

1                                   BEFORE THE LAND USE BOARD OF APPEALS

2                                   OF THE STATE OF OREGON

3  
4 DEPARTMENT OF LAND CONSERVATION )

5 AND DEVELOPMENT, )

6 )  
7                   Petitioner, )

8 )  
9           vs. )

10 )   LUBA Nos. 93-181 and 93-182

11 FARGO INTERCHANGE SERVICE )

12 DISTRICT and MARION COUNTY, )

13 )                                   FINAL OPINION

14                   Respondents, )

                                  AND ORDER

15 )  
16           and )

17 )  
18 BRENT LEATHERS, ED MONTECUCCO, )

19 and CBM DEVELOPMENT, )

20 )  
21                   Intervenors-Respondent. )

22  
23  
24           Appeal from Fargo Interchange Service District and  
25 Marion County.

26  
27           Celeste J. Doyle, Assistant Attorney General, Salem,  
28 filed the petition for review and argued on behalf of  
29 petitioner. With her on the brief was Theodore R.  
30 Kulongoski, Attorney General; Thomas A. Balmer, Deputy  
31 Attorney General; and Virginia L. Linder, Solicitor General.

32  
33           Robert C. Cannon, County Counsel and Jane Ellen  
34 Stonecipher, Assistant County Counsel, Salem; Edward J.  
35 Sullivan and Timothy S. Sercombe, Portland, filed the  
36 response brief. With them on the brief was Preston Gates &  
37 Ellis. Jane Ellen Stonecipher argued on behalf of  
38 respondent and Edward J. Sullivan argued on behalf of  
39 intervenor-respondent Leathers and Montecucco.

40  
41           KELLINGTON, Chief Referee; HOLSTUN, Referee,  
42 participated in the decision.

43  
44                   REMANDED                                   04/22/94

1           You are entitled to judicial review of this Order.  
2 Judicial review is governed by the provisions of ORS  
3 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the Fargo Interchange  
4 Service District (district) approving the construction of  
5 sewerage facilities that will connect the district with the  
6 City of Donald sewage treatment plant. Petitioner also  
7 appeals a county decision determining the district's  
8 decision is consistent with the county comprehensive plan.

9 **MOTION TO INTERVENE**

10 Brent Leathers, Ed Montecucco, and CBM Development move  
11 to intervene on the side of respondent in this appeal  
12 proceeding. There is no opposition to the motions, and they  
13 are allowed.

14 **FACTS**

15 The area to be served by the proposed district sewerage  
16 facilities consists of approximately 117 acres of land,  
17 developed with a variety of freeway service uses.<sup>1</sup> The  
18 district is within the county's acknowledged Interchange  
19 District (ID). Exceptions to Statewide Planning Goals  
20 (Goals) 3 (Agricultural Lands) and 4 (Forest Lands) were  
21 acknowledged for the Fargo interchange area in 1981 and  
22 1983. The district's service area and the exception area  
23 are coterminous.

24 In 1992, the district was formed to develop and provide

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<sup>1</sup>This Board affirmed the county decision approving the formation of the district in DLCD v. Marion County, 23 Or LUBA 619 (1992).

1 a public sewerage system to serve the Fargo interchange  
2 area. The area is currently served by private sewerage  
3 facilities which utilize lagoons located within the  
4 district. The current sewerage facilities are inadequate.  
5 See DLCD v. Marion County, supra.

6 The district evaluated various alternatives for  
7 provision of public sewerage facilities to the Fargo  
8 interchange exception area. The district ultimately  
9 approved an underground pressure line running between the  
10 district and the City of Donald Sewage Treatment Plant.

