

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 VinCEP, DOMAINE DROUHIN  
5 and JASON LETT,  
6 *Petitioners,*

7  
8 and

9  
10 ILSA PERSE  
11 *Intervenor-Petitioner,*

12  
13 vs.

14  
15 YAMHILL COUNTY,  
16 *Respondent,*  
17 and

18  
19 DAVID KAHN and  
20 THE HAZEL E. TIMMONS TRUST,  
21 *Intervenors-Respondent.*

22  
23 LUBA No. 2006-157

24  
25 FINAL OPINION  
26 AND ORDER

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28 Appeal from Yamhill County.

29  
30 Edward J. Sullivan and William K. Kabeiseman, Portland, filed the petition for  
31 review and argued on behalf of petitioners. With them on the brief were Carrie Richter,  
32 Garvey Schubert Barer, PC and Ilsa Perse.

33  
34 No appearance by Yamhill County.

35  
36 Roger A. Alfred, Portland, filed the response brief and argued on behalf of  
37 intervenor-respondents. With him on the brief were Michael C. Robinson and Perkins Coie,  
38 LLP.

39  
40 BASSHAM, Board Chair; HOLSTUN, Board Member; RYAN, Board Member,  
41 participated in the decision.

42  
43 REMANDED

03/21/2007

44  
45 You are entitled to judicial review of this Order. Judicial review is governed by the

1 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners<sup>1</sup> appeal a county decision approving exceptions to Statewide Planning Goals 3, 4 and 14 and related comprehensive plan and land use regulations to allow construction of a 50-room luxury hotel in an agricultural area.

**FACTS**

The subject property is a 65-acre parcel located two to three miles and roughly equidistant from the nearby cities of Dayton, Lafayette and Dundee, in a premier wine-growing region known as the Red Hills of Dundee. The parcel is designated Agriculture/Forestry Large Holding and zoned for exclusive farm use (EFU). The dominant soil types on the property are Jory soils that are suitable for agricultural uses, including vineyards. However, the property is not currently farmed. Surrounding uses include a bed and breakfast, vineyards, wineries, and other resource uses.

Intervenors-respondent (intervenors) propose to develop a luxury “wine country” hotel on a southern 12-acre portion of the subject parcel, on a ridge that is the highest part of the property. The remainder of the 65-acre parcel will remain in EFU zoning. The county’s decision describes the proposal as follows:

“The applicants’ proposal is to develop a hotel modeled after certain high-end wine country hotels in Napa Valley—specifically, Auberge du Soleil, Calistoga Ranch and Meadowood. The hotel will be relatively small, with approximately 50 rooms, a restaurant, a spa, and limited meeting facilities. The proposed hotel will support and enhance the Yamhill County economy by providing a unique luxury hotel in the heart of wine country that will allow wine country tourists to stay in Yamhill County rather than in Portland. In order to provide the requisite destination wine country experience similar to the identified Napa Valley hotels, the hotel must be located in a quiet and idyllic rural setting that affords privacy as well as expansive views of the

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<sup>1</sup> Petitioner VinCEP is an organization of Oregon wine growers. The other named petitioners are also wine growers. Petitioner Domaine Drouhin is a vineyard and winery located adjacent to the subject property.

1 surrounding wine country, and must also be in close proximity to wineries  
2 with tasting rooms.” Record 4.

3 After conducting a hearing, the county board of commissioners voted to approve the  
4 application, adopting a “reasons” exception to applicable statewide planning goals. This  
5 appeal followed.

## 6 INTRODUCTION

7 ORS 197.732 and Goal 2, Part II(c) permit a local government to plan and zone land  
8 for uses not allowed under applicable statewide planning goals if the local government  
9 identifies “[r]easons [that] justify why the state policy embodied in the applicable goals  
10 should not apply.” OAR 660-004-0020(2) elaborates on the four principal factors that must  
11 be addressed under the statute and Goal 2.<sup>2</sup> OAR 660-004-0022 sets out the types of

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<sup>2</sup> OAR 660-004-0020(2) provides, in relevant part:

“The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

“(a) ‘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;

“(b) ‘Areas which do not require a new exception cannot reasonably accommodate the use’:

“(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;

“(B) 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?

1 “reasons” that can justify exceptions to various specific goals. For uses not specifically  
2 addressed in OAR 660-004-0022, OAR 660-004-0022(1) sets out a “catch-all” provision that

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“(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?

“(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

“(c) 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 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;

“(d) ‘The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts’. \* \* \*”

1 lists a non-exclusive set of reasons sufficient to justify an exception.<sup>3</sup> For exceptions that  
2 involve urban uses on rural lands, OAR 660-004-0022(1) directs local governments to  
3 address the requirements of OAR 660, chapter 014, specifically the standards at OAR 660-  
4 014-0040.<sup>4</sup> See *DLCD v. Umatilla County*, 39 Or LUBA 715, 723-24 (2001) (in adopting a

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<sup>3</sup> OAR 660-004-0022(1) provides:

“For uses not specifically provided for in subsequent sections of this rule or in OAR 660-012-0070 or chapter 660, division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

- “(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either
- “(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or
- “(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.”

<sup>4</sup> OAR 660-014-0040 provides, in relevant part:

- “(1) As used in this rule, ‘undeveloped rural land’ includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.
- “(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.
- “(3) To approve an exception under section (2) of this rule, a county must also show:
  - “(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

1 reasons exception to allow an urban use on rural land, the county must apply OAR 660-014-  
2 0040, and need not apply OAR 660-004-0022(1) or (2)); *Caine v. Tillamook County*, 25 Or  
3 LUBA 209, 220 (1993) (same). The first four assignments of error challenge the county’s  
4 application of the foregoing administrative rules.

5 **FIRST ASSIGNMENT OF ERROR**

6 **A. Applicability of OAR 660-014-0040**

7 The county viewed the proposed hotel to be “urban development,” and accordingly  
8 evaluated the proposed reasons exception under the standards set out in OAR 660-014-0040.  
9 Petitioners contend that the proposed hotel is not “urban development,” given the emphasis  
10 the applicant and county place on locating the hotel in a rural setting. If the proposed hotel is  
11 not “urban development,” petitioners argue, OAR 660-004-0020 and 660-004-0022 supply  
12 the standards governing the proposed exception, and the county erred in applying OAR 660-

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“(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development 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 on other undeveloped rural lands, considering:

“(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

“(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

“(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

“(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

“(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.”

1 014-0040. Specifically, petitioners contend that the catch-all standards set out in OAR 660-  
2 004-0022(1) potentially apply, and therefore the county may be required to determine that  
3 there is a “demonstrated need” for the proposed use, and either that “[a] resource upon which  
4 the proposed use or activity is dependent can be reasonably obtained only at the proposed  
5 exception site and the use or activity requires a location near the resource,” or “[t]he  
6 proposed use or activity has special features or qualities that necessitate its location on or  
7 near the proposed exception site.” OAR 660-004-0022(1). *See* n 3.

8         Intervenors respond, and we agree, that the county correctly concluded that the  
9 proposed hotel is “urban development” for purposes of OAR 660-014-0040. While it is  
10 frequently difficult to draw clear distinctions between “urban” and “rural” development, a  
11 50-unit deluxe hotel that, in the county’s words, is intended to “allow wine country tourists  
12 to stay in Yamhill County rather than in [the City of] Portland” is more accurately viewed as  
13 urban development. It is true, as petitioners point out, that the applicant and the county  
14 describe the proposed hotel in ways that emphasize the desirability, at least, of a rural setting  
15 for the hotel. However, for reasons discussed below we do not believe the cited desirability  
16 of a “rural setting” renders the proposed 50-unit deluxe hotel a rural use, for purposes of  
17 adopting a reasons exception under OAR 660-014-0040.

18         Petitioners also argue that while the hotel may be an “urban” use in a general sense, it  
19 is not “urban development” as that term is used in OAR 660-014-0040. Petitioners note that  
20 OAR 660-014-0040(2) gives an example of a reason that suffices to justify “urban  
21 development” in rural areas, that is, an “urban population and urban levels of facilities and  
22 services are necessary to support an economic activity that is dependent upon an adjacent or  
23 nearby natural resource.” *See* n 4. Petitioners contend that the only “economic activity” here  
24 is the hotel itself, and that it is bootstrapping for the county to find that the economic activity  
25 that makes urban facilities and services necessary will also supply those services and  
26 facilities.



1 OAR 660-014-0040(2) provides that the reasons that justify urban development on  
2 rural land “include but are not limited to” circumstances where “urban population and urban  
3 levels of facilities and services are necessary to support an economic activity that is  
4 dependent upon an adjacent or nearby natural resource.” We address below, under the third  
5 assignment of error, petitioners’ challenges to the county’s findings directed at that reason.  
6 However, for present purposes, it is clear that the scope of the term “urban development,” as  
7 used in OAR 660-014-0040, is not limited to the non-exclusive example set out OAR 660-  
8 014-0040(2). As we already have explained, we agree with the county that a 50-unit deluxe  
9 hotel is properly viewed as urban development.

10 **B. Applicability of OAR 660-004-0020 and 660-004-0022**

11 Alternatively, petitioners argue that if the proposed hotel is urban development and  
12 OAR 660-014-0040 applies, that rule does not constitute the exclusive set of applicable rule  
13 standards. According to petitioners, OAR 660-004-0020 and 660-004-0022 interpret the  
14 requirements of ORS 197.732 and Goal 2, Part II, and therefore those rule provisions apply  
15 to any exception taken under the statute and goal, including the present reasons exception.  
16 Petitioners argue that the holding in *1000 Friends of Oregon v. Yamhill County*, 203 Or App  
17 323, 332-334, 126 P3d 684 (2005), supports their view that OAR 660-004-0020 and 660-  
18 004-0022 apply in addition to the requirements of OAR 660-014-0040.

