

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Nothing in OAR chapter 660, division 004, requires a county to identify one specific proposed use when adopting a reasons exception, or precludes a county from identifying a wide range of uses as the proposed “use.” *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Adopting a reasons exception for an open-ended range of unspecified industrial uses, justified under three separate, partially overlapping “reasons,” is a permissible approach, but compared to justifying a single proposed use under a single reason, the broader approach complicates an already difficult process, when the analysis moves to determining whether the proposal complies with the reasonable accommodation, ESEE and compatibility standards, and at the end of the process when the local government must apply zoning that limits uses to those allowed in the reasons exception. *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. In taking a reasons exception, a local government must ensure that there is a close, direct relationship between the reason that is advanced to justify the exception, the proposed use or uses that fit within that reason and are analyzed under the exception standards, and the uses that are ultimately authorized by the zoning applied to the exception area. *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. OAR 660-004-0018(4) provides that in taking a reasons exception a local government shall adopt zoning that limits the uses to those justified in the exception. Complying with OAR 660-004-0018(4) is difficult when the reasons exception is intended to authorize a broad array of unspecified rural industrial uses, under three separate reasons, because it may be unclear which specific industrial uses are allowed in the exception area and whether they have been justified in the exception. That difficulty might be overcome if the exceptions document that is incorporated into the comprehensive plan, the conditions imposed, and the approval standards and plan policies that will apply to any proposed industrial use are sufficient to ensure that only uses justified in the reasons exception are allowed. *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. OAR 660-004-0020(2)(d) requires findings that the use proposed for an exception area will be rendered compatible with adjacent uses through measures designed to reduce adverse impacts. However, merely identifying a local process that in the future will identify the proposed use, identify the adverse impacts of that use and then identify and impose specific measures to reduce impacts is insufficient to comply with OAR 660-004-0020(2)(d), because it represents a deferral of compliance with the exception standard. *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Even if there may be circumstances where it is permissible to defer to a later permit proceeding

consideration of goal compliance issues that tangentially arise in processing a post-acknowledgment plan amendment that does not require a goal exception, it is clearly impermissible to approve a goal exception while deferring to a later permit proceeding a determination that a Goal 2 exception standard is or is not met. *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. That the county initially adopted a problematic interpretation of the criteria for applying a limited use overlay zone to limit uses allowed on land for which a reasons exception is taken does not provide a basis for reversal or remand, where the county adopted an alternative interpretation that is consistent with the text of the zone change criteria. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Under a zone change criterion that requires a finding that the proposed base zone is “best suited” to accommodate the proposed use, in order to apply a limited use overlay zone to limit uses of the property to uses justified in a reasons exception, the fact that other base zones would also accommodate the proposed use does not undermine the county’s finding that the proposed tourist commercial zone is best suited, where there is no evidence that the other zones are better suited than the tourist commercial zone, and the reasons exception was expressly justified based on tourist commercial uses and application of the tourist commercial base zone. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. LUBA will affirm a governing body’s interpretation of a code standard allowing imposition of a limited use overlay zone if “it is required to limit the uses permitted in the proposed zone” by the reasons exception rule at OAR 660, Division 004, to employ the overlay zone to limit uses to ensure consistency with Statewide Planning Goal 12 (Transportation), and the need to take an exception to Goal 12, even though the county took reasons exceptions only to other statewide planning goals, where the county’s interpretation is not inconsistent with the express language, purpose or underlying policy of the code standard. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. While OAR 660-004-0018(4) requires that a reasons exception must limit uses authorized to those justified in the exception, the rule does not expressly require that the local government use the mechanism of an overlay zone to achieve that end, or preclude the use of appropriate conditions imposed under the plan or zoning amendments as part of the reasons exception. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. LUBA will reverse under ORS 197.829(1) a governing body’s interpretation that a Limited Use overlay zone is applied to limit uses in exception areas only when the applicant requests it, and that instead conditions of approval can be applied to limit uses, when (1) the Limited Use overlay zone is expressly intended for that purpose, (2) nothing in the code suggests an alternative mechanism to limit uses or authorizes attaching conditions of

