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

OREGON COAST ALLIANCE,
Petitioner,

vs.

CLATSOP COUNTY,
Respondent.

LUBA No. 2024-087

FINAL OPINION
AND ORDER

Appeal from Clatsop County.

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

Joshua P. Soper filed the respondent's brief and argued on behalf of respondent. Also on the brief were Christopher D. Crean and Beery, Elsner & Hammond, LLP.

WILSON, Board Member; ZAMUDIO, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED 05/27/2025

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

Opinion by Wilson.

NATURE OF THE DECISION

Petitioner appeals a legislative decision by the board of commissioners that amends the Land and Water Development and Use Code (LAWDUC). The decision is referred to as the "Housing Amendments" and primarily affects lands within the county's rural communities.

FACTS

In 2019, the county and its five incorporated cities conducted a housing study, which recognized the need for greater varieties of housing, including middle housing. In response, in 2023 the county adopted amendments to the LAWDUC – the Housing Amendments – to increase the variety of housing types allowed within unincorporated portions of the county to encourage housing production at all price points.

In addition to housekeeping changes, the Housing Amendments: (1) amended certain definitions related to housing; (2) added new siting and development standards for cottage clusters and employee housing while amending minimum parking requirements; and (3) amended the standards for lot width and size, setbacks, and the types of housing allowed and review processes used in designated rural community zones.

At issue in this appeal are the third set of amendments, which reduced the minimum lot size in rural communities from 7500 square feet to 5000 square feet

and increased the type of applications subject to a Type I ministerial review rather than a Type II public review process.

The Board of Commissioners adopted the Housing Amendments over the objections of petitioner and others. This appeal followed.

FIRST ASSIGNMENT OF ERROR

The Housing Amendments are post-acknowledgment amendments to the county's land use regulations. Therefore, the amendments must be in compliance with the statewide planning goals, including administrative rules implementing the goals. ORS 197.175(2)(a) & (c); *DLCD v. Clackamas County*, 335 Or App 205, 214, 558 P3d 64 (2024), *rev den*, 373 Or 305, ___ P3d ___ (2025).

Petitioner argues that the Housing Amendments violate the administrative rules regarding unincorporated communities. OAR 660-022-0030 provides in pertinent part:

> "(2) County plans and land use regulations may authorize any residential use and density in unincorporated communities, subject to the requirements of this division.
>
> "* * * * *
>
> "(8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:
>
> "(a) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and
>
> "(b) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services."

Petitioner argues that by reducing the minimum lot size in unincorporated communities from 7500 square feet to 5000 square feet that many previously unbuildable lots will now be buildable. According to petitioner, the county decision does not comply with OAR 660-022-0030(8)(a) and (b) because there is no evidence that the cumulative development allowed by the amendments "[w]ill not result in public health hazards or adverse environmental impacts that violate state or federal water regulations" or "[w]ill not exceed the carrying capacity of the soil or of existing water supply resources and sewer services."

A. First Subassignment of Error

Petitioner argues that the county misinterpreted OAR 660-022-0030(2), which provides that the county "may authorize any residential use and density in unincorporated communities, subject to the requirements of this division." The county reduced the lot size in unincorporated communities based on the language of OAR 660-022-0030(2) allowing "any" density in unincorporated communities. According to petitioner, the county misinterpreted OAR 660-022-0030(2) by not addressing the other "requirements of this division" – in particular, OAR 660-022-0030(8).

The county did not address OAR 660-022-0030(8) in its decision. As discussed later, the county believes that it was already in compliance with OAR 660-022-0030(8) and that nothing in the Housing Amendments changes that fact. OAR 660-022-0030(2) allows the county to reduce density in unincorporated communities as long as the other requirements of the division, including OAR

660-022-0030(8), are met. The county did not "misinterpret" OAR 660-022-0030(2) – it did not interpret the rule at all. The question is whether the county is correct, on appeal, that the Housing Amendments are in compliance with OAR 660-022-0030(8). We address that question below.

Petitioner's first subassignment of error is denied.

B. Second Subassignment of Error

Petitioner argues that the county's decision does not demonstrate compliance with OAR 660-022-0030(8). According to petitioner, the decision does not demonstrate that the "cumulative development" allowed by the Housing Amendments will not "result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations" or "exceed the carrying capacity of the soil or of existing water supply resources and sewer service."

