

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

3
4 LANDWATCH LANE COUNTY,
5 *Petitioner,*

6
7 vs.

8
9 LANE COUNTY,
10 *Respondent.*

11
12 LUBA No. 2013-058

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from Lane County.

18
19 Sean T. Malone, Eugene, filed the petition for review and argued on
20 behalf of petitioner.

21
22 Stephen L. Vorhes, Assistant County Counsel, Eugene, filed a response
23 brief and argued on behalf of respondent. With him on the brief was H.
24 Andrew Clark.

25
26 BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board
27 Member, participated in the decision.

28
29 REMANDED 02/20/2014

30
31 You are entitled to judicial review of this Order. Judicial review is
32 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a county ordinance taking a reasons exception to Statewide Planning Goal 14 (Urbanization) to allow urban levels of industrial development on existing rural industrial lands in the unincorporated community of Goshen.

FACTS

Goshen is a rural unincorporated community located approximately 2.6 miles southeast of the City of Eugene urban growth boundary (UGB). The community was designated as such pursuant to committed and developed exceptions to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands). The community is located at the intersection of Interstate 5 and Highway 58, and is served by railroad.

Approximately 316 acres of Goshen is designated and zoned for rural industrial development, and is designated as a Regionally Significant Industrial Area (RSIA) pursuant to ORS 197.722. The RSIA designation recognizes that the industrial area (1) includes suitable vacant industrial sites for location and expansion of industrial uses, (2) has site characteristics that give the area significant competitive advantages that are difficult to replicate in the region, (3) has superior access to transportation and freight infrastructure, and (4) is located close to major labor markets. Under the administrative rules that govern rural unincorporated communities, new industrial development within the Goshen RSIA is generally limited to buildings no larger than 40,000 square feet. OAR 660-022-0030(11).

The existing Goshen RSIA is partially developed with industrial uses. Existing industrial development on the site is served by individual septic

1 systems. The soils underlying the Goshen RSIA site are generally hydric soils
2 that can include wetlands. However, the number and extent of wetlands in the
3 area have not been delineated.

4 In 2011, the county adopted a strategic plan to increase employment in
5 the county, called the Goshen Region Employment and Transition (GREAT)
6 plan. The ultimate goal of the GREAT plan is to create 2,000 to 3,000 new
7 jobs that pay 150 percent of the median wage in the county. To implement the
8 GREAT plan, in 2012 the county initiated legislative post-acknowledgment
9 amendments to the Lane County Rural Comprehensive Plan (RCP) to take a
10 reasons exception to Goal 14, in order to allow urban levels of industrial
11 development in the 316-acre RSIA. In addition, the county proposed to rezone
12 the RSIA under two new urban industrial zones: General Industrial (GI) and
13 Light Industrial (LI).

14 The county planning commission conducted a hearing on the proposed
15 amendments and recommended approval. The county board of commissioners
16 conducted a hearing on the recommendation and, on June 4, 2013, adopted an
17 ordinance approving the amendments, along with supporting findings. This
18 appeal followed.

19 **INTRODUCTION**

20 Goal 14 generally prohibits urban development on land outside urban
21 growth boundaries. Goal 14 is implemented in relevant part by two
22 administrative rules, OAR chapter 660, divisions 014 and divisions 022. OAR
23 660-022-0030 governs the planning and zoning of unincorporated communities
24 like Goshen, and in relevant part authorizes certain types of industrial uses in
25 unincorporated communities, subject to certain limits, discussed below. OAR
26 660-022-0030 is at issue in the first assignment of error.

1 ORS 197.732 and Statewide Planning Goal 2 (Land Use Planning)
2 authorize local governments to take exceptions to certain statewide planning
3 goals, to authorize uses not allowed by the goals, if the local government
4 establishes one or more “reasons” that justify why the state policy embodied in
5 the applicable goal should not apply. ORS 197.732(2)(c)(A). OAR 660-014-
6 0030 sets out the standards for adopting a “reasons” exception to allow urban
7 development on rural land. These standards are at issue under the second
8 through seventh assignments of error.

9 **FIRST ASSIGNMENT OF ERROR**

10 Under the first assignment of error, petitioner argues that the county
11 erred in taking a Goal 14 exception under OAR 660-014-0030, because the
12 more intensive industrial development contemplated in the GREAT plan can be
13 accomplished without an exception, pursuant to the unincorporated
14 communities rule at OAR 660-022-0030(3). According to petitioner, a county
15 cannot take an exception to a goal to authorize a use if the goal in fact already
16 allows that same use. *See DLCD v. Yamhill County*, 183 Or App 556, 53 P3d
17 462 (2002) (a county errs in adopting an exception to Goal 3 to provide for a
18 use that is allowed under the Goal); *Waste Not of Yamhill County v. Yamhill*
19 *County*, 240 Or App 285, 246 P3d 493 (2010), *adh’d to as modified on recons*
20 241 Or App 199, 255 P3d 496 (2011) (same).

21 OAR 660-022-0030(3) is part of the unincorporated communities rule,
22 and in relevant part limits new and expanded industrial uses in unincorporated
23 communities in several ways.¹ OAR 660-022-0030(3)(c), for example, limits

¹ OAR 660-022-0030(3) provides, in relevant part:

1 new industrial uses to “small-scale, low-impact uses.” However, OAR 660-
2 022-0030(3)(f) allows within an unincorporated community new industrial uses
3 “more intensive than those allowed” under OAR 660-022-0030(3)(a) through
4 (e), if the county demonstrates that the more intensive industrial uses comply
5 with three requirements. Specifically, the more intensive new industrial uses
6 must be “necessary to provide employment that does not exceed the total

“County plans and land use regulations may authorize only the following new or expanded industrial uses in unincorporated communities:

“* * * * *

“(e) New uses that will not exceed the capacity of water and sewer service available to the site on the effective date of this rule, or, if such services are not available to the site, the capacity of the site itself to provide water and absorb sewage;

“(f) New uses more intensive than those allowed under subsection (a) through (e) of this section, provided an analysis set forth in the comprehensive plan demonstrates, and land use regulations ensure:

“(A) That such uses are necessary to provide employment that does not exceed the total projected work force within the community and the surrounding rural area;

“(B) That such uses would not rely upon a work force employed by uses within urban growth boundaries; and

“(C) That the determination of the work force of the community and surrounding rural area considers the total industrial and commercial employment in the community and is coordinated with employment projections for nearby urban growth boundaries.”

