

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

SEP 11 4 18 AM '87

HAMMACK & ASSOCIATES, INC.,)
BURNS BROS., INC., RALPH)
ELLIGSEN, COMMUNITY FIRST)
FEDERAL SAVINGS and ELVIN H.)
FOSTER,)

LUBA NO. 87-037

FINAL OPINION
AND ORDER

Petitioners,)

vs.)

WASHINGTON COUNTY,)

Respondent,)

and)

WORLD ENTERTAINMENT SERVICES)
OREGON, INC.,)

Respondent-)
Participant.)

Appeal from Washington County.

Mark J. Greenfield, Portland, filed a petition for review and argued on behalf of petitioners. With him on the brief were Mitchell, Lang & Smith.

Cheyenne Chapman, Hillsboro, filed a response brief and argued on behalf of Respondent, Washington County.

Joseph S. Voboril and Jeffrey H. Keeney, Portland, filed a response brief and argued on behalf of Respondent-Participant, World Entertainment Services Oregon, Inc. With them on the brief were Tonkon, Torp, Galen, Marmaduke and Booth.

HOLSTUN, Referee; DuBAY, Chief Referee; BAGG, Referee; participated in the decision.

REMANDED

09/11/87

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

1 Opinion by Holstun.

2 NATURE OF THE DECISION

3 This is an appeal of an amendment to the Washington County
4 Rural/Natural Resources Plan Exceptions Statement Document to
5 approve exceptions to Goals 3, 4 and 11 to allow development of
6 an outdoor performing arts center.

7 FACTS

8 The property includes 45.25 acres located outside the
9 Portland Metropolitan Area Urban Growth Boundary (UGB) near the
10 I-5 Stafford Road exit in Wilsonville, Oregon. The proposed
11 outdoor performing arts center includes an amphitheater with
12 5,000 permanent fixed seats and a terraced sloping lawn above
13 the fixed seating capable of accommodating an additional 10,000
14 people. The stage and fixed seating would be covered by a tent
15 to provide shelter and act as an acoustical resonating
16 chamber. Traffic to be generated would range from 3,750 to
17 9,000 vehicles, and parking would be provided on site. The
18 center would connect to sewer and water service available on
19 adjoining urban land from the City of Wilsonville. Record
20 18-19.

21 The Metropolitan Service District (Metro) denied a
22 requested UGB amendment to include the property within its
23 UGB. Metro's denial was affirmed by this Board. City of
24 Wilsonville v. Metropolitan Service District, ___ Or LUBA ___
25 (LUBA No. 86-037, October 9, 1986).

26 The applicant, Stafford Hills Performing Arts Center,

1 subsequently requested plan amendments to allow the proposed
2 performing arts center without amending the UGB. The county
3 planning commission held hearings on the proposed plan
4 amendment. The board of commissioners held a hearing on the
5 proposal, twice continued the hearing, and then took action to
6 approve the plan amendment. Additional relevant facts are
7 discussed later in this opinion.

8 PRELIMINARY MATTERS

9 Petitioners' Motion to Strike

10 Petitioners moved to strike seven portions of
11 participant-respondent World Entertainment Services' brief and
12 one portion of respondent Washington County's brief.¹
13 Petitioners claim the statements they want stricken from
14 respondents' briefs either are not supported by the record, or
15 are inaccurate.

16 While our rules do not expressly provide for motions to
17 strike, OAR 661-10-065 does authorize the filing of motions
18 generally. We do not believe petitioners' objections justify
19 striking respondents' briefs as requested. Petitioners merely
20 object that statements made in respondents' briefs are not
21 supported by the record, or are inaccurate. Such objections
22 may warrant a reply brief as provided in OAR 661-10-075(4), but
23 the fact that an assertion in a brief is inaccurate or not
24 supported by the record is not grounds for striking the
25 assertion. We will, however, disregard any portions of
26 respondents' briefs which assert facts which lack foundation in

1 the record.

2 Petitioners' motion to strike is denied.

3 Respondent Washington County's Motion to Strike

4 Following oral argument, Washington County filed a motion
5 to supplement the record with the tapes of hearings before the
6 planning commission and board of county commissioners. Without
7 objection from any party, the Board allowed the motion to
8 supplement the record. Washington County also filed an
9 alternative motion to strike 22 portions of petitioners' brief,
10 contending the brief improperly included transcripts of those
11 tapes or made references to the tapes. Because the record now
12 has been supplemented to include the tapes, the alternative
13 motion to strike is denied.²

14 FIRST AND SECOND ASSIGNMENTS OF ERROR

15 In the first two assignments of error, petitioner argues
16 the proposed outdoor performing arts center is an urban use,
17 and the county's action violates Goal 14, OAR 660-14-040 and
18 Comprehensive Plan Policy 18.³

19 Goal 14 does not expressly prohibit urban uses on rural
20 land. 1000 Friends of Oregon v. Wasco County Court, 299 Or
21 344, 703 P2d 207 (1985). Goal 14 defines "urban land,"
22 "urbanizable land" and "rural land."⁴ While the effect of
23 Goal 14 is to require that urban uses be located on urbanizable
24 land or urban land (i.e., land inside UGBs) rather than rural
25 land, no definition in the Goals describes "urban use." 1000
26 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 724 P2d

1 268 (1986). The Supreme Court has made it clear, however, that
2 when a local government is faced with an objection that a use
3 it wishes to allow on rural land is an urban use, it has three
4 options:

5 "(1) make a record [showing] that the decision does
6 not offend the goal because it does not in fact
convert 'rural land' to 'urban uses';

7 "(2) comply with Goal 14 by obtaining acknowledgement
8 of an urban growth boundary, based upon
considering [sic] of the factors specified in the
9 goal; or

10 "(3) justify an exception to the goal." Id. at 477.

11 In City of Wilsonville v. Metropolitan Service District,
12 supra, the Board affirmed Metro's denial of an attempt to
13 pursue the second option through amendment of the UGB to
include the property.⁵ The applicant then proceeded under
14 the first option, and Washington County concluded that the
15 proposed outdoor performing arts center is a rural use for
16 which no exception to Goal 14 is required.

17 Respondent Washington County asserts the first two
18 assignments of error turn on the definition of urban use. The
19 county argues

20 "The central issue in this case is what is an 'urban
21 use'. The most straightforward answer is that no one
22 knows for sure, because there is a 'definitional gap',
1000 Friends of Oregon v. LCDC (Curry County), 301 Or
447, 504, 724 P2d 268 (1986)." Respondent's Brief 6.