19 As intervenors note, OAR 660-004-0000(1) states that OAR chapter 660, division  
20 004 interprets the exception process as it applies to statewide Goals 3 to 19, “[e]xcept as  
21 provided for in OAR chapter 660, division 14[.]”<sup>5</sup> Similarly, OAR 660-004-0022(1) appears

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<sup>5</sup> OAR 660-004-0000(1) provides:

“The purpose of this rule is to explain the three types of exceptions set forth in Goal 2 ‘Land Use Planning, Part II, Exceptions.’ *Except as provided for in OAR chapter 660, division 14, ‘Application of the Statewide Planning Goals to Newly Incorporated Cities and to Urban Development on Rural Lands’ and OAR chapter 660, division 12, ‘Transportation Planning’, section 0070, ‘Exceptions for Transportation Improvements on Rural Land,’* this division interprets the exception process as it applies to statewide Goals 3 to 19.” (Emphasis added.)

1 to exempt from that rule “uses not specifically provided for in \* \* \* OAR chapter 660,  
2 division 14[.]” See n 3. Reading those rules together, it is reasonably clear that the Land  
3 Conservation and Development Commission (LCDC) intends that a reasons exception for  
4 proposed urban development on rural land be evaluated under OAR chapter 660, division  
5 014, instead of OAR 660-004-0020 or 660-004-0022, as we held in *DLCD v. Umatilla*  
6 *County* and *Caine v. Tillamook County*.

7 The more recent case petitioners cite, *1000 Friends of Oregon v. Yamhill County*,  
8 lends little assistance to petitioners. That case involved a reasons exception for a  
9 transportation facility under former OAR 660-012-0070. The Court of Appeals held that the  
10 county must apply both the Goal 12 rule and OAR 660-004-0020. Significantly, the then-  
11 applicable versions of OAR 660-004-0000 and OAR 660-004-0022(1) did not include the  
12 language that exists in the present rule, which exempts reasons exceptions under OAR 660-  
13 012-0070 from the requirements of OAR chapter 660, division 004. In other words,  
14 following *1000 Friends of Oregon v. Yamhill County*, LCDC apparently amended the  
15 relevant rules to effectively overturn the holding that petitioners rely on. OAR 660-004-  
16 0000(1) and OAR 660-004-0022(1) now specify in identical terms that reasons exceptions  
17 pursuant to OAR 660-012-0070 and OAR chapter 660, division 014 are not subject to  
18 OAR chapter 660, division 004. That recent legislative history is an additional indication  
19 that LCDC does not intend OAR 660-004-0020 and 660-004-0022 to govern reasons  
20 exceptions for urban development on rural lands. The county did not err in concluding that  
21 OAR 660-014-0040 provides the governing standards for the proposed reasons exception in  
22 the present case.<sup>6</sup>

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<sup>6</sup> As a precaution, the county adopted alternative findings addressing the standards in OAR 660-004-0020(2) and 660-004-0022(1). Given our conclusion that those standards do not apply, we need not address petitioners’ challenges to those findings.

1           **C.     Validity of OAR 660-014-0040**

2           Petitioners also argue that, if OAR 660-014-0040 is interpreted to provide the  
3 exclusive criteria for a reasons exception, the rule is inconsistent with Goal 3 and the priority  
4 scheme at ORS 197.298, which generally assigns the lowest priority to resource lands in  
5 determining which lands to include within an urban growth boundary. According to  
6 petitioners this alleged inconsistency arises because the rule appears to allow *urban*  
7 development on resource land more easily than OAR 660-004-0022(2) would allow *rural*  
8 development on that same resource land. According to petitioners, as the county has applied  
9 OAR 660-014-0040 in the present case, it is easier to site a luxury hotel on high value  
10 farmland than it would be site a 4-lot rural residential subdivision on rural land not zoned for  
11 farm use.<sup>7</sup> Petitioners contend that result cannot possibly be consistent with Goal 3.

12           Petitioners’ apparent premise is that the listed reasons that the county can rely on to  
13 justify exceptions for uses specified in OAR 660-004-0022 (e.g., rural residential  
14 development, rural industrial development, etc.) are more detailed and rigorous than the  
15 reasons that the county can rely on to justify an exception for urban development under  
16 OAR 660-014-0040(2). If that is petitioners’ argument, it is not clear to us that the criteria  
17 that govern a reasons exception under OAR 660-014-0040(2) are any less rigorous than the  
18 criteria that govern a reasons exception under the subsections of OAR 660-004-0022. As

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<sup>7</sup> Petitioners argue, in full:

“To the extent LUBA reads the rules otherwise, the rules violate the policies underlying Goal 3 and the priority scheme of ORS 197.298 by allowing urban development on resource land (the lowest priority in ORS 197.298) without adequate reasons. If LCDC’s rules could be read to allow a concededly urban development on resource land, yet it would not be available to site other developments identified in OAR 660-004-0022, the exception process in OAR Division 660-014 violates the most fundamental underpinnings of the state’s land use system and must be found to be inconsistent with ORS 197.732 and the Goals. For example, under the County’s interpretation, it would be easier to site a luxury hotel on high value farmland zoned for exclusive farm use than it would be to site a 4-lot rural residential subdivision on rural land not zoned for exclusive farm use, even though the impacts from the subdivision would be significantly less and may remove less land from agricultural production.” Petition for Review 9.

1 noted, OAR 660-014-0040(2) sets out a non-exclusive example of a reason that is sufficient  
2 to justify urban development on rural land, *i.e.*, that “urban population and urban levels of  
3 facilities and services are necessary to support an economic activity that is dependent upon  
4 an adjacent or nearby natural resource.” While that is not the only type of reason that can  
5 justify urban development, to be sufficient the proffered reason or reasons must similarly  
6 “justify why the policies in Goals 3, 4, 11 and 14 should not apply[.]” That is no light  
7 undertaking. While OAR 660-014-0040(2) does not set out a detailed or exhaustive list of  
8 sufficient reasons, it is by no means clear to us, as petitioners suggest, that under OAR 660-  
9 014-0040 it is easier to obtain a reasons exception for urban development on rural land than  
10 it is to obtain a reasons exception for the types of rural development listed in OAR 660-004-  
11 0022.

12 In any case, petitioners have not established that OAR 660-014-0040 is inconsistent  
13 with either Goal 3 or ORS 197.298. The statute governs proposals to amend an urban growth  
14 boundary, and petitioners do not explain what bearing that statute has on a proposal that does  
15 not involve an urban growth boundary amendment. As for Goal 3, petitioners cite no  
16 provision of OAR 660-014-0040 that is textually inconsistent with any goal provision. The  
17 real thrust of petitioners’ argument, it appears, is that the county misapplied OAR 660-014-  
18 0040, to reach a result that is contrary to the rule as well as the goal. We address those  
19 arguments under the third assignment of error.

20 **D. Reasons Why the State Policy Embodied in the Applicable Goals Should**  
21 **Not Apply**

22 In the remainder of the first assignment of error, petitioners advance a number of  
23 arguments challenging the sufficiency of the county’s stated reasons why the state policy  
24 embodied in the applicable goals should not apply. Much of petitioners’ argument under this  
25 assignment of error is based on the premise that the “catch-all” reason set out in OAR 660-  
26 004-0022(1) applies, particularly the requirement for a “demonstrated need for the proposed  
27 use or activity, based on one or more of the requirements of Goals 3 to 19.” For the reasons

1 discussed above, the standards in OAR 660-014-0040(2) govern the county’s efforts to  
2 identify “reasons why the state policy embodied in the applicable goals should not apply,”  
3 not OAR 660-004-0022(1).

4 That said, petitioners argue, and we agree, that OAR 660-004-0022 and cases  
5 interpreting that rule and related goals and statutes are not completely irrelevant, for  
6 purposes of understanding what OAR 660-014-0040(2) requires. Both administrative rules  
7 are among a set of interrelated rules that constitute LCDC’s interpretations of the  
8 requirement in Goal 2, Part II and ORS 197.732 that local governments may plan and zone  
9 land for uses not allowed under applicable statewide planning goals if the local government  
10 identifies “[r]easons [that] justify why the state policy embodied in the applicable goals  
11 should not apply.”

12 While LCDC has chosen to instantiate that common requirement somewhat  
13 differently in different contexts, there is a strong family resemblance among the various rules  
14 that interpret that requirement. For example, all or nearly all of the specific reasons set out in  
15 OAR 660-004-0022 for taking exceptions to various goals to allow various specific uses  
16 include circumstances where there is a “demonstrated need” or where the use is “necessary”  
17 to satisfy a stated purpose or goal. For example, a reasons exception for rural residential  
18 development under OAR 660-004-0022(2) may be allowed where it is “necessary to satisfy  
19 the market demand for housing generated by existing or planned rural industrial, commercial,  
20 or other economic activity in the area.” A reasons exception to expand an unincorporated  
21 community may be allowed where there is a “demonstrated need for additional land in the  
22 community to accommodate a specific rural use based on Goals 3-19.” OAR 660-004-  
23 0022(4)(a). The specific rule applicable to urban development, OAR 660-014-0040(2), and  
24 the principle “reason” the county identified in the present case, allows urban development  
25 outside urban growth boundaries where “urban population and urban levels of facilities and  
26 services are necessary to support an economic activity that is dependent upon an adjacent or

1 nearby natural resource.” Given the strong resemblance between the standards articulated in  
2 OAR 660-004-0022 and OAR 660-014-0040, and the fact that those standards implement a  
3 common requirement set out in Goal 2, Part II and ORS 197.732, any cases interpreting  
4 OAR 660-004-0022, the goal or the statute are at least potentially helpful in interpreting  
5 OAR 660-014-0040(2) or evaluating a reasons exception under that rule.

