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

LANDWATCH LANE COUNTY,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

TERRY STIMAC,
Intervenor-Respondent.

LUBA No. 2025-077

FINAL OPINION
AND ORDER

Appeal from Lane County.

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

No appearance by Lane County.

Bill Kloos filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent.

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

AFFIRMED 02/26/2026

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a hearings official's decision rezoning a parcel from Exclusive Farm Use (EFU) to Marginal Lands (ML).

MOTION TO INTERVENE

Terry Stimac (intervenor), the applicant below, moves to intervene on the side of the county. No party opposes the motion, and it is allowed.

FACTS

The subject property is a 50-acre parcel that is located approximately 0.4 miles south of the City of Eugene's urban growth boundary (UGB), but within the city's urban reserve area. The property lies within an area of Lane County that is subject to the Eugene-Springfield Metropolitan Area General Plan (Metro Plan). The Metro Plan was jointly adopted by the cities of Eugene and Springfield as their comprehensive plan. Lane County also adopted the Metro Plan as its comprehensive plan for the unincorporated areas of the county within the Metro Plan boundaries, instead of the county's own Rural Comprehensive Plan (RCP). The outer jurisdictional ring of the Metro Plan outside the UGB is sometimes referred to as the "donut." Unincorporated areas that are outside the UGB but within the Metro Plan boundaries are thus subject to the Metro Plan, not the RCP. The Metro Plan includes no zoning designations for any lands within its boundaries, including for land within the "donut," such as the subject property.

For such lands, the county continues to apply its zoning and land use regulations, codified in Lane Code Chapter 16.

In the present case, the Metro Plan applies two comprehensive plan designations to the subject property. Approximately 45 acres are designated Agriculture (A), a designation that implements Statewide Planning Goal 3 (Agricultural Lands). Approximately five acres are designated Forest (F), a designation that implements Statewide Planning Goal 4 (Forest Lands). The property is subject to Lane County zoning, specifically a zoning designation of EFU-25 (25-acre minimum parcel size).

Intervenor applied to the county to rezone the subject property from EFU-25 to Marginal Lands (ML), which is a county zoning designation that the county applies to land designated as marginal land pursuant to *former* ORS 197.247. As discussed below, that statute was part of a short-lived legislative effort to allow counties to choose to designate certain lands with lower quality agricultural and forestry soils as "marginal lands." Under the statute, certain uses and land divisions not otherwise allowed on agricultural or forest lands under then applicable versions of Goals 3 and 4 are allowed on lands designated marginal lands. ORS 215.317. *Former* ORS 197.247 was originally adopted in 1983, but repealed in 1991. Between 1983 and 1991, only two counties, Lane and Washington, elected to adopt legislation implementing the marginal lands statute. Record 26. After ORS 197.247 was repealed in 1991, no other counties were allowed to elect to designate marginal lands, but the counties that had already

done so could continue to do so under *former* ORS 197.247, subject to certain qualifications. ORS 215.316(1).

The hearings official conducted a hearing on the rezoning application at which petitioner appeared in opposition, arguing in relevant part that, because the Metro Plan has no specific plan designation for marginal lands, rezoning the property to ML conflicts with the two Metro Plan A and F designations that would still apply to the property. On October 17, 2025, the hearings official issued a decision approving the rezoning to ML, concluding that the subject property qualified as "marginal lands" under *former* ORS 197.247, and that the county's ML zone is consistent with the Metro Plan A and F plan designations.

This appeal followed.

FIRST AND SECOND ASSIGNMENTS OF ERROR

Because the arguments under the first and second assignments of error all concern the proper interpretation and application of *former* ORS 197.247 and statutory and county marginal lands legislation, we address both assignments together. No deference is owed to the hearings official's interpretations of either the statute or the county's marginal lands legislation, including the Metro Plan. *Landwatch Lane County v. Lane County*, 81 Or LUBA 400, 406 (2020). Our standard of review, set out in ORS 197.835(9)(a)(D), is whether the hearings official "[i]mproperly construed applicable law." In interpreting ambiguous statutory or local legislation, we apply the familiar text-context analysis described in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859

P2d 1143, 1146 (1993), as modified by *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009).