23 We believe this appeal only requires us to determine
24 whether the proposed outdoor performing arts center is an urban
25 use. The larger question of what the general concept of urban
26

1 uses encompasses generally is one that the Supreme Court has
2 left to LCDC because it necessarily involves the exercise of
3 significant discretion and policy choice. 1000 Friends of
4 Oregon v. LCDC (Curry County), supra at 521. Thus, while there
5 are some uses generally agreed to be urban (e.g., residential
6 subdivisions with half-acre lots and community water and sewer)
7 and some uses generally agreed to be rural (e.g., residential
8 development on ten acre parcels), there remain a significant
9 number of uses that will require a case-by-case analysis. Id.
10 at 505-511. We believe the outdoor performing arts center
11 falls in the category of uses requiring case-by-case analysis.

12 Citing LCDC's decision in City of Sandy v. Clackamas
13 County, 3 LCDC 139 (1979), our decisions in Conarow v. Coos
14 County, 2 Or LUBA 190 (1981), and Ashland v. Jackson County, 2
15 Or LUBA 378 (1981), and the Supreme Court's decision in 1000
16 Friends of Oregon v. LCDC (Curry County), supra, petitioner
17 says the outdoor performing arts center is an urban use.

18 In City of Sandy, LCDC concluded that a 90,000 square foot
19 shopping center located between, and approximately 4 miles
20 from, the cities of Sandy and Gresham and clearly serving
21 residents in adjoining urban areas was an urban use. In
22 Conarow, the Board concluded that a 2,500 square foot grocery
23 store properly was considered a rural commercial use because it
24 was "limited to, the needs and requirements of the rural area
25 to be served." 2 Or LUBA at 193. In Ashland, the Board
26 determined that the county's designation of 56 acres located

1 near the city of Ashland's UGB and within an "area of mutual
2 concern" as "interchange commercial" violated Goal 14 because
3 it allowed intensive "urban" uses required by Goal 14 to be
4 located within UGBs. 2 Or LUBA at 381-382.

5 In Curry County, the Supreme Court remanded LCDC's
6 acknowledgment order because it was unable to determine whether
7 extensive rural areas planned and zoned by the county for
8 residential development at various densities resulted in
9 impermissible urban use of rural land. 301 Or at 511. The
10 Supreme Court did identify a number of relevant factors from
11 previous cases applying Goal 14 to rural areas.⁶

12 Respondents contend that under Curry County, the Board
13 should defer to the county's determination that outdoor
14 performing arts centers most properly are viewed as rural uses.
15 According to respondents, such centers are a unique use.
16 Respondents note that no single factor or consideration
17 necessarily will determine whether a particular use is urban.
18 In particular, respondents argue that our decision in Conarow
19 specifically recognized that a recreational use may serve urban
20 residents and, nevertheless, be rural. Conarow, supra at 193
21 n 4.

22 The county concluded the outdoor performing arts center is
23 a rural use and set forth five reasons for that conclusion as
24 follows:

- 25 "a. By virtue of the requirement of CDC Section
26 430-88.1.E, outdoor performing arts centers can
only be located on parcels with a minimum lot

1 size of 40 acres * * *.

2 "b. In terms of use and appearance, an outdoor
3 Amphitheatre is similar to [several] * * * uses
4 which are permitted, either outright or
5 conditionally, in the AF-10 Zone * * *.

6 "c. In terms of use and appearance, an outdoor
7 amphitheatre is similar to [several] * * * uses
8 which are permitted in the exclusive farm use
9 zones under ORS 215.213.

10 "d. The ratio of land cost to improvement cost for an
11 outdoor performing arts center is more reflective
12 of a rural use * * *.

13 "e. Outdoor performing arts centers are more
14 appropriately located in rural areas * * *."
15 Record 27, 28.

16 We agree with respondents that the county's explanation of
17 why it believes the use is a rural use is entitled to some
18 weight. However, as discussed below, we cannot accept the
19 county's explanation.

20 We do not find the requirement for a minimum parcel size of
21 40 acres to be a significant factor in this case. As
22 petitioner correctly points out, a 40 acre minimum lot size
23 might be significant if the use proposed were a single family
24 residence. Here, however, the proposed use is a performing
25 arts center that may, at any given performance, accommodate as
26 many as 15,000 patrons. Even though parcel size is relevant,
the 40 acre requirement is an insufficient basis for concluding
that the outdoor performing arts center is a rural use.

Respondents note that the proposed use is similar to other
uses allowed in the AF-10 Zone such as golf courses and parks.
Golf courses, parks, churches, public and private schools,

1 solid waste disposal sites, and commercial power generating
2 facilities are permitted or allowed conditionally in EFU
3 Zones. ORS 215.213.

4 We find all of these uses can and do generate impacts that
5 are urban in nature and may require services and facilities
6 that are urban in nature. The fact that they are allowed in an
7 EFU Zone does not mean they are rural. It simply means the
8 legislature apparently made a policy decision, these uses may
9 be a permissible use of rural EFU lands.

10 Further, while the performing arts center is said to be
11 seasonal and would offer less than 20 performances during the
12 season, nothing in the county's approval limits the number of
13 performances. In addition, even if the number of performances
14 were limited, the center, on the days it is used, will generate
15 significant noise, accommodate thousands of people, and
16 generate significant traffic impacts that will require careful
17 management to minimize impacts on the transportation system.
18 While the use may exhibit urban characteristics only a few days
19 a year, it is an urban use on those days.⁷

20 The respondents also argue that the county legislatively
21 determined that the use is rural when the AF-10 Zone (a rural
22 zone) was amended to allow outdoor performing arts centers.
23 Respondents further claim that Metro and LCDC participated in
24 this proceeding and participated in the county's amendments to
25 the AF-10 Zone.

26 The AF-10 Zone lists outdoor performing arts centers as a

1 use permitted under a type III procedure. Code Section
2 346-4.1(V). However, the Code also provides that approval of
3 an outdoor performing arts center is subject to special use
4 standards in Code Section 430-88. One of those standards is as
5 follows:

6 "The applicant shall be required to submit findings
7 for exception to LCDC goals pursuant to LCDC Goal 2,
8 OAR 660-04-020. Any exception request shall be
9 processed as a quasi-judicial plan amendment. The
development review application may be heard and
processed in conjunction with the plan amendment."
Code Section 430-88.3.

