LUBA
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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

OREGON COAST ALLIANCE,
Petitioner,

vs.

COOS COUNTY,
Respondent,

and

OCEAN RIVER, LLC,
Intervenor-Respondent.

LUBA No. 2025-005

FINAL OPINION
AND ORDER

Appeal from Coos County.

Sean T. Malone filed the petition for review and reply brief and argued on behalf of petitioner.

No appearance by Coos County.

Bill Kloos filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent.

WILSON, Board Member; ZAMUDIO, Board Chair; BASSHAM, Board Member, participated in the decision.

AFFIRMED 06/18/2025

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

Opinion by Wilson.

NATURE OF THE DECISION

Petitioner appeals a board of commissioners decision approving a conditional use for a golf course and accessory uses.

FACTS

Intervenor-respondent (intervenor) owns a 342-acre tract on land zoned for exclusive farm use (EFU) near the Pacific Ocean. Intervenor applied for a conditional use permit to operate an 18-hole golf course with accessory uses. Approximately 115 acres would consist of the tees, fairways, and greens, the practice course and range, as well as a clubhouse, parking, maintenance facility, restrooms, and a turn stand (combined restroom/vendor facility). Approximately 50 acres would consist of intermediate areas, such as the rough and safety corridors, which will be minimally maintained as open sand dunes, tall grasses, and native vegetation. Approximately 134 acres would consist of open space that contains natural dune formations with some vegetation.[1] Approximately 20 acres would consist of wetlands, and approximately 23 acres would consist of identified flood areas.[2] There are two existing residential dwellings on the subject

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[1] The open space areas are areas that are undeveloped rather than areas specifically zoned open space.

[2] Intervenor explains that there are approximately 10 acres that would be used for accessory uses such as the clubhouse, and that the decision often refers to the 165 acres of just the fairways, roughs, and greens rather than the accessory uses.

parcel that have been used as long-term rentals. Use of these structures is not included as part of the golf course conditional use application, and intervenor maintains that the dwellings will not be used in conjunction with the golf course use.

The property is largely surrounded by farm uses, open space, and recreational uses. Land to the south is privately owned open space. Land to the west is owned by Oregon State Parks and is undeveloped open space for recreation. Land to the north and east consists of EFU land that has been historically used for growing cranberries.

Intervenor obtained approval of the conditional use from the county planning commission. Petitioner appealed the planning commission decision to the board of county commissioners, raising eight issues in its local appeal statement. The board of county commissioners denied petitioner's appeal and approved the golf course with conditions. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner's first assignment of error is somewhat unusual. Petitioner argues that the county's findings are inadequate and inconsistent with ORS 215.416(9), set out later, because it is unclear exactly what the county incorporated as findings of fact. Petitioner does not argue in this assignment of error that there are inadequate findings for any particular approval criterion.

The portion of the property proposed to be developed for the golf course is 175 acres.

Petitioner argues instead that because it cannot tell what findings are incorporated in the decision that the decision must be summarily remanded.

The decision on appeal is the board of commissioners' denial of petitioner's appeal of the planning commission decision. While the planning commission decision addressed all of the applicable approval criteria, the board of commissioners' decision only addressed the eight issues raised by petitioner in its local appeal statement. Coos County Zoning and Land Development Ordinance (CCZLDO) 5.8.170.6 requires that:

> "The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval * * *."

Petitioner raised eight issues on appeal, and the board of commissioners addressed all eight issues in detail. Record 1-25. ORS 215.416(9) provides:

> "Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth."

The board of commissioners' decision complies with ORS 215.416(9). The decision has a (more than) brief statement that explains the criteria and standards relevant on appeal. The decision states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards, and facts set forth in the decision.

Petitioner argues that the board of commissioners' decision inadequately incorporates additional findings in its decision. In addition to the findings made by the board of commissioners in the decision, the decision also incorporates findings from the planning commission and staff reports. The decision states:

> "The Planning Commission adopted 43 pages of findings in support of its decision approving this application. Those findings are incorporated here. The findings made here supplement those of the Commission in order to address the issues on appeal. These findings control over the findings of the Commission to the extent of any inconsistencies.
>
> "Similarly, there were staff reports issued in the course of this application and appeal. Each addressed standards for the decision based on the record. The Staff Reports are adopted as supplemental findings of the Board to the extent those Staff Reports are not inconsistent with the findings made by the Planning Commission and the findings made here." Record 6-7.

