

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 JAMES M. SMITH AND TONI J. SMITH,
5 *Petitioners,*

6
7 vs.

8
9 DOUGLAS COUNTY,
10 *Respondent,*

11 and

12
13 THOMAS H. IRELAND, INC.
14 *Intervenor-Respondent.*

15
16 LUBA No. 99-104

17
18 FINAL OPINION
19 AND ORDER

20
21
22 Appeal from Douglas County.

23
24 Ralph O. Bloemers, Portland, filed the petition for review. With him on the brief was
25 Stoel Rives LLP.

26
27 Paul E. Meyer, Assistant County Counsel, Roseburg, represented respondent.

28
29 Stephen Mountainspring, Roseburg, represented intervenor-respondent.

30
31 BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member,
32 participated in the decision.

33
34 REMANDED

03/24/2000

35
36 You are entitled to judicial review of this Order. Judicial review is governed by the
37 provisions of ORS 197.850.

38

1

2 **NATURE OF THE DECISION**

3 Petitioners appeal the county’s decision approving a quasi-judicial comprehensive
4 plan and zoning map amendment, and amending the Myrtle Creek-Tri City urban growth
5 boundary (UGB).

6 **MOTION TO INTERVENE**

7 Thomas H. Ireland, Inc. (intervenor), the applicant below, moves to intervene on the
8 side of the county. There is no opposition to the motion and it is allowed.

9 **FACTS**

10 The subject property is a 2.53-acre parcel located adjacent to the South Umpqua
11 River. A .73-acre portion of the property lies outside the UGB, and is designated Agriculture
12 Cropland in the comprehensive plan and zoned Exclusive Farm Use 20-acre (F-1). Soils on
13 the .73-acre portion are Evans Loam, Class III, classified as high-value agricultural soil. The
14 remaining 1.8-acre portion of the property is within the UGB, and is designated Community
15 Commercial on the plan map and zoned Community Commercial. Nearly all of the subject
16 property is within the 100-year floodplain boundary of the river, and the western half of the
17 site is also within the river’s floodway boundary.¹

18 Intervenor applied to the county to amend the UGB and adopt comprehensive plan
19 and zoning map amendments to allow the development of a 20-unit recreational vehicle (RV)
20 park on the subject property. The requested amendments (1) expand the UGB to include the
21 .73-acre portion; (2) amend the plan designation of that portion from Agriculture Cropland to
22 Tourist Commercial, and its zoning from F-1 to Tourist Commercial; and (3) amend the plan
23 designation of the remaining portion from Community Commercial to Tourist Commercial

¹The county code defines “floodway” as “[t]he channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.” Land Use Development Ordinance (LUDO) 3.30.200.

1 and the zoning from Community Commercial to Tourist Commercial.

2 On May 15, 1997, the county planning commission approved the proposed
3 amendments. Petitioners, who own and operate a farm adjacent to and downstream from the
4 subject property, appealed that decision to the county board of commissioners. On July 23,
5 1997, the board of commissioners affirmed the planning commission decision, adopting the
6 planning commission's findings of fact and decision as its own. Petitioners appealed to
7 LUBA. The county then requested a voluntary remand from LUBA. On remand, the county
8 planning commission conducted additional proceedings and, on April 15, 1999, again
9 approved the proposed amendments, adopting new findings. Petitioners appealed to the
10 board of commissioners, who affirmed the planning commission decision on June 9, 1999,
11 adopting the planning commission's findings and decision as its own.

12 This appeal followed.

13 **INTRODUCTION**

14 Neither respondent nor intervenor-respondent chose to file a response brief in this
15 case, and petitioners declined to present oral argument. Therefore, we must resolve
16 petitioners' assignments of error based solely on the record and on the arguments in the
17 petition for review. The inherent difficulty of doing so without the full assistance of the
18 parties is compounded by the fact that the challenged decision is over one hundred pages
19 long, and adopts or incorporates as additional "findings" numerous documents or reports
20 which are neither appended to the decision nor identified in the record table of contents.
21 Neither the decision nor the petition for review identify the location of these additional
22 findings in the four-volume record. In addition, the petition for review sometimes challenges
23 the county's decision on particular grounds without acknowledging the existence of relevant
24 findings addressing those grounds in the challenged decision. Without assistance from the
25 parties, we will not comb the record to locate incorporated findings that are not contained in

1 or appended to the decision. Consequently, we resolve petitioners’ challenges based on the
2 findings that are contained in or appended to the challenged decision at Record 2-105.

3 **FIRST ASSIGNMENT OF ERROR**

4 Petitioners argue that the challenged decision violates Statewide Planning Goal 7
5 (Natural Disasters and Hazards) and related provisions of the Douglas County
6 Comprehensive Plan (DCCP), and is not supported by adequate findings and substantial
7 evidence.²

8 Petitioners contend that the county’s decision allows development on property that is
9 located in both the 100-year floodplain and the floodway of the South Umpqua River,
10 without adequately addressing the danger to downstream property owners, or mitigating the
11 potential for flood damage to downstream properties caused by placing fill on parts of the
12 property within the floodplain. Petitioners also argue that the county failed to condition uses
13 on the property to prevent potential flood damage, and failed to consider the effect of recent
14 floods in 1996 that eroded part of the floodplain on the subject property and effectively
15 added parts of the floodplain into the floodway. Petitioners cite to evidence in the record that
16 even a “periodic flood,” much less a “100-year” flood, would expose petitioners’ farming
17 property to fuel, oil, chemicals, human waste and other debris from any development on the
18 subject property, including an RV park.

