

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

3  
4 SHELLEY WETHERELL,  
5 *Petitioner,*

6  
7 vs.

8  
9 DOUGLAS COUNTY,  
10 *Respondent,*

11  
12 and

13  
14 DAVID ROBERTS, KELLY ROBERTS,  
15 HARVEY NAITO and JANICE NAITO,  
16 *Intervenors-Respondents.*

17  
18 LUBA No. 2008-024

19  
20 FINAL OPINION  
21 AND ORDER

22  
23 Appeal from Douglas County.

24  
25 Jannett Wilson, Eugene, filed the petition for review and argued on behalf of  
26 petitioner. With her on the brief was Goal One Coalition.

27  
28 No appearance by Douglas County.

29  
30 Stephen Mountainspring, Roseburg, filed the response brief and argued on behalf of  
31 intervenors-respondents. With him on the brief was Dole, Coalwell, Clark, Mountainspring,  
32 Mornarich & Aitken, PC.

33  
34 BASSHAM, Board Member; HOLSTUN, Board Member, participated in the  
35 decision.

36  
37 RYAN, Board Chair, did not participate in the decision.

38  
39 REMANDED 08/19/2008

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

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**NATURE OF THE DECISION**

Petitioner appeals a county decision amending its comprehensive plan and adopting a reasons exception to expand the boundary of a rural community to include four additional parcels.

**MOTION TO INTERVENE**

David Roberts, Kelly Roberts, Harvey Naito, and Janice Naito (intervenors), the applicants below, move to intervene on the side of the respondent in this appeal. There is no opposition to the motion and it is granted.

**FACTS**

The subject properties consist of four parcels totaling 23.59 acres in size located adjacent to or near the western boundary of the Riversdale Rural Unincorporated Community, just northwest of the City of Roseburg. Each of the parcels has a single-family dwelling. The parcels are planned and zoned for rural residential use, with a five-acre minimum lot size (5R), pursuant to previously adopted committed exceptions to Statewide Planning Goals 3 (Agricultural Land) and 4 (Forest Land).

Intervenors applied to the county to expand the Riversdale community boundary to include the four parcels, and rezone the parcels to Rural Residential, 2-acre minimum (RR), which would allow the four parcels to be divided into a total of up to 10 parcels.<sup>1</sup> The planning commission approved the application over petitioner’s objections, and petitioner appealed to the board of county commissioners. The board of county commissioners affirmed the planning commission’s decision. This appeal followed.

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<sup>1</sup> The county has three rural residential zones, 5R, RR, and Rural Residential, one-acre minimum (1R).

1    **INTRODUCTION**

2           The county’s decision adopts a reasons exception to Statewide Planning Goal 14  
3 (Urbanization), pursuant to ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-  
4 0022. Petitioner’s single assignment of error argues that the county erred in justifying an  
5 exception under these standards. Intervenors defend the county’s decision on the merits, but  
6 in addition intervenors argue, in two cross-assignments of error, that even if the county’s  
7 reasons exception is flawed, remand is not warranted because the county erred in concluding  
8 that a reasons exception to Goal 14 is necessary in the first place.

9           Cross-assignments of error do not seek to overturn the outcome of the challenged  
10 decision, but rather challenge particular aspects of the decision, in the event one or more of  
11 the petitioner’s assignments of error are sustained and the decision is otherwise subject to  
12 reversal or remand. *Copeland Sand & Gravel, Inc. v. Jackson County*, 46 Or LUBA 653,  
13 *aff’d* 193 Or App 822, 94 P3d 913 (2004). Generally, we do not address cross assignments  
14 of error unless we sustain an assignment of error or the challenged decision is otherwise  
15 subject to reversal or remand. *Young v. Jackson County*, 49 Or LUBA 327, 343-44 (2005).  
16 Occasionally, however, the nature of the arguments involved favors resolving the cross  
17 assignments of error first. *See Copeland Sand & Gravel*, 46 Or LUBA at 671 (LUBA sees  
18 no point in rendering what would be an advisory opinion involving an issue of potential  
19 statewide concern). As in *Copeland Sand & Gravel*, we see no point in resolving the  
20 assignment of error if intervenors’ cross-assignments of error are dispositive. Accordingly,  
21 we first address the cross-assignments of error.

22    **FIRST AND SECOND CROSS-ASSIGNMENTS OF ERROR**

23           Intervenors argued to the county below, and argue now to LUBA, that an exception to  
24 Goal 14 is not required because expanding a rural unincorporated community to include  
25 existing exception lands and zoning those lands for rural residential use at two-acre  
26 minimum lot sizes does not involve an urban use of rural land contrary to Goal 14.

1 Intervenor argue that OAR 660-004-0020(4) and OAR 660-004-0022(4), the rules that set  
2 out reasons and criteria that can justify expansion of unincorporated communities, apply only  
3 when the land included in the unincorporated community is “resource land” subject to one or  
4 more of the resource goals. Because all four parcels included in the Riversdale community  
5 are not subject to Goals 3 or 4 or any other resource goal, intervenors argue, OAR 660-004-  
6 0020(4) and OAR 660-004-0022(4) simply do not apply. According to intervenors, no  
7 administrative rule requires that a reasons exception to Goal 14 be adopted to include land  
8 within a rural unincorporated community that is not “resource land” as defined at OAR 660-  
9 004-0005(2). The county therefore erred, intervenors argue, in requiring an exception to  
10 Goal 14.

11 **A. Overview of Relevant Administrative Rules**

12 An overview of the relevant administrative rules adopted by the Land Conservation  
13 and Development Commission (LCDC) is necessary to understand the cross-assignments of  
14 error, as well as the assignment of error.

