BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

RON MANNING,
Petitioner,

vs.

MARION COUNTY,
Respondent.

LUBA No. 2001-195

FINAL OPINION
AND ORDER

Appeal from Marion County.

William C. Cox, Portland, filed the petition for review and argued on behalf of petitioner. With him on the brief was Gary P. Shepherd.

Jane Ellen Stonecipher, Assistant County Counsel, Salem, filed the response brief and argued on behalf of respondent. With her on the brief was Michael J. Hansen.

BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member, participated in the decision.

REMANDED 04/15/2002

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a county ordinance that amends comprehensive plan designations and zoning for 15 parcels removed from the City of St. Paul's urban growth boundary (UGB).

FACTS

In 1999, the City of St. Paul adopted an ordinance that removed land from its UGB. The city's UGB decision means that new comprehensive plan and zoning map designations must be adopted for 15 parcels, in 10 ownerships. The 15 parcels total approximately 102 acres, and are located on the western, southwestern, and eastern periphery of the city limits. At the time of the city's action, each parcel was zoned Urban Transition Farm (UTF). The UTF zone is a county zone designed to encourage the continued practice of commercial agriculture in areas planned for future urban development.[1]

Petitioner has an ownership interest in tax lot 200, an undeveloped 8.4-acre parcel removed from the city's UGB on the western side of the city.[2] Tax lot 200 was designated Industrial on the city's comprehensive plan, and zoned UTF. Soils on tax lot 200 consist entirely of Class II or III agricultural soils, considered high-value soils under the county's

---

[1]The Marion County Urban Zoning Ordinance (UZO) 14.00 provides:

> "The purpose of the UTF (URBAN TRANSITION FARM) zone is to encourage the continued practice of commercial agriculture in areas planned for future urban development. The UTF zone shall be applied in those areas within an urban growth boundary where the applicable urban area comprehensive plan indicates that land should be retained in large blocks, and acreage residential development discouraged, to facilitate efficient conversion to urban use.
>
> "The UTF zone is intended to be a farm zone consistent with ORS 215.203."

[2]Petitioner apparently acquired an ownership interest in tax lot 200 some time during the proceedings before the county. The 8.4-acre parcel is part of a tract that contains two parcels totaling 9.9 acres. The smaller parcel, tax lot 100, contains a house, barn and an accessory structure. The county's findings, and most of the parties' arguments, address both parcels together as a single tract.

zoning ordinance. A ground survey conducted in May 2000 found that grass seed was grown on petitioner's property, in conjunction with a farming operation on adjoining parcels to the north.

Petitioner's parcel is bordered on the east by the city's revised UGB and city limits. On the north tax lot 200 is bordered by several large parcels that are within the city limits but no longer within the UGB. To the northwest are lands outside the city limits zoned for exclusive farm use (EFU). To the west are tax lot 100 and a large parcel formerly within the UGB owned by the city that contains the city's wastewater treatment plant. On the south tax lot 200 is bordered by Blanchet Avenue and, further south, lands within the county zoned for exclusive farm use.

The county board of commissioners notified the city of its concurrence in the city's UGB decision on March 31, 2000. On April 18, 2000, the county board adopted a resolution that initiated consideration of amendments to its comprehensive plan designations and zoning for the 15 parcels, and directed the county planning director to submit recommendations regarding the appropriate designations and zoning. The planning director submitted a recommendation that each of the affected properties be designated Primary Agriculture and zoned EFU, with the exception of two tracts on the eastern side of the city, known as the Smith and Dolan properties, which the director recommended be designated and zoned for rural residential uses.

The county then conducted proceedings for a legislative amendment, pursuant to UZO chapter 38.[3] The county provided individual notice to the affected property owners, as

---

[3]UZO 38 provides, in relevant part:

> "**38.00 DEFINITION.** Any amendment of this zoning ordinance which deletes, supplements, or changes the text hereof, or involves 5 or more contiguous lots in separate ownership, is a legislative amendment.
>
> "**38.01 INITIATION.** Legislative amendments may be initiated by the Board or Planning Commission by resolution. An interested party may request that the Planning

well as notice to all property owners within 750 feet of the affected property. The county board conducted a hearing July 26, 2000, continued to September 13 and October 18, 2000. Petitioner appeared before the county, and argued that his property should either be planned and zoned for rural residential uses or, if it must be planned for agricultural use, it should be zoned Special Agriculture rather than Primary Agriculture. The county board then closed the record, and conducted a work session on November 3, 2000, to consider whether to adopt an exception to statewide Goal 3 (Agricultural Lands) for the Smith and Dolan properties.

