

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 1000 FRIENDS OF OREGON,
5 FRIENDS OF YAMHILL COUNTY,
6 COLUMBIA EMPIRE FARMS, INC.,
7 FAIR HOUSING COUNCIL OF OREGON
8 and CHARLIE HARRIS,
9 *Petitioners,*

10
11 vs.

12
13 YAMHILL COUNTY,
14 *Respondent,*

15
16 and

17
18 OREGON DEPARTMENT
19 OF TRANSPORTATION,
20 *Intervenor-Respondent.*

21
22 LUBA Nos. 2004-169, 2004-171, 2004-172, 2004-173,
23 2004-180, 2004-194, 2004-197, 2004-214, and 2004-215

24
25 FINAL OPINION
26 AND ORDER

27
28 On remand from the Court of Appeals.

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30 Jeffrey G. Condit, Portland, represented Columbia Empire Farms.

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32 Fredric Sanai, Assistant County Counsel, McMinnville, represented respondent.

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34 Bonnie E. Heitsch, Assistant Attorney General, Salem, represented intervenor-
35 respondent.

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

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39 AFFIRMED

08/18/2006

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

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INTRODUCTION

3 In *1000 Friends of Oregon v. Yamhill County*, 49 Or LUBA 640 (2005)(*Yamhill I*),
4 we affirmed the county’s decisions approving the Newberg-Dundee Transportation
5 Improvement Project (NDTIP).¹ Petitioner Columbia Empire Farms (CEF) appealed our
6 decision to the Court of Appeals who reversed and remanded our decision. *1000 Friends of*
7 *Oregon v. Yamhill County*, 203 Or App 323, 126 P3d 684 (2005) (*Yamhill II*). Specifically,
8 the Court “[r]everse[d] in part and remanded for further review in consideration of all relevant
9 exception criteria, including provisions of OAR chapter 660, division 4; otherwise affirmed.”
10 *Id.* at 341. Because it was not entirely clear to us what issues remained for our consideration
11 in light of the Court’s opinion, we asked the parties to brief what issues they believed we
12 needed to review.² The parties disagree about what issues remain for LUBA to consider.
13 We now resolve those disputes and respond to the Court’s remand. Our discussion follows
14 the assignments of error raised by CEF in their petition for review in *Yamhill I*.

15 **FIRST ASSIGNMENT OF ERROR (CEF)**

16 Under this assignment of error, CEF argues that the county violated ORS
17 197.732(1)(c)(A) because the reasons set forth by the county do not justify why the state
18 policy embodied by Statewide Planning Goal 3 (Agricultural Lands) should not apply.³

¹ For a detailed discussion of the NDTIP, see our description in *Yamhill I*, 49 Or LUBA at 642-43. It is worth noting that the county adopted three separate ordinances that involve (1) the bypass goal exception, (2) the East Dundee interchange goal exception, and (3) an interchange overlay district.

² The parties who participated at the Court of Appeals and are now participating in our proceedings are petitioner CEF, Yamhill County, and intervenor ODOT.

³ ORS 197.732(1) provides in pertinent part:

“A local government may adopt an exception to a goal if:

“* * * * *

“(c) The following standards are met:

1 In *Yamhill I*, we held that the specific rules regarding reasons justifying an exception
2 for transportation improvements on resource land under OAR 660-012-0070(4)⁴ substituted
3 for direct application of ORS 197.732(1)(c)(A) and Goal 2, Part II(c)(1). The Court
4 disagreed, noting that while the requirements of OAR 660-012-0070 mirror the language of
5 ORS 197.732(1) and Goal 2, Part II(c), the rule does not include all of the requirements set
6 out in OAR 660-004-0020(2)(a), which implement the statute and goal.⁵ The Court held that
7 both OAR 660-004-0020(2)(a) and OAR 660-012-0070(4) must be addressed.⁶

8 The Court affirmed that part of our decision in which we concluded that the county
9 had demonstrated compliance with OAR 660-012-0070(4). Therefore, as we understand it,

“(A) Reasons justify why the state policy embodied in the applicable goals should not apply.”

