BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JODY McCAFFREE,
Petitioner,

vs.

COOS COUNTY,
Respondent.

LUBA No. 2018-132

FINAL OPINION
AND ORDER

Appeal from Coos County.

Tonia L. Moro, Medford, filed the petition for review and argued on behalf of petitioner.

Nathaniel Greenhalgh-Johnson, Coquille, filed the response brief and argued on behalf of respondent.

RYAN, Board Chair; RUDD, Board Member; ZAMUDIO, Board Member, participated in the decision.

AFFIRMED 06/06/2019

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

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals Ordinance 18-09-009PL (Ordinance), a county ordinance that adopts text amendments to the county's land development ordinance.

REPLY BRIEF/MOTION TO TAKE EVIDENCE

Petitioner moves for permission to file a reply brief, to respond to waiver arguments raised in the response brief. There is no opposition to the motion, and the reply brief is allowed.

Petitioner additionally moves for LUBA to consider evidence not in the record. Petitioner moves for LUBA to accept three "screen shots" of pages from the county's website taken on August 16, 2018, on October 3, 2018 and October 5, 2018. According to petitioner, LUBA may consider the evidence in response to the county's argument in its response brief that petitioner failed to object during the proceedings before the county, to the procedural errors that she raises in the third assignment of error. According to petitioner, the August 16, 2018 screen shot demonstrates that the proceedings regarding the proposed legislative action that ultimately led to the county's enactment of the Ordinance were not listed on the county's website on that date. According to petitioner, the screen shot undercuts a statement by the county's planning staff at the October 2, 2018 board of commissioners' hearing that the county's web page provided notice of

the proceedings. Petitioner's Motion to Consider Evidence Deemed Outside of the Record 1-2.

ORS 197.835(2)(b) provides, in part, that "[i]n the case of disputed allegations of standing, unconstitutionality of the decision, ex parte contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities not shown in the record that, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations." A motion to take evidence must include a statement "explaining with particularity what facts the moving party seeks to establish, how those facts pertain to the grounds to take evidence specified in [OAR 661-010-0045(1)], and how those facts will affect the outcome of the review proceeding." OAR 661-010-0045(2). It is the movant's burden to demonstrate a sufficient basis for LUBA to take evidence outside the record. Petitioner has not established any basis under OAR 661-010-0045 for LUBA to consider the evidence she has submitted.

The motion is denied.

FACTS

In February 2018, the county introduced proposed amendments to the Coos County Zoning and Land Development Ordinance (LDO) to the county's Citizen Advisory Committee (CAC) at a CAC meeting, and in March at a planning commission meeting. Later, in July 2018, August 2018, and September 2018, the planning commission considered revised versions of the initially proposed

amendments. At its September 2018 meeting, the planning commission considred the version of the amendments that were subsequently adopted by the board of county commissioners.

Petitioner provided testimony during the board of county commissioners' October 2, 2018 meeting. At that meeting, the board of county commissioners conducted the first and only reading of the ordinance, by its title, and voted to adopt the LDO amendments. This appeal followed.

STANDARD OF REVIEW

The Ordinance is a decision that amends the local government's land use regulations. LUBA's standard of review of the challenged legislative decision is at ORS 197.835(7), which provides:

> "[LUBA] shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:
>
> "(a) The regulation is not in compliance with the comprehensive plan; or
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> "(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals."

In addition, ORS 197.835(9) provides that LUBA shall reverse or remand a land use decision if LUBA finds that the local government "exceeded its jurisdiction," "[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner," or "[i]mproperly construed the applicable law." ORS 197.835(9)(a)(A), (B) and (D).

THIRD ASSIGNMENT OF ERROR

In three subassignments of error under the third assignment of error, petitioner alleges that the county committed several procedural errors that warrant reversal or remand. ORS 197.835(9)(a)(B) provides that LUBA shall reverse or remand a land use decision if a local government "[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner[.]"

