

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

Aug 0 4 43 PM '88

3 HAROLD D. JOHNSON,                           )  
  )  
4                    Petitioner,                    )  
  )  
5                    vs.                            )  
  )  
6 TILLAMOOK COUNTY,                            )  
  )  
7                    Respondent,                    )  
  )  
8                    and                            )  
  )  
9 DAVID H. LARGE, PAT. MANUS,                    )  
MR. and MRS. PAUL MITCHELL,                    )  
10 PAUL FRANK, ROBERT SWAIN, STEVE            )  
NEUFELD, JULIE LARKINS, JULIO                )  
11 GOGAS, MR. and MRS. JIM NICHOLS,            )  
JIM WARD, DALE GEARHEART, Mr.                )  
12 and MRS. BERNIE NELSON, BONNIE            )  
SLIGER, MR. and MRS. FRED SMITH             )  
13 SHERYL BECKER, and BOB RISSEL,            )  
  )  
14                    Participants-Respondent.)

LUBA No. 87-074  
FINAL OPINION  
AND ORDER

15                    Appeal from Tillamook County.

16                    Harold D. Johnson, Bainbridge, Washington, filed the  
17 petition for review and argued on his own behalf.

18                    Neal C. Lemery, Tillamook, filed a response brief and  
19 argued on behalf of respondent county.

20                    Thomas O. Branford, Newport, filed a response brief and  
21 argued on behalf of intervenor-respondent David H. Large.

22                    SHERTON, Referee; BAGG, Chief Referee; HOLSTUN, Referee;  
23 participated in the decision.

24                    REMANDED   08/08/88

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

1 Opinion by Sherton.

2 NATURE OF THE DECISION

3 Petitioner appeals the adoption of an amendment to the  
4 acknowledged Tillamook County Comprehensive Plan (plan). The  
5 plan amendment adopts an exception to Statewide Planning Goal  
6 18 (Beaches and Dunes), Implementation Requirement (2)<sup>1</sup> to  
7 allow development on an active foredune<sup>2</sup> located on the  
8 approximately one acre oceanfront portion of "Tax Lot 7900" in  
9 Pacific City.

10 FACTS

11 The acknowledged plan includes an exception to Goal 18,  
12 Implementation Requirement (2) for 106 oceanfront properties in  
13 Pacific City classified as containing either an active foredune  
14 or a conditionally stable foredune subject to ocean  
15 undercutting or wave overtopping. Plan Goal 18 Element, Sec.  
16 6.lc. While not expressly stated, the acknowledged exception  
17 appears to be based on existing development and irrevocable  
18 commitment.<sup>3</sup>

19 The acknowledged exception area is zoned Medium-Density  
20 Residential (R2), Medium-Density Residential Planned  
21 Development (R2-PD), High-Density Residential (R-3) and  
22 Neighborhood Commercial (C-1). It contains 40 vacant lots,  
23 generally in separate ownership, scattered throughout the  
24 existing development. The existing development is primarily  
25 single family residential.

26 The acknowledged exception area consists of a continuous

1 oceanfront strip, with the exception of two "gaps." The  
2 southerly "gap" consists of the oceanfront portion of Tax Lot  
3 7900 and a county road turnaround and parking area. The  
4 undeveloped Tax Lot 7900 totals 8.6 acres, but includes only  
5 130 feet of ocean frontage. Tax Lot 7900 is zoned R2-PD and is  
6 part of the Kiawanda Shores - Fourth Addition subdivision.

7 During the county proceedings, participant-respondent Large  
8 (respondent), the applicant below, presented preliminary plans  
9 for a 101-unit motel/restaurant/shops complex to be located on  
10 the oceanfront portion of Tax Lot 7900 and adjoining lots to  
11 the north. However, the appealed goal exception does not grant  
12 approval for or limit development of Tax Lot 7900 to any  
13 particular use.

14 FIRST ASSIGNMENT OF ERROR

15 "The county improperly construed the law applicable  
16 under OAR 660-04-020(1) and (2)(a)-(d) and OAR  
660-04-022(1)(a)-(c) and OAR 660-04-022(9)(a)-(c)."

17 Petitioner contends that each of the rules cited in the  
18 first assignment of error requires the county's findings in  
19 support of an exception to Goal 18, Implementation Requirement  
20 (2) to address a specific proposed use of the subject  
21 property. Petitioner argues the county misconstrued these  
22 rules to allow it to adopt an exception for any future  
23 development on the active foredune of Tax Lot 7900, without  
24 requiring definition and description of a specific proposed  
25 use. As a result of this misinterpretation, according to  
26 petitioner, the findings required by law could not be, and were

1 not, made. Petition for Review 13.

