

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

3
4 CENTRAL OREGON LANDWATCH,
5 *Petitioner,*

6
7 vs.

8
9 DESCHUTES COUNTY,
10 *Respondent,*

11
12 and

13
14 MCKENZIE MEADOW VILLAGE LLC,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2025-070

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Deschutes County.

23
24 Rory Isbell filed the petition for review and reply brief and argued on
25 behalf of petitioner.

26
27 No appearance by Deschutes County.

28
29 Christopher P. Koback filed the intervenor-respondent's brief and argued
30 on behalf of intervenor-respondent. Also on the brief was Buchanan Schmid
31 Koback.

32
33 WILSON, Board Member; ZAMUDIO, Board Chair; BASSHAM, Board
34 Member; participated in the decision.

35
36 BASSHAM, Board Member, concurring.

37
38 REMANDED

8/19/2026

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

1 Opinion by Wilson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision that adopts a reasons exception to
4 Statewide Planning Goal 4 (Forest Lands) to amend the comprehensive plan and
5 zoning designation for property adjacent to the City of Sisters.

6 **FACTS**

7 The 58-acre subject property is located adjacent to the City of Sisters to
8 the west. The property is designated Forest in the county's comprehensive plan
9 and zoned Forest-2 (F-2). The county adopted a reasons exception to Goal 4 to
10 redesignate the property Rural Residential Exception Area (RREA) and rezone
11 the property to Multiple Use Agricultural-10 (MUA-10). City infrastructure is
12 developed up to the property line, and the city hopes to expand its urban growth
13 boundary (UGB) to include the property for additional housing, including needed
14 housing. Redesignating the property from resource land to exception area would
15 rank the property higher for inclusion in the city's UGB. The county hearings
16 officer recommended approval of the application, and the board of
17 commissioners approved the application. This appeal followed.

18 **FIRST ASSIGNMENT OF ERROR**

19 Petitioner argues that the county committed procedural errors that
20 prejudiced petitioner's substantial rights. OAR 661-010-0071(2)(c). According
21 to petitioner, the county violated a host of procedural requirements.

1 **A. ORS 197.610(3) and OAR 660-018-0020(3)**

2 Petitioner argues that the county's notice to the Department of Land
3 Conservation and Development (DLCD) was inadequate under ORS 197.610(3)
4 and OAR 660-018-0020(3). ORS 197.610 prescribes the requirements for
5 submitting proposed comprehensive plan and land use regulation changes to
6 DLCD.

7 Initially, intervenor argues that petitioner failed to preserve this issue.¹
8 According to intervenor, while petitioner challenged the adequacy of the notice
9 for the public hearing, petitioner did not challenge the adequacy of the notice to
10 DLCD during the proceedings below. Petitioner responds that it could not have
11 specifically challenged the adequacy of the notice to DLCD because it was not
12 aware of the DLCD notice until the notice was included in the record after
13 petitioner's record objections. We agree with petitioner that it was not required
14 to specifically raise the issue of the inadequacy of the DLCD notice when that
15 notice was not in the record or available to petitioner during the local proceeding.

16 ORS 197.610 provides in pertinent part:

17 “(1) *Before a local government adopts a change*, including
18 additions and deletions, to an acknowledged comprehensive plan or
19 a land use regulation, the local government shall submit the
20 *proposed change* to the Director of [DLCD]. * * *

¹ To be preserved for LUBA review, an issue must “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.” ORS 197.797(1).

1 ** * * * *

2 “(3) Submission of *the proposed change* must include all of the
3 following materials:

4 “(a) The text of *the proposed change* to the comprehensive
5 plan or land use regulation implementing the plan;

6 “(b) If a comprehensive plan map or zoning map is created
7 or altered by *the proposed change*, a copy of the map
8 that is created or altered;

9 “(c) A brief narrative summary of *the proposed change* and
10 any supplemental information that the local
11 government believes may be useful to inform the
12 director or members of the public of the effect of *the*
13 *proposed change*;

14 “(d) The date set for the first evidentiary hearing;

15 “(e) The form of notice or a draft of the notice to be
16 provided under ORS 197.797[.]” (Emphases added.)

17 The notice to DLCD states:

18 “The applicant requests approval of a Comprehensive Plan
19 Amendment to change the designation of the subject property from
20 Forest to Rural Residential Exception Area (RREA) and a
21 corresponding Zone Change to rezone the subject property from
22 Forest Use 2 (F2) to Multiple- use Agricultural (MUA). The total
23 area subject to the request is 58 acres.” Second Supplemental
24 Record 3.²

² LUBA received the record in this appeal on November 20, 2025. On December 8, 2025, LUBA received an amended record. On February 3, 2026, LUBA received a supplemental record, and on February 17, 2026, LUBA received a second supplemental record. All citations to the record are to the amended record, all citations to the supplemental record are to the supplemental

1 Petitioner argues that the notice to DLCD was inadequate because it did
2 not identify the proposed “use.” According to petitioner, because the DLCD
3 notice did not identify the proposed use and did not identify the applicable
4 approval criteria the notice was defective. Unlike notices for public hearings, the
5 notice to DLCD required under ORS 197.610(3) merely requires a “brief
6 narrative summary of the proposed *change*” and any useful supplemental
7 information. The notice required under ORS 197.610 does not require the
8 identification of a proposed “use” or the applicable approval criteria. Petitioner
9 cites *DLCD v. Umatilla County*, 39 Or LUBA 715 (2001) (*Umatilla County*) for
10 the proposition that the DLCD notice must identify the proposed “use” rather
11 than merely the proposed “change.” *Umatilla County*, however, did not involve
12 any notice issues, let alone notice required under ORS 197.610. While *Umatilla*
13 *County* concerns what approval criteria apply to exceptions, it does not concern
14 the adequacy of notices to DLCD under ORS 197.610.

