. * * * However, the county also heard
18 testimony that other chemicals or components of the PV panels
19 could potentially drain from the site and damage soils or water
20 resources as it drains from the property. On balance, the county
21 finds that this goal does not weigh in favor of approval or denial
22 of this proposed facility.” Record 20-21.

23 Petitioner challenges the finding that it provided no evidence about the water
24 savings from converting the farm use to a solar facility. Petitioner cites to its
25 testimony below that the facility would use no water, which petitioner contends
26 represents an obvious savings compared the present farm use, which
27 presumably relies on irrigation. Petitioner also disputes the finding that

1 “chemicals or components” of the solar panels might drain from the site.
2 According to petitioner, based on the evidence in the record a reasonable
3 person could only conclude that the proposed use is consistent with YCCP
4 Water Resources, Goal 1.

5 However, the fact that the solar facility would not use any water does not
6 necessarily result in a reduction in actual consumption. If the present farm
7 operation does not rely on irrigation, then converting the present farm use to a
8 solar facility would not represent an actual reduction in consumption. If the
9 present farm use relies on irrigation, it is possible that the water rights
10 supporting the former hay and grass seed operation could be transferred or used
11 elsewhere, with no resulting net conservation or reduction in consumption.
12 Petitioner apparently provided no analysis or evidence that would support a
13 finding that converting the farm use to a solar facility would result in actual
14 water conservation or reduction in consumption, but simply relied on its
15 statement that the solar facility would use no water. Petitioner has not
16 demonstrated that the county erred in finding that petitioner failed to present
17 evidence to substantiate its claim that the facility would reduce water
18 consumption.

19 As to chemical or aluminum runoff, we have elsewhere sustained the
20 county’s findings on that point with respect to other plan goals and policies.
21 To the extent that dispute is relevant to the county’s findings under Water
22 Resources Goal 1, which the county found did not weigh either in favor or

1 against the proposal, petitioner's arguments do not provide a basis for reversal
2 or remand.

3 The thirteenth subassignment of error is denied.

4 **n. Fourteenth Subassignment: Air, Water and Land Resources**
5 **Quality, Goal 1, Policy E**

6 YCCP Air, Water and Land Resources Quality Goal 1 is to "conserve
7 and protect natural resources, including * * * soil * * * from pollution or
8 deterioration[.]" Policy E states, in relevant part:

9 "In order to maintain and improve the quality of the county's air,
10 water and land resources, Yamhill County will seek to minimize
11 irreversible and other long-term impacts in its development of
12 energy resources[.]"

13 The county found:

14 "The applicant proposed findings for Policy [E], citing its intent to
15 use best management practices to minimize air, water and land
16 resource impacts during construction. However, the Goal
17 Statement concerns the conservation of natural resources,
18 including 'soil,' and testimony was received asserting that the
19 applicant had failed to demonstrate that, over the course of 20-30
20 years, the panels would not hurt the high-value soils on which they
21 are proposed to be located. Policy [E] states, in part, that:
22 'Yamhill County will seek to minimize irreversible and other long-
23 term impacts in its development of energy resources.' The
24 applicant failed to demonstrate that the impacts of the facility over
25 20-30 years would not constitute a 'long-term' impact to soils on
26 the site. This policy weighs in favor of denial of the application."
27 Record 22.

28 Petitioner argues that the above-quoted finding fails to consider under
29 the "minimize * * * impacts" language in Policy E petitioner's testimony
30 regarding minimization of impacts over the life of the facility, including the

1 erosion control plan, the soil compaction plan, and the weed mitigation plan.
2 However, the county found elsewhere and repeats here that petitioner's plans to
3 minimize impacts focused on construction impacts. We have elsewhere
4 rejected petitioner's challenges to the county's findings regarding long-term
5 impacts to soil after 20-30 years, and petitioner's arguments here provide no
6 new basis to conclude otherwise with respect to Policy E.