Petitioner does not dispute that the county properly incorporated the findings from the planning commission decision. Petitioner, however, argues that that the incorporation of "staff reports" is unclear because while there are two staff reports in the record, those staff reports include numerous attachments, including some attachments that oppose the application. According to petitioner, it cannot properly challenge a decision when it is unclear what all of the findings in support of the decision are.

Petitioner cites two cases in support of its argument: *Gonzalez v. Lane County*, 24 Or LUBA 251 (1992) (*Gonzalez*) and *Central Oregon LandWatch v. Jefferson County*, LUBA No 2023-026 (Sep 8, 2023) (*COLW*). Both of those

cases are distinguishable and do not establish that a decision may be summarily remanded because of ambiguous or overly inclusive incorporation of findings.

In *Gonzalez*, which is the leading case on incorporation of findings by reference, the challenged decision involved a comprehensive plan and zoning amendment. As part of the amendment the county was required to conduct a Statewide Planning Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) economic, social, environmental, and energy (ESEE) analysis. The findings in the challenged decision did not conduct the required ESEE analysis. The respondents argued that the decision incorporated ESEE findings from other documents in the record as findings. We explained that the decision failed to incorporate the ESEE analysis:

> "[W]e hold that if a local government decision maker chooses to incorporate all or portions of another document by reference into its findings it must clearly (1) indicate its intent to do so, and (2) identify the document or portions of the document so incorporated. A local government decision will satisfy these requirements if a reasonable person reading the decision would realize that another document is incorporated into the findings and, based on the decision itself, would be able both to identify and to request the opportunity to review the specific document thus incorporated." 24 Or LUBA at 259 (footnote omitted).

The *Gonzalez* petitioners argued in their second assignment of error that the county had failed to comply with Goal 5 in numerous ways. The consequence of the county's failure to properly incorporate the contested ESEE analysis was not that the decision was summarily remanded to adopt a more inclusive incorporation, but rather the county could not rely on anything in the ESEE

analysis as support for its decision. We did not summarily remand the case for the county to clarify or extend its findings. Instead, we merely went on to address the specific assignments of error based on the findings in the final decision itself. We also addressed other assignments of error that had nothing to do with the disputed ESEE analysis. If petitioner in the present case were correct that the failure to unambiguously incorporate findings by reference were an independent basis for remand, then we would not have addressed the *Gonzalez* petitioners' Goal 5 arguments or their other arguments. In other words, whether the county had properly incorporated other materials into its decision had a bearing only on LUBA's review over assignments of error that challenge whether a certain approval criterion had been satisfied – not whether the decision should be remanded on that basis alone. *Gonzalez* does not assist petitioner.

In *COLW*, the county adopted a Statewide Planning Goal exception redesignating and rezoning land as an amendment to its comprehensive plan. One of the requirements for taking a goal exception is to adopt findings and a statement of reasons explaining why the applicable exception criteria are met. While the challenged decision included some findings of facts and conclusions of law regarding the applicable exception criteria, the decision also incorporated nearly 700 pages of a 2500-page record. We explained that although the decision adequately identified the incorporated materials: "[a] reasonable person would not be able to identify *the findings of facts and statements of reasons* explaining why the county concludes the applicable exception criteria are met." *COLW*,

LUBA No 2023-026 (slip op at 13-14) (emphasis added). Although the county had, in the final decision document, adopted some findings on the exception criteria, it was reasonably clear that in order to support the exception the county had to rely on additional findings and statements of reasons, which ostensibly were included in the incorporated documents. We concluded that the incorporation by reference was overly broad and so it did not meet the *Gonzalez* standard. Thus, we sustained that portion of the assignment of error.