2 Petitioner points out that the actual text of the adopted  
3 amendment to the plan cannot be determined from the county's  
4 decision or the record. Petitioner argues the only indication  
5 of the content of the adopted plan amendment is found in the  
6 caption of the adopted ordinance, which states:

7 "In the Matter of David H. Large's Request to Amend  
8 Ordinance No. 32, the Tillamook County Comprehensive  
9 Plan, to Update the Exception to Goal 18 that  
10 Currently Permits Development on the Foredune for  
11 Certain Oceanfront Lots in Pacific City, and to Add to  
the Exception Area Tax Lot 7900, Section 24DD Township  
4 South, Range 11 West of the Willamette Meridian,  
Tillamook County, Oregon, Declaring an Emergency."  
(Emphasis added.) Record 12:1.<sup>4</sup>

12 Petitioner interprets the above-emphasized language to mean the  
13 adopted exception allows "development" in general on the  
14 subject property, with no limitation or restriction on the type  
15 or nature of such development.

16 Petitioner then alleges the county's decision cannot be  
17 interpreted as approving an exception specifically for  
18 respondent's proposed motel/restaurant/shops complex because  
19 the county's decision does not limit future use of the  
20 exception area to that proposed use.

21 Respondent contends that an applicant does not have to  
22 provide detailed plans for a proposed use in order to obtain an  
23 exception to Goal 18, Implementation Requirement (2).  
24 Respondent argues that it is only at the subsequent stages of  
25 satisfying the requirements of the zoning ordinance and  
26 building code that an applicant should have to provide such

1 detailed plans for a specific use. However, if a specific  
2 proposed use is required at the goal exception stage, the  
3 county and respondent argue that respondent's description and  
4 preliminary plans for a motel/restaurant/shops complex  
5 satisfies such a requirement.

6 Like petitioner, we cannot determine the text or contents  
7 of the goal exception adopted by the county. The "Decisions"  
8 section of the ordinance adopted by the county states in  
9 relevant part:

10 "Based upon the \* \* \* Findings of Fact and Conclusions  
11 of Law, the Planning Commission's recommendation of  
12 APPROVAL of Ordinance Amendment OA-87-6(32), is hereby  
13 AFFIRMED." Record 12:6.

14 The above-quoted language does not enable us to determine the  
15 content of ordinance amendment OA-87-6(32). Furthermore, the  
16 planning commission recommendation of approval referred to  
17 above is reflected only in the minutes of the commission's  
18 proceedings, which state:

19 "[A commission member] made a motion to recommend to  
20 the Board of Commissioners that they approve  
21 OA-87-6(32) to include Tax Lot 7900 in the Statewide  
22 Goal 18 Exception based on testimony given tonight,  
23 and the presentation for the proposed project."  
24 Record 6:7.

25 The most we are able to conclude from these provisions is  
26 that the county's decision added Tax Lot 7900 to its Pacific  
27 City Goal 18, Implementation Requirement (2) exception.<sup>5</sup> We  
28 are not able to determine the text of the revised goal  
29 exception which the county apparently intended to adopt to

1 support its decision.<sup>6</sup>

2 Statute and administrative rule provisions clearly require  
3 that the findings and reasons justifying a goal exception be  
4 adopted as part of the county's plan. ORS 197.732(8); OAR  
5 660-04-000(2); OAR 660-04-015(1); Confederated Tribes v.  
6 Wallowa County, 14 Or LUBA 92, 100 (1985). In this case,  
7 although the decision includes findings, it does not adopt any  
8 findings and reasons in support of an exception as part of the  
9 plan. This alone is sufficient grounds for remand. However,  
10 to provide guidance to the parties, we will address  
11 petitioner's argument that the county erred by not identifying  
12 a specific proposed use for Tax Lot 7900 as the subject of its  
13 goal exception.

14 Petitioner is correct that the administrative rules cited  
15 in his first assignment of error require a local government to  
16 identify, in its exception findings, the future use of the  
17 subject property.<sup>7</sup> However, we do not believe that these  
18 rule provisions require a goal exception, as a matter of law,  
19 to identify an individual, specific future use, as petitioner  
20 contends.

