

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the county board of
4 commissioners (county board) that takes "reasons" exceptions
5 to Goals 3 and 14, amends the county plan designation of the
6 7.61-acre subject property from Agriculture to Industrial,
7 expands the Dillard Urban Unincorporated Area (Dillard UUA)
8 boundary to include the property, and changes the property's
9 zoning from Exclusive Farm Use - Cropland (F1) to Heavy
10 Industrial (M-3).

11 **MOTION TO INTERVENE**

12 Willamette Industries, Inc. (intervenor), the applicant
13 below, moves to intervene on the side of the respondent.
14 There is no opposition to the motion, and it is allowed.

15 **FACTS**

16 As described by the Douglas County Comprehensive Plan
17 (DCCP), the Dillard UUA is one of seven areas which are
18 "located outside urban growth boundaries of
19 incorporated cities and possess a community
20 identity all their own. * * * These areas, due to
21 their density and the existence of public
22 facilities (including sewer), are urban in nature.
23 These areas have specific problems and issues
24 relative to their development not common to the
25 rural portions of the County." DCCP 15-53.

26 The subject property is flat, almost treeless vacant
27 land located adjacent to the Dillard UUA boundary. The
28 property is directly west of intervenor's laminated veneer
29 lumber manufacturing plant, which is on a 19.5-acre parcel

1 within the Dillard UUA boundary and zoned M3. Dillard
2 Garden Road is to the north of the subject property; the
3 Southern Pacific tracks are immediately to the south;
4 industrially zoned land lies further south, beyond the
5 tracks; and a small homestead parcel, which is not presently
6 being farmed, is to the west. The subject property contains
7 Class 1 and 2 soils. It currently is not being farmed, but
8 it is mowed periodically for aesthetic and fire suppression
9 purposes. Intervenor purchased the property in 1993. Prior
10 to that time, it was used as grazing land.

11 On or about April 16, 1996, intervenor filed separate
12 applications for the plan map amendment and zone change.
13 Record 133-44; 145-49.¹ Intervenor explained in the
14 applications that it proposed to construct a rail car
15 loading area that would consist of an approximately "200' x
16 200' blacktop area with a 160' rail spur coming off of the
17 adjacent Southern Pacific rail line." Record 145.
18 Intervenor explained further:

19 "Of the 7.61 acres available, Willamette
20 Industries intends to develop an approx. 1 * * *
21 acre area for use as a rail car loading and
22 shipping area. Should markets for our products
23 develop and the need for additional shipping
24 and/or storage develop, additional portions of the
25 lot may need to be used." Record 147.

¹Although petitioner's applications do not mention amending the Dillard UUC boundary, the pre-application conference form states that intervenor was requesting a plan amendment and zone change "and plan map amendment to Dillard Urban Unincorporated Area." Record 150 (emphasis in original).

1 After an evidentiary hearing on April 25, 1996 and the
2 receipt of subsequent submissions from the parties, the
3 planning commission approved intervenor's applications in a
4 written decision issued on June 27, 1996. The planning
5 commission adopted the findings proposed in an April 25,
6 1996 staff report that was considered at the evidentiary
7 hearing, Record 78-99, as well as additional findings
8 proposed in a supplemental staff report, dated May 16, 1996.
9 Record 58-62.

10 Petitioner timely appealed the planning commission's
11 decision to the county board. On September 16, 1996, the
12 county board approved intervenor's applications, subject to
13 two conditions.

14 This appeal followed.

15 **SCOPE OF REVIEW**

16 Petitioner's local appeal notice, a letter dated July
17 3, 1996, states the planning commission's decision
18 conflicted with five of the fourteen purposes or goals
19 stated in Douglas County Land Use Ordinance (DCLUO) 1.025.
20 Under each of the five purposes or goals quoted, the letter
21 contains a very short discussion of issues connected with
22 that purpose or goal. Record 29-31.