As in *Gonzalez*, the ineffectively incorporated materials in *COLW* were necessary to support to the decision. As in *Gonzalez*, after finding that the referenced materials were not properly incorporated as supportive findings, we sustained assignments of error directed at portions of the decision that relied on those improperly incorporated materials. Also, as in *Gonzalez*, the question of whether certain materials were properly incorporated had a bearing on whether there were adequate findings for a certain approval criterion. Neither *Gonzalez* or *COLW* stand for the proposition that an ineffective or ambiguous incorporation by reference provides a basis to summarily remand the decision for the local government to clarify its findings. If petitioner in the present case were correct that the failure to properly incorporate findings were an independent basis for remand, we would not have addressed the *COLW* petitioner's other arguments. Like *Gonzalez*, *COLW* stands for the proposition that if a decision fails to properly incorporate certain materials in its findings, then those materials may not be relied upon as findings to support the decision – the decision will have to

rely on other findings.[3] Neither *Gonzalez* nor *COLW* stand for the proposition that improper incorporation of findings is an independent basis for remand. Petitioner's argument does not provide a basis for remand.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the county's findings are inadequate, not supported by substantial evidence, and misconstrue the applicable law in determining that the application satisfies the farm impacts test of ORS 215.296. Golf courses on EFU land are conditional uses under the CCZLDO, and one of the approval criteria is CCZLDO 4.6.200(5), which incorporates what is generally referred to as the farm impacts test of ORS 215.296:

> "APPROVAL CRITERIA; Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:
>
> > "(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
> >
> > "(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

Petitioner raises three reasons it believes the county did not satisfy the farm impacts test. We address each in turn.

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[3] Petitioner does not identify any findings of the board of commissioners that relies on the allegedly improperly incorporated materials.

A. Approximate Accessory Use Locations

The application requests approval for a number of accessory uses such as a clubhouse, maintenance facility, restrooms, and caddy shack, but does not specify the precise location proposed for those uses. According to petitioner, because the county does not know the precise location of the accessory uses, it cannot properly determine what the impacts of those uses will be on surrounding lands devoted to farm use.

A threshold issue is whether petitioner may make this argument at LUBA. Intervenor argues that petitioner failed to address the findings in the board of commissioners' decision that found that petitioner had not adequately raised this issue in its appeal of the planning commission's decision, and therefore that issue is beyond our scope of review. The board of commissioners found that petitioner had not explained in detail how the lack of a precise location for the accessory uses meant the application did not meet the approval criteria:

> "ORCA contends that the location of the buildings will be relevant and material to the issue of whether the use will 'force a significant change in accepted farm practices on surrounding lands devoted to farm or forest use.'
>
> "Significant impacts are those that would prevent a farm owner from either conducting standard farm practices, or significantly increase the cost of farm practices. ORCA asserts impacts associated with building location due to people (visitors and golfers), garbage, traffic, trespass and crows * * *.
>
> "As the applicant points out, what is missing from the ORCA allegation is any hint of an explanation as to why or how any of these aspects of building location would relate to the statutory standard.

> All of these things (people, garbage, traffic, trespass, and birds) typically exist in proximity to any farming operation. In this instance, regardless of where on the golf course structures are located, the buildings will be remote from any farming operation, including by being buffered by the open space around the course in the same ownership.
>
> "It is not the job of the applicant or the staff or the Board to hypothesize possible adverse impacts, impute them to ORCA as evidence and arguments, and then analyze them under the standards. ORCA has an obligation to develop an argument based on the evidence in the record and explain in detail why the Planning Commission decision is erroneous. ORCA has not done that in this appeal.
>
> "This allegation is denied for failure to be sufficiently developed." Record 14.

The board of commissioners denied petitioner's arguments concerning farm impacts due to the lack of a precise location for the accessory uses on the grounds that that issue was not sufficiently developed and also adopted the planning commission's findings on the merits.[4] Petitioner does not challenge the board of commissioners' findings that the issue was not sufficiently raised in their appeal of the planning commission decision. Intervenor argues that when a local government has adopted alternative findings to support a decision, a petitioner must challenge both bases for the approval or the assignment of error must be denied.

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[4] As discussed in the first assignment of error, there is no dispute that the board of commissioners properly adopted the planning commission findings.

