

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision amending the Myrtle Creek Urban Growth
4 Boundary (UGB).

5 **MOTION TO INTERVENE**

6 Webb Briggs Land Co. (intervenor), the applicant below, moves to intervene in this
7 appeal on the side of respondent. There is no opposition to the motion, and it is allowed.

8 **FACTS**

9 The Myrtle Creek UGB encompasses the City of Myrtle Creek and an unincorporated
10 area, referred to as "Tri City" or the "Tri City Urban Growth Area," located south of the City
11 of Myrtle Creek. The Tri City Urban Growth Area includes the Interstate Highway 5 (I-5)
12 interchange with Pruner Road. The challenged decision extends the UGB south from its
13 existing location at the I-5/Pruner Road interchange to include an 8.3-acre parcel owned by
14 intervenor.

15 The challenged decision also changes the comprehensive plan designation for the
16 subject property from "Agricultural" to "Community Commercial" and changes the zoning
17 map designation from "Exclusive Farm Use-Cropland" to "Community Commercial."¹
18 Intervenor proposes to develop the subject property with a restaurant, mini-mall, professional
19 offices, retail store and motel. The proposed development would be served by a road running
20 between a restaurant and a service station currently located south of Pruner Road near its
21 intersection with I-5.

¹The subject 8.3 acres includes predominantly "Class I" agricultural soils, within the meaning of Statewide Planning Goal 3 (Agricultural Lands). Record 16. The subject property therefore qualifies as "High Value Crop Land," within the meaning of ORS 215.710 and OAR 660-033-0020(8).

1 **MOTION TO STRIKE**

2 After the petition for review was filed, the parties in this appeal stipulated that the
3 county would file a supplemental record composed of "Applicant's Exhibit No. 10." As part
4 of that stipulated order, petitioner was given an opportunity to file an amended petition for
5 review after the supplemental record was filed, to address any new material in the
6 supplemental record.

7 Intervenor contends that certain arguments included in the Amended Petition for
8 Review are new and do not respond to new material in the supplemental record. Intervenor
9 moves to strike those portions of the amended petition for review. Petitioner did not file a
10 written response to the motion to strike.

11 The motion to strike is granted, with the exception of the bracketed language in the
12 first two sentences of the first paragraph on page 15 of the amended petition for review.²
13 These proposed deletions would leave those sentences incomplete. We strike both sentences
14 in their entirety and substitute the first sentence in the first paragraph on page 14 of the
15 original petition for review in their place.

16 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

17 Under its second assignment of error, petitioner challenges the county's findings
18 addressing Goal 14, factors 1 through 7.³ Petitioner also argues that the county's findings

²Intervenor attaches to its motion to strike several pages from the amended petition for review, with brackets around the language that it requests be stricken.

³Goal 14 provides, in part:

"Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of the following factors:

- "(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with [Land Conservation and Development Commission (LCDC)] goals;
- "(2) Need for housing, employment opportunities, and livability;

1 addressing the exception requirements of ORS 197.732(1)(c), Statewide Planning Goal 2,
2 part II(c), and OAR 660-004-0010(1)(c)(B) are inadequate.⁴ Finally, petitioner contends that
3 the county's findings do not establish compliance with the priorities established by ORS
4 197.298 for adding lands to the UGB.⁵ Under its first assignment of error, petitioner argues
5 the county's decision is not supported by substantial evidence.

6 Petitioner organizes its arguments into subassignments of error under each of the

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- "(3) Orderly and economic provision for public facilities and services;
 - "(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
 - "(5) Environmental, energy, economic and social consequences;
 - "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
 - "(7) Compatibility of the proposed urban uses with nearby agricultural activities."

⁴OAR 660-004-0010(1)(c)(B) requires that amendments to acknowledged UGBs demonstrate the following standards are met:

- "(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14.);
- "(ii) Areas which do not require a new exception cannot reasonably accommodate the use;
- "(iii) 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
- "(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

These standards duplicate language in Goal 2, Part II(c) and ORS 197.732(1)(c).

⁵ORS 197.298 establishes a priority system for including lands inside an urban growth boundary. As relevant in this appeal, ORS 197.298 requires that the county first consider exception lands and nonresource lands. ORS 197.298(1)(b). If exception or nonresource lands are inadequate to meet the identified need, lands zoned for agricultural or forest use may be included. ORS 197.298(1)(d). However, if agricultural or forest lands are to be included, lands "of lower capability as measured by the capability classification system or by cubic foot site class" must be added before lands of higher capability. ORS 197.298(2).

