

1 Opinion by DuBay.

2 NATURE OF THE DECISION

3 This is an appeal of a decision to change the zoning
4 classification on 68 acres from Rural-Residential (R-1) to
5 Recreational-Commercial (CR-2).

6 FACTS

7 The 68 acres lies between the City of Joseph on the north
8 and Wallowa Lake on the south. The Chief Joseph Monument abuts
9 the property on the southeast. The property is outside the
10 Urban Growth Boundary for the City of Joseph.

11 Lands adjacent to Wallowa Lake are designated
12 Recreational-Residential in the county's comprehensive plan,
13 and lands between Wallowa Lake and the City of Joseph are
14 designated Rural-Residential. The comprehensive plan
15 designation is critical because the permitted uses in the CR-2
16 zone are consistent with the Recreational-Residential plan
17 designation but not with the Rural-Residential plan designation.

18 Petitioners' assignments of error are in two categories:
19 those that allege violations of either the comprehensive plan
20 or statutory procedures incident to plan amendment, and those
21 based on violations of statewide planning goals. We first take
22 up the assignments of error based on comprehensive plan
23 violations and plan amendment procedures.

24 ASSIGNMENTS OF ERROR 2 and 4

25 Petitioners' second assignment of error alleges the
26 county's order violates the comprehensive plan by authorizing

1 uses on this property not allowed by the Rural-Residential plan
2 designation. The fourth assignment of error alleges the effect
3 of the order is to change the plan designation from
4 Rural-Residential to Recreational-Residential. Petitioners say
5 this change violates ORS 197.610-.615, controlling changes to
6 comprehensive plans.¹

7 The county asserts no comprehensive plan amendments were
8 required. According to the county no plan map change was
9 necessary in order to designate the whole of the property
10 Recreational-Residential.

11 Whether the property is designated Rural-Residential or
12 Recreational-Residential is not readily apparent on the land
13 use classification map on page 9 of the Wallowa County Land Use
14 Plan (WCLUP) because the map scale is so large. The county's
15 interpretation of the map is expressed in the following finding:

16 "The land use classification map designates the parcel
17 as Recreational-Residential on the northern part and
Rural-Residential on the Southern [sic] part."

18 Notwithstanding this finding, the county relied on another
19 provision of the plan to adjust the boundary line to designate
20 the entire parcel as Recreational-Residential. The plan
21 provision relied on is as follows:

22 "This plan is flexible in that provisions are made for
23 reviewing and updating as conditions in the area
24 change. Such conditions may be economical, physical,
25 social, political or environmental. Boundary lines
for the various land use classifications are general
and may be adjusted (slightly) as the county
determines desirable, providing the intent of the plan
is not changed by the adjustment."

1 The county invoked this plan provision in the following
2 finding:

3 "However, in light of the 'flexibility' statement at
4 page 3 of the WCLUP, the Court finds that conditions
5 in the area support a slight adjustment of the
6 boundary line, thus designating the entire parcel as
7 Recreational Residential. The intent of the plan is
8 not changed by this adjustment." Record 3m.

9 The WCLUP provision regarding adjustments may be read to
10 grant authority to define boundaries where imprecise map lines
11 require interpretation because of map scale. However, the
12 findings show the county interpreted the flexibility provision
13 to give greater authority, i.e., to permit changes in the land
14 classification boundaries in the comprehensive plan without
15 amending the plan.

16 We do not agree the plan provision grants the authority
17 claimed by the county.

18 The legal requirements for comprehensive plan amendments
19 may not be circumvented by calling the change a slight
20 adjustment. Cf. Allm v. Polk County, ___ Or App ___, ___
21 P2d ___ (1985) (Affirming without opinion Allm v. Polk
22 County, ___ Or LUBA ___ (1985) (LUBA No. 84-105 dated
23 6/24/85)). For this reason alone, the second and fourth
24 assignments of error are sustained.

25 Even if the flexibility provision could grant authority to
26 allow changes in classification boundaries without amending the
plan, the county applied the provision incorrectly. The plan
provision only allows slight adjustments within the intent of

1 the plan. The county's order fails to illustrate how the
2 decision is slight or within the intent of the plan.