On May 15, 2001, the city mayor sent a letter to the county board urging that the board take action to reach a decision. The mayor's letter also suggested that the county consider adopting exceptions and zoning to allow rural residential uses on additional property, including petitioner's. The county board then reopened the record and conducted a hearing on July 11, 2001, to receive additional testimony regarding the appropriate designation and zoning for the affected properties.

On December 5, 2001, the county board adopted the challenged decision, supported by findings addressing applicable statewide planning goals and comprehensive plan standards. The county's decision adopts a Primary Agriculture comprehensive plan map

---

> Commission or Board initiate a legislative amendment. Legislative amendments shall only be initiated by the Board or Planning Commission when the proposed change is in the public interest and will be of general public benefit. If the Board initiates the amendments the resolution shall prescribe whether the Hearings Officer, Planning Commission or Board shall conduct the hearing. If the Planning Commission initiates the amendments the resolution shall prescribe whether the Hearings Officer or Planning Commission shall conduct the hearing.
>
> "**38.02 HEARINGS REQUIRED.** Upon adoption of a resolution initiating a legislative amendment the Zoning Administrator shall schedule a public hearing before the designated body and provide notice as required by law. The Zoning Administrator shall submit a report on the proposal at the hearing. Prior to approval of any amendment which deletes, supplements or changes the text of this Ordinance, the Board shall hold a hearing in addition to any hearing held by the Hearings Officer or Planning Commission.
>
> "* * * * *
>
> "**38.08 FINDINGS.** Approval of a zoning ordinance legislative amendment shall include findings showing that the amendment meets the applicable criteria."

designation for affected properties, including petitioner's, and zones them EFU. The decision also takes a Goal 3 exception for the Smith and Dolan properties, and plans and zones them for rural residential uses. This appeal followed.

REQUEST TO FILE REPLY BRIEF

Petitioner seeks to file a reply brief pursuant to OAR 661-010-0039, to respond to alleged new matters in the response brief.[4] According to petitioner's motion, the response brief argues that the challenged decision is legislative rather than quasi-judicial in character and that, because there is no generally applicable requirement that legislative decisions be supported by findings, the absence of adequate findings supporting a legislative decision may not, in and of itself, provide a basis for reversal or remand. The proposed reply brief argues that the challenged decision is quasi-judicial in character.

The county objects to the proposed reply brief, arguing that the issue of whether the challenged decision is legislative or quasi-judicial is not a "new matter raised in the respondent's brief" within the meaning of OAR 661-010-0039. According to the county, the challenged decision was processed openly as a legislative decision, and its legislative character was well known to all participants, including petitioner. The county also notes that the petition for review recites in the statement of material facts that the decision is a legislative decision. Petition for Review 2.

As discussed below, the assignment of error in the petition for review argues that the county's decision is not supported by adequate findings. The petition for review describes and argues for a standard for adequate findings based on a number of quasi-judicial cases. Notwithstanding the recitation in the statement of facts, the premise underlying the merits of

---

[4]OAR 661-010-0039 provides, in relevant part:

> "A reply brief may not be filed unless permission is obtained from the Board. A request to file a reply brief shall be filed with the proposed reply brief together with four copies as soon as possible after respondent's brief is filed. A reply brief shall be confined solely to new matters raised in the respondent's brief. * * *"

the assignment of error is that the challenged decision is quasi-judicial in character. The response brief challenges that premise. Under these circumstances, we believe a reply brief is warranted to allow petitioner to explain why he believes the challenged decision is quasi-judicial in character. The reply brief is allowed.

ASSIGNMENT OF ERROR

Petitioner argues that the county's findings with respect to his property are inadequate to establish compliance with Goal 3 or to justify applying the Primary Agriculture comprehensive plan designation to petitioner's property or zoning it EFU. According to petitioner, the county's findings fail to respond to issues and evidence petitioner raised below regarding whether petitioner's property is (1) properly designated Primary Agriculture under the county's comprehensive plan; (2) more properly designated and zoned for rural residential uses; and (3) already subject to an exception to Goal 3, because it was previously within the city's UGB. Petitioner argues that the county's findings must respond to those issues. *See Le Roux v. Malheur County*, 30 Or LUBA 268, 271 (1995) (findings supporting a quasi-judicial decision must address issues raised below regarding compliance with approval criteria and, if evidence is conflicting, the findings must state what facts the local government relies upon and explain why those facts lead to the conclusion that the applicable standard is satisfied).