6 Petitioners challenge the county’s findings addressing OAR 660-014-0040(2) under  
7 the third assignment of error. The third assignment of error expressly incorporates  
8 arguments made under the first assignment of error, to the extent those arguments are also  
9 applicable under OAR 660-014-0040(2). Accordingly, we will consider any arguments made  
10 in the first assignment of error (as well as intervenors’ responses) that appear relevant to  
11 interpreting or applying OAR 660-014-0040(2) in our discussion of the third assignment of  
12 error, below. In all other respects, however, the arguments under the first assignment of  
13 error do not provide a basis to reverse or remand the challenged decision.

14 The first assignment of error is denied.

15 **THIRD ASSIGNMENT OF ERROR**

16 As noted, OAR 660-014-0040(2) states that “[r]easons that can justify why the  
17 policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings  
18 that an urban population and urban levels of facilities and services are necessary to support  
19 an economic activity that is dependent upon an adjacent or nearby natural resource.” The  
20 county found that this element of the rule is satisfied “by the subject property’s proximity to  
21 the county’s wine country agricultural resources.”<sup>8</sup> Record 20. Petitioners challenge that  
22 finding and related findings.

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<sup>8</sup> The county’s findings state, in relevant part:

“OAR 660-014-0040(2) provides that one means by which a county can justify a Goal 14 exception is to provide reasons that justify why the policies in Goals 3, 4, 11 and 14 should not apply, including findings that urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

1           **A.     Non-Exclusive Reason**

2           As a threshold issue, intervenors note that the county’s findings quoted above at n 8  
3 discuss the fact that reasons sufficient to justify urban development on rural lands under  
4 OAR 660-014-0040(2) are not limited to the reason listed in that rule provision. Intervenors  
5 argue:

6           “\* \* \* By its terms, this portion of the rule is not intended to apply to *all*  
7 exceptions under Division 14—instead, it *may* be applied in those  
8 circumstances where an urban population and urban levels of services will  
9 result, and are dependent on a nearby natural resource. If those specific  
10 circumstances do not exist, as is the case with the challenged decision, the  
11 rule does not create a mandatory criterion. Instead, the remainder of the rule  
12 sets forth the actual mandatory approval criteria that must be addressed by a  
13 county approving a Goal 14 exception.” Intervenors-Respondent’s Brief 42  
14 (emphasis original).

15 Intervenors argue that any failure to demonstrate that the proposed urban development is  
16 “necessary to support an economic activity that is dependent upon an adjacent or nearby  
17 natural resource” under OAR 660-014-0040(2) is not a basis to reverse or remand the  
18 challenged decision, because that listed reason is not the exclusive reason that can justify  
19 urban development under the rule. Although it is not entirely clear, we understand  
20 intervenors to argue that where the local government does not rely on that listed reason or if  
21 that listed reason does not apply, “the remainder of the rule sets forth the actual mandatory  
22 criteria that must be addressed by a county approving a Goal 14 exception.” *Id.*

23           If intervenors are contending that the county may adopt a reasons exception under  
24 OAR 660-014-0040 without identifying any “reason [that justifies] why the state policy  
25 embodied in the applicable goals should not apply,” and can simply proceed to apply the  
26 remaining standards in OAR 660-014-0040, we disagree. OAR 660-014-0040(2) clearly

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However, the rule expressly states that this is not the only ‘reason’ on which the county can justify an exception to the goals. Although proximity to a nearby natural resource is not an exclusive test for justifying exceptions under the Division 14 rules, for the reasons addressed in more detail below regarding the specific locational requirements of the proposed wine country hotel, the [county] finds that this element of the rule is satisfied by the subject property’s proximity to the county’s wine country agricultural resources.” Record 19-20.

1 requires the county to identify a reason that justifies “why the policies in Goals 3, 4, 11 and  
2 14 should not apply[.]”

3           What intervenors more likely mean is that a failure to demonstrate that proposed  
4 urban development is “necessary to support an economic activity that is dependent upon an  
5 adjacent or nearby natural resource” is not a basis to reverse or remand the challenged  
6 reasons exception, if the county has identified a *different* reason that is *also* sufficient to  
7 demonstrate “why the policies in Goals 3, 4, 11 and 14 should not apply[.]” That much  
8 seems indisputable. The problem is that intervenors do not cite to any findings in the  
9 decision in which the county identifies a reason or reasons that are different from that listed  
10 in OAR 660-014-0040(2), as the “reason” that justifies why the policies in Goals 3 and 14  
11 should not apply. As far as we can tell from the findings, while the county noted that the  
12 reason listed in OAR 660-014-0040(2) is non-exclusive, the county proceeded to justify the  
13 exception based on that listed reason, *i.e.*, the proposed hotel is “necessary to support an  
14 economic activity that is dependent upon an adjacent or nearby natural resource.”<sup>9</sup> If the  
15 county justified the exception based on a different reason than the one listed in OAR 660-  
16 014-0040(2), it is not clear to us what that reason is.

17           Intervenors’ argument may be that OAR 660-014-0040(2) permits local governments  
18 to rely on a kind of “lesser-included” version of the listed reason, as a sufficient reason. In  
19 other words, a local government may attempt to demonstrate that the proposed urban  
20 development is “necessary to support an economic activity that is dependent upon an  
21 adjacent or nearby natural resource,” but if the local government’s demonstration falls short

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<sup>9</sup> The county’s findings state that the hotel will provide “urban levels of facilities and services” but will not “create a permanent ‘urban population.’” Record 20. It is not clear what the county means by the latter finding. The reason listed in OAR 660-014-0040(2) is not expressly limited to circumstances involving a “permanent” urban population. That none of the hotel patrons will reside permanently at the hotel does not necessarily mean that the proposed urban development does not involve an “urban population” as well as “urban levels of facilities and services.” See *Hammack & Associates, Inc. v. Washington County*, 16 Or LUBA 75, 82, *aff’d* 890 Or App 40, 747 P2d 373 (1987) (temporary use of rural lands for seasonal performing arts venue is an urban use of rural lands).



1 in any particular, for example, because the economic activity is not dependent on an adjacent  
2 or nearby natural resource, or the proposed development is not necessary to support that  
3 economic activity, the local government may nonetheless justify the exception based on  
4 whatever elements of the listed reason are satisfied. If that is intervenors’ argument, we  
5 disagree. LCDC provided the reason listed in OAR 660-014-0040(2) as an example of a  
6 reason that is sufficient to justify why the policies in Goals 3, 4, 11 and 14 should not apply.  
7 Where the local government proceeds to justify an exception under the reason listed in  
8 OAR 660-014-0040(2), or any reason listed in OAR 660-004-0022 for that matter, the  
9 decision must demonstrate that each of the elements set out in the specified reason are met.

10 We now turn to petitioners’ arguments challenging the county’s findings under  
11 OAR 660-014-0040(2).

12 **B. Economic Activity**

13 Petitioners argue, first, that the county misconstrued the rule in finding that the  
14 proposed hotel is both an “urban facility and service” and, at the same time, the “economic  
15 activity” that is “dependent upon an adjacent or nearby natural resource.” According to  
16 petitioners, under this element of OAR 660-014-0040(2) the urban facility or service must  
17 “support” the economic activity, and cannot *constitute* the economic activity. Petitioners  
18 argue that the “economic activities” at issue here are presumably the wineries in the county,  
19 and the proposed hotel is not “necessary to support” those wineries, many of which oppose  
20 the proposed hotel, and all of which have thrived for decades without a rural “wine country”  
21 hotel.

22 Intervenor respond that the relevant “economic activity” is neither the wineries nor  
23 the hotel, but rather the “wine tourism” that is dependent on the county’s natural resources,  
24 the vineyards and associated wineries that produce world-class wines. Specifically,  
25 intervenors argue that the county found, based on substantial evidence, that the existing wine  
26 tourism infrastructure in the county fails to serve a specific demographic of wine tourists:

1 affluent “core” wine consumers who are unlikely to stay in the local bed-and-breakfast  
2 facilities and who are more likely to stay in luxury hotels in the Portland area, because the  
3 county lacks luxury hotels necessary to attract that demographic.<sup>10</sup>

4 It is understandable that petitioners gained the impression that the county believes the  
5 hotel is both an urban facility or service *and* the relevant “economic activity,” for purposes of  
6 OAR 660-014-0040(2), because the county’s findings emphasize the economic benefits of  
7 the proposed hotel, and do not explicitly identify the “economic activity” to be supported by  
8 the hotel. However, we agree with intervenors that, reading the findings as a whole, the  
9 county believes that it is wine tourism in general, and its economic impact, that is the  
10 pertinent economic activity that the hotel supports.

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<sup>10</sup> The county described the targeted demographic as follows:

“The applicants’ proposed wine country hotel is targeted at a specific demographic of relatively more affluent ‘core’ wine consumers, who are the most likely wine country tourists. As explained in the ECONorthwest analysis and materials cited therein, these more affluent tourists seek small hotels or resorts, which offer more privacy and a wider array of services and amenities, rather than bed and breakfast-type accommodations. In fact, according to the profile prepared for the Washington State Business and Tourism Office titled ‘Washington Wine Country visitor Profile 2003,’ wine country tourists prefer hotels over B&Bs by a ten-to-one ratio. The specific demographic characteristics of wine country tourists and the types of accommodations and amenities they seek are addressed in detail in the April 24, 2006 ECONorthwest analysis at pages 2-4. For such tourists, a vacation to wine country is typically an opportunity to get away from stressful jobs and noisy urban environments, and seek refuge in a quiet, relaxing, upscale environment where they can enjoy fine wines and food, and also pursue their interest in wine by visiting wineries with tasting rooms and related facilities. Wine country tourists are currently well-served by Napa Valley hotels such as Auberge du Soleil, Meadowood and Calistoga Ranch, which provide this type of wine country experience in a quiet rural atmosphere among vineyards and near wineries. As discussed in more detail below, the applicants’ proposal is modeled after these hotels, which provide a very distinct type of lodging product with distinct site-related characteristics.