On appeal to the board of commissioners, petitioner clearly raised an issue regarding whether the lack of certainty regarding the precise location of the golf course accessory uses and, hence, their proximity to nearby farm uses, meant that the county lacked the information needed to evaluate the impacts petitioner identified on nearby farms. Record 115-16. Petitioner's appeal also incorporated by reference similar arguments made to the planning commission. As discussed later, that is not a winning argument, but it is a clearly stated one.

While the board of commissioners found that petitioner's argument was not "sufficiently developed," they did not appear to have trouble understanding petitioner's argument that the lack of certainty regarding the location of accessory uses and their proximity to farm uses must be determined before applying the farm impacts test. They simply did not agree with it, based on two counterarguments from intervenor that petitioner did not address: (1) the nearby farms already experience similar impacts (implying additional impacts would not be significant, no matter the location of the accessory uses), and (2) the distance and open areas between the golf course and nearby farms will buffer any impacts, no matter where the accessory uses are located. Based on those two counterarguments the county rejected petitioner's argument that it needed to precisely determine the location of the accessory uses in order to apply the farm impacts test. Thus, the county's finding that petitioner's argument was not "sufficiently developed" appears to have less to do with the lack of clarity or lack of detail on what issue was raised in the appeal document, and more to do with

the board of commissioners' disagreement with the merits of petitioner's argument, based on the two cited counterarguments.

From this perspective, the county's finding that petitioner's argument was not "sufficiently developed" is best understood as a conclusion that the argument is not meritorious, in light of the two counterarguments from the applicant cited in the decision. In other words, the board of commissioners understood the issue raised and resolved it on the merits. Where the appeal document alleges a cognizable error in the underlying decision, and the local review body understands the issue and is able to respond to and resolve the merits, then the petitioner need not separately assign error to findings that the appeal issue was not "sufficiently developed" in order to assign error to the findings on the merits.

On the merits, petitioner argues that the county's farm impacts findings are not supported by substantial evidence. Petitioner argues that the location of the accessory uses is relevant to impacts that are likely to occur to adjacent farm uses under the farm impacts test. According to petitioner, there could be impacts related to the number of visitors and golfers, the amount of garbage produced, traffic, trespassing, the attraction of corvids (crows), and other factors, and without knowing the location of the accessory uses, the farm impacts test could not be properly applied. As quoted earlier, the board of commissioners found that:

> "Significant impacts are those that would prevent a farm owner from either conducting standard farm practices, or significantly increase the cost of farm practices. ORCA asserts impacts associated with

> building location due to people (visitors and golfers), garbage, traffic, trespass and crows * * *.
>
> "As the applicant points out, what is missing from the ORCA allegation is any hint of an explanation as to why or how any of these aspects of building location would relate to the statutory standard. All of these things (people, garbage, traffic, trespass, and birds) typically exist in proximity to any farming operation. In this instance, regardless of where on the golf course structures are located, the buildings will be remote from any farming operation, including by being buffered by the open space around the course in the same ownership." Record 14.

The board of commissioners found that regardless of where on the golf course the accessory uses would be located, the impacts to farm uses would be the same and that all of the alleged farm impacts would be buffered by the open space around the golf course. Petitioner argues that there is no evidence in the record supporting the first finding that impacts from people, garbage, traffic, trespass and birds "typically exist in proximity to any farming operation." Petition for Review 24. However, the petition for review does not include a challenge to the evidence supporting the second finding, that the intervening open spaces would buffer any impacts from the golf course use on surrounding farming operations, no matter where the accessory uses are located.

Substantial evidence is evidence that a reasonable person would rely on in making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). In reviewing the evidence, LUBA may not substitute its judgement for that of the local decision maker. Rather, LUBA must consider all the evidence to which it is directed, and determine whether based on that evidence, a reasonable

local decision maker could reach the decision that it did. *Younger v. City of Portland*, 305 Or 346, 358-60, 725 P2d 262 (1988).