19 To reduce the risks of damage from flooding, the county imposed two conditions: (1)
20 that RVs and other personal property be removed when major flooding threatens, and (2) that

²Goal 7 is:

“To protect life and property from natural disasters and hazards.

“Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.

“* * * *”

1 picnic tables and other equipment in the RV park be secured when major flooding threatens.
2 The county also relied on the standards in LUDO 3.30.460(3), which require either that RVs
3 placed in flood hazard areas stay for no more than 90 consecutive days, or that such RVs be
4 highway ready, using only quick-disconnect type utilities, to find that petitioners' concerns
5 regarding flood damage from the RV park are unwarranted.³ The county ultimately adopted
6 nine pages of findings that addressed petitioners' Goal 7 flood hazard concerns. In
7 particular, the county found:

- 8 "1. There will be no material hazard to users of the subject property
9 because all RVs will be evacuated well in advance of flood danger.
- 10 "2. The floodplain overlay prohibits structures in the floodway, which will
11 protect the Smiths from the subject property being a source of
12 structural debris or increasing the level of the flood waters.
- 13 "3. Gravel the operator may place for driveways and spaces in the RV
14 park may be moved by flood waters, but the effect from that gravel on
15 the Smith property will be absolutely minuscule compared to the vast
16 amount of debris and gravel the flood waters will have collected in the
17 900,000-acre upstream drainage.
- 18 "4. The applicant will anchor moveable equipment such as picnic tables to
19 prevent them from floating off.
- 20 "5. The Smiths will be protected from sewage outflow from the RV park
21 because the RV units will be removed when flooding threatens, the
22 sewage lines are required to and will have backflow prevention
23 devices, and the sewage connectors are required to and will have tight
24 fitting caps secured by a durable chain to prevent loss." Record 26-27.

³LUDO 3.30.460(3) provides:

"Recreational vehicles placed on sites within the floodplain shall also meet the placement requirements [of LUDO 3.30.460(2)(a) through (c)] unless they either:

- "a. [Are] on the site for fewer than 90 consecutive days, or
- "b. [Are] fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions."

1 Goal 7 prohibits development in natural hazard areas “without appropriate
2 safeguards.” Petitioners’ arguments under this assignment of error boil down to an assertion
3 that the safeguards the county imposed here are insufficient. For example, petitioners
4 contend that the county’s reliance on LUDO 3.30.460(3) is misplaced because, contrary to
5 the county’s belief, that provision does not require quick-disconnect utilities and highway
6 ready RVs. Instead, petitioners point out, those requirements apply only to RVs that stay
7 more than 90 consecutive days. Petitioners also fault the county for allegedly failing to
8 consider changes in the floodplain/floodway caused as a result of recent floods, the fill
9 recently placed on the subject property, and the additional fill that must be placed on the
10 property in order to develop it as an RV park.

11 The county considered and rejected petitioners’ arguments regarding the
12 consequences of changes to the floodplain/floodway and the fill that was placed on the
13 subject property. Record 22-23; Record 28. Petitioners do not challenge or identify any
14 error in those findings, and we do not consider petitioners’ arguments on those matters
15 further. With respect to the issue of whether additional fill must be placed on the subject
16 property to develop it as an RV park, and the consequences of such fill on flood hazard
17 issues, petitioners cite to Record 331 as evidence that the applicant will have to construct an
18 access driveway from the highway down to the flat area near the river where the RV sites
19 will be located. According to petitioners, this will result in further filling in the floodplain.
20 However, Record 331 contains no reference to access driveways or further fills. Petitioners
21 have not demonstrated that the county erred in failing to address or consider the issue of
22 future fill on the subject property in finding compliance with Goal 7.

23 With respect to LUDO 3.30.460(3), the county relied on that provision to find that
24 RVs on the property “shall be temporary and ready for highway use, utilizing only quick
25 disconnect type utilities.” Record 22. However, petitioners argue that the actual effect of
26 LUDO 3.30.460(3) is that RVs on the property must be *either* temporary *or* ready for

1 highway use, etc. *See* n 3. Thus, petitioners argue, the county cannot rely on LUDO
2 3.30.460(3) to assure highway ready status for RVs staying less than 90 days in the park.

3 Petitioners are correct that LUDO 3.30.460(3) does not require highway ready status
4 and quick-disconnect utilities for RVs placed in flood hazard zones less than 90 consecutive
5 days. However, we disagree that the county erred in relying on LUDO 3.30.460(3) as one of
6 the “appropriate safeguards” required to comply with Goal 7 and county provisions
7 implementing Goal 7, or that the county’s misstatement of the effect of LUDO 3.30.460(3)
8 demonstrates that the proposed amendment does not comply with Goal 7. The county found
9 that “the RV park will be constructed and operated in a manner assuring that RVs on the
10 property [will] be removed well in advance of flooding conditions,” and conditioned
11 approval to require removal of all RVs when flooding threatens. Record 22. Petitioners do
12 not challenge that finding, or explain why that condition cannot be met, notwithstanding that
13 RVs staying less than 90 days in the proposed park are not subject to LUDO 3.30.460(3)(b).
14 We conclude that petitioners have not established that the county has approved development
15 in the flood hazard zone without the “appropriate safeguards” required by Goal 7.

