

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A local government’s findings that a prohibition on establishing new fossil fuel terminals (FFT) and expanding existing FFTs will “[l]imit development in or near areas prone to natural hazards” is supported by an adequate factual base where most of the local government’s industrial zoning is in areas with high levels of liquefaction susceptibility and where the prior ability of FFTs to expand storage capacity has not yielded many seismic upgrades. *Columbia Pacific v. City of Portland*, 81 Or LUBA 683 (2020).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A local government’s findings that there is adequate existing storage capacity to accommodate a modest growth in fossil fuel demand and, therefore, that a prohibition on establishing new fossil fuel terminals (FFT) and expanding existing FFTs will “[l]imit fossil fuels distribution and storage facilities to those necessary to serve the regional market” are (1) inadequate where natural gas falls under a local government’s definition of fossil fuels and where the findings do not address natural gas needs and (2) unsupported by an adequate factual base where the record establishes that natural gas demand will increase and where there is no evidence of the amount of terminal and storage capacity needed for natural gas generally. *Columbia Pacific v. City of Portland*, 81 Or LUBA 683 (2020).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A local government’s findings that a prohibition on establishing new fossil fuel terminals (FFT) and expanding existing FFTs will not result in any impacts on the intermodal transportation system are unsupported by an adequate factual base where the record establishes that a constriction in one component of an intermodal system, such as a pipeline, may shift demand to other modes, thereby increasing truck traffic. *Columbia Pacific v. City of Portland*, 81 Or LUBA 683 (2020).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. The inventory of existing bicycle facilities in a revised Transportation System Plan (TSP) does not violate the requirement, under OAR 660-012-0020(3)(a), that TSPs include “[a]n inventory and general assessment of existing and committed transportation facilities and services by function, type, capacity and condition” merely because the inventory includes narrow or substandard bike lanes. In addition, such an inventory does not violate the requirement, under Goal 2, that decisions be supported by an adequate factual base where the local government relies on a Level of Stress (LTS) analysis to reflect the capacity and condition of the facilities and where a petitioner fails to explain why LTS does not reflect capacity and condition. *Shaff v. City of Medford*, 79 Or LUBA 317 (2019).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A city’s findings addressing future regional demand for fossil fuels, the key support for city’s prohibition on any expansion of existing fossil fuel terminals, is not supported by an “adequate factual base,” as required by Statewide Planning Goal 2, where city ignored uncontradicted projections of moderate growth in demand for fossil fuels, and instead relied on unsupported speculation that demand will actually plateau or decline. *Columbia Pacific v. City of Portland*, 76 Or LUBA 15 (2017).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. An ordinance that amends the width and features of a buffer area between urban and rural lands is properly viewed as a legislative rather than quasi-judicial decision, where the ordinance was adopted as part of a legislative process that was not bound to result in a decision, the modified buffer affects over 135 acres of land that

stretch over one mile in length, and the amendments potentially affect hundreds of property owners. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A landscape architect’s conclusory statement that a proposed buffer will “ensure compatibility” between urban and rural agricultural uses is not supported by an adequate factual base, where the record includes uncontroverted testimony that the buffer depends on vegetation growth that will take up to 15 years to effectively screen equestrian jumping events located only 50 feet away from urban residential development, and that horses participating in the events may be panicked by fireworks and other sudden visual and auditory impacts stemming from the unscreened residential uses. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. An exhibit prepared by the applicant’s attorney showing that three equestrian centers are located within urban areas does not provide an adequate factual base to support a finding that a 50-foot-wide buffer is sufficient to ensure compatibility between urban residential uses and an adjacent equestrian center, where that testimony is undermined by testimony from the owners of the urban equestrian centers that their operations rely on buffers that are 160 to 300 feet wide, and that a buffer only 50 feet wide would compromise the safety of horse riders. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. The lack of evidentiary support for a finding that a vegetative buffer is superior to a distance buffer at reducing visual incompatibilities is not harmless error, where the only evidence on that point is to the contrary, and under the local government’s interpretation of the compatibility standard whether one buffer method is better at reducing or minimizing adverse visual impacts than another method appears to be a legitimate consideration. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Planning staff testimony that two five-foot-high fences on either side of a 50-foot-wide vegetated buffer would discourage human trespass from urban residential development onto adjoining agricultural land provides an adequate factual basis to conclude that the buffer “ensures compatibility” between urban and rural agricultural uses as regards impacts from trespass. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Under OAR 660-004-0020(2)(d), the relevant inquiry is whether the proposed use requiring an exception is compatible with adjacent uses, not whether the proposed use is more intensive than prior uses. *King v. Clackamas County*, 72 Or LUBA 143 (2015).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A city’s conclusion that proposed high-density residential zoning complies with Goal 12 and the Transportation Planning Rule is not supported by an adequate factual base, where the city assumed full development under the old zoning but only partial development under the new zoning, for general economic reasons that apply equally to both development scenarios. Absent an explanation for using different background assumptions, a comparison of traffic-generative capacity allowed under new and old zoning under

OAR 660-012-0060 must use consistent assumptions. *Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1 (2013).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Where the evidence in the record demonstrates that an applicant for a destination resort map amendment’s consultant compared the entirety of the applicant’s ownership of land within the county, based on the county’s ownership database, to the properties proposed for inclusion on the map of eligible lands, and disqualified several properties from inclusion on the map that included ineligible lands and did not comply with ORS 197.435(7) (the 30 percent rule), a reasonable person could rely on that evidence to conclude that the remaining properties included on the map comply with ORS 197.435(7) and that the proposed map amendment is supported by an adequate factual base. *Root v. Klamath County*, 68 Or LUBA 124 (2013).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Goal 9 requires local governments to provide adequate opportunities for a variety of economic activities, but does not require local governments to protect one type of economic activity against impacts created by other economic and non-economic uses. Goal 9 does not require that ODOT, in adopting higher mobility standards for state highways, address in its findings whether increased congestion from development allowed under the higher mobility standards will adversely affect existing economic activity. *Setniker v. ODOT*, 66 Or LUBA 54 (2012).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. The city’s reliance on information and studies prepared several years prior to the adoption of a public facilities plan does not, in itself, provide a basis for reversal or remand of the decision. *Central Oregon Landwatch v. City of Bend*, 66 Or LUBA 392 (2012).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Goal 2 (Land Use Planning) generally requires that comprehensive plan amendments be based on the analyses that are included in the comprehensive plan, rather than analyses that are external to the comprehensive plan. *Hawksworth v. City of Roseburg*, 64 Or LUBA 171 (2011).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A map adopted by the county does not provide an adequate factual base under Goal 2 for a decision to amend the county’s destination resort map where it is not possible to tell by looking at the map where the boundaries of the included properties are located, and the list of properties included in the record identifies properties as entire sections of land within townships and ranges, or numbered parcels within sections, ranges, and townships but the map does not include any section numbers or locations. *Root v. Klamath County*, 63 Or LUBA 230 (2011).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Based on the Court of Appeals’ decisions in *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 216, 124 P3d 1249 (2005), and *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 22, 994 P2d 1205 (2000), it would be error for a local government to ignore available commercial and industrial land data in its acknowledged comprehensive plan and rely instead on different data that is not part of the acknowledged comprehensive plan to conclude that a land use regulation amendment will leave the local government with an adequate supply of commercial and industrial land. However, if the

