

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the board of county
4 commissioners amending the county comprehensive plan and
5 zoning maps to redesignate and rezone the subject parcel
6 from Small Farm Wood Lot (SFW-20) to Medium Density Urban
7 Residential (R-2), for the purpose of allowing the
8 development of a 124 dwelling subdivision on the subject
9 property. The challenged decision also amends the Pacific
10 City community growth boundary.¹

11 **MOTION TO INTERVENE**

12 Arnold Meyerstein, one of the applicants below, moves
13 to intervene on the side of respondent in this appeal
14 proceeding. There is no objection to the motion, and it is
15 allowed.

16 **FACTS**

17 The subject property consists of 54 forested acres, not
18 located within an urban growth boundary (UGB). Pacific
19 City, an unincorporated community, and the Pacific City
20 community growth boundary, a boundary adopted as part of the
21 county comprehensive plan, are located to the north of the
22 subject property. Properties to the east are zoned SFW-20
23 and properties to the north, west and south are zoned
24 residential.

¹We explain the significance of the Pacific City community growth boundary, infra.

1 This is the second time a county decision redesignating
2 and rezoning the subject property has been appealed to this
3 Board. In Caine v. Tillamook County, 22 Or LUBA 687 (1992)
4 (Caine I), we remanded the county's prior decision on
5 procedural grounds and on the basis of an erroneous
6 exception to Statewide Planning Goal 14 (Urbanization).² In
7 Caine I, 22 Or LUBA at 699-700, we stated the following
8 concerning the county's obligations on remand:

9 "On remand, the county must establish one of two
10 things before it may properly plan and zone the
11 subject rural property for urban intensity uses.
12 First, the county may be able to establish that
13 its acknowledged plan in some way obviates the
14 obligation under ORS 197.175(2)(a)^[3] and
15 197.835(4)^[4] and Goal 14 to either amend its
16 comprehensive plan to include the property within
17 [a UGB] or take an exception to Goal 14 under OAR
18 660-14-040.^[5] Second, if the county is unable to
19 establish this, as we suspect may be the case, the
20 county must take an exception to Goal 14, in
21 accordance with OAR 660-14-040, before it may plan
22 and zone the subject property for urban uses,
23 notwithstanding the provisions in its acknowledged
24 comprehensive plan which suggest otherwise."

²In Caine I, supra, 22 Or LUBA at 695, we also determined, among other things, that the county failed to demonstrate compliance with, explain the applicability of, or take an exception to, Goals 3, 4, 5, 6, 11 and 12.

³ORS 197.175(2)(a) requires local governments to amend their comprehensive plans in compliance with the Statewide Planning Goals (goals).

⁴ORS 197.835(4) requires this Board to reverse or remand a local government decision amending a comprehensive plan if the amendment is not in compliance with the goals.

⁵OAR 660-14-040 provides standards for justifying an exception to certain goals to allow "new urban development" on rural land.

1 On remand, the board of county commissioners conducted
2 further evidentiary hearings, and again approved the
3 application. This appeal followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 "The county failed to provide notice of its final
6 hearing and decision."

7 **SECOND ASSIGNMENT OF ERROR**

8 "The application considered on remand is not the
9 application that was remanded."

10 Under these assignments of error, petitioner alleges
11 various procedural errors, including that the local notices
12 were inadequate and that intervenor-respondent's
13 (intervenor's) wife failed to sign the application for
14 development approval. However, assuming for the sake of
15 argument that the errors alleged occurred, petitioner fails
16 to establish such errors caused prejudice to his substantial
17 rights, and we do not see that they did. Accordingly, these
18 assignments of error provide no basis for reversal or remand
19 of the challenged decision. ORS 197.835(7)(a)(B).

20 The first and second assignments of error are denied.

21 **THIRD ASSIGNMENT OF ERROR**

22 "The county failed to allow petitioner a
23 continuance after additional documents and
24 evidence were provided in support of the
25 application."

26 Under this assignment of error, petitioner contends the
27 county admitted new evidence after the close of the
28 evidentiary record on remand, and refused to allow him a

1 continuance to rebut that evidence, as required by ORS
2 197.763(4)(b).⁶ This "new evidence" consists of two
3 documents, "attachments 21 and 22." These documents are a
4 newspaper article about development pressure on Oregon
5 coastal property and a roster of lots available for sale in
6 Pacific City.⁷

7 This Board has not yet determined whether the
8 requirements of ORS 197.763(4)(b) apply to local proceedings
9 on remand, or whether such proceedings are instead governed
10 by the right to rebuttal first extended to parties in
11 quasi-judicial land use proceedings under Fasano v.
12 Washington Co. Comm., 264 Or 574, 588, 507 P2d 23 (1973).
13 However, it is unnecessary for us to determine here whether
14 the county should have extended that right of rebuttal by
15 way of a continuance under ORS 197.763(4)(b). In any event,
16 the county was required to provide petitioner with an
17 opportunity to rebut the disputed attachments under either
18 ORS 197.763(4)(b) or Fasano, and it committed procedural
19 error by failing to do so.

⁶ORS 197.763(4)(b) provides:

"* * * If additional documents or evidence is provided in
support of the application, any party shall be entitled to a
continuance of the hearing. * * *"

⁷Apparently, these documents were intended to have been included in the
intervenor's submittal at the remand hearing, but were inadvertently
omitted from the packet of documents which intervenor submitted prior to
the close of the evidentiary hearing.

1 The county's failure to allow petitioner an opportunity
2 to rebut attachments 21 and 22 is a procedural error. We
3 must reverse or remand a challenged decision where a local
4 government commits procedural error that causes prejudice to
5 a petitioner's substantial rights. ORS 197.835(7)(a)(B).
6 Here, petitioner's substantial rights were prejudiced
7 because he never had an opportunity to rebut the information
8 contained in attachments 21 and 22.

9 The third assignment of error is sustained.

10 **FOURTH ASSIGNMENT OF ERROR**

11 "The county failed to comply with its Goals 4 and
12 5 and its own ordinances requiring consideration
13 of big game habitats."

14 Under this assignment of error, petitioner contends
15 Tillamook County Comprehensive Plan (plan) Goals 4 and 5
16 require the county to consider big game habitat and that the
17 county failed to do so. Petitioner specifically argues that
18 the county failed to apply plan Goal 4, section 4.12; plan
19 Goal 5, pages 11-14; and Tillamook County Ordinance (TCO)
20 3.006.

