

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON

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

6  
7 and

8  
9 ILSA PERSE,  
10 *Intervenor-Petitioner,*

11  
12 vs.

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14 YAMHILL COUNTY,  
15 *Respondent,*

16  
17 and

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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

27  
28 On remand from Court of Appeals.

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30 Edward J. Sullivan and William K. Kabeiseman, Portland, represented petitioners.

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32 Ilsa Perse, Carlton, represented herself.

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

35  
36 Roger A. Alfred, Portland, represented intervenors-respondent.

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

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40 RYAN, Board Member, did not participate in the decision.

41  
42 REMANDED

12/21/2007

43  
44 You are entitled to judicial review of this Order. Judicial review is governed by the  
45 provisions of ORS 197.850.

**INTRODUCTION**

The challenged decision approves exceptions to Statewide Planning Goals 3, 4 and 14 to allow construction of a 50-room luxury hotel in an agricultural zone. In relevant part, the county concluded that the proposed hotel is “urban” development proposed on rural lands, and therefore OAR 660-014-0040, part of the administrative rules on “Urban Development on Rural Lands,” provides the governing standards for a reasons exception, rather than the generic standards for “reasons” exceptions set out in OAR 660-004-0020(2) and OAR 660-004-0022(1). In the alternative, the county adopted findings addressing OAR 660-004-0020(2) and OAR 660-004-0022(1).

Petitioners appealed the county decision to LUBA, arguing under the first assignment of error that the proposed hotel is not “urban” development, and thus OAR 660-014-0040 did not apply at all. Instead, petitioners argued that OAR 660-004-0020(2) and OAR 660-004-0022(1) supply the applicable standards for a reasons exception to approve the hotel. In the alternative, petitioners argued that all three sets of standards applied, or at least that cases decided under OAR 660-004-0020(2) and OAR 660-004-0022(1) are relevant in evaluating a reasons exception adopted pursuant to OAR 660-014-0040.

On March 21, 2007, LUBA remanded the county’s decision. *VinCEP v. Yamhill County*, 53 Or LUBA 514 (2007) (*VinCEP I*). With respect to the first assignment of error, LUBA concluded that the county did not err in viewing the proposed hotel as “urban” development of rural lands, and thus that OAR 660-014-0040 provided applicable standards for a reasons exception. Citing the Board’s earlier precedent, LUBA held that a reasons exception for proposed urban development on rural land is governed exclusively by the standards in OAR chapter 660, division 14, and not governed by the generic standards for reasons exceptions set out in OAR 660-004-0020(2) and OAR 660-004-0022(1). However, we agreed with petitioners that, given the common origin and “strong family resemblance”

1 between the three sets of standards, cases decided under OAR 660-004-0020(2) and  
2 OAR 660-004-0022(1) are “potentially helpful in interpreting OAR 660-014-0040(2) or  
3 evaluating a reasons exception under that rule.” *Id.* at 529. Accordingly, we did not  
4 consider petitioner’s challenges to the county’s alternative findings addressing OAR 660-  
5 004-0020(2) and OAR 660-004-0022(1), and denied the first assignment of error.

6 Our opinion went on to consider petitioner’s challenges under the second and third  
7 assignments of error to the county’s reasons exception adopted pursuant to OAR 660-014-  
8 0040. Because petitioners cross-referenced their arguments under the first, second and third  
9 assignments of error, we considered any arguments under the first assignments of error (and  
10 any responses to those arguments) that seemed relevant or helpful in resolving the issues  
11 under the second and third assignments of error. In relevant part, we concluded that the  
12 county committed several analytical errors in applying the OAR 660-014-0040(2) provision  
13 that the proposed urban use be “necessary to support an economic activity that is dependent  
14 upon an adjacent or nearby natural resource.” Specifically, we held that the county erred in  
15 too narrowly defining the essential characteristics of the proposed hotel that the county used  
16 to reject various alternative sites on nearby urban and rural lands. We remanded under the  
17 second and third assignments of error for the county to adopt new findings addressing  
18 alternative rural and urban sites that were rejected based on the county’s erroneous  
19 application of OAR 660-014-0040(2).

