

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 DEPARTMENT OF LAND
5 CONSERVATION AND DEVELOPMENT,

6 *Petitioner,*

7
8 vs.

9
10 KLAMATH COUNTY,

11 *Respondent,*

12
13 and

14
15 PARADISE HILLS, LLC,

16 *Intervenor-Respondent.*

17
18 LUBA No. 2002-036

19
20 FINAL OPINION

21 AND ORDER

22
23 Appeal from Klamath County.

24
25 Steven E. Shipsey, Assistant Attorney General, Salem, filed the petition for review
26 and argued on behalf of petitioner. With him on the brief were Hardy Myers, Attorney
27 General, and Michael D. Reynolds, Solicitor General.

28
29 Reginald R. Davis, County Counsel, Klamath Falls, filed a response brief and argued
30 on behalf of respondent.

31
32 Michael L. Spencer, Klamath Falls, filed a response brief and argued on behalf of
33 intervenor-respondent. With him on the brief was Spencer & Spencer, LLP.

34
35 BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
36 participated in the decision.

37
38 AFFIRMED

07/11/2002

39
40 You are entitled to judicial review of this Order. Judicial review is governed by the
41 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner challenges a county decision approving a comprehensive plan map amendment and zone change for a 680-acre parcel from Non-Resource (NR) to Rural Residential (R-5).

FACTS

This matter is before us for the third time. In *DLCD v. Klamath County*, 38 Or LUBA 769, 771-72 (2000) (*Klamath County I*), we described the facts as follows:

“The subject property is east of U.S. Highway 97 (Highway 97), approximately two and one-half miles north of the urban growth boundary of the City of Klamath Falls. This tract of land is surrounded by lands zoned and planned for nonresource and rural residential use. Of the lands surrounding the tract that are zoned R-5, the average lot size is between 2.11 and 3.54 acres. About half of these lots are developed with homes.

“* * * * *

“Shady Pine Road lies to the north of the property and intersects with Highway 97. The decision anticipates that access to the interior roads on the subject property will be from Shady Pine Road. South Wocus Road lies to the south of the subject property and also intersects with Highway 97.

“In 1995, the county approved an 830-acre subdivision project known as Paradise Hills, Tract 1316, on the subject property. This subdivision created 36 20-acre residential lots. * * * In 1999, intervenor submitted new applications to the county to amend the designation on the comprehensive plan map [for 680 of the original 830 acres] from NR to Rural Residential and the zoning map designation from NR to R-5. Intervenor also submitted an application requesting approval for either a planned unit development (PUD) or a 118-lot subdivision. * * * On May 2, 2000, the county adopted a written order amending the zoning map designation from NR to R-5. In the order, the county found that the change ‘will not result in urbanization and therefore an exception to Goal 14 is not required.’ The order also concluded that the proposed change will not significantly affect transportation facilities.” (Footnotes, record citation omitted.)

In *Klamath County I*, we remanded the county’s decision in part for failing to adequately address Goal 12 (Transportation), the Transportation Planning Rule (TPR), and Goal 14 (Urbanization). During the first remand proceedings, intervenor modified its

1 application, withdrawing its proposed 118-lot PUD, which contained lots ranging from 2.2 to
2 21.4 acres in size, and proposing instead a standard 136-lot rural residential subdivision, with
3 no lot smaller than five acres. The county reapproved intervenor's application, and again
4 DLCD appealed the decision to LUBA. *DLCD v. Klamath County*, 40 Or LUBA 221 (2001)
5 (*Klamath County II*). We remanded the second decision to the county because the county
6 again failed to adopt adequate findings addressing Goal 12, the TPR and Goal 14.

