

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

CENTRAL OREGON LANDWATCH,  
*Petitioner,*

vs.

JEFFERSON COUNTY,  
*Respondent,*

and

MAC INVESTMENTS, INC.,  
*Intervenor-Respondent.*

LUBA No. 2023-026

FINAL OPINION  
AND ORDER

Appeal from Jefferson County.

Rory Isbell filed the petition for review and reply brief and argued on behalf of petitioner.

Rand Campbell filed the respondent's brief and argued on behalf of respondent. Also on the brief was Rand Campbell Law LLC.

D. Adam Smith filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent. Also on the brief was J. Kenneth Katzaroff, Bailey M. Oswald, and Schwabe, Williamson & Wyatt, P.C.

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

REMANDED

09/08/2023

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

**NATURE OF THE DECISION**

Petitioner appeals a county board of commissioners (board) decision approving a comprehensive plan map amendment and zone change from Range Land (RL) to Rural Residential 2 acre (RR2) including approving exceptions to Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization).

**FACTS**

The subject property is 142.5 acres and is undeveloped. The property is bordered on all four sides by the Crooked River Ranch, a rural unincorporated community. ORS 221.034(1)(b); Record 17; Jefferson County Comprehensive Plan (JCCP) 79.<sup>1</sup> The subject property is the rectangle of range land in the middle of the unincorporated community shown in the map below.

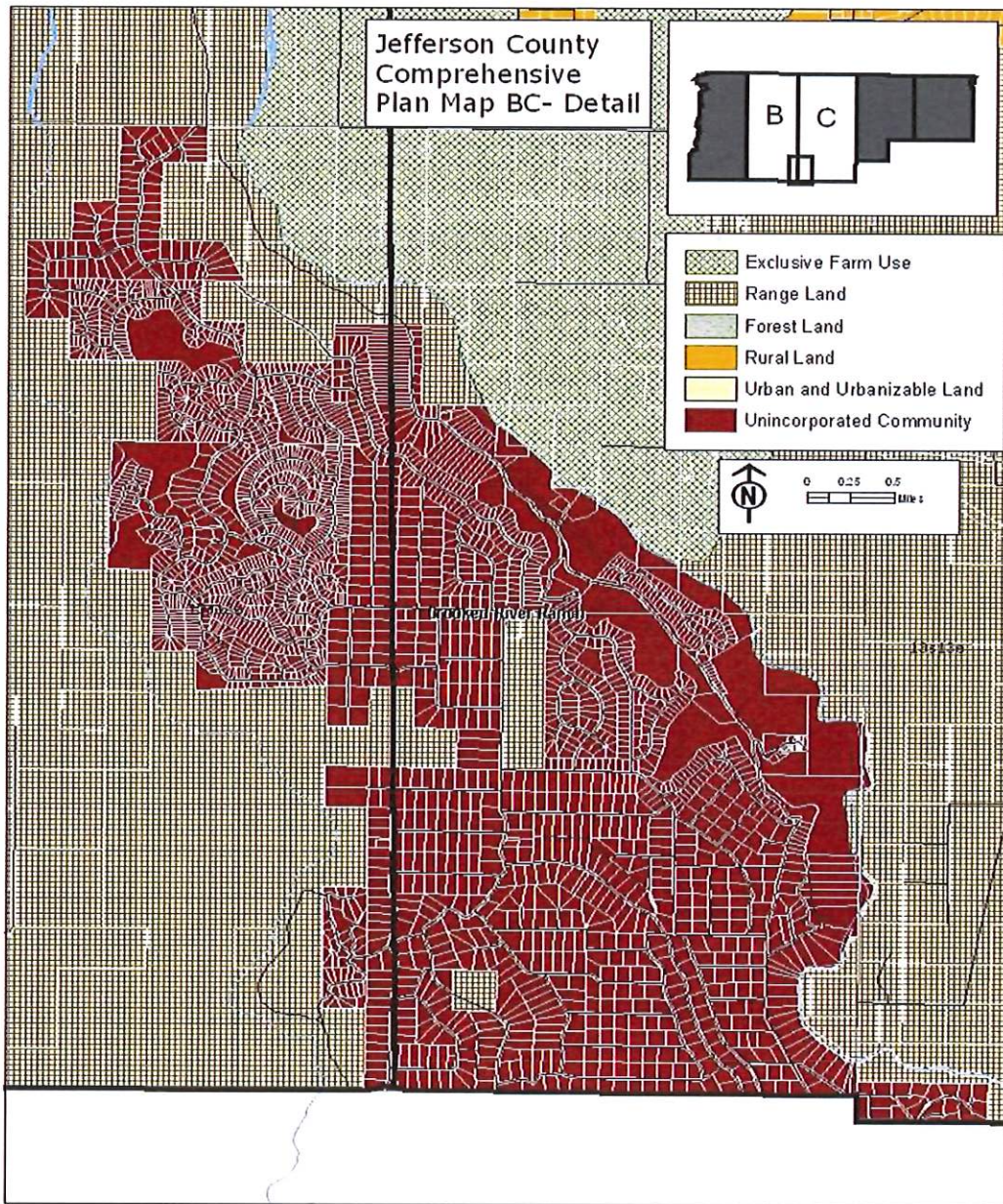
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<sup>1</sup> ORS 221.034(1)(b) provides:

“Rural unincorporated community” means a settlement with a boundary identified in an acknowledged comprehensive plan of a county and that:

“(A) Is made up primarily of lands subject to an exception to statewide planning goals related to agricultural lands or forestlands;

“(B) Either was identified in the acknowledged comprehensive plan of a county as a ‘rural community,’ ‘service center,’ ‘rural center,’ ‘resort community’ or similar term before October 28, 1994, or is listed in the Department of Land Conservation and Development’s ‘Survey of Oregon Unincorporated Communities’ (January 30, 1997);



1

2 JCCP 86.

“(C) Lies outside the urban growth boundary of a city or a metropolitan service district; and

“(D) Is not incorporated as a city.”

1       The western property line is adjacent to SW Quail Road. The northern  
2       property line is adjacent to SW Shad Road. The southern property line is adjacent  
3       to SW Mustang Road. The eastern boundary is adjacent to parcels with dwellings.  
4       Crooked River Ranch Fire and Rescue Association facilities are located on a  
5       parcel adjacent to and north and west of the property. Record 88.

6       The JCCP describes the Crooked River Ranch. “By far the largest amount  
7       of rural residential land in the County is in Crooked River Ranch, which contains  
8       2,642 lots[.]” JCCP 62. “Zoning regulations for Crooked River Ranch had been  
9       in place since 1987.” JCCP 79; Jefferson County Zoning Ordinance (JCZO) 317  
10      (governing the Crooked River Ranch Commercial Zone), 318 (governing the  
11      Crooked River Ranch Residential Zone). “Crooked River Ranch Water Company  
12      operates a community water system on portions of the Ranch, obtaining its water  
13      from wells.” JCCP 64. “Crooked River Ranch has its own Fire and Rescue  
14      Department[.]” JCCP 66.