20 Petitioners appealed our decision to the Court of Appeals, and intervenors-respondent  
21 (intervenors) cross-appealed. The Court affirmed our decision under the petition and cross-  
22 petition, with the exception of our disposition of petitioner’s first assignment of error.  
23 *VinCEP v. Yamhill County*, 215 Or App 414, \_\_\_ P3d \_\_\_ (CA A135362, October 10, 2007)  
24 (*VinCEP II*). The Court held that, while OAR chapter 660, division 014 provides the  
25 exclusive standards governing the requested *Goal 14* exception, OAR chapter 660, division

1 004 provides the applicable standards for the requested Goal 3 exception. The Court  
2 explained that:

3 “an exception to Goal 3 is fundamentally different from an exception to Goal  
4 14. The purpose of Goal 3 is to preserve and maintain agricultural lands for  
5 farm use. Goal 14 functions to confine urban uses inside urban growth  
6 boundaries and to inhibit their location on rural land, whether the land is  
7 agricultural land or not. The rationale for locating a use outside of an urban  
8 growth boundary may only partly explain why the use should be located on  
9 agricultural resource land. \* \* \*” 215 Or App at 426.

10 The Court rejected intervenors’ argument that “the same proof and findings would  
11 justify location of the luxury hotel outside of an urban growth boundary on land not suitable  
12 for farming as would justify its location on prime agricultural land[,]” and held that LUBA  
13 erred by conflating the exceptions processes for Goals 3 and 14 into a single inquiry under  
14 OAR 660-014-0040. Accordingly, the Court remanded the decision to LUBA to evaluate  
15 petitioners’ challenges to the county’s alternative findings addressing OAR 660-004-0020(2)  
16 and OAR 660-004-0022(1). We now turn to that task.

17 **FIRST ASSIGNMENT OF ERROR**

18 As explained in *VinCEP I*, ORS 197.732 and Goal 2, Part II(c) permit a local  
19 government to plan and zone land for uses not allowed under applicable statewide planning  
20 goals if the local government identifies “[r]easons [that] justify why the state policy  
21 embodied in the applicable goals should not apply.” OAR 660-004-0020(2) elaborates on  
22 the four principal factors that must be addressed under the statute and Goal 2.<sup>1</sup> OAR 660-

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<sup>1</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;

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

1 004-0022 sets out the types of “reasons” that can justify exceptions to various specific goals.  
2 For uses not specifically addressed in OAR 660-004-0022, OAR 660-004-0022(1) sets out a  
3 “catch-all” provision that lists a non-exclusive set of reasons sufficient to justify an  
4 exception.<sup>2</sup>

5 The county adopted a lengthy set of findings addressing OAR 660-004-0020(2) and  
6 OAR 660-004-0022(1). Record 35-53. Those findings incorporate the findings addressing  
7 OAR 660-014-0040, and generally rely on the same or similar reasons to justify why the  
8 state policy embodied in Goal 3 should not apply, as was used to justify why the state policy  
9 embodied in Goal 14 should not apply. Petitioners challenge those reasons on various  
10 grounds. As explained above, in *VinCEP I* we considered petitioners’ arguments under the  
11 first assignment of error to the extent they were relevant or helpful in resolving the  
12 challenges to the county’s OAR 660-014-0040 reasons. Much of our discussion of the third  
13 assignment of error is, in our view, directly applicable to resolving petitioners’ challenges to  
14 the county’s reasons under OAR 660-004-0020(2) and OAR 660-004-0022(1). For example,  
15 our critique of the county’s view of the “essential characteristics” of the proposed hotel and  
16 how it applied those characteristics in rejecting various alternative sites within or adjacent to

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<sup>2</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.”

1 urban growth boundaries applies with equal force to the county’s conclusions under  
2 OAR 660-004-0020(2) and OAR 660-004-0022(1).

3 Therefore, our discussion below focuses on those aspects of petitioners’ arguments or  
4 the county’s findings under OAR 660-004-0020(2) and OAR 660-004-0022(1) that we  
5 perceive were not fully considered in *VinCEP I* or that otherwise require additional  
6 discussion in light of the Court of Appeals’ decision in *VinCEP II*.