1 projected work force within the community and the surrounding rural area,”
2 and such uses must not “rely upon a work force employed by uses within urban
3 growth boundaries.” Due to these limitations, OAR 660-022-0030(3)(f) is
4 referred to in the findings as the “workforce provision.”

5 During the proceedings before the county, opponents argued that instead
6 of taking a reasons exception to Goal 14 to allow industrial uses unrestricted in
7 intensity, the county could authorize more intensive industrial uses under the
8 workforce provision, subject to the limitations in OAR 660-022-0030(3)(f)(A)
9 through (C). The opponents argued that the county could achieve the GREAT
10 plan’s objective of creating a number of new jobs by simply authorizing more
11 intensive rural industrial development pursuant to OAR 660-022-0030(3)(f),
12 and therefore there was no need to take a Goal 14 exception.

13 In its findings, the county rejected that argument, concluding that the
14 urban industrial uses allowed under the reasons exception cannot comply with
15 two requirements of OAR 660-022-0030(3). The county first concluded that
16 the “proposed urban level of industrial uses will exceed the capacity of the
17 existing water and sewer service available,” and therefore could not comply
18 with OAR 660-022-0030(3)(e), which authorizes new industrial uses only if the
19 new uses will not exceed the capacity of water and sewer service available.
20 Record 64. Petitioner does not challenge this finding under the first
21 assignment of error; indeed, as explained below, that undisputed finding is an
22 essential premise for its arguments under the fifth and sixth assignments of
23 error.

24 Second, the county concluded that the proposed intensity of industrial
25 uses could not comply with the workforce provision at OAR 660-022-
26 0030(3)(f). Petitioner challenges that second finding under the first assignment

1 of error, arguing that the county misinterpreted the workforce provision in
2 several ways. However, as we understand petitioner’s challenges to the
3 findings addressing OAR 660-022-0030(3)(f), there is no point in addressing
4 those challenges. Even if petitioner demonstrated that the county committed an
5 interpretative or other error in concluding that the proposed industrial uses
6 could not comply with the workforce provision at OAR 660-022-0030(3)(f),
7 any such error would not require reversal or remand, because petitioner does
8 not challenge the county’s initial conclusion that the proposed industrial uses
9 cannot comply with OAR 660-022-0030(3)(e). Under that initial conclusion,
10 the proposed industrial uses cannot be approved under the unincorporated
11 communities rule, and can only be approved pursuant to a Goal 14 exception.
12 Accordingly, petitioner’s arguments under the first assignment of error do not
13 provide a basis for reversal or remand.

14 The first assignment of error is denied.

15 **SECOND ASSIGNMENT OF ERROR**

16 OAR 660-014-0040 sets out the standards for taking a reasons exception
17 to Goal 14 to allow new urban development on undeveloped rural lands.²

² OAR 660-014-0040 provides, in relevant part:

- “(1) As used in this rule, ‘undeveloped rural land’ includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.
- “(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped

1 Under OAR 660-014-0040(2), reasons that can justify why the policies in Goal
2 14 should not apply “can include *but are not limited to* findings that an urban
3 population and urban levels of facilities and services are necessary to support
4 an economic activity that is dependent upon an adjacent or nearby natural
5 resource.” (Emphasis added.) In other words, OAR 660-014-0040(2) specifies
6 one reason why a Goal 14 exception can be taken—support for economic
7 activity dependent on a natural resource—but expressly leave open the
8 possibility that there may be other reasons that justify a Goal 14 exception.

9 The county adopted two alternative sets of reasons to justify
10 establishment of urban development within the Goshen RSIA; petitioner
11 challenges both. The primary set of reasons is based on (1) the Statewide
12 Planning Goal 9 (Economic Development) mandate to provide adequate
13 opportunities for a variety of economic activities in the county, (2) a shortage
14 of vacant land for urban industrial uses in the county, and (3) a list of unique or
15 significant characteristics of the Goshen RSIA that, the county concludes, make
16 it the prime location for needed urban industrial development. As an
17 alternative, the county also concludes that the existing Goshen RSIA is a
18 “natural resource,” and that “an urban population and urban levels of facilities
19 and services are necessary to support an economic activity that is dependent
20 on” that natural resource. Record 80.

rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.”

1 We first address petitioner’s challenge to the county’s alternative finding
2 that the existing Goshen RSIA is a “natural resource” for purposes of OAR
3 660-014-0040(2). We have no trouble agreeing with petitioner that the existing
4 Goshen industrial area is not a “natural resource” for purposes of OAR 660-
5 014-0040(2). The county’s findings cite the general Goal definition of “natural
6 resource,” which provides that natural resources are “[a]ir, land and water and
7 elements thereof which are valued for their existing and potential usefulness to
8 man.” However, that definition is clearly concerned with “natural” elements of
9 air, land and water that are useful to man. Industrially zoned and developed
10 property, no matter how useful to man, is not in itself a “natural” resource for
11 purposes of OAR 660-014-0040(2) or the general Goal definition. Were it
12 otherwise, all developed land in this state would be a “natural” resource.

13 However, the county’s error on this point does not warrant remand, if its
14 primary set of reasons is sufficient. Accordingly, we turn to petitioner’s
15 challenge to the county’s primary conclusion under OAR 660-014-0040(2).
16 The county’s primary set of reasons focuses on unique or significant
17 characteristics of the subject property, and discusses two general types of urban
18 industrial uses well-suited for the property’s characteristics: (1) “rail
19 dependent and/or related urban industrial uses on large sites,” and (2) urban
20 industrial uses on smaller sites that support the large-site urban industrial uses.
21 The “reasons” listed under both sub-categories are almost identical.³ In

³ The 15 listed “reasons” for large site rail-dependent urban industrial uses are as follows:

“* The proposed exception area is designated as a [RSIA] by the State of Oregon under ORS 197.723.

1 essence, the listed reasons state the unique or significant qualities of the
2 Goshen RSIA, particularly its RSIA status, its rail and highway connections,
3 and its existing industrial planning, zoning and development, that make it a

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- “* Existing Industrial zoning and Comprehensive Plan designation.
 - “* Existing impacts from industrial development (Industrial Character).
 - “* Presence of existing rail line that serves the community.
 - “* Existing rail spur served industrial properties.
 - “* Existing Highway interchange providing access to I-5 and Hwy 58.
 - “* Highway 99 runs through the community.
 - “* Community water system in place.
 - “* Natural Gas main line running through the community.
 - “* Location within the EPUD service area, providing electrical power.
 - “* Access to fiber optic infrastructure.
 - “* Close proximity to the second largest metropolitan area in the state.
 - “* Close proximity to University of Oregon, Lane Community College, and Willamette Christian University.
 - “* Community served by Lane Transit District (LTD).
 - “* Lane County is identified as ‘distressed’ according to Business Oregon.” Record 78 (footnote omitted.)