15      Intervenor-respondent (intervenor) explained the history of the subject  
16      property with respect to the Crooked River Ranch. The Crooked River Ranch  
17      was platted by its owners in the early 1970s. The subject property was not  
18      included in the Crooked River Ranch plat because the subject property was  
19      owned by another party at the time, the United States Forest Service. In 1989, a  
20      private party acquired the subject property from the federal government with the  
21      intention of developing the property as part of Crooked River Ranch. Record  
22      1391.



1 Intervenor applied for a comprehensive plan map amendment and zone  
2 change from RL to RR2. The planning commission held four public hearings and  
3 ultimately recommended denial. The board held two public hearings and  
4 approved the comprehensive plan map amendment and zone change and, as we  
5 explain in more detail below, adopted exceptions to Goal 3 (Agricultural Lands)  
6 and Goal 14 (Urbanization). This appeal followed.

### 7 **FIRST ASSIGNMENT OF ERROR**

8 In the first assignment of error petitioner alleges three errors: (1) that the  
9 county failed to set forth findings of fact and statements of reasons justifying the  
10 exceptions; (2) that the county failed to adopt findings of fact and statements of  
11 reasons justifying the exceptions as part of the JCCP; and (3) that the county  
12 failed to provide notice of public hearings specifically identifying the proposed  
13 goal exceptions and summarizing the issues in an understandable manner.

14 We start by setting out the applicable law. The county is required to adopt  
15 and amend its comprehensive plan consistent with the statewide planning goals.  
16 ORS 197.175. In some circumstances, a local government can adopt a goal  
17 exception as an amendment to an acknowledged comprehensive plan.

18 “Goal 2 (Land Use Planning), Part II, permits an ‘exception’ to the  
19 requirements of a goal for ‘specific properties or situations.’ OAR  
20 660-015-0000(2). The text of Goal 2, Part II, pertaining to  
21 exceptions is codified at ORS 197.732. The policies permit three  
22 types of goal exceptions: for land physically developed so that the  
23 property is no longer able to comply with the dictates of a goal, for  
24 land irrevocably committed to uses not allowed by the applicable  
25 goal, and when there are sufficient reasons to not apply the particular

1 goal[.]” *VinCEP v. Yamhill County*, 215 Or App 414, 418, 171 P3d  
2 368 (2007).

3 “A local government approving or denying a proposed exception shall set forth  
4 findings of fact and a statement of reasons that demonstrate that the standards of  
5 [ORS 197.732(2)] have or have not been met.” ORS 197.732(4); OAR 660-004-  
6 0015(1) (“A local government approving a proposed exception shall adopt, as  
7 part of its comprehensive plan, findings of fact and a statement of reasons that  
8 demonstrate that the standards for an exception have been met.”); *see also* OAR  
9 660-004-0020(1) (“If a jurisdiction determines there are reasons consistent with  
10 OAR 660-004-0022 to use resource lands for uses not allowed by the applicable  
11 Goal or to allow public facilities or services not allowed by the applicable Goal,  
12 *the justification shall be set forth in the comprehensive plan as an exception.*”  
13 (Emphasis added.)). ORS 197.732(6) provides that LUBA “shall be bound by  
14 any finding of fact for which there is substantial evidence in the record of the  
15 local government proceedings resulting in approval or denial of the exception”  
16 and “shall determine whether the local government’s findings and reasons  
17 demonstrate” that the standards for an exception “have or have not been met.”

18 A local government must

19 “(1) clearly identify in its decision what type or types of exceptions  
20 it wishes to adopt; (2) adopt findings of relevant fact, based on the  
21 evidence in the record, which support an exception; (3) adopt a  
22 statement of reasons explaining why it concludes the applicable  
23 exception criteria are or are not met; and (4) if it concludes the  
24 exception criteria are met, amend its comprehensive plan to include  
25 the exception and the findings and reasons which support the  
26 exception.” *DLCD v. Douglas County*, 17 Or LUBA 466, 472

1 (1989).

2 **A. The decision adequately identified the types of exceptions that**  
3 **the county wished to adopt.**

4 Petitioner first argues that the decision fails to identify the type of  
5 exception that the county adopted. The county responds, and we agree, that the  
6 decision adopts an irrevocably committed exception to Goal 3 and adopts  
7 findings addressing the standards for an irrevocably committed exception at ORS  
8 197.732(2)(b) and OAR 660-004-0028(3). Record 12.

9 The county further responds, and we agree, that the decision adopts a  
10 reasons exception to Goal 14 and an alternative irrevocably committed exception  
11 to Goal 14. The county found:

12 “[I]f a Goal 14 exception is required at all, then the only reasonably  
13 applicable criteria appear in OAR 660-004-0020. Accordingly, [the  
14 board of commissioners] adopts as its own those findings  
15 responding to OAR 660-004-0020 provided in the Applicant’s  
16 Burden of Proof (Exhibit 1 in the Record). As was the case with our  
17 Goal 3 findings discussed above, the [board of commissioners]  
18 further intends for these Applicant-provided findings responding to  
19 OAR 660-004-0020 to supplement the Staff Findings of Fact  
20 previously adopted by [the board of commissioners] and likewise  
21 responding to OAR 660-004-0020.” Record 15.

22 OAR 660-004-0020 governs reasons exceptions. It is thus reasonably clear  
23 that the county adopted a reasons exception to Goal 14.

24 In the alternative, the board of commissioners found that OAR 660-014-  
25 0030 applied and approved an irrevocably committed exception to Goal 14.  
26 Record 15-16.



1 While the decision could be clearer, the county adequately identified the  
2 types of exceptions that the county wished to adopt.

3 This portion of the first assignment of error is denied.

4 **B. The decision fails to set forth findings of fact and a statement of**  
5 **reasons justifying the exceptions.**

6 The board of commissioners' decision approving exceptions to Goals 3  
7 and 14 includes some findings of fact and conclusions of law explaining why it  
8 concludes that the applicable exception criteria are met. Record 9-16. The  
9 decision adopts by reference multiple documents containing various findings of  
10 fact in staff reports and intervenor's submittals. The decision states:

11 "Adoption of Findings. The Comprehensive Plan Map Amendment  
12 and Zone Map Change is in conformance with applicable statewide  
13 planning goals, administrative rules, Comprehensive Plan and  
14 Zoning Ordinances, as set forth in the Findings of Fact and  
15 Conclusions of law attached hereto as Exhibit A and incorporated  
16 with all Exhibits and evidence available in File 22-PA-04, by this  
17 reference.