7 **A. OAR 660-004-0020(2)(a) and (b): Why the Use Requires Location on**  
8 **Resource Land; Can the Use Be Reasonably Accommodated on Non-**  
9 **Resource Land?**

10 As the Court explained, reasons that might suffice to justify locating an urban use on  
11 rural land do not necessarily justify locating that use on rural resource land, as opposed to  
12 rural non-resource land. An exception to Goal 3 or 4 under OAR 660-004-0020(2)(a) must  
13 demonstrate “why the use requires a location on resource land.” Under OAR 660-004-  
14 0020(2)(b), the county’s findings must demonstrate that the use cannot reasonably be  
15 accommodated on non-resource lands or resource lands committed to non-resource uses.

16 The county’s findings under OAR 660-004-0020(2) do not specifically address the  
17 question of “why the use requires a location on resource land,” as opposed to otherwise  
18 suitable non-resource land. The closest the findings come is to assert that an essential  
19 characteristic of the proposed hotel, or at least a characteristic deemed essential to its  
20 economic success, is a setting in a “quiet rural atmosphere among vineyards and near  
21 wineries.” Record 37. However, in *VinCEP I*, we rejected similar findings addressing  
22 OAR 660-014-0040(2), in which the county asserted that a “location near vineyards” was an  
23 essential characteristic of the proposed hotel.<sup>3</sup> We concluded that a “location near

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<sup>3</sup> We stated in *VinCEP I*:

“The county is on somewhat stronger ground in treating a location near vineyards to be a critical locational characteristic, because reasonable proximity to wine tourism facilities is clearly ‘necessary to support’ wine tourism under the reason the county applied pursuant to OAR 660-014-0040(2), as discussed above. However, the ‘location near vineyards’

1 vineyards” was merely a desired visual enhancement of the hotel ambiance rather than an  
2 essential characteristic. Even if a location near vineyards were deemed an essential  
3 characteristic, we concluded, the findings fail to establish that a hotel setting among  
4 vineyards is categorically impossible to find or develop within or adjacent to urban growth  
5 boundaries. Our conclusions on that point seem to apply *a fortiori* to the county’s findings  
6 under OAR 660-004-0020(2)(a).

7 The county’s alternative sites analysis under OAR 660-004-0020(2)(b) also suffers  
8 from the same general flaws identified in *VinCEP I*, with respect to the alternative sites  
9 analysis conducted under OAR 660-014-0040(3)(a). That is, the county failed to establish  
10 that the siting criteria it applied to reject alternative sites in fact reflected the essential or  
11 necessary characteristics of the proposed wine country hotel, as opposed to characteristics  
12 desired by the applicant. Remand is therefore necessary for the county to adopt amended  
13 findings addressing OAR 660-004-0020(2)(b) in light of the holdings in *VinCEP I* and *II*.

14 **B. OAR 660-004-0022(1)(a): Demonstrated Need Based on the**  
15 **Requirements of the Goals**

16 OAR 660-004-0022(1)(a) is the first prong of a non-exclusive, generic set of reasons  
17 that are sufficient to justify an exception to allow a use not permitted by the applicable goals,  
18 including Goal 3. Under OAR 660-004-0022(1)(a), such reasons include “a demonstrated  
19 need for the proposed use or activity based on one or more of the requirements of Goals 3 to  
20 19[.]” The county concluded that there is a need for the proposed hotel under Statewide

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characteristic appears to be different from the characteristic discussed above, which involved a location within a 20-minute driving distance of a concentration of wine tourism facilities. Here, the ‘location near vineyards’ characteristic is basically part of the ‘expansive views of the surrounding countryside’ feature, a visual enhancement of the hotel ambiance that is based on one of the features of the three Napa Valley hotels and that presumably adds to the proposed hotel’s attractiveness to the target demographic. However desirable that characteristic might be, the county has not established that a hotel setting with views of vineyards is ‘necessary to support’ wine tourism in the county. Even if viewed as an essential characteristic of the proposed urban use, we agree with petitioners that there is no intrinsic reason why a hotel setting among vineyards is categorically impossible to find or develop within or adjacent to urban growth boundaries.” 53 Or LUBA at 550.