“\* \* \* Oregon lacks a full-service ‘destination’ hotel in the wine country area of the type found in Napa Valley, such as Meadowood, Auberge du Soleil and Calistoga Ranch. The proposed hotel will generate significant economic benefits to the County. At present, wine country tourists who decide to visit Yamhill County on a vacation are far more likely to stay in Portland than in Yamhill County, and must make at least a 60-mile round trip drive in order to visit wineries. In addition to depriving Yamhill County of tourist-related income, this situation also results in higher vehicle miles traveled and carbon emissions. As stated in the ECONorthwest study, ‘millions of potential tourism dollars are likely going unspent in Yamhill County because Oregon’s wine country is inconvenient and does not have adequate accommodations for wine country tourists.’ Record 20-21.

1           **C.       Characteristics of the Proposed Urban Development**

2           Petitioners next challenge whether the proposed hotel, as characterized by the  
3 applicant, is “necessary” to support wine tourism in the county. We do not understand  
4 petitioners to dispute that there may be a general “need” for a luxury hotel in the county that  
5 can accommodate affluent wine tourists who currently choose to stay at luxury hotels in the  
6 Portland area, because the county lacks luxury accommodations. As discussed below,  
7 petitioners argue that such a luxury hotel can and should be located within one of the several  
8 nearby UGBs in the area. However, petitioners argue that the county erred in defining the  
9 “need” based on the applicants’ desired characteristics for specific sub-type of hotel, one that  
10 is aimed at satisfying the market preferences of a small niche of affluent wine consumers,  
11 including an alleged preference for an “idyllic rural setting[.]”<sup>11</sup>

12           According to petitioners, a market-based preference for a rural setting or “rural  
13 ambiance” is not a legitimate reason to allow new urban development on rural land under  
14 OAR 660-014-0040(2), just as a general “market demand” for rural residential housing is not

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<sup>11</sup> The county’s findings identify several “critical locational factors” that are, according to county, essential characteristics of the needed hotel:

“The [county] also agrees with the evidence submitted by ECONorthwest and the applicants regarding the characteristics of the proposed hotel that are necessary to the meet the needs of the identified wine country tourists—those characteristics are similar to a private country estate that will also provide a complete wine country experience, including a rural setting among vineyards and proximity to wineries with tasting rooms. This conclusion is consistent with the findings of the 1988 INTRA study, which identified the Red Hills of Dundee as a potential location for the proposed wine country resort. It is also consistent with evidence submitted by the applicants regarding the three successful Napa Valley hotels that their proposal is modeled after. Based on this evidence, and as addressed in more detail below, *the [county] finds that the proposed hotel is entirely dependent upon critical locational factors, including proximity to wineries with on-site tasting rooms, vineyards, and other wine tourism opportunities, relative seclusion resulting from distance from major highways and population centers, and an idyllic rural setting with expansive views of the surrounding countryside and nearby vineyards.* These locational requirements, together with the identified need for a hotel of this kind in Yamhill County, the county’s need to expand and diversity its economy and promote its growing wine industry, and other reasons contained in the materials submitted by the applicants and addressed in these findings, provide the reasons that justify the exceptions to Goals 3, 4 and 14 to allow siting of the proposed wine country hotel. \* \* \*” Record 24-25 (emphasis added).

1 a sufficient basis for a reasons exception under OAR 660-004-0022(2). Petitioners argue  
2 that, under the county’s approach, any urban use that could establish some market advantage  
3 from “rural ambiance” could be justified on rural and resource lands under OAR 660-014-  
4 0040(2), potentially opening up a floodgate of new urban uses outside urban growth  
5 boundaries.

6 Further, petitioners argue, defining the essential characteristics of the proposed urban  
7 development to include an “idyllic rural setting with expansive views of the surrounding  
8 countryside” effectively predetermines the outcome of the alternatives analysis required by  
9 OAR 660-014-0040(3), which requires a showing that the proposed urban development  
10 cannot be reasonably accommodated in or through expansion of an urban growth boundary.  
11 As discussed below under the second assignment of error, the county rejected all alternative  
12 locations within nearby UGBs because “the specific type of hotel development being  
13 proposed precludes a location within an urban area.” Record 26.

14 Intervenor respond that OAR 660-014-0040(2) does not impose an explicit  
15 limitation on the type or definitional specificity of a proposed “urban development” that a  
16 county may find to be “necessary” under the rule. According to intervenors, it is permissible  
17 under OAR 660-014-0040 to evaluate the necessity for a reasons exception based on the  
18 specific characteristics of the particular urban development that is proposed. *See, e.g.,*  
19 OAR 660-014-0040(3)(b)(A) (requiring consideration of whether the amount of land used for  
20 “the proposed urban development” is appropriate); *see also 1000 Friends of Oregon v.*  
21 *Metro*, 38 Or LUBA 565, 588 (2000), *aff’d in part, rev’d in part* 174 Or App 406, 26 P3d  
22 151 (2001) (in approving a UGB amendment to allow urban residential development under  
23 OAR 660-004-0010(c)(B)(ii), there are no categorical restrictions on what considerations can  
24 be brought to bear on whether an alternative site can “reasonably accommodate” the  
25 proposed use).

1           The parties cite no relevant cases that interpret OAR 660-014-0040(2) or that address  
2 the issue of how specific the characteristics of the “proposed urban development” may be  
3 described, for purposes of the rule. The parties discuss a number of cases involving reasons  
4 exceptions under Goal 2, Part II, ORS 197.732 and OAR chapter 660, division 004, or urban  
5 growth boundary amendments that require an exception to Goal 14. As explained above,  
6 none of those cases are directly on point, but they may provide some indirect assistance in  
7 determining what OAR 660-014-0040(2) means and requires.

8           Petitioners cite *BenjFran Development v. Metro Service Dist.*, 17 Or LUBA 30  
9 (1988), *aff’d* 95 Or App 22, 767 P2d 467 (1989), for the general proposition that in  
10 determining whether there is a “need” for a reasons exception to allow urban development  
11 the local government cannot elevate the market preferences of the applicant or the  
12 applicant’s customers to the status of an essential characteristic of the proposed use. In  
13 *Benjfran*, the applicant proposed an urban growth boundary (UGB) amendment to allow  
14 development of a newly marketed type of industrial park designed to attract particular  
15 industrial users with specific preferences. The regional government, Metro, denied the  
16 proposed amendment, finding that the applicant had failed to demonstrate a “need” for the  
17 amendment under the first two Goal 14 factors. LUBA held that “Metro is not required to  
18 amend its UGB to provide appropriate land to accommodate every new industrial land  
19 marketing technique enjoying success in other major urban real estate markets[,] \* \* \* even  
20 if the amendment would attract industrial firms that may otherwise go elsewhere.” 17 Or  
21 LUBA at 40. We further rejected the applicant’s argument that Statewide Planning Goal 9  
22 (Economic Development) requires Metro to accommodate every land use proposal with  
23 potential economic benefits. The Court of Appeals agreed on both points.

24           Petitioners also cite to *Still v. Board of County Comm’rs*, 42 Or App 115, 600 P2d  
25 433 (1979), a case applying the requirement in the then-applicable version of Goal 2 that in  
26 order to adopt an exception to applicable goals the local government must explain “[w]hy

1 these other uses [not allowed by the goal] should be provided for.” The Court of Appeals  
2 paraphrased that language as requiring the county demonstrate that there is a “need” for the  
3 proposed use, which was a rural residential subdivision. The county relied on evidence that  
4 there is a scarcity of and market demand for rural residential development. However, the  
5 Court rejected that rationale, stating that “[a] market demand for rural residential  
6 development \* \* \* does not constitute a ‘need’ for it[.]” 42 Or App at 122.<sup>12</sup> Petitioners cite  
7 *Still* for the proposition that under Goal 2, Part II, and administrative rules that interpret the  
8 goal, “market demand” for a particular use is an insufficient reason to justify “why the state  
9 policy embodied in the applicable goals should not apply.” *See also Morgan v. Douglas*  
10 *County*, 42 Or LUBA 46, 53 (2002) (market demand for rural development is an insufficient  
11 reason under OAR 660-004-0022(1); there must be a showing of need based on the statewide  
12 planning goals); *Middleton v. Josephine County*, 31 Or LUBA 423, 430 (1996) (same).

13 Intervenor respond generally that each of the cited cases involve rule or goal  
14 requirements that are not applicable or not directly applicable in the present case, and are  
15 distinguishable for that reason alone. With respect to *BenjFran*, intervenors also argue that  
16 the UGB amendment application was based on the applicant’s general assertion that the  
17 contemplated industrial park would promote economic development, and the Court of  
18 Appeals found that assertion insufficient to demonstrate a “need” under Goal 14. Here,  
19 intervenors argue, the county adopted specific findings, supported by substantial evidence,

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<sup>12</sup> The Court stated, in relevant part:

“The [county’s] conclusion that there is a need for the proposed development in Marion County is based on its finding that there is a scarcity of similar lots, as indicated by the price and small number of similar lots on the market. This correctly summarizes the evidence, which shows that there is a market for residential lots of the kind in the proposed subdivision. A market demand for rural residential development, however, does not constitute a ‘need’ for it, as that word is used in Goal # 2. Goal # 3 was enacted to preserve agricultural land from encroachment by urban and suburban sprawl by subordinating the free play of the marketplace to broader public policy objectives. Land is not excepted from the agricultural goal merely because somebody wants to buy it for a house.” *Id.*

1 regarding the current and historical need for a wine country hotel, a need identified in a 1988  
2 county study, and the preferences of the desired demographic of core wine consumers.  
3 According to intervenors, the county relied on the testimony of multiple subject-matter  
4 experts, including an economist and the manager of one of the Napa Valley resorts that the  
5 design of the proposed hotel is based on, who testified that a hotel with a rural setting and  
6 other characteristics similar to those Napa Valley wine country hotels is a “necessary  
7 element of success for a wine country hotel of this type.” Record 27.<sup>13</sup>

8 As petitioners note, the characteristics of the “new urban development” that are  
9 “necessary to support an economic activity” under OAR 660-014-0040(2) play a role in the  
10 alternatives analyses that must be conducted under OAR 660-014-0040(3)(a), and may play a  
11 determinative role. That rule provision requires a demonstration that “the proposed urban  
12 development cannot be reasonably accommodated in or through expansion of existing urban  
13 growth boundaries or by intensification of development in existing rural communities[.]”  
14 See n 4. It is quite possible to characterize the proposed “urban development” so narrowly or  
15 specifically under OAR 660-014-0040(2) that when the analysis required by OAR 660-014-  
16 0040(3)(a) is applied, that analysis become a meaningless exercise, rendering selection of the  
17 subject property under those criteria a foregone conclusion.

