

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

3
4 DEPARTMENT OF LAND CONSERVATION
5 AND DEVELOPMENT, 1000 FRIENDS OF OREGON,
6 FRIENDS OF DOUGLAS COUNTY, and OREGON
7 DEPARTMENT OF FISH AND WILDLIFE,
8 *Petitioners,*

9
10 and

11
12 1000 FRIENDS OF OREGON,
13 and FRIENDS OF DOUGLAS COUNTY,
14 *Intervenors-Petitioners,*

15
16 vs.

17
18 DOUGLAS COUNTY,
19 *Respondent.*

20
21 LUBA Nos. 2018-039, 2018-040, 2018-041,
22 2018-048, 2018-049 and 2018-051

23
24 FINAL OPINION
25 AND ORDER

26
27 Appeal from Douglas County.

28
29 Erin L. Donald, Assistant Attorney General, Portland, filed a petition for
30 review and argued on behalf of petitioner Department of Land Conservation and
31 Development and Oregon Department of Fish and Wildlife.

32
33 Meriel L. Darzen, Portland, filed a petition for review and argued on behalf
34 of petitioner/intervenor-petitioner 1000 Friends of Oregon.

35
36 Jennifer M. Bragar, Portland, filed a petition for review and argued on
37 behalf of petitioner/intervenor-petitioner Friends of Douglas County. With her
38 on the brief was Tomasi Salyer Martin PC.

1 Michael C. Robinson, Portland, filed the response brief and argued on
2 behalf of respondent. With him on the brief were Andrew J. Lee and Schwabe,
3 Williamson & Wyatt, P.C.

4
5 Timothy J. Bernasek, Portland, filed the *amicus curiae* brief on behalf of
6 Oregon Farm Bureau Federation and Douglas County Farm Bureau. With him on
7 the brief was Dunn Carney Allen Higgins & Tongue LLP.

8
9 RUDD, Board Member; RYAN, Board Chair; ZAMUDIO, Board
10 Member, participated in the decision.

11
12 REMANDED 08/02/2019

13
14 You are entitled to judicial review of this Order. Judicial review is
15 governed by the provisions of ORS 197.850.

1

2 **NATURE OF THE DECISION**

3 Petitioners and intervenors-petitioners challenge a county board of
4 commissioners' decision adopting a post acknowledgement plan amendment
5 (PAPA) that adopts a new Rural Open Space (ROS) comprehensive plan
6 designation and a new zone designation, Rural Transitional-20 acre (RT-20).¹

7 **MOTION TO FILE AMICUS BRIEF**

8 On April 30, 2019, Oregon Farm Bureau Federation (OFBF) and Douglas
9 County Farm Bureau (DCFB) (collectively, *amicus*) filed a motion for leave to
10 participate as *amicus curiae* on the side of petitioners.² OAR 661-010-0052(1)

¹ Petitioners Department of Land Conservation and Development (DLCD) and Oregon Department of Fish and Wildlife (ODFW) and petitioners and intervenors-petitioners 1000 Friends of Oregon (1000 Friends) and Friends of Douglas County (FODC) are described collectively herein as petitioners.

² OFBF explains that it “is Oregon’s largest grassroots agricultural association, representing nearly 7,000 active farming and ranching families across the state.” *Amicus* Motion 2. OFBF advises that it “was one of the early proponents of Oregon’s land use planning system and views proper functioning of the land use system as critical to the viability of agriculture in Oregon.” *Id.* “DCFB’s membership includes small woodlands owners, vegetable farmers, hay farmers, livestock producers, and farmers of a myriad of other commodities in Douglas County.” *Id.* *Amicus* express concern that our decision may have significant implications for the response to development pressures on the state’s resource land and argues that *amicus* is able to provide helpful information concerning agricultural policy and considerations and implications of our decision for Oregon’s agricultural economy. *Amicus* Motion 2-3.

1 (2017).³ Our rules provide that “[w]here amicus is aligned with the interests of
2 the petitioner(s), the amicus brief is due seven days after the date the petition for
3 review is due.” OAR 661-010-0052(2). The motion to file an *amicus* brief is
4 timely, unopposed and accordingly, it is granted. *See Central Oregon Landwatch*
5 *v. Jefferson County*, 62 Or LUBA 530, 533 (2010) (explaining that “[t]he typical
6 amicus is a person or organization that has no direct interest in the matter, but is
7 in possession of views or perspectives that may assist LUBA to correctly decide
8 the legal issues.”)

9 **MOTION TO TAKE OFFICIAL NOTICE**

10 On April 24, 2019, DLCD and ODFW (collectively the agencies) filed an
11 unopposed motion requesting that LUBA take official notice of the Governor of
12 Oregon’s Executive Order No. 12-07 (Executive Order). The Executive Order
13 authorized the creation of a pilot program to evaluate the potential for
14 development of a regional approach for designating resource lands. The resulting
15 program was designated the Southern Oregon Regional Pilot Program (SORPP).

16 In their petition for review, the agencies state that they include a discussion
17 of the Executive Order in their statement of facts because the challenged decision
18 includes a discussion of the SORPP and the SORPP analysis is prominent in the

³ LUBA’s 2017 rules are applicable because the appeals in this matter were filed prior to the date of LUBA’s most recent rule amendment, January 1, 2019. OAR 661-010-0000 (2019). All subsequent references to our rules are to the 2017 version, unless otherwise noted.

1 county's decision. Agency Petition for Review 6. The agencies maintain that the
2 Executive Order provides context for the challenged decision. Motion to Take
3 Official Notice 2.

4 Official acts of the executive branch of a state are subject to judicial notice
5 under ORS 40.090(2) and we will take official notice of the Executive Order as
6 an official act of the Governor of Oregon.⁴ We acknowledge, however, that the
7 agencies' petition states that "the SORPP materials referenced and contained in
8 the challenged decision and the record have no independent legal significance."
9 Agency Petition for Review 7. We have consistently held that we will take
10 official notice of documents subject to judicial notice under ORS 40.090(2) with
11 the understanding that our review is generally limited to the record and that we
12 will not consider documents officially noticed for adjudicative facts. *Friends of*
13 *Deschutes County v. Deschutes County*, 49 Or LUBA 100, 103 (2005). Given
14 that it does not appear that the Executive Order is submitted for any purpose other
15 than for adjudicative facts for which we will not consider it, our taking official

⁴ ORS 40.090(2) provides that "Law judicially is defined as:

*** **

"Public and private official acts of the legislative, executive and
judicial departments of this state, the United States, any federally
recognized American Indian tribal government any other state,
territory or other jurisdiction of the United States."

1 notice of the document will not affect our analysis or impact our disposition of
2 this appeal.

3 **MOTION TO FILE REPLY BRIEF**

4 On June 7, 2019, 1000 Friends filed a motion to file a reply brief and reply
5 brief. “A reply brief may not be filed unless permission is obtained from the
6 Board. * * * A reply brief shall be confined solely to new matters raised in the
7 respondent’s brief, state agency brief, or amicus brief.” OAR 661-010-0039. The
8 reply brief addresses issues of waiver, failure to cite to the record and ripeness
9 that are raised in the county’s brief. The motion is unopposed and is granted.

10 **MOTION TO FILE SUPPLEMENTAL AUTHORITY**

11 On June 12, 2019, the agencies filed a motion to file supplemental
12 authority, a copy of *1000 Friends of Oregon v. Washington County*, 17 Or LUBA
13 671 (1989), in response to the argument in the county’s response that our review
14 of Statewide Planning Goal compliance is constrained in a case in which no land
15 is rezoned or given a new comprehensive plan designation. No party opposes the
16 motion and it is granted.

17 **BACKGROUND**

18 In the challenged decision, the county amended its comprehensive plan to
19 create a new comprehensive plan designation, the Rural Open Space (ROS)
20 designation, and a new zone to implement the ROS designation, the Rural
21 Transition 20 (RT-20) zone. We explain the process that the county engaged in

1 leading to the county’s adoption of the new plan and zone designations, and then
2 explain the applicable provisions of the Douglas County Comprehensive Plan.

3 **A. The SORPP**

4 As *amicus* explains, Douglas County is forecasted to grow by 4,575 people
5 over the next twenty years. Amicus Brief 2; Record 65.⁵

6 “Douglas County (‘Respondent’) attempted to address this
7 anticipated growth by creating a Rural Open Space (‘ROS’)
8 designation, which would allow for the development of single-
9 family homes and subdivisions on lands that were formerly zoned
10 for [resource] use. Rec. 33. The stated intent of the ROS designation
11 is to ‘provide for a well-defined classification of lands within
12 Douglas County that identify lands which hold marginal to no farm
13 and forest value, but are, for a lack of other implementing measure,
14 designated as resource lands.’ Rec. 32. ROS designated lands are
15 intended to serve as buffer lands, which create transitional open
16 space areas where homes can be built to ‘provide for rural family
17 open space lifestyles,’ but only on lands that are not high-value
18 agricultural or timberlands. Rec. 33. According to Respondent, the
19 ROS designation conforms with Oregon’s land use planning goals
20 because it ‘considers the spirit and intent of both Goal 3 and 4’ by
21 excluding high value agricultural and timberlands from the
22 designation. Record 33. In determining what lands would be
23 designated ROS, Respondent relied on the findings of the Southern
24 Oregon Regional Pilot Program (‘SORPP’). Record
25 34.” *Amicus* Brief 2-3.

26 Agricultural lands are protected for farm uses under Statewide Planning
27 Goal 3 (Agricultural Lands), and implementing regulations adopted by the Land

⁵ References to the Record are to the Reconsideration Record unless otherwise noted.