15 OAR 660-018-0020(3), regarding notice to DLCD of a proposed change
16 to a comprehensive plan or land use regulation, however, provides:

17 “The proposed text submitted to comply with [the notice to DLCD
18 requirement] of this rule must include all of the proposed wording
19 to be added to or deleted from the acknowledged plan or land use
20 regulations. A general description of the proposal or its purpose, by
21 itself, is not sufficient. For map changes, the material submitted to
22 the comply with [the notice to DLCD requirement] must include a

record, and all citations to the second supplemental record are to the second
supplemental record.

1 graphic depiction of the change; a legal description, tax account
2 number, address or similar general description, by itself, is not
3 sufficient. If a goal exception is proposed, the submittal must
4 include the proposed wording of the exception.”

5 As indicated by comments submitted by DLCD, they were not sure
6 whether the proposed change was being processed as a reasons exception or as a
7 determination that the property was not resource land. Record 1030-33. The
8 notice to DLCD did not include the proposed wording to be added or deleted to
9 the comprehensive plan and did not include the proposed wording of the
10 exception. The notice to DLCD did not comply with OAR 660-018-0020(3).
11 Unlike procedural errors, failure to provide adequate notice to DLCD is a
12 substantive error, and a petitioner does not need to demonstrate that its substantial
13 rights were prejudiced. *North East Medford Neighborhood v. City of Medford*,
14 214 Or App 46, 53 (2007). Therefore, remand is required on this basis.

15 **B. ORS 197.732(5) and 197.797(3)**

16 Petitioner also argues that the public notices provided by the county did
17 not comply with the requirements of ORS 197.732(5) and ORS 197.797(3). ORS
18 197.732(5) provides:

19 “Each notice of a public hearing on a proposed exception shall
20 specifically note that a goal exception is proposed and shall
21 summarize the issues in an understandable manner.”

22 ORS 197.797(3) provides, in pertinent part:

23 “The notice provided by the jurisdiction shall:

24 “(a) *Explain the nature of the application and the proposed*
25 *use or uses which could be authorized;*

1 “(b) List the applicable criteria from the ordinance and the
2 plan that apply to the application at issue[.]” (Emphasis
3 added.)

4 The public notices provided by the county state:

5 “The applicant requests approval of a comprehensive Plan
6 Amendment to change the designation of the property from Forest
7 to Rural Residential Exception Area and a corresponding Zone
8 Change to rezone the subject property from Forest Use 2 (F2) to
9 Multiple-Use Agricultural (MUA-10). The total area subject to the
10 request is 58 acres. The application includes a Goal 4 (Forest Lands)
11 exception request.

12 “The applicant states that the purpose of this request is to be
13 considered for inclusion in the City of Sisters Urban Growth
14 Boundary (UGB). The applicant intends to develop a needed
15 housing residential development with 30 [percent] of dwellings
16 being affordable housing. However, these applications do not
17 include a concurrent request to expand the City of Sisters UGB.”
18 Record 418, 1232.

19 Petitioner argues again that the notices were deficient because they failed
20 to state the proposed use sought by the exception. Intervenor again argues that
21 the county was not required to state a specific use. Unlike ORS 197.610, ORS
22 197.797(3) specifically requires that the notice “[e]xplain the nature of the
23 application and the *proposed use or uses which could be authorized.*” ORS
24 197.797(3)(a) (emphasis added). As discussed later, there is a disconnect between
25 what intervenor states is the purpose or result of the goal exception and what the
26 goal exception actually allows. The only use or purpose stated in the notice is that
27 the property is to be considered for inclusion in the city’s UGB and to eventually
28 be developed with residential housing. The decision, however, simply approves

1 a comprehensive plan and zone change that allows all of the myriad uses allowed
2 in the MUA-10 zone. Therefore, the notices do not comply with ORS 197.797(3).

3 ORS 197.797(3) imposes procedural requirements. Although the county's
4 notice was insufficient, we may not remand the county's decision based on a
5 procedural error unless the petitioner's substantial rights were prejudiced. ORS
6 197.835(9)(a)(B). Those rights are the right to an adequate opportunity to prepare
7 and submit one's case and to a full and fair hearing. *Muller v. Polk County*, 16
8 Or LUBA 771, 775 (1988). Petitioner explains that it was left in the dark as to
9 how the county proposed to adopt an exception. As discussed later, there are
10 different paths to adopting a reasons exception, especially depending upon what
11 purpose or use is proposed. Petitioner was required, due to the deficient notices,
12 to make many different arguments based on various potential avenues the county
13 could have been pursuing. For instance, petitioner made arguments that the
14 application would improperly allow urban development on resource land, but the
15 county later explained that it was not approving urban development. Requiring
16 petitioner to take such a blanket approach versus knowing what path the county
17 was taking to adopt the decision prejudiced petitioner's substantial rights.

18 The first assignment of error is sustained.

19 **SECOND ASSIGNMENT OF ERROR**

20 Petitioner argues that the county misconstrued the applicable law by
21 relying on the "catch-all" provision of OAR 660-004-0022(1) for a reasons

1 exception rather than OAR 660-004-0022(2), which specifically applies to rural
2 residential development.

3 Initially, intervenor argues that petitioner failed to preserve the issue of
4 whether the county was precluded from applying OAR 660-004-0022(1).
5 According to intervenor, petitioner argued before the hearings officer that the
6 county had to apply OAR 660-004-0022(2), but before the board of
7 commissioners petitioner only argued that the hearings officer misapplied OAR
8 660-004-0022(1). Petitioner clearly raised before the hearings officers the issue
9 that OAR 660-004-0022(2) must be applied. Record 733-34. Intervenor makes
10 no attempt to explain why raising the issue before the hearings officer was
11 insufficient to preserve the issue before LUBA. While *Miles v. City of Florence*,
12 190 Or App 500, 79 P3d 382 (2003), *rev den*, 336 Or 615 (2004), requires a party
13 to have raised the issue before the final decision maker if required by the local
14 appeal requirements, intervenor makes no attempt to explain that such a
15 requirement was applicable in the present case. Therefore, the issue is preserved.