local government also adopts adequate findings based on the commercial and industrial land data in its acknowledged comprehensive plan that the land use regulation amendment will not leave the local government with an inadequate supply of commercial and industrial land, the local government's additional findings that rely on data that is not included in the comprehensive plan provide no basis for reversal or remand. *McDougal Bros. Investments v. City of Veneta*, 59 Or LUBA 207 (2009).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. It may be that a city's buildable lands inventory (BLI) can be written and structured so that it can be updated without incorporating the update into the city's comprehensive plan. However, where a city's BLI is not the type of BLI that might be updated and relied upon without incorporating the updated BLI into the comprehensive plan, a city decision relying on that BLI update to enlarge the city's urban growth boundary, without first adopting the updated BLI as part of the city's comprehensive plan, is error. *Lengkeek v. City of Tangent*, 54 Or LUBA 160 (2007).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Extrapolation of a local government's buildable lands inventory based on assumptions not contained in the comprehensive plan is not compatible with the Goal 2 requirement that decisions be based on the comprehensive plan. *Lengkeek v. City of Tangent*, 52 Or LUBA 509 (2006).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A local government may rely on population projections contained in the transportation system plan portion of the comprehensive plan in amending its urban growth boundary. *Lengkeek v. City of Tangent*, 52 Or LUBA 509 (2006).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. The city's conclusion that there is a demonstrated need to add 90 acres of residential land to the city's residential buildable lands inventory, based on information submitted by the applicant that uses a planning period to the year 2020, is not inconsistent for purposes of Goal 2 (Land Use Planning) with the buildable lands inventory in the acknowledged comprehensive plan that relies on a planning period that ends in 2004 or 2005. *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Goal 10 (Housing) requires local governments to inventory available residential buildable lands, and Goal 2 (Land Use Planning) requires those inventories to be part of the comprehensive plan. Where the residential buildable lands inventory in the comprehensive plan is not useable, and an applicant presents evidence regarding the current inventory of buildable lands, Goal 1 (Citizen Involvement), Goal 2 and Goal 10 require that the comprehensive plan be amended to incorporate that inventory. *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Goal 10 (Housing), Goal 2 (Land Use Planning) and Goal 1 (Citizen Involvement) require that a population projection that forms the basis of a city's residential lands needs analysis be incorporated into the comprehensive plan. *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A county’s population projection is supported by an adequate factual base when it relies on a massive supply of groundwater in the regional aquifer and future acquisition of rights to the aquifer in order to meet future water needs for population growth. *Friends of Deschutes County v. Deschutes County*, 49 Or LUBA 100 (2005).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A local government may take past and future annexations into account in determining its future growth rate. *Friends of Deschutes County v. Deschutes County*, 49 Or LUBA 100 (2005).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. ORS 195.036 does not require a county to employ any particular methodology to project future population, and is silent with respect to whether different methodologies may be used for different areas of the county. As long as the county’s choice of methodology is supported by an adequate factual base, the county may choose to use different methodologies in different areas of the county. *Tipperman v. Union County*, 44 Or LUBA 98 (2003).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A reasonable factfinder would not rely on 1990-2000 building permit data to project a higher than historic population increase through the year 2020, where the analysis of building permit data assumes without any basis that each building permit resulted in construction of a permanent non-seasonal dwelling, and fails to adequately take into account the number of abandoned, demolished, removed or replaced dwellings. *Tipperman v. Union County*, 44 Or LUBA 98 (2003).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A reasonable factfinder would not assume that every new job and student slot created in the county over the next 20 years will be filled by a new immigrant to the county, for purposes of projecting county population increase, particularly given the relatively high rate of unemployment in the county, and the unlikelihood that all new jobs will be full-time or family-wage jobs likely to induce in-migration. *Tipperman v. Union County*, 44 Or LUBA 98 (2003).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A county’s choice to allocate a higher than historic rate of growth to one city, in coordinating the county’s 20-year population projection among cities and unincorporated areas, is supported by an adequate factual base, where the record includes evidence that the city was the fastest growing city in the county in the 1990s and is likely to annex rural residential land at a higher rate than other cities. *Tipperman v. Union County*, 44 Or LUBA 98 (2003).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. The Goal 2 requirement for an adequate factual base does not exist in a vacuum. In alleging a Goal 2 factual base inadequacy at LUBA, a petitioner must establish that some applicable statewide planning goal or other criterion imposes obligations that are of such a nature that a factual base is required to determine if the zoning ordinance amendment is consistent with the goal or other criterion. *OCAPA v. City of Mosier*, 44 Or LUBA 452 (2003).