1 Planning Goal 9 (Economic Development) and implementing comprehensive plan policies,  
2 “in order to achieve the county’s goals of diversification and stabilization of the local  
3 economy.”<sup>4</sup>

4 The county’s findings cite a 1988 study commissioned by the county, which  
5 identified a “pressing need for additional overnight accommodations and dining  
6 opportunities in the County” to boost wine tourism. The study recommended that the county  
7 encourage the location of a destination resort in wine country, and identified as one suitable  
8 location the area known as the Red Hills of Dundee, near the City of Dundee, where the  
9 subject property is located.<sup>5</sup> The county concluded that in the intervening years that

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<sup>4</sup> The county’s findings under OAR 660-004-0022(1)(a) state, in relevant part:

“The demonstrated need for this proposed use is established above in [findings addressing OAR 660-014-0040], which are incorporated here by reference. Under OAR 660-004-0022(1), one example of a reason that can be relied upon to establish the justification for an exception is that the exception will enable a local government to meet one or more of its planning obligations. Such obligations can be found in both the Statewide Planning Goals and in the county’s acknowledged comprehensive plan. The Board finds that in Yamhill County, the requested exceptions for the proposed hotel are necessary to allow a use that has been identified as an essential means by which the county can meet its requirements under Statewide Planning Goal 9, ‘Economic Development,’ and implementing policies of the Yamhill County Comprehensive Plan, in order to achieve the county’s goals of diversification and stabilization of the local economy.

“The Board finds that ORS 197.340(1) requires that local governments, DLCD and LCDC ‘shall give the goals equal weight in any matter in which the goals are required to be applied.’ The Board finds this to mean that Goal 9 has as much weight as Goals 3, 4 or 14 in this proceeding. The Board finds, based on substantial evidence in the whole record, that the economic development potential of this application for the county outweighs any concerns regarding inconsistencies with Goals 3, 4 or 14. Specifically, the significant economic advantages associated with the proposed hotel outweigh concerns regarding the placement of an ‘urban’ use on rural land, or the loss of 12 acres of EFU-zoned land that is not viable for agricultural production and has not been in agricultural production for at least ten years.” Record 49-50.

<sup>5</sup> The county’s findings continue:

“The need for a hotel of this type in the wine country of Yamhill County was recognized as early as 1988, when the INTRA study commissioned by Yamhill County identified a ‘pressing need’ for a lodging and dining establishment like the proposed hotel designed to serve growing numbers of wine country tourists. That study indicates that even as long ago as 1988 Yamhill County was attempting to capitalize on the tourism benefits associated with its growing wine industry by encouraging economic development associated with wine tasting and wine country tourism. The study found that the ‘secret to establishing Yamhill

1 identified need for wine tourism lodging had largely gone unmet, despite a proliferation of  
2 bed and breakfast establishments in the area.<sup>6</sup>

3 Turning to the requirements of Goal 9, the county concluded that the hotel is needed  
4 “to meet its obligations under Goal 9 to provide opportunities for economic activities vital to  
5 the health, welfare and prosperity of its citizens.” Record 51.<sup>7</sup> In addition, the county noted  
6 that a Yamhill County Comprehensive Plan (YCCP) provision implementing Goal 9  
7 encourages economic diversification and requires the county to maintain economic growth to

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County as the wine-tasting capital of Oregon is the creation of attractive, visitor-oriented facilities.’ The study noted that ‘as the local wine industry gains momentum and as wine tasting in Yamhill County becomes a form of recreation, there will be a pressing need for additional overnight accommodations and dining opportunities in the County.’ The study also found that ‘there is a growing need for additional facilities to serve the small meeting and conference market.’ The study concluded that the county’s wine industry was a significant tourism amenity and that the county should attempt to meet the identified needs and economic opportunities presented by the growth of the wine industry by locating a small destination resort in the wine county area.” Record 50-51 (citations omitted)

<sup>6</sup> The county found:

“The Board finds that the needs and economic opportunities identified by the 1988 study have still gone largely unmet. Although there has certainly been a proliferation of bed and breakfast establishments in the wine country area, there has been no development similar to the ‘destination’ wine country hotel that was proposed in 1988. As discussed in more detail below, a hotel of this type will fill a particular niche of overnight accommodation need that has never been met by Yamhill County, which is the reason why so many visitors to Yamhill County’s world-class wineries only make day trips to the county, staying at nicer hotels in Portland instead. \* \* \* Record 51.

