BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, Petitioner, vs. MARION COUNTY, Respondent, and JON and DELORES ISBERG, Intervenors-Respondent.	LUBA No. 89-104 FINAL OPINION AND ORDER

Appeal from Marion County.

Blair Batson, Portland, filed a petition for review and argued on behalf of petitioner.

Michael J. Hansen, Salem, Assistant Marion County Counsel, filed a response brief on behalf of respondents. With him on the brief was Robert C. Cannon, Marion County Counsel.

Robert L. Engle, Woodburn, filed a response brief on behalf and intervenor-respondent. With him on the brief was Engle and Schmidtman. Robert L. Engle argued on behalf of intervenors-respondent.

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

REMANDED 11/17/89

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

Opinion by Kellington.

NATURE OF THE DECISION

Petitioner appeals Marion County Ordinance No. 89-4 approving (1) a comprehensive plan amendment redesignating the subject property from Primary Agriculture to Interchange Development, (2) a zone change from Exclusive Farm Use to Interchange district, and, (3) approving intervenor's conditional use permit to expand an existing recreational vehicle (RV) park.

MOTION TO INTERVENE

Jon and Delores Isberg move to intervene on the side of the respondent. There is no objection to the motion, and it is allowed.

FACTS

This appeal concerns an expansion of an existing RV park, located at the Aurora/Donald interchange on interstate 5. The material facts are set out in petitioner's brief as follows:

> "* * * The existing RV park has 84 spaces for RV's; the expansion would allow 77 additional RV spaces, restrooms and an open area.
>
> The plan amendment, zone change and permit are for approximately 5 acres of an approximately 11.45-acre parcel. The entire parcel is zoned EFU. The 5 acres are currently used for growing Christmas trees. The remaining 6 acres are proposed to be used as the sewer treatment facility; a portion of this 6 acres contains the existing sewage treatment facilities for the RV park.* * *
>
> "The parcel is bordered on two sides (northern and eastern) by EFU land. The property to the east comprises the Yule Tree Farms Christmas tree farm. The record does not indicate the current use of the EFU land to the south of the 11.45 acre parcel. The

> property is bordered on the west by I-5 and on the north by an existing RV park, a gas station, a convenience grocery store and a trucking company service terminal on land zoned ID.
>
> "The applicants own the existing RV park, the gas station, convenience store and the trucking company service terminal. Mr. Isberg also is a principal in Yule Tree farms.
>
> "The applicant owns an unspecified number of acres of undeveloped land, already zoned ID, at the interchange to the north of the RV park. There is also an unspecified number of acres of undeveloped land zoned ID on the other (west) side of the highway from the interchange that the applicants do not own." (Record citations omitted.) Petition for Review 3-4.

FIRST ASSIGNMENT OF ERROR

> "Respondent misconstrued the applicable law, failed to make an adequate finding and made a decision not supported by substantial evidence in the record as a whole in concluding that "reasons" within the meaning of Goal 2, Part II, ORS 197.732, and OAR 660-04-020 and 022 justified allowing the nonfarm use on resource land."

In this assignment, petitioner challenges the adequacy of the county's exception to Goal 3 (Agricultural Lands). Petitioner contends that the county's findings and evidence are insufficient to demonstrate "reasons" to justify why the state policy embodied in the applicable Goals should not apply. ORS 197.732(1)(c)(A); Goal 2 Part II(c)(1); OAR 660-04-020(2)(a). We address separately below petitioner's contentions regarding the adequacy of the county's findings and the evidence supporting the findings.

A. Adequacy of the findings

Petitioner argues that the county improperly applied OAR 660-04-022(1)(a) and (c) which provides that the following

reasons, among others, may be used to justify an exception:

> "(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goal 3 or 19; and * * *
>
> "* * * * *
>
> "(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site."