A. ORS 203.045

ORS 203.045 provides in relevant part that:

> "(3) Except as subsections (4) and (5) of this section provide to the contrary, every ordinance of a county governing body shall, before being put upon its final adoption, be read fully and distinctly in open meeting of that body on two days at least 13 days apart.
>
> "(4) Except as subsection (5) of this section provides to the contrary, and except ordinances imposing, or providing exemptions from, taxation, an ordinance necessary to meet an emergency may, upon being read first in full and then by title, be adopted at a single meeting of the governing body by unanimous vote of all its members present, provided they constitute a quorum.
>
> "(5) Any reading required by subsection (3) or (4) of this section may be by title only:
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> "(a) If no member of the governing body present at the meeting requests that the ordinance be read in full; or
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> "(b) If, not later than one week before the first reading of the ordinance, a copy of it is provided each member, copies of it are available at the headquarters of the

governing body, one copy for each person who requests it, and notice of the availability is given by:

"(A) Written notice posted at the courthouse of the county and two other public places in the county; and

"(B) Publication at least once in a newspaper of general circulation in the county, designated by the county governing body and published in the county or, if no newspaper is so published, then in one published elsewhere.

"(6) An ordinance adopted after being read by title only may have no legal effect if it differs substantially from its terms as it is thus filed prior to the reading, unless each section incorporating such a difference, as finally amended prior to being adopted by the governing body, is read fully and distinctly in open meeting of that body."

Petitioner argues that the county violated ORS 203.045(3) in failing to conduct two readings of the proposed ordinance before adopting it.

The county first responds that petitioner failed to object to the alleged procedural error during the proceedings below, and having failed to object, may not now assign error to the county's procedure.[1] The "raise it or waive it" rule does not generally apply to issues raised in appeals challenging legislative decisions. *See* ORS 197.835(3) ("Issues shall be limited to those raised by any

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[1] The county does not argue that ORS 205.045 does not apply to the county's proceedings adopting the Ordinance and accordingly, we do not consider that issue. *See* ORS 203.045(1) ("This section does not apply to a county that prescribes by charter the manner of adopting ordinances for the county or to an ordinance authorized by a statute other than ORS 203.035.").

participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable."). *See also Roads End Sanitary District v. City of Lincoln City*, 48 Or LUBA 126 (2004) (LUBA will not extend the ORS 197.763(1) "raise it or waive it" requirement to legislative proceedings). However, LUBA has long held that where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the resulting decision. *Torgeson v. City of Canby*, 19 Or LUBA 511, 519 (1990); *Dobaj v. Beaverton*, 1 Or LUBA 237, 241 (1980). This obligation to object to procedural errors overlaps with, but exists independently of, ORS 197.763(1) and 197.835(3). *Confederated Tribes v. City of Coos Bay*, 42 Or LUBA 385, 393 (2002); *Simmons v. Marion County*, 22 Or LUBA 759, 774 n 8 (1992). While the "raise it or waive it" requirement at ORS 197.763(1) has a similar purpose to the requirement that a party with an opportunity to object to a procedural error must do so in order to seek remand based on that error, the two requirements share no antecedents and otherwise have no relationship with each other. *See Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312, 317 n 6 (1993) (the "raise it or waive it" provisions of ORS 197.763(1) and 197.835(3) do not supersede the requirement that parties raise objections to procedural errors when it is possible to do so). We have affirmed that the requirement to object to a procedural error is present in a process that culminates in a legislative decision. *Dobson v. City of Newport*, 47 Or LUBA 267, 277 (2003) (citing ORS 197.835(9)(a)(B)).

Petitioner does not point to any place in the record demonstrating that she objected to the county's procedure. The reply brief does not respond to the county's waiver argument except to argue that at the October 2, 2018 board of county commissioners hearing, petitioner objected that she did not receive emailed notice of the proceedings. Reply Brief 1. The reply brief argues that the county "should be judicially estopped from raising its [failure to object] arguments." Reply Brief 4. Accordingly, we agree with the county that petitioner has failed to demonstrate that she objected to the county's alleged failure to comply with ORS 203.045(3).