1 prime location for the additional urban industrial development that the county
2 believes is needed under Goal 9.

3 For large site rail-dependent urban industrial uses, the county’s findings
4 ultimately conclude:

5 “The cumulative effects of these reasons and site characteristics
6 are immeasurable and create not only regionally significant and
7 prime industrial land that is impossible to replicate within the
8 region, but also that is unique within the state. It is these factors,
9 together with Lane County’s need and desire to improve and
10 diversi[fy] its economy that warrant the proposed exception to
11 allow the urban level of development on the existing industrial
12 zoned lands.” Record 78.

13 Petitioner argues that the county must demonstrate that all of the listed
14 reasons for the exception are “necessary” to accomplish the county’s objectives
15 to provide for rail dependent/related urban industrial uses on large sites and
16 supporting industrial uses on smaller sites. According to petitioner, the
17 county’s findings addressing the supporting urban industrial uses on smaller
18 lots concede that some of the listed reasons are not “necessary” to support rail
19 dependent uses on large lots, but are simply “practicable, desirable or important
20 for other reasons.” Record 79. As examples, petitioner argues that “access to
21 fiber optic infrastructure” and “close proximity” to universities are not
22 “necessary” to support rail-dependent urban industrial uses. Because the
23 county acknowledges that some of its reasons are not “necessary” to support
24 rail-dependent urban industrial uses, petitioner argues, the county’s decision is
25 erroneous and must be remanded.

26 Petitioner’s argument that the county must demonstrate that all listed
27 characteristics of the Goshen RSIA are “necessary” is based on language in
28 *VinCEP v. Yamhill County*, 53 Or LUBA 514 (2007), *aff’d in part and rev’d*

1 *and rem'd in part*, 215 Or App 414, 171 P3d 368 (2007). *VinCEP* involved a
2 reasons exception to Goals 3 and 14 to allow for a luxury wine tourist hotel on
3 agricultural land. The county attempted to justify the exception under OAR
4 660-014-0040(2) as “necessary to support an economic activity that is
5 dependent upon an adjacent or nearby natural resource.” To that end, the
6 applicant described and the county adopted a number of “essential
7 characteristics” for locating a successful luxury wine tourist hotel,
8 characteristics that closely matched the subject property. The county then used
9 those specific characteristics in applying OAR 660-014-0040(3)(a), discussed
10 below—which requires the county to establish that the proposed urban
11 development cannot be reasonably accommodated within urban growth
12 boundaries or within an unincorporated community—to eliminate all
13 alternative sites for the proposed hotel. We remanded, holding that in
14 justifying an exception under the “necessary to support an economic activity”
15 language of OAR 660-014-0040(2), the county must justify as truly “essential”
16 any characteristic of the proposed urban development that is used to eliminate
17 alternatives sites within an urban growth boundary or unincorporated
18 community. 53 Or LUBA at 539.

19 In the present case, we agree with the county that *VinCEP* does not assist
20 petitioner. Unlike *VinCEP*, the county’s primary set of reasons is not based on
21 the “necessary to support economic activity” language of OAR 660-014-
22 0040(2). While it is true that the county must identify one or more reasons that
23 are *sufficient* to justify why Goal 14 should not apply to prohibit proposed
24 urban development on rural land, there is no generally applicable obligation
25 under OAR 660-014-0040(2) to find that each cited characteristic of the

1 proposed development or the subject property is “necessary” or “essential” to
2 achieve the county’s objective in taking the reasons exception.

3 It is also worth noting that the circumstances of the present case are
4 almost the reverse of those in *VinCEP*. In *VinCEP*, the county sought a reasons
5 exception for a very specific type of urban development, a luxury wine tourist
6 hotel, which arguably could be located in many different places in the county,
7 including within nearby urban or unincorporated areas. The analysis in
8 *VinCEP* turned on how successfully the applicant could “disqualify” alternative
9 sites for purposes of OAR 660-014-0040(3)(a). In the present case, the county
10 is seeking to justify an exception for *general* urban industrial development
11 based mostly on the unusual characteristics of a specific set of properties—land
12 which is designated as an RSIA, zoned and planned for rural industrial
13 development, and served by excellent rail and highway infrastructure—so that
14 it can be developed with a more expansive or intensive range of rail-dependent
15 and related industrial uses that the county believes is needed. The county
16 found, and petitioner does not dispute, that the county has a general need for
17 additional urban-intensity industrial development.⁴ Under these circumstances,

⁴ Elsewhere in the decision, the county adopted the following finding:

“* * * The proposed urban levels of industrial development cannot be reasonably accommodated in an existing UGB in the region (Eugene or Springfield) as evidenced by the results of the ECLA and CIBL reports. These reports find that neither of the City jurisdictions have adequate industrial land capacity within their existing UGBs to meet their or the region’s employment needs. Specifically identified is a need for large lot industrial sites. Additionally, the County finds that there is a need for large lot industrial sites that are strategically located in close proximity to the Interstate freeway system as well as near to and/or served by a

1 it is not surprising that the county’s approach in identifying “reasons” for why
2 Goal 14 should not apply to the subject property focuses on the unique or
3 significant features of the subject property that, in the county’s view, justify
4 designating the property for needed urban industrial development.⁵

5 We address below under the third assignment of error petitioner’s
6 challenge to the alternative sites analysis required by OAR 660-014-
7 0040(3)(a), which is based in part on a list of “essential characteristics” that
8 overlap in several ways the site characteristics listed by the county as part of its
9 “reasons.” For present purposes, we disagree with petitioner that OAR 660-
10 014-0040(2) requires the county to demonstrate that each of the 15
11 characteristics of the proposed exception area that the county identifies as parts
12 of its reasons analysis is “necessary” or “essential” to support rail-dependent or
13 related urban industrial development. Accordingly, the fact that the county
14 candidly acknowledged that *some* of the listed site characteristics, such as
15 access to fiber optic infrastructure, are merely “desirable” characteristics does
16 not establish that the county failed to identify one or more sufficient reasons

rail line. Together with the need for large sites as discussed in the findings above, siting supportive urban levels of industrial development in close proximity to the large rail served sites is a significant competitive advantage that cannot be provided on sites inside a UGB.” Record 81.