15 Generally, an exception is necessary to authorize uses that do not “comply with some  
16 or all goal requirements applicable to the subject properties or situations.” OAR 660-004-  
17 0005; Goal 2, Part II. The exceptions process is “generally applicable to all or part of those  
18 statewide goals which prescribe or restrict certain uses of resource land or limit the provision  
19 of certain public facilities and services,” including but not limited to Goals 3, 4, 11, 14, 16,  
20 17, and 18. OAR 660-004-0010. As intervenors note, OAR 660-004-0005(2) defines  
21 “Resource Land” for purposes of chapter 660, division 004, as land subject to Statewide  
22 Goals 3, 4, 16 (Estuarine Resources), 17 (Coastal Shorelands) or 18 (Beaches and Dunes).

1 OAR 660-004-0020(2)(a) elaborates on the four general exception requirements of  
2 Goal 2, Part II(c), including identification of “[r]easons [that] justify why the state policy  
3 embodied in the applicable goals should not apply.”<sup>2</sup> OAR 660-004-0020(1) provides:

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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’:

“\* \* \* \* \*

“(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. \* \* \* 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) 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. \* \* \*;

1 “If a jurisdiction determines there are reasons consistent with OAR 660-004-  
2 0022 to use *resource lands* for uses not allowed by the applicable Goal or to  
3 allow public facilities or services not allowed by the applicable Goal, the  
4 justification shall be set forth in the comprehensive plan as an exception.”  
5 OAR 660-004-0020(1) (emphasis added).

6 OAR 660-004-0020(4) modifies three of the exception requirements set out at  
7 OAR 660-004-0022(2), for reasons exceptions to expand a rural or urban unincorporated  
8 community.<sup>3</sup> OAR 660-004-0020(4) adds a ranking hierarchy for inclusion of lands into an  
9 unincorporated community, and provides in relevant part that first priority goes to exceptions  
10 lands in proximity to an unincorporated community boundary. *See* n 3.

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

<sup>3</sup> OAR 660-004-0020(4) provides:

“For the expansion of an unincorporated community defined under OAR 660-022-0010, or  
for an urban unincorporated community pursuant to OAR 660-022-0040(2), The exception  
requirements of subsections (2)(b), (c) and (d) of this rule are modified to also include the  
following:

“(a) Prioritize land for expansion: First priority goes to exceptions lands in proximity to  
an unincorporated community boundary. Second priority goes to land designated as  
marginal land. Third priority goes to land designated in an acknowledged  
comprehensive plan for agriculture or forestry, or both. Higher priority is given to  
land of lower capability site class for agricultural land, or lower cubic foot site class  
for forest land;

“(b) Land of lower priority described in subsection (a) of this section may be included if  
land of higher priority is inadequate to accommodate the use for any one of the  
following reasons:

“(A) Specific types of identified land needs cannot be reasonably accommodated  
on higher priority land; or

“(B) Public facilities and services cannot reasonably be provided to the higher  
priority area due to topographic or other physical constraints; or

“(C) Maximum efficiency of land uses with the unincorporated community  
requires inclusion of lower priority land in order to provide public facilities  
and services to higher priority land.”

1 OAR 660-004-0022 elaborates on the “reasons” that can justify an exception to allow  
2 certain types of uses or in certain situations. The prefatory statement to OAR 660-004-0022  
3 states that:

4 “An exception under Goal 2, Part II(c) can be taken for any use not allowed  
5 by the applicable goal(s). The types of reasons that may or may not be used to  
6 justify certain types of uses not allowed on *resource lands* are set forth in the  
7 following sections of this rule[.]” (Emphasis added.)

8 The rule sections that follow set out nonexclusive lists of reasons and criteria for exceptions  
9 to allow for rural residential development (section 2), rural industrial development (section  
10 3), expansion of rural unincorporated communities (section 4), expansion of urban  
11 unincorporated communities (section 5), Willamette Greenway (section 6), and lands subject  
12 to Goals 16, 17 and 18 (sections 7 through 11).<sup>4</sup> The pertinent section here, of course, is  
13 OAR 660-004-0022(4), entitled Expansion of Unincorporated Communities, which sets out a  
14 nonexclusive list of “appropriate reasons and facts” that can justify expanding a rural  
15 unincorporated community.<sup>5</sup>

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<sup>4</sup> There is also a “catch-all” provision, at OAR 660-004-0022(1), for uses not specifically provided for in other sections of the rule or other rules.

<sup>5</sup> OAR 660-004-0022(4) provides, in relevant part:

“Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community defined under OAR 660-022-0010(10), appropriate reasons and facts include but are not limited to the following:

“(a) A demonstrated need for additional land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration that either:

“(A) The use requires a location near a resource located on rural land; or

“(B) The use has special features necessitating its location in an expanded area of an existing unincorporated community, including:

“\* \* \* \* \*

“(ii) For residential use, the additional land is necessary to satisfy the need for additional housing in the community generated by existing industrial, commercial, or other economic activity in the surrounding area. The plan must include an economic analysis

1 The next relevant administrative rule is OAR 660-004-0040, which specifies how  
2 Goal 14 “applies to rural lands in acknowledged exception areas planned for residential  
3 uses.” OAR 660-004-0040(1). Notably, this rule does not apply to land inside an  
4 acknowledged unincorporated community boundary that was established pursuant to  
5 OAR chapter 660, division 022. OAR 660-004-0040(2)(c).

6 In general, OAR 660-004-0040 grandfathers in existing designated rural residential  
7 areas subject to zones that impose a minimum lot size of at least two acres. For new rural  
8 residential areas, counties must either impose a minimum lot size of 10 acres, or establish a  
9 minimum size of at least two acres “in accordance with the requirements for an exception to  
10 Goal 14 in OAR chapter 660, division 14.” OAR 660-004-0040(7)(i). In addition,  
11 OAR 660-004-0040(7)(a) provides that the creation of any new lot or parcel smaller than two  
12 acres in a rural residential area “shall be considered an urban use” and can only be created  
13 pursuant to an exception to Goal 14. The rule cautions however that “[t]his subsection shall  
14 not be construed to imply that creation of new lots or parcels two acres or larger always  
15 complies with Goal 14. The question of whether the creation of such lots or parcels complies  
16 with Goal 14 depends upon compliance with all provisions of this rule.”

