

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

3  
4 KELLY DOHERTY,  
5 *Petitioner,*

6  
7 vs.

8  
9 MORROW COUNTY,  
10 *Respondent,*

11 and

12  
13  
14 PORT OF MORROW,  
15 *Intervenor-Respondent.*

16  
17 LUBA No. 2002-097

18  
19 FINAL OPINION  
20 AND ORDER

21  
22 Appeal from Morrow County.

23  
24 Daniel Kearns, Portland, filed the petition for review and argued on behalf of  
25 petitioner. With him on the brief was Reeve Kearns, PC.

26  
27 David C. Allen, District Attorney, Heppner, filed a response brief and argued on  
28 behalf of respondent.

29  
30 Mark J. Greenfield, Portland, filed a response brief and argued on behalf of  
31 intervenor-respondent.

32  
33 HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member,  
34 participated in the decision.

35  
36 REMANDED

03/11/2003

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

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**NATURE OF THE DECISION**

Petitioner appeals a county decision that adopts statewide planning goal exceptions and amends the county’s comprehensive plan and zoning ordinance to allow a major motorsport speedway with a number of associated uses.<sup>1</sup>

**FACTS**

The Port of Morrow (intervenor) is the applicant. Both petitioner and intervenor describe the disputed speedway in their briefs in some detail. The proposal is enormous in scale, and would have the capacity to draw up to 145,000 viewers. We include here a description of the components of the proposed speedway from intervenor’s brief. We understand petitioner to characterize the first 16 items as “the speedway” and the remaining items as “speedway related uses.” Petition for Review 14-15.

- “1. Asphalt Tri-Oval Super Speedway (1.95 miles)
- “2. Asphalt Road Course (12 turns)
- “3. Asphalt Oval (0.5 miles)
- “4. Drag Strip
- “5. Possible dirt track
- “6. Race control tower
- “7. An infield area with two pits containing approximately 42 and 30 spaces
- “8. 72 ancillary garages with team transport truck and motor coach parking
- “9. Press and team parking
- “10. Fueling island

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<sup>1</sup> In this opinion, the “speedway” is sometimes referred to as the “Boardman Speedway” or the “Oregon Motor Speedway.”

- 1           “11. Two 7,500 gallon tanker trucks adjacent to the fueling island
- 2           “12. Prefabricated all-metal grandstands with seating capacity for up to  
3           145,000 persons. The grandstands may include areas to showcase  
4           antique automobiles, hot rod cars, other racing memorabilia, or similar  
5           displays
- 6           “13. Portable hospitality tents with a main kitchen/commissary for food  
7           services
- 8           “14. Restroom facilities
- 9           “15. A 3,000-5,000 square foot medical/first aid facility accommodating up to  
10           10 beds, plus four first aid stations in the grandstand area and a  
11           helipad for emergency medical evacuation
- 12           “16. Two-story infield structure containing a driver’s lounge, kitchen and  
13           restroom facilities, a tire storage area, an office for the sanctioning  
14           body, team meeting rooms, a press room/dark room, VIP suites, and an  
15           infield maintenance building
- 16           “17. Up to 15,000 square feet of office space to accommodate the  
17           Speedway’s operations and administrative staff, a media center, a bank  
18           vault, a driving school, a virtual reality speedway, and other speedway  
19           related uses
- 20           “18. Ancillary maintenance and equipment buildings and fueling station for  
21           maintenance vehicles
- 22           “19. \* \* \* 5,000 square feet of restaurant facilities
- 23           “20. Approximately 208,000 square feet of industrial park space to  
24           accommodate automobile and auto-racing related industrial uses
- 25           “21. An on-site gift shop up to 6,000 square feet in size
- 26           “22. Speedway lodging not exceeding 250 rooms
- 27           “23. 3,500-space RV park/campground separated from the track, plus  
28           approximately 1,500 RV spaces in the infield and around the track
- 29           “24. Associated RV/campground uses, including a grocery/convenience  
30           store up to 3,000 square feet in size
- 31           “25. A multi-purpose recreational facility to accommodate car shows,  
32           community meetings, rodeos, fairs, concerts, dances, wine and food  
33           tasting, and similar activities, not to exceed 100,000 square feet of  
34           floor space

- 1           “26. An 8-bay (24 pump) gasoline station with attached convenience store
- 2           “27. Camper/tent camping areas containing up to 5,000 tent sites with
- 3           parking spaces that also could accommodate RVs
- 4           “28. Low intensity outdoor recreational facilities, including but not limited
- 5           to[:] a go cart track, miniature golf course, BMX bicycle track, water
- 6           park, and athletic fields and courts
- 7           “29. An arcade, up to 2,500 square feet in size, to serve Speedway and RV
- 8           park visitors” Intervenor’s Brief 2-3; paragraph bullets replaced with
- 9           numbers.

10           The challenged decision also allows certain of the uses listed above to be expanded if

11           certain conditions are met:

- 12           “30. Up to 5,000 additional improved or unimproved RV spaces and 5,000
- 13           unimproved camper/tent/RV sites, upon obtaining a contract to host a
- 14           Winston Cup race or a Federation Internationale de l’Automobile race
- 15           “31. Expansion of the industrial park by up to an additional 100,000 square
- 16           feet upon achieving 80 percent occupancy of the initial 208,000 square
- 17           feet of space
- 18           “32. Expansion of the office building by up [to] an additional 5,000 square
- 19           feet when the number of full time track and tenant employees exceeds
- 20           40
- 21           “33. Expansion of restaurants by up to 5,000 square feet when the number
- 22           of full time and tenant employees exceeds 200.” Intervenor’s Brief 3;
- 23           paragraph bullets replaced with numbers.” Intervenor’s Brief 3.

24           We also set out below additional relevant facts from intervenor’s brief:

25           “The Boardman airport, approximately 2,700 acres in size, is located in

26           unincorporated Morrow County approximately three miles west of the City of

27           Boardman Urban Growth Boundary (UGB) and approximately three miles

28           west of the City of Boardman’s developed urban area. Consistent with a Goal

29           3 [(Agricultural Lands)] exception adopted by Morrow County in 1985 and

30           acknowledged by the Land Conservation and Development Commission

31           (LCDC) in 1986, Morrow County’s Comprehensive Plan and zoning

32           regulations designate the airport ‘Airport Industrial’ and zone it

33           ‘Air/Industrial Park.’

34           Current land uses include a 4,200 [foot] by 150 [foot] asphalt runway located

35           on the central eastern portion of the site; an apron area; an airport office; and

36           two portable hanger sheds. Three single engine airplanes are based on the

1 airfield, and aircraft operations average 29 flights per week. Principal access  
2 to the site is via Tower Road, which borders the airport to the east and  
3 intersects with [Interstate 84 (I-84)] near the northeast corner of the airport  
4 property.

5 The proposed airport acreage identified for the speedway and racing-  
6 associated uses is situated mainly in the northern portion of the property,  
7 north of the runway \* \* \*.

8 “\* \* \* \* \*

9 “The proposed speedway would be a major speedway, sized and developed to  
10 accommodate a wide variety of motorsport activities, including National  
11 Association for Stock Car Auto Racing (NASCAR) series races, Indy car  
12 racing, semi and light duty truck racing, drag racing, motor cross and  
13 motorcycle racing, and similar activities. No other major speedways currently  
14 exist or are planned in the Pacific Northwest. The speedway would provide  
15 the Pacific Northwest with opportunities to attract major racing events, such  
16 as a NASCAR Winston Cup race, that occur today in nearly every geographic  
17 segment of the United States except the Pacific Northwest. It would [serve]  
18 communities within the states of Oregon and Washington plus western Idaho.