21 Intervenor argues that these are issues that petitioner
22 could have, but did not, raise in Caine I. Intervenor
23 argues that petitioner's failure to raise these issues in
24 Caine I prevents him from raising those issues in this
25 appeal.

26 In the petition for review in Caine I, the fourth
27 assignment of error addresses the county's failure to comply

1 with the seven Goal 14 factors. Under a subheading to that
2 assignment of error, entitled "Environmental, Energy,
3 Economic and Social [(ESEE)] Consequences" (Goal 14 factor
4 5), one sentence states:

5 "There is no evidence regarding the environmental
6 impact that the development will have on big game
7 habitat." Caine I Petition for Review 44-45.

8 In a footnote to that sentence, petitioner states the
9 following:

10 "Tillamook County Ordinance 3.006(3) requires the
11 planning director to address the affects [sic] of
12 a big game habitat; this has not been done." Id.
13 at n 24.

14 In Mill Creek Glen Protection Assoc. v. Umatilla
15 County, 88 Or App 522, 527, 746 P2d 728 (1987), the court of
16 appeals determined that if an issue could have been, but was
17 not, raised during a first appeal to LUBA that results in
18 remand of the challenged decision, that issue is waived when
19 a subsequent local government decision is challenged in a
20 second appeal to LUBA. In Beck v. City of Tillamook, 313 Or
21 148, 153 n 2, ___ P2d ___ (1992) the supreme court cited
22 this aspect of Mill Creek Glen Protection Assoc. with
23 approval. The court also stated that the effect of ORS
24 197.835(9)(a)⁸ is to allow LUBA to narrow the scope of the

⁸ORS 197.835(9)(a) provides:

"Whenever the findings, order and record are sufficient to
allow review, and to the extent possible consistent with the
time requirements of ORS 197.830(14), [LUBA] shall decide all
issues presented to it when reversing or remanding a land use

1 remand to those issues that require further exploration.
2 Id. at 152.

3 In Caine I, petitioner did not present the issues he
4 seeks to raise now as the subject of an assignment of error.
5 Petitioner merely stated, in passing, that TCO 3.006(3)
6 requires the planning director to address the effects of a
7 big game habitat. That statement was made in the context of
8 an assignment of error challenging the county's failure to
9 analyze the ESEE impacts of the proposal under Goal 14
10 factor 5. In Caine I, we did not address the issues
11 petitioner attempts to raise now, and did not include the
12 failure to comply with plan Goal 4 or 5 or TCO 3.006 as a
13 basis for remand. Petitioner did not seek judicial review
14 of Caine I. Accordingly, petitioner cannot assign these
15 issues as error for the first time in this appeal
16 proceeding.

17 Petitioner further argues the county's failures to
18 provide proper notice and comply with other procedural
19 requirements under ORS 197.763 allow him to raise issues
20 that might otherwise be barred by the doctrine of waiver
21 articulated in Mill Creek Glen Protection Assoc., supra. We
22 disagree. The waiver principle recognized in Mill Creek
23 Glen Protection Assoc. predated the enactment of ORS 197.763
24 in 1989. Nothing in ORS 197.763 indicates an intent to

decision described in subsections (2) to (7) of this section
* * *."

1 override the waiver principle articulated in Mill Creek Glen
2 Protection Assoc. ORS 197.763 was intended to limit the
3 issues that could be raised in an appeal to this Board to
4 those issues that were raised during the local proceedings,
5 so long as various procedural requirements were followed.
6 1000 Friends or Oregon v. Benton County, 20 Or LUBA 7, 10
7 (1990). There is nothing in ORS 197.763 to indicate that it
8 is intended to grant new rights to parties to raise issues
9 before this Board that otherwise could not be raised in a
10 subsequent LUBA appeal under the preexisting waiver
11 doctrine. Therefore, while not completely clear, it appears
12 that the court's reasoning in Beck v. City of Tillamook,
13 supra, concerning the narrowing of the scope of issues in a
14 second LUBA appeal pertains, regardless of whether the
15 county failed to comply with applicable requirements of ORS
16 197.763 in its proceedings on remand.

17 Accordingly, petitioner's arguments under plan Goal 4,
18 section 4.12, plan Goal 5, pages 11-14, and TCO 3.006(3)
19 concerning big game habitat are barred by the doctrine of
20 waiver; and we do not consider them further.

21 The fourth assignment of error is denied.

22 **FIFTH ASSIGNMENT OF ERROR**

23 "The county's findings do not identify the future
24 use of the property."

25 **NINTH ASSIGNMENT OF ERROR**

26 "The record does not provide adequate
27 justification for changing the nature of this

1 property or for taking exceptions to the
2 applicable goals."

3 Under these assignments of error, petitioners make
4 several arguments which we address separately below.

5 **A. Goal 3 (Agricultural Lands)**

6 Petitioner argues the county was required to take an
7 exception to Goal 3. Petitioner contends the challenged
8 decision's determination that the subject property is not
9 agricultural land is wrong because the land is designated
10 and zoned SFW-20, and because the plan designates the SFW-20
11 zone as an exclusive farm use zone. Finally, petitioner
12 argues the county's Goal 3 exception is not supported by
13 substantial evidence in the whole record.

14 Intervenor points out the challenged decision contains
15 extensive findings, supported by substantial evidence, that
16 Goal 3 does not apply to the subject property because the
17 subject property is not agricultural land.⁹ Intervenor
18 states that, among other things, the soils on the subject
19 property are classified as U.S. Soil Conservation Service
20 class VI. Intervenor also points out the comprehensive plan
21 does not simply designate the SFW-20 zone as an exclusive
22 farm use (EFU) zone. Rather, the comprehensive plan, page
23 33, states the SFW-20 zone qualifies as an EFU zone, but

⁹The challenged decision also includes alternative findings approving an exception to Goal 3, if it applies.

1 contains land suitable for either farm or forest uses, as
2 follows:

3 "The [SFW-20 zone] is designed for areas where a
4 20-acre minimum is sufficient to provide for farm
5 or forest uses. These lands are generally less
6 suited for resource use than land included in the
7 Farm Zone * * * or Forest Zone * * * because of
8 smaller parcel size, conflicting adjacent uses,
9 adverse physical features and other factors. This
10 includes narrow river valleys [where] ownerships
11 include both steep hill and fairly level bottom
12 land which is not sufficient to sustain either a
13 commercial farm or a commercial forest operation.

14 "Approximately 7,000 acres have been placed in
15 this zone * * *. While at least one-third of
16 these acres have mixed farm-forest
17 characteristics, about 2,500 acres are
18 predominantly farm-type land, while the remaining
19 4,500 acres are predominantly forest-type land.
20 The parcels that contain predominantly farm land
21 average less than 40 acres while those containing
22 forest land average less than 75 acres.