⁵ Although the county’s decision appears to list each unique or significant feature of the subject property as a separate and independent “reason” justifying the exception, it is probably more accurate to characterize the county’s decision as identifying a single overarching “reason,” namely, the identified need for urban rail-dependent or related industrial development in the county, and the combination of unique or significant factors that make the subject property, in the county’s view, a highly qualified site for that development.

1 why the Goal 14 prohibition on urban development of rural land should not
2 apply. Absent a more focused argument for why the county’s reasons,
3 individually or as a whole, do not suffice to demonstrate why Goal 14 should
4 not apply, petitioner has not identified a basis for reversal or remand.

5 The second assignment of error is denied.

6 **THIRD ASSIGNMENT OF ERROR**

7 OAR 660-014-0040(3) provides, in relevant part:

8 “To approve an exception under section (2) of this rule, a county
9 must also show:

10 “(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing
11 that the proposed urban development cannot be reasonably
12 accommodated in or through expansion of existing urban
13 growth boundaries or by intensification of development in
14 existing rural communities[.]”

15 The county’s findings addressing OAR 660-014-0040(3)(a) note that the
16 cities of Eugene and Springfield do not have a sufficient supply of industrial
17 land within their respective UGBs to meet their projected needs, and that any
18 new expansion of their UGBs for industrial uses will be onto resource land.
19 Record 86-87. The county identified two alternative sites within nearby UGB
20 areas: (1) the 60-acre American Flakeboard site in West Eugene, and (2) a site
21 within the City of Coburg located along Interstate 5 that is fully developed with
22 industrial uses. Petitioner does not argue that the county erred in considering
23 only those two sites, or argue that there are other sites the county should have
24 considered.

1 **A. American Flakeboard and Coburg Sites**

2 Under the first sub-assignment of error, petitioner challenges the
3 county’s conclusion that the two alternative sites cannot “reasonably
4 accommodate” the proposed urban industrial use.

5 The county’s conclusion that neither alternative site can “reasonably
6 accommodate” the proposed urban development is based on five “essential
7 characteristics” “for the anticipated industrial uses.” The first four “essential
8 characteristics” are similar to the criteria for designating a RSIA, *i.e.* existing
9 industrial sites with room for expansion, with superior access to transportation
10 and located in proximity to major labor markets.⁶ A fifth set of characteristics

⁶ The county’s decision sets out a list of “essential characteristics,” which is slightly reformatted here for clarity.

- “1. Existing industrial/non-resource zoned land.
- “2. Can provide significant additional employment
 - “* Minimum redevelopable acreage size of 50-100+ acres.
- “3. Has superior access to transportation and freight infrastructure
 - “* Close proximity (within 1 mile) and access to major transportation route, including I-5.
 - “* Access to (within ¼ mile) Rail.
- “4. Located in close proximity to major labor markets
 - “* Close proximity (within 5 miles) of the Eugene/Springfield metro area.
- “5. Has site characteristics that are difficult or impossible to replicate in the region.
 - “* Serviced by transit via Lane Transit District.

1 is subdivided into six “site characteristics that are difficult or impossible to
2 replicate in the region.”

3 The county concluded that the American Flakeboard site in West Eugene
4 cannot reasonably accommodate the proposed urban industrial use, because it
5 is located at a distance from the major freight routes of Interstate 5 and
6 Highway 58, as well as unspecified “potential environmental sensitivity
7 issues.” Record 85. The county rejected the Coburg site because it is already
8 fully developed with industrial uses and does not have access to rail facilities.
9 *Id.*

10 With respect to the American Flakeboard site, petitioner first argues that
11 the county did not list close proximity to Highway 58 as an “essential
12 characteristic,” and therefore cannot disqualify the site on that basis. The
13 county identified “[c]lose proximity (within 1 mile) and access to [a] major
14 transportation route, including I-5” as an essential characteristic, and petitioner
15 does not dispute that that characteristic is a valid consideration in conducting
16 the reasonable accommodation analysis. Under that characterization, an
17 alternative site must be in close proximity and have access to Interstate 5. The

“* Close proximity (within 5 miles) of higher education facilities (University of Oregon and Lane Community College).

“* Direct access (within ¼ mile) to electricity.

“* Direct access (within ¼ mile) to a natural gas pipeline.

“* Limited natural resource conflicts (wetlands, floodplains, etc.)

“* Relatively level topography (no steep slopes).” Record 85-86.

1 county disqualified the American Flakeboard site because it lacked close
2 proximity to *both* Interstate Highway 5 and Highway 58. Those two
3 disqualifications are independent of each other. Consequently, even if the
4 county erred in also disqualifying the site based on lack of close proximity to
5 Highway 58, any such error is not reversible error.

6 Petitioner goes on to argue that the American Flakeboard site is located
7 in close proximity to Highway 569, which loops north and east to pass through
8 Eugene and after a few miles connects to Interstate 5 near the eastern edge of
9 the city. *See* Record 151 (map of alternative sites). Petitioner does not contend
10 that Highway 569 is itself a “major transportation route,” which the county’s
11 findings equate to a “major freight route.” Petitioner seems to argue that
12 because truck traffic from the American Flakeboard site can reach Interstate 5
13 by driving through the city on Highway 569 for several miles that the site is
14 located in sufficient “close proximity” to Interstate 5, and therefore should not
15 be disqualified. If that is petitioner’s argument, it does not establish reversible
16 error. The county found that close proximity (within one mile) to Interstate 5 is
17 a significant comparative advantage for urban industrial development, and an
18 appropriate “essential characteristic” for evaluating alternative sites. We do
19 not understand petitioner to contend otherwise. The county’s finding that the
20 American Flakeboard site is not located in close proximity to Interstate 5 is
21 supported by substantial evidence and is a sufficient basis to disqualify the
22 American Flakeboard site.

23 Finally, petitioner challenges the county’s finding that the American
24 Flakeboard site is disqualified due to “potential environmental sensitivity
25 issues,” pointing out that the Goshen RSIA also has potential environmental
26 sensitivity issues, specifically wetlands. If this finding were the only basis to

1 disqualify the American Flakeboard site, we might well agree with petitioner
2 that the county erred in rejecting that alternative site, absent a better
3 explanation in the findings for distinguishing the two sites. However, as
4 explained above, the county also rejected the American Flakeboard site due to
5 lack of proximity to Interstate 5, and we have affirmed that conclusion.

