BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FLYING J. INCORPORATED,
Petitioner, Cross-Respondent,

vs.

MARION COUNTY,
Respondent,

and

TRAVELCENTERS OF AMERICA, BRENT LEATHERS
and LEATHERS FUELS,
Intervenors-Respondent, Cross-Petitioners.

LUBA No. 99-143

FINAL OPINION
AND ORDER

Appeal from Marion County.

D. Daniel Chandler, Vancouver, Washington; G. Frank Hammond, Portland; Dana Krawczuk, Portland; and Richard G. Carlisle, Kansas City, Missouri, filed briefs on behalf of petitioner, cross-respondent. With them on the briefs were Ramis, Crew, Corrigan, and Bachrach, and Freilich Leitner and Carlisle. Richard G. Carlisle argued on behalf of petitioner, cross-respondent.

William K. Kabeiseman, Portland; Edward J. Sullivan, Portland; and Phillip E. Grillo, Portland, filed the briefs on behalf of intervenors-respondent, cross-petitioners. Edward J. Sullivan and Phillip E. Grillo argued on behalf of intervenors-respondent, cross-petitioners. With them on the brief were Preston, Gates and Ellis, and Miller, Nash, Wiener, Hager and Carlsen.

Jane Ellen Stonecipher, Assistant Legal Counsel, Salem, filed a response brief and argued on behalf of respondent.

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

AFFIRMED 06/06/2000

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

provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals and intervenors-respondent cross-appeal the county's denial of an application for site plan review for development of a truck stop.

MOTIONS TO INTERVENE

TravelCenters of America, Brent Leathers, and Leathers Fuels (intervenors) move to intervene on the side of respondent. There is no opposition to their motion, and it is allowed.

FACTS

The challenged decision in this case is the county's decision on remand from LUBA and the Court of Appeals. *Leathers v. Marion County*, 31 Or LUBA 220 (1996) (*Leathers I*), *aff'd* 144 Or App 123, 925 P2d 148 (1996) (*Leathers II*). The following passage from the challenged decision summarizes the relevant factual and procedural background:

> "The subject 29-acre property is designated Interchange Development [ID] in the Marion County Comprehensive Plan [MCCP]. A 27-acre portion of the property is zoned ID-LU [Limited Use Overlay Zone], while a two-acre portion is zoned ID. The purpose and intent of the ID zone is to provide a location for needed highway service commercial facilities at the interchanges between the controlled access highways and the intersecting arterial roads. The limited use overlay zone is applied to specific properties to limit the range of uses permitted when a zone change allows several intensive uses that may not be appropriate for the location.
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> "The subject property is on the northwest corner of the Bents Road-Ehlen Road intersection. The property is west of the Fargo Interchange on the I-5 Freeway. Properties to the north and west are zoned EFU (EXCLUSIVE FARM USE) and are devoted to commercial farm uses. Properties to the south are zoned ID and devoted to farm use and a truck and auto service station. A TravelCenters of America (TA) truck stop is to the east on ID zoned lands.
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> "The subject property is part of the Fargo Interchange exception area. An exception was taken for the interchange in the early 1980s as part of the MCCP acknowledgment process. The exception area included a parcel between Bents Road and I-5 containing a Unocal Truck Stop (now TA), two acres west of Bents Road (now part of the subject property), and several acres south of Ehlen Road. In 1987, previous owners asked to expand the two acres west of Bents Road to include 27 additional acres. ZC/CP/P/CU 87-2 asked

