

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

OREGON COAST ALLIANCE,  
PEG REAGAN, and PENNY SUESS,  
*Petitioners,*

vs.

CURRY COUNTY,  
*Respondent.*

LUBA No. 2022-088

FINAL OPINION  
AND ORDER

Appeal from Curry County.

Sean T. Malone filed the petition for review and reply brief and argued on behalf of petitioners.

Bill Kloos filed the respondent's brief and argued on behalf of respondent. Also on the brief was Law Office of Bill Kloos, PC.

ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board Member, participated in the decision.

AFFIRMED                      06/23/2023

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

**NATURE OF THE DECISION**

Petitioners appeal Ordinance 22-04, a legislative decision by the board of county commissioners amending the text of the Curry County Zoning Ordinance (CCZO).

**BACKGROUND**

The county adopted Ordinance 22-04

“for the purpose of carrying out five (5) primary land use objectives including:

“1. Authorizing the BOC review of applications and appeals.

“2. Increasing housing opportunities in the R2 zoning district.

“3. Allowing an Accessory Dwelling Unit (ADU) on Residential zoned land.

“4. Regulating Short-Term Rentals (STRs) using clear and objective standards.

“5. Defining requirements for Lot Line Adjustments.” Record 10.

The amendments do not include comprehensive plan amendments or zone changes.

Prior to adopting Ordinance 22-04, the county code did not regulate STRs. Ordinance 22-04 expressly authorizes STR uses of dwelling units located in the following zones: Rural Residential (RR), CCZO 3.082(2), Rural Community Residential (RCR), CCZO 3.090, Residential-One (R-1), CCZO 3.100, Residential-Two (R-2), CCZO 3.110, Residential-Three (R-3), CCZO 3.120,

1 Rural Commercial (RC), CCZO 3.130, and Light Commercial (C-1), CCZO  
2 3.152(1). Record 33-58. STR uses are subject to newly adopted standards at  
3 CCZO 4.300. Record 67.

4 Prior to Ordinance 22-04, the CCZO allowed ADUs in conjunction with  
5 single-family dwellings inside urban growth boundaries (UGBs) in the RC, RCR,  
6 R-1, R-2, and R-3 zones. CCZO 4.090; Record 61. Ordinance 22-04 newly allows  
7 ADU uses outside UGBs in the RR-2, RR-5, and RR-10 zones, subject to  
8 standards at CCZO 4.100. CCZO 3.082(1); Record 63.

9 The applicable standard of review is set out at ORS 197.835(7), which  
10 provides:

11 “The board shall reverse or remand an amendment to a land use  
12 regulation or the adoption of a new land use regulation if:

13 “(a) The regulation is not in compliance with the comprehensive  
14 plan; or

15 “(b) The comprehensive plan does not contain specific policies or  
16 other provisions which provide the basis for the regulation,  
17 and the regulation is not in compliance with the statewide  
18 planning goals.”

19 The county adopted the CCZO amendments through a legislative process  
20 involving multiple hearings and periods of public comment before the planning  
21 commission and board of commissioners. We explained the applicable standard  
22 of review of legislative land use decisions as follows:

23 “Because the challenged decisions are legislative rather than quasi-  
24 judicial, there is no generally applicable requirement that the  
25 decisions be supported by findings, although the decisions and

1 record must be sufficient to demonstrate that applicable criteria were  
2 applied and ‘required considerations were indeed considered.’  
3 *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16  
4 n 6, 38 P3d 956 (2002). With respect to evidence, Statewide  
5 Planning Goal 2 (Land Use Planning) requires that a decision that  
6 amends a comprehensive plan or land use regulation be supported  
7 by an adequate factual base. An ‘adequate factual base’ is equivalent  
8 to the requirement that a quasi-judicial decision be supported by  
9 substantial evidence in the whole record. *1000 Friends of Oregon v.*  
10 *City of North Plains*, 27 Or LUBA 372, 378, *aff’d*, 130 Or App 406,  
11 882 P2d 1130 (1994). Substantial evidence exists to support a  
12 finding of fact when the record, viewed as a whole, would permit a  
13 reasonable person to make that finding. *Dodd v. Hood River County*,  
14 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*,  
15 305 Or 346, 351-52, 752 P2d 262 (1988).” *Restore Oregon v. City*  
16 *of Portland*, 80 Or LUBA 158, 162 (2019), *aff’d*, 301 Or App 769,  
17 458 P3d 703 (2020).

18 “For legislative land use decisions, the city may rely on findings as well as  
19 arguments in its brief and accessible material in the record to establish that  
20 applicable legal standards are satisfied.” *Home Builders Assoc. v. City of Eugene*,  
21 78 Or LUBA 441, 451 (2018); *see also Redland/Viola/Fischer’s Mill CPO v.*  
22 *Clackamas County*, 27 Or LUBA 560, 563-64 (1994) (citing *Von Lubken v. Hood*  
23 *River County*, 22 Or LUBA 307, 314 (1991) (explaining that a respondent may  
24 “provide in their briefs argument and citations to facts in the record adequate to  
25 demonstrate that the challenged legislative decision complies with applicable  
26 legal standards”)). “In alleging a Goal 2 factual base inadequacy at LUBA, a  
27 petitioner must establish that some applicable statewide planning goal or other  
28 criterion imposes obligations that are of such a nature that a factual base is

1 required to determine if the zoning ordinance amendment is consistent with the  
2 goal or other criterion.” *OCAPA v. City of Mosier*, 44 Or LUBA 452, 462 (2003).

3 With that review framework we proceed to the assignments of error.

#### 4 **FIRST ASSIGNMENT OF ERROR**

5 Again, ORS 197.835(7)(a) requires the board to “reverse or remand an  
6 amendment to a land use regulation or the adoption of a new land use regulation  
7 if \* \* \* [t]he regulation is not in compliance with the comprehensive plan.”  
8 Petitioners argue in their first assignment of error that Ordinance 22-04 is not  
9 consistent with the Curry County Comprehensive Plan (CCCP) in five respects  
10 and that the county’s findings are not supported by substantial evidence.

##### 11 **A. CCCP Goal 5 Natural Resources**

12 CCCP Goal 5, policy 12, “Plan Policies Regarding Natural Resources,”  
13 provides, in part:

##### 14 **“A. With regard to Open Space Lands:**

15 “1. Curry County has adequate open space lands to meet  
16 the needs of its citizens and visitors.

17 “2. Curry County recognizes the value of open space as an  
18 asset to the county for scenic qualities[,] recreational  
19 opportunities, and wildlife habitat.

20 “3. Curry County has preserved open space land within the  
21 county through the designation of much of the county  
22 land area for agricultural and forest use.”