1 Goal 14 factors and incorporates its exception process and ORS 197.298 arguments into
2 those subassignments of error. We follow petitioner's organization in this opinion.

3 **A. Goal 14, Factors 1 and 2**

4 The first two factors of Goal 14 are referred to as the "need factors." City of Salem v.
5 Families for Responsible Govt, 64 Or App 238, 243, 668 P2d 395 (1983). As petitioner
6 points out, the county approached the question of need somewhat differently, depending on
7 which of the approval criteria it was considering. Under this subassignment of error we limit
8 our review to determining whether the county demonstrated a need for 8.3 more acres of
9 urban, commercially planned and zoned land under Goal 14, factors 1 and 2.⁶

10 When the Tri City Urban Unincorporated Area Comprehensive Plan was adopted in
11 1980, the urban area included 3,135 persons and 34 acres of land zoned for commercial use.
12 This resulted in a ratio of approximately 10.85 acres of commercial land per 1000 persons.
13 In 1990, the Myrtle Creek UGB was expanded to include the Tri City Urban Area.⁷ Between
14 1980 and 1990, Tri City's population increased to 3,780, but the available acres of
15 commercial land decreased by .72 acres, due to rezonings of commercially zoned land during
16 that 10-year period. The resulting ratio of commercial land per capita in 1990 was 8.79
17 acres/1000 persons. However, no additional commercial land was included in the UGB at
18 that time. Record 34.

19 The challenged decision explains that the 1997 Tri City population estimate is 4,800.
20 Between 1990 and 1997 four zoning changes involving commercial land further reduced the
21 amount of commercially zoned land within the UGB by .66 acres. The resulting ratio of

⁶Under this subassignment of error, the parties also include arguments concerning whether there are suitable alternatives to including the disputed 8.3 acres in the UGB and whether the county properly rejected those alternatives. We consider those additional arguments later in this opinion.

⁷Myrtle Creek and Douglas County entered an Urban Growth Management Agreement under which the former Tri City Urban Growth Area is referred to as "Area 2" of the expanded Myrtle Creek/Tri City Urban Growth Area and the City of Myrtle Creek is referred to as "Area 1."

1 commercial land per capita is 6.79 acres/1,000 persons. The challenged decision then
2 explains that to reestablish the 10.85 ratio, an additional 20 acres of commercial land are
3 needed in Area 2. The challenged decision takes the position that even if the entire Myrtle
4 Creek UGB is considered, rather than only Area 2, in order to maintain the 10.85 acre ratio
5 an additional 11.1 acres should have been added before 1995, and an additional 26.6 acres
6 will be needed by the year 2000. Finally the decision finds that whether Areas 1 and 2 are
7 considered together or Area 2 is considered alone, there is a current need for more than the
8 8.3 acres of commercially zoned land that were added to the UGB by the decision challenged
9 in this appeal.⁸

10 Petitioner advances a number of arguments to challenge the above reasoning which
11 the county relied upon to conclude there is a need for at least an additional 8.3 acres of urban
12 commercially planned and zoned land. Petitioner contends that the 10.85 ratio that existed in
13 1980 does not provide a basis for amending the UGB to maintain that ratio in 1997. If the
14 10.85 ratio had not been one of the planning assumptions or objectives used by the county to
15 determine how much land should be planned and zoned for commercial use in Tri City in
16 1980, we might agree with petitioner. However, the acknowledged Douglas County
17 Comprehensive Plan (DCCP) provides that the 10.85 ratio is the planning objective that was
18 applied to the population figures to determine how many acres of commercially planned and
19 zoned land were needed.

20 "[The] projection of future land needed to accommodate commercial
21 expansion has been based on the existing ratio of commercially developed
22 land to population (10.85 ac/1000 persons) to the projected year 2000

⁸Petitioner includes arguments under this subassignment of error that the county erred by analyzing the needs of Area 2 separately from Area 1. Petitioner contends such a subregional analysis of need is improper for a relatively small UGB like Myrtle Creek's. Because the county also based its decision on the needs in Areas 1 and 2 combined, it is not necessary for us to consider those arguments.