> to partition 27 acres from a larger farm parcel, to redesignate and rezone the property from farm use to interchange development, to take a reasons exception to Statewide Planning Goal 3 [Agricultural Lands], and to allow several uses at the site. Marion County Ordinance 765 approved the request, but the county's decision was challenged by the Department of Land Conservation and Development (DLCD). The county reconsidered its decision, repealed Ordinance 765, and changed the designation and zoning on only 17 acres of the subject property by Ordinance 777. Soon after Ordinance 777 was adopted, ten additional acres were redesignated and rezoned for interchange development in ZC/CP/P 87-18 by Marion County Ordinance 784. A reasons exception from Statewide Planning Goal 3 was taken. In ZC/CU 88-14, the county approved certain conditional uses and changed the zoning on the 27 acres by adding a limited use overlay to the property (Marion County Ordinance 826).
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> "In January 1995, the current applicant requested use approval, site plan review, and interpretation of conditions of approval. The BOC [board of commissioners] approved the application, but the BOC decision was appealed to LUBA. [In *Leathers I,*] LUBA sustained several assignments of error and remanded the decision to the BOC. LUBA's decision was appealed to the Oregon Court of Appeals. [In *Leathers II*, t]he Court of Appeals affirmed the decision on petition, and, on cross-petition, affirmed the decision in part, and reversed the decision in part. The Court of Appeals remanded the decision to LUBA. LUBA remanded the decision to the BOC, and the BOC remanded the application to the hearings officer for further proceedings." Record II 11-13.[1]

Petitioner's 1995 application included a request for several uses depicted on a 1987 tentative site plan (1987 site plan) that was the basis for the county's adoption of exceptions to Goal 3 in Ordinances 777 and 784. The 1987 site plan depicts a truck stop with a restaurant and drivers' facility with laundry, showers and lounge; an automated card reader fueling system; a future motel; water retention facilities, and realignment of Bents Road.[2]

[1]The record in this case includes the record of the county's 1995 decision, which we cite as Record I, and the record of the county's decision on remand, which we cite as Record II.

[2]As explained further in the text below, the 1987 site plan was apparently submitted at a point where the proposed uses on the subject property were considered an expansion of the existing Unocal operation. Presumably as a reflection of that, the 1987 site plan proposes to move Bents Road from its current location between the subject property and the Unocal property to circle around the western perimeter of the subject property, in a manner that effectively cuts off direct access from the Unocal property to Ehlen Road and Interstate 5.

The 1995 application also requested two additional uses, a convenience store and truck scales, which were not depicted on the 1987 site plan. On remand following *Leathers I* and *II*, petitioner modified its 1995 application to remove the request for site plan review, and to remove the request for a convenience store and truck scales. To gain approval of the remaining uses, petitioner submitted a non-binding, "conceptual" site plan (1999 site plan) illustrating how the uses described in the 1987 site plan might be developed. Petitioner also requested clarification of various issues in light of LUBA's and the Court of Appeals' decisions in *Leathers I* and *II*.

The hearings officer determined, based on her reading of the holdings in *Leathers I* and *II*, (1) that the original exceptions to Goal 3 taken in Ordinances 777 and 784 for the subject property had been justified as an expansion of the neighboring Unocal truck stop now owned by intervenor TravelCenters of America;[3] (2) that the use proposed in 1995 and 1999 is an independent truck stop; and (3) that, pursuant to OAR 660-004-0018(4), an independent truck stop is not allowed on the subject property without taking a new exception to Goal 3.[4] Because petitioner did not propose to take a new exception to Goal 3 for an independent truck stop, the hearings officer concluded, the application must be denied. The hearings officer also addressed an argument by intervenors that an exception to Statewide Planning

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[3]We follow the parties in referring to the neighboring property east of Bents Road as the "Unocal property."

[4]OAR 660-004-0018(4) (formerly OAR 660-004-0018(3)) provides:

> "'Reasons' Exceptions:
>
> "(a) When a local government takes an exception under the 'Reasons' section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;
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> "(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a 'Reasons' exception, a new 'Reasons' exception is required."

Goal 14 (Urbanization) was required, and concluded that no exception to Goal 14 was required to develop the subject property in accordance with Ordinances 777 and 784.

Petitioner appealed the hearings officer's decision to the board of commissioners. The board of commissioners conducted further proceedings and, on August 10, 1999, denied the appeal, adopted the hearings officer's findings as its own, and affirmed the hearings officer's decision.