19 “The speedway would hold approximately four to eight ‘premier’ racing  
20 events annually. Premier racing events are large and mid-sized racing events,  
21 including but not limited to NASCAR Winston Cup, Craftsman Truck and  
22 Busch Series races, Indy car races; CART Series races, Super Sport  
23 Motorcycle races, GT Championships, National Hot Rod Association races,  
24 and Federal Internationale de l’Automobile sanctioned events, that are  
25 expected to attract 20,000 or more attendees on the day of the racing event.  
26 Typically, a speedway will include two or three such events on a premier  
27 racing weekend and hold two or three premier racing weekends a year.

28 “The proposed speedway location in north central Oregon allows it to serve  
29 all the major metropolitan areas in the Pacific Northwest, including Portland,  
30 Seattle, Spokane, Tri-Cities and Boise. The site has excellent access to [I-84]  
31 in Oregon with connections to I-5, I-82 and I-90 in Oregon and/or  
32 Washington, meaning that visitors from these major population centers can  
33 access the site via 4-lane highways. Small annual rainfall amounts (9.14  
34 inches) and relatively mild fall and late winter temperatures render the site  
35 reliable and usable virtually all year long. \* \* \*

36 “Immediately surrounding lands are designated and zoned predominately for  
37 industrial uses. Immediately north of the airport are I-84, the Union Pacific  
38 Railroad tracks, undeveloped land zoned M-G (General Industrial), and the  
39 Columbia River. West of the airport is a railroad spur owned by Portland  
40 General Electric which serves its coal fired plant located several miles to the  
41 south. Farther west is undeveloped land owned by the State of Oregon that is

1 zoned Space Age Industrial, and west of that is land zoned exclusive farm use  
2 (EFU). Adjacent lands to the south are zoned Space Age Industrial, except  
3 for a small area of land at the airport’s southwest corner that is zoned EFU.  
4 Farther south are more farms and rural residences and the US Navy bombing  
5 range, a 47,000 acre federal naval facility \* \* \*. Immediately east of Tower  
6 Road are more lands zoned Space Age Industrial, including a 450-acre  
7 property owned by the City of Boardman that is designated for future  
8 wastewater treatment system. Farther east and south are some farms \* \* \* and  
9 rural residences. The residential dwelling closest to the speedway is  
10 approximately 2,100 feet (0.4 miles) from Tower Road and 12,700 feet (2.4  
11 miles) the proposed racetrack location. \* \* \*” Intervenor’s Brief 5-8.

## 12 INTRODUCTION

13 During the county proceedings, much of the focus was on potential impacts on nearby  
14 transportation facilities from the large numbers of potential attendees traveling to and from  
15 the proposed speedway to attend the larger “premier” events. In fact, some of the facilities  
16 that are included as part of the speedway facility are justified by the applicant and the county,  
17 in part, to mitigate possible traffic impacts on surrounding transportation facilities.

18 The petition for review includes three assignments of error. In the second assignment  
19 of error, which we address first, petitioner alleges that the county misapplied a county  
20 criterion that governs zoning map amendments. In the third assignment of error, petitioner  
21 alleges the county erred in granting “reasons” exceptions to Statewide Planning Goals 11  
22 (Public Facilities) and 14 (Urbanization) to allow the speedway and speedway-related uses.<sup>2</sup>  
23 Finally, in the first assignment of error, petitioner alleges the county erred by relying on the  
24 1985 Airport Industrial reasons exception to Statewide Planning Goal 3 when it should have  
25 adopted a new reasons exception to Goal 3 to allow the speedway and speedway-related  
26 uses.

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<sup>2</sup> “A [statewide planning] goal exception is essentially a variance that allows” a use that would otherwise not be allowable under applicable statewide planning goals. *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344, 352, 703 P2d 207 (1985); OAR 660-004-000; 660-004-0005(1). There are three general types of exceptions: (1) “physically developed” exceptions (2) “irrevocably committed” exceptions and (3) “reasons” exceptions. ORS 197.732(1); Goal 2 (Land Use Planning) Part II; OAR 660-004-0020; OAR 660-004-0022; 660-004-0025; 660-004-0028. The exceptions at issue in this appeal are all “reasons” exceptions. We set out the applicable requirements for a reasons exception later in this opinion.

1 The Goal 11 and Goal 14 exceptions that are challenged in the third assignment of  
2 error were adopted in part to approve the 250-room hotel noted above. The applicant  
3 concedes that this part of the Goal 11 and Goal 14 exceptions has not been adequately  
4 justified. The applicant concedes that the challenged decision must be remanded so that the  
5 exception for the hotel can be adequately justified or, if the hotel cannot be adequately  
6 justified, the hotel can be eliminated from the proposal. With that concession by the  
7 applicant, petitioner’s third assignment of error must be sustained in part. We consider  
8 petitioner’s remaining assignments of error and the balance of petitioner’s third assignment  
9 of error below to identify all of the issues that must be addressed by the county on remand.

10 ORS 197.835(11)(a).

11 **SECOND ASSIGNMENT OF ERROR (MORROW COUNTY ZONING ORDINANCE**  
12 **(MCZO) 9.050(7)(B))**

13 Petitioner’s second assignment of error challenges the “reasons exception to Goals 11  
14 and 14 for the Boardman Speedway and [the amendment of] the County’s Comprehensive  
15 Plan.” Petition for Review 11. Petitioner contends the county’s findings misapply and  
16 misinterpret OAR 660-004-0020(2) and 660-014-0040 and MCZO 9.050(7)(B) and that  
17 those findings are not supported by substantial evidence.

18 As intervenor correctly notes, the argument that appears in the petition for review in  
19 support of the second assignment of error is directed exclusively at MCZO 9.050(7)(B) and  
20 does not address the cited administrative rules. We therefore do not consider OAR 660-004-  
21 0020(2) and 660-014-0040 further under this assignment of error. As intervenor also  
22 correctly notes, the second assignment of error is directed at the *comprehensive plan*  
23 *amendments* approved by the challenged decision and does not mention the *zoning map*  
24 *amendment*. MCZO 9.050(7)(B) provides as follows:

25 “(B) The Hearing Body shall in addition to other factors set forth by this  
26 ordinance, consider the following criteria to be relevant and such will  
27 be considered in making its decision on a zone change proposal:

- 1           “(a) The proposal is in conformance with the Comprehensive Plan  
2 by showing that there is a public need for the proposal and that  
3 the need will be best served by allowing the request.
- 4           “(b) If other areas in the county are designated for a use as  
5 requested in the application, then a showing of the necessity  
6 for introducing that use into an area not now so zoned and why  
7 the owners there should bear the burden, if any, of introducing  
8 that zone into their area.
- 9           “(c) Mistake in the original Comprehensive Plan or change in the  
10 character of the neighborhood.
- 11           “(d) The factors listed in ORS 215.055 or others which relate to the  
12 public need for healthful, safe and aesthetic surroundings and  
13 conditions.”

14           The challenged decision specifically points out that MCZO 9.050(7)(B) does not  
15 apply to the comprehensive plan amendments and that it applies only to the Limited Use  
16 Overlay Zone that is applied to the speedway property:

17           “\* \* \* The County Court \* \* \* finds that [MCZO] 9.050(7) does not apply to  
18 the requested plan amendments, as that section refers specifically to zone  
19 changes. It finds that comprehensive plan amendments and zoning  
20 amendments are not the same thing. However, [MCZO] 9.050(7) does apply  
21 to the applicant’s request to amend the zoning to apply the Limited Use  
22 Overlay to the speedway property. \* \* \*” Record 116.

23           Because petitioner does not challenge this finding and does not include a challenge to the  
24 zoning map amendment under the second assignment of error, the second assignment of error  
25 is denied.