3 We reject the city's characterization of the change as a
4 "slight adjustment." The county did not articulate an
5 interpretation of "slight," but simply declared the whole tract
6 in question Recreational-Residential. We attach weight to the
7 finding that part of the 68 acres is Rural-Residential. This
8 finding shows the county considered the Rural Residential part
9 of the property as a significant portion of the 68 acre
10 parcel. This view is supported by the land use designations
11 shown in greater detail on page 93 of the county's plan. This
12 page shows the location of the Urban Growth Boundary for the
13 City of Joseph and the land use classifications surrounding the
14 city, including the area between the city and Wallowa Lake.²
15 The delineation of the 68 acres on this map must be estimated.
16 However, we note that substantially all of the land between
17 Joseph and Wallowa Lake is clearly designated
18 Rural-Residential. Only a narrow fringe around the north end
19 of Wallowa Lake is shown as Recreational-Residential.³
20 Considering both the county's finding that part of the property
21 is designated Rural-Residential and the plan maps showing this
22 designation on most of the 68 acres in question, the order
23 changing the designation to Recreational-Residential is more
24 than a slight adjustment of boundaries.

25 The county also found the intent of the plan is not changed
26 by designating the entire 68 acres as Recreational

1 Residential. This conclusion is also not explained in the
2 order. The comprehensive plan includes a statement of purpose
3 for each of the plan use classifications. WCLUP, pages 5-7.
4 According to these statements of purpose,
5 Recreational-Residential areas "are generally surrounded by
6 timber/grazing activities and should be developed with that in
7 mind." The purpose statements also say Rural-Residential areas
8 "are primarily abutting the incorporated cities, providing a
9 transition between urban and agricultural uses...." These
10 characteristics may be seen to apply in the plan classification
11 maps, particularly the smaller scale map on page 93 of the
12 plan. The maps show Rural-Residential abutting the City of
13 Joseph in keeping with the stated purpose of the
14 classification. Yet there is no explanation in the county's
15 order how adjusting the Recreational-Residential boundary
16 northward to abut the city limits of Joseph complies with these
17 statements of purpose.

18 For these reasons, we reject the county's argument that the
19 plan provision allowing slight adjustments of boundaries
20 authorizes the classification of the entire 68 acres as
21 Recreational-Residential. The Rural-Residential property may
22 not be re-designated Recreational-Residential without a
23 comprehensive plan map change meeting all the applicable
24 criteria for a comprehensive plan amendment. Because this was
25 not done, petitioners' second assignment of error is sustained.

26 We also sustain petitioners' fourth assignment of error.

1 As we noted above, the effect of the county's adjustment of the
2 Recreational-Residential boundary line was to change the
3 comprehensive plan designation for a substantial portion of the
4 68 acres. All amendments to acknowledged comprehensive plan
5 map plans are subject to the procedures in ORS 197.610 and
6 197.615. These statutes require, among other things, mailing
7 of proposals for plan amendments to the Director of the
8 Department of Land Conservation and Development (DLCD) prior to
9 final hearings and sending adopted findings after the final
10 decision. Wallowa County did not comply with either statute.

11 The county responds in part by contending that petitioners
12 were not prejudiced by the county's noncompliance with the
13 statutes. Whether or not petitioners were prejudiced by the
14 county's failure to follow the statutes is not the issue. The
15 statute's apparent purpose is to give notice of the proposed
16 plan changes to DLCD to provide for comment by DLCD to the
17 local government about the proposal's compliance with statewide
18 planning goals. The county's failure to follow the statutory
19 procedures prevented DLCD's review and comments. This failure
20 warrants a remand to give the county the opportunity to follow
21 the correct procedures.