Although the county argues that the decision complies with OAR 660-022-0030(8), the county also appears to argue that the decision does not have to comply with the rule. To the extent the county argues the rule is not applicable, we agree with petitioner that the county must demonstrate compliance with OAR 660-022-0030(8), as it is one of the "requirements of this division" under OAR 660-022-0030(2).

The decision does not mention, let alone address, OAR 660-022-0030(8). If this were a quasi-judicial decision, we would readily remand the decision for lack of adequate findings. This is a legislative decision, however, and there is no

generally applicable requirement that legislative land use decisions be supported by findings, although the decision and record must be sufficient to demonstrate that applicable criteria were applied and "to permit LUBA and [the appellate courts] to exercise our review functions, there must be enough in the way of findings or accessible material in the record of the legislative act to show that applicable criteria were applied and that required considerations were indeed considered." *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002).

With respect to evidence, Statewide Planning Goal 2 (Land Use Planning) requires that a decision that amends a comprehensive plan or land use regulation must be supported by an adequate factual base. An "adequate factual base" is equivalent to the requirement that a quasi-judicial decision be supported by substantial evidence in the whole record. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 378, *aff'd*, 130 Or App 406, 882 P2d 1130 (1994). Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*, 305 Or 346, 351-52, 752 P2d 262 (1988). The Goal 2 "adequate factual base" requirement is satisfied if the decision is supported by either: (1) findings demonstrating compliance with the applicable legal standards; or (2) argument and citations to facts in the record adequate to demonstrate compliance with

applicable legal standards. *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560, 563-64 (1994).

As the decision does not contain findings demonstrating compliance with OAR 660-022-0030(8), the county relies on its brief to provide argument and citations to the record adequate to demonstrate compliance with the rule. The county argues that existing LAWDUC provisions ensure compliance with OAR 660-022-0030(8). The county provides a "few illustrative examples (not an exhaustive list)" that purport to demonstrate compliance with OAR 660-022-0030(8). Respondent's Brief 8. The list of LAWDUC provisions includes: (1) basic characteristics of a residential site; (2) state and federal permit requirements; (3) water improvement standards; (4) erosion control standards; (5) flood hazard overlay regulations; (6) aquifer reserve overlay district regulations; and (7) environmental and resource protection regulations.

The county argues that, prior to the adoption of the Housing Amendments, the existing regulatory scheme ensured compliance with OAR 660-022-0030(8). According to the county, the cited regulatory provisions ensure that the Housing Amendments continue to comply with OAR 660-022-0030(8).

The county's argument is similar to an argument made by Jefferson County in *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008). In *Johnson*, the county amended the Jefferson County Zoning Ordinance (JCZO) to limit the number of vacation rental units and the permissible floor area of lodges and vacation rental units. An intervenor-petitioner, Friends of the Metolius (FOM), argued that the

amendments violated OAR 660-022-0030(8) because the requirements of the rule were not written into the amendments. We held that the county was not required to "graft" the provisions of OAR 660-022-0030(8) into the JCZO:

> "FOM's entire argument is that the amended JCZO violates OAR 660-022-0030(8) because specific provisions of OAR 660-022-0030(8) are not 'grafted into' the JCZO. We understand FOM to argue that the only way to ensure that development in the CSVR [Camp Sherman Vacation Rental zone] satisfies the OAR 660-022-0030(8) public health hazard, environmental impact and carrying capacity standards is to set those standards out verbatim in the CSVR. We do not agree.
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> "As intervenors * * * point out, JCZO 342(A) limits the number of vacation rental units and the permissible floor area of lodges and vacation rental units. JCZO 342(B) sets out a number of development standards to regulate and minimize the impacts of development in the CSVR zone. Lodges and vacation rental units are also subject to site plan review under JCZO 414 where a variety of impacts are considered. FOM simply claims that the standards in OAR 660-022-0030(8) are not 'reflected in' JCZO 342 and 414. * * * *It is not unusual for local governments to adopt a variety of specific land use regulations to comply with more general statutory, statewide planning goals and administrative rule requirements.* Without commenting on whether the standards that the county must apply to approve lodges and vacation rental units and grant site plan review necessarily are sufficient to ensure development of lodges and vacation rental units will comply with OAR 660-022-0030(8), FOM must do more than simply claim that the only way to comply with OAR 660-022-0030(8) is to copy the OAR 660-022-0030(8) standards into the JCZO." 56 Or LUBA at 54 (emphasis added).