A. Legislative or Quasi-Judicial

The county responds that petitioner's understanding of the appropriate standard for findings is premised on the mistaken notion that the challenged decision is quasi-judicial in character. The county argues that the challenged decision is legislative, and that the adopted findings, together with arguments in the county's brief and citations to the record, are adequate to demonstrate that the decision complies with all applicable standards. *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560, 563-64 (1994) (although there is no generally applicable requirement that legislative decisions be supported

by findings, for LUBA to perform its review function a challenged legislative decision must either be supported by findings demonstrating compliance with applicable standards, or the respondent must provide in its brief argument and citations to facts in the record adequate to demonstrate that the decision complies with applicable standards); *see also Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, ___ P3d ___ (2002) (to permit LUBA and the court to exercise their review functions, there must be enough in the way of findings or accessible material in the record of a legislative decision to show that applicable criteria were applied and that required considerations were indeed considered). The county contends that the standards for adequacy of findings in quasi-judicial decisions described in *Le Roux* do not apply to review of findings in support of a legislative decision. Therefore, the county contends, even if its findings fall short of the standards that are articulated in *Le Roux*, that shortcoming, in and of itself, is not a basis to remand a legislative decision. *Johnson v. City of La Grande*, 37 Or LUBA 380, 388, *aff'd* 167 Or App 35, 1 P3d 1036 (2000); *Churchill v. Tillamook County*, 29 Or LUBA 68, 73-74 n5 (1995).

UZO 38.08 requires that the county adopt findings showing that the proposed legislative amendment "meets the applicable criteria." *See* n 3. Thus, even if the decision is correctly characterized as legislative, the county's decision must be supported by findings, and those findings must be sufficient to show that the amendment "meets the applicable criteria." The county is therefore incorrect that the absence or insufficiency of findings required by UZO 38.08 may not be a basis for remand of the county's legislative decision. *See Foster v. Coos County*, 28 Or LUBA 609, 612 (1995) (the absence of findings required by code for a legislative decision, or the adoption of purely conclusory findings, can provide a basis for reversal or remand).

Under these circumstances, and given the limited nature of petitioner's assignment of error, it may make little difference whether the challenged decision is properly characterized

as legislative or quasi-judicial.[5] The ultimate standard—whether the decision complies with applicable standards—is the same in reviewing both quasi-judicial and legislative decisions. The only potential difference in the present case is the standard of review we would apply to petitioner's findings challenges. The above-cited cases certainly suggest that findings supporting quasi-judicial decisions play a more essential role in establishing compliance with applicable criteria, and hence are subject to more rigorous scrutiny, than findings supporting legislative decisions.

However, we need not decide in this case whether the challenged decision is properly characterized as legislative or quasi-judicial.[6] We conclude, for the reasons below, that even if the decision is a legislative one, the findings and the portions of the record cited to us are insufficient to demonstrate that "applicable criteria were applied and that required

---

[5]As noted, petitioner's assignment of error is limited to a findings and evidentiary challenge, and does not, for example, argue that the county violated petitioner's procedural rights in following the code procedure for legislative decisions, or failed to provide notice to petitioner as a result of following the legislative process.

[6]The test for determining whether a local government decision is legislative or quasi-judicial was articulated in *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 591, 601 P2d 769 (1979), and its progeny. The *Strawberry Hill 4 Wheelers* test for determining whether a decision is legislative in nature requires consideration of three factors:

1. Is the process bound to result in a decision?

2. Is the decision bound to apply preexisting criteria to concrete facts?

3. Is the action directed at a closely circumscribed factual situation or a relatively small number of persons?

Valerio v. Union County, 33 Or LUBA 604, 607 (1997) (applying the considerations enumerated in *Strawberry Hill 4 Wheelers*). The more definitely the questions are answered in the negative, the more likely the decision under consideration is a legislative land use decision. *Id*. Each of the factors must be weighed, and no single factor is determinative. *Estate of Gold v. City of Portland*, 87 Or App 45, 740 P2d 812, *rev den* 304 Or 405 (1987).