17 Finally, while not directly applicable here, OAR chapter 660, division 022 sets out  
18 standards for designation, planning and zoning of unincorporated communities of various

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showing why the type and density of planned housing cannot be  
accommodated in an existing exception area or UGB, and is most  
appropriate at the particular proposed location. The reasons cannot  
be based on market demand for housing, nor on a projected  
continuation of past rural population distributions.

- “(b) Need must be coordinated and consistent with the comprehensive plan for other exception areas, unincorporated communities, and UGBs in the area. Area encompasses those communities, exception areas, and UGBs which may be affected by an expansion of a community boundary, taking into account market, economic, and other relevant factors;
- “(c) Expansion requires demonstrated ability to serve both the expanded area and any remaining infill development potential in the community at time of development with the level of facilities determined to be appropriate for the existing unincorporated community.”



1 kinds.<sup>6</sup> With some exceptions, land that may be included within an unincorporated  
2 community boundary is limited to exception areas historically considered to be part of the  
3 community that includes existing, contiguous concentrations of development, including  
4 residential uses at greater density than exception lands outside rural communities. OAR 660-  
5 022-0020(3)(a).

6 OAR 660-022-0030 sets out the planning and zoning requirements for unincorporated  
7 communities, both rural and urban, although additional rules applicable to urban  
8 unincorporated communities are found in OAR 660-022-0040. OAR 660-022-0030  
9 generally limits industrial and commercial uses in unincorporated communities. However,  
10 with respect to residential uses, OAR 660-022-0030(2) provides that “[c]ounty plans and  
11 land use regulations may authorize any residential use and density in unincorporated  
12 communities, subject to the requirements of this division.”

13 **B. Intervenors’ Arguments**

14 With that overview of the applicable and contextually relevant administrative rules,  
15 we turn to intervenors’ argument that no exception to Goal 14 is required when expanding a  
16 rural unincorporated community to include land for which exceptions to Goals 3 and 4 have  
17 been taken and that is therefore not “resource land, as OAR 660-004-0005(2) defines that  
18 term.

19 The county acknowledged that argument, but nonetheless concluded that the relevant  
20 administrative rule provisions, read in context, require an exception to Goal 14, even when  
21 the lands included in a rural unincorporated community are lands not subject to any resource  
22 goals.<sup>7</sup> Intervenors challenge the county’s findings to that effect.

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<sup>6</sup> OAR chapter 660, division 022 includes no provisions for *expanding* a rural unincorporated community. OAR 660-022-0040 does, however, require that expansion of an urban unincorporated community must follow the criteria for an amendment to an UGB under Goal 14, and sets out a number of additional requirements and standards.

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

1           The county relied in part on OAR 660-004-0040(7), which, as noted, states in  
2 relevant part that the requirement to take an exception to approve new lots smaller than two  
3 acres in a rural residential area does not mean that creation of new lots two acres or larger in  
4 size “always complies with Goal 14.” Intervenors note, correctly, that OAR 660-004-0040  
5 applies only to rural residential lands, and does not apply to land within unincorporated  
6 communities. Intervenors argue that while OAR 660-004-0070 would apply if the county  
7 were merely rezoning the subject properties to another rural residential zone in an exception  
8 area, the rule does not govern a proposal to place rural residential lands into a rural  
9 unincorporated community.

10           We generally agree with intervenors that the county erred to the extent it concluded  
11 that OAR 660-004-0040(7) applies to the proposed action and requires an exception to Goal

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“The County has determined that a ‘reasons’ exception is required for the expansion of an unincorporated community, even though the land to be added to the rural community has already been the subject of an acknowledged goal exception. The standards and procedures for taking an exception to allow expansion of a [rural unincorporated community] boundary are set out in OAR Chapter 660, Division 4 (Goal 2 Exception Process). The exception rule describes ‘*the types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands . . .*’ and goes on to identify four specific types of uses that may be permitted on resource land if a ‘reasons’ exception is taken. The [county] notes that the land proposed for inclusion in the Riversdale URC in this case is not resource land; nevertheless, it has been the policy and practice of the county to apply the standards for a reasons exception to URC expansion proposals in order to demonstrate that the expansion complies with the Statewide Urbanization Goal (Goal 14).

“Goal 14 requires local governments to establish urban growth boundaries that separate urban lands from rural lands and requires urban uses to be located within acknowledged urban growth boundaries. Lands within acknowledged rural communities, such as the Riversdale Unincorporated Rural Community, are not considered ‘urban’ and are not directly subject to the policy contained in Goal 14. In Douglas County, residential development in a designated rural community at a density not greater than two acres per dwelling unit has been acknowledged by LCDC to be a ‘rural’ use. Therefore, the proposed expansion of the Riversdale URC does not involve the conversion of rural land to urban use. However, OAR 660-004-0040(7)(a) provides that, while a residential density greater than two acres in rural areas requires an exception to Goal 14, the question of whether a residential density less than two acres complies with the goal depends upon compliance with the exception requirements set out under OAR 660-004-0022(4), Expansion of Unincorporated Communities.” Record 4-5 (emphasis in original).

1 14.<sup>8</sup> It is not clear, however, that the county so concluded. Arguably, the county cites OAR  
2 660-004-0040(7) only as context to support the county’s position that an exception to Goal  
3 14 is required under other rules, specifically OAR 660-004-0022(4), even when rezoning  
4 land to a minimum two-acre lot size. While OAR 660-004-0040(7) perhaps has only limited  
5 value as context, we see no error in citing the rule for that purpose.