16 ORS 197.732(2)(c) allows for a reasons exceptions. Among the
17 requirements for a reasons exception is ORS 197.732(2)(c)(A), that “[r]easons
18 justify why the state policy embodied in the applicable goals should not apply[.]”
19 OAR 660-004-0022 provides the rules regarding reasons exceptions and states in
20 part:

21 “An exception * * * may be taken for any use not allowed by the
22 applicable goal(s) * * *. The types of reasons that may or may not
23 be used to justify certain types of uses not allowed on resource lands

1 are set forth in the following sections of this rule.”

2 The following thirteen subsections then set out the allowable reasons for specific
3 uses. For purposes of this opinion, only the first three subsections are relevant:

4 “(1) *For uses not specifically provided for in this division * * ** the
5 reasons shall justify why the state policy embodied in the
6 applicable goals should not apply. *Such reasons include but*
7 *are not limited to the following:* There is a demonstrated need
8 for the proposed use or activity, based on one or more of the
9 requirements of Goals 3 to 19; and either:

10 “(a) A resource upon which the proposed use or activity is
11 dependent can be reasonably obtained only at the
12 proposed exception site and the use or activity requires
13 a location near the resource. An exception based on this
14 subsection must include an analysis of the market area
15 to be served by the proposed use or activity. That
16 analysis must demonstrate that the proposed exception
17 site is the only one within that market area at which the
18 resource depended upon can reasonably be obtained; or

19 “(b) The proposed use or activity has special features or
20 qualities that necessitate its location on or near the
21 proposed exception site.

22 “(2) Rural Residential Development: For rural residential
23 development the reasons cannot be based on market demand
24 for housing except as provided for in this section of this rule,
25 assumed continuation of past urban and rural population
26 distributions, or housing types and cost characteristics. A
27 county must show why, based on the economic analysis in the
28 plan, there are reasons for the type and density of housing
29 planned that require this particular location on resource lands.
30 A jurisdiction could justify an exception to allow residential
31 development on resource land outside an urban growth
32 boundary by determining that the rural location of the
33 proposed residential development is necessary to satisfy the
34 market demand for housing generated by existing or planned

1 rural industrial, commercial, or other economic activity in the
2 area.

3 “(3) Rural Industrial Development: * * * For the siting of rural
4 industrial development on resource land outside an urban
5 growth boundary, appropriate *reasons may include, but are*
6 *not limited to, the following* [as listed in subsections (a)
7 through (c).]” (Emphases added.)

8 The county approved the reasons exception under OAR 660-004-0022(1)
9 and did not address OAR 660-004-0022(2). While OAR 660-004-0022(1) lists
10 possible bases for a reasons exception under that subsection, the rule specifically
11 allows for additional unenumerated reasons (“reasons include but are not limited
12 to the following”). The county approved the reasons exception under the
13 unenumerated reasons, or “catch-all,” provision. Petitioner argues that because
14 the approved exception allows for rural residential development, the county was
15 required to proceed under OAR 660-004-0022(2) rather than OAR 660-004-
16 0022(1). It is well established under our caselaw that only when a use for which
17 a goal exception is sought is “not specifically provided for” in OAR 660-004-
18 0022(2) to (13) does OAR 660-004-0022(1) allow for use of the catch-all basis
19 for a reasons exception. *Oregon Shores Conservation Coalition v. Coos County*,
20 LUBA No 2020-002 (May 4, 2021) (slip op at 23); *Friends of Yamhill County v.*
21 *Yamhill County*, 47 Or LUBA 508, 516 (2004); *Morgan v. Douglas County*, 42
22 Or LUBA 46, 52-53 (2002).

23 Initially, intervenor responds that OAR 660-004-0022(2) does not apply
24 because the exception does not authorize rural residential development.

1 According to intervenor, just because rural residential development is an allowed
2 use in the MUA-10 zone that does not mean the approved exception authorizes
3 rural residential development. Intervenor asserts that no specific use is authorized
4 by the exception and the purpose of the exception is to create a transition zone
5 that would allow the property to be more easily included in the UGB:

6 “There is no interim purpose. If the property is not included in the
7 UGB, which is unlikely given the letter from City Council to the
8 County Board encouraging an expeditious decision on the rezone
9 application, the applicant will not pursue rural residential
10 development because that is not the long-term vision to provide
11 affordable and work force housing in [the City of] Sisters.”
12 Intervenor-Respondent’s Brief 24.

13 While we do not doubt intervenor’s preferred plan is to bring the property
14 into the city’s UGB for housing, the problem with intervenor’s position is that
15 there is nothing in the decision that restricts the use of the property to that
16 purpose. The decision merely redesignates and rezones the property to RREA
17 and MUA-10, which allow for a multitude of uses including rural residential
18 development. Absent any conditions of approval restricting the use of the
19 property to intervenor’s proffered intentions, the decision expressly allows rural
20 residential development. When, as here, the decision does not approve a specific
21 use but merely rezones the property allowing a multitude of uses, then the
22 decision must apply the applicable specific reasons exception provisions of OAR
23 660-004-0022(2) to (13).

1 Intervenor and the county's decision also rely upon *1000 Friends of*
2 *Oregon v. Jackson County*, 76 Or LUBA 270 (2017), *aff'd in part, rev'd in part*,
3 292 Or App 173, 423 P3d 793 (2018), *rev dismissed*, 365 Or 657 (2019) (*Solar*
4 7), for the proposition that a reasons exception can be approved under either OAR
5 660-004-0022(1) *or* one of the specific provisions of OAR 660-004-0022(2) to
6 (13). The hearings officer stated:

7 "Based on the [*Solar 7*] case, I find that [intervenor] can attempt to
8 show compliance with either OAR 660-004-0022(1) or any other
9 provision of OAR 660-004-0022 as the basis for the Reasons
10 Exception." Record 69.