11 The City of Donald is located some distance from the  
12 district. The underground pressure line will traverse  
13 several miles of rural land zoned Exclusive Farm Use (EFU).  
14 The district's approval of the proposal to construct and  
15 provide sewer service through the underground pressure line  
16 to the City of Donald is reflected in the challenged  
17 district decision.<sup>2</sup>

18 The county decision approving the proposal is separate  
19 from the district decision. The challenged county decision  
20 determines that both the proposal to construct the facility,  
21 and for the City of Donald to provide sewerage service to  
22 the Fargo Interchange exception area through an agreement  
23 with the district, is consistent with the Marion County

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<sup>2</sup>The challenged district decision is entitled "In the matter of adopting a facilities order for construction, operation and financing of sewer service facilities." Record 290.

1 Zoning Ordinance (MCZO) and the Marion County Comprehensive  
2 Plan (plan).

3 **JURISDICTION OVER DISTRICT DECISION**

4 LUBA has exclusive jurisdiction to review "land use  
5 decisions" and "limited land use decisions."<sup>3</sup>  
6 ORS 197.015(10); ORS 197.015(12). ORS 197.015(10)(a)  
7 defines "Land use decision" as follows:

8 "(A) A final decision or determination made by a  
9 \* \* \* special district that concerns the  
10 adoption, amendment or application of:

11 "(i) The goals;

12 "(ii) A comprehensive plan provision;

13 "(iii) A land use regulation; or

14 "(iv) A new land use regulation;

15 " \* \* \* \* "

16 Intervenor argues this Board lacks jurisdiction to  
17 review the challenged district decision because it is not a  
18 "land use decision."<sup>4</sup>

19 The district has no comprehensive plan or land use  
20 regulations to apply to the proposal. Therefore, for the  
21 challenged district decision to be a statutory land use  
22 decision, there must be some statutory or other authority  
23 requiring application of the goals to the challenged

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<sup>3</sup>No party contends that the challenged decision is a limited land use decision, and we do not believe that it is.

<sup>4</sup>Intervenor does not dispute that the challenged county decision is a land use decision subject to our review.

1 decision. See Olson v. Neahkahnie Water District, 25 Or  
2 LUBA 792 (1993); Miller v. City of Dayton, 22 Or LUBA 661  
3 (1992), aff'd 113 Or App 300 (1992). That authority is  
4 ORS 195.020(1), which provides:

5 "Special districts shall exercise their planning  
6 duties, powers and responsibilities and take  
7 actions that are authorized by law with respect to  
8 programs affecting land use, \* \* \* in accordance  
9 with [the statewide planning] goals \* \* \*."  
10 (Emphases supplied.)

11 The challenged district decision finally determines  
12 policy questions concerning how the district will provide  
13 sewerage service to the Fargo interchange area, where that  
14 service will occur, and the level of that service.<sup>5</sup> We  
15 believe the challenged decision is an exercise of the  
16 district's planning duties and responsibilities, and is a  
17 land use decision over which we have review authority.

18 This Board has jurisdiction over the challenged  
19 district decision.

20 **ASSIGNMENTS OF ERROR**

21 Under the assignments of error, petitioner argues the  
22 challenged district and county decisions are erroneous for a  
23 number of reasons addressed below.

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<sup>5</sup>The challenged decision is not, as intervenors contend, simply a decision concerning the financing aspects of a facilities plan. We agree that if it were simply this, we would lack jurisdiction to review such a decision. This is because ORS 197.712(2)(e) excludes from the definition of land use decision "\* \* \* project timing and financing provisions of public facility plans \* \* \*."

1           **A. District Decision**

2           Petitioner argues the challenged district decision is  
3 inadequate because it fails to establish compliance with  
4 Goals 11 (Public Facilities) and 14 (Urbanization).