1 Conservation and Development Commission (LCDC). Forest lands are protected
2 for forest uses under Statewide Planning Goal 4 (Forest Lands) and implementing
3 regulations adopted by LCDC. Farm and forest lands are generally referred to as
4 “resource lands.” The SORPP process grew out of years of inquiries as to whether
5 a region of the state should have more regionally specific standards for
6 conserving resource lands. During its 2011 and 2012 legislative sessions,
7 Oregon’s legislature considered bills which would authorize the county, along
8 with Jackson and Josephine Counties, to develop and recommend new regional
9 definitions for uses in applying Statewide Planning Goals 3 (Agricultural Lands)
10 and 4 (Forest Lands) in those counties. HB 3615, HB 4095. Neither bill was
11 enacted by the legislature, but the Governor issued the Executive Order mirroring
12 key aspects of the proposed legislation and providing state support for regional
13 studies to explore the potential for a region-based approach for protecting farm
14 and forest lands. Record 35. The study process was directed toward determining
15 if the three counties could agree on a rulemaking proposal for submission to
16 LCDC for consideration.⁶

17 Over the course of four years, the county “worked in close coordination
18 with Jackson and Josephine Counties and the DLCD in order to [complete tasks
19 including] * * * data collection/acquisition, data analysis and assessment,

⁶ LCDC adopts state land use planning goals and implementing rules, assures local plan compliance with the goals, and coordinates state and local planning. ORS 197.030–197.070.

1 conceptualization, a carrying capacity analysis, and final summary reports.” *Id.*
2 Ultimately, the three counties did not submit a regional rulemaking petition to
3 LCDC implementing a SORPP developed concept. Record 35-36. The county
4 concluded, however, that:

5 “The program provided many beneficial results, including and [*sic*]
6 methodology for identifying non-resource land unique to the
7 Southwestern region of Oregon. The methodology for identifying
8 non-resource lands established in [SORPP Task 5], was a regional
9 concept developed in order to meet the needs of each of the three
10 counties, while also addressing the guidance provided to the
11 counties for identification of non-resource lands.” Record 35-36.

12 Finding value in the work done under the SORPP umbrella, the county
13 “adapted and refined the information and analysis provided within the SORPP in
14 order to create [its] Rural Open Space Lands Program.” Record 36.

15 **B. LUBA Appeals**

16 The procedural background of these consolidated appeals is lengthy. The
17 present consolidated set of appeals involves (1) three notices of intent to appeal
18 (NITAs) that all challenge Ordinance No. 2018-02-01, adopted on March 7,
19 2018, and (2) three NITAs that challenge a “Correction Order” adopted on April
20 23, 2018, which corrected aspects of Ordinance No. 2018-02-01.

21 On March 7, 2018, Douglas County adopted Ordinance 2018-02-01,
22 creating a new comprehensive plan and zoning designation. DLCD, 1000 Friends
23 and ODFW appealed the decision adopting Ordinance 2018-02-01 to LUBA
24 (LUBA Nos 2018-039, 2018-040, and 2018-041, respectively).

1 Approximately six weeks after adopting Ordinance 2018-02-01, on April
2 23, 2018, the county adopted its “Correction Order” to resolve inconsistencies
3 concerning a method erroneously included in the record. DLCD and ODFW filed
4 new NITAs to LUBA of the Correction Order alleging the county did not utilize
5 the procedure in OAR 661-010-0021 to withdraw the original decision for
6 reconsideration. (LUBA Nos 2018-048 and 2018-049, respectively). Agency
7 Petition for Review 5. FODC also appealed the correction order. (LUBA No
8 2018-051). LUBA consolidated these six appeals.

9 On August 6, 2018, the county withdrew Ordinance 2018-02-01 and the
10 April 23, 2018 Correction Order, for reconsideration in the manner provided in
11 OAR 661-010-0021. On October 24, 2018, the county adopted Ordinance No.
12 2018-10-01 reflecting its decision on reconsideration, which readopts Ordinance
13 2018-02-01, as corrected, with minor changes.

14 Ordinance No. 2018-10-01 provides that “The Board of Commissioners is
15 re-adopting the 2018 Legislative Amendments to better document the final
16 document methodology and text as corrected on April 23, 2018 and alleviate any
17 lack of clarity in the Plan adoption for the LUBA appeal review process.” Record
18 5. Subsequently, 1000 Friends, the petitioner in LUBA No. 2018-040, refiled its
19 original NITA, challenging Ordinance No. 2018-02-01, pursuant to OAR 661-
20 010-0021(5)(a)A). FODC, the petitioner in LUBA No. 2018-051, also refiled its
21 original NITA. DLCD, the petitioner in LUBA Nos. 2018-039 and 2018-048, and
22 ODFW, the petitioner in LUBA Nos. 2018-041 and 2018-049 filed amended

1 NITAs, challenging the decision on reconsideration pursuant to OAR 661-01-
2 0021(5)(a)(B). Thus, our review is of Ordinance 2018-10-01, which we
3 sometimes refer to as the challenged decision.

4 **C. The Douglas County Comprehensive Plan Provisions**

5 The county identifies four types of Rural Lands in the Douglas County
6 Comprehensive Plan (Comp Plan): Timberland, Agriculture, Coastal Resource
7 and Farm/Forest Transitional.⁷ Comp Plan 15-8.

8 “The intent of the Timberlands designation is to conserve forest
9 lands for forest uses; encourage activities which enhance the overall
10 forest resource; reduce conflicts from competing land uses in forest
11 resource areas; and to conserve and protect significant forest values
12 such as wildlife habitat, watersheds and recreation * * *.” *Id.*

13 The Timberland Comp Plan designation is implemented through application of
14 the Timberland Resource (TR) zone. Comp Plan 15-14.

15 For the Agriculture Comp Plan designation, “The intent of the Agriculture
16 designation is to preserve and maintain prime agriculture lands for farm use. It is
17 also intended to provide protection from nonfarm uses as well as provide
18 encouragement and incentives for activities which enhance the agricultural
19 resources of Douglas County.” Comp Plan 15-11. The Agriculture Comp Plan

⁷ The Rural Resources section of the Comp Plan directs the reader to the
“Coastal Resource document” to obtain more information on coastal resources.
Comp Plan 15-8. It is mentioned above only for completeness and will not be
discussed further in this opinion.

1 designation is implemented through the Exclusive Farm Use - Grazing (FG) and
2 Exclusive Farm Use - Cropland (FC) zones. Comp Plan 15-14.

3 The Comp Plan describes the Farm/Forest Transitional lands as consisting
4 of “low to no value soils * * * located within close proximity to rural and urban
5 communities, as well as, areas committed to existing ROS (non-resource)
6 development.” Record 31 (underscore omitted). “The intent of the Farm/Forest
7 Transitional designation is to conserve and maintain open space lands for forest
8 uses, farm uses or both. It is also intended to maintain open space lands which
9 are otherwise necessary to protect natural resource areas.” Comp Plan 15-10. The
10 Farm/Forest Transitional Comp Plan designation is implemented through the
11 Farm Forest (FF), Agriculture and Woodlot (AW) zones and, pursuant to the
12 challenged decision, the ROS Comp Plan map designation and the RT-20 zone.
13 Comp Plan 15-14; Record 31-32. The ROS Comp Plan map designation and RT-
14 20 zoning are described collectively herein as the ROS/RT-20 designation.

15 In the challenged decision, the county adopted a map identifying lands that
16 the county, after applying a variety of criteria (the eligibility filter), determined
17 were eligible to seek the new ROS/RT-20 designation. The county also adopted
18 standards for approving a quasi-judicial or legislative effort to redesignate
19 property ROS/RT-20.

20

1 **STANDARD OF REVIEW**

2 LUBA “shall reverse or remand an amendment to a comprehensive plan if
3 the amendment is not in compliance with the [statewide planning] goals.” ORS
4 197.835(6). Petitioners argue that the county’s decision should be remanded
5 because it fails to demonstrate compliance with Statewide Planning Goals 2
6 (Land Use Planning), 3 (Agricultural Lands), 4 (Forest Lands), 5 (Natural
7 Resources, Scenic and Historic Areas, and Open Spaces), 7 (Areas Subject to
8 Natural Hazards), 10 (Housing), and 11 (Public Facilities and Services).⁸

9 In response, the county invokes cases in which we and the appellate courts
10 have concluded that appellate review of a comprehensive plan amendment that
11 does not change the land use designation of any property is limited with respect
12 to review for goal compliance. Response Brief 15-16, 35-36, 45-46. *Citizens*
13 *Against Irresponsible Growth v. Metro*, 179 Or App 12, 14-15, 38 P3d 956
14 (2002); *Friends of Deschutes County v. Deschutes County*, 49 Or LUBA 100,
15 101 (2005); *Tipperman v. Union County*, 44 Or LUBA 98, 106 (2003). Those
16 cases establish that appellate review is limited if (1) the challenged decision
17 demonstrates compliance with the goals, or establishes that certain goals are not
18 implicated by the decision, or (2) the challenged decision affirmatively
19 establishes that the local government will review a future decision that applies

⁸ FODC argues, among other things, that the county failed to adequately coordinate with appropriate entities, as required by Goal 2, with respect to Goals 7, 10 and 11.

1 the comprehensive plan amendment for goal compliance in a later, required
2 proceeding.

3 For example, our recent decision in *Central Oregon Landwatch v.*
4 *Deschutes County* __ Or LUBA __ (LUBA No 2018-126, Mar 20, 2019) (*Aceti*
5 *III*), *aff'd*, 298 Or App 376, __ P3d __ (2019), concerned a comprehensive plan
6 text amendment removing language from the plan that limited application of
7 Rural Industrial and Rural Commercial plan designations to certain exception
8 lands. As we explained:

9 “[T]he effect of the plan amendments [was] to allow the county to
10 potentially approve an application to change the comprehensive plan
11 designation for any property in the county to [Rural Industrial],
12 provided the application is consistent with all applicable statutes,
13 rules, the provisions of the [Deschutes County Comprehensive
14 Plan], and the provisions of the Deschutes County Code (DCC)
15 governing plan amendments.” *Aceti III*, __ Or LUBA __ (LUBA No
16 2018-126, Mar 20, 2019) (slip op at 5).

17 The county deferred finding compliance with certain goals because the decision
18 did not change the designation of any property. *Id.* (slip op at 14). The county’s
19 findings explained that a future application to rezone resource land property to
20 Rural Industrial would require an exception to the statewide planning goals, or a
21 determination that the application is consistent with all applicable statewide
22 planning goals. *Id.* (slip op at 11). We agreed with the county’s finding that Goal
23 3 was not implicated and rejected the assignment of error. *Id.* (slip op at 13-14).

