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

PACIFIC RIVERS COUNCIL, INC., )  
an Oregon nonprofit corporation, )  
and MCKENZIE RIVER GUIDES )  
ASSOCIATION, an Oregon nonprofit )  
corporation, ) LUBA No. 93-085  
Petitioners, ) FINAL OPINION  
vs. ) AND ORDER  
LANE COUNTY, )  
Respondent. )

Appeal from Lane County.

Bill Kloos, Eugene, filed the petition for review and argued on behalf of petitioners. With him on the brief was Johnson & Kloos.

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

SHERTON, Referee; KELLINGTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

REMANDED 12/30/93

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

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county ordinance amending the  
4 Master Road Plan Map in the Transportation Element of the  
5 Lane County Rural Comprehensive Plan (RCP) to (1) add a new  
6 bridge across the McKenzie River (Bear Creek Bridge),  
7 (2) add a new road approximately 125 feet in length  
8 (connector road) which connects the south end of the new  
9 bridge to an existing road, and (3) apply a minor collector  
10 designation to 1.2 miles of the existing road, the new  
11 connector road and the new bridge. The challenged ordinance  
12 also adopts exceptions to Statewide Planning Goals (Goals) 4  
13 (Forest Lands) and 5 (Open Spaces, Scenic and Historic  
14 Areas, and Natural Resources).<sup>1</sup>

15 **FACTS**

16 The McKenzie River Highway (Highway 126) runs along the  
17 north side of the McKenzie River. The Goodpasture Bridge  
18 over the McKenzie River is located at milepost 25.5 of  
19 Highway 126, near the unincorporated community of Vida. The  
20 Goodpasture Bridge is a single-lane covered bridge listed on  
21 the National Register of Historic Places. It was renovated

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<sup>1</sup>Although the challenged decision adopts exceptions to Goals 4 and 5, it alternatively finds that goal exceptions are unnecessary. Whether an exception to Goal 4 is required is addressed in detail under the first and third assignments of error, infra. No issue is raised in this appeal with regard to the necessity for or adequacy of the county's exception to Goal 5.

1 by the county in 1986, and has a travel lane 17.5 feet wide  
2 and a weight limit of 80,000 pounds.

3 The south end of the Goodpasture Bridge connects to  
4 Goodpasture Road, a county road that parallels the south  
5 bank of the river to the east of the Goodpasture Bridge for  
6 about eight miles. The first five miles of Goodpasture Road  
7 is paved and designated as a minor collector on the RCP  
8 Master Road Plan Map. The remaining three miles of  
9 Goodpasture Road is single-lane gravel with turnouts, and is  
10 not designated as a minor collector on the RCP Master Road  
11 Plan Map.<sup>2</sup>

12 The Goodpasture Bridge currently provides the sole  
13 means of access to approximately 100 residences located in  
14 developed or committed goal exception areas along  
15 Goodpasture Road on the southern side of the McKenzie River,  
16 and to certain recreational improvements. It also currently  
17 provides the sole means of access to approximately 19,000  
18 acres of resource land in the Gale Creek, Marten Creek and  
19 Deer Creek drainages. Approximately 8,000 of these acres

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<sup>2</sup>The parties characterize the nature of the one-lane, unpaved portion of Goodpasture Road differently. Petitioners describe this portion of the existing road as a "'contract forest road' as defined by ORS 376.310, \* \* \* maintained by Weyerhaeuser under a contract with the county." Petition for Review 3. Respondent does not specifically deny that the unpaved portion of Goodpasture Road is currently a "contract forest road," as defined in ORS 376.310(2), but maintains that it is a public road. Under ORS 376.305 to 376.390, a "logging operator" may enter into a contract with a county to maintain or improve certain county or other public roads. Under ORS 376.310(2), such public roads are termed "contract forest roads." Thus, the parties' positions are not inconsistent.

1 are owned by the Bureau of Land Management (BLM) and the  
2 remainder by private timber companies.

3 Under the challenged decision, the Bear Creek Bridge  
4 will be located at milepost 31.5, providing an additional  
5 means of access to the 100 residences, recreational  
6 improvements and resource land located on the south side of  
7 the McKenzie River in the subject area. The north end of  
8 the Bear Creek Bridge, and the road joining it to  
9 Highway 126, will be located on land designated Rural  
10 Residential by the RCP and zoned Rural Residential 5 (RR-5).  
11 The south end of the proposed bridge and the new connector  
12 road will be located on land designated Forest by the RCP  
13 and zoned Nonimpacted Forest Land (F-1).<sup>3</sup> Both ends of the  
14 bridge, and the new connector road, are proposed to be  
15 located on land currently owned by respondent. The 1.2 mile  
16 one-lane gravel portion of Goodpasture Road located between  
17 the connector road and the existing, paved minor collector  
18 portion of Goodpasture Road will be designated as a minor  
19 collector.<sup>4</sup>

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<sup>3</sup>According to the land use/zoning map at Record 566, the McKenzie River itself does not have a zoning designation. We do not know whether the river bears a RCP map designation. In any case, no party raises any issue concerning the plan or zoning designation of the river itself.

<sup>4</sup>However, the challenged decision does not itself approve construction of the improvements necessary to bring this portion of Goodpasture Road into compliance with county standards for minor collectors.

1 **FIRST AND THIRD ASSIGNMENTS OF ERROR**

2       Petitioners challenge the county's determination that  
3 adding the Bear Creek Bridge and connector road to the RCP  
4 Master Road Plan Map and designating them as minor  
5 collectors does not require an exception to Goal 4.<sup>5</sup>  
6 Petitioners also contend the challenged decision fails to  
7 comply with (1) the requirements of ORS 197.732 and Goal 2,  
8 Part II for an exception to Goal 4; and (2) the  
9 substantially identical requirements of RCP Transportation  
10 Element Recommendation (hereafter Criterion) 16(3)(a)(ii)  
11 for approving construction of a new bridge on land  
12 designated Forest, where use of the new bridge is not  
13 limited to uses allowed in the F-1 zone.<sup>6</sup> To avoid  
14 confusion, in these assignments of error we cite only the  
15 relevant requirements of ORS 197.732(1)(c)(A) to (D), and  
16 not the parallel requirements of Goal 2, Part II(c)(1) to

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<sup>5</sup>We do not understand petitioners to contend that applying a minor collector designation to 1.2 miles of the existing Goodpasture Road requires adoption of an exception to Goal 4 for the land subject to that minor collector designation.

<sup>6</sup>Criterion 16 states "[i]n the location of new bridge construction, the following [six] criteria shall be applied." The challenged decision addresses Criteria 16(1) to (6) as six approval standards for the subject RCP amendment. The decision specifically states Criterion 16(3)(a)(ii) "restates the standards for a 'reasons' exception contained in ORS 197.732[(1)(c)]." Record 23; see also Record 43. We therefore reject the argument made by respondent in its brief that there are significant differences between compliance with the standards of ORS 197.732(1)(c) and Criterion 16(3)(a)(ii). If an exception to Goal 4 is required, and the challenged decision does not comply with the requirements of ORS 197.732(1)(c)(A) to (D), it also fails to comply with the parallel requirements of Criterion 16(3)(ii)(aa) to (dd).

1 (4) and Criterion 16(3)(a)(ii)(aa) to (dd). We first  
2 address the issue of whether an exception to Goal 4 is  
3 required, and then address petitioners' arguments concerning  
4 noncompliance with ORS 197.732(1)(c)(A) to (D).

5 **A. Requirement for Exception to Goal 4**

6 The challenged decision cites three bases for the  
7 conclusion that an exception to Goal 4 is not required.<sup>7</sup>  
8 Each is considered below.

9 **1. Local Service Road**

10 The decision determines the proposed river crossing  
11 qualifies as a "local service road" with "local travel," as  
12 those terms are defined in OAR 660-12-065(2)(c). Record 19.

13 OAR Chapter 660, Division 12 (Transportation Planning  
14 Rule) implements Goal 12 (Transportation). OAR 660-12-000.  
15 Section (2) of OAR 660-12-065 (Transportation Improvements  
16 on Rural Lands) establishes definitions for terms used in  
17 that rule, including "local service roads" and "local  
18 travel." However, whether a proposed road and its use  
19 satisfy the definitions of "local service road" and "local  
20 travel" has no bearing on whether that road may be sited on

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<sup>7</sup>The challenged decision determines that a Goal 4 exception is not required and, alternatively, that a Goal 4 exception is justified. These determinations apply only to the sites of the new bridge and connector road (these are sometimes referred to together as the "river crossing"), not the 1.2 miles of Goodpasture Road to which the challenged decision applies a minor collector designation. However, as explained in n 5, supra, we do not understand petitioners to contend an exception to Goal 4 is required for the application of a minor collector designation to these 1.2 miles of the existing Goodpasture Road.