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Where petitioner alleges that a comprehensive plan amendment violates the Goal 2 requirement for an “adequate factual base,” but petitioner makes no attempt to explain why the three-volume record supporting the challenged decision is inadequate to satisfy this general Goal 2 requirement, the assignment of error will be denied. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A UGB amendment based on a subregional need to provide affordable housing must ensure that the land included in the UGB will be used to satisfy that need. Adoption of a master plan that imposes zoning and other measures to allow for a significant number of high-density dwellings is sufficient to ensure that the land included in the UGB will be used to satisfy that need, given evidence that the lack of affordable housing in the subregion is the result of the relative absence of high-density dwellings and that such dwellings will be affordable to 83 percent of the employees in the subregion. *Residents of Rosemont v. Metro*, 38 Or LUBA 199 (2000).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A county’s 2020 population projection is supported by an adequate factual base, notwithstanding that it is based on 1991-1997 population figures that differ from official state estimates for those years, where a reasonable person could conclude that, when the two sets of figures are adjusted to cover the same period of time, the difference between the county and state figures falls within a statistically acceptable margin of error. *DLCD v. Douglas County*, 37 Or LUBA 129 (1999).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A county population projection is supported by an adequate factual base, notwithstanding that it is based on assumptions regarding economic growth that are inconsistent with the county’s historic economic growth patterns, where a reasonable person could conclude that those historic economic growth patterns are not indicative of the county’s long-term economic prospects. *DLCD v. Douglas County*, 37 Or LUBA 129 (1999).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A county plan amendment imposing a “sequencing” requirement that proposed attached housing be built before completing proposed detached housing is supported by an adequate factual base, where a reasonable decision maker could conclude, based on testimony in the record, that the sequencing requirement is necessary to forestall attempts to underbuild attached housing, which may subvert the county’s minimum density standard. *West Hills Development Co. v. Washington County*, 37 Or LUBA 46 (1999).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Petitioners fail to demonstrate that a county’s plan amendment lacks an adequate factual base and is inconsistent with Goal 10 where petitioners merely speculate that the county’s plan amendment, which requires that proposed attached housing be built at a site before completing proposed detached housing, will adversely affect the county’s buildable lands inventory. *West Hills Development Co. v. Washington County*, 37 Or LUBA 46 (1999).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Petitioners fail to demonstrate that a county’s minimum density standard lacks an adequate factual base or is inconsistent with Goal 10 where petitioners merely speculate that application of the standard will make it impossible to

develop certain lands at lower densities. Even if petitioners' speculations are correct, the only probable result is that those lands will be developed at higher densities, which is not inconsistent with Goal 10. *West Hills Development Co. v. Washington County*, 37 Or LUBA 46 (1999).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. A local government errs in declaring that an intergovernmental agreement no longer controls where by the terms of that agreement it governs until specified recommendations are implemented, and the record shows that the recommendations have been only partially implemented. *City of Salem/Marion County v. City of Keizer*, 36 Or LUBA 262 (1999).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Petitioner's arguments that four studies supporting a comprehensive plan amendment are old, fail to address certain features, are preliminary, and call for more study do not demonstrate the challenged amendment lacks an adequate factual base, where the challenged decision's factual base is not limited to the four studies. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. With regard to providing an explanation of the basis for a challenged legislative decision, the Goal 2 "adequate factual base" requirement will be satisfied if the decision is supported by either (1) findings demonstrating compliance with applicable legal standards, or (2) argument and citations to facts in the record, in respondents' briefs, adequate to demonstrate compliance with applicable legal standards. *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Statewide Planning Goal 2 requires that comprehensive plan and land use regulation amendments have an adequate factual base, regardless of whether they are legislative or quasi-judicial in nature. *Rea v. City of Seaside*, 27 Or LUBA 443 (1994).

6.5 Goal 2 – Land Use Planning – Adequate Factual Base. Statewide Planning Goal 2 requires that planning decisions and actions have an adequate factual base, regardless of the legislative or quasi-judicial nature of the decision. The Goal 2 requirement for an adequate factual base is equivalent to the requirement for substantial evidence in the whole record. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994).