22 FIRST AND FIFTH ASSIGNMENTS OF ERROR

23 These assignments of error challenge an exception to Goal
24 14 in the county's order. The order states:

25 "The county recognizes, however, that even though this
26 is a small tract zoning amendment to an acknowledged
land use regulation the amendment must comply with the

1 statewide planning goals. ORS 197.835(5). Therefore,
2 an exception to Goal 14 has been established."⁴

3 Petitioners challenge the county's action on two grounds.
4 The first assignment of error alleges the exception is invalid
5 because the comprehensive plan was not amended to incorporate
6 the new exception. The fifth assignment of error alleges the
7 county's order did not make findings adequately addressing the
8 exceptions criteria in ORS 197.732, OAR 660-04-022(1) and OAR
9 660-04-020.

10 The county has four answers to these allegations,
11 summarized as follows:

- 12 (1) Even though the order states an exception is
13 taken to Goal 14, statewide goals are not
applicable to this decision.
- 14 (2) An exception to Goal 14 is not necessary where
15 there is an acknowledged exception to Goal 3 for
the same use.
- 16 (3) It is not necessary to amend an acknowledged
comprehensive plan to take an exception.
- 17 (4) The findings in the order satisfy the legal
18 criteria for a Goal 14 exception.

19 The county's first line of defense is based on the
20 applicability of two sections of the statute governing our
21 scope of review. They are:

22 "(5) Notwithstanding the provisions of subsection (3)
23 of this section, the board shall reverse or
24 remand a decision adopting a small tract zoning
map amendment to an acknowledged land use
regulation if the decision does not comply with
the goals and:

25 "(a) The amendment applies to land outside an
26 acknowledged urban growth boundary;

1 (b) The local government has a comprehensive
2 plan that was acknowledged before July 1,
3 1981; and

4 (c) The commission has not reviewed the
5 acknowledged comprehensive plan under ORS
6 197.640.

7 (6) If the board determines that an amendment
8 described in subsection (5) of this section is
9 consistent with specific related land use
10 policies contained in the acknowledged
11 comprehensive plan or land use regulations or it
12 complies with the goals, the board shall find the
13 amendment in compliance with the goals."
14 ORS 197.835.

15 While the county recognizes this decision meets the three
16 criteria in ORS 197.835(5), it also contends the decision is
17 consistent with specific related policies in its acknowledged
18 plan. Accordingly, the county argues ORS 197.835(6) requires
19 that we find the order complies with the goals.

20 The county says the following two plan provisions are
21 specifically related to the decision:

22 (1) "The Imnaha River Woods and Wallowa Lake Resort
23 Area have been designated as
24 Recreational-Residential on the plan. Other
25 locations may be determined suitable for that
26 purpose, providing water supplies, sewage
27 disposal, fire protection, access and other
28 requirements can be satisfied." WCLUP at 6.

29 (2) "Major (recreation) sites have been indicated on
30 the plan map, and other recreation improvements
31 shown on the inventory map. Such areas
32 include...the Chief Joseph Monument at the north
33 end of the Wallowa Lake...." WCLUP at 7.

34 These provisions are in statements describing the purpose
35 for each land use classification. The purpose statements also
36 identify particular locations on the plan map, e.g., Wallowa

1 Lake Resort and Chief Joseph Monument, as either Recreation or
2 Recreational-Residential designated areas. However, these
3 statements refer only to specifically designated areas. They
4 do not mention the area between Wallowa Lake and the City of
5 Joseph.

6 The county argues its order is not inconsistent with these,
7 or any other, plan provisions. While that may be true, these
8 plan policies do not refer to the area between Wallowa Lake and
9 the City of Joseph, nor do they refer to any Rural-Residential
10 land. In particular, the policies set no standards to
11 determine when land may be designated
12 Recreational-Residential. Without plan policies more specific
13 than these, the exception from the requirement of goal
14 compliance in ORS 197.835(6) does not apply.

15 In contrast to its position before us, the county correctly
16 concluded in the order that the decision must comply with
17 statewide planning goals. Nevertheless, the county argues an
18 exception to Goal 14 is not necessary where the county has
19 adopted an exception to Goal 3 authorizing the same use, citing
20 1000 Friends of Oregon v. LCDC, 73 Or App 350, ___ P2d ___
21 (1985).⁵ There, the Court of Appeals held:

22 "...Neither the Supreme Court nor we have held that a
23 county or incorporated city that has taken exceptions
24 of those goals must also take an exception to Goal 14
25 in order to allow the same use." 73 Or App at 357.