23 DCLUO 2.700 2. provides that the county board's review
24 on appeal "shall be a de novo review of the record limited
25 to the grounds relied upon in the notice of review * * *."
26 Pursuant to DCLUO 2.700 2., the county board limited its

1 review to the question of whether the planning commission's
2 decision conflicted with DCLUO 1.025. The challenged
3 decision concludes that since DCLUO 1.025 is the only ground
4 identified in petitioner's July 3, 1996 letter as the basis
5 for an appeal to the county board, and since DCLUO 1.025
6 states only aspirational criteria, the county board "has no
7 ability" to review intervenor's application on the merits.
8 Record 12. Petitioner does not assign error to that
9 conclusion in his petition for review.

10 The county argues as follows:

11 "Because [DCLUO] § 1.025 was the only ground
12 called out in petitioner's local notice of appeal
13 as having been violated by the [planning]
14 commission's decision, the governing body
15 determined that it had no ability to review the
16 appeal on its merits and so it affirmed the
17 commission's approval of the application. The
18 governing body's interpretational decision to do
19 so must be now affirmed by LUBA as well."
20 Respondent's Brief 7.

21 We understand the county to contend that because the
22 county board's review was limited by DCLUO 2.700 2. to the
23 sole ground stated in the local notice of appeal, i.e.,
24 DCLUO 1.025, our review should also be as limited. However,
25 as we explained in Davenport v. City of Tigard, 25 Or LUBA
26 67, 70, aff'd 121 Or App 135 (1993), ORS 197.763(1) and ORS
27 197.835(3) make it clear that all a petitioner must do is
28 raise the issue it wishes to raise at LUBA "not later than
29 the close of the record at or following the final
30 evidentiary hearing * * *." ORS 197.763(1). The county

1 does not contend petitioner did not raise at any time below
2 the issues he now raises to LUBA, and we will not review the
3 entire record to determine that he did not. Cf Eckis v.
4 Linn County, 110 Or App 309, 821 P2d 1127 (1991) (LUBA is
5 not required to search the record looking for evidence with
6 which the parties are presumably already familiar). A local
7 governing body may be free to adopt provisions to narrow its
8 own scope of review in local appeals, but it is not free to
9 narrow LUBA's scope of review.

10 **ASSIGNMENT OF ERROR**

11 Petitioner's brief does not make assignments of error
12 as such, but instead discusses alleged error in connection
13 with the application of several listed Statewide Planning
14 Goals: Goals 1, 2, 3, 5, 7 and 14. Notwithstanding the
15 formal deficiencies of the petition for review, when
16 petitioner's arguments are stated clearly enough for the
17 county and intervenor to respond, we may consider them.
18 Eckis, 110 Or App at 311; Testa v. Clackamas County, 29 Or
19 LUBA 383, 388 n6, aff'd 137 Or App 21 (1995).

20 **A. Exceptions Under Goal 2**

21 The challenged decision concludes that the proposed
22 rail spur and rail car loading area is an urban use. Record
23 93. It takes reasons exceptions to Goals 3 and 14 in
24 authorizing (1) the expansion of the Dillard UUA boundary;
25 (2) an amendment of the comprehensive plan designation of
26 the subject property from Agriculture to Industrial; and (3)

1 a change in zoning from F1 to M3. Petitioner contends the
2 county erred in granting a Goal 2 reasons exception to Goals
3 3 and 14.²

4 **1. Scope of Review**

5 ORS 197.830(11)(c) requires that a petitioner include
6 in the petition for review a statement of the issues the
7 petitioner seeks to have reviewed. A party challenging a
8 local land use decision must provide some particularized
9 basis for showing it to be subject to remand or reversal.
10 Opus Development Corp. v. City of Eugene, 141 Or App 249,
11 256, 918 P2d 116 (1996). As we have often stated, it is not

²The requirements for a reasons exception are stated in ORS 197.732(1):

"A local government may adopt an exception to a goal if:

** * * * *

"(c) The following standards are met:

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

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

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

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

Goal 2, Part II states the same requirements.

1 our function to supply petitioner's legal theories or to
2 make petitioner's case for petitioner. Deschutes
3 Development v. Deschutes Cty., 5 Or LUBA 218 (1982).