We begin with an overview of the statute and its context. *Former* ORS 197.247(1) directed the Land Conservation and Development Commission (LCDC) to amend the statewide planning goals "to authorize counties to designate land as marginal land" if the land meets certain criteria specified in the statute.[1] Under *former* ORS 197.247(7), the amended goals shall "permit counties to authorize the uses on and divisions of marginal lands set out in ORS 215.317 and 215.327." ORS 215.317 lists seven uses that are allowed on marginal lands, including "intensive farm or forest operations, including but not limited to 'farm use' as defined in ORS 215.203," as well as "single-unit dwellings." ORS 215.327 allows division of marginal lands with a minimum parcel size of 10 or 20 acres, depending on whether the marginal land is adjacent to land zoned for farm or forest use.

LCDC subsequently amended Goal 3 to provide that "[c]ounties authorized by ORS 215.316 may designate agricultural land as marginal land and allow those uses and land divisions on the designated marginal land as allowed by law." Goal 4 was similarly amended to provide that "[l]ocal governments authorized by ORS 215.316 may inventory, designate and zone forest lands as

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[1] Petitioner in the present case does not dispute that the subject property meets the criteria for marginal lands set out in *former* ORS 197.247.

marginal land, and may adopt a zone which contains provisions for those uses and land divisions authorized by law."

As noted, Lane County opted to go down the marginal lands path. To implement the statute, the county added to the RCP a plan designation, Marginal Lands, which the county applies to lands when designating lands as marginal lands. The county's ML zone implements the RCP Marginal Lands plan designation. RCP Goal Two (Land Use Planning), para 25. However, as noted, the subject property is not subject to the RCP. The county, in coordination with the two cities, adopted the Metro Plan as the controlling comprehensive plan for the unincorporated area of the county that includes the subject property.

The Metro Plan includes two resource designations that implement Goals 3 and 4, the Agriculture (A) designation and the Forest (F) designation. The Metro Plan includes no zones implementing any plan designations, and does not specify which city or county zones implement which Metro Plan designations. Each city and the county applies their own zones and zoning regulations, and determines which zones map to which Metro Plan designations.

Presumably because the Metro Plan governs a largely metropolitan urban area, with relatively few resource lands subject to Goals 3 and 4, the Metro Plan findings and policies under the A and F plan designations are not extensive. For example, the Agricultural Lands element of the Metro Plan includes only three brief findings and four policies. The most detailed policy, Policy C.4, applies only to agricultural lands outside the UGB within the Metro Plan boundary, such

as the subject property. Policy C.4 lists 16 sub-policies. The most pertinent is Policy C.4(n), which provides that "[l]and may be designated as marginal land if it complies with the requirements of ORS 197.247 (1991 Edition)." Similarly, Forest Lands Policy C.7(c) states: "Forest lands that satisfy the requirements of ORS 197.247 (1991 Edition), may be designated as Marginal Lands. Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247 (1991 Edition)."

With that background, we turn to petitioner's first and second assignments of error.

A. Designation

Before the hearings official, petitioner argued that to "designate" land as marginal land under *former* ORS 197.247, the county must apply a comprehensive plan designation that implements the statute. Because the Metro Plan, unlike the RCP, has no plan designation that specifically implements the marginal lands statute, petitioner contends, the subject property cannot be rezoned ML unless and until the Metro Plan is amended to include a plan designation that implements the marginal lands statute.

The hearings official responded, in part, by finding that the term "designate" as used in *former* ORS 197.247 and other statutes is not limited to comprehensive plan designations, but includes applying an appropriate zoning

designation, such as the ML zone.[2] On appeal, petitioner challenges this conclusion under the first assignment of error, first subassignment.

According to petitioner, the issue raised below was whether "designation" under *former* ORS 197.247 requires application of a marginal-lands-specific plan designation, to replace the prior agriculture or forest plan designation. In petitioner's view, "designation" necessarily requires a plan amendment, at a minimum, whether or not it *also* requires a zone amendment. Petitioner argues that the hearings official failed to resolve the issue raised, but concluded only that the term "designation" also refers to a zoning amendment, and that, at least in the circumstances of this case, designation could be accomplished by simply rezoning the property to ML. Petitioner contends that the hearings official's

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[2] The hearings official's decision states:

> "In response, [intervenor] argues ORS 197.247 does not expressly limit the term 'designate' to comprehensive plans and notes examples where state law refers to 'zoning designations' such as ORS 215.794, ORS 215.209, ORS 215.791(1) and (3), and ORS 215.794, 197.360(l)(a)(E)(i). [Intervenor's] position is ultimately that Oregon law does not limit use of the term 'designate' to comprehensive plans, and that nothing in ORS 197.247 prohibits the Metro Plan from allowing property to be zoned ML in the absence of a Metro Plan designation of marginal lands.
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> "The Hearings Official agrees with [intervenor's] position. Nothing in ORS 197.247, or the cases [petitioner] cites, limits the term 'designate' to only comprehensive plans." Record 8 (footnote omitted).

findings on this point misunderstood petitioner's argument, and failed to resolve the issue raised.