7 As a result of our two remands, in 2001 intervenor submitted a revised application to
8 the county. The revised application continued to request a plan amendment and zone change
9 for the 680 acres from NR to R-5. However, in addition, intervenor requested that a limited
10 use overlay be placed on the property. On February 27, 2002, the board of county
11 commissioners approved the revised application, finding (1) that the proposed application is
12 either consistent with Goal 14, or is the equivalent of an exception to Goals 11 (Public
13 Facilities and Services) and 14; (2) that despite the subject property's proximity to the City
14 of Klamath Falls' urban growth boundary (UGB), the plan amendment and zone change as
15 approved would not undermine the effectiveness of the boundary; and (3) that the proposed
16 use of Highway 97 would not "significantly affect" a transportation facility as that term is
17 used in OAR 660-012-0060(1).

18 With the addition of the limited use overlay, the county found that (1) no planned unit
19 development could be approved on the parcel that would result in the establishment of
20 community water or sewer systems in the absence of an exception to Goal 14; (2) no
21 commercial uses would be allowed; and (3) no planned unit development would be approved
22 that would "result in urbanization" unless an exception to Goal 14 is taken. The county's
23 decision provides an opportunity for intervenor to propose a PUD application that may
24 contain lots smaller than five acres, so long as the density will not result in "urbanization."
25 This appeal followed.

1 **ASSIGNMENT OF ERROR**

2 The only remaining issue in this appeal is whether the county’s findings are adequate
3 to demonstrate that the proposed development either is consistent with Goal 14, or that an
4 adequate exception to Goal 14 has been taken. The Department of Land Conservation and
5 Development (DLCD or petitioner) argues that the proposal, even as amended, is
6 inconsistent with Goal 14 and that the county’s finding that an exception to Goal 14 had been
7 established is in error.

8 **A. Exceptions to Goal 14**

9 As stated above, the county’s decision concludes that the findings it adopted
10 constitute an adequate exception to Goal 14.¹ In the alternative, the decision concludes that
11 the proposed plan amendment and zone change is consistent with Goal 14. DLCD challenges
12 the county’s findings that it adopted an adequate exception to Goal 14. According to DLCD,
13 the county’s “goal exception” misconstrues ORS 197.732, Goal 2, Part II and OAR chapter
14 660, division 4 pertaining to exceptions.

15 Neither respondent nor intervenor addresses petitioner’s arguments that the county’s
16 “exception” to Goal 14 is inadequate. We agree with DLCD that because the county’s
17 findings do not address ORS 197.732, Goal 2, Part II and OAR chapter 660, division 4, the

¹ The county’s findings state in relevant part:

“The proposed zone change, along with the limited use overlay that prevents commercial development, prohibits a PUD that would result in urbanization and the development of community water and/or sewer services, and the amendment of the plan designation prevents urbanization and creates an exception to Goal 14. Even without the overlay an exception to Goal 14 is not required. * * *

“* * * * *

“The limited use overlay prevents the creation of a community water system or a community sewer system and the evidence clearly shows that individual water wells and septic systems are feasible. The limited use overlay also prevents commercial development of this area. Therefore there is an exception to Goals 11 and 14 created by the limited use overlay.” Record 2-3.

1 county’s findings are inadequate to establish an exception to Goal 14. As a result, the
2 county’s decision may only be affirmed if the findings demonstrate that the proposed
3 development is consistent with Goal 14.

4 **B. Consistency with Goal 14**

5 Goal 14 provides “for an orderly and efficient transition from rural to urban land
6 use.”² Goal 14 Purpose Statement. Development outside UGBs must not have the effect of
7 undermining those UGBs. *Medford v. Jackson Cty*, 2 Or LUBA 387, 391 (1981). In addition,
8 in the absence of an exception to Goal 14, land outside UGBs may only be used for rural
9 purposes. *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 477, 724 P2d 268
10 (1986). In this appeal, petitioner argues that the proposed plan amendment and zone change
11 will (1) undermine the effectiveness of the Klamath Falls UGB by allowing sprawl and the
12 inefficient development of land; and (2) permit urban uses on rural lands.