11 The *Solar 7* case involved a reasons exception for a solar power generation
12 facility (solar farm). The various parties, including DLCD, were uncertain
13 whether a solar farm constituted "rural industrial development," so the county
14 adopted alternative findings under both the catch-all provision reasons in OAR
15 660-004-0022(1) and the reasons for rural industrial development in OAR 660-
16 004-0022(3). Before LUBA, the petitioner argued that the county erred by
17 adopting such alternative reasons for an exception. The intervenor argued that,
18 given the uncertainty of whether the solar farm was a rural industrial
19 development, alternative findings were acceptable. We generally agreed with the
20 intervenor:

21 "As we noted in *Morgan*, both OAR 660-004-0022(1)(a) and OAR
22 660-004-0022(3) set out a *non-exhaustive* list of acceptable reasons
23 to justify an exception. We stated:

24 "Although it is unlikely that [the Land Conservation and

1 Development Commission (LCDC)] intended this result, as
2 OAR 660-004-0022(1) and (3) are written, there is * * *
3 nothing that expressly precludes use of the same reasons
4 specified in OAR 660-004-0022(1) to justify rural industrial
5 development under OAR 660-004-0022(3)' 42 Or LUBA at
6 52.

7 "We went on to evaluate challenges to the findings articulated under
8 OAR 660-004-0022(1), to determine if those reasons were sufficient
9 to justify a reasons exception for rural industrial development.
10 Similarly, in the present case, we see nothing in the rule that would
11 preclude the county from attempting to justify a reasons exception
12 for an indisputable rural industrial use using the standards set out in
13 the 'catch-all' provision at OAR 660-004-0022(1), in lieu of the
14 non-exclusive set of reasons listed in OAR 660-004-0022(3).
15 Because the county is not limited to the reasons set out in OAR 660-
16 004-0022(3) to justify rural industrial development, and can attempt
17 to identify other reasons, including those set out in OAR 660-004-
18 0022(1), it is not error, or at least not reversible error, to attempt to
19 justify reasons exceptions under both OAR 660-004-0022(1) and
20 OAR 660-004-0022(3) in the same decision, particularly where
21 there is uncertainty regarding whether the proposed use is a rural
22 industrial use. Errors made under one set of reasons standards may
23 be harmless if the county adequately justifies an exception under a
24 different set of reasons standards. Accordingly, we conclude that
25 petitioner's categorical argument under the first subassignment of
26 error that the county must choose one basis over another does not
27 provide a basis for reversal or remand." *Solar 7*, 76 Or LUBA at
28 277-78.

29 As the preceding quotation explains, OAR 660-004-0022(3) provides a
30 non-exhaustive list of reasons that can justify an exception for rural industrial
31 development. Therefore, the reasons under OAR 660-004-0022(1) could be the
32 same reasons justifying rural industrial development under OAR 660-004-
33 0022(3). Given that there was uncertainty in *Solar 7* and a set of reasons to justify

1 the use could be the same under either OAR 660-004-0022(1) or (3), there was
2 no error in proceeding under both subsections. Unlike the reasons sufficient to
3 justify an exception to rural industrial use, the reasons justifying an exception for
4 rural residential development *are* exhaustive. A county may not rely on the non-
5 exhaustive list of reasons in OAR 660-004-0022(1) to justify an exception for
6 rural residential use. As explained earlier, even though intervenor does not plan
7 to develop rural residential housing, that use is allowed by the decision.
8 Therefore, absent any conditions of approval prohibiting rural residential
9 development, the county was required to satisfy OAR 660-004-0022(2).

10 The second assignment of error is sustained.

11 **THIRD ASSIGNMENT OF ERROR**

12 Petitioner argues that the county misconstrued the law and made a decision
13 unsupported by substantial evidence and adequate findings in concluding that a
14 reasons exception is justified.

15 **A. First Subassignment of Error**

16 Petitioner argues that the decision violates ORS 197.732(4) by failing to
17 set forth findings of fact and a statement of reasons that demonstrate that the
18 standards of ORS 197.732(2) have been met. ORS 197.732(4) provides:

19 “A local government approving or denying a proposed exception
20 shall set forth findings of fact and a statement of reasons that
21 demonstrate that the standards of [ORS 197.732](2) * * * have or
22 have not been met.”

23 ORS 197.732(2) provides:

1 “A local government may adopt an exception to a goal if

2 “* * * * *

3 “(c) The following standards are met:

4 “(A) Reasons justify why the state policy embodied in
5 the applicable goals should not apply;

6 “(B) Areas that do not require a new exception cannot
7 reasonably accommodate the use;

8 “(C) The long term environmental, economic, social
9 and energy consequences resulting from the use
10 at the proposed site with measures designed to
11 reduce adverse impacts are not significantly
12 more adverse than would typically result from
13 the same proposal being located in areas
14 requiring a goal exception other than the
15 proposed site; and

16 “(D) The proposed uses are compatible with other
17 adjacent uses or will be so rendered through
18 measures designed to reduce adverse impacts.”

19 Under ORS 197.732(4), for a reasons exception the county must set forth
20 findings of fact and a statement of reasons that the four standards of ORS
21 197.132(2)(c)(A) through (D) are met. Petitioner’s argument is essentially an
22 adequate findings argument. ORS 197.732(4) does not concern whether the
23 standards of ORS 197.732(2) are met – only whether the local government has
24 set out findings of fact and a statement of reasons. Findings must (1) address the
25 applicable standards; (2) set out the facts relied upon; and (3) explain how those
26 facts lead to the conclusion that the standards are met. *Heiller v. Josephine*
27 *County*, 23 Or LUBA 551, 556 (1992). “[T]o be sufficient for review, findings

1 need only ‘establish the factual and legal basis for the particular conclusions
2 drawn in a challenged decision.’” *Niederer v. City of Albany*, 79 Or LUBA 305,
3 314 (2019) (quoting *Thormahlen v. City of Ashland*, 20 Or LUBA 218, 229-30
4 (1990)).