21 In 1000 Friends of Oregon v. LCDC, 75 Or App 199, 206, 706  
22 P2d 987 (1985), the court said that the "reasons" factor for an  
23 exception for rural industrial use could be satisfied by an  
24 exception proposing future industrial use in general, i.e.,  
25 that the exception did not have to identify specific industrial  
26 operations which would occupy the exception area.

1 Similarly, although the rules cited by petitioner and  
2 quoted in footnote 5 do require identification of the future  
3 use of the exception area, we do not believe that the future  
4 use must, as a matter of law, be a specific, particular use.  
5 Rather, it could be a type or range of uses (e.g., rural  
6 residential use, water-dependent commercial use, uses allowed  
7 by a particular zoning district), so long as the substantive  
8 findings requirements of applicable administrative rule  
9 provisions are satisfied for the use or uses identified.<sup>8</sup>

10 In this case, the county has not identified the future use  
11 or uses of the portion of Tax Lot 7900 added to the exception  
12 area at all. The decision discusses the applicant's  
13 preliminary proposal for a motel/restaurant/shops complex, but  
14 makes it clear that future uses of the property are not limited  
15 to this preliminary proposal.<sup>9</sup> Record 12:2-3. Rather, the  
16 county's findings specifically addressing goal exception  
17 criteria refer to the future use for which the exception is  
18 adopted as "beachfront development," "oceanfront development,"  
19 "development," and "potential uses." Record 12:4-6.

20 The county's findings do not comply with OAR 660-04-020(1)  
21 and (2) and OAR 660-04-022(1) and (9) because they do not  
22 identify the future use of the property. Under these findings  
23 any future development of the portion of Tax Lot 7900 within  
24 the exception area could be allowed.

25 The first assignment of error is sustained.

26 //

1 SECOND ASSIGNMENT OF ERROR

2 "The county made findings of fact, conclusions of law  
3 and made a decision under OAR 660-04-020(2)(a)-(d),  
4 OAR 660-04-022(1)(a)-(c) and OAR 660-04-022(9)(a)-(c)  
5 which are not supported by evidence in the record."

6 Petitioner argues the findings of fact, conclusions of law  
7 and evidence in the record fail to satisfy or even address the  
8 requirements of OAR 660-04-020 and 660-04-022. Petitioner  
9 contends the fact that Tax Lot 7900 was omitted from the  
10 previously acknowledged Pacific City Goal 18, Implementation  
11 Requirement (2) exception establishes a presumption against  
12 such an exception for this property. Petitioner complains that  
13 no effort was made to explain why the property was previously  
14 denied an exception or to demonstrate what circumstances have  
15 changed to render those reasons now inapplicable.

16 The county and respondent argue that there is no  
17 presumption against a goal exception for Tax Lot 7900 because  
18 it was not included in the county's prior acknowledged  
19 exception.

20 Petitioner is correct that neither the findings<sup>10</sup> nor the  
21 evidence in the record explains why the oceanfront portion of  
22 Tax Lot 7900 was not included in the original, acknowledged  
23 exception.<sup>11</sup> However, this is not a basis for reversal or  
24 remand. The county's decision must demonstrate that the  
25 applicable legal standards for an exception to Goal 18,  
26 Implementation Requirement (2) for the oceanfront portion of  
Tax Lot 7900 are satisfied at the present time. Petitioner has

1 not indicated, and we are not aware of, any legal standard  
2 requiring the county to explain why Tax Lot 7900 was not  
3 included in the previous exception. The county's failure to  
4 include this property in its acknowledged exception does not  
5 create a presumption against such an exception for the property  
6 or place a greater burden of proof on the applicant.

7 Petitioner makes additional challenges to the adequacy of  
8 the findings and the evidence<sup>12</sup> to establish compliance with  
9 individual sections of the administrative rules governing goal  
10 exceptions.

11 A. OAR 660-04-020(2)(a)

12 Petitioner argues that the decision does not set out  
13 adequate facts and reasons why state policy embodied in Goal 18  
14 should not be applied, as is required by OAR 660-04-020(2)(a)  
15 (see footnote 5) . Petitioner also argues OAR 660-04-020(2)(a)  
16 requires facts regarding the amount of land needed for the  
17 proposed use and why the use requires a location on resource  
18 land (in this case, an active foredune), but such facts are  
19 absent from the findings and record.