Intervenor responds that despite not specifying the exact location of the accessory uses, the record establishes that the clubhouse, parking lot, pro shop, and bag drop would be located on the northern portion of the golf course between the first hole and the practice range. The record establishes that the maintenance compound with the agronomy building, office, storage, restrooms, and turn stand would be located on the eastern edge of the golf course between the fifth and sixth holes. The planning commission discussed the approximate distances between the accessory structures and the closest farm operations. The planning commission found that the combined area for the accessory uses would consist of approximately 10 acres. Petitioner makes no attempt to explain how the potential impacts to farm uses would be different depending on where within the specific area set out for accessory uses the accessory uses are eventually built. Based on this record, we agree with intervenor that a reasonable person could reach the decision that the exact location of the accessory uses would not have any effect on the impacts to farm uses.

Petitioner also appears to argue that there would be farm impacts from crows and the number of golfers. Petitioner's arguments are difficult to follow. Petitioner does not explain what these alleged impacts have to do with the location of the accessory structures. Instead, petitioner appears to be repeating arguments made about the farm impacts test in general. This argument is directed

at the lack of precise locations for the accessory uses. These extraneous arguments do not appear to have anything to do with that argument as far as we can tell. Even if those arguments were properly directed at the county's findings regarding the farm impacts test, those arguments completely ignore the six pages of board of commissioners findings and seven pages of planning commission findings addressing the farm impacts test. Petitioner's extraneous arguments provide no basis to remand the decision.

B. Source of Testimony Regarding Farm Practices and Impacts

Petitioner argues that some of the findings in support of the farm impacts test being satisfied erroneously rely on testimony from engineering and geologist consultants who are not experts on farm practices. According to petitioner, a reasonable person would not rely on that testimony and, thus, the decision is not supported by substantial evidence.

The findings state:

> "The applicant's narrative discussing compliance with the farm impacts standard appears at * * *. That discussion and evidentiary statement is made by the applicant's professionals at Stuntzner Engineering. Exhibit E to the application shows and labels, on an air photograph, the adjacent farming operations to the north and east of the tract. The applicant's statements about topography are supported by a topographic map it placed in the record. Exhibit G to the application is a discussion of water rights and water supply for the golf course submitted by the applicant's expert [geologist]. Exhibit H to the application is a report by the applicant's consulting geologist, * * * addressing the geotechnical suitability of the site for the use." Record 22.

Intervenor's engineering firm's point person, a land use planner, testified at the appeal hearing with another intervenor representative, the general manager of Bandon Dunes, a golf course north of the City of Bandon operated by the same parent company as intervenor. Intervenor's representatives testified that the proposed golf course practices would mirror those at Bandon Dunes, which has received national environmental awards and has had minimal impact on adjacent agricultural activities, in large part because the golf course uses are similar to activities commonly found on farming operations.

There is no prescribed standard for expertise in providing testimony on the farm impacts test. The general substantial evidence standard applies – that is, whether a reasonable person could reach the decision the local decision maker made based on the evidence presented. Petitioner argues some expertise is required, based on *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015) (*Mahar/Tribble*). According to petitioner:

> "The nature of some types of potential adverse impacts may be such that some technical expertise is necessary to provide substantial evidence to support the conclusions drawn about the likelihood of those impacts and the 'methods which could be employed to avoid or minimize adverse impacts.'" *Id.* at 232.

In *Mahar/Tribble*, the standard at issue was Goal 16 (Estuarine Resources), Implementation Requirement 1.[5] We remanded for the city to evaluate the potential adverse impacts on the estuary from residential development allowed under the new plan and zoning designations in light of expert biologist testimony that pollution from stormwater runoff from the subject property could adversely impact endangered salmon species. Although we said some types of potential adverse impacts might require technical expertise, we also said that we generally agreed that the requirement "does not necessarily require that the impacts assessment be prepared by experts or based on expert testimony." *Mahar/Tribble*, 72 Or LUBA at 232. The issue in *Mahar/Tribble* was that the petitioner had submitted expert testimony on the issue but intervenor had not submitted any expert counterevidence and, instead, intervenor relied solely on their attorney's statements. We reasoned that "[t]he mere statements of the applicant's attorney do not provide the required evidentiary foundation necessary to support conclusions regarding such technical questions * * *." *Id.* at 232-33.