1 land designated for forest use without an exception to  
2 Goal 4. OAR 660-12-065(3)(b) (discussed in more detail in  
3 the following section) identifies the transportation  
4 facilities that may be sited on land designated and zoned  
5 for forest use, consistent with Goal 4. OAR 660-12-065(3)(b)  
6 makes no mention of "local service roads" or roads for  
7 "local travel."

8 **2. Transportation Facility**

9 The challenged decision states that because the new  
10 river crossing is proposed to be located on "land acquired  
11 [by the county] for right-of-way over 10 years ago and does  
12 not result in the creation of new land parcels," the  
13 proposal is permitted on land designated and zoned for  
14 forest uses as a "transportation facility" authorized under  
15 OAR 660-12-065(3)(b), OAR 660-06-025(4)(u) and  
16 ORS 215.213(2)(q) through (s). Record 20. According to the  
17 decision, "[t]he key element in the three types of [road]  
18 improvement projects listed [in ORS 215.213(2)(q) through  
19 (s) is] that new land parcels are not created." Id.

20 OAR 660-12-065(3) provides, in relevant part:

21 "The following transportation facilities and  
22 improvements are consistent with Goals 3 and 4 and  
23 may be sited on rural agricultural and forest  
24 land:

25 "\* \* \* \* \*

26 "(b) On land zoned for forest use, transportation  
27 facilities and improvements permitted  
28 outright or conditionally under OAR  
29 [Chapter] 660, Division 6 [(Forest Rule)]."

1 OAR 660-06-025 (Uses Authorized in Forest Zones)  
2 identifies the uses that may be allowed on land designated  
3 and zoned for forest uses. The challenged decision states  
4 the proposed river crossing is authorized by  
5 OAR 660-06-025(4)(u), which states that, subject to the  
6 standards in OAR 660-06-025(5), the following uses may be  
7 allowed on forest lands:

8 "Public road and highway projects as described in  
9 ORS 215.213(2)(q) through (s) and ORS 215.283  
10 (2)(p) through (r)."

11 ORS 215.213(2)(q) through (s) describes the following  
12 road projects:

13 "(q) Construction of additional passing and travel  
14 lanes requiring the acquisition of right of  
15 way but not resulting in the creation of new  
16 land parcels.

17 "(r) Reconstruction or modification of public  
18 roads and highways involving the removal or  
19 displacement of buildings but not resulting  
20 in the creation on new land parcels.

21 "(s) Improvement of public road and highway  
22 related facilities such as maintenance yards,  
23 weigh stations and rest areas, where  
24 additional property or right of way is  
25 required but not resulting in the creation of  
26 new land parcels."

27 Respondent argues that ORS 215.213(2)(q) through (s)  
28 generally allow "projects involving 'public roads and  
29 highways' regardless of the need for additional right-of-way  
30 so long as the project does not result 'in the creation of  
31 new land parcels.'" Respondent's Brief 7 n 2. We disagree.  
32 Where no new land parcels are created, ORS 215.213(2)(q)

1 through (s) authorizes (1) construction of additional  
2 passing and travel lanes; (2) reconstruction or modification  
3 of public roads and highways; and (3) improvement of public  
4 road and highway related facilities such as maintenance  
5 yards, weigh stations and rest areas. These three  
6 provisions all refer to existing roads. We do not see that  
7 construction of a new bridge terminus and new road to  
8 connect that bridge to an existing road falls in any of the  
9 above categories. Consequently, the river crossing  
10 authorized by the challenged plan amendment is not allowed  
11 on land designated and zoned for forest uses under  
12 OAR 660-06-025(4)(u) and ORS 215.213(2)(q) through (s).

13 **3. Primary Purpose to Support Forest Operations**

14 The decision states an exception to Goal 4 is not  
15 required because "the primary purpose of the new bridge is  
16 to support forest management activities and [protect] forest  
17 lands from fire danger." Record 19. Other relevant  
18 findings state:

19 "[T]he evidence submitted shows that the primary  
20 purpose of the new river crossing would be to  
21 accommodate forest-related travel and that other  
22 usage would be secondary to that primary purpose.  
23 There are approximately 19,000 acres of forest  
24 land in the Deer Creek, Gale Creek, and Marten  
25 Creek drainages that are accessed from Goodpasture  
26 Road. [T]he most conservative estimate indicates  
27 an annual [timber] harvest of two to three million  
28 board feet per year which translates to 400 to 600  
29 (one way) truck trips per year. Additionally,  
30 \* \* \* a variety of forest management activities  
31 would be occurring on a continuing basis that  
32 would require movement of heavy equipment into and

1 out of the area to be served by the new bridge.  
2 Finally, [there is a] need for a new river  
3 crossing to provide fire protection for forest  
4 lands south of the McKenzie River \* \* \*.

5 "In contrast \* \* \* travel unrelated to forest  
6 management on the new bridge would be very  
7 limited. Residences along Goodpasture Road are  
8 clustered along the paved portion of the road,  
9 near the existing covered bridge. Traffic from  
10 those residences would continue to use the  
11 existing bridge, particularly when the trip origin  
12 or destination was the Eugene-Springfield  
13 metropolitan area. While the new bridge would  
14 provide an alternative emergency vehicle access  
15 route \* \* \*, it would only be used if the existing  
16 bridge was blocked because the Goodpasture Road  
17 area would be served from stations located  
18 downstream of the Goodpasture Bridge." Record 19.

19 OAR 660-06-025(1) lists five "general types of uses"  
20 that may be allowed on forest lands "subject to the  
21 standards in the goal and in this rule," including "[u]ses  
22 related to and in support of forest operations."  
23 OAR 660-06-025(2) through (4), 660-06-027 and 660-06-028  
24 list specific uses, within the "five general types," that  
25 shall be allowed, may be allowed outright, or may be allowed  
26 conditionally in forest zones.<sup>8</sup> Only two of these  
27 provisions purport to allow construction of permanent road

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<sup>8</sup>As we understand it, the listing of five "general types of uses" allowable on forest lands in OAR 660-06-025(1) is implemented by the listing of specific uses in OAR 660-06-025(2) through (4), 660-06-027 and 660-06-028. OAR 660-06-025(1) does not provide independent authority for allowing a use in a forest zone that is not authorized in OAR 660-06-025(2) through (4), 660-06-027 or 660-06-028.

1 facilities and are contended to be applicable here.<sup>9</sup> One of  
2 these, OAR 660-06-025(4)(u), was discussed in the preceding  
3 section. The other is OAR 660-06-025(2)(a).  
4 OAR 660-06-025(2) provides in relevant part:

5 "The following uses pursuant to the Forest  
6 Practices Act (ORS Chapter 527) and Goal 4 shall  
7 be allowed in forest zones:

8 "(a) Forest operations or forest practices  
9 including, but not limited to, \* \* \* road  
10 construction and maintenance[.]

11 "\* \* \* \* \*

12 We understand respondent to contend the proposed bridge  
13 and connector road are authorized under  
14 OAR 660-06-025(2)(a), because the challenged decision finds  
15 the primary use of the facilities will be to support forest  
16 management operations, and any use of the facilities by  
17 residents from the south side of the river would be "very  
18 limited." The county argues these findings either are not  
19 challenged by petitioners or are supported by substantial  
20 evidence.

21 Petitioners contend the inclusion of the proposed  
22 bridge and connector road on the county Master Road Plan Map  
23 as public roads with a minor collector designation  
24 necessitates an exception from Goal 4. Petitioners further

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<sup>9</sup>A third provision, OAR 660-06-025(3)(h), which authorizes "[w]idening of roads within existing rights-of-way" in certain circumstances in forest zones, is not relied on by the challenged decision as a basis for determining an exception to Goal 4 is not required. However, this provision is discussed under the seventh assignment of error, infra.

1 argue that if the county intended to find a Goal 4 exception  
2 is not required because non-forestry use of the proposed  
3 road and bridge will be de minimus or incidental, this  
4 conclusion is neither clearly stated nor supported by  
5 substantial evidence. Petitioners further point out the  
6 findings project that use of the proposed bridge by log  
7 trucks will be only one or two trips per day, and argue  
8 there is no projection or evidence concerning the number of  
9 trips across the bridge by residents of the rural  
10 residential areas on the south side of the McKenzie River.  
11 Petitioners also argue the decision itself states one of the  
12 important reasons for constructing the new bridge is the  
13 provision of alternative access to the approximately 100  
14 residences on the south side of the river along Goodpasture  
15 Road. Record 24.