26           We recognize that the Court of Appeals has directed that LUBA is not to impose  
27 “technical requirements of pleading having no statutory basis.” *Hilliard v. Lane County*  
28 *Commrs.*, 51 Or App 587, 595, 626 P2d 905, *rev den* 291 Or 368 (1981). We do not believe  
29 that requiring that a petitioner correctly identify the part of the challenged decision that is  
30 challenged and the legal theory for that challenge constitutes “technical requirements of  
31 pleading having no statutory basis.” Even if it is, and this Board should consider a challenge

1 to the zoning map amendment that is not expressly stated in the second assignment of error,  
2 we agree with intervenor that the challenge is not well taken.

3 The county’s findings concerning MCZO 9.050(7) include the following:

4 “\* \* \* The County Court finds that no mistake was made in the original  
5 Comprehensive Plan designation, but it also finds that the original designation  
6 has proven ineffective to achieve its intended results. It further finds that  
7 Section 9.050(7) does not require that there be a mistake in order to allow a  
8 change in the zoning. Rather it requires only that this factor be considered.  
9 \* \* \* Record 155.

10 As the challenged decision points out, MCZO 9.050(7) lists several factors that must  
11 be considered rather than separate approval criteria that must be independently satisfied to  
12 approve rezoning. Petitioner does not challenge that interpretation, and it is consistent with  
13 the text of MCZO 9.050(7). Therefore, it is not at all clear whether the finding that “the  
14 airport-related industrial designation of the subject property in 1985 has been ineffective”  
15 would provide a basis for remand, even if the record did not include substantial evidence in  
16 support of the finding.<sup>3</sup> Even if it is, the decision includes unchallenged findings that explain  
17 that since the airport-related industrial designations were applied, there has been almost no  
18 development at the airport. *See* finding 8; Record 111 (describing uses on the subject  
19 property without listing any airport-related industrial uses). Those findings are supported by  
20 substantial evidence in the record. Record 1011-1045.

21 The second assignment of error is denied.

22 **THIRD ASSIGNMENT OF ERROR (GOAL 11 AND GOAL 14 EXCEPTIONS)**

23 ORS 197.732(1)(c) and Goal 2, Part II impose four identically worded criteria for  
24 approving a reasons exception.<sup>4</sup> OAR 660-004-0020 repeats those four criteria and adds

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<sup>3</sup> Petitioners challenge under the first assignment of error is directed at this finding.

<sup>4</sup> Those four criteria are set out in Goal 2, Part II(c) as follows:

“(1) Reasons justify why the state policy embodied in the applicable goals should not apply;

1 some additional explanation and informational requirements. OAR 660-004-0022 elaborates  
2 on the “types of reasons” that may be relied on for exceptions for particular uses. For urban  
3 uses governed by OAR chapter 660 division 14, that division applies in place of OAR 660-  
4 004-0022(1). Although the structure and wording of the rules is not entirely clear, it appears  
5 that OAR 660-014-0040(2) and (3) effectively become the relevant criteria for a statewide  
6 planning goal exception to Goal 14, and to Goals 11 and 3 if such additional exceptions are  
7 necessary, to allow urban uses and urban public facilities on rural agricultural lands.

8 OAR 660-014-0040(2) adds one inapplicable example of a reason that may justify  
9 locating an urban use or rural land, but does not impose any express constraints on the  
10 universe of other reasons that may be relied on to justify an exception to allow urban uses  
11 and public facilities on rural lands.<sup>5</sup> Therefore, the reasons based on statewide planning  
12 goals that the county cites in its decision to justify the disputed exceptions are at least  
13 potentially valid reasons under OAR 660-014-0040(2). OAR 660-014-0040(3) provides  
14 criteria that repeat and elaborate on the four Goal 2, Part II(c) reasons exception criteria.<sup>6</sup>

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“(2) Areas which do not require a new exception cannot reasonably accommodate the use;

“(3) 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

“(4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”

<sup>5</sup> OAR 660-014-0040(2) provides:

“A county can justify an exception to Goal 14 to allow \* \* \* establishment of new urban development on undeveloped rural land. Reasons which can justify why the policies in Goals 3, 4, 11, and 14 should not apply can *include but are not limited to* findings that an urban population and urban levels of facilities and services are necessary to support an economic activity which is dependent upon an adjacent or nearby natural resource.” (Emphasis added.)

<sup>6</sup> OAR 660-014-0040(3) provides:

“To approve an exception under this rule, a county must also show:



1 encountered in other cases in justifying decisions to site urban uses on rural lands supports  
2 petitioner’s characterization of the difficulty of satisfying that requirement. However, when  
3 an applicant has approached that daunting task in the manner the applicant has here, with the  
4 result that there is an 80-page single-spaced decision with detailed findings that incorporate a  
5 detailed exception document and many supporting documents that were submitted in support  
6 of the application and to respond to objections that were raised during the local proceedings,  
7 it is also a daunting task for a petitioner to demonstrate error in such a decision. That is  
8 particularly the case with the reasons exception standards described above, which are  
9 generally subjective and expressed as open-ended considerations rather than measurable  
10 criteria.

11 Petitioner criticizes the decision for accepting the proposal as a “package deal.”  
12 Petition for Review 17. According to petitioner, the county is desperate for economic  
13 development, in whatever form it might be packaged. Petitioner is particularly critical that  
14 the county has accepted an updated and modified version of the same apparently erroneous  
15 assumption that it embraced in the 1985 exception where it assumed that if the county makes  
16 vacant land available for industrial development, it will be developed.

17 **1. The Speedway**

18 As noted earlier, petitioner distinguishes between the “speedway” and “speedway-  
19 related uses.” Petition for Review 14-15. According to petitioner, “even if the speedway  
20 must be placed on rural land, all or most of the ‘speedway-related uses’ can and should be  
21 placed within existing urban areas and urban growth boundaries.” Petition for Review 19  
22 (underscoring in original). Despite that observation, it is clear that petitioner does not  
23 concede that the county has provided adequate reasons for locating the speedway part of the  
24 proposal on the subject rural land. We turn to petitioner’s arguments concerning the  
25 speedway before turning to petitioner’s arguments concerning the reasons given for specific  
26 speedway-related uses.

1           Petitioner contends the county erred because “[t]he reason for the Speedway itself is  
2 expressed solely in terms of economic development for Morrow County under Goal 9.”  
3 Petition for Review 17. Petitioner argues that the on-site hotel, thousands of on-site RV and  
4 camping sites and the on-site restaurant and recreational facilities will leave the persons  
5 attending events at the speedway with little or no reason to venture out to the nearby  
6 communities, thus making the hoped-for economic impact unlikely. Petitioner also notes  
7 that the number of patrons who would seek hotel and motel rooms far outnumber the  
8 available rooms, making the likely economic impact small. In addition petitioner contends  
9 the traffic mitigation measures that will be required for premier events will also discourage  
10 or prevent patrons from utilizing area businesses. In sum, petitioner argues that the county  
11 fails to provide the reasons that are required by OAR 660-014-0040(2) and (3)(a) to site the  
12 admittedly urban scale speedway outside urban growth boundaries on rural land, *i.e.*,  
13 “reasons why the state policies embodied in Goals 11 and 14 should not apply.” Petition for  
14 Review 22.