In *Mahar/Tribble*, the applicant intervenor bore the burden of establishing compliance with Goal 16 and failed to provide any expert testimony responding to expert testimony regarding estuarine impacts. In this case, applicant intervenor bears the burden of providing evidence demonstrating that the proposed use will

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[5] Goal 16, Implementation Requirement 1, requires in part that "actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration."

not force a significant change in or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm or forest use. There is no evidence in the record that the proposed golf course use will force a significant change in or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm or forest use. The evidence in the record is that the golf course use will not significantly impact surrounding farms. Petitioner argues that intervenor's experts are not subject matter experts on farm impacts and, thus, intervenor did not meet its evidentiary burden to satisfy the farm impacts test. Thus, according to petitioner, the county's decision that the farm impacts test is satisfied is not supported by substantial evidence. ORS 215.296 does not require an agricultural expert to testify to the absence or insignificance of farm impacts. No agricultural expert (*i.e.*, farmer) has opined that significant impacts will occur. In the absence of agricultural expert testimony alleging significant farm impacts, a reasonable person could rely on engineer, geologist, and golf-course manager testimony regarding the absence of farm impacts from the golf course use.[6] We agree with intervenor that a reasonable person could rely on intervenor's representatives' testimony.

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[6] We do not mean to suggest that in a hypothetical case where the record includes agricultural expert testimony alleging significant farm impacts that an applicant must always provide counter agricultural expert testimony. The source of the testimony and, thus, weight of the testimony, is an evidentiary issue for the local government to resolve in applying the farm impacts test.

C. Impacts to Water Resources

Petitioner argues that the "findings do not and cannot know the impacts to surrounding farms because the findings do not contain any reliable information on water drawdown and potential for contamination from chemicals used on golf courses." Petition for Review 29. Petitioner argues that it raised the issue of potential water drawdown and quotes arguments it made below. Petitioner then quotes the county's findings on the issue:

> "Furthermore, the applicant's expert, a registered geologist and Certified Water Rights Examiner, explained in Exhibit F to the application how the water rights permitting system works and how any water rights acquired by the applicant for the golf course cannot and will not adversely impact the viability of existing agricultural uses. The Board finds this evidence to be credible and a basis for finding, in the absence of conflicting evidence, that permitted water use by the golf course will not negatively affect farming." Record 26.

We understand petitioner to argue that the impacts to water resources will not be revealed until a water rights proceeding at which petitioner will not have an opportunity to object under the farm impacts test and, therefore, the county was required to defer an ultimate finding regarding the farm impacts test until a later time when the water resources impacts are known, pursuant to *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447-48 (1992).

In *Rhyne*, we explained that there are three ways for a local government to deal with conflicting evidence on an approval criterion:

> "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 necessary. Second, if the local government determines there is insufficient evidence to determine the feasibility of compliance with the standards, 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 that 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." *Id.*

As we understand it, petitioner argues that, in the absence of demonstrated water resources impacts, the record does not include substantial evidence for the county to find that there are no significant farm impacts with respect to water resources. Thus, according to petitioner, the county must take the third *Rhyne* option and defer a determination on the farm impacts test until intervenor has obtained its water rights.

As intervenor points out, the county did not take the third option under *Rhyne* and defer a finding until a further proceeding. The county took the first option and specifically found that the evidence was sufficient to find that the farm impacts test was satisfied, and, in particular, was satisfied in regards to potential

water drawdown because the existing state water regulation program will not permit the golf course to use water in a manner that will adversely impact the surrounding farm uses. Petitioner is incorrect that the county was required to take the third *Rhyne* option. Which *Rhyne* option a local government elects to take is up to its sole discretion. The question on review is whether the evidence supports the option that the local government elected. In the present case, petitioner merely argues that the county was required to take the third *Rhyne* option. The county clearly proceeded under the first option. Therefore, petitioner's arguments provide no basis for remanding the decision.

