

NATURE OF THE DECISION

Petitioners appeal a county comprehensive plan amendment that projects the county’s population through the year 2020.

FACTS

ORS 195.025 and 195.036 require that a county establish and maintain a population forecast for the county for use in maintaining and updating city and county comprehensive plans, and shall coordinate the forecast with the local governments within the county.¹ In 1997, the county began discussions to update the population forecast in its existing comprehensive plan, which dates to 1983. That 1983 forecast predicted a county population of 41,596 persons by the year 2000. According to the 2000 U.S. Census, the county’s 2000 population was 24,530. The 2000 population figure represents an increase of 932 persons from the 1990 Census count of 23,598. That historical population increase represents an annual average growth rate (AAGR) of 0.39 percent. Based on that historical rate of growth, the state Office of Economic Analysis (OEA) advised the county that the AAGR for the period 2000-2020 should be 0.39 percent, which would result in a 2020 population of 27,971.

The county and most of the cities in the county were not satisfied with the OEA’s forecast and, in 2001, the county hired a consulting firm, Benkendorf, to prepare a population forecast through the year 2020, called the Union County Population Analysis and 2020 Forecast (UCPAF). The initial UCPAF, dated January 25, 2002, predicts a 1.0 percent AAGR for the entire county over 2000-2002. Assuming a 1.0 percent AAGR, the UCPAF

¹ ORS 195.036 provides:

“The coordinating body under ORS 195.025(1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary.”

1 predicts that the county's population will increase by 5,406 persons, for a 2020 total of
2 29,956. Record 268.

3 The January 25, 2002 UCPAF also allocated the predicted growth among the
4 county's eight cities and its unincorporated areas. For unincorporated areas, the UCPAF
5 assumed a .66 percent AAGR, or a total increase of 873 persons. Record 268. For most of
6 the cities in the county, the UCPAF assumed that population would increase at the same rate
7 as the county as a whole, 1.0 percent AAGR. However, for the City of Island City (Island
8 City), the UCPAF assumed a 3.0 percent AAGR, predicting that the population of Island City
9 would increase from 945 to 1,691 persons by the year 2020. *Id.*

10 On February 7, 2002, the county submitted an application to the planning
11 commission, proposing that the county incorporate the UCPAF into the county's
12 comprehensive plan as the population projections required by ORS 195.036. At the hearings
13 before the planning commission, representatives from Island City argued that the estimated
14 growth for Island City was too low, and the estimated growth for unincorporated areas was
15 too high. Island City argued that the county should adopt a 6.0 percent AAGR for Island
16 City, and reduce the AAGR for unincorporated areas accordingly. The planning commission
17 agreed to allocate a 5.0 percent AAGR to Island City, which would result in an increase of
18 1,529 persons, for a 2020 total of 2,454 persons in the city. The reallocation to Island City
19 left the unincorporated areas of the county with a predicted increase of 90 persons, or a .07
20 percent AAGR.

21 With that modification, the planning commission voted to recommend approval of the
22 proposed amendments to the board of county commissioners. The county commissioners
23 held three hearings, and voted to incorporate the final UCPAF, dated June 21, 2002, into the
24 county's comprehensive plan, as the county's official population forecast. This appeal
25 followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioners argue that the challenged decision does not comply with Statewide
3 Planning Goal 2 (Land Use Planning) and Goal 9 (Economic Development).

4 **A. Goal 2**

5 Petitioner contends that the decision violates Goal 2, because the county’s findings
6 fail to consider and evaluate alternative courses of action or explain why one choice was
7 selected over others.² Citing to *Gruber v. Lincoln County*, 2 Or LUBA 180, 188 (1981),
8 petitioners argue that the Goal 2 requirement for evaluation of “alternative courses of action”
9 requires the county in the present case to address alternative population projections and
10 allocations among the county’s cities and unincorporated areas. Petitioner contends that the
11 county failed to do so.

12 The county responds, first, that petitioner failed to raise any issue below regarding
13 Goal 2, and thus the arguments under this subassignment of error are waived, pursuant to
14 ORS 197.763(1).³ However, ORS 197.763(1) applies only to quasi-judicial land use

² Goal 2 is to:

“To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.”

Goal 2 also requires that:

“All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. * * *”

³ ORS 197.763 provides, in relevant part:

“The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

“(1) An issue which may be the basis for an appeal to the [LUBA] shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. * * *”

1 decisions. The county asserts elsewhere in its brief that the challenged decision is legislative
2 in character, and it obviously is. Therefore, the “raise it or waive it” rule at ORS 197.763(1)
3 does not apply. *Johnson v. City of La Grande*, 37 Or LUBA 380, 388 (1999), *aff’d* 167 Or
4 App 35, 1 P3d 1036 (2000).

5 The county next responds that numerous alternative population projections and
6 allocations were addressed during the proceedings below and, to the extent Goal 2 requires
7 consideration of such alternatives, the record in the present case demonstrates that the goal is
8 satisfied.

9 *Gruber* involved a decision that in relevant part zoned property for low density rural
10 residential uses. The decision and record contained no explanation for why the county chose
11 that zone, among several others that might well apply. We rejected the suggestion that Goal
12 2 requires evaluation of alternative zonings for each area under consideration, but held that

13 “where, as here, there is an articulate challenge to a proposed designation and
14 there is no plan policy controlling the decision and eliminating competing
15 choices for land use designations, the ‘rationale’ for the particular decision
16 must be evident someplace in the plan or in supporting documents (i.e., the
17 record).” 2 Or LUBA at 188.

18 *Gruber* is of little assistance to petitioners. The decision and adopted findings
19 explain why the county disagreed with the OEC forecast, and set forth a rationale for the
20 choices the county made. The findings also specifically respond to particular objections and
21 alternatives raised below. Record 38-46. The decision and findings are more than sufficient
22 to satisfy the Goal 2 requirement for evaluation of alternative courses of action, as
23 interpreted by *Gruber*. See also *Hubenthal v. City of Woodburn*, 39 Or LUBA 20, 30 (2000)
24 (the Goal 2 requirement to evaluate alternative courses of action is a very general directive).