16 The first assignment of error is denied.

17 **SECOND ASSIGNMENT OF ERROR**

18 Petitioners argue that the county’s UGB amendment with respect to the .73-acre
19 portion of the subject property fails to comply with Statewide Planning Goal 14
20 (Urbanization), and is not supported by adequate findings or substantial evidence.⁴ In
21 particular, petitioners contend that the decision fails to demonstrate compliance with each of
22 the seven Goal 14 factors that govern establishment and change of UGBs.⁵

⁴Goal 14 is “[t]o provide for an orderly and efficient transition from rural to urban land use.”

⁵Goal 14 requires that

“* * * Establishment and change of the [UGB] shall be based upon considerations of the following factors:

1 **A. Factors 1 and 2 (Need)**

2 The county adopted 10 pages of findings addressing the first and second factors of
3 Goal 14, finding that the applicant had demonstrated both a general need for more
4 commercially zoned land within the UGB and a specific need for additional RV parks within
5 the UGB. With respect to the need for more commercial land, the county noted that the ratio
6 of commercial land to population had declined from 10.85 acres per 1,000 persons in 1980 to
7 6.79 acres per 1,000 in 1997, far below what the county found to be the “minimum required
8 for a viable community.” Record 53. With respect to the specific need for more RV parks,
9 the county adopted and relied on the applicant’s survey of RV parks within the UGB to
10 conclude that there was a need for RV parks in general and a particular need for the type of
11 RV park proposed here, which the county designated a “category I” park. Record 57.⁶

12 Petitioners do not dispute the county’s general finding of need for additional
13 commercial land, but fault the findings regarding need for more RV parks and the proposed
14 RV park in particular. Petitioners argue that the county’s classification of RV parks is
15 arbitrary, that other RV parks within the UGB in other “categories” are not fundamentally

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- “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;
 - “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.”

⁶As far as we can tell, a “category I” RV park is one that allows indeterminate occupancy (greater than 5-7 days), is well maintained, is directly accessible from an arterial or major collector road, is located away from the immediate vicinity of Interstate 5, and has river access. Record 57. Other “categories” of RV parks presumably lack one or more of these features.

1 different from the proposed park, and that large vacancies at some of those other parks
2 indicate no need for an additional park or an additional “category I” park.

3 Goal 14, factors 1 and 2 require a demonstrated need to accommodate long-range
4 urban population growth requirements, and a need for housing, employment opportunities
5 and livability. Generally, a local government can demonstrate a need under Goal 14, factors
6 1 and 2 by demonstrating either that the projected population within the UGB has increased
7 above the estimates used to create the UGB, or that the supply of land within the UGB is no
8 longer adequate to meet the projected population over the relevant planning period, or both.
9 *DLCD v. Douglas County*, 36 Or LUBA 26, 33 (1999) (rejecting challenges to the county’s
10 findings that there is a need under Goal 14, factors 1 and 2 for additional commercially zoned
11 land within the Myrtle Creek-Tri City UGB); *BenjFran Development v. Metro Service Dist.*,
12 17 Or LUBA 30, 42 (1988), *aff’d* 95 Or App 22, 767 P2d 467 (1989). Goal 14, factors 1 and
13 2 do not require that, when the county has demonstrated a need for additional commercial
14 land, the county must also demonstrate a specific need for the *particular* commercial use
15 proposed by the owner of land being considered for inclusion within the UGB. However, as
16 part of considering Goal 14, factors 3-7, and the Goal 2 exceptions criteria, the county
17 conducted an alternative sites analysis that relied heavily on the identified specific need for a
18 “category I” RV park. Because the county’s alternative sites analysis relies on a specific
19 need, the county must have established that need in considering factors 1 and 2. *BenjFran*
20 *Development*, 17 Or LUBA at 48.

21 The county’s findings conclude that there is a demographic need for additional RV
22 parks in the urban area and that the general “need for additional commercial land must be
23 partly met by allocating some of that additional land to RV parks.” Record 58-59. The
24 county identified a need for additional “category I” RV parks, and explained why existing or
25 potential RV parks within or near the UGB do not meet that need. Record 57-58. Petitioners
26 challenge those findings, arguing that the county’s “categories” are arbitrary, and that the

1 county’s conclusions that existing or potential RV parks do not meet the identified need are
2 undermined by other evidence in the record.

3 With respect to the county’s classifications, petitioners are correct that the
4 “categories” identified by the applicant and adopted by the county are based on features that
5 conveniently distinguish the proposed RV park from other parks. In *BenjFran Development*,
6 LUBA affirmed Metro’s determination that the applicant for a UGB amendment had failed to
7 show a “need” under Goal 14, factors 1 and 2 for a specific type of industrial park. We held
8 that “Metro is not required to amend its UGB to provide appropriate land to accommodate
9 every new industrial land marketing technique enjoying success in other major urban real
10 estate markets.” 17 Or LUBA at 40. While a local government is not *required* to amend its
11 UGB to accommodate a specific type of proposed use, petitioners have not cited anything in
12 Goal 14 or elsewhere that prohibits a local government from attempting to identify a specific
13 type of use as a “need” under Goal 14, factors 1 and 2.