6 Turning to OAR 660-004-0020 and 660-004-0022, intervenors are correct that  
7 OAR 660-004-0020(1) and the prefatory statement to OAR 660-004-0022 suggest that the  
8 specific exception standards listed in those rules, including OAR 660-004-0020(4) and 660-  
9 004-0022(4), apply only in circumstances where the exception involves “resource lands” as  
10 defined in OAR 660-004-0005(2), *i.e.*, land subject to Goals 3, 4, 16, 17, and 18. However,  
11 in our view the force of that suggestion is undercut by the text and context of the relevant  
12 rules. *See Todd v. City of Florence*, 52 Or LUBA 445, 459 (2006) (questioning whether  
13 OAR 660-004-0022 is limited to exceptions involving resource lands).

14 Starting with OAR 660-004-0010(1), that rule provides that “[t]he exceptions process  
15 is generally applicable to all or part of those statewide planning goals which prescribe or  
16 restrict certain uses of resource land or limit the provision of certain public facilities and  
17 services,” including but not limited to Goals 3, 4, 11, and 14. The reference to goals that  
18 “limit the provision of certain public facilities and services” is an obvious reference to Goal  
19 11, which generally limits establishment or extension of public facilities and services on rural  
20 lands.<sup>9</sup> Goal 11, like Goal 14, is concerned with maintaining certain distinctions between

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<sup>8</sup> As noted, the last sentence of OAR 660-004-0040(7)(a) states that “whether the creation of lots or parcels [two acres or larger] complies with Goal 14 depends upon compliance with all provisions of this rule.” The county appears to understand the reference to “all provisions of this rule” to include OAR 660-004-0022(4). However, the “rule” referred to is OAR 660-004-0040. OAR 660-004-0022(4) is a section of a different rule (OAR chapter 660, division 004, rule 0022).

<sup>9</sup> Goal 11 is “[t]o plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” Goal 14 is “[t]o provide for an orderly and efficient transition from rural to urban use.” Goal 14 provides that establishment or change in an UGB

1 urban and rural lands, and is not particularly concerned with preserving “resource lands” as a  
2 distinct element of rural lands. *See VinCEP v. Yamhill County*, 215 Or App 414, 426, 171  
3 P3d 368 (2007) (“Goal 14 functions to confine urban uses inside urban growth boundaries  
4 and to inhibit their location on rural land, whether the land is agricultural land or not”).  
5 Conversely, Goal 14, like Goal 11, is concerned among other things with the “orderly and  
6 economic provision for public facilities and services,” and the two goals often apply and  
7 work together toward a congruent objective: to limit urban uses, services and facilities to  
8 urban areas. In other words, the OAR 660-004-0010(1) reference to goals that “limit the  
9 provision of certain public facilities and services” can be easily understood to include Goal  
10 14.

11 Second, as noted OAR 660-004-0020(4) sets out additional standards for an  
12 exception to expand *both* urban and rural unincorporated communities, requiring that the  
13 county prioritize land for expansion, and give first priority to exception lands in proximity to  
14 an unincorporated community boundary, second priority to marginal lands, and lowest  
15 priority to resource lands. Obviously, an exception under OAR 660-004-0020(4) can be  
16 satisfied, and indeed is *preferentially* satisfied, by expanding an unincorporated community  
17 using only non-resource lands.

18 As noted, OAR 660-004-0022 sets out a number of reasons and criteria that can  
19 justify an exception for particular uses not allowed by the applicable goal, including  
20 expansion of a rural unincorporated community. The prefatory statement to OAR 660-004-  
21 0022 can be read to suggest that the reasons listed in OAR 660-0040-0022(1) through (11)  
22 apply *only* when a reasons exception is taken regarding resource lands and, by implication,  
23 that there is no need for an exception at all if the proposed action does not involve resource  
24 lands. However, we note that OAR 660-004-0022(6) provides reasons for an exception to

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separating urbanizable from rural land shall be based on seven factors, including the “[o]rderly and economic provision of public facilities and services[.]”

1 Goal 15, the Willamette Greenway, for certain uses within an urban area.<sup>10</sup> Land within  
2 urban areas rarely, if ever, are subject to the resource goals or fit the definition of “resource  
3 land” at OAR 660-004-0005(2). The only possible conclusion is that the prefatory statement  
4 to OAR 660-004-0022 is incomplete, and is not intended to limit the application of reasons  
5 listed in OAR 660-004-0022(1) though (11) to proposals involving resource lands. We also  
6 note that nothing in OAR 660-004-0022(4), listing reasons that can justify expansion of rural  
7 unincorporated communities, refers to resource lands or suggests that the section applies only  
8 to expansions that involve resource lands. In that respect, OAR 660-004-0022(4) differs  
9 from other sections of OAR 660-004-0022 that are explicitly limited to resource lands. *E.g.*,  
10 OAR 660-004-0022(2) (setting forth appropriate reasons to justify rural residential housing  
11 on resource lands); OAR 660-004-0022(3) (setting forth appropriate reasons “[f]or the siting  
12 of industrial development on resource land[.]”

13 In sum, we disagree with intervenors that the references in OAR 660-004-0020(1) or  
14 the prefatory statement to OAR 660-004-0022 to “resource lands” impliedly limit the need to  
15 take an exception to Goal 14 to circumstances that involve resource lands.

16 We turn next to intervenors’ broader, and stronger, argument that no exception to  
17 Goal 14 is needed in the present case because the proposed expansion and rezoning do not  
18 involve the *urban* use of rural land. As relevant here, Goal 14 generally prohibits urban uses  
19 outside urban growth boundaries without an exception. *1000 Friends of Oregon v. LCDC*  
20 (*Curry County*), 301 Or 447, 724 P2d 268 (1986). An exception to a goal is generally  
21 required only when the proposed use or action does not “comply with some or all goal  
22 requirements applicable to the subject properties or situations[.]” OAR 660-004-0005; Goal

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<sup>10</sup> OAR 660-004-0022(6) provides, in relevant part:

“Willamette Greenway: Within an urban area designated on the approved Willamette Greenway Boundary maps, the siting of uses which are neither water-dependent nor water-related within the setback line required by Section C.3.k of the Goal may be approved where reasons demonstrate the following [listing four criteria].”