25 **B. Goal 9**

26 Petitioner also argues that the administrative rule implementing Goal 9 (Economic
27 Development) at OAR 660-009-0015(4) requires the county to consider the “economic
28 advantages and disadvantages of attracting new or expanded development * * *” to the area.

1 According to petitioners, the county’s population projection is based on consideration of the
2 advantages of attracting new or expanded development, but fails to consider the
3 disadvantages of doing so.

4 OAR 660-009-0015(4) is part of a subsection that requires cities and counties to
5 conduct an elaborate “Economic Opportunities Analysis” requiring, among other things, a
6 review of national, state and local economic trends, and an inventory of industrial and
7 commercial lands. OAR 660-009-0010(2) suggests that such review and analysis is required
8 only at the time of periodic review. In any case, there is no suggestion in the rule that
9 counties must conduct a “Economic Opportunities Analysis” or any part of it in the context
10 of establishing a population forecast pursuant to ORS 195.036. *See Volny v. City of Bend*,
11 168 Or App 516, 4 P3d 768 (2000) (the transportation planning rule does not prohibit local
12 governments from adopting provisions related to transportation, prior to adopting the
13 transportation system plan required by the rule). Petitioners do not argue that Goal 9 itself
14 requires such an analysis.

15 The first assignment of error is denied.

16 **SECOND ASSIGNMENT OF ERROR**

17 Petitioners contend that the county erred in applying two different methodologies for
18 to determine population projections for different areas of the county.

19 The first method, used for the county as a whole and for all cities within the county,
20 with the exception of Island City, rejects historical population growth figures and instead
21 relies solely on projections of population growth based on building permit data and future
22 employment projections. For Island City, petitioners explain, the county relied on historic
23 population growth figures from 1970 to 2000. Petitioners argue that use of two different
24 methods, and two different time periods, is arbitrary and capricious.

25 The county responds that state law does not require a uniform methodology for
26 population projections throughout the county, merely that such projections be coordinated

1 with local governments within the county. The county further argues, for the reasons
2 discussed below, that there is sufficient reason to treat Island City as a special case.

3 ORS 195.036 does not require local governments to employ any particular
4 methodology to project future populations. It is silent with respect to methodology. It is also
5 silent with respect to whether different methodologies may be used for different areas of the
6 county. Whatever methodology is used, Goal 2 requires that the county’s population
7 projection be supported by an adequate factual base. *DLCD v. Douglas County*, 37 Or
8 LUBA 129, 132 (1999). The Goal 2 requirement for an adequate factual base is equivalent
9 to the substantial evidence standard. *Id.* That standard is satisfied when the record, viewed
10 as a whole, would permit a reasonable person to reach the same factual conclusion that the
11 local decision maker did. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608
12 (1993). We address, below, petitioners’ evidentiary arguments. However, petitioners have
13 not demonstrated that the county’s choice to use different methodologies for different areas
14 of the county is, in itself, prohibited by law.

15 The second assignment of error is denied.

16 **THIRD ASSIGNMENT OF ERROR**

17 The Union County Zoning, Partition and Subdivision Ordinance (UCZPSO)
18 23.05(3)(D) requires a determination as to whether a proposed comprehensive plan
19 significantly affects a transportation facility.⁴ In response to UCZPSO 23.05(3)(D), the

⁴ UCZPSO 23.05(3)(D) appears to implement OAR 660-012-0060, part of the Transportation Planning Rule. UCZPSO 23.05(3) provides, in relevant part:

“A decision on a Land Use Plan text or map amendment by the Planning Commission and Board of Commissioners shall be based on the applicant’s ability to meet the following:

“* * * * *

“D. Determine whether the amendment significantly affects a transportation facility. The amendment shall assure that land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. * * *

1 county’s findings simply state that “[t]he adoption of the proposed [UCPAF] will provide the
2 basis for transportation forecasting in all jurisdiction in Union County.” Record 33.

3 Petitioners argue that UCZPSO 23.05(3)(D) requires consideration of the impact of
4 the proposed amendments on transportation facilities in the county, and the challenged
5 decision fails to address any impacts on any facility. Instead, the decision appears to defer
6 consideration of transportation impacts until later decisions.

7 Petitioners do not explain why they believe the adopted population projection
8 “significantly affects” any transportation facility in any of the four ways described in
9 UCZPSO 23.05(3)(D), and we do not see that it does. The county argues, and we agree, that
10 while the challenged decision may set the stage for later decisions that may “significantly
11 affect” transportation facilities, the decision itself does not do so, and therefore the county
12 need not conduct that inquiry in this decision. *See Citizens Against Irresponsible Growth v.*
13 *Metro*, 179 Or App 12, 22, 38 P3d 956 (2002) (OAR 660-012-0060 does not apply to an
14 urban growth boundary amendment that does not itself “significantly affect” any
15 transportation facility).

16 The third assignment of error is denied.

“A plan or land use regulation amendment significantly affects a transportation facility if it:

“Changes the functional classification of an existing or planned transportation facility;

“Changes standards implementing a functional classification system;

“Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

“Would reduce the level of service of the facility below the minimum acceptable level specified in the Transportation System Plan.”

1 **FOURTH AND FIFTH ASSIGNMENTS OF ERROR**

2 In the fourth assignment of error, petitioners set forth seven subassignments of error
3 that challenge the evidentiary basis for a number of the county’s findings and conclusions.
4 In the fifth assignment of error, petitioners set forth nine subassignments of error alleging
5 that the county’s findings are inadequate in certain respects. The assignments and
6 subassignments of error overlap to a degree, and we discuss them together.