However, even if we assume petitioner objected that the county failed to conduct two readings of the Ordinance, we also agree with the county's response on the merits. ORS 203.045(4) and (5) allow an ordinance that is passed with an emergency clause to be read once only, and only by title "[i]f no member of the governing body present at the meeting requests that the ordinance be read in full." ORS 203.045(5)(b). It is undisputed that the Ordinance includes an emergency clause, and petitioner does not challenge that emergency clause. It is also undisputed that no member of the board of county commissioners requested a full reading. Accordingly, ORS 203.045(5) allowed the county to read the Ordinance a single time and by title only. Petitioner does not address ORS 203.045(5) or otherwise explain why, under that statute, the county's reading of the Ordinance by title only was insufficient to comply with ORS 203.045.

Finally. petitioner argues:

> "[B]ecause the version read by title at the planning commission hearing on September 16, 2018, differs substantially from the terms of what was considered and read only by title at the board's hearing on October 2, 2018, the ordinance [sic] 'has no legal effect' and LUBA should reverse the county's decision purporting to adopt it." Petition for Review 22-23.

We reject the argument. ORS 203.045(6) renders an ordinance void if it "differs substantially from its terms as it is thus filed prior to the reading" of the ordinance. Petitioner does not develop any argument under the language of ORS 203.045(6) explaining how the language of the Ordinance "differs substantially" from that language "filed prior to the reading" of the Ordinance by title at the October 2, 2018 board of county commissioners' hearing. Accordingly, petitioner's argument provides no basis for reversal or remand of the decision.

The first subassignment of error is denied.

B. ORS 197.610

ORS 197.610(1) requires the county to submit a proposed amendment to the LDO to the Department of Land Conservation and Development (DLCD) at least 20 days before the county holds the first evidentiary hearing on adoption of the proposed change. In relevant part, ORS 197.610(3) requires the notice to include the text of the proposed change, a brief narrative summary of the proposed change, and the date set for the first evidentiary hearing. The county submitted notice of and the text of the proposed changes to the LDO to DLCD on August 2, 2018. Record 614. The version of the proposed amendments submitted to DLCD did not include later revisions to LDO 5.2.600 that were

proposed after August, and ultimately adopted by the board of county commissioners. As explained above, further revisions to the proposed amendments were presented after August 2, 2018, and were considered at the September 2018 planning commission meeting and again at the October 2, 2018 board of county commissioners hearing.

Citing ORS 197.620(2)(c), petitioner argues that "[t]he adopted version differs from the proposed changes provided to DLCD to such an extent that the notice does not reasonably describe the proposed and ultimate decision. *See* ORS 197.620(2)(c) (granting right of appeal in such circumstances)."[2] Petition for Review 24. We understand petitioner to argue that the county failed to provide the notice required under ORS 197.610(1), and that failure requires remand. Petition for Review 24 (citing *Oregon City Leasing, Inc. v. Columbia County*,

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[2] ORS 197.620(2)(c) provides:

> "(2) Notwithstanding the requirements of ORS 197.830(2) that a person have appeared before the local government orally or in writing to seek review of a land use decision, the Director of the Department of Land Conservation and Development or any other person may appeal the decision to the Land Use Board of Appeals if:
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> " * * * * *
>
> "(c) The decision differs from the proposed changes submitted under ORS 197.610 to such an extent that the materials submitted under ORS 197.610 do not reasonably describe the decision."

121 Or App 173, 854 P2d 495 (1993) (complete failure to provide the notice required under ORS 197.610(1) is a substantive error that requires remand)).

The county's response first points out that ORS 197.620(2)(c) has no bearing on the present appeal, in which no challenge to petitioner's standing to appeal the decision has been raised.[3] We agree with that response.