18 For that reason, we agree with petitioners that under OAR 660-014-0040(2) the local  
19 government must justify any “essential characteristic” of the proposed urban development, at  
20 least where those “essential characteristics” have the effect of eliminating the need to  
21 consider the alternative of siting the proposed urban development within an urban growth  
22 boundary. In particular, where the local government relies upon the reason listed in

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<sup>13</sup> The findings at Record 27 quote the following testimony from the manager of the Auberge du Soleil:

“[A] quiet rural setting among vineyards is a necessary element of success for a wine country hotel of this type. This type of luxury resort requires seclusion, views, and ambiance that simply could not be found in an urban environment. A luxury hotel [of this type] simply will not work if it is located in a town or city location.”

1 OAR 660-014-0040(2), the local government must demonstrate that the purportedly essential  
2 characteristics are indeed necessary to the policy objective identified by that reason, *i.e.*, that  
3 is, “necessary to support an economic activity that is dependent upon an adjacent or nearby  
4 natural resource.” In our view, it is not sufficient that a particular characteristic is merely  
5 economically desirable, or is likely to enhance the economic success of the proposed  
6 development, or that the characteristic happens to be a feature of development elsewhere that  
7 the proposed development is modeled on.

8 That view is supported to some extent by *BenjFran* and *Still*, which admittedly  
9 involve different rule requirements and different circumstances. Nonetheless, the common  
10 thread between those cases is that the “reasons” that suffice to “justify why the state policy  
11 embodied in the applicable goals should not apply” under Goal 2, Part II and its many  
12 instantiations, including OAR 660-014-0040, are limited to circumstances where the  
13 applicant demonstrates that allowing the proposed use at the proposed location is “necessary”  
14 to fulfill an important policy objective. If a reasons exception to the resource lands or  
15 urbanization goals can be granted based on “characteristics” that are not essential for the use  
16 to fulfill an identified policy objective, and that have the effect of obviating the alternatives  
17 analyses required by Goal 2, Part II, then it becomes quite easy to plan and zone resource  
18 lands for uses not allowed by the applicable goals, and such exceptions would become  
19 commonplace. An approach that would allow exceptions to be easily approved would be  
20 inappropriate under ORS 197.732 because exceptions must be just that—exceptional. *1000*  
21 *Friends of Oregon v. LCDC*, 69 Or App 717, 731, 688 P2d 103 (1984).

22 Of course, determining whether specified “essential characteristics” adequately  
23 justify the proposed use as “necessary” to fulfill an important policy objective will call for a  
24 somewhat subjective determination. That determination will to some extent turn on the  
25 respective significance or weight that is assigned to the important policy objective that is  
26 asserted to support the exception, and the weight that is assigned to the policy objectives in



1 the statewide goals that the exception conflicts with, including the resource values that led to  
2 the resource land designation in the first place, and other relevant circumstances.

3 The only authority intervenors cite to the contrary is *1000 Friends of Oregon v.*  
4 *Metro*, 38 Or LUBA at 588, which involved a UGB amendment under the alternatives  
5 analysis at OAR 660-004-0010(1)(c)(B)(ii). However, in that case the UGB amendment was  
6 intended to satisfy an identified subregional need for urban residential development. We  
7 held that Metro could reject an alternative site because of parcelization, rural residential  
8 development patterns, steep topography, and difficulty in extending urban services, in  
9 determining whether that site could “reasonably accommodate” the proposed urban  
10 residential use. We stated that, “[w]here \* \* \* the proposed use is for urban residential  
11 development, Metro may legitimately consider factors that bear on the ability of the site to  
12 accommodate that use, including limitations on the amount or quality of buildable lands.” *Id.*  
13 The proposed use in that case was the broad category of “urban residential development,”  
14 rather than, as here, a narrowly characterized use that is essentially a sub-category of one  
15 type of urban commercial use aimed at satisfying the preferences of a small niche market.  
16 *1000 Friends of Oregon v. Metro* is not particularly strong authority for the proposition that  
17 any and all of the applicant’s desired characteristics for the proposed use can be elevated to a  
18 “need” or essential status and then used to reject alternative sites, for purposes of OAR 660-  
19 014-0040(2) and (3).

20 As explained, the relevant standard here is whether the proposed urban development,  
21 including any essential characteristics, is “necessary to support an economic activity that is  
22 dependent upon an adjacent or nearby natural resource.” The rule does not define  
23 “necessary” but the most pertinent dictionary definition suggests that to be “necessary,” the  
24 characteristic must be one that “cannot be done without : that must be done or had :  
25 absolutely required : ESSENTIAL, INDISPENSABLE.” Webster’s Third New Int’l Dictionary  
26 1511 (unabridged ed. 1981).

1           Although stated in slightly different ways at different points in the decision, the  
2 county apparently views the following to be among the “essential characteristics” of the  
3 proposed hotel:

- 4           1.     A location on a parcel at least 35 acres in size;
- 5           2.     Proximity to the highest concentration of vineyards and wineries with  
6           tasting rooms, which the county defined as a maximum 20-minute  
7           driving distance;
- 8           3.     Access to major highways while not being negatively affected by  
9           noise or view of such highways; and
- 10          4.     A location in an “idyllic rural setting with expansive views of the  
11           surrounding countryside and nearby vineyards.”

12          Petitioners challenge the county’s reliance on the foregoing characteristics. Most of these  
13 challenges are made under the second assignment of error, which is directed at the county’s  
14 findings under OAR 660-014-0040(3)(a), but others are scattered through the first and third  
15 assignments of error. Given the intimate relationship between OAR 660-014-0040(2) and  
16 (3)(a), we consider here the parties’ arguments under the first, second or third assignments of  
17 error that bear on the meaning and application of OAR 660-014-0040(2).

18                           **1.     Parcel at least 35 acres in size**

19           Petitioners contend that the county failed to justify the necessity of a 35-acre or larger  
20 parcel, particularly given that the requested exception area is only 12 acres in size.  
21 According to petitioners, the county applied that characteristic to reject under OAR 660-014-  
22 0040(3)(a) and (b) alternate locations less than 35 acres in size.

23           The 35-acre minimum parcel size apparently stems from the fact that each of the  
24 three Napa Valley hotels that the proposed development is modeled after is located on tracts  
25 at least 33 acres in size. The county rejected petitioners’ arguments below that the  
26 alternatives analyses must evaluate the 12-acre exception area, not a 35-acre area, concluding  
27 that “[t]he additional property is required for open space, views, and a proposed vineyard,

1 which \* \* \* contributes to the necessary ambiance of a luxury wine country hotel.” Record  
2 69.<sup>14</sup>

3 Petitioners point out that nothing in the decision dedicates the surrounding 23 acres to  
4 “open space, views and a proposed vineyard.” That area remains available for any use  
5 allowed in the EFU zone. In any case, petitioners argue, the “proposed urban development”  
6 is the hotel, which requires at most 12 acres, and that development does not include an  
7 additional 23 acres of agricultural land, even if used for open space, views or vineyards.

8 We agree with petitioners that the county has not demonstrated that a minimum 35-  
9 acre parcel size is an essential characteristic for a 12-acre hotel development, for purposes of  
10 OAR 660-014-0040(2) and (3). The fact that the three Napa Valley hotels are located on  
11 parcels at least 33 acres in size is, by itself, not a sufficient justification. OAR 660-014-  
12 0040(3)(b)(A), at least, requires the local government to justify the “amount of land included  
13 within the boundaries of the proposed urban development.” The county justified a 12-acre  
14 exception area for the proposed urban development, not a 35-acre exception area. Moreover,  
15 a meaningful alternatives analysis under OAR 660-014-0040(3)(a) and (b) requires a  
16 consistent comparison between the exception area and alternative locations. By treating a  
17 minimum 35-acre parcel size as an “essential characteristic” for the 12-acre exception area,  
18 the county effectively skewed the OAR 660-014-0040(3)(a) and (b) analyses in favor of the

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<sup>14</sup> The county’s findings state, in relevant part:

“Several opponents contend that because the applicants are requesting a rezone for only 12 acres of the entire 65-acre parcel, the applicants erroneously imposed a 35-acre minimum site size for purposes of the alternatives analysis. However, the [county] finds that the basis for the 12-acre request is simply to minimize the amount of EFU land that is re-designated by only changing the map designations for the footprint of the hotel, parking, and access road to the property. The fact that the paved and constructed areas of the site plan only constitute 12 acres does not change the need for a minimum of 35 acres to site the hotel. The additional property is required for open space, views, and a proposed vineyard, which leaves land in agricultural production and contributes to the necessary ambiance of a luxury wine country hotel. The [county] finds that the opponents’ suggestion that this hotel could be successfully located on a 12-acre site in an urban area is incorrect. The expected economic benefit to the county and its wine tourism industry will not occur if the hotel is not successful.” Record 69.