7 **A. Fourth Assignment, Third Subassignment of Error**

8 Petitioners contend there is no evidence in the record that the county’s consultant,
9 Benkendorf, is qualified to prepare the county’s population projection. Petitioners cite to
10 *Concerned Citizens of the Upper Rogue v. Jackson County*, 33 Or LUBA 70, 100-101
11 (1997), for the apparent proposition that testimony from a consultant that is not shown to be
12 qualified by education or experience to provide population projections cannot constitute
13 substantial evidence.

14 In *Concerned Citizens*, as in the present case, the city hired a planning consultant to
15 prepare a population projection. While we ultimately found that the testimony of that
16 consultant was not substantial evidence, that conclusion had little to do with the consultant’s
17 qualifications, and much more to do with countervailing evidence and internal flaws in the
18 consultant’s testimony. *Id.* at 101-105. We reject the argument that the county’s planning
19 consultant must be shown to pass some threshold of qualification by education or experience
20 before the testimony of that consultant may constitute substantial evidence.⁵

⁵ We do not mean to suggest that the qualifications or lack thereof of a planning consultant has no bearing on whether a decision is supported by substantial evidence. However, we do not believe that failure to specify a consultant’s qualifications necessary means the consultant’s testimony is not evidence a reasonable person would rely on.

1 **B. Fourth Assignment of Error, Second, Fifth, Sixth and Seventh**
2 **Subassignments of Error**

3 **Fifth Assignment of Error, First, Second, Fourth, Fifth, Sixth, and Eighth**
4 **Subassignments of Error**

5 These subassignments of error generally challenge the adequacy of the county’s
6 findings that the county’s population will grow at a 1.0 percent AAGR through the year
7 2020, and the evidentiary support for those findings.

8 As explained above, the UCPAF and the county’s findings reject the .39 percent
9 AAGR urged by the OEA, which was based on the historic rate of population growth from
10 1990 to 2000, and instead rely on building permit data from 1990 to 2000 and projections of
11 future employment growth to project a 1.0 percent AAGR for the county as a whole.⁶

⁶ The county’s findings state, in relevant part:

“The January 25 draft [UCPAF] analyzed population and employment historical and projected growth. U.S. Census population data is challenged and if corrected would result in an 1% AAGR between 1990 and 2000. Employment growth in Union County from 1991 to 2001 is shown to be equivalent to 1.36% AAGR. The OED [Oregon Employment Department] Region 13 [Union, Baker, Wallowa counties] employment projection from 1998 to 2008 is calculated for Union County to be 1.02% AAGR. Known local job growth such as EOU [Eastern Oregon University] will have direct, indirect and induced increases resulting in about 1% AAGR for the County from 2000 to 2020.

“The June 3 * * * Updated Housing Growth Analysis 1990-2000 reviews local building permit data and concludes the county added 1,304 housing units between 1990 to 2000, which represents an AAGR of 1.28%. The City of La Grande, with one half of the countywide population, is identified to have added 497 net new housing units based on building permits between 1990 and 2000 resulting in a 0.97 AAGR.

“The June 21 final [UCPAF] * * * reviews historical demographic data and finds total county employment between 1990 and 2000 grew at 0.89% AAGR and total nonfarm payroll employment grew at 1.09% * * *. Based on building permit records, County housing units grew at 1.28% between 1990 and 2000. Projected employment between 2000 and 2010 based on Region 13 calculations show a county growth equivalent of 0.91% AAGR. A survey of existing county businesses and government agencies identified existing and planned employment growth resulting in population growth slightly more than a 1% AAGR between 2000 and 2020.

“Therefore, based on the cumulative findings above the Board of Commissioners have concluded that the 1% countywide forecast is substantially more accurate than the OEA 0.39% AAGR which is based on U.S. Census historical trends.” Record 37-38.

1 **1. Building Permit Data**

2 According to petitioners, the UCPAF’s starting premise is that the 2000 Census is
3 inaccurate in several respects and does not provide an accurate means for projecting future
4 population. The UCPAF particularly relies on an alleged undercount in dwelling units, and
5 argues that if building permit data is considered from 1990 to 2000, then the number of
6 existing dwelling units, and by extrapolation the number of people in the county and the
7 average annual growth rate, is higher than found in the 2000 Census.⁷

8 The 2000 Census found 10,603 housing units in the county, a net increase of 629
9 units over 1990. Table 2 in the final UCPAF shows that local governments in the county
10 issued 1,337 building permits between 1990 and 2000, and that the City of La Grande issued
11 33 demolition permits, for a net gain of 1,304 units.⁸ There are apparently no data on
12 demolition permits for other jurisdictions within the county. According to petitioners, the
13 UCPAF assumes that (1) no dwellings were abandoned, demolished, removed or replaced in
14 the county during 1990 to 2000, other than the 33 dwellings demolished in the City of La
15 Grande; (2) none of the building permits were for seasonal or second homes; (3) if a building

⁷ The UCPAF finds, in relevant part:

- “1) The 2000 Census shows a total of 1,127 housing units built from 1990 to 2000 in Union County as a whole (based on ‘year structure built’ data field). Conversely, the Census net change in units obtained by comparing the number of units in 1990 to 2000 is only 629 units. This is a discrepancy of 498 units.
- “2) Based on building permit records, *Union County added 1,304 net housing units from 1990 to 2000*. This figure is more than twice the net housing unit growth of 629 shown in the Census (based on comparing the 1990 and 2000 figures), and *represents an AAGR of 1.28%* from the 1990 Census estimate of 9,974 units.
- “3) Applying a 2.45 persons per household figure to the estimated net housing unit growth through building permits (1,304) yields an estimate of 3,195 in new population from 1990 to 2000 in Union County as a whole. This represents an average annual growth rate of 1.28% from the 1990 Census countywide figure of 23,598 persons.” Record 17 (emphases in original).

⁸ Table 2 contains a footnote explaining that the building permit total for new manufactured homes does not include 188 “replacement” manufactured homes. It is not clear whether the building permit totals for other dwelling types include replacement dwellings.