Intervenor responds that the hearings official's findings adequately resolve the issues raised regarding what constitutes "designation" for purposes of *former* ORS 197.247. Intervenor notes that petitioner does not dispute the hearings official's conclusion, based on text and context, that "designation" as used in *former* ORS 197.247 and contextual statutes is not limited to plan designations but also encompasses zoning designations. Where petitioner and the hearings official part company, intervenor argues, is on whether retaining the existing Metro Plan A and F designations is consistent with applicable law. That is an issue addressed in petitioner's second assignment of error.

We agree with intervenor that the petitioner has not demonstrated that the findings are inadequate on the issue of whether a comprehensive plan amendment is required in order to designate land as marginal land. The hearings official did not find, as petitioner seems to argue, that a zone amendment is sufficient, in itself, to constitute "designation" for purposes of *former* ORS 197.247. It is reasonably clear that the hearings official believed that designation was accomplished by (1) application of the ML zone, and (2) retention of Metro Plan A and F plan designations that, the hearings official concluded, are consistent with the proposed marginal lands designation. We address the parties' disputes regarding the Metro Plan A and F designations below. For the present purposes,

petitioner's findings challenge under the first assignment of error, first subassignment, does not provide a basis for reversal or remand.

B. Authority to Designate

Under the first assignment of error, third subassignment, petitioner argues that only counties, not cities, have authority under *former* OR 197.247 to adopt legislation allowing for the designation of marginal lands. For that reason, petitioner argues, existing plan designations in the Metro Plan cannot be construed to allow designation of marginal lands. The hearings official rejected similar arguments made below, concluding that because the property is within county jurisdiction, and the county has adopted the Metro Plan as its own comprehensive plan in this area of the county, the county has authority to designate lands as marginal lands, in this particular case by applying the ML zone to land that already has compatible Metro Plan resource designations.[3]

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[3] The hearings official's findings state, in relevant part:

> "[Intervenor] responds that even if [petitioner's] position is correct, it fails to account for the fact that the county is a party to the Metro Plan and adopted it in accordance with state law. The property is outside of the city limits of Eugene and its urban growth boundary, but within the city's urban reserve area and ultimately remains under the county's jurisdiction. The Hearings Official agrees with [intervenor]. [Petitioner's] assertions also fail to account for the myriad coordination responsibilities state law demands of cities, counties and other service providers with respect to urban growth areas, which are intended to result in coordinated plans such as the Metro Plan." Record 8-9 (footnote omitted).

Petitioner is correct that the marginal lands statutes in ORS chapters 197 and 215 expressly confer marginal lands authority on counties, and do not expressly confer such authority on cities or other bodies.[4] However, it does not follow, as petitioner argues, that the county lacks authority to designate land as marginal land, relying in part on the Metro Plan A or F designation to provide the comprehensive plan support for the county's ML zone. Petitioner argues that only if the Metro Plan were amended to include a plan designation that is expressly and specifically intended only for marginal lands, and preferably labeled "Marginal Lands," could the county apply a Metro Plan designation to support the zoning designation of marginal lands. However, petitioner argues that

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The hearings official also adopted by incorporation arguments in intervenor's September 25, 2025 submittal, sections I.A. and I.B. Record 8-9. In the incorporated findings, intervenor cites an ordinance adopted by the county commissioners approving marginal lands designation in a different case. Intervenor argued that, in the cited ordinance, the commissioners relied upon the existing Metro Plan Forest designation to provide the plan designation supporting application of the county's ML zone. Record 30-32.

[4] We note, however, that in amending Goal 4 to allow marginal lands designation, LCDC provided that "[l]ocal governments" may designate forest lands as marginal land. As used in most statutory contexts, the phrase "local government" encompasses cities. ORS 174.116(1) (defining "local government," "as used in the statutes of this state," to includes cities); *see also* ORS 197.015(13) (broadly defining "local government" to include cities). It is not clear whether LCDC's choice to use the broader term "local government" rather than the narrower term "counties," as it did when adopting a similar amendment to Goal 3, was a deliberate choice and, if so, whether LCDC intended to recognize in cities the authority to designate forest lands as marginal lands. We need not and do not resolve that question in this opinion, or address it further.

it would legally be impossible to amend the Metro Plan to include a "Marginal Lands" designation, because such an amendment would require adoption by the two cities, and cities lack statutory authority to designate land as marginal land. For the same reason, we understand petitioner to argue, the county is precluded from applying the Metro Plan A and F designations to support a marginal lands designation, because the Metro Plan was initially adopted by the two cities, as well as the county.