14 We turn then to petitioners’ evidentiary challenges to the county’s Goal 14, factors 1
15 and 2 findings. Petitioners cite to evidence in the record that indicates that existing or
16 potential RV parks could meet the identified need, and argues that that evidence undermines
17 the evidence the county relied upon. If a reasonable person would rely on the evidence the
18 county chose to rely on, the choice between conflicting evidence belongs to the county.
19 *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993); *Tigard Sand and Gravel,*
20 *Inc. v. Clackamas County*, 33 Or LUBA 124, 138, *aff’d* 149 Or App 417, 943 P2d 1106
21 (1997). Because a reasonable person could rely on the evidence the county chose to rely on,
22 petitioners’ disagreement with the county’s conclusion provides no basis for reversal or
23 remand.

24 This subassignment of error is denied.

25 **B. Factors 3 and 4 (Urban Services/Efficient Land Use)**

26 Petitioners’ argument under this subassignment consists of the following:

1 “The reasons given in support of these factors are not sufficient to justify
2 designation of the land requested under Factors 3 and 4. The findings
3 misdescribe the location of utilities in relation to existing Exception areas for
4 this purpose. * * * [The] Applicant never conducted a proper alternative sites
5 analysis and the findings misconstrue and misapply the law related to location
6 and alternate sites that might satisfy whatever need might be established to
7 exist, and the findings are not supported by substantial reasons or evidence.
8 Because the land is not free from the physical constraints presented by the
9 nearness of the river, low elevation, flood designations and historically
10 frequent flooding, the efficiency findings are not supported by substantial
11 evidence.” Petition for Review 15.

12 The county adopted nine pages of findings addressing Goal 14, factors 3 and 4. Goal
13 14, factor 3 is the “[o]rderly and economic provision for public facilities and services.” To
14 establish that Goal 14, factor 3 is met, the county must demonstrate that public facilities and
15 services can reasonably be provided to the expansion area over the planning period, without
16 leaving the area already within the UGB with inadequate facilities and services. *1000*
17 *Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 389, *aff’d* 130 Or App 406, 882
18 P2d 1130 (1994). With respect to Goal 14, factor 3, the county incorporated its findings of
19 compliance with Goal 11 (Public Facilities and Services) and concluded that urban services
20 are available to the site, and that development of the site will not leave the area already
21 within the UGB with inadequate facilities. Record 38-41. Petitioners’ above-quoted
22 arguments under this subassignment do not develop any cognizable challenge to those
23 findings. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

24 Goal 14, factor 4 requires consideration of the “[m]aximum efficiency of land uses
25 within and on the fringe of the existing urban area.” In relevant part, the county found:

26 “The subject 0.73-acre property is presently contiguous to the UGB and the
27 district boundaries of the area’s urban service providers. The site is a
28 relatively small portion of the applicant’s ownership at the subject location.
29 Extension of the UGB to encompass the subject 0.73-acre property will
30 promote a more efficient approach to developing the portion of the property
31 presently within the urban area. Existing public water and sewer facilities are
32 already on the property or immediately adjacent to it. These existing facilities
33 are adequate to serve the subject site. Any necessary extension of urban
34 services to the subject 0.73-acre property will be minimally short and directly

1 across land already in the UGB. Although the subject site is subject to
2 periodic flooding due to its close proximity to the South Umpqua River,
3 which will limit the type and intensity of urban development, such potential
4 constraint will not hinder the ready availability of urban services to the
5 subject site.

6 “We considered whether lands already included within the UGB could be
7 redesignated so that such lands could accommodate the identified need for
8 commercial land suitable for a category I RV park. The only parcel brought
9 to our attention that was claimed to be suitable is the old sawmill site,
10 discussed below under Exception Standard 2, which was not suitable. We
11 found no land in the UGB that would meet the identified need for a category I
12 RV park, even by assembling lots. * * *

13 “The subject property is free of any substantial physical constraints that would
14 impair or otherwise hinder maximally efficient use of the existing urban
15 services and facilities, and it makes maximally efficient use of land within and
16 on the fringe of the UGB. The proposed plan and UGB amendment and zone
17 change complies with Goal 14, Factor 4.” Record 60-61.

18 Petitioners’ above-quoted argument under this subassignment does not explain why
19 the county’s findings are inadequate or not supported by substantial evidence. Petitioners’
20 argument that historically frequent floods are “physical constraints” that preclude maximally
21 efficient use of the property misconstrues the county’s findings. The county found that no
22 substantial physical constraints affect provision of *urban services*. The county conceded that
23 potential flooding affects the type and intensity of urban uses on the property, but found for
24 other reasons that including the property within the UGB provides for “maximum efficiency
25 of land uses[.]” Petitioners do not challenge those other reasons. To the extent petitioners’
26 arguments under this subassignment are developed sufficiently for review, they do not
27 provide a basis for reversal or remand.