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

19 "Incorporated Findings of Fact: Except to the extent inconsistent  
20 with the findings, interpretations, and conclusions of law herein, the  
21 [board of commissioners] adopts and incorporates as part of this  
22 decision the Findings of Fact issued by County staff on the  
23 following occasions: Planning Commission Staff Report [dated  
24 August 11, 2022]; Planning Commission Staff Report: Addendum –  
25 September 8, 2022; Planning Commission Staff Report: 2nd  
26 Addendum – October 27, 2022; Planning Commission Staff Report;  
27 3rd Addendum – November 17, 2022; and the Board of  
28 Commissioners Staff Report – December 7, 2022 (collectively cited  
29 herein as 'Staff Findings of Fact'). The [board of commissioners]

1 further endorses and adopts as its own all interpretations, whether  
2 specified or implied, of the Jefferson County Comprehensive Plan  
3 ('JCCP') and Jefferson County Zoning Ordinance ('JCZO')  
4 contained in those Staff Findings of Fact, except to the extent said  
5 interpretations are inconsistent with the [board of commissioners']  
6 findings set forth herein.

7       \*\* \* \* \* \*

8       "With regard to the remaining OAR 660-004-0028 subparts and the  
9 related Goal 3 rules in OAR 660-004-0015 and OAR 660-004-0018  
10 \* \* \* the Board is persuaded by and adopts as its own the proposed  
11 findings contained in the Applicant's Burden of Proof (Exhibit 1 in  
12 the Record). This [board of commissioners] also adopts as its own  
13 the 'Statement of Reasons' provided by the Applicant pursuant to  
14 OAR 660-004-0028(6). The [board of commissioners] intends for  
15 these Applicant-provided findings and Statement of Reasons to  
16 serve as supplemental findings supporting the Staff Findings of Fact  
17 previously adopted by this [board of commissioners].

18       \*\* \* \* \* \*

19       "[T]his [board of commissioners] adopts as its own those findings  
20 responding to OAR 660-004-0020 provided in the Applicant's  
21 Burden of Proof[.]

22       \*\* \* \* \* \*

23       "[T]he [board of commissioners] further intends for these  
24 Applicant-provided findings responding to OAR 660-004-0020 to  
25 supplement the Staff Findings of Fact previously adopted by this  
26 [board of commissioners] and likewise responding to OAR 660-  
27 004-0020.

28       \*\* \* \* \* \*

29       "As an alternative basis for approval, the [board of commissioners]  
30 agrees with the Applicant's legal analysis contained in the  
31 November 3, 2022 letter and adopts that analysis as its own.

1           “\* \* \* \* \*

2           “[T]his [board of commissioners] adopts as its own those findings  
3           responding to OAR 660-014-0030 proposed by the Applicant and  
4           provided along with the November 3, 2022 letter.” Record 7, 9, 13,  
5           15 (internal citation omitted).

6           Findings must (1) identify the relevant approval standards, (2) set out the  
7           facts which are believed and relied upon, and (3) explain how those facts lead to  
8           the conclusion that the approval standards are met. *Heiller v. Josephine County*,  
9           23 Or LUBA 551, 556 (1992). As the court explained in *Sunnyside Neighborhood*  
10          *v. Clackamas Co. Comm.*,

11          “[n]o particular form is required, and no magic words need be  
12          employed. What is needed for adequate judicial review is a clear  
13          statement of what, specifically, the decision-making body believes,  
14          after hearing and considering all the evidence, to be the relevant and  
15          important facts upon which its decision is based.” 280 Or 3, 21, 569  
16          P2d 1063 (1977).

17          “Final decisions may incorporate findings in other documents prepared by  
18          staff or an applicant, but \* \* \* they may not do so in a way that leaves the parties  
19          and [LUBA] guessing which documents are made part of the decision or where  
20          the necessary findings may be located in the record.” *DLCD v. Tillamook County*,  
21          33 Or LUBA 323, 325 (1997). In *Gonzalez v. Lane County*, we explained the  
22          general standard for the adequacy of findings incorporated by reference:

23          “[I]f a local government decision maker chooses to incorporate all  
24          or portions of another document by reference into its findings, it  
25          must clearly (1) indicate its intent to do so, and (2) identify the  
26          document or portions of the document so incorporated. A local  
27          government decision will satisfy these requirements if a reasonable  
28          person reading the decision would realize that another document is

1 incorporated into the findings and, based on the decision itself,  
2 would be able both to identify and to request the opportunity to  
3 review the specific document thus incorporated.” 24 Or LUBA 251,  
4 259 (1992) (footnote omitted).

5 The general requirement for findings to support a quasi-judicial land use  
6 decision is based in case law. *Sunnyside*, 280 Or at 20-21; *Fasano v. Washington*  
7 *Co. Comm.*, 264 Or 574, 507 P2d 23 (1973). The requirement for findings is also  
8 codified in statute. *See* ORS 215.416(9) (requiring counties to adopt findings  
9 when approving or denying an application for a land use permit or expedited land  
10 division); ORS 227.173(3) (requiring cities to adopt findings when approving or  
11 denying an application for a land use permit or expedited land division); ORS  
12 197.195(4) (requiring findings for limited land use decisions).

13 As explained above, ORS 197.732(4) specifically governs goal exceptions  
14 and requires a local government to set forth findings of fact and a statement of  
15 reasons that demonstrate that the exception standards have or have not been met.  
16 We have also applied the *Gonzalez* standard to decisions approving an exception,  
17 where the petitioner challenged the adequacy of an incorporation of other  
18 documents in the record as findings in support of the decision. *See, e.g., Dooley*  
19 *v. Wasco County*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2022-045, Oct 31, 2022); *Rogue*  
20 *Advocates v. Jackson County*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2020-077, May 13,  
21 2021); *Jacobus v. Klamath County*, 81 Or LUBA 785 (2020).

22 We concluded in *Dooley* that the county had not adequately incorporated  
23 documents into its findings. The county responds that *Dooley* is distinguishable  
24 because, there, the record did not include a decision document, such as an order,

1 ordinance, or any other official action by the board of county commissioners  
2 approving the applications. The notice of decision included in the record in  
3 *Dooley* did “not include any clear statement that purport[ed] to incorporate as  
4 findings the record pages reference[d] by the county in its response brief.” \_\_\_ Or  
5 LUBA at \_\_\_ (slip op at 8). We concluded that, even if the county had attempted  
6 to incorporate as findings 831 pages of the record, as the county argued in its  
7 brief, that attempted incorporation by reference would

8 “fail[] the *Gonzalez* test because a reasonable person reading the  
9 decision would not be able to identify which documents are  
10 incorporated in the findings, where the findings purport to  
11 incorporate conflicting documents, some that attempt to  
12 demonstrate that the applications should be approved and others that  
13 the attempt to demonstrate that the applications should be denied.”  
14 *Id.*

15 The county argues that, differently, here, the board adopted a final decision  
16 and specifically identifies the documents that it intended to incorporate by  
17 reference as findings.