This appeal followed.

FIRST ASSIGNMENT OF ERROR (PETITIONER)

Petitioner argues that the county erred to the extent it found that, under the applicable ordinances, the subject property must be jointly owned or jointly managed by the owners of the adjoining Unocal property. Petitioner argues that, properly understood, Ordinances 777 and 784 do not require joint ownership or management. According to petitioner, the only integration Ordinances 777 and 784 require between the two properties is that the uses allowed on the subject property not duplicate those present on the Unocal property, except to the extent depicted on the 1987 site plan.

As a threshold matter, intervenors argue that this assignment should be summarily denied because petitioner fails to challenge the county's sole basis for denial, and indeed challenges only findings that the county did not in fact adopt.[5] Intervenors point out that the petition for review "requests that [LUBA] affirm the rulings of the Hearings Officer," provided that LUBA "clarify" that neither joint ownership nor joint management of the subject property is required by Ordinance 777 or 784. Petition for Review 40-41. According to intervenors, because petitioner does not seek to reverse or remand the challenged decision, only to "clarify" certain issues, petitioner improperly requests LUBA to render an advisory or declaratory opinion regarding an issue—whether Ordinances 777 and 784 impose a joint-

[5]The county filed a response brief joining in intervenors' responses to petitioner's assignments of error, without any additional argument.

ownership/management requirement—on which the county's decision is silent. In the alternative, intervenors contend that the issue of joint ownership or management was conclusively decided against petitioner in *Leathers I* and *II*, and thus that issue cannot be

revisited under the doctrine established by *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992).

Intervenors are correct that the challenged decision nowhere adopts any express findings that Ordinances 777 and 784 require that the subject property be jointly owned or managed with the Unocal property, and that petitioner's arguments on that point appear to challenge a conclusion that the county did not adopt. The hearings officer did, however, reject petitioner's related argument made below (and repeated before us) that the Goal 3 exceptions taken in Ordinances 777 and 784 were *not* justified as an expansion of the Unocal property:

> "Applicant contends that the applications and ordinances leading up to the current application never intended to expand the Unocal truck stop, only to expand truck stop related uses at the site.
>
> "While previous applicants or others may have *intended* to build a new truck stop on the site, LUBA and the Court of Appeals found, and the hearings officer agrees, that the original exceptions taken for the property were *justified* as an expansion of the Unocal site. The proposed use is not part of or integrated with the Unocal (TA) truck stop. By virtue of the Court of Appeals' opinion, an unintegrated, independent facility is not, by law, allowed on this site without taking a new exception to Goal 3. The uses requested by applicant cannot be approved, individually or as a whole. The application must be denied." Record II 17-18 (emphasis in original).

With respect to joint ownership, the hearings officer went on to comment:

> "Ownership of the subject property is not the issue here. The issue is whether the uses proposed by applicant represent a change in the type or intensity of uses approved by the exceptions taken for the subject property. Resolution of this issue is not dependent on ownership of the property. Ordinance 784, which took an exception to Statewide Planning Goal 3, acknowledged that the subject property and the Unocal property were in different ownerships. The Marion County ordinances do not restrict development of the subject property to certain owners, just for certain purposes." Record II 18.

Reduced to its essentials, petitioner's argument under this assignment is that the county can approve the uses depicted on the 1987 site plan, *i.e.*, the uses that were the basis for the exceptions to Goal 3 taken in Ordinances 777 and 784, without taking a new

exception to Goal 3. If petitioner is correct that Ordinances 777 and 784, properly construed, require integration with the Unocal property only in the sense of no duplication of uses on the subject property other than those depicted on the 1987 site plan, then the hearings officer necessarily erred in finding that the uses proposed in 1999, which are the same uses proposed in the 1987 site plan, constitute an unintegrated, independent facility that requires a new exception to Goal 3. Viewed in this light, we disagree with intervenors that this assignment of error should be summarily rejected because it fails to challenge the county's basis for denial, or because it asks LUBA to render an advisory opinion. Notwithstanding the tangential angles of petitioner's argument, the target of that argument is clearly the hearings officer's sole basis for denial: that uses proposed in the 1987 and 1999 site plans constitute a nonintegrated, independent facility that cannot be approved unless an exception to Goal 3 is taken. Consequently we must address petitioner's arguments regarding Ordinances 777 and 784. For reasons explained below, however, those arguments are nearly indistinguishable from arguments that were raised and rejected in *Leathers I* and *II*. To the extent those arguments go to issues beyond the holdings in those cases, we reject them on their merits.