20 Petitioner also contends that, although the findings  
21 recognize a primary intent of Goal 18, Implementation  
22 Requirement (2) is to protect foredune areas from the hazards  
23 of ocean flooding, the county's decision merely promises future  
24 studies and more reports on the potential hazards of the site,  
25 rather than demonstrating how this recognized policy embodied  
26 in Goal 18 will be met. Petitioner asserts the goals require

1 specific evidence to support an exception and do not allow  
2 deferral of these required determinations to later zoning or  
3 building permit proceedings "where applicable criteria do not  
4 include all the concerns of the planning goals." Petition for  
5 Review 27. This argument of petitioner's will be addressed  
6 together with his similar argument under OAR 660-04-022(9).  
7 See subsection F below.

8 Respondent argues that demonstrated need for the proposed  
9 motel/restaurant/shops complex is shown by many letters from  
10 local businesspeople. Record 7:3-23.

11 The findings do not address how much land is needed or why  
12 a resource location is required and, therefore, are inadequate  
13 to comply with OAR 660-04-020(2)(a).<sup>13</sup> Because the county's  
14 findings are inadequate, no purpose would be served by  
15 discussing the additional allegation that the findings are not  
16 supported by substantial evidence. DLCD v. Columbia County, 15  
17 Or LUBA 302, 305 (1987); McNulty v. City of Lake Oswego, 14 Or  
18 LUBA 366, 373 (1986).

19 This subassignment of error is sustained.

20 B. OAR 660-04-020(2)(b)

21 OAR 660-04-020(2)(b) requires a "reasons" goal exception to  
22 be based on a determination that "areas which do not require a  
23 new exception cannot reasonably accommodate the use."  
24 Petitioner challenges the decision because, although the  
25 findings admit there are "few" areas in the county that can  
26 reasonably accommodate residential or commercial oceanfront

1 development without an exception (Record 12:4), the findings do  
2 not identify or discuss these areas.

3 The county replies that it found that there were no other  
4 vacant ocean front lots in the Pacific City area that would  
5 accommodate the proposed development and which do not require  
6 an exception. The county also argues that its findings meet  
7 the standard of OAR 660-04-020(2)(b)(C) for "a broad review of  
8 similar types of areas." The county contends it was not  
9 required to make site specific comparisons because no other  
10 party to its proceedings described specific sites which could  
11 reasonably accommodate the proposed use.

12 The findings state land available for beachfront  
13 development is limited to a few areas in the county such as  
14 Nedonna, Cape Meares, Tierra del Mar and Neskowin. Record  
15 12:4. The findings also say there are 40 vacant lots in the  
16 Pacific City exception area. Record 12:2. Since the use for  
17 which the exception is adopted is not limited to the  
18 motel/retaurant/shops complex, there is no explanation why  
19 those 40 lots cannot reasonably accommodate the use. There is  
20 also no explanation why the other areas outside Pacific City  
21 cannot accommodate the use, since the "reasons" findings do not  
22 base the exception on reasons unique to Pacific City (other  
23 than to say Pacific City is developed and can provide services).

24 Thus, the findings are not adequate to comply with OAR  
25 660-04-020(2)(b). As stated above, because the findings are  
26 inadequate, no purpose would be served by discussing the

1 allegation that they are not supported by substantial  
2 evidence. DLCD v. Columbia County, supra; McNulty v. City of  
3 Lake Oswego, supra.

4 This subassignment of error is sustained.

5 C. OAR 660-04-020(2)(c)

6 Petitioner explains that OAR 660-04-020(2)(c) requires a  
7 demonstration that the long-term environmental, economic,  
8 social and energy (ESEE) consequences resulting from the use at  
9 the proposed site, with measures designed to reduce adverse  
10 impacts, are not significantly more adverse than would  
11 typically result from the same proposal being located in other  
12 areas requiring a goal exception.<sup>14</sup>

13 Petitioner argues the decision does not provide adequate  
14 findings to determine compliance with this standard because it  
15 concludes that the ESEE consequences of the proposed  
16 development are similar to those in any developed area  
17 designated for residential use where a range of public  
18 facilities are available.

19 Respondent argues that no information on alternative sites  
20 was submitted by any party to the county proceedings and,  
21 therefore, OAR 660-04-020(2)(c) expressly requires no detailed  
22 examination of alternative sites.