5           There is no real dispute that the challenged district  
6 decision is legislative in nature. No statute, statewide  
7 planning goal or administrative rule requires that local  
8 governments adopt findings to support legislative land use  
9 decisions. Von Lubken v. Hood River County, 22 Or LUBA 307  
10 (1991). Neither is there any statutory requirement that  
11 such decisions be supported by substantial evidence.  
12 Alexiou v. Curry County, 22 Or LUBA 639 (1992).  
13 Nevertheless, we have explained on several occasions that  
14 findings may be necessary to permit this Board to perform  
15 its review function. See Von Lubken v. Hood River County,  
16 supra; League of Women Voters v. Klamath County, 16 Or LUBA  
17 909, 913, (1988); Tides Unit Owners Assoc. v. City of  
18 Seaside, 11 Or LUBA 84, 89-90 (1984); 1000 Friends of Oregon  
19 v. Marion County Board of Commissioners, 1 Or LUBA 33, 37  
20 (1980). Where the local government does not adopt findings  
21 explaining why a challenged legislative land use regulation  
22 amendment complies with applicable approval criteria, LUBA  
23 relies upon the responding parties to provide argument and  
24 citations to the record to assist the resolution of  
25 petitioners' allegations.

26           Under ORS 195.020(1), the challenged district decision

1 must be consistent with the statewide planning goals.  
2 Petitioner contends Goals 11 and 14 apply to the proposal,  
3 and we agree that they do. The challenged district decision  
4 contains no findings of compliance with these goals.  
5 Further, the challenged district decision does not purport  
6 to take an exception to Goals 11 and 14.<sup>6</sup> Respondents do  
7 not purport to establish compliance with Goals 11 and 14 in  
8 their brief. Therefore, we conclude the challenged decision  
9 does not satisfy the requirement of ORS 195.020(1), that the  
10 district's exercise of its planning responsibilities be  
11 consistent with the statewide planning goals.<sup>7</sup>

12 This assignment of error is sustained.

13 **B. County Decision**

14 As stated above, the challenged county decision  
15 approves the extension of sewer services from the City of  
16 Donald to the Fargo interchange exception area through an  
17 agreement between the city and the district. Petitioner  
18 challenges the county's decision on a number of different  
19 bases. Petitioner argues that (1) the challenged decision  
20 violates Goals 11 and 14, (2) new or amended exceptions to  
21 Goals 3 and 4, and exceptions to Goals 11 and 14 are

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<sup>6</sup>The previous exceptions for the Fargo interchange area were exceptions to Goals 3 and 4, only.

<sup>7</sup>We note that to the extent the district relies upon the challenged county decision to make the required findings, for the reasons explained below, the county decision does not establish the proposal is consistent with Goals 11 and 14.

1 required to authorize the proposed sewerage service, and (3)  
2 the proposal violates various county comprehensive plan  
3 policies. We address each of these arguments separately  
4 below.

5 **1. Goals 11 and 14**

6 The county's comprehensive plan and land use  
7 regulations are acknowledged by the Land Conservation and  
8 Development Commission pursuant to ORS 197.251. Therefore,  
9 the goals are only directly applicable to the challenged  
10 decision if the decision amends the county plan. Foland v.  
11 Jackson County, 311 Or App 167, 807 P2d 801 (1991);  
12 1000 Friends of Oregon v. Jackson County, 79 Or App 93, 718  
13 P2d 753 (1986), rev den 301 Or 445 (1987); Murray v. Marion  
14 County, 23 Or LUBA 268 (1992).

15 The challenged decision does not amend the county's  
16 comprehensive plan.<sup>8</sup> The challenged decision is simply a  
17 determination that the provision of sewer service, from the  
18 City of Donald treatment facility to the district, is  
19 consistent with the county plan. Assuming the county  
20 comprehensive plan permits such a service extension, we are  
21 aware of no legal standard requiring direct application of  
22 the statewide planning goals to the challenged decision.

23 This subassignment of error is denied.

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<sup>8</sup>While petitioner advances various arguments that the county should have amended its plan in adopting the challenged decision, the county did not amend its plan, and we are not aware of any legal requirement that it do so in determining a proposal complies with the plan.