6 Turning to the Coburg site, the county concluded that the Coburg site
7 could not reasonably accommodate the proposed urban industrial development
8 because it (1) is already fully developed and (2) lacks access to rail. Petitioner
9 argues that the Goshen RSIA site is partially developed with existing industrial
10 uses, and therefore the fact that the Coburg site is also developed cannot
11 constitute a disqualifying characteristic. However, the county identified as an
12 essential characteristic one of the RSIA criteria for a site that allows for
13 “additional” employment. Petitioner does not argue that the Coberg site can be
14 expanded or redeveloped to allow for “additional” employment, beyond the
15 existing industrial development.

16 With respect to access to rail, the county identified as an essential
17 characteristic rail access within one-quarter mile, and disqualified the Coburg
18 site because it does not have access to rail. Petitioner’s only challenge on that
19 point is to argue that the county has not established that rail access must be
20 within one quarter mile, as opposed to a different distance, such as one-half
21 mile. However, petitioner does not argue that the Coburg site is within one-
22 half mile of rail access, or indeed within any practicable distance to rail access.
23 Petitioner does not dispute that reasonable access to rail transportation is an
24 appropriate essential characteristic for proposed rail-dependent urban industrial
25 uses. Absent a more developed challenge, petitioner’s arguments regarding the

1 Coburg site do not demonstrate that the county erred in rejecting the Coburg
2 site as an alternative site.

3 **B. Other Essential Characteristics**

4 Finally, under the second sub-assignment of error, petitioner argues that
5 some of the identified “essential characteristics” of the proposed urban
6 industrial development do not qualify as “essential characteristics” that can be
7 used to disqualify potential alternative sites. For example, petitioner argues
8 that close proximity to major labor markets and close proximity to educational
9 institutions should not be viewed as an essential characteristics of the proposed
10 urban industrial development, for purposes of OAR 660-014-0040(3)(a), but at
11 best should be viewed only as desirable characteristics.

12 Petitioner may be correct that not all of the “essential characteristics” the
13 county identified as such constitute permissible bases to disqualify sites that
14 could otherwise reasonably accommodate the proposed urban industrial use.
15 However, petitioner has not established that the county in fact disqualified any
16 alternative site based on any non-essential characteristic. As discussed above,
17 the county disqualified the American Flakeboard site for lack of access to
18 Interstate5, and the Coburg site for lack of rail access and lack of capacity to
19 create additional industrial employment. To the extent petitioner argues that
20 those three bases are not appropriate bases to disqualify an alternative site
21 under OAR 660-014-0040(3)(a), we have rejected those challenges. Petitioner
22 has not cited to anything in the county’s decision that purports to disqualify any
23 alternative site based on lack of proximity to major labor markets, lack of
24 proximity to educational institutions, or any other of the purported “essential
25 characteristics” that petitioner challenges under the second sub-assignment of
26 error. As far as we are informed, both alternative sites meet the characteristics

1 that petitioner cite as non-essential. Therefore, any error the county committed
2 in identifying characteristics that were not in fact used to disqualify alternative
3 sites is, at best, harmless error. Accordingly, we need not address petitioner’s
4 specific arguments that certain characteristics do not constitute permissible
5 bases to disqualify alternative sites.

6 The third assignment of error is denied.

7 **FOURTH AND SEVENTH ASSIGNMENTS OF ERROR**

8 The county’s decision applies two new zones, the GI and LI zones, to the
9 316-acre exception area. The GI and LI zones generally allow only industrial
10 uses, but do allow a small variety of commercial uses, subject to special
11 permits or standards. Specifically, both the GI and LI zones allow “Corporate
12 Office/Headquarters” subject to special standards. In addition, both zones
13 allow “small-scale personal and professional services (e.g. child care, fitness
14 center, coffee shop/deli, dry cleaners, barber shops and salons, copy center,
15 banks, and financial institutions, and similar uses),” subject to a 2500 square
16 feet or one percent gross floor area restriction, and other special standards.
17 Finally, the LI zone allows “contractor business,” “heavy equipment sales, and
18 “equipment rental and repair services,” subject to special standards or permits.
19 LC 16.265, Table 8-1.

20 Under the fourth and seventh assignments of error, petitioner argues that
21 the county erred in allowing these commercial uses within the 316-acre
22 exception area, in violation of OAR 660-0014-0040(3)(a) and (b). Because
23 both assignments of error challenge the same set of commercial uses, we
24 address them here together. We first address petitioner’s arguments under
25 OAR 660-014-0040(3)(a), before turning to the arguments under OAR 660-
26 014-0040(3)(b).

1 **A. OAR 660-014-0040(3)(a) Reasonably Accommodate within**
2 **UGB**

3 As noted, OAR 660-014-0040(3)(a) requires a finding that the “proposed
4 urban development cannot be reasonably accommodated in or through
5 expansion of existing urban growth boundaries or by intensification of
6 development in existing rural communities[.]” Under the seventh assignment
7 of error, petitioner contends that the county failed to demonstrate that the
8 commercial uses allowed in the GI and LI zones cannot be “reasonably
9 accommodated” within the nearby Eugene or Springfield UGBs.

10 The county’s findings cited to us do not expressly discuss the
11 commercial uses allowed in the GI and LI zones, and it is not clear whether and
12 how the county intended to justify those uses as part of the reasons exception,
13 and thus make those uses subject to the “reasonable accommodation” standard
14 at OAR 660-014-0040(3)(a). However, OAR 660-004-0018(4) requires that in
15 adopting a reasons exception, zoning designations must limit the uses allowed
16 to only those that are justified in the exception. The county applied OAR 660-
17 004-0018(4) and found that “[t]he proposed zoning designations will limit the
18 uses, density and activities as justified in the proposed exception.” Record 71.
19 Therefore, we will assume that the county intended to limit the uses allowed in
20 the GI and LI zones to those justified in the exception and, conversely, the
21 county intended to justify under the reasons exception all uses authorized in the
22 GI and LI zones, including small scale commercial uses.

23 In its brief, the county responds that commercial uses allowed in the GI
24 and LI zones are a limited subset of uses, subject to special standards, that are
25 subordinate to or supportive of industrial uses permitted in those zones. For
26 example, LC 16.280(9)(g)(vi) allows a corporate office/headquarters only if it

1 is directly associated with and subordinate to a primary permitted use, and
2 further the office cannot exceed 25 percent of the building square footage.
3 Similarly, LC 16.280(9)(g)(i) allows “[s]mall scale personal and professional
4 services” only if secondary to the primary use of the building, further limited to
5 2,500 square feet or one percent of the total square feet. According to the
6 county, the limited set of commercial uses allowed in the GI and LI zones
7 within the exception area are permissible as subordinate or supportive uses for
8 the primary industrial uses allowed within the GI and LI zones.

