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May 25, 2016

Via Hand Delivery

Hood River County Planning Commission
c/o Eric Walker, Principal Planner
601 State Street
Hood River, OR 97031

Re: Appeal #16-0073 of Commercial Land Use Permit #15-0174; Hood River Valley Residents Committee Appeal of Apollo Land Holdings LLC Hotel Project on the former Dee Mill site.

Dear Chair Schuppe and Planning Commission:

On behalf of the Hood River Valley Residents Committee ("Residents Committee"), I submit these comments in support of Appeal #16-0073 regarding the Commercial Land Use Permit #15-0174 for a 50-unit hotel on the site of the former Dee Mill. For the reasons set forth below, the Residents Committee requests that the Planning Commission deny the commercial land use permit application. Please notify me of any decisions related to this application and appeal.

Overview

The subject property is the former Dee Mill site, near the intersection of Lost Lake Road and Dee Highway, 1N 10E 07 #201. The property is subject to a Goal 4 Exception as Rural Industrial land in the Hood River County Comprehensive Plan. Dee Hardboard Industrial Exception Map #36 (Exhibit A). The historic uses of the property were rural industrial in nature, and the county planning documents reflect that use of the property, taking into consideration the surrounding resource (farm and forest) land uses. State law does not allow a new use of the property that is inconsistent with the use justified in the County's Goal Exception document.

The applicant previously received approval for an event venue at this property. *See* Exhibits B, C. Now, in addition to the 2,250 square foot concert pavilion, 437-space parking lot, food cart area, large lawn, and portable restroom facilities, the site would also house a 50-room hotel, on-site wastewater treatment system, wells and/or water supply, and other utility and circulation improvements. In all, the proposed development would have most or all of the characteristics of a destination resort as defined by Oregon law, as "a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities." ORS 197.445. However, destination resorts are not allowed in Hood River county farm and forestland areas.

The Residents Committee is concerned that this series approach to the development proposal will, in effect, result in a destination resort style development despite the fact the Hood River County as recently as last fall retained its prohibition on destination resorts on farm and forestlands. In addition, the Residents Committee has concerns regarding the urban nature of the proposed use in this rural area, the impacts of traffic and other services including wastewater treatment and water use, impacts to the East Fork of Hood River, and the residual contamination on the site resulting from the prior mill operations. These issues are discussed in more detail below.

The Residents Committee urges the Planning Commission to apply the Comprehensive Plan and Statewide Planning Goals, including the applicable state statutes and regulations, to preserve this property for rural industrial uses.

The Proposed Use is Not Permitted Under Hood River County's Goal 4 Exception for this Site.

The property's industrial zoning designation is based on the County's Goal 4 exception for this site. The Goal Exceptions document is part of Hood River County's Comprehensive Plan, as required by state law. *See* OAR 660-004-0015(1). State law prohibits land uses in exception areas other than those justified by the applicable exception:

> "Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception."

OAR 660-004-0018(1). The Oregon Court of Appeals has explained:

> "Under the rule, a physically developed or irrevocably committed exception will permit only uses that are the same as those already existing on the property or uses that can meet the requirements set out in the rule. In such cases, no new exception is required. … However, changes in existing uses that do not meet those requirements are subject to the requirements for a new exception that are set out in OAR 660-004-0018(3). … In a sense, the basis for the physically developed or committed lands exception evaporates with an incompatible proposed use, and a new rationale for not applying the otherwise applicable resource goal becomes necessary."

Doty v. Coos County, 185 Or App 233, 243 (2002).

The property is subject to a Goal 4 Exception as Rural Industrial land in the Hood River County Comprehensive Plan. The Exception document recognizes the surrounding land characteristics as resource use, "farm to the west, forest to the east." Hood River County Exceptions Document at 237 (1984) (Exhibit A). The original *Central Valley Plan* document notes that the Dee Mill site is largely committed to industrial uses, and "[w]hatever industrial expansion occurs … will likely be done only by the existing mill[ ] on the site[ ]." *Id.* at 9. In other words, the Goal 4 exception

for this property envisioned expansion of the existing rural industrial land use—the mill in operation at the time the exception was taken.

The Staff Report explains that the proposed 50-room hotel is a commercial use. The commercial hotel use is not a recognized or justified use in the County's exception document for this site. Although the current Industrial (M-1) zone includes commercial establishments through incorporation of the commercial (C-1) zone, tourism commercial use at this site is not consistent with the rural industrial use for which the Goal 4 exception was taken. In order to allow the proposed commercial use without a new Goal 4 exception, the County must determine whether the hotel can meet the requirements set out in OAR 660-004-0018(2)(b), including whether the proposed hotel will maintain the land as "rural land" and be consistent with all other applicable goal requirements, and whether the use is compatible with adjacent and nearby resource uses. As discussed further in detail below, the hotel is not consistent with other applicable goals including Goal 14, and is not compatible with the nearby resource uses.

Urban Use on Rural Lands

The proposed hotel is an urban use that would violate Goal 14. *See 1000 Friends v. LCDC (Curry County)*, 301 Or 447, 507 n.37 (1986) (Exhibit D). Regardless of the zoning, the County may not allow urban commercial uses on rural land without an exception to Goal 14. OAR 660-014-0040 sets forth the allowable justifications for an exception to Goal 14 to allow the establishment of new urban development on undeveloped rural lands (which would include the former Dee Mill site). The prior Goal 4 exception did not authorize commercial or urban uses of the property or determine that the land is "suitable, necessary, or intended for urban use" under Goal 14. The county has not taken a Goal 14 exception for this property.

In order to determine whether a proposed land use is urban or rural, the county may consider several factors including the size of the area in relationship to the developed use (density), whether the proposed use is likely to become a magnet attracting people from outside the rural area, and the types and levels of services which must be provided to the proposed development. *1000 Friends v. LCDC (Curry County)*, 301 Or 447 (1986) (Exhibit D). Applying these factors, the Land Use Board of Appeals has previously found that a 50-unit hotel that would allow tourists to stay in the rural area rather than returning to the City of Portland is an urban development. *VinCEP v. Yamhill County*, 53 Or LUBA 514, 523 (2007) (Exhibit E). In this case, the proposed 50-unit hotel is designed to draw tourists from urban areas such as the City of Portland to the rural area, and would allow those tourists to stay overnight in the rural area rather than returning to the urban centers. For example, the Staff Report notes that the "proposal will increase tourism to Hood River County," and the site is "near the Mt. Hood National Forest, which is a popular recreational destination." Staff Report at 15,13. The original concert venue application describes the vision for the development as a venue that "has a high probability of being the go to venue in Oregon." Concert Venue Application at 3 (Exhibit B). The application describes how visitors from Portland and Hood River would access the site. *Id.* at 9.

The types and levels of services required for this proposal likewise demonstrate that the hotel is an urban development and therefore requires a Goal 14 exception. As discussed below,

information related to the level of service needed for water use and other public services has not been provided in detail with the application. Nevertheless, the available information demonstrates that a 50-room hotel would require urban level services. For example, the hotel will require significant amounts of water for drinking, washing, and fire suppression. The existing 2-inch water line serving the will likely not meet all of the water requirements for the hotel and supporting facilities. No public sewer is available, but the wastewater treatment needs will be large enough to require an on site sewer system and a Water Pollution Control Facility Permit from DEQ.

The level of traffic resulting from the proposed use will be urban in nature, even if for only those days when events occur at the site. Although the Residents Committee appreciates the Planning Staff's response to traffic concerns and recommendations for future conditions of approval to limit traffic impacts (Staff Report at 4-5), the urban level of traffic caused by this development would violate Goal 14. Traffic impacts are discussed in more detail, below.

A Goal 14 exception is required for the proposed urban use of this rural property. That exception process requires an analysis of the environmental, economic, social, and energy consequences of siting this proposed urban use in a rural area. OAR 660-014-0040(3)(b). That ESEE analysis would reveal important consequences and significant impacts to the rural community.

Commercial Use on Industrial Land

As noted above, the County's Goal 4 exception for this property acknowledged that the site was committed to rural industrial use through operation of the Dee Mill. The County may be able to allow industrial uses on the property without an exception to Goal 14. *See* OAR 660-014-0040(4). However, there is no similar provision for commercial development under the Goal 14 rule. *Id.* Further, the property qualifies as an "abandoned or diminished mill site" for redevelopment for industrial uses under the "Mill Bill," ORS 197.719. The Mill Bill allows for local governments to zone and develop abandoned or diminished mill sites for industrial uses, notwithstanding land use planning goals related to protecting agricultural and forestlands (Goals 3 & 4) and relating to public services (Goal 11) and urbanization (Goal 14). ORS 197.719(2), (3), (4). The exemption from the requirements of Goals 3, 4, 11, or 14 applies only to new industrial development and accessory uses subordinate to the industrial development. For sites subject to these exemptions, "The governing body or its designee may not approve a permit for retail, commercial or residential development on the mill site." ORS 197.719(6)(b). In other words, both the County's exceptions document and the state law for redevelopment of mill sites preserve this property for industrial, not commercial, uses.

Further, the Goal 9 element of the Hood River County Comprehensive Plan contains goals and policies applicable to the development of new industrial and commercial facilities. The overall goal is to "maintain and provide for a stable and healthy agricultural and forest product based economy." Commercial growth "shall only be encouraged to the extent that it does not significantly alter the rural character, or the existing agriculture and forestry base of the economy in those areas designated as resource land." *Hood River County Comprehensive Plan*, Goal 9 Economic Development. The proposed hotel does not support this goal. Further policies and strategies within the Goal 9 element require that commercial activities be centralized, and that

new commercial establishments be close to population centers and compatible with surrounding uses, size, and character.

Public Services – On Site Sewer and Goal 11 Requirements

The applicant proposed developing an on-site wastewater treatment system to serve the hotel and associated facilities. The on-site sewer system likely requires an exception to Goal 11 because it will serve more than one unit in the hotel.[1] OAR 660-011-0060. ORS 197.719(4)(c) allows a local government to approve the establishment of "on-site sewer facilities to serve an area that on June 10, 2003, is zoned for industrial use and that contains an abandoned or diminished mill site . . . . The sewer facilities may serve only industrial uses authorized for the mill site and contiguous lands zoned for industrial use." ORS 197.719 does not allow the County to approve an on-site sewer facility to serve commercial or other non-industrial uses on the property without an exception to Goal 11.

Water Resources Impacts

The site is subject to the Stream Protection Overlay Zone (Article 42). This overlay is intended to protect the water resources of the fish-bearing streams of Hood River County, including the East Fork of Hood River and Tony Creek, and to meet the requirements of Goal 5 for the protection of riparian areas. The Residents Committee has several concerns regarding the proposed hotel's impacts on the water resources of the East Fork and Tony Creek.

Water Use

Section 64.25(D) requires agency approval of a potable water supply. The hotel will likely require large amounts of water, at least 5,000 gallons per day (per estimates for wastewater treatment needs). Given the additional water needed for fire protection, the applicant has not demonstrated approvals for all necessary water use. The applicant failed to provide specific information regarding the amount of water needed for the project and how that water would be obtained. Although the applicant asserts that it has water rights (for industrial uses) from both Hood River and Tony Creek, these water rights are likely subject to cancellation for non-use. Water rights Certificates 39054 and 30440 apply to this property. *See* Exhibit F. Because the property has not been used for industrial purposes since the mill burned in 1996, the water rights have not been put to beneficial use. Absent beneficial use, water rights are subject to cancellation. ORS 540.610.

The application states that wells may be required to meet water needs. However, construction of new groundwater sources must demonstrate that there will be no substantial interference with nearby surface waters. OAR 690-009-0040. Because of the proximity of the East Fork to the proposed use, any proposed new groundwater source is likely to impact surface water flows in the river. The hotel use is likely to be most intensive during late summer and early fall months, when water flows are at their lowest. *See* USGS Flow Table (Exhibit G). Decreased river flows

[1] Although not proposed as such, the hotel likely meets the definition of "planned unit development" for purposes of Goal 11.

have impacts for water quality and fish habitat including increased temperature and decreased dissolved oxygen levels.

The presence of contamination from historic mill activities on the property presents another concern with the proposal to use groundwater sources. Oregon DEQ has investigated known contamination at this site. *See* Exhibit H. Following that investigation, DEQ and the mill owner entered into a letter agreement for removal actions, and granted an equitable servitude and easement over the property that was "intended to protect human health and the environment." Equitable Servitude and Easement (August 5, 1998) (Exhibit H at 2). The equitable servitude identifies two areas of contamination and restricts the uses of those areas. Specifically, at the Paint/Ash Area, "no use shall be made of groundwater by extraction through wells or by other means, which use involves consumption or residential use of the groundwater for drinking water purposes." *Id.* at 4. In addition, construction "of a residential building of any type" is prohibited at the Paint/Ash Area. *Id.* Due to the lack of scale on the applicant's drawings, it is not clear whether the proposed hotel would fall within the footprint of the Paint/Ash Area where residential buildings of any type are prohibited. Based on an initial comparison, it appears that at least a portion of the proposed hotel falls within the Paint/Ash Area. The area should be surveyed to ensure this restriction on use is not violated. At a minimum, no wells for drinking water sources may be installed in either of the restricted use areas.

The Staff Report acknowledges this history and comments from DEQ recommending soil sampling to ensure no new or previously undisclosed hazardous sites exist. The Staff Report recommends Condition of Approval #26 to address this issue. However, Condition of Approval #26 states only that the "applicant consider taking soil samples as part of the development of this property…" This is not a requirement but a recommendation and does not address the potential for groundwater contamination.

Stormwater

Section 31.60.B requires that an applicant demonstrate that storm drainage or natural drainage systems will handle any increased runoff created by the new development. Section 42.20(B) restricts development within 50 feet of the bankfull stage of the East Fork of Hood River. The East Fork is habitat for Endangered Species Act protected salmon and steelhead. Federal and state agencies (and in turn, taxpayers) have invested in restoration activities on the Hood River for recovery of ESA listed species. The Residents' Committee appreciates the Planning Staff's recommended conditions of approval to help protect water quality and riparian habitat in compliance with Section 42.20(B) requiring state and federal permits and restricting development within 50 feet of the bankfull stage of the East Fork of the Hood River. However, given the intensity of the proposed use, where hundreds of people may visit the property at any one time, the potential for bank erosion and other pollution sources on the property is high. The County should consider whether additional restrictions are warranted to ensure protection of water quality and fish habitat.

Further, the stormwater impacts of the proposed use should be analyzed as part of the Goal 14 Exceptions process. The Confederated Tribes of the Warm Springs operates a fish hatchery south of the project on Red Hill Drive. This project should be assessed for its impacts on both the

Tribe's hatchery project and to the recovery of native runs of ESA listed salmon and steelhead. The hotel and parking lots' impervious surfaces have the potential to create significant stormwater runoff, and the County must ensure that no stormwater discharges to Hood River as a result of this project.

Traffic Impacts

Section 31.60, Site Design Standards, requires that at the time of new development, or change of use, the applicant shall demonstrate, "A. Site access will not cause dangerous intersections or traffic congestion … Roadway capacity, speed limits and number of turning movements shall all be considered." This standard requires more than a showing of capacity, but a demonstration that the new use will not cause dangerous conditions.

As with the concert venue application, the Residents Committee is concerned with site access, traffic congestion, and safety related to the hotel proposal. The concert venue approval included conditions requiring the applicant to develop a traffic control plan and to obtain a road approach permit to address traffic congestion and safety along Lost Lake Road and at the Highway 281/Lost Lake Road intersection area. 18 months later, the applicant has not submitted that required plan.

The county must consider the traffic impacts of the proposed development that now includes both the concert venue facility and hotel. Whether or not the average traffic counts would exceed the Level of Service for this intersection does not necessarily answer the question of whether the proposed site access will cause dangerous intersections or traffic congestion.

The Hood River County Transportation System Plan (TSP) classifies Highway 281 as a minor arterial, and Lost Lake Road as a rural collector. The 2001 average daily traffic count at this intersection was 1,700, with an hourly design volume of 435. According to ODOT data, the 2014 annual average daily traffic count at this intersection was 2,300 vehicles. *See* Exhibit I. Seasonal traffic increases during summer months in this area are significant.

The prior traffic study, upon which this application relies, failed to use the accurate seasonal traffic counts consistent with ODOT data. An accurate high season assessment of existing traffic is essential to establish a baseline for any calculation of the traffic impacts of this development. As previously noted by the Residents Committee, traffic added by concert venue development will increase daily traffic on Highway 281 by around 50% on the days the concert venue is in operation. It is highly unusual that a single development has such a significant impact on traffic volume. The combined traffic of the event venue and hotel will add approximately 1,000 vehicles to the road, with the majority of that traffic occurring during a short period before and after events. *See* December 2014 comments of HRVRC (Exhibit J).

Without the traffic control plan required by the event venue approval and further information to demonstrate that the proposal will not cause dangerous intersections or congestion, the applicant has not shown compliance with Section 31.60.A.

Further, the traffic impacts of the proposed use should be analyzed as part of the Goal 14 Exceptions process. Goal 2 Part II(c)(3) requires that the county determine that "the long term environmental, economic, social and energy consequences of" siting the proposed urban use at this site are not "significantly more adverse than would typically result" from locating the proposal at other rural sites that would require an exception to Goal 11 and/or Goal 14. In so doing, the County here would properly include an analysis of the environmental, economic, social and energy (ESEE) consequences of the traffic related to the proposed use.

Fire

The property is within the service area of the Parkdale Rural Fire District. The Staff Report recommends conditions of approval to comply with all Fire and Life Safety requirements implemented by Parkdale Fire District including adequate water flow for required suppression devises. However, the application does not demonstrate that compliance with fire protection requirements is feasible given the uncertainty of water available to serve the site.

Fire protection service to the proposed use will exceed the usual rural level of service in this district. U.S. fire departments responded to an estimated average of 3,700 structure fires per year at hotel or motel properties between 2006-2010. These fires caused average annual losses of 12 civilian deaths, 143 civilian injuries, and $127 million in direct property damage each year. In an average year, one of every 12 hotels or motels reported a structure fire. For context, in an average year 1 in 335 homes reported a structure fire. *See* NFPA Fact Sheet (Exhibit K).

Conclusion

The Residents Committee supports the preservation of rural industrial lands for rural industrial uses. This property was specifically identified as committed to rural industrial uses and therefore appropriate for the application of an industrial zone. However, the proposed hotel is neither rural, nor industrial, and therefore is inconsistent with the uses allowed by the County's Goal 4 exception for this property. Goal 14 prohibits the proposed hotel development on this property without taking an exception to Goal 14.

Sincerely,

Courtney Johnson
On Behalf of Hood River Valley
Residents Committee

Exhibit List

A	Dee Mill Site Exceptions Document	4 pages
B	Event Venue Application Narrative (excerpt)	9 pages
C	Event Venue Appeal Order	2 pages
D	*1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986)	38 pages
E	*VinCEP v. Yamhill County*, 53 Or LUBA 514 (2007) (excerpt)	5 pages
F	Water Rights 39054 & 30440	8 pages
G	USGS flow data Hood River	1 page
H	DEQ ESCI and Equitable Servitude	8 pages
I	ODOT traffic data 2014 (excerpt)	2 pages
J	HRVRC Traffic Comment (Dec. 2014)	2 pages
K	NFPA Hotel Fact Sheet	1 page

HOOD RIVER COUNTY EXCEPTIONS DOCUMENT

1984

(Amended 12/17/84)

GOAL 2: INTRODUCTION: EXCEPTIONS SUMMARY

A. Overview: Hood River County is taking exception to approximately 5,154 acres. These lands are built out and committed or an Exception was justified. TABLE 1 below shows the acreage figures for each Plan designation.

TABLE 1

EXCEPTION AREAS-DESIGNATED ACRES: HOOD RIVER COUNTY, 1984

Plan Designations		Acres
A.	Residential	
	1. Medium Density Residential	269
	2. Rural Residential	4,084
	Subtotal	4,353
B.	Rural Center	32
C.	Commercial	127
D.	Industrial	249
E.	Light Industrial	299
F.	Airport Development	94
	Subtotal	801
	GRAND TOTAL	5,154

Source: Hood River County Planning Department, 1984.

Exception Areas exist throughout the rural portions of Hood River County and depending upon location, *infilling (e.g., additional residential, commercial and industrial development) is allowed in the majority of the Exception Areas. These Exception Areas provide a diversity of living and working environments in the rural portions of Hood River County.

B. Method Used in Evaluating Exception Areas: Areas which had previous exceptions taken were re-evaluated utilizing the factors in Goal 2, Oregon Administrative Rule 660-04-000.

*Infilling, can be limited to substantial, depending upon location.

Factors used to determine whether areas were built upon or irrevocably committed to uses other than allowed by resource goals included: (1) land use, site and adjacent lands; (2) parcel sizes; (3) ownership patterns; (4) public services; (5) neighborhood and regional characteristics; (6) natural boundaries; and (7) other relevant factors such as tax deferral status, etc.

Exceptions to Goals 3 and 4 have been taken for other areas and are noted in the Exception Document. Background Data Sheets regarding each exception are intended to supplement the previous exceptions that were submitted to the LCDC in 1980.

C. Discussion Exception Areas Per Plan/Zoning Designations:

1. Residential: The 4,353 acres designated residential are zoned with minimum lot sizes ranging from 7,500 square feet to 5 acres as shown in TABLE 2 below.

TABLE 2

ACRES IN RESIDENTIAL ZONES

Zone	Acres
R1-7500	256
R1-15000	13
RR-½	138
RR-1	341
RR-2½	2,508
RR-5	1,097
TOTAL	4,353 Acres

Source: Hood River County Planning Department, 1984.

The range and lot sizes allows for a variety of housing densities and can accommodate choices of lifestyles for Hood River County residents.

a. Medium Density Residential: Areas (R1-7500, R1-15000) allow for medium intensity development near transportation arterials and established community centers.

b. Rural Residential: Acres (RR-½, 1, 2½, 5) will maintain the rural characteristics of the County while providing an opportunity for rural dwellings and activities that are compatible with the surrounding resource uses. The smaller lot sizes are located near established rural centers, industrial areas or communities.

2. Location/Residential Exceptions: Substantial to limited residential development can occur in the following rural portions of the County: (1) adjacent to the City of Hood River's Urban Growth Boundary, especially to the west and south; (2) Odell; (3) south of Odell along Highway 35 and in the vicinity of Miller Road; (4) vicinity of Eastside and Highline Roads; (5) Dee Highway; (6) Fir Mountain Road; (7) Neal Creek Road and Booth Hill Road; and (8) Parkdale and area south.

Recognition must also be given to the potential for additional development within rural lands planned and zoned Farm and Forest. Additional growth is also projected for lands within both the City Limits of Hood River and Cascade Locks and also within their Urban Growth Areas.

3. Residential Development Potential: A projection for residential development was based on infilling occurring due to land partitionings of existing parcels. Potential residential development resulting from infilling of existing Exception Areas is approximately 1,175 dwelling units. Initially a high figure of 1,808 dwellings was projected, however it was lowered by approximately 35% due primarily to the following site limitations and characteristics: siting of dwellings actually on the parcels; unique topographic features; site drainage problems; hazard areas; access and roads; septic drainfields and alternative drainfield systems; etc.

The figure of 1,175 dwelling units is only an indicator.

Residential designations have been limited to existing areas where development has already occurred and areas where Exceptions have been justified. Justification for each of the areas is provided in the Background Data Report in the Exceptions Document. Clustered development within and around areas already committed will limit conflicts with the farming and forestry uses which are prevalent in the County.

4. Rural Centers: Rural Centers provide limited housing, business, cultural and governmental services to the surrounding area.

5. Commercial: In designating lands for commercial uses, many of the existing commercial uses were recognized while providing limited area for new commercial growth in established areas. The Background Report for Goal 9 (Economy of the State) should be referenced for more detailed information relating to the availability and location of commercial land in the County. This report states that vacant commercial lands are generally in small lots and interspersed among committed commercial lands. They are generally along major transportation routes or in rural communities and have rural services either on the property or available to the property. The lands are well suited for either small local businesses or transportation/tourist oriented facilities. Commercial areas are located south of Hood River along Tucker Road; at the junction of Highway 35 and Old Columbia River Drive; and in the communities of Odell, Mt. Hood and Parkdale. A few isolated site specific parcels are designated commercial to recognize existing operations. The four Rural Center areas provide additional limited retail and service oriented businesses which are intended to be small in scale and compatible with the surrounding agricultural or rural residential community.

6. Industrial: Land designated and zoned either for industrial or light industrial use is located in areas surrounded by rural residential land and near commercial areas (i.e., Guignard Industrial Area, Diamond Fruit Site at Windmaster Corner); or at the site of existing industrial operations (i.e., Hanel Mill Site and Dee Hardboard Plant Site); or in the communities of Odell and Parkdale. The Background Report for Goal 9 (Economy of the State) should be referred to for more detailed information relating to the availability and location of industrial land in the County. Exceptions for these areas were supported based upon committment to non-resource uses. Most industrial sites are built on and surrounding land is being reserved for expansion of the on-site industrial use. Approximately 94± acres, however, are available for new industrial uses. Largest available acreages are within the Hood River Airport (AD Zone), the Odell Area, the Guignard Area and the current site of Hood River Sand & Gravel.

D. Clarification

The Exception Area noted in Map #38 (encompassing 114± acres) was justified as being built upon and committed, however in further justifying this area as being utilized for non-resource use, the four factors in Goal 2 were also addressed. For details, see the Background Data discussion, Map #38.

BACKGROUND DATA

SITE NAME: Dee Hardboard Industrial Exception (MAP #36)

A. Location: 1N 10E 7 #200, 201, 500. (See Attachment "A").

B. Exception: 1980 Central Valley Plan, Exception to Goal 4. (See Attachment "B").

C. Plan/Zoning: Industrial/M-1.

D. Land Use:

1. Site: 28± acres are the site of the Dee Hardboard Plant and associated pond, sawdust piles, etc. 39± acres are within the established floodplain of the East Fork Hood River or are on extreme slopes and unuseable for development. The remaining 26± acres are available for expansion of the current use or other industrial uses, however flooding must be considered in lower areas.