15           Intervenor first responds that petitioner is wrong about the county relying entirely on  
16 economic reasons under Goal 9 (Economic Development) to justify the exception.<sup>8</sup> In any  
17 event, intervenor contends that the record supports the county’s heavy reliance on expected  
18 economic benefits from the speedway. Intervenor concedes that fans and participants will  
19 have few incentives to leave the speedway during the premier events when traffic control  
20 measures are in place and there are relatively few businesses in the area that are currently in  
21 a position to receive significant economic benefits from the speedway. However, intervenor  
22 points out that the facility is expected to be open ten months a year and the premier events

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<sup>8</sup> Intervenor cites findings that the proposal will further currently underserved motorsport-related recreational needs and thereby further Goal 8 (Recreational Needs). Record 22. In addition the county found that the facility will increase use of the airport, thus furthering the objectives of Goal 12 (Transportation). *Id.* Intervenor also identifies findings that conclude that the facility will improve livability under Goal 14 by providing a regional motor-racing venue. Record 23. Finally, intervenor identifies findings that identify economy-related plan policies that the proposed development would support. Record 116, 326-329.

1 attracting more than 20,000 fans will occur on only two to four weekends a year. Intervenor  
2 contends that during the more numerous smaller events during the rest of the year when  
3 extreme traffic control measures will not be needed, the expected economic impact is  
4 realistic and significant. While the estimates of the magnitude of the expected economic  
5 impact vary, intervenor argues that the record clearly supports the county's expectation that  
6 there will be a positive economic impact from the speedway.<sup>9</sup>

7 Intervenor also disputes petitioner's characterization of the proposal as a "package  
8 deal." Intervenor contends, and we agree, that the county identified specific reasons for each  
9 aspect of the disputed facility.<sup>10</sup> Intervenor also disputes petitioner's contention that the  
10 county simply recycled the reasons that were given in 1985 to justify the airport-related  
11 industrial exception.<sup>11</sup>

12 Finally, intervenor offers the following response to petitioner's contention that the  
13 county has not adequately explained why the speedway cannot be located in Tri-Cities,  
14 Washington; Spokane, Washington; or Boise, Idaho:

15 "[T]he exception and findings clearly indicate that speedways have noise  
16 impacts that are not compatible with residential and other urban uses. The  
17 findings also explain[] why the speedway cannot reasonably be located in  
18 Spokane or Boise. Regarding location of the speedway in Tri-Cities,

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<sup>9</sup> For example the county found that fans traveling to and from the facility would be stopping "to purchase gas, food, groceries or other supplies" on the way to the speedway and the anticipated traffic control measures would not preclude such shopping. There is also evidence that although many race fans would only visit the speedway for the day and would not need lodging, other fans would likely use available lodging in the area. The record includes evidence that the Sears Point Raceway has an annual primary and secondary impact on Sonoma County of approximately \$60 million. Record 966. The applicant's economic consultant estimated that once established, the proposed speedway could have a similar impact on Boardman and the surrounding area. *Id.*

<sup>10</sup> We note some of those reasons later when we address petitioner's challenge to specific aspects of the approved facility.

<sup>11</sup> Intervenor notes the county's findings concerning the desirability of locating the speedway away from urban areas to avoid noise and traffic impacts and the general absence of incompatible development near the site. The county's findings cite the relatively central location that allows the facility to effectively draw fans from as far away as Seattle, Portland, Spokane and Boise. The county also found that the speedway would provide "a much needed 'shot in the arm' for the Boardman Airport \* \* \*." Record 22.

1 Petitioner’s exact testimony below was that ‘Contrary to the assertions of the  
2 application, sites that can “reasonably” accommodate a use on this scale and  
3 intensity are simply not available east of the Cascades, with the possible  
4 exception of Spokane, Washington, or Boise, Idaho.’ Petitioner cannot now,  
5 for the first time, argue that Tri-Cities is a suitable site for the speedway.”  
6 Intervenor’s Brief 28; record citations omitted.

7 Petitioner fails to demonstrate error in the county’s findings that there are reasons  
8 why the speedway cannot “reasonably accommodated in or through expansion of existing  
9 urban growth boundaries or by intensification of development at existing rural centers.”  
10 Petitioner’s challenge to the speedway under the first subassignment of error is denied.

11 **2. Speedway Lodging**

12 Intervenor and the county concede that the county’s decision must be remanded to  
13 allow further consideration of the speedway lodging.<sup>12</sup>

14 **3. Gas Station and Convenience Store**

15 Petitioner cites a statement in a report prepared by the applicant’s economic  
16 consultant to the effect that at least half of the large speedways located elsewhere in the  
17 country operate successfully with gas stations and convenience store located two or more  
18 miles away.<sup>13</sup> We understand petitioner to contend the gas stations and convenience stores  
19 in nearby urban areas can adequately serve the speedway.

20 Intervenor cites county findings that explain that such facilities are located a short  
21 distance to the east in Boardman, but also explain that westbound traffic must travel 20-25  
22 miles to Arlington to reach the first facilities. The findings cite potential adverse impacts if  
23 westbound fans must travel out of direction to Boardman to obtain gasoline before returning  
24 to their destinations to the west. The findings also cite location and signage conditions that

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<sup>12</sup> Intervenor filed a brief on the merits. The county filed a brief in which it joins in intervenor’s brief.

<sup>13</sup> That report nevertheless recommended that the county approve an on-site gas station and convenience store. Record 911.

1 the decision imposes to reduce the chance that these facilities would become stand-alone  
2 facilities that would attract passing traffic on I-84.<sup>14</sup>

3 Intervenor contends that the noted findings are adequate to provide a reason that  
4 justifies siting the gas station and convenience store on the property. In the absence of a  
5 more developed challenge from petitioner, we agree with intervenor. Petitioner’s challenge  
6 under the first subassignment of error regarding the gas station and convenience store is  
7 denied.

#### 8 **4. RV and Camping Sites**

9 Citing a statement in the applicant’s economic consultant’s report that approximately  
10 25 percent of fans attending premier speedway events “will travel by RV and camp,”  
11 petitioner contends that the challenged decision does not provide an adequate reason for  
12 approving 20,000 RV and camping spaces and that the evidence in the record supports a  
13 conclusion that far fewer spaces are actually needed. Petition for Review 25; Record 913.

14 Intervenor responds that the percentage of fans using RVs and camping at other  
15 speedways is not a reliable indication of the percent of fans that would use RV and camping  
16 sites at the Boardman speedway, because those other speedways are much closer to large  
17 cities than the Boardman speedway. Intervenor cites county findings that explain the larger  
18 number of RV and camping spaces is needed to provide the capacity to attract a significant  
19 percentage of the crowd *before* the day of the main event, and to retain them on-site after the  
20 day of the main event, to spread out traffic impacts on nearby transportation facilities.  
21 Similarly, the findings explain that even though convenience store facilities are available in  
22 nearby Boardman, the on-site convenience store is needed to minimize the impact on

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<sup>14</sup> We note other county reasons for allowing the convenience store in our discussion of petitioner’s challenge to the Recreational Vehicle (RV) and camping spaces under the next part of the first subassignment of error.

1 transportation facilities that such convenience store trips to Boardman would have during  
2 larger racing events.

3 Intervenor contends that the noted findings are adequate to provide reasons that  
4 justify siting the RV and camping spaces and convenience store on the property. In the  
5 absence of a more developed challenge from petitioner, we agree with intervenor.  
6 Petitioner's challenge under the first subassignment of error regarding the RV and camping  
7 spaces is denied.

8 **5. Restaurant and Bar**

9 As petitioner correctly notes, the county did not find that an on-site full sized  
10 restaurant is a necessity, and the record does not support such a finding. However, the  
11 exception document that the county adopted provides the following description and  
12 justification for the approved restaurant:

13 “\* \* \* On-site restaurants are more common when they are associated with  
14 industrial parks. As noted, both Sears Point and Las Vegas have on-site  
15 restaurant facilities to serve industrial park employees as well as racing fans.