The county next responds that LUBA has held that *inadequate* provision of the notice required under ORS 197.610(1), as opposed to a complete failure to provide the required notice, requires remand only if that failure (1) prejudiced petitioner's substantial rights, or (2) was likely to prejudice the substantial rights of other persons who may be relying on DLCD's notice to participate in the post-acknowledgment plan amendment (PAPA). We agree with the county that an

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[3] The county's response also cites and discusses ORS 197.610(6), a provision that petitioner does not cite or discuss. ORS 197.610(6) provides:

> "If, after submitting the materials described in subsection (3) of this section, the proposed change is altered to such an extent that the materials submitted no longer reasonably describe the proposed change, the local government must notify the Department of Land Conservation and Development of the alterations to the proposed change and provide a summary of the alterations along with any alterations to the proposed text or map to the director at least 10 days before the final evidentiary hearing on the proposal. The director shall cause notice of the alterations to be given in the manner described in subsection (4) of this section. Circumstances requiring resubmission of a proposed change may include, but are not limited to, a change in the principal uses allowed under the proposed change or a significant change in the location at which the principal uses would be allowed, limited or prohibited."

argument that the notice provided under ORS 197.610(1) was incomplete or inaccurate is a challenge that requires a demonstration of prejudice. *Bryant v. Umatilla County*, 45 Or LUBA 653, 656-57 (2003); *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647, 653-56 (2003); *OCAPA v. City of Mosier*, 44 Or LUBA 452, 468-72 (2003); *Stallkamp v. City of King City*, 43 Or LUBA 333, 351-52 (2002), *aff'd*, 186 Or App 742, 66 P3d 1029 (2003). Petitioner has not attempted to establish that any inadequacy in the notice provided by the county to DLCD pursuant to ORS 197.610(1) on August 2, 2018 prejudiced her substantial rights, or the substantial rights of others.

We also conclude that petitioner has not established that the notice provided to DLCD as required by ORS 197.610(1) was inadequate. Petitioner argues that the amendments to LDO 5.2.600 that were submitted to DLCD on August 2, 2018 did not include what was eventually adopted as LDO 5.2.600.1.b(1), which provides that "[a]ll conditional uses for residential development including overlays shall not expire once they have received approval." Petitioner also argues that language included in the adopted version of LDO 5.2.600 identified as "footnote 3" was not included in the version provided to DLCD. Petition for Review 23-24. However, petitioner does not explain why the changes that occurred during the legislative proceeding on the proposed amendments mean that the original notice provided pursuant to ORS

197.610(1) was inadequate.[4] Accordingly, this subassignment of error provides no basis for reversal or remand of the decision.

This subassignment of error is denied.

C. Citizen Advisory Committee Review

In the third subassignment of error, petitioner argues that the county's decision to amend the LDO fails to comply with Coos County Comprehensive Plan (CCCP) Section 5.1. ORS 197.835(6). That is so, petitioner argues, because the Citizen Advisory Committee provided for in CCCP 5.1 did not review changes that were proposed to the LDO after the CAC initially met and reviewed the changes in February 2018 and May 2018.[5]

CCCP 5.1 provides that the CAC:

> "[s]hall aid the Planning staff in the direction of revising the Comprehensive Plan and Implementing Ordinance, as well as to voice concerns and/or support revisions and updates of the plan and implementing ordinance prior to public hearings and determinations

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[4] We have observed that ORS 197.610(1) and ORS 197.615(1) "expressly recognize the reality that proposed legislative post-acknowledgement amendments may be revised during the course of local proceedings." *OCAPA*, 44 Or LUBA at 468. We observe here that ORS 197.610(6) appears to us to be the legislature's attempt to identify non-exclusive circumstances under which post-notice revisions to a land use regulation go so far that new notice is required. *See* n 3. Petitioner has not argued or demonstrated that the revisions in this case are of the same nature as those circumstances described in ORS 197.610(6).