23 "The SFW-20 zone provides adequate protection for
24 the resource value of the type of land included in
25 the zone. The 20-acre minimum assures that land
26 in the zone will not be divided in acreage rural
27 lots. Moreover, land in this zone is retained for
28 farm and forest uses through restrictions on the
29 types of uses allowed in the zone. The SFW-20
30 zone qualifies as an exclusive farm use zone. * *
31 *"

32 We agree with intervenor that these statements in the
33 plan do not conclusively establish the subject property is
34 agricultural land. Other than to argue the plan designates
35 the subject property as agricultural land, petitioner does
36 not explain why the county's findings that the subject
37 property is not agricultural land are inadequate, and we do

1 not see that they are. Accordingly, no exception to Goal 3
2 was required; and this subassignment of error provides no
3 basis of reversal or remand of the challenged decision.
4 DLCD v. Josephine County, 18 Or LUBA 798, 802-03 (1990).

5 This subassignment of error is denied.

6 **B. Goals 5 (Open Space, Scenic and Historic Areas,**
7 **and Natural Resources), 6 (Air, Water and Land**
8 **Resources Quality), 11 (Public Facilities and**
9 **Services) and 12 (Transportation)**

10 Petitioner argues the record lacks substantial evidence
11 to support an exception to Goals 5, 6, 11 and 12. However,
12 the challenged decision does not purport to take an
13 exception to those goals. Rather, the challenged decision
14 contains findings that the proposal complies with them, and
15 petitioner does not challenge those findings. Accordingly,
16 that the record may lack evidence to support an exception to
17 Goals 5, 6, 11 and 12, provides no basis for reversal or
18 remand of the challenged decision.

19 This subassignment of error is denied.

20 **C. Goals 4 and 14**

21 Petitioner argues the county's exceptions to Goals 4
22 and 14 are inadequate.¹⁰ Petitioner argues that when a
23 local government takes an exception to Goals 4 and 14, the
24 following standards apply: ORS 197.732; OAR 660-04-020,

¹⁰Additional issues expressed in the challenged decision concerning the exception to Goal 14 are considered under the eighth and tenth assignments of error.

1 660-04-022, 660-14-040; Goal 2, Part II; plan Goal 2, pages
2 1-2.¹¹

3 Each of these standards have similar, as well as
4 dissimilar, provisions. Petitioner argues that only some of
5 these standards are not met. Petitioner contends the
6 general reasons standard in OAR 660-04-022(1)(a) requiring a
7 "demonstrated need for the proposed use or activity" is not
8 met, because the decision does not establish that additional
9 housing is needed within the county.¹² Petitioner also
10 argues the more specialized reasons exception standards
11 contained in OAR 660-04-022(1)(b) and OAR 660-14-040(2) are
12 not met. Finally, petitioner argues that even if there is a
13 need for additional housing, the county failed to adequately
14 establish that there are (1) no alternative locations in the
15 county that do not require a goal exception that can
16 reasonably accommodate the proposed use, and (2) no
17 alternative locations to satisfy the need that require a
18 goal exception and have significantly less adverse ESEE
19 consequences. We address these issues separately below.

20 **1. Applicability of OAR-660-04-020 and**
21 **660-04-022**

¹¹The county plan at the pages cited by petitioner adds nothing to the statutory and administrative rule standards cited above. Accordingly, we do not address the proposal's compliance with those two pages of the plan.

¹²We note that this demonstrated need standard is also expressed by Goal 14 factors 1 and 2.

1 We recognize that the parties do not argue that
2 OAR 660-04-020 and 660-04-022 do not apply to the challenged
3 decision. Further, it is unclear whether the challenged
4 decision applies the standards of OAR 660-04-020 and
5 660-04-022. However, we believe resolution of this
6 threshold issue is important to a useful disposition of this
7 appeal. Accordingly, we determine whether OAR 660-04-020
8 and 660-04-022 apply to the challenged decision.

9 OAR 660-04-000(1) provides:

10 " * * * Except as provided for in OAR 660 Division
11 14, * * * this Division interprets the exceptions
12 process as it applies to statewide Goals 3 to 19."
13 (Emphasis supplied.)

14 In addition, OAR 660-04-022(1) provides:

15 "For uses not specifically provided for in * * *
16 OAR 660, Division 14, the reasons shall justify
17 why the state policies embodied in the applicable
18 goals should not apply. Such reasons include but
19 are not limited to the following:

20 " * * * * " (Emphasis supplied.)

21 By its own terms, 660-04-022 applies to a reasons exception
22 to applicable goals, only to the extent that OAR 660,
23 Division 14 does not. Further, nothing in OAR 660-04-020
24 and 660-04-022 suggests that either of those rules were
25 intended to impose additional standards to those articulated
26 by OAR 660, Division 14. Therefore, the question is whether
27 OAR 660, Division 14 applies to the proposal.

28 OAR 660-14-000 states that Division 14:

1 "* * * Specifies the satisfactory method of
2 applying Statewide Planning Goals 2, 3, 4, 11 and
3 14 to the incorporation of new cities."

4 OAR 660-14-040, the rule on the incorporation of new cities
5 on undeveloped rural land, includes provisions applicable to
6 "new urban development on rural land." OAR 660-14-040(2).
7 Specifically, OAR 660-14-040(2) provides that:

8 "A county can justify an exception to Goal 14 to
9 allow * * * new urban development on rural land.
10 Reasons which can justify why the policies in
11 Goals 3, 4, 11 and 14 should not apply can include
12 but are not limited to [certain suggested
13 reasons]."

14 The basic issue in this appeal proceeding is whether
15 the county's exceptions to Goals 4 and 14 are adequate.
16 Moreover, there is no dispute that the proposal will allow
17 the placement of urban level development on rural land.¹³
18 Accordingly, OAR 660-14-040 applies to the challenged
19 exceptions to Goals 4 and 14 and OAR 660-04-020 and
20 660-04-022 do not apply. Therefore, no purpose is served in
21 reviewing petitioner's challenges to the proposal's
22 compliance with OAR 660-04-020 and 660-04-022.

23 **2. Applicability of OAR 660-04-010(1)(c)(B) and**
24 **the Seven Goal 14 Factors**

¹³We note that there is no definition of the term urban development or urban use in any relevant statute or in any goal or administrative rule. Thus, the determination of whether a particular proposal is for an urban or rural use requires a case by case analysis. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1986). In this case, the proposal envisions placing 124 dwellings on 54 acres of land. Such a proposal contemplates an urban use.