23 The findings say the Pacific City dune system is similar to  
24 those in other exception areas, and does not contain  
25 significant wildlife or shoreland resources. Record 12:5. The  
26 findings also state that the ESEE consequences of development

1 on the Pacific City exception lots are similar to those for any  
2 developed area designated for residential use. Id. However,  
3 the findings do not demonstrate compliance with OAR  
4 660-04-020(2)(c) because they compare the proposed site to  
5 existing exception areas, whereas this provision of the rule  
6 requires comparison to other areas which would require an  
7 exception for the proposed use.

8 This subassignment of error is sustained.

9 D. OAR 660-04-020(2)(d)

10 Petitioner argues that the county failed to address (1) the  
11 impacts of the proposed use on adjacent residences, (2) the  
12 issue of compatibility or (3) measures to reduce adverse  
13 impacts. Petitioner contends the county should have addressed  
14 impacts of a 101-unit motel/restaurant/shops complex, such as  
15 traffic, noise, lights and trespassing, on adjacent residences.

16 OAR 660-04-020(2)(d) requires a demonstration that the  
17 future use of the exception area is "compatible with other  
18 adjacent uses or will be so rendered through measures designed  
19 to reduce adverse impacts."

20 Since the county was not approving a specific use of the  
21 subject property, its findings address the impacts and  
22 compatibility of foredune development in general, e.g.,  
23 additional shoreline protective structures, foredune grading,  
24 wind erosion. The county based its conclusion that the  
25 proposed use (foredune development) would be compatible with  
26 other adjacent uses on the application of various LUO

1 provisions, such as the Flood Hazard and Beaches and Dunes  
2 overlay zones and the conditional use review process, which  
3 would "reduce adverse off-site impacts to adjacent uses."  
4 Record 12:5.

5 OAR 660-04-020(2)(d) requires the county's decision to be  
6 supported by findings and evidence sufficient to demonstrate  
7 that future development on the exception site will be  
8 compatible or will be rendered compatible with other adjacent  
9 uses. The county's decision is not supported by any findings  
10 or evidence concerning what the nature or impacts of future use  
11 of the site will be and, therefore, provides no basis for a  
12 conclusion that it will be feasible to render future use of the  
13 site compatible with adjacent uses through application of the  
14 cited LUO provisions.

15 This subassignment of error is sustained.

16 E. OAR 660-04-022(1)(a)-(c)

17 Petitioner argues this section of the rule was not  
18 addressed in the county's decision.

19 OAR 660-04-022(1) applies only to "uses not specifically  
20 provided for in subsequent sections of this rule \* \* \*."<sup>15</sup>  
21 Exceptions to Goal 18, Implementation Requirement (2) for  
22 foredune development are specifically provided for in section  
23 (9) of the rule. Therefore, OAR 660-04-022(1) does not apply  
24 to the subject exception.

25 This subassignment of error is denied.

26 //

1 F. OAR 660-04-022(9)

2 OAR 660-04-022(9) requires that the reasons which justify  
3 why Goal 18, Implementation Requirement (2)'s foredune use  
4 prohibition should not apply shall demonstrate the following:

5 "(a) The use will be adequately protected from any  
6 geologic hazards, wind erosion, undercutting,  
7 ocean flooding and storm waves, or is of minimal  
8 value; and

9 "(b) The use is designed to minimize adverse  
10 environmental effects;

11 "(c) The provisions of OAR 660-04-020 shall also be  
12 met."

13 Petitioner argues that the decision and record do not  
14 demonstrate compliance with this section. Petitioner contends  
15 the decision merely states that the above-mentioned hazards and  
16 adverse environmental effects will be protected against after  
17 more investigation and reports. According to petitioner, the  
18 time for such investigations and reports is before an exception  
19 is approved.<sup>16</sup>

20 The findings state that potential uses of the exception  
21 area will be protected from ocean flooding and storm waves  
22 through the requirements of the Flood Hazard Overlay Zone, LUO  
23 Sec. 3.060, and from geologic hazards, including wind erosion  
24 and ocean undercutting, through the requirements of the Beach  
25 and Dune Overlay Zone, LUO Sec. 3.085. Record 12:4 and 6.<sup>17</sup>  
26 The findings also state that there are findings in the  
acknowledged plan that LUO requirements, through the Beach and  
Dune and Flood Hazard overlay zones, are adequate to minimize

1 adverse environmental effects. Id.