1 permit was issued, the authorized dwelling was actually built and occupied; and (4) each of
2 the new 1,304 dwellings were occupied by immigrants to the county. Based on these
3 assumptions, which petitioners contend have no basis in the record, the UCPAF calculates
4 that the county's 2000 population actually increased by 3,195 new persons between 1990 and
5 2000, rather than the 932 persons found by the U.S. Census. An increase of 3,195 new
6 persons over that period would reflect a 1.28 percent AAGR. Petitioners argue that this
7 supposed 1990-2000 1.28 percent AAGR in county population is a key element in the
8 county's projection that the 2000-2020 AAGR will exceed 1.0 percent.

9 The county responds that it reasonably concluded that the 2000 Census dwelling
10 count is erroneous, and reasonably relied on building permit data to provide a more accurate
11 count of the increase in dwelling units. According to the county, there is an unexplained
12 discrepancy in the 2000 Census data, which shows construction of 1,127 dwelling units in
13 the 1990s, but only a 629 increase over the number of dwelling units in 1990. There is no
14 explanation for the missing 498 units, the county argues, and therefore the UCPAF
15 reasonably rejected the Census count of dwelling units, and turned to building permit data to
16 provide a more accurate count. With respect to the issue of abandoned, demolished, removed
17 or replaced dwellings, the county cites a finding in the UCPAF that the county has no
18 "record of any demolitions in the unincorporated area from 1990 to 2000[.]" Record 16.

19 As an initial matter, we note that the findings quoted at n 6 and the portion of the
20 UCPAF quoted at n 7 appear to draw different conclusions from the building permit data.
21 The findings at n 6 suggest that, after considering building permit data, there was a 1.28
22 percent increase in *dwelling units* from 1990 to 2000. The quoted portion from the UCPAF
23 at n 7, on the other hand, appears to conclude from the building permit data that there was a
24 1.28 percent increase in *population* from 1990 to 2000 in Union County, representing a
25 3,195-person increase over the 1990 Census figure of 23,598 persons. In other words, there
26 is some confusion whether the cited 1.28 percent increase refers to dwelling units or

1 population. The quoted portion of the UCPAF, which was incorporated into the county's
2 comprehensive plan, appears to find that the county's 2000 population was 26,793 persons
3 (23,598 + 3,195). If so, that finding is in direct conflict with other portions of the UCPAF,
4 which assert a 2000 county population figure of 24,550.⁹ It is also, of course, inconsistent
5 with the 2000 Census population count.

6 If we assume that the purported 1.28 percent increase refers to dwelling units rather
7 than population, as the findings quoted at n 6 suggest, then other problems arise. First, the
8 county appears to rely on the purported 1.28 percent increase in the number of dwelling units
9 from 1990 to 2000 as an indication that population will increase from 2000 to 2020 at an
10 average annual rate faster than the historic .39 percent rate. However, the county's findings
11 do not explain why increases in the number of dwelling units during one decade translates
12 into higher population rates in future decades.

13 Even assuming that the 1990-2000 rate of increase in dwelling units has some bearing
14 on the rate of population increase from 2000-2020, we agree with petitioners that no
15 reasonable person would rely on the cited building permit data to conclude, as the county
16 did, that the number of dwelling units in the county increased at a 1.28 percent AAGR from
17 1990 to 2000.

18 First, petitioners argue, and the county does not dispute, that the 2000 Census
19 involved an actual count of existing dwelling units. The Census noted 1,127 housing units
20 constructed during 1990 to 2000, but found a net increase of only 629 units. While the
21 Census is not infallible, it seems highly unlikely that the Census missed nearly 500 dwelling
22 units. The likely explanation for the "discrepancy" relied upon by the county is that the
23 dwellings were abandoned, demolished, removed, or replaced. Petitioners note that the

⁹ The 24,550 figure is based on an estimate by the Portland State University Center for Population Studies. The PSU estimate is slightly different from the 2000 Census figure of 24,530. Although the parties do not discuss the difference, we understand the explanation to be that the 2000 Census counted population as of April 1, 2000, while the PSU's estimate is of July 1, 2000.

1 county's comprehensive plan describes 25 percent of the county's dwellings as
2 "substandard," and argues that a number of those dwellings were likely abandoned,
3 demolished, removed or replaced between 1990 and 2000. The UCPAF appears to contain
4 data on demolished dwellings only for the City of La Grande. It is not clear whether the
5 other jurisdictions in the county simply do not track demolitions, or whether no demolitions
6 occurred elsewhere in the county. It is also not clear whether jurisdictions in the county
7 track abandoned, removed or replaced dwellings. Table 2 in the UCPAF contains a note that
8 the number of building permits issued for manufactured dwellings does not include 188
9 replacement manufactured homes. Record 15. The note does not indicate which jurisdictions
10 track replacement dwellings. There is no similar note for stick-built or multi-family
11 dwellings, so it is not clear whether all replacement dwellings in the county during 1990-
12 2000 happened to be manufactured homes or whether the county did not account for
13 replacement stick-built or multi-family dwellings. Given the lack of explanation on these
14 points, a reasonable person would not rely on the cited building permit data to conclude, as
15 the county did, that the number of dwelling units in the county is considerably higher than
16 found in the 2000 Census.

17 Petitioners also argue that the county errs in assuming that if a building permit was
18 issued, the authorized building was in fact constructed. Petitioners argue that there is no
19 basis for that assumption, and that in fact it is common for building permits to lapse without
20 construction. The county does not respond to this argument. We agree with petitioners that,
21 given the discrepancy between the door-to-door Census count and the building permit data, a
22 reasonable person would not simply assume, as the county apparently did, that each building
23 permit resulted in a net addition of a dwelling in the county.

24 Finally, petitioners argue that the UCPAF makes no attempt to distinguish dwellings
25 intended for permanent occupancy and those intended for seasonal occupancy, *e.g.* second
26 homes or seasonal cabins. The county does not respond to this argument. Again, we agree

1 with petitioners that a reasonable person would not simply assume, as the county apparently
2 did, that none of the building permits resulted in a seasonal dwelling.