1 The challenged decision applies OAR 660-04-010(1)(c)(B)
2 and the seven Goal 14 factors, and the parties argue about
3 whether these standards are satisfied by the challenged
4 decision. However, the source of the requirement to apply
5 these standards is unclear. We address this issue first.

6 OAR 660-04-010(1)(c)(B) provides the following:

7 "When a local government changes an established
8 [UGB] it shall follow the procedures and
9 requirements set forth in Goal 2 'Land Use
10 Planning,' Part II, Exceptions. An established
11 [UGB] is one which has been acknowledged * * *
12 under ORS 197.251. Revised findings and reasons
13 in support of an amendment to an established [UGB]
14 shall demonstrate compliance with the seven
15 factors of Goal 14 * * * [.]

16 " * * * * " (Emphasis supplied.)

17 In addition, Goal 14 provides the following:

18 "Urban growth boundaries shall be established to
19 identify and separate urbanizable land from rural
20 land. Establishment and change of the boundaries
21 shall be based upon consideration of the following
22 [seven] factors:

23 " * * * * " (Emphasis supplied.)

24 By their express terms, both OAR 660-04-010(1)(c)(B)
25 and the seven Goal 14 factors apply only to amendments to
26 established UGBs. However, there is no dispute in this
27 appeal that the challenged decision does not amend a UGB.
28 Rather, the challenged decision amends the community growth
29 boundary (CGB) of unincorporated Pacific City, to include
30 the subject property within that CGB. Further, the
31 challenged decision recognizes the Pacific City CGB is not a

1 UGB. Nevertheless, the decision explains at length that the
2 county plan was acknowledged with provisions requiring that
3 the same standards applied to an amendment of a UGB, be
4 applied to an amendment of a CGB.

5 Specifically, the challenged decision states the
6 following concerning the applicability of OAR
7 660-04-010(1)(c)(B) and the seven Goal 14 factors:

8 "The [legal definitions of urban and rural land]
9 leave no room for communities such as Pacific City
10 which are neither incorporated nor fit the
11 definition of 'rural lands.' Yet, we must
12 acknowledge the existence of such communities and
13 plan for them.

14 "This dilemma was explicitly acknowledged and
15 addressed in the Goal 14 Element of the County's
16 Comprehensive Plan (see Exhibit 'A'). After
17 describing the degree of development in Pacific
18 City, this element concludes that this community
19 is 'functionally urban' and that it will be
20 planned 'in accordance with the Urbanization Goal
21 (Goal 14) because this goal best meets planning
22 needs in * * * (this community).'

23 "Accordingly, extension of the community growth
24 boundary for Pacific City is considered analogous
25 to an urban growth boundary revision for one of
26 the county's incorporated towns of like size. It
27 is therefore appropriate that LCDC Rule
28 OAR-660-04-010(1)(c)(B) be used as the basis for
29 presenting findings and reasons in support of the
30 exception required for the proposed community
31 growth boundary extension. This rule requires
32 that the proposal demonstrate compliance with the
33 seven factors of Goal 14 (Urbanization) and also
34 demonstrate that the four standards of a 'reasons'
35 exception can be met.

36 "Since the 'reasons' exception test will be used
37 to meet the Goal 14 portion of the exception,
38 satisfaction of the Goal 4 exception requirements

1 will also be achieved with these findings and
2 conclusions. The Goal 14 Exception requirements
3 are described and addressed in Section IV of this
4 report." Remand Record 42.¹⁴

5 The challenged decision determines the county plan
6 requires that OAR 660-04-010(1)(c)(B) and the seven Goal 14
7 factors be applied to this decision to amend the Pacific
8 City CGB. The challenged decision relies upon plan Goal 14,
9 section 3.12 for this determination. Plan Goal 14,
10 section 3.12, is entitled "Changing Established Community
11 Growth Boundaries for Unincorporated Communities" and
12 provides, in relevant part, as follows:

13 "Findings

14 "Community growth boundaries are not meant to be
15 forever fixed. Changing conditions and community
16 needs require changes in CGB location. In
17 addition, the long term population projections
18 which determine, in part, CGB location are only
19 crude estimates of future population. Population
20 projections are based on the continuation of past
21 trends and are dependent on community values, the
22 economy and other factors. With time, the
23 projections will become increasingly inaccurate.
24 It is important, therefore, to review and revise
25 CGBs periodically.

26 "* * * * *

27 "The Urbanization Goal specifies that future
28 changes in an acknowledged CGB must be based on
29 the seven factors listed in the Goal as well as
30 the procedures and requirements set forth in the

¹⁴In this opinion, we refer to the record submitted in this appeal as "Remand Record ___." We refer to the record originally submitted in Caine I as "Original Record ___."

1 Land Use Planning goal for goal exceptions (see
2 [plan section dealing with UGB amendments]).

3 "Policy

4 "Tillamook County will periodically review
5 community growth boundaries, every 3 to 5 years,
6 to see if they meet community needs. Boundary
7 revisions will be made where necessary. Future
8 community growth boundary changes will be made in
9 accordance with the seven factors listed in the
10 Urbanization Goal (Goal 14) and the procedures and
11 requirements set forth in the Land Use Planning
12 Goal (Goal 2) for goal exceptions."

13 The county's interpretation of its own plan as
14 requiring the application of OAR 660-04-010(1)(c)(B) and the
15 seven Goal 14 factors to the proposed amendment of the
16 Pacific City CGB is not clearly contrary to the express
17 words, policy or context of plan Goal 14, section 3.12; and,
18 therefore, we defer to it. Clark v. Jackson County, 313 Or
19 508, 515, 836 P2d 710 (1992). Accordingly, by virtue of the
20 county's acknowledged comprehensive plan, OAR 660-04-
21 010(1)(c)(B) and the seven Goal 14 factors apply to the
22 challenged decision.

23 The provisions of OAR 660-04-010(1)(c)(B)(i)-(iv) and
24 the seven Goal 14 factors in many respects parallel the
25 provisions of other statutory, goal and administrative rule
26 standards applicable to goal exceptions. Therefore, we
27 address petitioner's challenges to the challenged decision's
28 compliance with OAR 660-04-010(1)(c)(B) and the Goal 14
29 factors together with petitioner's challenges concerning
30 other similar standards, below.