[5] Petitioner also argues, in a single sentence, that the process in CCCP 5.1 violates Statewide Planning Goal 1 (Citizen Involvement). Petition for Review 25. We do not address that undeveloped argument.

at the Planning Commission and Board of Commissioners level.

" * * * * *

"[CAC] meetings shall be scheduled and publicized as deemed necessary by the Planning Director or the designee."

The county responds initially that petitioner failed to object to the alleged procedural error during the proceedings below, and having failed to object, may not raise the procedural error before LUBA. Petitioner's reply brief does not respond to the county's argument in any way that we can understand. Accordingly, we agree with the county that petitioner has not demonstrated that she objected to the alleged procedural error. *Dobson*, 47 Or LUBA at 277.

However, we also agree with the county's response on the merits that nothing in CCCP 5.1 requires the CAC to review every proposed change to the CCCP or the LDO prior to public hearings by the planning commission or the board of commissioners. The role of the CAC is to assist the planning staff, and nothing in the language of CCCP 5.1 suggests that the CAC must review every proposed change to the LDO that arises after the public hearings have commenced.

The third subassignment of error is denied.

The third assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

ORS 197.722 to 197.728 allow a local government to designate "regionally significant industrial areas" (RSIAs) and to provide for protections from

development standards that may have the effect of limiting industrial development on such a RSIA site. ORS 197.724 provides:

> "(1) An applicant for a new industrial use or the expansion of an existing industrial use located within a regionally significant industrial area may request that an application for a land use permit be reviewed as an application for an expedited industrial land use permit under this section if the proposed use does not require:
>
> > "(a) An exception taken under ORS 197.732 to a statewide land use planning goal;
> >
> > "(b) A change to the acknowledged comprehensive plan or land use regulations of the local government within whose land use jurisdiction the new or expanded industrial use would occur; or
> >
> > "(c) A federal environmental impact statement under the National Environmental Policy Act.
>
> "(2) If the applicant makes a request that complies with subsection (1) of this section, the local government shall review the applications for land use permits for the proposed industrial use by applying the standards and criteria that otherwise apply to the review and by using the procedures set forth for review of an expedited land division in ORS 197.365 and 197.370."

The board of county commissioners adopted amendments to the LDO at LDO 4.3.220(6)(e), LDO 5.0.250, and LDO 5.0.900. Those amendments implement provisions of ORS 197.724. In her second assignment of error, petitioner argues that LDO 4.3.220(6)(e), LDO 5.0.250, and LDO 5.0.900 are inconsistent with ORS 197.724(1) because according to petitioner, those provisions require the county to process *all* applications for a new industrial use or expansion of an

existing industrial use in a RSIA according to the procedures for an expedited land division, whether or not the applicant requests such a process. In addition, petitioner argues that ORS 197.723 required the county to consider whether the amendments to the LDO comply with ORS 197.723.

The county responds, initially, that ORS 197.726(1) places the issues raised in the second assignment of error outside of LUBA's scope of review.[6] ORS 197.726(1) provides in relevant part that LUBA "does not have jurisdiction to consider decisions, aspects of decisions or actions taken under ORS 197.722 to ORS 197.728." As the county explains it, the county's implementation of ORS 197.724 in the Ordinance is an "action taken under" ORS 197.724.[7] Response Brief 2.

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[6] The county argues that ORS 197.726(1) "deprives LUBA of jurisdiction to review the county's implementation of [ORS 197.724.]" Response Brief 18. The county does not dispute that the Ordinance is a PAPA subject to review by LUBA pursuant to ORS 197.825(1). Accordingly, we understand the county's argument to be that ORS 197.726(1) places the issues presented in petitioner's second assignment of error outside LUBA's scope of review