Petitioner and the county argue for different results under the *Strawberry Hill 4 Wheelers* factors. In addition, the county argues that its characterization of the challenged decision as legislative is consistent with, and mandated by, comprehensive plan and zoning code language that defines legislative and quasi-judicial plan and zone amendments and prescribes different procedures for both. *See* UZO 38.00 (legislative) and 39.00 (quasi-judicial).

considerations were indeed considered." *Citizens Against Irresponsible Growth*, 179 Or App at 16 n 6.

B. Petitioner's Challenges

1. Alternative Plan Designations

As noted, petitioner challenges the county's decision to designate his property Primary Agriculture, and argues that the county's decision fails to address alternative plan designations and zoning map classifications. In assessing the appropriate comprehensive plan designation for the disputed properties, the county considered the "Agricultural Lands" element of its comprehensive plan, pursuant to UZO 38.05. The agricultural element describes four "criteria" to determine which lands are subject to the agricultural goals and policies. Those four criteria are:

> "a. Soils that are suitable for agricultural production using accepted farming practices, especially Class I-IV soils.
>
> "b. Areas of open land that are relatively free [from] non-farm conflicts. Areas that are still capable of being farmed.
>
> "c. Areas that are presently in farm production or are capable of being farmed now or in the future.
>
> "d. Those other lands that are necessary to protect farm uses by limiting adjoining non-farm activities." Marion County Comprehensive Use Plan (MCCLUP) 14.

The county's comprehensive plan describes two types of agricultural designations: Primary Agriculture and Special Agriculture.[7] The county adopted general findings concluding that

[7]The county's comprehensive plan describes the Primary Agriculture designation in relevant part as follows:

> "The areas identified as Primary Agriculture on the Land Use Plan Map are intended, as the name implies, primarily for agricultural use in large commercial farm units. The existing commercial agricultural enterprise of these areas is characterized by extensive agricultural use, a large variety of crop types and a lack of significant areas of non-farm uses. And, quite importantly, there is widespread support from property owners for maintaining these areas for the exclusive use of farming and protecting them from non-farm conflicts. These areas are the

eight of the 10 ownerships are agricultural land under the above-quoted criteria and are properly designated Primary Agriculture and zoned EFU.[8] In addition, the county adopted specific findings addressing petitioner's property.[9]

---

foundation of the agricultural industry in Marion County and are intended to be maintained for long term agricultural production.

"The intent of the Primary Agriculture designation will be implemented by applying the EFU * * * zone as established in ORS 215.203 *et seq*. and the County Zoning Ordinance.

"To make the farmland protection program effective it is necessary to apply the Primary Agriculture designation and consequent EFU * * * zoning to large areas and in a blanket-like manner. Those lands on which EFU zoning is applied are predominantly large commercial farm parcels with Class I-IV soil classifications. There are, however, intermingled, occasional parcels that are not economic or commercial farm units by virtue of size, shape, soils or use. Where they are few in number and in area, these parcels are included within the Primary Agriculture designation to maintain the solidarity and preference for the farming community and to minimize conflicts on surrounding lands. Often these parcels can be leased for farm use or be combined with a farm operation. * * *" MCCLUP 15.

The MCCLUP describes the Special Agriculture designation as follows:

"The special agriculture land use designation identifies less extensive and specialized rural agricultural areas. The purpose of this designation is to identify, for special treatment, those lands in Marion County that are characterized by small scale commercial farm enterprises or areas with a mixture of good and poor farm soils where the existing land use pattern is a mixture of large and small farm units and some acreage homesites. This classification is based on the premise that protection of Class I through IV soils in areas of mixed soil classification is feasible and desirable and that existing and potential productivity of the land resource can be protected. It also recognizes that protection of farm soils need not preclude the use of significant areas of poor farm soil for rural residential use.

"These lands are characterized by a diversity of existing conditions that include:

"a. Predominantly poorer hill soils with fewer crop type choices, often involving specialized crops. Typical soil types are a mixture of Class II through VI for agriculture.

"b. Generally a mixture of parcel sizes ranging between 5 and 40 acres.

"c. Existence of, or potential for, hobby or small farming units that are not full-time commercial operations.