1 **3. ORS 197.732(1)(c)(A) (Reasons to Justify**
2 **Exception)¹⁵**

3 ORS 197.732(1)(c)(A) requires the following standard be
4 met in order to take an exception to an applicable Statewide
5 Planning Goal:

6 "Reasons justify why the state policy embodied in
7 the applicable goals should not apply."

8 With regard to exceptions to Goals 4 and 14 to allow
9 urban development on undeveloped rural land, OAR
10 660-14-040(2) explains how the "reasons" standard of ORS
11 197.732(1)(c)(A) may be satisfied. Also, as made applicable
12 to the challenged decision by the county plan,
13 OAR 660-04-010(1)(c)(B)(i) provides that adequate reasons
14 for taking an exception to Goal 14 can be expressed by a
15 local government's compliance with the seven factors of
16 Goal 14.¹⁶ Further, OAR 660-14-040(2) requires that to take
17 a "reasons" exception to Goal 4 and 14, adequate "reasons":

¹⁵Goal 2, Part II(c) sets forth requirements for a goal exception identical to those specified in ORS 197.732(1)(c). Accordingly, compliance with ORS 197.732(1)(c) establishes compliance with Goal 2, Part II(c), and vice versa.

¹⁶The seven Goal 14 factors are as follows:

- "(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- "(2) Need for housing, employment opportunities, and livability;
- "(3) Orderly and economic provision for public facilities and services;

1 "* * * can include but are not limited to findings
2 that an urban population and urban levels of
3 facilities and services are necessary to support
4 an economic activity which is dependent upon an
5 adjacent or nearby natural resource."

6 The challenged decision appears to provide "reasons"
7 for taking the exceptions to Goals 4 and 14, based on the
8 seven Goal 14 factors and OAR 660-14-040(2). Petitioner
9 challenges the reasons given in the challenged decision for
10 taking exceptions to Goals 4 and 14, on the basis that (1)
11 the seven Goal 14 factors are not satisfied, and (2)
12 inadequate reasons are given in the challenged decision,
13 under OAR 660-14-040(2).

14 Goal 14 factors 1 and 2 express need based reasons for
15 an exception to Goal 14. However, the other Goal 14 factors
16 closely parallel the other, non "reasons" based
17 administrative rule and statutory requirements for taking an
18 exception. Accordingly, petitioner's challenges to the
19 county's compliance with the remaining Goal 14 factors are
20 addressed elsewhere in this opinion.

"(4) Maximum efficiency of land uses within and on the fringe
of the existing urban area;

"(5) Environmental, energy, economic and social consequences;

"(6) Retention of agricultural land as defined, with Class I
being the highest priority for retention and Class VI the
lowest priority; and,

"(7) Compatibility of the proposed urban uses with nearby
agricultural activities."

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a. Goal 14 Factors 1 and 2

Goal 14 factor 1 requires the following:

"[That there is a demonstrated need to accommodate long-range urban population growth requirements consistent with [Land Conservation and Development Commission] goals."

Goal 14 factor 2 requires the following:

"[That there is a need for housing, employment opportunities, and livability."

The challenged decision adopts various findings¹⁷ of compliance with Goal 14 factors 1 and 2, to the effect that there is a large influx of retirees into the Pacific City area and that those retirees can best afford and prefer manufactured housing. In addition, the county adopted the following findings to establish compliance with Goal 14 factors 1 and 2:

"Growth is occurring, and is projected to continue to occur, at a very rapid rate on the Oregon Coast in general, and in Tillamook County in particular. * * * Pacific City is a prime candidate to receive a substantial share of this growth given its status as the principal urban service area in the southern half of Tillamook County, * * * its proximity to the Pacific Ocean and Nestucca Bay, and its many scenic amenities. The only real limit to the growth of Pacific City is the amount of land available for development * * *." Remand Record 47.

¹⁷The findings are located in several different documents and are extremely difficult to follow. Even though all of the findings may not be explicitly referenced in this decision, we have reviewed all findings cited and cross-referenced in the petition for review, the intervenor's brief and the documents comprising the challenged decision.

1 "Demand for housing in the community has increased
2 as a result of the population trends [stated in
3 the above finding]. An addition to the buildable
4 land supply for the community as represented by
5 this request is important due to limitations on
6 development of land in other locations within the
7 CGB * * *." Id.

8 "Much of the area within the Pacific City
9 Community Growth Boundary is either in the flood
10 plain of the Nestucca and Little Nestucca Rivers,
11 within or adjacent to the shoreland and estuary
12 management areas of those rivers or the ocean
13 front or adjacent sand dune system subject to
14 velocity flooding and other dunal development
15 constraints * * *. The request will provide an
16 area for development which is not subject to the
17 problems and constraints found in these areas.

18 "The proposal involves a 54-acre parcel of
19 recently-logged forest land zoned SFW-20, the
20 County's secondary resource zone. It is * * *
21 completely isolated from any ongoing commercial
22 forest management area. * * *

23 "* * * * *

24 "The subject property is, in conjunction with an
25 adjacent undeveloped parcel already within the
26 [CGB], an optimum location to serve the growth
27 needs of the community with the least number of
28 ancillary resources impact problems." Remand
29 Record 48.

30 Petitioner argues that while the challenged decision
31 justifies the plan and zone change, at least in part, based
32 on the basis of a need for low cost manufactured housing for
33 elderly people, there is nothing in the challenged decision
34 requiring the subject property to be developed for that
35 purpose.

1 We agree with petitioner that nothing in the challenged
2 decision establishes a need for low cost manufactured
3 housing for the elderly to justify replanning and rezoning
4 the subject parcel. In addition, the challenged decision
5 fails to establish how much land is required to satisfy any
6 such need. Baker v. Marion County, ____ Or LUBA ____ (LUBA
7 No. 92-174, February 16, 1993), slip op 7-8. In other
8 words, nothing in the challenged decision explains why the
9 entire 54 subject acres are required to be replanned and
10 rezoned to satisfy any need which the county determines
11 exists.¹⁸ Further, there is nothing in the challenged
12 decision which establishes a "demonstrated need to
13 accommodate long-range urban population requirements" under
14 Goal 14 factor 1. In order to demonstrate compliance with
15 Goal 14 factor 1, the county would be required to amend the
16 population projections in the acknowledged plan or amend the

¹⁸There are findings to the effect that intervenor states he needs at least 40 acres to develop a project which features lot sizes of 2.4 acres each. The findings go on to state:

"At previous hearings it was indicated that this lower density would allow the Applicants to allow for topographical difficulties such as steep slopes. * * * Also as water, sewer and electrical service have to be extended to the property, enough units have to be allowed to make the development cost effective. Applicants have maintained that they need at least 40 acres minimum to develop this project and due to the terrain, more acreage would be preferable." Remand Record 105.