1 2, Part II. Intervenors contend that including the subject properties in a *rural* unincorporated  
2 community and rezoning them to a *rural* residential zone that provides for a two-acre  
3 minimum lot size cannot possibly involve the urban use of rural land, and therefore no  
4 exception to Goal 14 is required.

5 We disagree that the proposition that, as a matter of law, expanding a rural  
6 unincorporated community and rezoning the expanded area to a residential zone that  
7 provides for a two-acre minimum lot size cannot possibly result in the urban use of rural  
8 land, contrary to Goal 14. The distinction between urban and rural uses of land is ill-  
9 defined—to put it mildly—although the relatively recent adoption of OAR 660-004-0040 has  
10 clarified that distinction to some extent, at least with respect to rural residential lands on  
11 exception areas outside unincorporated communities. In *Curry County*, the Court held that  
12 whether proposed use of rural land implicates Goal 14 depends on a multi-faceted analysis of  
13 density, public services available, and proximity to urban growth boundaries. 301 Or at 505,  
14 507. Thus, where OAR 660-004-0040 does not apply, as here, the fact that the proposed  
15 zoning applies a two-acre minimum lot size is not a sufficient basis to conclude that Goal 14  
16 is not implicated. As noted above, even where OAR 660-004-0040 applies, in designating  
17 new rural residential lands a county must either apply a minimum lot size of 10 acres or  
18 pursuant to an exception to Goal 14 establish a minimum lot size of at least two acres. That  
19 suggests, consistent with *Curry County* and its progeny, that proposed residential densities  
20 between two and ten acres potentially implicate Goal 14 and may require a Goal 14  
21 exception, depending on the particular circumstances.

22 Similarly, that the proposed use involves the expansion and zoning of a rural  
23 unincorporated community does not necessarily mean that Goal 14 cannot be implicated  
24 under the *Curry County* factors. The administrative rule framework that governs  
25 unincorporated communities imposes what appear to be significant constraints on both the  
26 initial designation and expansion of rural unincorporated communities. As noted, OAR 660-

1 022-0020(3) limits the type of exception land that can be included when initially designating  
2 a rural unincorporated community. The purpose of those limits, as OAR 660-022-0020(2)  
3 explains, is to “establish boundaries of unincorporated communities in order to distinguish  
4 lands within the community from exception areas, resource lands and other lands.” In turn,  
5 LCDC promulgated relatively difficult legal and evidentiary standards to justify expansion of  
6 a rural unincorporated community, at OAR 660-004-0020(4) and OAR 660-004-0022(4). It  
7 seems unlikely that LCDC would require that counties carefully distinguish unincorporated  
8 communities from surrounding exception lands when *designating* such communities, yet  
9 allow such communities to be subsequently *expanded* to include additional exception lands  
10 that may not comply with the standards of OAR 660-022-0020(3)(a), based on *no*  
11 administrative rule standards at all.

12 An additional textual basis to conclude that LCDC intended to require a reasons  
13 exception to expand a rural unincorporated community is found in OAR 660-022-0030,  
14 which provides for the planning and zoning of both rural and urban unincorporated  
15 communities. OAR 660-022-0030(2) provides that “[c]ounty plans and land use regulations  
16 may authorize any residential use and density in unincorporated communities, subject to the  
17 requirements of this division.” Nothing else in OAR chapter 660, division 022 imposes  
18 requirements on residential density in rural unincorporated communities. Therefore, once  
19 land is included within a rural unincorporated community, at least theoretically it may be  
20 planned and zoned at *any* residential density.<sup>11</sup> Density is one of the three *Curry County*  
21 factors, and a key distinguishing feature between urban and rural uses. Although the rules  
22 could be clearer on this point, the fact that LCDC would authorize counties to plan and zone

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<sup>11</sup> Presumably, the actual residential density that could be achieved within a rural unincorporated community would be limited by the suitability of soils for septic systems, unless the county took an exception to Goal 11 to allow a community sewage system. However, nothing in OAR chapter 660, division 022 appears to prohibit a county from authorizing single or multi-family residential uses served by septic systems at densities considerably greater than two acres per dwelling unit.

1 to allow any residential use and density within rural unincorporated communities strongly  
2 suggests that LCDC intended that expansion of a rural unincorporated community would be  
3 accomplished by means of an exception to Goal 14, pursuant to the standards of OAR 660-  
4 004-0020(4) and OAR 660-004-0022(4).<sup>12</sup>

5 When the relevant rule provisions are read together, the clear impression is that  
6 LCDC intended that expansions of a rural unincorporated community require a reasons  
7 exception to Goal 14 under the standards of OAR 660-004-0020(4) and OAR 660-004-  
8 0022(4), at least in those circumstances in which the *Curry County* factors indicates that an  
9 exception to Goal 14 may be necessary.

10 Applying the *Curry County* factors to the present case, the two-acre residential  
11 density applied is at the lower end of the range (two to ten acres) that typically indicates that  
12 evaluation under Goal 14 is necessary. With respect to the public services available, the  
13 decision indicates that the Riversdale community is served by a public water system, and by  
14 private utilities, including natural gas, but each dwelling within the community is served by  
15 individual septic systems. With respect to proximity and impact on urban growth  
16 boundaries, maps in the record suggest that the southeastern edge of the Riversdale  
17 unincorporated community is less than a mile from the western edge of the City of Roseburg  
18 UGB (UGB), connected by Garden Valley Road. Record 173. The decision candidly admits  
19 that the Riversdale community functions as part of a west-side “bedroom community” for the  
20 City of Roseburg. Record 58. The county’s inventory of rural unincorporated communities  
21 indicates that the Riversdale community is by far the county’s largest rural unincorporated  
22 community, with almost 500 existing dwelling units and 600 parcels on nearly 1,500 acres,

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<sup>12</sup> We note in this respect that a staff representative of the Department of Land Conservation and Development (DLCD), the agency responsible for implementing rules adopted by LCDC, provided comments to the county during the proceedings below arguing that the proposed expansion does not comply with the standards for a reasons exception. Record 164-65. Evidently DLCD or at least its staff believes that the proposed expansion of the Riversdale unincorporated community requires an exception to Goal 14.