In order to obtain a remand, petitioner would have had to challenge the evidentiary basis for the findings the county made in support of finding that the farm impacts test was satisfied with regard to water resources. Petitioner does not challenge those findings so, again, petitioner's arguments do not provide a basis to remand the decision. Even if petitioner had challenged the county's findings regarding the golf course impacts on water resources, those findings are supported by substantial evidence. The Exhibit F referenced in the findings from intervenor's Certified Water Rights Examiner states:

> "The purpose of this memorandum is to address the potential for adverse impacts to local users of groundwater and surface water near the proposed [site] due to new water applications.
>
> "All new water right applicants must demonstrate to the agency's satisfaction that the proposed water right changes and requests for new water rights will cause no harm to natural resources or injury to other water users due to the proposed change or new use. Oregon

> has a robust water right administration in place to assess applications for new water right[s] to ensure that water is available and that no injury to other water resource users will occur due to the issuance of a new water right.
>
> "Oregon's water right administration is transparent and open to the public. The permitting process for new water rights, are open to the public for review and comment under [OAR] Chapter 690 rules and allow for ample public involvement.
>
> "Based on the presented requirements of three state agencies; [Oregon Water Resources Department (OWRD), Oregon Department of Environmental Quality (DEQ), and Oregon Department of Fish and Wildlife (ODFW)] the natural surface water and groundwater resources of Oregon are well protected for development of new irrigation uses and do not threaten the continued use of surface water or groundwater in the area for traditional irrigation purposes or any other use." Record 471-72.

A reasonable person could rely on the testimony of the Certified Water Rights Examiner to determine that the golf course's water use will not result in significant farm impacts. The county's findings regarding potential water drawdown are supported by substantial evidence.

Petitioner also argues that the findings are inadequate because they do not address petitioner's argument that potential contamination of groundwater from fertilizers and chemical sprays would violate the farm impacts test. As intervenor points out, however, the board of commissioners specifically addressed this argument:

> "ORCA's allegations include a statement of fears by its attorney that chemicals used on the golf course will hit the groundwater and travel thousands of feet to the north and east and adversely impact cranberry bogs and other farming uses. There is no evidence

supporting this kind of transmission via groundwater or what kind of impacts to farming cost or practices there might be. The applicant needs to respond to credible evidence submitted by knowledgeable persons, not to unsupported factual allegations from attorneys." Record 27.

Petitioner does not address this finding, let alone explain how it is inadequate. The findings are adequate.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioner argues that the county's findings are inadequate, not based on substantial evidence, and misconstrue the applicable law regarding OAR 660-033-0130(20) regarding the definition of "golf course," which provides, in relevant part:

> "'Golf Course' means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A 'golf course' for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:
>
> "(a) A regulation 18 hole golf course is *generally characterized by a site of about 120 to 150 acres of land*, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;
>
> "* * * * *
>
> "(c) Non-regulation golf courses are not allowed uses within these areas. 'Non-regulation golf course' means a golf course or golf course-like development that does not meet the definition of golf course in this rule,

including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

"(d) Counties shall limit *accessory uses* provided as part of a golf course consistent with the following standards:

"(A) *An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course.* An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. *Accessory uses to a golf course do not include*: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or *housing*[.]" (Emphases added.)

A. First Subassignment of Error

Petitioner argues that the county misconstrued OAR 660-033-0130(20) by allowing housing as an accessory use. We interpret administrative rules essentially the same way as we interpret statutes. The meaning of administrative rule language is determined by analysis of the text, context, and, if available,

legislative history. *Fritch v. Clackamas County* 68 Or LUBA 184, 187-88 (2013), *aff'd*, 260 Or App 767, 320 P2d 675 (2014).

As explained earlier, the tract on which the golf course would be located contains two preexisting dwellings that have been used for long-term rentals. Petitioner argues that because housing is not allowed as an accessory use to a golf course under OAR 660-033-0130(20), the county has misconstrued the rule. According to petitioner, housing is "simply prohibited" on a tract containing a golf course. The fundamental problem with petitioner's argument is that it only considers part of the rule. While it is true that the rule prohibits housing, the rule only prohibits housing as an *accessory use*. Intervenor did not propose for the preexisting dwellings to be accessory uses of the golf course – or uses of any kind of the golf course. The preexisting dwellings were used as long-term rentals before the application and would be used as long-term dwellings after the golf course is established.

The county's findings state:

> "The application narrative * * * explains that the existing dwellings are long-term rental units and will not be a part of the golf course use.
>
> > "'There are two residential dwellings located within the boundaries of the proposed golf course. Both dwellings are currently being utilized as month-to-month residential rentals. It is the intent of the applicant to continue the monthly rental of both units. In other words, the dwellings will not be utilized in conjunction with the golf course.'
>
> "There is no conflicting evidence in the record to refute these facts

stated in the application." Record 21.