1 subject property. We discuss further below the “rural ambiance” characteristic the county  
2 identifies, but for present purposes we note that even if an adjoining 23-acre open space,  
3 viewshed and vineyard area can be viewed as an essential or necessary “characteristic” of the  
4 proposed *urban* development, the county does not explain why that open space, viewshed or  
5 vineyard area must be located on the same parcel as the 12-acre hotel development, *i.e.*, why  
6 a minimum 35-acre parcel is necessary rather than a 12-acre parcel that is located adjacent to  
7 or near other lands that provide those visual amenities.<sup>15</sup> For these reasons, the county erred  
8 in identifying a 35-acre minimum parcel size as an essential characteristic of the proposed  
9 urban development, and in applying that minimum parcel size in its alternatives analyses  
10 under OAR 660-014-0040(3).

11 **2. Maximum 20-minute drive to highest concentration of vineyards**  
12 **and wineries**

13 Petitioners do not dispute that reasonable proximity to vineyards and wineries is an  
14 essential characteristic for any hotel that is intended to support the wine tourism industry.  
15 However, petitioners argue that there is no basis in the record or law to limit the alternatives  
16 analysis to sites that are within an arbitrarily chosen driving distance from the “highest  
17 concentration” of vineyards and wineries. According to petitioners, the record shows that  
18 there are dozens of vineyards and wineries with tasting rooms in this area of the county, with  
19 different geographic concentrations, including urban areas or areas within or adjacent to  
20 urban growth boundaries. Petitioners argue that while the area immediately surrounding the  
21 subject property may exhibit the “highest” concentration in the county, there is no basis in  
22 the law to reject other concentrations.

23 With respect to the 20-minute driving distance, petitioners argue that that  
24 characteristic is based solely on a statement in the applicant’s economic report, that the

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<sup>15</sup> We note that the 12-acre exception area borders on or is very close to property boundaries on the south and eastern sides of the 65-acre parcel, which does not suggest that the applicants view it as a necessity that the subject parcel itself provide the additional 23 acres of open space, views and vineyards. Record 811.

1 subject property is within a 20-minute drive from more than 20 wineries with tasting rooms,  
2 which “increases the appeal of the subject site as the focus of an Oregon wine country  
3 tour.”<sup>16</sup> Record 687. Petitioners contend that while being within a 20-minute drive of a  
4 large number of wineries may “increase the appeal” of the proposed hotel, that statement  
5 falls short of demonstrating that a hotel location within a 20-minute driving distance of a  
6 particular number of wineries is “necessary to support” wine tourism. A site could  
7 “reasonably accommodate” the use even if it were more than 20 minutes drive from a  
8 concentration of wine tourism facilities, petitioners argue.

9 Both parties cite to maps at Record 812 and 814 that depict the locations of wineries  
10 and wineries with tasting rooms within a large area of the county. The subject property is  
11 located proximately to a distinct cluster of such wineries. However, as petitioners point out,  
12 there are other distinct concentrations of wineries and wineries with tasting rooms elsewhere  
13 in the county. While it may be economically advantageous to locate the proposed hotel close  
14 to the densest concentration of such wineries, we agree with petitioners that the county has  
15 not demonstrated that such a location is “necessary to support” the local wine tourism  
16 industry. As explained above, not every feature that would arguably enhance the economic  
17 success of the proposed use is a “necessary” characteristic for purposes of OAR 660-014-  
18 0040(2) and (3). It may be that alternative locations proximate to less dense but still  
19 significant concentrations of such wineries could reasonably accommodate the proposed  
20 hotel, for purposes of OAR 660-014-0040(3). Nothing we are cited to in the record or  
21 decision demonstrates otherwise. The county erred in concluding that a location proximate  
22 to the “highest” concentration of wineries, as opposed to less dense but still significant  
23 concentrations, is an essential characteristic of the proposed urban development.

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<sup>16</sup> Petitioners point to evidence that eight of the 20 wineries with tasting rooms within a 20-minute drive of the subject property are located within urban growth boundaries.

1           The 20-minute driving distance presents a closer question. While the economic study  
2 does not justify the 20-minute driving distance as “necessary,” petitioners do not seriously  
3 dispute that an alternative location must be within a reasonable distance from a concentration  
4 of wineries, to “reasonably accommodate” the proposed use. The 20-minute figure appears  
5 to be chosen somewhat arbitrarily. However, petitioners do not argue or cite to any evidence  
6 that any other driving distance would be less arbitrary. We cannot say that the county erred  
7 in treating as an essential characteristic of the proposed use a location that is within a 20-  
8 minute driving distance from a concentration of wine tourism facilities.

9                           **3. Access to major highways while not being negatively affected by**  
10                           **noise or view of such highways.**

11           Petitioners do not dispute that easy access to major highways is a necessary  
12 characteristic for the proposed hotel, but argue that the county erroneously rejected several  
13 alternative areas as being essentially too close to existing or planned regional transportation  
14 facilities. These arguments are generally folded in with other arguments that challenge the  
15 county’s view that an “idyllic rural setting” is an essential characteristic of the proposed  
16 hotel, and that by negative implication no sites within urban areas, urban growth boundaries,  
17 or developed areas in general can “reasonably accommodate” the use. Because the  
18 arguments and evidence overlap considerably, we address them together, below.

19                           **4. Idyllic rural setting with expansive views of the surrounding**  
20                           **countryside and nearby vineyards**

21           Petitioners challenge from several perspectives the county’s conclusion that an  
22 “idyllic rural setting with expansive views” is a necessary characteristic of the proposed  
23 hotel. According to petitioners, it is difficult to reconcile the county’s conclusion that the use  
24 is “urban development” with its further conclusion that that same urban development  
25 categorically cannot be located within an urban growth boundary.

26           Petitioners also challenge the county’s reliance on “expansive views,” noting that two  
27 of the three Napa Valley resorts that the proposed development is modeled after appear to be

1 located in low-lying areas without “expansive views” of the surrounding countryside.  
2 Petitioners contend that there is no categorical reason why views and even an idyllic setting  
3 amid vineyards cannot be obtained within or adjacent to an urban growth boundary, even if  
4 those characteristics are deemed to be essential. As discussed under the second assignment  
5 of error, petitioners argue that there are large areas within and adjacent to the City of  
6 Newberg and City of Dundee UGBs that are currently zoned and used for agriculture,  
7 including vineyards.

8 As discussed under the first assignment of error, the county reasonably concluded  
9 that the proposed 50-unit luxury hotel is urban development, making OAR 660-014-0040 the  
10 operative rule. We do not intend to foreclose the possibility that the county can justify an  
11 “rural setting” or “rural ambiance” as essential characteristics of a proposed urban use, as  
12 “necessary to support” the identified economic activity. However, as explained earlier, that  
13 approach renders some aspects of the alternatives analysis under OAR 660-014-0040(3)(a) a  
14 meaningless exercise. It is undoubtedly true that a “rural ambiance” might enhance the  
15 attractiveness of the proposed hotel, compared to luxury hotels in nearby urban or  
16 urbanizable areas that seek to serve the same demographic, and such an ambiance might  
17 increase the odds of the proposed hotel’s economic success. However, as explained, not  
18 every feature that would increase the odds of economic success of the proposed urban  
19 development is necessarily an essential characteristic of that use, for purposes of OAR 660-  
20 014-0040(2) and (3). There are many urban uses that might gain some competitive  
21 advantage by location in a rural setting, conveniently near to but not within an urban growth  
22 boundary. If OAR 660-014-0040(2) and (3) are to perform their intended purpose, a case  
23 must be made that a “rural setting” or “rural ambiance” truly is an essential or necessary  
24 characteristic for proposed urban development, that can then be used to categorically reject  
25 otherwise suitable alternative sites within or adjacent to urban growth boundaries.

1           The findings and evidence cited to us do not establish that “rural ambiance” is an  
2 essential characteristic of the proposed hotel, that renders the proposed hotel “necessary to  
3 support” wine tourism. As noted above, according to the county’s findings, the “target  
4 demographic” is affluent wine tourists who require luxury accommodations not currently  
5 found anywhere in the county, and who therefore largely choose to stay in luxury hotels in  
6 the Portland area and drive 60 miles to visit the wineries in the county, rather than stay in  
7 local bed and breakfast facilities or non-luxury hotels in the county. The county’s decision  
8 quotes a statement from one of the subject-matter experts it relied upon:

9           “\* \* \* It is a shame how many of these tourists come down for a day because  
10 we do not have what they consider proper accommodations. They are staying  
11 at the Vineyard Suites, The Heathman, The Benson, etc.—all quality,  
12 UPSCALE, hotels an hour away! They should be staying here and spending  
13 their dollars here.” Record 23.

14 Given that at least a significant part of the target demographic of affluent wine tourists  
15 currently chooses to stay in luxury hotels that are located within an urban area 60 miles  
16 away, it is not clear why it is necessary to locate the proposed hotel in a “rural setting” in  
17 order to serve that demographic. The county’s answer, apparently, is that at least some of the  
18 affluent wine tourists who currently stay in luxury hotels in Portland would rather stay in a  
19 luxury hotel located in a rural setting closer to the wineries and vineyards, if they had the  
20 choice. However, we are not cited to any findings or evidence that such wine tourists would  
21 choose *not* to stay in a luxury hotel located within one of the urban growth boundaries, such  
22 as the City of Dundee’s, that is also close to wineries and vineyards, and would instead  
23 continue to stay in Portland hotels.

24           Moreover, the findings and evidence cited to us do not establish that there is a distinct  
25 and economically significant sub-class of affluent wine tourists that will *only* stay at rural  
26 resorts such as the three Napa Valley hotels, and would be unlikely to visit any wine country  
27 area where luxury accommodations are available only in adjacent urban areas. If there were  
28 evidence to that effect, in our view the county would have a stronger case for treating “rural



1    ambiance” as an essential characteristic of the proposed hotel, because in that case no urban  
2    luxury hotel could capture that economically significant demographic.