1 more than twice as many dwelling units as the next largest rural community. Expanding a  
2 rural community that is already larger than many incorporated cities, and that functions as a  
3 bedroom community to a nearby city, is almost certain to have some impact on the  
4 functioning of the UGB that surrounds that city. Under these circumstances, we conclude  
5 that expanding the Riversdale community to include an additional 25 acres and zoning that  
6 land to permit up to six additional dwelling units at two-acre densities requires an exception  
7 to Goal 14, pursuant to OAR 660-004-0020(4) and OAR 660-004-0022(4).<sup>13</sup>

8 Accordingly, the county correctly required an exception to Goal 14, under the  
9 standards at OAR 660-004-0020(4) and OAR 660-004-0022(4). Intervenors' cross-  
10 assignments of error are denied.

11 **PETITIONER'S FIRST ASSIGNMENT OF ERROR**

12 Petitioner argues that the county did not comply with the provisions of OAR 660-  
13 004-0022(4) in taking a reasons exception to expand the boundaries of Riversdale  
14 unincorporated community to include the subject properties.

15 OAR 660-004-0022(4)(a) provides that the city may justify expansion of an  
16 unincorporated community if it identifies (1) a demonstrated need for additional land in the  
17 community to accommodate a specific rural use based on Goals 3-19, and either (2) the "use  
18 requires a location near a resource located on rural land" under OAR 660-004-0022(4)(a)(A)  
19 or (3) the "use has special features necessitating its location" in an expanded area of an  
20 existing unincorporated community under OAR 660-004-0022(4)(a)(B).<sup>14</sup> The county's  
21 findings focus mainly on the "special features" language of OAR 660-004-0022(4)(a)(B).

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<sup>13</sup> We leave open the possibility that under different circumstances the expansion of a rural unincorporated community would not require an exception to Goal 14 under the *Curry County* factors, and therefore would not be subject to OAR 660-004-0020(4) and OAR 660-004-0022(4).

<sup>14</sup> We set out relevant portions of OAR 660-004-0022(4) below. For a fuller quotation, see n 5.

1           **A.     Demonstrated Need to Accommodate a Specific Rural Use Based on**  
2           **Goals 3-19.**

3           Petitioner argues initially that the county failed to identify “[a] demonstrated need for  
4 additional land in the community to accommodate a specific rural use based on Goals 3-19.”  
5 According to petitioner, the county does not specifically address that rule language or  
6 identify any statewide planning goal that necessitates including additional land in the  
7 community to accommodate a specific rural use. The closest the county comes, petitioner  
8 argues, is to cite Statewide Planning Goal 10 (Housing) in support of its assertion that there  
9 is a need for additional rural residential housing in the county and in the area of the  
10 Riversdale community.<sup>15</sup> Petitioner argues, however, that by its terms Goal 10 does not

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“Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community defined under OAR 660-022-0010(10), appropriate reasons and facts include but are not limited to the following:

“(a)     A demonstrated need for additional land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration that either:

          “(A)    The use requires a location near a resource located on rural land; or

          “(B)    The use has special features necessitating its location in an expanded area of an existing unincorporated community, including:

          “\* \* \* \* \*

          “(ii)    For residential use, the additional land is necessary to satisfy the need for additional housing in the community generated by existing industrial, commercial, or other economic activity in the surrounding area. The plan must include an economic analysis showing why the type and density of planned housing cannot be accommodated in an existing exception area or UGB, and is most appropriate at the particular proposed location. The reasons cannot be based on market demand for housing, nor on a projected continuation of past rural population distributions.”

<sup>15</sup> Goal 10 is

“To provide for the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

1 apply outside urban growth boundaries. Further, petitioner contends, even if the housing  
2 goal applies to rural lands its application is modified by the OAR 660-004-0022(4)(B)(ii)  
3 prohibition on justifying an expansion for rural residential housing “based on market demand  
4 for housing [or] on a projected continuation of past rural population distributions.” Petitioner  
5 argues that the purported need is based on market demand for housing and continuation of  
6 past rural population distributions.

7 Intervenor respond that Goal 10, while focused largely on urban and urbanizable  
8 areas, also applies outside urban growth boundaries. The basic command of Goal 10,  
9 intervenors argue, is to “provide for the housing needs of citizens of the state,” and that  
10 command is not limited to urban and urbanizable areas. Intervenor argue that the county  
11 correctly concluded that the general policy contained in Goal 10 requires the county to  
12 ensure that “there is sufficient land available to provide for needed housing \* \* \* in rural  
13 communities” as well as inside urban growth boundaries. Record 41.

14 Petitioner is correct that the specific requirements of Goal 10, including the  
15 requirements regarding “needed housing,” apply only to lands within urban growth  
16 boundaries. Nothing cited to us in Goal 10 or its administrative rule suggests that Goal 10  
17 imposes any requirements regarding needed housing on rural lands. On the other hand,  
18 nothing in the goal or rule explicitly prohibits a county from applying Goal 10 to rural lands.  
19 However, intervenors do not assert that the county has adopted a Goal 10 inventory of  
20 buildable rural residential lands or otherwise attempted to apply Goal 10 to areas outside  
21 urban growth boundaries. We agree with petitioner that to the extent Goal 10 applies to rural  
22 lands or a county chooses to apply it to rural lands, its application is significantly modified

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*Buildable Lands* -- refers to lands in urban and urbanizable areas that are suitable, available  
and necessary for residential use.”