Petitioner cites the following findings as those the county relied upon to demonstrate compliance with OAR 660-04-022(1)(a) and (c):

> "Applicants submit that the policies contained in Goal 3 - that resource land such as the subject property should be preserved for farm use - should not apply because of the need for additional recreational vehicle spaces to accommodate tourists and travelers in the Willamette Valley on property adjacent to the existing park so as to use its facilities.
>
> "In addition, evidence was submitted indicating that the 5 acres is generally unsuitable for farm use. The prior farm operator stated that due to the high clay content of the soil it is unsuitable for farm use. A study of the 5 acres by a biochemical consultant also supported the unsuitable nature of the 5 acres for a farm use. Adjacent uses, freeway, RV parks, and sewage treatment ponds also severely restrict farm use of the 5 acres. Record 7."[1]

According to petitioner, these findings are inadequate to satisfy OAR 660-04-022(1)(a) and (c) because they do not

---

[1]Petitioner correctly points out that these "findings" are really only recitations of evidence. However, the ordinance does state: "* * * the Board adopts as its own the Findings and Facts and Conclusions in Exhibit A, attached hereto, and by this reference incorporated herein." Record 5. We believe it is reasonably clear that the county intended to adopt these recitations as their own. Findings need take no particular form and no magic words are required to make findings adequate for review. Sunnyside v. Clackamas County, 280 Or 3, 20-21, 569 P2d 1063 (1977) These "findings" are adequate in the sense that we can understand what the county considered to be important in arriving at its decision regarding "need."

establish "need" but rather establish only a market demand for the proposed use.[2] Petitioner also suggests that the findings do not establish that there is anything special about the proposed use necessitating its location at the proposed site.

Respondent and intervenors (respondents) argue that the county's findings are adequate to address OAR 660-04-022(1)(a) and (c). Respondents contend that the county's findings regarding "need" for the proposed use are not based solely on market demand. Rather, respondents claim that the county's findings establish need as that term is explained in Still v. Board of County Commissioners, 42 Or App 115, 122, 600 P2d 433 (1979); Ludwick v. Yamhill County, 11 Or LUBA 281 (1984) and 1000 Friends v. Douglas County, 4 Or LUBA 149 (1981).

Respondents claim that "need" may be established through a demonstration that a market demand exists for a particular use, and a demonstration that accommodating the identified market demand serves another goal or goals. Respondents suggest that in this case, both the Statewide Planning Goals and economic goals in the county's comprehensive plan to improve and foster

---

[2]At oral argument, petitioner argued that ORS 197.230(1)(b)(A) evinces a legislative policy to provide special protection to "lands adjacent to freeway interchanges" and that this legislative policy is relevant in determining need in this case because it shows a higher and protective standard should be applied to land use actions involving land located at freeway interchanges. This argument was not raised in the Petition for Review and we would reject the argument in any event. ORS 197.230(1)(b)(A) only provides a directive to LCDC to consider land next to freeway interchanges when it adopts rules and Statewide Planning Goals (Goals). We are aware of no rules or Goals applicable specifically to freeway interchanges.

tourism provide the basis for the need which the county identified.[3]

Respondents claim that the following findings demonstrate that the county applied a proper "need" test:

> "* * * The Plan recognizes that there is a legitimate need for commercial facilities at interchanges along I-5 to serve the traveling public, and the Plan notes that not enough developable land is available at urban interchanges to accommodate the needed freeway-commercial services. The Plan recognizes recreational vehicle parks as a needed freeway commercial service, and anticipated an RV park at this location or at Brooks. The Plan recognized that the interchanges north of Salem would experience greater development than those south of Salem.
>
> "The development of the RV park at the Fargo Road interchange was consistent with the Plan's projection. The proposed expansion of this freeway-related service is a result of the need for additional camping space created by increased tourist traffic since the adoption of the plan. The increase in tourist traffic is consistent with the economic goals and desires of the State and at least in part must be attributed to the efforts of the State to promote and encourage tourism in Oregon. The proposed expansion is consistent with the Plan's projection of an RV park at this interchange, and is preferable to a separate park at another interchange at which freeway-commercial development was not anticipated." Record 10-11.

Additionally, respondents cite the following findings to show that the county adequately addressed OAR 660-04-022 (1) (c):

> "Preliminary plans from State Highway Division for the

---

[3]Respondents also suggest that because petitioners did not introduce any evidence to disprove the applicant's evidence of need, that petitioner's position must fail. We reject this suggestion. The applicant has the burden of providing sufficient and adequate evidence to support approval of their application. Sunnyside v. Clackamas County, 280 Or 3, 18, 569 P2d 1063 (1977)

> reconstruction of the interchange showed a substantial portion of the existing developed and underdeveloped portions of the park as being needed for new freeway access ramps and overpass relocation. As a result, prudent long-range planning for the use of the property requires that this area remain undeveloped. As a result of the interchange reconstruction, less than one acre of undeveloped park area will be available for expansion. This small of an area is insufficient to warrant the cost of expansion. Use of other undeveloped ID zoned lands at the interchange would result in duplication of the existing campground. Use of the existing operation's building, utilities, road, etc. would not be possible. These are economic factors that apply to the 'Reasons' criterion. These areas are adjacent to two existing truck stops, resulting in high potential for traffic conflicts between large trucks and RVs. The proposed site allows for a practical separation of uses based on the existing land use pattern around the interchange. Maintaining the campground in one location results in a more cohesive, compact land use pattern for the area. Expanding the existing campground will reduce traffic on the County road as campers will have internal access to the gas station and grocery store." Record 8.