1 population. This results in a need for an additional 27 acres of land for
2 commercial usage." DCCP 15-107.⁹

3 The procedure employed by the county for projecting the amount of commercially
4 planned and zoned land is a straightforward, mechanical process. The county's process relies
5 on population projections and a commercial land to population ratio of 10.85 acres/1000
6 population. Undoubtedly there are other planning assumptions or objectives that the county
7 could establish to project commercial land needs. However, the 10.85 acres/1000 persons
8 objective is described in the acknowledged comprehensive plan, and the county did not
9 commit error by applying that same objective in the challenged decision in projecting a need
10 for at least 8.3 additional acres of commercially planned and zoned land in this case.

11 This subassignment of error is denied.¹⁰

12 **B. Goal 14, Factors 3-7, Estoppel**

13 Before turning to petitioner's arguments under Goal 14, factors 3-7, we consider
14 intervenor's argument that the following language in the acknowledged county
15 comprehensive plan has the legal effect of estopping petitioner DLCD from contesting the
16 challenged decision:

17 "Commercial development at the I-5/Pruner Road interchange shall be given
18 priority consideration in future commercial plan amendments for the Tri City
19 area." DCCP 15-158.

20 If we understand intervenor's argument correctly, it argues that the above
21 acknowledged comprehensive plan language establishes the suitability of the disputed
22 property for inclusion within the UGB under Goal 14, factors 3-7 as a matter of law. We

⁹The citation is to the current version of the DCCP dated November 12, 1997. An earlier version of the DCCP (dated February 23, 1994) was in effect when the application that led to the challenged decision was submitted. The language quoted in the text appears at DCCP 15-98 in the February 23, 1994 version of the DCCP.

¹⁰As we explain in more detail below, this does not necessarily mean that the particular 8.3 acres that the challenged decision added to the UGB may be added to meet this need. The county is required to explore a number of alternatives, both inside and outside the existing UGB, before the subject property may be added to the UGB.

1 reject the argument. The above-quoted comprehensive plan language does not purport to
2 apply the Goal 14 factors, rather it merely identifies the 1-5/Pruner Road interchange as a
3 "priority" for future consideration. Designating a site as a "priority" for future UGB
4 amendments, without more, has no legal effect on whether that site may ultimately be added
5 to the UGB based on the Goal 14 factors. See 1000 Friends of Oregon v. City of North
6 Plains, 27 Or LUBA 372, 385-88, aff'd 130 Or App 406, 882 P2d 1130 (1994) (Designation
7 of property as an "area of interest" does not obviate the requirement to address the Goal 14
8 locational factors before including the area inside the UGB).

9 **C. Goal 14, Factors 4 and 6; Goal 2; OAR Chapter 660, Division 4; ORS**
10 **197.298 and 197.732**

11 Under relevant statutory requirements, statewide planning goals and LCDC
12 administrative rules, once the county establishes a need for additional urban land for
13 commercial purposes, it must go through an exacting alternatives analysis before it may
14 include Class I agricultural soils to meet the identified urban land need.

15 **1. Alternative Lands Inside the UGB**

16 Goal 14, factor 4, requires consideration of "[m]aximum efficiency of land uses
17 within and on the fringe of the existing urban area." This requirement is met, in part, by the
18 county encouraging urban development within the existing urban area before expanding the
19 UGB. City of North Plains, 27 Or LUBA at 390. As we explained in Concerned Citizens v.
20 Jackson County, 33 Or LUBA 70, 114 (1997).

21 "[A local government] may satisfy Goal 14, factor 4 by carefully evaluating
22 the availability of land within the UGB before reaching a conclusion that none
23 will accommodate the proposed development. See Turner v. Washington
24 County, 8 Or LUBA 234, 257 (1983), aff'd 70 Or App 575, 689 P2d 1318
25 (1984). However, that evaluation must include consideration of (1) changing
26 planning designations within the existing UGB to allow for greater densities;
27 (2) assembling lots within the existing UGB; and (3) reconfiguring the
28 proposed use to maximize the use of land within the existing UGB. * * *"

1 ORS 197.732(1)(c)(B); Goal 2, Part II(c)(2) and OAR 660-004-0010(1)(c)(B) also require
2 that the county first consider whether lands already included within the UGB can be
3 redesignated so that such lands could accommodate any identified need for commercial
4 land.¹¹ City of La Grande v. Union County, 25 Or LUBA 52, 64 (1993); BenjFran
5 Development v. Metro Service Dist., 17 Or LUBA 30, 47 (1988), aff'd 95 Or App 22, 767
6 P2d 467 (1989).