16 While we accept the county's findings that travel from  
17 the nonforest residences along Goodpasture Road across the  
18 new bridge would be "very limited," neither the findings nor  
19 the supporting evidence quantify what "very limited"  
20 residential traffic means. However, the findings do  
21 recognize some residential traffic across the new bridge  
22 will occur, particularly when the trip origin or destination  
23 is to the east. Moreover, if Goodpasture Bridge is closed  
24 for any reason, all traffic to and from the rural residences  
25 will be via the new bridge. Although we believe the roads  
26 in support of forest operations authorized by

1 OAR 660-06-025(2)(a) may include some incidental or  
2 de minimus use of such roads by the public, such as for  
3 access to hunting, camping or other forest recreational  
4 opportunities, we agree with petitioners that it does not  
5 include public roads designated minor collectors as part of  
6 the county's road system, and which provide alternative and  
7 emergency access to approximately 100 nonforest residences.

8 We reject each of the county's bases for determining  
9 that an exception to Goal 4 is not required, and conclude  
10 that an exception to Goal 4 is required to authorize siting  
11 of the proposed bridge terminus and connector road on land  
12 designated and zoned for forest uses.<sup>10</sup>

13 **B. Reasons Justifying Goal Exception**

14 ORS 197.732(1)(c)(A) establishes the following standard  
15 for a goal exception:

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<sup>10</sup>The parallel "exception" standards of Criterion 16(3)(a)(ii) must be satisfied if "the uses of the new bridge construction would [not] be limited to the uses allowed in the [F-1 zone]." Criterion 16(3)(a)(i). The decision states:

"\* \* \* To the extent that use of the new bridge may not be limited solely to those uses permitted in the [F-1] zone, [Criterion 16(3)(a)(ii)] is addressed \* \* \* in the following findings." Record 22-23.

The above quote indicates the county did not find that uses of the new bridge would be limited to those allowed by the F-1 zone, but rather applied Criterion 16(3)(a)(ii). In addition, as we determine under the seventh assignment of error, infra, the proposed bridge and connector road themselves are not uses allowed in the F-1 zone. Thus, the challenged decision must demonstrate compliance with Criterion 16(3)(a)(ii)(aa) to (dd) with regard to the proposed bridge and connector road, regardless of whether an exception to Goal 4 is required.

1 "Reasons justify why the state policy embodied in  
2 the applicable goals should not apply[.]"

3 The above statutory requirement is further explained in  
4 OAR 660-04-020(2)(a) and 660-04-022. OAR 660-04-020(2)(a)  
5 provides:

6 "\* \* \* The exception shall set forth the facts and  
7 assumptions used as the basis for determining that  
8 a state policy embodied in a goal should not apply  
9 to specific properties and situations \* \* \*."

10 As relevant in this case, OAR 660-04-022(1) states:

11 "[T]he reasons shall justify why the state policy  
12 embodied in the applicable goals should not apply.  
13 Such reasons include but are not limited to the  
14 following:

15 "(a) There is a demonstrated need for the proposed  
16 use or activity, based on one or more of the  
17 requirements of Statewide Goals 3 to 19; and  
18 \* \* \*

19 "\* \* \* \* \*

20 "(c) The proposed use or activity has special  
21 features or qualities that necessitate its  
22 location on or near the proposed exception  
23 site."<sup>11</sup>

24 The challenged decision determines a new McKenzie River  
25 crossing is needed for four reasons.<sup>12</sup> We address

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<sup>11</sup>Subsection (b) of this section provides an alternative to subsection (c). However, (b) requires a demonstration that the proposed site is the only one within the relevant market area at which a particular resource, upon which the proposed use is dependent, can be obtained. No party contends this provision is applicable to a goal exception for a new river crossing, and we do not see that it is.

<sup>12</sup>These four reasons are set out in findings at Record 23-25. In its brief, the county argues there are additional findings relevant to the "reasons" requirement of ORS 197.732(1)(c)(A) at Record 17, 19, 28-29,

1 petitioners' challenges to each of these four reasons below.  
2 However, our review of the county's "reasons" findings is  
3 problematic because neither the challenged decision nor the  
4 argument in the county's brief specifically addresses the  
5 requirements of OAR 660-04-022(1), quoted above. We realize  
6 OAR 660-04-022(1) states the reasons adequate to justify a  
7 goal exception "include but are not limited to" those set  
8 out in subsections (a) and (c) of that section. However, in  
9 the absence of some explanation in the decision or the  
10 argument in the county's brief that it intended to justify  
11 its exception on some other basis, we will assume the  
12 county's findings are intended to satisfy  
13 OAR 660-04-022(1)(a) and (c).<sup>13</sup>

14 **1. Forest Management Support**

15 The relevant findings state:

16 " \* \* \* The Goodpasture Bridge is a covered wooden  
17 structure with a travel surface of 17.5 feet and a  
18 load limitation of 80,000 pounds. The existing  
19 structure is limited in its ability to support  
20 heavier equipment. \* \* \*

21 " \* \* \* \* \*

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36-40, 43-45 and 47. Respondent's Brief 12-13. We have reviewed the additional findings cited by the county and find they add nothing of significance to the "reasons" findings at Record 23-25 discussed in the text below.

<sup>13</sup>In general, there is no dispute that a proposed crossing of the McKenzie River to serve the subject area necessitates a location on and adjacent to the banks of the relevant portion of the river, as required by OAR 660-04-022(1)(c). Therefore, our discussion under this subassignment of error primarily concerns whether each of the four reasons relied on in the challenged decision satisfies OAR 660-04-022(1)(a).

1 "A new bridge is needed to support forest  
2 management activities on the approximately 19,000  
3 acres of resource land accessed from Goodpasture  
4 Road. [A] wide variety of forest management  
5 activities will continue to occur in the area  
6 served by Goodpasture Road, including road  
7 building, harvesting, silvicultural operations,  
8 and fire protection. The Board [of Commissioners]  
9 concludes from the evidence submitted [by Champion  
10 International, Willamette Industries, Weyerhaeuser  
11 and Rosboro Lumber Co.,] that forest management  
12 operations will continue to occur in the Gale  
13 Creek and Marten Creek drainages and that  
14 alternative access is needed to support those  
15 operations." Record 23.

16 Petitioners contend the above findings establish  
17 nothing more than the existence of a market demand by the  
18 commercial timber industry for more convenient, less  
19 expensive access to the subject area. Petitioners argue the  
20 county cannot find that the proposed river crossing is  
21 necessary for commercial forest management to continue in  
22 the affected area. Petitioners further argue the county has  
23 not demonstrated that any equipment necessary for commercial  
24 forest management operations cannot be moved into the area,  
25 across the existing Goodpasture Bridge (either intact or  
26 partially disassembled) or overland on higher elevation  
27 routes (albeit perhaps at greater cost or with restrictions  
28 due to weather). According to petitioners, the findings at  
29 Record 24-25 are inadequate to rule out the possibility of  
30 using existing Weyerhaeuser and BLM roads that connect  
31 Goodpasture Road to Deerhorn Road for this purpose.  
32 Petitioners contend the county erroneously assumed that the

1 private forest roads would have to be acquired and improved  
2 for general public use, requiring an exception to Goal 4.

3 The county contends the need for the proposed river  
4 crossing to support forest management operations is  
5 adequately described in its findings. The county also  
6 argues that, contrary to petitioners' arguments,  
7 ORS 197.732(1)(c)(A) does not require that the proposed use  
8 be necessary (i.e. essential) for commercial forest  
9 management to be carried out in the subject area.

10 The decision relies, in part, on a need for the  
11 proposed river crossing to support forest management  
12 operations in the affected watersheds south of the river.  
13 As we understand it, petitioners' arguments amount to a  
14 contention that the findings are based solely on market  
15 demand, and do not establish "a demonstrated need for the  
16 proposed use \* \* \*, based on one or more of the requirements  
17 of Statewide Goals 3 to 19." OAR 660-04-022(1)(a).

18 We have stated the following with regard to the  
19 requirement of OAR 660-04-022(1)(a):

20 "While market demand alone does not establish  
21 'need,' \* \* \* market demand can provide some  
22 evidence of a 'need' for a use not otherwise  
23 allowed by a resource goal, if other relevant  
24 factors are present. Specifically, we believe OAR  
25 660-04-022(1)(a) contemplates that the 'need'  
26 requirement may be met based on a showing of  
27 (1) market demand for the proposed use, and  
28 (2) that the county cannot satisfy its obligations  
29 under one or more of Goals 3-19, or the  
30 requirements of its acknowledged comprehensive  
31 plan, without accommodating the proposed use at

1 the proposed location. \* \* \* " 1000 Friends of  
2 Oregon v. Marion County, 18 Or LUBA 408, 413  
3 (1989).