3 In sum, we agree with petitioners that if the cited 1.28 percent AAGR is intended to
4 represent population increase between 1990-2000, it is contradicted by other findings. If the
5 cited 1.28 percent AAGR is intended to represent the increase in dwelling units between
6 1990-2000, that figure is not supported by substantial evidence.

7 **2. Employment Growth**

8 The other major support the county relied upon in projecting a countywide 1.0
9 percent AAGR population increase is projected growth in employment.

10 The starting point for the county's analysis is the OED employment projection for
11 Union, Baker and Wallowa counties, which projects 1,450 new jobs in the region through
12 2010. Record 18. The UCPAF notes that Union County's percentage of the region's
13 nonfarm payroll employment from 1990 to 2000 was approximately 66 percent. Based on
14 that percentage, the county estimates that Union County's share of regional growth through
15 2010 will be approximately 957 new jobs, representing a .91 percent AAGR over the 10,050
16 jobs in the county in 2000. *Id.* That figure is consistent with the historic rate of growth (.89
17 percent AAGR) in employment from 1990 to 2000. Record 12.

18 However, the UCPAF ultimately concludes that future employment growth will
19 exceed the .91 percent AAGR predicted by OED.¹⁰ That conclusion is based on recent job

¹⁰ The relationship between the OED employment analysis and the UCPAF's employment analysis is not entirely clear. At two points, the UCPAF states that the jobs discussed in its analysis are *in addition* to the employment growth that is the basis for the OED prediction. The only explanation for that assertion is a quote from the OED's regional analysis that "[p]rojecting employment in small labor market areas like those of Northeast Oregon is particularly difficult in light of the fact that some of our industry employment totals depend more on the actions of one or two major firms than they do on recognizable national economic trends." Record 19. The UCPAF paraphrases that quote as stating that "the actions of a handful of employers in a small market can affect employment growth to a degree not accounted for in long-term projections." *Id.* However, it is not clear to us why the difficulties of projecting employment growth in a small market supports the assertion that the jobs predicted by the UCPAF's analysis are in addition to the jobs projected by the OED regional analysis. It seems more likely that the OED regional analysis took into account the difficulties of predicting employment in a small market area, and that there is *at least* some overlap between the number of jobs predicted by OED and the number of jobs predicted by UCPAF. Neither the UCPAF nor the county's findings

1 growth from 2000 to 2002, and projections of future employment growth from a number of
2 existing or potential employers in the county, summarized in Table 7 of the UCPAF. In
3 relevant part, Table 7 estimates that (1) a proposed expansion of Eastern Oregon University
4 (EOU) in the City of La Grande will create 178 new jobs, (2) a proposed expansion of an
5 existing Wal-Mart will create 125 jobs and (3) proposed establishment of the Rappaport Bio-
6 Mass plant will create 75 jobs. Record 22. Table 7 states that these new jobs, together with
7 other recent and projected employment growth, will total 683 new jobs. *Id.* The UCPAF
8 then assumes that every new job created will induce other employment growth, apparently to
9 provide services to the new employees. Accordingly, UCPAF applies a 1.75 percent “direct
10 effect multiplier,” and concludes that recent and planned job growth in the county will total
11 1,195 new jobs (683 multiplied by 1.75).

12 In addition, the UCPAF states that the projected EOU expansion will increase annual
13 student enrollment from the current 1,700 students to 4,120 students by the year 2020, an
14 increase of 2,420 students. Table 8 of the UCPAF estimates that expenditures from these
15 additional students in the local economy would create an additional 484 new jobs. The
16 UCPAF then adds the results of Table 7 and Table 8 to estimate projected job growth from
17 2000 to 2020 at 1,534 new jobs (1,195 plus 484). Record 23.

18 Finally, Table 9 of the UCPAF attempts to use this new job estimate to project
19 population growth. After assuming that there will be 1.23 jobs per household, and an
20 average household size of 2.4 persons, the UCPAF estimates that the 1,534 new jobs will
21 result in 2,998 new persons in the county. Adding that figure to the projected additional
22 2,420 students, the UCPAF estimates that projected employment growth will result in a
23 county population increase of 5,418 additional persons over the 2000 Census figure of
24 24,530. Table 10 of the UCPAF estimates that that rate of population increase represents

discuss the issue further, and the UCPAF proceeds to rely solely on its employment analysis to support its population projection.

1 approximately 1.0 percent AAGR. Record 24. Therefore, the UCPAF concludes,
2 consideration of recent and planned employment growth from 2000 to 2020 supports the
3 conclusion that the county's rate of population increase over that period will equal 1.0
4 AAGR.¹¹

5 Petitioners challenge the foregoing calculations on a number of grounds. Petitioners
6 contend that much of the projected new employment, including the Wal-Mart and EOU
7 expansion, and the creation of the Rappaport Bio-Mass plant, is entirely speculative. With
8 respect to Wal-Mart, petitioners argue that there is no evidence that Wal-Mart has committed
9 to expand the existing store. With respect to the Rappaport Bio-Mass plant, petitioners argue
10 that it does not exist and there is no evidence in the record that it is ever likely to exist. With
11 respect to the EOU expansion, petitioners contend that the projected 2,420-student increase
12 is simply an expression of the university's desire for growth and that there is no evidence that
13 the campus and faculty expansion that would be necessary to support the additional student
14 population will ever be funded and constructed during the planning period.

15 Petitioners also argue that the county's employment projections fail to take into
16 account the likelihood of continued job losses between 2000 and 2020 in the county's
17 traditional non-farm employment sectors, including the wood products industry, federal
18 employment, public schools, the railroads, as well as service jobs supported by these jobs.
19 Further, petitioners contend that the county failed to take into account the likelihood of

¹¹ The UCPAF finds, in relevant part:

"1. Recent and planned employment and population growth in Union County, including enrollment and staff increases at [EOU], are projected to have total direct, indirect, and induced impacts of 1,534 new jobs and 5,418 in new population.