Petitioner's argument under the first assignment of error reviews the proceedings leading up to adoption of Ordinances 777 and 784. Based on that history and the text of those ordinances, petitioner argues that the county's intent in adopting a Goal 3 exception in those ordinances was not to require either joint ownership or joint management between the subject property and the Unocal property. Petitioner explains that Ordinance 777 took an exception to Goal 3 with respect to a 17-acre portion of the subject property. The purpose of the proposed use is stated in Finding No. 3 of Ordinance 777:

> "Surrounding uses consist of [the Unocal] truck stop/gas station/restaurant to the east on 20 acres of land zoned ID. The purpose of the proposal is to provide additional adjacent acreage to expand this facility. * * * " Record I 235.

In addition, Zoning Condition No. 1 of Ordinance 777 provides:

> "The 19 ± acre parcel [*i.e.* the 17-acre portion plus the existing ID-zoned 2-acre portion of the subject property] and the 20-acre parcel to the east owned by the truck stop developer [*i.e.* the Unocal property] shall be considered a single parcel for land use purposes. Any partitioning or lot line adjustment shall require County approval and shall be consistent with the intent to provide for the expansion of the truck stop and related facilities. * * *" Record I 240.

Similarly, Condition of Partition Approval No. 3 provides:

> "Special partitioning requirements have been applied to ensure that the [17-acre portion of the subject property] is developed as part of an integrated development under a single ownership (refer to Zoning Condition #1)." Record I 242.

Petitioner argues that, notwithstanding the above-quoted provisions of Ordinance 777, the county did not intend to require that the two properties be either jointly owned or managed. The main source of confusion on that point, petitioner argues, stems from Ordinance 784. Ordinance 784 took an exception to Goal 3 in the course of approving a lot-line adjustment to add 10 acres to the 17-acre parcel addressed in Ordinance 777. In so doing, the county in Ordinance 784 imposed Zoning Condition No. 1:

> "The 27 ± acre parcel created by the Lot Line Adjustment shall be considered a single parcel for land use purposes. Any partitioning or lot line adjustment shall require County approval and shall be consistent with the intent to provide for the expansion of the truck-stop and related facilities. * * *" Record I 208.

In addition, in Ordinance 784 the county adopted Finding No. 13, which interpreted Zoning Condition No. 1 in *Ordinance 777*:

> "Based on the above findings and conclusions the Board concludes that *the intent of Zoning Condition #1 in Ordinance 777 was to retain the ID-zoned land west of Bents Road* [*i.e.* the subject property] *in one ownership unless a modified goal exception and partition is approved by the County. Further, the intent was that this land be developed with the land east of Bents Road* [*i.e.* the Unocal property] *as an integrated truck stop under one management*. It is recognized that the land east of Bents Road is in different ownership from that of the truck stop operator. To ensure that the 10 acres rezoned by this action are developed and operated as part of the truck stop the proposed partition should be amended to a lot line adjustment. This modification consolidates the ownership of the 10 acres with the 17 acres rezoned in [Ordinance 777]

> and prevents its partitioning without County approval and a revised goal exception." Record I 206-7 (emphasis added).