18 We agree with the county that the decision clearly indicates its intent to  
19 incorporate other documents as findings and identifies the documents so  
20 incorporated. A reasonable person reading the decision would recognize that the  
21 findings in staff reports and intervenor’s documents are incorporated by reference  
22 and would be able to request from the county an opportunity to review those  
23 documents. However, we agree with petitioner that a reasonable person would  
24 not be able to identify the findings of fact and statements of reasons explaining

1 why the county concludes the applicable exception criteria are met. Thus, the  
2 attempted incorporation fails the *Gonzalez* test.

3 The incorporated findings are voluminous. The various staff reports and  
4 intervenor's submissions that the board of commissioners incorporated by  
5 reference as findings constitute nearly 700 pages of an approximately 2,500-page  
6 record. The staff report for the board of commissioners includes all the planning  
7 commission staff reports and 37 exhibits, for a total of 676 pages. "Applicant's  
8 Narrative Demonstrating Compliance with the Approval Criteria" (Applicant's  
9 Narrative) is 46 pages long, and is included in Exhibit 1 to Exhibit A of the staff  
10 report for the board of commissioners. Record 356-401, 2126-71.<sup>2</sup> The decision  
11 incorporates by reference the entirety of the findings in Applicant's Narrative by  
12 incorporating by reference intervenor's entire application. The decision also  
13 specifically incorporates intervenor's proposed findings in Applicant's Narrative  
14 regarding satisfaction of OAR 660-004-0015, OAR 660-004-0018, OAR 660-  
15 004-0020, and OAR 660-004-0028. Finally, the decision incorporates by  
16 reference intervenor's letter dated November 3, 2022, and intervenor's proposed  
17 findings responding to OAR 660-014-0030 provided with that letter. Record  
18 1266-76. Together, those items constitute another 11 pages.

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<sup>2</sup> We assume that the county's references to the "applicant's burden of proof" refer to Applicant's Narrative.



1 In order to review all of the board's findings incorporated by reference, an  
2 interested person would have to request and review 687 pages of documents and  
3 attempt to discern what parts of those documents constitute the board of  
4 commissioners' findings that are responsive to the applicable exception criteria.  
5 Parts of the documents specifically identify and respond to those criteria.  
6 However, other parts do not identify specific criteria. A complex decision may  
7 reasonably contain lengthy findings. However, we agree with petitioner that a  
8 reasonable person would not be able to identify the findings of fact and  
9 statements of reasons explaining why the county concludes the applicable  
10 exception criteria are met.

11 Our prior application of the *Gonzalez* standard to decisions approving an  
12 exception do not discuss that ORS 197.732(4) specifically requires a local  
13 government "set forth findings of fact and a statement of reasons" justifying an  
14 exception *and* that OAR 660-004-0015(1) requires a local government that  
15 approves an exception to adopt "as part of its comprehensive plan, findings of  
16 fact and a statement of reasons that demonstrate that the standards for an  
17 exception have been met." A decision adopting an exception must clearly set  
18 forth findings of fact and a statement of reasons that demonstrate that the  
19 exception criteria have been met. That is not to say that an exception decision  
20 may never incorporate by reference findings of fact and statements of reasons.  
21 However, those incorporated findings must be set out in a manner so that a  
22 reasonable person can identify and reasonably understand the facts and reasons

1 supporting the exception. Here, the county's incorporation by reference of  
2 numerous different documents over 687 pages does not satisfy that standard. This  
3 portion of the first assignment of error is sustained.

4 **C. The county failed to amend its comprehensive plan to include**  
5 **the exception and the findings and reasons which support the**  
6 **exception.**

7 "OAR 660-004-0015(1) requires that the findings and statement of  
8 reasons supporting an exception be adopted as part of the local  
9 government's comprehensive plan. One important purpose of that  
10 requirement is to ensure that the county, applicants and the public  
11 know with reasonable certainty exactly which goal(s) or goal  
12 requirements no longer apply to the subject property." *Columbia*  
13 *Riverkeeper v. Columbia County*, 70 Or LUBA 171, 212, *aff'd*, 267  
14 Or App 637, 342 P3d 181 (2014).<sup>3</sup>

15 Because OAR 660-004-0015(1) requires that an exception be included as part of  
16 the comprehensive plan, any attempt to expand uses allowed under an existing  
17 exception "will require a new post-acknowledgment plan amendment, with  
18 attendant notice and procedures." *Devin Oil Co., Inc. v. Morrow County*, 62 Or  
19 LUBA 247, 264, *aff'd*, 241 Or App 351, 250 P3d 38 (2010), *rev den*, 350 Or 408  
20 (2011).

21 "When a local government takes an exception under the 'Reasons' section  
22 of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, OAR

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<sup>3</sup> "A local government denying a proposed exception shall adopt findings of fact and a statement of reasons that demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan." OAR 660-004-0015(2).

1 660-014-0040, or OAR 660-0140-090, plan and zone designations must limit the  
2 uses, density, public facilities and services, and activities to only those that are  
3 justified in the exception.” OAR 660-004-0018(4)(a).

4 “In addition, under OAR 660-004-0018(4)(b), where a local  
5 government changes the types or intensities of uses or public  
6 facilities and services within an area approved under a reasons  
7 exception, a new reasons exception is required, which will  
8 necessarily entail adopting a new ordinance amending the  
9 comprehensive plan, pursuant to the post-acknowledgment plan  
10 amendment process.” *Devin Oil Co., Inc.*, 62 Or LUBA at 264.

11 The county responds that the decision in fact amends the JCCP, quoting  
12 the caption of the challenged ordinance, which is “IN THE MATTER OF  
13 AMENDING THE JEFFERSON COUNTY COMPREHENSIVE PLAN AND  
14 ZONING MAP FOR PROPERTY LOCATED AT T135 R12E SEC 23 LOT 100  
15 AND DECLARING AN EMERGENCY.” Record 7; Respondent’s Brief 18. The  
16 county also points to Record 16, which provides:

17 “Based upon the foregoing Findings of Fact and Conclusions of  
18 Law, the Board of County Commissioners hereby APPROVES the  
19 Applicant’s application for a JCCP amendment to redesignate the  
20 Subject Parcel from Range Land to Rural Land and a corresponding  
21 zone map amendment to change the zoning of the Subject Parcel  
22 from Range Land (RL) to Rural Residential-2 (RR-2).”

23 The county states that “[o]nce the Decision is final, an amendment will be listed  
24 on the first page of the JCCP, as is custom practice in the County.” Respondent’s  
25 Brief 18.

1       The face page of the JCCP lists amendments to the JCCP by ordinance  
2       number and date, but does not indicate the subject of the amendments including  
3       which, if any, of those amendments adopt exceptions to statewide planning goals.