1 Ordinance 22-04 amends the CCZO to allow for ADUs and STRs in the  
2 RR zone and, petitioners argue, is therefore not consistent with CCCP Goal 5,  
3 policy 12, because ADUs and STRs will affect that county's efforts to preserve  
4 open space. Petitioners argue that, because the RR zone allows for farming and  
5 forestry use, the RR zone "aids in preserving open space in the County, pursuant  
6 to Goal 5." Petition for Review 15 (citing CCZO 3.081(2)).

7 The county responds that CCCP Goal 5, policy 12(A)(3), states that the  
8 county "has preserved open space land within the county *through the designation*  
9 *of much of the county land area for agricultural and forest use.*" (Emphasis  
10 added.) RR land is designated for low-density residential use, is not designated  
11 for resource use, and is not inventoried as significant open space as part of the  
12 county's Goal 5 program. The RR zone allows for forest and farm uses but  
13 specifically states that its purpose is "to allow for low density residential  
14 development outside urban growth boundaries and rural communities." CCZO  
15 3.080. We agree with the county that land designated as RR is not a part of the  
16 county's Goal 5 program. Accordingly, the county did not err in failing to  
17 consider or adopt findings of consistency with CCCP Goal 5, policy 12.<sup>1</sup>

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<sup>1</sup> Petitioners argue for the first time in the reply brief that "[b]ecause STRs and ADUs are now permitted on resource lands, the ordinance implicates Goal 5's open spaces." Reply Brief 4. We do not consider issues raised for the first time in a reply brief. *Porter v. Marion County*, 56 Or LUBA 635, 641 (2008).

1           Petitioners also argue that the decision is inconsistent with CCCP Goal 5  
2   because it does not address compliance with CCCP Goal 5, policy 12, section F,  
3   which states, in part, regarding water resources:

4           “3.   Due to the questionable availability of surface water and  
5               groundwater in some parts of the county, residential  
6               development should be encouraged only in areas which are  
7               known to have adequate supplies of potable water.

8           “\* \* \* \* \*

9           “6.   Curry County will cooperate with the Department of Water  
10           Resources [(OWRD)] and Department of Fish and Wildlife  
11           [(ODFW)] to obtain more information about groundwater and  
12           surface water availability and to conserve water resources for  
13           consumptive and non-consumptive uses to the benefit of the  
14           people of the county.”

15          Petitioners first argue that there is public testimony in the record that  
16   “indicate[s] serious problems with the [City of] Port Orford water supply and  
17   infrastructure, as well as concerns about water availability in other parts of the  
18   County subject to the amendments.” Petition for Review 16. This is relevant,  
19   petitioners argue, because CCCP Goal 5, policy 12(F)(3), specifically notes that  
20   there is “questionable availability of surface water and groundwater in some parts  
21   of the county,” and the county’s decision “will increase the number of dwellings  
22   and accessory dwellings, \* \* \* contemplated by policy 3, [which will]  
23   necessitat[e] more of a resource that has ‘questionable availability.’” *Id.*

24          We note again that, prior to Ordinance 22-04, the county code allowed  
25   ADUs in conjunction with single-family dwellings inside UGBs in the RC, RCR,

1 R-1, R-2, and R-3 zones. Ordinance 22-04 newly allows ADU uses *outside* UGBs  
2 in the RR-2, RR-5, and RR-10 zones. It is not clear to us from petitioners'  
3 argument why the county should have addressed compliance with CCCP Goal 5,  
4 policy 12(F)(3), with respect to the City of Port Orford's water supply, where the  
5 residential zones located within UGBs were not affected by the amendments.

6 The testimony that petitioners refer to, and includes in the "Facts" section  
7 of the petition for review, is varied and not specifically targeted to issues the  
8 county has the power to address. A large portion of it is concerned with the City  
9 of Port Orford. *See* Record 23 ("Code changes in the R2 zone in the UGB of Port  
10 Orford are a concern regarding water use[.]" and "City of Port Orford's  
11 watershed should be protected \* \* \*."); Record 181 ("Residents in unrestricted  
12 STR areas are the ones that suffer with increased \* \* \* strain on water and other  
13 infrastructures[.]"); Record 322 (a comment entitled "Port Orford Watershed  
14 concern"). While the "watershed of Port Orford" and the code changes in certain  
15 parts of the county may be under the umbrella of what the county had to consider  
16 when promulgating Ordinance 22-04, it is not clear to us what petitioners believe  
17 to be "some parts of the county" that the county was required to address with  
18 respects to CCCP Goal 5, policy 12(F)(3). We will not develop petitioners'  
19 argument for them. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218,  
20 220 (1982).

21 Regarding CCCP Goal 5, policy 12(F)(6), petitioners argue that there is no  
22 evidence in the record that the county consulted or cooperated with OWRD and



1 ODFW in promulgating Ordinance 22-04. CCCP Goal 5, policy 12(F)(6), quoted  
2 above, appears to generally direct the county to obtain more information from  
3 OWRD and ODFW concerning water availability and to conserve water.  
4 However, that policy does not include a trigger or timeline for such work.  
5 Petitioners point us to nothing specific in Ordinance 22-04 that that requires the  
6 county to cooperate with or obtain information from OWRD or ODFW. Without  
7 a developed argument explaining why CCCP Goal 5, policy 12(F)(6) applies to  
8 the county's decision, we conclude that it does not.

9 Because we do not agree with petitioners that the county was required to  
10 consider the cited CCCP Goal 5 policies, we do not address petitioners' argument  
11 that the county's findings are inadequate and not supported by substantial  
12 evidence.

13 This subassignment is denied.

14 **B. CCCP Goal 6 Air, Land, and Water Resource Quality**

15 Petitioners next argue that the county was required and failed to consider  
16 compliance with CCCP 6, section 6, policies 2 and 4. CCCP Goal 6, section 6,  
17 concerns "Plan Policies for Air, Land, Water Resource Quality," and provides,  
18 in part:

19 "2. Curry County recognizes that development activities can  
20 cause loss of water quality, and can constitute a risk to the  
21 health, safety and welfare of its citizens due to transport of  
22 sediments and other pollutants by runoff, both at the time of  
23 construction, and from additional stormwater runoff  
24 generated by the creation of impervious surfaces, and from

1 the loss of geological stability due to erosion and soil  
2 saturation. The County will limit these problems by  
3 establishing thresholds for vegetation removal and creation of  
4 impervious surfaces, and will allow development exceeding  
5 such thresholds only after approval of erosion control and  
6 stormwater management plans prepared by applicants or  
7 qualified professionals as specified by County Ordinance, and  
8 after all special construction techniques necessary for  
9 construction of the plan improvements have been designed by  
10 an engineer licensed by the State of Oregon.

11 “\* \* \* \* \*

12 “4. Curry County will discourage activities which cause the  
13 degradation of the air, water or land resource quality in the  
14 implementation of its comprehensive plan and zoning  
15 ordinance.”