In *Johnson*, we agreed with the county that it was possible for existing regulations to demonstrate that the code amendments were in compliance with OAR 660-022-0030(8) even if the requirements of the rule were not specifically

set forth in the code amendments. Similarly, here, the mere fact that the record and amendments do not reference OAR 660-022-0030(8) does not compel a conclusion that the challenged amendments violate the requirements of OAR 660-022-0030(8).

In *Johnson*, opponents did not challenge whether the other code provisions were sufficient to demonstrate compliance with OAR 660-022-0030(8) – only whether the requirements of the rule must be set out in the code amendments. The present case presents a different question – whether the county has demonstrated that the code amendments comply with OAR 660-022-0030(8) by reference to existing, unamended code provisions.

The county argues that the cited provisions ensure compliance with OAR 660-022-0030(8), but as petitioner points out, the cited provisions do not address "cumulative impact" as required by the rule. The only evidence in the record the county points to that arguably relates to cumulative impacts are statements that future development proposal review will ensure that public services have capacity to serve the new development:

> "It should be noted that these amendments would only expand the list of uses permitted within specific zoning districts. As actual development is proposed, the sewer, water and fire district serving the property is required to sign off on the permit to verify that they have capacity available to service the development." Record 15.[1]

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[1] This language is repeated in numerous other places in the record – Record 17, 18-19, 21, 22, and 23.

> "Has an impact study been done to see if the proposals would impact local sanitary and water districts?
>
> "No. Sewer and water districts are special districts that are outside the jurisdiction of Clatsop County. Each special district is responsible for monitoring its capacity and infrastructure needs. The zoning code already requires each sewer and water provider to sign a form verifying that adequate capacity is available to serve each new dwelling unit.
>
> "How will stormwater reviews be done for higher density developments?
>
> "In certain zones, LAWDUC currently requires a stormwater plan for new development or development that exceeds 25% of existing improvements." Record 1338.

The cited provision only ensures that future development under the amendments will only be approved if there is proof of potable water and verification of septic approval or an approved connection to a state-approved sewer system. The record citations only indicate that the existing provisions will ensure that there is adequate capacity for water, sewer, and fire protection. The record citations further suggest that only *some* future development would be subject to stormwater review and regulations, which in turn suggests that some future development would *not* be subject to stormwater review and regulation. Neither the provisions themselves nor the record citations provided by the county address the cumulative impact of the potential increased density and associated increase in water, sewer, and stormwater impacts. In other words, just because adequate water and sewer (and maybe stormwater) service can be provided on a case-by-case basis does not necessarily mean that the cumulative development

would not: (a) "result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations" or (b) "exceed the carrying capacity of the soil or of existing water supply resources and sewer services." OAR 660-022-0030(8).

While the county may be able to demonstrate that the existing LAWDUC provisions are sufficient to ensure compliance OAR 660-022-0030(8), merely pointing to the existing provisions and record citations that provide for adequate water, sewer, and fire services does not provide substantial evidence that the cumulative development allowed by the Housing Amendments comply with the rule.

The second sub-assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

The Housing Amendments must comply with the comprehensive plan. ORS 197.835(7)(a). Petitioner argues that the Housing Amendments do not comply with various provisions of the county's comprehensive plan.

A. Public Facilities Goal of the Southwest Coastal Community Plan

Petitioner argues that the Housing Amendments do not comply with the Public Facilities Goal of the Southwest Coastal Community Plan, which provides:

> "To provide appropriate levels of public facilities and services capable of meeting the existing and future needs of the Southwest

Coastal Planning Area."[2]

Petitioner essentially repeats its argument under the first assignment of error that the Housing Amendments do not comply with OAR 660-022-0030(8) and therefore do not comply with the Public Facilities Goal. The county responds that the existing LAWDUC provisions require that adequate levels of public facilities and services be available before development will be permitted. Unlike OAR 660-022-0030(8), there is no requirement under the Public Facilities Goal that cumulative impacts be addressed. The Public Facilities Goal merely requires that the county provide appropriate levels of public facilities. Because the rule and the Public Facilities Goal impose different requirements, it is not necessarily the case that failure to comply with the rule's "cumulative impacts" means that the county has also failed to comply with the Goal. Absent a more developed argument, petitioner has not demonstrated a basis for reversal or remand. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

B. Comprehensive Plan Housing Goal

Petitioner argues that the Housing Amendments do not comply with the Comprehensive Plan Housing Goal, which provides:

> "To provide adequate numbers of housing units at price ranges and rent levels commensurate with financial capabilities of the households in the region and to allow for flexibility in housing

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[2] As the county points out, petitioner misidentified this goal as the Public Facilities Goal of the Comprehensive Plan rather than the Public Facilities Goal of the Southwest Coastal Planning Area.

location, type and density."