28 This subassignment of error is denied.

29 **C. Factors 5 (Environmental, Social, Energy and Economic [ESEE]**
30 **Consequences) and 7 (Compatibility)**

31 Petitioners argue that the county’s findings addressing Goal 14, factors 5 and 7 are
32 not supported by the evidence. The county adopted extensive findings addressing these
33 factors, concluding that the UGB amendment, zone change and associated RV park would

1 have either positive or neutral ESEE consequences, and would be compatible with nearby
2 agricultural activities. Petitioners cite to evidence that the proposed RV park might have
3 negative impacts on the environment and farm practices. However, that evidence is not such
4 that it undermines the contrary evidence the county relied upon. Accordingly, the choice of
5 conflicting evidence was the county's. *Tigard Sand and Gravel, Inc.*, 33 Or LUBA at 138.

6 This subassignment of error is denied.

7 **D. Factor 6 (Retention of Farm Land)**

8 Factor 6 requires consideration of the "retention of agricultural land," with Class I
9 being the highest priority for retention and Class VI the lowest priority. The county's
10 findings concluded that the .73-acre portion has poor agricultural capability and poor
11 prospects for agricultural use. Further, the county examined existing exception areas and
12 lower priority agricultural lands and concluded that such lands cannot satisfy either the
13 identified need for additional commercial land, or the need for additional RV parks.
14 Petitioners fault these findings, arguing that

15 "The record reveals existing Exception areas and lands with soils of lower
16 quality than the subject property that have not been shown to be unavailable
17 or to be unsuitable for the requested use. Similarly, only a few commercial
18 sites within Tri City were evaluated for possible rezoning as a means of
19 satisfying whatever need might be established to exist." Petition for Review
20 17.

21 We understand petitioners to argue that the county's findings concerning available
22 exception areas and lands with lower quality soils are inadequate. However, the county
23 adopted findings addressing such lands and petitioners make no attempt to explain why those
24 findings are inadequate. We also understand petitioners to argue that the county's analysis of
25 commercial sites within the UGB was insufficient in scope. However, petitioners do not
26 explain why the scope was too narrow or what additional commercial sites should have been
27 evaluated. Petitioners' remaining arguments under this subassignment contend that the
28 county's Goal 14, factor 6 findings inadequately address conflicts with nearby agricultural

1 operations. However, the county addressed such conflicts under Goal 14, factor 7, and
2 petitioners do not explain why the county was required to repeat that exercise in addressing
3 Goal 14, factor 6.

4 This subassignment of error is denied.

5 The second assignment of error is denied.

6 **THIRD, FOURTH, FIFTH, SIXTH AND TENTH ASSIGNMENTS OF ERROR**

7 In the third, fourth and fifth assignments of error, petitioners challenge the county's
8 findings that adopt a "reasons" exception to Statewide Planning Goal 3 (Agricultural Lands)
9 pursuant to Goal 2, Part II, ORS 197.732(1)(c) and related provisions of the county's
10 comprehensive plan and land use regulations.⁷ The sixth and tenth assignments of error
11 challenge the county's rezoning of the property, arguing that that rezoning is also invalid
12 because it is dependent upon the reasons exception to Goal 3 and the resulting
13 comprehensive plan amendments. We address these related assignments together.

14 The county evaluated six other potential sites as part of the alternative sites analysis
15 required by Goal 2, Part II, and ORS 197.732(1)(c)(B), and concluded that no alternative

⁷Goal 2, Part II and ORS 197.732(1)(c) both provide that a local government may adopt an exception to a goal if:

- “(A) Reasons justify why the state policy embodied in the applicable goals should not apply;
- “(B) Areas which do not require a new exception cannot reasonably accommodate the use;
- “(C) 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; and
- “(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”

See also OAR 660-004-0010(1)(c)(B) (setting forth identical standards, and clarifying that the “reasons” factor of ORS 197.732(1)(c)(A) can be satisfied by compliance with the seven factors of Goal 14).

1 sites that do not require an exception can reasonably accommodate the identified need for the
2 proposed RV park. The county also repeated much of the ESEE analysis and compatibility
3 analysis set out in its Goal 14 findings. In the third assignment of error, petitioners argue
4 that the county’s analyses are inadequate and not supported by substantial evidence, because
5 those analyses are based on arbitrary and inconsistent considerations and inappropriately
6 reject alternative sites that in fact could reasonably accommodate the proposed RV park.
7 Petitioners’ arguments under this assignment are similar to those raised, and rejected, under
8 the first assignment, challenging the county’s Goal 14 findings. We have reviewed the
9 county’s findings adopting an exception to Goal 3 and conclude that those findings are not
10 inadequate or unsupported by substantial evidence for any of the reasons expressed in the
11 third assignment of error.

12 The fourth assignment of error alleges that the county’s decision violates
13 comprehensive plan provisions that implement Statewide Planning Goals 3 and 14. The fifth
14 assignment of error argues that the “reasons” exception adopted by the county violates a
15 county land use regulation that implements Goal 2. Petitioners’ arguments under the fourth
16 and fifth assignments are derivative of their arguments under the second and third
17 assignments of error, and likewise provide no basis for reversal or remand. The sixth and
18 tenth assignments of error argue that the zone change is invalid because it depends on the
19 exception to Goal 3 and comprehensive plan amendments challenged in the second and third
20 assignments. Because we denied the second and third assignments of error, petitioners’
21 derivative arguments under the sixth and tenth assignments also provide no basis for reversal
22 or remand.