[7] Absent ORS 197.724, an application for development of an industrial use in a RSIA would almost certainly be an application for "the discretionary approval of a proposed development of land," or in other words, an application for a "permit" as that term is defined in ORS 215.402. As such, the procedures at ORS 215.416 and the provisions of the LDO that implement ORS 215.416 would apply. However, ORS 197.724, and the LDO provisions that implement the statute at ORS 197.724, provide for a different and more expeditious way to process an application for an industrial use in a RSIA. That procedure – which is the same as the procedure for processing an expedited land division – expressly removes such a county decision on a development application from LUBA's

"Under" is generally interpreted as meaning "as authorized by." *Jones v. Douglas County*, 247 Or App 81, 93-94, 270 P3d 278 (2011). ORS 197.722 to 728 provide the substantive authority for the county to treat and process an application that would otherwise be a permit as something other than a permit. However, it is ORS 197.646(1) that requires the county to adopt the challenged amendments to the LDO. ORS 197.646(1) provides that "a local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 *to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals*." (Emphasis added.) In other words, the Ordinance is not an "action taken under" ORS 197.724. It is an action taken under ORS 197.646(1).

The county next responds that the LDO provisions the county adopted to implement ORS 197.724 are consistent with the statute. The county responds that notwithstanding any difference in language between the LDO and the statute, the language of the statute continues to apply directly to an application for an expedited land use permit described in ORS 197.724(1). Absent any developed

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jurisdiction. ORS 197.375(7) ("The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects of decisions or actions made under ORS 197.360 to 197.380.") Rather, review of a final county decision on an expedited land division application is subject to judicial review by the Oregon Court of Appeals.

argument from petitioner regarding why the LDO provisions are inconsistent with ORS 197.724 or ORS 197.723(4) and (5), we agree with the county.

The second assignment of error is denied.

FIRST ASSIGNMENT OF ERROR

Petitioner's first assignment of error presents myriad challenges to LDO 5.2.600.

1. First Subassignment of Error

a. LDO 5.2.600.1.a(3)

OAR 660-033-0140 is an administrative rule, adopted by the Oregon Land Conservation and Development Commission (LCDC), that governs expiration and extension of permits on farm and forest land. The county's amendments to LDO 5.2.600 are intended to implement the rule. OAR 660-033-0140(3) provides that "[a]pproval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision." The phrase "administrative decision" is not defined by LCDC. In her first subassignment under the first assignment of error, petitioner first argues that the amendments to LDO 5.2.600 are "inconsistent with" OAR 660-033-0140(3). Petition for Review 13.

LDO 5.2.600.1.a(3) provides that "[a]pproval of an extension granted under this rule is a ministerial decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision." Petitioner first argues that "administrative decision[s]" as that term is used in OAR 660-033-

0140(3) are "subject to a post-decision de novo hearing," while "'ministerial decisions' are not." Petition for Review 13. If petitioner is arguing that the phrase "administrative decisions" as used in the rule refers to decisions that are subject to the procedures for a permit under ORS 215.416, we reject that argument. It is clear that in adopting the rule, LCDC intended to make extension decisions under the rule *not* permit decisions (and not land use decisions at all).

As the county explains it, the LDO includes types of decisions that are referred to as "administrative conditional uses," and the LDO does not define the term "ministerial." According to the county, the county chose to use the word "ministerial" where the rule uses the phrase "administrative decision" in order to avoid confusion with the phrase used in the LDO "administrative conditional uses."

If petitioner is arguing that the LDO treats "administrative decisions" and "ministerial" decisions differently, petitioner has not demonstrated that is true. We conclude that the county's use of the word "ministerial" to describe the type of extension decisions subject to LDO 5.2.600 is not inconsistent with the rule's description of the same decisions as "administrative decision[s]."

b. LDO 5.2.600.1.a(2)

In LDO 5.2.600.1.a(2), the county adopted a provision that

> "Coos County has and will continue to accept reasons for which the applicant was not responsible as, but [not] limited to, financial hardship, death or owner, transfer of property, unable to complete conditions of approval and projects that require additional permits."