approval to limit uses in exception areas, and (3) under the county's interpretation and the criteria that govern designation of the overlay zone there are no circumstances under which the overlay zone could be applied. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Where a county approves an exception for a transportation facility that will cross privately owned and federally owned EFU-zoned land, the county must approve the exception for both the privately and federally owned land. *Central Oregon Landwatch v. Deschutes County*, 62 Or LUBA 302 (2010).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. The statewide planning goal exception standards are set out at ORS 197.732 (statutory standard), Goal 2, Part II (goal standard); OAR chapter 660, division 4 (general administrative rule standard); OAR 660-012-0070 (transportation improvements on rural land); OAR chapter 660, division 14 (urban development of rural land). Those different exception standards vary somewhat in their wording and level of detail, and where a Goal 14 exception is required to allow residential development on rural land, OAR 660-014-040 is the more particular standard and the exception standard that applies to such Goal 14 exceptions. *VinCEP v. Yamhill County*, 215 Or App 414, 422-23, 171 P3d 368 (2007). *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 240 (2010).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. A net reduction in potential development density on rural land could be a sufficient reason under OAR 660-014-0040(2) to allow existing rural residential zoning to be relocated and reduced in size. *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 240 (2010).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Where a county's EFU zone does not permit solid waste disposal sites, but the statutory EFU zone does allow solid waste disposal sites, under the holding in *DLCD v. Yamhill County*, 183 Or App 556, 53 P3d 462 (2002), a county may not approve an exception to Goal 3 (Agricultural Lands) to allow a solid waste disposal site on EFU-zoned property. Rather, the county must amend its EFU zone to allow solid waste disposal sites if it wishes to authorize that use on its EFU-zoned land. *Waste Not of Yamhill County v. Yamhill County*, 61 Or LUBA 423 (2010).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. When a goal exception is taken to facilitate proposed development, any comprehensive plan policies that implement the goal for which the exception is taken no longer govern that development. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Remand is necessary where the local government adopts exceptions to Statewide Planning Goals 11 and 14 to approve a destination resort, but fails to address comprehensive plan transportation policies that appear to implement Statewide Planning Goal 12 (Transportation), for which the local government did not adopt an exception, and

the decision fails to explain why those policies are either satisfied or not applicable. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. In rezoning existing exception areas, OAR 660-004-0018(2)(b) does not require a county to evaluate all of the various uses potentially allowed in the new rural zone when (1) the rezone is from one nonresource zone to another nonresource zone, (2) the site is already developed with an existing use, and (3) the purpose of the rezone is to conform the zoning designation more closely to that existing use. *Landwatch Lane County v. Lane County*, 56 Or LUBA 408 (2008).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Where an existing exception area is rezoned to allow redevelopment of a developed site or development of a vacant site, OAR 660-004-0018(2)(b) may require the county to evaluate at least those uses in the new zone that are more intensive than uses allowed in the old zone and impose appropriate conditions if necessary to assure that the new zoning complies with the rule. *Landwatch Lane County v. Lane County*, 56 Or LUBA 408 (2008).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. LUBA will affirm findings that rezoning a vacant exception area from rural industrial to rural commercial is consistent with OAR 660-004-0018(2)(b), notwithstanding that the applicant does not propose a specific commercial use to evaluate, where the county concludes that any allowable use in the commercial zone would not commit nearby resource lands to nonresource use or be incompatible with such uses, given that the property is isolated and buffered from nearby resource uses by a highway, a river, and residential development. *Landwatch Lane County v. Lane County*, 56 Or LUBA 408 (2008).

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

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

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Petitioner’s argument that land formerly within a city’s urban growth boundary is necessarily subject to an exception to Goal 3 provides no basis for remand where it is not

clear that the property was subject to a Goal 3 exception when included in the UGB and, even if it was, petitioner does not explain why removal of the property from the UGB would leave the property subject to a Goal 3 exception as a matter of law. *Manning v. Marion County*, 42 Or LUBA 56.

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

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

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

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Land that is already included within a UGB is assumed to be available for urban development. That assumption is not rendered invalid simply because sites that are planned and zoned for residential, industrial and commercial use have soil or other characteristics that make them less than ideal to develop. *DLCD v. Douglas County*, 38 Or LUBA 542 (2000).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Alternative sites to meet an identified need for commercially planned and zoned land may not be rejected solely because they have soils limitations that the USDA estimates may result in an average 39 percent development cost increase for some small commercial buildings. The estimated 39 percent cost increase is an average, so it may be lower in particular cases, and any added cost may be offset by other advantages the sites may possess. *DLCD v. Douglas County*, 38 Or LUBA 542 (2000).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. Where petitioner argues that a Goal 3 exception to allow a subdivision of 10 five-acre lots on rural land also requires an exception to Goal 14, but petitioner fails to explain why such a subdivision constitutes an urban use and fails to challenge the county's findings that the

proposal would be served by rural services, LUBA will reject the argument. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 489 (2000).

6.3.1 Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Generally. ORS 197.732(6), which applies to LUBA’s and LCDC’s review of goal exception decisions, does not require LUBA to perform a comprehensive and independent evaluation of a proposed goal exception, but is satisfied by a reasoned opinion. *Laurence v. Douglas County*, 33 Or LUBA 292 (1997).

6.3.1 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Generally. The county’s failure to provide adequate notice of a proposed goal exception under ORS 197.732(5) is a procedural error that will not result in reversal or remand where the record demonstrates that petitioners’ substantial rights were not prejudiced. *Middleton v. Josephine County*, 31 Or LUBA 423 (1996).

6.3.1 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Generally. At a minimum, ORS 197.732(5) requires that the county’s notice of a proposed goal exception must include a brief summary of the issues involved in the proposed exception, in addition to the list of applicable criteria required by ORS 197.763(3)(b). *Middleton v. Josephine County*, 31 Or LUBA 423 (1996).

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

6.3.1 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Generally. Under OAR 660-04-020(2)(d), an exception to Goal 3 may be approved so long as compatibility with adjacent uses *will be* achieved through measures designed to reduce adverse impacts; compliance with the compatibility standard need not be actually achieved prior to approval of the exception. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57 (1996).

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