16 “The proposed Oregon Motor Speedway will include both racing facilities and  
17 an industrial park. While most racing spectators will rely on concessions for  
18 food, [the applicant's economic consultant] has determined that the site can  
19 support up to about 7,000 square feet of restaurant space. Although it is not  
20 necessary to locate a full-service restaurant on site, some type of on-site food  
21 service will be needed and is desirable at the track on a daily basis when it is  
22 operating. Employees, racing school attendants, industrial park workers,  
23 other facility uses and daily track patrons will generate demand. Accordingly  
24 this proposal initially includes a restaurant facility not to exceed 5,000 square  
25 feet in floor space.

26 “It is important to recognize, however, that the number of full time employees  
27 could increase with the success of the operation and Speedway-related  
28 industrial uses. If so, additional restaurant space may be needed to meet  
29 increased demand. Accordingly, this application provides for expansion of  
30 restaurant facilities by up to 5,000 more square feet if and when the number of  
31 full time track and tenant employees working at the site reaches 200.

32 “This restaurant is not intended to compete with restaurant facilities in  
33 Boardman and elsewhere along the I-84 Corridor. It is not intended to serve

1 passby traffic. Conditions of approval addressing signage and location can be  
2 imposed to achieve that result.” Record 40.

3 As the above-quoted findings recognize, it is not essential that a restaurant be  
4 available on-site. Locating a restaurant on-site will mean that fewer workers at the speedway  
5 and industrial park will drive to Boardman to eat. However, as the findings explain, the  
6 workers at the site will create a demand for proximate foodservice. As the decision  
7 recognizes, allowing an on-site restaurant is more a convenience than a necessity. The  
8 question is whether its status as a convenience necessarily means that allowing the on-site  
9 restaurant runs afoul of OAR 660-014-0040(2) and (3)(a).

10 Although it is a reasonably close question, we reject petitioner’s challenge to the on-  
11 site restaurant. The convenience that the restaurant will provide to on-site workers is a  
12 legitimate reason to approve it in conjunction with the speedway and speedway-related uses.  
13 Although it will likely have the effect of reducing some of the positive economic impact the  
14 speedway would otherwise have on restaurants in nearby Boardman, some of the speedway  
15 and industrial park workers will no doubt drive to restaurants in Boardman notwithstanding  
16 the on-site restaurant alternative. The decision includes conditions of approval that prohibit  
17 locating the restaurant within one-half mile of an interchange and prohibit signage or other  
18 advertising that might attract passing motorists on the freeway. Those conditions are  
19 imposed to ensure the restaurant performs its limited convenience function and does not  
20 significantly compete with nearby restaurants in urban areas. The limited right to expand  
21 from 5,000 feet to 10,000 feet appears to be consistent with the underlying reasoning for  
22 allowing the initial 5,000 square foot facility.

23 We agree with intervenor that the county has provided adequate reasons to justify  
24 siting the restaurant and bar on the property. Petitioner’s challenge under the first  
25 subassignment of error regarding the restaurant and bar is denied.

1                                   **6.     Arcade, Indoor and Outdoor Recreational Facilities**

2             Petitioner contends that the applicant’s economic consultant’s report does not support  
3 approval of the 2,500-square foot arcade, the 100,000-square foot multi-purpose indoor  
4 recreational facility or the outdoor recreational facility. Petitioner contends these uses have  
5 nothing to do with a speedway and that they “are nothing more than additional urban  
6 ornaments on the applicant’s Christmas wish list.” Petition for Review 26.

7             Intervenor identifies findings that provide reasons for the disputed arcade and  
8 recreational facilities. A recurring theme in the application is the need to attract a large  
9 number of fans to the site early, and to keep them on the site after the main event, to spread  
10 the traffic impact on adjoining transportation facilities over a longer period of time. The  
11 findings also explain:

12                    “These facilities would help serve the needs of visitors to the Speedway  
13                    without unduly interfering with Boardman’s ability or interests in providing  
14                    more urban type[s] of recreational facilities like movie theaters and bowling  
15                    alleys.” Record 41.

16             The findings go on to explain that the arcade and recreational facilities are provided in part  
17 for use by family members who are not interested in the races and as a accessory uses to the  
18 speedway.

19             Petitioner does not directly challenge the explanation in the above-described reasons  
20 for the arcade and recreational facilities in the exception statement. While the extent of  
21 recreational facilities approved and their scale and some of the reasons cited in the  
22 exceptions document seem questionable, without a more focused challenge by petitioner  
23 regarding these facilities we cannot say the county’s reasons for approving the arcade and  
24 recreational facilities are inconsistent with OAR 660-014-0040(2) and (3)(a). Petitioner’s  
25 challenge under the first subassignment of error regarding the arcade and recreational  
26 facilities is denied.

1                   **7. Office Space**

2           Based on a report by the applicant’s economic consultant, petitioner argues that only  
3 10,000 square feet of office space is justified for the speedway, not the 20,000 square feet of  
4 office space that was approved.

5           Intervenor cites discussion in the exception document that explains the rationale for  
6 the 20,000 square feet of office space.<sup>15</sup> The exceptions document explains that 10,000  
7 square feet of office space is needed for the speedway “ticketing, operations and  
8 administrative staff.” Record 32. The findings go on to explain why the additional 5,000  
9 square feet were added to make up the 15,000 square feet of office space that is initially  
10 authorized by the challenged decision. The exceptions document goes on to explain the  
11 contingent authorization for an additional 5,000 square feet of office space if the initial

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<sup>15</sup>Relevant portions of that discussion follows:

“Demand for office space tends to be a function of the number of full-time employees expected at the facility and the amount of space a typical office employee occupies. For this proposal, the Port’s professional consultant advises that up to 10,000 square feet of office space will be needed to accommodate ticketing, operations and administrative staff. Another 2,000 square feet of office space is needed for on-site banking facilities to safely secure revenues received at events, and to accommodate the media and employees of an internet racing service proposed to be located at the Speedway. This ‘virtual raceway’ will allow people to simulate races at the Oregon Motor Speedway on-line.

“If the speedway attracts long-term tenants such as auto manufactures or racing schools, as expected, then the applicant anticipates that another approximately 3,000 square feet will be needed to accommodate the lessees. Accordingly, this exception seeks authorization to construct up to 15,000 square feet of office space associated with the Speedway and Speedway related uses.

“The estimate of office spaces needs \* \* \* is based on an assumption that the facility will employ 16 to 28 people full-time. While this number of employees is consistent with figures for Sears Point Raceway, it is small compared the number of full-time employees at Kentucky Speedway (50-55), Talladega Superspeedway (50-55), Michigan Motor Speedway (57), and Las Vegas Motor Speedway (45-50). Hence, the total number of full-time employees could significantly exceed the estimated 16-28 persons. \* \* \* To avoid having to take another goal exception in [the] event [employment exceeds initial estimates], this exception requests authorization to add up to an additional 5,000 square feet of office space at such time as the number of full-time track and tenant employees exceeds 40.” Record 32-33.

1 estimate of 16-28 employees proves wrong and the number of speedway and tenant  
2 employees exceeds 40 persons in the future.

3 Petitioner does not directly challenge these findings. Without such a challenge, we  
4 do not agree that they are insufficient to establish reasons to authorize 15,000 square feet of  
5 office space and an additional 5,000 square feet of office space in the event that more than 40  
6 persons are employed at the speedway.

7 Petitioner's challenge under the first subassignment of error regarding the office  
8 space is denied.

9 **8. Retail Space**

10 Petitioner argues there is nothing in the record that provides reasons for siting a  
11 6,000-square foot gift shop on the rural site to sell racetrack memorabilia. Petitioner  
12 contends that while it may be economically advantageous to the developer to do so, locating  
13 the gift shop on-site detracts from the economic benefits to local retailers that the county  
14 relies on to justify the larger speedway.