These findings are inadequate to provide a justification of why the entire 54 acres is an appropriate amount of rural land to convert to urban residential use, or why 54 acres is required to satisfy any identified need for additional dwelling units.

1 assumptions applied to those figures. 1000 Friends of
2 Oregon v. Metro Service Dist., 18 Or LUBA 311, 318 n 6;
3 BenjFran Development Inc., v. Metro Service Dist., 17 Or
4 LUBA 30, 42 (1988), aff'd 95 Or App 22 (1989). Finally, it
5 is not clear whether the challenged decision attempts to
6 justify the purported need on the basis of a subregional
7 need in southern Tillamook County, or whether the need is
8 justified on the basis of the county as a whole, but the
9 decision determines that the need can best be satisfied in
10 southern Tillamook County due to development constraints or
11 other reasons.¹⁹ See Friedman v. Yamhill County, _____ Or
12 LUBA ____ (LUBA No. 91-200, May 27, 1992), slip op 4 n 2.

13 This subassignment of error is sustained.

14 **b. OAR 660-14-040(2)**

15 OAR 660-14-040(2) provides:

16 "A county can justify an exception to Goal 14 to
17 allow * * * establishment of new urban development
18 on undeveloped rural land. Reasons which can
19 justify why the policies in Goals [4 and 14]
20 should not apply include, but are not limited to
21 findings that an urban population and urban levels
22 of facilities and services are necessary to
23 support an economic activity which is dependent
24 upon an adjacent or nearby natural resource."
25 (Emphasis supplied.)

¹⁹Because we determine the findings are inadequate, no purpose is served in reviewing the evidentiary support for the county's determination of need under Goal 14 factors 1 and 2. Forster v. Polk County, 22 Or LUBA 380, 388 (1991); DLCD v. Columbia County, 16 Or LUBA 467 (1988).

1 The challenged decision determines compliance with
2 OAR 660-14-040(2) based on findings to the effect that
3 either retired persons are an economic activity dependent
4 upon a nearby natural resource, or that retired persons are
5 a natural resource who generate economic activity. However,
6 even assuming that retired persons constitute an economic
7 activity, the challenged decision does not explain in what
8 way the economic activity of retired persons is dependent
9 upon a natural resource.²⁰ Further, it is incorrect to
10 determine that retired people are a natural resource.²¹

11 In addition, intervenor argues that OAR 660-14-040(2)
12 allows the county to justify an exception to Goals 4 and 14
13 based on reasons other than those specifically stated in the
14 rule. In this regard, intervenor argues the challenged
15 decision establishes such an alternative reason for to
16 justify the exception. Specifically, intervenor states:

17 "The [plan] states that there is a need to
18 accommodate approximately 670 additional housing
19 units in Pacific City by 2000. The [CGB] can only
20 accommodate 530 additional housing units, or 140
21 units short of the anticipated need. * * *"
22 Intervenor's Brief 36.

²⁰We note that we are skeptical that the county could establish retired persons are an economic activity dependent upon a natural resource.

²¹The statewide planning goals include the following definition of the term "natural resources":

"Air, land and water and the elements thereof which are valued for their existing and potential usefulness to man."

1 However, intervenor provides no citation to the any part of
2 the challenged decision which articulates such a reason.

3 We have examined the challenged decision and do not
4 find any such reason stated. Specifically, nowhere does the
5 challenged decision say that the CGB is 140 housing "units"
6 short of being able to accommodate the anticipated need for
7 housing units within the CGB as projected by the
8 acknowledged plan. There are several places in the decision
9 and the record where there are findings and evidence that
10 one might be able to rely on to piece together such a
11 determination. However, piecing together sufficient
12 findings and evidence to support such a determination is not
13 the function of this Board. See Eckis v. Linn County, 110
14 Or App 309, 821 P2d 1127 (1991). Further, because the
15 "reason" advanced by intervenor requires an interpretation
16 by the county of its acknowledged plan provisions relating
17 to the Pacific City CGB, it is the county that must express
18 such as interpretation, in a manner adequate for review, in
19 the first instance. Weeks v. City of Tillamook, 117 Or
20 App 449, ___ P2d _____ (1993).

21 Therefore, we conclude that the county has not
22 expressed, in the challenged decision, adequate reasons to
23 justify exceptions to Goals 4 and 14.

24 This subassignment of error is sustained.²²

²²This provides a sufficient basis to remand the challenged decision. However, because we believe it may be helpful to the parties, and

1 **4. ORS 197.732(1)(c)(B) and**
2 **OAR 660-14-040(3)(a)**

3 ORS 197.732(1)(c)(B) requires a determination that:

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

6 For an exception to Goals 4 and 14 to allow new urban
7 development on undeveloped rural land, OAR 660-14-040(3)(a)
8 requires findings that:

9 "* * * the proposed urban development cannot be
10 reasonably accommodated in or through expansion of
11 existing urban growth boundaries or by
12 intensification of development at existing rural
13 centers."

14 The challenged decision is confusing regarding the
15 application of these standards. Although the decision
16 appears to determine the existence of a "demonstrated need"
17 for more housing, on a county wide basis, the decision only
18 analyzes alternative locations to satisfy that need in the
19 immediate area of the subject property. However, in the
20 absence of an adequate explanation of why it should be
21 analyzed differently, the county's analysis of alternative
22 areas which do not require a new goal exception must match
23 the area generating the established need. See Roden
24 Properties v. City of Salem, 17 Or LUBA 1249, 1263 (1989).

25 This subassignment of error is sustained.

ultimately this Board, if this case is again appealed after our decision here, we review petitioner's other subassignments of error. ORS 197.835(9)(a).

1 **4. OAR 197.732(1)(c)(C); OAR 660-14-040(3)(b)**
2 **and Goal 14 Factor 5**

3 Petitioner argues the proposal fails to supply an
4 adequate ESEE consequences analysis, as required by
5 ORS 197.732(1)(c)(C),²³ OAR 660-14-040(3)(b),²⁴ and Goal 14
6 factor 5.

7 At the outset we note that Goal 14 factor 5 requires
8 consideration of the ESEE consequences of designating the
9 subject property for urban, rather than rural, uses. Knapp
10 v. City of Jacksonville, 20 Or LUBA 189, 202 (1990). This
11 is somewhat different than the ESEE analysis required for
12 adoption of a "reasons" goal exception. For an exception to

²³ORS 197.732(1)(c)(C) requires that:

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

²⁴OAR 660-14-040(3)(b) requires an analysis:

"* * * showing the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

"(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

"(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area."