2       Whereas OAR 660-04-022(9) does not require that every  
3 technical detail of the future use to be established on the  
4 subject site be known at the time an exception to Goal 18,  
5 Implementation Requirement (2) is approved, it does require  
6 that the county's decision be supported by findings and  
7 evidence sufficient to demonstrate that it will be feasible to  
8 protect the future use from the hazards specified in the rule  
9 and to minimize its adverse environmental effects. See Meyer  
10 v. City of Portland, 67 Or App 274, 282, 678 P2d 741, rev den  
11 297 Or 82 (1984); Margulis v. City of Portland, 4 Or LUBA 89,  
12 98 (1981). In this case, there are no such findings or  
13 evidence in the record.

14       This subassignment of error is sustained.

15       The second assignment of error is sustained, in part.<sup>18</sup>

16       The county's decision is remanded.

FOOTNOTES

1  
2  
3 1

Goal 18, Implementation Requirement (2) provides:

"Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if the findings required in [Implementation Requirement] (1) above are presented and it is demonstrated that the proposed development:

"a. Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and

"b. Is designed to minimize adverse environmental effects."

14 2

The Statewide Planning Goals define active foredune as follows:

"An unstable barrier ridge of sand paralleling the beach and subject to wind erosion, water erosion, and growth from new sand deposits. Active foredunes may include areas with beach grass, and occur in sand spits and at river mouths as well as elsewhere."

20 3

The statute, goals and administrative rules recognize three types of goal exceptions, based on (1) physical development, (2) irrevocable commitment or (3) reasons why the policy embodied in the applicable goal provision should not apply. ORS 197.732(1)(a)-(c), Goal 2, Part II (a)-(c), OAR 660-04-020(1), OAR 660-04-025(1) and OAR 660-04-028(1).

24 4

The record filed by the county in this case does not consist of consecutively numbered pages, as required by OAR 661-10-025(4)(a)(D), but rather of 18 numbered exhibits, each

1 of which has consecutively numbered pages. In referencing  
2 documents in the record, we will cite "exhibit number:page  
number."

3  
4 5

5 Whereas the ordinance caption and the planning commission  
6 recommendation apparently refer to adding the entire Tax Lot  
7 7900 to the goal exception area, we note the findings adopted  
8 in support of the appealed ordinance refer to an approximately  
9 one acre oceanfront portion of Tax Lot 7900 as being added to  
10 the goal exception area. There is a map of the "exception area  
of Tax Lot 7900," identifying with cross-hatching only the  
oceanfront portion of Tax Lot 7900. This map is labeled as  
"Exhibit B" to the county's decision. Record 12:17. However,  
the decision references Exhibit B only in a finding describing  
the location of Tax Lot 7900. Record 12:1. It does not adopt  
Exhibit B as an amendment to a Pacific City Goal 18,  
Implementation Requirement (2) exception map in the plan.

11  
12 6

13 We note that there is a document in the record which has  
14 the heading "OA-87-6(32)" and includes what appears to be the  
15 text of a revised Pacific City Goal 18, Implementation  
16 Requirement (2) exception. Record 5:1-8 and 12:18-25. This  
17 document is identified in the table of contents to the record  
as the "Staff Report to the Tillamook County Planning  
Commission" and is referred to by the parties in their briefs  
as the "staff report." None of the parties claimed in their  
briefs or in response to questions at oral argument that this  
document contains the text of the plan amendment which was  
adopted by the county, and we decline to treat it as such.

18  
19 7

20 Examples of language in these rules which requires such  
identification of the future use for the property subject to a  
goal exception include:

21 "'Reasons justify why the state policy embodied in the  
22 applicable goals should not apply': The exception  
23 shall set forth the facts and assumptions used as the  
24 basis for determining that a state policy embodied in  
a goal should not apply to specific properties or  
situations including the amount of land for the use  
being planned and why the use requires a location on  
resource land." OAR 660-04-020(2)(a).

25 "There is a demonstrated need for the proposed use or  
26 activity, based on one or more of the requirements of

1 Statewide Goals 3 to 19 \* \* \*" OAR 660-04-022(1)(a).

2 "The use will be adequately protected from any  
3 geologic hazards, wind erosion, undercutting, ocean  
4 flooding and storm waves, or is of minimal value \* \* \*"  
5 OAR 660-04-022(9)(a).

6 "The use is designed to minimize adverse environmental  
7 effects." OAR 660-04-022(9)(b). (Emphasis added.)

8

9 Of course, we note that as a general rule, the broader the  
10 identified future use for an exception area, the more difficult  
11 it will be to adopt findings which meet the rule's standards  
12 for a goal exception.