2. Adjacent: Land to the east is generally in timber (Middle Mountain). An abandoned quarry is located on tax lot #300 east of the Dee Highway. Land to the west is in orchard. To the north and south, land is similar to that of the Exception Area: river floodplain and associated vegetation, land slopes steeply down to the riverbed from higher ground on either side.

E. Soils:

1. Forest: Cubic foot site classes 4, 5, and 6.

2. Agricultural: VI and VII.

Majority are xerofluvents (nearly level riverbed soils) which are Agricultural Class VII

Also present in limited areas are xerumbrepts and Bald Cobbly loams on the steep slopes down to the river bed. These are Agricultural Class VI and VII and cubic foot site classes 4, 5, and 6. It would not be feasible for commercial timber operations due to the proximity to Dee Highway, Lost Lake Road, and the Hood River.

F. Acreage: 92.95 acres

G. Ownership:

1. Site: With the exception of 0.01 acres in United Telephone ownership, the entire parcel is in the ownership of Champion International Corporation and Champion Building Products.

2. Adjacent: Public ownership includes; to the north Pacific Power & Light and State Highway Commission; the east, Mt. Hood Railroad, Hood River County, and Champion International Corporation. Hood River County Forest lands are further east. Orchard land to the west is in private ownership.

H. Public Services:

1. Sewer: Septic system, storm sewer.
2. Water: Available
3. Fire: Dee Rural Fire Protection District
4. Access: Dee Highway (arterial), Lost Lake Road (collector)
5. Other: Served by railroad.

I. Natural Boundaries: Area is bounded to the east and west by steep sloping banks up from the East Fork Hood River Floodplain. River flows through the middle.

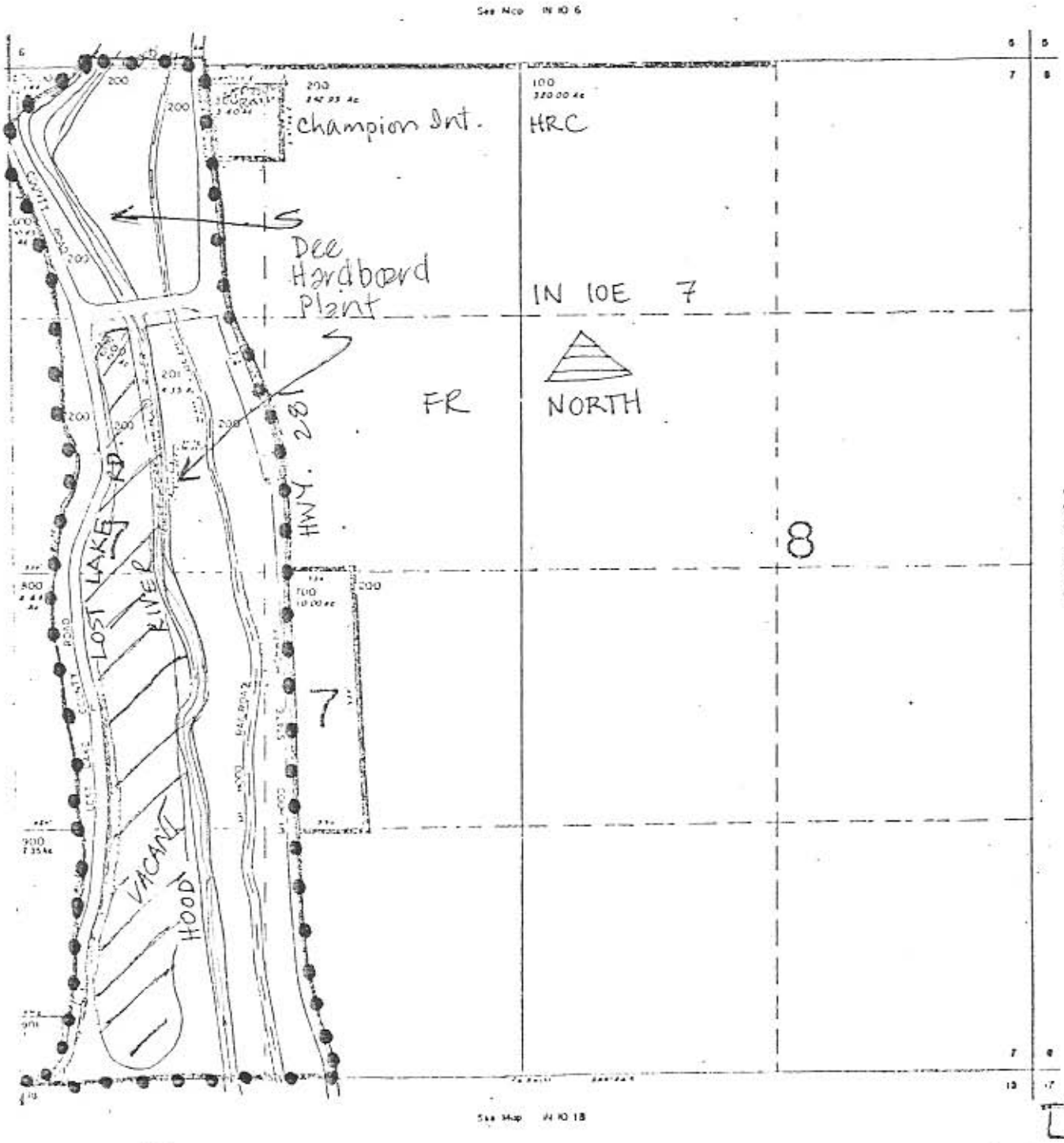
J. Neighborhood and Regional Characteristics: Surrounding area is in resource use and designated accordingly, farm to the west, forest to the east. Dee Highway is one of the major north/south arterials connecting the Parkdale/Odell area with Hood River and Interstate-84. Two rural residential exception areas are within 2 miles.

K. Recommendation: The Background Data above indicates that approximately 72% of the land designated for industrial use is either committed or is undevelopable due to terrain or floodplain. The adjacent undeveloped lands in the same ownership can be allowed for expansion purposes (Mitch Rohse, DLCD Staff).

The Exception from Goal 4 should be supported and the above information added to the Background Document.

IN 10

Section 7 T1N R10E WM
Hood River County
1" = 400'



IN 10

vacant land

boundary of exception

DEE HARDBOARD
INDUSTRIAL EXCEPTION

ATTACHMENT "A"

V. Industrial Land Use

The Plan Map designates one area within the Odell Sanitary District as "Light Industrial" and one area immediately east of the Sanitary District as "Industrial." These designations roughly correspond with the existing 1973 Comprehensive Plan "Industrial" designations except they delete the acreage west of AGA Road.

Outside of the Odell Sanitary District, the Plan Map designates the currently industrially-zoned Hanel Mill and Dee Mill areas as "Industrial." The Hanel Mill area is allocated an additional eight acres to the south of Neal Creek Road for expansion, and an additional 17 acres north of the current mill operation for expansion.

A. Need

The Background Report for this Plan points out there are approximately 380 acres of land in the planning area that are currently zoned for industrial use. Of this land zoned "Industrial," approximately 210 acres are built on or committed for industrial expansion. To provide for the employment needs of the expected population increase in the planning area, and accommodate industrial uses and expansion where they exist now, the Plan Map has designated several large, level sites with adequate services available for industrial uses. Most new industrial use is projected to be located within the Odell Sanitary District. A limited industrial expansion is allocated at the Dee and Hanel mill sites.

B. Alternatives

Several level sites outside the Odell Sanitary District that might make good industrial sites due to proximity to main transportation routes and good soils for large septic tank drainfields happen to also be upon prime agricultural soils and would likely cause serious conflicts with adjacent farming uses. These sites are generally along Highway 35. It was decided to designate as "Industrial" only those sites outside of Odell that were largely committed to industrial use.

C. Consequences

All the industrial designations in the planning area are at least partly on Class I to IV soils. The Hanel Mill and Dee Mill sites, as mentioned previously, are largely committed to industrial uses. Whatever industrial

(Continued on Page 12)

CENTRAL VALLEY PLAN EXCEPTIONS TO GOALS AND GOALS NOT APPLICABLE

(Continued from Pg. 11)

expansion occurs at these sites will likely be done only by the existing mills on the sites.

The "Industrial" and "Light Industrial" designations at Odell are located primarily on Wyeast Silt Loam, a Class III soil. That portion of the designation not presently built on by industrial uses is used for pasture and hay. Little impact on the County's agricultural economy will result from the loss of this land. No orchard land will be removed from production.

This area does have all public facilities readily available, has no orchard conflicts, and is adjacent to a rail line. The Oregon Rail Plan prepared by the Oregon Department of Transportation (1978) points out that if Oregon communities wish to maintain spur rail lines in use, they must provide adequate amounts of industrial land that will use such rail lines.

D. Compatibility

The Zoning Ordinance requires that for industrial zones, erection of a building or the use of property within 100 feet of a lot in a farm or residential zone will be subject to the approval of the Planning Commission. The intent of the Ordinance is to minimize conflicts between industrial uses on the one hand, and farm and residential uses on the other. All of the industrial designations are committed or largely committed to industrial uses. Housing, farm, or commercial uses are adjacent to these designations. The low density allowed in the rural housing, and farm designations will help prevent conflicts between the people occupying the residences in the lands adjacent to the "Industrial" designations. It is not expected that there will be serious land-use conflicts in Odell where the "Light Industrial" designation abuts the Central Business District. This is because the fruit packing plants in this area emit very little air or noise pollution. In the locations where industrial designa-

ATTACHMENT "B"

DEETOUR

OPERATIONS PLAN

December 19, 2013

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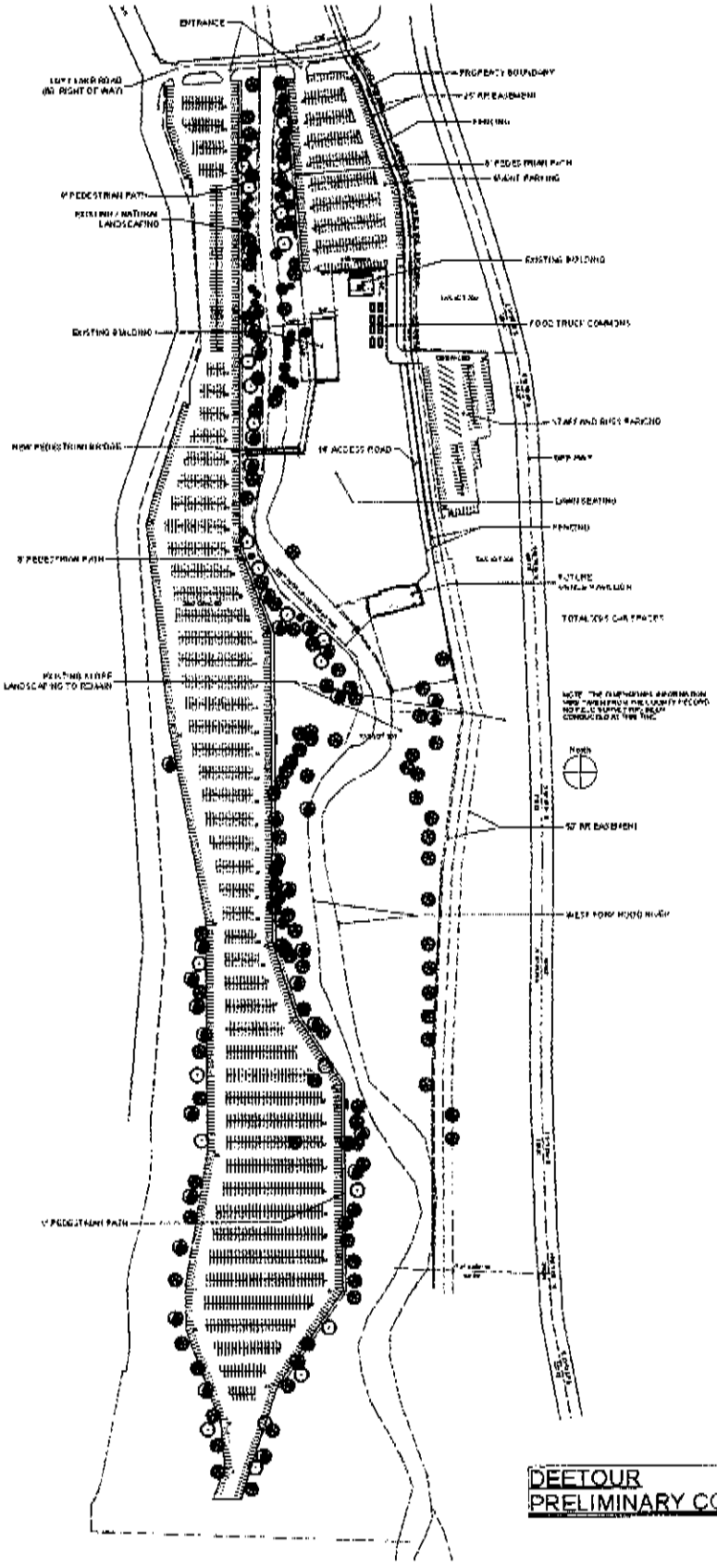
INTRODUCTION

The Dee Mill has seen more than a number of changes over its 100 plus year history. Starting out as a small saw mill and through its rise to prominence via the leadership of David Eccles, the mill has only known one constant and that is change. The site has been modified, remodeled, retooled and burned a number of times. Over the years forward progress and a deep sense of community has always been its guiding light. Our proposal reflects the next step in the evolution of this amazing site. While we are not proposing a saw mill, we are proposing forward progress in both an outcome that would add lasting value to the community and an end result that would create considerable employment opportunities. Furthermore, this is an opportunity to create a music venue that is unique and special in a number of ways and has a high probability of being the go to venue in Oregon.


ENTRANCE
PROPERTY BOUNDARY
8' PEDESTRIAN PATH
EXISTING BUILDING
FOOD TRUCK COMMONS
24' ACCESS ROAD
LAWN SEATING
FENCING
FUTURE
North
DEETOUR
PRELIMINARY CONCEPT PLAN
SITE PLAN
SCALE: 1:3200

HOURS AND SEASON OF OPERATION

The DeeTour will operate varying hours depending on scheduled events. All events will end by 11:00 PM.

The DeeTour amphitheater will be in operation year round, with a majority of events occurring mid-May to early September. The intent will be to hold 14 weekly summer music concert events. The season for all other events (festivals, weddings and any other rented event) will be expanded from May 1 to mid-October but may be expanded based on weather and event type.

MASS GATHERING STATUTE, ORS CHAPTER 433

Information was requested regarding the applicability of Oregon's Mass Gathering Statute, ORS Chapter 433, to our project proposal. In short, we anticipate that most events at the site will not fall within the scope of the statute, since they will be single event concerts of limited duration and the amphitheater pavilion/stage will be a permanent structure. There may be occasion when a festival could fall within the scope of ORS 433.763, for Extended Outdoor Mass Gatherings, in which case application would be made for a permit.

ORS 433.735(1) defines 'outdoor mass gathering' as follows:

"[U]nless otherwise defined by county ordinance, * * * an actual or reasonably anticipated assembly of more than 3,000 persons which continues or can reasonably be expected to continue for more than 24 consecutive hours but less than 120 hours within any three month period, and which is held primarily in open spaces and not in any permanent structure."

Hood River County does not have an ordinance otherwise defining mass gatherings. The statutory definition therefore applies, which has four parameters:

(1) number of participants (more than 3,000 people); (2) duration (more than 24 hours but less than 120 hours); (3) frequency (not more than one gathering each three months); and (4) location (in open spaces and without permanent structures).

Some of our concert events may reasonably be anticipated to draw in excess of 3,000 people. As indicated in our proposed hours of operation, all events will end by 11:00 p.m. As the staging would be permanent, it is not anticipated that set up or break down would extend the total duration of any event more than 24 hours. Regarding frequency, the season would run from approximately May-October, and we anticipate staging one concert per week. While the concerts will have an open air feel, in that concertgoers would be utilizing lawn seating in a natural amphitheater environment, the performances would be staged utilizing a permanent structure. The structure is a

framed, partially enclosed pavilion and stage with lighting, etc. similar to the Maryhill venue, as opposed to an exclusively open space site where staging, scaffolding for lighting and sound systems, etc. are trucked in and removed for each event.

ORS 433.735(3) defines permanent structure as "a stadium, an arena, an auditorium, a coliseum, a fairgrounds or other similar established places for assemblies." ORS 433.735(4) defines temporary structures as "tents, trailers, chemical toilet facilities and other structures customarily erected or sited for temporary use." Our venue most closely resembles a stadium (large, partially enclosed, fixed structure). It's clear the statute is intended to differentiate between temporary, moveable facilities, as opposed to fixed structures developed for the specific purpose of accommodating sporting, theatrical, musical, and similar events attended by large crowds. Our venue is being developed for the specific purpose of creating a permanent structure to host musical and similar events, while utilizing the natural amphitheater environment for its acoustical and aesthetic values. Given the foregoing, we don't believe our project falls within the scope of ORS 433.735.

Another provision within the outdoor mass gathering statute, ORS 433.763, provides specific requirements for large gatherings of people that are not covered by the above quoted ORS 433.735 outdoor mass gathering definition (often referred to as Extended Outdoor Mass Gatherings). Specifically, ORS 433.763 regulates gatherings of more than 3,000 people for more than 120 hours within any three month period any part of which is held in open spaces. Were we to stage a multi-day festival that would exceed 120 hours duration, we understand this section to require county approval of a permit for these gatherings, provided the standards of ORS 433.750 are met.

NOISE CONTROL

You requested a written explanation of how our facility will comply with Hood River County's Noise Ordinance. We have investigated potential noise impacts that might be produced by concert events at the site, and consulted with sound engineers to estimate average noise levels that would be generated by those events, as well as average noise levels measured from Noise Sensitive Facilities in the vicinity. In short, we do not believe the concerts we intend to promote will produce or permit production of sound in excess of the noise levels prohibited by the Noise Code.

Hood River County's Noise Ordinance is codified at Title 8, Chapter 12, of the Hood River County Code. (Noise Code). Section 8.12.025 prohibits "[t]he production of sound that, when measured within 20 feet of the Noise Sensitive Facility of another:

(1) Exceeds 55 dB, A-weighted, average sound level between the hours of 10:00 p.m. and 7:00 a.m. the following day;

(2) Is plainly audible between the hours of 10:00 p.m. and 7:00 a.m. the following day; or

(3) Exceeds 65dB, A-weighted, average sound level at any time of day."

Noise Sensitive Facilities are defined as "a lawfully sited dwelling or a school, hospital, church or public library." 8.12.015(9). Dwelling is further defined as "a residence, hotel, campground or other facility commonly uses for sleep or shelter." 8.12.015(5).

A-weighted is defined to mean the American National Standards Institute standard sound level measurements using the A-weighted scale, which is adjusted to correspond to human hearing. 8.12.015(2). Average means a sound level measured over the average of one or more seconds as opposed to a peak sound level measure. 8.12.015(1). Plainly audible is defined to mean sound for which the average listener can discern its content or source. 8.12.015(11).

The DeeTour site and proposed location of the concert pavilion venue and stage are situated such that the closest Noise Sensitive Facilities are over 2000 feet away. Those locations are included in a map in Appendix I. The site is also a natural amphitheater that will refract rather than amplify noise. Outdoor music concerts can produce average A-weighted sound levels of 100-110dB at the point source; however, musical shows produced in covered theaters or stages such as ours, which allows more uniform distribution of sound to the immediate audience and minimizes propagation of sound outside the venue, average 100 dB. While there are numerous factors that impact sound measurement over distance, in general, hearing is such that a change of 3 dB is just noticeable, a change of 5 dB is clearly noticeable. In a large open area with no obstructive or reflective surfaces, sound levels drop from a point source of noise at a rate of 6 dB with each doubling of distance from the source -the decibel drop-off rate is a mathematical calculation, see equation below. (source: csg computer support, speaker decibel change calculator, csgnetwork.com, December 1st 2013, from http://www.csgnetwork.com/decibeldropdistancecalc.html). While atmospheric conditions can cause changes in sound path and absorption, assuming a 6 dB drop off rate, the average sound level 500 feet from the Event Site would be 56 dB. At 1000 feet, it would be 50 dB. At 2000 feet, it drops to 44 dB. As such, when measured within 20 feet of any Noise Sensitive Facility in the vicinity, the average sound level will not exceed the noise levels set forth in Section 8.12.025, at any time of day.

Assuming a point source of 110 dB and no sound obstructions such as trees, wind and hills, the following dB decrease would occur at the following distance increases:

1'- 2' =-6dB
2'-4' = -6dB
4'-8' = -6dB
8'-16'=-6dB
16'-32'=-6dB
32'-64'=-6dB

64'-128'=-6bB
128'-256'=-6dB
256'-512'=-6dB
512'-1024'=-6dB
1024'-2048'=-6dB or -66dB at 2048' from the point source. In other words, from the stage to the nearest dwelling, the sound level would be less than 110dB - 66dB or 44dB which is equates to the sound of light rain.

Sound level L and Distance r

$$L_2 = L_1 - \left|20 \cdot \log\left(\frac{r_1}{r_2}\right)\right| \qquad L_2 = L_1 - \left|10 \cdot \log\left(\frac{r_1}{r_2}\right)^2\right|$$

$$r_2 = r_1 \cdot 10^{\left(\frac{L_1 - L_2}{20}\right)}$$

The sound level will decrease by 6 dB every time the source to the listener's distance is doubled.

Source: tontechnik-rechnel-sengpieaudio, Damping of Sound Level vs. Distance, December 1st, 2013, From http://www.sengpielaudio.com/calculation-distance.htm

PARKING/TRAFFIC CONTROL AND TRAFFIC PLAN

The DeeTour amphitheater will utilize multiple modes of transportation and traffic control measures to mitigate congestion issues and give patrons the most efficient access to our events.

Modes of Transportation

- Automobile
- Bus
- Shuttle
- Train
- Bicycle

Automobile

Automobile transportation will be the most common mode of transportation to and from events at the DeeTour amphitheater. Three parking lots exist to handle automobile parking. The East lot, is located directly north of the amphitheater and has a 419 automobile capacity. The event staff lot, is located to the west of the amphitheater and has a 129 automobile capacity. The largest of our parking lots, the west lot, is located across the Hood River to the west of the amphitheater and has a 2547 auto capacity. By utilizing these three lots and multiple access points we have the ability to handle large volumes of automobiles. With the assumption that a cars capacity is 3 people per car, then our 3095 parking spaces allows for more than adequate parking, including parking for our staff.

Bus

Bus transportation will also be a large component of the transportation plan. By consolidating large groups from Portland and other outlying areas we can improve our access efficiency and provide event patrons with the luxury of not driving from far away locations. Our event staff lot has the capacity to hold nine buses. We will coordinate with tour companies in the Northwest to ensure that we utilize bus transportation to its fullest extent. Bus transportation will greatly reduce traffic to and from the event.

Shuttle

Shuttle transportation will be used to shuttle patrons from near by parking areas in the case of larger events. The advantage of shuttles is that after they drop patrons off, they can return to the satilite parking area from which they originated and then return to collect patrons at the end of the event. Shuttles will be used mostly for larger events.

Train

Train transportation is one of the unique methods of transportation to events at our venue. We will partner with the Mt. Hood Railroad to allow patrons to board the train in beautiful downtown Hood River and then take a scenic trip up the Hood River Valley to an event. Parking for the train will be handled in the City of Hood River, lowering the automobile traffic to and from the event.

Bicycle

Before the Planning Commission
for Hood River County

In the Matter of an Appeal (*File #14-0219*) Filed by the Hood River Valley Residents Committee of the County Planning Department's Decision to Approve, With Conditions, a Commercial Land Use Permit (*File #13-0216*) Filed by Apollo Land Holdings, LLC to Construct an Amphitheater for Outdoor Music Concerts, Festivals, Weddings, and Other Commercial Events.	)	**ORDER**

A public hearing was held before the Hood River County Planning Commission on December 10, 2014 at 7:00 p.m. in the County Board of Commissioners Conference Room (1st floor), 601 State Street, Hood River, Oregon, to consider the above reference appeal.

Due notice was given of the public hearing before the Planning Commission. A quorum was present. The qualifications of the members of the Planning Commission in attendance were determined and all of the five commissioners present participated in the hearing. Prior to the hearing, the presiding Chair of the Planning Commission described the applicable rules and procedures of the hearing.

The Planning Commission was provided a brief staff summary and then received testimony from the appellant, proponents of the appeal, applicant, and opponents of the appeal. The County Engineer was also at the hearing and responded to commissioner questions.

As part of the testimony received, the Planning Commission heard from the appellant and proponents of the appeal that, among other concerns, the Planning Department's decision improperly deferred decisions of compliance with approval criteria to a later date without the opportunity for required notice and public review/comment, specifically in regards to issues of traffic, storm water drainage, stream protection overlay, potable water, noise, and emergency response. The appellant also questioned the methodology and information relied upon as part of the applicant's traffic study.

As part of their testimony, the appellant did, however, acknowledge that their earlier procedural concerns about the lack of proper notice and findings to support the decision had been corrected as part of the appeal process. The appellant suggested though that the County consider making necessary modifications to the zoning ordinance in the future to eliminate various contradictions and statements that currently exist in regards to administrative and ministerial decisions. The appellant also suggested that the County consider whether or not commercial uses should be allowed in the Industrial (M-1) zone and whether additional review criteria should be added to the zoning ordinance to address other potential impacts not currently addressed.

The Planning Commission also heard testimony from the applicant and his attorney who were generally supportive of the Planning Department's decision despite the number of conditions imposed, including a number of which they felt were outside of the scope of applicable ordinance requirements. The applicant's testimony focused on the proposed concert venue/event site being an outright allowed use in the M-1 zone. The applicant also testified to the facts of the case provided as part of the submitted application and staff report demonstrating that the use conformed to applicable criteria. The applicant argued that, based on these facts, his burden of proof had been met, and refuted the appellant's claims to the contrary. The applicant also questioned some of the appellant's testimony as being irrelevant given the use being outright allowed and the limits of the review criteria at hand.

