

28.3 LUBA Scope of Review – Goal Exceptions. In the context of a reasons exception to allow a data center use on agricultural land, while a local government cannot judge whether a property has a service-based locational advantage without a complete understanding of the extent of services in the alternative locations, the absence of an inventory of existing infrastructure in the record does not undermine the decision-maker’s conclusion that the exception area provides a “significant comparative advantage,” for purposes of OAR 660-004-0022(3)(c), where alternative sites were not rejected based upon the unavailability of services. *1000 Friends of Oregon v. Morrow County*, 81 Or LUBA 508 (2020).

28.3 LUBA Scope of Review – Goal Exceptions. Speculation that a reasons exception to allow an industrial use on agricultural land will hasten future zone change applications does not establish that the exception will not “cause only minimal loss of reproductive resource lands” for purposes of OAR 660-004-0022(3)(c); however, the fact that that an equal amount of land elsewhere in the jurisdiction will be rezoned from industrial to agricultural does not demonstrate that that criterion is met where the findings do not discuss the quality or productivity of the resource lands in the proposed exception area or otherwise attempt to describe, in qualitative terms, what removing the agricultural zoning of the proposed exception area means for resource land productivity. *1000 Friends of Oregon v. Morrow County*, 81 Or LUBA 508 (2020).

28.3 LUBA Scope of Review – Goal Exceptions. In the context of a reasons exception to allow a data center use on agricultural land, that a site is under contract or currently used for the disposal of wastewater; that a site is in federal ownership and that its ownership transfer timeline is unknown; that much of a site is covered in wetlands and that removal and fill of the wetlands will increase risk and will increase costs in an amount in the tens of thousands of dollars; that a site is too close to other existing or planned data centers to avoid general, undefined issues of facility proximity and interdependence; and that a site is inconsistent with the applicant’s objective of ultimately extending services to a particular property do not necessarily establish that those sites “cannot reasonable accommodate the use” for purposes of OAR 660-004-0020(2)(b). *1000 Friends of Oregon v. Morrow County*, 81 Or LUBA 508 (2020).

28.3 LUBA Scope of Review – Goal Exceptions. In determining whether to take a reasons exception under ORS 197.732(2)(c), where a local government finds that there is a public need to provide certain residents, many of whom are of limited financial means and mobility, with close access to the proposed uses, the local government does not err in concluding that “[a]reas that do not require a new exception cannot reasonably accommodate the use” under ORS 197.732(2)(c)(B) because the proposed location is the only location that is accessible to the residents. *VanSickle v. Klamath County*, 80 Or LUBA 241 (2019).

28.3 LUBA Scope of Review – Goal Exceptions. Where a petitioner argues a Geographic Information System map in the record suggests that a portion of the Willamette River Greenway included in a city’s Goal 15 exception is located outside the city limits, but within county limits, and therefore the county is also required to join in or approve its own Goal 15 exception, petitioner fails to allege a basis for remand or reversal because as a matter of law the official Willamette River Greenway overlay zone boundary is the boundary mapped by the Oregon Department of Transportation, which confirms the greenway overlay zone is entirely within city limits. *Deumling v. City of Salem*, 76 Or LUBA 99 (2017).

28.3 LUBA Scope of Review – Goal Exceptions. OAR 660-004-0022(6), which provides the standards for approving an exception to Goal 15, allows adverse effect on habitat as long as the adverse effect is not “significant.” An argument that challenges a local government’s findings that with mitigation, impacts to riparian habitat from a proposed new bridge project will not be significant because the need for mitigation at all demonstrates that the bridge will have a “significant adverse effect” on riparian values provides no basis for reversal or remand. *Deumling v. City of Salem*, 76 Or LUBA 99 (2017).

28.3 LUBA Scope of Review – Goal Exceptions. An ordinance that amends a county’s comprehensive plan map and zoning maps, in order to implement an earlier decision that adopted findings taking exception to statewide planning goals, is a land use decision as defined at ORS 197.015(10)(a), because it “amends” the county’s comprehensive plan and land use regulations, even if the ordinance itself does not adopt the exceptions or otherwise “apply” any statewide planning goals. *Rogue Advocates v. Josephine County*, 72 Or LUBA 475 (2015).

28.3 LUBA Scope of Review – Goal Exceptions. Where a county adopts an ordinance amending its comprehensive plan map and zoning map, in order to implement an earlier decision that adopted findings taking exceptions to statewide planning goals, it may be that those earlier adopted findings cannot be challenged in the appeal of the ordinance. However, even in that event, that does not mean that LUBA lacks jurisdiction over the ordinance, only that if the petitioner raises no challenges to the ordinance that are within LUBA’s scope of review, LUBA will affirm the ordinance. *Rogue Advocates v. Josephine County*, 72 Or LUBA 475 (2015).

28.3 LUBA Scope of Review – Goal Exceptions. In reviewing a county’s decision that property is irrevocably committed to nonresource uses, LUBA is not required to give any deference to the county’s explanation for why it believes the facts demonstrate compliance with the legal standards for a committed exception. *Friends of Yamhill County v. Yamhill County*, 38 Or LUBA 62 (2000).

28.3 LUBA Scope of Review – Goal Exceptions. 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. *Laurance v. Douglas County*, 33 Or LUBA 292 (1997).

28.3 LUBA Scope of Review – Goal Exceptions. Even where a local government’s findings supporting an “irrevocably committed” goal exception address all factors made relevant under OAR 660-04-028, and are supported by substantial evidence in the record, it is still LUBA’s responsibility to determine whether the findings demonstrate compliance with the standard of ORS 197.732(1)(b) that “existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.” *1000 Friends of Oregon v. Columbia County*, 27 Or LUBA 474 (1994).

28.3 LUBA Scope of Review – Goal Exceptions. OAR 660-04-022(1) states reasons adequate to justify a goal exception “include but are not limited to” those set out in that section. Where OAR 660-04-022(1) applies, in the absence of some explanation in the decision or argument in the local government’s brief that it intended to justify its goal exception on some other basis, LUBA will

assume the local government's findings are intended to satisfy OAR 660-04-022(1)(a) to (c). *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993).

28.3 LUBA Scope of Review – Goal Exceptions. Under ORS 197.732(6)(b), LUBA is authorized to determine whether a local government's findings and reasons satisfy the standards of ORS 197.732(1). *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993).

28.3 LUBA Scope of Review – Goal Exceptions. Where a county does not adopt a goal exception as part of its comprehensive plan, the exception is not valid. *Schrock Farms, Inc. v. Linn County*, 24 Or LUBA 58 (1992).

28.3 LUBA Scope of Review – Goal Exceptions. Statutory, goal and administrative rule provisions require that the findings and reasons justifying a goal exception be adopted as part of the comprehensive plan. Failure to include such findings and reasons in the plan is sufficient grounds for reversal or remand of the decision. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

28.3 LUBA Scope of Review – Goal Exceptions. LUBA will not reverse or remand on evidentiary grounds a local government decision that the “irrevocable commitment” goal exception standard is not met, unless petitioner establishes, as a matter of law, that the *only* reasonable conclusion which can be reached based on the evidence in the whole record is that the “irrevocable commitment” standard is satisfied. *Chambers v. Clackamas County*, 19 Or LUBA 355 (1990).