While market demand alone does not establish "need", we agree with respondents that market demand can provide some evidence of a "need" for a use not otherwise allowed by a resource goal, if other relevant factors are present. Specifically, we believe OAR 660-04-022(1)(a) contemplates that the need requirement may be met based upon a showing of (1) market demand for the proposed use and (2) that the county cannot satisfy its obligations under one or more of Goals 3-19, or the requirements of its acknowledged comprehensive plan, without accommodating the proposed use at the proposed location. We believe that this approach to determining "need" is supported by the decision of the Court of Appeals in Still v. Board of County Commissioners, (Still) supra. At issue in Still was a

proposed exception to Goal 3 to accommodate a rural residential housing development. In Still, the court determined that an exception to Goal 3 was not justified simply because "somebody wants to buy [the agricultural] land for a house * * *." The Court concluded that this kind of market demand, alone, is insufficient to support an exception to Goal 3.[4] Still, at 122. The Court went on to articulate under what circumstances a demand might be shown sufficient to rise to the level of a need for a rural residential development on agricultural land as follows:

> "A determination of whether [the] land is needed for residences should be made in accordance with Goal 10, housing, which mandates that local governments should designate sufficient suitable land within the urban growth boundary to meet residential needs. There is no showing in the record that no suitable land is available inside the urban growth boundary for residential use. * * *."

In this case, there is no showing that the there is insufficient ID or other non-resource planned and zoned land for the proposed use to allow the county to comply with its obligations to further one or more of the purposes stated in the Goals or in the county's acknowledged plan policies. Goal 8 provides in part that it is an objective of the state to:

> "* * * satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational

---

[4]In Still, the proposed Goal 3 exception was analyzed under the former Goal 2 "public need" requirement for exceptions. However, we believe that the principle discussed in Still is equally applicable to determining "need" within the meaning of that term in OAR 660-04-022(1)(a).

facilities including destination resorts,"

Goal 9 provides in part that it is an objective of the state to provide:

> "[provision of] adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."

In this case we understand the county's findings, to state that a market demand has existed for RV spaces at the proposed location. The county's findings suggest that the source of this demand is, at least in part, state and county efforts to promote tourism. While the findings suggest that the additional RV spaces at the proposed location will serve policy 6 of the county plan and policies in unidentified Statewide Planning Goals, the county's findings do not establish that the county cannot achieve the policies of the plan or of relevant Goals without additional land for RV spaces at the proposed location. Furthermore, the findings say little about what is "special" about the proposed use which requires that it be located in the area proposed.[5] The findings discuss only why the proposed location is, in the county's view, a reasonable one for the proposed use. We believe that the county's findings are inadequate to satisfy OAR 660-04-022(1)(a) and (c).

---

[5]The findings state only that RV travelers use the freeways and that freeway interchanges are good locations to accommodate such RV travelers. This finding does not, however, explain what is special about the proposed use that makes it appropriate to locate the use at or near the proposed exception area as opposed to other locations appropriately zoned for the use.

This subassignment of error is sustained.

B. Substantial Evidence[6]

Petitioner claims that the following evidence, upon which the county relied to make its determination regarding need, is not evidence a reasonable person would rely upon for that determination:

> "A newspaper clipping regarding travel and tourism in Oregon consisting of a chart and a portion of an accompanying article.
>
> "Testimony * * * that:
>
> > "This [existing RV] campground is listed in nationally-distributed RV guides, directories and publications such as 'trailer life', and has received the highest rating for its quality. As a result of its high rating as well as its convenient location adjacent to the freeway the campground has become well known and extremely popular, and demand for camping spaces frequently exceeds capacity. Records of campground occupancy and camper 'turnaways' for the period May through September have been kept for 1986 and 1987 by the campground managers, and the statistics show a consistently high volume of requests for space that cannot be accommodated. A copy of the tabulation of monthly turnaways provided by the campground managers is attached to this report.
> >
> > "Based on the demand for additional camping space Jack and Delores Isberg, the owners of the property, would like to expand the RV campground.