24 Under the *Aceti III* holding, in order for our review to be limited at this
25 stage, the county must establish that for any parcel designated ROS/RT-20 in the

1 future, the county will review that designation for compliance with the statewide
2 planning goals, and not only for compliance with the adopted ROS/RT-20
3 eligibility filter. If neither the challenged decision nor other applicable
4 regulations establish that the detailed goal compliance review will in fact occur
5 when an eligible property is redesignated to ROS/RT-20, it is appropriate that we
6 review the challenged decision for goal compliance.

7 **A. Compliance with Goals 3 and 4**

8 In this case, the county does not argue that the challenged decision
9 establishes that the new Comp Plan and zoning designation comply with all
10 applicable goals as implemented by administrative rules. *See, e.g.*, Response
11 Brief 14-15. Instead, the county argues that we should review petitioners'
12 arguments regarding compliance with Goals 3, 4 and 5 narrowly, because the
13 county's decision does not apply the new ROS/RT-20 designation to any land,
14 but instead only identifies properties that are eligible for future redesignation.
15 Response Brief 1-2, 15-16, 35-36, 45-46. The county asserts that because no land
16 is being redesignated or rezoned by the challenged decision creating the new plan
17 and zoning designations, petitioners are required to establish that "*any* future
18 redesignation of land to ROS or rezoning to [RT]-20 is categorically inconsistent
19 with controlling legal standards." Response Brief 2 (emphasis in original). Given
20 that our review is limited substantially if the county is correct, we address this
21 contention with respect to Goals 3 and 4 first. We address Goal 5 separately, later
22 in this opinion.

1 The newly adopted Comp Plan language does not require review for
2 compliance with the goals. Reply 7. Rather, the adopted language provides:

3 “Lands identified under the Rural Open Space Lands Identification
4 Methodology may be amended to the Rural Open Space (ROS)
5 designation through a quasi-judicial or legislative plan amendment
6 process and qualify for a re-zoning to Rural Transitional-20 Acre
7 (RT-20) designation provided that:

8 “1. The property proposed for zone change is a minimum of 20
9 Acres in size and contains at least 60% of lands designated as
10 Rural Open Space.

11 “2. Lands proposed for zone change to RT-20, prior to final
12 approval, shall be disqualified from special assessment under
13 a farm and forest deferral.

14 “3. The designation will permit for one single family dwelling.
15 However, all uses and structures authorized under the Rural
16 Open Space designation shall adhere to the fire siting and
17 resource management standards outlined within the RT-20
18 zone.

19 “4. In the Rural Open Space designation, areas that may be
20 eligible for a new subdivision, Douglas County shall
21 encourage the use of the cluster development provisions
22 found in Chapter 4 of the Land Use and Development
23 Ordinance.” Record 32–33 (underscore omitted).

24 The county’s decision incorporated findings of goal consistency from the
25 SORPP. Record 39-40, 50-57. As the county explained:

26 “Although the SORPP was a program characterized by the finding
27 [of] an alternative designation for farm and forest lands from the
28 [Statewide Planning Goals (SWPG)], overall consistency with the
29 SWPGs remains a core value of the program. The following review
30 of the applicable SWPG’s organizes the considerations and analyses
31 performed within SORPP in order to demonstrate consistency with

1 each goal.” Record 50.

2 With respect to Goals 3 and 4, the county found that:

3 “Douglas County’s Rural Open Space designation considers the
4 spirit and intent of both Goal 3 and 4 by protecting and maintaining
5 lands identified as high value agricultural and timberlands by the
6 Comprehensive Plan which has been acknowledged to comply with
7 The Statewide Planning Goals. This is achieved by better defining
8 Rural Open Space lands within Douglas County that would function
9 more adequately as buffer lands, within transitional areas, utilized
10 for open space resource related land uses with the understanding that
11 these lands will provide for rural family open space lifestyles. (See
12 ‘Implementation of the Southern Oregon Regional Pilot Program’
13 section for a comprehensive review of goal compliance.)” Record
14 33.

15 The county found that:

16 “In order for the Rural Open Space lands designation process to
17 remain consistent with the intent and requirements of the SWPG’s
18 (ORS 197.230), a great deal of consideration and data analysis were
19 contained in several phases of the SORPP. These considerations and
20 analyses are made available with the Task 5 & 7 reports produced
21 by Douglas County during the SORPP. References to these
22 documents are made throughout this plan element amendment. The
23 identification and analysis process contained within these reports
24 address compatibility of the SORPP with the SWPG’s.” Record 40.

25 The language in those findings suggests that in identifying properties that
26 are eligible for ROS/RT-20 designation, the county intended that consistency
27 with the ROS/RT-20 designation quoted above will necessarily mean that the
28 designation of any property as ROS/RT-20 is consistent with Goals 3 and 4.
29 Based upon these findings, the county could conclude, in a future application,
30 that compliance with the ROS/RT-20 designation standards establishes

1 compliance with Goals 3 and 4. That conclusion would bypass Goal 3 and 4
2 compatibility review entirely.

3 **B. Future Goal Compliance Review**

4 Legislative findings can, in some cases, be sufficient to establish that in
5 cases where no land is being redesignated, goal compliance will be addressed at
6 a later stage. As the county points out, the county has not applied the ROS/RT-
7 20 designation to any property. Rather, the county's decision identified
8 approximately 22,500 acres of property that would be eligible for the ROS/RT-
9 20 designation. Record 78. This is similar to the adoption of a map identifying
10 properties eligible to seek destination resort zoning that we considered a
11 challenge to in *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA
12 123 (*Cyrus*), *aff'd*, 245 Or App 166, 262 P3d 1153 (2011).

13 In *Cyrus*, we held that a comprehensive plan amendment identifying
14 properties that are eligible to seek zoning as a destination resort did not require
15 the county to address the transportation planning rule (TPR), which implements
16 Statewide Planning Goal 12 (Transportation), because the eligibility map did not
17 change the zoning designation of any specific properties. Similarly, here, the
18 county has identified lands eligible to apply for the ROS/RT-20 designation but
19 has not applied the designation to any specific land. *Cyrus* differs from the case
20 before us, however, because in *Cyrus* the county's findings expressly
21 acknowledged that the county would address the TPR when it zoned specific
22 properties on the county's map of destination resorts. *Id.* at 144.

1 In the challenged decision in this case, the county has not adopted any
2 findings establishing that goal compliance will be addressed at the time a specific
3 property is designated ROS and zoned RT-20. The fact that future additional
4 decisions must occur before properties are redesignated does not insulate the
5 county from its obligation to ensure it evaluates goal compliance at some point
6 prior to designating any property ROS/RT-20. This conclusion is consistent with
7 our holding in *1000 Friends of Oregon v. Washington County*, 17 Or LUBA 671,
8 683 (1989) (*Metropolitan Service District*), where we held that the statewide
9 planning goals may apply to a decision even though that decision is not the last
10 decision needed to authorize construction of a particular facility.⁹ We therefore
11 proceed to determine if evaluation for compliance with the goals will necessarily
12 occur at a later stage.

13 The county argues that Comp Plan 2-9 requires the county to establish
14 compliance with Goal 4 at the time any specific property is redesignated. Comp
15 Plan 2-9 provides:

16 “Before forest land in forest use is allowed to change to nonfarm or
17 non-forest use, the act of justifying an amendment to the

⁹ In *Metropolitan Service District*, the regional transportation plan (RTP) had not been updated to include a bypass. The county’s obligation to amend its local transportation plan to be consistent with the RTP by including the bypass had not yet arisen. Further, additional approvals were required before the bypass at issue could be constructed. Given, however, that the county elected to include the bypass in its local plan, a determination of compliance with relevant goal standards was required. 17 Or LUBA 671.

1 Comprehensive Plan must occur in the manner provided for in
2 Statewide Planning Goal 2, except for those uses permitted without
3 an exception by state statute or administrative rule, or for those uses
4 found necessary for the public convenience and welfare which may
5 be permitted conditionally.” Response Brief 18-19.

6 We disagree with the county that Comp
7 Plan 2-9 ensures future review for compliance with Goal 4 and its implementing
8 regulations. First, this policy expressly applies only to forest land in forest use,
9 and therefore on its face offers no protection to forest land not in forest use.
10 Second, the county maintains that “[a]ll ‘forest land’ previously designated as
11 such remains ‘forest land.’” Response Brief 19. The plain language of the
12 provision does not assist in resolving the issue if there is a fundamental
13 disagreement between the goals and the amendments as to what constitutes
14 “forest land” in the context of the decision. This policy does not establish that
15 applications to redesignate property will be reviewed directly for compliance
16 with the goals. Finally, Comp Plan 2-9 does not require the county to address
17 Goal 3 at all.

18 We conclude that because the county’s decision does not establish that the
19 county is not required to establish compliance with Goals 3 and 4 at this stage, or
20 that future county review of applications for redesignation/rezoning will require
21 the county to establish compliance with those goals, it is appropriate for us to
22 consider petitioners’ Goal 3 and 4 challenges on review in this appeal.

1 **GOAL 4¹⁰**

2 Goal 4 (Forest Lands) is:

3 “To conserve forest lands by maintaining the forest land base and to
4 protect the state’s forest economy by making possible economically
5 efficient forest practices that assure the continuous growing and
6 harvesting of forest tree species as the leading use on forest land
7 consistent with sound management of soil, air, water, and fish and
8 wildlife resources and to provide for recreational opportunities and
9 agriculture.” OAR 660-015-0000(4).

10 The agencies set forth two basic reasons they conclude that the county
11 ROS/RT-20 designations violate Goal 4. First, the agencies maintain that the
12 ROS/RT-20 designation does not identify “forest lands” consistent with OAR
13 660-006-0010. Second, the ROS/RT-20 designation allows conversion of forest
14 lands. We agree that the county’s decision does not comply with Goal 4.