After receiving the above testimony, asking questions, and providing opportunities for rebuttal, the Planning Commission closed the hearing and proceeded into deliberations. After due deliberations, the five Planning Commission members present then voted on a motion to deny the appeal and approve the application based on the findings of fact and conclusions of law provided in the staff report, dated December 3, 2014. This motion failed given Planning Commission's hearing rules that require at least four affirmative votes for a decision to be made. Next, a second motion was made to approve the appeal and deny the application. This motion also failed for the lack of four affirmative votes.

Based upon the above information, it is **HEREBY ORDERED** that without an affirmed decision, the Planning Department's original decision dated September 9, 2014 to approve the application, with conditions, stands.

DATED THIS 15th **DAY OF DECEMBER, 2014.**

HOOD RIVER COUNTY PLANNING COMMISSION

John Brennan, Vice-Chair

APPROVED AS TO FORM:

Wilford K. Carey, County Counsel

1000 Friends of Oregon v. Land Conservation & Dev. Com.

Supreme Court of Oregon

November 6, 1985, Argued and submitted ; August 12, 1986

SC No. S31859

Reporter
301 Ore. 447; 724 P.2d 268; 1986 Ore. LEXIS 1467

1000 FRIENDS OF OREGON, Petitioner on Review, v. LAND CONSERVATION AND DEVELOPMENT COMMISSION and CURRY COUNTY, Respondents on Review

Prior History: **[***1]** On review from the Court of Appeals. ** LCDC No. 84-ACK-027; CA No. A31278.

Disposition: Court of Appeals decision affirmed in part, reversed in part; case remanded to LCDC for further proceedings.

Core Terms

urban, parcels, county's, rural land, rural, requires, impracticable, local government, zoning, Planning, built, farm, density, factors, services, acknowledgment, ***land use***, urban growth, adjacent, irrevocably, residential, reasons, comprehensive plan, staff report, ownership, acres, urbanizable, convert, nonresource, levels

Case Summary

Procedural Posture
Petitioner conservation group challenged a judgment of the Court of Appeals (Oregon), which affirmed a decision of respondent Oregon Land Conservation and Development Commission (LCDC) in favor of respondent county, finding that no exception to Oregon Statewide Planning Goal 14 listed in Or. Admin. R. 660-15-000 to 660-15-010 was necessary to allow uses of land for other than farming and forestry.

Overview
The conservation group challenged the LCDC's acknowledgement of the county's comprehensive ***land use*** plan to address whether Oregon's ***land use*** planning laws required the county to take exceptions under Goal 14 as to certain lands that were to transform from ″rural″ to ″urban″ for which the county took exceptions to Oregon Statewide Planning Goals 3 and 4 listed in Or. Admin. R. 660-15-000 to 660-15-010. The court held that Goal 14 required the county to determine which existing uses were ″urban″ to identify areas where the county's plan converted rural land to urban uses and to justify those uses. The court further held that the LCDC was required under Goal 14 to evaluate whether the county had considered the proper factors in justifying any development that was urban. The court further held that the conservation group, on remand, had to identify the portions of the exception areas in which it claimed that the uses allowed by the county's plan were ″urban″ and the county had to then explain why it believed that those uses were not ″urban″ to demonstrate, as required under *Or. Rev. Stat. § 197.732(4)*, that the standard for ″committed″ exceptions to Goal 14 were met.

Outcome
The court reversed the portion of the judgment that held that the county's exceptions to certain Oregon Statewide Planning Goals sufficed to meet the conservation group's concern that the plan did not comply with certain Goals and remanded to LCDC to determine, among other things, which of the county's exception areas the county's plan allowed urban uses and rural land. With regard to other parts, the judgment was affirmed.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Environmental Law > ***Land Use*** & Zoning > Comprehensive & General Plans

Governments > Local Governments > Administrative Boards

Real Property Law > Zoning > Comprehensive Plans

HN1 *Or. Rev. Stat. § 197.005* provides that the Oregon Legislative Assembly finds that: (1) Uncoordinated use of lands within Oregon threaten the orderly development, the

** Appeal from Order of the Land Conservation and Development Commission, 73 Or App 350, 698 P2d 1027 (1985).

Judges: In Banc. * Lent, J. Peterson, C.J., concurred and filed an opinion.

Opinion by: LENT

Opinion

[*449] **[**272]** The general question is whether cities, counties, and the Land Conservation and Development Commission (LCDC) must recognize in their planning decisions that land which cannot be **[***2]** used for commercial farming or forestry may have other uses short of intense urban development. The specific issue is what Oregon's ***land use*** planning law requires a county to do before the county allows "urban uses" [1] of lands located outside boundaries which have been established to contain future urban growth.

[*3]** We allowed review of petitioner 1000 Friends of Oregon's (1000 Friends) challenge to LCDC's acknowledgment of the comprehensive ***land use*** plan for Curry County (the county) to address that question and to clarify principles of the planning system which the legislature intended "to assure the highest possible level of liveability in Oregon," *ORS 197.010*, but which some Oregonians perceive as bewilderingly complex and beneficial only to a few experts and special interest groups. [2]

[*4]** **[**273]** The technical question presented is the following: having justified "exceptions" to allow uses other than the farming and forestry that Statewide Planning Goals 3 and 4 would otherwise require on certain lands, when must a county justify for those same lands "exceptions" to Goal 14, which aims "[t]o provide for an orderly and efficient transition from rural to urban ***land use***"? The Court of Appeals held that no **[*450]** exception to Goal 14 was required "under the facts here," where the county took exceptions to Goals 3 and 4 "to allow the same use" which 1000 Friends claims requires exceptions to Goal 14. *1000 Friends of Oregon v. LCDC, 73 Or App 350, 357, 698 P2d 1027 (1985)*.

We hold that the county and LCDC did not properly consider either the matters essential to determining whether exceptions to Goal 14 were required or the matters that must be considered to justify such exceptions. Therefore, we reverse that portion of the Court of Appeals' decision which held that the county's exceptions to Goals 3 and 4 sufficed to meet 1000 Friends' concern that the plan did not comply with Goal 14. *Id., 73 Or App at 356-58*. We remand to LCDC to determine in **[***5]** which of the county's exceptions areas the plan would allow "urban uses" on "rural land," and, if there are any such exceptions areas, to determine whether the county has shown that these areas cannot practicably be put to any rural uses.

To explain our decision, in Part I we introduce the Oregon ***land use*** planning procedures and goals which frame the legal issues in this case. Part II outlines the factual background and procedural history of the Curry County controversy. In Part III we undertake to decide whether the county was required to take exceptions to Goal 14. We explain why local governments must either comply with or take exceptions to Goal 14 when they convert "rural land" to "urban uses," why the county's decision-making process failed to satisfy the requirements for justifying exceptions to Goal 14, and why this court cannot say whether the county's plan converts "rural land" to "urban uses" such that the county must either comply with or take exceptions to Goal 14. In Part IV we consider 1000 Friends' challenge to the validity of the county's exceptions to Goals 3 and 4, and in Part V we outline what must be done on remand.

I. *Comprehensive Planning and* **[***6]** *Exceptions*

A. *LCDC, the Goals, and Plan Acknowledgment*

The decision under review is LCDC's order acknowledging that the county's comprehensive ***land use*** plan and

* Roberts, J., retired February 7, 1986.

1 By "urban uses" we refer to a term that LCDC employs in the text of Statewide Planning Goal 14 and in some of its published definitions of other terms, but which LCDC has not defined in the goals, the published definitions that apply to those goals, the Oregon Administrative Rules, or any other source of which we are aware. We shall refer to this lack of a definition, Part I.B., *infra*, 301 Or at 456, note the necessity of having a working definition of "urban uses" before resolving the questions which the parties have presented in this case, Part III, *infra*, 301 Or at 469-70, and elaborate on the consequences of LCDC's failure to examine whether this county's plan allows "urban uses." Parts III.C.3, and V, *infra*, 301 Or at 511, 520-522.

2 *See, e.g.*, Ota, *Legal Designations Bog Down Hearing*, The Oregonian, Nov. 12, 1985 at B4 (discussing this case); *Oregon* ***Land Use*** Symposium: Closing Remarks - The Oregon Example: A Prospect for the Nation, 14 Envtl L 843, 849 (1984) (remarks of Edward J. Sullivan) ("The lack of information helps the small cabal of planners and lawyers, including myself, who keep a watch on [LCDC] and [the ***Land Use*** Board of Appeals], but it does not help the general public or the lawyer or the planning practitioner."); Cockle, *Rural Coalition Declares Range War on LCDC*, The Oregonian, Nov. 17, 1985, at E1, E4.

regulations comply with the Statewide Planning Goals (the goals) which LCDC has adopted under authority granted in **[*451]** Senate Bill 100, enacted in Oregon Laws 1973, chapter 80, and codified as amended in ORS chapter 197.

Concerned that "state intervention was needed to stop a process of cumulative public harm resulting from uncoordinated ***land use***," the 1973 legislature enacted Senate Bill 100 in order "to substitute a systematic decisional process based on consideration of all relevant facts, affected interests and public policies." *1000 Friends of Oregon v. Wasco County Court, 299 Or 344, 347, 703 P2d 207 (1985)*; *1000 Friends v. LCDC [Goal 14 Amendment Case], 292 Or 735, 745-46, 642 P2d 1158 (1982)*; *ORS 197.005* and *197.010*. [3] **[***9]** Senate Bill 100 **[*452]** **[**274]** created the Department of Land Conservation and Development (the Department), consisting of a director and professional staff, and LCDC, a seven-member citizen's commission appointed by the Governor. *ORS 197.030*, *197.075 to 197.090*. **[***7]** The legislature directed the Department to prepare, and LCDC to adopt, "goals and guidelines for use by state agencies, local governments and special districts in preparing, adopting, amending and implementing * * * comprehensive plans." *ORS 197.225*. The legislature defined "goals" only as "the mandatory statewide planning standards adopted by [LCDC]" and did not dictate their content; the goals are general expressions of state policy, and "guidelines" are "suggested approaches designed to aid" cities, counties, state agencies, and special districts in carrying out the goals.

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[3] ORS 197.005 provides:***HN1***

"The Legislative Assembly finds that:

"(1) Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state.

"(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with goals.

"(3) Except as otherwise provided in subsection (4) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

"(4) The promotion of coordinated state-wide land conservation and development requires the creation of a state-wide planning agency to prescribe planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state."

ORS 197.010 provides:***HN2***

"The Legislative Assembly declares that, in order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

"(1) Must be adopted by the appropriate governing body at the local and state levels;

"(2) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

"(3) Shall be the basis for more specific rules and ***land use*** regulations which implement the policies expressed through the comprehensive plans;

"(4) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and

"(5) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve."

ORS 197.015(8), (9). A goal, because it is a "statement of general applicability that implements, interprets or prescribes law or policy," ORS 183.310(8), is a "rule" within the meaning of the Administrative Procedures Act. *Goal 14 Amendment* Case, supra, 292 Or at 737, n 1. In all, LCDC has adopted 19 goals, most accompanied by guidelines addressing "planning" and "implementation," along with definitions for purposes of these goals and guidelines. [4] Once the goals were adopted, each city and county (local government) in Oregon was required to make its ***land use*** decisions and to prepare comprehensive **[***8]** ***land use*** plans "in compliance with the goals"; once LCDC has "acknowledged" that a local government's plan and ***land use*** regulations comply with the goals, the local government must make ***land use*** decisions "in compliance with the acknowledged plan and * * * regulations." ORS 197.175(2).

By acknowledgment, then, LCDC affirms that a local government has successfully incorporated basic state policies into its planning and zoning documents and, therefore, that those documents can be used instead of the goals to evaluate most future ***land use*** decisions. [5] ***HN4*** When a local **[**275]** government **[*453]** requests LCDC to acknowledge its comprehensive plan and ***land use*** regulations (the plan), the Department's director and staff must prepare a report (the staff report) for LCDC, stating whether **[***10]** the plan complies with the goals. ORS 197.251(1) and (2). LCDC must give persons reasonable opportunity to submit written comments and objections to the acknowledgment request and written exceptions to the staff report. ORS 197.251(2) and (3). In deciding whether to grant acknowledgment, LCDC considers the staff report, the record made in the local government's proceedings adopting the plan, the comments, objections, and exceptions filed with LCDC itself, and, if LCDC wishes, oral argument by persons who filed these. ORS 197.251(4). LCDC then issues an order granting, denying, or continuing acknowledgment, identifying the goals with which the plan does and does not comply, and providing "a clear statement of findings" supporting its conclusions. ORS 197.251(5). Denials and continuances both indicate that there is at least one goal with which the plan does not fully comply. A denial is used when the changes required "affect many goals and are likely to take a substantial period of time to complete." ORS 197.251(13)(b). A continuance is used for more modest noncompliance and specifies actions the local government must complete "within a specified time period" to gain acknowledgment. **[***11]** ORS 197.251(13)(a).

[*12]** B. *Introduction to Goals 3, 4, and 14*

The requirements of Goals 3, 4, and 14 pose the ***land use*** planning problem at the heart of this case.

Goal 3, entitled "Agricultural Lands," aims "to preserve and maintain agricultural lands," and requires in relevant part:

> "Agricultural lands shall be preserved and maintained for **[*454]** farm use, consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215."

Oregon's Statewide Planning Goals, n 4, *supra*, at 6. The pertinent part of ORS chapter 215 defines ***HN5*** "farm use" as

> "the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural

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[4] ***HN3*** The goals are listed in OAR 660-15-000 to 660-15-010. As far as we know, however, the full text of the goals and guidelines as amended is available only in a tabloid publication of LCDC, Oregon's Statewide Planning Goals (1985), available from the Department of Land Conservation and Development, 1175 Court Street, N.E., Salem, Oregon 97310, telephone (503) 378-4926. Practitioners should, but may not necessarily, know that seven goals were amended in 1983 and 1984. (Indeed, at the time this case was argued, this court's own library contained only the pre-amendment versions of the goals.)

[5] Some major decisions, for example amendments and revisions of the comprehensive plan itself, must be made "in compliance with" the goals even after acknowledgment, ORS 197.175(2)(a), and are subject to review by the ***Land Use*** Board of Appeals for such compliance. ORS 197.835(4). *See also* the reasoning of the Court of Appeals in *1000 Friends of Oregon v. Jackson Co.*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* ***301 Or 445 (1986)***. ("*All* comprehensive plan amendments are reviewable under ORS 197.835(4) for compliance with the statewide goals." (Emphasis added.))

Although LCDC, on August 7, 1986, acknowledged the plans for the last two of Oregon's 277 counties and cities subject to the planning requirements, several plans are still on judicial review, and LCDC is expected to review about 3,000 "adjustments" to local comprehensive plans per year, including as many as 1,000 plan amendments on which it may have to file formal comments. *See* The Oregonian, Aug. 8, 1986, at D5.

> or horticultural use or animal husbandry or any combination thereof. 'Farm use' includes the preparation and storage of the products raised on such land for human use and **[***13]** animal use and disposal by marketing or otherwise. 'Farm use' also includes the propagation, cultivation, maintenance and harvesting of aquatic species. * * *"

ORS 215.203(2)(a). With exceptions not relevant to this case, these provisions require local governments to plan and zone areas that meet the definition of "agricultural lands" exclusively for "farm use."

Goal 4 imposes an analogous restriction on use of "Forest Lands." It aims "[t]o conserve forest lands for forest uses," and provides in part:

> "Forest land shall be retained for the production of wood fibre and other forest uses. Lands suitable for forest uses shall be inventoried and designated as forest lands. * * *"

Planning Goals at 6. The goal goes on to define "forest uses" as follows:

> **[**276]** "*Forest uses* - are (1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness **[***14]** values compatible with these uses; and (7) grazing land for livestock."

Id.

Unlike Goals 3 and 4, referred to as "resource goals" because they restrict the uses of lands rich in certain resources **[*455]** to uses appropriate to their natural endowments, [6] **[***16]** Goal 14 aims not to protect particular natural resources but "[t]o provide for an orderly and efficient transition from rural to *urban* ***land use***." (Emphasis added.) Planning Goals at 13. While the parties dispute precisely what Goal 14 requires and permits, it is clear that the goal obligates local governments to establish as part of their comprehensive plans urban growth boundaries (UGBs) which "identify and separate *urbanizable land* from *rural land*." [7] (Emphasis added.) *Id.* "Establishment and change of the boundaries" is to be based upon consideration of seven factors (the establishment factors):

> "(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
>
> "(2) Need for housing, employment opportunities, and livability;
>
> "(3) Orderly and economic provision for public facilities and services;
>
> "(4) Maximum efficiency of land uses **[***15]** within and on the fringe of the existing urban area;
>
> "(5) Environmental, energy, economic and social consequences;
>
> "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and
>
> "(7) Compatibility of the proposed *urban uses* with nearby agricultural activities." (Emphasis added.)

Id. The goal further provides that once included within the UGB, land "shall be considered available over time for "*urban uses*." (Emphasis added.) *Id.* Finally, "[c]onversion [8] of *urbanizable land* to *urban uses* shall be based on consideration" (emphasis added) of four additional factors (the conversion factors):

> **[*456]** "(1) Orderly, economic provision for public facilities and services;
>
> "(2) Availability of sufficient land for the various uses to insure choices in the market place;
>
> "(3) LCDC goals; and,
>
> "(4) Encouragement of development within urban areas before conversion of urbanizable areas."

Id.

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[6] LCDC Policy Memorandum, Exceptions Process, approved Mar. 10, 1978, and amended May 3, 1979, p. 2. Other resource goals are Goal 16, "Estuarine Resources," Goal 17, "Coastal Shorelands," and Goal 18, "Beaches and Dunes." *See* Planning Goals, *supra*, n 4, at 16-21.

[7] We consider how the definitions of "urbanizable" and "rural" land apply to this case in Part III.C.1, *infra*. 301 Or at 498-501.

[8] We consider the meaning of "conversion" of land in Part III.C.2, *infra*. 301 Or at 501-02.

In general, Goal 14 provides that ″urban uses″ should occur on ″urbanizable land″ which has been included within a UGB by applying the establishment factors, and then justified for ″urban uses″ by applying the conversion factors. The definitions accompanying the goals define the three types of land referred to in Goal 14 as follows:

> *Urban land*
>
> ″Urban areas are those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also:
>
> **[**277]** ″(a) Have concentrations of persons who generally reside and work in the area
>
> ″(b) Have supporting public facilities and services.″
>
> *Urbanizable land*
>
> ″Urbanizable lands are those lands within the urban growth boundary and which are identified and
>
> ″(a) Determined to be necessary and suitable for future *urban* **[***17]** *uses*
>
> ″(b) Can be served by urban services and facilities
>
> ″(c) Are needed for the expansion of an urban area.″
>
> *Rural land*
>
> ″Rural lands are those which are outside the urban growth boundary and are:
>
> ″(a) Non-urban agricultural, forest or open space lands or,
>
> ″(b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for *urban use*.″ (Emphasis added.)

Planning Goals at 24. However, there is no definition of ″urban uses.″

[*457] In a nutshell, the reason the requirements of these goals posed a ***land use*** planning problem is that Curry County wanted to allow admittedly non-farm uses of indisputably ″agricultural lands,″ admittedly non-forest uses of indisputably ″forest lands″ and, so 1000 Friends contends, ″urban uses″ of lands that are not within any UGB.

C. *The Exceptions Process*

HN6 In order to allow ***land use*** which any goal would prohibit, a local government must take an ″exception″ to that goal. *1000 Friends of Oregon v. Wasco County Court, supra, 299 Or at 352*. An ″exception″ is ″essentially a variance,″ a comprehensive **[***18]** plan provision which allows a local government to waive compliance with a goal for ″specific properties or situations.″ *Id.*; *ORS 197.732(8)*.

The exceptions process was originally controlled by Goal 2, Part II. Under proper circumstances, local governments could use this provision to override the requirements of other goals. ″When * * * it [was] *not possible* to apply the appropriate goal to specific properties or situations,″ (emphasis added), Goal 2 required a local government to indicate each proposed exception to each goal during its plan preparation and in its public notices and to explain ″the compelling reasons″ for the use proposed by each adopted exception, including the need to provide for that use in that place rather than others, the long-term effects of that use, and the compatibility with uses of nearby lands. [9] **[***19]** In a policy memorandum, **[*458]** LCDC stated that the

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[9] Before amendment, Goal 2, Part II, provided:

> ″When, during the application of the statewide goals to plans, it appears that it is not possible to apply the appropriate goal to specific properties or situations, then each proposed exception to a goal shall be set forth during the plan preparation phases and also specifically noted in the notices of public hearing. The notices of hearing shall summarize the issues in an understandable and meaningful manner.
>
> ″If the exception to the goal is adopted, then the compelling reasons and facts for that conclusion shall be completely set forth in the plan and shall include:
>
> ″(a) Why these other uses should be provided for;
>
> ″(b) What alternative locations within the area could be used for the proposed uses;
>
> ″(c) What are the long term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;
>
> ″(d) A finding that the proposed uses will be compatible with other adjacent uses.″

process ″is normally limited to″ the resource goals, including Goals 3 and 4 but not Goal 14. [10]

In 1979 LCDC stated that ″an exception *is not* required for Goals 3 and 4 if findings can be made that the land is (a) physically developed or built upon or (b) irrevocably committed to nonfarm or nonforest uses * * *.″ [11] In **[**278]** July, 1982, LCDC confirmed that policy in a new rule, OAR 660-04-025(1), providing that ″[i]f a conclusion that land is *built* upon or *irrevocably committed* is supported, the four factors in Goal 2 need not be addressed.″ (Emphasis added. *See* n 9, *supra*, for ″the four factors in Goal 2.″)

On August 10, 1983, the Court of Appeals held that LCDC's ″built″ and ″irrevocably committed″ exceptions mechanism was **[***20]** unlawful because ″it excuses local governments from the consideration of factors made mandatory by Goal 2.″ Marion County v. Federation for Sound Planning, 64 Or App 226, 235, 668 P2d 406 (1983). The court held that the policy was so contrary to the provisions of Goal 2 that LCDC could promulgate it only by amending that goal; LCDC had not done that. 64 Or App at 235.

On August 9, 1983, the day before that decision, however, the legislature enacted ORS 197.732, which expressly authorized local governments to adopt ″physically developed″ (″built″) and ″irrevocably committed″ exceptions as well as ″reasons″ exceptions, i.e., the type Goal 2 had always expressly allowed. On December 30, 1983, LCDC amended Goal 2 to conform to the new statute. Planning Goals at 2. [12]

[*21]** **[*459]** The parties generally agree how the exceptions process should now work. ***HN8*** First, a local government takes inventory of the resources, the existing uses, and the potential uses of its lands to determine which goals apply. For example, it may find that an area consists of agricultural land as defined in Goal 3 but does not contain any forest land as defined in Goal 4; the exclusive farm use requirement of Goal 3, but not the forest use requirement of Goal 4, applies to that land. Second, the local government identifies the uses that conflict with requirements of the goals. For example, the county may wish to establish non-farm residences on agricultural lands, a use which generally conflicts with Goal 3. Third, for each conflict it identifies, the local government decides whether to plan and zone land consistently with the goal's requirements, or to seek an exception.

HN9 A local government which decides to take an exception must use the procedures and the substantive standards provided in ORS 197.732, as interpreted by LCDC's

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[10] LCDC Policy Memorandum, *supra*, n 6, at 2.

[11] LCDC Policy Memorandum, *supra*, n 6, II. *Common Questions Concerning the Exceptions Process as it Relates to* ***Land Use*** Decisions Prior to an Acknowledged Comprehensive Plan (as amended May 3, 1979) at 1.

[12] ORS 197.732(1) provides:***HN7***

> ″(1) A local government may adopt an exception to a goal when:
>
> > ″(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;
> >
> > ″(b) The land subject to the exception is irrevocably committed as described by commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or
> >
> > ″(c) The following standards are met:
> >
> > ″(A) Reasons justify why the state policy embodied in the applicable goals should not apply;
> >
> > ″(B) Areas which do not require a new exception cannot reasonably accommodate the use;
> >
> > ″(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
> >
> > ″(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.″

The corresponding provisions of Goal 2, Part II, are now identical. *See* Planning Goals at 4.

amended Goal 2 and administrative rules in OAR chapter 660. It must give public notice of proposed exceptions summarizing issues to be discussed, **[***22]** hold a public hearing on those issues, state its findings of fact and reasons for deciding that the substantive standards for each exception have or have not been satisfied, and develop a record suitable for LCDC's review of the decision. ORS 197.732(4) to (6); Goal 2, Part II; OAR 660-04-000(2) and (4); OAR 660-04-030 and 660-04-035.

[*460] **[**279]** Although ORS 197.732 codified the categories of exceptions which LCDC applied in practice until Marion County v. Federation for Sound Planning, supra, the present scheme differs from the old one in two ways. First, ***HN10*** LCDC has provided for the taking of exceptions to Goal 14. OAR 660-04-010(1)(c), 660-14-000 to 660-14-040. Second, exceptions are not limited to cases where it is "not possible" to apply a goal; each of the three possible types of exceptions requires a different kind of analysis, defined by ORS 197.732(1) and elaborated in OAR chapter 660.

The first type, a "built" exception, may be taken to allow an existing use when "[t]he land subject to the exception is *physically developed* to the extent that it is *no longer available* for uses allowed by the applicable goal." (Emphasis added.) ORS 197.732(1)(a); **[***23]** OAR 660-04-025(1). The local government must set forth "[t]he exact nature and extent of the areas found to be physically developed." OAR 660-04-025(2). Uses allowed by the applicable goals to which an exception is being taken may not be used to justify an exception for "physically developed" land. *Id.*

The second type of exception, for land not yet developed but "*irrevocably committed* as described by commission rule to uses not allowed by the applicable goal" (emphasis added), may be taken if "existing adjacent uses and other factors make uses allowed by the applicable goal *impracticable*." (Emphasis added.) ORS 197.732(1)(b). ***HN11*** LCDC describes "irrevocably committed" in two different rules, one that applies generally and another for a narrower but ill-defined class of ***land use*** decisions. [13]

HN12 If land is neither "developed" **[***24]** nor "committed," a local government which believes that land is needed for development may seek an exception under the standards of ORS 197.732(1)(c). These correspond to the factors under the original version of Goal 2, Part II. LCDC is required to adopt rules establishing the circumstances in which particular "*reasons*" may justify an exception to a goal. (Emphasis added.) ORS 197.732(1)(c)(A) and (3). LCDC has adopted "reasons" **[*461]** rules for specific goals and ***land use*** decisions, OAR 660-04-022(2) to (9) and 660-14-040, as well as a residual rule for other "uses not specifically provided for." OAR 660-04-022(1). To justify a "reasons" exception, a local government must also show that areas which would not require an exception cannot reasonably accommodate the use, that long-term effects will not be significantly worse than if the exceptions area were located elsewhere, and that the proposed use can be made compatible with adjacent uses. ORS 197.732(1)(c)(B) to (D).

