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

CENTRAL OREGON LANDWATCH,
Petitioner,

vs.

JEFFERSON COUNTY,
Respondent.

LUBA No. 2025-023

FINAL OPINION
AND ORDER

Appeal from Jefferson County.

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

David C. Allen filed the respondent's brief and argued on behalf of respondent.

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

REMANDED 10/31/2025

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

Opinion by Zamudio.

NATURE OF THE DECISION

Petitioner appeals Jefferson County Ordinance No. 0-031-25 in which the board of commissioners approved a comprehensive plan map amendment and zone change from Range Land (RL) to Rural Residential 2 acre (RR2) and adopted exceptions to Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization).

MOTION TO TAKE EVIDENCE OUTSIDE OF THE RECORD

The challenged decision is the county's decision after remand. In the first assignment of error, petitioner argues that the county committed prejudicial procedural error when it limited the scope of its remand proceedings and rejected the entirety of petitioner's written testimony dated January 15, 2025, and redacted portions of petitioner's written testimony dated November 26, 2024. Petitioner requests that we accept those documents as extra-record evidence to establish a procedural irregularity.

OAR 661-010-0045 provides, in part:

> "(1) Grounds for Motion to Take Evidence Not in the Record: The Board may, upon written motion, take evidence not in the record in the case of *disputed factual allegations in the parties' briefs* concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or 227.178, or *other procedural irregularities* ***not shown in the record*** *and which, if proved, would warrant reversal or remand of the decision.* The Board may also upon motion or at its discretion take evidence to resolve disputes regarding the content of the record, requests for stays, attorney fees, or actual damages

under ORS 197.845.

> "(2) Motions to Take Evidence:
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> "(a) A motion to take evidence shall contain a statement explaining with particularity what facts the moving party seeks to establish, how those facts pertain to the grounds to take evidence specified in section (1) of this rule, and how those facts will affect the outcome of the review proceeding. The motion to take evidence shall be filed as a separate document and shall not be contained within a brief or other filing." (Emphases and boldface added.)

Petitioner explains that it seeks to establish that it raised six issues during the remand proceeding, and the county improperly rejected three of the issues—namely, petitioner's arguments concerning an irrevocably committed exception to Goal 3, a reasons exception to Goal 14, and an irrevocably committed exception to Goal 14.

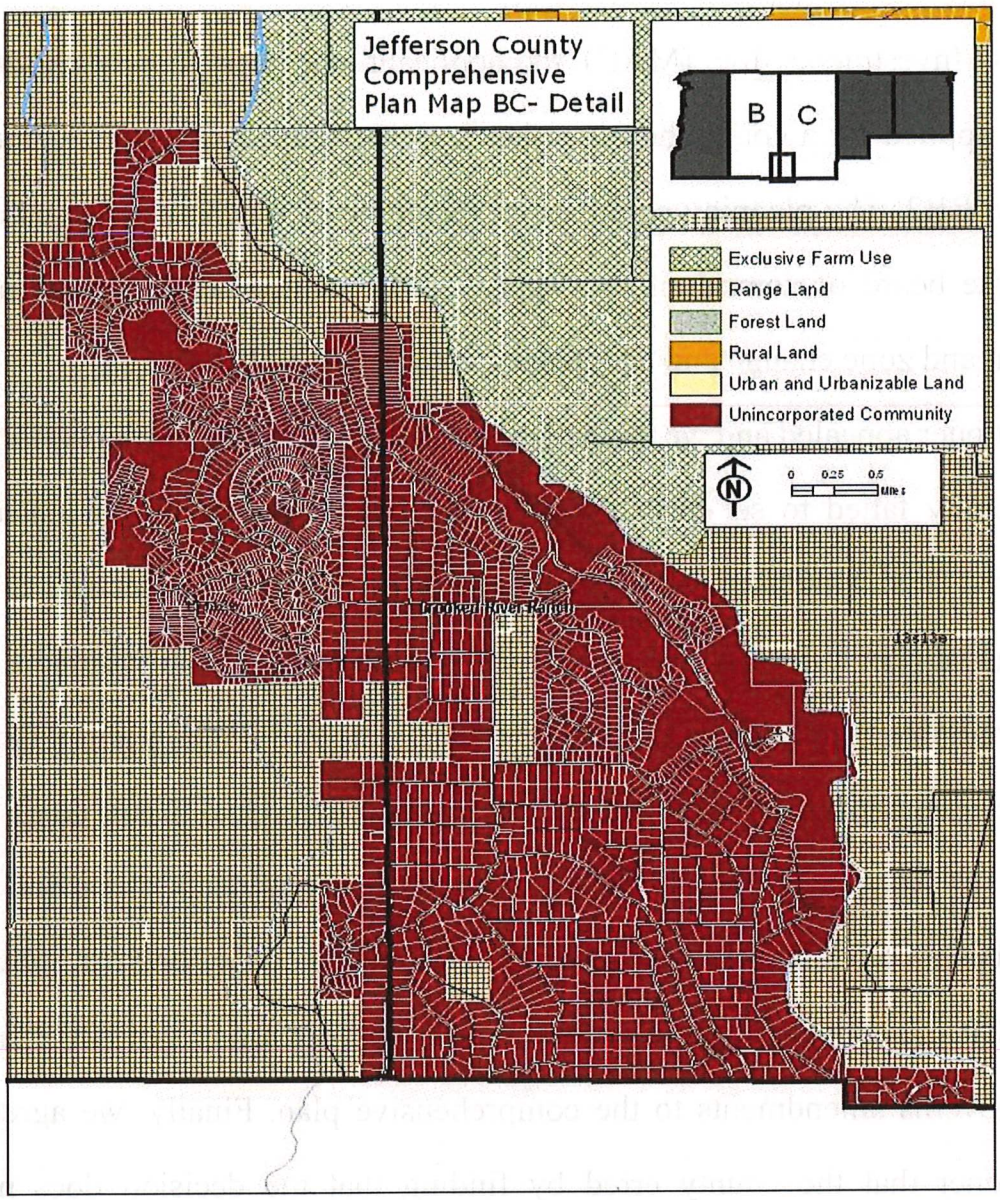
The county responds that we should deny the motion because it does not meet the requirements for taking evidence outside the record, as the parties agree that petitioner submitted the omitted materials and the board of commissioners rejected them. We agree with the county that there are no disputed facts on these points and that the alleged procedural error is already shown in the record. The county does not dispute petitioner's characterization of the omitted materials. Accordingly, there is no basis for us to accept the extra-record evidence.

Petitioner's motion to take evidence is denied.

BACKGROUND

The challenged decision is the county's decision on remand from *Central Oregon Landwatch v. Jefferson County*, LUBA No 2023-026 (July 25, 2024) (*MAC III*). We reiterate the facts from our original opinion. *Central Oregon Landwatch v. Jefferson County*, LUBA No 2023-026 (Sept 8, 2023) (*MAC I*), *rev'd and rem'd*, *Central Oregon Landwatch v. Jefferson County*, 332 Or App 302, 550 P3d 424 (2024) (*MAC II*).

The subject property is 142.5 acres and is undeveloped. The property is surrounded by the Crooked River Ranch, a rural unincorporated community. The subject property is the rectangle of Range Land in the middle of the Unincorporated Community shown in the map below.



Jefferson County Comprehensive Plan (JCCP) 86.

The western property line is adjacent to SW Quail Road. The northern property line is adjacent to SW Shad Road. The southern property line is adjacent to SW Mustang Road. The eastern boundary is adjacent to parcels with dwellings. We describe the parcelization, development, and use of the adjacent land in greater detail below.

MAC Investments, Inc. (MAC), the applicant and intervenor-respondent in *MAC I*, applied for a comprehensive plan map amendment and zone change from RL to RR2. The planning commission recommended denial. After public hearings, the board of commissioners approved the comprehensive plan map amendment and zone change and adopted exceptions to Goals 3 and 14.

Petitioner appealed and we remanded in *MAC I*. We agreed with petitioner that the county failed to set forth findings of fact and statements of reasons justifying the Goal 3 and Goal 14 exceptions and the county failed to amend its comprehensive plan to include the exceptions and the findings and statement of reasons supporting the exceptions. We remanded for further findings and did not reach or resolve petitioner's substantive challenges to the Goal 3 and Goal 14 exceptions or MAC's and the county's (together, respondents') responsive waiver defenses. We also agreed with petitioner that the county had not shown that the JCCP amendment is "necessary" or "required" for purposes of JCCP Part 5, which governs amendments to the comprehensive plan. Finally, we agreed with petitioner that the county erred by finding that the decision does not authorize the expansion of the Crooked River Ranch rural unincorporated community, and by not addressing the criteria for such an expansion.

Respondents sought judicial review. The Court of Appeals reversed and remanded the portion of our decision concluding that the approval would result in an expansion of the Crooked River Ranch rural unincorporated community. The court otherwise affirmed our decision. *MAC II*, 332 Or App 302. We

remanded the case to the county for further proceedings consistent with the court's decision in *MAC II* and the court-affirmed dispositions in *MAC I. MAC III*, LUBA No 2023-026 (July 25, 2024).