4 Additionally, the county's findings must address and respond  
5 to specific issues relevant to compliance with applicable  
6 approval standards that were raised in the proceedings  
7 below. Norvell v. Portland Area LGBC, 43 Or App 849, 853,  
8 604 P2d 896 (1979); Heiller v. Josephine County, 23 Or LUBA  
9 551, 556 (1992).

10 The county's findings are essentially conclusory  
11 statements that, due to the dimensional and weight  
12 restrictions of the existing Goodpasture Bridge, there is a  
13 demand by the timber industry for a new river crossing to  
14 transport logs and equipment in and out of the affected area  
15 south of the river. The findings do not set forth facts  
16 establishing the nature and magnitude of the impediment to  
17 forest operations posed by the current situation, as  
18 required by OAR 660-04-020(2)(a). The findings do not  
19 explain why the county cannot satisfy its obligations under  
20 one or more of Goals 3-19, or the requirements of its  
21 acknowledged comprehensive plan, without providing the  
22 proposed use, as required by OAR 660-04-022(1)(a).<sup>14</sup>

23 In other words, although we agree with the county that

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<sup>14</sup>The findings at Record 35-40 address Criterion 16(3)(d), which requires compliance with RCP Transportation Policies 2, 3 and 4. These findings purport to demonstrate the proposed river crossing complies with these policies. They do not purport to find the proposed river crossing is required to satisfy the county's planning obligations under these policies.

1 ORS 197.732(1)(c)(A) and OAR 660-04-022(1)(a) do not require  
2 that it be impossible to carry out commercial forest  
3 management of the subject area without the proposed use, the  
4 county's findings must show more than a market demand for  
5 the proposed use. They must show the magnitude of the  
6 present impediment to forest management is such that without  
7 the proposed use, the county cannot satisfy its obligations  
8 under one or more of Goals 3-19 or the requirements of its  
9 acknowledged comprehensive plan.

10 Further, in addressing this standard, the findings must  
11 respond to relevant issues specifically raised by  
12 petitioners below concerning possible means of lessening or  
13 eliminating this need for the proposed use. Norvell v.  
14 Portland Area LGBC, supra; Heiller v. Josephine County,  
15 supra. Here, the findings fail to respond to relevant  
16 issues raised below by petitioners concerning whether the  
17 need for a new river crossing could be minimized or  
18 eliminated by using smaller, albeit slower or less cost  
19 effective forest management equipment, partially  
20 disassembling equipment for transport, or bringing large  
21 equipment into the area only at certain times of the year,  
22 using existing forest roads.<sup>15</sup>

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<sup>15</sup>The findings at Record 24-25 reject the possibility of minimizing or eliminating the need for the proposed use to support forest management, through use of the existing forest roads. However, these findings are based in part on the assumption that such roads would have to be acquired and improved by the county, and an exception to Goal 4 taken, to allow them to be used by the general public. What the county must address in its

1 We conclude that because the findings fail to explain  
2 why the proposed use is needed for the county to carry out  
3 its obligations under the goals or its acknowledged plan,  
4 and fail to address relevant issues, this reason cannot be  
5 relied on by the county to justify the proposed goal  
6 exception.

7 **2. Reduced Forest Fire Response Time**

8 The relevant findings state:

9 "The Oregon Department of Forestry [(ODOF)] has  
10 primary responsibility for providing forest fire  
11 protection to the area served from Goodpasture  
12 Road. The \* \* \* following statement from [ODOF  
13 is] particularly compelling:

14 "Timely response for suppression of  
15 wildfire on the south side of the  
16 McKenzie River is critical. Thousands  
17 of acres of valuable timberland, as well  
18 as homes and improvements, can currently  
19 be readily accessed only by the  
20 Goodpasture Bridge. [The] response time  
21 from our Holman station to the  
22 Goodpasture Bridge is approximately 15  
23 to 20 minutes. A bridge near Bear Creek  
24 would reduce the access time to the  
25 south side of the McKenzie River by 10  
26 to 15 minutes. In a fire emergency this  
27 could become critical.' \* \* \*" Record  
28 23-24.

29 Petitioners contend the above findings are inadequate  
30 because they do not establish that ODOF's current forest

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findings is whether the existing forest roads connecting Goodpasture and Deerhorn Roads could be used by the affected timber companies to transport equipment and logs in and out of the subject area, thereby lessening or eliminating the impediments caused by use of the existing Goodpasture Bridge and, consequently, the need for a new river crossing to support forest management.

1 fire response time fails to meet any minimum standard for  
2 forest fire suppression response time. Petitioners also  
3 argue the finding is undermined by testimony from the chief  
4 of the McKenzie Rural Fire Protection District (RFD) that a  
5 new river crossing closer to the existing bridge would be  
6 preferable, because residential development is concentrated  
7 along the western portion of Goodpasture Road. Record 749.

8 Petitioners do not challenge the above quoted findings  
9 that a new river crossing at the proposed location would  
10 decrease the ODOF forest fire response time by 10 to 15  
11 minutes, and that such a reduction "could become critical"  
12 in a fire emergency.<sup>16</sup> Additionally, we agree with the  
13 county that neither statutory nor rule "reasons" standards  
14 require the county to demonstrate that current ODOF forest  
15 fire response time is below some established minimum  
16 standard. What is lacking from the findings, however, is an  
17 explanation of how, by reducing ODOF's forest fire response  
18 time, the proposed use will enable the county to carry out  
19 its obligations under one or more of Goals 3-19 or its  
20 acknowledged RCP provisions.

### 21 **3. Alternative Access to Residences**

22 The relevant findings state:

23 "[The Goodpasture Bridge] is subject to blockage,

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<sup>16</sup>Whether the county properly considered alternative locations for the proposed river crossing is addressed under the following two subassignments of error.

1 in which case access to the area served by  
2 Goodpasture Road can be completely obstructed.

3 \* \* \* \* \*

4 "There are approximately 100 residences sited in  
5 developed and committed [exception] areas along  
6 the western portion of Goodpasture Road. There  
7 are also recreational improvements. If the  
8 existing Goodpasture Bridge is blocked for any  
9 reason, access to these improvements is completely  
10 blocked. [P]rovision of alternative access to  
11 Goodpasture Road is needed. That access will be  
12 available to residents if the existing bridge is  
13 blocked. It will also be important for emergency  
14 vehicle access." Record 23-24.

15 Petitioners contend this reason is based on a totally  
16 speculative concern that Goodpasture Bridge may someday be  
17 blocked. Petitioners argue there is no evidence that this  
18 has happened in the past or that it is reasonably likely to  
19 occur in the future. Petitioners also argue the county  
20 improperly failed to consider the possibility of using  
21 existing forest roads for emergency access to the residences  
22 in question, in the remote likelihood of temporary blockage  
23 of the Goodpasture Bridge.<sup>17</sup>

24 The county adopted detailed findings addressing the  
25 possibility of eliminating this reason for a new river  
26 crossing by using existing forest roads for alternative  
27 public road access to the residences along Goodpasture Road.

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<sup>17</sup>With regard to this and the following reason, petitioners also argue the county should have considered the possibility of building a new, larger, fireproof bridge adjacent to the existing bridge, in the same right-of-way. This argument is addressed under the following subassignment of error concerning alternative locations for the proposed river crossing.

1 Record 23-25. The county rejected the three possibilities  
2 it considered because each involved considerably more road  
3 construction and larger Goal 4 exception areas than the  
4 proposed new bridge. Petitioners do not explain how these  
5 findings fail to address the issue they raised below, and we  
6 do not see that they do.

7 As petitioners point out, the findings merely assume  
8 that if Goodpasture Bridge is blocked, alternative access  
9 will be needed. The findings do not purport to establish  
10 any likelihood that Goodpasture Bridge may become blocked.  
11 Moreover, the findings do not explain why the county cannot  
12 satisfy its obligations under any of Goals 3-19 or the  
13 requirements of its acknowledged comprehensive plan unless  
14 it provides alternative access to these 100 residences.  
15 OAR 660-04-022(1)(a).

#### 16 4. Reduce Damage to Goodpasture Bridge

17 The relevant findings state:

18 "\* \* \* The Goodpasture Bridge is a covered wooden  
19 structure with a travel surface of 17.5 feet and a  
20 load limitation of 80,000 pounds. The existing  
21 structure is limited in its ability to support  
22 heavier equipment. It is also subject to damage,  
23 particularly from tail swing of loaded log trucks  
24 exiting the structure. \* \* \*

25 "\* \* \* \* \*

26 "Removal of logging traffic and other heavy  
27 equipment from the covered Goodpasture Bridge will  
28 reduce potential damage to that historic  
29 structure." Record 23-24.