15 **A. Identification of Goal 4 Forest Lands**

16 OAR 660-006-0005(7) defines forest land as lands acknowledged as forest
17 land, or, in the case of a plan amendment “(a) Lands that are suitable for
18 commercial forest uses, including adjacent or nearby lands which are necessary
19 to permit forest operations or practices; and (b) Other forested lands that maintain
20 soil, air, water and fish and wildlife resources.” Thus, there are four types of
21 forest lands protected by Goal 4:

- 22 1. Lands designated forest land in an acknowledged comprehensive plan;

¹⁰ Agencies’ First Assignment of Error and 1000 Friends’ Second Assignment of Error.

- 1 2. Lands suitable for commercial use;
- 2 3. Lands adjacent to or nearby commercial forest lands necessary to permit
- 3 forest operations or practices; and
- 4 4. Other forested lands that maintain soil, air, water quality, and fish and
- 5 wildlife resources.

6 **B. Forest Lands Designated in Acknowledged Comp Plan**

7 Forest Lands identified in the county’s acknowledged Comp Plan include

8 lands designated Timberlands and Farm/Forest Transitional.¹¹ Comp Plan 2-9.

9 **1. Timberlands**

10 The Timberlands Comp Plan designation is intended “[t]o protect the

11 County’s forest economy by making possible economically efficient forest

12 practices that assure the continuous growing and harvesting of forest tree species

13 as the leading land use.” Comp Plan 2-10. The Timberlands designation is

14 implemented through the TR zone, a zone intended:

15 “to conserve and protect lands for continued timber production,

16 harvesting and related uses, conserve and protect watersheds,

17 wildlife habitat and such other uses associated with forests and to

18 provide for the orderly development of both public and private

19 recreational uses as appropriate and not in conflict with the primary

20 intent of the zone, which is sustained production of forest products.”

21 Douglas County Code (DCC) 3.2.000.

¹¹ Prime forest land is designated Timberlands and nonprime forest land is designated Farm/Forest Transitional. Comp Plan 2-9.

1 designation.¹² Response Brief 32-33; Record 59. The county argues that because
2 the filters applied to identify lands eligible to request ROS/RT-20 designation
3 exclude lands zoned TR, the ROS/RT-20 eligibility filter protects land currently
4 acknowledged as forest land through the TR zone designation.

5 1000 Friends notes that the county approach protects lands currently
6 designated Timberlands in the Comp Plan and zoned TR, but not lands designated
7 Farm/Forest Transitional and zoned FF or AW. 1000 Friends Petition for Review
8 31-32. The ROS/RT-20 eligibility filter does not remove FF or AW zoned lands
9 from consideration for ROS/RT-20 designation, so these lands are potentially
10 eligible for ROS/RT-20 designation.

11 This subassignment of error is sustained.

12 **D. ROS/RT-20 Treatment of Commercial Forest Lands in a PAPA**

13 OAR 660-006-0010 sets out the means by which commercial forest land
14 is to be identified in a PAPA. We understand that certain lands, like the TR-zoned
15 land described above, have been removed from the map of lands eligible to apply
16 for redesignation. For lands that remain available for redesignation consideration,
17 the rule requires that the county first consider U.S. Natural Resources
18 Conservation Service (NRCS) soil site class productivity data. A table in the

¹² The county explains that “[i]n order to ensure ongoing protection of the county’s high value commercial forest lands, all lands currently protected under the Timberland designation have been removed from consideration within the alternative designation process.” Record 59. Lands with a Timberlands Comp Plan designation have a TR zoning designation.

1 Comp Plan indicates that properties with productivity above roughly 80 cubic
2 acre feet per year have an NRCS Class ranging from I to IV. Agency Petition for
3 Review, App 63. NRCS Class I to IV are excluded from eligibility for the
4 ROS/RT-20 designation. Record 23.

5 The agencies assert that designating lands with productivity of less than 80
6 cubic acre feet per year as eligible to apply for an ROS/RT-20 designation fails
7 to comply with Goal 4 for multiple reasons. With respect to commercial forest
8 uses, the agencies point to our decision in *Anderson v. Coos County*, 62 Or LUBA
9 38 (2010). In *Anderson*, we recognized that LCDC has adopted rules requiring
10 consideration of land productivity in determining whether land is suitable for
11 commercial forest use but has not adopted a standard level of productivity test
12 for land that qualifies as commercial forest land. In the absence of a bright line
13 standard, LUBA has identified a range of productivity standards and discussed
14 their probable relationship to commercial levels of productivity. We concluded
15 that land with wood productivity of less than 20 cubic feet per acre per year is
16 considered unsuitable for commercial forest use unless other factors compensate
17 for the relatively low productivity, land with a low of approximately 40 cubic
18 acre feet per year and a high of approximately 80 cubic acre feet per year is
19 suitable for commercial forest use unless additional factors makes the soil
20 unsuitable for commercial forest use, and land producing over 80 cubic feet per
21 acre per year is almost certainly commercial forest land. 1000 Friends notes that
22 LUBA has already held that the county may not simply exclude from forest land

1 those lands with a productivity threshold below 80 cubic acre feet per year in
2 *Wetherell v. Douglas County*, 50 Or LUBA 167, 199 (2005), *rem'd on other*
3 *grounds*, 204 Or App 732, 132 P3d 41 (2006), *rev'd and rem'd on other grounds*,
4 342 Or 666, 160 P3d 614 (2007).

5 The county has not explained how Goal 4 is met by including as eligible
6 for the ROS/RT-20 designation properties where available NRCS data indicates
7 a productivity of less than 80 cubic acre feet per year but greater than 40 cubic
8 acre feet per year. The ROS/RT-20 eligibility filter potentially allows conversion
9 of any lands with a productivity less than 80 cubic acre feet per year, despite the
10 fact that they may still be commercial forest land. Agency Petition for Review
11 12.

12 Further, the agencies argue that the county method does not complete the
13 required assessment of soil productivity where NRCS data is lacking or
14 inaccurate. Agency Petition for Review 12. *See Oregon Shores Cons. Coalition*
15 *v. Coos County*, 50 Or LUBA 444, 466-67 (2005), *aff'd*, 204 Or App 245 (2006)
16 (determining whether property is suitable for commercial forestry must include
17 measurement of productivity of the land).

18 According to the county, accurate NRCS data is unavailable for parts of
19 the county. However, where the data is unavailable or inaccurate, OAR 660-006-
20 0010(b) requires the county to use the following sources, in the following order
21 of priority:

22 1. Oregon Department of Revenue Western Oregon site class maps;

- 1 2. USDA Forest Service plant association guides;
- 2 3. Other information determined by the State Forester to be of comparable
- 3 quality; and
- 4 4. If the above data is unavailable, the alternative method set out in the
- 5 Oregon Department of Forestry’s Technical Bulletin may be used.

6 Because the county did not use the alternative sources for obtaining
7 productivity data set forth in the OAR, the county’s decision does not establish
8 that it has identified all properties appropriately characterized as forest in
9 accordance with the applicable OARs and removed them from eligibility for
10 ROS/RT-20 designation.

11 In *Rogue Advocates v. Josephine County*, 66 Or LUBA 45 (2012), the
12 county’s internal rate of return system for identifying forest land was
13 acknowledged in the 1990s. In 2008 and 2011, LCDC amended OAR 660-006-
14 0010 to require identification of land suitable for commercial forest use by using
15 specifically identified data sources. At the time of the *Rogue Advocates* case the
16 county had not amended its regulations to incorporate the OAR standards into the
17 local code, so the OAR standards applied directly to the application before the
18 county. We held that “[a]pplication of OAR 660-006-0010 cannot be avoided by
19 concluding, based on different dates or a different methodology than that set out
20 in the rule, that the subject property is not forest land subject to Goal 4.” *Id.* at
21 51.

1 As discussed above, the county did not adopt findings or adopt a regulation
2 requiring that compliance with legal standards be determined before property will
3 be redesignated. The first page of the Forest Resources element of the Comp Plan
4 states “[i]t is intended that the Forest Element satisfy all of the requirements of
5 Statewide Planning Goal 4.” Comp Plan 2-1. We agree with the agencies that the
6 county process for identifying forest land must comply with that set forth in the
7 OARs and the information sources specified in the OAR must be used by the
8 county, in the OAR order of priority. The county did not make such a finding or
9 adopt such a regulation. To the extent the county has established an alternative
10 basis for determining whether its designation of property is consistent with Goal
11 4, it must use the priority system set forth in the OAR.

12 This subassignment of error is sustained.

13 **E. ROS/RT-20 Treatment of Lands Necessary for Forestry Uses on**
14 **Nearby and Adjacent Lands and Other Forested Lands**

15 In addition to identifying commercial forest lands, counties are required to
16 identify (1) forest lands necessary to support forest use on nearby and adjacent
17 lands, and (2) other forested lands necessary to maintain soil, air, and water
18 quality and protect fish and wildlife resources. OAR 660-006-0010(2)(c);
19 Agency Petition for Review 14, 16. 1000 Friends argues that the county used
20 only two data sets: (1) lands zoned TR and (2) lands with an NRCS site Class of
21 IV or higher, and lands within a given radius of an urban growth boundary, urban
22 unincorporated community or rural community boundary, to exclude lands from

1 ROS/RT-20 eligibility. Record 23, 38. The agencies maintain that the ROS/RT-
2 20 designation is inconsistent with Goal 4 because the ROS/RT-20 designation
3 does not conserve forest land. Agency Petition for Review 16-18. Rather, the
4 agencies argue, it allows houses on 20 acre lots.

5 As recognized above, OAR 660-006-0010(c) requires the county to
6 evaluate whether nearby or adjacent lands are necessary to permit forest
7 operations. Agency Petition for Review 15; 1000 Friends Petition for Review 32.
8 1000 Friends argues that the county's decision provides no explanation of how
9 these exclusions would protect all forestry uses and lands necessary to support
10 forestry uses on nearby or adjacent lands. Similarly, the county's decision
11 provides no explanation of how these exclusions protect other forested lands
12 necessary to protect soil, air, and water quality and fish and wildlife resources.
13 We agree with the petitioners.