HN13 Whatever the type of exception, the local government must make findings of fact and a statement of reasons why the standards for an exception have or have not been met. ORS 197.732(4). In reviewing **[***25]** decisions on exceptions, LCDC, bound by any local government factual findings for which the record contains substantial evidence, must determine whether and state reasons why the standards for exceptions have or have not been met. ORS 197.732(6).

II. *The Curry County Controversy*

A. *The Setting*

The parties do not dispute the facts concerning the natural characteristics and historic uses of the county's land, which appear in the record in the comprehensive plan. Curry County, the southernmost county on Oregon's coast, lies within the Klamath Mountains physiographic region and consists of mountain ridges, narrow river canyons, terraces produced by ocean waves and river flooding, lowland floodplains, marshes, and dunes along the coast. Most of the county is forested, primarily with Douglas Fir; its rivers are renowned for scenic beauty and sport fishing; its wildlife includes sizable populations of deer, bear, other big game, upland game **[**280]** birds, wintering waterfowl, and small furbearers. The first inhabitants, Qua-to-mas, Chetcos, and tribes speaking other dialects of a common Athapascan language, set up villages near river and stream mouths and developed **[***26]** a culture highly dependent on ocean resources. White settlement, also based largely upon the area's natural endowment, began in the early 1850s with efforts to establish sawmills, gold mining, and trade routes to more inland settlements. Further development established small towns, ferries, lumber mills, and mining of gold, borax, nickel and sandstone. Cultivation of **[*462]** ornamental lily bulbs, a crop of which the county is now a leading producer, began in the 1940s.

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[13] *Compare* OAR 660-04-028 *with* OAR 660-14-030. We shall consider how these rules apply to the facts in Curry County in Part III.B.1 of this opinion. ***301 Or at 480-485***.

When the county submitted its comprehensive plan for LCDC acknowledgment in 1982, 98 percent of its land was still in uses closely tied to natural resources: 90 percent for forestry, 7 percent for grazing and rangeland, and 1 percent for crops. The remaining 2 percent contained all residential, commercial, ***industrial***, and other non-resource uses, as well as the county's rivers and estuaries. The non-resource uses are concentrated in the vicinities of the three incorporated cities (Port Orford, Gold Beach and Brookings), in what the plan denominates as ″Rural Communities″ (Langlois, Ophir, Nesika Beach and Agness), and along the Rogue, Chetco and Pistol Rivers. All these areas except Agness, located inland **[***27]** where the Illinois and Rogue Rivers join, are located along or near U.S. Highway No. 101, the major highway in the county.

The areas at issue in this case occupy a tiny fraction of the county's 1,064,960 acres (1,664 square miles) but contain a substantial part of the land not owned by government or timber companies. The Siskiyou National Forest, the Kalmiopsis and Wild Rogue Wilderness areas, and other federally owned lands comprise 65 percent of the county. Another 28 percent is owned by timber corporations and another 1 percent by the state. Still another 1 percent lies within the planning jurisdiction of the three cities, all of whose comprehensive plans and UGBs LCDC has acknowledged. The remaining 5 percent contains 54,000 acres (about 84 square miles) outside the UGBs. The county has chosen to take exceptions to Goals 3 and 4, to allow non-resource uses, in areas totaling 10,400 acres (about 16 square miles). 1000 Friends charges that 4,000 acres [14] **[***28]** of those exceptions were taken in violation of Goals 2 and/or 14. [15]

B. *The Plan and the Objections, 1982*

The county's plan for lands outside the UGBs, submitted for LCDC acknowledgment in April 1982, included a **[*463]** Committed Lands Document containing both the county's criteria for taking exceptions and its 79 specific exceptions areas totaling the 10,400 acres.

The exceptions criteria included size of parcels, size and development of neighboring parcels, residential density and percentage of land covered by residential uses, proximity to UGBs or established rural communities, ″other features which preclude * * * resource use,″ and availability of public services.

In applying the criteria to specific areas, the county included maps and data sheets indicating the total acreage, number of parcels, size of parcels and number of ″developed″ parcels. The data sheets concluded **[***29]** with paragraphs on Committed Area's ***Land Use***, Adjacent Land Uses, Topography and Natural Features, Transportation and Public Facilities, and Evaluation Comments. For the four largest exceptions areas, the ″Rural Communities,″ the materials also included a General Description and accounts of Community Features and **[**281]** Community Boundaries. Four ″Undeveloped Subdivisions″ and 71 other areas of ″Developed and Committed Residential Lands″ lie primarily near the coast and on the lower Rogue, Chetco, Pistol, Elk, and Winchuck rivers. Neither the data sheet format nor the documents for the specific exceptions areas indicated which resource goals were applicable to the lands, to which goals exceptions were being taken, or how the county proposed to zone the lands. [16]

[*30]** 1000 Friends objected to all or part of 66 exceptions areas, on several grounds. First, it charged that in general the *criteria* violated Goal 2, Part II, because they ″overemphasized the significance of parcelization″ without properly weighing the other factors prescribed by LCDC's rule on ″committed″ exceptions, i.e., common ownership of parcels, actual uses, neighborhood characteristics, adjacent uses, and natural boundaries.

Second, it argued that individual *exceptions areas* violated Goal 2 because the data sheets supporting them **[*464]** omitted information needed to determine whether lands were ″committed″ to non-farm or non-forest use under the proper legal standards. It objected especially to including large parcels of vacant land with built-up parcels in the exceptions areas.

Third, cross-referring to the county's zoning maps, 1000 Friends claimed that the actual *zoning* of the exceptions area

[14] Where the parties have minor disagreements about exact numbers which seem unimportant in detail, we have more or less split the difference and approximated.

[15] Before LCDC and the Court of Appeals, 1000 Friends raised several other objections upon which it either prevailed or chose not to petition for our review. *1000 Friends of Oregon v. LCDC*, 73 Or App 350, 354-56, 698 P2d 1027 (1985) (third through fifth assignments of error).

[16] It is not clear from individual data sheets to which goals exceptions were being taken for each area; many speak generally of commitment to ″non-resource″ uses. While 1000 Friends objects to the county's failure to specify, it is not disputed that each exception was either to Goal 3, Goal 4, or both.

lands violated Goal 14 by allowing urban-like development in rural areas. ″The county has not made any effort to segregate urban uses, residential densities and services and locate them inside the urban growth areas [but instead] * * * ratified the wasteful, haphazard **[***31]** pattern of development which existed prior to Senate Bill 100.″ 1000 Friends noted that the exceptions areas contained more land than all three of the county's cities and their urban growth areas combined; that the 2.4 persons/acre population density in the most intensely developed rural residential zone (one-acre minimum lot size) would be higher than the 1.5 persons/acre in the county's cities (which have lower densities than exist in such other Oregon coastal cities as Florence (2.1), Lincoln City (3.3), and Cannon Beach (9.3)); and that according to the county's own estimates of population growth and new housing, the percentage of the county's people living in cities and urban growth areas would actually decline under the county's plan, from 54 percent in 1980 to 45 percent in 2000. (With its brief in the Court of Appeals, the county eventually submitted revised estimates in which the percentage would remain constant.)

1000 Friends also complained that the plan, without explaining the need for ***industrial*** and commercial uses outside the UGBs, zoned over 1,000 acres of rural lands for those uses, substantially more land than is so zoned within Brookings, the county's largest city **[***32]** in both area and population. The county eventually replied that the rural ***industrial*** land consists entirely of present or former (presently vacant) ***industrial*** sites, and only 140 of the commercial acres would be new development.

C. *LCDC's Decisions, 1982-84*

On December 14, 1982, LCDC entered a Continuance Order, concluding that the county's plan complied with Goals 1, 6 to 8, and 13, but not with Goals 2 to 5, 9, 12, and 16 to 18, for reasons given in an October 29, 1982 staff report. The **[*465]** report stated that the county's ″committed″ exceptions criteria were consistent with those in LCDC's ″committed″ exceptions rule and that all of the specific exceptions areas, except for the Rural Communities and three of the Undeveloped Subdivisions, were in compliance with Goal 2. In effect, the report denied that Goal 14 applied at all to the county's plan. The report said simply that ″[t]he county's acknowledgment request is for the area outside of the acknowledged **[**282]** urban growth boundaries.″ Because the statute then in effect, *former* ORS 197.251(8)(a)(C) (*repealed by* Or Laws 1983, ch 827, § 5), had been interpreted to make continuance orders ″final″ **[***33]** only as to the goals with which the entire plan was expressly found ″in compliance,″ 1000 Friends could not at that time obtain judicial review of its unsuccessful Goal 2 and Goal 14 objections. [17] *See 1000 Friends of Oregon v. LCDC* [Benton County], 56 Or App 759, 761-62, 643 P2d 654 (1982); *1000* Friends of Oregon v. Marion Co., 56 Or App 755, 758, 643 P2d 652 (1982).

The Continuance Order gave the county 150 days to revise its plan, which was resubmitted to LCDC in August 1983. The county had not changed either its ″committed″ exceptions criteria or the specific exceptions areas. 1000 Friends iterated its 1982 objections to both, based on its earlier **[***34]** arguments and on photographs newly added to the record purporting to show that some lands the county said could not be farmed were still being used for commercial lily bulb farming.

On January 30, 1984, the county adopted amendments to the portions of its Committed Lands Document covering the Rural Communities and the Undeveloped Subdivisions which LCDC had not acknowledged in 1982. The Rural Communities portions emphasized that the boundary for each community was ″in the appropriate location″ and that the lands were either developed or ″committed to non-resource use″ such that it was ″impracticable to apply Goals 3 and 4.″ The Undeveloped Subdivisions portions emphasized that most parcels had been sold into individual ownerships, **[*466]** public facilities had been developed, and many new homes had been built. No part of the amended Committed Lands Document stated whether any lands were built or committed to ″urban uses″ or mentioned Goal 14 in any manner.

Following a February 3 hearing, on February 17, 1984, LCDC issued an acknowledgment order finding the county's plan in compliance with Goals 1 to 13. LCDC based its decision on a January 20, 1984, staff report, revised **[***35]** on February 1 to take into account the county's January 30 amendments. The report concluded that the amendments demonstrated irrevocable commitment of the lands to non-resource uses and that the entire plan complied with Goal 2. The report said that the county's compliance with Goals 16 to 18 would be reviewed separately; however, although 1000 Friends continued to claim that the urban levels of development on rural land violated Goal 14,

[17] The county's argument to the contrary is incorrect. It is true that ORS 197.251(13)(a)(C) now makes continuance orders final and therefore reviewable, ORS 183.480(1), as to any parts of the plan that are in compliance with all the goals. However, that provision did not take effect until August 9, 1983. Or Laws 1983, ch 827, §§ 5 and 61.

neither the staff report nor the acknowledgment order said anything about that goal and its application to the exceptions areas.

D. *The Court of Appeals Decision, 1985*

On 1000 Friends' appeal, the Court of Appeals rejected the Goal 2 objections without reaching their merits. The court said that the exceptions criteria in the county's plan had no legal effect, because any post-acknowledgment exceptions would be treated as plan amendments and reviewed for compliance with the goals rather than with the plan. *73 Or App at 352*, citing *ORS 197.732(6)(b)*, *(8)*, and *ORS 197.835(4)*. Therefore, it made no difference whether the criteria complied with the goals. *Id.* The court also declined to review the individual exceptions areas because it **[***36]** believed that 1000 Friends, except for one area discussed "by way of example," had not sufficiently specified the objections to particular areas. *Id. at 352-53*. Thus, the court did not expressly affirm that the challenged areas were justifiably excepted from the resource use requirements of Goals 3 and 4.

Nevertheless, the court appeared to assume the validity of those exceptions in rejecting 1000 Friends' Goal 14 objection. **[**283]** *See 73 Or App at 356* ("The validity of those exceptions is not in issue here."). 1000 Friends argued that even if the exceptions to Goals 3 and 4 were valid, allowing non-resource uses in the 79 areas, the "new urban types of uses" proposed for these areas outside the UGB would violate **[*467]** Goal 14 and therefore required exceptions to Goal 14 as well. The Court of Appeals said there was no precedent for requiring a local government that had taken exceptions to Goals 3 and 4 "to permit the nonresource use of land" to also take an exception to Goal 14 "to allow the same use." *73 Or App at 357*. The court reasoned that because "the issue here does not involve the inclusion of resource land in a UGB" and "Goals 3 and 4 specifically regulate **[***37]** the use" of the land in the exceptions areas, "[t]here is no legal or logical reason why the county should be required to supplement its exceptions to these goals with an exception to Goal 14." *Id. at 358*. [18] The court thus affirmed LCDC's disposition of the Goal 14 issue and remanded to LCDC for reconsideration only of matters concerning another assignment of error that is not before us. *Id. at 356-358*.

[*38]** 1000 Friends petitioned for our review of both the Goal 2 and the Goal 14 issues. In this court, all parties and *amicus curiae* Metropolitan Service District (Metro) have focused on whether the county should have taken exceptions to Goal 14.

Because the county's acknowledgment order is "a commission order," *ORS 197.251(5)*, judicial review is "in the manner," and subject to the scope of court authority, provided in *ORS 183.482*. *ORS 197.650(1)*. *ORS 183.482(8)* provides:***HN14***

> "(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:
>
> "(A) Set aside or modify the order; or
>
> "(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.
>
> **[*468]** "(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:
>
> "(A) Outside the range of discretion delegated to the agency by law;
>
> "(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by **[***39]** the agency; or
>
> "(C) Otherwise in violation of a constitutional or statutory provision.
>
> "(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. 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."

We are particularly concerned with whether LCDC "erroneously interpreted" Goal 14 when it responded to 1000 Friends' Goal 14 objection only by indicating that Goal 14 was inapplicable to decisions concerning areas

[18] In *1000 Friends of Oregon v. LCDC (Linn County)*, 78 Or App 270, 717 P2d 149 (1986), the court explained what it had believed the issue to be in its decision in the case at bar. "The issue which we understood that we were deciding in our earlier opinion was whether a separate exception to Goal 14 was necessary to allow the same or substantially similar nonresource uses as those which were authorized by the exceptions to Goals 3 and 4 for the resource land in question." 78 Or App at 274. The court went on to explain that it did not believe that it faced a level of development more intensive than the existing development that had prompted the taking of exceptions in the first place. *Id.*

outside the UGBs and, if so, whether ″a correct interpretation compels a particular action″ by LCDC. ORS 183.482(8)(a). We also examine the validity of the exceptions to Goals 3 and 4 and consider LCDC's argument that those exceptions were sufficient to meet the standards for exceptions to Goal 14. We therefore inquire whether the county has ″set forth findings of fact and a statement of reasons″ and whether LCDC has ″adopt[ed] a **[**284]** clear statement of reasons which sets forth the basis for the determination″ that ″the standards of [ORS 197.732(1)] have * * * been met″ for exceptions **[***40]** to every applicable goal in the situations where exceptions were required. ORS 197.732(4), (6)(c). *See also* ORS 197.251(5)(b) (requiring that LCDC's acknowledgment order include ″a clear statement of findings in support of the determinations of compliance″ with the goals).

III. *Were Exceptions to Goal 14 Required?*

To determine whether the county must take exceptions to Goal 14 covering areas for which it has already taken exceptions to Goals 3 and 4, we must consider three subsidiary questions:

A. Must a county take an exception to Goal 14 when **[*469]** converting ″rural land″ outside an urban growth boundary to ″urban uses″?

B. Does the taking of exceptions to Goal 14 require consideration of matters which the county did not consider in taking its exceptions to Goals 3 and 4?

C. Does the county's plan, in the areas for which it took exceptions to Goals 3 and 4, in fact convert ″rural land″ outside the urban growth boundaries to ″urban uses″?

Only if the answer to all three questions is ″yes″ was the county required to take exceptions to Goal 14.

The meanings of the defined term ″rural land″ and the undefined term ″urban uses,″ *see* Part I.B, **[***41]** *supra*, 301 Or at 455-457, are critical to our inquiry. The first two of the foregoing three questions concern the legal consequences that follow from the determination that a plan allows ″urban uses″ on ″rural land″: the requirement of exceptions to Goal 14 and the standards that must be met to justify such exceptions. These questions we can resolve as a matter of law without considering problems of defining ″urban uses.″ We may first assume with the parties that this term can be given some determinate meaning, then examine what the language and policy of Goal 14 indicate should be done concerning ″urban uses″ -- whatever these may be -- when they occur on ″rural land″ outside UGBs. In considering the first two questions, we employ ″urban uses″ in the same sense as do the parties in their pertinent discussion, to stand for the as-yet-unspecified uses that the relevant statutes, goal and administrative rules require to be treated in certain ways when they are located on ″rural land.″

To answer the third question, however, requires discussion of what ″urban uses″ really are, to determine whether this county's plan in fact allows them on ″rural land.″ Because the ***land use*** statutes **[***42]** gave to LCDC, rather than to this court, the ″authority to fill in the so-called 'interstices' of the statutes″ by adopting goals and reviewing plans for compliance with those goals, *see* Springfield Education Assn. v. School Dist., 290 Or 217, 221, 621 P2d 547 (1980), our discussion necessarily gives ″some deference″ to LCDC's own interpretation of the term ″urban uses″ as used in Goal 14, which LCDC itself adopted. Branscomb v. LCDC, 297 Or 142, 145, **[*470]** 681 P2d 124 (1984). To the extent that the meaning of ″urban uses″ is ambiguous in the light of the goals and other definitions, we would review any interpretations by LCDC of that term in this case only to determine if they ″express a new policy or standard varying in substance from the existing policy and standards of Goal 14,″ *1000* Friends of Oregon v. Wasco County Court, supra, 299 Or at 369; ORS 183.482(8)(b)(B) (court shall remand agency order if exercise of discretion is ″[i]nconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained″); if they are ″within the legislative policy which inheres″ in the statutes that give LCDC the **[***43]** authority to adopt the goals (ORS 197.225 and 197.230), *see* Springfield Education Assn. v. School Dist., supra, 290 Or at 227; ORS 183.482(8)(a) (a court may set aside, modify or remand if agency has ″erroneously interpreted a provision of law″); and **[**285]** if the factual findings on which they rely are ″supported by substantial evidence in the record.″ ORS 183.482(8)(c). However, LCDC's acknowledgment order and staff reports in this case offer no interpretation of ″urban uses.″ We employ that term in our discussion of the third question only in an effort to discover from other sources whether LCDC has made a definitive interpretation that can tell us whether this county's plan allows ″urban uses.″

A. *Goal 14 and conversion of rural land to urban uses*

We read the responses of LCDC's staff reports and acknowledgment order to 1000 Friends' Goal 14 objections -- in 1982 merely noting that the acknowledgment request was for the area outside the acknowledged UGBs, and in

1984 omitting mention of Goal 14 -- to express the legal position that Goal 14 does not pertain in any way to decisions which affect land outside UGBs and do not establish or change a UGB. The Court **[***44]** of Appeals took the position that ″under some circumstances, a local government may be required to take an exception to Goal 14 to allow an urban use on rural land.″ *73 Or App at 357*. We hold that ***HN15*** any county whose comprehensive plan converts ″rural land″ outside of established urban growth boundaries to ″urban uses″ must either (1) show that its action complies with Goal 14, or (2) take an **[*471]** exception to Goal 14, as prescribed by *ORS 197.732*, Goal 2, Part II, and OAR chapter 660.

1000 Friends and LCDC's lawyer (differing from the position LCDC took in its acknowledgment order and staff report) maintain that the reasoning of *1000 Friends of Oregon v. Wasco County Court, supra*, does not necessarily require this holding but that of *Perkins v. City of Rajneeshpuram, 300 Or 1, 706 P2d 949 (1985)*, does. We agree.

In *Wasco County Court* we noted decisions in which LCDC and the ***Land Use*** Board of Appeals (LUBA) have held that Goal 14 ″prohibit[s] urbanization outside existing UGBs,″ but did not need to decide whether these were correct. *299 Or at 367 n 22*. We held that a county need not take an exception to Goal 14 when it approves a petition to incorporate a city **[***45]** on land outside of existing UGBs. *Id.* at 370. Although that opinion contains language from which the county has argued here that Goal 14 has nothing to do with a decision which neither establishes nor changes a UGB, *see id. at 363* (″On its face, Goal 14 provides a process for the establishment and change of UGBs, and nothing more.″), we cannot reconcile the county's argument with the reasoning and holding of *Wasco County Court*. After stating that ″Goal 14 specifies the requirements for *conversion of rural land to urban land,*″ *id. at 351* (emphasis added), we noted that incorporation alone would not authorize changes in the classification or use of the land; conversion from rural to urban land could result only later, after the establishment of a UGB. *Id.* at 365-66. Because a local government must take an exception only ″where an applicable goal would otherwise prohibit [a local government's] proposed action,″ *id. at 352*, and ″even assuming * * * that Goal 14 prohibits urbanization outside UGBs, it does not follow that an action which cannot result in urbanization before a UGB is established is also prohibited,″ *id. at 367 n 22*, we required no exception **[***46]** to Goal 14. Nevertheless, because it is likely that after incorporation a city will propose a UGB, we said that even at the incorporation stage a county may not simply ignore Goal 14; it must, as with the other goals, determine that ″it is reasonably likely that the newly incorporated city can and will comply with the goals once the city assumes primary responsibility for comprehensive planning in the area to be incorporated.″ *Id. at 360, 367-68*. We did not identify which decisions concerning lands **[*472]** outside urban growth boundaries require the taking of exceptions to Goal 14.

In *Perkins v. City of Rajneeshpuram, supra*, it was undisputed that the city's challenged action would convert rural **[**286]** agricultural land to ″urban uses,″ *300 Or at 4*, and we held that ″the city was required to comply with Goal 14 either by (1) meeting its requirements, or (2) following the exceptions procedure and adopting an exception to the goal.″ *Id. at 12*. There, the city annexed and zoned land ″to permit urban development,″ *id. at 4*, relying on the fact that the land was within a UGB which the city had adopted but LCDC had not acknowledged. We noted Goal 14's provision **[***47]** that once a UGB is ″established,″ the land included within it is ″urbanizable″ and ″available over time for urban uses.″ *300 Or at 8*. We rejected the argument that the city's UGB became ″established″ when the city adopted it; no UGB is ″established″ until LCDC has acknowledged it. *Id. at 9*. Since *ORS 197.175(2)(c)* requires cities and counties to ″make ***land use*** decisions in compliance with the goals″ until LCDC acknowledges their comprehensive plans, the city was required to either comply with each pertinent goal or adopt an exception to each. *300 Or at 9-12*.

We recognized in *City of Rajneeshpuram* that neither the language of Goal 14 nor our previous decisions addressed whether the exceptions process applies to Goal 14 when the proposed ***land use*** neither establishes nor changes a *UGB. 300 Or at 12*. However, we found that ″the policy embodied in the goal″ provided an answer:

> ***HN16*** ″[A] city should not convert rural land to urbanizable land or urban uses prior to inclusion within an acknowledged UGB. The purpose of the goal, which comports with the policy of the ***land use*** statutes in general, is '[t]o provide for an orderly and efficient transition from rural to urban **[***48]** ***land use***.' This purpose is effected by the establishment of the UGB. *Urbanization is to occur within a UGB adopted upon consideration of the seven establishment factors set forth in Goal 14 and subsequently acknowledged by LCDC.*″ (Footnote omitted. Emphasis added.)

300 Or at 12. Therefore, ″[a] proposal to convert rural agricultural land to urban uses prior to inclusion within an **[*473]** acknowledged UGB″ requires either meeting the requirements specified in Goal 14 or properly taking exception to that goal. *Id.*

Both 1000 Friends and LCDC interpret *City of Rajneeshpuram* as saying that any urbanization of "rural land" requires either compliance with, or an exception to, Goal 14. The county makes several arguments why that rule of law cannot apply to the type of ***land use*** decision involved here.

First, the county argues that *City of Rajneeshpuram* "does not state that Goal 14 prohibits urban uses on rural land but only that ***land use*** decisions *affecting* land within a proposed UGB may require Goal 14 compliance or exception." The county bases its argument on one sentence from the opinion: "Preacknowledgment ***land use*** decisions *affecting land* **[***49]** *within the proposed UGB* must comply with the individual goals, including the exceptions procedure * * *." (Emphasis added.) *300 Or at 10*.

The county's argument does not consider the context of that sentence and is inconsistent with the policy we noted as the reason for our decision. We spoke particularly about "land within the proposed UGB" only because the city had argued that its adoption of the proposed UGB excused it from showing compliance with the goals. However, the statute to which we referred, *ORS 197.175(2)(c)*, ***HN17*** requires all preacknowledgment "***land use*** decisions" to be made "in compliance with the goals," regardless of where in the jurisdiction the affected lands are located. We held that the city must comply with or take exception to Goal 14 not because the annexed lands were also within the *proposed* UGB, but because, like those at issue here, they were *not* within an *acknowledged* UGB. To authorize urbanization of the county's lands without requiring it to comply with or take exception to Goal 14 would defeat the goal's purpose: "provid[ing] for an orderly **[**287]** transition from rural to urban ***land use***." Goal 14.