5 ORS 197.732(2)(c)(A) requires that “[r]easons justify why the state policy
6 embodied in the applicable goals should not apply[.]” The hearings officer’s
7 recommendation, which was adopted by the board of commissioners, devoted
8 four pages to the issue of whether reasons justify why the policies of Goal 4
9 should not apply. The hearings officer agreed with intervenor and explained:

10 “According to [intervenor] these [Goal 4] policies ‘in most or all
11 respects are advanced better under the proposed [MUA-10] zoning.’
12 [Intervenor] has also asserted that there is a specific need for MUA-
13 10 zoning near the City of Sisters to provide a better transitional
14 zone between urban and rural development. I infer from
15 [intervenor’s] arguments that a reason for the Goal Exception is to
16 establish this transitional zone on the Subject Properties, which
17 [intervenor] asserts is more beneficial than keeping Goal 4
18 protections in place on a property that is not suitable for Goal 4
19 uses.” Record 67 (third brackets in original).

20 The hearings officer further explains that the soil report confirms that the
21 property is not suitable for commercial forestry and the natural area protections
22 of the MUA-10 zone would provide greater protection for natural areas on the
23 property such as Trout Creek. *Id.* The hearings officer concludes by explaining
24 that intervenor has met the burden to show the reasons why the Goal 4 policies
25 should not apply to the property and that opponents’ comments do not dispute
26 with any particularity intervenor’s reasons for the exception. The hearings

1 officer's incorporated recommendation adequately sets forth findings of facts and
2 a statement of reasons for why reasons justify why the policies of Goal 4 should
3 not apply.

4 ORS 197.732(2)(c)(B) requires that "[a]reas that do not require a new
5 exception cannot reasonably accommodate the use[.]" The hearings officer's
6 recommendation explains the difficulty in analyzing potential alternative sites
7 when intervenor has not proposed any of the specifically allowed MUA-10 uses,
8 but rather proposes a transitional zone to allow future annexation into the city.
9 The hearings officer explained that intervenor assessed the ability of other areas
10 to accommodate the rural uses allowed in the MUA-10 zone and that those other
11 areas do not allow the same types of uses and are encumbered by restrictions
12 preventing certain types of developments. The hearings officer further explains
13 that intervenor's analysis is largely unchallenged, and petitioner's challenges
14 involved proposed urban uses rather than MUA-10 use. Finally, the hearings
15 officer concluded that intervenor "met its burden to demonstrate that the
16 proposed use (transitional zoning for the City of Sisters to allow a variety of rural
17 uses) cannot reasonably be accommodated in areas that do not require a new Goal
18 Exception." Record 71. The hearings officer's incorporated recommendation
19 adequately sets forth findings of facts and a statement of reasons for why areas
20 which do not require an exception cannot reasonably accommodate the use.

21 ORS 197.732(2)(c)(C) requires that economic, social, environmental, and
22 energy (ESEE) consequences would not be significantly more adverse than

1 would result in other areas requiring a goal exception. The hearings officer
2 explains that intervenor provided an analysis of ESEE consequences
3 demonstrating that those consequences would be no greater, and in some cases
4 less, than if the proposal were on other lands requiring a goal exception. The
5 hearings officer further explained that opponents' comments did not contradict
6 intervenor's analysis because they addressed other areas that did *not* require a
7 goal exception rather than other areas that would require an exception. The
8 hearings officer concludes that intervenor had satisfied its burden under this
9 standard. Record 71-72. The hearings officer's incorporated recommendation
10 adequately sets forth findings of facts and a statement of reasons for why the
11 ESEE consequences would not be greater than for other areas that also require an
12 exception.

13 ORS 197.732(2)(c)(D) requires that "proposed uses are compatible with
14 other adjacent uses or will be so rendered through measures designed to reduce
15 adverse impacts." The hearings officer explains that the property is too small for
16 many of the uses allowed in the MUA-10 zone, such as dude ranches, golf
17 courses, and destination resorts, so no impacts are likely to occur from such uses.
18 The hearings officer further explains that opponents' comments again focused on
19 potential urban uses rather than MUA-10 uses. The hearings officer concludes by
20 explaining that all of the uses in the MUA-10 are compatible with adjacent uses.

21 ORS 197.732(4) is a findings requirement not a substantive standard.
22 While the legal or evidentiary bases for the county's conclusions that ORS

1 197.732(2)(c)(A) through (D) are satisfied may or may not be sufficient, the
2 decision adequately sets forth findings of fact and a statement of reasons for why
3 it believes they are satisfied.

4 The first subassignment of error is denied.

5 **B. Second Subassignment of Error**

6 Petitioner argues that the county misconstrued the law and adopted
7 inadequate findings unsupported by substantial evidence in finding that reasons
8 support an exception to Goal 4. As discussed earlier, ORS 197.732(2)(c)
9 provides, in part, that a local government may adopt a reasons exception if the
10 following standards are met:

11 “(A) Reasons justify why the state policy in the applicable goals
12 should not apply;

13 “(B) Areas that do not require a new exception cannot reasonably
14 accommodate the use[.]”

15 **1. Whether There Are Reasons Why the Goal Should Not**
16 **Apply**

17 Petitioner argues that, even if the catch-all provision of OAR 660-004-
18 0022(1) can be used to obtain an exception in this situation, the reasons the
19 county relied upon are not sufficient to justify an exception.³ When proceeding

³ Although we held under the second assignment of error that the county erred in relying on OAR 660-004-0022(1) and not addressing OAR 660-004-0022(2), in the event our decision is overturned on appeal or the county conditions the decision to prohibit rural residential development, we address petitioner’s arguments. *See* ORS 197.835(11) (providing that “to the extent possible

1 under the catch-all reasons exception, acceptable reasons must “be of comparable
2 force and weight” to the reasons expressly identified in the rules and not be
3 “makeweights that render the goal requirements meaningless.” *Todd v. City of*
4 *Florence*, 52 Or LUBA 445, 463 (2006). The three reasons the county relied upon
5 to support the exception are: (1) need for a transition zone on property located
6 near city limits that could be annexed into the city; (2) the property is not suitable
7 for commercial forestry operations; and (3) the MUA-10 zone provides
8 equivalent or better protection of soil, water, and wildlife resources.