10 Since the code expressly requires goal exceptions for
11 outdoor performing arts centers, we are unable to agree with
12 respondents that the fact that the AF-10 Zone is a rural zone,
13 results in a legislative determination that the use is rural.
14 While Section 430-88.3 does not specify the goals an exception
15 must be taken to, we find nothing in the county's code to
16 clearly state that an exception to Goal 14 will not be required
17 for an outdoor performing arts center. It may be that the
18 county has determined that if an outdoor performing arts center
19 is to be permitted in a rural area, it may be allowed in the
20 AF-10 Zone subject to exception to all appropriate goals. It
21 may also be that smaller less intensive centers could be
22 allowed as rural uses while larger more intensive centers, such
23 as the one proposed, are urban and will require an exception to
24 Goal 14. In any event, we do not believe the code says an
25 exception to Goal 14 is never required for any outdoor
26 performing arts center in the AF-10 Zone.

1 Finally, with regard to the parties' various claims
2 regarding the participation in the local proceedings by Metro
3 and the Department of Land Conservation and Development (DLCD),
4 we assign no significance to their participation or lack of
5 participation. Metro or DLCD could have intervened or
6 participated in this proceeding to make their views known. For
7 reasons that may well have nothing to do with their views on
8 the merits of this appeal, they have elected not to do so. We
9 will not speculate as to their views on the county's action.

10 The first and second assignments of error are sustained.

11 THIRD ASSIGNMENT OF ERROR

12 Petitioners next contend that the county's order violates
13 Goal 11 and Comprehensive Plan Policy 22 because it allows
14 extension of urban facilities to rural land outside the urban
15 growth boundary. Petitioners contend the county's Goal 11
16 exception is inadequate and not supported by substantial
17 evidence.

18 Goal 11 requires the county to "plan and develop a timely,
19 orderly and efficient arrangement of public facilities and
20 services to serve as a framework for urban and rural
21 development." The Goal further requires that

22 "urban and rural development shall be guided and
23 supported by types and levels of urban and rural
24 public facilities and services appropriate for, but
limited to, the needs and requirements of the urban,
urbanizable and rural areas to be serviced."

25 Washington County concluded that the proposed outdoor
26 performing arts center is a rural use. However, the county

1 nevertheless took an exception to Goal 11. Respondent contends
2 the exception was taken "because public facilities will be
3 technically 'extended' beyond the UGB... ." Respondent's Brief
4 13. Respondent contends Goal 11 does not prohibit extension of
5 urban facilities outside the UGB. Respondents note that the
6 Supreme Court observed in Curry County that "the restrictions
7 on urban facilities in [rural] areas are not absolute." 301 Or
8 at 508.

9 Because the facilities extended to the outdoor performing
10 arts center are clearly urban facilities, and because we have
11 concluded that the outdoor performing arts center is an urban
12 use, respondent's answers to the third assignment of error are
13 inadequate.

14 Respondents also argue, however, that pursuant to
15 OAR 660-04-020(2)(a) the county set forth the following four
16 reasons why the policy in Goal 11 against extending urban
17 services into rural areas should not apply:

18 "First, public facilities will not be extended into a
19 new area. Rather, as required by CDC Section
20 430-88.1D, the applicant will simply connect to
21 existing public facilities adjacent to the project
22 site. * * * Second, the city of Wilsonville has
23 determined that existing services are adequate to
24 service the project. * * * Third, the nature of the
25 use does not mandate that it be connected to public
26 facilities. The facility could operate using rural
type, on-site services. However, because the site is
located adjacent to the city of Wilsonville, it is
both logical and convenient to take advantage of
existing facilities. Finally, given the nature of the
proposed use and the way the site will be developed,
there is no danger that urban densities will follow."

Petitioner takes issue with each of these reasons as a

1 justification for an exception to Goal 11.

2 We cannot accept respondent's argument that the extension
3 of sewer and water facilities to the 45 acre site does not
4 involve extension of urban facilities into a new area. While
5 it is true that the sewer and water facilities exist adjacent
6 to the property within the UGB, extension of those services to
7 the proposed site requires extension of urban facilities onto
8 rural lands. The county's suggestion that connection of a 45
9 acre parcel, located outside a UGB, to water and sewer
10 facilities located adjacent to the parcel but inside the UGB,
11 does not involve extension of urban facilities into a rural
12 area is erroneous. Whether termed an extension or connection,
13 the fact remains that 45 acres of rural property will be
14 serviced by urban water and sewer facilities.

15 The county's second reason (existing services are adequate)
16 and third reason (the proposed use could be serviced by on-site
17 facilities without extending urban services from the adjoining
18 urban area) do not demonstrate that the proposal is consistent
19 with the policies in Goal 11. The fact that the services to be
20 extended have capacity to provide service to the proposed
21 project does not mean the extension of those services into a
22 rural area is consistent with Goal 11. The argument that the
23 proposed outdoor performing arts center could be serviced by
24 on-site facilities, even if correct, has no apparent relevance
25 to the Goal 11 issue. The applicants do not propose to service
26 the outdoor performing arts center on-site; rather, they

1 propose to extend water and sewer from the adjoining urban area.

2 The fourth reason stated by the county is premised on
3 assumption the proposed use is a rural use. That assumption is
4 erroneous. See our discussion under the first and second
5 assignments of error.

6 For the reasons stated above, the third assignment of error
7 is sustained.

8 FOURTH ASSIGNMENT OF ERROR

9 In this assignment of error petitioner contends that the
10 county's decision violates Code Section 430-88.2 by allowing a
11 use that will create a significant change and significantly
12 increase the cost of farming practices on nearby lands.
13 Petitioner contends the county's findings failed to address
14 relevant testimony, are inadequate to show compliance with the
15 plan and are not supported by substantial evidence.

16 Code Section 430-88.2 requires findings which demonstrate
17 that "the amphitheatre or activities associated with it, will
18 not force a significant change in or significantly increase the
19 cost of accepted farming or forest practices on nearby lands
20 devoted to farm or forest use."

21 Petitioner Elligsen leases 55 acres adjacent to the
22 proposed outdoor performing arts center and owns 100 acres
23 one-third mile from the proposed center. Mr. Elligsen raises
24 cows, sheep, timber, hay, grain and clover. In a letter
25 submitted to the board of county commissioners petitioner
26 claimed the proposal adversely affects his farming operation.