"d. Special terrain, vegetation or other land conditions that could allow additional small farms with residences to be located without adversely affecting commodity production from this area." MCCLUP 17-18.

[8]The county's findings state, in relevant part:

"Primary Agriculture is the designation used to identify land that is in 'large commercial farm units; * * * [t]hese areas are the foundation of the agricultural industry in Marion County and

Petitioner challenges the conclusion that his property is properly designated Primary Agriculture. According to petitioner, and as the county's findings note, the Primary Agriculture designation is intended for property that will be "maintained for long-term agricultural production." Record 20. The county's findings can be read to conclude, at least implicitly, that petitioner's property can be "maintained for long-term agricultural production." *Id.* However, petitioner cites to evidence that the grass seed operation that the county observed on the property in May 2000 was part of a farming operation to the north, a portion of which was within city limits, that will cease when the land to the north is

---

are intended to be maintained for long term agricultural production.' It is further characterized by: [quoting the four agricultural lands criteria].

"The [county board] finds that [five ownerships, including petitioner's property] represent this type of agricultural land. These properties are almost completely in agricultural use and are surrounded by properties designated Primary Agriculture and in agricultural production. Further, these properties are comprised entirely of Class I through IV soils. The parcel sizes range from 6.4 to 28.7 acres, are predominantly in farm production, capable of being farmed in conjunction with adjacent parcels of land, and appear to be currently farmed as part of commercial farm operations. * * *" Record 20.

[9]The county's findings address petitioner's property, as follows:

"[The tract including petitioner's property consists of] 9.9 acres as two parcels of land at 3777 Blanchet Ave. Although a house, a barn, and an accessory structure are located on this property, approximately 96% of the land is undeveloped. A ground survey on May 3, 2000, determined that grass seed was being grown on the property. This property was zoned UTF when it was inside the St. Paul UGB. All portions of this property have been removed from the city's UGB.

"Concord Silt Loam (III) comprises 59% of the soils on this property. Amity Silt Loam (II) comprises 34% of the soils on this property. Woodburn Silt Loam (II/III) comprises 7% of the soils on this property. Because all of the soils are of Class I-IV, the property is considered agricultural land by Goal 3. This property is also considered high-value farmland by Marion County's EFU zoning provisions.

"Based on evidence of the soils found on this property and the current farm use, the appropriate designation for this property is Primary Agriculture. To be consistent with zoning on adjacent properties, and to implement the Primary Agriculture designation, the appropriate zoning is [EFU].

"Designating this property Primary Agriculture and zoning it EFU achieves the purpose of the EFU zoning in preserving high-value soils for farm use and keeping farm land in large parcels. Further, the designation and zoning of this land for agricultural use meets the goals of the Marion County Comprehensive Plan and the policies it establishes by preserving and protecting agricultural resource land by minimizing the possibility that non-farm uses will conflict with adjacent or nearby farm uses." Record 22-23.

developed for urban uses. Petitioner cites to evidence that, when land to the north is developed, the farmer who runs the grass seed operation will no longer be interested in using petitioner's property as part of that operation.

Second, petitioner challenges the evidentiary support for the county's finding that the eight tracts designated and zoned for agricultural uses are "surrounded by properties designated Primary Agriculture and in agricultural production," insofar as that finding applies to petitioner's property. Record 20. According to petitioner, the record shows that his property is bordered on the north and east by lands within the city limits, on the south by a road, and on the west by the city wastewater treatment plant.

We understand petitioner to argue that, viewed in light of the foregoing evidence, his property is not appropriately designated Primary Agriculture. Petitioner argued below that the most appropriate designation and zoning is for rural residential uses, just as rural residential designation and zoning was appropriate for the Smith and Dolan properties. In the alternative, petitioner argued that the Special Agriculture designation fits his property more accurately than the Primary Agriculture designation, and that the county should designate his property Special Agriculture. Record 378. Petitioner seeks remand so the county can adopt findings addressing whether, in light of the evidence in the record, his property is more appropriately designated as something other than Primary Agriculture.