MAC initiated remand proceedings with the county. The county limited the remand proceeding to revising its findings of fact and statement of reasons justifying the Goal 3 and Goal 14 exceptions, adopting new findings regarding JCCP Part 5, and amending the JCCP to include the exceptions. Remand Record 441 (public notice for remand hearing).[1] Petitioner argued that the county was required to reopen the record for additional argument and evidence on the Goal 3 and Goal 14 exceptions. The board of commissioners rejected that argument and petitioner's attempt to submit testimony on the issues that the board of commissioners determined were outside the limited scope of the remand. Remand Record 17-21. Ultimately, the board of commissioners again approved a comprehensive plan map amendment and zone change from RL to RR2 and adopted exceptions to Goals 3 and 14. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the county committed procedural error when it limited the scope of the remand proceedings and rejected portions of petitioner's

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[1] In this opinion we refer to the record of the remand proceeding in LUBA No. 2025-023 as the Remand Record and all citations to the Remand Record are in reference to the Amended Record. We refer to the record of the initial proceeding as the 2023-026 Record.

written testimony. We will remand a decision that is flawed by procedural errors that prejudice the substantial rights of the petitioner. ORS 197.835(9)(a)(B); OAR 661-010-0071(2)(c).

Jefferson County Zoning Ordinance (JCZO) 908.2 Scope of Remand Hearing provides that "[r]emand proceedings may be limited to the assignments of error that resulted in the remand." Petitioner argued during the remand proceeding that the county should broaden the scope of the remand so that the requested Goal 3 and Goal 14 exceptions could be substantively relitigated. Petitioner argued that the Court of Appeals' decision in *MAC II* remanded the entire case to the county to supply adequate findings and statements of reasons. Remand Record 17-18. Further, petitioner argued that because we never reached petitioner's challenges to the substance of the Goal 3 and Goal 14 exceptions, the substance of those exceptions were live issues on remand, including the requirements of the applicable exception criteria and the evidentiary support for the exceptions.

The county rejected that argument and limited the remand proceeding to adopting and adequately incorporating findings of fact and a statement of reasons justifying its decision to take exceptions to Goal 3 and Goal 14, adopting new findings regarding JCCP Part 5, and amending the JCCP to include the exceptions. The county explains that

> "the vast majority of the findings contained in this decision on remand are not newly adopted. With the exception of the additional findings to address [petitioner's] new procedural objections during

> the remand proceedings and the scope of the remand itself, and the expanded findings to address the JCCP Part 5, the remaining findings in this remand decision are word-for-word the same as the findings originally adopted by the County." Remand Record 18.

The county concluded that petitioner misconstrued the court's decision and directive in *MAC II*. The county observed that the court disagreed with respondents' argument that we had erred in *MAC I* by not dismissing petitioner's Goal 14 arguments as unpreserved and affirming the irrevocably committed Goal 14 exception. The court reasoned that "[h]aving adequate findings and statements of reasons, including for any Goal 14 exception, will facilitate evaluation of the waiver argument * * * and will also facilitate review of the county's decision to approve a Goal 14 exception." *MAC II*, 332 Or App at 310. The county concluded that

> "[i]f the Court's intent was to require the County to substantively relitigate the Goal 3 and Goal 14 exceptions on remand, then its reference to the preservation arguments would be meaningless because reopening these issues on remand would provide [petitioner] a renewed opportunity to raise any new arguments regarding the Goal 14 exception and therefore cure any preservation error. Stated differently, if the Court intended for the County to set aside its decision on the Goat 14 exception entirely, then there would be no waiver argument for LUBA to evaluate following these remand proceedings.
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> "Furthermore, [petitioner's] interpretation of the Court's dicta, taken to its logical end, would require the County to not only accept new evidence and draft new findings on the goal exceptions, it would also require the County to revisit every issue that otherwise was conclusively decided in this case. Stated differently, [petitioner's] read of the Court's decision would lead to remand proceedings that are not limited in scope to any degree, therefore

essentially requiring a 'do-over' of the original proceedings just because the County otherwise incorporated too many findings into its original decision." Remand Record 19.

During the remand proceeding, the county accepted from MAC what petitioner characterizes as "a complete rewrite of Goal 3 and Goal 14 exception findings." Petition for Review 7 (citing Remand Record 454-643). Petitioner argues that MAC's submission included "new evidence" that petitioner was entitled to respond to under ORS 197.797. Petitioner asserts substantial rights to a participatory hearings process under ORS 197.797(1) and (7), which provide:

> "(1) 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.
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> "* * * * *
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> "(7) When a local governing body, planning commission, hearings body or hearings officer *reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.*"[2] (Emphasis

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[2] ORS 197.797(9) provides that, for purposes of ORS 197.797(7),

> "(a) 'Argument' means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. 'Argument' does not include facts.

added).

We have explained that "basic notions of procedural fairness * * * are potentially violated if [the local government decision-maker] accepts evidence in a quasi-judicial land use proceeding without providing interested parties a reasonable opportunity to respond to that new evidence." *Lundeen v. City of Waldport*, LUBA No 2020-071 (May 5, 2021) (slip op at 15) (citing *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973)).

The county responds that that the remand procedures are consistent with JCZO 908.2, that it has considerable discretion to select its remand procedures, and that it "is not required to repeat on remand the procedures applicable to the initial proceeding." Respondent's Brief 41 (internal quotation marks omitted, quoting *Siporen v. City of Medford*, 55 Or LUBA 29, 48 (2007); *Fraley v. Deschutes County*, 32 Or LUBA 27, 36, *aff'd*, 145 Or App 484, 930 P2d 902 (1996), *rev den*, 325 Or 45 (1997)). In *Siporen*, we explained:

> "In deciding what issues a local government wishes to consider following a LUBA remand, a local government is certainly entitled to limit the issues it will consider on remand to those issues that it *must* address to adequately respond to the LUBA remand, although the local government is also free to expand the issues it will consider on remand. A local government also enjoys considerable discretion in selecting the procedures it will follow on remand.

> "(b) 'Evidence' means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision."

"'As a general matter, the scope of proceedings on remand from LUBA is governed by the terms of the remand and any applicable local requirements. *Fraley*[, 32 Or LUBA at 36] (absent instructions from LUBA or local provisions to the contrary, a local government is not required to repeat on remand the procedures applicable to the initial proceeding). A local government is entitled to limit its consideration on remand to correcting the deficiencies that were the basis for LUBA's remand. *Bartels v. City of Portland*, 23 Or LUBA 182, 185 (1992); *Von Lubken v. Hood River County*, 19 Or LUBA 404, 419, *rev'd on other grounds*, 104 Or App 683 (1990). Conversely, while not required to do so, a city may expand the scope of its remand hearing beyond the scope of the remand. *Schatz v. City of Jacksonville*, 113 Or App 675, 680, 835 P2d 923 (1992).' *CCCOG v. Columbia County*, 44 Or LUBA 438, 444 (2003).

"Although a local government is entitled to limit the issues it will consider on remand to those that must be addressed to respond to the remand, there are a variety of factors that may complicate a local government's job in distinguishing between issues that must be considered on remand and issues that are resolved or have been waived by virtue of prior local or appellate proceedings and no longer need be addressed in the remand proceedings. *The procedures the local government elects to follow on remand may broaden the issues that must be addressed on remand. For example, if the local government holds additional evidentiary hearings, or even holds additional hearings to allow additional argument only, those hearings may have the effect of expanding the issues that must be addressed on remand. ORS 197.7[97](7).* Additionally, allowing an applicant to modify the proposal that led to the remand in the first place may raise issues concerning approval criteria that might otherwise be resolved or waived issues if the application had not been modified. But with the caveat that a local government may encounter difficulties in determining what issues it must address to adequately respond to a remand, *a local government clearly has authority to limit its proceedings on remand to addressing those issues and may select the procedures it believes are most appropriate, provided those procedures do not improperly exclude*

> *any parties who are entitled to participate in those remand proceedings*." *Siporen*, 55 Or LUBA at 48 (first emphasis in original; subsequent emphases added; footnote omitted).

In *Citizens for Resp. Growth v. City of Seaside*, we explained:

> "In *Beck v. City of Tillamook*, 313 Or 148, 151, 831 P2d 674 (1992), the court explained that successive LUBA appeals are 'two phases of the same case' where a local government decision is appealed to LUBA, LUBA remands the decision, the local government conducts proceedings in response to LUBA's remand and adopts a new decision, and the new decision is appealed to LUBA. The court stated that when a local government reopens its record to admit new evidence or testimony, after remand of its decision by LUBA, it does so pursuant to ORS 197.7[97](7). Further, the court's discussion states that under ORS 197.7[97](7), *the issues to be considered in a local remand proceeding include new, unresolved issues relating to the new evidence or testimony, but not issues that LUBA resolved in its decision remanding the first local government decision or any issue that could have been, but was not, raised in the first LUBA appeal.* In its discussion in *Beck*, it is clear the court views local remand proceedings as part of a single, continuous process." 26 Or LUBA 458, 461-62 (1994) (footnote omitted; emphasis added).