16 Petitioners argue that because CCCP 6, section 6, policy 2, uses the term  
17 “development,” which Ordinance 22-04 will “unquestionably result” in more of,  
18 the county was required to consider whether the CCZO amendments comply with  
19 this policy. Petition for Review 17. Further, petitioners argue that additional  
20 development “*could ‘cause* the degradation of the air, water or land resource  
21 quality in the implementation of its comprehensive plan and zoning ordinance.”  
22 Petition for Review 17 (citing CCCP Goal 6, section 6, policy 4 (emphasis  
23 added)).

24 The county responds that there is no evidence to support petitioners’  
25 allegation that development allowed under Ordinance 22-04 will cause  
26 degradation of air, land, or water resource quality. Petitioners cite to no evidence  
27 to support their argument that development under Ordinance 22-04 will cause the

1 degradation of air, land, or water resource quality. This argument is undeveloped  
2 and does not provide a basis for reversal or remand. *Deschutes Development*, 5  
3 Or LUBA at 220.

4 This subassignment of error is denied.

5 **C. CCCP Goal 10 Housing**

6 CCCP Goal 10, section 4 describes future housing needs in the county and  
7 concludes that “most of the county population cannot afford to buy the average  
8 priced houses on the market today and needs some form of affordable housing.”  
9 CCCP Goal 10, section 5, describes general housing policies and provides, in  
10 part, “Curry County recognizes that adequate and affordable housing is essential  
11 to its citizens and seeks to provide for these housing needs through its  
12 comprehensive plan.” CCCP Goal 10, section 5, policy 6, provides:

13 “Curry County will revise its comprehensive plan with regard to  
14 housing *should any significant change take place in the existing*  
15 *population or housing demand* which indicates an inadequate supply  
16 of housing units.” (Emphasis added.)

17 Petitioners argue that Ordinance 22-04 is inconsistent with CCCP Goal 10,  
18 section 5, policy 6, in the context of sections 4 and 5, because “a dwelling [can  
19 be] converted to an STR, that reduces the availability of housing, including  
20 affordable housing. In light of these changing circumstances and ‘an inadequate  
21 supply of housing units,’ the County was required to ‘revise its comprehensive  
22 plan with regard to housing’ and address policy 6.” Petition for Review 18.

1 CCCP Goal 10, section 5, policy 6, includes a required action—the county  
2 revising the CCCP—when a triggering event occurs—a “significant change \* \* \*  
3 in existing population or housing demand.” Petitioners state that public testimony  
4 “noted \* \* \* the issue of affordable housing demand has become even more dire”  
5 and that there are concerns regarding the conversion of dwellings into STRs.  
6 Petition for Review 18.

7 The county responds, in part, that the directive to revise the CCCP, if it  
8 exists, is triggered after a significant change in the housing demand and not at the  
9 time of adopting or amending land use regulations. Petitioners do not point us to  
10 the location of testimony in the record regarding the demand for affordable  
11 housing. In the decision itself there is no indication that a “significant change” in  
12 population or housing demand is what triggered the county to undertake the  
13 adoption of Ordinance 22-04. Petitioners have not established that the county was  
14 required to consider or find consistency with CCCP Goal 10, section 5, policy 6,  
15 in adopting Ordinance 22-04 and we therefore do not address petitioners’  
16 argument concerning inadequate findings.

17 This subassignment is denied.

18 **D. CCCP Goal 11 Public Facilities and Services**

19 CCCP Goal 11, section 10, concerning “Rural and Urban Level Services,”  
20 states, in part:

21 “Plan designations and zoning have been applied to lands within the  
22 county that are appropriate to the identified service levels. The  
23 county has developed several rural residential zones which are

1 applied to lands that have only rural services. These zones have  
2 minimum lot sizes which are appropriate for the provision of water  
3 and disposal of sewage on individual lots. The following land use  
4 zones are applied to rural lands:

5 “1. Rural-Residential (5 acre & 10 acre dwelling  
6 density/minimum lot size) - for lands located outside [UGBs]  
7 and identified Rural Communities.

8 “2. Rural-Residential (2.5 acre & 1.0 acre dwelling  
9 density/minimum lot size) - for lands located outside UGBs  
10 but within identified Rural Communities with public water  
11 systems.

12 “3. Residential (1 acre to 6,000 square feet dwelling  
13 density/minimum lot size) - for lands within UGBs with lots  
14 less than one acre allowed where a public sewer system is  
15 available.”

16 Petitioners argue that “[p]lan designations and zoning have been applied  
17 to their type of services and contingent upon minimum lot sizes and dwelling  
18 density, but the provisions for ADUs and STRs increase the development density  
19 in the respective zones.” Petition for Review 19.

20 Petitioners may mean to argue that the new allowance of ADUs and STRs  
21 in RR zones will increase dwelling density to a level that exceeds existing rural  
22 services and may allow more development than is “appropriate for the provision  
23 of water and disposal of sewage on individual lots.” If this is petitioners’  
24 argument, it is undeveloped for our review. It is not clear to us whether or how  
25 the use of existing dwellings for STRs increases the demand on rural safety  
26 services. To the extent that adding an ADU increases density on any individual  
27 lot, the applicant will be required to demonstrate adequate services, such as

1 appropriate wastewater disposal. *See* Record 64 (showing requirement for septic  
2 services and evidence of potable water as ADU standards outside of UGBs). We  
3 agree with the county that petitioners have not demonstrated any inconsistency  
4 with CCCP Goal 11, section 10.

5 CCCP Goal 11, section 11, “Plan Policies Regarding Public Facilities,”  
6 provides, in part:

7 “The provision of public facilities and services at adequate levels to  
8 support the density of development proposed in all areas of the  
9 county is an important aspect of the comprehensive plan. Curry  
10 County recognizes several levels of public facility service in the  
11 county and has determined plan designations that are appropriate to  
12 these levels of service. Curry County has also developed the  
13 following plan policies with regard to public facilities for  
14 implementation of the plan[:]

15 “1. Curry County recognizes three levels of public facilities and  
16 services existing in the county:

17 “a. rural services;

18 “b. rural community services;

19 “c. urban services; and has defined these levels as part of  
20 the comprehensive plan.

21 “2. Urban service levels located within county jurisdiction are  
22 planned to be included within the urban growth boundaries of  
23 cities so that these facilities can be further developed in  
24 coordination with the adjacent cities through the Public  
25 Facilities Plans adopted for each city's urban growth area.

26 “3. Rural community services are located within unincorporated  
27 community centers which have organized water districts, fire  
28 protection; and have been defined by a community boundary

1 that separates the higher service level from the adjacent rural  
2 lands.

3 “4. Rural lands are all other lands that are dependent upon  
4 individual sources of water and sewage disposal and have a  
5 limited level of other public facilities and services.