23 The third, fourth, fifth, sixth and tenth assignments of error are denied.

24 **SEVENTH ASSIGNMENT OF ERROR**

25 Petitioners argue that the county’s findings fail to demonstrate that there is a public
26 need for the plan amendment that is best served by the subject property, as compared with

1 other available property, as required by LUDO 6.500(2).⁸ According to petitioners, the
2 county misconstrued the applicable criteria and improperly failed to consider property in the
3 vicinity that is zoned and available for the proposed RV park. In addition, petitioners argue
4 that the plan amendment to Tourist Commercial is inappropriate, because Tourist
5 Commercial is a rural, not an urban, designation.

6 The county adopted several pages of findings regarding LUDO 6.500(2), including
7 the following:

8 “A major factor that demonstrates a need for additional land within the urban
9 area to support the proposed development is the existing capacity and use of
10 other RV parks in the general vicinity. * * *

11 “The applicant’s survey of existing RV park facilities in the surrounding area
12 shows a significant and growing need for RV camping accommodations in
13 category I, particularly ones located on arterial roads with direct access to the
14 river that cater to both freeway travelers and RV’ers seeking to stay longer for
15 up to a few months. Parks adjacent to Interstate 5 tend to attract primarily
16 overnight travelers passing through on their way to other destinations, while
17 parks in urban settings with a broader range of services tend to be used by
18 persons making the urban area their destination. * * *

19 “* * * The proposed RV park has unique qualities and will serve a specific
20 segment of the RV-using general public. The proposed RV park will be the
21 only RV park located on the South Umpqua River within the UGB where the
22 full range of urban services is available, thus facilitating the needs of that
23 segment of the market needing to stay for more than just a few days. * * *”
24 Record 99-100.

25 “From the point of view of the consumer, there is a demographic need for
26 additional RV parks in the Myrtle Creek/Tri City urban area. As the

⁸LUDO 6.500(2) provides in relevant part:

“The application shall address the following requirements which shall be the standard for [a quasi-judicial plan] Amendment:

“* * * * *

“b. That there is a public need for a change of the kind in question.

“c. That such need will be best served by changing the Plan Designation of the particular piece of property in question as compared with other available property.”

1 population of the urban area and Douglas County increases, the need for RV
2 parks increases at a disproportionately higher rate, as stated in the
3 comprehensive plan. Thus the need for additional commercial land * * * must
4 be partly met by allocating some of that additional land to RV parks. The
5 applicant's proposed project is the most suitable such site identified based on
6 its river access, direct access to the surrounding community via Old Pacific
7 Highway, [and] central location within the urban area * * *." Record 102.

8 Petitioners argue that the findings improperly confuse the applicant's target market
9 niche with "public need," and so narrowly define that need that other potentially available
10 sites are dismissed as unavailable. However, petitioners' arguments under this assignment
11 repeat petitioners' challenge to the county's Goal 14 alternative sites analysis, and fare no
12 better. Petitioners have not demonstrated that the county misconstrued LUDO 6.500(2) or
13 erred in determining that the identified need is best served by the subject property, compared
14 to other available property.

15 Petitioners also argue that the Tourist Commercial plan designation for this property
16 is inappropriate because the comprehensive plan describes the designation as a rural rather
17 than an urban designation.⁹ Petitioners contend that it violates the comprehensive plan to
18 apply a rural plan designation to urban lands. However, it is not evident why application of
19 the Tourist Commercial zone to urban lands conflicts with provisions explaining why the
20 Tourist Commercial designation is consistent with Statewide Planning Goals 3, 4 and 14
21 when applied to rural lands. More importantly, although petitioners do not address them, the
22 county adopted findings that the Tourist Commercial designation is appropriate for urban
23 lands. Record 31-32. Those findings appear to interpret the two DCCP provisions at issue

⁹Petitioners cite to the following language at DCCP 15-26:

"The tourist commercial designation meets the intent of Goals 3 and 4 (agriculture and forest lands) because the designation is applied, in most cases, to committed areas only. * * *

*** ** *

*** ** * Goal 14 (Urbanization) is not an issue in [the Tourist Commercial] designation because tourist facilities are not intense urban activities and do not require urban services."

1 here to squarely reject petitioners’ argument under this assignment. Petitioners make no
2 attempt to demonstrate that the county’s interpretation is inconsistent with the express
3 language or purpose of those provisions, or otherwise “clearly wrong.” ORS 197.829(1);
4 *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 217, 843 P2d 992
5 (1992).

6 The seventh assignment of error is denied.

7 **EIGHTH ASSIGNMENT OF ERROR**

8 Petitioners contend that the county’s redesignation of the subject property to allow
9 commercial uses is inconsistent with various comprehensive plan provisions that describe
10 three conceptual plans to build an arterial through or near part of the property to connect
11 Interstate 5 and Old Pacific Highway. Petitioners argue that the county failed to address the
12 effect of the plan amendment on the proposed arterial. In addition, petitioners argue that the
13 county erred in relying on the RV park to find consistency with the proposed arterial,
14 because “the plan and zone amendments do not limit use of the property in question to an RV
15 park.” Petition for Review 26.

16 The county’s findings describe each of the three conceptual plans for the proposed
17 arterial. Only one of the plans, Option A, would cross the subject property. The county
18 concluded that the plan designation and development of the subject property were compatible
19 with each of the options, because:

20 “1. Only one of the three bridge routes would materially impact the RV
21 park. Even if the county constructed Option A, an RV park would be
22 minimally disruptive to re-converting the land to right-of-way. There
23 are no substantial improvements in the RV park or allowed in the
24 floodplain that would be a material impediment to the future bridge
25 project.