The key issue before the county was the appropriate plan designation and zoning for the subject properties, including petitioner's. In our view, determining the appropriate plan designation and zoning classification required the county to consider any potentially suitable designation or classification supported by the record. The county's findings do not appear to consider any designation for petitioner's property other than Primary Agriculture. The county's brief does not cite us to any evidence or material in the record that (1) shows that the county considered other potentially applicable comprehensive plan map designations or (2) explains why other potentially suitable designations should not be applied. As far as we

can tell from the decision and record cited to us, the county's inquiry with respect to petitioner's property began and ended with consideration of whether his property shared some of the characteristics of lands described in the Primary Agriculture designation. That limited scope of inquiry and the resulting decision and record are insufficient to show that "required considerations were indeed considered." *Citizens Against Irresponsible Growth*, 179 Or App at 16 n 6.

We do not mean to imply agreement with petitioner's argument that the Primary Agriculture designation is inappropriate for his property, or that other designations and zoning classifications are more appropriate.[10] It may well be the case that, even after considering alternative designations, the county will continue to believe that the Primary Agriculture designation is the appropriate designation. The county's choice among several potentially suitable designations is one that is not likely to be disturbed on evidentiary grounds, given the generally deferential standard of review that LUBA applies to evidentiary challenges.[11] Nonetheless, until the county actually considers potentially suitable alternative designations, the decision and record are insufficient to demonstrate compliance with applicable standards.

2. Exception Land

The remaining issue is petitioner's contention that the county erred in failing to address his argument that, because his property at one time was within the city's UGB, it is

---

[10]In particular, there may be good reasons why petitioner's property should not be planned and zoned for rural residential uses, or why it does not presently qualify for an exception to Goal 3, notwithstanding the county's decision that an exception to Goal 3 was warranted for the Smith and Dolan properties. *See* Record 26-28 (findings explaining why the county believes an exception to Goal 3 is appropriate for the Smith and Dolan properties).

[11]Statewide Goal 2 (Land Use Planning) requires that local government land use decisions, including legislative decisions, be supported by an "adequate factual base." LUBA has held that the Goal 2 requirement for an adequate factual base requires that a legislative land use decision be supported by substantial evidence. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 377-78, *aff'd* 130 Or App 406, 882 P2d 1120 (1994). Substantial evidence is evidence a reasonable decision maker would rely upon to support a conclusion. *Id.* at 378.

necessarily land subject to an exception to Goal 3. That being the case, petitioner argues, his property is not, by definition, "agricultural land" for purposes of the county comprehensive plan provisions implementing Goal 3. From that premise petitioner argues that the only appropriate designation and zoning are for non-agricultural uses.

The county implicitly rejected petitioner's argument when it adopted an exception to Goal 3 in designating and zoning the Smith and Dolan properties for non-agricultural uses. Such an exception would be unnecessary under petitioner's view of the law. It is not clear whether petitioner seeks our review of the merits of his position, or remand so that the county can explain its position.

Whatever the case, we conclude that remand on this basis is not warranted. Petitioner cites no authority for his position that land removed from a UGB is or remains land subject to an exception to Goal 3. That is not surprising, as few reported cases involve removal of land from a UGB. We note that OAR 660-004-0010(1)(c)(A) provides that an exception is not required to establish an urban growth boundary.[12] It is not clear whether the properties affected by the county's decision were included in the city's UGB at the time that UGB was originally established. However, even if petitioner is correct that his property was subject to

---

[12]OAR 660-004-0010(1) provides in relevant part:

> "(1) * * * The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land. These statewide goals include but are not limited to:
>
> "* * * * *
>
> "(c) Goal 14 'Urbanization' except as provided for in paragraphs (l)(c)(A) and (B) of this rule, and OAR 660-014-0000 through 660-014-0040:
>
> "(A) An exception is not required to an applicable goal(s) for the establishment of [a UGB] around or including portions of an incorporated city when resource lands are included within that boundary. * * *
>
> "(B) When a local government changes an established [UGB] it shall follow the procedures and requirements set forth in Goal 2 'Land Use Planning,' Part II, Exceptions. * * *"

an exception or the legal equivalent of an exception to Goal 3, by virtue of its former inclusion in the city's UGB, petitioner does not explain why removal of that property from the UGB would leave that property subject to an exception as a matter of law. If the sole predicate for the "exception" was the property's inclusion in the UGB, it seems more logical that removal from the UGB would also negate any previously approved "exception" that may have been adopted to justify including the property within the UGB.

For the foregoing reasons, petitioner's assignment of error is sustained in part.

The county's decision is remanded.