9 Specifically, we understand the county to argue that the findings at
10 Record 79-80—which justify an exception for non-rail dependent *industrial*
11 uses on smaller sites because they are supportive of rail-dependent industrial
12 uses on large sites—are also sufficient to justify the small scale supportive
13 commercial uses allowed in the GI and LI zones.⁷ According to the county,

⁷ The county’s findings state, in relevant part:

“These supporting industrial uses on nearby smaller sites are necessary to serve the larger rail dependent or related uses in order to reduce vehicle trip numbers and length (VMT – vehicle miles traveled), making it more economical for companies to conduct business in Goshen. * * *

“To determine if urban levels of rail related industrial uses associated with the urban level of rail dependent industrial uses/sites should be allowed to locate within the community of Goshen, it is important to identify the benefit from being located in close physical proximity to the urban levels of rail dependent and/or rail supportive industrial uses on larger sites. Additionally it is important to identify the practicality of the rail related uses being located near the rail dependent uses: would the absence of the rail related use cause significant adverse impact to the development or to the larger community/region.

1 the same rationale expressed in those findings also applies to justify an
2 exception for commercial uses within the Goshen RSIA that are supportive of
3 industrial uses.

4 The county might well be able to adopt findings justifying a limited set
5 of commercial uses supportive of rail-dependent/related industrial uses under
6 the reasons exception to Goal 14, and explaining why those supportive
7 commercial uses cannot be “reasonably accommodated” within nearby UGBs.
8 However, the county’s findings justifying the exception do not even mention
9 the commercial uses allowed in the GI and LI zones, much less analyze them
10 under the OAR 660-014-0040(3)(a) reasonable accommodation standard or any

“For some of the related uses, a location at or near the rail dependent uses is necessary. For other such uses, a location at or near the rail dependent uses may not be necessary but may be practicable, desirable, and important for other reasons. For these uses the question was asked: ‘Does a location outside of a community create an inconvenience or adverse impacts so significant that it warrants the location within the community?’ Still other uses do not require a location within the community and should instead be located inside an urban growth boundary or on other rural industrial land.

“Providing land for related industrial businesses will help attract companies that can complement the rail dependent uses. Uses of this nature may not be feasible until the larger rail dependent uses are successfully operating. It would benefit the larger region, community and the uses by locating in close proximity to the rail dependent uses by reducing trips and shipping cost, as well as other efficiencies.

“Proximity to competitors, a skilled workforce, specialized suppliers, and a shared base of sophisticated knowledge about their industry are reasons that are critical for allowing the supportive rail related uses.” Record 79-80.

1 other standard. We disagree with the county’s position taken in its response
2 brief that such an analysis can be imputed to the county’s findings at Record
3 79-80.

4 That said, it may not be as difficult to adopt findings justifying an
5 exception to allow the limited commercial uses listed in the GI and LI zones as
6 petitioner appears to presume. Petitioner suggests that because a wide range of
7 commercial uses are allowed within the Eugene and Springfield UGBs, the
8 commercial uses allowed in the GI and LI zones could easily be accommodated
9 within those UGBs, making an exception to allow such uses impossible to
10 justify under OAR 660-014-0040(3)(a). However, the county may be able to
11 establish that the limited set of commercial uses allowed in the GI and LI zones
12 are supportive of the primary rail-dependent/related industrial uses and must be
13 located in close proximity to those industrial uses in order to support them,
14 which may be a sufficient basis on which to conclude that those commercial
15 uses cannot be “reasonably accommodated” within the UGBs.⁸ Regardless,
16 the county’s present decision includes no such justification, and remand is
17 necessary for the county to either (1) limit the uses allowed in the GI and LI
18 zones to those expressly justified in the exception, or (2) justify the commercial

⁸ In addition, we note that the entire Goshen community is already subject to committed and irrevocably committed exceptions to Goals 3 and 4, and that the rural industrial zones that the GI and LI zones replaced within the Goshen RSIA allow a seemingly wide range of commercial uses that were presumably justified in the earlier exceptions. Given that a range of commercial uses are already allowed in the Goshen RSIA, it may be that the limited set of supportive commercial uses allowed in the GI and LI zones may not require much additional justification under a Goal 14 reasons exception.

1 uses allowed in those zones under the applicable OAR 660-014-0040
2 standards.

3 The seventh assignment of error is sustained.

4 **B. OAR 660-014-0040(3)(b)**

5 OAR 660-014-0040(3)(b) requires that a determination that:

6 “* * * the long-term environmental, economic, social and energy
7 [ESEE] consequences resulting from urban development at the
8 proposed site with measures designed to reduce adverse impacts
9 are not significantly more adverse than would typically result from
10 the same proposal being located on other undeveloped rural lands,
11 considering:

12 “(A) Whether the amount of land included within the boundaries
13 of the proposed urban development is appropriate[.]”

14 Thus, under OAR 660-014-0040(3)(b), the county must compare the ESEE
15 consequences of locating the proposed urban development in the proposed
16 exception area to the ESEE consequences that would typically result from
17 locating the same proposal on other undeveloped rural lands, which would also
18 require a Goal 14 exception. The goal of that comparison is to determine
19 whether urban development of the proposed exception area would cause
20 significantly more adverse ESEE consequences than would typically result
21 from locating the same urban development on other rural lands.⁹ Among the

⁹ The county’s ultimate conclusion is that “[u]rban levels of industrial development as proposed for Goshen on other undeveloped rural lands would have more adverse impact than would the proposed urban level development in Goshen due to the unique set of status quo conditions that exist in Goshen [i.e. the existing rural industrial site]; conditions that are not present in other areas that could be considered.” Record 89. Petitioner does not challenge this ultimate conclusion, or even appear to recognize that the focus of OAR 660-014-0040(3)(b) is on a comparison of ESEE consequences of urban

1 considerations to be applied in conducting that comparison is “[w]hether the
2 amount of land included within the boundaries of the proposed urban
3 development is appropriate[.]” Although it is not entirely clear why, OAR 660-
4 014-0040(3)(b)(A) seems to require the county to consider whether the *size* of
5 the proposed exception area is “appropriate,” when it compares the ESEE
6 consequences of locating the proposed urban development in the proposed
7 exception area to the ESEE consequences that would typically result from
8 locating the same proposal on other undeveloped rural lands, which would also
9 require a Goal 14 exception.