⁴ OAR 660-012-0070(4) provides:

“To address Goal 2, Part II(c)(1) the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Further, the exception shall demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 which cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception:

“(a) Alternative modes of transportation;

“(b) Traffic management measures; and

“(c) Improvements to existing transportation facilities.”

⁵ OAR 660-004-0020(2)(a) implements and elaborates on ORS 197.732(1)(c)(a) and the identically worded Goal 2, Part II(c)(1), providing in full:

“‘Reasons justify why the state policy embodied in the applicable goals should not apply’: The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land[.]”

⁶ We note that, effective July 14, 2006, OAR 660-012-0070 is amended to provide that the exception standards in OAR chapter 660, division 4 do not apply when taking a goal exception to site a transportation facility. OAR 660-012-0070(2) (2006). The amended rule further states that “[e]xceptions adopted pursuant to this division shall be deemed to fulfill the requirements for goal exceptions required under ORS 197.732(1)(c) and Goal 2.” *Id.* The amended rule incorporates many requirements of OAR 660-004-0020(2), and as far as we can tell an analysis under OAR 660-012-0070 (2006) would be substantively equivalent to an analysis under OAR 660-004-0020(2) and the version of OAR 660-012-0070 applied in this case.

1 our task on remand is to determine (1) what requirements of OAR 660-004-0020(2)(a) are
2 not duplicated in OAR 660-012-0070(4), and (2) consider the findings if any addressing
3 those unduplicated requirements and the parties' arguments regarding those requirements.

4 ODOT argues that the only potentially unresolved issues under OAR 660-004-
5 0020(2)(a) are the requirements that the county justify: (1) the amount of land for the use
6 being planned and (2) why the use requires a location on resource land. *See* n 5. CEF did
7 not attempt to answer or analyze this issue, instead simply arguing that LUBA should just
8 “generally” reconsider this assignment of error. We decline that invitation, and agree with
9 ODOT that the only unresolved issues under this assignment of error are the adequacy of the
10 findings and evidence addressing the two OAR 660-004-0020(2)(a) requirements identified
11 by ODOT.

12 The county adopted the following findings justifying the amount of land needed for
13 the use being planned:

14 “The approximately 208 acres of rural land needed for the proposed Bypass,
15 and the approximately 27 acres of rural land needed for the proposed East
16 Dundee Interchange, including its connection to existing Oregon 99W, reflect
17 the amount of rural land needed for right-of-way to meet ODOT Statewide
18 Highway design standards for a four-lane limited access facility. Because the
19 acreage need reflects adopted state standards for highway design, the amount
20 of rural land included in the exception is justified.” Record 613.

21 The county also adopted the following findings explaining why the use requires a
22 location on resource land:

23 “ORS 197.732(1)(c)(A), Goal 2 Part II(c)(1) and OAR 660-004-0020(2)(a)
24 and –0022 parallel OAR 660-012-0070(4). ORS 197.732(1)(c)(A) and Goal
25 2, Part II(c)(1) require an exception to include reasons which justify why the
26 state policy embodied in the applicable goals should not apply. OAR 660-
27 004-0020(2)(a) interprets these requirements by explaining that the exception
28 should set forth the facts and assumptions used as the basis for determining
29 that a state policy embodied in a goal should not apply to a specific property
30 or situation, including the amount of land for a use being planned and why the
31 use requires a location on resource land. OAR 660-004-0022 expands on
32 OAR 660-004-0020(2)(a) by giving examples of the types of reasons that may
33 justify exceptions, including demonstrated need for the activity based on one

1 or more requirements of Goals 3 to 19 and special features of the proposed
2 use or activity that necessitate its location on the proposed exception site.