1           **2.   New Exceptions to Goals 3 and 4 and exceptions to**  
2           **Goals 11 and 14**

3           Goal 3 and Goal 4 exceptions were approved for the  
4 Fargo interchange area in the early 1980's. No exceptions  
5 to Goals 11 or 14 were taken at the time the exceptions to  
6 Goals 3 and 4 were approved and acknowledged. Nevertheless,  
7 the county's acknowledged comprehensive plan and land use  
8 regulations plan and zone the Fargo interchange area ID.  
9 The ID plan and zone designation permits a level of activity  
10 that requires sewer service. In fact, the goal exceptions  
11 for the Fargo interchange area specifically allow a sewerage  
12 system to serve the exception area. As previously noted,  
13 the Fargo interchange exception area is currently served by  
14 privately owned sewer facilities, although the existing  
15 sewerage system is inadequate.

16           In Murray v. Marion County, supra, we determined that  
17 once county plan and land use regulations are acknowledged,  
18 a petitioner may not challenge proposed development allowed  
19 by the plan and land use regulations on the basis that the  
20 allowed development violates the goals. Acknowledgment  
21 forecloses such challenges. Byrd v. Stringer, 295 Or 311,  
22 666 P2d 1332 (1983).

23           Finally, petitioner contends the approved exceptions  
24 expressly forbid the construction of an off-site sewerage  
25 facility. Nothing cited by petitioner establishes the  
26 approved goal exceptions contained any such restriction on  
27 the construction of off-site facilities to serve the Fargo

1 interchange exception area.

2 This subassignment of error is denied.

3 **3. Plan Policies**

4 Petitioner contends the proposal violates various  
5 county plan provisions. As a preliminary matter, we note  
6 our scope of review over land use decisions was altered in  
7 one significant respect by the 1993 legislature, under  
8 ORS 197.829(4). Prior to the enactment of ORS 197.829(4) in  
9 1993, LUBA was required to defer to a local government's  
10 interpretation of its own enactment, unless the  
11 interpretation was contrary to the express words, policy or  
12 context of the enactment. Clark v. Jackson County, 313 Or  
13 508, 836 P2d 710 (1992). While ORS 197.829 generally  
14 carries forward this rule of LUBA deference to a local  
15 government's interpretation of its own enactments,  
16 ORS 197.829(4) adds an important exception. ORS 197.829(4)  
17 provides that LUBA is required to defer to a local  
18 interpretation of its own plan and land use regulations  
19 unless the interpretation:

20 "Is contrary to a \* \* \* land use goal or rule that  
21 the comprehensive plan provision or land use  
22 regulation implements."

23 Therefore, while the goals do not directly apply to a land  
24 use decision that simply applies acknowledged plan and land  
25 use regulation provisions, the goals are relevant to a local  
26 government interpretation of plan or land use regulation  
27 provisions that implement a goal or goals.

1 With this in mind, we address petitioner's arguments  
2 concerning the proposal's compliance with various county  
3 plan provisions, below.

4 **a. Plan Urban Growth Policy 7**

5 Plan Urban Growth Policy 7 provides as follows:

6 "Urban Densities and urban services shall only be  
7 established within recognized urban growth  
8 boundaries."

9 Petitioner contends plan Urban Growth Policy 7  
10 implements Goals 11 and 14. Petitioner argues that under  
11 ORS 197.829(4), we are required to interpret plan Urban  
12 Growth policy 7 to be consistent with Goals 11 and 14 that  
13 the plan policy implements. Petitioner points out that  
14 Goals 11 and 14 together prohibit the extension of urban  
15 level services outside of urban growth boundaries, unless a  
16 goal exception is taken. Petitioner points out the City of  
17 Donald sewerage treatment facility is an urban public  
18 facility serving the urban population within the City of  
19 Donald urban growth boundary (UGB). Petitioner argues,  
20 therefore, that the county's interpretation of plan Urban  
21 Growth Policy 7 is inconsistent with Goals 11 and 14 that  
22 the policy was designed to implement.