7 **2. Alternative Lands Outside the UGB**

8 Under ORS 197.298(1) and (2); 197.732(1)(c)(B); Goal 2, Part II(c)(2) and OAR
9 660-004-0010(1)(c)(B)(ii), Class I agricultural lands such as the subject property are the
10 lowest priority for inclusion in the UGB to meet urban land needs. ORS 197.298 identifies
11 different types of lands and establishes a priority system for considering those types of land
12 when amending the UGB.¹² Douglas County does not have all of the types of land identified

¹¹See n 4. Under ORS 197.732(1)(c)(B); Goal 2, Part II(c)(2) and OAR 660-004-0010(1)(c)(B), the county must demonstrate that "[a]reas which do not require a new exception cannot reasonably accommodate the use * * *." Because it is possible that vacant or redevelopable lands within the UGB could be developed without an exception, the county must demonstrate that such lands "cannot reasonably accommodate" the identified need for urban commercial land.

¹²See D.S. Parklane Development, Inc. v. Metro, ___ Or LUBA ___ (LUBA Nos. 97-048, 97-050, 97-052, 97-053, 97-054, 97-055, 97-057, 97-063, February 25, 1999), slip op 124-28 (generally discussing the ORS 197.298 priorities). ORS 197.298 provides, in part:

- "(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:
 - "(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.
 - "(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
 - "(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

1 in ORS 197.298.¹³ As relevant in this appeal, if lands for which an exception to Goal 3 has
2 already been taken can "reasonably accommodate" the identified need for urban commercial
3 lands, such exception lands must be added to the UGB before agricultural lands protected by
4 Goal 3 may be added. ORS 197.298(1)(b). In addition, if any non-resource lands could be
5 added to the UGB to meet the identified need for urban commercial lands, such non-resource
6 lands must be included in the UGB before agricultural lands may be included. Id. Finally, if
7 the county's identified need for urban commercial land cannot be met by adding exception
8 lands or nonresource to the UGB, the county may include agricultural lands to meet that
9 need. However, ORS 197.298(2) and Goal 14, factor 6 establish a second priority system for
10 including agricultural lands.¹⁴ The county must ensure that any suitable agricultural lands

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- "(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.
- "(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.
- "(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:
- "(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;
- "(b) Future urban services could not reasonably be provided to the higher priority due to topographical or other physical constraints; or
- "(c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands."

¹³Douglas County has not designated urban reserves or marginal lands. We do not know whether any alternative resource lands are completely surrounded by exception lands. See ORS 197.298(1)(a), (b) and (c).

¹⁴Like ORS 197.298(2), Goal 14, factor 6 requires that when agricultural lands are added to the UGB higher priority must be given to land of lower agricultural capability. See ns 3 and 12.

1 within Classes VI through II are included in the UGB, before any Class I agricultural land,
2 such as the subject property, may be included within the UGB.

3 In summary, the lands included by the county in this case are Class I agricultural
4 soils. Such soils may be included to meet the identified need for urban commercial land only
5 if (1) there are no lands inside the UGB which could reasonably accommodate that need and
6 (2) there are no nonresource land, exception lands or Class II through Class VI agricultural
7 lands outside the UGB which could be included to satisfy the identified need.

8 **3. The County's Findings Concerning Alternatives**

9 The county's findings addressing alternatives conclude that residentially and
10 commercially planned and zoned lands within the UGB cannot satisfy the identified need for
11 8.3 acres of commercially planned and zoned land. The county also finds that lands outside
12 the UGB that must be considered before Class I agricultural lands may be added to meet any
13 identified need to expand the UGB are incapable of meeting the identified need. In
14 considering alternative lands inside and outside the UGB, the challenged decision appears to
15 depart somewhat from the position that there is a general need for 8.3 commercially planned
16 and zoned acres and describes the need as a need for "quality commercial land." Record 47.
17 Quality commercial land apparently means large contiguous ownerships that are not located
18 close to residential uses and are located at or near a freeway interchange. Record 47-48. The
19 county's findings rely in large part on the written testimony submitted by Milton Herbert and
20 Schofield & Associates in support of the application. We describe that testimony before
21 considering the adequacy of the county's findings addressing Goal 14, factors 4 and 6.