15 Intervenor cites discussion in the exceptions document that explains that small gift  
16 shops are a common feature of speedways and other major sports venues and that the  
17 approved 6,000-square foot gift shop is consistent with the size of gift shops that are  
18 provided at such venues.<sup>16</sup>

19 The ultimate legal question that petitioner presents in challenging the county's  
20 authorization of the gift shop is whether the county has provided adequate reasons for  
21 allowing the gift shop and whether the county has adequately demonstrated that nearby urban  
22 areas or rural centers cannot reasonably accommodate the gift shop. While the county's

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<sup>16</sup> The exception document also cites the Oregon Supreme Court's conclusion that a winery gift shop could be viewed as a reasonable extension of a winery allowed in an EFU zone as a farm use or a commercial activity in conjunction with farm use. *Craven v. Jackson County*, 308 Or 281, 289, 779 P2d 1011 (1989). While the approach taken by the Supreme Court in *Craven* appears to be consistent with the approach applied by the county here, a very different question was presented in *Craven*, and *Craven* is at best indirect support for the approach taken by the county here.

1 decision does not squarely address that question, we understand the county’s decision to  
2 implicitly take the position that an off-site location in Boardman would not be a reasonable  
3 place to put the gift shop. The apparent fact that major sports venues routinely offer on-site  
4 gift shops is not overwhelming evidence that it would be unreasonable to require that the gift  
5 shop be located in an off-site urban location, but in this case we conclude it is evidence that a  
6 reasonable person could rely on to reach that conclusion.

7 Petitioner’s challenge under the first subassignment of error regarding retail space is  
8 denied.

9 **9. Industrial Space**

10 Petitioner argues the county has not provided reasons that justify approval of up to  
11 308,000 square feet of land for industrial development. Petitioner argues “[n]one of this  
12 industrial space appears to be associated with or related to the speedway, and there is no  
13 analysis or report upon which the industrial space designation is based.” Petition for Review  
14 27.

15 Intervenor points out that the challenged decision redesignates land that was  
16 previously approved for airport-related industrial use in 1985 to allow it to be developed for  
17 speedway-dependent or speedway-related industrial uses. Intervenor cites to a report by the  
18 applicant’s economic consultant, which states that other speedways provide such industrial  
19 development opportunity for companies that require a site next to a speedway. Intervenor  
20 also cites to the rationale set out in the exception document for approving up to 208,000  
21 square feet of industrial space initially and up to 100,000 additional square feet of industrial  
22 space once that space is 80 percent occupied.<sup>17</sup>

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<sup>17</sup> The gist of that rationale is that speedway-related and dependent industrial uses and the speedway offer each other economic advantages when they are located in close proximity. Although the exceptions document does not clearly say so, it can be read to suggest that speedway-dependent and speedway-related industrial uses need to be located next to the speedway. In addition, it states that those industrial uses may generate sufficient noise that they should not be located in urban areas. The relevant findings are set out below:

1           The questions to be answered under OAR 660-014-0040(2) and (3)(a) are whether (1)  
2 there are reasons to site speedway-dependent and related industrial uses outside existing  
3 urban areas and rural centers, and (2) whether nearby urban areas and rural centers can  
4 reasonably accommodate such industrial uses. The fact that the decision merely redesignates  
5 existing airport-related industrial land so that it can be used for speedway-dependent and  
6 related industrial use has no obvious bearing on either of those questions. The facts that (1)  
7 other speedways incorporate industrial parks and (2) such industrial parks improve the  
8 speedway’s profitability may be relevant to the first of those questions (*i.e.*, whether there are  
9 reasons to plan and zone for such industrial development), but have nothing to do with the  
10 second question. The exception document can be read to suggest that the  
11 speedway-dependent and related industrial uses could not reasonably locate on urban

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“While all speedways include space to accommodate the maintenance and operations needs of the speedway, several also provide space for businesses that are speedway related or dependent. For example, Michigan Motor Speedway provides land for a tire company and a catering/concession enterprise. Sears Point Raceway contains a 157,000 square foot industrial park that is leased only to racing-related businesses and racing teams that are based at Sears Point. Land also is provided to store cars that are tested at the racetrack and to house the racing school.

“Providing land for racing-related manufacturing businesses appears to be an emerging trend in speedway development. The experiences at Michigan and Sears Point indicate there are industries that want to be next to a race track and would not otherwise locate in the town where the track is sited. The speedway-related industrial park concept is relatively new to racing facilities and appears to provide good supporting income for the track.

“At Boardman, attracting companies of this nature may be feasible once the Speedway is successfully operating. Companies likely to locate at the site include racing schools, race car testing, wind tunnel testing, engine manufacturing, and similar racing-related industrial activities. Because these uses could generate noise levels significant enough to warrant separation from developed areas, and because the 2,700 acre Boardman site already is zoned to allow *airport*-related industrial uses in order to expand, improve and diversify the local economy, it makes sense to expand that zoning to allow a small portion of the overall airport site to be available for uses that are *racing*-related or dependent.

“This proposal seeks authorization to allow the construction of manufacturing buildings containing up to 208,000 square feet of floor space, to be leased only to racing-related businesses. To avoid the need to take another goal exception, this exception provides that once that space is 80 percent occupied, then the industrial park could expand to add up to an additional 100,000 square feet of racing-related industrial floor space.” Record 34-35 (emphases in original).

1 industrial land in nearby Boardman, although it does not clearly take that position. The  
2 exception document does, however, state that noise associated with these industries might  
3 make them inappropriate in urban areas.

4 The mere suggestion that speedway-dependent and related industrial uses may require  
5 close proximity to the speedway and the statement that they may generate sufficient noise to  
6 make an urban location inappropriate provide weak reasons for approving a rural location for  
7 such industries. However, petitioner neither acknowledges nor challenges this rationale in  
8 the exceptions document. Without such a challenge, we do not agree that they are  
9 insufficient to establish reasons for approving the speedway-dependent and related industrial  
10 space and for concluding they should be located on rural land next to the speedway.

11 Petitioner's only specific arguments under this part of the first subassignment of error  
12 are that (1) there is no analysis showing a need for the industrial space, and (2) "[n]one of  
13 this industrial space appears to be associated with or related to the speedway." Petition for  
14 Review 27. Neither of those arguments is well founded. The applicant's economic  
15 consultant states that there would be a demand for such industrial land at the speedway.  
16 Record 907-908. The decision includes a condition that the approved industrial space be  
17 limited to "racing related businesses and activities." Record 170.

18 Petitioner's challenge under the first subassignment of error regarding the  
19 speedway-dependent and related industrial space is denied.

20 For the reasons explained above, petitioner's first subassignment of error under the  
21 third assignment of error is sustained with regard to the speedway hotel. Otherwise, the first  
22 subassignment of error under the third assignment of error is denied.

### 23 **B. Areas that do not Require a New Exception**

24 As noted earlier in this opinion, Goal 2 Part II(c)(2) requires that the county show  
25 that "[a]reas that do not require a new exception cannot reasonably accommodate the use."  
26 In the context of an exception to Goals 11 and 14 to allow urban uses and facilities, OAR

1 660-014-0040(3)(a) states that requirement more precisely: “the proposed urban  
2 development cannot be reasonably accommodated in or through expansion of existing urban  
3 growth boundaries or by intensification of development of existing rural centers.” *See* ns 4  
4 and 6.

5 Under the second subassignment of error petitioner argues the county inadequately  
6 consider alternative urban locations. Petitioner raises several arguments that we address  
7 separately below.