"* * * * *

"3. The population growth of 5,418 calculated from existing and planned employment growth (see Table 10) is slightly more than the population increase of 5,406 that is needed to provide a 1% AAGR for Union County from 2000 to 2020 * * *." Record 24 (emphasis omitted).

1 continued decline in traditional downtown retail businesses, particularly in competition with
2 the proposed Wal-Mart expansion. For every job created by Wal-Mart, petitioners argue,
3 other jobs will be lost in the local economy. In addition, petitioners cite to evidence
4 projecting a 15 percent decline in public school enrollment between 2001 and 2015.
5 Petitioners argue that the county failed to consider this evidence, or take into account the
6 likelihood of reduced school employment and reduced school age population.

7 Petitioners also challenge the 1.75 percent multiplier used by the county to calculate
8 the number of secondary service jobs induced by newly created employment. According to
9 petitioners, the 1.75 percent multiplier is based on studies involving family-wage
10 manufacturing jobs. Petitioners argue that many of the projected new jobs relied upon by the
11 county, such as those at Wal-Mart, will be lower wage or part-time service jobs that are
12 likely to induce fewer secondary jobs.

13 Turning to the county's attempt to translate job growth into population growth,
14 petitioners argue that a key flaw is the county's apparent assumption that projected new jobs
15 and student enrollment will be entirely filled by new immigrants to the county. Petitioners
16 argue that the county fails to take into account the degree to which any new jobs and new
17 student slots may be filled by current residents. Petitioners point out that, according to the
18 2000 Census, the 2000 unemployment rate in the county was 7.94 percent, or 939 persons,
19 and argue that many new jobs will likely be filled by unemployed current residents. Record
20 12. Moreover, petitioners point out, the county assumed that each new immigrant would
21 bring his or her family into the county. Petitioners argue that many of the proposed new
22 jobs, such as those at Wal-mart, will be part-time jobs, and therefore jobs that are unlikely to
23 induce anyone, much less an entire family, to move into the county.

24 Similarly, petitioners argue that the county erred in assuming that each of the
25 projected 2,420 new students would move to and then reside within the county. According
26 to petitioners, the county failed to take into account the percentage of county residents that

1 would attend, or the percentage of nonresidents who would attend by distance learning or
2 commuting, or who would enroll in programs that require them to spend a portion of their
3 matriculating years on other campuses.

4 In sum, petitioners argue that the county's projected job growth is not supported by
5 substantial evidence, and therefore that job growth does not support the county's projected
6 population increase of 1.0 AAGR.

7 The county responds that the record and its findings support the projected
8 employment growth from 2000 to 2020, which in turn supports the projected 1.0 AAGR for
9 population growth over the same period. With respect to whether the projected Wal-Mart
10 and EOU expansions and the creation of the Rappaport Bio-Mass project will in fact occur,
11 the county argues that it reasonably relied on the stated plans of these potential employers.
12 With respect to the possibility of job losses, the county responds that there is no evidence in
13 the record suggesting that the county will experience job losses in any of the traditional
14 employment sectors cited by petitioners. With respect to the assumption that all projected
15 employment growth will be filled by immigrants to the county, the county argues that it is
16 currently experiencing a relatively low unemployment rate and that it is reasonable to assume
17 that a significant number of new jobs will be filled by new residents.

18 In any case, the county argues, the employment projections relied upon by the county
19 are not intended to predict actual future employment growth, or to show an exact correlation
20 between job growth and population growth, but simply to show that official employment
21 growth projections, based on historic growth patterns during the 1990s, are too low, and that
22 actual future employment projections will likely be higher. If so, we understand the county
23 to argue, that lends support to the county's ultimate conclusion that future population will
24 grow at a higher rate than the .39 percent growth rate experienced during the 1990s.

25 The county's last point is somewhat puzzling. As far as we can tell, the UCPAF *does*
26 attempt to correlate projected job growth with population increase, and that correlation is one

1 of two major elements in the county's ultimate conclusion that population will increase by a
2 1.0 percent AAGR through 2020. As explained above, the UCPAF estimates that projected
3 employment growth will result in 5,418 new residents to the county, representing a 1.0
4 AAGR in population. Record 24.

5 The question of whether the county erred in relying upon the proposed Wal-Mart and
6 EOU expansions, and other projected new employment, is a close question. Based on the
7 record documents to which we are cited, the EOU has a vision or long range goal of doubling
8 its student population, but there is little indication how that goal will be funded or
9 accomplished. Absent some evidence of how that goal will be accomplished, only the most
10 optimistic forecaster would take the stated goal at its maximum face value, as the county has.
11 Nonetheless, the EOU documents represent some evidence on the point, and we cannot say
12 that no reasonable decision maker would rely on that evidence. Similarly, the stated plans of
13 Wal-Mart and the proponents of the Rappaport Bio-Mass project, while necessarily
14 speculative, are evidence that a reasonable decision maker could rely upon.

15 However, while the county may reasonably assume that the projected new jobs and
16 student slots will be created, we agree with petitioners that the county erred in failing to
17 consider (1) foreseeable job losses in traditional industries, and (2) foreseeable job losses in
18 retail business in competition with the proposed Wal-Mart store. The OED employment
19 projection through 2010, at Record 19, suggests that there will be future job losses in the
20 lumber industry and in federal employment, but the county's own projections do not appear
21 to consider such losses. Similarly, neither the decision nor the county's brief responds to
22 petitioners' argument that any new jobs created by Wal-Mart are likely to replace existing
23 retail jobs. We also agree with petitioners that the 1.75 percent multiplier assumed by the
24 county appears to be based on full-time, family-wage jobs. The county does not dispute that
25 some of the projected new jobs will be part-time, low-wage service jobs, and does not
26 explain why the 1.75 multiplier should be applied to those jobs.