6 “\* \* \* \* \*

7 “6. The comprehensive plan designates uses appropriate to each  
8 of these service levels through the zoning and subdivision  
9 ordinances that determine land use and minimum lot size.

10 “\* \* \* \* \*

11 “9. Curry County recognizes the rural areas of the county as being  
12 a rural service area and does not encourage the provision of  
13 additional public services into these areas in order to preserve  
14 their rural character.”

15 Petitioners argue that Ordinance 22-04 “will result in increased density that  
16 may affect the designations relevant to the service levels” implicating CCCP  
17 Goal 11, section 11, policy 6. Petition for Review 21. Petitioners argue that the  
18 county was thus required to address “these changes and impacts.” *Id.* at 21-22.  
19 Petitioners further argue that the county was is required to address CCCP Goal  
20 11, section 11, policy 9, because Ordinance 22-04 “increases development and  
21 dwelling density in rural areas, which could result in the provision of public  
22 services.” *Id.* at 22.

23 The county responds, and we agree, that the arguments regarding CCCP  
24 Goal 11, section 11, policies 2, 6, and 9 are not sufficiently developed. It is not  
25 clear to us what exactly petitioners argue the county was required to find  
26 consistency with regarding Ordinance 22-04.

1       Petitioners also argue that CCCP Goal 11, section 11, “policies require  
2   ‘coordination with the adjacent cities through the Public Facilities Plans,’ [which]  
3   \* \* \* as noted by the City of Port Orford’s testimony, \* \* \* should have occurred  
4   based on the impacts to the City.” Petition for Review 21 (citing Record 329).<sup>2</sup>

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<sup>2</sup> Petitioners cite to testimony from the City of Port Orford which states, in part:

“[T]he City of Port Orford has concerns about the proposed code changes to the R-2 zone in the [UGB]. Unlike Gold Beach and Brookings, Port Orford has an unusually large [UGB] that [is] actually [two] times larger than the City. Therefore, increasing the density in the [UGB] will have significant strain on the City and its resources.

“The Port Orford City Council held a special meeting on Friday August 12th to address concerns the residents of Port Orford have with the proposed changes. It is felt throughout the community that the changes to allow additional uses in the Port Orford [UGB] do not adequately address the City’s concerns regarding housing and STR density, fire suppression and water use. The Community also would have appreciated outreach during the process of the Code Amendments and STR regulations.

“Many areas of Port Orford’s Comprehensive Plan and goals refer to the UGB areas. One of those goals is for the City of Port Orford to grow and annex properties in the UGB into the City in order to build the City out. The proposed changes may have [effects] on our Comprehensive Plan that are unintended consequences of the enhanced density and commercialization of the area through STRs. It is Port Orford’s position that these affects should be researched prior to hastily adopting new code provisions.” Record 329.



1 We understand petitioners may be arguing that the City of Port Orford  
2 would have preferred to be more involved in the adoption of the CCZO  
3 amendments as they relate to county land within the City of Port Orford UGB.  
4 However, petitioners' arguments do not identify a basis for reversal or remand  
5 based on the county's process, which the record demonstrates involved the City  
6 of Port Orford. Record 430-38, 439-54, 557-63.

7 This subassignment is denied.

8 **E. CCCP Goal 14 Urbanization**

9 Petitioners' final argument under their first assignment of error is that  
10 Ordinance 22-04 is not consistent with CCCP Goal 14, which implements  
11 Statewide Planning Goal 14 (Urbanization). CCCP 14, section 8, policies 7 and  
12 12, provide:

13 "7. Curry County recognizes rural lands in the county and seeks  
14 to retain the rural character of these lands by limiting the  
15 development of these lands through rural zoning which will  
16 retain the rural character of these areas as reflected in the  
17 existing lot size pattern."

18 "\* \* \* \* \*

19 "12. Curry County will limit commercial uses on rural lands; new  
20 commercial uses shall be no greater than 2500 square feet in  
21 area allowed only upon a finding that they are appropriate for,  
22 and limited to the needs and requirements of the rural area in  
23 which they are located; new commercial uses in the Rural  
24 Resort Commercial zone shall be limited to hotels, motels,  
25 and lodges no greater than 5000 square feet in size and no  
26 more than 40 lodging units. The county will not allow the  
27 rezoning of land to Rural Resort Commercial or Rural

1 Residential without an approved Goal 2 exception to Goal  
2 14.”

3 Ordinance 22-04 amends CCZO 3.082 to allow for ADUs and STRs as  
4 permitted uses in the RR zones. Petitioners argue that CCCP 14, section 8,  
5 policies 7 and 12, are intended to retain the rural character of rural lands and place  
6 a square-footage limitation on new commercial uses on rural land. Petitioners  
7 argue that Ordinance 22-04 allows new uses and a greater dwelling density in  
8 rural areas, which threatens their rural character in conflict with policy 7. Petition  
9 for Review 23. Petitioners argue that STRs are commercial uses and Ordinance  
10 22-04 does not place a square footage limitation on STRs, therefore it is  
11 inconsistent with policy 12. Petitioners also argue that STRs are a commercial  
12 use, and that Ordinance 22-04 allows STRs on rural lands contrary to both  
13 policies 7 and 12.

14 The county responds, and we agree, that petitioners’ argument under  
15 policy 7 is undeveloped for our review. The county points out that “rural  
16 character” is undefined in the CCCP and petitioners develop no argument about  
17 what that phrase means beyond implying that “rural” is characterized by low  
18 dwelling density and limited commercial uses.<sup>3</sup> As we understand it, petitioners’

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<sup>3</sup> As the county points out, the new CCZO provisions that allow ADUs on rural lands are authorized by ORS 215.495, which provides counties discretion to allow ADUs on rural residential land “[c]onsistent with a county’s comprehensive plan,” and subject to other standards. ORS 215.495(2). Counties are not required to allow ADUs on rural residential land. ORS 215.495(7).

1 argument under policy 7 is two-fold: (1) allowing ADUs on RR zoned land  
2 allows for increased density, which impairs the rural character of the area; and  
3 (2) allowing STR use of dwellings on RR zoned land allows commercial uses,  
4 which impairs the rural character of the area. Petitioners do not attempt to  
5 establish what level of density is “rural” for purposes of policy 7 or explain how  
6 commercial use of a dwelling impairs the rural character of the area. Petitioners’  
7 argument under policy 7 is undeveloped and provides no basis for remand.  
8 *Deschutes Development*, 5 Or LUBA at 220.

9 Petitioners points out that Ordinance 22-04 amends the CCZO to allow  
10 STRs in the Rural Commercial (RC) and Light Commercial (C-1) zones. Petition  
11 for Review 23 (citing Record 53-60). Petitioners allege that “[t]he findings also  
12 concede that existing STRs are commercial endeavors that pay the ‘transient  
13 lodging tax’ and ‘have a county business license.’” Petition for Review 23.  
14 Petitioners mischaracterize the findings, which do not conclude that STRs are  
15 “commercial endeavors” at all, but rather explain that STRs must obtain a  
16 business license and pay the transient lodging tax. Petitioners do not develop any  
17 argument explaining why STRs are commercial uses within the meaning of  
18 CCCP 14, section 8, policy 12. Absent any developed explanation, petitioners’  
19 argument provides no basis for reversal or remand.