8 **1. Unreasonable Definition of the Proposed Development**

9 Petitioner argues that the applicant improperly defined the proposed development so  
10 “that it literally could not be located anywhere but the Boardman airport exception area.”<sup>18</sup>  
11 Petition for Review 29.

12 Petitioner provides no reason or basis for questioning the applicant’s description of  
13 the required characteristics of sites for a major speedway. We see nothing inherently  
14 improper in the list of characteristics that are necessary to attract national or international  
15 auto racing.

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<sup>18</sup> The exception document states that “a major speedway serving the Pacific Northwest requires the following characteristics:

- “● A central location within recognized (four to six hour) driving distances of major population centers in the Pacific Northwest.
- “● A transportation network capable of transporting tens of thousands of vehicles to the site for a major event.
- “● A very large tract of flat, undeveloped land to accommodate the use.
- “● Separation from noise-sensitive uses.
- “● Surrounding compatible uses.
- “● Dry, reliable weather conditions.” Record 266.

1                                   **2.       Separate the Speedway and Speedway-Related Uses**

2           Petitioner contends that the impacts of a major speedway that may justify a rural  
3 location do not apply to the speedway-related uses. Petitioner contends that there is no  
4 reason why those speedway-related uses could not be located inside nearby urban areas. The  
5 reasons the county provided for siting the speedway-related uses are discussed under the first  
6 subassignment of error in our discussion of petitioner’s more specific challenges to those  
7 speedway-related uses. Petitioner’s challenges to the county rationale for approving those  
8 speedway-related uses at the rural speedway site are rejected under the first subassignment of  
9 error. Petitioner offers no different or additional argument under the second subassignment  
10 of error to challenge the county’s reasons for approving those uses. As we have already  
11 explained, many of those speedway-related uses are sited at the speedway site to attract and  
12 retain fans over a long period of time to avoid unacceptable impacts on traffic facilities or for  
13 other reasons need to be at the speedway site to perform their intended purpose.

14           With the exception of the speedway hotel, we rejected petitioner’s arguments under  
15 the first subassignment of error that the county failed to provide adequate reasons in support  
16 of its exceptions to Goals 11 and 14 for the speedway and speedway-related uses. Petitioner  
17 does not present any additional argument concerning the speedway-related uses here.

18                                   **3.       Alternative Urban Locations**

19           Petitioner criticizes the county for rejecting Spokane and Boise as viable alternative  
20 sites because they are not centrally located. Petitioner contends the county inadequately  
21 explained what it meant by the “market areas” or what is required to be “central.” Petition  
22 for Review 31. Moreover, petitioner contends it is error to reject these alternative sites solely  
23 for the reason that they are not central.

24           With regard to petitioner’s suggestion that Tri-Cities is a suitable alternative location,  
25 intervenor contends petitioner took the opposite position below and should not now be

1 permitted to argue that Tri-Cities is a suitable alternative. As previously noted, we agree  
2 with intervenor.

3 With regard to Spokane and Boise, we agree with intervenor that the petitioner  
4 simply expresses disagreement with the county’s finding that Spokane and Boise are not  
5 suitable locations because they are not centrally located in the market area. That finding is  
6 supported by a report that was prepared by the applicant’s economic consultant, which  
7 petitioner makes no attempt to challenge. Record 868-876. Petitioner must do more than  
8 disagree with the county’s finding on this point.

9 **4. Destination Resort**

10 Petitioner contends the county should have treated the proposed speedway and  
11 speedway-related uses as a destination resort under ORS 197.435 to 197.467.

12 Intervenor responds that the proposed development includes uses that are prohibited  
13 by the destination resort statutes and argues that petitioner offers no legal theory in support  
14 of her suggestion that the county was legally required to view the proposal as a destination  
15 resort or to require that it be reviewed and approved as such. We agree with intervenor.

16 For the reasons stated above, petitioner’s second subassignment of error under the  
17 third assignment of error is denied.

18 **C. Economic, Social, Environmental and Energy (ESEE) Consequences**

19 Goal 2 Part II(c)(3) requires that the county determine that “[t]he long term  
20 environmental, economic, social and energy consequences of” siting the proposed facility at  
21 the approved rural site in Boardman are not “significantly more adverse than would typically  
22 result” from locating the proposal at other rural sites that would require exceptions to Goals  
23 11 and 14.<sup>19</sup>

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<sup>19</sup> OAR 660-014-0040(3)(b) elaborates on this requirement but petitioner does not assign any significance to that elaboration. See n 6.

1           Petitioner again questions the economic benefit of the proposed facility in view of the  
2 uses that are included to manage traffic impacts, and the traffic control measures that will be  
3 employed. Petitioner also argues that the county erred by not requiring a fuel consumption  
4 analysis for the approved site or alternative sites.

5           Petitioner's questions concerning the economic impact of the speedway are noted and  
6 addressed elsewhere in this opinion and will not be specifically addressed a second time  
7 here.<sup>20</sup> Intervenor points out that the exception document includes an analysis of ESEE  
8 consequences under OAR 660-014-0040(3)(b). Record 46-58. Petitioner makes no attempt  
9 to challenge that analysis. Although petitioner contends an energy consumption analysis is  
10 required, she does not challenge the energy consequences analysis that appears at Record 55-  
11 56. That analysis acknowledges that motorists traveling to the speedway will consume large  
12 quantities of gasoline, as will the motorsport racing itself. However, those findings identify a  
13 number of positive energy consequences, including: (1) good roadway connections with  
14 major-market cities will reduce congestion and reduce energy consumption; (2) proximity to  
15 Boardman and I-84 will reduce travel time for employees; (3) existing support facilities are  
16 in place. The energy discussion in the exception document also acknowledges that locating  
17 the facility west of the Cascades might reduce total travel time by employees and fans, but  
18 also notes that the weather conditions are much less desirable. The energy discussion also  
19 acknowledges that locating the speedway near Spokane or Boise might reduce travel time for  
20 employees, but also notes that those sites would increase travel time for fans in the rest of the  
21 market area.

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<sup>20</sup> As we have already noted, while the traffic mitigation measures may reduce the economic advantage the speedway might otherwise provide to surrounding businesses, that reduction in economic benefits will be severe only during the relatively infrequent premier racing events. If anything like the speedway that the county envisions is actually built, it seems indisputable based on the documents in the record that it would have a significant economic impact on the county, even if certain aspects of the facility may reduce that economic benefit to some degree.

1           Given the above energy analysis and petitioner’s failure to specifically challenge that  
2 analysis or the discussion of economic, social or environmental consequences, we do not  
3 agree that the county’s failure to require a fuel consumption analysis of the site and  
4 alternative rural locations constitutes reversible error.

5           The third subassignment of error under the third assignment of error is denied.

6           The third assignment of error is sustained with regard to the speedway hotel and is  
7 otherwise denied.

8           **FIRST ASSIGNMENT OF ERROR (GOAL 3 EXCEPTION)**

9           Petitioner argues that the county erred by not adopting a new Goal 3 exception in  
10 addition to the Goal 11 and Goal 14 exceptions. As petitioner correctly notes, the 1985  
11 exception was adopted to authorize airport-related industrial uses, not a large international  
12 speedway and associated uses. Petitioner cites and relies on our decision in *Flying J. Inc. v.*  
13 *Marion County*, 38 Or LUBA 149 (2000), *aff’d* 170 Or App 568, 13 P3d 516 (2000) in  
14 arguing that a new Goal 3 exception is required to authorize the disputed speedway and  
15 associated uses.

16           Our decision in *Flying J. Inc.* concerned the proper application of OAR 660-004-  
17 0018(4), which requires that the planning and zoning that is applied to implement a reasons  
18 exception must limit uses to those that have been justified in that reasons exception and that a  
19 *new* reasons exception must be adopted before allowing additional uses.<sup>21</sup> The decision at

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<sup>21</sup> OAR 660-004-0018(4) provides in relevant part:

“(4) ‘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;

“(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.”