As we understand it, petitioner's argument is twofold. *First*, petitioner argues that the Court of Appeals decision in *MAC II* and our decisions in *MAC I* and *MAC III* required the county to open the record on remand to allow petitioner to submit evidence and argument concerning the Goal 3 and Goal 14 exceptions. *Second*, petitioner asserts that the county expanded the issues on remand by

accepting and adopting MAC's new, additional findings of fact supporting those exceptions.[3]

As to the first argument, we agree with the county that *MAC I*, *MAC II*, and *MAC III* all identify the deficit in the county's initial approval decision as inadequate findings and statement of reasons supporting the Goal 3 and Goal 14 exceptions. Nothing in those decisions required the county to conduct additional evidentiary hearings or to otherwise reopen the record on remand to allow interested parties, including petitioner, to submit new evidence and argument concerning the Goal 3 and Goal 14 exceptions. The county could have elected to reopen the record on remand to accept new evidence and argument on those issues, but it did not.

With respect to the second argument, the county responds, and we agree, that ORS 197.797(7) does not require the county to provide petitioner additional opportunities to respond to evidence that was already in the record. The local proceeding prior to *MAC I* provided petitioner opportunities to present evidence and argument in response to the evidence and argument in the record regarding the Goal 3 and Goal 14 exceptions. *See Manning v. Marion County*, 45 Or LUBA 1, 14 (2003) (finding no legal requirement that the county provide an additional

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[3] While petitioner does not cite ORS 197.797(9), set out in n 2, we understand petitioner to contend that petitioner was entitled to respond to the draft findings because the draft findings constitute evidence, that is, "facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision." *Id.*

evidentiary hearing on remand or that the county base its decision on remand on evidence updated on remand). Importantly, on appeal, petitioner does not point to anything in the draft findings at Remand Record 454 to 643 that is a *new* argument, fact, document, data or other information offered to demonstrate compliance with the exception standards that was not already included in the record prior to remand.

Given the nature of the assignment of error that we sustained in *MAC I*—that the Goal 3 and Goal 14 exception *findings* were inadequate for review—we are not persuaded that ORS 197.797(7) required the county to reopen the record on remand so that petitioner could submit new evidence and argument regarding the Goal 3 and Goal 14 exceptions generally, or specifically in response to MAC's newly submitted draft findings. We agree with the county that interpretation of ORS 197.797(7) would be inconsistent with *Beck* because it would allow petitioner a fresh opportunity to raise issues that petitioner could have raised in the prior local proceeding. *See Beck*, 313 Or at 153-54; *McKay Creek Valley v. Washington County*, 122 Or App 59, 64, 857 P2d 167 (1993) ("The overriding principle of *Beck* is that issues in land use cases must be brought to finality at the earliest possible opportunity."); *Devin Oil Co. v. Morrow County*, 252 Or App 101, 113, 286 P3d 925 (2012) (a party to a land use decision waives an issue by failing to raise it at the earliest opportunity). Petitioner has not

established that it was entitled to additional, expanded process during remand under ORS 197.797(1) and (7).[4]

The first assignment of error is denied.

SIXTH ASSIGNMENT OF ERROR

Petitioner argues that the county's failure to provide adequate notice that the application did *not* propose an expansion of an unincorporated community prejudiced petitioner's substantial rights.

In *MAC I*, in the third assignment of error, petitioner argued that the county erred by finding that the decision does not authorize the expansion of an existing unincorporated community and by not addressing the criteria for such an expansion. OAR 660-004-0020(4); OAR 660-004-0022(4). We agreed. On judicial review, the Court of Appeals reversed and remanded that portion of our decision. In *Mac III*, we denied the third assignment of error.

In this appeal, the county points out that petitioner initially raised the same inadequate notice issue as an alternative argument in its *MAC I* third assignment of error and that, in *MAC III*, we effectively rejected the alternative procedural

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[4] The county emphasizes that it rejected the entirety of petitioner's written testimony dated January 15, 2025, because petitioner failed to submit that testimony by the January 8, 2025, deadline. Accordingly, the county argues, and we agree, that rejection was due to timing in addition to substance. Thus, even if the substance of the January 15, 2025 testimony was not at issue, petitioner has not demonstrated that the county erred in rejecting that letter as untimely submitted.

argument by denying the entire third assignment of error. We agree with the county that this issue has been dispositively resolved and may not be raised again in this proceeding. Petitioners are foreclosed from raising issues at LUBA that were "conclusively decided against them by the first final and reviewable LUBA decision." *Beck*, 313 Or at 150.

The sixth assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the decision violates OAR 660-004-0015(1) and our order in *MAC I* by failing to adopt its goal exceptions decision into the county's comprehensive plan. "A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of [ORS 197.732(2)] have or have not been met." ORS 197.732(4). A local government must

> "(1) clearly identify in its decision what type or types of exceptions it wishes to adopt; (2) adopt findings of relevant fact, based on the evidence in the record, which support an exception; (3) adopt a statement of reasons explaining why it concludes the applicable exception criteria are or are not met; and (4) if it concludes the exception criteria are met, amend its comprehensive plan to include the exception and the findings and reasons which support the exception." *DLCD v. Douglas County*, 17 Or LUBA 466, 472 (1989).

See also OAR 660-004-0015(1) ("A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have

been met."); OAR 660-004-0020(1) ("If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.").

The county's initial exception approval appealed in *MAC I* included a JCCP amendment that referenced the ordinance number on the JCCP face page. We reasoned that "a simple reference to an ordinance is insufficient to satisfy the OAR 661-004-0015(1) requirement that 'findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met' be included in the comprehensive plan." *MAC I*, LUBA No 2023-026 (slip op at 18). We instructed that,

> "[i]f, on remand, the county adopts findings of fact and statements of reasons justifying the exceptions, then findings of fact and statements of reasons justifying the exceptions must be included in the JCCP in a manner that a reasonable person reviewing the JCCP could determine 'with reasonable certainty exactly which goal(s) or goal requirements no longer apply to the subject property' and the reasons for and scope of the exceptions." *Id.* at 18-19 (quoting *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171, 212, *aff'd*, 267 Or App 637, 342 P3d 181 (2014)).

Petitioner argues that the county on remand again violated OAR 660-004-0015(1) and our order in *MAC I* by failing to adopt its goal exception decision into the comprehensive plan and instead simply referencing the ordinance number in an appendix at the end of the comprehensive plan. The county

responds, and we agree, that petitioner misrepresents the JCCP amendments adopted on remand. The county described the approved goal exceptions in the JCCP beyond simply including an appendix. The county added two paragraphs to the JCCP to address exceptions for Goal 3 and Goal 14.

The decision adds the following paragraph to the end of JCCP Part 2, Goal 3: Agricultural Lands:

> "Pursuant to Ordinance [No. 0-031-25] the County granted a Goal 3 Exception for a 142.5 acre parcel, Taxlot 1312230000100, in the middle of Crooked River Ranch but formally not part of the Ranch. Pursuant to that Goal 3 exception, the County re-designated the parcel to Rural Land and re-zoned the parcel to Rural Residential. 2-acre minimum (RR-2.) Ordinance [No. 0-031-25] approving the Goal 3 Exception, the re-designation, and the re-zoning is included in its entirety in Appendix II-B." Remand Record 113.

The decision adds the following paragraph to the end of JCCP Part 2, Goal 14: Urbanization:

> "Pursuant to Ordinance [No. 0-031-25] the County granted Goal 14 Exceptions for a 142.5 acre parcel, Taxlot 1312230000100, in the middle of Crooked River Ranch but formally not part of the Ranch. Pursuant to those Goal 14 exceptions, the County re-designated the parcel to Rural Land and re-zoned the parcel to Rural Residential. 2-acre minimum (RR-2.) Ordinance [No. 0-031-25] approving the Goal 14 Exceptions, the re-designation. and the re-zoning is included in its entirety in Appendix II-B." Remand Record 172.

We agree with the county that a reasonable person reviewing the JCCP could determine with reasonable certainty that Goals 3 and 14 no longer apply to the subject property and the reasons for and scope of the exceptions.

The second assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioner argues that the decision misconstrues and misapplies the applicable law in finding that the criteria for the reasons and irrevocably committed exceptions to Goal 14 are satisfied and that the county's findings are inadequate and unsupported by substantial evidence.

The county responds, initially, that petitioner failed to raise any issue opposing the irrevocably committed exception to Goal 14 during the initial local proceeding and that issue is thereby waived. Further, the county argues, because there is no viable challenge to the irrevocably committed exception to Goal 14, petitioner's challenges to the reasons exception to Goal 14 provide no basis for remand. For the reasons explained below, we agree with the county.

Goal 14 prohibits the establishment of urban uses on rural lands. The amendments change the subject property to RR2, rural residential two-acre minimum designation and zoning, which is a nominally "rural" zone. Nevertheless, Goal 14 applies because the RR2 zone permits two-acre lots. OAR 660-004-0040(8)(i) requires that new rural residential areas have a ten-acre minimum lot size, but allows rural residential two-acre minimum lot size, if the local government takes an exception to Goal 14.[5] Similarly, for comprehensive

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[5] OAR 660-004-0040(8)(i) provides:

> "(i) For rural residential areas designated after October 4, 2000, the affected county shall either:

plan map amendments involving a Goal 3 exception to rezone the property from resource zoning to rural residential zoning, the county requires a minimum lot size of ten acres "unless the application meets the requirements for an exception to statewide planning Goal 14 in accordance with OAR 660-004-0018." JCZO 803.2(H).