<sup>7</sup> The county’s findings conclude, in relevant part:

“The Board finds that there is an identified and unmet need for a hotel of this type in order for the county to meet its obligations under Goal 9 to provide opportunities for economic activities vital to the health, welfare and prosperity of its citizens. The need for this hotel is also supported by Yamhill County Comprehensive Plan Section 1.F, which relates to Economic Development and recognizes that economic diversification ‘results in a stronger, more stable local economy by increasing employment opportunities.’ The Economic Development Plan provisions require the county to ‘maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under-employment in the county, balance the real property tax base of the various cities, and strengthen local economic bases.’ The Board finds that the Plan identifies a need to diversify the economy, encourage economic growth and strengthen local economic bases. The proposed hotel responds to that need by furthering economic activity within the wine industry, stimulating additional tourism in Yamhill County, and strengthening the local economic base and the county’s tax base. The proposed hotel will provide the county with an important vehicle, not otherwise available, to meet the identified economic needs and goals by providing diversification and strengthening the local economy.” Record 51-52.

1 prevent high unemployment, balance the real property tax base of cities in the county, and  
2 strengthen local economic bases. The county concluded that the proposed hotel “will  
3 provide the county with an important vehicle, not otherwise available, to meet the identified  
4 economic needs and goals by providing diversification and strengthening the local  
5 economy.” Record 52. The county’s findings then recite a number of anticipated benefits  
6 that the hotel would provide to the local economy.

7 Petitioners argue that the county misconstrued OAR 660-004-0022(1)(a) and failed to  
8 establish that there is a demonstrated need for the proposed hotel “based on one or more of  
9 the requirements” of Goal 9. Petitioners contend, first, that Goal 9 imposes no particular  
10 requirements on rural lands outside urban growth boundaries. According to petitioners, Goal  
11 9 and OAR chapter 660, division 009, the administrative rule that implements Goal 9, require  
12 local governments to take specific actions under Goal 9 only with respect to  
13 “[c]omprehensive plans for urban areas.”<sup>8</sup> OAR 660-009-0010(1) provides that the Goal 9

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<sup>8</sup> Goal 9 is to:

“provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.

“Comprehensive plans and policies shall contribute to a stable and healthy economy in all regions of the state. Such plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability and cost; labor market factors; educational and technical training programs; availability of key public facilities; necessary support facilities; current market forces; location relative to markets; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.

“Comprehensive plans for urban areas shall:

- “1. Include an analysis of the community’s economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends;
- “2. Contain policies concerning the economic development opportunities in the community;
- “3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies;

1 rule “applies to comprehensive plans for areas within urban growth boundaries,” and the rule  
2 “does not require or restrict planning for industrial and other employment uses outside urban  
3 growth boundaries.” Because the Goal 9 rule does not “require” any planning for  
4 employment uses on rural lands, we understand petitioners to argue, there is no applicable  
5 Goal 9 “requirement” that would justify allowing the proposed hotel on resource land  
6 contrary the explicit requirements of Goal 3.

7 Intervenor respond that Goal 9 applies to rural lands as well as lands within urban  
8 growth boundaries, arguing that the goal requires local governments to “provide adequate  
9 opportunities *throughout the state* for a variety of economic activities vital to the health,  
10 welfare, and prosperity of Oregon’s citizens” (emphasis added).

11 We agree with intervenors that Goal 9 itself applies throughout the state, including  
12 rural areas outside urban growth boundaries. The county is required, at least, to “provide  
13 adequate opportunities \* \* \* for a variety of economic activities[.]” It is true, however, that  
14 most if not all of the more specific requirements of Goal 9, and all of the requirements of the  
15 Goal 9 rule, apply only with respect to comprehensive plans governing lands within urban  
16 growth boundaries. Goal 9 itself includes no particular requirements aimed at rural or  
17 resource lands, and the Goal 9 rule explicitly states that comprehensive plans for rural areas  
18 are not “required” to plan for industrial or employment uses, although counties are  
19 presumably free to do so.