1 issue in *Flying J. Inc.* concerned an attempt to expand the uses that had been allowed under a  
2 prior reasons exception to Goal 3 without adopting *any* new exception, whereas the decision  
3 at issue in this appeal does adopt new exceptions to Goals 11 and 14. Nonetheless, our  
4 reasoning in that case in rejecting arguments that the uses could be expanded without taking  
5 a new exception to Goal 3 also supports petitioner's argument here.

6 OAR 660-004-0018(4)(b) does not expressly require that the *new* reasons exception  
7 that must be taken under the rule to change the uses that were authorized by a *previously*  
8 *adopted* reasons exception must include an exception to the *same* goal or goals that were the  
9 subject of the original exception. The rule is therefore somewhat ambiguous. However, the  
10 likely purpose of the rule is to avoid the potential for an end run that would avoid compliance  
11 with one or more applicable statewide planning goals. For example, a reasons exception to  
12 Goal 3 for a resource-dependent industrial use might be justified for a property with unique  
13 raw materials, where an industrial use that needs those raw materials must be sited close to  
14 those raw materials. However, if that property is later planned and zoned to approve a  
15 residential subdivision without requiring a new exception to Goal 3, it might be possible to  
16 approve a residential subdivision for which a reasons exception to Goal 3 could never be  
17 justified directly. Simply stated, the reasons that justify a Goal 3 exception to allow the  
18 resource-dependent industrial use could easily be irrelevant in attempting to justify a Goal 3  
19 exception for a residential subdivision.

20 Assuming the possibility of an end run is the concern that gave rise to the rule, that  
21 concern might be obviated when Goal 11 and 14 exceptions are approved to allow a  
22 speedway on property that is already subject to a reasons exception to Goal 3 to allow  
23 industrial use. The same reasons that justify an exception to Goals 11 and 14 might well also  
24 justify a new reasons exception to Goal 3. However, the analysis and justification that are  
25 required for exceptions to Goals 11 and 14 to site the disputed speedway on rural land clearly  
26 might not be sufficient to justify an exception to Goal 3 to site that same speedway on rural

1 agricultural land if, for example, a suitable rural nonresource site that did not include  
2 agricultural lands was available to accommodate the use. Similarly, that analysis and  
3 justification might not be sufficient to justify a new or revised reasons exception to Goal 3 to  
4 allow the speedway and related uses in place of the airport-related industrial uses for which  
5 the 1985 exception was adopted.<sup>22</sup> If not, a use for which an exception to Goal 3 has never  
6 been justified could be constructed in place of the only nonresource uses for which an  
7 exception to Goal 3 has been justified.

8 It may well be that the same factors that the county found persuasive in concluding  
9 that the requested exceptions to Goals 11 and 14 are justified will lead it to approve a new  
10 exception to Goal 3. To the extent the analysis that has already been done to justify the  
11 exceptions to Goals 11 and 14 is also sufficient to justify an exception to Goal 3, the county  
12 may simply explain why that is the case and rely on that analysis. However, we do not  
13 believe it is appropriate for us to assume that the county will find that the analysis that we  
14 find adequate to justify Goal 11 and 14 exceptions for all proposed uses but the hotel also  
15 justifies a new reasons exception to Goal 3.

16 Finally, citing our decision in *DLCD v. Umatilla County*, 39 Or LUBA 715 (2001),  
17 intervenor contends that “even [if] a Goal 3 exception [was] required, this assignment of  
18 error would fail because Morrow County’s Goal 11 and 14 exceptions necessarily satisfy any  
19 Goal 3 exception requirements applicable to this decision.” Intervenor’s Brief 13.

20 Intervenor misreads our opinion in *DLCD v. Umatilla County*. That case involved a  
21 reasons exception for residential development in a rural area of Umatilla County. The  
22 challenged decision characterized the development as both “rural” and “urban” in nature.  
23 We pointed out that, as those terms are defined and used in land use parlance, the residential

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<sup>22</sup> In adopting a reasons exception, the first factor that must be considered is whether there are reasons that “justify why the state policy embodied in the applicable goals should not apply.” Although the state policies embodied in Goals 11 and 14 (urban uses and urban levels of public facilities belong inside UGBs) compliment the state policy embodied in Goal 3 (protect rural agricultural lands), they are not the same.

1 development could not be both urban and rural. Determining whether the proposed  
2 residential development was “urban” or “rural” was important in *DLCD v. Umatilla County*  
3 because the required reasons analysis for justifying an exception for “urban” uses of rural  
4 land is set out at OAR 660-014-0040, whereas the required reasons analysis for justifying  
5 “rural” residential development on agricultural land is set out at OAR 660-014-0022(2). We  
6 went on to reach the following conclusions, from which intervenor-respondent extracts its  
7 legal argument here:

8           “\* \* \* Nonetheless, any judgment [concerning compliance with OAR 660-  
9 014-0040] is premature, because the county has not addressed OAR 660-014-  
10 0040. Assuming, for the sake of discussion, that the proposed development  
11 complies with OAR 660-014-0040, there would then be no need to address the  
12 requirements of either OAR 660-004-0022(1) or (2) with respect to either  
13 Goal 3 or Goal 11. *That is because reasons that justify a Goal 14 exception*  
14 *under OAR 660-014-0040 also must be sufficient to justify exceptions to*  
15 *Goals 3, 4 and 11, if exceptions to those goals are required. OAR 660-014-*  
16 *0040(2) \* \* \** In this context, no additional reasons for purposes of OAR  
17 660-004-0020(2)(a) are necessary to establish exceptions to Goals 3, 4 and 11  
18 once the local government demonstrates reasons to justify new urban  
19 development under OAR 660-014-0040.” 39 Or LUBA at 723-724.

20           The point we were trying to make in *DLCD v. Umatilla County* is that under OAR  
21 660-014-0040(2) the reasons that might justify an exception to Goal 14 for an urban use of  
22 rural land must also include reasons that would justify an exception to Goals 3 and 11 *if*  
23 *exceptions to those goals are also required*. If reasons are identified under OAR 660-014-  
24 0040(2) that justify exceptions to Goal 14, and Goals 3 and 11 as well, then there is no need  
25 to provide additional reasons to justify reasons exceptions to Goals 3 and 11 under OAR  
26 660-004-0022(1) or (2). We did not mean to suggest that reasons that justify Goal 14  
27 exceptions necessarily justify an exception to Goals 3, 4 and 11, or obviate the necessity for  
28 such exceptions. The exception that the county adopted here expressly takes the position that  
29 it *need not* provide reasons that would justify an exception to Goal 3. The challenged  
30 decision relies entirely on the 1985 exception to Goal 3, which did not concern the proposed

1 speedway, and speedway-related uses. *DLCD v. Umatilla County* does not support  
2 intervenor’s argument.<sup>23</sup>

3 The county erred in concluding that a new Goal 3 exception is not required.

4 The first assignment of error is sustained.

5 The county’s decision is remanded.

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<sup>23</sup> We note and reject one additional argument that intervenor makes. OAR 660-033-0020(1)(a) defines agricultural land for purposes of Goal 3. While the subject property falls within the Class I-VI soils that would make it agricultural land, OAR 660-033-0020(1)(c) excludes “land within acknowledged exception areas for Goal 3[.]” Therefore, as intervenor correctly argues, the subject property is technically not “agricultural land” that is subject to Goal 3. However, intricacy in the definition of agricultural land does not obviate the requirement of OAR 660-004-0018(4)(b) that “[w]hen 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.”