4       We accept for purposes of this decision the county's statement that the  
5       decision amends the JCCP and will be listed as an amendment to the JCCP on  
6       the face page. However, a simple reference to an ordinance is insufficient to  
7       satisfy the OAR 661-004-0015(1) requirement that "findings of fact and a  
8       statement of reasons that demonstrate that the standards for an exception have  
9       been met" be included in the comprehensive plan. We agree that, even if the  
10      county's decision has been adopted as an amendment to the JCCP, the decision  
11      violates OAR 660-004-0015(1).

12      Above, we explain why we agree with petitioner that the county failed to  
13      adopt findings of fact and statements of reasons justifying the exceptions. We  
14      further conclude that listing the ordinance number on the face page of the  
15      comprehensive plan does not meet the requirement to amend the comprehensive  
16      plan to include findings of fact and a statement of reasons that demonstrate that  
17      the standards for an exception have been met. If, on remand, the county adopts  
18      findings of fact and statements of reasons justifying the exceptions, then findings  
19      of fact and statements of reasons justifying the exceptions must be included in  
20      the JCCP in a manner that a reasonable person reviewing the JCCP could  
21      determine "with reasonable certainty exactly which goal(s) or goal requirements

1 no longer apply to the subject property” and the reasons for and scope of the  
2 exceptions. *Columbia Riverkeeper*, 70 Or LUBA at 212.

3 This portion of the first assignment of error is sustained.

4 **D. Notices**

5 Goal 2 requires that “[e]ach notice of a public hearing on a proposed  
6 exception shall specifically note that a goal exception is proposed and shall  
7 summarize the issues in an understandable manner.” *See also* ORS 197.732(5)  
8 (stating the same); OAR 660-004-0030(1) (stating the same). Petitioner argues  
9 that the county failed to provide notice of public hearings specifically noting the  
10 proposed goal exceptions and summarizing the issues in an understandable  
11 manner. Petitioner argues that the county committed a procedural error that  
12 prejudiced its substantial rights in failing to comply with ORS 197.732(5).  
13 Petition for Review 13-14. Petitioner argues, and the county and intervenor  
14 (together, respondents) do not dispute, that none of the four notices of public  
15 hearings explain that goal exceptions were proposed, list the exception criteria,  
16 or summarize the exception issues. Record 971 (notice of board of commissioners  
17 hearing December 7, 2022); Record 1542 (notice of planning commission  
18 hearing October 27, 2022); Record 1784 (notice of planning commission hearing  
19 September 8, 2022); Record 2094 (notice of planning commission hearing  
20 August 11, 2022).

21 The county responds, initially, that this issue is waived because petitioner  
22 did not raise it below. Our review of a quasi-judicial decision is generally limited

1 to issues that were raised before the local government. ORS 197.797(1).<sup>4</sup> A  
2 petitioner must demonstrate in the petition for review that the issue raised in an  
3 assignment of error was preserved during the proceedings below or explain why  
4 preservation is not required. OAR 661-010-0030(4)(d). In addition,

5 “LUBA has long held that where a party has the opportunity to  
6 object to a procedural error before the local government, but fails to  
7 do so, that error cannot be assigned as grounds for reversal or  
8 remand of the resulting decision. *Torgeson v. City of Canby*, 19 Or  
9 LUBA 511, 519 (1990); *Dobaj v. Beaverton*, 9 Or LUBA 237, 241  
10 (1980). This obligation to object to procedural errors overlaps with,  
11 but exists independently of, ORS 197.7[97](1) and 197.835(3).  
12 *Confederated Tribes v. City of Coos Bay*, 42 Or LUBA 385, 393  
13 (2002); *Simmons v. Marion County*, 22 Or LUBA 759, 774 n 8  
14 (1992). While the ‘raise it or waive it’ requirement at ORS  
15 197.7[97](1) has a similar purpose to the requirement that a party  
16 with an opportunity to object to a procedural error must do so in  
17 order to seek remand based on that error, the two requirements share  
18 no antecedents and otherwise have no relationship with each other.”  
19 *McCaffree v. Coos County*, 79 Or LUBA 512, 517-518, *aff’d*, 299  
20 Or App 521, 449 P3d 594 (2019), *rev den* 366 Or 205 (2020).

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<sup>4</sup> ORS 197.797(1) provides:

“An issue which may be the basis for an appeal to [LUBA] shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.”



1       The county responds that petitioner received the notices and did not object  
2 to the contents of the notices.<sup>5</sup> As noted, the county concedes that the notices did  
3 not specify that goal exceptions were proposed or list the applicable criteria.  
4 However, the county points out that petitioner had an opportunity to object and  
5 failed to object. The county further points out that petitioner addressed Goals 3  
6 and 14 exception criteria in its testimony, which demonstrates that petitioner was  
7 aware that goal exceptions were proposed.

8       Petitioner argues that its notice argument under ORS 197.732(5) is subject  
9 to ORS 197.835(4)(a), which provides an exception to the preservation  
10 requirement where the local government failed to list the applicable criteria in its  
11 notices of hearings. ORS 197.835(4)(a) provides that a petitioner may raise new  
12 issues to LUBA if:

13       “(a) The local government failed to list the applicable criteria for a  
14 decision under ORS 197.797(3)(c) or 197.763(3)(b), in which case  
15 a petitioner may raise new issues based upon applicable criteria that  
16 were omitted from the notice. However, [LUBA] may refuse to  
17 allow new issues to be raised if it finds that the issue could have  
18 been raised before the local government[.]”

19       The county responds that petitioner fails to explain why it failed to raise  
20 any issue stemming from the notice requirements in ORS 197.732(5) and OAR  
21 660-004-0030 below.

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<sup>5</sup> Petitioner objected below to the timing of the notice of the board of commissioners December 7, 2022, hearing. Record 967-68. Petitioner does not assign error to the timing of that notice.

1       Petitioner argues that a petitioner is not required to attend every hearing  
2       and stay apprised of the details of a developing record to learn what types of goal  
3       exceptions an applicant might contemplate. Rather, the purpose of the particular  
4       public notice requirements in ORS 197.732(5) and OAR 660-004-0030(1) is to  
5       apprise petitioners of the exception issues presented.

6       ORS 197.835(4)(a) may allow for an exception to preservation for certain  
7       exception criteria if we find that petitioner could not have raised an issue under  
8       those criteria before the county. However, petitioner has not explained why it  
9       could not have raised the issue of the county's deficient notices below.  
10      Accordingly, we agree with the county that petitioner waived the issue of  
11      noncompliance with ORS 197.732(5) and OAR 660-004-0030.

12      This portion of the first assignment of error is denied.

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

#### 14      **FOURTH ASSIGNMENT OF ERROR**

15      Petitioner argues that the county's decision approving a Goal 3 exception  
16      misconstrues applicable law and is unsupported by substantial evidence. ORS  
17      197.835(9)(a)(C), (D). We conclude above that that the county failed to adopt  
18      findings of fact and statements of reasons justifying the exception. To remedy  
19      that error, the county must adopt a new or significantly revised decision on  
20      remand regarding the Goal 3 exception. Accordingly, we do not reach or address  
21      the fourth assignment of error.