20 Next, petitioners cite to two LUBA cases in which the Board has interpreted  
21 OAR 660-004-0022(1) “demonstrated need” prong to require a showing that the county  
22 cannot “satisfy its obligations under one of more of Goals 3-19 absent the proposed  
23 exception.” *Middleton v. Josephine County*, 31 Or LUBA 423, 430 (1996); *see also Morgan*  
24 *v. Douglas County*, 42 Or LUBA 46, 53 (2002) (quoting *Middleton*). *Middleton* involved a

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“4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses.”

1 proposal for a commercial motorcycle racetrack on forest lands that the county justified on  
2 the basis of economic diversification and to respond to “market demand.” *Morgan* involved  
3 an industrial use on agricultural lands that the county justified based on findings that the use  
4 would contribute to the county’s economy. We held in both cases that such justifications  
5 were not sufficient, and that the county must show that the exception was required in order to  
6 meet the county’s obligations under one or more of the goals.

7         Petitioners contend that there are no Goal 9 “obligations” that must be met through an  
8 exception to allow the proposed hotel. The county is “not between the devil and the deep  
9 blue sea in discharging its planning obligations,” petitioners argue. Petition for Review 14.  
10 According to petitioners, the county’s general desire to diversify and boost the local  
11 economy are not “requirements” or obligations of Goal 9 within the meaning of OAR 660-  
12 004-0022(1)(a), and insufficient to justify an exception to Goal 3.

13         Intervenors respond to petitioners’ arguments under *Middleton* and *Morgan* by  
14 arguing that those cases interpret only the “demonstrated need” prong of OAR 660-004-  
15 0022(1)(a), which the county concluded and intervenors assert is inapplicable. That  
16 assertion, however, was rejected by the Court in *VinCEP II*. Intervenors do not argue that  
17 *Middleton* and *Morgan* were wrongly decided or that they misinterpret OAR 660-004-  
18 0022(1)(a). We understand intervenors to argue, nonetheless, that the general Goal 9  
19 requirement to “provide adequate opportunities \* \* \* for a variety of economic activities” as  
20 implemented in YCCP Section 1.F requires the county to “diversify” and thus “strengthen”  
21 the local economy, and that the county’s findings identify a demonstrated need based on such  
22 requirements sufficient to justify a reasons exception to Goal 3.

23         We do not necessarily agree with petitioners that the county must be “between the  
24 devil and the deep blue sea” with respect to its planning responsibilities, in order to identify a  
25 “demonstrated need” under OAR 660-004-0022(1)(a). Stated differently, the county need  
26 not be faced with a circumstance in which it must choose between violating its Goal 9

1 obligations or its Goal 3 obligations. Nonetheless, the county must establish that there is a  
2 demonstrated need for the proposed hotel based on the requirements of one or more goals, in  
3 this case Goal 9. The only Goal 9 requirement the county identifies is the goal itself, to  
4 “provide adequate opportunities \* \* \* for a variety of economic activities” within the county,  
5 and perhaps related comprehensive plan language recognizing that diversification of the  
6 economy “results in a stronger, more stable local economy[.]”<sup>9</sup>

7 However, petitioners argue, and we agree, that Goal 9 does not “require” local  
8 governments to provide for every kind of productive economic use, even within urban  
9 growth boundaries. *Home Depot U.S.A., Inc. v. City of Portland*, 169 Or App 599, 602, 10  
10 P3d 316 (2000).<sup>10</sup> Nor does the goal require local governments to adopt regulations that  
11 allow for every market demand to be satisfied.

12 In our view, to show a demonstrated need to locate the proposed hotel on resource  
13 land based on the general Goal 9 requirement to “provide adequate opportunities \* \* \* for a  
14 variety of economic activities,” the county must establish that the county has failed or is at  
15 risk of failing to provide *adequate* opportunities for a *variety* of economic activities, and that  
16 taking an exception to Goal 3 to provide for a hotel is a necessary step toward satisfying that  
17 goal requirement. As we indicated in *Middleton and Morgan*, a general desire for

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<sup>9</sup> The summary to YCCP Section 1.F (Economic Development) states in relevant part that “[e]conomic diversification generally results in a stronger, more stable local economy by increasing employment opportunities.”