Petitioner argues, first, that Ordinance 784 amended Zoning Condition 1 of Ordinance 777 to delete reference to the Unocal property. Therefore, whatever Zoning Condition 1 of Ordinance 777 may have required in terms of integration with the Unocal property was effectively revoked in Zoning Condition 1 of Ordinance 784. In light of that revocation, petitioner argues, the language emphasized above in Finding No. 13 should not be read to express the county's intent that the subject property be jointly managed. Second, petitioner argues that, for a variety of practical reasons, it is absurd to impose a joint management requirement on property that, as Finding No. 13 recognizes, is not commonly owned. To avoid that absurd result, petitioner argues, Finding No. 13 should not be interpreted to recognize such a requirement.

However, petitioner does not explain the basis for its assertion that Ordinance 784 amends Zoning Condition No. 1 of Ordinance 777, and it is not apparent that it does. Nothing in Ordinance 784 identified by petitioner purports to amend any part of Ordinance 777. Indeed, as petitioner points out, Finding No. 13 of Ordinance 784 interprets Zoning Condition No. 1 in Ordinance 777, a strange thing to do if that condition was repealed and replaced with Zoning Condition No. 1 in Ordinance 784. At most, Finding No. 13 purports to clarify that the "common ownership" requirement of Ordinance 777 applies only to the various portions of the subject property, and does not require common ownership between the subject property and the Unocal property. However, Finding No. 13 unequivocally reaffirms the county's intent that the subject property be "an integrated truck stop under one management" with the Unocal property. Even if that requirement is unworkable or absurd under the present circumstances, and even if the original applicant did not intend such a result, none of that changes the text of Ordinances 777 and 784, which plainly take exceptions to Goal 3 based on use of the subject property as an expansion of the Unocal facility. Moreover, this Board reached essentially the same conclusion in *Leathers I*:

> "However, we do agree with petitioners that the [county's 1995] decision abandons one of the basic assumptions used to justify granting a Goal 3 exception at the time Ordinances 777 and 784 were adopted. Addendum A [to Ordinance 784] unequivocally states the facilities on the subject property are to be an expansion of the existing Unocal truck stop, integrated with the existing facilities. * * * That is repeated in Ordinances 765 and 777, finding 3; Ordinance 784, finding 13; and Ordinance 826, 'additional findings' 5 and 6, and condition 14. * * * A finding that the proposed site plan minimizes impacts on adjacent farm property does not answer the question whether an independent truck stop in combination with the existing Unocal truck stop will result in a greater intensity of use than an expanded Unocal truck stop alone. Although it is a close call, we believe the change from an expansion of an existing truck stop to an independent truck stop with its own 'travel plaza' represents a change in either the type or the intensity of the proposed use, justifying another notice to DLCD." 31 Or LUBA at 232-33 (citations to record omitted).

The Court of Appeals affirmed LUBA's conclusions on that point:

> "Petitioner and respondents disagree about whether ordinance 826 allows different and more intensive uses on the 27-acre site than do ordinances 777 and 784. Whether or not ordinance 826 itself has that effect, we agree with respondents and LUBA that the decision which is the subject of this appeal, and which postdates all three ordinances, does add to and intensify the uses authorized by ordinances 777 and 784 and the exceptions taken in them. *In particular, the present decision allows an independent operation, rather than the expansion of the existing truck stop that was contemplated by ordinances 777 and 784*. Additionally, as LUBA held, the 'travel plaza' approved by the county in the present decision entails a different and more intensive use than either ordinances 777 and 784 or the exceptions adopted with them would allow. * * *" *Leathers II*, 144 Or App at 126 (emphasis added).

Consequently, we agree with intervenors that petitioner's arguments under this assignment of error were either resolved adversely to petitioner in *Leathers I* and *II* or, to the extent those arguments go beyond the holdings of those cases, do not demonstrate that the hearings officer erred in rejecting petitioner's similar arguments below. The hearings officer correctly concluded that the exceptions taken in Ordinances 777 and 784 were based on an expansion of the Unocal facility and that, as far as those ordinances are concerned, the more intensive independent facility proposed in 1995 and again in 1999 cannot be approved without a revised exception to Goal 3.

The first assignment of error (petitioner) is denied.