14 This subassignment of error is sustained.

15 **F. ROS/RT-20 Predominance Test Treatment of Forest Land**

16 The agencies assert the predominance test adopted as part of the PAPA
17 violates Goal 4. Agency Petition for Review 9. Under the predominance test, if
18 60 percent of a specific parcel at issue is characterized by having less than Class
19 I to IV soil, and the parcel is at least 20 acres in size, the parcel may obtain the
20 ROS/RT-20 zone through a quasi-judicial application. Agency Petition for
21 Review 19. The agencies argue that this creates a situation where 40 percent of

1 the property, which should be protected as forestland because it has Class I to IV
2 soils, could be redesignated in violation of Goal 4.

3 It is not clear to us that any land with an NRCS Class I-IV classification
4 can, as the agencies argue, potentially be redesignated, because, as we understand
5 the county's representation, those lands are not included in the ROS eligible
6 lands. Agency Petition for Review 19. Also, the county is correct that OAR 660-
7 006-0010 does not establish how land is to be designated when the property has
8 a mix of soils. We conclude, however, that the predominance test may not
9 conserve forest land and therefore is inconsistent with Goal 4. In a quasi-judicial
10 setting under the newly adopted county process, the applicant will seek an ROS
11 Comp Plan map designation. Once a property is given the ROS Comp Plan map
12 designation, each lawfully established parcel is reviewed to determine whether
13 each parcel is eligible for the RT-20 zoning classification. Record 63. The
14 determination of whether property may obtain the RT-20 designation turns on
15 whether the land consists of at least 60 percent ROS eligible land. *Id.* The county
16 does not establish how Goal 4 is met given that it is not clear that other forested
17 lands necessary to support forest uses are protected by the ROS/RT-20
18 designation and the potential increase in residential density.

19 This subassignment of error is sustained.

20 **G. Consistency with OAR 660-006-0015**

21 The agencies also contend that the ROS/RT-20 designation violates OAR
22 660-006-0015, which requires the county to either designate and zone forest land

1 consistent with forest conservation requirements, or fall within one of the
2 exclusions set forth in the rule.¹³ Agency Petition for Review 9, 18. For the
3 reasons discussed above, the ROS/RT-20 eligibility filter does not ensure that
4 lands properly inventoried as forest lands under Goal 4 will be implemented with

¹³ OAR 660-006-0015, Plan Designation Outside an Urban Growth Boundary, provides:

“(1) Lands inventoried as forest lands must be designated in the comprehensive plan and implemented with a zone that conserves forest lands consistent with OAR chapter 660, division 6, unless an exception to Goal 4 is taken pursuant to ORS 197.732, the forest lands are marginal lands pursuant to ORS 197.247 (1991 Edition), the land is zoned with an Exclusive Farm Use Zone pursuant to ORS chapter 215 provided the zone qualifies for special assessment under ORS 308.370, or is an ‘abandoned mill site’” zoned for industrial use as provided for by ORS 197.719. In areas of intermingled agricultural and forest lands, and agricultural/forest lands designation may also be appropriate if it provides protection for forest lands consistent with the requirements of OAR chapter 660, division 6. The plan shall describe the zoning designation(s) applied to forest lands and its purpose and shall contain criteria that clearly indicate where the zone(s) will be applied.

“(2) When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.”

1 a protective zoning classification and the county has not asserted that any of the
2 exclusions apply.

3 This subassignment of error is sustained.

4 **H. ROS/RT-20 Inadequate Factual Base**

5 1000 Friends also argues that there is not an adequate factual base
6 supporting the decision because improper underlying data was used to decide
7 which properties were included on the eligibility map. 1000 Friends Petition for
8 Review 35. We agree that the decision lacks an adequate factual base because it
9 fails to establish that the lands deemed eligible for redesignation do not include
10 protected lands necessary for forestry uses on adjacent or nearby lands or other
11 forested lands protecting soil, air, and water quality and fish and wildlife
12 resources.¹⁴ Further, the PAPA did not utilize the data priority list set forth in
13 OAR 660-006-0010.

14 This subassignment of error is sustained.

15 The agencies' first assignment of error and 1000 Friends' second
16 assignment of error are sustained.

¹⁴ FODC also argues that there is an inadequate factual base to support the county's position that the ROS/RT-20 lands provide a buffer which is compatible with and preserves resource lands. This is discussed later in our opinion.

1 **GOAL 3¹⁵**

2 Goal 3 (Agricultural Lands) is “[t]o preserve and maintain agricultural
3 lands.” OAR 660-015-0000(3).

4 **A. Identification of Goal 3 Agricultural Lands**

5 OAR 660-033-0020(1) provides, in part, that:

6 “(a) ‘Agricultural Land’ as defined in Goal 3 includes:

7 “(A) Lands classified by the U.S. Natural Resources
8 Conservation Service (NRCS) as predominantly Class
9 I–IV soils in Western Oregon and I-VI soils in Eastern
10 Oregon;

11 “(B) Land in other soil classes that is suitable for farm use
12 as defined in ORS 215.203(2)(a), taking into
13 consideration soil fertility; suitability for grazing;
14 climatic conditions; existing and future availability of
15 water for farm irrigation purposes; existing land use
16 patterns; technology and energy inputs required; and
17 accepted farming practices; and

18 “(C) Land that is necessary to permit farm practices to be
19 undertaken on adjacent or nearby agricultural lands.

20 “(b) Land in capability classes other than I-IV/I-IV that is adjacent
21 to or intermingled with lands in capability classes I-IV/I-VI
22 within a farm unit, shall be inventoried as agricultural lands
23 even though this land may not be cropped or grazed[.]”

24 Similar to the agencies’ argument in their first assignment of error
25 addressing compliance with Goal 4, the agencies argue that the ROS/RT-20 filter

¹⁵ Agencies’ Third Assignment of Error and 1000 Friends’ First Assignment of Error.

1 for identifying eligible land does not exclude all agricultural land that Goal 3
2 requires be preserved and maintained. Agency Petition for Review 29. The
3 ROS/RT-20 method for excluding agricultural land from those eligible for the
4 ROS plan designation eliminated properties with the following characteristics:

5 **I. Agricultural Land Protection:**

- 6 “1. Not Lands that are NRCS Soil Class 1-4
7 “2. Not Lands that are identified as High Value Farm Land (ORS
8 195.300) within the dataset provided by DLCDC
9 “3. Not Lands that are identified as viticulture lands within the
10 dataset provided by DLCDC

11 **a) Crop Land Protection:**

- 12 “4. Not Lands that are zoned EFU-Farm Cropland by the Douglas
13 County Comprehensive Plan
14 “5. Not Lands that are identified within the Cropland boundaries
15 dataset provided by DLCDC

16 **b) Grazing Land Protection:**

- 17 “6. Not Lands that are zoned EFU-Farm Grazing by the Douglas
18 County Comprehensive Plan
19 “7. Not Lands that are identified as hay/pasture lands within the
20 2011 National Land Cover Database.” Record 62.

21 For the reasons explained below, we agree with the petitioners that the ROS/RT-
22 20 filter fails to adequately identify Goal 3 agricultural land excluded from
23 eligibility for the ROS/RT-20 designation.

1 The county argues that the ROS/RT-20 filter excludes agricultural land.
2 Response Brief 29. The filter excluded land zoned EFU from eligibility. The
3 ROS/RT-20 designation is only potentially available for Farm/Forest
4 Transitional Land. Response Brief 29, 39. Pursuant to the Comp Plan,
5 Farm/Forest Transitional lands consist primarily of:

6 “(1) Lands in areas where the lotting pattern is predominantly
7 below 40 acres;

8 “(2) Lands where the predominant Natural Resource Conservation
9 Service (NRCS) soil class is IV through VII where those soils
10 have not historically been used for agricultural purposes; as
11 an example, those lands that have not received the farm tax
12 deferral;

13 “(3) Forest lands which are predominantly cubic foot site class 5
14 or below in southern Douglas County and 4 thorough 5 in
15 northern, central, and coastal Douglas County; or

16 “(4) Other lands needed to protect farm or forest uses on
17 surrounding designated agricultural or forest lands.” Comp
18 Plan 2-9, 2-10.

19 We agree with the county that excluding the EFU-zoned land from
20 potential redesignation is a substantial first step toward protecting Goal 3 lands.
21 Response Brief 40. However, the rule requires consideration of factors which
22 could affect the suitability of land currently designated Farm/Forest Transitional,
23 such as available technology and energy inputs and climate conditions.
24 Accordingly, we conclude that the ROS/RT-20 filter is still required to apply the
25 factors in OAR 660-015-0033(20).

1 **B. ROS/RT-20 Protection of Lands Suitable for Farm Use**

2 The ROS/RT-20 filter excludes lands with an NRCS soil class of I to IV
3 consistent with OAR 660-033-0020(1)(a)(A). However, it must also exclude
4 “[l]and in other soil classes that is suitable for farm use as defined in ORS
5 215.203(2)(a), taking into consideration soil fertility; suitability for grazing;
6 climatic conditions; existing further availability of water for farm irrigation
7 purposes; existing land use patterns; technological and energy inputs required;
8 and accepted farming practices[.]” OAR 660-033-0020(1)(a)(B). Each of these
9 factors must be considered. *Wetherell v. Douglas County*, 52 Or LUBA 677, 680
10 (2006). We agree with petitioners that the county’s analysis used to identify
11 eligible lands did not consider all of those required factors.

12 Climatic conditions are addressed in part by eliminating viticulture land in
13 the DLCD data set, but the decision does not address climate conditions’ impact
14 on non-grape crops. Agency Petition for Review 33.

15 The county excluded land zoned EFU-Farm Grazing, but this is not
16 sufficient to preserve and maintain land suitable for grazing.¹⁶ Agency Petition
17 for Review 33. The county’s approach does not appear to consider the grazing
18 capacity, if any, of land with FF or AW designations. 1000 Friends Petition for
19 Review 17. The ROS/RT-20 eligibility filter does consider suitability for grazing
20 by evaluating the 2011 National Land Cover Database. However, in addition to

¹⁶ Similarly, existing zoning may not identify land with cropland capability. Agency Petition for Review 32.