1   **FIFTH ASSIGNMENT OF ERROR**

2           Petitioner argues that the county’s decision approving a Goal 14 exception  
3   misconstrues applicable law. ORS 197.835(9)(a)(D). We conclude above that  
4   that the county failed to adopt findings of fact and statements of reasons justifying  
5   the exception. To remedy that error, the county must adopt a new or significantly  
6   revised decision on remand regarding the Goal 14 exception. Accordingly, we do  
7   not reach or address the fifth assignment of error.

8   **SIXTH ASSIGNMENT OF ERROR**

9           Petitioner argues that the decision violates Goal 11 (Public Facilities and  
10   Services) by allowing the extension of a water system onto rural land. We deny  
11   this assignment of error for reasons explained below.

12          Goal 11 is “[t]o plan and develop a timely, orderly and efficient  
13   arrangement of public facilities and services to serve as a framework for urban  
14   and rural development.” Goal 11 regulates sewer systems and water systems.  
15   Goal 11 and its implementing rule for sewer systems, OAR 660-011-0060,  
16   prohibit the establishment or extension of a sewer system to serve land outside of  
17   an urban growth boundary (UGB), without an exception to Goal 11. Differently,  
18   Goal 11 and its implementing rule for water systems, OAR 660-011-0065, do not  
19   prohibit the establishment or extension of water systems to serve land outside of  
20   a UGB. Instead, the goal and rule prohibit the county from relying on an

1 extension of central water systems to justify an increase in residential density.<sup>6</sup>  
2 *See Foland v. Jackson County*, 239 Or App 60, 65-66, 243 P3d 830 (2010)  
3 (explaining Goal 11 operation with respect to water systems).

4 With respect to Goal 11, the county found:

5 “The Subject Property is currently served by or has demonstrated  
6 through ‘will serve’ letters that all critical public services, including,  
7 Crooked River Ranch Water Company, Crooked River Ranch Rural  
8 Fire Protection District, Crooked River Sanitary, Pacific Power,  
9 TDS Telecom, and the Redmond School District as found in  
10 Exhibits F – K attached to the application. Staff finds that proposed  
11 future development on the Subject Property will be served by

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<sup>6</sup> Goal 11 provides, in part: “Local governments shall not rely upon the presence, establishment, or extension of a water or sewer system to allow residential development of land outside urban growth boundaries or unincorporated community boundaries at a density higher than authorized without service from such a system.”

OAR 660-011-0065(2) provides:

“Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:

- “(a) Allow an increase in a base density in a residential zone due to the availability of service from a water system;
- “(b) Allow a higher density for residential development served by a water system than would be authorized without such service; or
- “(c) Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.”

1 individual septic systems, and as such extension or use of any  
2 existing sewer system is not needed.

3 “Staff finds the addition of the Subject Property to the existing  
4 public services through the proposed Plan map amendment and zone  
5 change is consistent with Goal 11 because it furthers the goal’s  
6 objective of developing an efficient arrangement of public facilities  
7 and services in a manner that best supports the proposed uses. In  
8 contrast to most rural development, this proposal does not require  
9 the extension of new services from outside of Crooked River Ranch  
10 or other rural residential areas. Additional development of the  
11 Subject Property will benefit from the existing public facilities and  
12 services that currently provide services to the surrounding area.  
13 Using these facilities and services to provide for additional  
14 development will reduce the need for more public facilities and  
15 service providers in the future as the population in the County and  
16 the Crooked River Ranch community increases.

17 “While the Crooked River Ranch Water Company will need to  
18 establish new taps for future development of the Subject Property,  
19 an exception to Goal 11 is not required in this circumstance. Goal  
20 11, as relates to water service, provides that ‘for land that is outside  
21 urban growth boundaries and unincorporated community  
22 boundaries, county land regulations shall not rely upon the  
23 establishment or extension of a water system to authorize a higher  
24 residential density than would be authorized without a water  
25 system.’ In the context of Goal 11, the Oregon Court of Appeals  
26 interpreted the ‘establishment or extension’ term to mean water  
27 system expansions that are ‘systematic in scope[,] and that  
28 contemplates the new *or* expanded presence of water systems in  
29 areas where none was present before.’ *D[ept. of Land Conservation]*  
30 *v. Lincoln County*, 144 Or App 9, 17, 925 P2d 135 (1996)[, *rev den*,  
31 324 Or 560 (1997)]. A Goal 11 exception is not required here  
32 because the proposed Plan map amendment and zone change, and  
33 any subsequent future rural residential development, will not require  
34 the Crooked River Ranch Water Company to systematically expand  
35 the scope of its existing system. The Subject Property will utilize the  
36 Company’s existing water system, which already has pipes running  
37 along the north and south boundaries of the Subject Property that

1 serve the [Crooked River Ranch] community. See Exhibit 11  
2 attached to the application for details. That system will be used to  
3 provide water to any future rural residential development on the  
4 Subject Property. LUBA applied the Court of Appeal's  
5 aforementioned Goal 11 interpretation in *DeShazer v. Columbia*  
6 *County*, 35 Or LUBA 689 (1999). The facts in *DeShazer* are similar  
7 to the present application, with LUBA finding that where that  
8 applicant provided information and testimony from a water provider  
9 confirming that the at-issue property was located within its current  
10 service area, existing infrastructure ran through the at-issue  
11 property, and the surrounding properties received water service  
12 from the water provider, a Goal 11 exception was not required. *Id.*  
13 at 693 n 1.

14 “As in *DeShazer*, [intervenor] has provided confirmation from  
15 Crooked River Ranch Water Company that it can provide water  
16 service to the Subject Property using its existing infrastructure,  
17 which nearly completely surrounds the Subject Property already. As  
18 such, no exception is required, and the application is consistent with  
19 Goal 11.” Record 315-16.<sup>7</sup>

20 Petitioner argues that “Goal 11 prohibits the extension of a water system  
21 outside of unincorporated communities when that extension is outside of an  
22 existing water service area.” Petition for Review 51.

23 Intervenor responds that Goal 11 prohibits the county from justifying an  
24 increase in residential density due to the availability of service from a water

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<sup>7</sup> These findings are in the planning commission staff report for the planning commission's August 11, 2022, hearing, which is one of the documents that the board of commissioners incorporated by reference as findings. Petitioner does not dispute that these findings constitute the board of commissioners' Goal 11 findings or that they are somehow tainted by the board of commissioners' error with respect to incorporating findings of fact and statements of reasons justify the Goals 3 and 14 exceptions.



1 system and that the county did not approve an increase in the density based on  
2 the Crooked River Water Company extending service to the subject property.  
3 Accordingly, petitioner has failed to allege a basis for relief under Goal 11. We  
4 agree.