Second, the county claims that **[***50]** because none of the three cities' UGBs had been acknowledged when the county took its exceptions in 1982, "there is no requirement that Goal 14 be excepted or addressed." Based on the record before us, we think the county's factual premise is incorrect; the October 29, 1982, staff report refers to all three cities' UGBs as **[*474]** "acknowledged." The county's legal reasoning appears to be as follows:

(1) The decisions made before *City of Rajneeshpuram*, holding that Goal 14 applies to urbanization of lands outside established UGBs, emphasized the adverse impact that "*intensification* of development in rural areas" has on "nearby *established* UGBs."

(2) According to *City of Rajneeshpuram*, the three as-yet-unacknowledged UGBs were "without effect," *300 Or at 10*.

(3) Because there were no effective, established UGBs on which the county's development could have an impact, there was no need to consider Goal 14.

Again, the county fails to recognize that the policy of Goal 14 is to contain urbanization within acknowledged UGBs. To be sure, some of the cases which the county cites did emphasize the effect of various decisions on existing UGBs. [19] **[***53]** None, however, says **[***51]** that Goal 14 matters *only* when urbanization of "rural land" will undermine the effectiveness of an established UGB. The Court of Appeals, LCDC, and the ***Land*** **[*475]** ***Use*** Board of Appeals (LUBA)

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[19] *E.g.*, *Medford v. Jackson Cty*, 2 Or LUBA 387, 391 (1981) ("the decision to allow intensification of use outside an urban growth boundary on non-resource lands must not undermine the effectiveness of adjacent urban growth boundaries"), *aff'd in part & remanded in relevant part*, *City of Medford v. Jackson County*, 57 Or App 155, 161, 643 P2d 1353 (1982) (noting with apparent approval LUBA's decision that "Goal 14 requires assessing the impact that ***industrial*** development outside urban growth boundaries would have on lands inside such boundaries"); *Metropolitan Serv. Dist. v. Clackamas Cty*, 2 Or LUBA 300, 307-08 (1981) ("[W]e do believe the county should have included some facts and made a finding as to the effect of the approval of the developments on the urban growth boundary. Of particular interest to us is whether these developments would contribute to a kind of sprawl or leap frogging development that might undermine the effectiveness of an urban growth boundary enacted to contain intense development.").

See also 1000 Friends of Oregon v. Clackamas Cty, 3 Or LUBA 316, 327 (1981) ("The creation of many small rural lots * * * may necessarily result in the provision of a substantial amount of housing outside the UGB -- housing which may well attract people who otherwise would live within the regional UGB. The effect of this on the UGB's ability to control residential sprawl must be addressed by the county. * * * Petitioners' * * * assignments of error, insofar as they allege a violation of goal 14, are sustained."); *Sandy v. Clackamas Cty.*, 3 LCDC 139, 149-50 (1979) ("If this development is allowed, then there may as well not be urban growth boundaries. [It] * * * 'is a perfect example of how Goal 14 may, little by little, case-by-case, be rendered ineffective and useless in controlling urban sprawl.' According to the testimony, this development would seriously frustrate urban-level utilization of lands in Sandy. * * * Proof that rural development will injure a city is proof of a Goal 14 violation.").

[20] have all indicated, even in cases where no particular threats to the integrity of established UGBs were noted, that Goal 14 generally prohibits urbanization of "rural land." [21] **[**288]** The concern in *City of Rajneeshpuram* was not that this ill-fated community would attract development that otherwise would be contained within established UGBs, but that establishing new "urban uses" on rural land without properly considering Goal 14 amounts to intrinsically bad ***land use*** planning. The city's proposal would have violated Goal 14's policy of establishing urban growth boundaries "to identify and separate urbanizable land from rural land" and "not convert[ing] rural land to * * * urban uses prior to inclusion within an acknowledged UGB." *300 Or at 12*. Because the purpose of that policy is to contain urbanization within UGBs, if in fact no acknowledged UGBs existed in 1982 to contain Curry County's urbanization, the county should have planned its exceptions with special concern **[***52]** for compliance with Goal 14, rather than with no concern at all.

[*54]** Third, the county argues that because Oregon law did not explicitly provide for taking exceptions to Goal 14 when the county took its exceptions to Goals 3 and 4, the county cannot be required to take such exceptions now. The county is correct that the law neither explicitly permitted nor required **[*476]** the taking of exceptions to Goal 14 until LCDC promulgated OAR chapter 660, division 14, in 1983. We cannot agree with 1000 Friends that LCDC's policy memorandum on the exceptions process [22] implied that local governments could take exceptions to Goal 14. That memorandum, at page 2, listed the goals (including 3 and 4) to which "[u]se of the Exceptions Process is normally limited," contrasting these with others, including Goal 14, for which "existing built-in conflict resolution mechanisms should be used."

However, from the fact that the county could not take exceptions to Goal 14 in 1982, it does not follow that this goal was irrelevant to its planning process. On the **[***55]** contrary, several opinions had held that "urban uses" of "rural land" outside UGBs violate Goal 14. *See* cases, *supra*, nn 19 and 21 (those decided before the December 14, 1982 Continuance Order in this case). [23] The lack of a provision for exceptions to Goal 14 in 1982, then, implied not that cities and counties could convert "rural land" to "urban uses" without applying Goal 14, but rather, that in considering such conversions, they should have applied the establishment and conversion factors of Goal 14, *supra*, *301 Or at 455-56*, even where no UGB was being established or changed.

The 1983 legislature, by passing *ORS 197.732* (which "does not exclude any particular goal from its operation," *City of Rajneeshpuram, 300 Or at 13 n 17*), and LCDC, by "mak[ing] Goal 14 subject to the exceptions procedure," *id.*, did not narrow, but rather liberalized, what local governments can do in the face **[***56]** of Goal 14. Cities and counties may now either comply with the goal or justify exceptions to it.

Finally, the county points to cases involving what it characterizes as "urban uses" outside UGBs in which the decisions did not indicate any concern about Goal 14

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[20] ***HN18*** LUBA was established in 1979, *see* ORS 197.810, to review certain ***land use*** decisions "not includ[ing] those matters over which [LCDC] has review authority under ORS 197.005-187.455 * * *." ORS 197.825(2)(c). *See generally* ORS 197.805-197.855. Some questions of LUBA's jurisdiction are discussed in *Wasco County Court*, 299 Or at 355-59, and *Wright v. KECH-TV*, 300 Or 139, 707 P2d 1232 (1985).

[21] *Carmel Estates, Inc. v. LCDC*, 66 Or App 113, 117 and n 2, 672 P2d 1245 (1983) (affirming LCDC's order to rezone 12-acre tract located outside UGB "for non-urban use" to correct violation of Goal 14); *Patzkowsky v. Klamath County*, 8 Or LUBA 64, 71 (1983) (in case involving subdivision located 17 miles from the nearest UGB, stating the county's general obligation "to make findings on the applicability of Goal 14 when rural land is to be converted to small size lots"); *Ashland v. Jackson Cty*, 2 Or LUBA 378, 382 (1981) ("It is our view that designation of a large area outside an urban growth boundary for urban-like or intensive uses is a violation of Goal 14"); *Conarow v. Coos County*, 2 Or LUBA 190, 193-94 (1981) (neighborhood store "appropriate for and limited to the needs of the rural area in which it is proposed to be located" did not violate Goal 14, but "an *urban use* of land * * * must be included within an urban growth boundary to avoid violation of Goal 14") (emphasis added); *Wright v. Marion County Board of Commissioners*, 1 Or LUBA 164, 170 (1980) ("Just as * * * the need for housing must be satisfied by land located within [a UGB], so must also the need for ***industrial*** uses be satisfied by land located within [a UGB]."); *Sandy v. Clackamas Cty.*, 3 LCDC 139, 148 (1979) ("Rural land may not be put to urban level use. The only way to convert rural to urban land is to follow the Goal 14 process.").

[22] See nn 10-11, *supra*.

[23] The Court of Appeals decided *City of Medford v. Jackson County, supra*, n 19, on April 26, 1982.

violations; [24] it argues these decisions imply that the goal does not prohibit urbanization outside UGBs. In none of these cases **[*477]** did **[**289]** the Court of Appeals either indicate that the Goal 14 issue was raised by any party or discuss that issue in the decision. We decline to consider those silences more persuasive than our reasoning in *City of Rajneeshpuram* and the discussions by the Court of Appeals, LUBA and LCDC in the other cases, nn 19 and 21, *supra*, which have addressed the issue.

[*57]** ***HN19*** Conversion of ″rural land″ to ″urban uses″ must be supported either by compliance with the requirements of Goal 14 or by an exception to that goal. This conclusion follows from the goal's express purpose ″[t]o provide for an orderly and efficient transition from rural to urban ***land use***″ and its provision that ″[u]rban growth boundaries shall be established to identify and separate urbanizable land from rural land,″ from the policies discussed in *City of Rajneeshpuram* and in earlier cases prohibiting ″urban uses″ of ″rural land,″ and from the provisions of ORS 197.732 and OAR chapter 660, divisions 4 and 14, authorizing the taking of exceptions to Goal 14. In practice, once an objector has charged that a decision affecting ″rural land″ outside an urban growth boundary is prohibited by Goal 14, a local government may do any one of three things: (1) make a record based on which LCDC enters a finding that the decision does not offend the goal because it does not in fact convert ″rural land″ to ″urban uses″; (2) comply with Goal 14 by obtaining acknowledgment of an urban growth boundary, based upon considering of the factors specified in the goal; or (3) justify an exception **[***58]** to the goal.

Because LCDC's decision did not respond to 1000 Friends' objection in any of those three ways, it ″erroneously interpreted a provision of law,″ namely Goal 14. *See* ORS 183.482(8)(a). The Court of Appeals' reason for affirming LCDC's disposition of the issue, that the county had taken exceptions to Goals 3 and 4 to allow the same use, similarly did not go to any of the three ways of properly meeting the concern that to allow the alleged ″urban uses″ offended Goal 14.

However, in this case LCDC and the county argue alternative grounds for affirming the result reached by LCDC and the Court of Appeals. In *City of Rajneeshpuram*, the city obtained no acknowledgment, attempted to justify no exceptions, and admitted that it was converting ″rural land″ to **[*478]** ″urban uses.″ Here, the county has not attempted to extend any UGB to include the exceptions areas, but LCDC argues that the county did everything it would have had to do to justify exceptions to Goal 14, and the county argues that its exceptions areas do not in fact convert ″rural land″ to ″urban uses.″ If this court could properly determine either that the county has performed the functional equivalent **[***59]** of exceptions to Goal 14 or that the county's plan does not convert any ″rural land″ to ″urban uses,″ then there could have been no error in LCDC's decision not to require exceptions to Goal 14. There would be no reason to ″set aside or modify the order″ or to ″remand the case″ to LCDC, because the ″correct interpretation″ of Goal 14 in this particular case would compel no further ″particular action″ by LCDC, *see* ORS 183.482(8)(a), once we determined that there was no need for exceptions to Goal 14.

B. *Requirements for Exceptions to Goals 3, 4 and 14*

LCDC argues that when the taking of exceptions to Goals 3 and 4 ″indirectly but effectively results in the equivalency of an exception to Goal 14,″ a local government need not take a ″committed″ exception to Goal 14. Although the county's planning documents did not purport to justify any exceptions to Goal 14, and neither the staff report nor LCDC's acknowledgment order suggested that the plan did so, LCDC argues to us that the county's committed exceptions to Goals 3 and 4 satisfied the requirements for exceptions to Goal 14. The Court of Appeals seemed uncertain whether 1000 Friends was arguing for exceptions to Goal **[***60]** 14 *in addition to* or *as an alternative to* exceptions to Goals 3 and 4. *See* 73 Or App at 356-358 and nn 3-4. **[**290]** Because it found no cases holding that local governments that take exceptions to Goals 3 and 4 ″to permit the nonresource use of land subject to the resource use requirements of those goals″ must also take exceptions to Goal 14 ″in order to allow the same use,″ and because Goals 3 and 4 ″specifically regulate the use of [resource] land,″ the Court of Appeals found no ″legal or logical reason″ why the county should also have to take exceptions to Goal 14. Id. at 357-58. Thus, while 1000 Friends and LCDC agreed before this court, and we have held here, that local governments which convert ″rural land″ outside the UGBs to ″urban uses″ must either comply with or take exceptions to Goal 14, both LCDC and the Court of Appeals disposed of this case without **[*479]** expressing any view concerning either (1) what must be done to justify exceptions to Goal 14 or (2) precisely when such exceptions are required. There is no finding in either's decision, therefore, which purports to

[24] *1000 Friends of Oregon v. LCDC* [Coos County], 75 Or App 199, 706 P2d 987 (1985); *1000 Friends of Oregon v. LCDC* [Jefferson County], 69 Or App 717, 688 P2d 103 (1984); Still v. Board of County Comm'rs, 42 Or App 115, 600 P2d 433 (1979).

determine that (as LCDC now claims for the first time) the county's exceptions **[***61]** to Goals 3 and 4 sufficed as exceptions to Goal 14.

Under the circumstances of this case, we must therefore determine as a matter of law the requirements for taking exceptions to Goal 14 and then examine whether either LCDC's findings, "which set[] forth the basis for the approval * * * of acknowledgment," ORS 197.251(5), or the county's findings and statements of reasons for approving the exceptions, ORS 197.732(4) and (6), can be read to satisfy those requirements. We hold that ***HN20*** properly taken "committed" exceptions to resource goals do not necessarily meet the requirements for "committed" exceptions to Goal 14 and that the specific exceptions taken here failed to meet those requirements.

We need not compare the requirements for "reasons" exceptions to the various goals. If the county's exceptions to Goals 3 and 4 sufficed for "built" or "committed" exceptions to Goal 14, "reasons" exceptions for the same land would be redundant, because only one kind of exception is needed for any particular piece of land. *See* OAR 660-14-040(1) and (2) ***HN21*** (requirement that "reasons" exception to Goal 14 be taken for "establishment of new urban development on undeveloped rural land" does **[***62]** not apply to "land subject to built and committed exceptions to Goals 3 or 4 but * * * *developed* at urban density or *committed* to urban level development.") (Emphasis added). If they did not suffice, the county justified no exceptions to Goal 14, because all parties agree that the county did none of the analysis necessary to justify "reasons" exceptions.

The parties focus the argument on requirements for "committed" exceptions but also appear to disagree about "built" exceptions. In the Court of Appeals, 1000 Friends conceded that ***HN22*** "[w]here [urban uses of rural lands] already exist, obviously a Goal 14 exception is not necessary." LCDC and the county agree. In this court, however, 1000 Friends says that a "built" exception to Goal 3 or 4 "obviously" differs from the same kind of exception to Goal 14 because

> **[*480]** "an area can be lightly developed in such a way that agriculture is rendered impracticable but the land may still qualify under the definition of rural lands. Land which is built upon such that agriculture is impracticable may have a residential density of one house per 10 acres, which is clearly not an urban intensity of development."

[*63]** Because this is the same point 1000 Friends makes in the more elaborate argument on "committed" exceptions, we shall return to it after resolving that argument.

1. *The Administrative Rules for "Committed" Exceptions*

HN23 Either of two administrative rules might apply to the taking of "committed" exceptions to Goal 14. Division 4 of OAR chapter 660 "interprets the exceptions process as it applies to statewide Goals 3 to 19," except as provided for in division 14 of the same chapter. OAR 660-04-000(1). Division 4 also contains a general rule for "committed" exceptions. OAR 660-04-028.

[291]** The scope of division 14 is unclear. It is entitled "Administrative Rule for Application of the Statewide Planning Goals to the Incorporation of New Cities," and the section on its purpose provides:

> " ORS 197.175 requires cities and counties to exercise their planning and zoning responsibilities in compliance with the Statewide Planning Goals. This includes, but is not limited to, a city or special district boundary change including the incorporation or annexation of unincorporated territory. The *purpose of this rule is to clarify the requirements of Goal 14 and to provide* **[***64]** *guidance to cities, counties and local government boundary commissions regarding incorporation of new cities under the Goals*. This rule specifies the satisfactory method of applying Statewide Planning Goals 2, 3, 4, 11 and 14 to the incorporation of new cities." (Emphasis added.)

OAR 660-14-000. Division 14 contains a provision entitled "Incorporation of New Cities on Rural Lands Irrevocably Committed to Urban Levels of Development." OAR 660-14-030. The county maintains that since no incorporation is involved here, division 14 does not apply. However, both 1000 Friends and LCDC refer to OAR 660-14-030 as "the Goal 14 rule" for committed exceptions, as if it applies in contexts other than incorporation.

We believe ***HN24*** OAR 660-14-030 governs all "committed" **[*481]** exceptions to Goal 14. While three of its six sections appear to limit it to situations where there is an area "proposed for incorporation," [25] **[***66]** the other three speak generally of decisions that land is "irrevocably

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[25] OAR 660-14-030 ***HN25*** provides in part:

committed to urban levels of development." [26] The latter sections **[**292]** state the general rule for determining **[*482]** commitment and factors to be considered in deciding whether **[***65]** land is "committed." Further, the

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"* * *

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

"* * *

"(5) Larger parcels or ownerships on the periphery of an area committed to urban densities may only be considered *committed to urban development* and included in the area *proposed for incorporation* if findings of fact demonstrate:

"(a) Urban levels of facilities are currently provided to the parcel; and

"(b) The parcel is irrevocably committed to nonresource use or is not resource land; and

"(c) The parcel can reasonably be developed for urban density uses considering topography, natural hazards or other constraints on site development.

"(6) More detailed findings and reasons must be provided to demonstrate that land is *committed to urban development* than would be if the land is currently built upon at urban densities. Land which cannot be shown to be built to urban densities or committed to urban development may not be included within the area *proposed for incorporation*, except as provided for in OAR 660-14-040." (Emphasis added.)

[26] OAR 660-14-030 ***HN26*** provides in part:

"(1) A conclusion, supported by reasons and facts, that rural land is *irrevocably committed to urban levels of development* can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goal 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-04-020(2) need not be addressed.

"* * *

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

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

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

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

"(d) Parcel sizes and ownership patterns.

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

"* * *."

"purpose" of the rules in division 14 is not only to provide guidance for incorporation of new cities, but also "to clarify the requirements of Goal 14" generally. OAR 660-14-000. OAR 660-14-030 is also more specifically tailored to the taking of exceptions to Goal 14 than is the general "committed" exceptions rule, OAR 660-04-028. The former describes factors considered and findings required to determine that land is "committed to urban development," OAR 660-14-030, *see* nn 25-26, *supra* (all subsections), while the latter speaks only generally of "commit[ment] to uses not allowed by the applicable goal," OAR 660-04-028(1) and (3), or factors which prevent the "resource use" of lands. OAR 660-04-028(2)(c)(A).

[*67]** The county argues that the validity of all the rules in division 14 "is in some doubt" after *Wasco County Court*. In that opinion we said that another provision, OAR 660-14-010(1), did not warrant our deference to agency interpretation because it varied from the policy and standards of Goal 14 and amounted to a *de facto* goal amendment. *See 299 Or at 350, 369*. Relying on *Wasco County Court*, the Court of Appeals has declared that rule invalid as beyond LCDC's statutory authority. *McKnight v. LCDC, 74 Or App 627, 629-30, 704 P2d 1153 (1985)*.

However, neither *Wasco County Court* nor *McKnight* expresses any view about other rules in division 14, and the county does not explain how the decisions call these rules into question. *Wasco County Court* held that OAR 660-14-010(1) varied from the policies and standards of Goal 14 because the rule required an exception for an incorporation decision which could not by itself convert "rural land" to "urban uses"; by contrast, the county's decision to actually plan and zone land in particular ways possibly does so. *See, infra*, Part III.C. The county offers no reason to question the validity of OAR 660-14-030, **[***68]** and we hold that it is a valid rule which applies in this case.

HN27 The rule for "committed" exceptions to Goal 14, **[*483]** OAR 660-14-030, requires a more exacting analysis than does OAR 660-04-028, which governs "committed" exceptions to Goals 3 and 4. [27] OAR 660-04-028(3) requires only that "one or more" of several factors (of which parcel size and ownership patterns seem the most important) makes resource use impracticable upon the land. [28] The corresponding part of **[*484]** **[**293]** OAR 660-14-030 explicitly recognizes that lands may be built or committed to different intensities of development; it requires that local governments explain, based on "all of the factors" listed in

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[27] OAR 660-05-010(5) ***HN29*** provides that OAR chapter 660, division 4, governs exceptions to Goal 3, and OAR 660-06-015(1) provides the same for exceptions to Goal 4.

[28] OAR 660-04-028(2) and (3) ***HN30*** provide:

> "(2) Whether land has been irrevocably committed will depend upon the situation at the specific site and the areas adjacent to it. The exact nature and extent of the areas found to be irrevocably committed shall be clearly set forth in the justification for the exception, and those area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall address the following factors:
>
> "(a) Existing adjacent uses;
>
> "(b) Public facilities and services (water and sewer lines, etc.);
>
> "(c) Parcel size and ownership patterns of the exceptions area and adjacent lands:
>
> "(A) Consideration of parcel size and ownership patterns under subsection (2)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the divided land. Only if existing development on the resulting parcels or other factors prevent their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception.
>
> "(B) Existing parcel sizes and their ownership shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered only as one farm or forest operation. The mere fact that small parcels exist does not alone constitute irrevocable commitment. Small parcels in separate ownerships are more likely irrevocably committed if the parcels are developed, or clustered in a large group as opposed to standing alone or are not adjacent to or are buffered from designated resource land.
>
> "(d) Neighborhood and regional characteristics;

the rule, the level of development to which the land is committed, and why. *See* OAR 660-14-030(2), (3) and (4), *supra*, nn 25 and 26 (emphasized portions other than ″proposed for incorporation″). The division 14 rule also requires closer scrutiny of the intensity of development to which each individual parcel is built, committed, and suitable. OAR 660-04-028(4) provides in part:

> ″*Findings of fact and a statement of reasons* that land subject to an exception is physically developed **[***69]** or irrevocably committed *need not be prepared or adopted for individual parcels separately*. Such units of land may be considered in combination as a single exception area. * * *″ (Emphasis added.)

OAR 660-14-030(5) and (6) ***HN28*** provide:

> ″(5) *Larger parcels or ownerships on the periphery of an area committed to urban densities may only be considered committed to urban development* and included in the area proposed for incorporation *if findings of fact demonstrate:*
>
> ″(a) Urban levels of facilities are currently provided to *the parcel;* and
>
> ″(b) *The parcel* is irrevocably committed to non-resource use or is not resource land; and
>
> ″(c) *The parcel* can reasonably be developed for urban density uses considering topography, natural hazards or other constraints on site development.
>
> ″(6) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be if the land is currently built upon at urban densities. *Land which cannot be shown to be built to urban densities or committed to urban development may not be included within the area proposed for incorporation*, except as provided for **[***70]** in OAR 660-14-040.″ (Emphasis added.)

Thus, it is entirely possible to take exceptions to Goal 3, Goal 4, or another resource goal without considering factors or making findings which LCDC has established as critical to taking of exceptions to Goal 14.

[*71]** 2. *Substantive Requirements for Exceptions*

[*485] ***HN31*** Even if exceptions to the resource goals and to Goal 14 were governed by the same administrative rule, the former would not generally suffice to meet the requirements for the latter. The analysis that must be done to justify exceptions to each goal, and the uses which exceptions to each goal allow, are quite different. Each goal requires and allows different kinds of uses; therefore, justifying ″committed″ exceptions to different goals requires findings that different kinds of uses are ″impracticable.″ *See* ORS 197.732(1)(b). Exceptions to Goals 3, 4 and other resource goals cannot generally suffice as exceptions to Goal 14 because the former necessitate only a determination that a narrow category of uses, the particular resource uses required by the goal, are impracticable, while the latter necessitates a finding that not merely resource uses, but all other rural uses, are impracticable.

a. *The resource goals*

The parties agree that ***HN32*** to justify a ″committed″ exception to Goal 3's requirement that ″[a]gricultural lands shall be preserved **[**294]** and maintained for farm use,″ Planning Goals at 6, a local **[***72]** government must show that the land cannot practicably be used for farming. Similarly, a ″committed″ exception to Goal 4's requirement that ″[f]orest land shall be retained for the production of wood fibre and other forest uses,″ *id.*, requires proof that the land cannot practicably be put to ″forest uses,″ as defined elsewhere in Goal 4. *See, supra*, Part I.B., 301 Or at 454. To justify a ″committed″ exception to any resource goal, a local government need only demonstrate that some level of development existing on adjacent land makes that resource use impracticable on the land.

The parties disagree, however, about what uses were allowed once the county took exceptions to Goal 3 or Goal 4. The county says that no provision of ORS 197.732, ORS chapter 215 (governing county planning and zoning), Goal 2, or OAR chapter 660 requires local governments to identify

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> ″(e) Natural boundaries or other buffers separating the exception area from adjacent resource land;
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> ″(f) Physical development according to OAR 660-04-025; and
>
> ″(g) Other relevant factors.

″(3) A conclusion that land is irrevocably committed to uses not allowed by the applicable Goal shall be based on *one or more of the factors* listed in section (2) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion that it is impracticable to apply the Goal to the particular situation or area.″ (Emphasis added.)

either the purposes of, or the proposed zoning for, a ″committed″ exceptions area. However, Goal 2 requires that the ″implementation measures,″ including zoning ordinances, must be ″consistent″ with the plan, and ORS 197.250 requires that all ***land use*** provisions be ″in compliance″ with the goals. **[*486]** These **[***73]** ″regulating realities,″ the county says, restrict allowable uses in the exceptions areas to ″rural levels of uses, public facilities and services and development.″

LCDC and *amicus* Metro say that exceptions to Goals 3 and 4 will allow any level of development that is no more intense than the existing adjacent uses which were used to justify the exceptions. Metro argues that if the basis in fact for determining that the commitment has occurred is that adjacent lands have been developed *at urban densities*, then the ″committed″ exceptions area may be filled in at ″the identical urban density.″ LCDC asserts that if the ″basis for the exception is a rural level of development and commitment,″ only a ″rural level of development″ is allowed.