23 The challenged decision states plan Urban Growth  
24 Policy 7 is not violated by the proposal because the subject  
25 Fargo interchange area is acknowledged to be in compliance  
26 with the goals, notwithstanding that it is outside a UGB.  
27 The decision reasons that because the Fargo interchange area

1 is outside of any UGB, and the existing level of development  
2 is acknowledged to be in compliance with the goals, it is  
3 necessarily a "rural" area. The decision further reasons  
4 that if the Fargo interchange area is "rural," then the  
5 proposed extension of sewer service is also a rural level of  
6 service. The county maintains Goals 11 or 14 contain no  
7 prohibition against the extension of a rural level of sewer  
8 service outside a UGB.

9 We agree with petitioner. It is clear that plan Urban  
10 Growth Policy 7 implements Goals 11 and 14. Therefore,  
11 under ORS 197.829(4), we may not defer to the county's  
12 interpretation of plan Urban Growth Policy 7, unless the  
13 county's interpretation is consistent with those goals.  
14 Because the proposal will extend sewer service to the Fargo  
15 interchange from the City of Donald urban sewerage treatment  
16 plant, the proposal will extend an urban service outside of  
17 an urban growth boundary. This is inconsistent with Goals  
18 11 and 14. The county's interpretation of plan Urban Growth  
19 Policy 7 to allow such an extension of urban services  
20 outside of the City of Donald UGB, is incorrect.

21 It may be that there is nothing inherently urban about  
22 a central sewerage system. As noted earlier, the Fargo  
23 interchange exception area was acknowledged with express  
24 authorization for such a central sewerage facility, even

1 though it is not within a UGB.<sup>9</sup> In any event, it is clear  
2 that a determination of whether the type and intensity of  
3 development allowed within the Fargo interchange exception  
4 area under existing acknowledged plan and land use  
5 regulations is "urban," is foreclosed by acknowledgment of  
6 those provisions without requiring exceptions to Goals 11  
7 and 14. Thus, under the acknowledged plan and land use  
8 regulations applied within the district, allowed development  
9 may occur under those provisions, and any such development  
10 may be served by the sewerage system currently authorized  
11 within the district. However, the district now seeks to  
12 treat and dispose of sewage generated by the development  
13 allowed under the acknowledged county provisions, not within  
14 the district as is permitted under the acknowledged plan and  
15 land use regulations, but rather by extending the urban  
16 sewerage collection and treatment facilities of the City of  
17 Donald to the district. Under the county plan, it must be  
18 established that such a proposal is consistent with Urban  
19 Growth Policy 7. Under ORS 197.829(4), plan Urban Growth  
20 Policy 7 must be interpreted and applied consistently with  
21 Goals 11 and 14.

22 In interpreting plan Urban Growth Policy 7 consistently  
23 with Goals 11 and 14, which the policy is designed to

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<sup>9</sup>We note, however, that we have explained that "sewerage facilities and the higher developmental densities such facilities allow, are one of the clearer indicia of urban, as opposed to rural, development." Parmenter v. Wallowa County, 21 Or LUBA 490, 495 (1991).

1 implement, it is unreasonable to ignore that the proposed  
2 sewerage treatment service is from the City of Donald  
3 treatment facility, an indisputably urban facility. There  
4 is some facial appeal to respondents' contention that the  
5 district serves only a "rural" area and, therefore, the  
6 proposed service is a rural service. However, we reject it  
7 as focusing exclusively and improperly on the district, as  
8 service user, while ignoring the urban nature of the  
9 sewerage service itself. That the district itself may  
10 legally lay claim to being "rural," is immaterial. The  
11 extension of the urban service from the City of Donald to  
12 the district violates plan Urban Growth Policy 7, if that  
13 policy is interpreted consistently with Goals 11 and 14.<sup>10</sup>  
14 ORS 197.829(4).