13

14 Because we find that the future use for which this  
15 "reasons" goal exception was adopted was not identified by the  
16 county as the proposed motel/restaurant/shops complex, we do  
17 not address petitioner's argument that this complex could not  
18 be the subject of a Goal 18, Implementation Requirement (2)  
19 exception for Tax Lot 7900 because a major portion of the  
20 complex would be located on properties adjacent to Tax Lot 7900  
21 which are subject to protective covenants limiting them to  
22 residential use.

23

24 We have some difficulty in identifying the findings in  
25 support of the county's decision. At various points, the  
26 decision appears to incorporate into the findings (1) minutes  
of the board of commissioners hearing (Record 12:1); (2)  
minutes of the planning commission hearing (Record 12:2); (3)  
the letters of comment received at the hearings (Record 12:2);  
(4) oral testimony at the board of commissioners hearing  
(Record 12:3); and (5) the staff report presented to the  
commission and board (Record 12:2).

27 The county's decision must state, or clearly refer to  
28 documents which state, the facts the county decision makers  
29 believed to be true. DLCD v. Klamath County, Or LUBA  
30 (LUBA No. 88-025, July 22, 1988). Designating the minutes of  
31 hearings and the oral and written testimony received at those  
32 hearings as findings does not express the facts the county  
33 found to be true, as the minutes simply recount the events of  
34 the hearings and the testimony will include contradictory facts  
35 and conclusions. We therefore decline to consider the minutes  
36 and oral and written testimony as findings of fact. Allen v.

1 Columbia County, 6 Or LUBA 81, 82 (1982); Jackson-Josephine  
2 Forest Farm Assn. v. Josephine County, 12 Or LUBA 40, 42 (1984).

3 On the other hand, the county may adopt and incorporate by  
4 reference into its decision the findings set out in an  
5 identifiable staff report. Astoria Thunderbird v. City of  
6 Astoria, 13 Or LUBA 154, 162 (1985). However, there is no  
7 document in the record which is clearly identifiable as the  
8 "staff report." The decision states the staff report is  
labelled as "Exhibit C." Record 12:2. However, the document  
attached to the decision as "Exhibit C" is the minutes of the  
planning commission hearing (Record 12:31), not a "staff  
report." We therefore limit our consideration of the county's  
"findings" to those findings and conclusions set out in the  
decision itself, at Record 12:1-6.

9 As we stated under the first assignment of error, supra,  
10 even the findings in the decision technically cannot be  
11 considered goal exception findings because the county's plan  
12 was not amended to incorporate them, as required by statute and  
rule. However, since the parties treat these findings as the  
county's exception findings, we will review petitioner's  
arguments under this assignment of error on that basis.

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15 The evidence in the record to which we are cited indicates  
16 only that the county planning staff did not know why Tax Lot  
17 7900 was not included in the acknowledged exception. Record  
6:3, 10:3,4.

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20 Petitioner also claims the only evidence in the record in  
21 support of the county's decision is the staff report at Record  
22 5:1-13. Petitioner complains that the author of the report was  
23 not present at the county hearings, did not testify and could  
24 not be questioned or cross-examined on the contents of the  
25 report. Petitioner contends this means that the staff report  
26 cannot constitute substantial evidence in support of the  
county's decision.

27 A "staff report" can constitute substantial evidence in  
28 support of a local government decision, as a local government  
29 is entitled to rely on its staff to furnish it with factual  
30 information on which to base its decisions. Grover's Beaver  
31 Electric Plumbing v. Klamath Falls, 12 Or LUBA 61, 64 (1984).  
32 Absent a local ordinance or judicial decision granting the  
33 right of cross-examination in land use proceedings, we will not  
34 engraft such a requirement onto local government hearing  
35 procedures. Younger v. City of Portland, 15 Or LUBA 210,  
36

1 233-234, aff'd 86 Or App 211, 739 P2d 50 (1987), rev'd other  
2 grounds 305 Or 346, 752 P2d 262 (1988).

3 Petitioner does not claim that he was denied the right to  
4 respond to the staff report, and does not challenge the  
5 credentials or credibility of its author. Petitioner,  
6 therefore, does not present any basis for concluding that the  
7 staff report cannot constitute substantial evidence in support  
8 of the county's decision.

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11 It would seem to be virtually impossible to identify the  
12 amount of land needed for the exception or why a resource  
13 location is required when the future use of the exception area  
14 has not been established (see first assignment of error).