4 ORS 197.732(6) states the requirements that apply to
5 our review of decisions approving or denying a goal
6 exception. It provides:

7 "Upon review of a decision approving or denying an
8 exception:

9 "(a) The board or the [Land Conservation and
10 Development C]ommission shall be bound by any
11 finding of fact for which there is
12 substantial evidence in the record of the
13 local government proceedings resulting in
14 approval or denial of the exception;

15 "(b) The board upon petition, or the [Land
16 Conservation and Development C]ommission,
17 shall determine whether the local
18 government's findings and reasons demonstrate
19 that the standards of subsection (1) of this
20 section have or have not been met; and

21 "(c) The board or [Land Conservation and
22 Development C]ommission shall adopt a clear
23 statement of reasons which sets forth the
24 basis for the determination that the
25 standards of subsection (1) of this section
26 have or have not been met."

27 In 1000 Friends of Oregon v. Columbia County, 27 Or
28 LUBA 474, 476 (1994), we stated with reference to ORS
29 197.732(6)(b) that this Board has a "responsibility," in
30 reviewing goal exception decisions, to determine whether the
31 local government's "findings and reasons demonstrate that
32 the standards of [ORS 197.732(1)] have or have not been
33 met." See also Johnson v. Lane County, 31 Or LUBA 454, 465

1 (1996); 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA
2 508, 519 (1994); Pacific Rivers Council, Inc. v. Lane
3 County, 26 Or LUBA 323, 344 (1993). That statement could be
4 misunderstood to say that regardless of the arguments made
5 in the petition for review, the Board must scrutinize a
6 local government decision independently to confirm it
7 satisfies the requirements of ORS 197.732(1).

8 ORS 197.732(6)(b) states that the Board in particular
9 must make its determination "upon petition." Although ORS
10 197.732(6) treats the Board and the Land Conservation and
11 Development Commission (LCDC) identically, apart from the
12 "upon petition" language in ORS 197.732(6)(b), we do not
13 read the statute to require that we must, like LCDC during
14 the acknowledgment process or periodic review, perform a
15 comprehensive and independent evaluation of a proposed goal
16 exception. The mandatory language in ORS 197.732(6)(b) is
17 similar to language in ORS 197.835 that describes the scope
18 of our review; and just as our review of the matters
19 described in ORS 197.835 is limited to issues raised and
20 arguments made, so is our review of goal exceptions under
21 ORS 197.732(6). The requirement stated in ORS 197.732(6)(c)
22 that we "adopt a clear statement of reasons which sets forth
23 the basis for the determination that the standards of [ORS
24 197.732(1)] have or have not been met" is satisfied by the

1 reasoned opinions we normally issue.³

2 ORS 197.805 provides that "time is of the essence in
3 reaching final decisions in matters involving land use and
4 that those decisions be made consistently with sound
5 principles governing judicial review." If our
6 responsibility included performing a full and independent
7 review of every local government decision granting a goal
8 exception, regardless of the issues raised in the petition
9 for review, it would be both impossible to satisfy within
10 the statutory time constraints stated in ORS 197.830(13) and
11 inconsistent with the Board's review function.

12 We note that in none of the cases cited above did we
13 actually stray from the issues stated and arguments made in
14 the petition for review. What these cases should be
15 understood to say is that in the process of analyzing a
16 properly articulated challenge to a goal exception, even
17 where the findings address all of the required factors and
18 are supported by substantial evidence, we ultimately have
19 the authority and responsibility to consider whether the
20 findings demonstrate compliance with ORS 197.732(1). The
21 ultimate legal conclusion that an exception is justified
22 must be supported by findings showing how that conclusion
23 follows from the findings of fact. 1000 Friends of Oregon

³ORS 197.732(6)(c) precludes us from deciding goal exception challenges by memorandum opinion under ORS 197.830(16). Petrie v. City of Lake Oswego, 139 Or App 8, 11, 911 P2d 346 (1995).

1 v. Yamhill County, 27 Or LUBA at 519.

2 **2. Goal 3 Exception**

3 The county correctly determined that a Goal 3 exception
4 is required to amend the plan map and rezone the subject
5 property to permit a use not allowed by Goal 3 or the Goal 3
6 Rule (OAR chapter 660, division 33). OAR 660-04-020
7 contains an explanation of the criteria, set forth in ORS
8 197.732(1)(c) and Goal 2, Part II(c), that must be addressed
9 to justify a reasons exception.