22 Milton Herbert, a local businessman, explained in a July 9, 1997 letter that in his
23 opinion rezoning existing vacant lands within the UGB for commercial use was not an
24 acceptable alternative to including the subject property. Mr. Herbert explained:

25 " * * * It is obvious to any knowledgeable observer of the commercial real
26 estate market that vacant commercial land requires certain characteristics to
27 attract investors willing to put at risk the capital necessary to develop a

1 successful business. In other words, the commercially zoned acreage needs to
2 be commercially desirable for commercial development to be economically
3 feasible. The characteristics of quality commercial property include location,
4 site acreage, site configuration, direct access to transportation facilities and
5 sensitivity to adjacent land uses." Record 195.

6 Mr. Herbert goes on to explain in his letter that the subject property's proximity to I-5
7 makes it far more attractive to "capital investors" as compared to other sites located on "Old
8 Highway 99" or other roads within the existing UGB. According to Mr. Herbert, this is
9 because the higher income travelers on I-5 provide potential customers that will make the
10 proposed businesses "more viable than [businesses that depend] solely on local residents for
11 patronage * * *."¹⁵ Record 196. Mr. Herbert also notes the larger size of the subject
12 property will allow development of a larger, more diverse commercial development so that
13 "customers can have more of their needs met [at] one location." *Id.* Because smaller vacant
14 sites within the UGB do not offer such opportunities for "synergism," Mr. Herbert takes the
15 position "[t]hey are simply not as suitable for [commercial] development." *Id.* (Emphasis
16 added). Finally, Mr. Herbert opines that vacant sites within the UGB "are not suitable as
17 alternative commercial sites" because they are located close to residentially zoned or
18 developed areas. According to Mr. Herbert, the conflicts that are generated between
19 proximate commercial and residential uses are avoided by the subject property's location next
20 to existing commercial and agricultural uses. Mr. Herbert also discounts petitioner's
21 suggestion that existing, unneeded residentially zoned lands could be rezoned for commercial
22 uses by pointing out that recent historical trend has been exactly the opposite; commercially
23 zoned lands have been rezoned for residential use.

24 The application relies in large part on an exhibit prepared by Schofield & Associates
25 to consider whether exception lands or nonresource lands or lesser quality agricultural lands

¹⁵Mr. Herbert does not explain why he believes commercial development within the existing UGB located next to I-5 will not be able to attract any customers traveling on I-5.

1 could be included within the UGB to meet the identified need for urban commercial land.¹⁶

2 That exhibit explains that the analysis of alternatives outside the UGB was similarly affected
3 by the county's position that the needed commercial land must be located at a freeway
4 interchange:

5 "As has been discussed earlier by the applicant, the subject eight acre parcel is
6 proposed for inclusion within the Tri City UGB to facilitate its development
7 with freeway-oriented commercial uses. Consequently, any alternative site
8 would have to be located in relative close proximity to Interstate 5, and
9 particularly close to an interchange that provides safe and convenient access
10 to the site. With the exception of the existing 5.38 acres of commercially
11 designated and zoned land on the west side of I-5 at the Pruner Road
12 Interchange (of which all but 1.70 acres is presently developed with freeway-
13 oriented commercial uses) and the 90 acre South Umpqua Valley Industrial
14 Park, all land within the present UGB is located on the east side of the
15 freeway. * * *" First Supplemental Record 13.

16 The county relied on the above written testimony to find that alternatives to including
17 the subject property to meet the identified need for commercial lands do not exist, either
18 inside or outside the UGB.

19 The county's findings include the following:

20 "* * * The applicant has shown that the land available in the UGB is not
21 suitable for the kind of commercial development needed in the UGB, is
22 irrevocably committed to residential use, or is poor to submarginal quality
23 commercial land which poorly meets the commercial needs of residents in the
24 UGB. * * *

25 "This conclusion is further supported by our finding that the area urgently
26 needs additional quality commercial land; that available sites are inadequate;
27 that poor or submarginal quality commercial land will not adequately meet
28 area residents' needs for jobs, goods, and services, as well as being unable to
29 attract adequate investment capital to insure commercial development; that
30 freeway interchange sites often have quality commercial land; and that only
31 one of the two freeway interchange locations in the UGB is developable * * *.