1000 Friends says that ″committed″ exceptions to Goals 3 and 4 do not affirmatively authorize any particular uses:

> ″The terminology of 'commitment' is misleading because the county's only determination concerned the impracticability of agriculture on these properties. It did not consider whether particular nonagricultural uses *must* be developed on those properties, because that is not part of the test. * * * This kind of exception **[***74]** is called a 'commitment' exception implying a positive determination of the prospective non-agricultural use of the land. But in application it is a purely negative determination that one kind of use, agriculture, is no longer practicable. * * * [E]vidence is always and only directed toward the negative determination of the 'impracticability' of agriculture and not what use can or should be allowed on those parcels found to be 'built' or 'committed.'″

We agree with 1000 Friends that ***HN33*** an exception to Goal 3 or 4 does not, by itself, authorize particular uses of land. On the one hand, exceptions and other ″regulating realities″ do not limit uses in Goals 3 and 4 exceptions areas to ″rural″ ones as the county asserts. The plan and the zoning ordinances must be consistent with each other and in compliance with the goals, but Goal 2 and the statutes cited by the county do not indicate that the finding of impracticability for farm or forest use limits uses of land to rural ones. Such a finding only removes one restriction on the use of land, the requirement of resource use, making nonresource use possible. Only the other goals, *e.g.*, Goal 14, not any limitations contained **[***75]** within the **[*487]** resource goal exception itself, restrict the types of nonresource uses that the county may authorize in its zoning ordinances.

On the other hand, LCDC and Metro are incorrect that the existing level of development in adjacent areas is a justification for affirmatively authorizing like uses in the ″committed″ areas. ***HN34*** The ″basis″ for an exception to a resource goal is that a particular resource use is impracticable, and **[**295]** any ″existing adjacent uses and other relevant factors″ which make resource use impracticable will justify an exception. ORS 197.732(1)(b). Because no finding that adjacent uses are ″urban″ is necessary to the conclusion that farming or forestry is impracticable, an explicit or implicit finding that the existing adjacent uses are ″urban″ cannot be the ″basis″ for an exception to Goal 3 or 4. LCDC's own rules, moreover, do not allow a local government which merely shows that *resource* uses are impracticable to conclude that *other* uses are also impracticable so as to authorize uses that would require exceptions to other goals:

> ″An exception to one goal or goal requirement does not assure compliance with any other applicable **[***76]** goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals * * * does not exempt a local government from the requirements of any goal(s) for which an exception was not taken.″

OAR 660-04-010(3).

By themselves, the county's exceptions to Goals 3 and 4 could neither define all restrictions upon uses of lands in the exceptions areas nor authorize particular uses of these lands. Those exceptions could suffice as exceptions to Goal 14 *only* if the showing that farm and forest uses were impracticable also established whatever is necessary to show that uses which Goal 14 allows outside UGBs were impracticable. *See* ORS 197.732(1)(b).

b. *Goal 14*

All three parties agree that commitment to non-resource use does not necessarily establish commitment to ″urban uses,″ but LCDC and 1000 Friends disagree about what must be shown to be ″impracticable″ in order to justify an exception to Goal 14. LCDC says the required finding is **[*488]** that it is ″impracticable to *prohibit urban* uses″ on the land proposed for the exceptions area, while 1000 Friends

[*77]** contends the question should be whether it is ″impracticable to *allow rural* uses.″ At first this seems like a distinction that makes no difference, but oral argument and post-argument responses have convinced us otherwise.

LCDC maintains that ″even if a rural use is theoretically practicable an exception allowing urban uses may be taken if the county finds that it is impracticable to prohibit urban uses.″ For example, in a hypothetical area with some small, urban-sized developed parcels interspersed among large undeveloped lots, LCDC would find that it was impracticable to prohibit ″urban uses″ in the area as a whole and would allow ″committed″ exceptions for the undeveloped areas.

LCDC cites its approval of Clackamas County's Mount Hood Corridor Plan as an example of its interpretation. [29] There, the majority of a proposed 2,000-acre ″committed″ exceptions area was developed, divided into small parcels, and provided with community water, schools, fire, transportation and solid waste disposal services which LCDC called ″urban in nature,″ but the area also included a 400-acre area of large, undeveloped lots. A recently-created sewer service district, which was constructing **[***78]** a $ 5.3 million treatment plant financed by taxes assessed on all district properties, annexed the undeveloped area. LCDC asserts that in the Mt. Hood Corridor case it ″concluded that the area was committed to *urban* uses, that an exception therefore had been justified, and that the urban planning and zoning designations within the undeveloped portions of the corridor could legally remain.″ (Emphasis added.) Had the inquiry been whether it was impracticable to allow rural uses, LCDC says, ″no exception to allow urban uses could have been justified. As to all the undeveloped **[**296]** land, the $ 5.3 million public investment would have been lost.″ LCDC's analysis there, it maintains, ″in essence * * * demonstrated that it was impracticable to prohibit urban uses in light of existing levels of development, parcelization, and public facilities and services.″ Since ″Goal **[*489]** 14 regulates urbanization, * * * the practicability of 'rural uses' is not an appropriate inquiry.″

[*79]** 1000 Friends argues that if rural uses are ″practicable (meaning possible in actual practice)″ on land outside a UGB, then a county cannot allow ″urban uses″ there; it denies that its argument is based, as LCDC asserts, on what may be ″theoretically practicable.″ Thus, in the hypothetical area referred to above, 1000 Friends would not allow ″urban uses″ on the large undeveloped lots if any ″rural uses″ are possible in actual practice. The parties cite no provision of Oregon law defining ″rural *uses*,″ but 1000 Friends assumes, and the other parties agree, that these include the uses referred to in the Goal definition of ″Rural Land″:

> ***HN35*** ″Rural lands are those which are outside the urban growth boundary and are
>
> ″(a) Non-urban agricultural, forest or open space lands or,
>
> ″(b) Other lands suitable for *sparse settlement, small farms, or acreage homesites with no or hardly any public services, and which are not suitable, necessary, or intended for urban use*.″ (Emphasis added.)

Planning Goals at 24. 1000 Friends concludes that unless it is impracticable to use land for sparse settlement, small farms, or acreage homesites with few public services, no exception **[***80]** to Goal 14 is justified.

1000 Friends maintains that both the statutory language and the Mt. Hood Corridor case support its position. *ORS 197.732(1)(b)* and *OAR 660-04-028(1)* require a finding that ″uses allowed by the applicable goal″ are ″impracticable,″ so the inquiry should be about the practicability of the allowed *use* (rural), not of some ***land use*** *action* by the county (prohibiting urban use). As for the Mt. Hood Corridor, 1000 Friends says that LCDC failed to explain why 10-acre residential lots (characterized by 1000 Friends as a rural use) were impracticable and that the service district incorrectly assumed that all its lands would be developed to ″urban types and densities of uses.″

We hold that ***HN36*** the statute requires local governments to support any exceptions to Goal 14 by demonstrating that it is *impracticable to allow any rural uses* in the exceptions area. **[*490]** *ORS 197.732(1)(b)* says unambiguously that ″the *uses allowed by* the applicable goal″ must be shown to be ″impracticable.″ (Emphasis added.) LCDC adheres to this mandate in what it requires for exceptions to Goals 3 (farm use is impracticable) and 4 (forest use is impracticable), but inexplicably **[***81]** abandons this focus on the ″uses allowed by″ the goals in addressing Goal 14, creating what it admitted in oral argument is a ″double negative.″ The statute does not permit LCDC to invert the inquiry depending on the goal to which exception is being taken.

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[29] LCDC appended to its Response to the Court's Questions two continuance orders and the acknowledgment order in that case, *In the Matter of Clackamas County's Comprehensive Plan and Implementing Measures*, 83-ACK-14 (LCDC Feb. 9, 1983), along with excerpts from the staff reports.

The interpretation LCDC urged before this court also undermines the policy of the ***land use*** goals. ***HN37*** The integrity of the planning system depends on planners starting from the assumption that lands will be used in compliance with the goals, unless "specific circumstances justify departure from the state policy embodied in a particular goal." *See City of Rajneeshpuram, 300 Or at 11* (referring to exceptions process). As to Goals 3 and 4, LCDC starts by assuming that land must be preserved for resource uses and evaluates the practicability of using it for those purposes. The practice LCDC now advocates for exceptions to Goal 14 would go backward. It would allow local governments to start by asking whether any uses of the kind which the goal prohibits -- "urban uses" -- can be found in a given area outside the UGB and, if so, would allow local governments to find commitment of *that entire area* to "urban uses" on grounds that **[***82]** it is impracticable to entirely **[**297]** prohibit in an area uses that have already gained a foothold there.

LCDC's approach would thus invite a kind of bootstrapping that could thwart the policy of Goal 14. Because local governments and LCDC would not need to inquire what uses allowed by Goal 14 were still practicable on as-yet-undeveloped parcels, there would be nothing to limit the size of exceptions areas. Any local government which wished to create additional urbanizable land without going to the trouble of extending a UGB in compliance with Goal 14, or which disagreed with state ***land use*** planning mandates and wished to defy the system, [30] could draw the lines of an exceptions area **[*491]** around as much land as it wanted, so long as the area contained some "urban" development which self-evidently would be "impracticable to prohibit." Unless the analysis supporting a "committed" exception focuses on how the existing development affects the practicable uses of the lands which are not yet developed, neither the local government nor LCDC has a basis for determining the geographical limits of the areas which are "committed" and for limiting urbanization outside UGBs. **[***83]**

The merits of the Mt. Hood Corridor decision are not before us, and the portions of that decision to which LCDC directs our attention do not support its interpretation of the standard for exceptions to Goal 14. The portion of the staff report in that case cited by LCDC characterizes the sewer system as an "urban service," but it makes no express finding that the entire service district, including the undeveloped 400 acres, is committed to "urban uses"; on the contrary, it discusses whether all the facts concerning the area "commit *resource lands to nonresource use*." That 1981 report does not mention how Goal 14 applies to the area and, indeed, was written two years before LCDC promulgated the rules which provide for exceptions to that goal. *See, supra*, *301 Or at* **[***84]** *460*. The only reference to Goal 14 is in a later report where the staff rejects a challenge to designation of "urban" boundaries around unincorporated communities in the corridor:

> "* * * Goal 14 boundaries are not required for these communities since they are unincorporated and do not meet the Statewide Goal's definition of 'urban land' which require such boundaries. A proper exception for each of these communities has been adopted by the County and no attempt to justify a Goal 14 urban growth boundary was made."

In other words, the staff believed (as in the staff report and acknowledgment order here, but not as in some other cases, *see* nn 19, 21, *supra*) that Goal 14 did not apply because no fixing of a UGB was involved; LCDC, LUBA, and we have since rejected that position. *See generally* Part III.A., *supra*. While the existing development in that case may well have been "urban" as that term is commonly understood, the staff articulated the justification for the ***land use*** decision in terms of commitment only to "nonresource" uses, not to "urban uses." In that case, LCDC did not recognize the need to determine, and it did not determine, whether all the **[***85]** land **[*492]** within the Goals 3 and 4 exceptions areas was committed to "urban uses."

We do not think that the Mt. Hood Corridor decision, made without acknowledging the applicability of Goal 14, without determining whether critical portions of the lands at issue were "committed" to "urban uses," and before the law provided for exceptions to Goal 14, established a model for taking exceptions to that goal. As LCDC describes the decision, the risk of losing a public investment became an excuse for sweeping aside all consideration of Goal 14, rather than a factor in the analysis which that goal and the exceptions process require. If investment and financing schemes make all rural uses impracticable (e.g., economically impracticable), they may justify a "committed" exception to Goal 14 **[**298]** under the proper test. If they do not establish that impracticability, they merely serve as an impermissible pretext for the evasion of Goal 14.

3. *The County's Exceptions and the Requirements*

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[30] *See* Cockle, *Rural Coalition Declares Range War on LCDC*, The Oregonian, November 17, 1985 at E1. *Cf.* OAR 660-04-000(2) ("* * * The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.").

LCDC's acknowledgment order was required to include "a clear statement of findings which sets forth the basis for the approval * * * of acknowledgment," ORS 197.251(5), and, because the [***86] plan it acknowledged contained exceptions, was also required to contain "a clear statement of reasons which sets forth the basis for the determination that the standards of [ORS 197.732(1), for adopting exceptions] have * * * been met." ORS 197.732(6)(c). Those findings and reasons could be based only upon a review confined to the record made before the county, comments and objections, the staff report, and oral arguments permitted by LCDC. ORS 197.251(4). ***HN38*** Our review of LCDC's order is similarly "confined to the record." ORS 197.650(1), 183.482(7). We hold that LCDC made no "statement of reasons" which could support a conclusion that the county satisfied the ORS 197.732(1)(b) requirements for exceptions *to Goal 14* and that the record does not show that the county satisfied those requirements.

First, nothing in LCDC's staff report or acknowledgment order demonstrates or sets forth any basis for concluding that it would be impracticable to allow any rural uses in the "committed" exceptions areas. The 1982 staff report stated only that the areas were committed to "nonfarm and nonforest uses." In the 1984 report, LCDC stated, regarding [*493] some areas, that the land [***87] was committed to "residential" and other uses distinguished from "resource" uses, and regarding others that the facts supported the county's decision to "commit" lands without stating to what the lands were being committed. LCDC did not state that the commitment was to anything more definite than nonresource use or that it would be impracticable to use at least some of the lands for "sparse settlement, small farms, or acreage homesites with no or hardly any public services." *See* Definition of "Rural Land," part (b), *supra*, 301 Or at 489. To the contrary, for example, LCDC's characterization of the 71 "Developed and Committed Residential Lands" exceptions areas (i.e., all but the "Rural Communities" and "Undeveloped Subdivisions") indicates that such rural, nonresource uses could be, arguably, quite practicable:

> "[A]ll these areas are comprised primarily of small lots less than 5 acres with dwellings interspersed with other similarly small vacant lots primarily in separate ownerships and distinctly smaller and separate from the much larger adjacent parcels designated for farm and forest uses."

For the "Undeveloped Subdivision" exception acknowledged in [***88] 1982, LCDC specifically said only that the land was "'irrevocably committed' to *nonfarm and nonforest uses*," (emphasis added), and LCDC's 1984 findings concerning two of the "Rural Communities" focus on explaining why *resource use* is impracticable on several large parcels. LCDC's findings cannot be read to state that the standards for exceptions to Goal 14 have been met. ORS 197.732(6).

Second, even assuming that when LCDC has not set forth a basis for exceptions to a goal, *we* could examine the local government's "findings of fact and * * * statement of reasons," ORS 197.732(4), to see if they can be read to set forth such a basis, we could not find "substantial evidence" in this record of a basis for "committed exceptions" to Goal 14. *See* ORS 183.482(8)(c). The Committed Lands Document as amended January 30, 1984, focuses on showing that land is "committed to nonresource use" and does not purport to show that the development on the "built" parcels or the existing level of public services makes "sparse settlement, small farms, or acreage homesites," definition of "Rural Land," *supra*, impracticable on the "committed" parcels. The county says that several larger [***89] (28 to 40-acre) parcels in some rural [*494] communities (Langlois, [**299] Ophir, and Nesika Beach) "can" or "could" be developed to "higher density" residential or "more intensive" commercial uses, but does not state why these or any other lands cannot practicably be put to nonresource rural uses. Like LCDC's orders and staff reports, the county's planning documents do not even acknowledge either the application of Goal 14 or the question whether the level of development to which these lands is "committed" is "urban," as issues in this case.

LCDC notes that the county, in taking its exceptions to Goals 3 and 4, did consider such factors as "the location[,] number and density of existing residential, commercial and ***industrial*** uses; availability of facilities and services; and parcel size and ownership patterns," factors very like those which the rule for "committed" exceptions to Goal 14 now requires to be addressed in a "decision that the land is committed to urban levels of development." *Cf.* OAR 660-14-030(3), set forth in n 26, *supra*. However, mere consideration and discussion of those factors cannot justify exceptions to Goal 14 if that process does not [***90] result in findings that the land is "committed to urban levels of development." The county did not make such findings, and LCDC's decision contained no statement that the county had done so. To take only one example where the record shows that the county could not have done so consistently with the administrative rules, we note that while OAR 660-14-030(3)(c) states that a decision that land is committed to urban development shall be based in part on a finding that the land has "urban levels of facilities and services[,] including at least public water and sewer facilities," the

Committed Lands Document states that Agness has no public water or sewer facilities.

The ″Urbanization″ chapter of the county's Comprehensive Plan does discuss the Rural Communities and other exceptions areas. It says that most Rural Communities are defined by boundaries of principal utility (water or fire) districts ″delineating the land area in which services can be provided that allow for higher density residential development.″ A brief description of each community follows, summarizing the same information as in the Committed Lands Document. The county describes the other exceptions areas as ″other **[***91]** rural lands outside [UGBs] and rural communities which are substantially committed to nonresource use by the **[*495]** nature of existing land parcelization, physical development of parcels, clustering of development uses, and relationship to transportation routes, urban growth areas, and other special characteristics of the area.″ It says that 1,428 additional homes could be provided on the vacant lots within these areas, compares this additional capacity with projected population growth, and concludes that 1,829 more units outside of UGBs and exceptions areas will be needed to accommodate that growth. Later the county called its population estimate ″inflated″ and lowered it to eliminate the need for the 1,829 units. In its ″Plan Policies Regarding Urbanization,″ the county concluded that it

> ″*recognized the rural communities * * * as an additional element of urbanization* and * * * determined boundaries * * * based on the organized public utility districts and the existing ***land use*** * * * [and] *recognizes rural lands * * * and their use of individual water sources and septic systems for sewage disposal and seeks to retain the rural character of these lands by* **[***92]** *limiting the development of higher levels of public facilities which will change the density* of development.″ (Emphasis added.)

LCDC did not consider whether that chapter of the Comprehensive Plan established commitment to ″urban uses,″ and we cannot conclude that the plan did so. In three of the rural communities (Langlois, Ophir, and Nesika Beach), the county found that the lack of sewer systems ″necessitates a large lot size for development use.″ Agness also lacks public water service. The discussions of ″potential infill″ in each community focus on future ″growth needs″ (based on the earlier, inflated projection) rather than considering which areas, if any, cannot practicably be put to nonresource **[**300]** rural uses. The county characterizes what it did as recognizing the exceptions areas as an ″element of urbanization,″ but its planning documents do not justify its having done so, because they do not even purport to show which areas, if any, are ″committed″ to ″urban uses″ under the proper legal standard.

Even if we inquired, as LCDC urges, whether it was impracticable to prohibit ″urban uses,″ we would reach the same conclusion. We cannot conclude that it is **[***93]** impracticable to prohibit ″urban uses″ in any of the county's exceptions areas, because neither the county's planning documents nor LCDC's orders and reports (as distinguished from its lawyer's **[*496]** argument before us) contain any findings or statements that the existing level of development is ″urban.″ Indeed, after oral argument, the county stated that it ″has never (nor has it been LCDC required) found in any of its committed areas that 'it is impracticable to prohibit urban uses.'″ Even if we assume that the land ″committed″ has been zoned for ″infill″ on parcels no smaller than those in the adjacent ″built″ areas, nothing in the record purports to show or to find that parcels of that size, which may be ″impracticable to prohibit,″ is urban. Nothing even approaches the findings in the Mt. Hood Corridor case that the level of services was ″urban″ and that part of the investment in sewer services might be lost if further development was stopped. Thus, LCDC did not find, the record contains no basis for finding, and we cannot conclude that the uses that justified the exceptions to Goals 3 and 4 -- the uses which it would be ″impracticable to prohibit″ -- were ″urban.″

[*94]** As stated earlier, the taking of exceptions to Goals 3 and 4 generally cannot, as LCDC suggests, ″indirectly but effectively result in the equivalency of an exception to Goal 14.″ To take an exception to Goal 3 or 4, a local government need only show that commercial farm or forest use is impracticable, but to take an exception to Goal 14 the local government must show that it is impracticable to allow not only resource use, but also all other rural uses including ″sparse settlement, small farms, or acreage homesites.″ Definition of Rural Land, Planning Goals at 24. The Court of Appeals erred in not recognizing that the greater showing required for exceptions to Goal 14 is the ″legal or logical reason″ why a local government which converts ″rural land″ to ″urban uses″ ″should be required to supplement its exceptions to [resource] goals with an exception to Goal 14.″ *See* *73 Or App at 358*. It would be possible, of course, for a local government's analysis in support of exceptions to Goals 3 and 4 to contain findings that not only resource uses, but all rural uses, were impracticable, and for LCDC's report and order on review to so state. There is no way to read this record to **[***95]** say that. LCDC's theory that the local government need only show that the ″built″ uses are ″urban″ is incorrect, because that showing alone does not

determine what is practicable on lands not yet developed. LCDC, in any event, did not find that the county had made such a showing, and the record does not show that the uses are **[*497]** ″urban.″ The theory LCDC presented to this court finds no support in the law and in this case could only be an after-the-fact rationalization because the record contains no evidence that either the county or LCDC applied that theory in their decisions.

4. *The ″Built″ Exceptions*

We also hold that ***HN39*** the requirements for ″built″ exceptions to Goal 14 differ from those for Goals 3 and 4. 1000 Friends is incorrect that the ″built″ exception requires any determination of ″impracticability.″ The question is whether the land is ″physically developed to the extent that it is *no longer available* for uses allowed by the applicable goal.″ (Emphasis added.) ORS 197.732(1)(a). While ″built″ exceptions, unlike ″committed″ exceptions, do not require analysis of how development of some parcels affects practicable uses of others, the requirements for **[***96]** ″built″ exceptions to resource goals and to Goal 14 differ in the same manner as do requirements for committed exceptions. **[**301]** Proof that land is ″no longer available″ for farming or forestry does not establish that it is not available for ″sparse settlement, small farms or acreage homesites with no or hardly any public services.″ Definition of ″Rural Land,″ *supra*. For example, proof that land has been partitioned into 10-acre lots, each with a rural homesite and too small for commercial farming, would not by itself support zoning of that land for half-acre lots, apartments, or shopping centers. A local government that wants to zone land outside a UGB for urban uses based on a ″built″ exception to Goal 14 must show that the land has already been ″physically developed″ to ″urban″ levels and is no longer available for any rural uses. Here, LCDC did not find, and the record does not show, which, if any, uses in the ″built″ areas are ″urban.″

Because the county's exceptions to Goals 3 and 4 did not meet the requirements for exceptions to Goal 14, LCDC's acknowledgment order cannot stand if exceptions to Goal 14 were required in this case. Whether exceptions to Goal 14 **[***97]** were required turns on whether the county's plan permits the conversion of ″rural land″ to ″urban uses.″

C. *Conversion of Rural Land to Urban Uses*

In Part III.A., *supra*, we have reaffirmed our holding **[*498]** in *City of Rajneeshpuram* that ***HN40*** a local government may not ″convert rural land″ outside UGBs to ″urban uses″ unless it complies with or takes exception to Goal 14, 300 Or at 12, and, in Part III.B., *supra*, have decided that what the county and LCDC did here did not suffice as compliance or as an exception. In this case, unlike *City of Rajneeshpuram*, the parties dispute whether ″rural land″ is being ″converted″ to ″urban uses.″

1. *Rural Land*

We must first decide whether the county's exceptions areas are ″rural land.″ LCDC's definitions and other phrases introduced by the parties create uncertainty, but the only reasonable construction of all these terms indicates that the areas are indeed ″rural land.″

HN41 Goal 14 uses the terms ″urban,″ ″urbanizable,″ and ″rural″ land. *See* the definitions set forth, *supra*, Part I.B. For purposes of Goal 14 analysis, we have assumed that all lands are either ″urban,″ ″urbanizable,″ or ″rural.″ *See* **[***98]** Wasco County Court, 299 Or at 350-51; *Goal 14 Amendment* Case, supra, 292 Or at 737-38.

Some language in the definitions, however, suggests that our assumption may have been incorrect. Land can be ″urbanizable″ only if it is within a UGB, and ″rural″ only if it is outside, but the definition of ″rural land″ can be read not to include absolutely all lands outside the UGB. It appears that to be ″rural,″ lands outside the UGB must also be either resource land (part (a) of definition), or sparsely settled land ″not suitable, necessary, or intended for urban use″ (part (b)). *See* Definition of ″Rural Land,″ *supra*, 301 Or at 489. Whatever else is out there is not ″rural.″ Similarly, it appears there could be lands which are within a UGB but do not satisfy parts (a), (b), and (c) of the ″Urbanizable Land″ definition. *See* Definition of ″Urbanizable Land,″ *supra*, 301 Or at 456. The definitions and goals do not label or say what is to be done about these hypothetical non-rural and non-urbanizable lands. *See supra*, 301 Or at 456.

When a UGB is acknowledged, lands become ″urban,″ ″urbanizable,″ and ″rural″ as described in the definitions. The Court of Appeals' **[***99]** reasoning in Willamette University v. LCDC, 45 Or App 355, 369, 608 P2d 1178 (1980), is persuasive:

> **[*499]** ″While Goal 14 provides that all land within an acknowledged urban growth boundary is either urban or urbanizable, the definition of the term urbanizable land appears to impose three additional conditions before land is [to] be regarded as urbanizable. Yet these three elements **[**302]** of the definition are essentially the same as some of the seven factors listed in Goal 14 for consideration in establishing an urban growth boundary in the first place.

> ″On balance, we are only able to conclude that urban and urbanizable lands lie within an acknowledged urban growth boundary while rural lands lie outside an acknowledged urban growth boundary.
>
> ″* * *
>
> ″The above definitions make the most sense *after* a city's comprehensive plan, including an urban growth boundary, has been acknowledged by LCDC to comply with the statewide planning goals; they do not provide clear guidance for pre-acknowledgment application of the goals.″ (Emphasis in original.)

Goal 14 cannot be made to work under any other interpretation. ***HN42*** The goal says that UGBs shall **[***100]** ″*identify* and separate urbanizable land from rural land.″ (Emphasis added.) Planning Goals at 13. Thus, no land is ″rural″ or ″urbanizable″ for purposes of the goals until a UGB has been acknowledged. The process of establishing a UGB determines which lands are ″not suitable, necessary, or intended for urban use″ and will remain ″rural land.″ *See* Definition of ″Rural Land,″ *supra*. The portions of the definition of ″rural land″ following the statement that it is ″outside the [UGB]″ describe two types of land which exist outside the UGB once it has been acknowledged: ″part (a)″ resource lands and ″part (b)″ lands for which exceptions to a resource goal have been taken. *See Braat v. Morrow Cty*, 3 LCDC 207, 213 (1980) (exception to Goal 3 must be taken to allow uses described in Part (b) of definition).