10 The county’s finding addressing OAR 660-014-0040(3)(b)(A) essentially
11 concludes that it is appropriate to include all of the existing 316-acre RSIA-
12 designated rural industrial area within the exception area:

13 “The boundary of the proposed urban levels of industrial
14 development follows the existing boundary of the industrial
15 designated lands within the unincorporated community of Goshen,
16 west of I-5. * * * This includes following the boundary of the
17 community boundary itself along the majority of the perimeter of
18 the existing industrial designated land. The amount of industrial
19 designated land within the existing community boundary is finite,
20 at 316.51 acres, and is based on the historical and pre-existing
21 uses that were present when the community boundary was
22 established and formally recognized. The amount of land within
23 the boundary is appropriate given the long-standing pattern of
24 development in relation to the surrounding properties and area.”
25 Record 88.

26 Under the fourth assignment of error, petitioner contends that the county
27 erred in concluding that the amount of land included in the 316-acre exception
28 area is “appropriate,” because as discussed above the GI and LI zoning applied

development at the proposed site versus typical ESEE consequences of urban
development on other rural lands.

1 within the exception area allows some commercial uses, which petitioner
2 argues could contribute to adverse environmental impacts on wetlands found
3 within the exception area. According to petitioner, “the County fails to
4 demonstrate that small-scale, commercial uses that are not rail-dependent are
5 appropriate in light of the fact that they would contribute to the long term
6 adverse consequences to substantial wetlands on the Goshen site.” Petition for
7 Review 38.

8 Petitioner’s argument is misplaced, and difficult to square with what we
9 understand OAR 660-014-0040(3)(b)(A) to require. For purposes of OAR
10 660-014-0040(3)(b)(A), the question is not whether “small-scale commercial
11 uses” or any proposed uses are “appropriate,” but whether the *amount of land*
12 proposed for urban development is appropriate. OAR 660-014-0040(3)(b)(A)
13 is concerned with the *size* of the exception area. Here, the county’s findings
14 justify the size of the 316-acre exception area based solely on the size of the
15 existing rural industrial area, without regard for the uses to be authorized. In
16 other words, petitioner has not established that allowing small-scale
17 commercial uses in the GI and LI zones has anything to do with the county’s
18 justification for the amount of land included within the exception area. Under
19 that justification, the 316-acre exception area would be the same size even if
20 the GI and LI zones allowed no commercial uses at all. Absent a more
21 developed argument, petitioner’s arguments under the fourth assignment of
22 error do not provide a basis for reversal or remand.

23 The fourth assignment of error is denied.

24 **FIFTH ASSIGNMENT OF ERROR**

25 A second consideration for the ESEE analysis required by OAR 660-
26 014-0040(3)(b) is:

1 “Whether urban development is limited by the air, water, energy
2 and land resources at or available to the proposed site, and
3 whether urban development at the proposed site will adversely
4 affect the air, water, energy and land resources of the surrounding
5 area.” OAR 660-014-0040(3)(b)(B).

6 Thus, the county must determine whether urban development at the proposed
7 site (1) is limited by air, water, energy and land resources at the site and (2)
8 would adversely affect the air, water, energy and land resources of the
9 surrounding area. The county must then “consider” those determinations in
10 concluding whether or not the ESEE consequences of developing the site are
11 significantly more adverse than would typically result from developing the
12 same proposal on other rural lands. As noted, the county’s ultimate conclusion
13 is that due to the existing rural industrial development and industrial zoning of
14 the subject property, the ESEE consequences of allowing urban industrial
15 development on the subject property are significantly *less* adverse than would
16 be the typical ESEE consequences of developing any other undeveloped rural
17 site with urban industrial uses.

18 In two sub-assignments of error, we understand petitioner to argue that
19 the county underestimated the ESEE consequences of allowing urban
20 development on the subject site, in two particulars. Specifically, petitioner
21 argues that the county’s findings fail to address whether (1) the presence of
22 wetlands on the site will limit urban development of the Goshen RSIA, and (2)
23 the lack of a wastewater management system on the site will limit urban
24 development of the property.

25 **A. Wetlands**

26 With respect to wetlands, petitioner argues that the county apparently did
27 not consider wetlands to be “water” resources for purposes of OAR 660-014-

1 0040(3)(b)(B), because its findings discuss only the Goshen community water
2 system and conclude that the water system has sufficient capacity to serve the
3 proposed urban industrial development. According to petitioner, OAR 660-
4 014-0040(3)(b)(B) also requires the county to consider the extent to which the
5 presence of wetlands on the site may limit urban development.

6 It is not clear to us that wetlands present on the site constitute “water”
7 resources “at or available to the proposed site” for purposes of OAR 660-014-
8 0040(3)(b)(B). The focus of OAR 660-014-0040(3)(b)(B) appears to be on the
9 absence or availability of air, water, energy and land *resources* available to
10 *serve* the proposed urban development, not natural features on the property—
11 wetlands, steep terrain, etc.—that may operate to limit which parts of the
12 property may be developed.

13 However, as noted, OAR 660-014-0040(3)(b)(B) operates as one of two
14 considerations that provides input into the ESEE analysis required by OAR
15 660-014-0040(3)(b). As explained, the county must determine whether the
16 ESEE consequences of urban development of the subject property are
17 significantly more adverse than the typical ESEE consequences that would
18 result from the same urban development on other rural sites. One of the ESEE
19 consequences, of course, is “environmental” consequences. Petitioner argues
20 that the county did not consider wetlands to be an “environmental”
21 consideration because the county’s ESEE findings fail to address wetlands at
22 all. Petition for Review 39. We understand petitioner to argue that the
23 county’s ESEE analysis is deficient because it does not address the
24 environmental consequences filling of or impacting wetlands on the site caused
25 by urban development.

1 The county’s findings addressing OAR 660-014-0040(3)(b) and whether
2 urban development of the Goshen site is limited by air, water, land and energy
3 resources do not address the wetlands on the site. The county’s ESEE analysis
4 does not address wetlands. In fact, none of the county’s findings cited to us
5 address any environmental consequences of urban development on wetlands
6 that might exist on the site, or on surrounding lands. In its response brief, the
7 county argues that any new industrial development that potentially affects
8 wetlands will trigger review by the Oregon Department of State Lands (DSL),
9 and that review will adequately address any concerns that might arise about
10 adverse impacts on wetlands. That may be, and it also may be that under DSL
11 review the long-term environmental consequences of developing in or near
12 wetlands are unlikely to be significantly more adverse than the typical
13 environmental consequences of such development on other rural lands.
14 However, without *some* findings addressing the issue, we agree with petitioner
15 that remand is necessary for more adequate findings.