5 Petitioner also argues that there is no evidence in the record to support the  
6 finding that the subject property is within the Crooked River Water Company's  
7 service area.

8 Intervenor responds that this substantial evidence challenge is  
9 undeveloped and provides no basis for remand. We agree. Petitioner has not  
10 identified any applicable criteria that requires the county to find that future  
11 residential development of the subject parcel will be served by Crooked River  
12 Water Company.

13 The sixth assignment of error is denied.

## 14 **SECOND ASSIGNMENT OF ERROR**

15 Petitioner argues that the decision is not consistent with JCCP Part 5 (Part  
16 5), which governs amendments to the comprehensive plan. Part 5 provides, in  
17 part: "The Comprehensive Plan should be evaluated periodically and updated or  
18 amended when necessary to reflect changes in land use patterns that have  
19 occurred or when the citizens of the County, as represented by the Planning  
20 Commission and Board of Commissioners, feel it is desirable." JCCP 92.

21 For a quasi-judicial amendment, such as the one at issue in this appeal, Part  
22 5 provides, in part, that "[i]n order to be approved, the proposed amendment must

1     \* \* \* [b]e necessary due to changes in physical, economic or social conditions,  
2     population growth, or development patterns which require an adjustment in the  
3     land use[] designations in the area where the amendment is proposed.” JCCP 94.

4             The board found that “the Subject Parcel is an ‘island’ of rangeland-zoned  
5     property within a sea of residential properties, and that the nearest actively  
6     farmed properties are located to the west and north-east of the Subject Parcel  
7     across deep canyons formed by the Crooked and Deschutes Rivers, respectively.”

8     Record 11. The board of commissioners found that “93% of the [Crooked River  
9     Ranch] parcels are currently developed, with only 135 privately owned parcels  
10    in [Crooked River Ranch] under 20 acres left to be developed.” *Id.* The board of  
11    commissioners observed that “110 single family homes have been permitted to  
12    be built in the [Crooked River Ranch] community from 2017 to 2021, averaging  
13    22 homes per year. At that rate, the [board of commissioners] notes that the 135  
14    aforementioned residential lots remaining in [Crooked River Ranch] could be  
15    built out in as little as six years.” *Id.* The board of commissioners found:

16            “[T]his [board of commissioners] specifically interprets the terms  
17            ‘population growth’ and ‘development patterns’ appearing [in Part  
18            5] to include the unrefuted and well-documented changes that have  
19            occurred as the [Crooked River Ranch] community has evolved  
20            from a working ranch to a recreational community to the current  
21            residential neighborhood that exists today. Based on that  
22            interpretation, the [board of commissioners] further finds that these  
23            changes necessitate a zoning adjustment to avoid incompatibilities  
24            that could occur under the Subject Parcel’s current rangeland  
25            zoning, considering that the Subject Parcel is entirely surrounded by  
26            a nearly built-out residential community.” Record 11.

1       Petitioner argues that the plan designation and zone change is not  
2   “necessary” or “required.” We review the board of commissioners’ interpretation  
3   of Part 5 under ORS 197.829(1) and are required to affirm that interpretation so  
4   long as it is consistent with the express language, underlying purposes, or  
5   policies—that is, if it is plausible. *Siporen v. City of Medford*, 34 Or 247, 259,  
6   243 P3d 776 (2010).<sup>8</sup> Petitioner points to our independent interpretation of Part  
7   5 under ORS 197.829(2) in *Central Oregon Landwatch v. Jefferson County*, \_\_\_\_  
8   Or LUBA \_\_\_\_ (LUBA No 2021-054, Oct 6, 2021) (*City of Metolius*).<sup>9</sup> There,

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<sup>8</sup> ORS 197.829(1) provides:

“[LUBA] shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

- “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- “(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- “(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- “(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.”

<sup>9</sup> ORS 197.829(2) provides: “If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct.”

1 petitioners appealed the county board of commissioners' approval of the City of  
2 Metolius's application for approval of expansion of the city's UGB to include the  
3 city's wastewater treatment plant.

4 The county found that the Part 5 standard was met because the city owns  
5 and operates the wastewater treatment site and the city desired to have  
6 jurisdiction over the site. The county also found that the Part 5 standard was met  
7 because "there is a change in population growth and development patterns that  
8 support the active role the City of Metolius is taking in meeting the established  
9 need for adequate wastewater facilities to support the development that is  
10 occurring." *City of Metolius*, \_\_\_\_ Or LUBA at \_\_\_\_ (slip op at 25).

11 We determined that the county had not interpreted what it means for an  
12 amendment to "[b]e necessary" or "required." We quoted dictionary meanings of  
13 "require" and "necessary" including the synonyms "essential" and  
14 "indispensable." *Id.* at \_\_\_\_ (slip op at 27). We concluded that the board of  
15 commissioners failed to explain "why it is necessary, indispensable, or essential  
16 that the subject property be within the UGB." *Id.*; *see also id.* at \_\_\_\_ ("The county  
17 does not explain how recent housing development or the city's desire for land use  
18 control over the site *require or make necessary* an adjustment in land use  
19 designation where the city's wastewater facility was permitted over 20 years ago  
20 and has long been in operation on the site." (Emphasis in original.) (slip op at  
21 26)).

1       The facts in this case are distinct from *City of Metolius*, which makes that  
2 case of limited usefulness to the Part 5 analysis in this appeal. There, we  
3 concluded that the county had not shown that a UGB expansion was necessary  
4 for the city's UGB to encompass a wastewater plant. Nothing tied the change in  
5 population growth and development patterns to the decision to expand the UGB  
6 to include the wastewater plant.

7       Differently, here the proposed amendment will change range land into  
8 residential land, a change the county found is justified by the facts that the subject  
9 property is surrounded by residential land and that "the 135 aforementioned  
10 residential lots remaining in [Crooked River Ranch] could be built out in as little  
11 as six years." Record 11. The board of commissioners expressly interpreted the  
12 terms "population growth" and "development patterns" to include the changes  
13 that have occurred as the Crooked River Ranch community has evolved. The  
14 county thereby found that the requisite "changes" have occurred for purposes of  
15 Part 5. Petitioner does not challenge those interpretations or conclusion.

16       Petitioner also argues that the county fails to show that it is necessary,  
17 indispensable, or essential that the subject property be redesignated and rezoned  
18 to facilitate additional rural residential development. Petition for Review 19  
19 (citing *City of Metolius*, \_\_\_ Or LUBA at \_\_\_ (slip op at 27)). Petitioner contends  
20 that general population growth and development pattern is insufficient to satisfy  
21 Part 5. The county responds that the board of commissioners' interpretation is  
22 plausible.