1 being potentially out of date, we understand the 2011 National Land Cover
2 Database to include another category of land suitable for grazing that the county
3 did not address.¹⁷ 1000 Friends Petition for Review 21. Suitability of lands for
4 grazing must be addressed.

5 This subassignment of error is sustained.

6 **C. Protection of Land Necessary to Permit Farm Practices on**
7 **Nearby or Adjacent Lands and Lands Intermingled With a**
8 **Farm Unit**

9 OAR 660-033-0020(1)(a)(C) provides that the definition of agricultural
10 land also includes land “that is necessary to permit farm practices to be
11 undertaken on adjacent or nearby agricultural lands.” Petitioners argue that the
12 ROS/RT-20 filter fails to address these lands. Agency Petition for Review 33;
13 1000 Friends Petition for Review 27.

14 The county argues that Goal 3 land has already been given the EFU
15 designation and cannot be changed to ROS/RT-20. The county points to Comp
16 Plan 3-1, which provides that “[a]gricultural land shall be inventoried and
17 preserved by adopting Exclusive Farm Use zones pursuant to ORS Chapter 215.”
18 The county also points to the purpose sections stating that the “Exclusive Farm
19 Use zone is to be applied to all lands designated ‘Agriculture’ in the

¹⁷ The agencies suggested below that Animal Unit Month data available from NRCS would assist the county in evaluating grazing potential, but the county elected to focus on existing grazing. 1000 Friends Petition for Review 18-19.

1 Comprehensive Plan in accordance with LCDC Goal No. 3 and the Douglas
2 County Agricultural Element.” Response Brief 40; DCC 3.3.000, 3.4.000.

3 The AW zones’ purpose statement explains that the “classification is
4 intended to preserve the rural quality and conserve lands of marginal agricultural
5 and timber production capability and which are predominately in private
6 ownership for agricultural and forest use, and to provide incentives for the
7 beneficial use of these lands for resource use under intensive management.” DCC
8 3.6.000. With respect to FF lands,

9 “The Farm Forest Classification is intended to promote management
10 utilization and conservation of forested grazing land, land which
11 might not be forested but have such potential, and non-tillable
12 grazing and adjacent farm forested lands. The purpose of this
13 classification is to encourage sound management practices on such
14 lands for agricultural or forest resource uses, including but not
15 limited to: watershed management; recreation; fish and wildlife
16 management; and agricultural activities consistent with sound forest
17 and agricultural management practices, to retain lands within this
18 district for farm and forest use, protecting such land from
19 nonresource use and conflicts.” DCC 3.5.000.

20 Lands zoned FF or AW may be utilized as part of farm units or to assist in farm
21 use of adjacent of nearby lands. The predominance test appears to allow
22 redesignating and rezoning these lands to ROS/RT-20 if at least 60 percent of a
23 parcel meets the ROS/RT-20 eligibility filter. The county has not established that
24 lands required to be protected as Goal 3 lands are protected by the ROS/RT-20
25 eligibility filter.

1 The agencies' third assignment of error and 1000 Friends' first assignment
2 are sustained.

3 **GOAL 5¹⁸**

4 Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces)
5 is “[t]o protect natural resources and conserve scenic and historic areas and open
6 spaces.” OAR 660-015-0000(5). In our earlier discussion of whether goal
7 compliance must be addressed we indicated that we would address Goal 5
8 separately. We do so here.

9 OAR 660-023-0250(3) establishes when Goal 5 is properly considered in
10 a PAPA and explains that:

11 “Local governments are not required to apply Goal 5 in
12 consideration of a PAPA unless the PAPA affects a Goal 5 resource.
13 For purposes of this section, a PAPA would affect a Goal 5 resource
14 only if:

15 “(a) The PAPA creates or amends a resource list or a portion of an
16 acknowledged plan or land use regulation adopted in order to
17 protect a significant Goal 5 resource or to address specific
18 requirements of Goal 5;

19 “(b) The PAPA allows new uses that could be conflicting uses
20 with a particular significant Goal 5 resource site on an
21 acknowledged resource list; or

22 “(c) The PAPA amends an acknowledged [Urban Growth
23 Boundary (UGB)] and factual information is submitted

¹⁸ Agencies' Second Assignment of Error.

1 demonstrating that a resource site, or the impact areas of such
2 a site, is included in the amended UGB area.”

3 OAR 660-023-0250(3)(c) does not apply because the UGB is not being amended.

4 OAR 660-023-0250(3)(b) does not apply because no particular Goal 5 resource
5 site is being opened to new uses. Thus, the county is required to consider Goal 5
6 at this stage if the PAPA creates or amends a resource list or acknowledged plan
7 or regulation adopted to protect a significant Goal 5 resource or to address
8 specific Goal 5 requirements. OAR 660-023-0250(3)(a). The parties do not allege
9 that the eligibility map amends or creates a resource list, leaving only the question
10 of whether this PAPA creates or amends a plan or land use regulation protecting
11 a Goal 5 resource or responding to Goal 5 requirements.

12 Peripheral and Sensitive Big Game Habitat are protected Goal 5 resources
13 in the county. Peripheral Big Game Habitat is protected through the established
14 Peripheral Big Game Habitat Overlay (BGHO). As petitioners explain, the
15 BGHO limits residential density to one dwelling per 40 acres. Agency Petition
16 for Review 24. The county findings expressed an intent to rely on the continued
17 application of existing Goal 5 zoning overlays to protect Goal 5 resources,
18 explaining that:

19 “Implementation: Any development approved as a result of the
20 implementation of this plan would be subject to all existing
21 restrictive Goal 5 zoning overlays.” Record 53.

22 Thus, the BGHO protection mechanism is unaltered by the PAPA and the 20-
23 acre lot size would not allow more than one dwelling per 40 acres in the ROS/RT-

1 20 areas containing identified habitat for peripheral big game as a matter of
2 right.¹⁹

3 As the agencies acknowledge, the county protects Peripheral Big Game
4 Habitat through the imposition of the TR zoning. Agency Petition for Review 22.
5 Residential uses on TR-zoned lands are limited to one dwelling per 80 acres in
6 order to protect Peripheral Big Game Habitat. Pursuant to Goal 5, if TR-zoned
7 land may be redesignated under the amendment, an economic, social,
8 environmental, and energy (ESEE) analysis is required because houses will be
9 allowed by right on 20-acre lots rather than 80-acre lots. OAR 660-023-0040(1)
10 provides that the steps in the standard ESEE analysis include identifying
11 conflicting uses, determining the impact area and developing a program to
12 achieve Goal 5. As we understand it, however, no property currently zoned TR
13 is included on the ROS/RT-20 eligibility map. As a result, the ROS/RT-20
14 amendment does not change the regulation protecting Peripheral Big Game
15 Habitat. Response Brief 46-47.

¹⁹ DCC 3.32.300(3) provides that “A density of 1 dwelling unit per 40 acres shall be maintained in areas so designated on the Peripheral Big Game Habitat Map of the Comprehensive Plan.” DCC 3.32.300(1). “Requests for dwellings or land divisions that will result in eventual placement of a dwelling, and which could result in an areawide density of greater than 1 dwelling per 40 acres, shall be referred to [ODFW] for review and recommendation. If the ODFW cannot recommend approval or suggest acceptable mitigation measures, a Variance, pursuant to Article 40, shall be required.”

1 The agencies argue that this PAPA amends a plan regulation that protects
2 a Goal 5 resource because the predominance test will allow properties with land
3 zoned TR to be rezoned if 60 percent of the parcel complies with the ROS/RT-
4 20 eligibility filter. Again, we understand TR-zoned lands to be excluded from
5 the eligible lands. Response Brief 46-47. However, to the extent the
6 predominance test could be used to redesignate TR-zoned land in the future, OAR
7 660-023-0250(3)(b) would require an ESEE analysis at the time of the property
8 specific amendment because that application would allow removal of the BGHO
9 protection mechanism for an identified resource site.

10 The agencies also argue that Goal 5 resources in the area are not limited to
11 big game, and at a minimum also include a variety of bird species. Agency
12 Petition for Review 27. We note that the DCC includes a Special Bird Habitat
13 Overlay. DCC 3.32.500. As we observed above, the findings provide that existing
14 overlays will continue to apply. To the extent the agencies argue that the county
15 was required to address certain bird species or other Goal 5 resources in the
16 PAPA, the argument is not sufficiently developed for our review.

17 Agencies' second assignment of error is denied.

18 **GOAL 11²⁰**

19 Goal 11 (Public Facilities and Services) is: “[t]o plan and develop a timely,
20 orderly and efficient arrangement of public facilities and services to serve as a

²⁰ FODC's Third Assignment of Error.

1 framework for urban and rural development.” OAR 660-015-0000(11). FODC
2 contends that the county failed to adequately analyze whether the amendments
3 comply with Goal 11. FODC argues that a statement in the findings that the
4 majority of the properties will be served by private water and sewer is
5 unsupported in the record and that references to fire protection are inadequate.
6 FODC Petition for Review 49-50.

7 We agree with county that its Goal 11 analysis is sufficient for this stage
8 of county planning with respect to water. The county anticipated that the majority
9 of the properties designated by the SORPP would be served by private water and
10 sewer system. Record 56. With respect to water, the SORPP analysis stated that
11 water would be administered on a site by site basis with the knowledge that
12 studies showed a significant majority of the properties under consideration were
13 proximate to groundwater sources and the existing code requires a request for a
14 dwelling or land division establish access to a year round supply of potable water.
15 Record 293.

16 With respect to wastewater, the county advises in its brief that the
17 minimum lot size is 20 acres and that Oregon Department of Environmental
18 Quality (DEQ) rules “effectively establish a presumption that parcels 10 acres
19 and larger can utilize an onsite wastewater treatment system.” Response Brief 60.
20 The DEQ rules cited provide that if a DEQ agent plans to deny a permit for a
21 parcel 10 acres or larger they must provide the permit applicant with a notice of

1 intent to deny, set forth the reasons for the planned denial and offer a contested
2 case hearing to challenge the denial.