MAC submitted its initial application on May 31, 2022. 2023-026 Record 2110. In its application, MAC attempted to demonstrate that it satisfied the requirements for a reasons exception to Goal 14 under the general exception criteria at OAR 660-004-0020 and OAR 660-004-0022. 2023-026 Record 2157-71. MAC did not initially apply for an irrevocably committed exception to Goal 14 under the criteria at OAR 660-014-0030.[6]

"(A) Require that any new lot or parcel have an area of at least ten acres, or

"(B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the applicable requirements for an exception to Goal 14 in OAR chapter 660, division 14. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, 'Planning and Zoning for Exception Areas.'"

[6] OAR 660-014-0030 provides:

"(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably

committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

"(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

"(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

"(a) Size and extent of commercial and industrial uses;

"(b) Location, number and density of residential dwellings;

"(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and

"(d) Parcel sizes and ownership patterns.

"(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

"(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities."

On October 20, 2022, the Department of Land Conservation and Development (DLCD) submitted a letter to the county advising "that the provisions of OAR 660-014-0030 be considered." 2023-026 Record 1381-82.[7] That rule and criteria were discussed in subsequent public hearings and in numerous record submittals. *See* 2023-026 Record 1345 (slide from MAC's October 27, 2022 planning commission hearing addressing Goal 14 irrevocably committed exception criteria at OAR 660-014-0030), 1266-70 (MAC's November 3, 2022, submission addressing, in part, the issues raised by DLCD's letter), 1000-02 (MAC's November 15, 2022, submission discussing, in part, Goal 14), 984 (November 17, 2022, planning commission meeting minutes mentioning the DLCD letter), 279 (December 6, 2022, DLCD staff email confirming that MAC's November 3, 2022, submission addresses Goal 14 and OAR 660-014-0030), 120-23 (MAC's proposed findings for the board of commissioners' decision), 112-13 (MAC's December 13, 2022, submission again addressing, in part, Goal 14). The county ultimately adopted a Goal 14

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[7] The DLCD letter stated, in part:

> "In order to approve a Goal 14 exception, the county must find that the tests at either OAR 660-014-0030 or OAR 660-014-0040 have been met.
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> "Our experience has shown that the provisions of OAR [660]-014-0040 are particularly difficult to satisfy in these types of instances. We advise that the provisions of OAR 660-014-0030 be considered." 2023-026 Record 1382 (underscoring omitted).

reasons exception under the reasons exception criteria at OAR 660-004-0020, OAR 660-004-0022(1), and OAR 660-014-0040, *and* adopted an irrevocably committed Goal 14 exception under the criteria at OAR 660-014-0030.

In *MAC I*, we rejected petitioner's argument that the county had failed in its original decision to identify the type of exceptions that the county adopted. *MAC I*, LUBA No 2023-026 (slip op at 8-9). We concluded that the county had adopted an irrevocably committed exception to Goal 3, a reasons exception to Goal 14, and an alternative irrevocably committed exception to Goal 14. *Id.* (citing 2023-026 Record 12, 15-16). However, we agreed with petitioner that the county had failed to set forth findings of fact and a statement of reasons justifying the exceptions because the original decision incorporated by reference over 687 pages of numerous different documents containing various findings of fact in staff reports and MAC's submittals. *Id.* at slip op 9-16. We agreed with petitioner that the county's findings of facts and statements of reason were inadequate for review because a reasonable person could not discern what parts of those documents constituted the county's findings that are responsive to the applicable exception criteria or identify and reasonably understand the facts and reasons supporting the exceptions. We remanded on that basis.

In its fifth assignment of error in its petition for review in *MAC I*, petitioner argued, in the alternative to the overarching findings challenge, that the county's decision approving the Goal 14 exceptions misconstrued applicable law, including OAR 660-014-0030. We did not reach that issue because, to remedy

the findings error, the county would need to adopt a new or significantly revised decision on remand regarding the Goal 14 exceptions. *MAC I*, LUBA No 2023-026 (slip op at 23).

In response to the fifth assignment of error in *MAC I*, respondents responded that petitioner failed to raise any issue during the initial local proceedings challenging the irrevocably committed Goal 14 exception pursuant to OAR 660-014-0030 and, thus, had waived any issue under those criteria. We did not address that waiver challenge in *MAC I*.

On judicial review, respondents argued that we had erred by not resolving whether petitioner had waived its challenges to the irrevocably committed exception to Goal 14. *MAC II*, 332 Or App at 307. Respondents argued to the court that we should have found petitioner's challenges waived and thus sustained the county's approval of a Goal 14 irrevocably committed exception. The court rejected that argument and reasoned:

> "[A]lthough the route [respondents] propose may well have been a permissible one for LUBA, we are not persuaded it was a required one. As LUBA concluded, the county's choice to incorporate by reference facts and analysis from an expansive record—rather than articulating findings and reasoning directly—made it so a reasonable person would have great difficulty ascertaining what, exactly, the county's findings and reasoning were. Although portions of the record incorporated by reference may have contained cogent factual findings and reasoning—such as the portion articulating the basis for the county's determination that an irrevocably committed exception was warranted—many other portions of the record that the county incorporated by reference do not contain cogent findings and analysis. Having adequate findings

> and statements of reasons, including for any Goal 14 exception, will facilitate evaluation of the waiver argument advanced by petitioner and the county, and will also facilitate review of the county's decision to approve a Goal 14 exception. Given the overarching inadequacy of the county's findings and statements of reasons, we conclude that LUBA did not err as a matter of substance or procedure when it remanded the entire case to the county to supply adequate findings and statements of reasons." *Id.* at 309-10.

That waiver issue is now ripe for review. For the reasons explained below, we conclude that petitioner did waive that issue.

To demonstrate satisfaction of OAR 660-014-0030, MAC submitted draft findings and a letter dated November 3, 2022. 2023-026 Record 1273-76, 1266. The county adopted those findings as its own and noted that no opponent challenged or addressed those findings. Remand Record 16; 2023-026 Record 15. On appeal, petitioner argues that MAC's submittals are insufficient to support a conclusion that "all rural uses are impracticable" on the subject property in order to satisfy OAR 660-014-0030. Petition for Review 38 (quoting *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 156, 173-74 (2016).

As relevant here, our review is limited to issues raised before the local hearings body, as provided by 197.797. ORS 197.835(3). ORS 197.797(1) requires that:

> "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."

The "raise it or waive it" principle does not limit the parties on appeal to the exact same arguments made below, but it does require that the issue be raised below with sufficient specificity so as to prevent "unfair surprise" on appeal. *Boldt v. Clackamas County*, 21 Or LUBA 40, 46, *aff'd*, 107 Or App 619, 813 P2d 1078 (1991); *Friends of Yamhill County v. Yamhill County*, LUBA No 2021-074, (Apr 8, 2022), *aff'd*, 321 Or App 505 (2022) (nonprecedential memorandum opinion), *rev den*, 370 Or 740 (2023) (slip op 6). A particular issue must be identified in a manner detailed enough to give the governing body and the parties fair notice and an adequate opportunity to respond. *Boldt v. Clackamas County*, 107 Or App 619, 623 (1991). In order to raise the issue of whether findings of compliance with an applicable approval criterion are adequate, the petitioner must demonstrate that issues regarding compliance with that criterion were raised below. *Lucier v. City of Medford*, 26 Or LUBA 213, 216 (1993). When attempting to differentiate between "issues" and "arguments," there is no "easy or universally applicable formula." *Reagan v. City of Oregon City*, 39 Or LUBA 672, 690 (2001).

Petitioner does not assert that preservation is not required for petitioner to raise the Goal 14 irrevocably committed exception issue raised in this appeal. *See* OAR 661-010-0030(4)(d) (requiring, in part, that "[w]here an assignment raises an issue that is not identified as preserved during the proceedings below, the petition shall state why preservation is not required"). In the petition for review, petitioner argues that petitioner raised the issue during the initial proceeding at

2023-026 Record 78 (petitioner's December 13, 2022, letter), 246-51 (petitioner's November 29, 2022, letter), 1843-46 (petitioner's August 11, 2022, letter) and also raised the issue in *MAC I*. Petition for Review 27. The county responds that, during the initial proceeding, petitioner challenged only the Goal 14 reasons exception. We have reviewed petitioner's cited letters at 2023-026 Record 78, 246 to 251, and 1843 to 1846. We agree with the county that petitioner did not raise any issue in those pages with respect to the Goal 14 irrevocably committed exception. Petitioner raised issues regarding the Goal 3 irrevocably committed exception and the Goal 14 reasons exception. Petitioner did not oppose a Goal 14 irrevocably committed exception, cite OAR 660-014-0030, or mention the operative terms of that rule or related case law.

Petitioner replies that its citation to OAR 660-004-0018 and argument that the proposal would not "maintain" the subject property as "rural land" were sufficient to raise the issue that the proposal does not meet the Goal 14 irrevocably committed exception criteria in OAR 660-014-0030 because MAC had not established that "all rural uses are impracticable."[8] Reply Brief 1-2. We

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[8] OAR 660-004-0018 provides, in part:

> "(2) For 'physically developed' and 'irrevocably committed' exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):

reject that argument. OAR 660-004-0018 sets out planning and zoning standards for exception areas. OAR 660-014-0030 sets out specific criteria for a county to conclude that rural land is irrevocably committed to urban levels of development. See n 6. Petitioner's reference to OAR 660-004-0018 was not sufficient to alert the county and MAC that petitioner disputed that the proposal satisfies the criteria in OAR 660-014-0030.

