

**6.3.1 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Generally.** A county does not err by failing to consider and approve an exception to Goals 3 and 4, where the application for a comprehensive plan and zoning map designation that would allow rural residential development is based on a code provision that allows rural nonagricultural and nonforest lands to be designated for rural residential use. *Rutigliano v. Jackson County*, 47 Or LUBA 470 (2004).

**6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally.** Under Goal 2, Part II(c)(4) an exception to allow a parkway on agricultural land requires that impacts on adjacent uses be reduced to a compatible level. Where a petitioner argues the challenged decision fails to do so and respondents identify no findings addressing this requirement, remand is required. *Friends of Eugene v. City of Eugene*, 44 Or LUBA 239 (2003).

**6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally.** Petitioner’s argument that land formerly within a city’s urban growth boundary is necessarily subject to an exception to Goal 3 provides no basis for remand where it is not clear that the property was subject to a Goal 3 exception when included in the UGB and, even if it was, petitioner does not explain why removal of the property from the UGB would leave the property subject to a Goal 3 exception as a matter of law. *Manning v. Marion County*, 42 Or LUBA 56.

**6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally.** Rural nonresource property for which a Goal 2 exception has not been taken is not subject to the Goal 14 safe harbor provisions of OAR 660-004-0040. *DLCD v. Klamath County*, 40 Or LUBA 221 (2001).

**6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally.** In adopting an exception to the statewide planning goals to allow rural residential use of forestland, a local government must comply with the requirements of OAR 660-004-0018(2)(b) regarding rural uses in exception areas. Rural residential zoning, in itself, does not demonstrate that the exception area will not commit nearby resource uses to nonresource uses and that the exception area is compatible with nearby resource uses, particularly when nearby rural residential uses are used to justify a conclusion that the exception area is committed to nonresource use. *DLCD v. Coos County*, 39 Or LUBA 432 (2001).

**6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally.** Before amending an urban growth boundary to add land with predominantly Class I soils to meet an identified need for commercial land, a county must determine whether alternatives to adding a site with predominantly Class I soils can reasonably accommodate the identified need. That alternatives analysis under OAR 660-004-0020(2)(b)(B) is a multi-factor analysis and rejecting alternative sites solely because they have soils that may increase development costs is error. *DLCD v. Douglas County*, 38 Or LUBA 542 (2000).

**6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally.** Land that is already included within a UGB is assumed to be available for urban development.

That assumption is not rendered invalid simply because sites that are planned and zoned for residential, industrial and commercial use have soil or other characteristics that make them less than ideal to develop. *DLCD v. Douglas County*, 38 Or LUBA 542 (2000).

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Alternative sites to meet an identified need for commercially planned and zoned land may not be rejected solely because they have soils limitations that the USDA estimates may result in an average 39 percent development cost increase for some small commercial buildings. The estimated 39 percent cost increase is an average, so it may be lower in particular cases, and any added cost may be offset by other advantages the sites may possess. *DLCD v. Douglas County*, 38 Or LUBA 542 (2000).

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Where petitioner argues that a Goal 3 exception to allow a subdivision of 10 five-acre lots on rural land also requires an exception to Goal 14, but petitioner fails to explain why such a subdivision constitutes an urban use and fails to challenge the county's findings that the proposal would be served by rural services, LUBA will reject the argument. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 489 (2000).

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ORS 197.732(6), which applies to LUBA's and LCDC's review of goal exception decisions, does not require LUBA to perform a comprehensive and independent evaluation of a proposed goal exception, but is satisfied by a reasoned opinion. *Laurence v. Douglas County*, 33 Or LUBA 292 (1997).

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The county's failure to provide adequate notice of a proposed goal exception under ORS 197.732(5) is a procedural error that will not result in reversal or remand where the record demonstrates that petitioners' substantial rights were not prejudiced. *Middleton v. Josephine County*, 31 Or LUBA 423 (1996).

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At a minimum, ORS 197.732(5) requires that the county's notice of a proposed goal exception must include a brief summary of the issues involved in the proposed exception, in addition to the list of applicable criteria required by ORS 197.763(3)(b). *Middleton v. Josephine County*, 31 Or LUBA 423 (1996).

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ORS 215.431(1) and (2) allow delegation by a county governing body to the county planning commission or hearings officer of the authority to conduct hearings and make decisions on applications for plan amendments, subject to appeal to the county governing body. However, under ORS 215.413(5)(a), ORS 215.431(1) and (2) do not apply to any plan amendment for which an exception to any of the Statewide Planning Goals is required. *Young v. Douglas County*, 31 Or LUBA 545 (1996).

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Under OAR 660-04-020(2)(d), an exception to Goal 3 may be approved so long as compatibility

with adjacent uses *will be* achieved through measures designed to reduce adverse impacts; compliance with the compatibility standard need not be actually achieved prior to approval of the exception. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57 (1996).

**6.3.1 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Generally.** A county governing body's interpretation that an otherwise applicable code permit standard requiring "Class I-IV soils [to] be preserved and maintained for farm use" is not applicable to land for which an exception to Statewide Planning Goal 3 (Agricultural Lands) has been adopted as part of the acknowledged county comprehensive plan, is not "clearly wrong," and is within the governing body's discretion under ORS 197.829. *Reeves v. Yamhill County*, 28 Or LUBA 123 (1994).