Intervenor responds, and we agree, that the undisputed fact that *former* ORS 197.247 and related statutes do not authorize cities to designate marginal land does not preclude the county from relying on the existing Metro Plan A and F designations (putting aside for the moment the question, addressed below, of whether those plan designations are properly interpreted to support a marginal lands determination). As we understand the nature of the Metro Plan, the Plan has force and effect on unincorporated lands outside the UGB only because the county adopted the Metro Plan as the *county's* comprehensive plan for those unincorporated lands, replacing the RCP with the Metro Plan in the "donut" area. The unincorporated areas outside the UGB are subject to the county's exclusive land use jurisdiction. Stated differently, the cities' adoption of the Metro Plan had no extra-jurisdictional effect whatsoever, until the *county* adopted the plan and applied it to certain areas under county jurisdiction. No subsequent city action was necessary (or legally possible) in order to designate marginal lands within the "donut." Any marginal lands designation within that area is solely in the

hands of the county, and thus consistent with *former* ORS 197.247 and related statutes that authorize only counties to designate marginal lands.

It is true that the county was obligated to apply the Metro Plan designations in approving or denying the proposed designation to marginal lands, because the county has no ability to unilaterally amend the Metro Plan. We address below the parties' arguments regarding whether the Metro Plan A and F designations are sufficient comprehensive plan support for the county's marginal lands zoning designation. For present purposes, we disagree with petitioner that the county's application of the Metro Plan A and F designations in deciding whether or not to approve the proposed marginal lands designation resulted in an exercise of city authority contrary to the marginal lands statutes.

The first assignment of error, third subassignment, is denied.

C. Resource Lands

Under the first assignment of error, second subassignment, petitioner argues that the hearings official erred in concluding that marginal lands are resource lands subject to Goals 3 and 4, albeit lower quality resource lands. According to petitioner, as a matter of law, land that qualifies as marginal land is non-resource land that is not subject to Goals 3 and 4.

The hearings official found:

> "[Petitioner] asserts [intervenor] has demonstrated the property is not agricultural land and has failed to show how the existing Metro Plan designation of Agriculture (A) can be consistent with the ML zone. Staff and [intervenor] respond that marginal lands are resources lands, and the ML zone is a resource zone. [Intervenor]

> described marginal lands as lower quality agricultural lands and cited documents prepared by the county and the state that describe marginal lands as a type of resource land.
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> "The Hearings Official finds the ML zone is a resource zone implementing a resource plan designation, consistent with state law. As such, [petitioner's] argument in this regard provides no basis to deny the application." Record 9 (footnotes omitted).

On appeal, petitioner argues that, contrary to the hearings official's characterization, marginal lands are not resource lands, and the county's ML zone is not a resource zone. Petitioner suggests that, because marginal lands allow residential use as a permitted use, marginal lands are more akin to rural residential lands within an exception area, than to resource lands. Consequently, we understand petitioner to argue, the county's ML zone cannot be consistent with the Metro Plan A and F designations, which are both plan designations that implement the resource land protections of Goals 3 and 4.

As support for its argument, petitioner first notes that none of the marginal lands statutes refer to marginal land as a type of resource land, and argues that that statutory silence suggests that the legislature did not intend marginal lands to be regarded as resource land subject to Goals 3 and 4. Petitioner also cites to a 1994 LUBA case that notes differences between resource-zoned lands and marginal lands, particularly that on the latter certain non-resource-related uses, such as single-family dwellings, are allowed under ORS 215.317. *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994). Finally, petitioner cites to language in a training manual on marginal lands prepared by county staff.

While acknowledging that the training manual was not adopted by county commissioners and has no force of law, petitioner highlights language in the manual stating that marginal lands should not be considered "productive resource lands," as indicating that in adopting and applying county marginal lands legislation the commissioners understood that marginal lands were not resource lands. Record 25.