20 This subassignment of error is denied.

21 The first assignment of error is denied.

## 1    **SECOND ASSIGNMENT OF ERROR**

2           As explained above, ORS 197.835(7) requires LUBA to

3           “reverse or remand an amendment to a land use regulation or the  
4           adoption of a new land use regulation if:

5                   “(a) The regulation is not in compliance with the  
6                   comprehensive plan; or

7                   “(b) The comprehensive plan does not contain *specific*  
8                   *policies or other provisions* which provide the basis for  
9                   the regulation, and the regulation is not in compliance  
10                  with the statewide planning goals.” (Emphasis added.)

11          Petitioners’ second assignment of error is that (1) the county was required  
12          to show consistency with the Statewide Planning Goals (the goals); and (2)  
13          Ordinance 22-04 is inconsistent with Goal 1 (Citizen Involvement), Goal 2 (Land  
14          Use Planning), Goal 5 (Natural Resources, Scenic and Historic Areas, and Open  
15          Spaces), Goal 10 (Housing), Goal 11 (Public Facilities and Services), and Goal  
16          14 (Urbanization).

17          CCCP Goal 2, policy 4, states that “Curry County shall review its  
18          comprehensive plan and implementing ordinances as required for Periodic  
19          Review under relevant Oregon statutes and administrative rules and will revise  
20          the plan and ordinances as needed to comply with state law.” The county  
21          contends that Ordinance 22-04 implements CCCP Goal 2, policy 4, and, thus,  
22          Ordinance 22-04 is reviewable only for consistency with the CCCP and not  
23          reviewable for consistency with the goals. The county argues that Ordinance 22-  
24          04 is in response to changes in state law, so the county is therefore “revis[ing]

1 the plan and ordinances as needed to comply.” Respondent’s Brief 21. For the  
2 reasons explained below, we conclude that Ordinance 22-04 is reviewable for  
3 consistency with the goals under ORS 197.835(7)(b). However, petitioners have  
4 not established any inconsistency with the goals.

5 Where the county seeks to rely on a comprehensive plan policy or other  
6 provision as the basis for their regulation, it must be specific to the regulation.  
7 *See Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 358, 369 (2012)  
8 (finding that a comprehensive plan policy concerning the adoption of a program  
9 to improve septic system maintenance “could hardly be more specific”). Here,  
10 the county points us to a generalized policy concerning keeping the CCCP and  
11 CCZO current with state law. Relying on general plan policies does not provide  
12 enough of a basis to meet the requirement in ORS 197.835(7)(b) that the  
13 comprehensive plan “contain specific policies or other provisions which provide  
14 the basis for the regulation” in order to avoid review for goal compliance. We  
15 therefore proceed to review petitioners’ arguments that Ordinance 22-04 is not in  
16 compliance with the statewide planning goals. We reject those arguments as  
17 explained below.

18 **A. Goal 1 Citizen Involvement**

19 Goal 1 is, in relevant part,

20 “To develop a citizen involvement program that insures the  
21 opportunity for citizens to be involved in all phases of the planning  
22 process.

23 “The governing body charged with preparing and adopting a

1 comprehensive plan shall adopt and publicize a program for citizen  
2 involvement that clearly defines the procedures by which the  
3 general public will be involved in the on-going land-use planning  
4 process.”

5 Petitioners argue that Ordinance 22-04 is inconsistent with Goal 1 because  
6 “the county did not explicitly coordinate with [Port Orford] and its citizens”  
7 despite the zoning amendments affecting the R-2 zone in Port Orford’s UGB.  
8 Petition for Review 27. Petitioners argue that the county failed to satisfy Goal 1  
9 because the county has adopted a program, Citizens Committee for Involvement  
10 (CCI), to comply with Goal 1, but did not use it for Ordinance 22-04. The  
11 county’s CCI program is a part of the CCCP, which has been acknowledged as  
12 consistent with the goals. *See generally* CCCP 1, section 5. It states, in relevant  
13 part, that the “program is also considered to be an on-going program that would  
14 be utilized in the event of any regular review or revision of the plan after  
15 acknowledgement.” *Id.* This language does not state that it is the only avenue that  
16 the county has to meet its Goal 1 requirements. Importantly, the challenged  
17 decision does not amend the CCCP.

18 The county also has CCZO provisions for legislative amendments. CCZO  
19 2.300. The county found that their obligation under CCZO 2.300 was met.

20 “The first evidentiary hearing was held on July 21, 2022 before the  
21 Curry County Planning Commission. Notice of the hearing was  
22 published in three newspapers within Curry County – The Pilot  
23 (6/24/22), The Port Orford News (6/29/22) and the Curry Reporter  
24 (6/29/22).

25 “\* \* \* \* \*

1 “The Board of Commissioners held a public workshop on the  
2 proposed CCZO amendments on June 8, 2022. Public notification  
3 was given for the workshop. No comments were received from the  
4 public during the workshop.

5 “The public hearing for ZOA 2022.1 [was] scheduled before the  
6 Board of Commissioners on August 17, 2022 at 11:00 am. Notice of  
7 the hearing was published in three newspapers within Curry County  
8 – The Pilot (7 /22/22), the Port Orford News (7 /20/22), and the  
9 Curry Reporter (7 /20/22). The purpose of the hearing [was] to  
10 consider the recommended approval of ZOA 2022.1 from the Curry  
11 County Planning Commission.

12 “\* \* \* \* \*

13 “Most of the public comments were focused in and around Port  
14 Orford. The BOC received only a few comments from other parts of  
15 the county.” Record 21-23.

16 The county responds that the county held eleven different public meetings,  
17 workshops, or hearings before the planning commission and board of  
18 commissioners and, thus, the county met its citizen involvement obligations.  
19 Respondent’s Brief 23 (citing Record 22-23). Petitioners point to nothing in the  
20 CCZO that required the county to provide more opportunities for citizen  
21 involvement.

22 Petitioners argue that, while the county held a number of meetings and  
23 hearings, there were “inadequate notices that did not explain what would be  
24 occurring at various meetings and hearings, leaving many of the residents in the  
25 dark.” Petition for Review 28-29. Petitioners concede that the record contains  
26 three notices, but argue that in one of those notices “the matters ultimately  
27 adopted are not clearly presented.” Petition for Review 29 (citing Record 84d-e).

1 Petitioners do not explain what Goal 1 standard requires the notice to present the  
2 “matters ultimately adopted” or how the notice falls short of that standard.