---

[6]While we need not review the adequacy of the evidence to support inadequate findings, we believe it will be helpful to the parties to provide some guidance regarding the extent to which the evidence relied upon is supportive of a determination of need under OAR 660-04-022(1)(a).

> "As documented by the occupancy rate at the existing campground and by the number of requests for spaces that must be turned away, there is a need for additional RV campground spaces to serve tourists and freeway travelers at this location. Tourism is a major focus of the state's economic development program, and RV's are a major means of travel for tourists in Oregon. I-5 is a major north-south travel route through western Oregon for tourists, and the existing campground is a major campground in the northern Willamette Valley. Considering the need to provide for tourist accommodations along the major travel corridors, the proposed campground expansion will satisfy a need that outweighs the benefits of producing Christmas trees on this five acres * * *.
>
> "A letter * * * documenting the number of RV's turned away in 1986 and 1987." (Record citations omitted.) Petition for Review 7-8."

Petitioner argues that the above described evidence shows only a market demand for RV spaces at the proposed location and market demand alone is insufficient to justify a finding that a proposed use is needed, citing Ludwick v. Yamhill County, 11 Or LUBA 281, (1894); Weyerhaeuser Real Estate v. Lane County, 7 Or LUBA 42 (1982) and Rudd v. Malheur County, 1 Or LUBA 322 (1980). Petitioner points to evidence in the record that a 141 space RV park exists:

> "* * * adjacent to I-5 a few miles south of the Aurora/Donald interchange in the city of Woodburn. There was no finding and no evidence whether this RV park could accommodate the purported need that the applicants hope to address with 77 new RV spaces." Petition for Review 10.

Petitioner further argues that the evidence upon which the county relies does not support a finding that there is even a

market demand for the proposed use because:

> "[The evidence] does not show whether the amount of tourists visiting Oregon each year is increasing, decreasing or remaining in static. It does not show whether the 16.5 percent in RVs (in unspecified years) are finding adequate places to park." Petition for Review 9.

Respondents contend that the evidence relied upon is substantial and is adequate to support the county's determination that there is a "need" for the proposed expansion, within the meaning of OAR 660-04-022(1)(a).

We understand petitioner's substantial evidence argument to be twofold. First, petitioner contends that the evidence the county relied upon is inadequate because it shows no more than a market demand for the proposed use and that a market demand cannot be used to establish need. Second, petitioner contends that the evidence relied upon is inadequate to demonstrate a market demand for the proposed use, because the county failed to explain why the Woodburn 141 space RV park could not, or did not, accommodate the market demand identified.

The evidence does not show that "turnaways" from intervenors' RV park in 1986-87 could not find accommodations elsewhere then or now. Furthermore, the evidence regarding "turnaways" is more than two years old and there is no attempt to relate this information to current RV tourist demands. The evidence does not show intervenors have continued to "turnaway" potential RV customers, and does not show whether the particular "turnaway" figures for intervenors' park have remained constant,

or whether they have declined or increased. The evidence says nothing about the extent to which the county is unable to achieve the objectives of its plan and of the Goals without approving the proposed use at the proposed location.

Accordingly, we agree with petitioner that the evidence does not support a determination that there is a market demand for additional RV space.

This subassignment is sustained.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

> "The respondent's conclusion that the additional RV facilities need to be located on the subject property misconstrues the applicable law, does not constitute a sufficient finding and is not based on substantial evidence in the record as a whole."

THIRD ASSIGNMENT OF ERROR

> "The respondent's conclusion that areas that do not require an exception could not reasonably accommodate the use misconstrues the applicable law, does not constitute a sufficient finding and is not based on substantial evidence in the record as a whole."

FOURTH ASSIGNMENT OF ERROR

> "The respondent's conclusion that all lands designated 'Interchange Development' are committed to development or unsuited for the proposed use misconstrues the applicable law and was not based upon substantial evidence in the whole record."[7]

---

[7]In the fourth assignment of error, and in an argument consolidated with the second and third assignments of error, petitioner asserts that plan policy 7 was improperly applied. Petitioner, however, does not develop the argument. It is petitioners responsibility to explain a basis upon which we might grant relief. Petitioner has not done so with respect to the fourth assignment of error. Accordingly, the fourth assignment of error is denied.

OAR 660-04-020(2)(b) requires that it be established that:

"Areas which do not require a new exception cannot reasonably accommodate the use.