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17 OAR 660-04-020(2)(c) states:

18 "The long-term environmental, economic, social and  
19 energy consequences resulting from the use at the  
20 proposed site with measures designed to reduce adverse  
21 impacts are not significantly [sic] more adverse than  
22 would typically result from the same proposal being  
23 located in other areas requiring a Goal exception.  
24 The exception shall describe the characteristics of  
25 each alternative areas considered by the jurisdiction  
26 for which an exception might be taken, the typical  
advantages and disadvantages of using the area for a  
use not allowed by the Goal, and the typical positive  
and negative consequences resulting from the use at  
the proposed site with measures designed to reduce  
adverse impacts. A detailed evaluation of specific  
alternative sites is not required unless such sites  
are specifically described with facts to support the  
assertion that the sites have significantly fewer  
adverse impacts during the local exceptions  
proceeding. The exception shall include the reasons  
why the consequences of the use at the chosen site are  
not significantly more adverse than would typically  
result from the same proposal being located in areas  
requiring a goal exception other than the proposed  
site. Such reasons shall include but are not limited  
to, the facts used to determine which resource land is  
least productive; the ability to sustain resource uses  
near the proposed use; and the long-term economic  
impact on the general area caused by irreversible  
removal of the land from the resource base. Other  
possible impacts include the effects of the proposed

1 use on the water table, on the costs of improving  
2 roads and on the costs to special service districts."

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OAR 660-04-022(1)(a)-(c) provides in relevant part:

4 "(1) For uses not specifically provided for in  
5 subsequent sections of this rule or OAR 660, Division  
6 14, the reasons [for a goal exception] shall justify  
7 why the state policy embodied in the applicable goals  
8 should not apply. Such reasons include but are not  
9 limited to the following:

10 "(a) There is a demonstrated need for the  
11 proposed use or activity, based on one or more of the  
12 requirements of Goals 3 to 19; and either

13 "(b) A resource upon which the proposed use or  
14 activity is dependent can be reasonably obtained only  
15 at the proposed exception site and the use or activity  
16 requires a location near the resource. \* \* \*

17 "(c) The proposed use or activity has special  
18 features or qualities that necessitate its location on  
19 or near the proposed exception site."

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Petitioner also contends that although there is evidence  
21 that there is a flood hazard affecting the subject property,  
22 the decision does not require any measures to prevent or  
23 mitigate such hazard. According to petitioner, under Sills v.  
24 Josephine County, 9 Or LUBA 122 (1983), the lack of such  
25 measures is sufficient basis for remand of the decision.

26 Petitioner's reliance on Sills v. Josephine County, supra,  
is inapposite. In that case, a county's decision that a 20  
acre parcel was not subject to flooding violated the Goal 2  
(Land Use Planning) requirement that there be a factual basis  
for the county's decision because the county had not identified  
the 20 acre parcel with specificity and therefore could not  
determine whether Goal 7 (Areas Subject to Natural Disasters  
and Hazards) applied to it. In this case, petitioner did not  
challenge the county's findings that its Flood Hazard and  
Beaches and Dunes overlay zones apply to the subject property  
and has not alleged a violation of Goal 7.

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Similar findings on the flood hazard issue are made to

1 address OAR 660-04-020(2)(a) and 660-04-022(9). Since OAR  
2 660-04-022(9) provides more specific "reasons" requirements to  
3 supplement the general "reasons" requirement of OAR  
4 660-04-020(2)(a), including an explicit requirement that  
5 protection against ocean flooding be demonstrated, we address  
6 the flood hazard issue under OAR 660-04-022(9).

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19 In the body of his argument under this assignment of error,  
20 petitioner made the allegation that county findings number 5,  
21 6, 12, 13, 14 and each of the county's conclusions of law  
22 (Record 12:3-6) "are without support in the record." Petition  
23 for Review 37-38. However, a petitioner who alleges that  
24 specific findings are unsupported by the record is entitled to  
25 reversal or remand of the decision only if (1) the allegation  
26 is correct; and (2) the unsupported findings are essential to  
the decision. Cann v. City of Portland, 14 Or LUBA 254, 257,  
aff'd 80 Or App 246, 720 P2d 1348 (1986). Except as otherwise  
discussed in subassignments A through F, supra, petitioner has  
failed to explain why the challenged findings are essential to  
the county's decision. In the absence of such an explanation,  
we will not review the evidence in the record, since the result  
of our inquiry might be of little or no ultimate consequence.  
Bonner v. City of Portland, 11 Or LUBA 40, 65 (1984).