SECOND ASSIGNMENT OF ERROR (PETITIONER)

Petitioner argues that the county erred in failing to apply the provisions of Ordinance 826 to the challenged decision. Petitioner explains that in 1989, a year after adoption of Ordinance 784, an interested entity other than the original applicants informed the county that the joint management restrictions in Ordinances 777 and 784 were interfering with attempts to obtain financing. In response, the county adopted Ordinance 826. Ordinance 826 repealed Finding No. 13 of Ordinance 784 because of "the difficulty of interpreting and implementing the 'under one management' requirement." Record I 102. To replace that requirement, Ordinance 826 imposed the following:

> "There shall be no duplication of services or uses between the 27-acre rezoned area and the existing Unocal truck stop facility located east of Bents Road, except as identified on the applicants' site plan of June 15, 1987 [the 1987 site plan]. Development on the 27-acre rezoned area is considered an extension of the uses and services provided by the Unocal truck stop located on the east side of Bents Road." Record I 106.

Petitioner argues that Ordinance 826 is acknowledged to comply with the statewide planning goals. *Leathers II*, 144 Or App at 129. Although Ordinance 826 did not take an exception to any goals, or modify the exceptions in Ordinances 777 and 784, petitioner argues that the legal effect of its acknowledged status is that any decision approving or denying the truck stop contemplated by Ordinance 826 is measured only against the terms of Ordinance 826 and not against any statewide planning goals. ORS 197.015(11); 197.175(2)(d); *Foland v. Jackson County*, 311 Or 167, 171, 807 P2d 801 (1991). Therefore, petitioner argues, as a matter of state law no joint management requirement exists, and any application for uses authorized by Ordinance 826 need be measured only against the terms of that ordinance, and need not demonstrate compliance with, or take a revised exception to, any statewide planning goals. Because the 1999 application proposes only those uses approved in the 1987 site plan and in Ordinance 826, petitioner argues, the county erred in finding that the 1999 application must be denied unless an exception to Goal 3 is taken.

Petitioner recognizes that in *Leathers II* the Court of Appeals held that the acknowledged status of Ordinance 826 was immaterial to whether a revised exception to Goal 3 is required for the proposed facility, because the determinative questions presented in that case were matters of state law, *i.e.* the requirement at OAR 660-004-0018(4) that new Goal 3 exceptions are required for any changed "types or intensities of uses." 144 Or App at 131. As noted in discussing the first assignment of error, the Court of Appeals affirmed LUBA's conclusion that the proposed use was a changed intensity of use, because it consists of "an independent operation, rather than the expansion of the existing truck stop that was contemplated by ordinances 777 and 784." 144 Or App at 126. The court also affirmed LUBA's conclusion that the 1995 application presented a changed type and intensity of use, because it proposed a "travel plaza" containing uses, the convenience store and truck scales, not considered when the exceptions to Goal 3 were taken. *Id.* Nonetheless, petitioner argues that:

> "The only way to reconcile the Court of Appeals' decision with 22 years of Oregon statutes and case law is to find that the changed 'types or intensity of uses' in the 1995 Site Plan resulted from the attempt to add the convenience store and truck scales, which were not approved by Ordinance 826 or any of the acknowledged ordinances; not that a change in management structure somehow constitutes a change in type or intensity of use under Oregon law." Petition for Review 38-39.

However, it is impossible to limit the Court of Appeals' decision to its conclusion regarding the proposed "travel plaza" and ignore its separate conclusion that a facility that is not an expansion of the Unocal facility requires a revised exception to Goal 3, even if Ordinance 826 otherwise allows such a facility. On that point, the court held that the acknowledged status of Ordinance 826 is immaterial, agreeing with the respondents that the relevant question is whether the proposed uses may be allowed consistently with state law in the absence of the revised exceptions to Goal 3 that the county did not take in Ordinance 826 or in the 1995 decision. The court held that LUBA correctly answered that question in the negative, even though our analysis hinged on our incorrect understanding that Ordinance 826

was unacknowledged. To the extent petitioner argues that the Court of Appeals reached the wrong conclusion, or that the court failed to appreciate the relevant issues, that argument, if not precluded by law of the case, must be addressed to the Court of Appeals.