1 Petitioner Elligsen claimed he would be required to install
2 an electric fence, increase his liability insurance, cease
3 aerial spraying and stop leaving tools and farm equipment in
4 the fields. Mr. Elligsen claimed he would likely have to stop
5 leasing the adjoining property which he currently used for farm
6 purposes.

7 Respondents acknowledge that under McCoy v. Tillamook
8 County, 14 Or LUBA 108 (1985) "when an opponent presents
9 focused and relevant testimony, the issues raised must be
10 discussed in the final order." Respondents' Brief 17.
11 Respondents contend the county addressed all of petitioners'
12 issues and that their conclusions are supported by substantial
13 evidence.

14 The county's findings disputed the need for an electric
15 fence noting the purpose of an electric fence is to keep
16 animals in, not to repel potential trespassers.⁸ The county
17 also noted the entire site would be surrounded by a security
18 fence and there would be security personnel to minimize offsite
19 impacts. In their findings, the county concluded the proposed
20 use would prevent aerial spraying and questioned whether aerial
21 spraying was critical to Mr. Elligsen's current farming
22 operation. The county also rejected petitioners' claim that
23 Mr. Elligsen would have to increase his liability insurance
24 coverage, citing the security fence and the security personnel
25 as the primary reasons.

26 Finally, in rejecting Mr. Elligsen's other claims and his

1 claim that he would be forced to stop leasing the adjoining
2 property for farm purposes, the county essentially relied on
3 the design features of the property including the proposed
4 buffer along the eastern boundary, the security fence, security
5 personnel and the requirement for personnel to direct traffic
6 at the beginning and at the conclusion of performances. The
7 county concluded

8 "* * * Close examination by the Board of
9 Mr. Elligsen's allegations reveals that either the
10 allegations are factually inaccurate or, if accurate,
11 fail to support the conclusion that the amphitheatre
12 will significantly impact Mr. Elligsen's farming
practices. Given the natural terrain and the proposed
method of operations, the Board finds that nearby
farming practices will not be significantly impacted."
Record 22.

13 The relevant code standard requires the county to conclude
14 there will be no "significant change in or significant increase
15 (in) the cost of accepted farming or forest practices." We
16 find the evidence relied upon by the county to be sufficient.
17 Younger v. City of Portland, 86 Or App 211, ___P2d___ (1987).

18 We believe the county has adequately responded to
19 petitioners' concerns that the proposed use will "force a
20 significant change in or significantly increase the cost of
21 accepted farming or forest practices on nearby lands devoted to
22 farm or forest use.

23 This is not to say there may not be some impacts. However,
24 the standard only requires the county to conclude that there
25 will not be significant changes or significant increase in
26 costs. As the Court of Appeals has stated in rejecting spray

1 drift, field burning smoke and plowing dust as a basis for
2 irrevocable commitment of affected property to non-farm use,
3 "people who build in an agricultural area must expect some
4 disadvantages to accompany the perceived advantage of a rural
5 location." 1000 Friends of Oregon v. LCDC, 69 Or App 717, 728,
6 688 P2d 103 (1984).

7 We believe the county interpretation and application of
8 Code Section 430-88.2 simply reflects the county's view that
9 outdoor performing art centers will be expected to tolerate
10 reasonable negative impacts from adjoining agricultural
11 operation. In our view, that understanding and the county's
12 application of Code Section 430-88.2 in this case is reasonable
13 and supported by substantial evidence in the record.

14 The fourth assignment of error is denied.

15 FIFTH ASSIGNMENT OF ERROR

16 Petitioners next contend that their right to due process
17 was violated by the county's refusal to accept and consider
18 rebuttal evidence.

19 At its April 17, 1987 hearing in this matter, the board of
20 county commissioner's refused to accept an offer of proof, an
21 affidavit and a letter from Northwest Farm Bureau Insurance
22 Company. Petitioners claim the offer of proof, affidavit and
23 letter were submitted because rebuttal testimony submitted by
24 the applicant in the form of an affidavit raised an issue of
25 petitioners' credibility. Therefore, according to petitioners,
26 under Yost v. Ontario, 2 Or LUBA 49 (1980), there was a right

1 to correct the misleading statements notwithstanding the county
2 code's failure to provide for surrebuttal testimony.

3 Petitioners were given an opportunity to rebut proposed
4 findings and testimony at a February 24, 1987 hearing.
5 Petitioner submitted over 100 pages of written testimony at
6 that hearing. The hearing was continued to March 10, 1987 to
7 allow the applicant time to submit rebuttal testimony. A
8 rebuttal memorandum together with exhibits, including the
9 challenged affidavit, was submitted. At the April 7 hearing
10 portions of the applicant's rebuttal memorandum and two
11 exhibits were determined by the county to be new evidence, not
12 rebuttal testimony, and were deleted with the agreement of the
13 applicant.

14 Petitioner's complaints regarding the applicant's affidavit
15 are rejected. The county did not err in refusing petitioners'
16 offer of proof, affidavit and letter. We disagree with
17 petitioners' claim that the thrust of the applicant's affidavit
18 is that Mr. Elligsen does not need to spray his crop. Rather,
19 the applicant's affidavit appears to be an attempt to establish
20 the past spraying history of the area and that the adjoining
21 properties could be sprayed as long as the amphitheatre was not
22 in use 24 hours a day. According to the affidavit if the
23 center were used on summer evenings and weekends, it would be
24 possible to spray in the morning. Record 278-280. We believe
25 the county was correct in concluding the affidavit was rebuttal
26 testimony. If the county does not wish to allow surrebuttal

1 testimony in such circumstances, it need not do so. Fasano v.
2 Washington County Commissioners 264 Or 524, 507 P2d 23 (1973)
3 only requires the county to allow rebuttal testimony.⁹

4 The fifth assignment of error is denied.

5 SIXTH AND SEVENTH ASSIGNMENTS OF ERROR

6 Petitioner's sixth through eleventh assignments of error
7 challenge the reasons exceptions taken by the county to satisfy
8 Code Section 430.88.3. ORS 197.732, Goal 2, Part II and LCDC
9 rules OAR 660-04-020 and OAR 660-04-022 require consideration
10 of four factors. Those four factors are: 1) reasons; 2)
11 alternative locations; 3) consequences; and 4)
12 compatibility.¹⁰ In assignments of error six and seven,
13 petitioners challenge the findings regarding the reasons
14 factor. Assignment of error eight challenges the alternative
15 locations findings. Assignments of error nine and ten
16 challenge the county's findings regarding consequences and
17 assignment of error eleven challenges the county's findings
18 with regard to compatibility.