"* * * * *

"(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate to proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed.

"i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not why not?

"(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not why not?

"iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not why not?"

The Marion County Comprehensive Plan (plan) provides as follows:

"Expansion of Interchange District zoning at any particular interchange shall only be considered when all designated lands are committed to development or are shown to be unsuited for the proposed use. Compelling evidence must be provided of a need for additional land at the particular interchange and the availability of adequate services to support freeway related uses." Plan 44, policy 7.

These assignments of error challenge the county's

compliance with OAR 660-04-020(2)(b) quoted above and plan section (7).[8] We address separately below petitioner's challenges to the adequacy of the findings and petitioner's challenges to the adequacy of the evidence.

A. Adequacy of the Findings

According to petitioner, the county improperly dismissed two specific alternative locations that could reasonably accommodate the proposed use, on the basis that they are "unsuitable for the proposed use."[9] Petitioner contends that

---

[8]While we must remand the county's decision due to our resolution of the first assignment of error, we resolve the remaining assignments of error to the extent we believe it will assist the parties on remand to do so.

[9]Petitioner challenges the following findings:

> "* * * Use of other undeveloped ID zoned lands at the interchange would result in duplication of the existing campground. Use of the existing operation's building, utilities, road, etc. would not be possible. These are economic factors that apply to the 'reasons' criterion. These areas are adjacent to two existing truck stops, resulting in high potential for traffic conflicts between large trucks and RVs. The proposed site allows for a practical separation of uses based on the existing land use pattern around the interchange. Maintaining the campground in one location results in a more cohesive, compact land use pattern for the area. Expanding the existing campground will reduce traffic on the county road as campers will have internal access to the gas station and grocery store.
>
> "The Board concludes it is more reasonable to establish one large recreational vehicle park rather than two smaller ones, and it would be logical not to duplicate facilities unnecessarily.
>
> "* * * * *
>
> "* * * There is vacant ID land on the west side of the freeway. This land is not suitable for the proposed use because it would require establishment of a separate campground that would

the county's findings that vacant ID zoned land on the west side of the interchange is unsuited for the proposed use is inadequate to satisfy OAR 660-04-020(2)(b).[10] Petitioner argues that the county compared the vacant ID zoned site on the west side of the freeway with the existing RV park location and determined that the existing park location:

> "* * * is more convenient and financially feasible for the owners to use their own property and their existing services than to purchase another site. The county also reasoned that it would be more convenient and pleasant for the RV users." Petition for Review 14.

> require separate utilities and services, and would not consolidate camping in one location. In addition, the existing campground is provided with management facilities and amenities, such as a recreation and laundry building, that will also serve the expansion. The need for additional camping space and the availability of the existing services to support the proposed use has been described as required by this policy. Specifically, sewage disposal will be provided by the existing treatment facility by connection to the existing service lines. Water will be supplied by the system that serves the existing campground, simply by extending the service lines. A storm drainage system designated (sic) to the Marion County Public Works Department or the State Highway standards can be provided for the additional area by tying into the existing system." Record 8-11.

[10]We do not understand petitioner to challenge the following finding that the ID land owned by intervenors cannot reasonably accommodate the proposed use:

> "Preliminary plans from State Highway Division for the reconstruction of this interchange showed a substantial portion of the existing developed and underdeveloped portions of the park as being needed for new freeway access ramps and overpass relocation. As a result, prudent long range planning for the use of the property requires that this area remain undeveloped. As a result of the interchange reconstruction, less than one acre of undeveloped park area will be available for expansion. This small of an area is insufficient to warrant the cost of expansion. Record 8.

Instead, we understand petitioner to contend there is not substantial evidence to support this finding.

Petitioner argues that the county's findings do not establish that other locations cannot reasonably accommodate the proposed use. Petitioner contends that the county focused on the economics and convenience of serving the proposed use through services available at the existing site and summarily dismissed other sites because other sites do not have existing facilities to serve the proposed use.

Citing, Gordon v. Clackamas County, 10 Or LUBA 240, 251 (1984) and Kennedy v. Klamath County, 8 Or LUBA 103, 110 (1983), petitioner contends that the county's findings demonstrate that the the county improperly applied OAR 660-04-020(2)(b) as a matter of law. Finally, petitioner argues that the county failed to consider other alternative locations for the proposed use identified by staff and failed to make the determinations required by OAR 660-04-020(2)(b)(B)(i)-(iii).