26 As we noted earlier, designating the entire 68 acres as

1 Recreational-Residential changed the land use classification
2 shown on the comprehensive plan maps. However, the uses
3 authorized by any prior exception to Goal 3 are reflected in
4 the classifications shown on the acknowledged (i.e., unamended)
5 plan maps. Uses authorized by the new Recreational-Residential
6 designation are different than those allowed under the
7 acknowledged exception. Commercial and public uses permitted
8 in the Recreational-Residential classification are not allowed
9 in Rural-Residential. Because the uses in each classification
10 are not the same, the acknowledged Goal 3 exception does not
11 shield the present decision from application of Goal 14. We
12 reject respondent's contentions that any previous exception to
13 Goal 3 authorized the Recreational-Residential designation on
14 the entire tract.

15 The county next contends an exception analysis need not be
16 incorporated in a plan amendment. However, the statutory and
17 LCDC rule requirements are clearly contrary to the county's
18 position.⁶ Here, the county attempted to take an exception
19 to Goal 14 but failed to incorporate the exception into its
20 plan.

21 We sustain petitioners' first assignment of error.

22 Petitioners' fifth assignment of error challenges the
23 exception to Goal 14 on the grounds the findings do not
24 adequately address, or fail to address at all, the criteria for
25 an exception in ORS 197.732, OAR 660-04-022(1) and OAR
26 660-04-020. ORS 197.732(3) requires LCDC to make rules

1 establishing under what circumstances particular reasons may or
2 not be used to justify an exception under ORS 197.732(1)(c),
3 commonly referred to as the "reasons" exception. Petitioners
4 say LCDC has not adopted specific criteria for a Goal 14
5 exception. Therefore, the general "reasons" criteria in OAR
6 660-04-022(1) should have been applied by the county.

7 We reject this attack because petitioners' premise that no
8 rules establish specific criteria for Goal 14 exceptions is in
9 error. OAR 660-04-022(1), on which petitioners rely, provides
10 reasons for exceptions only "(f)or uses not specifically
11 provided for in...OAR 660, Division 14...." (Emphasis
12 supplied.) In OAR 660-14-040(2) and (3), however, LCDC has set
13 forth reasons which can justify an exception to Goal 14 where
14 the proposal (as in this case) is to establish a new urban
15 development on undeveloped rural land. We conclude that these
16 criteria, not the criteria in OAR 660-04-022(1) upon which
17 petitioners base their challenge, are applicable to the Goal 14
18 exception taken by the county.

19 Although we reject petitioners' attack on the findings
20 setting forth reasons for the exception as required by ORS
21 197.732(1)(c)(A), we take a different view of petitioners'
22 additional allegations that the county failed to satisfy the
23 standard in ORS 197.732(1)(c)(B). This exception standard
24 requires a demonstration that areas which do not require an
25 exception cannot reasonably accommodate the use.

26 A variety of uses are permitted in the CR-2 Zone (see

1 discussion of the third assignment of error below). However,
2 the findings show recreational resort type development was the
3 only use considered when the county addressed this standard.
4 The county did not find areas within existing urban growth
5 boundaries are unable to reasonably accommodate all uses
6 permitted in the CR-2 Zone. For this reason the county did not
7 satisfy the standard required by ORS 197.732(1)(c)(B).

8 We also sustain this assignment of error for another
9 reason. The county found:

10 "The intended use cannot be reasonably accommodated in
11 or through expansion of the existing urban growth
12 boundary beyond the city limits since it is not
13 economically feasible for the city to provide
14 extensions of its public facilities such as sewer and
15 water service."

16 This finding suggest that excessive costs to provide public
17 facilities beyond an existing urban growth boundary are
18 justification for expanding the boundary. This argument would
19 undermine the purpose of urban growth boundaries, and we have
20 previously rejected it for that reason. Abrego v. Yamhill
21 County, 2 Or LUBA 101 (1980).