26 “2. The bridge project is expensive, costing \$5 million to \$7 million, and
27 there are no commitments for funding the project by the county,
28 ODOT [Oregon Department of Transportation] or the federal highway
29 administration. Option B would only minimally impact the proposed

1 RV park and is \$900,000 cheaper than Option A. Option C does not
2 impact the RV park.

3 “3. Option A is not strongly supported by the public (21% of the
4 respondents). The option most strongly supported (40%) is not to
5 build the Weaver Road Bridge. Option B is supported by 31% of the
6 respondents and is the most likely to be selected * * *.” Record 46.

7 We disagree with petitioners that the county failed to address the impact of the plan
8 amendment on the proposed arterial. Petitioners do not challenge any of the above-quoted
9 findings or provide any basis to find them erroneous. We also disagree with petitioners’
10 further argument that the county improperly relied on the impermanence of the RV park to
11 find that the plan amendment and zone change is consistent with Option A. Petitioners’
12 argument is apparently premised on the understanding that the county’s decision fails to limit
13 uses on the subject property to the proposed RV park. However, the county applied a limited
14 use overlay that limits uses on the .73-acre portion of the subject property to the proposed
15 RV park and accessory uses.¹⁰ See discussion of the twelfth assignment of error, below.

16 The eighth assignment of error is denied.

17 **NINTH ASSIGNMENT OF ERROR**

18 Petitioners argue that the county’s decision is inconsistent with DCCP Land Use and
19 Resource Management policies, which require, respectively, that nonresource uses be given
20 lowest priority on lands requiring a Goal 2 exception and that agricultural use be encouraged
21 on lands with the best agricultural soils and in floodplains.¹¹ Zoning the subject property for
22 commercial uses, petitioners argue, violates both these provisions.

¹⁰That limitation apparently does not apply to other portions of the subject property that were already within the UGB and already zoned and partially developed for commercial uses. However, petitioners do not argue that the county was also required to limit uses on those portions of the subject property.

¹¹DCCP Land Use Objective B, Policy 4, requires that:

“When considering requests for nonresource land uses, the County shall give the highest development priority to urban areas and committed lands while giving the lowest development priority to areas which require a Goal 2 exception.”

1 The challenged decision does not address or find compliance with the cited DCCP
2 policies. Without some assistance from respondents, we cannot determine what these
3 policies require and whether the county’s decision is or is not consistent with them.

4 The ninth assignment of error is sustained.

5 **ELEVENTH ASSIGNMENT OF ERROR**

6 Petitioners argue that the county’s decision violates Statewide Planning Goal 9
7 (Economic Development)¹² Petitioners contend that redesignation of the subject property to
8 allow an RV park is to the detriment of economic opportunity, because the RV park and
9 petitioners’ adjacent farm operation are inherently incompatible, and their concurrent
10 operation will cause both to suffer. Petitioners explain that their farm operation uses
11 fertilizers and pesticide sprays, and that it runs livestock, all of which are incompatible with
12 the quasi-residential uses of an RV park. Petitioners argue that the resulting complaints will
13 hamper farm operations and reduce the attractiveness of the RV park, to the economic
14 detriment of both.

15 The county adopted extensive findings of compliance with Goal 9, and concluded that
16 the proposed RV park was economically compatible with adjacent farm uses, and that the
17 park would generate substantial economic benefits for the community. Record 33-34. The
18 county also adopted findings addressing impacts of farm operations on the RV park. Record
19 88-89. Petitioners do not challenge, or even acknowledge the existence of, those findings.
20 We conclude that petitioners have not demonstrated that the challenged decision violates
21 Goal 9.

DCCP Resource Management Objective A, Policy I states that it is the county’s policy to:

“Encourage the use of lands with the best agricultural soils, particularly those lands within the floodplains, for agricultural use.”

¹²Goal 9 is “[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”

1 The eleventh assignment of error is denied.

2 **TWELFTH ASSIGNMENT OF ERROR**

3 The challenged decision imposed an “Exceptions Process Limited Use Overlay” on
4 the .73-acre portion of the property “to limit future use of that portion to the specific use of
5 an RV park and accessories identified in the findings addressing the ‘reasons’ criteria of the
6 Goal 2 exception process.” Record 105.

7 Petitioners argue that this limitation is inadequate because it fails to specify or
8 effectively limit the “accessories” that might also be approved as part of the proposed RV
9 park. Petitioners explain that the county’s findings refer to potential accessory uses such as a
10 public archery range or a swimming pool, and to public use of the river frontage, not limited
11 to park occupants. Petitioners argue that public riverfront park usage, archery ranges, and
12 swimming pools are not properly considered “accessory uses” to an RV park as defined in
13 the LUDO. Unless the limited use overlay is modified to expressly prohibit those uses,
14 petitioners argue, the county’s decision inadvertently allows intervenor to seek approval of
15 uses other than the proposed RV park.