Petitioner argues that the Housing Amendments do not provide adequate numbers of housing units at price ranges and rent levels commensurate with financial capabilities of the households in the region. According to petitioner, the decision purports to facilitate "housing construction at all price points" rather than addressing the financial capabilities of households in the region. The findings state:

> "The intent of the proposed LAWDUC amendments is to increase the variety of housing product types allowed within unincorporated Clatsop County in order to encourage housing construction at all price points." Record 329.

Petitioner focuses on the first part of the Housing Goal to the exclusion of the second part. As the county explains, it is not required to seek to achieve all parts of all goals with each legislative amendment. The county argues that it is clear that the Housing Amendments are primarily aimed at achieving the latter component of the goal. The Housing Amendments allow for additional, higher density housing types such as duplexes, triplexes, and quadplexes. We agree with the county that Housing Amendments are consistent with the goal because they allow for flexibility in housing location, type, and density.

Petitioner also argues that the findings are inconsistent because they include two different characterizations of the results of the same 2019 housing study – one states that there is a sufficient supply of land and housing and the other states that there is a surplus. Initially, we agree with the county that there is

nothing inconsistent about having a surplus and a sufficient supply. If there is a surplus supply of something it follows that there is a sufficient supply as well.

Petitioner also cites findings that state that there is a severe housing crisis to show that the findings are inconsistent. As the county explains, however, the quantity of housing is not the problem being addressed by the Housing Amendments, but rather the type of housing. The findings state:

> "[W]hile there was technically a sufficient supply of land and housing units for current and future needs, focus needed to be applied to providing the 'right type' of housing products affordable to homebuyers and more multi-family housing." Record 2.

> "[W]hile the County has a surplus of potentially buildable lands and a surplus of housing units, certain types of housing and housing products at specific price-points are either missing from the county's housing inventory, or are not provided in sufficient quantities." Record 1476.

We agree with the county that the record is sufficient to demonstrate that the Housing Amendments comply with the Comprehensive Plan Housing Goal, because they allow for flexibility in housing location, type, and density.

C. Comprehensive Plan Urbanization and Development Policies

Petitioner argues that the Housing Amendments do not comply with three of the Urbanization and Development Policies under the Comprehensive Plan Housing Goal. In particular, petitioner argues the Housing Amendments do not comply with:

> "Policy E: The County shall prioritize development of land with less resource value.

> "Policy F: Community plans shall provide for orderly growth which reduces the cost of essential services while preserving the basic elements of the environment.
>
> "Policy M: Housing shall be developed where services are readily available. Subdivision of land and planned development shall be allowed only where septic tank, sewer and water capacity is sufficient to meet its needs."

Petitioner's argument is not well developed. Petitioner argues that opponents are "highly concerned with the effect of increased density on stormwater drainage and flooding." Petition for Review 33. Petitioner does not explain what the cited policies have to do with stormwater drainage and flooding, and we do not see that they do. Petitioner also argues that the findings are inadequate. The county findings collectively respond to all of the Urbanization and Development Policies:

> "The majority of the code changes are proposed on lands that are within the County's rural communities of Arch Cape, Miles Crossing/Jeffers Garden, Knappa-Svensen and Westport. Rural communities are areas that are often served by community water and sewer and are designated as areas suitable for increased density. These rural communities are designated Development in the comprehensive plan and are suitable for increased density. OAR 660-022-0030([2]) allows county land sue regulations to authorize any residential use and density in unincorporated communities.
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> "The proposed amendments would allow additional types of housing products within the rural communities to provide a wider variety of options for housing development. With specific regard to higher density zones, the amendments would simplify the approval process for multi-unit dwellings and would increase the number of housing options by adding attached dwellings, duplex, triplex, quadplex, cottage cluster development and accessory dwelling units to those zones.

> "By focusing the proposed amendments on established rural communities, a transitional space between higher-density incorporated communities and lower-density rural residential lands will continue to be maintained.
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> "* * * It should be noted that these amendments would only expand the list of uses permitted within specific zoning districts. As actual development is proposed, the sewer, water and fire district serving the property is required to sign off on the permit to verify that they have adequate capacity to service the development." Record 15.