13 **1. The Proposed Development Will Undermine the Effectiveness of**
14 **the UGB**

15 DLCD argues that there is no real difference between the residential uses within the
16 Klamath Falls UGB and those that will occur on the subject property as a result of the

²Neither the statewide land use goals nor Land Conservation and Development Commission (LCDC) administrative rules define urban or rural *uses*. However, LCDC goal definitions define “urban land” and “rural land” as follows:

“**URBAN LAND.** Urban areas are those places that must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also:

“(a) Have concentrations of persons who generally reside and work in the area[;]

“(b) Have supporting public facilities and services.”

“**RURAL LAND.** Rural lands are those that are outside the urban growth boundary and are:

“(a) Non-urban agricultural, forest or open space lands or,

“(b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and that are not suitable, necessary or intended for urban use.”

1 county's decision. Therefore, DLCD argues, permitting such similar uses within close
2 proximity to the UGB will undermine the effectiveness of the UGB. DLCD explains that
3 there is a surplus of residential land within the Klamath Falls UGB and argues that the
4 proposed residential use of the subject property will result in people moving to five-acre lots
5 rather than residing on smaller lots within the UGB, where services can be provided more
6 efficiently and effectively.

7 DLCD further argues that approval of the plan amendment and zone change may
8 presage other plan amendments and zone changes to other NR properties in the vicinity that
9 lie between the UGB and the subject property. According to DLCD, using the same rationale
10 intervenor used in this case, an additional 370 acres of NR land in proximity to the subject
11 property could be converted to R-5 densities.

12 DLCD also contends that the evidence demonstrates that most residents of the
13 proposed development will work in Klamath Falls rather than work within or near the subject
14 property. Those residents will rely on Highway 97 to commute to the city. DLCD notes that
15 children from the development will attend schools within the city and will need to be
16 transported from the subject property to their schools. According to DLCD, the additional
17 local commuter traffic that will result from the plan amendment and zone change will
18 adversely affect Highway 97 because it will be congested with vehicles originating from the
19 proposed development, thereby reducing the ability of Highway 97 to serve as an inter-city
20 and interstate highway.

21 The county and intervenor (together, respondents) argue that the proposed
22 development will not undermine the effectiveness of the Klamath Falls UGB. They contend
23 that the county considered the potential impact of the proposed plan amendment and zone
24 change on the Klamath Falls UGB, and determined that (1) the persons who are likely to
25 purchase lots in the proposed development differ from those who would purchase lots within
26 the UGB; (2) there is a qualitative difference between the proposed R-5 lots and the much

1 smaller residential lots that are available within the UGB; (3) there is a shortage of available
2 rural residential land within proximity to Klamath Falls; and (4) the two and one-half mile
3 distance between the proposed development and Klamath Falls provides an adequate buffer
4 between the rural residential and urban residential uses and makes it less likely that the
5 proposed lots will compete with lots within the UGB. In addition, the county notes that
6 DLCD did not challenge the county's finding that the proposed plan amendment and zone
7 change will not adversely affect Highway 97.

8 With respect to the possibility that approval of this development will result in other
9 properties in the area being subject to similar applications, respondents counter that that
10 outcome is speculative, and that any actual impact can be addressed at the time applications
11 for other properties are considered. Respondents argue that the potential for sprawl on other
12 properties should not prevent the subject property from being rezoned to R-5.

13 We do not agree with DLCD that the proposed use of five-acre lots is sufficiently
14 similar to the residential uses that may occur within the UGB that there is no qualitative
15 difference between the two for the purposes of Goal 14. There is evidence in the record on
16 which the county relied to show that the persons who are likely to move to the subject
17 property are people who are seeking a rural experience within a 10-mile proximity to
18 Klamath Falls. In the absence of the proposed development, the evidence shows, those
19 people will commute to and from other rural areas as far as 35 miles away. That evidence
20 supports the county's finding that the potential residents of this development differ from the
21 population that would look for housing within the UGB and therefore will not undermine the
22 residential development that occurs within the UGB. Petitioner cites to no countervailing
23 evidence.