7 Finally, petitioner argues that the solar facility is consistent with the goal
8 and policy because it reduces the county's reliance on non-renewable fossil
9 fuels, which at some remove would presumably help the county protect air
10 quality from pollution. That may be so, but the county's findings under Goal 1
11 and Policy E focus on preservation of agricultural soils. Petitioner has not
12 demonstrated that reducing the county's reliance on non-renewable fossil fuels,
13 and any associated reductions in air pollution, compel the conclusion that
14 approving the solar facility is consistent with Goal 1 and Policy E, as weighed
15 against the soil impacts identified by the county.

16 The fourteenth subassignment is denied.

17 **o. Final Weighing and Balancing**

18 The county's ultimate weighing and balancing of the YCCP goals and
19 policies is embodied in the following conclusion:

20 "On balance, the comprehensive plan goals support preservation
21 of farmland instead of the proposed non-farm use solar facility.
22 The county's responsibility under the consistency standard is to
23 make findings of consistency with the Comprehensive Plan
24 policies by balancing of all relevant goals and policies. The

1 Agricultural Land goals and policies to protect and preserve
2 farmland, soils, large blocks of farmland, as well as protecting
3 rural areas all weigh stronger for preservation of farmland for farm
4 use than any alleged gain in provision of renewable energy
5 sources. The county further balances the Comprehensive Plan
6 goals and policies in favor of farmland protection because a solar
7 facility can be located on non-farmland. Overall and as weighed
8 against each other, the Agricultural Land, Open Space, Rural Area
9 Development, and Economic Goals of the Plan weigh in favor of
10 denying this application.” Record 22-23.

11 We have rejected petitioner’s challenges to the findings addressing
12 specific plan goals and policies, as well as petitioner’s broader challenges to
13 the manner in which the county weighed and balanced the applicable plan goals
14 and policies, where conflict or tension exists between them. Given the
15 deferential review we must apply to the county’s interpretative and evidentiary
16 judgments, and the inherently subjective nature of evaluating whether the
17 proposed use is consistent with a broad range of comprehensive plan goals and
18 policies, the county’s ultimate conclusion that the balance of the applicable
19 goals and policies weigh against the proposed use is not reversible on appeal.

20 The sixth assignment of error is denied.

21 **SECOND THROUGH FIFTH, AND SEVENTH ASSIGNMENTS OF**
22 **ERROR**

23 As explained, if LUBA sustains one sufficient basis for denial, LUBA
24 does not typically address challenges to other, alternative bases for denial,
25 because doing so would not change the disposition of the appeal, and would
26 result in LUBA rendering advisory opinions, contrary to the statutory directive

1 to conduct LUBA's review consistent with sound principles of judicial review.
2 ORS 197.805; *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256,
3 266, *aff'd* 195 Or App 762, 100 P3d 218 (2008). Because we have rejected
4 petitioner's challenges to a sufficient basis for denial under the sixth
5 assignment of error, we therefore need not and do not resolve petitioner's
6 challenges to other bases for denial, under the second, third, fourth, fifth and
7 seventh assignments of error.

8 **EIGHTH ASSIGNMENT OF ERROR**

9 Under the eighth assignment of error, petitioner challenges the county's
10 failure to adopt findings of compliance or noncompliance with four approval
11 standards.

12 While a local government certainly has an obligation to address all
13 applicable mandatory approval standards when approving a land use
14 application, petitioner cites no authority that obligates the decision-maker to
15 adopt findings of compliance or noncompliance with all approval standards,
16 once the decision-maker has determined that the application must be denied in
17 any event, based on findings of noncompliance with one or more approval
18 standards. Petitioner also cites no authority or reason for LUBA to remand a
19 denial decision that LUBA must otherwise affirm, in order for the local
20 government to adopt findings regarding approval standards the local
21 government decided not to address, once it had determined that the application
22 must be denied for other reasons. *Wal-Mart Stores*, 47 Or LUBA at 266.

1 Accordingly, petitioner's arguments under the eighth assignment of error do
2 not provide a basis for reversal or remand.

3 The eighth assignment of error is denied.

4 The county's decision is affirmed.