1 In short, the county's finding that 1,534 new jobs will be created by 2020 is not
2 supported by substantial evidence. We now turn to the county's efforts to translate job
3 growth into population increase. Petitioners do not dispute the county's premise that there is
4 some correlation between job growth and population increase. As noted, the number of jobs
5 in the county increased by 1,010 during the 1990s, while the population increased by 932
6 persons, suggesting a correlation something like 1:1. However, petitioners argue that the
7 county's efforts to translate projected future job growth into future population increase
8 grossly overstates the relationship between the two.

9 In particular, petitioners argue, and we agree, that the county erred in assuming that
10 every new job created in the county will be filled by a new immigrant to the county. No
11 support is cited for that assumption. Given the rate of unemployment in the county, and the
12 unlikelihood that all new jobs will be full-time or family wage jobs that are likely to induce
13 in-migration to the county, no reasonable person would assume, as the county did, that all
14 new jobs will be filled by new immigrants to the county. Similarly, we agree with petitioners
15 that the county erred in assuming that all new students at EOU will come from outside the
16 county and will reside in the county. No support is cited for those assumptions, and they
17 seem unreasonable on their face. As a result of those assumptions, the UCPAF concludes that
18 1,534 new jobs will translate into 2,998 new persons in the county, a nearly 1:2 correlation.
19 The county is undoubtedly correct that a significant number of new jobs or student slots will
20 go to new residents; however, we are cited to no evidence supporting the county's view that
21 *all* new jobs and student slots will go to new residents. The county's finding that projected
22 job growth and the EOU expansion will result in 5,418 new residents to the county, a 1.0
23 percent AAGR population increase, is not supported by substantial evidence.

24 3. Conclusion

25 The county's projected 1.0 percent AAGR population increase is based on (1)
26 building permit data and (2) projected employment increases. For the reasons described

1 above, neither of those bases is sufficient, alone or together, to support the county's projected
2 1.0 percent AAGR population increase. We do not mean to suggest that the county must
3 adopt the OEA population projection, as petitioners urge. It may well be that, if the county
4 corrects the above-described errors and gaps in its analysis, the evidence in the record will
5 support a population projection greater than .39 percent AAGR. However, as explained
6 above, the county's projected 1.0 percent AAGR is not supported by substantial evidence,
7 and the county has not demonstrated what projection higher than the OEA projection is
8 supported by the record.

9 The fourth assignment of error, second, fifth, sixth and seventh subassignments of
10 error, and the fifth assignment of error, first, second, fourth, fifth, sixth, and eighth
11 subassignments of error are sustained, in part.

12 **C. Fourth Assignment of Error, First and Fourth Subassignments of Error**
13 **Fifth Assignment of Error, Third and Seventh Subassignments of Error**

14 These subassignments of error challenge the county's allocation of the projected 1.0
15 percent AAGR among the eight cities in the county, and its unincorporated area.

16 Table 11 in the UCPAF takes the increased population predicted by the 1.0 percent
17 AAGR discussed above, and allocates that population among the eight cities in the county
18 and its unincorporated area. For most of the cities in the county, Table 11 assumes that the
19 city population will grow at 1.0 percent AAGR. Record 25. For example, the City of La
20 Grande is predicted to grow from a 2000 population of 12,340 to a 2020 population of
21 15,057, an increase of 2,717 persons or 1.0 percent AAGR. For Island City, however, Table
22 11 predicts that the city will grow from a 2000 population of 925 persons to a 2020
23 population of 2,454 persons, representing an increase of 1,529 persons, or a 5.0 percent
24 AAGR. For the unincorporated portions of the county, Table 11 predicts that those areas
25 will grow from a 2000 population of 6,215 to a 2020 population of 6,305 persons, an increase
26 of 90 persons, or a .07 percent AAGR.

1 According to the 2000 Census, Island City’s population increased from 705 to 925
2 people during the 1990s, a 2.78 percent AAGR. Record 262. Based on that historic rate of
3 increase, the initial UCPAF allocated Island City 746 new persons, or a 3.0 percent AAGR.
4 Record 268. For unincorporated areas, the initial UCPAF allocated 873 persons, or .66
5 percent AAGR. However, Island City argued to the planning commission that Island City’s
6 2020 population will be 3,127, representing an increase of 2,202 persons or 6.0 percent
7 AAGR. Island City argued that that rate of increase is consistent with Island City’s
8 acknowledged comprehensive plan, which predicts a 2015 population of 3,127, and that it is
9 also consistent with Island City’s rate of increase from 1970 to 2000, which averages 5.2
10 percent AAGR. Island City also identified a number of reasons, for example lower
11 development costs and a large supply of buildable land, for why Island City would continue
12 to grow faster than the county as a whole. Finally, Island City noted that population in the
13 unincorporated portion of the county actually declined from 1990 to 2000, from 6,338 to
14 6,223, a decrease of 115 persons, or -.18 percent. Record 235.¹² Given that decrease, Island
15 City argued that it was unreasonable to assume much if any growth in unincorporated areas.
16 Therefore, Island City argued, most of the growth initially allocated to unincorporated areas
17 should be assigned to Island City. The planning commission, and the board of county
18 commissioners, agreed to increase Island City’s AAGR from 3.0 percent (746 new residents)
19 to 5.0 percent (1,529), and accordingly decrease the unincorporated areas AAGR from the
20 initial projection of .66 percent (873 new residents) to .07 percent (90).¹³

¹² Although the record is not entirely clear on this point, it appears that the population decline in the county’s unincorporated areas between 1990 and 2000 was largely attributable to annexations of unincorporated areas into cities. It is not clear to us what assumptions the county made regarding future annexations, in allocating population among the cities and unincorporated areas.

¹³ The county’s findings state, in relevant part:

“Island City is the only local government that expressed concern for their AAGR within the countywide forecast.

1 Petitioners challenge the county’s allocations, arguing that there is no evidence
2 supporting a 5.0 percent AAGR for Island City, and no evidence supporting only .07 percent
3 AAGR for unincorporated areas. According to petitioners, both allocations are arbitrary.
4 With respect to Island City, petitioners argue that the county erred in considering historic
5 growth rates from the 1970s and 1980s in projecting future growth.¹⁴ Petitioners argue that
6 there is no explanation why Island City’s growth in the 1970s or 1980s is a better prediction
7 of what will occur in the future than the most recent period of the 1990s, when the city’s
8 AAGR was only 2.78 percent. Petitioners point out that the 1970s was a period of
9 extraordinary growth for the entire county, during which Island City’s population doubled.