15 This subassignment of error is sustained.

16 **b. Plan Rural Service Policies 2, 3 and 4**

17 Petitioner argues the proposal violates plan Rural  
18 Service Policies 2 and 3, which provide:

19 "(2) It is the intent of Marion County to maintain  
20 the rural character of the areas outside of  
21 urban growth boundaries by only allowing

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<sup>10</sup>The flaw in the county decision and in respondents' arguments in support of that decision is the reasoning allows the City of Donald to extend its sewerage facilities outside its UGB to serve any use or user desiring to obtain such service, so long as that use or user could successfully claim to be "rural." Such action would violate Goals 11 and 14 if the goals applied directly, because those goals prohibit the extension of urban services onto rural lands. Such action would also violate plan Urban Growth Policy 7 which implements those Goals and imposes an identical prohibition.

1           those uses that do not increase the potential  
2           for urban services.

3           "(3) Only those facilities and services that are  
4           necessary to accommodate planned rural land  
5           uses should be provided unless it can be  
6           shown that the proposed service will not  
7           encourage development inconsistent with  
8           maintaining the rural density and the  
9           character of the area."

10           The challenged decision states the following concerning  
11 the proposal's compliance with plan Rural Service Policies 2  
12 and 3:

13           "[These policies] state the general intent that  
14           Marion County maintain the rural character of the  
15           areas outside of UGBs by allowing only those uses  
16           that do not increase the potential for urban  
17           services, and providing that only those facilities  
18           and services that are necessary to accommodate  
19           planned rural land uses should be provided, unless  
20           it can be shown that the proposed service will not  
21           encourage development inconsistent with  
22           maintaining the rural density and character of the  
23           area. The [Board of Commissioners] interprets  
24           these policies as non-binding.

25           "[The Board of Commissioners] finds the proposed  
26           facility is anticipated and allowed by the [plan]  
27           and is a 'closed facility' which will serve only  
28           existing and planned development of a type and  
29           nature allowed by the ID zone at a designated  
30           rural development center, i.e., the [Fargo Road  
31           Exception Area]. Absent a health hazard, any  
32           service outside of the identified rural  
33           development center or ID zone would be contrary to  
34           the [plan] and will be a land use decision. The  
35           [Board of Commissioners] further finds that the  
36           proposal provides for those facilities and  
37           services necessary to accommodate planned  
38           development in [the Fargo Road Exception Area.]"  
39           Record 25-26.

40           Petitioner also argues the proposal violates plan Rural

1 Services Policy 4, which provides:

2 "The sizing of public or private service  
3 facilities shall be based on maintaining the rural  
4 character of the area. Systems that cannot be  
5 cost effective without exceeding the rural  
6 densities specified in this Plan shall not be  
7 approved."

8 The challenged decision determines compliance with this  
9 policy, as follows:

10 "The evidence indicates that the facility is sized  
11 and designed to serve only those uses allowed by  
12 the ID zone, which is a recognized rural  
13 commercial freeway interchange zone. Approval of  
14 this proposal will not change the character of any  
15 area, but merely carries out the acknowledged  
16 [plan,] which sets forth the types and levels of  
17 uses in the [Fargo Road Exception Area.] The  
18 [Board of Commissioners] concludes that the [Fargo  
19 Road Exception Area] will realize those uses  
20 provided for in the [plan,] while the agricultural  
21 land around the [Fargo Road Exception Area],  
22 including that over which the facility is to run,  
23 will not be affected by the grant of this  
24 proposal, provided a condition of approval  
25 providing for a closed system is imposed.

26 "The evaluation of the proposed alternative for  
27 treatment of the waste at the [City of Donald]  
28 facility indicates that this is the most cost  
29 effective and environmentally sound alternative to  
30 serve the allowed rural densities that the Plan  
31 and zone anticipated for this interchange. The  
32 200,000 gallon limit was designed to serve only  
33 the permitted development on the approximately 110  
34 acres within the district. Any extension of the  
35 district's facilities to resource lands shall be a  
36 land use decision (sic) which would require a  
37 separate opportunity for hearing and appeal. The  
38 [Board of Commissioners] concludes that this  
39 proposal is consistent with the [plan] goals and  
40 policies, carries out the same, is supportive of  
41 development provided for in the plan, provides  
42 sufficient sewer capacity for planned growth in

1 the [Fargo Road Exception Area] and, as  
2 conditioned, provides for no more growth and  
3 development than that provided in the [plan.]"  
4 Record 26-27.