3 The county does not indicate that the DEQ rules it cites are referenced in
4 the record but rather appears to introduce them for the first time in the county's
5 response brief. The county does not direct us to any findings or evidence in the
6 record addressing wastewater. The county is required to establish compliance
7 based on the findings and evidence in the record. While the DEQ rule may
8 indicate that generally in Oregon, properties of 10 or more acres in size are able
9 to support onsite wastewater systems, the county points us to no evidence that is
10 the case within the portion of Douglas County at issue.

11 The county noted that lands lacking emergency services were eliminated
12 from consideration early in the process. Record 55. The county references
13 proximity of the majority of candidate lands to fire districts as established in the
14 SORPP. Record 289. The county explains that for the 5 percent of land which
15 would receive fire protection from Douglas Fire Protective Association (DFPA),
16 the record supports the conclusion that there would not be more demand created
17 for DFPA funds. The county also directs us to its conclusion that ten years of data
18 indicated less than 2 percent of fires resulted from residential structures.
19 Response Brief 58-59. Further, the county argues that future development would
20 require compliance with forest protection standards set out in DCC 3.5.160 and
21 3.5.170. To our knowledge there is, however, no analysis of the likelihood of
22 increased fire as more residences are potentially introduced into the area, or

1 discussion of the capacity of the existing fire service organizations to provide
2 more service.

3 FODC’s third assignment of error is sustained as to wastewater and fire
4 protection, and otherwise denied.

5 **GOAL 2²¹**

6 Statewide Planning Goal 2 (Land Use Planning) is “[t]o establish a land
7 use planning process and policy framework as a basis for all decisions and actions
8 related to use of land and to assure an adequate factual base for such decisions
9 and actions.” Goal 2 requires that decisions be (1) coordinated and (2) supported
10 by an adequate factual basis.

11 **A. Adequacy of Coordination**

12 As FODC explains, we have held that:

13 “[t]he Goal 2 requirement to coordinate comprehensive plan and
14 implementing measures with the plans of affected governmental
15 units is satisfied by (1) inviting an exchange of information between
16 the planning jurisdiction and affected governmental units, and (2)
17 using the information gained in that exchange to balance the needs
18 of all affected government units and the citizens they represent.
19 *Columbia Pacific v. City of Portland*, 76 Or LUBA 15, 49 (2017),
20 *rev’d and remanded on other grounds*, 289 Or App 739, 755-56, 412
21 P3 258, *rev den*, 363 Or 390 (2018).

²¹ Agencies’ Fourth Assignment of Error and FODC’s First Assignment of Error.

1 Counties are responsible for coordinating planning actions within their
2 jurisdiction. ORS 195.025(1). Coordination is limited to “legitimate concerns” of
3 the commenting party. *Borton v. Coos County*, 52 Or LUBA 46, 65 (2006).

4 **1. Adequacy of Coordination with Agencies**

5 Goal 2 requires that the county must adopt findings responding to
6 legitimate concerns. *Waugh v. Coos County*, 26 Or LUBA 300, 314-15 (1993).
7 *DLCD v. Douglas County*, 33 Or LUBA 216, 222 (1997). The agencies argue
8 that the decision does not explain why the challenged decision failed to consider
9 certain data suggested by the agencies. The county does not point us to responsive
10 findings but rather advises in its brief that it decided not to use the data the
11 agencies suggested. We agree with petitioners that the county did not meet its
12 Goal 2 coordination obligations.

13 The county lacked NRCS soils productivity data in some cases and the
14 agencies objected to the PAPA not following the priority scheme in OAR 660-
15 006-0010. Specifically, the agencies wanted the county to remove from ROS/RT-
16 20 consideration lands with Oregon Department of Revenue (DOR)
17 classifications FA, FB, FC, FD, FE, FF and FG.²² Record 1217. In the county’s
18 view, this more restrictive approach was not required. FODC argues that:

²² For the purpose of property taxation, the Oregon DOR assigns value to forestland in western Oregon by classifying land into eight productivity classes, FA-FG, and FX. FX class is used for non-productive forestland within a forested property; all other classes have some level of productivity.

1 “ODFW’s comments provided survey analysis that supports the
2 conclusion that as parcel size decreases, landowners are much less
3 interested in income from timber production. Rec. 1142. Further,
4 ODFW explained that as building density increases and parcel sizes
5 decrease, both industrial and non-industrial private forest owners are
6 less likely to invest in management activities like planting or
7 thinning, and that such lack of management can substantially reduce
8 timber supply and overall commercial vitality of forestland. Rec.
9 1143.” FODC Petition for Review 20.

10 We agree that the county considered the agencies’ request and did not
11 violate the Goal 2 coordination requirement by electing not to follow it. The
12 county was required, however, to adopt findings explaining why it did not accept
13 the agencies’ request. Also, as we noted previously in this decision, failure to
14 follow the priority set out by rule violates Goal 4 as implemented by the
15 administrative rule.

16 The agencies’ fourth assignment of error is sustained.

17 **2. Adequacy of Coordination with Cities**

18 FODC asserts that the county failed to coordinate with affected cities
19 concerning Goal 10 (Housing), Goal 7 (Natural Hazards), and Goal 11 (Public
20 Facilities).

21 **a. Goal 10 (Housing)**

22 Goal 10 is “[t]o provide for the housing needs of citizens of the state.”
23 FODC argues that the county failed to coordinate with cities in the region “to
24 address the needs of the region, fair allocation of housing, and future ability to
25 expand urban growth boundaries.” FODC Petition for Review 8.

26 OAR 660-008-0030 provides that:

1 “(1) Each local government shall consider the needs of the
2 relevant region in arriving at a fair allocation of housing types
3 and densities.

4 “(2) The local coordination body shall be responsible for ensuring
5 that the regional housing impacts of restrictive or expansive
6 local government programs are considered. The local
7 coordination body shall ensure that needed housing is
8 provided for on a regional basis through coordinated
9 comprehensive plans.”

10 The decision estimates an additional 375 to 750 homes may result based
11 upon changes of property land use designations to ROS/RT-20. Record 65. As
12 the local coordination body, the county was responsible for ensuring that the
13 regional housing impacts of the program were considered and the needs of the
14 region with respect to the allocation of housing. The City of Roseburg (the city)
15 expressed concerns about the ROS/RT-20 program. Record 659. These concerns
16 included the potential that the county’s efforts would “negatively affect the work
17 [the city is] trying to complete in trying to supply additional housing within the
18 city limits as well as the UGB” and that the potential increase in residents could
19 put “a heavy toll on the public infrastructure used to serve these individuals, who
20 do not share in the cost of its upkeep and maintenance.” *Id.* The county does not
21 direct us to any findings responding to the city’s legitimate concerns.

22 FODC’s first subassignment of error is sustained.

23 **b. Goal 7 (Natural Hazards) and Goal 11 (Public**
24 **Facilities)**

25 Goal 7 (Areas Subject to Natural Hazards) is “[t]o protect people and
26 property from natural hazards.” OAR 660-015-0000(7). Goal 11 (Public

1 Facilities) is to “[t]o plan and develop a timely, orderly and efficient arrangement
2 of public facilities and services to serve as a framework for urban and rural
3 development.” FODC argues that the county failed to adequately coordinate with
4 local cities concerning fire risk and availability of fire protection services. We
5 agree with FODC that the county failed to conduct adequate coordination with
6 respect to Goals 7 and 11.

7 In its response to this assignment of error, the county relies in part on
8 communications with local jurisdictions during the SORPP process. Although the
9 county relied on a substantial amount of data and analysis generated during the
10 SORPP process, the ROS/RT-20 amendment process was separate and distinct
11 from the previous SORPP process. The county provides no support for its
12 position that the county did not need to engage with the cities with respect to the
13 specific PAPA under consideration and the potential impact of that decision on
14 the ability of the governmental entities to provide services within their
15 jurisdiction or extend services such as fire protection to include new residents on
16 ROS/RT-20 lands. Similarly, the county has not pointed us to evidence in the
17 record that it coordinated with local governments with respect to planning for
18 Goal 7 natural hazards, such as wildfire.

19 FODC’s second subassignment of error is sustained.

20 **B. Adequacy of Factual Base**

21 To establish that the county’s decision is supported by an adequate factual
22 base as required by Goal 2, the county’s decision must either include findings

1 based on substantial evidence in the record establishing compliance with the
2 relevant legal standards, or the county must provide argument in its brief with
3 citations to the record demonstrating the legal standards are met. *West Hills*
4 *Development Co. v. Washington County*, 37 Or LUBA 46, 55 (1999). Substantial
5 evidence is evidence a reasonable decision maker would rely upon to make a
6 decision, and provides an adequate factual base for a legislative decision. *1000*
7 *Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 378, *aff'd*, 130 Or
8 App 406, 882 P2d 1130 (1994).

9 The county concluded that the ROS/RT-20 designated lands “serve as
10 buffers between higher and lower intensity land use areas and maintain protection
11 for higher value farm and forest lands.” Record 6. Implementation of the
12 ROS/RT-20 designation may, according to the county “provide some land
13 owners the ability to separate less valuable lands in order to more appropriately
14 manage high value commercial forest lands.” Record 39. The county states in its
15 decision that it is not anticipated that the designation and ultimately development
16 of ROS/RT-20 designated lands “will have any impact on the functionality of
17 important resource lands[.]” Record 58.