16 However, we do not understand the challenged decision to approve *any* use, including
17 the RV park. An RV park is a conditional use in the Tourist Commercial zone, and thus
18 intervenor must seek a conditional use permit in order to develop the park. As part of that
19 process, intervenor may or may not also seek approval for accessory uses. The limited use
20 overlay limits any such accessory uses to those “identified in the findings addressing the
21 ‘reasons’ criteria of Goal 2[.]” Those findings state that the applicant foresees potential
22 accessory uses such as “a children’s playground, campground, and archery course” that
23 would apparently also be open to the public. Record 63. However, those findings do not
24 determine that such proposed uses are in fact “accessory” to the proposed RV park. The
25 limited use overlay limits the range of *potential* accessory uses to those identified, but does
26 not authorize such uses or determine whether such uses are in fact accessory to the RV park.

1 That issue has not yet been determined. We conclude that petitioners’ arguments under this
2 assignment of error do not provide a basis for reversal or remand.

3 The twelfth assignment of error is denied.

4 **THIRTEENTH ASSIGNMENT OF ERROR**

5 Petitioners argue that the county erred in failing to prevent RVs from staying at the
6 proposed RV park beyond 90 days, because such RVs then become illegal “structures.”

7 Petitioners explain that the county has previously imposed a “Right of Way
8 Protection Overlay” on part of the subject property to prohibit uses inconsistent with Option
9 A of a proposed arterial connecting Old Pacific Highway and Interstate 5. *See* the eighth
10 assignment of error, above. RV parks are allowed within the overlay, although any
11 “structures” are prohibited in the right of way itself. However, petitioners argue, the
12 county’s decision allows RVs to stay in the park for an indefinite period. According to
13 petitioners, the definition of “Recreational Vehicle” at LUDO 1.090 states that RVs used for
14 residential purposes for more than 90 days in a calendar year are subject to regulation as
15 mobile homes. Because mobile homes are “structures” as defined by LUDO 1.090,
16 petitioners contend, the county’s failure to prevent RVs from staying in the park beyond 90
17 days means that the decision effectively approves “structures” in the overlay.

18 However, merely because RVs used for residential purposes for more than 90 days in
19 a calendar year are subject to *regulation* as mobile homes does not mean that such RVs *are*
20 mobile homes, and hence “structures” as defined by the code. The county examined the code
21 definitions of “structure” and “RV park” and found that “structures” do not include RV park
22 development, except for any “building” part of that development. Record 94. The county
23 prohibited any building or structures within the right of way. It is difficult to read the
24 county’s finding as anything other than a conclusion that RVs are not “structures” for
25 purposes of the county’s code. Petitioners do not challenge that finding, and have not
26 demonstrated that RVs staying longer than 90 days become “structures.”

1 The thirteenth assignment of error is denied.

2 **FOURTEENTH ASSIGNMENT OF ERROR**

3 The county adopted extensive findings addressing and finding compliance with
4 Statewide Planning Goal 12 (Transportation). The county then concluded that:

5 “The proposed plan and UGB amendment and zone change comply with Goal
6 12, the Tri-City Traffic Circulation Plan, and the Transportation Element of
7 the comprehensive plan. *Compliance with Goal 12 will be assured through*
8 *the application of specific local policies and standards at the time*
9 *development plans for the subject property are submitted.”* Record 48
10 (emphasis added).

11 In this assignment of error, petitioners challenge the emphasized portion of the
12 above-quoted statement, arguing that “[t]he policies and standards are not identified. In the
13 absence of such identification, the decision does not demonstrate compliance with either
14 Goal 12 or local transportation policies.” Petition for Review 32. However, the challenged
15 statement is the concluding paragraph to eight pages of findings regarding Goal 12 and the
16 Transportation Planning Rule that address the traffic impacts of the proposed RV park and
17 find that those impacts will have no significant impact on affected transportation facilities
18 and will comply with all applicable development standards. Petitioners do not challenge any
19 of those findings. Petitioners do not explain why the county must identify the specific local
20 policies and standards that will apply at the time of development in order to establish
21 compliance with Goal 12. Without that explanation, the arguments under this assignment of
22 error are insufficiently developed to provide a basis for reversal or remand.

23 The fourteenth assignment of error is denied.

24 **FIFTEENTH ASSIGNMENT OF ERROR**

25 The challenged decision approved the UGB amendment as well as the associated plan
26 and zone amendments. However, the decision also found that, in the alternative, “should
27 appellate review find the proposed UGB amendment does not comply with Goal 14, we
28 allow the plan designation and zone change without amending the UGB.” Record 105.

1 Petitioners challenge the county’s alternative disposition, arguing that it is unclear
2 what its legal effect is or what it means. Moreover, petitioners argue that the application was
3 submitted and subjected to opposition and proof as a combined application, and that the
4 findings regarding the plan and zone amendments are so intrinsically related to the portion of
5 the property outside the UGB that the several aspects of the decision cannot be severed.
6 Petitioners also allege prejudice to their substantial rights, because the alternative disposition
7 was inserted as a condition in the county’s decision without providing petitioners an
8 opportunity to testify or provide evidence in response.

9 In resolving the foregoing assignments of error, we denied each of petitioners’
10 challenges directed toward the county’s UGB amendment. Accordingly, the county’s
11 alternative disposition, whatever effect it might have had under other circumstances, is
12 effectively a nullity. Under the present circumstances, petitioners’ challenges to the
13 alternative disposition cannot provide a basis for reversal or remand.

14 The fifteenth assignment of error is denied.

15 The county’s decision is remanded.