3 Accordingly, petitioners’ notice argument provides no basis for remand.

4 Petitioners also argue that the county did not provide adequate technical  
5 information in the form of “maps to the public to better understand the effect of  
6 the amendments,” despite requests from the public to do so. Petition for Review  
7 27-28. Petitioners rely on Goal 1, section 4, which provides that the local  
8 government’s citizen involvement program should “assure that technical  
9 information is available in an understandable form” and that “[a] copy of all  
10 technical information shall be available at a local public library or other location  
11 open to the public.”

12 The county responds that “[Ordinance 22-04] does not change any plan or  
13 zone designations in the County; it mostly changes uses allowed in existing  
14 zones. The County’s zoning information is provided online and is also available  
15 at the planning counter.” Respondent’s Brief 24. We agree with the county that  
16 it was not required to reproduce planning maps that were already accessible to  
17 the public in order for the county’s process to satisfy Goal 1.

18 This subassignment of error is denied.

## 19 **B. Goal 2 Land Use Planning**

20 Goal 2 requires local governments to “establish a land use planning process  
21 and policy framework as a basis for all decision and actions related to use of land



1 and to assure an adequate factual base for such decisions and actions.” As we  
2 have explained:

3 “[T]he Goal 2 requirement for an adequate factual base is not met  
4 unless a legislative land use decision is supported by substantial  
5 evidence, *i.e.*, evidence a reasonable person would believe.

6 “[T]he Goal 2 requirement for an adequate factual base does not  
7 exist in a vacuum. In alleging a Goal 2 factual base inadequacy at  
8 LUBA, a petitioner must establish that some applicable statewide  
9 planning goal or other criterion imposes obligations that are of such  
10 a nature that a factual base is required to determine if the zoning  
11 ordinance amendment is consistent with the goal or other criterion.”  
12 *OCAPA*, 44 Or LUBA at 462.

13 Petitioners argue that Ordinance 22-04 is inconsistent with Goal 2 because  
14 there is not “a factual basis in the comprehensive plan” for allowing STRs in a  
15 residential zone. Petition for Review 29.

16 The county responds that “the findings discuss both the value STRs  
17 provide for the tourist industry as well as the adverse effects of their increasing  
18 use, which the relevant amendments are intended to address.” Respondent’s Brief  
19 27. The county points to the following findings:

20 “Short Term Rentals (STRs) or vacation rentals have become a  
21 significant factor in Curry County. They have eroded the availability  
22 of long-term rentals and likely have displaced some workforce  
23 housing. However, they continue to be a positive influence in  
24 promoting tourism and bringing added dollars to both the  
25 individuals who own the vacation rentals and the businesses and  
26 employees that serve the vacationers. Curry County is not a ‘day-  
27 trip’ destination. Having a wide variety of STR housing available is  
28 paramount to attracting tourists.

1 “It is estimated that there are up to five hundred (500) STRs  
2 currently operating in the unincorporated areas of the county. The  
3 only regulatory requirement is that they have a county business  
4 license and pay the 7% Transient Lodging Tax (TLT).  
5 Approximately one hundred (100) STR owners have a county  
6 business license and during the summer months approximately three  
7 hundred (300) pay the county TLT tax.

8 “The county continues to experience the [effects] of the increasing  
9 amount and influence of STRs. Daily, we address general questions,  
10 structural changes to homes, long-term rentals, Accessory Dwelling  
11 Units (ADUs) transitioning into STRs, violations, nuisances,  
12 building code violations, zoning violations and enforcement  
13 actions.” Record 25-26.

14 Petitioners do not challenge those findings. We agree with the county that  
15 they provide an adequate factual basis for the decision.

16 Goal 2 states, in part:

17 “City, county, state and federal agency and special district plans and  
18 actions related to land use shall be consistent with the  
19 comprehensive plans of cities and counties and regional plans  
20 adopted under ORS Chapter 268.”

21 Petitioners argue that Ordinance 22-04 is not compliant with Goal 2  
22 because the county did not adequately coordinate with Port Orford as a “local  
23 government[], \* \* \* which [has] programs, land ownership or responsibilities  
24 within the area included in the plan.” Petition for Review 30 (quoting Goal 2).  
25 Petitioners point to a letter from the City of Port Orford which states that “[t]he  
26 proposed changes may have [effects] on our Comprehensive Plan that are  
27 unintended consequences of the enhanced density and commercialization of the  
28 area through STRs.” Record 329; n 3. Ordinance 22-04 may create changes in

1 land use that may affect areas within the City of Port Orford's UGB. However,  
2 as explained above, while the city of Port Orford may have preferred more  
3 coordination, petitioners have not established a basis for reversal or remand under  
4 the Goal 2 coordination obligation.

5 This subassignment of error is denied.

6 **C. Goal 5 Natural Resources, Scenic and Historic Areas, and Open**  
7 **Spaces**

8 Goal 5 is "[t]o protect natural resources and conserve scenic and historic  
9 areas and open spaces." Petitioners argue that Ordinance 22-04 is inconsistent  
10 with Goal 5 because the development permitted by Ordinance 22-04 "would  
11 frustrate open spaces in the areas subject to farm and forest uses in the various  
12 RR zones." Petition for Review 31. This argument is derivative of petitioners'  
13 argument under their first assignment of error concerning CCCP Goal 5 and we  
14 reject it for the same reasons.

15 **D. Goal 10 Housing**

16 Goal 10 is "[t]o provide for the housing needs of the citizens of the state[,]"  
17 and includes an implementation component that "[p]lans should provide for a  
18 continuing review of housing need projections and should establish a process for  
19 accommodating needed revisions." Petitioners argue that Ordinance 22-04 is  
20 inconsistent with Goal 10 because the "allowance for STRs and the allowance to  
21 use ADUs as STRs in certain circumstances only serves to reduce availability  
22 and affordability of dwellings for County residents." Petition for Review 31.

1 Petitioners argue that Ordinance 22-04 affects the housing needs of the county  
2 without the county reviewing and accommodating those changes.

3 We have explained the limits of Goal 10 requirements as follows:

4 “Goal 10 requires that ‘Buildable lands for residential use shall be  
5 inventoried and plans shall encourage the availability of adequate  
6 numbers of needed housing units at price ranges and rent levels  
7 which are commensurate with the financial capabilities of Oregon  
8 households and allow for flexibility of housing location, type and  
9 density.’ Goal 10 and ORS 197.295(1) define ‘buildable lands’ as  
10 ‘lands in urban and urbanizable areas that are suitable, available and  
11 necessary for residential use.’ *See also* OAR 660-008-0005(2)  
12 (similar definition in the administrative rule implementing Goal 10  
13 and the needed housing statutes). As defined in the Goals, ‘urban’  
14 and ‘urbanizable’ lands refer to lands within urban growth  
15 boundaries. Thus, as a general rule, Goal 10 imposes specific  
16 planning obligations only for lands within urban growth  
17 boundaries.” *Seabreeze Associates Limited Partnership v.*  
18 *Tillamook County*, 71 Or LUBA 218, 221-22 (2015).