1 Goals 4 and 14 to allow urban development on undeveloped
2 urban land, OAR 660-14-040(3)(b) requires a comparison of
3 the long-term ESEE consequences of the proposed urban
4 development at the proposed site, with the consequences of
5 locating the proposed urban use on other undeveloped rural
6 lands, based on a consideration of certain specified
7 factors, and a demonstration that the ESEE consequences are
8 not significantly more adverse at the proposed site.²⁵

9 As far as we can tell in the challenged decision, the
10 county adopted a single ESEE analysis both to justify the
11 exceptions taken to Goal 4 and Goal 14 and to demonstrate
12 compliance with Goal 14 factor 5. Similarly, petitioner
13 challenges the ESEE analysis without differentiating between
14 the requirements for exceptions to Goals 4 and 14 and
15 compliance with Goal 14 factor 5.

16 Petitioner's arguments are largely unfocused
17 evidentiary challenges to the county's ESEE analysis.
18 Specifically, petitioner argues the county's ESEE analysis
19 is inadequate because there is no evidence to show the
20 environmental consequences of the proposal on big game
21 habitat. Petitioner also argues there is no:

22 "specific evidence in the record as to the effects
23 [of the proposal] on the water table, the costs of
24 improving roads or the costs of any special
25 districts. There is nothing in the record to

²⁵We note that both of the above mentioned ESEE analyses are different from the ESEE analysis required by Goal 5.

1 evidence the likelihood of costs of overcoming
2 these problems." Petition for Review 38.

3 Petitioner contends there is no evidence in the record of
4 projected economic costs or effects for any of the
5 facilities." Id. Petitioner also claims that there is no
6 evidence concerning the availability of emergency services
7 to serve the proposal, or how schools or hospitals, sewers,
8 "road plans" and service districts will be affected by the
9 proposal. Id.

10 There is evidence in the record that if the applicant
11 complies with the requirements of the Pacific City Water
12 District, the district could provide adequate water service
13 to serve the proposed development. Remand Record 561-62.
14 Therefore, there is evidence in the record concerning water
15 availability and concerning the impact of serving the
16 proposed development on the water service district, contrary
17 to petitioner's assertion.

18 There is evidence in the record that the Pacific City
19 Sanitary District could provide sewer service to the
20 proposed development. Original Record 345. Therefore,
21 there is evidence in the record concerning the availability
22 of sewers, contrary to petitioner's assertions.

23 We are cited to no findings and no evidence in the
24 record establishing the consequences of the proposal on big
25 game habitat. Clearly, wildlife habitat constitutes an
26 environmental asset. One of the required considerations in
27 an ESEE analysis is a consideration of a proposal's impact

1 on the environment. Regardless of the fact that the issue
2 of compliance with TCO and plan standards concerning big
3 game habitat has been waived (see discussion under the
4 fourth assignment of error, supra), the environmental
5 consequences of the proposal must be considered in the ESEE
6 analysis required by applicable statutory, goal and
7 administrative rule provisions. The county's failure to do
8 so is error.

9 Further, we understand petitioner to argue there is
10 evidence in the record that the volunteer fire department
11 serving Pacific City is already overburdened and could not
12 serve the proposal without adversely impacting the service
13 adjacent landowners currently enjoy. We are cited to no
14 findings or evidence establishing the ESEE consequences of
15 the proposal on the availability to emergency services. On
16 remand, if the county wishes to reapprove the proposal, it
17 must adopt such an analysis supported by substantial
18 evidence.

19 Petitioner's arguments concerning the cost of improving
20 roads, and the impact of the proposal on schools and
21 hospitals, are too unfocused to merit review. Consequently
22 we do not consider these arguments further. Deschutes
23 Development v. Deschutes County, 5 Or LUBA 218, 220 (1982).
24 We note that petitioner may be asserting the challenged
25 decision violates the following provision of

1 OAR 660-04-020(2)(c) identifying other possible ESEE
2 impacts:

3 "* * * Other possible impacts include the effects
4 of the proposed use on the water table, on the
5 costs of improving roads and on the costs to
6 special service districts."

7 However, we determine above that OAR 660-04-020 is
8 inapplicable to the challenged decision. Therefore, an
9 argument in this regard provides no basis for reversal or
10 remand of the challenged decision.

11 Finally, as we understand it, petitioner also argues
12 the county included more land within the CGB than is
13 appropriate contrary to OAR 660-14-040(3)(b)(A). We agree
14 with petitioner that the challenged decision fails to
15 include an adequate explanation of why it is appropriate to
16 include the entire 54 acre parcel within the UGB for new
17 urban uses.²⁶

18 This subassignment of error is sustained, in part.

19 The fifth and ninth assignments of error are sustained.

20 **SIXTH ASSIGNMENT OF ERROR**

21 "The county has undisclosed ex parte contacts with
22 respondent-intervenor."

23 Under this assignment of error, petitioner complains
24 intervenor submitted proposed findings to the county and the

²⁶A large part of the problem with the challenged decision's compliance with OAR 660-14-040(3)(b)(A) is that the determination of the appropriateness of the amount of land included is dependent upon an adequate statement of reasons justifying the exception in the first place. As we explain above, the reasons given for the exception are inadequate.

1 county adopted those findings. Petitioner argues that this
2 amounts to impermissible ex parte contacts between the local
3 decision maker and intervenor.

4 We do not believe that a party's submission of proposed
5 findings to a local decision maker constitutes an ex parte
6 contact warranting reversal or remand. It is often the case
7 that the local government directs the prevailing party to
8 submit proposed findings, which it may modify or adopt as
9 submitted. In the absence of a local code provision to the
10 contrary, there is no error in a local government's
11 utilization of such a process. See Adler v. City of
12 Portland, ___ Or LUBA ____ (LUBA No. 92-041, September 1,
13 1992).

14 The sixth assignment of error is denied.

15 **SEVENTH ASSIGNMENT OF ERROR**

16 "The record fails to provide sufficient evidence
17 to support a conclusion that the land is better
18 suited for an R-2 Zone."

19 This assignment of error relates to the determination
20 in the challenged decision that:

21 "[TCO] 9.020(3)(c) requires that the site is
22 better suited to the purposes of the proposed zone
23 than it is to the purposes of the existing zone.
24 This is met by [various findings elsewhere in the
25 decision.]" Remand Record 38.