1       We agree with petitioner that the county has not shown that the amendment  
2   is necessary or required. While posed as a misconstruction assignment of error,  
3   this argument reduces to a mixed improper construction, inadequate findings, and  
4   lack of substantial evidence challenge. Even accepting that the Crooked River  
5   Ranch development has changed the development pattern in the area, and  
6   assuming that population growth in the area has increased development demand  
7   for rural residential land, the county has not identified any findings that establish  
8   that it is necessary or required to change the designation and zoning of the subject  
9   property to rural residential. For example, petitioner argues elsewhere that other  
10   undeveloped land in the county is already zoned for rural residential use. Petition  
11   for Review 42-43. To the extent that the county's findings explain that the county  
12   approved the change "to avoid incompatibilities that could occur under the  
13   Subject Parcel's current rangeland zoning, considering that the Subject Parcel is  
14   entirely surrounded by a nearly built-out residential community," the county does  
15   not direct us to any evidence that such incompatibilities exist, or conflicts occur  
16   under the current zoning. Record 11.

17       The second assignment of error is sustained.

### 18   **THIRD ASSIGNMENT OF ERROR**

19       Petitioner argues that the county erred by finding that the decision does not  
20   authorize the expansion of an existing unincorporated community and by not  
21   addressing the criteria for such an expansion. We agree for the reasons explained  
22   below.

1 Crooked River Ranch is a rural unincorporated community. We explained  
2 the Unincorporated Communities Rule in *Central Oregon Landwatch v.*  
3 *Deschutes County*:

4 “In 1994, \* \* \* [the Land Conservation and Development  
5 Commission (LCDC)] adopted the Unincorporated Communities  
6 Rule at OAR chapter 660, division 22, which interprets Goals 11  
7 and 14 concerning urban and rural development outside UGBs. As  
8 the court explained in *Gisler v. Deschutes County*, 149 Or App 528,  
9 535, 945 P2d 1051 (1997)]. Goals 11 and 14 work together

10 “to regulate development as well as services and facilities, to  
11 coordinate development levels with service and facility  
12 levels[,] and \* \* \* to channel intensive uses and development  
13 to existing urban and urbanizable land first before allowing  
14 the conversion of or intense non-resource uses on the rural  
15 land that comprises the areas outside UGBs.’ 149 Or App at  
16 535 (citing [*1000 Friends of Oregon v. LCDC*, 301 Or 447,  
17 724 P2d 268 (1986) (*Curry County*)]).

18 “The purpose of the Unincorporated Communities Rule is to  
19 establish a statewide policy for the planning and zoning of  
20 unincorporated communities and to expedite the planning process  
21 for counties by reducing the need to take exceptions to statewide  
22 planning goals when planning and zoning unincorporated  
23 communities. OAR 660-022-0000(1). The Unincorporated  
24 Communities Rule requires counties to identify and plan for  
25 development in unincorporated communities.” \_\_\_ Or LUBA \_\_\_,  
26 \_\_\_ (LUBA No 2021-028, June 18, 2021) (slip op at 15-16).

27 Petitioner argues that the decision approves expansion of the Crooked  
28 River Ranch unincorporated community without applying criteria for such an  
29 expansion at OAR 660-004-0020(4) and OAR 660-004-0022(4). Petitioner also

1 argues that the county failed to adopt findings addressing petitioner's argument  
2 that OAR 660-004-0020(4) and OAR 660-004-0022(4) are applicable criteria.<sup>10</sup>

3 The county responds that the board of commissioners correctly determined  
4 that the application was not for an expansion of the Crooked River Ranch  
5 unincorporated community.

6 We have explained that "OAR 660-004-0020(4) modifies three of the  
7 exception requirements set out at OAR 660-004-0022(2), for reasons exceptions  
8 to expand a rural or urban unincorporated community." *Wetherell v. Douglas*  
9 *County*, 57 Or LUBA 240, 245 (2008) (footnote omitted). Appropriate reasons  
10 and facts that could support an expansion of an unincorporated community,

11 "may include findings that there is a demonstrated need for  
12 additional land in the community to accommodate a specific rural  
13 use based on Goals 3-19 and a demonstration that either:

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<sup>10</sup> Petitioner points to two findings related to this issue:

"Staff finds the Applicant is not requesting an expansion of an unincorporated community. As such, [OAR 660-004-0020(4)] does not apply.

"\* \* \* \* \*

"Staff finds that Exhibit 18 states that the 'Jefferson County Hearing Notices for the September 8, 2022[,] and the August 11, 2022[,] hearing[s] state that the application is proposing to expand the Crooked River Ranch Rural Community[.]' Staff finds that as shown in Exhibit 21 attached (the certified notice from Pamplin Media Group) clearly does not say what is stated in Exhibit 18." Petition for Review 21 (quoting Record 334, 576).



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

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

6 “\* \* \* \* \*

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

19 “(b) The findings of need must be coordinated and consistent with  
20 the comprehensive plan for other exception areas, unincorporated  
21 communities, and urban growth boundaries in the area. For purposes  
22 of this subsection, ‘area’ includes those communities, exception  
23 areas, and urban growth boundaries that may be affected by an  
24 expansion of a community boundary, taking into account market,  
25 economic, and other relevant factors.” OAR 660-004-0022(4).

26 We agree with petitioner that the decision approves a de facto expansion  
27 of the Crooked River Ranch community without demonstrating compliance with

1 OAR 660-004-0020(4) and OAR 660-004-0022(4), even though the applicant  
2 and the county do not characterize it as such an expansion.<sup>11</sup>

3 The term “expansion” and the phrase “expansion of an unincorporated  
4 community” are not defined in the LCDC rules. The plain meaning of the term  
5 “expansion” is “the act or process of expanding.” *Webster’s Third New Int’l*  
6 *Dictionary* 798 (unabridged ed 2002). “Expand” means “to spread out” and “to  
7 increase the extent, number, volume, or scope of : enlarge.” *Id.* A rural  
8 unincorporated community is a settlement outside of a UGB that “[i]s made up  
9 primarily of lands subject to an exception to statewide planning goals related to  
10 agricultural lands or forestlands,” and within a defined community boundary.  
11 ORS 221.034(1)(b)(A).

12 The challenged decision adopted a Goal 3 exception and redesignated and  
13 rezoned the property for residential use. The subject property is surrounded by  
14 Crooked River Ranch. Residential uses will function as an integrated part of the  
15 Crooked River Ranch community and will be served by existing Crooked River  
16 Ranch public services, including Crooked River Ranch Water Company,  
17 Crooked River Ranch Rural Fire Protection District, and Crooked River Ranch  
18 Sanitary. Record 313. We agree with petitioner that the county erred by  
19 approving the expansion of the Crooked River Ranch unincorporated community

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<sup>11</sup> Petitioner explains that the Crooked River Ranch zoning criteria do not allow new lot sizes that are less than 10 acres, while the approved zoning authorizes two-acre lots. Petition for Review 25 (citing Record 330).

1 without applying the criteria at OAR 660-004-0020(4) and OAR 660-004-  
2 0022(4).

3 The third assignment of error is sustained.

4 The county's decision is remanded.