Respondents argue that the county's findings are adequate. They contend that under OAR 660-04-020(2)(b) the county may, and did, consider economic factors. Respondents claim that the county did not, as petitioner argues, solely rely upon convenience and financial feasibility in determining that the two specific locations could not reasonably accommodate the proposed use. Respondents also argue OAR 660-04-020(2)(b) does not require that it be established that other ID planned and zoned land is totally unavailable.[11] Respondents contend that

---

[11]Respondents also suggest that the plan's requirement that land may be

the relevant inquiry is whether there are other sites which are reasonably available. Respondents suggest that petitioner's contention that the county must explain why other sites are not reasonably available to accommodate the proposed use, imposes an impossible standard on the applicant and the county not required by OAR 660-04-020(2)(b). Specifically, respondents contend:

> "Petitioner does not specify whether it believes that each and every ID-zoned interchange district in the state must be considered, or only those within 20 miles of the Fargo Road interchange, or only those within 10 miles should be considered etc." Respondents' Brief 9.

Choosing the scope of the alternative sites which must be examined under OAR 660-04-020(2)(b) is a task specifically addressed by OAR 660-04-020(2)(b)(C) as follows:

> "This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding."

This rule requires the county to conduct a "broad review of

---

redesignated to ID if land already zoned ID is "unsuited" for the proposed use, is equivalent to the requirements of OAR 660-04-020(2)(b)(B)(i)-(iii). We reject this suggestion. The county must apply its plan and it must also apply the "reasons" exception requirements. The factors of OAR 660-04-020(2)(b)(B)(i)-(iii) require a more detailed analysis than a determination whether land zoned for exclusive farm use is "unsuitable" for that purpose.

similar types of areas" and to explain why "similar types of areas in the vicinity could not reasonably accommodate the use." The county is only required to perform a more detailed and site specific analysis if a "party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use." We understand petitioner to contend that staff's provision of additional information regarding alternative locations was sufficient to require the county to address the adequacy of those specific sites to reasonably accommodate the proposed use.[12] Staff did not explain why the specific sites they identified could more reasonably accommodate the proposed use than could the location specified in intervenors' application, as is required by OAR 660-04-020(2)(b)(C).[13] Accordingly, the county was not required to address the alternative locations staff identified.

We believe that the inquiry required by OAR 660-04-020(2)(C), under these circumstances, is whether the county conducted a "broad review of similar types of areas" and explained why "similar types of areas in the vicinity could not reasonably accommodate the use."

In its review, the county did examine several parcels at

---

[12]We assume for purposes of discussion that county staff could be considered as a party to the local proceeding in this context.

[13]Other than by a brief letter indicating its interest, it does not appear petitioner was either present at the county hearing, or presented evidence regarding other sites which could reasonably accommodate the proposed use.

the subject interchange and did explain that several of these parcels are not vacant. Additionally, the county examined two vacant sites, both zoned ID, and located at the subject interchange.[14] However, because the county did not include areas within urban growth boundaries within its broad review, the scope of the county's review of alternative areas to accommodate the proposed use was improperly narrow.

Similarly, we do not believe that the county adequately addressed the requirements of OAR 660-04-020(2)(b)(B)(i)-(iii). The county concluded, essentially, that because the existing RV park already had services such as a septic system and a water well in addition to a grocery store and a gas station, the proposed site was a more reasonable location for additional RV spaces than the 2 vacant sites. The county's findings simply provide economic justifications, for locating the proposed use at intervenors existing park. However, we are cited to no findings addressing the requirements of OAR 660-04-020(2)(b)(B)(i)-(iii) regarding (1) whether the proposed use can be "reasonably accommodated on nonresource land

---

[14]It does not appear that the county examined whether any land was reasonably available to serve the proposed use within an urban growth boundary. While OAR 660-04-020(2)(b)(C) authorizes a broad review of areas in the vicinity of the proposed exception area, we read this section together with OAR 660-04-020(2)(b)(B)(iii). OAR 660-04-020(2)(b)(B)(iii) requires the county to determine whether land within an urban growth boundary can reasonably accommodate the proposed use. Accordingly, we believe that the county's broad review of potential alternative locations in the "vicinity" as defined in OAR 660-04-020(2)(b)(C), requires the county to include a review of whether land within urban growth boundaries is within the "vicinity" of the proposed exception area and could reasonably accommodate the proposed use.

that would not require an exception, including increasing the density of uses on nonresource land"; or (2) whether "the proposed use can be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands"; or (3) whether the proposed use could "be reasonably accommodated inside an urban growth boundary" as is required by OAR 660-04-020(2)(b)(B)(i)-(iii).