“The Planning Commission on March 18, 2002 discussed the differences between the 3% AAGR in the January [UCPAF] (2020 – 1,707 people) and the Island City requested 3,217—2015 population (about 6% AAGR). * * * Island City’s consultant * * * submitted a Memorandum dated April 4, 2002 that provides arguments to support a 6% AAGR and suggests the increased growth rate could be made up by reallocating Union County’s unincorporated area population.

The Planning Commission discussed the Island City forecast on April 22, 2002 * * *. Island City Mayor Dale DeLong testified that from 1970 to 2000 Island City grew about 5.2% per year (compounded yearly). * * *

“A Memorandum dated May 2, 2002 prepared by [the county’s consultant] on page 8 states that increasing the Island City allocation by adding all of the unincorporated population growth would increase Island City’s AAGR to 5.19 or 5.15% depending on the base used.

“On May 13, 2002 the Planning Commission amended the draft [UCPAF] to give Island City a 5% AAGR by reducing the unincorporated AAGR correspondingly * * *.

“* * * * *

“The June 21 final [UCPAF] allocates a 5% AAGR to Island City and correspondingly reduces the unincorporated AAGR to 0.07%. Justification for the unincorporated growth rate was discussed by the Planning Commission (May 13 at 4) and Board of Commissioners (Aug. 21 at 5)—a declining people per household ratio and annexation of high density unincorporated areas over time.

“The Board of Commissioners [was] not able to justify an Island City AAGR beyond 5% because their historical rate including annexations over the last 30 years has been about 5%.” Record 36-37.

¹⁴ Petitioners also repeat their argument under the second assignment of error that the county erred in applying different methodologies to Island City and the rest of the county. We reject that argument for the same reasons expressed above.

1 Record 27. According to petitioners, there is no explanation why those circumstances will be
2 repeated, or why the city's growth will more resemble that of the 1970s than of the 1990s.

3 With respect to unincorporated areas, petitioners cite to evidence that there has been
4 and will continue to be substantial housing construction and population growth in
5 unincorporated areas of the county that are not subject to annexation, particularly a large
6 rural residential area near the City of Cove. Petitioners argue that allocating a mere 90 new
7 residents to unincorporated areas over the next 20 years is not supported by any evidence in
8 the record. According to petitioners, the county arrived at that figure based not on any
9 evidence regarding growth in the unincorporated areas, but simply by assigning what was left
10 over after allocating 5.0 percent AAGR to Island City.

11 Although it is a close question, we disagree that the county erred in allocating Island
12 City a 5.0 percent AAGR. Petitioners are correct that, absent some evidence to the contrary,
13 recent data is likely to be more accurate predictor of future growth than data from three
14 decades ago. The county's findings do not explain why Island City's future growth rate is
15 more likely to resemble the growth rate of the 1970s rather than the 1990s. However, the
16 county was apparently persuaded by Island City's consultant that, for a number of different
17 reasons, Island City would continue to grow at a significantly higher rate than the county and
18 at a higher rate than the city did in the 1990s. Those reasons include (1) lower development
19 costs and bigger land supply than nearby La Grande; (2) a pro-development regulatory
20 environment; (3) the presence of large, vacant tracts adjacent to city limits, which facilitates
21 and reduces opposition to annexations; (4) two new subdivision applications housing 250-
22 300 people; (5) a large supply of affordable housing that will attract the proposed additional
23 students at nearby EOU; and (6) a proposed regional shopping center at the Island City/La
24 Grande planning line that will employ low-income workers who will likely to take advantage
25 of Island City's supply of affordable housing. Record 237. None of the foregoing reasons
26 are particularly compelling, but together they provide evidence that a reasonable person

1 could rely upon to conclude that Island City will grow at a faster rate than it did in the 1990s,
2 and will capture through annexations a larger share of growth in unincorporated areas than
3 would nearby La Grande. Petitioners do not identify any contravening evidence. Given the
4 imprecise nature of coordinating the county's projected population growth among the cities
5 and unincorporated areas under ORS 195.036, we cannot say that the county's choice to
6 allocate additional population to Island City is unsupported by substantial evidence.

7 The county's corresponding choice to allocate only a .07 percent AAGR to
8 unincorporated areas is also supported by substantial evidence. Unincorporated areas
9 experienced a negative growth rate during the 1990s, apparently in large part due to
10 annexations. The county's decision cites to several factors, including future annexations of
11 high density areas near city limits, that point to a low growth rate for unincorporated areas.

12 The fourth assignment of error, first and fourth subassignments, and the fifth
13 assignment of error, third and seventh subassignments, are denied.

14 **D. Fifth Assignment of Error, Ninth Subassignment**

15 In this subassignment, petitioners argue that the county failed to address their
16 contention that the initial UCPAF had miscounted the alleged discrepancy between the 2000
17 Census dwelling count and the building permit records considered by the county.

18 The county responds that it did address that contention, and the final UCPAF
19 modified its calculations. Because petitioners' argument under this subassignment appears to
20 be directed at the initial UCPAF, and does not challenge the final UCPAF, petitioners'
21 arguments provide no basis for reversal or remand. This subassignment of error is denied.

22 **D. Conclusion**

23 We have sustained a number of subassignments of error that generally challenge the
24 county's conclusion that the countywide population will increase at a 1.0 percent AAGR.
25 That conclusion requires that the county reevaluate its countywide population projection in
26 light of this opinion. Although we did not sustain petitioners' arguments regarding allocation

1 among the county's cities and unincorporated area, if on remand the county revises its
2 countywide projection, that will by necessity require revisions to its allocations.

3 The county's decision is remanded.