22 This assignment of error is sustained.

23 THIRD ASSIGNMENT OF ERROR

24 Petitioners allege the county failed to take an exception
25 to Goal 3. They contend the 68 acres is agricultural land as
26 defined in Goal 3 because it is predominantly class VI soils,
is used as pasture, and is assessed as farm land for real
property tax purposes. Petitioners posit that an exception was

1 evidently taken when the land was given the current land use
2 classification which allows non-farm uses.⁷ Even though the
3 exception has been acknowledged, petitioners say the new
4 exception is required by OAR 660-04-018. This rule in part
5 states:

6 "(1) When a jurisdiction changes the type or
7 intensities of uses or zones allowed in an
8 exception area which the commission has
9 previously acknowledged and when the new use or
uses would have a substantial impact upon
adjacent uses, a new or modified exception is
required."

10 The county made the following findings concerning impacts
11 on adjacent uses:

12 "Surrounding land uses include residential uses to the
13 north in the City of Joseph and grazing interspersed
with residential uses to the south, east and west.

14 "The anticipated use, commercial resort and associated
15 activities, requires a parcel of adequate size to
accommodate a golf course, open space, condominiums
and private septic tank disposal units.

16 "Any increased population in the area will not be
17 detrimental to the Chief Joseph Monument since
18 additional visitors will serve to enhance the purpose
of the monument.

19 "The rolling topography of the subject parcel as well
20 as the Design Review requirements can be used to
prevent any development from adversely impacting
visual qualities of the monument.

21 "The proposed urban development on the proposed site
22 will have little if any adverse impact on land uses in
23 the nearby exclusive farm use zone since that zone is
24 separated from this parcel by Highway 62. Any
possible impact on the Chief Joseph Monument and the
nearby irrigation ditch will be eliminated by buffer
zone requirements and fencing requirements."

25 Based on these findings of fact (some of which are
26

1 conclusions), the county found the "proposed use is compatible
2 with adjacent uses." The county also found "[t]he development
3 is compatible with the scenic views and sites in the area."

4 These and other findings show the county considered only
5 the proposed use, (a commercial resort, golf course, open
6 space, condominiums and private septic tank disposal units)
7 when it assessed impacts on uses adjacent to the 68 acres.
8 However, since the county did not make the zone change
9 conditional upon construction of any specific development, all
10 uses permitted in the CR-2 zone are possible on the property.

11 Uses permitted outright in this zone include:

- 12 a. Summer resorts, including hotels, motels, cabins
and boarding houses.
- 13 b. Retail stores and service establishments.
- 14 c. Summer cottages or residences.
- 15 d. Year round residences.
- 16 f. Golf courses.
- 17 g. Church
- 18 h. School
- 19 i. Tent colonies, recreation clubs, including yacht,
boat, beach, golf and country clubs.
- 20 j. Auto trailer camps and private public parks,
playgrounds and campgrounds.
- 21 k. Boy's and girl's camps.
- 22 l. Dude Ranches⁸

23 Some of these uses are more intensive than others. Some
24 are more prone than others to cause impacts on adjacent uses.
25 Since there is no assurance that the intended commercial resort
26 will be constructed, a more intensive use is possible, e.g.,
retail stores and commercial establishments. The impacts on
adjacent uses which could result from these more intensive uses
were not considered by the county. When making a determination

1 whether a new or modified exception is required by OAR
2 660-04-018, the impacts resulting from the most intensive uses
3 allowed by the proposed change are the appropriate yardstick.

4 Here, the county only assessed impacts expected from an
5 applicant's intended use which is not the most intensive, i.e.,
6 impact producing, use allowed in the CR-2 zone. The county
7 used the wrong yardstick. We therefore sustain the assignment
8 of error.

9 SIXTH ASSIGNMENT OF ERROR

10 Petitioners allege the county violated Statewide Goal 5
11 (open spaces, scenic and historic areas, and natural resources)
12 and LCDC's Goal 5 interpretive rules. Petitioners say the
13 county made no findings about Goal 5 and did not follow the
14 procedures in OAR 660-16-000 et seq for protection of cultural
15 resources. Petitioners acknowledge the county found the Chief
16 Joseph Monument would not be adversely affected by the proposed
17 development. In addition, petitioners recognize the county
18 imposed conditions to prohibit buildings within 300 feet of the
19 monument and to give notice to affected tribal organizations
20 prior to excavation. Nevertheless, petitioners say these
21 findings and conditions are insufficient to comply with Goal 5
22 and OAR 660-16-000.