19 Goal 10 is applicable only to lands within the various UGBs that are  
20 buildable lands. Petitioners do not focus their Goal 10 argument on those areas  
21 or explain why Ordinance 22-04 is inconsistent with Goal 10 when the analysis  
22 is appropriately limited to buildable lands.

23 The county responds that petitioners fail to consider that the “ADU  
24 provisions will allow the County to approve additional units outside the UGB  
25 that will increase housing options in the County.” Respondent’s Brief 29. The  
26 county further argues that Ordinance 22-04 was adopted in part to address the  
27 need for more housing options in the R-2 zones within the UGBs. *Id.* While some

1 units might be lost due to their use as STRs, this is not evidence that the county  
2 is not meeting its Goal 10 obligation.

3 This subassignment of error is denied.

4 **D. Goal 11 Public Facilities and Services**

5 Goal 11 is

6 “To plan and develop a timely, orderly and efficient arrangement of  
7 public facilities and services to serve as a framework for urban and  
8 rural development.

9 “\* \* \* \* \*

10 “Public facilities and services should be appropriate to support  
11 sufficient amounts of land to maintain an adequate housing market  
12 in areas undergoing development or redevelopment.”

13 Petitioners argue that the allowance of STRs violates Goal 11 because  
14 “housing availability and affordability will decrease while the requirement for  
15 facilities and services will increase.” Petition for Review 33.

16 The county responds, and we agree, that this argument is not developed for  
17 our review. Petitioners do not explain why use of dwellings as STRs would  
18 require more facilities and services than long-term residential use of the same  
19 structures. Furthermore, the amendments address the public facilities and  
20 services issue, explaining how in the R-2 zone permitted development will be  
21 regulated, to include lot sizes and numbers of units, depending upon whether  
22 municipal sewer and community water connections are available or whether the  
23 development must depend on on-site water and sewer. Record 24-25. The

1 amendments require applicants for ADUs to demonstrate evidence of available  
2 septic and potable water. Record 62 (CCZO 4.090(9) and (10) within UGBs);  
3 Record 64 (CCZO 4.100(8) and (9) for areas outside UGBs). Petitioners do not  
4 explain how these requirements violate Goal 11.

5 This subassignment of error is denied.

6 **E. Goal 14 Urbanization**

7 Goal 14 is

8 “To provide for an orderly and efficient transition from rural to  
9 urban land use, to accommodate urban population and urban  
10 employment inside urban growth boundaries, to ensure efficient use  
11 of land, and to provide for livable communities.”

12 Included under its implementation component, Goal 14 states that “[t]he type,  
13 location and phasing of public facilities and services are factors which should be  
14 utilized to direct urban expansion.” Petitioners argue that Ordinance 22-04 “will  
15 decrease housing availability and affordability and increase the need for facilities,  
16 a matter which the findings concede.” Petition for Review 34 (citing Record 25).  
17 We have reviewed Record 25 and do not see how that has any bearing on the  
18 county’s Goal 14 duty. This argument is undeveloped, and we will not address it  
19 further. *Deschutes Development*, 5 Or LUBA at 220.

20 This subassignment is denied.

21 The second assignment of error is denied.

### 1   **THIRD ASSIGNMENT OF ERROR**

2           Petitioners' third assignment of error is that Ordinance 22-04 is  
3   inconsistent with existing land use regulations because the county's definition of  
4   STR under Ordinance 22-04 falls within the existing definition of "motel/lodge"  
5   in the CCZO. Ordinance 22-04 defines STR, in relevant part, as "*a lawfully*  
6   *established dwelling unit, or portion of a dwelling unit*, that is rented to any  
7   person or entity for lodging or residential purposes, for a period of up to thirty  
8   (30) consecutive nights." Record 67 (emphasis added). The CCZO definition of  
9   a "motel/lodge" is "[a] building or group of buildings on the same unit of land  
10   containing guest units with separate entrances directly to the exterior and  
11   consisting of individual sleeping quarters, detached or in connected rows, for  
12   rental to travelers. Guest units may include kitchen facilities or meals may be  
13   provided." CCZO 1.030(99). Petitioners note that the CCZO definition for  
14   "motel/lodge" is distinguishable from that of a "hotel" because that definition  
15   specifically states, "no provisions are made for cooking in the lodging rooms  
16   although meals may be provided." CCZO 1.030(70). However, petitioners argue,  
17   there is no such bright line distinction when comparing "motel/lodge" and STR.

18           The county responds, and we agree, that the CCZO definitions do  
19   distinguish STR use from "motel/lodge." Where a "motel/lodge" occurs in "[a]  
20   building or group of buildings," STRs may only be operated in "a lawfully  
21   established dwelling unit, or portion of a dwelling unit." CCZO 1.030(99);  
22   Record 67. STRs, by their definition, are only allowed in a lawfully established

1 dwelling unit; they do not fall within the definition of “motel/lodge.” There is no  
2 conflict between Ordinance 22-04 and the existing land use regulation.

3 The third assignment of error is denied.

#### 4 **FOURTH ASSIGNMENT OF ERROR**

5 Petitioners’ arguments under their fourth assignment of error are derivative  
6 of their arguments under their first, second, and third assignments of error. Where  
7 an argument is derivative of other arguments made by petitioners, the derivative  
8 argument provides no independent basis for reversal or remand. *Underwood v.*  
9 *Clackamas County*, 80 Or LUBA 542, 549 (2019) (citing *Seabreeze Associates*  
10 *Limited Partnership*, 71 Or LUBA at 221).

11 The fourth assignment of error is denied.

#### 12 **FIFTH ASSIGNMENT OF ERROR**

13 Ordinance 22-04 contains the following:

14 “Severance Clause

15 “If any section, subsection, paragraph, sentence, clause, or phrase of  
16 this Ordinance, or any part thereof, is for any reason held to be  
17 unconstitutional (or otherwise invalid), such decision shall not affect  
18 the validity of the remaining portions of this Ordinance or any part  
19 thereof. The legislative body hereby declares that it would have  
20 passed each section, subsection, subdivision, paragraph, sentence,  
21 clause or phrase thereof, irrespective of the fact that any one or more  
22 sections, subsections, subdivisions, paragraphs, sentences, clauses  
23 or phrases be declared unconstitutional (or otherwise invalid).”  
24 Record 17-18 (boldface and underscoring omitted).

25 Petitioners argue that “LUBA’s rules do not allow LUBA to ‘sever’ any  
26 offending provision.” Petition for Review 38. Petitioners argue that the severance



1 clause is inconsistent with LUBA's scope of review and therefore inconsistent  
2 with and in violation of state law.