<sup>10</sup> *Home Depot U.S.A., Inc.* involved a city ordinance that restricted the ability to site large format retail stores. The petitioner argued that the ordinance restriction violated the Goal 9 requirement to provide for “an adequate supply of sites of suitable size, types, locations, and service levels for a variety of industrial and commercial uses.” The Court rejected that argument, stating:

“\* \* \* Goal 9 does not require local governments to make land available for every specific kind of economically productive use that anyone wishes to conduct (let alone to make land for every use available in a particular zone or zones). The goal requires planning and provision for ‘a variety of industrial and commercial uses,’ not a herculean--or quixotic--planning and zoning effort whereby every community assures that there are available sites for every conceivable kind of business activity. *Benjfran Development v. Metro Service Dist.*, 95 Or App 22, 26, 767 P2d 467 (1989); *Western PCS, Inc. v. City of Lake Oswego*, 33 Or LUBA 369, 382 (1997).” 169 Or App at 602.

1 “diversification” or to boost the local economy are not sufficient reasons to justify an  
2 exception under OAR 660-004-0022(1)(a). If that were the case, then it would be relatively  
3 easy to identify a sufficient reason to take an exception to the resource goals. As we  
4 explained in *VinCEP I*, any approach that would allow exceptions to be easily approved  
5 would be inappropriate under ORS 197.732, because exceptions must be just that—  
6 exceptional. 53 Or LUBA at 540, citing *1000 Friends of Oregon v. LCDC*, 69 Or App 717,  
7 731, 688 P2d 103 (1984).

8 Here, the county’s findings do not attempt to address whether there are or are not  
9 adequate opportunities for a variety of economic activities in the county, but instead focus on  
10 the current lack of a luxury “wine country” hotel in the county that would attract a small  
11 demographic of “core” wine connoisseurs, some of whom choose to stay at luxury hotels in  
12 the Portland area rather than at the hotels and lodging establishments currently available in  
13 the county. There may be a market demand or “need” for such a hotel in some sense of that  
14 word, but the county has not explained why such a “need” is “based on” the Goal 9  
15 requirement to provide adequate opportunities for a variety of economic activities, or the  
16 YCCP Section 1.F language recognizing the benefits of diversification. That there is a  
17 locally unsatisfied niche market demand for a particular sub-type of lodging accommodation  
18 does not establish that the county lacks “adequate opportunities for a variety of economic  
19 activities.” Accordingly, we agree with petitioners that remand is necessary under the first  
20 assignment of error for the county to adopt more adequate findings explaining why it  
21 believes that there is a demonstrated need for the proposed hotel, based on the Goal 9  
22 requirement to provide adequate opportunities for a variety of economic activities.

23 Finally, intervenors note one sentence in the county’s findings addressing OAR 660-  
24 004-0022(1)(a) recognizes the “higher vehicle miles traveled and carbon emissions” resulting  
25 from core wine tourists who choose to stay in Portland area hotels and make day trips to

1 county wineries rather than stay overnight in the county.<sup>11</sup> The proposed hotel would avoid  
2 some of those vehicle miles and carbon emissions. Intervenors argue in their response brief  
3 that this finding represents a conclusion that there is a demonstrated need for the proposed  
4 hotel, based on the requirements of Goal 12 (Transportation). However, neither the cited  
5 finding nor any other finding cited to us addressing OAR 660-004-0022(1)(a) mentions Goal  
6 12. While the county is free on remand to adopt findings addressing whether, for purposes of  
7 OAR 660-004-0022(1)(a), there is a demonstrated need for the proposed hotel based on the  
8 requirements of Goal 12 or other goals, we disagree with intervenors that the present  
9 decision does so.

10 The first assignment of error is sustained, in part.

11 For the reasons set out above and in *VinCEP I*, the county's decision is remanded.

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<sup>11</sup> The county's findings include:

“\* \* \* 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. \* \* \*” Record 50.