10 Petitioner's discussion of the Goal 3 exception is
11 confused and unfocused. He argues the first reasons
12 exception criterion (that "[r]easons justify why the state
13 policy embodied in the applicable goals should not apply")
14 is not satisfied because there is not substantial evidence
15 to support a finding that the proposed development will
16 create jobs. However, the challenged decision does not
17 contain a finding that the proposed development will create
18 jobs. Rather, it finds a need based on the Goal 9
19 requirement that local land use plans "provide for at least
20 an adequate supply of sites of suitable sizes, types,
21 locations, and service levels for a variety of industrial
22 and commercial uses consistent with plan policies."
23 Record 84. Petitioner neither argues that the finding of
24 need that was made is inadequate nor states an evidentiary
25 challenge.

26 Petitioner contends next that the second reasons

1 exception criterion (that "[a]reas which do not require a
2 new exception cannot reasonably accommodate the use") is not
3 adequately addressed by the county's findings. As
4 intervenor notes, OAR 660-04-020 explains the ORS
5 197.732(1)(c) factors that must be considered in granting a
6 reasons exception. The application of the alternative areas
7 standard is governed by OAR 660-04-020(2)(b). OAR 660-04-
8 020(2)(b)(A) provides that the exception must indicate, on a
9 map or by description, possible alternative areas considered
10 for the use which do not require a new exception and
11 identify the area for which the exception is taken.

12 Intervenor's application identifies two alternative
13 areas. Record 157. It explains that although the first
14 area, south of and adjacent to the existing manufacturing
15 facility, is zoned to allow industrial use, it would require
16 the product to be transported across an active rail line by
17 forklift, creating a safety hazard. The second area,
18 located to the west of the subject property, is not adjacent
19 to the manufacturing facility and, like the subject
20 property, is zoned for resource use.

21 The challenged decision describes alternative sites at
22 Record 84-85. The area for which an exception is being
23 taken is identified by description at Record 80 and mapped
24 at Record 182. Intervenor's analysis of these alternative
25 areas is incorporated into the findings. Record 61; 86-87.
26 Petitioner does not provide a reviewable argument that the

1 findings are inadequate.

2 Petitioner also raises the fourth reasons exception
3 criterion: "[t]he proposed uses are compatible with other
4 adjacent uses or will be so rendered through measures
5 designed to reduce adverse impacts." OAR 660-04-020(2)(d)
6 explains:

7 "The exception shall describe how the proposed use
8 will be rendered compatible with adjacent land
9 uses. The exception shall demonstrate that the
10 proposed use is situated in such a manner as to be
11 compatible with surrounding natural resources and
12 resource management or production practices.
13 'Compatible' is not intended as an absolute term
14 meaning no interference or adverse impacts of any
15 type with adjacent uses."

16 The only compatibility issue petitioner raises is the
17 potential for flooding petitioner's property as a result of
18 poor drainage from the subject property. Intervenor has
19 agreed to correct drainage problems. Record 61. The
20 challenged decision includes as a condition of approval that
21 prior to development, intervenor must "provide evidence, in
22 the form of an engineer['s] certificate, that the on-site
23 drainage is adequate." Record 13. Petitioner's argument
24 does not even acknowledge the existence of the condition,
25 which appears to address his concern about flooding.

26 **3. Area for Which Exception Is Taken**

27 Petitioner contends the proposed rail spur and rail car
28 loading area could be located on a small portion of the
29 subject property. Petitioner challenges the county's
30 conclusion that there is a demonstrated need that justifies

1 exceptions to Goals 3 and 14 with respect to the entire
2 7.61-acre parcel.

3 This Board can grant relief only if petitioner
4 demonstrates that an applicable legal standard is violated
5 by the challenged decision. Schellenberg v. Polk County, 22
6 Or LUBA 673, 679 (1992); Lane School District 71 v. Lane
7 County, 15 Or LUBA 150, 153 (1986). Petitioner has not
8 identified an applicable legal standard and has not provided
9 a reviewable argument in support of his challenge.

10 **B. Remaining Goal Contentions**

11 The petition for review contains additional contentions
12 of error related to the county's failure to comply with
13 Statewide Planning Goals 1, 5 and 7. These contentions
14 appear to be without merit; in any case, the argument in
15 support of the contentions is insufficiently developed to
16 permit review.

17 The county's decision is affirmed.