3 “For this matter, the applicable Goals are Goals 3 (Agricultural Lands), 11
4 (Public Facilities and Services), and 14 (Urbanization). The state policies
5 embodied in these goals are, respectively, the protection and preservation of
6 agricultural land for farm use; the establishment of a timely, orderly, and
7 efficient arrangement of public facilities and services that serves as a
8 framework for urban and rural development; and the provision of an orderly
9 and efficient transition from rural to urban land use. * * *

10 “* * * The reasons these policies should not apply to the Bypass and to the
11 East Dundee interchange are set out above in the sections addressing the
12 transportation need for these facilities and why alternatives not requiring goal
13 exceptions cannot reasonably accommodate the use. These reasons relate to
14 Goal 12 [Transportation], the need to serve the large numbers of through trips
15 that pass through this area, impacts to Dundee’s adopted economic and
16 community development objectives, and the fact that highways, unlike other
17 land uses, are linear and must travel through rural lands to connect cities and
18 regions of the state. These reasons reflect statewide and local transportation
19 policies and reflect statewide, regional and local transportation needs.”
20 Record 612-13.

21 The county’s findings therefore address the two identified differences between OAR
22 660-004-0020(2)(a) and OAR 660-012-0070(4). Upon review of CEF’s petition for review,
23 we do not discern any arguments based on OAR 660-004-0020(2)(a), which is not even cited
24 under the first assignment of error.⁷ Instead, CEF’s arguments were based on the county’s
25 determination that other alternatives were not sufficient to meet the specific type of highway
26 determined to be necessary by ODOT. The determination of what type of bypass would be
27 necessary was based on thresholds established by ODOT. CEF challenged those thresholds
28 before the Court, but the Court upheld our decision on that issue. CEF’s arguments under the
29 first assignment of error do not provide a basis to reverse or remand under OAR 660-004-
30 0020(2)(a).

⁷ Our opinion in *Yamhill I* addressed CEF’s first assignment of error and 1000 Friends of Oregon’s first assignment together. The petition for review filed by 1000 Friends of Oregon does cite and quote OAR 660-004-0020(2)(a), but does not present any particularized argument based on that rule provision generally or the two identified requirements specifically.

1 The first assignment of error is denied.

2 **SECOND ASSIGNMENT OF ERROR (CEF)**

3 In this assignment of error, CEF argues that the county erred in its application of the
4 alternatives analysis required by OAR 660-004-0020(2)(b), by rejecting alternatives
5 proposed by petitioner.⁸ We disagreed. CEF argued to the Court in relevant part that we
6 repeated our error in addressing only the requirements of OAR 660-012-0070 and not those
7 in OAR 660-004-0020(2). The Court affirmed our decision on this point, stating:

8 “LUBA expressly rejected petitioner’s alternative sites because it found that
9 those sites did not satisfy the OHP [Oregon Highway Plan] standards. As
10 discussed, LUBA did not err in upholding the county’s use of those standards
11 as ‘thresholds’ for determining whether a proffered alternative is suitable for
12 the planned transportation improvement project. In addition, LUBA did not
13 ignore the specificity requirements of OAR 660-004-0020(2)(b)(C) and (c);
14 instead it specifically discussed those provisions in addressing petitioner’s
15 proposed alternatives.” *Yamhill II*, 203 Or App at 334-35 (footnote omitted).

16 In the omitted footnote, the Court observed that our treatment of OAR 660-004-
17 0020(2)(b) appeared to be at odds with our conclusion that “transportation improvement

⁸ OAR 660-004-0020(2)(b)(B) provides:

“To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:

“(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

“(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

“(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

“(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?”