Further, Goal 10 defines “Needed Housing Units” referenced above to mean “housing types determined to  
meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels.”

1 where a county relies on OAR 660-004-0022(4)(a)(B)(ii) to justify an expansion of a rural  
2 unincorporated community.

3 In any case, petitioner is correct that the county’s findings do not specifically address  
4 the requirement to identify “[a] demonstrated need for additional land in the community to  
5 accommodate a specific rural use based on Goals 3-19.” To the extent the county relied on  
6 Goal 10, we agree with petitioner that the county’s findings are inadequate. The “specific  
7 rural use” here is presumably rural residential housing, but the findings do explain why that  
8 use is “based on” Goal 10 or any Goal 10 requirement.

9 **B. Use Requires a Location Near a Resource: OAR 660-004-0022(4)(a)(A).**

10 Turning to the alternative prongs of OAR 660-004-0022(4)(a), the county’s findings  
11 explicitly address the “special features” provisions of OAR 660-004-0022(4)(a)(B), but do  
12 not explicitly address the “the use requires a location near a resource” language of OAR 660-  
13 004-0022(4)(a)(A). Intervenors argue, however, that the county did address that alternative  
14 language, and petitioner’s failure to challenge those alternative findings addressing OAR  
15 660-004-0022(4)(a)(A) means that any error the county may have made in addressing the  
16 “special features” prong of OAR 660-004-0022(4)(a)(B) is not a basis for reversal or remand.

17 However, we do not see that the county adopted findings that purport to justify the  
18 expansion under OAR 660-004-0022(4)(a)(A). The findings intervenors assert are the  
19 alternative findings under OAR 660-004-0022(4)(a)(A) are taken from two separate portions  
20 of the decision, and state:

21 “More specifically, the [economic] analysis [relied upon by the planning  
22 commission] shows that economic activity in and around the [URC],  
23 including expansion of the Umpqua Basin Water facilities and the Roseburg  
24 Country Club, and intensification of resource management activities in the  
25 Callahan Ridge and lower Garden Valley areas, has contributed to creating a  
26 job-related need for additional housing in the Community. While the  
27 evidence from the *two economic analyses in the record demonstrates there is*  
28 *a need for additional housing in the rural community, nothing in the*  
29 *[planning commission’s] findings say or imply that the identified need is*

1           *based on market demand \* \* \* as alleged by [petitioner].”* Record 44  
2           (emphasis added).

3           *“Resource uses are the major component of economic activity in the area*  
4           *surrounding the Community. [The URC] has a pivotal proximity to forest*  
5           *lands and agricultural lands to the west, which provides an essential nexus to*  
6           *the generation of employment activity and the need for additional housing*  
7           *within the Community.*

8           “Forest employment, particularly on the Callahan Ridge commercial forest  
9           land to the west of the Community, as well as intensive small woodland  
10          management occurring in the area, creates a job-related housing need within  
11          the [URC].” Record 57-58 (emphasis added).

12          We see nothing in the foregoing findings indicating that they were adopted in order to  
13          demonstrate compliance with OAR 660-004-0022(4)(a)(A).<sup>16</sup> The county never cites OAR  
14          660-004-0022(4)(a)(A) or gives any indication that the quoted findings are directed at that  
15          provision of the rule. In addition, the context in which the findings appear indicate that they  
16          were adopted in response to petitioner’s challenge that the decision does not comply with  
17          OAR 660-004-0022(4)(a)(B)(ii). The findings from Record 44 are clearly adopted to  
18          respond to petitioner’s challenge that the need for housing is based on market demand, which  
19          is not allowed by OAR 660-004-0022(4)(a)(B)(ii). As the emphasized language illustrates,  
20          the county was discussing the economic analyses required under OAR 660-004-  
21          0022(4)(a)(B)(ii) and also specifically states that the identified need is not based on market  
22          demand, which is prohibited under OAR 660-004-0022(4)(a)(B)(ii). The findings from  
23          Record 57-58 also are clearly adopted to respond to challenges under OAR 660-004-  
24          0022(4)(a)(B)(ii). The heading of the specific finding quoted above states that “there is a  
25          need for additional housing in the community as a consequence of economic activity in the  
26          surrounding area.” Record 57. That language mirrors the language of OAR 660-004-  
27          0022(4)(a)(B)(ii). We reject intervenors’ argument that petitioner failed to challenge

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<sup>16</sup> We also note that neither the application nor the staff report addressed OAR 660-004-0022(4)(a)(A) or purported to justify the expansion based on that prong.

1 alternative findings and therefore we must deny the assignment of error challenging the  
2 findings under OAR 660-004-0022(4)(a)(B)(ii).

3 **C. Special Features: OAR 660-004-0022(4)(a)(B).**

4 Returning to petitioner’s assignment of error, as noted, under OAR 660-004-  
5 0022(4)(a)(B)(ii) the proposed use must have “special features” necessitating location of the  
6 proposed use in the unincorporated community. For residential housing, the expansion must  
7 be (1) necessary to satisfy the need for additional housing generated by existing industrial,  
8 commercial, or other economic activity in the surrounding area; (2) based on an economic  
9 analysis showing why the type and density of planned housing cannot be accommodated in  
10 an existing exception area or urban growth boundary; and (3) cannot be based on a market  
11 demand for housing or a continuation of past rural population distributions.

12 With respect to the need for additional housing based on existing economic activity in  
13 the surrounding area, petitioner does not appear to dispute the finding or supporting evidence  
14 that increased economic activity in the surrounding area generates a need for “additional  
15 housing.”<sup>17</sup> Petitioner does dispute, however, the finding that the type and density of  
16 housing cannot be accommodated in an existing exception area or in the nearby City of  
17 Roseburg UGB, and the finding that need is not based on market demand for housing or  
18 continuation of past rural population distributions.