This subassignment of error is sustained.

B. Substantial Evidence

Petitioner claims that there is not substantial evidence to support the county's determination that the specific parcels of land (the land located at the freeway interchange, planned and zoned for ID uses and owned by intervenor and the ID land located at the freeway interchange not owned by intervenor) cannot "reasonably accommodate the proposed use" within the meaning OAR 660-04-020(2)(b). Because we determine that the county's findings are inadequate, no purpose would be served by reviewing the evidence to support those findings.[15]

This subassignment of error is sustained.

---

[15]We note that we believe that the Department of Transportation planning study (study) could be substantial evidence that the ID zoned land at the interchange owned by intervenors cannot "reasonably accommodate" the proposed use if the study showed that it was reasonably definite that land would be taken by the state within a period of time shorter than the expected life of a RV park of the kind proposed.

The second and third assignments of error are sustained.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

> "The conclusion that the property is generally unsuitable for farm use misconstrues the applicable law, constitutes an inadequate finding and is unsupported by substantial evidence in the record as a whole."[16]

Neither OAR 660-04-020 nor 022 require the county to find that land is "generally" or otherwise "unsuitable" for farm use in order to take an exception to Goal 3. However, both parties agree that whether a parcel is "generally unsuitable" for farm use could be an additional reason to justify an exception to Goal 3 under OAR 660-04-020 and 022.[17]

To the extent that the unsuitability of the proposed location for farm use is a sufficient reason to justify an

---

[16]The county's findings regarding unsuitability for farm use are the following:

> "In addition, evidence was submitted indicating that the 5 acres is generally unsuitable for farm use. The prior farm operator stated that due to the high clay content of the soil it is unsuitable for farm use. A study of the 5 acres by a biochemical consultant also supported the unsuitable nature of the 5 acres for a farm use. Adjacent uses, freeway, RV parks, and sewage treatment ponds also severely restrict farm use of the 5 acres. Record 7."

[17]Respondents suggest that OAR 660-04-020(2)(b)(B), which allows local government to consider economic "and other relevant factors in determining that the use cannot reasonably be accommodated in other areas," authorizes the county to consider the suitability of the proposed site for farm use. We believe that the county begins from an incorrect premise in this analysis. We understand the rule to require a determination that other sites cannot reasonably accommodate the use, considering economic and other factors, not that the proposed site is unsuitable for the uses for which it is planned and zoned.

exception under OAR 660-04-020 and 022, the county's findings are inadequate to show that the land is generally unsuitable for farm use, under any reasonable interpretation of that standard.[18] At most, the findings provide conclusions that the land is unsuitable for farm use because the land has a "high clay content." These findings do not, however, identify what crops or livestock were evaluated to reach the conclusion that the parcel is unsuitable for farm use; they do not identify the particular soil type of the land; they do not explain why a biochemical consultant is qualified to determine that the proposed parcel is unsuitable for farm use; they do not explain what crop management techniques have been utilized or whether by using different soil or crop management techniques the land could provide for more efficient production of livestock or crops, including the Christmas trees currently growing on the land. Finally, the findings do not explain what it is about adjacent uses and sewage treatment ponds that make the land unsuitable for farm use. For example, the findings neither identify how much of the subject parcel is covered by a sewage treatment pond nor describe the nature of the interference between the pond and potential or existing farm uses on the subject parcel.

---

[18]Petitioner argues that we should interpret the phrases "unsuitable for farm use" and "generally unsuitable" for farm use as used in the county's findings in the same manner as the phrase "generally unsuitable" has been interpreted in ORS 215.213(3)(b) and ORS 215.283(3)(d), concerning approvals of nonfarm dwellings in exclusive farm use zones.

The county's findings are inadequate to establish that the subject parcel is generally unsuitable for farm use.

The fifth assignment of error is sustained.

SIXTH ASSIGNMENT OF ERROR

> "The respondent misconstrued the applicable law in allowing the plan amendment, zone change and conditional use without requiring an exception be taken to Goal 14."