1 exceptions need to satisfy only OAR 660, division 12.” 203 Or App at 335, n 8. The Court
2 directed that “LUBA’s treatment of this issue on remand will need to be made consistent.”
3 *Id.*

4 In *Yamhill I*, we concluded that addressing OAR 660-012-0070(4) substituted for
5 direct application of ORS 197.732(1)(c)(A) and Goal 2, Part II(c)(1). 49 Or LUBA at 647.
6 We failed to recognize that addressing OAR 660-012-0070(4) would not completely satisfy
7 the requirements of OAR 660-004-0020(2)(a). We made a similar error with respect to
8 OAR 660-004-0020(2)(c), discussed below. Having corrected those errors in this opinion,
9 we believe our treatment of OAR 660-004-0020(2)(a)-(d) is consistent.

10 As noted, the Court affirmed our disposition of this assignment of error. No further
11 action on remand is required.

12 The second assignment of error is denied.

13 **THIRD ASSIGNMENT OF ERROR (CEF)**

14 In this assignment of error, CEF argues that the county did not comply with ORS
15 197.732(1)(c)(C) and OAR 660-004-0020(2)(c).⁹ In *Yamhill I*, we held that complying with

⁹ ORS 197.732(1)(c)(C) provides:

“The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site[.]”

OAR 660-004-0020(2)(c) provides:

“The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local

1 the environmental, economic, social, and energy consequences (ESEE) analysis in OAR 660-
2 012-0070(7) was also sufficient to comply with the ESEE analysis of OAR 660-004-
3 0020(2)(c).¹⁰ The Court of Appeals, however, noted several differences in the two ESEE
4 analyses, specifically the requirements to “determine which resource land is least productive;
5 the ability to sustain resource uses near the proposed use; and the long-term economic impact
6 on the general area caused by irreversible removal of the land from the resource base.” *See n*
7 9. Accordingly, the Court held that the county must comply with both ESEE analyses, and
8 that LUBA erred in confining its review to the findings addressing OAR 660-012-0070(7):

9 “In order to properly perform its review of the county’s decision, LUBA also
10 was also required to address whether the county’s comparisons were sufficient
11 to satisfy the criteria specified in OAR 660-004-0020(2)(c) * * *. In
12 particular, OAR 660-004-0020(2) explicitly requires scrutiny of agricultural
13 productivity, sustainability, and the long term effects of removing land from

exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. *Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts[.]*” (Emphasis added).

¹⁰ At the time of the decision, OAR 660-012-0070(7) provided:

“To address Goal 2, Part II(c)(3), the exception shall:

- “(a) Compare the economic, social, environmental and energy consequences of the proposed location and other alternative locations requiring exceptions;
- “(b) Determine whether the net adverse impacts associated with the proposed exception site are significantly more adverse than the net impacts from other locations which would also require an exception. A proposed exception location would fail to meet this requirement only if the affected local government concludes that the impacts associated with it are significantly more adverse than the other identified exception sites;
- “(c) The evaluation of the consequences of general locations or corridors need not be site-specific, but may be generalized consistent with the requirements of section (3) of this rule.”

1 the agricultural resource base.” *Yamhill II*, 203 Or App at 337 (footnote
2 omitted).

3 The Court noted that the county adopted findings attempting to address OAR 660-
4 004-0020(2)(c), and that respondents argue that the county’s findings are sufficient to
5 demonstrate compliance with both OAR 660-004-0020(2)(c) and OAR 660-012-0070(7).
6 The Court remanded the decision to LUBA to “determine whether the county’s findings
7 satisfied the criteria in OAR 660-004-0020(2)(c) as well as OAR 660-012-0070(7).” *Id.* at
8 338.

9 In its petition for review, and its post-remand briefing, CEF takes the position that
10 OAR 660-004-0020(2)(c) requires the County to choose the alternative that is “least
11 disruptive to resource land.” Petition for Review 22; Memorandum on Remand 4. We
12 understand CEF to argue, in order to show compliance with OAR 660-004-0020(2)(c), on
13 remand the county must show that the findings and evidence demonstrate that the preferred
14 alternative is the “least disruptive to resource land.” CEF also argues that the county
15 misconstrued the relationship between OAR 660-004-0020(2)(c) and 660-012-0070(7) in the
16 same way LUBA did. Because the county’s findings suffer from that same misconception
17 of law, CEF argues that remand is necessary for the county to adopt findings that apply the
18 correct understanding of law. CEF also contends that the county must re-open the record on
19 remand to allow the parties to submit new evidence regarding the criteria in OAR 660-004-
20 0020(2)(c). According to CEF, the current record does not include evidence necessary to
21 demonstrate compliance with the specific requirements of OAR 660-004-0020(2)(c).