24 Similarly, we agree with respondents that in this circumstance, the types of public
25 services that will be provided to the subject property will not undermine the UGB. Highway
26 97 exists and is currently used for interstate, inter-city and local travel. That will not change

1 as a result of the challenged decision. The only other arguably “urban” service that DLCD
2 points to—schools—is being provided within the urban growth boundary and there is
3 evidence in the record to support the county’s finding that there is adequate school capacity
4 to serve the projected student population that will originate from the subject property.

5 Nothing in Goal 14 expressly requires the county to analyze the potential impact of
6 the proposed rezoning on similar property in the area or the cumulative impact of the
7 potential rezonings and development in the area on the Klamath Falls UGB. Even if such
8 requirements can be implied, we agree with respondents that the concern DLCD expresses
9 with regard to cumulative impact can be addressed at the time any subsequent rezoning
10 applications are being reviewed.

11 In all, we conclude that (1) the distance between the subject property and the Klamath
12 Falls UGB; (2) evidence that persons likely to reside in the proposed development would not
13 otherwise reside in the UGB; (3) the size difference between the proposed five-acre lots and
14 the .16-acre lots allowed within city limits; (4) the limitation on the use of property to
15 residential uses without public sewer and water; and (5) the limited provision of public
16 services, such as roads and schools, support the county’s conclusion that the plan amendment
17 and zone change will not undermine the effectiveness of the Klamath Falls UGB.

18 **2. The Proposed Uses are Urban Rather than Rural**

19 DLCD argues that, for many of the same reasons argued above, the proposed
20 residential use of the subject property is urban rather than rural in nature. DLCD notes that
21 the proposed development could add over 300 persons to the Klamath Falls region, a number
22 that is twice as large as the population of many of the county’s rural communities. DLCD
23 argues that the potential increase in population on the 680 acres is urban, in part because of
24 the number of dwellings that could be approved on the subject property and in part because
25 the residents would be living in relatively close proximity to the Klamath Falls UGB and
26 would be working and obtaining services located within the UGB on a regular basis.

1 In addition, DLCD argues the county’s interpretation of Klamath County
2 Comprehensive Plan (KCCP) Goal 11 Policy 11 does not prevent community water or sewer
3 systems from being installed on the property.³ According to DLCD, the county’s
4 interpretation merely establishes that any particular development that is proposed may not
5 provide for community water or sewer unless those systems are approved as an exception to
6 Goals 11 and 14. In this case, DLCD argues that the plan amendment and zone change to R-5
7 may only be approved as being consistent with Goal 14 if no community water and sewer
8 may be approved on the subject property. DLCD contends that the challenged decision
9 permits intervenor to submit an urban PUD application, complete with community water and
10 sewer systems, and that PUD may be approved, provided the county takes an exception to
11 Goals 11 and 14 as part of that PUD application. DLCD also argues that, even if the adoption
12 of the limited use overlay will have the result of prohibiting community water and sewer
13 systems on the property, that prohibition alone is insufficient to show that the proposed
14 development is not urban.

15 Intervenor responds that DLCD’s argument is again speculative, and focuses on what
16 *may be* approved subsequent to the plan amendment and zone change rather than what *was*

³ KCCP Goal 11, Policy 11 provides, in relevant part:

“The County shall establish appropriate [densities] and corresponding levels of services for rural lands.”

The policy is followed by an “Implementation” section that, in relevant part, provides that neither community water nor community sewer is appropriate in the R-5 zone. However, the Implementation section includes a note that:

“[T]he proposed development of a community water (or sewer) system may be appropriate [within certain zones, including the R-5 zone] and * * * a plan amendment may be required prior to approval of the development and an exception to Goal 11 and Goal 14 may be required.”

The county interpreted this note to mean that:

“[A] community water and/or sewer system is prohibited in an R-5 zone unless a plan amendment is adopted prior to the approval of the development and an exception is taken to Goal 11 and Goal 14.” Record 3-4.