¹⁶The application includes a study of existing commercially planned and zoned properties located within the UGB, and that study concludes that those properties cannot reasonably accommodate the commercial development planned for the subject property. Because we agree with the county that it has demonstrated a need for 8.3 additional acres of commercially planned and zoned land, it was not necessary for the county to examine lands inside the UGB that are already planned and zoned for commercial development.

1 Under these circumstances, the annexation of an 8.30-acre parcel of prime
2 agricultural land into the UGB is, perhaps regrettably, necessary as the only
3 rational solution. We find further that this necessity, however grim it may be,
4 is palliated by the fact that the subject property's conversion to urban
5 commercial use will have no demonstrable impact on the remaining
6 agricultural properties in the surrounding area * * *." Record 47-48.

7 We agree with petitioner that the county's findings concerning alternatives are
8 inadequate. The county appears to find that the identified need for commercial land can only
9 be met by land with particular characteristics. However, the county's findings are inadequate
10 to establish that commercial land must include parcels of a particular size to be successfully
11 developed.¹⁷ The findings also do not establish that any conflicts that may be associated
12 with commercial development next to residentially planned and zoned property are such as to
13 render such lands inappropriate for commercial development. Finally, and for purposes of
14 this appeal most importantly, the findings do not establish that the identified need for
15 commercial land can only be satisfied by land that is located at or near a freeway
16 interchange. The county's finding are little more than unexplained conclusions that appear to
17 rely entirely on the testimony of Milton Herbert and Schofield & Associates.

18 If the county believes adequately sized parcels for commercial development cannot
19 be aggregated from existing vacant parcels inside the UGB, it must explain why it believes
20 such is the case. Similarly, we know of no generally accepted basis for concluding that
21 residential uses render adjoining land unsuitable for commercial development. If the county
22 believes that such is the case, it must adopt a more complete explanation of why. Finally, it
23 may well be true that commercial development at the Pruner Road interchange with I-5
24 would have an easier time attracting investment capital and would potentially have an
25 advantage over sites located further from the freeway in being able to attract customers

¹⁷Even if some minimum parcel size is required for successful commercial development, the county's findings do not establish that existing lands within the UGB that might be redesignated for commercial use could not be consolidated to achieve the required minimum parcel size.

1 traveling on I-5. However, those facts do not establish a particular need for commercial land
2 at that location and do not establish that lands located elsewhere are unsuitable for
3 commercial development.

4 Because we conclude the county's findings concerning alternatives inside the UGB
5 are inadequate, we must sustain petitioner's second assignment of error. We need not and do
6 not consider petitioner's first assignment of error, i.e., whether the testimony of Milton
7 Herbert, upon which the county relies to adopt its conclusory findings, could constitute
8 substantial evidence in support of findings that vacant lands inside the UGB are inadequate
9 alternatives for commercial development. DLCD v. Columbia County, 16 Or LUBA 467,
10 471 (1988); McNulty v. City of Lake Oswego, 14 Or LUBA 366, 373 (1986). We note,
11 however, that while Mr. Herbert's testimony clearly expresses an opinion that development
12 of the subject property would have a number of advantages over development of other lands
13 that are already inside the UGB, his testimony does not really address the relevant legal
14 question under Goal 14, factor 4. That the subject property may be significantly better for
15 commercial development does not necessarily mean that lands already inside the UGB
16 cannot reasonably be redesignated and developed for commercial uses.

17 The county's findings concerning alternatives lands outside the UGB suffer from
18 essentially the same defect that its findings concerning alternatives inside the UGB suffer.
19 The county's unsupported conclusion that the need for commercial land can only be satisfied
20 by lands located near a freeway interchange resulted in a narrower consideration of
21 alternatives outside the UGB than is required by ORS 197.298(1) and (2). See n 12. In
22 particular, we cannot tell whether the county may have failed to consider Class II through VI
23 agricultural lands or nonresource lands, simply because such lands are not located close to a
24 freeway interchange.

25 We emphasize that we do not understand the county to have attempted to justify its
26 inclusion of the subject property as being needed to satisfy a "[specific type] of identified

1 land [need that] cannot be reasonably accommodated on higher priority land," as allowed by
2 ORS 197.298(3)(a). To the extent the county's decision could be read to take that position,
3 the county's findings are not sufficient to demonstrate that such a specific identified land
4 need exists, within the meaning of ORS 197.298(3)(a). All that the county has demonstrated
5 is that a commercial development on the subject property would have an easier time
6 attracting investment capital and would be in a better position to attract potential customers
7 traveling on I-5. Neither do we understand the county to have attempted to justify including
8 the subject property based on one of the other exceptions provided by ORS 197.298(3)(b) or
9 (c) for providing or recognizing the difficulty of providing urban services to higher priority
10 lands.