23 Goal 5 obligates the county to prepare an inventory of the
24 location, quality and quantity of various resources, including
25 historic areas and sites as well as cultural areas. A cultural
26 area is defined in the goal as:

1 "...an area characterized by evidence of an ethnic,
2 religious or social group with distinctive traits,
3 beliefs and social forms."

4 Historic areas are "lands with sites, structures and objects
5 that have local, regional, statewide or national historical
6 significance." Goal 5.

7 When such resources have been identified and included in
8 the required inventory, Goal 5 requires consideration of
9 conflicting uses, including an analysis of the economic,
10 social, environmental and energy consequences of allowing the
11 conflicting uses. Following the analysis, programs must be
12 developed to achieve the goals.

13 The county asserts it has no obligation to follow the Goal
14 5 inventory-analysis-program development pattern after the
15 comprehensive plan has been acknowledged. The Goal 5
16 procedures apply only in the plan formation phase prior to
17 acknowledgement, according to this argument.

18 This line of reasoning does not take into account the
19 statute's language mandating goal compliance for decisions of
20 the kind under review. Amendment and revision of comprehensive
21 plans require compliance with "goals approved by the
22 commission." ORS 197.175(2)(a). Also, LUBA must review
23 certain small tract zoning amendments for compliance with "the
24 goals" notwithstanding an existing acknowledged plan. ORS
25 197.835(5).⁹ These statutes are consistent with Goal 5 which
26 requires programs to resolve conflicts with resources protected
27 by the goal as the conflicts arise. Coates v. LCDC, 67 Or App

1 504, 679 P2d 898 (1984).

2 As petitioners point out, there was extensive testimony at
3 the county hearings by Indian tribal members and tribal
4 organizations about Indian cultural resources on the 68 acres.
5 Record 5i-5m, 5y-5z. One witness testified that the area
6 around Wallowa Lake has Indian burial sites, and sites may
7 exist on the 68 acres. More importantly, the Chief Joseph
8 Monument, a known burial site, lies adjacent to the property in
9 question. According to the testimony, the monument boundary
10 does not demarcate the limits of the burial ground. This
11 testimony by those with special knowledge of the cultural
12 heritage was not challenged or contradicted.

13 OAR 660-16-000(5)(a) gives a planning jurisdiction the
14 option to exclude a cultural resource from its Goal 5
15 inventory.¹⁰ Also, this rule requires justification in the
16 comprehensive plan of a decision not to include a particular
17 site in a plan inventory when challenged by objections.

18 When credible evidence is received by a governing body of
19 the existence of resources protected by Goal 5, local
20 governments must begin an inventory process. Beginning the
21 process includes "collection of available data from as many
22 sources as possible including experts in the field, local
23 citizens and landowners." OAR 660-16-000(1). Only after
24 information is collected, refined and analyzed may the local
25 government determine whether the resource is of significance.
26 At this stage of the process the local government may find the

1 resource is not important enough to warrant inclusion on the
2 plan inventory.

3 The testimony by tribal members was credible evidence of
4 the site's possible value as a protected resource. Although
5 the witnesses were unable to definitely identify the 68 acres
6 as a cultural resource site, their testimony was sufficient to
7 require the county to make further inquiry before rezoning the
8 property. However, the county did not do so. Instead, the
9 site was excluded from consideration for protection under Goal
10 5 because evidence of actual burial sites was not presented at
11 the zone change hearings. Finding L at Record 3k.

12 In cases of this sort, the county is obligated to respond
13 to the allegation that a Goal 5 resource exists by setting
14 forth the justification for not including the resource in its
15 Goal 5 inventory. OAR 600-16-000(5)(a). The county has not
16 yet satisfied this obligation.