1 approved. Intervenor contends that the county approved a plan amendment and zone change
2 for rural uses only, and adopted a limited use overlay that prohibits community water and
3 sewer systems and prohibits commercial uses. According to intervenor, there is nothing in
4 the size of the subject property or the number of residents that may occupy it that supports a
5 conclusion that the area will be urban as a result of the plan amendment and zone change.
6 Intervenor points to the county’s findings that there are other rural subdivisions within the
7 county that are of similar size and scale to support its contention that this proposal is not
8 urban.

9 Intervenor argues that OAR chapter 660, division 22 (the Unincorporated
10 Communities Rule) lends support to the county’s conclusion that the proposed plan
11 amendment and zone change will result in rural development. According to intervenor, the
12 rule defines four different types of communities. Three are classified as “rural.” The fourth is
13 defined as an “urban unincorporated community.” OAR 660-022-0010(9).⁴ Intervenor argues
14 that if OAR 660-022-0010(9) is used as a guide to determine the difference between urban
15 and rural uses, the proposed uses on the subject property are clearly rural. Intervenor argues
16 that the proposed plan amendment and zone change has none of the threshold features of an
17 unincorporated urban community. Therefore, intervenor contends, the county’s conclusion
18 that the proposed development is not urban should be affirmed.

⁴ OAR 660-022-0010(9) defines “urban unincorporated community” as “an unincorporated community which has the following characteristics:

- “(a) Includes at least 150 permanent residential dwelling units;
- “(b) Contains a mixture of land uses, including three or more public, commercial or industrial land uses;
- “(c) Includes areas served by a community sewer system; and
- “(d) Includes areas served by a community water system.”

1 Lot sizes of one acre or less are clearly urban, and lot sizes greater than 10 acres are
2 clearly rural. Whether densities between those extremes are urban or rural depends on the
3 types of urban services to be provided and the proximity of the proposed development to
4 urban growth boundaries. *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or at 506-
5 507. While not conclusive evidence of urbanization, public water and sewer systems are
6 major indicators of urban development. *See 1000 Friends of Oregon v. LCDC (Curry*
7 *County)*, 301 Or at 504 (water and sewer are major indicators of urban development);
8 *Kaye/DLCD v. Marion County*, 23 Or LUBA 452 (1992) (approval of an 85-unit PUD on
9 72.5 acres of a 468-acre parcel is urban when the proposed lot size is 20,000 square feet and
10 the lots will be served by community sewer and water).

11 Here, the county approved a plan amendment and zone change that, without more,
12 will permit five-acre lots on the subject property. The limited use overlay prohibits the
13 establishment of community sewer and water systems. No commercial development will be
14 permitted. In addition, there is no evidence that the City of Klamath Falls will be extending
15 services to the subject property, which is two and one-half miles from its UGB. In all, we
16 conclude the county could find, based on the evidence before it, that the proposed plan
17 amendment and zone change will not result in urban development and is therefore consistent
18 with Goal 14.

19 We recognize that at some future time, there may be an application that could result
20 in urban development on the property. However, we believe that the county's interpretation
21 of KCCP Goal 11, Policy 11 to prohibit such development in the absence of an exception to
22 Goals 11 and 14 is adequate to ensure that such urban development will not occur as a matter
23 of course.

24 **C. Consistency with County Plan Policies Pertaining to Development on NR**
25 **Lands**

26 DLCD argues that the county failed to adopt findings addressing KCCP Land Use
27 Planning Policy 11 (Policy 11), which provides:

1 “Lands which are not agricultural or forest lands as defined in Statewide
2 Planning Goals 3 and 4 shall be designated [NR] and [shall be] subject to the
3 regulations of the [NR] zone contained in the Land Development Code.

4 “Rationale:

5 “• To identify and plan appropriate uses and densities for non-
6 agricultural and non-forest lands compatible with adjacent resource
7 and non-resource lands and commensurate with existing and proposed
8 levels of services.