18 FODC argues that the record lacks substantial evidence that the 20-acre
19 lots allowed by the ROS/RT-20 designation and the two-mile buffers established
20 by the requirement that these lands be proximate to cities and unincorporated
21 communities supports continued resource use and the protection of agriculture
22 and forest land. FODC Petition for Review 18. FODC points to evidence

1 supporting a conclusion that the 20-acre lots with a dwelling by right would be
2 detrimental to resource uses, noting that in its comments to the county DCLD
3 included “citation to a study that determined that where there is one house per 20
4 acres, *there is a 25 [percent] chance of commercial forestry occurring.* [Record
5 674.] In contrast, the likelihood of resource management in *support* of
6 commercial forestry goes up exponentially as density decreases, where one house
7 per 80 acres results in a 75 [percent] likelihood of commercial forestry.” FODC
8 Petition for Review 19 (emphasis in original; footnotes omitted). 1000 Friends
9 and FODC argue that the underlying data used to make decisions was not
10 included in the record.²³ 1000 Friends Petition for Review 24; FODC Petition for
11 Review 23. We agree with petitioners that (1) the background reports the county
12 relies upon must be incorporated into the comprehensive plan, *Hawksworth v.*
13 *City of Roseburg*, 64 Or LUBA 171 (2011); and that (2) the county’s reliance on
14 hyperlinks found in documents that are in the record to reference data that is not
15 in the record is insufficient to make the information accessed by clicking on those
16 hyperlinks part of the record. *Oster v. City of Silverton*, __ Or LUBA __ (LUBA
17 No 2018-103, Order, November 27, 2018 (slip op at 5 n 2); *Terra Hydr Inc. v.*
18 *City of Tualatin*, 68 Or LUBA 511, 513 (2013) (concluding that an electronic link
19 to a document was insufficient to make the document part of the record).

²³ 1000 Friends’ First Assignment of Error, second subassignment also challenges the factual base with respect to Goal 3.

1 For the reasons set forth above, we conclude that the county has not
2 adequately addressed how the ROS/RT-20 designations comply with Goals 3 and
3 4 or based its decision on substantial evidence in the record.

4 FODC's first assignment of error, third, fourth and, fifth subassignments
5 of error are sustained.

6 FODC's first assignment of error and the agencies' fourth assignment of
7 error are sustained.

8 **ORS 215.788-215.794²⁴**

9 1000 Friends argues that the legislative process for reevaluating the
10 designation of resource lands set forth in ORS 215.788-215.794 is exclusive, and
11 provides legislative history to support its argument that the legislature's intent
12 was that this process be the only means of conducting the type of evaluation the
13 county engaged in here. The county responds, and we agree, that this provision
14 does not apply. ORS 215.788(1) provides that:

15 "For the purposes of correcting mapping errors made in the
16 acknowledgment process and updating the designation of farmlands
17 and forestlands for land use planning, a county may conduct a
18 legislative review of lands in the county to determine whether the
19 lands planned and zoned for farm use, forest use or mixed farm and
20 forest use are consistent with the definitions of 'agricultural lands'
21 or "'forest lands' in goals relating to agricultural lands or
22 forestlands."

²⁴ 1000 Friends' Third Assignment of Error.

1 First, as county has pointed out repeatedly, no lands were given a new
2 comprehensive plan designation or land use zone in this process. Thus, no
3 mapping errors were corrected. Second, the county sought in this decision to
4 establish its own definitions of agricultural and forest land and this decision was
5 not verifying the accuracy of maps as discussed in ORS 215.788. Lastly, the
6 legislature could have made its intent clear if it intended that the type of review
7 conducted by the county could only be completed using the procedure set forth
8 in these provisions. We note, however, that following the structure set forth in
9 the statutes might assist the county is ensuring compliance with the relevant
10 goals.²⁵

²⁵ The remainder of ORS 215.788 provides:

“(2) A county may undertake the reacknowledgment process authorized by this section only if the Department of Land Conservation and Development approves a work plan, from the county, describing the expected scope of reacknowledgment. The department may condition approval of a work plan for reacknowledgment under this section to reflect the resources needed to complete the review required by ORS 197.659 and 215.794. The work plan of the county and the approval of the department are not final orders for purposes of review.

“(3) A county that undertakes the reacknowledgment process authorized by this section shall provide an opportunity for all lands planned for farm use, forest use or mixed farm and forest use and all lands subject to an exception under ORS 197.732 to a goal relating to agricultural lands or forestlands to be included in the review.

1 1000 Friends' third assignment of error is denied.

2 **ORS 215.780**²⁶

3 Pursuant to ORS 215.780(1), the minimum parcel size generally is (1) 80
4 acres for land zoned exclusive farm use, not designated rangeland, (2) 160 acres
5 for land zoned exclusive farm use and designated rangeland, and (3) 80 acres for
6 land designated forest land. 1000 Friends argues that the decision violates this

“(4) A county must plan and zone land reviewed under this section:

“(a) For farm use if the land meets the definition of ‘agricultural land’ in a goal relating to agricultural lands;

“(b) For forest use if the land meets the definition of ‘forest land’ used for comprehensive plan amendments in the goal relating to forestlands;

“(c) For mixed farm and forest use if the land meets both definitions;

“(d) For nonresource use, consistent with ORS 215.794, if the land does not meet either definition; or

“(e) For a use other than farm use or forest use as provided in a goal relating to land use planning process and policy framework and subject to an exception to the appropriate goals under ORS 197.732(2).”

“(5) A county may consider the current land use pattern on adjacent and nearby lands in determining whether land meets the appropriate definition.”

²⁶ 1000 Friends' Fourth Assignment of Error.

1 provision because the RT-20 zone allows 20 acre lots. We agree with the county
2 that its decision does not impact the minimum lot size of parcels zoned exclusive
3 farm use, because exclusive farm use parcels are not eligible for RT-20 zoning.

4 The county has not established, however, that land designated forest land
5 will not be impacted by this decision. As we discussed in our resolution of
6 petitioners' challenges under Goal 4, the OAR defines forest land broadly, and
7 the county's decision does not exclude from future RT-20 designation all land
8 that might be forest land, yet it allows 20-acre lots that do not meet the 80-acre
9 minimum set forth in ORS 215.780.

10 1000 Friends' fourth assignment of error is sustained.

11 **COUNTY COMPREHENSIVE PLAN POLICIES²⁷**

12 ORS 197.175(2)(d) provides that local land use decisions must be
13 consistent with the locality's acknowledged comprehensive plan.²⁸ FODC

²⁷ FODC's Second Assignment of Error

²⁸ ORS 197.175(2)(d) provides:

“(2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:

“* * * * *

“(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations[.]”

1 charges in its second assignment of error that the challenged decision is not
2 consistent with the Comp Plan and that the allowance of dwellings on ROS/RT-
3 20 lands is inconsistent with the Forest Element, Agriculture and Rural Lands
4 Element, the Rural Land Designation and Rural Land policies, the state laws
5 these Comp Plan provisions implement as well as Comp Plan population and
6 housing policies. FODC Petition for Review 24-48. FODC argues that the
7 challenged decision is facially inconsistent with the Comp Plan. FODC Petition
8 for Review 26. We agree.

9 As FODC observes, the Comp Plan requires that a PAPA involving forest
10 land must include in forest lands, those lands “necessary to permit forest
11 operations and practices that maintain soil, air, water and fish and wildlife
12 resources.” Comp Plan 2-1. As we discussed with respect to Goal 4, the ROS/RT-
13 20 designation does not preserve these lands for those purposes. Forest Resource
14 policies support limiting expansion of rural development into forest land and
15 emphasizing productive use of those lands. Comp Plan 2-7, 2-8. Contrary to those
16 objectives, the ROS/RT-20 designation promotes expansion of rural
17 development.

18 Allowance of parcelization is inconsistent with the existing policy to
19 encourage consolidation of parcels to create more viable resource units and
20 restrict the amount of land used for dwellings. Comp Plan 2-12. The decision is
21 also inconsistent with Rural Land policies requiring that when rural land is
22 designated, population projections and available potential homesites will be

1 evaluated. Comp Plan 3-14. FODC argues that the required analysis did not occur
2 and the county does not direct us to such an analysis. FODC Petition for Review
3 36.

4 Population policies promote growth in established service areas and
5 require coordination in order to maximize the efficiency of public facilities.
6 Comp Plan 10-7. Coordination of housing is also required. 12-10. As we held in
7 our discussion of compliance with Goal 2, necessary coordination did not occur.²⁹

8 FODC also argues that the minimal findings the county adopted are
9 inadequate. FODC Petition for Review 28. 31, 37, 42. The county concedes that
10 remand is required in order for the county to adopt findings with respect to the
11 goals and policies cited by FODC. Response Brief 72. In light of our conclusion
12 that the ROS/RT-20 designation is inconsistent with the above Comp Plan
13 policies identified by FODC, it is unnecessary for us to address FODC's findings
14 challenge or the county's response that concedes that its findings are inadequate.

15 FODC's second assignment of error is sustained.

16 **CONCLUSION**

17 The county identified and refined material generated in the SORPP process
18 and used it to develop a mechanism allowing it to give land currently protected
19 by Goal 3 or 4 less restrictive zoning. In adopting the PAPA, the county created

²⁹ The Comp Plan housing policy is discussed earlier in this opinion in the context of Statewide Planning Goal 2.

1 a streamlined path for designating certain lands identified for farm or forest use,
2 but not considered by the county to be prime forest land or exclusive farm use
3 land, the more flexible ROS/RT-20 designation. As discussed in this opinion,
4 however, Oregon has developed a complex system of administrative rules to
5 protect and conserve farm and forest land for those uses and limit when land
6 deemed farm or forest under state law may be converted to other uses. We find
7 that the county was not required to utilize the process set forth in ORS 215.788-
8 215.794 in its effort to pre-identify properties which may properly be
9 redesignated. The county failed, however, to ensure that all the types of land that
10 state law requires be preserved as or in support of farm and forest land under
11 Goals 3 and 4 were in fact preserved. We conclude that the decision fails to
12 comply with Goals 3 and 4 and does not ensure that minimum parcel sizes
13 required by ORS 215.780(1) are maintained. We also conclude that the county
14 failed to coordinate with local jurisdictions as required by Goal 2, concerning
15 Goals 7, 10 and 11 and, given that it did not include much of the underlying data,
16 did not have an adequate factual base for its decision as required by Goal 2. We
17 also conclude that the county did not adequately address wastewater and fire
18 protection under and Goal 11. Finally, we conclude that the county is not required
19 to establish compliance with Goal 5 at this stage.

20 The county's decision is remanded.