Both 1000 Friends, in speaking of ″a continuum, urban, rural, and something in between,″ and LCDC, in referring to ″quasi-urban″ land, suggest that there is some land outside UGBs that is not ″rural.″ The definitions and Goal 14, however, establish not a ″continuum″ but categories of land. ″Rural land″ is of the two types described by parts (a) and (b) of the definition. **[***101]** The ″something in between″ ″rural **[*500]** land″ and ″urban land″ is obviously ″urbanizable land,″ that land within the UGB which has not yet been converted to ″urban uses.″ The ″something in between″ rural *resource* lands (part (a) of definition) and ″urbanizable land″ is ″part (b)″ rural land, that land excepted from resource uses but not included within a UGB. The ″something in between″ ″part (b)″ rural land and ″urbanizable land″ is the same thing that LCDC calls ″quasi-urban″ land.

HN43 ″Quasi-urban″ is the term LCDC and LUBA use to describe development of urban-like intensity located outside incorporated cities and UGBs. [31] LCDC and LUBA avoid labeling this development ″urban″ because the definition of ″urban land″ requires the presence of an incorporated city. *Medford v. Jackson Cty, 2 Or LUBA 387, 390 n 2 (1981), aff'd in part, remanded in part 57 Or App 155, 643 P2d 1352 (1982)*. LCDC argues that a ″reasons″ exception to Goal 14 is not required for areas ″built″ or ″committed″ to ″quasi-urban″ uses, but is required for areas involving ″new urban development″ outside UGBs. We agree. However, one cannot conclude that areas have been ″built″ or ″committed″ to **[***102]** ″quasi-urban″ uses until a local government has undertaken the analysis necessary to take ″built″ or ″committed″ exceptions to Goal 14. [32] The taking of an exception to Goal **[**303]** 14, whether of the ″built,″ ″committed,″ or ″reasons″ type, determines that land is ″suitable, necessary, or intended for urban use″ and takes it out of the definition of ″part (b)″ rural land. Once **[*501]** land has been identified as ″rural land″ by the establishment of a UGB which does not contain that land, *see* Goal 14, it ceases to be ″rural land″ only after it has been made the subject of an exception to Goal 14.

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[31] *See Medford v. Jackson Cty, supra*, n 19, 2 Or LUBA at 390-91. *See also* Acknowledgment of Compliance (LCDC staff report of July 11, 1983) accompanying *In the Matter of Wasco County's Comprehensive Plan and* ***Land Use*** Regulations, 83-CONT-192 (LCDC Sept. 7, 1983), at 4.

[32] The leading LUBA case on ″quasi-urban″ areas supports this conclusion:

> ***HN44*** ″[C]ircumstances may exist * * * whereby it may be necessary to recognize quasi-urban areas outside an urban growth boundary. We believe the most reasonable approach which achieves the purpose of Goal 14 is to follow Goal 2's exception process when determining whether quasi-urban uses may be located outside [UGBs] on resource lands as defined by the Goals. That is, the county may recognize the existence of White City and its built-up lands. Any expansion beyond what is already built on resource land would be undertaken with the ['reasons' exception process]. * * *
>
> ″We believe this process will preserve what we perceive as an intent throughout the goals to limit expansion of urban uses outside the urban areas.″

Medford v. Jackson Cty., supra, n 19, 2 Or LUBA at 391. Now that exceptions may be taken to Goal 14, the exception process to be followed in recognizing quasi-urban uses is the one for ″built″ and ″committed″ exceptions to that goal.

[*103]** Because the county has not undertaken the analysis necessary to take any exceptions to Goal 14, Part III.B., *supra*, we cannot agree with LCDC that the exceptions areas are ″quasi-urban″ land which the county is entitled to infill without taking further exceptions. All of the land in the county outside the three cities' UGBs remains ″rural land″ because LCDC did not find in its decision that the county has shown that the land is ″built″ or ″committed″ to ″quasi-urban″ uses.

2. *Conversion*

The county argues that no exceptions to Goal 14 are necessary, because its Goal 3 and 4 exceptions areas do not *convert* ″rural land″ to ″urban uses,″ but merely recognize existing development. This argument misunderstands ″built″ and ″committed″ exceptions as well as the policy of Goal 14.

In saying that both ″built″ and ″committed″ exceptions recognize existing development, the county disregards an important difference between the two. ***HN45*** ″Built″ exceptions recognize what already exists on the parcels for which exception is taken. ″Committed″ exceptions require an analysis of how existing development on some parcels affects practicable uses of others and ″must be based on facts **[***104]** illustrating how past development has cast a mold for future uses.″ *See Halvorson v. Lincoln County*, No. 84-099 (Or LUBA July 19, 1985), slip op at 8. By definition, a ″built″ exception does not change the existing use, but a ″committed″ exception does permit the use to be changed as provided for in the actual zoning of the parcel. In claiming that its ″committed″ exceptions areas only allow development which already exists, the county overlooks both the general nature of ″committed″ exceptions and its own statement in the Committed Lands Document that ″committed lands include some vacant lands which could provide areas for residential infill with *future development*.″ (Emphasis added).

We hold, moreover, that any decision which *allows* ″urban uses″ of ″rural land″ *converts* that land and must **[*502]** comply with or take exception to Goal 14, even if that decision does not change the use of the land. The statutory provision for ″built″ exceptions, ORS 197.732(1)(a), and the policy of Goal 14 require this conclusion. By providing for ″built″ exceptions, the legislature decided that local governments may not simply recognize informally uses which do not conform **[***105]** to goal requirements. The city or county must inventory existing uses to identify which actually conflict with the goals, officially authorize these uses, and publicly articulate its reasons for legitimizing them. This is not an empty formality, but a rational process that requires local governments to characterize existing development and consider its effects upon practicable and desirable uses of neighboring land. The ″orderly and efficient transition from rural to urban ***land use***″ which Goal 14 is intended to effect cannot occur if a local government does not determine and state at the outset which areas outside of UGBs already contain ″urban″ (or ″quasi-urban″) uses.

3. *Urban uses*

Exceptions to Goal 14 are required if the uses to which the county authorized conversion **[**304]** of its ″rural land″ were ″urban.″ We have recognized that because ″urban uses″ derives its significance from the presence of that phrase in a goal adopted by LCDC, we would give ″some deference″ to any decision by LCDC concerning the meaning and application of this phrase. *Supra*, 301 Or at 469. However, LCDC decided this case without considering whether the particular uses allowed by this **[***106]** county's plan were ″urban uses,″ and we find in the other materials cited by the parties no definitive interpretation of that term enabling us to decide whether a plan allows ″urban uses″ in cases where LCDC has not addressed the issue.

1000 Friends argues, *see* Part II.B., *supra*, that the overall effect of the exceptions areas is to allow ″urban uses,″ also pointing to specific areas where it believes the uses allowed by the county's zoning are ″urban.″ The Agness Rural Community, a 491-acre area where the Illinois River joins the Rogue, is surrounded by the Siskiyou National Forest. It has 27 homes, ″several resorts,″ a recreational vehicle park, a motel, a store, a restaurant, a library, a post office, a grade school, and a volunteer fire department, but it lacks public **[*503]** water and sewer systems. 1000 Friends complains that Agness now has an average parcel size of 19 acres, but the county has zoned 30 to 40 percent of the area for Rural Residential, one-acre minimum lot size, and another 40 percent for ″Community Commercial″ use.

Pistol River Central has 65 acres presently divided into eight parcels under six ownerships, 55 of those acres in parcels of at **[***107]** least nine acres, and houses on only two parcels, one of 13 and the other of two acres. 1000 Friends complains that the county has zoned the entire area for Rural Residential, five-acre minimum lot size, which would allow a six-fold increase in residential density.

Other residential areas of which 1000 Friends complains are Elk River/Swinging Bridge (zoned 2.5-acre minimum) and Hubbard Creek (5-acre minimum), in which the county's zoning would allow populations to quadruple.

1000 Friends also says that the county's Planned Unit Development ordinance allows "apparently unlimited densities" in exceptions areas and that the more than 1,100 acres of commercial and ***industrial*** lands, for which the county took no exceptions to any goal, would be "urban."

1000 Friends has undoubtedly chosen what it considers the clearest examples of "urban uses" which the county's plan would allow in the exceptions areas, but we understand 1000 Friends to argue that these examples are representative. 1000 Friends does not indicate in how many areas it believes the county would allow similar intensification of development. The Committed Lands Document shows that many exceptions areas have core areas **[***108]** of from one-third to one-half of their land already developed at about the parcel sizes allowed by the county's zoning, but also have much larger, mostly undeveloped, parcels on their peripheries, which border on even larger and less developed parcels immediately outside the exceptions areas. It is clear that in these areas, the county's zoning allows for substantially greater residential densities than now exist.

It is not clear, however, whether those greater densities would be "urban." As we have already emphasized, the definitions that accompany the goals do not define "urban **[*504]** uses." They do say that "urban *land*" may have "concentrations of persons who generally reside and work in the area" and "supporting public facilities and services," but this does not tell us what *degree* of concentration, measured by what standard, makes uses "urban." Similarly, while *OAR 660-14-030(3)* lists criteria to be addressed in deciding "that land is committed to urban levels of development" --

> "(a) Size and extent of commercial and ***industrial*** uses;
>
> "(b) Location, number and density of residential dwellings;
>
> **[**305]** "(c) Location of urban levels of facilities and **[***109]** services; including at least public water and sewer facilities; and
>
> "(d) Parcel sizes and ownership patterns."

-- these criteria themselves do not say at what "size," "extent," "number," "density" or "ownership pattern" the line between urban and non-urban is to be found. Only the provision that "urban levels of facilities" exist only where there is "at least public water and sewer facilities" suggests such a line.

Even so, before this court all three parties make an effort to fill the definitional gap. 1000 Friends argues from past LCDC and LUBA cases which have defined urban uses "in bits and pieces, but not consistently," that the uses authorized by the county's plan are "urban." The county, selecting differently from the same cases, maintains that to the extent the existing uses are not already "urban," its plan does not make them "urban," either. LCDC says that "what is urban will depend greatly on the locale and the factual situation at a specific site," that in this factual situation the uses are "quasi-urban" and that, therefore, the "equivalency of an exception to Goal 14" has resulted. [33]

[*110]** LCDC and LUBA decisions indicate that parcel sizes at either extreme are clearly urban or non-urban, but establish no bright line in the range presented by this county's exceptions areas -- one-acre to five-acre minimums. We accept the concessions of 1000 Friends that residential density of one house per ten acres is generally "not an urban intensity," and **[*505]** of LCDC that areas of "half-acre residential lots to be served by community water and sewer" are "urban-type." We find no decisions which had trouble classifying lands at these extremes. [34] **[***112]** However, absent an authoritative interpretation from LCDC so stating, it is not for us to generalize, as Metro suggests, that any development which requires a sewer system, "usually * * * development of more than one unit per acre" is "urban," or as 1000 Friends urges, that any zoning at densities above one dwelling per three acres is "urban." Metro and the county persuasively identify sewer service as an important indicator of urbanization but cite no authority to prove that it should be conclusive; in any event, this record contains no finding about what residential density requires a sewer system under the particular conditions **[***111]** in Curry County. 1000 Friends' three-acre rule proposes a larger lot size than LCDC and LUBA have considered as possibly urban in most cases; it also makes no allowance for

[33] We agree with LCDC that what is "urban" depends heavily on the context, but we have already decided that the existing uses in the county's exceptions areas have not been shown to be "quasi-urban." Part III.C.1, *supra*.

[34] The county says that in *Halvorson v. Lincoln County*, No. 84-099 (Or LUBA July 19, 1985), a density of parcels greater than proposed here (41 lots on 25 acres) was found not to be urban. In that case, LUBA did not determine that such a density would not be urban but rather that the county had not shown that the area, which was in only 17 different ownerships and had only eight lots developed with residences, was already committed to urban use. The decision did not say the *proposed* density would not be urban; indeed, the context of the decision was an objection to the county's extension of a UGB, a virtual admission by the county that it considered the proposed density urban.

considering other factors which LCDC and LUBA have treated as important, such as the size of the area, its proximity to acknowledged UGBs, and the types and levels of services which must be provided to it. [35] LCDC's **[**306]** lawyer stated at oral argument that **[*506]** "because of the varying density of urban fabric you'll find in the State of Oregon, * * * it's virtually impossible to draw a line and say, one-acre lots are urban, two-acre lots are rural." If that correctly states the agency's position, it is clear that LCDC is not prepared to draw a bright urban/rural line based on parcel size alone.

[*113]** LCDC's staff report and acknowledgment order do not state, and the record contains no findings which indicate, whether the uses to be allowed in the residential exceptions areas are "urban." In several cases, n 35, *supra*, LUBA and LCDC have considered one-acre lots potentially "urban" and have indicated that larger lots may also be considered "urban" if they are close to a UGB or would require extension of certain services. The concern is that UGBs mean little if similarly-sized, similarly-served lots are as readily available just outside the UGBs as within them. The county says that only eight of its exceptions areas touch the UGBs. Perhaps cross-referencing between the Committed Lands Document and the zoning maps would reveal how many acres are zoned for which densities within certain distances from the three UGBs in the county. That information would still not indicate how those densities compare with those allowed just within the UGBs or what services might have to be provided.

The task of compiling and analyzing such data to determine its significance (if any) for identifying "urban uses" is not for this court. Even if we were presented with the data, we would be wrong **[***114]** to decide whether the uses are "urban" without analysis of the issue by the county, which is best situated to describe its authorized uses, and by LCDC, which itself adopted the goal that employs the term "urban uses" and thus has the responsibility for developing consistent policies for evaluating what "urban uses" means in different contexts. For example, if the county presented information comparing the proposed development with that within the **[*507]** UGBs, LCDC might resolve the "urban uses" question in the manner suggested in one LUBA opinion by asking if the uses are "of a kind and intensity characteristic of urban development" in nearby cities. [36] LCDC might instead decide that certain commercial and ***industrial*** uses, residential densities, levels of facilities, and parcel sizes are *per se* "urban uses" statewide. In this case, the county's planning documents, the staff report, and the acknowledgment order are silent on the issue with respect to the exceptions areas.

[*115]** Similarly, the county and LCDC do not discuss whether the commercial and ***industrial*** uses proposed by the county outside the UGB are "urban." In past cases, LUBA and LCDC have implied that rural commercial and ***industrial*** development present as serious a threat to the policies of Goal 14 as do rural residences. [37] LUBA **[**307]** has said that among the factors considered in determining if a particular use is urban are whether it is "appropriate for, but limited to, the needs and requirements of the rural area to be

[35] The principal cases cited by the parties are *Patzkowsky v. Klamath Cty*, 8 Or LUBA 64, 71 (1983) (requiring county to discuss whether subdivision into one-acre lots in area 14 miles from UGB and two miles from nearest unincorporated community would comply with Goal 14); *1000 Friends of Oregon v. Clackamas County*, 3 Or LUBA 316, 327, 330 (1981) (to designate one-, two- and five-acre residential zones without addressing their impact on UGBs violates Goal 14); *Medford v. Jackson Cty, supra*, n 19, 2 Or LUBA at 389-91 (describing as "quasi-urban" a 2,600-acre area between Medford and Eagle Point containing 4,300 residents and the largest concentration of ***industry*** in the county); *Metropolitan Serv. Dist. v. Clackamas Cty*, 2 Or LUBA 300, 307 (1981) (holding that although 13 lots on 31 acres 1 1/2 miles from UGB, and 12 lots on 28 acres 1/2 mile from UGB, are not necessarily "'urban' as a matter of law," close proximity to UGB requires county to consider whether UGB "would be affected by the approval" of these subdivisions); *In the Matter of Linn County's Comprehensive Plan and* ***Land Use*** Regulations, 84-CONT-383 (LCDC Dec. 21, 1984, adopting staff report of Oct. 25, 1984), staff report at 33-34 (111-unit Planned Unit Development (PUD) on 117 acres requiring community sewer system violated Goal 14); *In the Matter of Lane County's Rural Comprehensive Plan and* ***Land Use*** Regulations, 84-ACK-201 (LCDC October 3, 1984, adopting staff report of June 29, 1984), staff report at 16, 50 (Cluster Subdivision on 500-acre parcel allowing 500 units on small lots with remainder in "common open space" would be an "urban" subdivision, not permitted in rural areas); *Ager v. Klamath Cty*, 3 LCDC 157, 161, 177-79 (1979) (PUD of 700 to 800 residences, single and multiple-family dwellings on lots of one acre or less, and ten-acre shopping area would be "urban" level of development); *Umatilla & Hermiston v. Umatilla Cty.*, 2 LCDC 204, 218-19, 222-23 (1979) (1,100-resident mobile home subdivision outside cities' UGBs requiring "urban density services" such as water, sewers, fire protection, and schools violated Goal 14).

[36] This is the definition of "urban use" mentioned in passing by LUBA in *Halvorson v. Lincoln County*, No. 84-099 (Or LUBA July 19, 1985), slip op at 8, but not yet applied in any case we have found.

[37] The principal cases are *Ashland v. Jackson Cty*, 2 Or LUBA 378, 382 and n 5 (1981) (designating area outside UGB for "Interchange Commercial" zone of strictly "tourist-oriented" businesses such as gas stations, motels, restaurants, and truck-stop facilities violated Goal

served," and whether it is likely to become a "magnet" attracting people from outside the rural area. *Conarow v. Coos County, 2 Or LUBA 190, 193 and n 4 (1981)*. Although the Comprehensive Plan characterizes the county's rural commercial and ***industrial*** lands as "lands which are presently committed to such use and some vacant lands that were previously in commercial or ***industrial*** use or are needed for future development * * *," the Committed Lands Document does not include, identify, or analyze these lands. The plan lists three commercial zones allowing differing levels of use, but does not indicate how much of the existing and future commercial lands are zoned "Heavy **[***116]** Commercial," the highest level of these. Nor does it indicate how **[*508]** much of the existing and future ***industrial*** uses might be of "urban" intensity. Even had LCDC considered this issue, it would have had little to go on.

[*117]** The county, however, contends that to the extent development in the exceptions areas is not already "urban," the plan restricts provision of public facilities and services to these areas and so prevents them from becoming "urban." Goal 11, Guideline A.2, states:

> "Public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses."

LUBA and LCDC decisions have concluded that this guideline prohibits provision of urban levels of services to rural areas. *Conarow v. Coos County, 2 Or LUBA 190, 193 (1981)*; *Sandy v. Clackamas Cty.*, 3 LCDC 139, 148 (1979). The county says it "has placed considerable reliance upon Goal 11 regulation of rural and urban development in its plan and zoning ordinance," and that conversion of "rural land" to "urban uses" "was not possible in Curry County because of the Goal 11 restrictions on extra-UGB public facilities and services * * * (urban public facilities and services are prohibited outside UGBs)."

LCDC made no findings to the effect, and we cannot conclude, that the plan's "Goal 11 restrictions" as a matter of law prohibit "urban uses" in the county's **[***118]** exceptions areas. First, the restrictions on urban facilities in the areas are not absolute. The Goal 11 guideline uses the verb "should" rather than the mandatory "shall." The county says it "recognizes the rural areas of the county as being a rural service area and *does not encourage* the provision of additional public services into these areas in order to preserve their rural character." (Emphasis added.) The Committed Lands Document does not give the zoning of the exceptions areas, and while the data sheets for each area indicate the existing "Transportation and Public Facilities" and the number of "Additional Dwelling Units Possible," they do not say what burden the additional units will put on existing services. For many areas, the "Transportation and Public Facilities" section does not say whether or not some services (e.g., water, police, and fire protection) discussed for other areas exist. There is no **[*509]** assurance that the exceptions areas will not demand, and be provided with, new "urban" level services.

Second, the county does not clearly define what it considers to be the line between "urban" and "rural" levels of services. At one point, the county offers **[***119]** these broad, inclusive definitions:

> "Rural Facilities and Services-are facilities and services which the governing body determines to be suitable and appropriate **[**308]** solely for the needs of rural use.
>
> "Urban Facilities and Services-are key facilities which are at least the following: police protection, fire protection, sanitary, storm drainage facilities, planning, zoning, and subdivision control, health services, recreation facilities, energy and communication services, and community government services."

At another point, however, it seems to distinguish the two mostly by availability of community water and sewers:

> "Rural service levels are generally considered to be the provision of protective services (police and fire), electrical power, communication services and education.
>
> "Urban level services are generally determined to be all of those services found in rural areas and also the provision of public water and sewage disposal * * *. The comprehensive plan recognizes the following public facility service areas in the county:
>
> > "(1) Rural service areas-basic protective services, energy and communication services and education available, water **[***120]** and sewage disposal on individual bases.
> >
> > "(2) Rural community service areas-all services that exist in rural areas and also a public water

14); *Conarow v. Coos County*, 2 Or LUBA 190, 193 (1981) (2,500 square-foot building including rural neighborhood grocery store did not violate Goal 14); *Wright v. Marion County Board of Commissioners*, 1 Or LUBA 164, 170 (1980) (needs for non-farm, non-forest ***industrial*** uses must be satisfied from land included within UGB); *Sandy v. Clackamas Cty.*, 3 LCDC 139, 145, 155-56 (1979) (90,000 square-foot shopping center including supermarket, furniture store, clothing stores, music and record store, motel, and office space, located three to four miles outside UGB, would be urban).

> system together with a commercial center (store, post office, church, etc.)
>
> ″(3) Urban service areas-all services that exist in the above service areas and also sewage disposal. These areas are located within the [UGBs] * * *.″

The county's shifting definitions further weaken the assurance that no ″urban uses″ will occur in the exceptions areas.

Third, the actual zoning does not necessarily correspond to the levels of service which the county has identified as **[*510]** existing or appropriate. The plan says that ″[p]lan designations and zoning have been applied to lands within the county that are appropriate to the identified service levels″; the three rural residential zones are five-acre minimum ″where lands are presently parcelized at that size and water availability is uncertain,″ 2.5-acre minimum where lands are parcelized at that size and ″water availability is known to some extent,″ and one-acre minimum ″where lands are highly parcelized and public or community water is available or approved individual wells exist **[***121]** on each lot proposed in a division of land.″ For 17 exceptions areas, however, the data sheets say nothing about available water, and few, if any, sheets mention ″approved individual wells.″ Perhaps we should assume that in these areas no public water is available, but for many other areas the county expressly says so when this is the case. For some areas where the county does discuss water availability, the zoning is inconsistent with the plan's generalizations. On the one hand, the county zones three areas on the lower Rogue River for one-acre minimum rural residences, although the data sheet for one (Pedro Gulch/Squaw Valley Junction) says no public water is available, for the second (Jerry's Flat/Saunders Creek) does not mention water availability, and for the third (Jerry's Flat/Vista Loop) says that ″[p]ublic water is available from the City of Gold Beach water main at the county road.″ [38] On the other hand, it zones for 2.5-acre minimums three areas near the Chetco River (Pleasant Hills, Tiderock, and Van Pelt Addition) which are already served by public water. Moreover, in two areas (McVay Creek and Lower Winchuck) the county has taken exceptions for areas where public **[***122]** water is now being extended to alleviate health hazards caused by contaminated water supplies, noting for each area that numerous ″additional dwelling units″ are ″possible.″ The county, in short, does not consistently use either the level of existing services or existing residential density **[**309]** as a reliable ″governor″ of urbanization outside the UGBs.

We do not hold that a plan's Goal 11 restrictions on extension of services can never serve as an adequate assurance that development on ″rural land″ will not become ″urban **[*511]** uses.″ For example, a county could, in its plan, strictly prohibit provision of particular services to certain areas and types of ″rural land″; it could **[***123]** also explain in its exceptions documents why the uses proposed would not require ″urban″ levels of services. This county's plan does neither.

Absent discussion by LCDC whether the county's plan would allow ″urban uses″ in the exceptions areas, we decline the county's invitation to hold that the plan does not convert ″rural land″ to ″urban uses″ (and therefore that exceptions to Goal 14 could not have been required). Because LCDC did not do the analysis necessary to determine whether the county's plan would allow the conversion of ″rural land″ to ″urban uses,″ neither the Court of Appeals nor this court could be in a position to decide whether the county should have taken exceptions to Goal 14. LCDC's disposition of 1000 Friends' Goal 14 objection ″erroneously interpreted a provision of law,″ *ORS 183.482(8)(a)*, because it is impossible ″[t]o provide for an orderly and efficient transition from rural to urban ***land use***,″ Goal 14, when the county and LCDC fail to do what is necessary to determine whether such a transition is taking place. Moreover, ″a correct interpretation″ of Goal 14 ″compels a particular action,″ *ORS 183.482(8)(a)*: LCDC must determine whether the county's exceptions **[***124]** areas allow ″urban uses.″ We must remand this case to LCDC so that it may do this analysis that the correct interpretation of Goal 14 requires.

IV. *Were the Exceptions to Goals 3 and 4 Valid Under Goal 2?*

The Court of Appeals declined to decide whether the underlying exceptions to Goals 3 and 4 comply with the requirements of Goal 2 and *ORS 197.732*. Although we granted review primarily to determine when exceptions must be taken to Goal *14*, and the parties gave little emphasis to the Goal 2 issue in their written submissions and in oral argument, the validity of the exceptions to Goals 3 and 4 is important. For the exceptions that were valid, LCDC may properly (1) acknowledge every exceptions area

[38] We do not know whether this means that Vista Loop is actually served by the Gold Beach system at present, or merely that residents from the area could tap into the main at that point. In discussing other areas where public water is in use, the county tends to say that the area is ″served″ or ″provided″ with public water.

in which it determines that the county is not proposing urban uses; and (2) assume for the areas in which the county's plan allows "urban uses" that impracticability of *resource* use (part (a) rural use) but not yet of other, Part (b) rural uses, has already been shown. For the exceptions that were invalid, LCDC must **[*512]** require the county to begin anew to justify all the exceptions areas, whether or not the county proposes urban uses.