3           However, the evidence cited to us does not support the existence of such a sub-class  
4    of affluent wine tourist, or other sufficient basis to treat rural ambiance as an essential  
5    characteristic of the hotel that can then be used to categorically reject all alternative urban  
6    sites. We note, in this respect, that petitioners cite to evidence that most of the luxury wine  
7    tourism hotels in Napa Valley are located within urban areas. Petitioners also note that a  
8    different developer has recently applied to construct an 85-room luxury hotel on a 35-acre  
9    parcel within the City of Newberg UGB that is apparently intended to serve the same or a  
10   similar target demographic as the proposed hotel. The county distinguishes those urban wine  
11   tourism hotels as being fundamentally different than the proposed hotel, which is modeled on  
12   the three rural Napa Valley hotels. However, as explained, we are not cited to any evidence  
13   that the affluent wine tourists served by the urban Napa Valley luxury hotels, the proposed  
14   luxury hotel in Newberg, or the luxury hotels in Portland, are fundamentally different from  
15   the affluent wine tourists served by the three rural Napa Valley hotels. In other words, while  
16   there may be a consumer preference for a wine tourism hotel in a “rural setting,” that mere  
17   consumer preference is not sufficient to render a rural setting an essential characteristic of a  
18   hotel designed to accommodate affluent wine tourists.

19           We reach a similar conclusion with respect to “expansive views of the surrounding  
20   countryside[.]” While an expansive rural view would undoubtedly make the proposed hotel  
21   a more attractive destination, the county has not demonstrated that a hotel with expansive  
22   views is “necessary to support” the wine tourism industry. We also agree with petitioners  
23   that there is no intrinsic reason why such views are categorically unobtainable in or near an  
24   urban growth boundary.<sup>17</sup> The county erred to the extent it viewed “expansive views of the

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<sup>17</sup> It is worth noting in this respect that OAR 660-014-0040(3)(a) requires a demonstration that the proposed urban development cannot be reasonably accommodated in or “through expansion” of existing urban

1 surrounding countryside” as an essential characteristic, and to the extent it applied that  
2 characteristic to reject alternative locations.

3         The county is on somewhat stronger ground in treating a location near vineyards to be  
4 a critical locational characteristic, because reasonable proximity to wine tourism facilities is  
5 clearly “necessary to support” wine tourism under the reason the county applied pursuant to  
6 OAR 660-014-0040(2), as discussed above. However, the “location near vineyards”  
7 characteristic appears to be different from the characteristic discussed above, which involved  
8 a location within a 20-minute driving distance of a concentration of wine tourism facilities.  
9 Here, the “location near vineyards” characteristic is basically part of the “expansive views of  
10 the surrounding countryside” feature, a visual enhancement of the hotel ambiance that is  
11 based on one of the features of the three Napa Valley hotels and that presumably adds to the  
12 proposed hotel’s attractiveness to the target demographic. However desirable that  
13 characteristic might be, the county has not established that a hotel setting with views of  
14 vineyards is “necessary to support” wine tourism in the county. Even if viewed as an  
15 essential characteristic of the proposed urban use, we agree with petitioners that there is no  
16 intrinsic reason why a hotel setting among vineyards is categorically impossible to find or  
17 develop within or adjacent to urban growth boundaries.

18             **D. Conclusion**

19         For the foregoing reasons, the county failed to demonstrate that some of the  
20 characteristics of the proposed hotel that it used to reject alternatives under OAR 660-014-

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growth boundaries. Thus, if there is a rural location adjacent to an urban growth boundary that can reasonably accommodate the proposed use through expansion of the UGB, then an exception cannot be taken for the preferred location. In this respect, OAR 660-014-0040 differs significantly from and is arguably more rigorous than the alternatives analysis required under OAR 660-004-0020(2)(b), which in relevant part requires only a demonstration that the use cannot be reasonably accommodated “inside an urban growth boundary.” OAR 660-004-0020(2)(b)(B)(iii). The practical consequence is that even if a “rural setting” or “expansive views of the surrounding countryside” are viewed as essential characteristics of the proposed use, it is quite possible that such characteristics can be found on rural lands adjacent to urban growth boundaries, even if they cannot be found within urban growth boundaries.

1 0040(3) are “necessary to support an economic activity that is dependent upon an adjacent or  
2 nearby natural resource,” within the meaning of OAR 660-014-0040(2).

3 The third assignment of error is sustained.

#### 4 **SECOND ASSIGNMENT OF ERROR**

5 Under the second assignment of error, petitioners challenge the alternatives analysis  
6 the county conducted pursuant to ORS 197.732(1)(c)(B) and OAR 660-014-0040(3)(a). We  
7 discussed above under the third assignment of error many of the specific legal challenges  
8 petitioners advance under the second assignment of error. In the remainder of the second  
9 assignment of error, petitioners challenge the county’s rejection of specific alternative sites  
10 or areas, including a 275-acre area within the City of Dundee UGB, and a 400-acre area in  
11 the City of Newberg Urban Reserve.

12 Remand for the reasons set out in the third assignment of error will require that the  
13 county adopt new findings addressing these and other alternative sites that were rejected  
14 based solely on the characteristics addressed above. Accordingly, no purpose would be  
15 served in addressing the parties’ arguments regarding specific alternative sites, and we do not  
16 address those arguments.

17 The second assignment of error is sustained, in part.

#### 18 **FOURTH ASSIGNMENT OF ERROR**

19 OAR 660-004-0018(4) requires that when a local government takes a reasons  
20 exception under ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan  
21 and zone designations “must limit the uses, density, public facilities and services, and  
22 activities to only those that are justified in the exception.” Petitioners contend that the  
23 county justified the exception based on a very specific use, a sub-category of luxury hotel,  
24 but failed to adequately limit the uses allowed in the exception area to those justified in the  
25 exception, as required by OAR 660-004-0018(4). According to petitioners, there is nothing  
26 in the decision that would preclude construction and operation of an entirely different type of

1 hotel, or that would preclude the applicant from simply placing “doublewide trailers on the  
2 site and never actually pursu[ing] the niche market the exception is designed to serve.”  
3 Petition for Review 34.

4 Intervenor note that the county imposed conditions of approval 4 and 5, which state:

5 “4. The approved use shall include a hotel operator with a demonstrated  
6 track record of successfully executing boutique ‘get-away’ hotels. The  
7 hotel operator shall strive for a high rating by a rating group such as  
8 *The Mobil Guide* or *The Michelin Guide*.

9 “5. This exception approval shall be limited to the description of the use  
10 and the acreage proposed by the applicant at the June 7, 2006 public  
11 hearing.” Record 70.

12 Intervenor contend, and we agree, that conditions 4 and 5 are adequate to demonstrate  
13 compliance with OAR 660-004-0018(4). Petitioners argue that condition 4 is hortatory and  
14 insufficient in itself to satisfy the rule. While that might be true, petitioners do not challenge  
15 condition 5 or explain why both conditions together are insufficient to comply with the  
16 OAR 660-004-0018(4).

17 The fourth assignment of error is denied.

#### 18 **FIFTH ASSIGNMENT OF ERROR**

19 ORS 197.435 through 197.467 allow counties to authorize destination resorts in  
20 certain areas that are mapped as eligible for a destination resort. Petitioners contend that the  
21 proposed hotel functions as, and appears to fit within the description of, a small “destination  
22 resort” allowed pursuant to ORS 197.445(7), that is, a facility located on a site of 20 acres or  
23 more, with at least 25 but no more than 75 units of overnight lodging, and including a  
24 restaurant and meeting room. Because the proposed hotel use is a potentially allowed as a  
25 destination resort, petitioners argue, the county cannot take a reasons exception to allow that  
26 use, under the reasoning in *DLCD v. Yamhill County*, 183 Or App 556, 53 P3d 462 (2002).

27 In *DLCD v. Yamhill County*, the county adopted a reasons exception to permit  
28 development of a single non-farm dwelling on a 10-acre parcel. DLCD argued to the county,

1 to LUBA and the Court of Appeals that OAR 660-004-0000(2) limits the authority to adopt  
2 an exception to circumstances where the proposed use is a “use not allowed by the applicable  
3 goal.” Because Goal 3 and associated statutes would potentially permit the proposed use,  
4 one non-farm dwelling, on the property, DLCD argued that it is impermissible to adopt an  
5 exception to Goal 3 to permit that use. The Court of Appeals agreed, stating:

6 “[T]here is no basis in either the relevant statutes or the rules from which to  
7 conclude that a ‘use not allowed by the applicable goal,’ OAR 660-004-  
8 0000(2), includes uses that specifically are permitted by the applicable goal  
9 under some circumstances. Rather, a use that is permitted under the  
10 applicable goal must conform to the requirements of the goal. It is only when  
11 a use is not permitted at all under the applicable goal that the exceptions  
12 process may come into play.

13 “\* \* \* Here, the property at issue is subject to Goal 3. Goal 3 allows nonfarm  
14 dwellings to be built under certain circumstances specified in ORS chapter  
15 215. If an applicant wishes to build a nonfarm dwelling on property subject to  
16 Goal 3, then the applicant must satisfy the criteria set forth in one of the  
17 relevant provisions of ORS chapter 215. The applicant does not have the  
18 option of building that dwelling on that property through the exceptions  
19 process and rezoning if the applicant fails to satisfy the criteria of ORS  
20 chapter 215. That is so because the type of use in question--the use of the  
21 property for a nonfarm dwelling in this case--is permitted under the relevant  
22 goal.” 183 Or App at 562.