Petitioner contends the county failed to demonstrate that the proposed use is rural and that (1) Goal 14 does not apply, or (2) demonstrate that the proposed use is urban and apply Goal 14 or take an exception to the Goal. Additionally, petitioner argues that the proposed use is urban in nature and that the county should have taken a Goal 14 exception, citing Ashland v. Jackson County, 2 Or LUBA 378, 372, n5 (1981) (zone which authorized "* * * strictly tourist oriented businesses and services * * * automobile service stations, motels/hotels/eating or drinking establishments, limited personal services, gift shops, and truck stop facilities * * *" authorized urban uses.)

Citing Dougherty v. Tillamook County, 12 Or LUBA 20, 20-29, 32-33 (1984), respondents argue that an RV park is not an urban use. Respondents contend that Dougherty v. Tillamook County, supra:

> "* * * recognizes the recreational vehicle park as the type of campground that is consistent with farm use. LUBA did not find any reason to distinguish RV campgrounds from other types of campgrounds that are permitted by conditional use in EFU zones. By finding RV campgrounds appropriate for EFU zones, which are rural by definition, an RV campground is recognized as a rural use, and not an urban use." Respondents

Brief 14-15.

The county did not expressly determine whether it considered the proposed use as an urban or a rural use. The county's findings provide:

> "In addition to the exception criteria contained in the administrative rules, applicants must demonstrate compliance with the remaining applicable Statewide Goals. Statewide Goals 4 through 13 and 15-19 do not apply to this application.
>
> "DLCD commented that Goal 14, Urbanization, did apply and an exception to this goal would be required to expand a mobile home park. The application is for the expansion of a recreational vehicle park in a rural area. Goal 14 is not, therefore, applicable to this application.
>
> "* * * * *
>
> "Rural industrial, commercial, and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.
>
> "The Fargo Road, Brooks, Sunnyside-Delaney, North Jefferson, Ankeny, and Talbot interchanges along I-5 and the Santiam interchange on Highway 22 are all appropriate locations for highway-related services. Other types of commercial or industrial uses shall not be permitted at these locations.
>
> "Expansion of Interchange District zoning at any particular interchange shall only be considered when all designated lands are committed to development or are shown to be unsuited for the proposed use. Compelling evidence must be provided of a need for additional land at the particular interchange and the availability of adequate services to support freeway-related uses." Record 9-10.

We agree with petitioner that the county must provide additional justification for its position that the proposal is for a rural use or take an exception to Goal 14. As we said in Shaffer v. Jackson County(I), ___ Or LUBA ___ (88-029, August

11, 1988) slip op 6:

> "Because the county did not determine whether the proposed use is urban or rural, and because the nature of the use suggests that indeed it may be urban, we believe the county must either include the site within an urban growth boundary, take an exception to Goal 14, or demonstrate in its decision that the use is rural, not urban."

The county's findings are not adequate to determine that the proposed use is a "rural" use and that Goal 14 does not apply. The above quoted findings state only that Goal 14 is not applicable because "the application is for expansion of an RV park in a rural area." While "whether a proposed use is typically located in urban or rural areas of the county" is relevant in determining if a proposed use is rural or urban, the county's findings do not determine whether RV parks are "typically located in rural areas"[19]. Shaffer v. Jackson County(II), supra, slip op 22. The above quoted findings state only that intervenors' application contemplates that a particular use will occur in a rural area. Those findings do not demonstrate that RV parks of the kind and intensity proposed are typically found on rural lands. Consequently, the county's findings do not explain why the proposed use is one which is urban or rural in nature, as they must.[20]

---

[19]Even if the county's findings did determine that the proposed use is typically found in rural areas, such a determination alone is inadequate to address Goal 14. See Shaffer v. Jackson County(II), ___ Or LUBA ___ (89-015, July 7, 1989) slip op 30.

[20]We do not decide whether the proposed use is urban or rural in nature. It is for the county to determine in the first instance whether and the

See Goal 14; 1000 Friends v. LCDC (Curry County), 301 Or 447, 477 724 P2d 286 (1986); Hammack and Associates v. Washington County, ___ Or LUBA ___ (LUBA No. 87-037, September 11, 1987); Shaffer v. Jackson County (I), supra; Shaffer v. Jackson County(II), supra.

The sixth assignment of error is sustained.

The county's decision is remanded.

---

extent to which Goal 14 is implicated by the proposed use. The proposed facility does have some urban characteristics to the extent that it will apparently serve a relatively large number of people, at least seasonally; have public facilities and services to serve those people; and will increase traffic. See Ashland v. Jackson County, supra. It is these urban characteristics and the proposed rural location that triggers a requirement that the county address Goal 14.