9 While determining whether reasons under the catch-all provision are
10 “makeweights” or not is a subjective standard, two prior cases give some insight
11 into what types of reasons are not merely makeweights. In *Todd*, the city
12 approved an exception to Statewide Planning Goal 11 (Public Facilities and
13 Services) to extend water and sewer services to an adjacent property held in trust
14 for the federally-recognized Confederated Tribes of the Coos, Lower Umpqua,
15 and Siuslaw Indians (the Tribes). The Tribes had the right to develop to urban
16 level uses, so we held that was a sufficient reason to justify an exception. *Id.* at
17 467. In *Oregon Coast Alliance v. Tillamook County*, LUBA Nos 2021-101/104
18 (Sept 30, 2022), the county took an exception to Statewide Planning Goal 18
19 (Beaches and Dunes) to allow shoreline armoring to protect an existing
20 unincorporated community from encroaching tides. We held that the coastal

consistent with the time requirements of ORS 197.830(14), the board shall decide all issues presented to it when reversing or remanding a land use decision”).

1 weather phenomena combined with existing jetties created unique circumstances
2 that justified the exception. *Oregon Coast Alliance*, LUBA Nos 2021-101/104
3 (slip op at 28).

4 The county's first reason – need for a transition zone on property located
5 near city limits that could be included in the city's UGB – could constitute a
6 reason that is more than a makeweight. Intervenor points to materials submitted
7 into the record that support this reason. Intervenor-Respondent's Brief 24. These
8 materials include that the state has an acknowledged housing crisis as evidenced
9 by executive orders signed by the Governor and that in the City of Sisters in the
10 last 20 years median household income has increased 88 percent while the cost
11 of housing has increased approximately 400 percent. Record 1519-20. The stated
12 purpose of creating the MUA-10 transitional zone was to change the designation
13 of the subject property from resource land to an exception area, which would
14 have higher priority over non-exception lands in any UGB expansion conducted
15 by the City of Sisters. As discussed earlier, however, there is a disconnect
16 between the stated purpose, which we do not doubt, and the practical effect of the
17 decision. The decision does not merely create a transition zone that can be used,
18 and only used, to facilitate inclusion in the city's UGB. Instead, the decision
19 creates an MUA-10 zone which allows a multitude of uses, including rural
20 residential use, with no conditions of approval or any other limiting factor that
21 would restrict the use of the property to the stated purpose.

1 The county's second reason – the property is not suitable for commercial
2 forestry operations – is not a sufficiently weighty reason to justify an exception.
3 The suitability of resource land for resource use is not particularly relevant when
4 considering a goal exception, rather it is a reason that an exception is not
5 necessary. *Friends of Yamhill County*, 47 OR LUBA at 523. The county's third
6 reason – the MUA-10 zone provides equivalent or better protection of soil, water,
7 and wildlife resources – is also not a sufficiently weighty reason to justify an
8 exception. As petitioner argues, this inverts the analysis by looking for reasons
9 that Goal 4 should apply (and not finding them) rather than why Goal 4 should
10 not apply. The reasons that the county relied upon, particularly when the purpose
11 of creating a transition zone did much more than that, are not sufficient reasons
12 to justify an exception under the catch-all provision of OAR 660-004-0022(1).
13 Therefore, we agree with petitioner that the county misconstrued ORS
14 197.732(2)(c)(A).

15 **2. Whether There Are Areas That Do Not Require an**
16 **Exception That Can Reasonably Accommodate the Use**

17 As discussed multiple times, there is a disconnect between the purpose of
18 merely creating a transition zone to eventually be included in the UGB and the
19 multitude of uses allowed in MUA-10 zone which are allowed by the decision.
20 This disconnect is also reflected in the county's findings. Regarding ORS
21 197.732(2)(c)(B), other areas that do not require an exception, the board of
22 commissioners found:

1 “Other exception lands cannot reasonably accommodate the new
2 MUA-10 uses. Other properties in the area designated are
3 designated RREA and are predominantly zoned RR-10. Maps
4 presented in the proceedings illustrate that those exception lands
5 cannot reasonably accommodate new MUA-10 development.”
6 Record 55.

7 The hearings officer’s findings, which were adopted by the board of
8 commissioners, state:

9 “[Intervenor] acknowledges that this criterion is difficult to apply
10 because no one specific use is being proposed. By seeking to rezone
11 the Subject Properties without specifying any limitation on which
12 uses are or are not allowed, [intervenor] is proposing that all uses in
13 the MUA-10 zone be allowed. More specifically, however,
14 [intervenor] is proposing to allow those uses through the
15 establishment of a transitional zone adjacent to the City that allows
16 a variety of rural uses, including housing. Looking at the ‘proposed
17 use’ through that lens, ORS 197.732(2)(c)(B) requires a
18 determination of whether other areas not requiring a Goal Exception
19 could also be used to establish a transitional zone adjacent to the
20 City of Sisters to allow a variety of rural uses.

21 “* * * * *

22 “I find that [intervenor] has met its burden to demonstrate that the
23 proposed use (transitional zoning for the City of Sisters to allow a
24 variety of rural uses) cannot reasonably be accommodated in areas
25 that do not require a new Goal Exception.” Record 70-71.

26 While the county may be correct that there are no other areas that do not
27 require an exception that could reasonably accommodate a transitional zone
28 adjacent to current city limits that could eventually be included in the UGB, that
29 is not what the decision approves. The decision that was actually approved
30 creates a MUA-10 zone with all of its possible uses. There is little doubt that

1 there are many other areas in the county that could reasonably accommodate
2 MUA-10 uses. If the county had adopted a decision that only allowed a transition
3 zone pending inclusion in the UGB then perhaps the county could comply with
4 ORS 197.732(2)(c)(B), but the decision that was adopted does not.