The second assignment of error (petitioner) is denied.

ASSIGNMENT OF ERROR (CROSS-PETITIONERS)

Intervenors cross-petition that aspect of the county's decision that concludes that no exception to Statewide Planning Goal 14 is required to approve the proposed truck stop.

In *Leathers I*, we addressed an argument that the county's 1995 decision authorizes urban uses without taking an exception to Goal 14. We concluded that it was not clear whether or not the county had taken an exception to Goal 14 in Ordinances 777 and 784.[6] Even if such an exception was taken, we concluded, remand was necessary to determine whether the different and more intensive use proposed in 1995 required a revised Goal 14 exception. Accordingly, we remanded the county's 1995 decision to adopt findings (1) showing either that Goal 14 does not apply or the proposal complies with an existing Goal 14 exception, or (2) taking a new Goal 14 exception. 31 Or LUBA at 234. The Court of Appeals affirmed LUBA on that point, commenting in a footnote that

> "[t]he issue of whether a Goal 14 exception was ever taken by the county and, if so, whether it remains viable, is somewhat murky. However, LUBA's remand gives the county ample latitude either to take a Goal 14 exception or to demonstrate why doing so is unnecessary." 144 Or App at 129 n 6.

On remand, the hearings officer addressed whether the county had taken an exception

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[6]We explained that:

> "Ordinances 777 and 784 do not clearly take an exception to Goal 14. In the actual texts of the ordinances, excluding exhibits incorporated by reference, mention is made only of an exception to Goal 3. * * * However, Addendum A, which is incorporated by reference, contains an analysis of Goal 14 as it applies to the original expansion proposal, and concludes, 'the proposal qualifies for an Exception to Goal 14.' * * * Yet in its Goal 2 exceptions analysis, Addendum A also states that the policies of Goal 14 should not apply 'because major, enroute truck service plazas are not a characteristically urban use.' * * *" 31 Or LUBA at 233-34 (citations to the record omitted).

to Goal 14 in Ordinance 777 or 784:

> "The action elements of ordinances 777 and 784 do not take exceptions to goal 14. Addendum A of ordinances 777 and 784 (the same addendum for both ordinances) finds that a goal 14 exception is not required, and that one is required and met. *A reasonable reading of these conflicting findings is that the BOC found no goal 14 exception was required (thus none was taken in the action element), but if it were found that a goal 14 exception was required, the application met those requirements*." Record II 19 (emphasis added).

The hearings officer then continued:

> "A good indicator of whether a use is urban or rural in nature is whether an urban level of services will be required to support the use. The subject property is part of the Fargo Interchange Service District, a rural sewer service district. * * * A long case law history is associated with forming the district, *DLCD v. Marion County*, 23 Or LUBA 619 (1992) and deciding to transfer effluent to the City of Donald for treatment, *DLCD v. Fargo Interchange [Service] District*, 27 Or LUBA 150 (1994) and *Department of Land Conservation v. Fargo Interchange*, 129 Or App 447 [879 P2d 224] (1994).
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> "* * * * *
>
> "Development of the subject property as authorized under ordinances 777 and 784 [was] contemplated when the Fargo Interchange Service District, a rural sewer service district, was formed. Formation of the district and its manner of treatment was held to comply with goal 14. That a use is served by a rural service district is a good indicator that the use is a rural use.
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> "A truck stop is not an inherently urban or rural use, and can be located in rural or urban areas. The purpose of the truck stop is to provide en route services for the trucking industry and other travelers. The trucking industry serves rural and urban uses. Since the use is neither inherently urban or rural, it is reasonable that the determinative factor in whether a truck stop may be sited in a rural area is whether an urban level of services is required to support the use. According to the Fargo Interchange Service District cases, the district is a rural service district that serves rural uses. *Provided the site is developed in accordance with ordinances 777 and 784, goal 14 is not implicated*." Record II 19-20 (emphasis added).