Intervenor responds, and we agree, that petitioner has not demonstrated that the hearings official erred in characterizing marginal lands as a type of resource land, and the ML zone as a type of resource zone. While it is true that the marginal lands statues do not refer to marginal lands a resource land, it is equally true that the statutes do not refer to marginal lands as non-resource lands. The statutes are silent on that score. However, that the legislature directed LCDC, in *former* ORS 197.247(1), to amend Goals 3 and 4 to authorize counties to designate marginal land suggests, if anything, that designation is an action that occurs pursuant to the goals, as amended, which in turn suggests that designated lands remain agricultural or forest lands, albeit lesser quality resource lands that are subject to an expanded range of allowed uses. LCDC subsequently amended the goals to allow designation of marginal lands, which again suggests that designation is an action taken pursuant to those goals.[5]

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[5] We note that OAR 660-033-0020(8)(f), part of the administrative rule adopted by LCDC to implement Goal 3, defines the term "High-Value Farmland"

The LUBA opinion that petitioner cites does not characterize marginal lands as non-resource lands; in fact, as intervenor notes, we characterized marginal lands as "poorer quality agricultural and forest lands[.]" *1000 Friends of Oregon*, 27 Or LUBA at 307. Finally, as intervenor argues, the Lane County training manual cited by petitioner, to the extent it sheds any light on the intent of the county governing body in adopting the ML zone, does not suggest that the county regarded marginal lands as non-resource lands. To the contrary, intervenor argues, the training manual expressly characterizes marginal lands as resource lands. Record 210.

As to petitioner's contention that activities on marginal lands are akin to those allowed on rural residential land or land subject to an exception to Goals 3 or 4, and hence that marginal lands should be viewed as a type of non-resource land, intervenor notes that ORS 197A.355 (formerly ORS 197.298) sets out priorities of land to be included in the Metro UGB, and clearly distinguishes between non-resource land and land within exception areas, on the one hand, with marginal lands on the other.[6] Under ORS 197A.355(1)(c), marginal lands are

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to exclude marginal lands. Arguably, that exclusion would be unnecessary if, as a matter of law, marginal lands are non-resource lands not subject to Goal 3.

[6] ORS 197A.355(1) provides:

> "* * * [L]and may not be included within an urban growth boundary of Metro except under the following priorities:
>
> "(a) First priority is land that is designated urban reserve land under ORS 197A.245, rule or Metro action plan.

assigned a lower priority for inclusion than non-resource lands and exception areas under ORS 197A.355(1)(b). We agree with intervenor that the priority scheme at ORS 197A.355 is a contextual indication that the legislature does not view marginal lands as equivalent to non-resource land or land within exception areas, at least for the purpose of priority for inclusion into the Metro UGB. By the same token, ORS 197A.355 also suggests that the legislature does not view marginal lands as equivalent to resource lands, at least for some purposes. Nonetheless, ORS 197A.355 does not support petitioner's contention that marginal lands are, as a matter of law, non-resource lands.

> "(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
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> "(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).
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> "(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both."

Intervenor also argues that the criteria for designating marginal lands at *former* ORS 197.247(1) do not require the applicant to demonstrate that the property is not agricultural or forest land, as those terms are defined under Goals 3 and 4 and implementing regulations, or otherwise non-resource land. The relevant criteria focus on either parcel size irrespective of soil quality or productivity, or lower thresholds for the quality or productivity of agricultural or forest soils.[7] We agree with intervenor that the relevant criteria in *former* ORS

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[7] ORS 197.247(1)(b) (1991 Edition) requires that the proposed marginal land meet at least one of three tests:

> "(A) At least 50 percent of the proposed marginal land plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983;
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> "(B) The proposed marginal land is located within an area of not less than 240 acres of which at least 60 percent is composed of lots or parcels that are 20 acres or less in size on July 1, 1983; or
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> "(C) The proposed marginal land is composed predominantly of soils in capability classes V through VII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21)."

197.247(1) do not require the applicant to demonstrate that proposed marginal land is not resource land.

In sum, we disagree with petitioner that, as a matter of law, marginal lands are non-resource lands, no longer subject to Goals 3 and 4. Based on the arguments and authorities cited to us, petitioner has not demonstrated that the hearings official erred in concluding that designated marginal land remains resource land subject to Goals 3 and 4, for at least some purposes.

The first assignment of error, second subassignment, is denied.

D. Metro Plan A and F Designations

In the second assignment of error, petitioner challenges the hearings official's conclusion that the zone change to ML is consistent with the Metro Plan, specifically with Metro Plan A and F designations, as well as Policy C.4(n) and Policy C.7(c).