22 Respondents submitted a lengthy post-remand brief arguing that the county’s findings
23 and the evidence suffice to demonstrate compliance with OAR 660-004-0020(2)(c),
24 specifically the requirements identified by the Court that differ from the requirements of
25 OAR 660-012-0070(7). Respondents cite to findings and identify evidence that, they
26 contend, adequately address the productivity of resource land, the ability to sustain resource

1 uses affected by the alternative alignments considered, and the long-term economic impacts
2 on the area caused by removal of the land from the resource base.

3 As an initial matter, we disagree with CEF that OAR 660-004-0020(2)(c) requires the
4 county to choose the alternative that is “least disruptive to resource land.” The rule does not
5 use that phrase. The rule requires the county’s ESEE analysis to “determine which resource
6 land is least productive; the ability to sustain resource uses near the proposed use; and the
7 long-term economic impact on the general area caused by irreversible removal of the land
8 from the resource base.” The county must consider those determinations in setting forth the
9 “reasons why the consequences of the use at the chosen site are not significantly more
10 adverse than would typically result from the same proposal being located in areas requiring a
11 goal exception other than the proposed site.” However, the rule does not impose an absolute
12 standard that the county must choose the site that is “least disruptive” to resource land.¹¹
13 Rather, the county may choose the preferred alternative as long as the ESEE consequences
14 are not “significantly more adverse” than would typically result from using other resource
15 lands for the proposed use.

16 It is also worth bearing in mind that the required determinations (productivity, ability
17 to sustain resource use, and long-term economic impact) involve largely *economic*
18 consequences. The ESEE analysis requires analysis of four types of consequences, only one
19 of which is economic. By its nature, the ESEE analysis does not elevate economic
20 consequences above the other three types of consequences that must be analyzed. In other
21 words, if analysis of the environmental, social and energy consequences strongly support the
22 preferred alternative, a local government could reach a sustainable conclusion that the long-
23 term ESEE consequences of the preferred alternative “are not significantly more adverse than

¹¹ As respondents noted in their response brief, if LCDC wanted to require that local governments choose the alternative with the least impacts to agricultural lands, it knows how to write rules to that effect. *See, e.g.*, OAR 660-012-0065(5)(c) (“Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use”).

1 would typically result from the same proposal being located in other areas requiring a Goal
2 exception,” notwithstanding that analysis of economic consequences indicates that another
3 alternative is superior in that respect.¹²

4 We further disagree with CEF that the county’s findings are so infected by an
5 incorrect understanding of OAR 660-004-0020(2)(c) that the county’s decision should be
6 summarily remanded without considering whether the county’s findings in fact suffice to
7 demonstrate compliance with that rule. While the findings certainly focus heavily on
8 OAR 660-012-0070(7), as the Court noted the findings cite and appear to address OAR 660-
9 004-0020(2)(c), including the specific language identified by the Court. While the county
10 may have believed (and argued to LUBA and the Court) that OAR 660-012-0070(7)
11 essentially substitutes for OAR 660-004-0020(2)(c) under the present circumstances, the
12 county’s findings nonetheless appear to address the substantive requirements of OAR 660-
13 004-0020(2)(c). If the county’s findings as a whole in fact make the determinations required
14 by OAR 660-004-0020(2)(c) and in fact conduct the analysis required by that rule, we see no
15 point in summary remand to the county to adopt additional findings.