Housing by itself is not prohibited under the rule. Housing is prohibited as an accessory use. In order to be an accessory use to a golf course, the use must be "incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course." OAR 660-033-0130(20)(d)(A). Petitioner does not explain how the preexisting rental dwellings would be incidental to the operation of the golf course and are either necessary for the operation and maintenance of the golf course or would provide customary goods or services for golfers – and we do not see that they would. Petitioner's only argument that golfers might want to use the dwellings as short-term rentals is mere speculation and is not part of the application. Furthermore, even assuming that such short-term rental use would run afoul of the rule, the findings explain that short-term rentals are not allowed in the county's EFU zone.

While housing is not allowed as an accessory use under the rule, that does not mean that no housing is allowed on any property containing a golf course. The rule is merely designed to prevent housing that would not otherwise be allowed on a property with a golf course to be shoehorned in as an accessory use. The preexisting dwellings were allowed prior to the proposed golf course, and they would be allowed after the golf course is established. They would be preexisting uses, not accessory uses. The county did not misconstrue OAR 660-033-0130(20).

The first subassignment of error is denied.

B. Second Subassignment of Error

Petitioner argues that the county misconstrued OAR 660-033-0130(20) by allowing a golf course larger than the rule permits. OAR 660-033-0130(20)(a) defines "golf course" as consistent with: "A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes[.]" Petitioner argues that the proposed golf course is 342 acres – the entire tract – and therefore violates the rule which restricts golf courses to 150 acres. As discussed, the tract is 342 acres. Approximately 175 acres of the tract would be utilized as the developed golf course: 115 acres of fairway and greens, 50 acres of rough, and 10 acres of accessory uses such as the clubhouse. The rest of the tract is made up of open space, wetlands, and floodplains. While the applicant states that the rest of the tract provides a good backdrop for the golf course, it is not part of the golf course. So under petitioner's math the golf course is 342 acres, while under the county's math the golf course is 175 acres.

We addressed a similar issue in *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015) (*Knapp Ranch*). In *Knapp Ranch*, the developed golf course encompassed approximately 198 acres of a 354-acre tract. Petitioner argued that a 198-acre golf course did not meet the OAR 660-033-0130(20)(a) definition of "golf course" that defined regulation golf courses as "generally characterized by a site of about 120 to 150 acres of land." We held:

> "We agree with the county and intervenor that OAR 660-033-0130(20)(a)'s description of a regulation 18-hole golf course that is 'generally characterized by a site of about 120 to 150 acres of land' is not meant to impose a strict upper limit of 150 acres. The qualifications 'generally' and 'about' do not denote strict limits. The proposed Scottish-style course otherwise fits within the description of a regulation 18-hole golf course in terms of par and playable distance, and bears no resemblance to the examples of non-regulation golf courses listed in OAR 660-033-0130(20(c), such as executive or par 3 golf courses. * * * Petitioner has not demonstrated that the county erred in concluding that the proposed golf course qualifies as a regulation 18-hole golf course as that term is described in OAR 660-033-0130(20)." *Knapp Ranch*, 71 Or LUBA at 306-07.

This is essentially the same situation. The proposed golf course takes up 175 acres of a 342-acre tract, as opposed to a golf course taking up 198 acres of a 354-acre tract. In both cases, the golf courses only take up part of the tracts while the remainder of the tracts would not be used for golf. In both cases, the golf courses otherwise meet the definition for regulation golf courses and do not resemble the non-regulation golf courses such as executive, par 3, and miniature golf courses. In the present case, the proposed 175-acre golf course is smaller than the 198-acre golf course that we found met the definition of "golf course" in *Knapp Ranch*. We see no reason to reach a different conclusion in the present case. Golf courses are not prohibited from being built on larger properties that are not fully used by the golf course. The county did not misconstrue the law.

The second subassignment of error is denied.

The third assignment of error is denied.

The county's decision is affirmed.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2025-005 on June 18, 2025, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 18th day of June, 2025.

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