9 “Implementation:

10 “• Lands identified in Klamath County as non-resource consistent with
11 the methods and findings contained in the County’s ‘planning process
12 for identifying and designating residential, commercial, and industrial
13 lands,’ shall be planned [NR] and zoned [NR].” KCCP 12.⁵

14 Intervenor concedes that this issue was raised by DLCD in prior appeals, but
15 contends that because LUBA remanded the county’s decision on other grounds, and DLCD
16 did not appeal LUBA’s decision, DLCD is now prevented from arguing that the county failed
17 to comply with Policy 11. In any event, intervenor argues that Policy 11 does not, by itself,
18 prohibit the rezoning of non-resource land to other uses. Intervenor points to KCCP Public
19 Facilities and Services Policy 12 (Policy 12) to support its contention that non-resource land
20 may be subject to other plan and zoning designations.

21 Policy 12 provides, in relevant part:

22 “The County shall require a plan amendment to change from a ‘Non-
23 Resource’ designation (1 dwelling unit/20 acres) to a higher density rural
24 designation (1 dwelling unit/5 acres). * * *

⁵ DLCD also argues that the county failed to adopt findings that demonstrate compliance with KCCP Public Facilities and Services Policy 18. The county adopted amendments to the KCCP on September 8, 1999. Part of those amendments deleted KCCP Public Facilities and Services Policy 18. The application that led to the challenged decision was filed on December 3, 1999. The standards in effect at the time the application was submitted are the standards by which the application is to be judged. ORS 215.427(3). Accordingly, the county’s failure to adopt findings addressing Public Facilities and Services Policy 18 provides no basis for reversal or remand.

1 “Rationale:

2 “• Because the zoning and densities applied to rural lands within Klamath
3 County are based on specific criteria which are supported by inventory
4 information contained in the Atlas and other documents, a plan
5 amendment is appropriate.

6 “Implementation:

7 “• The County shall use the plan amendment process as provided in
8 Articles 48 and 49A of the Land Development Code.” KCCP 74.

9 A petitioner is not precluded from raising issues that were not resolved by LUBA in
10 prior appeals of the same decision. *Friends of Yamhill County v. Yamhill County*, 38 Or
11 LUBA 62 (2000). Because we remanded the prior county decisions for failure to comply
12 with the statewide land use goals and the TPR, we did not feel it necessary to address
13 arguments based on the county’s plan. Therefore, DLCD is not precluded from assigning
14 error based on that issue in this appeal.

15 However, we do not believe that the county’s failure to address this policy provides a
16 basis for reversal or remand in this case. Policy 11 merely provides that once a property falls
17 within the category of NR land, it is zoned NR. That was done in this case. Policy 11 does
18 not preclude a subsequent application to rezone the property for other uses and, as intervenor
19 points out, Policy 12 appears to expressly allow for that possibility.

20 **D. Inadequate Findings**

21 Petitioner argues that the county’s findings are inadequate in several respects. We
22 have addressed most of petitioner’s findings challenges in our discussion of the county’s
23 application of Goal 14. We address petitioner’s remaining challenges below.

24 In *Klamath County I* and *Klamath County II*, we faulted the county for relying
25 exclusively on the fact that its R-5 zone was acknowledged to conclude that the subject
26 property, if zoned R-5, is rural. In its third decision, the county adopted the following finding
27 to support its conclusion that the proposed plan amendment and zone change will result in
28 rural uses:

1 “2. The area involved in this matter is 680 acres, which could have as
2 many as 136 residential units. Subdivisions with this many residential
3 units are found both within and outside of the urban growth boundaries
4 of Klamath Falls. Neither the acreage involved nor the number of
5 potential residential lots [is] extreme in context with other rural
6 residential subdivisions in Klamath County. Likewise, there are a
7 number of residential subdivisions (and PUDs) within the [UGB] of
8 Klamath Falls that far exceed this proposal both in size and number of
9 units allowed. There are, however, no urban subdivisions with
10 five * * * acre minimums * * *. An urban subdivision of 136 units
11 would utilize about 22 acres (.16 acres per unit [based on a 7,000
12 square foot lot size for residential lots within Klamath Falls]). 680
13 acres would have as many as 4,250 urban-sized residential lots. The
14 [board of county commissioners] finds that this proposal would be a
15 rural use of rural lands when compared to urban uses of urban lands.”
16 Record 2-3 (footnote omitted).