The hearings official found that the applicant was required to demonstrate consistency with the Metro Plan. The hearings official adopted by incorporation the following findings, proposed by intervenor in their September 25, 2025 submittal:

> "The Metro Plan explicitly allows for land to be designated as marginal lands as a subset of agricultural lands,
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> "'*Agricultural Lands (Goal 3)*
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> "***
>
> "'*Policy C. 4 In addition to any of the above policies, these policies apply to agricultural lands within the Plan Boundary*

> *of the Metro Plan but outside the UGB. *** n. Land may be designated as marginal land if it complies with the requirements of ORS 197.247 (1991 Edition).'* Page III-C-5.

> "This shows a clear intent to allow a Marginal Lands path for lands outside of the UGB but inside the Metro Plan boundary and shows clear recognition that Marginal Lands are agricultural lands for purposes of the Metro Plan. The Metro Plan was adopted with the Policy C.4 allowance and without a separate Marginal Lands Comprehensive Plan designation. Thus, the intent of Policy C.4 is to allow Marginal Lands zoning designation on property designated in the Comprehensive Plan as Agriculture. DLCD acknowledged the Metro Plan, including this element, as being consistent with Statewide Planning Goals. [Petitioner] cannot now challenge it. In Lane County, for areas within the Metro Plan Boundary but outside the UGB, the proper comprehensive plan designation is either Farm or Forest for the ML zoning designation." Record 30 (italics in original; footnote omitted); *see also* Record 8 (incorporating section I.A of intervenor's September 25, 2025 submittal).

On appeal, petitioner argues that it is axiomatic that a zone change must be consistent with the applicable comprehensive plan and that, if there is a conflict between a plan and a zone, the plan controls. *Baker v. City of Milwaukie*, 271 Or 500, 514, 533 P2d 772 (1975). Petitioner argues that the only way to avoid a conflict between the county's ML zone and the Metro Plan is if the Metro Plan were amended to include a plan designation specifically formulated for marginal lands.[8]

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[8] As noted, petitioner argued under the first assignment of error that cities lack statutory authority to designate land as marginal land, which would presumably extend to city adoption of a comprehensive plan designation specifically directed to marginal lands. Because amending the Metro Plan to include a "Marginal Lands" plan designation would require the cities' approval, we understand

With respect to the Metro Plan A and F designations, we understand petitioner to argue that because those plan designations apply only to resource lands, and marginal lands are non-resource lands, retaining the A and F designations on the subject property would conflict with the ML zone. Petitioner argues that Metro Plan Policies C.4(n) and C.7(c), properly interpreted, simply reflect that resource lands *can be* designated marginal lands, not that those plan designations can operate thereafter as *de facto* marginal lands plan designations.

Intervenor responds, and we agree, that petitioner has not demonstrated that the hearings official erred in concluding that the ML zone is consistent with the existing Metro Plan A and F designations. The Metro Plan A and F designations, and Metro Plan Policies C.4(n) and C.7(c), are all acknowledged to comply with Statewide Planning Goals 3 and 4. As discussed above, Goals 3 and 4 expressly allow designation of farm and forest lands to marginal lands, and nothing cited to us in any statute, goal or administrative rule indicates that designated marginal lands thereby become non-resource lands or lose their former character as resource lands subject to the Goals, at least for some purposes.

Given that the acknowledged Metro Plan (1) expressly authorizes designation of marginal lands in unincorporated areas within the Plan area, but (2) does not include a bespoke plan designation for "Marginal Lands," a logical

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petitioner to argue that it would be problematic, if not legally impossible, to amend the Metro Plan to include a specific "Marginal Lands" plan designation.

conclusion is that the drafters of the Metro Plan intended that one or more of its existing plan designations would provide the comprehensive plan support needed for marginal lands designation. If so, the strongest candidates are the A and F plan designations, which are the only Metro plan designations that have policies specifically authorizing designation of farm and forest lands as marginal lands. Under this view, the A and F plan designations serve as the plan designations for the county EFU and forest zones, *and* for the county marginal lands zone. It is not uncommon for multiple zones to implement a single plan designation.

As discussed, the county's ML zone is a resource zone, that allows all of the farm and forest uses allowed in the county's EFU and forest zones. The ML zone also allows the additional uses permitted under ORS 215.317, including intensive farm and forest operations, and single-family residential uses on 10- or 20-acre parcels. Importantly, petitioner identifies nothing in the Metro Plan A or F designations that conflict or are inconsistent with the ML zone. As noted, the Metro Plan A and F designations are somewhat unusual resource plan designations in that they are embodied in a metropolitan comprehensive plan that, at its outer boundaries, provides comprehensive planning for resource land in the county that is within urban reserves or otherwise likely destined for urbanization. In this context, it is not surprising that the Metro Plan A and F designations perform multiple roles, and may correspondingly differ somewhat from more typical agricultural and forest plan designations found under the RCP, not least with respect to marginal lands.