16 The only substantive differences between OAR 660-004-0020(2)(c) and OAR 660-
17 012-0070(7) cited to us are those noted by the Court, the requirements to determine (1)
18 which resource land is least productive, (2) the ability to sustain resource uses near the
19 proposed use, and (3) the long-term economic impact on the general area caused by
20 irreversible removal of the land from the resource base.

¹² At Record 627 is a table quantifying various economic, social, environmental and energy consequences for the three bypass alignments that the county considered under OAR 660-004-0020(2)(c) and 660-012-0070(7). In general, the preferred alignment appears to have less severe social, environmental and energy consequences than the other two alignments. For example, the preferred alternative displaces only six residences, compared to 17 (rural residential option) and 40 (northern alignment), and impacts fewer acres of wetlands and wildlife habitat. For that matter, the preferred alternative displaces only slightly more EFU-zoned land than the rural residential option (175 versus 169), and less than the northern alternative (182).

1 The county’s ESEE analysis considered three bypass corridor alternatives that cross
2 resource lands.¹³ Each alternative has an eastward, central, and westward portion. The
3 westward portion of all three alternatives, between the cities of Dundee and Dayton, is the
4 same alignment. The alternatives differ only in the eastward and central portions. The
5 preferred Southern Alternative passes south of the City of Newberg, crosses resource land
6 (including CEF’s property) between the cities of Newberg and Dundee, and continues south
7 and west around Dundee. The Southern Alternative with Rural Residential Option is
8 identical in its eastern portion, but differs from the preferred alternative in the central portion
9 between Newberg and Dundee by crossing more rural residential-zoned lands. The third
10 option is the Northern Alternative, which loops north around the City of Newberg, crosses
11 Highway 99E between Newberg and Dundee and joins the alignment of the other alternatives
12 for the remaining westward portion. Both the Southern Alternative with Rural Residential
13 Option and the Northern Alternative cross a portion of CEF’s property.

14 With respect to the productivity of resource land, respondents cite us to findings and
15 evidence indicating that all of the displaced farmland is “high-value farmland.” Record
16 1298. The findings describe the farm uses occurring on lands displaced under each
17 alternative. The findings do not explicitly determine which resource lands have the least
18 productivity, or explicitly rank productivity of resource lands, but it appears based on the
19 evidence cited to us that all displaced resource lands consist of high-value farmlands and are
20 similar in their agricultural productivity. CEF does not cite us to any countervailing
21 evidence, or advance any arguments at all regarding the relative productivity of resource

¹³ The ESEE analysis also considered three alternatives for the East Dundee Interchange, a separate element of the Bypass, and selected the North option because it did not further fragment CEF’s farm operation, as did the other two alternatives. Except under the seventh assignment of error, discussed below, CEF does not present any focused challenge to Ordinance 750, which adopts the preferred alternative for the East Dundee Interchange. To the extent CEF challenges the adequacy of the findings addressing the East Dundee Interchange under OAR 660-004-0020(2)(c), we agree with respondents that the county’s findings adequately explain why the East Dundee Interchange element is consistent with OAR 660-004-0020(2)(c).

1 lands crossed by the various alternatives. Given that lack of focused argument, we conclude
2 that the county's findings adequately determine the productivity of resource lands, for
3 purposes of OAR 660-004-0020(2)(c).

4 With respect to the ability to sustain resource uses near the proposed use, the county
5 adopted extensive findings concluding that the preferred alternative impacted the ability to
6 sustain resource uses less than either of the other two alternatives. With respect to CEF's
7 farm operation, the findings concluded that the preferred alternative would divide CEF's
8 property into large parcels, each more than the minimum parcel size for commercial farms,
9 while the other alignments would create a substandard remainder parcel that due to its size
10 and location would be subject to intense urbanization pressure. Record 628-29; 684-85. The
11 county also adopted findings addressing impacts on other resource areas, noting, for
12 example, that the northern alternative would displace 33 acres of EFU land not displaced by
13 either southern alternative, and would directly impact existing orchards and vineyards.
14 Record 629. Although CEF appears to disagree with those findings, CEF has not shown that
15 the county failed to consider the ability to sustain resource uses under the various
16 alternatives.