19 Petitioners contend under the sixth and seventh assignments
20 of error the county's decision violates Goal 2, Part II(c)(1),
21 ORS 197.732(1)(c)(A), OAR 660-04-020(2)(a) and
22 OAR 660-04-022(1) because the county's exception fails to
23 demonstrate a need for the use or justify why goal policies
24 should not apply. Petitioners also contend the findings
25 supporting the reasons exception failed to address relevant,
26 focused testimony, are conclusional and are not supported by

1 substantial evidence in the whole record.

2 Petitioners argue the county is required to provide reasons
3 why the state's policies and applicable goals should not
4 apply. OAR 660-04-022(1)(a). Petitioner argues the county is
5 also required to show "there is a demonstrated need for the
6 proposed use based on one or more requirements of Statewide
7 Goals 3-19." OAR 60-04-022(1)(a). Petitioner contends that
8 there are a number of underutilized facilities that can easily
9 accommodate the proposed use.¹¹ Petitioner contends

10 "While there may be no facilities exactly like the one
11 proposed, there are clearly facilities within the
12 region available for outdoor and indoor concerts,
13 including the zoo, civic stadium, civic coliseum,
14 Schnitzer Hall, waterfront park and the Clark County
15 Fairgrounds." Petitioners Brief 32.

16 Petitioner cites Still v. Board of County Commissioners, 42
17 Or App 115 600 P2d 433 (1979) and argues that market demand for
18 the proposed facility does not constitute a demonstrated need.
19 Petitioner also argues the record is insufficient to support a
20 finding of need for a 15,000 person capacity outdoor performing
21 arts center.

22 Respondents claim the findings of a demonstrated need based
23 on the requirements of Goal 8 "to satisfy the recreational
24 needs of the state and visitors" is supported by substantial
25 evidence. Respondents cite three items in the record. The
26 first is a two page letter from Brian T. Becker, President of
Pace Entertainment Group to Michael Seaman, Executive Vice
President of World Entertainment Services, Inc. In that

1 letter, Mr. Becker concludes without any supporting analysis "I
2 am certain that the Portland area will strongly support your
3 efforts * * *, I believe there is a strong market demand and
4 need for such a project." Record 286. Respondents next cite
5 to a one page letter from Carlos Wilson, managing director of
6 the Oregon Symphony Association, in which Mr. Wilson indicates
7 the Oregon Symphony Association is willing to discuss the
8 future possibility of performances at the center. Mr. Wilson
9 states he has little information regarding the proposed center,
10 but indicates the Oregon Symphony has plans to establish an
11 outdoor festival or concert series. Respondents next cite to a
12 one page article in Business Week in which the popularity of
13 outdoor amphitheatres is discussed. Finally respondents cite
14 to a two page letter to respondents attorney by Thomas Laskey,
15 a local entertainment and marketing consultant. In that
16 letter, Mr. Laskey criticizes a memorandum prepared by a Mr.
17 Millinoff for petitioners for failing to recognize the unique
18 nature of outdoor performing arts centers. Mr. Laskey states
19 that such facilities cannot be compared with the existing
20 facilities in the Portland metropolitan area. Mr. Laskey
21 contends that "what the Stafford Hills Performing Arts Center
22 will offer is another dimension in touring, which is an option
23 already available in many other cities."

24 Respondents contend this is an instance in which the
25 commissioners received conflicting testimony and elected not to
26 accept petitioners' memorandum. Instead, they chose to rely on

1 the applicant's evidence in support of the finding of need.

2 The Board recognizes that our review is only to assure that
3 the county's decision is supported by substantial evidence.

4 "Substantial evidence consists of evidence which a
5 reasonable mind would accept as adequate to support a
6 conclusion * * * where there is conflicting evidence
7 based on differing data, but any of that data is such
8 that a reasonable person might accept it, a conclusion
9 based upon a choice of any of the data is, by
10 definition, supported by substantial evidence."
11 Homebuilders v. Metro Service Dist., 54 Or App 62-63,
12 633 P2d 1320 (1981); See Younger v. City of Portland,
13 supra, 86 Or App at 216.

14 We are unable, however, to conclude that the portions of
15 the record cited represent substantial evidence of a need for
16 the proposed facility based on Goal 8. Conclusional statements
17 regarding the uniqueness and expected success of the proposed
18 use and the existence of such uses in other metropolitan areas
19 are an insufficient basis upon which to decide there is a need
20 that justifies not applying the state policies in Goals 3, 4,
21 11 and 14.

22 The proposed outdoor performing arts center may well be
23 consistent with Goal 8. However, in order to justify an
24 exception the county must show both a need for the use and that
25 the proposed site is required to satisfy that need.

26 OAR 660-04-022(1). It is the demonstrated need for the
proposed use and the uniqueness of the site under
OAR 660-04-022(1) that warrants overriding the competing state
policies and other goals to allow an exception. This
demonstration requires more than simply showing a proposed use

1 would be consistent with another goal.

2 Petitioners also contend there has been no need shown based
3 on Goal 9. The policy in Goal 9 is "[t]o diversify and improve
4 the economy of the state." Petitioner points out that the
5 proposed use would only employ 250 part-time and 10 full-time
6 people. Record 25. Petitioner argues adjoining industrial
7 properties "could provide over 1,250 full-time jobs on those
8 acres." Petitioner's Brief 32.

9 Respondents answer petitioners' challenge to the county's
10 Goal 9 finding by pointing out that the petitioner's attack
11 ignores the present AF-10 Zoning on the property which would
12 not permit industrial uses. Respondents also note that the
13 amphitheatre will attract large numbers of people who may
14 patronize nearby business. We have not been cited to other
15 portions of the record which explain the magnitude or
16 significance of secondary economic impacts from the proposed
17 facilities. Even though the proposed may comply with Goal 9,
18 we do not believe the county's findings are sufficient to show
19 a demonstrated need for the proposed use based on the
20 requirements of Goal 9, that would justify not applying
21 applicable Goals.

22 Petitioner also challenges the finding of need based on
23 Goal 13 because "the proposed site is far out on the fringe of
24 the UGB, many miles from centrally located downtown Portland
25 where other alternative facilities exist * * *." The policy in
26 Goal 13 is "[t]o conserve energy." According to petitioner

1 the site "could hardly be farther away from the center of
2 population." Petitioners' Brief 33.