In sum, petitioner has not demonstrated that a *Baker* conflict exists between the ML zone and the Metro Plan A and F designations, or identified any basis to conclude that the A and F designations cannot lawfully function as the plan designations for the ML zone. The hearings official did not err in so concluding.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

LC 16.252(2) requires a finding that a proposed rezoning "shall not be contrary to the public interest." In the decision, the hearings official noted the opposition of neighbors and others to the rezoning application, but ultimately found in a series of adopted and incorporated findings that the proposed rezoning is not contrary to the public interest.[9] Record 10, 26, 33-35, 194. On appeal,

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[9] The hearings official adopted the following primary finding:

> "Section 16.252(2) of the Code states that rezonings 'shall not be contrary to the public interest.' The Code does not define 'public interest,' a subjective term that will inevitably mean different things to different people. Nor does the Code clarify how a rezoning that meets all other applicable criteria may nevertheless be contrary to the public interest.
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> "Those opposed to the application offer various reasons why the proposal is contrary to the public interest. [Intervenor] and staff disagree and explain why they believe the proposed rezoning advances the public interest. For the reasons stated by [intervenor] and staff, the Hearings Official finds the proposal will not be contrary to the public interest.

petitioner argues that some of the incorporated findings are not supported by substantial evidence, fail to adequately respond to the concerns of neighbors, and misconstrue LC 16.252(2) to exclude neighboring landowners from the scope of the "public."[10]

One of the documents incorporated as additional findings is Section I.E. of a letter from intervenor's planning consultant submitted during the open record

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> "In addition, the property is within the City of Eugene's urban reserve area. Under state law, lands within urban reserves have the highest priority for inclusion in a future expansion of an urban growth boundary. Until they are included in a UGB, state law requires local governments to zone urban reserve lands tor rural uses 'in a manner that ensures a range of opportunities for the orderly, economic and efficient provision of urban services when these lands are included in the urban growth boundary.' These provisions of Oregon law further support the finding that rezoning the property to a less restrictive resource zone is not contrary to the public interest." Record 10 (footnotes omitted).

In omitted footnote 31, the hearings official adopts and incorporates (1) finding 8 in the Staff Report (Record 194); (2) section I.E. of intervenor's September 25, 2025 response letter (Record 33-35); and (3) section A.3 of intervenor's October 2, 2025 final written argument (Record 26).

[10] ORS 197.835(9)(a)(C) authorizes LUBA to reverse or remand a land use decision that is not supported by substantial evidence. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993) (citing *Younger v. City of Portland*, 305 Or 346, 358-60, 752 Pd 262 (1988). Findings are adequate for LUBA's review if they set out the applicable approval criteria and the facts relied upon, and explain why the facts relied upon demonstrate whether the applicable approval criteria are satisfied. *Le Roux v. Malheur County*, 30 Or LUBA 268, 271 (1995).

rebuttal period. Record 10. The incorporated section begins with the statement that "Oregon is in an acknowledged housing crisis." Record 33. Petitioner argues that that statement is not supported by substantial evidence. Intervenor responds that the planning consultant who submitted the letter is qualified by experience to opine on whether Oregon is in an acknowledged housing crisis. In any case, intervenor cites to other testimony in the record regarding the "dire need" for housing. Record 190. We agree with intervenor that, to the extent the challenged statement is necessary to support the decision, and requires evidentiary support, the record includes evidence supporting the statement. Petitioner cites no countervailing evidence in the record.

Petitioner next notes that Section I.E. of the rebuttal letter incorporated as findings includes a statement that "[t]he 'public' does no[t] oppose the development, a few neighbors do[.]" Record 35.[11] Petitioner contends that this statement misconstrues "public interest" to exclude from the "public"

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[11] Intervenor's rebuttal letter includes the following statement:

> "The 'public' does no[t] oppose the development, a few neighbors do. There is not 'overwhelming' opposition, as [petitioner] asserts. To the extent that opposition by neighbors has anything to do with public interest as a whole, the notice of this proposal was sent to many nearby parcels and individuals … probably 50+ individuals received notice by mail or word of mouth. Those people likely spoke to other people. After all that, only a very few filed opposition letters. Rather than opposition, this shows tacit support by the neighborhood." Record 35.