Intervenors argue that the county erred to the extent it found that Ordinances 777 and 784 took an exception to Goal 14. Intervenors also contend that *Leathers I* and *II* conclusively determined that the use proposed in 1995 requires an exception to Goal 14, and that determination precludes the county from reaching a contrary conclusion with respect to

the present application. Finally, intervenors argue that, even if the county properly reached the issue, it erred in concluding that the proposed use is not an urban use and thus no exception to Goal 14 is required.

Petitioner responds, and we agree, that the challenged decision interprets the findings in Ordinances 777 and 784 to adopt alternative conclusions that the use contemplated in those ordinances does not require an exception to Goal 14 or, if required, that an exception to Goal 14 is taken. While intervenors disagree with that interpretation, they do not explain why it is wrong even under a nondeferential standard of review.[7] We also disagree with intervenors that either *Leathers I* or *II* necessarily resolved either whether the county took an exception to Goal 14 in Ordinances 777 and 784 or whether the use proposed in 1995 requires a new exception to Goal 14. Both decisions left the county "ample latitude" to resolve those issues, if necessary. However, as we pointed out in *Leathers I*, even if the county took an exception to Goal 14 in Ordinances 777 and 784 with respect to the expansion of the existing facility proposed in those ordinances, the county must still address whether the more intensive use allowed in the 1995 decision is consistent with Goal 14. 31 Or LUBA at 234. In other words, Ordinances 777 and 784 do not answer the question of whether the *independent* facility proposed in 1995 and in the present case is consistent with, or requires an exception or revised exception to, Goal 14.

Unfortunately, the county's decision in this case does not provide an answer to that question. Its ultimate conclusion is that "[p]rovided the site is developed in accordance with

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[7] *Leathers II*, as explained above, held that "the need for or sufficiency of statewide goal exceptions are governed by applicable provisions of state law," and that a county's decision contrary to such state law cannot be saved by the fact that it purports to be an interpretation of local legislation. 144 Or App at 130, 131. Intervenors do not identify any state law to which the county's interpretation is contrary, other than to suggest that the purported Goal 14 exception is insufficient due to improper notice and inadequate findings. However, the sufficiency of the Goal 14 exception is a different issue than whether a Goal 14 exception was in fact taken. The county interpreted Ordinances 777 and 784, in part, as taking an exception to Goal 14. Because intervenors do not identify any state law to which that interpretation is contrary, our standard of review is pursuant to ORS 197.829(1). However, even under a less deferential standard of review, we conclude that the county's understanding of Ordinances 777 and 784 on this point is correct.

ordinances 777 and 784, [G]oal 14 is not implicated." Record II 20. Given the county's previous conclusion that those ordinances complied with Goal 14 or, in the alternative, took an exception to Goal 14, it necessarily follows that development pursuant to those ordinances does not implicate Goal 14. However, the relevant question is whether the use proposed here, *i.e.* the independent facility contemplated by Ordinance 826, is consistent with or requires an exception or revised exception to Goal 14. The county's decision is silent on that question. It may be that its reasoning, that a truck stop served by a rural sewer district is not an urban use, applies equally well to the independent truck stop proposed here as to the expanded Unocal facility contemplated by Ordinances 777 and 784, but the county's findings are insufficient to state that position.

Intervenors challenge the county's reasoning nonetheless, arguing that any truck stop in a rural zone, even one served by a rural sewer district, is an urban use. However, in the present posture there is no need to resolve that argument, because the county's decision does not purport to apply its reasoning to an independent truck stop facility. Whether an independent truck stop such as that proposed here does or does not require a revised exception to Goal 14 is not answered by the challenged decision. For the reasons expressed above, nothing in the cross-petition provides a basis to reverse or remand the county's decision.

This assignment of error (cross-petitioners) is denied.

The county's decision is affirmed on the petition and cross-petition.