3 We have explained that we cannot give effect to a severance clause because  
4 "[w]e do not have the authority to affirm in part and reverse or remand in part a  
5 decision." *Briggs et al v. Lincoln County*, \_\_\_ Or LUBA \_\_\_, \_\_\_ (LUBA Nos  
6 2021-118/2022-030, Aug 8, 2022) (citing *Dept. of Land Conservation v.*  
7 *Columbia County*, 117 Or App 207, 843 P2d 996 (1992) (slip op at 24 n 10)).  
8 However, we agree with the county that the inclusion of a severance clause alone  
9 is not a basis for us to remand the entire ordinance.

10 Petitioners' fifth assignment of error is denied.

#### 11 **SIXTH ASSIGNMENT OF ERROR**

12 Ordinance 22-04 adopts CCZO 8.125(3)(c), which provides:

13 "A property line adjustment is subject to the minimum lot or parcel  
14 size standards of the applicable zoning district, except in the  
15 following circumstances:

16 "i. One or both abutting *properties* are smaller than the  
17 minimum lot or parcel size for the applicable zone  
18 before the property line adjustment and, after the  
19 adjustment, one is as large or larger than the minimum  
20 lot or parcel size for the applicable zone; or

21 "ii. Both abutting *properties* are smaller than the minimum  
22 lot or parcel size for the applicable zone before and  
23 after the property line adjustment." Record 77  
24 (emphases added).

25 As petitioners point out, these provisions appear to mirror state law concerning  
26 property line adjustments. ORS 92.192(3) provides:

1 “Subject to subsection (4) of this section, for land located entirely  
2 outside the corporate limits of a city, a county may approve a  
3 property line adjustment in which:

4 “(a) One or both of the abutting *lawfully established units*  
5 *of land* are smaller than the minimum lot or parcel size  
6 for the applicable zone before the property line  
7 adjustment and, after the adjustment, one is as large as  
8 or larger than the minimum lot or parcel size for the  
9 applicable zone; or

10 “(b) Both abutting *lawfully established units of land* are  
11 smaller than the minimum lot or parcel size for the  
12 applicable zone before and after the property line  
13 adjustment.” (Emphases added.)

14 Petitioners argue that CCZO 8.125(3)(c), as amended by Ordinance 22-04, is  
15 inconsistent with state law because it refers to “properties” and not “lawfully  
16 established units of land.” Petitioners argue that “lawfully established unit of  
17 land” has “a specific meaning in state law,” and “property” does not carry that  
18 same specific meaning. Petition for Review 42.

19 The county responds that, read in context, CCZO 8.125(3) is not  
20 inconsistent with ORS 92.192. The county points to CCZO 8.100, “Property Line  
21 Adjustments,” which provides: “[a]s set forth in ORS 92.190(3), the common  
22 boundary line between *lawfully created units of land* may be adjusted in  
23 accordance with this section.” Record 75 (emphasis added). Further, CCZO  
24 8.125(2)(c) requires, as a part of the submittal requirements for a lot line  
25 adjustment, that the applicant provide “[e]vidence to show that the *units of land*  
26 *are lawfully created.*” Record 76 (emphasis added).

1       We agree with the county that, when read in context, the “properties”  
2   referenced in section 8.125(3)(c) refer only to “lawfully established units of  
3   land.” Further, the county is required to make land use decisions consistent with  
4   state law. ORS 197.829(1)(d); OAR 661-010-0071 (LUBA will review and  
5   reverse or remand land use decisions that are inconsistent with state law). Were  
6   the county to, in petitioners’ words, make a more “lenient” decision regarding a  
7   property line adjustment, that decision is reviewable for consistency with state  
8   law. Petition for Review 42; ORS 197.829(1)(d); OAR 661-010-0071.

9       The sixth assignment of error is denied.

#### 10   **SEVENTH ASSIGNMENT OF ERROR**

11       Petitioners argue that Ordinance 22-04 allows ADUs to be used as STRs  
12   on RR-zoned land, in conflict with state law. ORS 215.495(3) governs ADUs in  
13   rural residential zones and provides that “[a] county may not allow an accessory  
14   dwelling unit allowed under this section to be used for vacation occupancy.”  
15   Ordinance 22-04 allows for ADUs in the RR zones of the county, but states that  
16   “[n]either the existing single-family dwelling nor the accessory dwelling unit  
17   shall be used as a vacation rental.” Record 64.

18       Petitioners argue that Ordinance 22-04’s use of the term “vacation rental”  
19   is not consistent with ORS 215.495(3)’s use of the term “vacation occupancy, as  
20   defined by ORS 90.100.”<sup>4</sup>

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<sup>4</sup> ORS 90.100(51) defines vacation occupancy as

1 Ordinance 22-04 does not define the term “vacation rental,” nor is it  
2 defined in the CCZO. STR is defined by Ordinance 22-04, which states that an  
3 STR is

4 “a lawfully established dwelling unit, or portion of a dwelling unit,  
5 that is *rented* to any person or entity *for lodging or residential*  
6 *purposes*, for a period of up to thirty (30) consecutive nights. It can  
7 include an accessory dwelling unit or a guest house or cottage. It  
8 does not include outbuildings: such as agricultural buildings, storage  
9 units, cargo containers, farm worker housing, or an accessory farm  
10 dwelling. Further, it does not include or allow a recreational vehicle,  
11 travel trailer, tent, parked vehicle, or other temporary shelter to be  
12 used as a short-term rental or occupied in conjunction with a short-  
13 term rental.” Record 67 (emphases added, underscoring omitted).

14 The definition of an STR allows for the rental of lawfully established dwelling  
15 unit for lodging or residential purposes which, according to petitioners, could fall  
16 within ORS 90.100(51)’s definition of vacation occupancy.

17 The county responds that “what is relevant is what the ADU provisions  
18 prohibit.” Respondent’s Brief 50. We agree. For ADUs in the RR zones outside

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“occupancy in a dwelling unit, not including transient occupancy in  
a hotel or motel, that has all of the following characteristics:

- “(a) The occupant rents the unit for vacation purposes only,  
not as a principal residence;
- “(b) The occupant has a principal residence other than at the  
unit; and
- “(c) The period of authorized occupancy does not exceed  
45 days.”

1 UGBs, “[n]either the existing single-family dwelling nor the accessory dwelling  
2 unit shall be used as a vacation rental.” Record 64. Petitioners may disagree with  
3 the county’s decision to use the term “rental” instead of “occupancy,” but that is  
4 not a basis for reversal or remand. We also reiterate that land use decisions must  
5 be consistent with state law. ORS 197.829(1)(d); OAR 661-010-0071. The  
6 county may not permit what state law prohibits.

7 The seventh assignment of error is denied.

8 The county’s decision is affirmed.