11 For the reasons explained above, we sustain petitioner's second assignment of error
12 challenging the adequacy of the county's findings considering alternative lands inside and
13 outside the UGB.

14 **D. Goal 14, Factor 3**

15 Goal 14, factor 3 requires that the county consider whether adding the subject
16 property to the UGB will result in "[o]rderly and economic provision for public facilities and
17 services[.]" Although the subject property apparently is not currently served by a full range
18 of public facilities and services, the county adopted findings that the subject property could
19 be provided adequate public facilities and services. Petitioner does not challenge those
20 findings. However, we understand petitioner to argue under this subassignment of error that
21 the county was also required to demonstrate under Goal 14, factor 3 that lands that are
22 already included within the UGB, which may already have necessary public facilities and
23 services, cannot accommodate the proposed commercial development.

24 As explained above, the county is required under relevant statutory, goal and
25 administrative rule provisions to consider whether alternative sites that are already included
26 within the UGB can be planned and zoned to accommodate the identified need for at least 8.3

1 acres for commercial use. If such sites exist within the UGB, it would be inconsistent with
2 those provisions to include the subject property within the UGB. Either as part of the
3 analysis required by those provisions, or under the analysis required by Goal 14, factor 3, the
4 county presumably will consider whether any such alternative sites within the UGB already
5 have required public facilities and services. We agree with petitioner that it would be
6 inconsistent with Goal 14, factor 3 to include the subject property within the UGB if (1)
7 required public facilities and services would have to be upgraded or extended to serve the
8 subject property and (2) alternative sites within the UGB which could accommodate the
9 identified need already have required public facilities and services.

10 The county's findings are inadequate to demonstrate that such is not the case. For that
11 reason, we sustain the portion of petitioner's second assignment of error challenging the
12 county's findings concerning Goal 14, factor 3. Because the county's findings concerning
13 Goal 14, factor 3 are inadequate, we do not reach petitioner's evidentiary challenge
14 concerning Goal 14, factor 3. DLCD v. Columbia County, 16 Or LUBA at 471; McNulty, 14
15 Or LUBA at 373.

16 **E. Goal 14, Factor 5**

17 Goal 14, factor 5 requires that the county address the "[e]nvironmental, energy,
18 economic and social consequences" of the proposal. Petitioner argues that it requested that
19 the county address the consequences the proposed development would have on existing
20 businesses in the area. Petitioner contends the county erred by failing to address this issue in
21 its findings.

22 Intervenor identifies findings that it argues are adequate to respond to this issue. We
23 agree with intervenor. This subassignment of error is denied.

24 **F. Goal 14, Factor 7**

25 Goal 14, factor 7 requires that the county consider the "[c]ompatibility of the
26 proposed urban uses with nearby agricultural activities." Petitioner argues the county's

1 findings simply conclude that because the use is commercial rather than residential, conflicts
2 with agricultural uses will be minimal. Petitioner argues that conclusion is inadequate
3 because the proposal includes a 100-unit motel.

4 As intervenor points out, the county adopted a number of findings addressing Goal
5 14, factor 7. Those findings include discussion of why the proposed design of the
6 commercial development will reduce any potential impacts of the proposal on adjoining
7 agricultural uses and point out that certain conditions of approval will operate to reduce
8 potential impacts on adjoining agricultural uses. Because petitioner does not challenge the
9 adequacy of these findings, we reject this subassignment of error.

10 **G. Conclusion**

11 For the reasons explained above, petitioner's challenges regarding Goal 14, factors 1,
12 2, 5 and 7 are rejected. However, we agree with petitioner that the county's findings
13 addressing alternative lands, as required by Goal 14, factors 3, 4 and 6; Goal 2; OAR chapter
14 660, division 4; ORS 197.298 and 197.732, are inadequate to address those requirements.
15 We therefore sustain petitioner's second assignment of error challenging those findings and
16 do not consider petitioner's first assignment of error which challenges the evidentiary support
17 for those findings.

18 The county's decision is remanded.