Petitioner next replies that DLCD raised the issue of consistency with OAR 660-014-0030 by advising MAC and the county to address the criteria in OAR 660-014-0030. We also reject that argument. DLCD raised the issue that the county should address the criteria in OAR 660-014-0030. MAC submitted evidence and argued that those criteria are satisfied. Neither DLCD nor any other

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> "(a) That are the same as the existing land uses on the exception site;
>
> "(b) That meet the following requirements:
>
> "(A) The rural uses, density, and public facilities and services will maintain the land as 'Rural Land' as defined by the goals, and are consistent with all other applicable goal requirements;
>
> "(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and
>
> "(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses[.]"

party, as far as we are informed, thereafter raised any issue regarding that evidence or the proposed findings, or raised any issues at all under OAR 660-014-0030. Under the standard articulated in *Boldt*, petitioner was required, at a minimum, to raise some issue under OAR 660-014-0030 with sufficient specificity that would permit the county and MAC an opportunity to respond to those issues during the local proceeding. 107 Or App at 623. Petitioner has not demonstrated that any party raised any cognizable issue regarding OAR 660-014-0030 during the initial proceeding.

In the alternative, petitioner argues that even if we conclude that the Goal 14 irrevocably committed exception issue was not raised, the issue is nevertheless subject to our review under ORS 197.835(4)(a) because the county failed to list the applicable criteria for that goal exception on the county hearing notices, as required by ORS 197.797(3)(b). Petition for Review 30-31. Petitioner points out that it raised that issue in *MAC I* and we did not reach it.[9]

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[9] In *MAC I*, we agreed with the county that petitioner waived the issue of noncompliance with ORS 197.732(5) and OAR 660-004-0030 requirement that "[e]ach notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner." *MAC I*, LUBA No 2023-026 (slip op at 19, 22). We rejected petitioner's ORS 197.835(4)(a) argument that the county hearing notices were deficient for not listing the specific exception rule criteria because petitioner did not explain why it could not have raised the issue of the county's deficient notices during the local proceeding.

ORS 197.797(3)(b) provides that notices of public hearings for quasi-judicial land use decisions must "[l]ist the applicable criteria from the ordinance and the plan that apply to the application at issue[.]" ORS 197.835(4) provides, in part:

> "A petitioner may raise new issues to [LUBA] regarding a quasi-judicial decision made under ORS 197.195 or 197.797 only if:
>
> "(a) The local government failed to list the applicable criteria for a decision under ORS 197.195(3)(c) or 197.797(3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, [LUBA] may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government[.]"

Although ORS 197.835(4)(a) allows a party to raise new issues if the notice of hearing failed to list as applicable criteria the criteria to which the issues relate, the right to raise new issues in ORS 197.835(4)(a) is a qualified right. We may refuse to consider an issue if we find that, notwithstanding a notice failure, "the issues could have been raised before the local government[.]" *Id.*; *see Roten v. City of Turner*, 79 Or LUBA 124, 128-29 (2019) (applying ORS 197.835(4)(a) and concluding that an issue of whether the city erred in not applying comprehensive plan provisions could have been raised in response to a staff report that did not apply those provisions); *Kingsley v. City of Sutherlin*, 49 Or LUBA 242, 247-48, (2005) (notwithstanding that the notice of hearing did not list policies as approval criteria, two staff reports and a planning commission

decision gave more than adequate notice that the city believed the policies were approval criteria).

First, ORS 197.797(3)(b) requires that the local notice must "[l]ist the applicable criteria *from the ordinance and the plan* that apply to the application at issue." (Emphasis added.) OAR 660-014-0030 is not part of the county's ordinance or plan. Therefore, the county's failure to list OAR 660-014-0030 as an applicable criterion in its notice of hearing does not violate ORS 197.797(3)(b) or excuse petitioner from raising the issue of compliance with OAR 660-014-0030 during the county proceeding.[10] *ODOT v. Clackamas County*, 23 Or LUBA 370, 374-75 (1992).

Second, the county responds that it again concedes, as it did in *MAC I*, that its notices failed to note that *any* goal exceptions were proposed or to list the applicable criteria for the goal exceptions. However, the county argues, the notice error and omission did not prevent petitioner from challenging the Goal 14 irrevocably committed exception during the initial proceedings because

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[10] While respondent does not raise this issue, we are independently obligated to correctly construe ORS 197.797(3)(b) and ORS 197.835(4)(a). *See* ORS 197.805 (providing the legislative directive that LUBA "decisions be made consistently with sound principles governing judicial review"); *Gunderson, LLC v. City of Portland*, 352 Or 648, 662, 290 P3d 803 (2012) ("In construing statutes and administrative rules, we are obliged to determine the correct interpretation, regardless of the nature of the parties' arguments or the quality of the information that they supply to the court." (*Citing Dept. of Human Services v. J. R. F.*, 351 Or 570, 579, 273 P3d 87 (2012); *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997).)).

petitioner had actual notice of that issue during the initial proceeding and thus, could have raised the issue of noncompliance with OAR 660-014-0030. The county argues that petitioner received actual notice of the goal exceptions by reviewing the record and attending the numerous public hearings, as evidenced by petitioner's letters submitted in opposition to a Goal 14 reasons exception and a Goal 3 irrevocably committed exception, which were also not formally noticed as applicable criteria.

The county points to the DLCD direction that MAC and the county address the OAR 660-014-0030 criteria for a Goal 14 irrevocably committed exception and the county emphasizes that exception was discussed in subsequent public hearings and in numerous record submittals described and cited above. The county argues that "[t]he same noticing error which [p]etitioner cites as the source for its ORS 197.835(4)(a) argument equally impacted [MAC's] requests for both the aforementioned Goal 3 exception and the Goal 14 Reasons Exception, both of which [p]etitioner challenged during the initial local proceedings." Respondent's Brief 9. In other words, the county's notice error did not prevent petitioner from raising issues pertaining to both Goal 14 exceptions, including the irrevocably committed criteria.

Petitioner disputes that it had actual notice that the county would apply OAR 660-014-0030. Petitioner insists that it did not know that a Goal 14 irrevocably committed exception was at issue during the local proceeding and that the county would apply OAR 660-014-0030. Petitioner points out that the

county staff reports did not list OAR 660-014-0030 as applicable criteria. Petitioner asserts that "[o]ne cannot know what one does not know; [petitioner] could not raise an issue when the [c]ounty did not inform [petitioner] of the applicable criteria." Petition for Review 31.

Our review of the parties' factual dispute regarding whether petitioner had actual notice is complicated by petitioner's alternative arguments that it *did* raise the issue below and that, alternatively, petitioner *did not know* that the issue was before the county for decision below. We cannot definitively determine from the record cited to us by the county whether, in the absence of *formal notice*, petitioner had *actual notice* that the county would apply OAR 660-014-0030. For example, we have not been advised whether petitioner attended or reviewed the recordings of the October 27, 2022, and November 17, 2022, planning commission hearings at which the Goal 14 exception criteria were addressed. Nevertheless, we conclude that ORS 197.835(4)(a) does not require a showing of actual notice. Instead, the question is whether "the issue *could have been* raised before the local government." ORS 197.835(4)(a) (emphasis added).

Here, petitioner participated in the local proceedings in opposing a complex proposal that evolved over the course of the local proceedings. We conclude that petitioner either was actually notified of the Goal 14 irrevocably committed exception or petitioner should have identified that issue through reasonably diligent review of the public record, including the of the October 27, 2022, and November 17, 2022, planning commission hearings and MAC's

presentations and submitted materials. The record and the facts in this case persuade us that, even if petitioner did not have actual notice that the county would apply OAR 660-014-0030, at a minimum, petitioner had constructive notice of that fact during the local proceeding and, thus, could have raised the issue that MAC's submittals were insufficient to support a finding that OAR 660-014-0030 is satisfied because MAC had not demonstrated that "all rural uses are impracticable" on the subject property. This constructive notice is evidenced by the fact that petitioner challenged the Goal 3 irrevocably committed exception and the Goal 14 reasons exception, neither of which were listed on the county notices of public hearing or the staff reports. *See* 2023-026 Record 299, 1006-07, 1384-85 (planning commission staff reports); 2023-026 Record 2094 (notice of August 11, 2022, planning commission hearing), 1784 (notice of September 8, 2022, planning commission hearing), 1542 (notice of October 27, 2022, planning commission hearing), 991 (notice of December 7, 2022, board of commissioners hearing).

Petitioner does not assert that, even if we conclude that the irrevocably committed Goal 14 exception issue is waived, petitioner's remaining arguments provide independent bases for us to reverse or remand the Goal 14 reasons exception. The county asserts that "the irrevocably committed exception to Goal 14 provides a sufficient legal basis supporting the Decision on its own[.]" Respondent's Brief 2. The county invokes *Landwatch v. Lane County*, 56 Or LUBA 408, 414 (2008), where we concluded that when a local government

adopts multiple exceptions for the same goal and we reject challenges to one exception, we need not address the other exception as any error therein would be harmless. Respondent's Brief 15. Accordingly, we agree that the remainder of the fourth assignment of error challenging the Goal 14 reasons exception provides no independent basis for remand.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

Petitioner argues that the county violated JCCP Part 5 and *MAC I* by adopting a PAPA that is not "necessary" or "required" and the county's finding that JCCP Part 5 is satisfied is not supported by adequate findings and substantial evidence. JCCP Part 5 governs amendments to the comprehensive plan and provides, in part:

> "The Comprehensive Plan should be evaluated periodically and updated or amended when necessary to reflect changes in land use patterns that have occurred or when the citizens of the County, as represented by the Planning Commission and Board of Commissioners, feel it is desirable." JCCP 92.