Petitioner challenges that provision as inconsistent with OAR 660-033-0140(2)(d), which provides that the county may grant an extension to a permit on farm or forest land if "the county determines that the applicant was unable to begin or continue development during the approval period *for reasons for which the applicant was not responsible*." (Emphasis added.) Petitioner argues that "the county may not legislate away its requirement to exercise discretion in making that decision by adopting a list of potential reasons that might satisfy the criteria." Petition for Review 14. The county responds, and we agree, that adopting an explanatory list of examples of "reasons for which the applicant was not responsible" is not inconsistent with the rule, especially in the absence of any definition for the phrase used in the rule or guidance given in the rule. The county will still be required to determine for each extension application whether "reasons for which the applicant was not responsible" prevented the applicant from initiating development.

This subassignment of error is denied.

2. OAR 660-033-0140(3)

We briefly discussed OAR 660-033-0140(3) above in our discussion of petitioner's challenges that LDO 5.2.600.1.a(3) is inconsistent with the rule. In her second subassignment of error, petitioner argues that OAR 660-033-0140(3) is inconsistent with ORS 197.015(10)(a) and (b), and that LCDC exceeded its authority in adopting the rule. Petitioner argues that LCDC's rule enacts an additional exception to LUBA's jurisdiction that the legislature has not enacted.

OAR 660-033-0140(3) provides that "[a]pproval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision." In previous challenges to LUBA's jurisdiction over a decision to approve an extension to a permit on farm or forest land, we have concluded that OAR 660-033-0140(3) limits our jurisdiction over those decisions. *McLaughlin v. Douglas County*, 76 Or LUBA 77 (2017).

LUBA's standard of review of the county's legislative decision is set out above. We have the authority to reverse or remand the decision if "the local government * * * exceeded its jurisdiction." ORS 197.835(9)(a)(A). However, petitioner's argument is that *LCDC* exceeded its authority in enacting OAR 660-033-0140(3). An argument that LCDC exceeded its authority in enacting an administrative rule does not provide LUBA with a basis under ORS 197.835(9)(a)(A) for reversal or remand of a county decision that merely implements, in nearly identical terms, the LCDC rule.

This subassignment of error is denied.

3. Third Subassignment of Error

We are unable to discern a cognizable argument providing a basis for reversal or remand in this subassignment of error, and we therefore will not consider the arguments included in it. *See Sommer v. Josephine County*, 54 Or LUBA 507, 511-12, *aff'd* 215 Or App 501, 170 P3d 8, 9 (2007) (LUBA will not

consider arguments that are so poorly stated that they cannot reasonably be responded to).

This subassignment of error is denied.

4. Fourth Subassignment of Error

In her fourth subassignment of error, we understand petitioner to argue that LDO 5.2.600.1.b(1) fails to comply with Statewide Planning Goal 2 (Land Use Planning).[8] Petitioner's argument is difficult to follow, but we understand her to argue that such a provision fails to comply with Goal 2 because Goal 2 anticipates that changes to adopted and acknowledged comprehensive plans and land use regulations will be adopted as the needs of the community evolve. Petitioner also argues that the county's decision is not supported by an adequate factual base, because the county's findings do not address Goal 2.

Our standard of review of the Ordinance allows us to reverse or remand this amendment to the LDO if "(a) the regulation is not in compliance with the comprehensive plan; or (b) the comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals." ORS 197.835(7). Petitioner's argument does not establish that the county was required to consider or establish compliance with Goal 2, or explain why our standard of

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[8] LDO 5.2.600.1.b(1) provides that "all conditional uses for residential development including overlays shall not expire once they have received approval."

review requires review of the Ordinance for compliance with Goal 2. Thus, petitioner's argument does not provide a basis for reversal or remand.

This subassignment of error is denied.

The first assignment of error is denied.

The county's decision is affirmed.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2018-132 on June 6, 2019, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Nathaniel Greenhalgh-Johnson
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Dated this 6th day of June, 2019.

Sara L. Urch
Staff Attorney

Denise Seaman
Executive Support Specialist