17 DLCD argues that Finding 2 is not particularly relevant to the determination that the
18 proposed uses on the subject property are rural. According to DLCD, Finding 2 would be
19 more relevant if there was evidence in the record to demonstrate how and when small-lot
20 subdivisions outside the UGB were approved. In addition, DLCD argues that the fact that the
21 city may allow for larger city lots only highlights the fact that there is capacity within the
22 UGB to absorb residential uses. According to DLCD, it provides no basis to support a
23 conclusion that the proposed uses on the *subject* property are rural.

24 Unlike the county’s prior two decisions, the county’s findings in this case address
25 why the county believes that applying the R-5 zoning to the subject property will not result
26 in urban uses. Specifically, the county relies on the fact that there is a significant difference
27 between allowed lot sizes within the urban growth boundary and the proposed five-acre
28 densities. Second, the county concluded that the limited use overlay will ensure that no
29 community water or sewer systems or commercial uses will be allowed on the property.
30 Third, the county analyzes the size and range of subdivisions within and outside the UGB
31 and concludes that in this area, this particular subdivision will not be urban. Those findings
32 are adequate to explain the county’s reasoning and identify the facts the county relied upon
33 to support the county’s conclusion that approval of the proposed plan amendment and zone

1 change is consistent with Goal 14. *Heiller v. Josephine County*, 23 Or LUBA 551, 556
2 (1992).

3 **E. Conclusion**

4 We understand DLCD to argue that because there is no logical reason why the
5 number of houses proposed on this property could not be accommodated within the Klamath
6 Falls UGB, then no rural residential uses of property within a short commuting distance from
7 the UGB should be approved because it will inevitably result in some people residing outside
8 the UGB who would otherwise be residing within the UGB.

9 The Oregon land use planning scheme contemplates that some rural land will be
10 available for homesites. *See e.g.*, Goals 3 (Agricultural Lands), 4 (Forest Lands), 10
11 (Housing); the definition of “Rural Lands” at n 2; ORS 215.213(3) and (4); ORS 215.284;
12 ORS 215.705; OAR 660-033-0130; OAR 660-004-0040. That residential lots may be
13 permitted within UGBs does not, *ipso facto*, mean that residential uses of lands outside
14 UGBs are forbidden. OAR 660-004-0040(5)(a), the rural residential rule adopted by LCDC
15 to address compliance with Goal 14 on rural residential lands that are subject to exceptions to
16 Goals 3 and 4, allows most rural residential lands to be divided into lots as small as two
17 acres, irrespective of their proximity to an urban growth boundary.⁶ To the extent that rule
18 provides guidance regarding the concerns that DLCD has with respect to rural residential
19 development near UGBs, those concerns do not exist in this case. The proposed rezoning
20 anticipates dwellings on five-acre lots, and those lots will be located more than one mile
21 from the Klamath Falls UGB. Therefore, we conclude that petitioner’s challenges to the
22 county’s decision provide no basis for reversal or remand.

23 The assignment of error is denied.

24 The county’s decision is affirmed.

⁶ OAR 660-004-0040(8) requires that rural residential areas located within one mile of the UGB of five listed cities permit land divisions that result in parcels no smaller than 10 acres if those five cities do not have a designated urban reserve area. OAR 660-004-0040(8)(c). For the Portland Metropolitan area, the minimum parcel size in the absence of a designated urban reserve area is 20 acres. OAR 660-004-0040(8)(e). All other rural residential development is limited to the two-acre minimum parcel size requirement.