5 Petitioner does not explain why the above quoted  
6 findings are inadequate to establish the proposal's  
7 compliance with plan Rural Service Policies 2, 3 and 4, and  
8 we do not see that they are.

9 This subassignment of error is denied.

10 **c. Plan Urban Growth Policy 6**

11 Petitioner argues the proposal does not comply with  
12 plan Urban Growth Policy 6, which provides as follows:

13 "Generally, cities are the most logical providers  
14 of urban services. Where special districts exist  
15 beyond the city limits and within the urban growth  
16 boundary such as around Salem, all parties shall  
17 work towards the development of the most efficient  
18 and economical method of providing needed  
19 services. Urban services should not be extended  
20 beyond the urban growth boundary."

21 The challenged decision includes findings explaining  
22 that Plan Urban Growth Policy 6 is not a mandatory standard  
23 with which the proposal must establish compliance.

24 We agree with the county that this policy does not  
25 appear to be intended to implement any particular goal. We  
26 note the last sentence of plan Urban Growth Policy 6 could  
27 be interpreted as implementing Goals 11 and 14. However,  
28 plan Urban Growth Policy 7 discussed, supra, is couched in  
29 mandatory terms, and we determine above that it implements  
30 Goals 11 and 14. While plan Urban Growth Policy 6 contains

1 a similar prohibition to that in Plan Urban Growth Policy 7,  
2 it is important that the former policy is couched in  
3 non-mandatory terms. Reading plan Urban Growth Policy 6 in  
4 the context of other plan Urban Growth policies, that policy  
5 does not implement Goals 11 and 14, rather plan Urban Growth  
6 Policy 7 does. We conclude the county's interpretation that  
7 Urban Growth Policy 6 does not impose a mandatory approval  
8 standard applicable to the proposal is not contrary to the  
9 express words, policy or context of the plan, and we defer  
10 to it. ORS 197.829; Clark v. Jackson County, supra.

11 This subassignment is denied.

12 **d. Plan Water Policy 1**

13 Petitioner argues the proposal violates plan Water  
14 Quality Policy 1, which provides:

15 "The location, type and density of rural  
16 development shall take into consideration, and not  
17 exceed, the physical capacity of the land and  
18 water to accommodate the use without adverse  
19 effects on water quality and quantity."

20 The challenged decision adopts the following findings of  
21 compliance with this policy:

22 "Water Quality Policies 1 and 4 state that the  
23 location, type and density of rural development  
24 shall take into consideration, and not exceed, the  
25 physical capacity of the land and water to  
26 accommodate the use without adverse effects on  
27 water quality and quantity, and to limit land use  
28 activities in areas experiencing water pollution  
29 from septic tanks and encourage the provision of  
30 individual treatment systems or community sewer  
31 systems. These policies control rural development  
32 and land use activities, neither of which are at  
33 issue here. Moreover, when Marion County took an

1           exception for the interchange to allow the  
2           interchange to serve as a major commercial  
3           highway-related interchange site, it was with the  
4           full knowledge that the site was not generally  
5           suitable for individual on-site sewage disposal  
6           systems to support the level of anticipated  
7           development and that a regional sewage system was  
8           going to be needed to avoid adverse effects on  
9           water quality. The Plan is designed to provide  
10          for regional systems to deal with areas of limited  
11          physical capacity that are needed to accommodate  
12          development anticipated and allowed in the Plan.  
13          The proposed system and disposal alternative is  
14          exactly what the Plan calls for and provides for."  
15          Record 30-31.

16          Petitioner does not explain why it believes these  
17          findings are inadequate to establish the proposal's  
18          compliance with plan Water Policy 1, and we do not see that  
19          they are.

20          This subassignment is denied.

21          The district and county decisions are remanded.

22