17 Finally, the same findings appear adequate to address the "long-term economic
18 impact on the general area caused by irreversible removal of the land from the resource
19 base." If there is some long-term economic impact that the county failed to consider, CEF
20 has not identified what it is. The county carefully addressed the alleged economic impacts
21 that CEF cited, and concluded that the preferred alternative would not be significantly more
22 adverse in that respect than the other alternatives requiring an exception. Record 715-717.

23 In sum, CEF has not established that the county's ESEE analysis is inadequate to
24 demonstrate compliance with the requirements of OAR 660-004-0020(2)(c).

25 CEF's third assignment of error is denied.

1 **FOURTH ASSIGNMENT OF ERROR (CEF)**

2 Under the fourth assignment of error, CEF argues that the county’s decision did not
3 require ODOT to implement adequate mitigation measures to ensure that the NDTIP will be
4 made compatible with CEF’s farming operations, pursuant to OAR 660-004-0020(2)(d).¹⁴
5 The Court rejected this argument finding that the county agreement to consider and ensure
6 mitigation at subsequent development stages was sufficient to satisfy OAR 660-004-
7 0020(2)(d). *Yamhill II*, 203 OR App at 340-41.

8 Although CEF argues that we should “generally reconsider” our opinion, because the
9 Court sustained our disposition of the mitigation requirement of OAR 660-004-0020(2)(d),
10 and our resolution of the issue specifically considered OAR 660-004-0020(2)(d) rather than
11 erroneously relying solely on the provisions of OAR 660-012-0070, this issue is resolved.

12 The fourth assignment of error is denied.

13 **FIFTH THROUGH TENTH ASSIGNMENTS OF ERROR (CEF)**

14 Of the remaining assignments of error, the only one that CEF argues is still viable is
15 the seventh assignment of error, in which CEF argues that if any of the three ordinances
16 adopted by the county to approve the NDTIP are remanded then the other ones must be
17 remanded as well, because the ordinances are interdependent. We concluded that the seventh
18 assignment of error is moot, because we did not remand any of the County’s ordinances. The

¹⁴ OAR 660-004-0020(2)(d) provides:

“‘The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.’ The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. ‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.”

1 Court of Appeals did not explicitly address that issue or direct us to reconsider our
2 disposition of the seventh assignment of error.¹⁵

3 Because we have affirmed the three ordinances adopted by the county, even if the
4 issue raised in the seventh assignment of error is still before us, there is no basis to remand
5 any of the ordinances.

6 The seventh assignment of error is denied.¹⁶

7 The county's decision is affirmed.

¹⁵ CEF apparently raised a similar issue before the Court, that was raised in CEF's *eighth* assignment of error, arguing that if the City of Dundee's corresponding comprehensive plan amendment was remanded, LUBA must also remand the county's ordinances. We considered that issue moot as well, since we had affirmed the City of Dundee decision. The Court discussed the issue briefly, and stated that it need not "further address petitioner's concern," because the Court remanded both the City of Dundee decision and the county's decisions. 203 Or App at 341. We in turn remanded the City of Dundee decision to the city, which issued a decision on remand. Petitioner has appealed that decision on remand to LUBA. *Columbia Empire Farms, Inc. v. City of Dundee* (LUBA No. 2006-141). Given the Court's disposition, it is arguable that CEF's *eighth* assignment of error is still unresolved. However, as noted, CEF's post-remand briefing identifies only the seventh assignment of error as an unresolved issue. Given the confused state of the facts and briefing on this point, we decline to consider on our own the viability or merits of the eighth assignment of error.

¹⁶ To the extent any of the remaining assignments of error are still viable, they are rejected without further discussion.