For a quasi-judicial amendment, such as the one at issue in this appeal, JCCP Part 5 provides, in part, that "[i]n order to be approved, the proposed amendment must * * * [b]e necessary due to changes in physical, economic or social conditions, population growth, or development patterns which require an adjustment in the land use[] designations in the area where the amendment is proposed." JCCP 94.

In *MAC I*, we agreed with petitioner that the county had not adopted any findings that established that it is necessary or required to change the designation and zoning of the subject property to rural residential. LUBA No 2023-026 (slip op at 32). On remand, the county determined that, because it adopted exceptions to Goals 3 and 14, it was "necessary" and "required" to adopt JCCP amendments in order to comply with the planning and zoning requirement of OAR 660-004-0018 and that "OAR 660-004-0018 itself provides the requested evidentiary support." Remand Record 12.

We must defer to a local governing body's interpretation of its own comprehensive plan if that interpretation is not "inconsistent with the express language of the comprehensive plan or land use regulation" or inconsistent with the underlying purposes and policies of the plan or regulation. ORS 197.829(1); *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010).

> "[T]he plausibility determination under ORS 197.829(1) is not whether a local government's code interpretation best comports with principles of statutory construction. Rather, the issue is whether the local government's interpretation is plausible because it is not expressly *inconsistent* with the text of the code provision or with related policies that 'provide the basis for' or that are 'implemented' by the code provision, including any ordained statement of the specific purpose of the code provision at issue." *Kaplowitz v. Lane County*, 285 Or App 764, 775, 398 P3d 478 (2017) (emphasis in original).

The "existence of a stronger or more logical interpretation does not render a weaker or less logical interpretation 'implausible' under the *Siporen* standard."

Mark Latham Excavation, Inc. v. Deschutes County, 250 Or App 543, 555, 281 P3d 644 (2012).

Petitioner argues that the county's interpretation of the interaction between OAR 660-004-0018 and JCCP Part 5 renders the latter meaningless. Petitioner argues that "[t]he JCCP Part 5 criteria are distinct and separate from any requirements of state law that must also be met to rezone the subject property." Petition for Review 45.

The county responds that OAR 660-004-0018(2) requires the rezoning of exception areas following the approval of goal exceptions. Therefore, the required findings of "necessary" and "required" are satisfied by the findings regarding the goal exceptions. The county responds that the same findings and evidence that support the goal exceptions also support findings that updating the JCCP and rezoning a property after it received a goal exception is necessary and required.

We agree with the county that the board of commissioners' interpretation of JCCP Part 5 is plausible. The language of JCCP Part 5 can be plausibly construed so that the evidence supporting a goal exception also evidences "changes in physical, economic or social conditions, population growth, or development patterns which require an adjustment in the land use[] designations in the area where the amendment is proposed." Therefore, we must defer to that interpretation. However, the county bases satisfaction of JCCP Part 5 on the findings and evidence supporting the goal exceptions. We conclude below that

the county erred in adopting an exception to Goal 3. Accordingly, on remand, the county must reconsider whether JCCP Part 5 is satisfied.

The fifth assignment of error is denied in part, and unresolved in part.

THIRD ASSIGNMENT OF ERROR

Petitioner argues that the county misconstrued the criteria for a Goal 3 exception in ORS 197.732(2)(b) and OAR 660-004-0028 and that the county's decision that those criteria are satisfied is not supported by substantial evidence.[11]

> "Goal 2 (Land Use Planning), Part II, permits an 'exception' to the requirements of a goal for 'specific properties or situations.' OAR 660-015-0000(2). The text of Goal 2, Part II, pertaining to exceptions is codified at ORS 197.732. The policies permit three types of goal exceptions: for land physically developed so that the property is no longer able to comply with the dictates of a goal, for land irrevocably committed to uses not allowed by the applicable goal, and when there are sufficient reasons to not apply the particular goal[.]" *VinCEP v. Yamhill County*, 215 Or App 414, 418, 171 P3d 368 (2007).

Here, the county adopted an irrevocably committed exception to Goal 3.

> "The standards for approving an irrevocably committed exception are set forth at OAR 660-004-0028(1) through (6). A local government may take an exception to a goal on the grounds that land is irrevocably committed to uses not allowed by the goal when it finds that 'existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable[.]' OAR 660-004-

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[11] The affirmed Goal 14 exception does not relieve the county from the requirements of Goal 3. *See* OAR 660-004-0018(1) ("Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements * * *.").

> 0028(1); *see also* ORS 197.732(1)(b) (same). Whether land is irrevocably committed depends on the relationship between the exception area and the adjacent lands, considering the characteristics of the exception area, adjacent lands, their relationship and other relevant factors. OAR 660-004-0028(2). For exceptions to Goals 3 * * *, the local government need only demonstrate that 'farm uses as defined in ORS 215.203,' * * * are impracticable. OAR 660-004-0028(3)(a), (b) and (c).
>
> "The local government's findings and conclusion that an exception area is irrevocably committed must address all applicable factors of OAR 660-004-0028(6) and must explain why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area. OAR 660-004-0028(4). Finally, OAR 660-004-0028(6) requires that the local government's findings consider a miscellany of factors, including existing adjacent uses; existing public facilities; parcel size and ownership patterns in the area; neighborhood and regional characteristics; natural or man-made features separating the exception area from adjacent resource land; and other relevant factors, in order to reach its ultimate conclusion that the property is or is not irrevocably committed." *Friends of Linn County v. Linn County*, 38 Or LUBA 868, 872-74 (2000) (footnotes omitted).

A local government that claims a goal exception has the burden of persuasion. ORS 197.350(2). When reviewing a local government's decision approving or denying a goal exception, we are bound by any finding of fact which is supported by substantial evidence in the record. ORS 197.732(6)(a). We are required to "determine whether the local government's findings and reasons demonstrate that the standards of [ORS 197.732(2)] have or have not been met[.]" ORS 197.732(6)(b). We have described our review under ORS 197.732(6)(b) as requiring that we "determine whether the standards provided for in ORS 197.732([2])(b) have been met as a matter of law. In performing that review, we

are not required to give any deference to the county's explanation for why it believes the facts demonstrate compliance with the legal standards for a committed exception." *Friends of Yamhill County v. Yamhill County*, 38 Or LUBA 62, 78 (2000) (footnote omitted).

In *1000 Friends of Oregon v. Columbia County*, 27 Or LUBA 474, 476 (1994) (*McFarland*), we set forth our "usual approach" to addressing challenges to an irrevocably committed exception under ORS 197.732(2) and OAR 660-004-0028:

> "[We first] resolve any contentions that the findings fail to address issues relevant under OAR 660-[0]04-[0]028 or address issues not properly considered under OAR 660-[0]04-[0]028. We next consider any arguments that particular findings are not supported by substantial evidence in the record. Finally, we determine whether the findings that are relevant and supported by substantial evidence are sufficient to demonstrate compliance with the standard of ORS 197.732([2])(b) that 'uses allowed by the goal [are] impracticable.'" (Footnote omitted; last brackets in original.)

The county found that the subject property is irrevocably committed to non-agricultural use by adjacent rural residential uses in the Crooked River Ranch. Remand Record 36. The decision agrees with MAC's legal arguments in a letter dated December 6, 2022. Remand Record 13-14; 2023-026 Record 262-72. The county adopted staff report findings on the Goal 3 issue and the proposed findings in MAC's burden of proof and statement of reasons included in its application. Remand Record 14, 35 (staff report findings); 2023-026 Record

2145 (MAC's burden of proof and statement of reasons).[12] MAC's burden of proof states: "In short, the Subject Property, currently zoned Range Land, is committed to non-agricultural use because adjacent uses (residential and fire department) and already developed public services and facilities, including roads, utilities and water, make farm and other agricultural use impractical." 2023-026 Record 2146.

The county described the subject property as undeveloped, mostly flat, and sparsely vegetated with sage brush and juniper. 2023-026 Record 2147. The county found that the subject property has not been in farm use at least since the Crooked River Ranch Limited Partnership acquired it in a trade with the United States Forest Service (USFS) on October 26, 1989. 2023-026 Record 2146. To the best of MAC's agent's knowledge, the subject property has never been in farm use. *Id.*

The county described the adjacent lands and development as follows:

> "[T]o the east of the Subject Property are 21 lots all zoned [Crooked River Ranch Residential Zone (CRRR)]. These lots range in size from 1.620 acres to 3.270 acres. The average and median parcel size are 2.20 and 2.03 acres, respectively. Of the 21 lots, 19 are shown to be developed with residential dwellings. These lots are mostly flat with light vegetation typical of the area.
>
> "To the northwest of the Subject Property is Crooked River Ranch Rural Fire Protection District fire house. The District's lot is zoned

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[12] The staff report findings largely duplicate MAC's submitted burden of proof.