30 Petitioners contend the county's findings do not

1 demonstrate that continued use of the existing bridge by  
2 logging traffic is incompatible with preservation of the  
3 historic structure. According to petitioners, the county  
4 failed to adopt findings explaining the causes of or  
5 potential for such damage, or the character of the damage  
6 feared. Petitioners also argue the county failed to address  
7 the relevant issue they raised below concerning use of  
8 structural solutions such as ballards or traffic islands to  
9 control the rate and radius of turns by log trucks.  
10 Record 308.

11 We agree with petitioners that if the county wishes to  
12 rely on the reduction of damage to Goodpasture Bridge as a  
13 reason justifying a goal exception, it must consider the  
14 issue they raised below concerning the possibility of  
15 reducing or eliminating this need through structural  
16 protection measures. We note the findings also fail to  
17 explain the likelihood of damage to the existing bridge from  
18 log trucks and the degree to which use of the existing  
19 bridge by log trucks will be lessened or eliminated by  
20 construction of a new river crossing. Additionally, the  
21 findings do not explain how reducing the threat of damage to  
22 Goodpasture Bridge will enable the county to carry out its  
23 obligations under one or more of Goals 3-19 or its  
24 acknowledged RCP provisions.

25 **5. Conclusion**

26 As the challenged decision states, and the county

1 argues in its brief, its four reasons justifying an  
2 exception to Goal 4 are cumulative and interrelated.  
3 Record 24; Respondent's Brief 13. We conclude above there  
4 are deficiencies in the findings explaining each of the  
5 county's reasons. Thus, the county failed to comply with  
6 ORS 197.732(1)(c)(A), OAR 660-04-020(2)(a) and  
7 660-04-020(1)(a). This subassignment of error is sustained.

8 **C. Sites Not Requiring New Goal Exception Cannot**  
9 **Reasonably Accommodate Use**

10 ORS 197.732(1)(c)(B) establishes the following standard  
11 for a goal exception:

12 "Areas which do not require a new exception cannot  
13 reasonably accommodate the use[.]"

14 Under this subassignment of error we consider  
15 petitioners' arguments that the county inadequately  
16 considered alternative locations for a new river crossing  
17 which do not require a new goal exception.

18 **1. New Bridge in Existing Alignment**

19 Petitioners contend they raised below the issue of  
20 building a new, larger fireproof bridge next to the existing  
21 historic bridge, in the same alignment. Record 307.  
22 Petitioners argue the county has taken other historic  
23 covered bridges out of service and built an adjacent  
24 serviceable bridge. Petitioners contend the county should

1 have addressed this issue in its findings.<sup>18</sup>

2 This issue is relevant, and was raised by petitioners  
3 below. We are cited to no findings in the challenged  
4 decision addressing this issue. This subassignment of error  
5 is sustained.

6 **2. Tom Creek Site**

7 The Tom Creek crossing site is located at approximately  
8 river mile 28.0, 2.5 miles upstream from the Goodpasture  
9 Bridge and 3.5 miles downstream from the proposed Bear Creek  
10 crossing. At this site, both ends of the bridge, and the  
11 connector road to Goodpasture Road, would be built on land  
12 designated and zoned for rural residential use and already  
13 the subject of exceptions to Goals 3 and 4.

14 The decision's four reasons for rejecting the Tom Creek  
15 crossing site "as a viable alternative" are summarized  
16 below:

- 17 1. Use of Tom Creek site requires acquisition  
18 and removal of an existing residence.
- 19 2. The new river crossing and connector road  
20 would be located less than 200 feet from four  
21 residences and within 300 feet of two other

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<sup>18</sup>The petition for review raises this issue under petitioners' "reasons" subassignment of error. Petition for Review 12. Nevertheless, because the issue concerns an alternative location for the proposed new river crossing, we address it here. However, in addressing it under the subassignment concerning ORS 197.732(1)(c)(B), we do not conclusively determine that a new bridge adjacent to the existing bridge would not require a new goal exception. That is for the county to determine. If the county decides that placing a new bridge adjacent to the existing bridge would require a new goal exception, then the county should consider this alternative location under ORS 197.732(1)(c)(C), discussed infra.

1 residences, and would have a "substantial  
2 impact" on these residences.

3 3. Requires crossing Tom Creek, a Class I  
4 stream. Tom Creek spawning areas are located  
5 south of Goodpasture Road. However, the new  
6 construction would enhance public access to  
7 the portion of Tom Creek between Goodpasture  
8 Road and the McKenzie River, which could  
9 threaten fish migrating to the spawning  
10 areas.

11 4. Tom Creek location does not provide the  
12 separation between crossings and loop escape  
13 route preferred by ODOF in event of a fire  
14 emergency. Record 26-27.

15 Petitioners contend the county findings summarized  
16 above are not adequate to demonstrate the Tom Creek site  
17 "cannot reasonably accommodate" the proposed bridge  
18 crossing. Some of petitioners' arguments are based on  
19 comparing findings and evidence concerning the Bear Creek  
20 and Tom Creek sites.<sup>19</sup>

21 The county argues that ORS 197.732(1)(c)(B) does not  
22 require comparison of alternative sites not requiring a goal  
23 exception to the chosen site and, therefore, petitioners'  
24 arguments that impacts of the proposed use at the Tom Creek  
25 and Bear Creek sites are the same or similar are irrelevant.  
26 As a preliminary matter, we consider whether comparison of  
27 the impacts and utility of the proposed use at the Tom Creek

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<sup>19</sup>With regard to reasons 2 and 3 above, petitioners contend the county has not demonstrated that the adverse impacts found at the Tom Creek site are greater than those at the Bear Creek site. With regard to reason 4, petitioners complain the decision does not comparatively evaluate the value of crossings at the two sites for their utility in fire protection.

1 site with those at the selected (Bear Creek) site, is  
2 relevant to determining compliance with  
3 ORS 197.732(1)(c)(B).

4 This Board is authorized to determine whether the  
5 county's findings and reasons satisfy the standards of  
6 ORS 197.732(1). ORS 197.732 (6)(b). However, neither  
7 ORS 197.732(1)(c)(B) nor OAR 660-04-020(2)(b) defines the  
8 term "cannot reasonably accommodate." We interpret this  
9 term in the context of the other statutory goal exception  
10 standards.

11 Overall, the statutory standards are difficult to  
12 satisfy and, therefore, favor compliance with the goals,  
13 rather than approval of exceptions to the goals. Further,  
14 the standards for a reasons exception treat alternative  
15 sites that require a goal exception and alternative sites  
16 that do not require a goal exception quite differently. The  
17 standards favor the chosen exception site over other sites  
18 that also require a goal exception.<sup>20</sup> On the other hand, we  
19 believe the standards express a preference for using an  
20 alternative site that does not require a goal exception.  
21 See 1000 Friends of Oregon v. Marion County, 24 Or LUBA 20,  
22 26, rev'd other grounds, 116 Or App 584 (1992). This means  
23 close calls favor a site that does not require a goal

---

<sup>20</sup>A chosen site satisfies ORS 197.732(1)(c)(C) so long as the consequences of locating the proposed use at the chosen site are "not significantly more adverse" than the consequences of locating the proposed use at another site also requiring a goal exception.

1 exception. If such a site is a reasonable alternative for  
2 the proposed use, a goal exception is not justified. 1000  
3 Friends of Oregon v. Metro Service Dist., 18 Or LUBA 311,  
4 330 (1989). Thus, comparison of the impacts and utility of  
5 the proposed use at such an alternative site to those at the  
6 chosen exception site is relevant to determining whether the  
7 alternative site can reasonably accommodate the proposed  
8 use.

9 With regard to reason 2 above, petitioners first argue  
10 the findings are inadequate because they fail to describe  
11 the nature or extent of the "substantial impact" that a  
12 river crossing at the Tom Creek site would have on the six  
13 residences within 400 feet. We agree.

14 Petitioners next point out the challenged decision  
15 concludes the proposed Bear Creek crossing is compatible  
16 with a residence located approximately 400 feet away and  
17 four additional residences "in the general vicinity of the  
18 Bear Creek crossing." Record 32. In this regard, the  
19 county found:

20 " \* \* \* There may be some increase in noise as a  
21 result of the crossing particularly when trucks  
22 leave the connecting road and accelerate to enter  
23 the highway. However, \* \* \* the increase would be  
24 episodic in nature, of limited duration, and must  
25 be viewed in the context of normal vehicular noise  
26 levels associated with trucks, passenger and  
27 recreational vehicle use of the highway which  
28 occurs on a constant basis." Id.

29 Petitioners maintain the same can be said with regard to the  
30 impacts of a Tom Creek crossing on nearby residences.