26 The findings cited in the above quoted conclusion rely
27 upon attachments 21 and 22. Under the third assignment of
28 error, supra, we determine the county improperly accepted
29 attachments 21 and 22 as evidence after the close of the

1 evidentiary hearing, without providing an opportunity for
2 rebuttal. On remand, the county will be required to reopen
3 the record to allow petitioner an opportunity to respond to
4 attachments 21 and 22. Accordingly, on remand, the county
5 will be required to evaluate the evidence it relies upon in
6 adopting this conclusion in light of petitioner's rebuttal
7 evidence and argument. Under these circumstances, no
8 purpose is served in reviewing petitioner's arguments that
9 on the existing evidence in the record, the above mentioned
10 finding is erroneous.

11 The seventh assignment of error is sustained.

12 **EIGHTH ASSIGNMENT OF ERROR**

13 "The record does not establish compatibility as
14 required by county ordinance and comprehensive
15 plan."

16 **TENTH ASSIGNMENT OF ERROR**

17 "The county's decision does not comply with
18 OAR 660-14-040."

19 Under this assignment of error, petitioner argues the
20 county erroneously construed ORS 197.732(1)(c)(D),
21 administrative rule, county plan and TCO compatibility
22 standards,²⁷ and one rule standard not related to

²⁷As a prerequisite to taking a "reasons" goal exception, ORS 197.732(1)(c)(D) requires a determination that:

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

1 compatibility.²⁸ Petitioner contends there is no evidence
2 that public facilities and services are available to the
3 subject property. In addition, petitioner argues there is

OAR 660-04-010(1)(c)(B)(iv), made applicable to the challenged decision by the county plan, states standards identical to those in ORS 197.732(1)(c)(D), quoted above.

OAR 660-14-040(3)(c) provides that in adopting an exception to Goal 14 to allow urban development on rural land, the following must be shown:

"* * * the proposed uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

"(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services, and

"(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured."

Plan Goal 14, section 2.7 (made applicable through plan Goal 14, section 3.12, discussed supra), requires the following:

"* * * a finding that the proposed uses will be compatible with other adjacent uses."

TCO 9.020(3)(d) requires the following:

"* * * the development anticipated to result from the proposed zone shall not impair the actual or legally designated uses of surrounding properties."

For purposes of these assignments of error, we call these standards the "compatibility" standards. Finally, we note that in these assignments of error petitioner raises issues previously discussed and resolved under the ninth assignment of error concerning the adequacy of the exception to Goals 4 and 14. We do not reconsider those issues here.

²⁸Petitioner argues the challenged decision fails to establish compliance with OAR 660-14-040(3)(d), which requires for an exception to Goal 14:

"That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner."

1 no evidence concerning the effect of the proposed 124 unit
2 residential development on such services, even if they could
3 be extended to the subject property. Petitioner also
4 maintains there is no evidence that a water source for the
5 proposed development exists or is likely to exist, as
6 required by OAR 660-14-040(3)(d).²⁹ Petitioner further
7 argues there is no evidence in the record that the proposed
8 residential development will be compatible with forest uses
9 on nearby SFW-20 zoned land. Specifically, petitioner
10 argues the road proposed to serve the development will
11 adversely impact nearby forestry operations. Moreover,
12 petitioner states the proposal will not be compatible with
13 nearby residentially zoned land. Petitioner argues the
14 proposed rezoning will lead to extensive residential
15 development requiring a domestic water supply, which will
16 impair the Pacific City Water Service District's ability to
17 serve existing residential customers. We address each of
18 these compatibility concerns below.

19 **A. Water**

20 As we understand it, the domestic water needs of the
21 residential development proposed for the property are to be
22 satisfied from a groundwater source and storage facility on
23 the subject property itself. However, the distribution of

²⁹As we understand it, the domestic water needs of the residential areas to which petitioner refers in the petition for review are served by the Pacific City Water District.

1 the water from such groundwater source and storage facility
2 is to be managed by the Pacific City Water District.
3 Intervenor cites two letters in the record from the district
4 stating, among other things, that if such a groundwater
5 source and water storage facility were established on the
6 subject property, then the district would annex the subject
7 property and provide water service.

8 If intervenor satisfies the conditions of annexation
9 specified by the water district, we believe there is
10 substantial evidence that once the property is annexed to
11 the water district, there will be an adequate water supply
12 to serve the subject property without adversely impacting
13 the water district, adjacent residential areas or other
14 district users. However, there is no condition of approval
15 specifying that the applicant must establish a water source
16 and storage facility on the property sufficient to annex to
17 the water district.

18 This subassignment of error is sustained, in part.

19 **B. Forest Uses**

20 Petitioner argues the proposal is incompatible with
21 forest uses of adjacent property.

22 As far as we can tell from the challenged decision, the
23 subject property was managed as part of a forest operation
24 and, until 1989, was owned by a timber company. The timber
25 company logged the subject property in 1989. Sometime
26 thereafter, the timber company sold the subject property to

1 intervenor. Apparently, the remainder of the property that
2 was managed as a forest operation, is the only adjacent
3 forest parcel in the area.³⁰ The challenged decision does
4 not establish whether the proposal is compatible with that
5 adjacent forest parcel and any potential or existing forest
6 uses of that parcel. Rather, the decision takes the
7 position that the adjacent forest land is not very good
8 forest land, that it will likely be converted to residential
9 uses in the future, and on these bases determines the
10 proposal to be compatible with forest uses. However, these
11 findings are a far cry from establishing the proposal's
12 compatibility with nearby forest uses. Such findings
13 suggest the proposal may be incompatible with the existing
14 or potential forest uses of nearby properties because it
15 will encourage the conversion of such forest land to
16 residential uses.

17 This subassignment of error is sustained.

18 **C. OAR 660-14-040(3)(d)**

19 Petitioner asserts that:

20 "The Record lack[s] any significant evidence as to
21 where road access to the development will go or
22 what effect the road site will have on resource
23 land, adjacent uses and existing road facilities.
24 It cannot be said that the road facilities are
25 likely to be provided in a timely and efficient

³⁰On remand, it would be helpful if the county would identify a particular area for consideration of compatibility issues and provide a clear statement as to the nature of the forest operations in that area.

1 manner as required by OAR 660-14-040(3)(d). * * *"
2 Petition for Review 47.

3 This argument is inadequately developed to state a
4 basis for reversal or remand of the challenged decision.
5 Deschutes Development Co. v. Deschutes County, supra.

6 This subassignment of error is denied.

7 The eighth and tenth assignments of error are
8 sustained, in part.

9 The county's decision is remanded.