> [Crooked River Ranch Commercial Zone (CRRC)] and is almost 10 acres in size. It is flat and is developed. Further to the north is SW Shad Road. This road is one of the main thoroughfares in the Ranch. On the north side of SW Shad are three lots ranging in size from 2.2 acres to 3.19 acres. One of those lots is zoned CRRC with the remaining two zoned CRRR. All lots to the north of the Subject Property are shown as being currently developed. The CRRC lots contains the Ranch's maintenance and service buildings, and the CRRR lots contain residential dwellings. All of the lots to the north are mostly flat with light vegetation typical of the area.
>
> "To the south of the Subject Property is Mustang Road. This road is one of the larger roads in Crooked River Ranch. To the south of Mustang Road are four lots zoned CRRR, each approximately 5 acres in size. All four lots to the immediate south are developed with residential dwellings. These lots are also mostly flat with light vegetation typical of the area.
>
> "To the west of the Subject Property is SW Quail Road. The road runs north-south along the entire western edge of the Subject Property. West of SW Quail Road are nine lots zoned CRRR. These lots range between 5+ and 9+ acres. The average and median parcel size for these lots are 7.42 and 5.98 acres, respectively. Of the nine lots, seven are developed with residential dwellings. These lots are mostly flat with vegetation typical of the area." 2023-026 Record 2147 (internal citations omitted).

The county identified "six potential conflicts between adjoining residential uses and a neighboring farm: '(1) smoke associated with field burning, (2) dust from farming activity, (3) noise from farm equipment, (4) irrigation water spraying or spilling onto adjacent properties, (5) pesticide application, and (6) damage to crops and land from trespassing.'" Remand Record 37-38 (quoting *Scott v. Crook County*, 56 Or LUBA 691, 696 (2008)). Although the county found that the "to the best of [MAC's] knowledge, the Subject Property has never been

in farm use[,]" the county found that "one could reasonably expect that all six aforementioned potential conflicts would likewise occur if the Subject Property were utilized for farm use." Remand Record 36-38. The county found a "seventh conflict if the Subject Property were in farm use, as tractors, farm equipment, and the movement of livestock and feed would interfere with the use of [adjacent] residential roads." Remand Record 38.

The county found that the following reasons supported the exception: (1) Conflicts between residential and farm uses; (2) Man-made features, roads and other infrastructure that serve Crooked River Ranch limit farm vehicle access and constrain the property from expansion; (3) Parcel sizes and ownership patterns of the adjacent property in Crooked River Ranch commit the subject property to nonfarm use; (4) The soils make the property suitable only for grazing farm use; however, grazing is impractical because livestock would need to be transported to the site and water sources would need to be developed on the property and the cost of development outweighs grazing benefits; (5) There are no nearby farm uses; (6) The subject property is geographically isolated from other active farms in the area because rivers, deep canyons, and reservoirs impede access to other resource areas. Remand Record 43-44.

A. Commercial farming practicability and profitability are not factors under OAR 660-004-0028.

Petitioner argues that the county improperly dismissed "low level farm use" and improperly relied on its conclusion that the subject property could not

be used for commercial farming and that farm use of the subject property would not likely be profitable. Petition for Review 24-25 (citing Remand Record 12-14). We agree. While ORS 215.203(2)(a) defines farm use as "employment of land for the primary purpose of obtaining a profit in money," the proper test is not "whether the property is capable of supporting an economically self-sufficient agricultural operation, or property on which a reasonable farmer could make a living entirely from agricultural use of land." *Lovinger v. Lane County*, 36 Or LUBA 1, 18-19, *aff'd*, 161 Or App 198, 984 P2d 958 (1999) (footnote omitted). Even if noncommercial levels of farm use are possible on the resource land, despite adjacent uses, then the land is not irrevocably committed to nonresource use. *Friends of Marion County v. Marion County*, LUBA No 2021-043 (Nov 22, 2021) (slip op at 27-28). The county erred in relying on commercial farming and profitability as tests for whether the subject property is irrevocably committed to nonfarm use.

B. Other Non-irrigated Farm Uses

Petitioner also argues that the county erred by considering only range land farm use and failed to consider other non-irrigated farm uses that petitioner argued are practicable on the subject property, including growing lavender, non-irrigated winter wheat, production of chickens, mules, or horses, a landscaping nursery, greenhouses to grow vegetables, or other livestock grazing. 2023-026 Record 248, 504.

The county responds that, even if not surrounded by the Crooked River Ranch unincorporated community, the only potential farm use of the property is for livestock range that would require hauling feed ten months of the year and hauling water year-round. Respondent's Brief 29 (citing 2023-026 Record 267-68, 277). Those pages contain quotes from the planning commission hearing as follows:

> "Specifically, Commissioner James Roff provided the following comment during the November 17, 2022 deliberations:
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> > "'* * * all over this County there's a lot of ground that's not being used. But that doesn't mean that [the subject property] wouldn't be used or couldn't be used by somebody else and this ground could be sold and bought by somebody else that would use it for agriculture and when I drove into Crooked River Ranch, I mean, I haul my cows regularly 60 miles. The nearest ranches are only minutes away from that property, so to say it's too far away is not really, that wouldn't be a problem for somebody to go in there and drop cattle and leave them for most of the year. It wouldn't cost much or anything. I don't think it would be all that profitable, but once again I don't think profitability is in that argument. That's just my thoughts.
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> "* * * Chair Roy Hyder echoed Commissioner Roff's comments with the following:
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> > "'Commissioner Roff just a minute ago was talking about the Goal 3 irrevocably committed. I think a lot about that and of course I look at the material that was supplied about what kind of agricultural activities might take place that would be conflicting with the community in the event that this request was not approved. It is my thinking however, those descriptions of agricultural activity are not realistic. That land is range land. It's range land zoned. It's always been range

> land. It was range land when the applicant acquired it quite some time ago. It's never been developed into high value irrigated [Exclusive Farm Use (EFU)] A-l prime farm land. The activities that were described that would be so conflictive with the community are what activities you conduct on irrigated EFU A-l prime farm land. What we have here is a piece of range land with a limited number of AUMs and the traffic involved would be a gooseneck trailer with 3 or 4 pair of cattle or 8 or 10 sheep, whatever the selection was for limited grazing season. Appropriate grazing management would certainly reduce wildfire hazard, having a side benefit. To say the property is irrevocably committed because a lot of traffic with big trucks and large farm equipment would be operating in and out of there just doesn't apply.'" 2023-026 Record 267-68 (internal citations, footnotes, and boldface omitted).[13]

The property is designated and zoned Range Land. JCCP Part 2, Goal 3, Policy 1.4 provides: "Unirrigated agricultural land outside the boundaries of the North Unit Irrigation District that is composed predominantly of Class IV through VII soils should be zoned Range Land." JCCP 15; *see also* JCZO 301.01(C) ("The RL zone has been established to recognize and preserve areas containing predominantly non-irrigated agricultural soils which are being used, or have the capability of being used, for livestock grazing."). The county considered rangeland as the sole potential farm use of the subject property. The county found: "The Subject Property is composed predominantly of type 38 and 87 A soils. * * * These soils are not suitable for commercial farming practices,

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[13] "The EFU A-1 zone has been established to preserve areas containing predominantly irrigated agricultural soils for existing and future farm uses related to the production of agricultural crops or products." JCZO 301.1(A).

leaving only livestock grazing as a possible use." Remand Record 44. The county does not point to any finding responding to petitioner's assertion that the subject property could be used for other non-irrigated farm uses. We agree with petitioner that the county erred by not considering or addressing other potential farm uses of the subject property and explaining why they are not practicable. *See Friends of Linn County*, 38 Or LUBA at 888 (explaining that, while a county is not required to address every possible farm use defined under ORS 215.203(2)(a), when a party below identifies a particular farm use that may be practicable, the county must address that issue).

C. Uses on Adjacent Lands

Petitioner argues that county's findings misconstrue OAR 660-004-0028(2) by merely describing the uses on adjacent lands and failing to show that the relationship with those lands irrevocably commits the subject property to nonresource use. Petitioner emphasizes that "[t]he mere presence of adjoining residential uses is not sufficient to conclude that resource lands are irreversibly committed to non-resource uses." Petition for Review 16 (citing *Gordon v. Polk County*, 54 Or LUBA 351, 356 (2007)); *see also Prentice v. LCDC*, 71 Or App 394, 403-04, 692 P2d 642 (1984). Petitioner argues that the findings and evidence do not demonstrate that conflicts with adjacent properties render agricultural use of the subject property impracticable, because the record contains no evidence of any conflict. Petitioner asserts that the county's analysis and findings point to nothing other than the mere presence of adjacent residential uses and speculative

concerns. Petitioner observes that the record lacks testimony or evidence from farmers that might describe how farm uses are impacted by nearby nonfarm uses to the extent that they become impracticable. *DLCD v. Lane County*, 39 Or LUBA 445, 451-52 (2001).

We agree with the petitioner that the six potential conflicts that the county cites from the *Scott* case and relies upon are speculative and not supported by substantial evidence. 56 Or LUBA at 696. As a planning commissioner noted, those types of impacts are associated with growing and harvesting crops, which are farm uses other than grazing. If, as the county asserts, the subject property could only be used for livestock range, then the potential conflicts of (1) smoke associated with field burning, (2) dust from farming activity, (3) noise from farm equipment, (4) irrigation water spraying or spilling onto adjacent properties, (5) pesticide application, and (6) damage to crops and land from trespassing would never occur. Thus, without further evidence to support those conflicts, the county erred in relying on those conflicts to support the Goal 3 exception. We agree with petitioner that that the findings and evidence do not demonstrate that conflicts with adjacent properties render agricultural use of the subject property impracticable.