16 **B. Lack of Community Wastewater Management/Sewer Facilities**

17 Petitioner also argues that the current lack of a community wastewater
18 management/sewer facility serving the Goshen RSIA will limit full urban
19 development of the subject property, until community facilities are constructed.
20 However, petitioner argues that the feasibility of a community sewer facility
21 has yet to be studied or established, and until such a facility is constructed, if
22 ever, full urban development will be limited.

23 The sixth assignment of error raises a similar but more focused challenge
24 under OAR 660-014-0040(d), which requires a showing that “an appropriate
25 level of public facilities and services are likely to be provided in a timely and
26 efficient manner[.]” As explained below, we remand the decision under the

1 sixth assignment of error for more adequate findings. For purposes of OAR
2 660-014-0040(3)(b)(B), petitioner contends that a community sewer facility is
3 an “air, water, energy or land resource” within the meaning of OAR 660-014-
4 0040(3)(b)(B). We understand petitioner to argue that the current lack of such
5 facility will limit the proposed urban industrial development, which means that
6 the county has failed to establish compliance with OAR 660-014-
7 0040(3)(b)(B).

8 As explained above, OAR 660-014-0040(3)(b)(A) and (B) set out two
9 “considerations” that provide input to the ESEE analysis/comparison required
10 by OAR 660-014-0040(3)(b), and are not in themselves approval standards.
11 We disagree with petitioner that a community wastewater system is an “air,
12 water, energy or land resource” for purposes of OAR 660-014-0040(3)(b)(A).
13 Petitioner’s arguments under this subassignment of error are focused on OAR
14 660-014-0040(3)(b)(B) and do not expressly challenge the county’s ESEE
15 analysis or its comparison of ESEE consequences. Absent a more developed
16 argument challenging the county’s ESEE analysis and the comparison of ESEE
17 consequences, petitioner’s arguments under this sub-assignment of error do not
18 establish a basis for reversal or remand.

19 The fifth assignment of error is sustained in part.

20 **SIXTH ASSIGNMENT OF ERROR**

21 As noted, OAR 660-014-0040(3)(d) requires a showing that “an
22 appropriate level of public facilities and services are likely to be provided in a
23 timely and efficient manner[.]”

24 Existing development on the 316-acre Goshen RSIA is currently served
25 by on-site septic systems. The unincorporated communities rule, at OAR 660-
26 022-0030(8)(B), requires that zoning applied to unincorporated communities

1 ensure that development will not exceed the carrying capacity of the soil. As
2 explained above, one reason why the county found that the proposed urban
3 development could not be approved without a Goal 14 exception pursuant to
4 OAR 660-022-0030(3) is that the proposed urban development at full build out
5 would exceed the carrying capacity of the soils:

6 “The proposed use is for urban levels of industrial development on
7 rural land. The existing industrially zoned lands are served by an
8 existing community water system and individual onsite septic
9 systems. The proposed urban level of industrial uses will exceed
10 the capacity of the existing water and sewer service available.
11 Therefore, the limitations proposed by this standard cannot be
12 met.” Record 64.

13 To establish compliance with OAR 660-014-0040(3)(d), requiring that
14 an appropriate level of public facilities are likely to be provided in a timely and
15 efficient manner, the county relied upon a code provision in the GI and LI
16 zones that requires development to demonstrate that it will not exceed the
17 carrying capacity of the soil:

18 “Sanitary sewage disposal in the community is currently provided
19 by individual on-site systems. The proposed code provisions for
20 the Goshen industrial zones require proposed uses and
21 development to not exceed the carrying capacity of the soil or
22 existing water supply resources. To address this requirement,
23 factual information will be required to be provided about any
24 existing or proposed sewer or water systems for the site and the
25 site’s ability to provide on-site sewage disposal and water supply
26 if a community water or sewer system is not available.” Record
27 98.

28 Elsewhere, the county stated that it “recognizes that for ultimate build out of all
29 of the industrial lands in Goshen at an urban level, a sewer treatment system
30 will be needed. As discussed above, the County is pursuing this through grant
31 opportunities to study the feasibility of developing such a system.” Record 87.

1 In short, full build out of proposed urban industrial development will
2 require a community sewer system of some kind. Until then, the county intends
3 to allow urban development served by on-site septic, as long as such
4 development does not exceed the carrying capacity of the soils. Apparently,
5 this means that if a specific development project will exceed the soil carrying
6 capacity, and no community system is available, that development will be
7 limited or denied.

8 Petitioner argues that the county’s findings fail to establish that the
9 community sewer system required by the proposed urban development is
10 “likely to be provided in a timely and efficient manner,” as OAR 660-014-
11 0040(3)(d) requires. According to petitioner, the wetlands present on portions
12 of the 316-acre Goshen site will limit the use of on-site septic systems, and
13 hasten the day when the carrying capacity of the soil will be exceeded, and a
14 community sewer solution of some kind will be required. However, petitioner
15 argues, the county findings do nothing to establish that the required community
16 sewer system is “likely to be provided in a timely and efficient manner.” While
17 the findings mention the possibility of obtaining a grant to study whether a
18 community sewer system is “feasible,” petitioner argues that the findings fail to
19 establish any basis to conclude that a community sewer system is feasible or
20 “likely to be provided in a timely and efficient manner.”

21 We agree with petitioner that the county’s findings regarding compliance
22 with OAR 660-014-0040(3)(d) are inadequate. The county justified the
23 reasons exception to Goal 14 in part based on the undisputed fact that proposed
24 industrial development of the Goshen site will exceed the carrying capacity of
25 the soil, making some kind of community sewer system necessary at some
26 undefined point. In these circumstances, OAR 660-014-0040(3)(d) requires the

1 county to do more than simply limit development to a level that will not require
2 a community sewer system, until such a system is eventually constructed. The
3 county must make a sufficient evaluation of the feasibility of providing a
4 community sewer system so that it can make an informed judgment, supported
5 by substantial evidence, whether the community sewer system necessary to
6 serve the proposed urban industrial development at full build out is “likely to
7 be provided in a timely and efficient manner.” The county’s findings in the
8 present case are conclusory and fail to establish compliance with OAR 660-
9 014-0040(3)(d).

10 The sixth assignment of error is sustained.

11 The county’s decision is remanded.