1 Petitioners argue the county must explain why it believes  
2 impacts on neighboring rural residences from a river  
3 crossing at the Tom Creek site would be significantly more  
4 adverse than at the Bear Creek site, and cannot be  
5 mitigated. Once again, we agree with petitioners.

6 With regard to reason 3 above, petitioners argue this  
7 concern about adverse impacts on fish habitat from enhanced  
8 public access is speculative, applies equally to the  
9 proposed river crossing site, and could be mitigated by  
10 using structural measures to discourage access. We agree  
11 with petitioners that if the county wishes to rely on  
12 adverse impacts on fish habitat due to enhanced public  
13 access as a reason for concluding that the Tom Creek site  
14 cannot reasonably accommodate the proposed use, it must  
15 explain why and to what extent this adverse impact is  
16 greater at the Tom Creek site, compared to the chosen site,  
17 and why it cannot reasonably be mitigated.

18 With regard to reason 4 above, petitioners argue the  
19 record does not support the county's conclusion that a river  
20 crossing at the Tom Creek site "does not provide the  
21 separation between crossings and loop escape route preferred  
22 by [ODOF] in event of a fire emergency." According to  
23 petitioners, the ODOF letter in the record does not address  
24 whether a Tom Creek crossing would provide adequate  
25 separation between crossings and an adequate loop escape  
26 route. Record 821. Petitioners also argue the record shows

1 the McKenzie RFD chief prefers a Tom Creek crossing for fire  
2 protection access, because it is closer to most of the  
3 existing residential development along Goodpasture Road.  
4 Record 749.

5 Two of the reasons relied on by the county to justify  
6 this exception, discussed above, are improved ODOF forest  
7 fire response capability and provision of alternative  
8 emergency access to the 100 residences along Goodpasture  
9 Road. If the county wishes to rely on inability to satisfy  
10 these needs as a basis for concluding the Tom Creek site  
11 cannot reasonably accommodate the proposed river crossing,  
12 it must explain in its findings to what extent a crossing at  
13 the Tom Creek will or will not result in improved ODOF  
14 forest fire response capability and provision of alternative  
15 emergency access to the 100 residences along Goodpasture  
16 Road, and demonstrate the proposed Bear Creek crossing  
17 better accommodates these needs.<sup>21</sup>

18 We conclude above that the county's findings with  
19 regard to reasons 2, 3 and 4 cannot be relied on to conclude  
20 the Tom Creek site cannot reasonably accommodate the  
21 proposed use. The remaining reason is that unlike the  
22 proposed river crossing at the Bear Creek site, a crossing  
23 at the Tom Creek site would require "acquisition and removal

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<sup>21</sup>We agree with petitioners that the ODOF letter says nothing with regard to whether or to what extent a crossing at Tom Creek would reduce forest fire response time and provide an adequate separation and loop escape route. Record 821.

1 of an existing residence." Record 26. We agree with  
2 petitioners that this reason is insufficient to establish  
3 that the Tom Creek site cannot reasonably accommodate the  
4 proposed use. ORS 197.732(6)(b).

5 This subassignment of error is sustained.

6 **D. ESEE Consequences Not Significantly More Adverse**  
7 **Than Sites Requiring Goal Exception**

8 ORS 197.732(1)(c)(C) establishes the following standard  
9 for a goal exception:

10 "The long term environmental, economic, social and  
11 energy [(ESEE)] consequences resulting from the  
12 use at the proposed site with measures designed to  
13 reduce adverse impacts are not significantly more  
14 adverse than would typically result from the same  
15 proposal being located in areas requiring a goal  
16 exception other than the proposed site[.]"

17 The provisions of ORS 197.732(1)(c)(C) are implemented by  
18 OAR 660-04-020(2)(c).

19 The challenged decision includes findings comparing the  
20 ESEE consequences of the proposed use at the proposed Bear  
21 Creek crossing site with those at three other crossing sites  
22 (Whitewater B, Forest Service and Rennie Landing) that also  
23 require an exception to Goal 4.<sup>22</sup> Record 28-31.  
24 Petitioners challenge the adequacy of these findings.

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<sup>22</sup>The Whitewater B site is slightly upstream from the Tom Creek site, on the portion of Goodpasture Road that is already developed as a minor collector. The Forest Service site is located at river mile 30.5, approximately one mile downstream from the selected Bear Creek site, on the one-lane, gravel portion of Goodpasture Road. The Rennie Landing site is located at river mile 32.0, approximately one-half mile upstream from the Bear Creek site, also on the one-lane, gravel portion of Goodpasture Road.

1                   **1. Three Additional Sites**

2           Petitioners contend the county should have included in  
3 the analysis required by ORS 197.732(1)(c)(C) three  
4 additional alternative river crossing sites (Whitewater A,  
5 Helfrich Landing, Deer Creek) for which the county performed  
6 a preliminary analysis. Petitioners argue they requested  
7 below that these three additional sites be included in the  
8 county's analysis. Record 309. Petitioners argue the  
9 challenged decision fails to give any explanation for its  
10 failure to include these three sites.

11           As relevant here, OAR 660-04-020(2)(c) provides:

12           "\* \* \* A detailed evaluation of specific  
13 alternative sites is not required unless such  
14 sites are specifically described with facts to  
15 support the assertion that the sites have  
16 significantly fewer adverse impacts during the  
17 local exceptions proceeding. \* \* \*" (Emphasis  
18 added.)

19           Petitioners' request below that these three additional  
20 sites be included in the county's analysis consists of the  
21 following:

22           "The county needs to conduct this [ESEE  
23 consequence] analysis for all eight sites \* \* \*."  
24 Record 309.

25           There is no dispute that the three sites were specifically  
26 described below, as the county did include these sites in  
27 its preliminary analysis. Record 620-734. However,  
28 petitioners do not assert that locating the proposed use at  
29 any of these sites would produce significantly fewer  
30 impacts, identify where such an assertion was made below, or

1 cite facts in the record supporting such an assertion.  
2 Consequently, we agree with the county that under the above  
3 portion of OAR 660-04-020(2)(c), it is not required to  
4 evaluate the ESEE consequences of locating the proposed use  
5 at any of these three sites.

6 This subassignment of error is denied.

7 **2. Findings Required by OAR 660-04-020(2)(c)**

8 OAR 660-04-020(2)(c) provides, in relevant part:

9 " \* \* \* The exception shall include the reasons why  
10 the [ESEE] consequences of the use at the chosen  
11 site are not significantly more adverse than would  
12 typically result from the same proposal being  
13 located in areas requiring a goal exception other  
14 than the proposed site. Such reasons shall  
15 include but are not limited to, the facts used to  
16 determine which resource land is least productive;  
17 the ability to sustain resource uses near the  
18 proposed use; and the long-term economic impact on  
19 the general area caused by irreversible removal of  
20 the land from the resource base. \* \* \*  
21 (Emphasis added.)

22 Petitioners contend the challenged decision does not  
23 include the findings required by the above emphasized  
24 portions of OAR 660-04-020(2)(c). Petitioners also argue  
25 such findings must consider not only the resource land that  
26 would be used for a bridge and connector road at each site,  
27 but also any resource land that would be removed from the  
28 resource base as a result of reclassifying and widening  
29 relevant portions of the existing one-lane, gravel section  
30 of Goodpasture Road.

31 The county does not contend its ESEE consequences

1 analysis includes the findings required by  
2 OAR 660-04-020(2)(c) at issue here. Rather, the county  
3 argues as follows:

4       "\* \* \* The resource land affected by all but one  
5       of the alternatives is essentially identical.  
6       Record 735-826. That includes the overland routes  
7       as well as all of the bridge crossing sites. The  
8       impact on resource use at the proposed site and  
9       others would be minimal at best, given the nature  
10      of the use in the proximity. \* \* \*" Respondent's  
11      Brief 17.

12       We agree with petitioners that the county's Goal 4  
13      exception improperly fails to include the findings required  
14      by the identified portions of OAR 660-04-020(2)(c). We also  
15      agree with petitioners that such findings must include  
16      consideration of any resource land that would be removed  
17      from the resource base as a result of reclassifying and  
18      widening relevant portions of the existing one-lane, gravel  
19      section of Goodpasture Road.

20       This subassignment of error is sustained.

### 21                   **3. Costs of Road Improvements**

22       As relevant here, OAR 660-04-020(2)(c) provides:

23       "\* \* \* Other possible [long-term ESEE] impacts  
24       include the effects of the proposed use \* \* \* on  
25       the costs of improving roads \* \* \*.