neighboring property owners. Intervenor responds, and we agree, that the challenged statement does not interpret the public interest standard to exclude neighboring landowners from the "public." The statement incorporated as additional findings is part of intervenor's rebuttal to testimony submitted by opponents during the open record period, and takes issue with petitioner's assertion that the "public" overwhelmingly opposes the application.[12] In our view, the parties' dispute on that point is utterly irrelevant to any determination regarding whether the rezoning is or is not in the public interest. Whatever "public interest" means for purposes of LC 16.252(2), it is not determined by polling neighbors or counting how many members of the public oppose or support the application. To the extent the incorporated portions of intervenor's rebuttal letter engages in that debate with opponents, petitioner has not established that the incorporated findings exclude opponents from the "public" or otherwise misconstrue LC 16.252(2). Relatedly, petitioner argues that the findings regarding how many neighbors support or oppose the application are inadequate and not supported by substantial evidence. However, as explained, the findings on this point are irrelevant to any determination of compliance with

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[12] In our view, the parties' dispute on this point illustrates the pitfalls of indiscriminate incorporation of advocacy documents in the record as "findings" supporting consistency or inconsistency with applicable approval criteria. The incorporated portions of the rebuttal letter at Record 33-35 were not, it seems clear, written or intended to function as proposed findings.

LC 16.252(2) and any inadequacy or lack of evidentiary support does not provide a basis for reversal or remand.

Petitioner next argues that the hearings official failed to adequately address the concerns raised by neighbors regarding impacts of development under the ML zone on farm uses and natural resources, such as impacts on wetlands. The adopted and incorporated findings conclude that these concerns are not supported by the record, not related to any approval criteria, or are premature, because the zoning application proposed no development, and any impacts of specific development proposals will be addressed as part of subsequent partition or permit review.[13] However, petitioner argues that the hearings official failed to appreciate

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[13] With respect to natural resources, the hearings official adopted the following finding:

> "Opponents raised concerns regarding natural resources on the property, including a wetland. However, they do not identify an approval standard related to natural resources that [intervenor] must satisfy as part of this application. The regulation and protection of natural resources would occur when development is proposed. [Intervenor] is not proposing any development as part of this zone change application. The issues raised regarding natural resources do not provide a basis for the Hearings Official to deny this application." Record 11.

The hearings officer also incorporated a number of additional findings on issues raised, including:

> "The proposal is for a change in zoning designation to ML. This proposal, in itself, allows no additional residential development. Thus, the rezone does not impact wetlands and does not (and cannot)

that these concerns were raised under the "public interest" standard at LC 16.252(2), which will not be addressed in reviewing any subsequent partition or permit application. Petitioner argues that it is incumbent on the hearings official to address all concerns raised under LC 16.252(2) in the present rezoning proceeding, citing *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447-48 (1992) (discussing whether and how it is appropriate to defer findings of compliance with permit standards to a subsequent administrative review proceeding that does not allow for a hearing or public participation).

Intervenor responds, and we agree, that the adopted and incorporated findings adequately address the issues opponents raised under the LC 16.252(2)

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result in additional water impact or sewerage impacts. Prior to any additional development, the property owner would need to file for a Type II (Notice and opportunity to comment/appeal) land divisions application under Lane Code Chapter 13. This process requires that the septic and water be addressed. See Lane Code Chapter 13 ("Water" and "Sewerage"). The current proposal cannot result in additional development without further 'permit' review and approval and thus cannot impact water or sewer.

"The only natural resources that are required to be protected are those that are inventoried and identified in the Metro Plan. Inventoried and protected wetlands cannot be developed or impacted. There are statewide and local protections. See Lane Code Chapter 13 (Dangerous and Sensitive Areas). The Oregon State Division of Lands enforces the State's wetland protection laws. Those protections are in place and will continue to apply. They will apply if any future development is proposed." Record 34 (underline and boldface omitted); *see also* Record 10 (incorporating section I.E of intervenor's September 25, 2025 submittal).

"not contrary to the public interest" standard, including impacts of allowed residential development on farming and natural resources, at the level of detail and specificity that the issues were raised, and as appropriate to a rezoning application under a generalized "public interest" standard. That the hearings official acknowledged that more detailed review of specific impacts will occur as part of partition or development approval does not mean that the hearings official deferred a finding of compliance with LC 16.252(2) to a subsequent administrative review proceeding that does not offer a hearing or public participation, as *Rhyne* proscribes.

In sum, petitioner's arguments under the public interest standard at LC 16.252(2) do not establish that the hearings official misconstrued the applicable law, or adopted inadequate findings or findings not supported by substantial evidence.

The third assignment of error is denied.

The county's decision is affirmed.