Policy E provides that the county "shall prioritize development of land with less resource value." The findings explain that the majority of the code changes are proposed for land within rural communities. Therefore, the Housing Amendments are focused on development on lands already slated for development rather than resource lands. Lands already slated for development have less resource value than resource lands.

Policy F provides that community plans "shall provide for orderly growth * * *." The findings explain that by focusing on established rural communities, a transitional space between higher-density incorporated communities and lower-density rural residential lands will be maintained. The Housing Amendments reduce lot sizes in rural communities where orderly growth is provided for by the existing development standards.

Policy M provides that "[h]ousing shall be developed where services are readily available" and subdivision and planned development "shall be allowed only where septic tank, sewer and water capacity is sufficient to meet its needs." The findings explain that the majority of the code amendments are proposed in

lands in rural communities which often have community water and sewer. The findings further explain that any actual development would require complying with development standards that require adequate capacity for water and sewer. The Housing Amendments provide for development only where services are adequate and available.

The county's findings regarding the Urbanization and Development Policies are adequate and supported by substantial evidence.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioner argues that the Housing Amendments misconstrue and are inconsistent with state law because they designate certain development actions as subject to Type I procedures that are processed without notice or opportunity for a public hearing. LAWDUC 2.1010(1) describes the type of uses subject to the Type I process:

> "Type I development actions involve permitted uses or developments governed by clear and objective review criteria. Type I actions do not encompass discretionary land use decisions. * * *."

The Housing Amendments include a number of dwelling types that will be subject to the Type I process, such as: (1) Dwelling, attached; (2) Dwelling, detached; (3) Dwelling, duplex; (4) Dwelling, Health Hardship; and (5) Accessory Uses. According to petitioner, those uses are not governed by clear and objective criteria. The parties engage in an extended discussion on whether the definitions of the specified development actions are clear and objective.

Whether the definitions of certain development actions might theoretically not be clear and objective under certain circumstances is a red herring. Petitioner argues that the Housing Amendments misconstrue and are inconsistent with state law because certain Type I procedures could be theoretically applied in circumstances where the review criteria are not clear and objective. The problem with petitioner's argument is that it does not identify any state law that the Housing Amendments allegedly misconstrue or are inconsistent with. The only statute cited by petitioner is ORS 197.015(10)(b)(A), which provides:

> "(10) 'Land Use Decision':
>
> "* * * * *
>
> "(b) Does not include a decision of a local government:
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> "(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment[.]"[3]

ORS 197.015(10) is merely the definition of "land use decision." The definition of land use decision is important because, among other things, LUBA's jurisdiction is generally limited to land use decisions and limited land use decisions. ORS 197.825(1). Petitioner does not attempt to explain how, even if the Housing Amendments do allow some applications that could involve non-

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[3] Although petitioner does not cite it, ORS 197.015(10)(b)(B) excludes a local government decision that "approves or denies a building permit issued under clear or objective land use standards" from the definition of "land use decision."

clear and objective standards under the Type I process, that violates ORS 197.015(10)(b)(A) – and we do not see that it could. ORS 197.015(10)(b) merely defines certain local government decisions that are not subject to our jurisdiction.

Petitioner appears to be concerned that decisions that are land use decisions subject to LUBA's jurisdiction could escape review by being processed as Type I actions. It is well established, however, that local governments may make decisions that were thought to be made without discretion or under clear and objective standards but were not. The result of that circumstance is not that the local government violated ORS 197.015(10)(b), but rather that LUBA has jurisdiction to review the decision because it does not fall under the exclusion to "land use decision." *See Tirumali v. City of Portland*, 169 Or App 241, 7 P3d 761 (2000), *rev den*, 331 Or 674 (2001); *Tirumali v. City of Portland*, 41 Or LUBA 231 (2002) (so explaining).

While the parties dispute whether the definitions of certain development actions are governed by clear and objective or discretionary standards, we are under no obligation to render an essentially advisory opinion on what future actions might or might not be subject to our jurisdiction. Petitioner's assignment of error alleges that the county's decision misconstrues or violates state law, but does not identify any state law that would be violated even if petitioner's arguments regarding clear and objective standards are correct. Therefore, petitioner's arguments provide no basis for reversal or remand.

The third assignment of error is denied.

The county's decision is remanded.