26       Petitioners argue the county's analysis of economic  
27      impacts of locating the proposed use at the selected and  
28      alternative sites should include costs associated with  
29      improving the relevant portions of the one-lane unpaved

1 section of Goodpasture Road.<sup>23</sup>

2 The county argues nothing in the challenged decision  
3 authorizes significant improvements to, or requires widening  
4 of, the 1.2 mile section of Goodpasture Road. It is unclear  
5 whether the county also argues the costs of improving  
6 relevant portions of Goodpasture Road are included in its  
7 comparison of the ESEE consequences of locating the proposed  
8 use at alternative sites pursuant to ORS 197.732(1)(c)(C).

9 We agree with petitioners that under  
10 OAR 660-04-020(2)(c), the county's consideration of the  
11 long-term economic impacts of locating the proposed use at  
12 alternative sites must include the costs of improvements to  
13 Goodpasture Road that would ultimately be incurred due to  
14 locating the proposed use at a particular site. This is so,  
15 even though such improvements are not themselves approved by  
16 the challenged decision. The county's analysis of the  
17 economic consequences of alternative sites does not include  
18 such findings. Record 29. The county does compare the  
19 "total costs" of using the Forest Service and Bear Creek  
20 sites in its findings on Criterion 16(2) at Record 22.<sup>24</sup>

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<sup>23</sup>Petitioners state only the Bear Creek alternative requires improvements to Goodpasture Road. However, the county points out, and we agree, that use of the Forest Service, Bear Creek, or Rennie Landing site would involve improving varying lengths of the existing one-lane, unpaved section of Goodpasture Road.

<sup>24</sup>Supplemental findings revise the Bear Creek cost figure to reflect an intended change in bridge design. Record 49-52.

1 However, these findings do not include figures for the  
2 Rennie Landing and Whitewater B sites, and we cannot  
3 determine from these findings whether they include  
4 associated costs of improving Goodpasture Road.<sup>25</sup>

5 This subassignment of error is sustained.

6 **E. Compatibility**

7 ORS 197.732(1)(c)(D) establishes the following standard  
8 for a goal exception:

9 "The proposed uses are compatible with other  
10 adjacent uses or will be so rendered through  
11 measures designed to reduce adverse impacts."

12 Petitioners contend the county's findings fail to  
13 explain why increased traffic along the one-lane gravel  
14 portion of Goodpasture Road, and the eventual improvement of  
15 that portion of Goodpasture Road to minor collector  
16 standards, due to the proposed river crossing, will be  
17 compatible with continued management of the forest land on  
18 either side of the road for forest uses. Petitioners state  
19 "[t]he county's finding that logging and recreational  
20 traffic already use this road ignores the point that the  
21 amount of general public traffic will increase dramatically  
22 with the opening of the bridge and the road improvement."  
23 Petition for Review 18. Petitioners argue the record  
24 includes testimony from the ODOF and McKenzie RFD regarding

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<sup>25</sup>However, we note petitioners cite portions of the record indicating the costs of improving Goodpasture Road to minor collector standards are not included in the "total costs" comparison at Record 22. Record 744-46.

1 the increased risk of fire.

2 The county's findings regarding compatibility of the  
3 proposed use with other uses of land on the south side of  
4 the McKenzie River, in their entirety, are:

5 "Land south of the McKenzie River at the Bear  
6 Creek crossing is devoted entirely to forest use.  
7 The crossing itself will involve approximately 125  
8 feet of connecting road between the bridge  
9 structure and the existing Goodpasture Road.  
10 [T]raffic using the Bear Creek crossing will have  
11 no greater effect on adjacent land uses south of  
12 the river than does existing logging and  
13 recreational traffic that uses that portion of  
14 Goodpasture Road." (Emphasis added.) Record 31.

15 We agree with petitioners that the above findings are  
16 impermissibly conclusory. The findings do not explain  
17 whether and to what extent the county believes traffic on  
18 Goodpasture Road will be affected by the proposed Bear Creek  
19 river crossing. The emphasized finding does not explain why  
20 the county believes that traffic on Goodpasture Road, with  
21 the new river crossing, will have no greater effect than  
22 existing traffic on that road.

23 This subassignment of error is sustained.

24 The first and third assignments of error are sustained,  
25 in part.

26 **SECOND ASSIGNMENT OF ERROR**

27 Statute, goal and administrative rule provisions  
28 clearly require that the findings and reasons justifying a  
29 goal exception be adopted as part of the county  
30 comprehensive plan. ORS 197.732(8); Goal 2, Part II,

1 definition of "exception;" OAR 660-04-000(2) and  
2 660-04-015(1); Caine v. Tillamook County, 22 Or LUBA 687,  
3 694 (1992); DLCD v. Josephine County, 18 Or LUBA 88, 90 n 1  
4 (1989); Johnson v. Tillamook County, 16 Or LUBA 855, 859-60  
5 (1988). Petitioners argue the county failed to adopt its  
6 Goal 4 exception findings as part of the RCP.

7 Section 2 of the challenged ordinance provides:

8 "This amendment to the RCP includes exceptions to  
9 Statewide Planning Goals pertaining to forest  
10 lands, open space and scenic resources. Findings  
11 \* \* \* in support of this amendment are included as  
12 Exhibit 2 of this Ordinance. The findings are  
13 based on evidence in the record that explain [sic]  
14 why these exceptions are warranted, as well as  
15 arguments [sic] why exceptions to Goals 4 and 5  
16 are unnecessary." Record 14.

17 The county argues the above language amends the RCP to  
18 include the findings of fact and statement of reasons  
19 supporting its exception to Goal 4.

20 Although the above quoted language states the adopted  
21 RCP amendment "includes exceptions to" Goals 4 and 5,  
22 neither the ordinance itself nor the attached exhibits  
23 identify what is included in, or what land is the subject  
24 of, these exceptions.<sup>26</sup> The Exhibit 2 referred to above is  
25 entitled "Findings in Support of Ordinance No. PA 1032."  
26 Exhibit 2 includes not only findings addressing RCP  
27 Criterion 16(3)(a)(ii)(aa) to (dd) (which parallel the

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<sup>26</sup>For instance, we are unable to locate any map or legal description that depicts the specific property to which the adopted exception to Goal 4 applies. OAR 660-04-005(1)(a).

1 "reasons" goal exception criteria of ORS 197.732(1)(c)(A) to  
2 (D)), but also findings that an exception to Goal 4 is  
3 unnecessary, findings addressing the other provisions of  
4 Criterion 16, and findings addressing other applicable RCP  
5 and Lane Code (LC) provisions. Additionally, it is unclear  
6 whether the above quoted language adopts Exhibit 2 as part  
7 of the RCP, or merely adopts it as findings in support of  
8 the challenged ordinance. In view of this uncertainty, we  
9 agree with petitioners that the above quoted language does  
10 not amend the RCP to include the findings and reasons  
11 justifying the adopted exception to Goal 4, as required by  
12 ORS 197.732(8), Goal 2, Part II, and OAR 660-04-000(2) and  
13 660-04-015(1).

14 The second assignment of error is sustained.

15 **FOURTH THROUGH SIXTH ASSIGNMENTS OF ERROR**

16 In these assignments of error, petitioners argue the  
17 challenged decision fails to comply with Criterion 16(2),  
18 16(3)(b) and 16(3)(c), respectively. However, the county  
19 contends petitioners waived these issues by failing to raise  
20 them in the local proceedings. Petitioners make no response  
21 to the county's contention.

22 Where a party contends that issues petitioners seek to  
23 raise before LUBA were not raised during the local  
24 proceedings, and petitioners neither identify where in the  
25 record the issues were raised below nor claim the local  
26 government failed to follow the procedures required by

1 ORS 197.763, petitioners may not raise the issues for the  
2 first time before LUBA. ORS 197.763(1), 197.835(2);  
3 Broetje-McLaughlin v. Clackamas County, 22 Or LUBA 198, 206  
4 (1991); Wethers v. City of Portland, 21 Or LUBA 78, 92  
5 (1991).

6 The fourth through sixth assignments of error are  
7 denied.

8 **SEVENTH ASSIGNMENT OF ERROR**

9 Petitioners observe that the site of the proposed  
10 bridge and connector road remains zoned F-1. Petitioners  
11 contend that, regardless of whether an exception to Goal 4  
12 is properly adopted, the proposed bridge and connector road  
13 are not allowed in the F-1 zone. See Schrock Farms, Inc. v.  
14 Linn County, 25 Or LUBA 187, aff'd 121 Or App 561 (1993)  
15 (Schrock Farms). Petitioners argue that, contrary to the  
16 county finding at Record 47, LC 16.210(3)(q) does not  
17 authorize the building of new roads or bridges in the F-1  
18 zone, but rather restates the improvements to existing roads  
19 that are allowed in a forest zone under OAR 660-04-025(4)(u)  
20 and ORS 215.213(2)(q) through (s).