17 In summary, we find the county should have applied Goal 5
18 when making its decision. The county failed to take the first
19 step of collecting all available information before making its
20 decision not to place the alleged Indian cultural area in the
21 plan inventory. The county also failed to include in its plan
22 the justification for not including the area in its inventory
23 of cultural areas.

24 We therefore sustain this assignment of error.

25 Remanded.

FOOTNOTES

1
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3 1

ORS 197.610(1) provides:

4 "(1) A proposal to amend a local government
5 acknowledged comprehensive plan or land use
6 regulation or to adopt a new land use regulation
7 shall be forwarded to the director at least 45
8 days before the final hearing on adoption. The
9 proposal forwarded shall contain the text and any
 supplemental information that the local
 government believes is necessary to inform the
 director as to the effect of the proposal. The
 director shall notify persons who have requested
 notice that the proposal is pending."

10 ORS 197.615(1) provides:

11 "(1) A local government that amends an acknowledged
12 comprehensive plan or land use regulation or
13 adopts a new land use regulation shall mail or
14 otherwise submit to the director a copy of the
15 adopted text of the comprehensive plan provision
16 or land use regulation together with the findings
17 adopted by the local government. The text and
18 findings must be mailed or otherwise submitted
19 not later than five working days after the final
20 decision by the governing body. If the proposed
21 amendment or new regulation that the director
22 received under ORS 197.610 has been substantially
23 amended, the local government shall specify the
24 changes that have been made in the notice
25 provided to the director."

20 2

21 The map on page 93 of the WCLUP shows only areas classed as
22 Industrial, Rural Residential and Recreational-Residential
23 outside the Urban Growth Boundary.

23 3

24 Although the county found the south part of the property is
25 classed as Rural-Residential with Recreational Residential on
26 the north, the land use classification maps suggests the
 classifications should be reversed. Lands designated

1 Recreational-Residential are shown around Wallowa Lake which is
2 south of the subject property. Lands designated
3 Rural-Residential are located north of the lake and are
4 adjacent to the Joseph city boundary.

4 4
5 Although not stated in the order, an exception to Goal 14
6 is necessary to allow urban uses permitted in the CR-2 zone
7 outside an urban growth boundary on undeveloped rural land.

7 5
8 As discussed, under the third assignment of error,
9 petitioners say the 68 acres meets the definition of
10 agricultural land described in Goal 3. Therefore, according to
11 petitioners, an exception to Goal 3 was necessary in order to
12 designate the property either Rural-Residential or
13 Recreational-Residential. Both plan classifications authorize
14 non-farm uses.

12 6
13 ORS 197.732(8) provides in part:

14 "As used in this section, 'exception' means a
15 comprehensive plan provision, including an amendment
16 to an acknowledged plan...."

15 OAR 660-04-000 states:

16 "(1) An 'Exception' is a comprehensive plan provision,
17 including an amendment to an acknowledged
18 comprehensive plan...."

18 OAR 660-04-015 also provides:

19 "(1) A local government approving a proposed exception
20 shall adopt as part of its comprehensive plan
21 findings of fact and a statement of reasons which
22 demonstrate that the standards for an exception
23 have been met."

23 7
24 Petitioners' supposition that a Goal 3 exception was taken
25 when the plan was adopted is supported in the agricultural land
26 section of the WCLUP:

25 "Included within the agricultural acreage or the
26 class I - class VI soils are the rural residential

1 classifications adjacent to the four incorporated
2 towns. The inclusion of this zone constitutes an
exception to the above goal." WCLUP at 20.

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Uses permitted outright in the CR-2 zone include the first two uses listed in addition to all uses allowed outright or conditionally in the R-2 zone. The uses listed in this opinion as (c) through (l) are permitted and conditional uses in the R-2 zone.

9

We take particular notice of OAR 660-16-015 which provides that any changes, additions or deletions to the data, findings and decisions regarding Goal 5 resources will be made as a plan amendment, following all Goal 5 steps.

10

"(5) Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:

"(a) Do Not Include on Inventory: Based on information that is available on location, quality and quantity, the local government might determine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information."