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<sup>17</sup> However, we note that the findings and evidence the county relies on to demonstrate that increased economic activity in the area has created new jobs and hence the need for additional housing are not particularly compelling. The findings cite to recent expansion of the local water district facilities and the local country club, and intensification of resource management activities in the area to demonstrate a job-related need for additional housing. Record 44. However, there is no attempt to quantify the number of new jobs created, and the county appears to simply assume that any new jobs will be filled by newcomers to the area rather than existing residents. As discussed below, the lack of any quantification on that point makes it difficult for the city to demonstrate that the need for additional housing, whatever it is and whatever its source, cannot be accommodated in exception areas or in a UGB.

1                   **1. Type and Density of Planned Housing Cannot be Accommodated**  
2                   **in Exception Areas or within a UGB.**

3                   Petitioner argues that the county failed to demonstrate that the need for additional  
4 housing could not be accommodated in nearby exception areas, including on vacant lands  
5 within the Riversdale community itself, or in the nearby UGB.<sup>18</sup> Relatedly, petitioner argues  
6 that the county erred in considering the “special feature” of the needed additional housing to  
7 be the proposed two-acre lot sizes permitted in the RR zone. According to petitioner, there is  
8 no evidence or explanation for why economic activity in the area generates a need for  
9 housing that can be satisfied only on the two-acre lots desired by the applicants, as opposed  
10 to five-acre lots allowed in the 5R zone or higher density lots permitted within the UGB.

11                  We agree with petitioner that the county’s findings are inadequate. The findings  
12 recite that the adjacent 804-acre exception area has sufficient vacant acreage to create up to  
13 16 new dwelling sites under 5R zoning. Record 61. The county concludes, however, that  
14 such new parcels could not accommodate the needed additional housing, because they would  
15 be widely dispersed and “it is not practical to view these committed lands as having any kind  
16 of realistic potential for accommodating the type and density of development being proposed  
17 by the applicants.” *Id.* However, it is not clear why wide dispersal of dwelling sites or any  
18 other factor disqualifies such parcels from accommodating the needed additional housing.

19                  The findings do not quantify the number of vacant and divisible parcels within the  
20 Riversdale community, but intervenors attach to their response brief portions of the county’s  
21 rural communities inventory indicating that the Riversdale community has 492 existing  
22 developed dwelling sites, 619 “existing possible” dwelling sites, and 49 potential new

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<sup>18</sup> Intervenors respond in part that petitioner challenges only the *existence* of the county’s findings under OAR 660-004-0022(4)(a)(B)(ii), not their adequacy, and suggests that we reject petitioner’s arguments for failing to recognize that the county in fact adopted findings addressing the rule, regardless of adequacy. However, fairly read we think petitioner’s assignment of error challenges the adequacy of the county’s findings.

1 buildable lots, after subtracting unbuildable hazard areas. Appendix A-7.<sup>19</sup> Although the  
2 findings suggest that the Riversdale community would have to be expanded to accommodate  
3 the needed additional housing, it is not clear why.

4 With respect to the Roseburg UGB, the findings make no effort to explain why the  
5 needed additional housing cannot be accommodated within the UGB. The county may have  
6 presumed that land within a UGB cannot possibly satisfy the identified need, because the  
7 need is for “rural” housing. If that is the county’s view, it is inconsistent with OAR 660-  
8 004-0022(4)(a)(B)(ii), which requires a demonstration that “the type and density of planned  
9 housing cannot be accommodated in an existing exception area or UGB.” The county may  
10 also have failed to analyze lands within the UGB because urbanizable lands can be  
11 developed at different densities than the two-acre RR density that intervenors propose. We  
12 generally agree with petitioner that the decision does not establish that the identified need for  
13 additional housing can be satisfied only by dwellings at the proposed two-acre density.  
14 OAR 660-004-0022(4)(a)(B)(ii) requires analysis of whether the “type and density of  
15 *planned* housing” cannot be accommodated within a UGB, not the “proposed” density.  
16 “Planned housing” presumably refers to housing types and density under the different  
17 planning and zoning designations that are available under the county’s plan and zoning  
18 ordinance and capable of satisfying the identified need, not limited to the zoning designation  
19 proposed by the applicant.

20 In sum, remand is necessary for the county to adopt more adequate findings  
21 addressing OAR 660-004-0022(4)(a)(B)(ii). Although it goes somewhat beyond the parties’  
22 arguments, we offer the following observation to guide the county and parties on remand.  
23 OAR 660-004-0022(4)(a)(B)(ii) evinces a clear preference for housing need generated by

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<sup>19</sup> The rural community inventory was adopted in 2006. See *Wetherell v. Douglas County*, 54 Or LUBA 520 (2007) (appeal of the ordinance adopting the inventory). We note that it is not clear what the 619 “existing possible” dwelling sites represents, but we surmise that it represents the total of (1) existing developed residential parcels, (2) existing vacant parcels, and (3) potential new parcels.



1 rural economic activity to be provided for in existing exception areas or within a nearby  
2 UGB, rather than via an expanded rural community. As a practical matter, satisfying that  
3 element of the rule requires the county compare the need for additional housing generated by  
4 economic activity in the area against the available land supply on exception lands and within  
5 a UGB, if one is nearby. Although the rule does not specify, it also seems clear that the  
6 county must consider the availability of vacant and divisible lands within the existing rural  
7 community (which typically are also composed of exception lands). We do not see how that  
8 comparison can be made without some attempt to quantify the need for additional housing  
9 generated by existing economic activity, as well as the available land supply to satisfy that  
10 need. As noted earlier, the county makes no effort to quantify the need for additional  
11 housing, which makes it difficult for the county to demonstrate that that need cannot be  
12 accommodated in existing exception areas, the existing community, or within the UGB. It  
13 also makes it difficult for the county to demonstrate that the need for additional housing is  
14 generated by existing economic activity, as opposed to “market demand for housing,” or  
15 “projected continuation of past rural population distribution.”

16           Petitioner’s assignment of error is sustained, in part.

17           The county’s decision is remanded.