21 The challenged decision states:

22 "[T]he F-1 zone does not list bridges at any  
23 location in the county and there are numerous  
24 bridges located on F-1 property. \* \* \*  
25 LC 16.210(3)(q) permits public road and highway  
26 projects. The \* \* \* authorization found at  
27 LC 16.210(3)(q) encompasses the Bear Creek  
28 crossing and \* \* \* amendment to the Lane Code is  
29 not required. \* \* \*" Record 47.

1           Petitioners' assignment of error is based on their  
2 contention that, regardless of whether an exception to  
3 Goal 4 for the proposed bridge and connector road is  
4 properly adopted, the zoning applied to the site of the  
5 proposed bridge and connector road must allow those uses.  
6 The county does not dispute this point, and we agree as  
7 well. Schrock Farms, supra, 25 Or LUBA at 193-94. However,  
8 the county contends we must affirm its interpretation of  
9 LC 16.210(3)(q) as allowing the proposed bridge and  
10 connector road in the F-1 zone, because that interpretation  
11 is not inconsistent with the language or purpose of the code  
12 provision. Clark v. Jackson County, 313 Or 508, 836 P2d 710  
13 (1992).

14           Under recent legislation, we are not required to affirm  
15 the county's interpretation of its own code provision if  
16 that interpretation "[i]s contrary to a state statute, land  
17 use goal or [administrative] rule that the [code provision]  
18 implements."           Or    Laws    1993,    ch 792,    § 43(4).  
19 LC 16.210(3)(q)(i) to (iii) are worded virtually identically  
20 to ORS 215.213(2)(q) to (s). LC 16.210(3)(q) clearly was  
21 adopted to implement the provision of OAR 660-04-025(4)(u)  
22 allowing "[p]ublic road and highway projects as described in  
23 ORS 215.213(2)(q) through (s)" on forest zoned lands. As we  
24 explain above under section A.2 of the first and third  
25 assignments of error, OAR 660-04-025(4)(u) and  
26 ORS 215.213(2)(q) to (s) do not authorize location of the

1 proposed bridge and connector road on forest zoned land.  
2 Thus, the county's interpretation is contrary to  
3 OAR 660-04-025(4)(u) and ORS 215.213(2)(q) to (s), which  
4 LC 16.210(3)(q) implements, and cannot be affirmed.

5 Additionally, the county argues for the first time in  
6 its brief that the proposed bridge and connector road are  
7 also allowed in the F-1 zone under another code provision,  
8 LC 16.210(3)(z). However, the challenged decision does not  
9 interpret LC 16.210(3)(z).<sup>27</sup> Under Gage v. City of  
10 Portland, 123 Or App 269, \_\_\_ P2d \_\_\_ (1993), and Weeks v.  
11 City of Tillamook, 117 Or App 449, 453-54, 844 P2d 914  
12 (1992), this Board may not interpret the county's code in  
13 the first instance. Ordinarily, this means we would remand  
14 the challenged decision to allow the county to interpret  
15 LC 16.210(3)(z) in the first instance. However, in this  
16 case, it is clear that LC 16.210(3)(z) implements the  
17 virtually identically worded provisions of OAR  
18 660-04-025(3)(h) and ORS 215.213(1)(m) to (p). Thus, if  
19 interpreting LC 16.210(3)(z) to allow the proposed bridge  
20 and connector road is contrary to these statutory and rule  
21 provisions, such an interpretation of LC 16.210(3)(z) could  
22 not be affirmed. Therefore, to avoid unnecessary delay in  
23 reaching finality in this matter, we determine whether

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<sup>27</sup>To be reviewable by LUBA, a local government's interpretation of its regulations must be provided in the challenged decision or the supporting findings, not in the local government's brief. Eskandarian v. City of Portland, \_\_\_ Or LUBA \_\_\_ (LUBA No. 93-012, October 15, 1993), slip op 15.

1 OAR 660-04-025(3)(h) and ORS 215.213(1)(m) to (p) allow the  
2 proposed bridge and connector road in a forest zone.

3 OAR 660-04-025(3)(h) states the following use may be  
4 allowed outright on forest zoned lands:

5 Widening of roads within existing rights-of-way  
6 in conformance with the transportation element of  
7 acknowledged comprehensive plans[, ] including  
8 public road and highway projects as described in  
9 ORS 215.213(1)(m) through (p)[.]" (Emphasis  
10 added.)

11 ORS 215.213(1)(m) through (p) list the following types of  
12 road projects:

13 "(m) Climbing and passing lanes within the right  
14 of way existing as of July 1, 1987.

15 "(n) Reconstruction or modification of public  
16 roads and highways, not including the  
17 addition of travel lanes \* \* \*.

18 "(o) Temporary public road and highway detours  
19 that will be abandoned and restored to  
20 original condition or use \* \* \*.

21 "(p) Minor betterment of existing public road and  
22 highway related facilities, such as  
23 maintenance yards, weigh stations and rest  
24 areas, within right of way existing as of  
25 July 1, 1987, and contiguous public-owned  
26 property utilized to support the operation  
27 and maintenance of public roads and  
28 highways."

29 The portion of OAR 660-04-025(3)(h) emphasized above  
30 indicates this provision authorizes only the widening of  
31 existing roads in forest zones, not construction of a new  
32 bridge and connector road. OAR 660-04-025(3)(h)  
33 additionally authorizes the road projects listed in

1 ORS 215.213(1)(m) to (p). These statutory provisions  
2 authorize (1) construction of additional climbing and  
3 passing lanes; (2) reconstruction or modification of public  
4 roads and highways; (3) temporary detours; and (4) minor  
5 betterment of existing public road and highway related  
6 facilities such as maintenance yards, weigh stations and  
7 rest areas. With the exception of ORS 215.213(1)(o), which  
8 authorizes temporary detours, these provisions all refer to  
9 existing roads. Construction of a new bridge terminus or a  
10 new road to connect that bridge to an existing road is not  
11 within any of the above categories. Consequently, a county  
12 interpretation of LC 16.210(3)(z) as allowing the proposed  
13 new bridge and connector road on F-1 zoned land would be  
14 contrary to OAR 660-04-025(3)(h) and ORS 215.213(1)(m) to  
15 (p), and could not be affirmed.

16 The seventh assignment of error is sustained.

17 **EIGHTH ASSIGNMENT OF ERROR**

18 OAR Chapter 660, Division 12 is LCDC's Transportation  
19 Planning Rule (TPR). OAR 660-12-055(2) requires the county  
20 to adopt a Transportation System Plan (TSP) and implementing  
21 measures by May 8, 1996. OAR 660-12-010 through 660-12-050  
22 establish standards for the adoption of such TSPs and  
23 implementing measures. Petitioners contend the challenged  
24 decision fails to comply with several provisions of these  
25 rules.

26 In Bicycle Transportation Alliance v. Washington

1 County, \_\_\_ Or LUBA \_\_\_ (LUBA Nos. 92-213, 92-214 and  
2 92-215, December 21, 1993) (Bicycle), we considered whether  
3 the standards of OAR 660-12-010 through 660-12-050 are  
4 applicable to comprehensive plan and land use regulation  
5 amendments adopted prior to the deadline established by  
6 OAR 660-12-055. We stated:

7       "\* \* \* OAR 660-12-010(2) specifically envisions  
8       that a local government may designate existing  
9       'plans and programs' as part or all of its TSP.  
10       However, \* \* \* some reasonably definite and  
11       specific action by the local government to  
12       designate or incorporate those 'plans and  
13       programs' as part or all of its TSP is  
14       contemplated by the TPR. \* \* \*" Bicycle, slip op  
15       at 13.

16 We concluded the adequacy of any new plan or regulation  
17 provisions, or of any existing plans and regulations  
18 designated and incorporated as part of a local government's  
19 TSP, to comply with OAR 660-12-010 through 660-12-050 can be  
20 challenged at the time the local government acts to  
21 designate new or existing plans and regulations as its TSP  
22 in the manner required by OAR 660-12-010(2). We also  
23 concluded that prior to such local government action, any  
24 challenge to adoption of a plan or regulation amendment  
25 based on failure to comply with the TSP requirements of  
26 OAR 660-12-010 through 660-12-050 is premature. Id.,  
27 slip op at 18-19.

28       In this case, there is no contention that the  
29 challenged decision constitutes the county's adoption of, or  
30 designation of existing plans and programs as, its TSP.

1 Consequently, OAR 660-12-010 through 660-12-050 are not  
2 standards for the challenged decision, and this assignment  
3 of error provides no basis for reversal or remand.

4 The eighth assignment of error is denied.

5 The county's decision is remanded.