5 The county misconstrued ORS 197.732(2)(c)(B).

6 The second subassignment of error is sustained.

7 The third subassignment of error is sustained, in part.

8 **FOURTH ASSIGNMENT OF ERROR**

9 Petitioner argues that the decision misconstrues the applicable law by
10 violating Statewide Planning Goal 14 (Urbanization) and Deschutes County
11 Comprehensive Plan (DCCP) policy 3.3.1 by allowing new residential
12 development with no minimum lot sizes.

13 **A. First Subassignment of Error**

14 Goal 14 prohibits the urban use of rural land. *1000 Friends of Oregon v.*
15 *LCDC (Curry Co.)*, 301 Or 447, 724 P2d 268 (1986) (*Curry County*). Whether a
16 use of land outside a UGB constitutes an urban or rural use involves an
17 individualistic, site-specific inquiry – applying the *Curry County* factors.
18 Petitioner argues that the MUA-10 zone allows urban use of rural land by
19 permitting residential development of up to 12 lots, with no minimum lot size,

1 adjacent to a UGB. This issue has been a recurring issue in a series of cases
2 involving the parties.⁴

3 The county initially found that “the application does not provide any basis
4 for the County to revisit whether the RREA designation, or the RR-10/MUA-10
5 zones violate Goal 14 by allowing urban development. No individual analysis of
6 whether specific allowable uses in the MUA-10 zone violate Goal 14 is required.”
7 Record 58. We rejected this exact argument in *Central Oregon LandWatch v.*
8 *Deschutes County*, LUBA No 2025-015 (June 26, 2025) (*Destiny Court*) (slip op
9 at 13).

10 The county then attempted to address the *Curry County* factors finding that
11 no urban uses were authorized because “[t]he minimum size in the MUA-10 zone
12 is 10 acres.” Record 59. The decision also relied upon updates to the
13 comprehensive plan made in response to *Destiny Court*. Those updates were
14 remanded, however, in *Central Oregon LandWatch v. Deschutes County*, LUBA
15 No 2024-080 (April 13, 2026) (*Pohaku Farms*), and are thus unacknowledged.
16 In this appeal, intervenor argues that even though the MUA-10 zone allows uses
17 that would clearly violate Goal 14, because *Pohaku Farms* holds that such uses
18 cannot be allowed absent an exception to Goal 14 those uses are effectively
19 prohibited, and therefore the current decision does not violate Goal 14. Intervenor

⁴ The county has admittedly been put in a difficult position as it has had to make decisions on individual applications while the law involving these issues has evolved with each individual decision’s trip up the appellate ladder.

1 further argues that this decision does not authorize any specific development, let
2 alone the type of development that would violate Goal 14. We rejected that
3 argument in *Central Oregon Landwatch v. Deschutes County*, LUBA No 2026-
4 015 (June 26, 2026) (*BCL*):

5 “Intervenor responds that petitioner’s speculations about potential
6 actual lot size in a potential PUD are very interesting, but academic,
7 because as discussed under the first assignment of error, intervenor
8 did not propose cluster development or PUD and the county did not
9 approve such development. Intervenor repeats its arguments that it
10 is premature to consider what kind of development, at what density,
11 intervenor or a future applicant will propose. Further, intervenor
12 repeats its argument that under *Destiny Court* and *Pohaku Farms* an
13 applicant is unlikely to gain approval for cluster development or
14 PUD at sub-10-acre minimums, but instead would likely be limited
15 to approval of a straightforward subdivision within the MUA-10
16 zone, where each lot is a minimum 10 acres in size.

17 “However, as previously noted, the county expressly assumed that
18 the subject property would be developed with cluster development
19 and PUD at the maximum potential density allowed under the
20 applicable code provisions. For purposes of evaluating whether the
21 PAPA is consistent with Goal 14 under *Curry County*, that
22 assumption is appropriate. The applicant did not propose, or the
23 county impose, any conditions or restrictions that would limit the
24 density or intensity of development. Accordingly, we disagree with
25 intervenor that it is premature or advisory to reach the merits of
26 petitioner’s arguments regarding actual lot size allowed under
27 potential cluster development or PUD of the property.” (slip op at
28 30-31.)

29 While the county did not expressly assume that cluster development will
30 occur in the present case, as in *BCL* intervenor did not propose and the county
31 did not impose any conditions of approval that would limit the density or intensity

1 of development. Therefore, for the same reason the county misconstrued the law
2 in finding the decision complied with Goal 14 in *BCL*, we conclude the present
3 decision also misconstrues the law.

4 The first subassignment of error is sustained.

5 **B. Second Subassignment of Error**

6 DCCP policy 3.3.1 provides:

7 “Except for parcels in the Westside Transect Zone, the minimum
8 parcel size for new rural residential parcels shall be 10 acres.”⁵

9 Petitioner argues that the MUA-10 zones explicitly allows parcels under
10 10-acres in size and therefore violates DCCP 3.3.1. While the county adopted
11 comprehensive plan amendments to resolve this issue, that decision adopting
12 those amendments was remanded in *Pohaku Farms*. Intervenor makes the same
13 argument it made under the first subassignment of error, that because *Pohaku*
14 *Farms* prohibits any development less than 10 acres, there is no conflict with
15 DCCP 3.3.1. We rejected that argument in *BCL*:

16 “Although petitioner raised below the issue of whether densities
17 allowed under the MUA-10 zone would be consistent with DCCP
18 3.3.1, the findings do not address that issue, or explain why it need
19 not be addressed. We agree with petitioner that that issue is most
20 appropriately addressed in the context of the present plan and zoning

⁵ We note that the subject property is not within the Westside Transect Zone. Further, as discussed above, and extensively explained in *Pohaku Farms*, the county is in the process of amending its comprehensive plan, which includes amending and renumbering DCCP 3.3.1. We continue to refer and cite to this policy as DCCP 3.3.1.