3 Respondents argue that the proposed outdoor performing arts
4 center is a unique facility that requires a sylvan-like
5 setting. Such sylvan-like settings, according to respondents,
6 are typically far away from urban populations. Respondents
7 contend the county recognized this and concluded that there was
8 a need to locate an amphitheater near a freeway interchange on
9 the fringe of a UGB in order to conserve energy by taking
10 advantage of the nearby freeway and availability of public
11 transportation.

12 Even if it is accepted that a sylvan-like setting is
13 required and typically found away from urban populations, the
14 most that respondents' argument demonstrates is that Goal 13
15 would require location near a freeway interchange and since the
16 proposed facility is so located, there would be no violation of
17 Goal 13. Mere consistency with Goal 13 is not sufficient for
18 compliance with OAR 660-04-022(1). The requirement that the
19 proposed use be located close to a freeway interchange, and the
20 resulting transportation advantages, does not demonstrate a
21 need for the proposed use based on the requirements of Goal 13.

22 The sixth and seventh assignments of error are sustained.

23 EIGHTH ASSIGNMENT OF ERROR

24 Under this assignment of error petitioners contend the
25 county's decision violates Goal 2, Part II(c)(2),
26 ORS 197.732(1)(c)(B), and OAR 660-04-020(2)(b) and (c) because

1 there are areas which do not require a new exception that can
2 readily accommodate the use. Petitioner also contends that the
3 county's findings are conclusional and not supported by
4 substantial evidence.

5 OAR 660-04-020(2)(b)(A) requires the county to identify
6 alternative areas. OAR 660-04-020(2)(b)(B) requires the county
7 to discuss why other areas which do not require a new exception
8 cannot reasonably accommodate the use and why the use cannot be
9 located inside a UGB. The applicant identified seven
10 alternative sites. Record 140-210. Petitioners say the
11 respondents findings with respect to these sites are
12 conclusional, and fail to explain why these sites cannot
13 reasonably be used.¹² Petitioners also argue that the Board
14 should sustain this assignment of error because the record
15 contains no substantial evidence or statement of reasons
16 showing why the proposed use cannot reasonably be accommodated
17 within the UGB "especially when the proposed site lies
18 immediately adjacent to the UGB."

19 Respondents answer that the county properly identified
20 alternative areas and discussed why these other areas, which do
21 not require a new exception, cannot reasonably accommodate the
22 use. Respondents note that each of the seven alternative sites
23 was considered and described in the order. Respondents contend
24 the county properly explained why the alternative sites could
25 not reasonably accommodate the proposed use.

26 We sustain this assignment of error. We agree with

1 petitioners that the findings with respect to the alternative
2 sites identified by the applicant are conclusional. The
3 county's explanation regarding the Sunnyside East site is
4 representative

5 "Located south of the Keizer-Sunnyside Medical Center
6 on SE 97th Street. Access to I-205 is too far (over a
7 half mile), over a winding two lane road and past a
8 hospital. Potential noise impact on adjacent
9 residential areas and a hospital. Part of site is
10 under development." Record 30.

11 These findings fail to explain why the sites cannot be
12 reasonably be used for the proposed use. In particular, the
13 factors identified are stated without explanation of why those
14 factors render the site unacceptable. Such findings are
15 insufficient to demonstrate that the alternative sites factor
16 required for an exception is met.

17 In addition, OAR 660-04-020(2)(b)(B)(iii) requires the
18 county to answer the following questions

19 "Can the proposed use be reasonably accommodated
20 inside an Urban Growth Boundary? If not, why not?"

21 The county essentially answered that question by taking the
22 position that the proposed outdoor performing arts center is
23 not an urban use. We conclude the county is incorrect. The
24 proposed site adjoins the UGB. We find nothing in the record
25 to explain why the UGB could not be amended to include this
26 site. Without such an explanation the decision does not comply
with OAR 660-04-020(2)(b)(B)(iii).

Petitioners also say they identified ten additional
alternative sites and argue the county's findings inadequately

1 address those sites.

2 Respondents say that the 10 additional sites identified by
3 petitioners, were not identified with the specificity required
4 by OAR 660-04-020(2)(b)(C) which states

5 "A detailed evaluation of specific alternative sites
6 is thus not required unless such sites are
7 specifically described with facts to support the
8 assertions the sites are more reasonable by another
9 party during the local exceptions proceedings."

8 Respondents note that even though the petitioners failed to
9 "'ring the bell' under OAR 600-04-020(2)(b)(C)" the county did
10 evaluate ten sites identified by petitioners.

11 We agree with respondents. The ten alternative sites
12 identified by petitioners on pages 141 and 142 of the record
13 are simply identified by location and size. In addition,
14 petitioners submitted real estate listings of vacant industrial
15 lands showing area zoning, services availability and price.
16 Record pages 151-152. Petitioners also included an inventory
17 and assessment of industrial lands prepared by the Metropolitan
18 Service District. Record 173-210. The petitioners' submittal
19 does not satisfy the requirements of OAR 660-04-020(2)(b)(C).
20 That rule requires a specific description of alternative sites
21 "with facts to support the assertion that the sites are more
22 reasonable... ." While these materials may supply the basis
23 for petitioners to comply with OAR 660-04-020(2)(b)(C), they do
24 not do so in and of themselves.

25 For the reasons stated above, the eighth assignment of
26 error is sustained.

1 NINTH AND TENTH ASSIGNMENTS OF ERROR

2 Petitioners contend that the county's decision violates
3 Goal 2, Part II(c)(C), ORS 197.732(1)(c)(C), and
4 OAR 660-04-020(2)(c) because the order fails to address
5 advantages and positive consequences of each alternative site
6 and the disadvantages and negative consequences of the
7 proposed site. Petitioners further contend the county failed
8 to address relevant and focused testimony and that the county's
9 findings are not supported by substantial evidence.

10 Petitioners argue the county did not properly address the
11 long term environmental, economic, social and energy
12 consequences resulting from the use at the proposed site as
13 required by OAR 660-04-020(2)(c). According to petitioner the
14 county did not properly address positive and negative
15 consequences at the proposed or the alternative sites.

16 Petitioners say negative consequences to elk and deer habitat,
17 adjoining businesses, and the Tualatin Fire District were
18 ignored.