23 Petitioners argue that the above reasoning applies in the present case, and that the  
24 proposed use is in essence a destination resort. Consequently, petitioners contend, the  
25 county is precluded from taking an exception to allow the proposed use, but instead must  
26 evaluate whether the proposed use may be approved as a destination resort allowed under  
27 ORS 197.445(7).

28 The county rejected that argument below, concluding that the application does not  
29 propose a “destination resort,” noting among other things that the subject property is not  
30 located within the area identified as eligible for a destination resort on the map the county  
31 adopted pursuant to ORS 197.455(1). We agree with intervenors that that circumstance  
32 renders the reasoning in *DLCD v. Yamhill County* inapposite. In that case, the subject  
33 property was governed by goals, statutes and rules that permitted the proposed use for which

1 a reasons exception was sought. Here, the applicable goals, statutes, rules and local  
2 regulations effectively *prohibit* a destination resort *of any kind* on the subject property.  
3 Thus, the present case is distinguishable from *DLCD v. Yamhill County*, because there is no  
4 means under the law other than a goal exception to approve the proposed use on the subject  
5 property.<sup>18</sup>

6 The fifth assignment of error is denied.

7 **SIXTH ASSIGNMENT OF ERROR**

8 The challenged decision rezones 12 acres of the subject property to Recreational  
9 Commercial (RC). Yamhill County Zoning Ordinance (YCZO) 1208.02(B) requires that a  
10 zone change demonstrate that:

11 “There is an existing, demonstrable need for the particular uses allowed by the  
12 requested zone, considering the importance of such uses to the citizenry or the  
13 economy of the area, the existing market demand which such uses will satisfy,  
14 and the availability and location of other lands so zoned and their suitability  
15 for the uses allowed by the zone.”

16 The county adopted findings concluding that there is a demonstrable need for a luxury wine  
17 country hotel, and that no other location is appropriate for that use, incorporating by  
18 reference findings that address goal exception standards at OAR 660-004-0020, OAR 660-  
19 004-0022(1), and OAR 660-014-0040.<sup>19</sup>

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<sup>18</sup> We note here, however, that the destination resort administrative rules demonstrate that LCDC is capable of providing more customized routes for approval of particular or specialized desired uses in rural areas, where it determines that approval of such uses through the exception process is too unwieldy or unpredictable.

<sup>19</sup> The county’s findings state, in relevant part:

“The [county] finds that substantial evidence in the record establishes that there is an existing demonstrable need for the particular use allowed by the requested zone. Detailed findings addressing the ‘need’ criterion are set forth above in Section IX, and those findings are adopted and incorporated by reference. The use allowed by the requested zone, pursuant to an exception granted for applicable Goals, is a luxury wine country hotel. The analysis submitted by ECONorthwest demonstrates that the need exists for such a facility to serve Oregon’s wine country. \* \* \*

1           Petitioners challenge the finding that “no other location is appropriate” for the  
2 proposed use,” arguing that the county’s goal exception analysis improperly eliminated from  
3 consideration all lands within urban growth boundaries and urban reserves that are also  
4 zoned RC. Petitioners cite to *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA  
5 529, 541, *aff’d* 201 Or App 528, 120 p3d 927 (2005), in which LUBA held that the  
6 YCZO 1208.02(B) requirement to evaluate the “availability and location of other lands so  
7 zoned and their suitability for the uses allowed by the zone” requires the county to consider  
8 other lands subject to the requested county zone, even lands located within urban growth  
9 boundaries. In addition, petitioners contend that the county’s approach under  
10 YCZO1208.02(B) is inconsistent with comprehensive plan policies encouraging the location  
11 of “recreational commercial uses” within urban growth boundaries.

12           The county found in relevant part that “no other lands zoned RC are suitable for the  
13 use given either their location, size, or proximity to highways and urban areas.” Record 64.  
14 That finding does not categorically reject evaluation of RC-zoned lands that are located  
15 within urban growth boundaries, but instead concludes that, given the locational  
16 characteristics of the proposed use, only the subject property is “suitable.” *Friends of*  
17 *Yamhill County* involved a county decision that declined to consider at all lands similarly  
18 zoned within urban growth boundaries, and did not address on what grounds the county  
19 could reject such lands as unsuitable for the proposed use. YCZO 1208.02(B) is a county  
20 provision that does not appear to implement any statute, goal or administrative rule, and

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“The ECONorthwest analysis also demonstrates that there is a significant existing market demand for the use. The market demand is not met by existing hotel facilities or bed and breakfast establishments. \* \* \*

“No other location is appropriate for this use. As explained in Section IX of these findings, and addressed in detail in the ECONorthwest analysis, the applicant has established that no other lands zoned RC are suitable for the use given either their location, size, or proximity to highways and urban areas. The subject property is appropriate for the use because of its reasonable access to State Highway 99, its proximity to vineyards and wineries, its views to the south and its distance from urban areas.” Record 64.

1 LUBA must defer to the governing body’s interpretation of that provision if it is consistent  
2 with the plain language, purpose and underlying policy. ORS 197.829(1). Petitioners have  
3 not established that it is reversible error to interpret YCZO 1208.02(B) to allow taking into  
4 account the locational characteristics of the proposed use, in determining the “suitability” of  
5 other lands zoned for that use.

6 With respect to the cited comprehensive plan policies, the county adopted findings  
7 addressing those policies at Record 58-59. Petitioners do not challenge those findings or  
8 explain why any context they may provide for YCZO 1208.02(B) compels reversal or  
9 remand of the challenged decision.

10 The sixth assignment of error is denied.

11 **SEVENTH ASSIGNMENT OF ERROR**

12 The subject property adjoins a parcel on which an existing quarry is located, on land  
13 that is apparently owned by one of the applicants. Condition 1 of the county’s decision  
14 requires that “[q]uarry rights will be terminated with final approval of the comprehensive  
15 plan and zoning map amendments and final approval of Site Design Review.” Record 70.  
16 Petitioners argue that Condition 1 is inconsistent with the county’s obligations under  
17 Statewide Planning Goal 5 (Natural Resources etc.) to protect significant aggregate  
18 resources.

19 Intervenor’s respond that this issue was not raised below and thus is waived.  
20 ORS 197.763(1); ORS 197.835(3). On the merits, intervenors argue that there is no evidence  
21 in the record that the quarry is a significant aggregate resource listed on the county’s  
22 inventory or protected by Goal 5.

23 Petitioners have not identified any place in the record where this issue was raised  
24 below. Accordingly, the issue raised in this assignment of error is waived.

25 The seventh assignment of error is denied.



1 **EIGHTH ASSIGNMENT OF ERROR**

2 As noted, both OAR 660-004-0020(2)(c) and OAR 660-014-0040(3)(b) implement  
3 the requirement in ORS 197.732(1)(c)(C) and Goal 2, Part II that the local government  
4 analyze the “environmental, economic, social and energy consequences” or ESEE  
5 consequences of the proposed use and demonstrate that those consequences are “not  
6 significantly more adverse” than would typically result from the same proposal being located  
7 on lands that would also require a goal exception. However, OAR 660-004-0020(2)(c)  
8 fleshes out that requirement in different and more detailed terms, than does OAR 660-014-  
9 0040(3)(b). Cf. ns 2 and 3. The county relied on a single ESEE analysis to address both sets  
10 of standards, and adopted findings addressing OAR 660-004-0020(2)(c) that simply cross-  
11 referenced the findings addressing OAR 660-014-0040(3)(b). Record 48.

12 Petitioners challenge the county’s failure to address the two sets of standards  
13 separately, arguing that the ESEE analysis required by OAR 660-004-0020(2)(c) is  
14 substantively different than the ESEE analysis required by OAR 660-014-0040(3)(b).  
15 According to petitioners, under the Court of Appeals’ reasoning in *1000 Friends of Oregon*  
16 *v. Yamhill County*, the county is required to address both sets of standards. In particular,  
17 petitioners contend that the county erred in failing to analyze “agricultural productivity,  
18 sustainability, and the long-term effects of removing land from the agricultural resource  
19 base,” and other considerations that must be analyzed under OAR 660-004-0020(2)(c) but  
20 that are not mentioned in OAR 660-014-0040(3)(b).

21 We rejected a similar argument under the first assignment of error, with respect to the  
22 applicability of OAR 660-004-0022(1). As explained, OAR 660-004-0000(1) provides that  
23 Division 004 interprets the exception process as it applies to statewide Goals 3 to 19,  
24 “[e]xcept as provided for in OAR Chapter 660, divisions 14[.]” In *1000 Friends of Oregon*  
25 *v. Yamhill County*, the court cited that same language as demonstrating LCDC’s intent to  
26 “exempt certain types of actions from the exception process in OAR chapter 660, division

1 4.”<sup>20</sup> Unlike the rules at issue in that case, petitioners cite no language in Division 004 or  
2 Division 014 that suggests a contrary intent.<sup>21</sup> Thus, any failure or inadequacy in the  
3 county’s findings addressing the ESEE standards at OAR 660-004-0020(2)(c) does not  
4 provide a basis for reversal or remand. The eighth assignment of error is denied.  
5 The county’s decision is remanded.

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<sup>20</sup> The Court of Appeals stated:

“In addition, LCDC has indicated that, ‘[e]xcept as provided for in OAR chapter 660, division 14, ‘Application of the Statewide Planning Goals to the Incorporation of New Cities,’ this Division interprets the exception process as it applies to statewide Goals 3 to 19.’ OAR 660-004-0000(1). That provision demonstrates that, when LCDC means to exempt certain kinds of actions from the exception process in OAR chapter 660, division 4, it knows how to do so.” 203 Or App at 333.

<sup>21</sup> As discussed above, the rules at issue in *1000 Friends of Oregon v. Yamhill County* were subsequently amended with the apparent effect of clarifying that the exception standards in OAR Chapter 660, division 004 do not apply when adopting a reasons exception for a rural transportation facility governed by OAR 660-012-0070.