Moreover, with respect to potential conflicts, petitioner argues, and we agree, that right-to-farm laws protect farmers from civil claims made by neighbors alleging nuisance or trespass from farm practices and provide some certainty that farm use of agricultural land will not be made impracticable due to

impacts to surrounding residential uses. Moreover, as the Court of Appeals has observed:

> "While [conflicts from spray drift, field burning smoke and plowing dust] may be a factor in showing that it is impracticable to continue agricultural use of an area, they are not conclusive. People who build houses in an agricultural area must expect some discomforts to accompany the perceived advantages of a rural location. If problems of this sort by themselves justified a finding of commitment, it would be impossible to establish lasting boundaries between agricultural and residential areas anywhere, yet establishing those boundaries is basic to the land use planning process." *1000 Friends of Oregon v. LCDC*, 69 Or App 717, 728, 688 P2d 103 (1984).

D. The remaining findings and statements of reasons are insufficient to demonstrate that farm uses of the subject property are impracticable.

We must determine whether the findings that are relevant and supported by substantial evidence are sufficient to demonstrate that farm uses are "impracticable." ORS 197.732(1)(b); OAR 660-004-0028(1); *McFarland*, 27 Or LUBA at 476. The county's remaining reasons supporting the exception include parcel size and ownership patterns, poor soil quality, lack of irrigation, and distance and physical separation from other agricultural land. Remand Record 43-44. Petitioner argues that "[t]hese reasons mostly repeat descriptions of adjacent residential uses and infrastructure, which do not render resource use of the subject property impracticable." Petition for Review 20.

1. Parcel Size and Ownership Patterns

One of the factors the county must address for a committed exception is "[p]arcel size and ownership patterns of the exception area and adjacent lands[,]" under OAR 660-004-0028(6)(c), which provides:

> "(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.
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> (B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably

committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations[.]"

The county found:

"[T]he surrounding lands were created through a large subdivision. In 1972 Crooked River Ranch was designated as Recreational Land. Staff finds that in 1980, the zoning for the Ranch changed from Recreational Land to Rural Residential.

"In 1985, DLCD acknowledged Jefferson County's Plan, and an exception to Goal 3 was taken to rezone the properties within Crooked River Ranch. For unknown reasons, the Subject Property was excluded from that exception area, though it may have been related to the USFS's ownership at the time, Regardless, since Crooked River Ranch completely surrounds the Subject Property, the physical development of houses, roads, water systems, and the fire department's facilities have made farm use of the Subject Property impractical.

"* * * All told, there are 38 properties adjacent to the Subject Property, with all but two of those properties being zoned CRRR. The residential properties to the east and north are predominantly 2+ acres in size, with 5+ acre residential properties predominating to the south and west. Staff finds Exhibit D in the application demonstrates that 34 of the 38 properties (89%) immediately adjacent to the Subject Property are currently developed. This high degree of parcelization that is nearly completely built-out immediately adjacent to the Subject Property requires a high degree of physical improvements such as roads, water pipes, etc., and epitomize the statement in OAR 660-004-0028(6)(c)(B) that 'Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed * * *.'" Remand Record 41.

"The parcel sizes and ownership patterns of nearby properties, including 38 immediately adjacent parcels, ranging in size between less than 2 acres and up to 10 acres, demonstrate that the Subject Property is irrevocably committed to nonresource use. All but four of those lots are currently developed, and that extensive

development has resulted in small parcel sizes and diverse ownership. All adjacent parcels are too small to farm and are in separate ownership. Moreover, neither the Subject Property nor surrounding properties standalone amidst larger farm operations. For these reasons, expansion of any farm use on the Subject Property is impossible." Remand Record 43-44.

We agree with petitioner that the county's findings and reasons regarding parcel size and ownership patterns largely rely on the county's unsubstantiated conclusion that there is a conflict between intensive agricultural use of the subject property and adjacent residential uses. The question is not whether the adjacent, rural residentially zoned parcels are committed to nonresource use. They are, and the county adopted a Goal 3 exception for those properties in 1985. The question is whether those parcels and ownership patterns commit the subject property to nonresource use. The county has not carried its burden to persuade that parcel size and ownership patterns commit the subject property to nonresource use. ORS 197.350(2); ORS 197.732(6)(b).

2. Poor Soil Quality and Lack of Irrigation

The county must address "[o]ther relevant factors" under OAR 660-004-0028(6)(g). Soil quality and irrigation availability are relevant factors for designating agricultural land or removing that resource designation. *See* OAR 660-033-0020(1) (defining "agricultural land" for purpose of Goal 3 and "taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming

practices"); OAR 660-033-0030 (identifying agricultural land). Differently, the committed exception criteria focus on development patterns. It is not clear to us that soil quality and irrigation availability are relevant to whether land is irrevocably committed to nonresource use. However, petitioner has not challenged the county considering soil quality and irrigation as relevant factors. Thus, we will assume for purposes of this decision that those are "other relevant factors" to consider whether agricultural use of the subject property is practicable.

The county opined that the only possible farm use of the subject property is livestock grazing, but that the cost of developing required livestock watering would outweigh the benefit from livestock grazing. We explain above that the county misconstrued OAR 660-004-0028 by relying on commercial viability of grazing the subject property. We also concluded that the county is required to address petitioner's contentions that other non-irrigated farm uses are practicable on the property. We agree with petitioner that poor soil quality and lack of irrigation are not sufficient reasons to conclude that the subject property is irrevocably committed to nonresource use.

3. Distance and Physical Separation from Other Agricultural Land

The county must address "[n]atural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource

use of all or part of the exception area[.]" OAR 660-004-0028(6)(e). The county must also address "[n]eighborhood and regional characteristics" under OAR 660-004-0028(6)(d). The county found that

> "the neighborhood regional characteristics justify an irrevocably committed exception because there are no nearby farm uses. Instead the neighborhood and community are predominantly rural residential and rural commercial, as part of the CRR. Efficient long term planning principles suggest the Subject Property should be rezoned to be consistent with surrounding uses. For the reasons stated above, the existing residential uses limit the ability to use the Subject Property for farm use.
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> "* * * * *
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> "Natural features are another reason to deem the Subject Property irrevocably committed. Specifically, the rivers, deep canyons, and a reservoir impede access to other resource areas. The Subject Property is geographically isolated from other active farms in the area. The only other land zoned RL that can be considered nearby is owned by the USFS and there is no evidence that it is inactive farm use or ever will be as that parcel is also geographically isolated.
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> "Similarly, man-made features, such as the roads in CRR, limit farm access because they are designed and intended only for residential use. For these reasons, natural and manmade features impede resource use of the Subject Property." Remand Record 44.

We agree with petitioner that the county's findings and reasons regarding neighborhood and regional characteristics largely rely on the county's unsubstantiated conclusion that there is a conflict between agricultural use of the subject property and adjacent residential uses. Distance from other farm uses may be relevant if the only practicable farm use on the subject property is rotational,

dryland livestock grazing that requires transporting livestock and water to and from the subject property. We concluded above that the county must determine on remand whether other non-irrigated farm uses are practicable on the subject property. On review of the decision before us, distance and separation from other agricultural land, alone, does not demonstrate that the subject property is irrevocably committed to nonresource use.

Petitioner argues that the existence of roads adjacent to the property does not irrevocably commit the land to nonresource use, citing *McFarland*, 27 Or LUBA at 476. In *McFarland*, the county adopted an irrevocably committed exception to Statewide Planning Goal 4 (Forest Lands). The property contained several roads constructed to serve rural residential development. The county found that trees could not be planted in the roads and the roads could not be economically removed. We agreed with the petitioner that the county's findings were insufficient to explain why it was impracticable to use the subject property for uses allowed by Goal 4. With respect to the roads, we observed that the findings did not convey what amount of the property was occupied by the roads or explain why the existence of the roads made it impracticable to use the remainder of the property for forest uses. We did not categorically say that roads cannot irrevocably commit land to nonresource use. Indeed, OAR 660-004-0028(6)(e) permits and even requires the county to consider the impact of roads.

Here, the county found that the roads that access the subject property were developed as part of Crooked River Ranch and are designed for residential use

and not "for frequent use of agricultural vehicles such as cattle trucks" and that "even 'semi' regular use of the roads by tractor trailers, tractors, and other heavy equipment commonly associated with farm use would likely damage the roads." Remand Record 43-44. Those findings rely on an unsubstantiated theory that the property could be used for intensive irrigated farming practices. There is no substantial evidence that traffic conflicts or potential road damage make farm use of the property impracticable. The existence of roads surrounding the subject property does not demonstrate that the subject property is irrevocably committed to nonresource use.

In sum, the findings and statements of reasons that are relevant and supported by substantial evidence are insufficient to demonstrate that farm uses are "impracticable" on the subject property. ORS 197.732(1)(b); OAR 660-004-0028(1); *McFarland*, 27 Or LUBA at 476.

The third assignment of error is sustained.

The county's decision is remanded.