19 Respondents answer first that none of the applicants' seven
20 alternatives is located on land that would require an
21 exception. Therefore, respondents argue OAR 660-04-020(2)(c)
22 did not require a detailed evaluation of these seven sites.
23 Respondents also argue the county was not required to address
24 the 10 sites identified by petitioners under OAR 660-04-020(2)(c)
25 because petitioners did not sufficiently describe their
26 alternatives to show they would

1 have fewer adverse impacts.

2 As pertinent, OAR 660-04-020(2)(c) requires

3 "(c) the long term environmental, economic, social and
4 energy consequences resulting from the use at the
5 proposed site with measures designed to reduce
6 adverse impacts are not significantly more
7 adverse than would typically result from the same
8 proposal being located in other areas requiring a
9 goal exception. * * * A detailed evaluation of
10 specific alternative sites is not required unless
11 such sites are specifically described with facts
12 to support the assertion that the sites have
13 significantly fewer impacts * * *." (emphasis
14 added)

15 We agree with respondents. OAR 660-04-020 establishes a
16 logical, albeit demanding, progression of standards. First, an
17 applicant must demonstrate with reasons that there is a need
18 for the use proposed under OAR 660-04-020(2)(a) and
19 OAR 660-04-022(1). Second, the applicant must show there are
20 no reasonable alternatives under OAR 660-04-020. This requires
21 demonstrating that the use cannot be accommodated on (1) rural
22 land that is not resource land; (2) rural resource land that is
23 already committed to nonresource use; or (3) land inside an
24 existing or amended UGB. Third, the applicant is required to
25 minimize the consequences of the exception by demonstrating
26 that use of the resource land will not have adverse impacts
27 "significantly more adverse than would typically result from
28 the same proposal being located in other areas requiring a goal
29 exception (i.e., other rural resource lands)."¹³

30 Here the applicants identified no alternative areas that
31 would require an exception. Petitioner identified a number of

1 sites, but did not do so with sufficient specificity or facts
2 to comply with OAR 660-04-020(2)(c). Record 144-148. None of
3 the applicant's alternative sites are outside the UGB and
4 therefore none are rural resource lands requiring an exception.

5 In view of these circumstances, there were no sites to
6 which the comparative consequences analysis required by
7 OAR 660-04-020(2)(c) applied. Therefore, the very general
8 discussion of environmental, economic, social and energy
9 consequences by the county at pages 32-33 of the record, is
10 sufficient.

11 The ninth and tenth assignments of error are denied.

12 ELEVENTH ASSIGNMENT OF ERROR

13 Under this assignment of error petitioners argue the county
14 failed to address relevant testimony concerning incompatibility
15 of the proposed use with existing adjacent uses and that the
16 county improperly deferred consideration of these impacts until
17 design review. Petitioners argue the findings are not
18 supported by substantial evidence of the record. Petitioners
19 say the county's failure to address these issues violates Goal
20 2, Part II(c)(4), ORS 197.732(1)(c)(D), and OAR 660-04-020(2)(d).

21 Petitioners argue the county failed to adopt adequate
22 findings explaining how the proposed use would be rendered
23 compatible with the Tualatin Fire District operation adjacent
24 to the proposed site. The fire district testified that the
25 proposed use would seriously impact its operation and cause it
26 to exceed, by many times, its emergency response time. Record

1 119-120. Petitioners also say the county failed to respond to
2 testimony regarding the possible impact from noise and
3 congestion on adjoining commercial properties. Petitioners
4 repeat their concern that nearby farming operations would be
5 negatively impacted.

6 Respondents answer that the commissioners did address all
7 the compatibility issues raised by petitioners. With regard to
8 the Tualatin Fire District's objections, the county found as
9 follows:

10 "As required by CDC Section 430-88.1b, the applicant
11 will provide traffic control personnel which will
12 minimize the impact of the parting vehicles on the
arterial streets." Respondent's Brief 38.

13 Respondents also argue that this is a two-step approval
14 process and that specific operational issues will be addressed
15 during the design review stage yet to be completed.

16 Respondents argue that this design review process is "another
17 'measure' designed to reduce adverse impact as contemplated by
18 OAR 660-04-020(2)(d)." Respondent's Brief 39.

19 We have previously concluded, under our discussion of the
20 fourth assignment of error, that the county's response to
21 concerns regarding possible impacts on adjoining farm uses was
22 sufficient. With one exception, we also believe the findings
23 with regard to impacts on adjoining businesses is sufficient
24 for compliance with OAR 660-04-020(1)(d). Record 21-22,
25 33-34. We do not believe the county's findings are sufficient
26 to demonstrate that the proposed use will be made compatible

1 with the Tualatin Fire District operation. The fire district's
2 testimony identified potential severe consequences to its
3 operation from traffic arriving and departing the proposed
4 facility. It may well be that acceptable solutions can be
5 developed during the subsequent design review stage. However,
6 the existing circulation pattern and approximate numbers of
7 vehicles are currently known. We believe the concern expressed
8 by the fire district requires a more detailed demonstration in
9 the exception that the proposed use is compatible with the
10 Tualatin Fire District's operation. While specific design and
11 management aspects may be deferred to design review, the record
12 must adequately demonstrate that expected traffic impacts will
13 not be incompatible. The county's finding quoted above is
14 insufficient to comply with OAR 660-04-020(2)(d).

15 The eleventh assignment of error is sustained.

16 The decision is remanded.

FOOTNOTES

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4 The portions of respondent's brief petitioners object to
5 are quoted below. The first seven portions are contained in
6 Participant-Respondent World Entertainment Services' brief; the
7 final item is contained in Respondent Washington County's brief:

- 8 1) "Metro did not object and, in fact, filed a
9 Statement of Intent to Participate in this appeal
10 supporting the order."
11 2) "In this case, the county, after consulting with
12 Metro and LCDC, determined that the first option
13 applied to applicant's request."
14 3) "In this definitional vacuum, the county, together
15 with Metro and LCDC, concluded that an outdoor
16 performing arts center is not an 'urban use.'"
17 4) "As noted above, both Metro and LCDC participated
18 in the drafting of the ordinance."
19 5) "In this case, the county, Metro and LCDC all have
20 decided that the AF-10 zone is...appropriate."
21 6) "The applicant will provide traffic control
22 personnel who will direct traffic away from the
23 Elligsen property."
24 7) "After the applicant and the proponents of the
25 amendment concluded their testimony, the
26 petitioners deposited more than 100 pages of
written 'testimony' into the record, including
Mr. Elligsen's letter."
8) "The county consulted with DLCD and Metro staff
before reaching a conclusion."