1 amendment that creates the potential conflict, not a subsequent land
2 use application for a specific development proposal. As it stands,
3 nothing in the county's decision would prevent a future applicant
4 from seeking cluster development or PUD on the subject tract at sub-
5 10-acre densities, and nothing cited to us in the DCCP or D[eschutes
6 County Code] or elsewhere would ensure that the issue of
7 consistency with DCCP 3.3.1 would be addressed and resolved in
8 approving or denying a specific development proposal.
9 Accordingly, we agree with petitioner that remand is appropriate for
10 the county to address and resolve in the first instance the issues
11 raised below regarding whether application of the MUA-10 zone in
12 the present case is consistent with DCCP 3.3.1." (slip op at 10-11.)

13 As our decision in *BCL* had not been issued when the decision in this
14 appeal was made, it is understandable that the county proceeded in the manner it
15 did. Under *BCL*, however, the county may not rely on the decision in *Pohaku*
16 *Farms* to solve the problem of the MUA-10 zone allowing uses that violate
17 DCCP policy 3.3.1.

18 The second subassignment of error is sustained.

19 The county's decision is remanded.

20 BASSHAM, Board Member, concurring.

21 I agree with the majority's reasoning and conclusions, but write separately
22 to highlight potential problems that the majority decision does not reach, and that
23 may affect how the county addresses remand under the third assignment of error,
24 concerning the criteria for adopting a reasons exception.

25 According to the decision, the stated purpose of the reasons exception is to
26 facilitate inclusion of the subject property within the City of Sister's UGB, in
27 anticipation of a city UGB amendment, driven by a serious local (and statewide)

1 housing crisis. Under the applicable statutes and administrative rules, a rigid
2 priority scheme governs inclusion of land within UGBs. *See* OAR 660-024-0067
3 and OAR 660-038-0170 (setting out priorities for including land within UGBs).
4 Under both rules, the highest priority is land within urban reserves, exception
5 areas, and nonresource lands; the lowest priority is resource lands, with the lowest
6 priority of all resource lands being those with high-value farm soils or higher
7 capability forest soils. Against that backdrop, the subject application is best
8 understood as an attempt by intervenor, blessed by the county, to leapfrog the
9 subject property up the priority ladder, from one of the lower rungs to the highest
10 rung. If intervenor is successful, that would effectively compel the city, in any
11 subsequent UGB expansion, to consider the subject property as first priority land
12 for inclusion.

13 However, in my view, intervenor's attempted gaming of the UGB
14 amendment priority scheme and its desire to leapfrog its property up the priority
15 ladder is an insufficient "reason" under the catch-all provision of OAR 660-004-
16 0022(1) to take an exception to the resource goals. The city in the present case
17 apparently supports intervenor's application. However, it is easy to imagine
18 circumstances where a property owner and a willing county, by taking a reasons
19 exception like that attempted in the present case, leapfrogs resource land into the
20 first priority despite the fact that that property may not be the most suitable for
21 inclusion within the UGB, compared to other lands adjacent to the UGB,
22 including other resource lands with lower quality soils than the hypothetical

1 subject property. It is possible in such circumstances that the property owner and
2 county could effectively compel the affected city to include that leapfrogged
3 property into the UGB to meet its identified housing needs, contrary to the city's
4 desires and interests, and the planning principles embodied in the priority
5 scheme. Stated differently, the property owner and county could effectively
6 advantage the hypothetical subject property in the priority competition to be
7 included in the UGB, at the expense of other, perhaps more suitable, resource
8 lands that would otherwise have priority and that the city might prefer to include.

9 The present record includes no information evaluating how the subject
10 property compares to other UGB-adjacent resource lands with respect to soil
11 quality and suitability for inclusion within the UGB under the priority scheme
12 and other required considerations. The city has no designated urban reserves, and
13 apparently has not adopted a study of adjacent lands under OAR 660-024-0067
14 or OAR 660-038-0170, to determine which lands are most suitable for inclusion
15 within the UGB. In my view, to the extent it is permissible for the county to
16 invoke the catch-all provision of OAR 660-004-0022(1) as the basis for a reasons
17 exception to a resource goal, in order to elevate resource land into the highest
18 priority category for inclusion within an adjoining UGB, the county must base
19 that decision on something more than the landowner's desire to jump to the head
20 of the line. I believe intervenor, or a future applicant, must demonstrate, in
21 coordination and with the support of the city, that the supply of first priority lands
22 is likely insufficient to meet the city's projected needs, and that it is likely that

1 lower priority resource lands, the subject property, must be included when the
2 city next expands its UGB. Further, the applicant must demonstrate that the
3 subject property is better suited for inclusion in the UGB, compared to other
4 adjoining resource lands, under all relevant considerations. In my opinion,
5 potentially relevant other considerations that might support a reasons exception
6 under OAR 660-004-0022(1) include the criteria for inclusion of land within
7 urban reserves, set out in ORS 197A.245(6).⁶ Arguably, if the record shows that

⁶ ORS 197A.245(6) provides:

“The designation of urban reserves under subsection (1)(b) of this section must be based upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

- “(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
- “(b) Includes sufficient development capacity to support a healthy urban economy;
- “(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
- “(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
- “(e) Can be designed to preserve and enhance natural ecological systems; and

1 resource land is uniquely or at least better qualified for inclusion within an urban
2 reserve under those statutory factors and other relevant considerations, compared
3 to other adjoining resource lands, that qualification could supply a legally
4 sufficient “reason” under OAR 660-004-0022(1) to take an exception to the
5 resource goals. But such an exception would be justified, if at all, only because it
6 increases the supply of suitable first priority lands and facilitates a more optimal
7 UGB expansion, not because it allows a particular property owner to jump the
8 queue.

9 Whatever approach is taken, it bears repeating that any attempt to use the
10 reasons exception process to effectively alter application of the priority scheme
11 that would govern a city’s UGB expansion must be coordinated with, and
12 explicitly supported by, the affected city.

“(f) Includes sufficient land suitable for a range of housing types.”

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2025-070 on August 19, 2026, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 19th day of August, 2026.



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