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23

2

24 At oral argument in this appeal, both respondents objected
25 to petitioners' attachment, to its brief, of transcripts of
26 portions of the hearings before the local governing body in
this matter. Respondents noted, correctly, that the record
initially submitted by the county included minutes of local
hearings, but did not include the tapes of those proceedings.
The respondents are also correct that OAR 661-10-025(3)(e)

1 provides a procedure for objecting to the sufficiency and
2 accuracy of the minutes, and the Board may order partial
transcripts in response to such objections.

3 Our rules do not require that local governments submit
4 transcripts or tapes as part of the record. We do not require
complete transcripts due to the cost and possible delay such a
5 requirement might pose. We do not require that tapes be
submitted, because some local governments do not have
6 convenient access to tape duplication facilities.

7 It has been this Board's view that even though the tapes or
a transcript are not submitted as part of the record, as
8 required under 661-10-025, the words that are spoken at a local
hearing are part of the record. When the tapes are retained
9 locally, they are available to the parties. The Board has
permitted parties who wish to transcribe portions of the taped
10 record and attach the transcripts to their briefs. The other
parties, of course, are free to contest the accuracy of such
11 transcripts in their opening brief or in a reply brief
submitted pursuant to OAR 661-10-075(4). This practice
12 frequently eliminates the need to delay appeals to resolve
record disputes.

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14 Goal 14 establishes the goal of "effective transition from
15 rural to urban use" and requires the establishment of UGBs to
separate urbanizable land from rural land. OAR 660-14-040
16 provides requirements for an exception to Goal 14 to allow
urban development on rural land. Comprehensive Plan Policy 18
17 is the county's rural development policy. In our view, the
only issue presented by the first two assignments of error is
18 whether the county is correct in its position that the outdoor
performing arts center is a rural use. If the county is
19 correct, Goal 14 is not violated, OAR 660-14-040 is not
applicable and Comprehensive Plan Policy 18 is complied with.
20 If the county is incorrect, each of those standards is violated.

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22 These terms are defined in the goals as follows:

23 "RURAL LAND: Rural lands are those which are outside the
urban growth boundary and are:

- 24 (a) Non-urban agricultural, forest or open space lands or,
25 (b) Other lands suitable for sparse settlement, small
26 farms or acreage homesites with no or hardly any
public services, and which are not suitable, necessary

1 or intended for urban use.

2 "URBAN LAND: Urban areas are those places which must have
3 an incorporated city and may also:

4 (a) Have concentrations of persons who generally reside
5 and work in the area

6 (b) Have supporting public facilities and services.

7 "URBANIZABLE LAND: Urbanizable lands are those lands
8 within the urban growth boundary and which are identified and

9 (a) Determined to be necessary and suitable for future
10 urban uses

11 (b) Can be served by urban services and facilities

12 (c) Are needed for the expansion of an urban area."

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15 We note that the requested UGB amendment in that case was
16 pursuant to Metro's acknowledged procedure for locational
17 adjustments to the UGB to permit more efficient land
18 development patterns. Under the locational adjustment
19 provisions, whether there is a need for additional urban land
20 is not relevant.

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23 Under the Supreme Court's decision in 1000 Friends v. LCDC
24 (Curry County), it may well be there is nothing inherently
25 rural or urban about residential, commercial or even industrial
26 uses. Rather, under current LCDC interpretive rules there are
27 merely a number of relevant factors such as parcel size,
28 intensity, necessity for urban facilities and proximity to the
29 UGB. 301 Or at 507.

30 _____
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32 As respondents argue, this may be an urban use that
33 generates unacceptable and unmanageable offsite impacts (e.g.,
34 noise) such that it cannot practicably be located in urban
35 areas. Record 28. If that is the case, an exception may be
36 justified to permit its location outside the urban area. Such
37 problems do not render an otherwise urban use a rural use.

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40 Mr. Elligsen refers to a New Zealand electric fence. We
41 have found nothing in the record which suggests a "New Zealand

1 electric fence" differs from any other kind of electric fence.

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4 Our decision in Yost v. City of Ontario supra, does not
5 support petitioners. In that case, the petitioner was denied
6 all right to testify, and the findings in support of the local
7 government's decision were misrepresented. Rebuttal testimony
8 frequently may be such that a local government will be called
9 upon to determine who it believes is more credible. When
10 credibility is put at issue by rebuttal testimony, that does
11 not, alone, create a right to submit surrebuttal evidence.

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14 As respondent-intervenor notes the exception taken in this
15 case to Goals 3, 4 and 11 is somewhat unusual. A committed
16 exception to Goals 3 and 4 was previously taken for this
17 property. Record 23. The property is therefore, considered
18 rural property not available for resource use, however, Code
19 Section 430-88.3 quoted supra at page 10 requires the applicant
20 to submit findings for exception to the Goals. The exception
21 to Goal 11 was taken to allow extension of urban (water and
22 sewer) services. As we concluded under the first two
23 assignments of error, the use proposed is urban, so a Goal 14
24 exception would also be required, absent a UGB amendment.

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26 11

27 Petitioners contend that existing facilities have the
28 capacity to accommodate any demonstrated need for the center as
29 follows: the Washington Park Zoo can accommodate up to 5,000
30 people for outdoor concerts (Record 133); Civic Coliseum can
31 accommodate up to 13,000 (Record 134); Schnitzer Hall and Civic
32 Auditorium have a seating capacity of 3,000 (Record 136); the
33 Clark County Fairgrounds has seating for 8,200 and a grassy
34 area for seating for 3,000 to 4,000 additional persons (Record
35 136-137).

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38 Petitioners also contend that the respondents' analysis of
39 other sites is faulty because OAR 660-04-020(2)(c) requires

40 "the exception shall describe the characteristics of
41 each alternative areas [sic] considered by the
42 jurisdiction for which an exception might be taken,
43 the typical advantages and disadvantages of using the
44 area for uses not allowed by the Goal, and the typical
45 positive and negative consequences resulting from the
46 use of the proposed site * * *"

1 Examination of advantages and disadvantages of
2 alternative sites is required under the environmental,
3 economic, social and energy consequences factor, not the
4 alternative areas factor set forth in OAR 660-04-020(2)(b).
5 We address the applicability of OAR 660-04-020(2)(c) under
6 the ninth and tenth assignments of error.

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The fourth requirement, compatibility with adjacent
uses, is addressed under the eleventh assignment of error.