A. *Issues Properly* **[***125]** *Before Us*

1. *The County's Exceptions Criteria*

The Court of Appeals erred in holding that the county's exceptions criteria need not be evaluated for conflicts with the state standards because the criteria have "no legal effect." *73 Or App at 352*.

We agree that the criteria cannot be given any legal effect in the future, for statutes now provide that exceptions are treated either as comprehensive plan provisions (before acknowledgment) or as plan amendments (after acknowledgment), and that all plan provisions and amendments must comply with the goals. *ORS 197.732(8)*, *197.250*, *197.835(4)*. Therefore, the county must consider the goals, not the criteria in its own plan, both in justifying any exceptions it chooses to take on remand of this case and in taking post-acknowledgment exceptions. Whatever the Committed Lands Document says about the use of the county's own criteria to take the present exceptions to Goals 3 and 4, future exceptions are controlled by *ORS 197.732*, Goal 2, Part II, and OAR chapter 660. Any LCDC order finally acknowledging the county's plan must make clear (as the 1984 acknowledgment order did not) that LCDC does not acknowledge the county's criteria **[***126]** **[**310]** as a proper basis for taking future exceptions.

However, even though the criteria cannot be used to justify future exceptions, they are still important because the county actually used them to justify the exceptions presently before us. If the criteria omitted factors that the goals and administrative rules required to be taken into account, or included factors that should have been irrelevant, all of the exceptions could have been flawed. Thus, we must examine whether the use of these criteria resulted in deficient justifications for the exceptions.

2. *1000 Friends' Other Objections*

We also disagree with the Court of Appeals that 1000 Friends presented its objections to specific exceptions areas too "incoherent[ly]" to warrant judicial review. *See 73 Or App at 352*.

[*513] Like the Court of Appeals, we are frustrated that 1000 Friends' precise basis for objecting to each part of each exceptions area is not clear. Nevertheless, 1000 Friends argues persuasively that appellate briefs would become interminable if objectors were required to detail every objection regarding every piece of land.

Moreover, the question before LCDC is not whether an **[***127]** objector has met some burden of going forward with or proving an objection to the plan, but whether the record made shows that the local government has complied with the ***land use*** laws, including the goals. We recognized in *Fish and Wildlife Department v. LCDC, 288 Or 203, 212-13, 603 P2d 1371 (1979)*, that "LCDC is not in the position of an appellate court whose primary duty is deciding competing interests of litigants but, rather, it is an agency of government charged with monitoring ***land use*** decisions of other governmental bodies to make sure established standards are met." The statutes requiring local government planning to comply with the goals, *ORS 197.175*, and providing for LCDC acknowledgment of plans, *ORS 197.251*, support the allocation of burdens described by Judge Gillette:

> "LCDC, in responding to 1000 Friends' objections to these areas, apparently placed the burden on 1000 Friends to show that the areas are not committed. That is improper. LCDC's role is to use all the information available, including that presented in objections, to make its independent determination of whether the county has shown that the exceptions are justified. LCDC should evaluate **[***128]** the strength of the county's case, not the weakness of the objector's."

1000 Friends of Oregon v. LCDC [Jefferson County], 69 Or App 717, 729 n 12, 688 P2d 103 (1984). On appeal, the objector's burden of going forward can be limited to stating the factual and legal grounds for its objections and demonstrating that it developed a basis for these in the record before LCDC.

Here, 1000 Friends' brief to the Court of Appeals referred to portions of the administrative record that listed the exceptions areas to which it objected and indicated the following factual and legal arguments, for each of which it had developed a record:

(1) The county's exceptions criteria "give improper **[*514]** weight to parcelization, which should not be considered independently from actual use of the land."

(2) The county does not define "development," a term used in several of the criteria.

(3) The criteria do not require precise statements why existing services irrevocably commit lands to nonresource use.

(4) The county should not have taken ″built″ and ″committed″ exceptions to Goal 3 for lands that were ″actually in [commercial lily bulb] farm use″ when the exceptions were **[***129]** taken, because it cannot be ″impossible″ or ″impracticable″ to farm land that is actually being used for farming.

(5) The county should not have included ″large, apparently vacant parcels on the periphery″ of the Rural Communities in its ″committed″ exceptions.

The first three grounds for objection went to the underlying basis for all the exceptions. **[**311]** As to the fourth and fifth grounds, 1000 Friends specified both in its objection letter in the record and in its brief examples of areas where the alleged deficiencies existed.

1000 Friends met its burden as objector because it (1) placed in the record a complete list of the exceptions areas to which it objected; (2) described the types of factual and legal deficiencies upon which it based the objections; and (3) gave examples of areas where each type of deficiency allegedly existed. An objector who does these things gives the local government a sufficient opportunity to respond, gives LCDC an opportunity to resolve the issues, and, if it summarizes the arguments and cites to the record on appeal, gives the court a basis for identifying and resolving contested issues. A court which demands that objectors do more **[***130]** before it will consider their arguments imposes an improper burden on objectors and, more importantly, implies that LCDC can disregard its duty to ″make its independent determination″ of a local government's compliance as to all portions of a plan which objectors do not contest. *See Jefferson County, supra, 69 Or App at 729 n 12*. We consider 1000 Friends' Goal 2 objections as sufficiently presented.

B. *The Merits*

[*515] 1. *The Exceptions Criteria*

Although the county's criteria did not precisely track the language of the factors in LCDC's ″committed″ exceptions rule that was in effect in 1982, *former OAR 660-04-025(3)*, [39] LCDC's 1982 staff report stated that the criteria were ″consistent″ with those factors. The table in LCDC's brief in the Court of Appeals convinces us that each of the factors in the LCDC rule was addressed somewhere in the county's criteria and/or its data sheets. Moreover, any ″one or more″ of the factors in *former OAR 660-04-025(3)* could serve as the basis for each exception. *Former OAR 660-04-025(4)*.

[*131]** However, the 1982 staff report and the briefs of both the county and LCDC neglected to consider that *former OAR 660-04-025(5)* and (6) spelled out more specific matter for local governments to take into account if the local governments relied on one particular factor, ″Parcel size and ownership patterns,″ as the basis for exception:

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[39] *Former* OAR 660-04-025(3) and (4) (*repealed by* LCDC 9-1983, effective Dec. 30, 1983) provided:

> ″(3) An assessment of whether land is built upon or irrevocably committed to uses not allowed by the applicable goal shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:
>
> ″(a) Adjacent uses;
>
> ″(b) Public facilities and services (water and sewer lines, etc.);
>
> ″(c) Parcel size and ownership patterns;
>
> ″(d) Neighborhood and regional characteristics;
>
> ″(e) Natural boundaries; and
>
> ″(f) Other relevant factors.
>
> ″(4) A conclusion that land is built upon or irrevocably committed to uses not allowed by the applicable goal shall be based on one or more of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found compel the conclusion that it is not possible to apply the goal to the particular situation or area.″

″(5) Consideration of parcel size and ownership patterns shall include *how the existing development pattern came about and whether findings against the goals were made at the time* of partitioning or subdivision. Past land *divisions made without application of the goals shall not be used to demonstrate commitment* of the divided land *unless development on the resulting parcels prevents their resource use or* **[*516]** *the resource use of nearby lands*. Farm and nonfarm parcels created pursuant to goal 3 and EFU zoning provisions shall not be used to justify a built or committed exception.

″(6) Existing *parcel sizes and their ownership shall be considered together in relation to the land's actual use*. For example, several *contiguous undeveloped parcels* (including parcels separated only by a road or highway) *under* **[**312]** **[***132]** *one ownership shall be considered only as one farm. The mere fact that small parcels exist does not alone constitute commitment*. Whether small parcels in separate ownerships are irrevocably committed will depend on whether the parcels stand alone or are clustered in a large group, and the location of the parcels relative to designated resource land.″ (Emphasis added.)

These provisions, maintained in substance in the present ″committed″ exceptions rule, [40] indicate an intent to recognize parcelization itself as sufficient justification for commitment only (1) when it (a) results from proper application of the planning goals, (b) results in parcels that cannot be used together because adjacent ones are in different ownership, and (c) actually affects the present practicable uses of the land; or (2) when the type of development on the parcels actually prevents resource use.

The county's exceptions criteria and data sheets generally **[***133]** failed to consider those additional matters in their discussion of parcelization. Neither the criteria nor the data sheet format requires any consideration of how the parcelization came about, and in fact few, if any, data sheets say whether the goals were considered when the parcels were created. The county omitted consideration of matters which the administrative rule requires, as the Court of Appeals has correctly observed, ″to determine if future development is the unavoidable result of the * * * area's growth or whether it will continue previous patterns which themselves developed contrary to the goals.″ *Jefferson County, supra, 69 Or App at 728*. The maps accompanying the data sheets have symbols indicating common ownership, but the criteria do not indicate ownership as a factor affecting commitment; the format does not have any space for it to be, or require it to be, considered; and few, if any, data sheets in fact consider how common **[*517]** ownerships of adjacent parcels affect practicable uses. The county appears to consider parcels ″developed″ if they have residences of any kind so that the criteria allow parcels actually in farm or forest use to be considered **[***134]** ″developed″ simply because they have residences. (One exceptions criterion states that ″[d]eveloped parcels of ten to thirty acres are included in a committed area if bordered on at least two sides by smaller developed parcels.″) Based on its criteria, the county, contrary to the ″committed″ exceptions rule, could find areas ″committed″ based simply on the small size of parcels bordering the areas and/or the presence of residences. In several instances, the county's ″Evaluation Comments″ stating the ultimate justification for exceptions in fact relied on nothing more than those two factors to find commitment of quite large parcels. [41] In others, the only additional justifications are matters that neither the rule nor the county's own criteria make relevant to determining commitment, such as the mere presence of a road bordering the parcel. [42]

[*135]** Because LCDC acknowledged exceptions areas based on justifications that did not address the matters in *former* *OAR 660-04-025(5)* and (6), its exercise of discretion was ″[i]nconsistent with an agency rule″ and this part of its order must be remanded. *ORS 183.482(8)(b)(B)*. On remand, LCDC should review the ″Evaluation Comments″ to determine which exceptions were justified only by parcelization. Before acknowledging any of those exceptions, LCDC must determine, based either upon the factors listed in *OAR 660-04-028(2)(c)(A)* and (B) (how parcels came about, ownerships, actual uses, type of ″development″ **[**313]** existing) or upon the factors other than parcelization listed in *OAR 660-04-028(2)(a)* and (b) (existing adjacent uses, public facilities and services), that the county's findings and reasons demonstrate that the pertinent resource use is impracticable. *ORS 197.732(6)(b)* and *(c)*.

[*518] 2. *Validity of Particular Exceptions*

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[40] OAR 660-04-028(2)(c)(A) and (B), set forth in n 29, *supra*.

[41] *E.g.*, Mid-Squaw Valley, Squaw Valley-McKinnen Drive, North Bank/Edson Creek, and Pedro Gulch/Squaw Valley Junction.

[42] *E.g.*, South Frankport (presence of ″roads within this area″); Lower Squaw Valley (large parcel ″can be considered committed because Squaw Valley Road borders this piece on two sides″); Canfield Bar (″This parcel is located between the other two parcels and has frontage on the county road. For these reasons this parcel can be considered committed.″).

We confine our review here to the objections 1000 Friends articulated in its appellate brief: that ″farm use″ should not be found impracticable on lands actually being farmed and that large, undeveloped parcels on peripheries should **[***136]** not have been included in Rural Communities exceptions areas.

The record shows that LCDC did not consider the first objection. In the 1984 proceedings, 1000 Friends presented the argument and the photographs purporting to show that land in some exceptions areas was actually in resource use. The 1984 staff report characterized 1000 Friends as ″reiterat[ing]″ objections made in 1982, ″formerly addressed″ by LCDC, and not upheld in 1982. However, the objection about land actually in resource use had not even been before LCDC in 1982. By lumping this ground of objection with grounds already rejected, LCDC failed to address its merits.

If land is actually in a use allowed by a resource goal, the county ought to make findings and state reasons, and LCDC should clearly state the reasons why ″existing adjacent uses and other relevant factors″ nevertheless ″make uses allowed by the applicable goal impracticable,″ to justify a ″committed″ exception to a resource goal for that land under *ORS 197.732(1)(b)*. *See* *ORS 197.732(4)*, *(6)(c)*. We agree with LCDC that the former ″not possible″ and the present ″impracticable″ standard are not the same. A May 27, 1983 memorandum to the Senate **[***137]** Committee on Environment and Energy stated that the drafters intended ″the terms 'irrevocably committed' be interpreted by [LCDC] to avoid any Court interpretations which would define this phrase in absolute terms.″ Nevertheless, the instances where existing resource uses cannot practicably be continued, and the reasons why, must be explained by the local government and evaluated by LCDC.

The county concedes that ″[f]arm use parcels were necessarily included within the committed area through application of [the county's exceptions] criteria.″ It argues that its inclusion of these parcels is justified because they are part of the Harbor Bench Farm District, said to be the product of ″a unique management concept,″ which overlays several exceptions areas and ″protects the valuable * * * resource land in spite of adjacent residential/commercial development and **[*519]** in spite of high intensity farming impact upon this existing development.″ The county maintains that the zoning for resource lands in the District is ″identical″ to exclusive ″farm use″ zoning and that the designation of the District allows planning decisions to be made ″on an integral basis with regard to the **[***138]** agricultural capability of the area.″ Whatever the merits of the farm district management concept, however, *ORS 197.732(1)(b)* does not permit the county to implement it by taking exceptions to Goals 3 and 4 for land on which farm use is still practicable. [43]

On remand, LCDC must determine which parcels in the areas objected to and photographed by 10000 Friends are actually in ″farm use.″ [44] LCDC may not acknowledge exceptions areas which include parcels in farm use unless it finds that the record shows why existing adjacent uses **[**314]** and other relevant factors (as described **[***139]** by LCDC's rule for ″committed″ exceptions) make ″farm use″ impracticable.

In 1982, LCDC sustained the objection to the Rural Communities, specifying that the county should provide more information about the large peripheral parcels. After the county submitted amendments in 1984, LCDC acknowledged the exceptions for the Rural Communities, citing for Langlois, Ophir, and Nesika Beach factors such as topography limiting practical resource use, development of parcels with multiple dwellings, natural features buffering parcels from adjacent resource lands, and complete surrounding of parcels by small parcels developed for uses incompatible with resource use. There is substantial evidence in the record for each fact upon which LCDC relied in citing those factors, and the factors cited are all recognized in the ″committed″ exceptions rule, *OAR* **[***140]** 660-04-028(2). LCDC noted that Agness is within a federal- and state-designated wild and scenic river area, where commercial forest practices would cause serious conflicts with **[*520]** the purposes of that designation. The record contains substantial evidence supporting that finding, and this was a proper ″other relevant factor″ upon which the county and LCDC could rely in concluding that resource use is impracticable. *OAR 660-04-028(2)(g)*.

Unlike the situation for some ″committed″ areas, the findings that resource use was impracticable in the Rural

[43] Even if the Harbor Bench Farm District could only be implemented by including farm parcels in exceptions areas, that fact would not justify our disregarding the ″impracticability″ test. We note, moreover, that the ″unique management concept″ does not depend on the entire district being excepted from Goals 3 and 4; the county's maps show that the District contains several areas of land that are not within any exceptions area.

[44] That determination is required only for the exceptions areas in which 1000 Friends has claimed that land is actually being farmed: the areas listed in Record Exhibit 13.

Communities relied on more than mere parcelization. As to the exceptions to Goals 3 and 4 for these areas, LCDC's findings were ″supported by substantial evidence in the record,″ ORS 183.482(8)(c), and LCDC acted consistently with its own rules in considering the factors that it did. We affirm LCDC's acknowledgment of the Rural Communities exceptions to Goals 3 and 4.

V. *Conclusion*

HN46 Our function is not to decide the details of ***land use*** planning controversies, but to resolve major doubts over the legal principles governing the planning system, to clarify how local governments and LCDC are to comply with the planning **[***141]** laws. The core of the local governments' role consists of identifying which goals pertain to which land, then deciding whether to plan for uses which comply with the goals or to take proper exceptions to permit other uses. The inclusion of Goal 14 among the goals requires local governments to determine which existing uses are ″urban,″ to identify areas where the plan might convert ″rural land″ to ″urban uses,″ and to justify those ″urban uses″; it requires LCDC to evaluate whether the local government has made those determinations properly and has considered the proper factors in justifying any development that is ″urban.″

Although we have treated 1000 Friends' objections to the county's plan as sufficient for judicial review of important legal issues, they must now be made more specific, so that LCDC may consider the individual exceptions areas on remand. It is not clear from 1000 Friends' objection letters, briefs, petition, and memoranda precisely which areas it objected to only on Goal 2 grounds (exceptions to Goals 3 and 4 not justified), which only on Goal 14 grounds (″urban uses″ improperly authorized), and which on both.

Where the development allowed by the county's **[***142]** plan **[*521]** outside the UGBs includes ″urban uses,″ the county's plan converts ″rural land″ to ″urban uses″ which will have to be supported by changes in the UGBs or by exceptions to Goal 14. On remand, 1000 Friends should identify the portions of the exceptions areas in which it claims that the uses allowed by the county's plan are ″urban″; the county should then either explain why it believes the uses allowed are not ″urban,″ or, if they are ″urban,″ make a record to demonstrate, as is required by ORS 197.732(4), that the standard for ″committed″ exceptions to Goal 14 have been met (that is, that it is impracticable to allow any rural uses). Of course, the county may choose instead to seek ″reasons″ exceptions to Goal 14, pursuant to ORS 197.752(1)(c), for any areas in which it concedes its zoning would allow ″urban uses,″ but on which it believes it cannot prove impracticability of rural use.

[315]** Before acknowledging that the plan complies with the goals, LCDC must determine that the plan allows no ″urban uses″ outside the UGBs which are not supported by exceptions to Goal 14. To make that determination, LCDC must enter findings based upon the record before it, **[***143]** stating in which (if any) of the exceptions areas the plan allows ″urban uses.″ *See* ORS 197.251(5). For any such areas, LCDC, bound by the county's findings for which there is substantial evidence in the record, must clearly state the reasons why the standards for ″built,″ ″committed,″ or ″reasons″ exceptions to Goal 14 have been met. ORS 197.732(1), (5). ″Committed″ exceptions to Goal 14 must be supported by an explanation of why ″existing adjacent uses″ and ″other relevant factors″ described by OAR 660-14-030 make it impracticable to allow any rural uses. ORS 197.732(1)(b) and (6)(c). We reiterate that the interpretation of ″urban uses″ is primarily for LCDC, subject to judicial review only for consistency with the statutes authorizing LCDC to adopt the goals and with the policies of the goals themselves. LCDC, however, must develop some interpretation of ″urban uses,″ either by formulating a general definition or by elaborating the meaning *ad hoc* from case to case. LCDC may even choose to address that issue and other definitional problems noted in this opinion by amending the goals, guidelines, or definitions in accordance with ORS 197.235 to 197.245, or by promulgating **[***144]** new or amended administrative rules, in accordance with ORS chapter 197 and ORS 183.325 to 183.410.

[*522] Because 1000 Friends objected to the exceptions criteria as a legally deficient basis for justifying all the Goal 3 and 4 exceptions areas, and we have held that the criteria were deficient, LCDC should not require 1000 Friends to identify the areas which the county justified only by the improper reliance on mere parcelization and unspecified ″development.″ It is LCDC's responsibility to identify the basis for each exception and to acknowledge exceptions only for those areas as to which the county has made a legally sufficient showing that the pertinent resource uses are impracticable. LCDC must also determine which parcels in the challenged exceptions areas are in ″farm use″ and on which any such parcels, in light of that use, the county has shown that ″farm use″ is impracticable.

The Court of Appeals is reversed on its disposition of the Goal 14 issue (sixth assignment of error), and affirmed in part and reversed in part on its disposition of the Goal 2 issues (first and second assignments of error). The case is

remanded to LCDC for further proceedings in accordance **[***145]** with this opinion.

Concur by: PETERSON

Concur

PETERSON, C.J., concurring

I agree that a county must take an exception to Goal 14 in order to authorize an urban use outside a UGB, that the taking of exceptions to Goals 3 and 4 is not equivalent to the taking of an exception to Goal 14, that the county should have taken an exception to Goal 14 in authorizing uses which could be termed ″urban uses″ outside an existing UGB, and that the case must be remanded for the reasons stated in the majority opinion. I therefore concur in the result.

53 Or. LUBA 514; 2007 Ore. Land Use Bd. App. LEXIS 33

Oregon ***Land Use*** Board of Appeals

March 21, 2007

LUBA No. 2006-157

Reporter
53 Or. LUBA 514; 2007 Ore. Land Use Bd. App. LEXIS 33

VinCEP, DOMAINE DROUHIN and JASON LETT, Petitioners, and ILSA PERSE, Intervenor-Petitioner, vs. YAMHILL COUNTY, Respondent, and DAVID KAHN and THE HAZEL E. TIMMONS TRUST, Intervenors-Respondent

Prior History:

[1]** Appeal from Yamhill County.

Disposition: REMANDED

Core Terms

hotel, wine, urban, rural, urban development, site, proposed use, urban growth, accommodate, vineyard, winery, luxury, assigned error, economic activity, adjacent, intervenor, nearby, zone, essential character, necessary to support, tourist, parcel, tourism, natural resources, local government, rural land, residential, resort, valley, drive

Synopsis

[*517] NATURE OF THE DECISION

Petitioners [1] appeal a county decision approving exceptions to Statewide Planning Goals 3, 4 and 14 and related comprehensive plan and ***land use*** regulations to allow construction of a 50-room luxury hotel in an agricultural area.

Counsel

Edward J. Sullivan and William K. Kabeiseman, Portland, filed the petition for review and argued on behalf of petitioners. With them on the brief were Carrie Richter, Garvey Schubert Barer, PC and Ilsa Perse.

No appearance by Yamhill County.

Roger A. Alfred, Portland, filed the response brief and argued on behalf of intervenor-respondents. With him on the brief were Michael C. Robinson and Perkins Coie, LLP.

Panel: BASSHAM, Board Chair; HOLSTUN, Board Member; RYAN, Board Member, participated in the decision

Opinion By: BASSHAM

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[1] Petitioner VinCEP is an organization of Oregon wine growers. The other named petitioners are also wine growers. Petitioner Domaine Drouhin is a vineyard and winery located adjacent to the subject property.

Opinion

FINAL OPINION AND ORDER

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

[517contd]**

[EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however,

this pagination accurately reflects the pagination of the original published documents.]

FACTS

The subject property is a 65-acre **[**2]** parcel located two to three miles and roughly equidistant from the nearby cities of Dayton, Lafayette and Dundee, in a premier wine-growing region known as the Red Hills of Dundee. The parcel is designated Agriculture/Forestry Large Holding and zoned for exclusive farm use (EFU). The dominant soil types on the property are Jory soils that are suitable for agricultural uses, including vineyards. However, the property is not currently farmed. Surrounding uses include a bed and breakfast, vineyards, wineries, and other resource uses.

Intervenors-respondent (intervenors) propose to develop a luxury "wine country" hotel on a southern 12-acre portion of the subject parcel, on a ridge that is the highest part of the property. The remainder of the 65-acre parcel will remain in **[*518]** EFU zoning. The county's decision describes the proposal as follows:

"The applicants' proposal is to develop a hotel modeled after certain high-end wine country hotels in Napa Valley--specifically, Auberge du Soleil, Calistoga Ranch and Meadowood. The hotel will be relatively small, with approximately 50 rooms, a restaurant, a spa, and limited meeting facilities. The proposed hotel will support and enhance the Yamhill **[**3]** County economy by providing a unique luxury hotel in the heart of wine country that will allow wine country tourists to stay in Yamhill County rather than in Portland. In order to provide the requisite destination wine country experience similar to the identified Napa Valley hotels, the hotel must be located in a quiet and idyllic rural setting that affords privacy as well as expansive views of the surrounding wine country, and must also be in close proximity to wineries with tasting rooms." Record 4.

After conducting a hearing, the county board of commissioners voted to approve the application, adopting a "reasons" exception to applicable statewide planning goals. This appeal followed.

INTRODUCTION

ORS 197.732 and Goal 2, Part II(c) permit a local government to plan and zone land for uses not allowed under applicable statewide planning goals if the local government identifies "[r]easons [that] justify why the state policy embodied in the applicable goals should not apply." OAR 660-004-0020(2) elaborates on the four principal factors that must be addressed under the statute and Goal 2. [2] OAR 660-004-0022 sets out the **[*520]** types of "reasons" that can justify exceptions to

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[2] OAR 660-004-0020(2) provides, in relevant part:

"The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

"(a) 'Reasons justify why the state policy embodied in the applicable goals should not apply': The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;

"(b) 'Areas which do not require a new exception cannot reasonably accommodate the use':

"(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;

various **[**4]** specific goals. For uses not specifically addressed in OAR 660-004-0022, OAR 660-004-0022(1) sets out a "catch-all" provision that lists a non-exclusive set of reasons sufficient to justify an exception. [3] **[*521]** For exceptions that involve urban uses on rural lands, OAR 660-004-0022(1) directs local governments to address the requirements of OAR 660, chapter 014, specifically the standards at OAR 660-014-0040. [4] *See* DLCD v. Umatilla County, 39 Or LUBA 715, 723-24 (2001) **[*522]** (in adopting a reasons exception to allow an urban use on rural land, the county must apply OAR

"(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:

"(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

"(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

"(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

"(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

"(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

"(c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

"(d) 'The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts'. * * *"

[3] OAR 660-004-0022(1) provides:

"For uses not specifically provided for in subsequent sections of this rule or in OAR 660-012-0070 or chapter 660, division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

"(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

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

"(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site."

[4] OAR 660-014-0040 provides, in relevant part:

660-014-0040, and need not apply OAR 660-004-0022(1) or **[*523]** (2)); *Caine v. Tillamook County, 25 Or LUBA 209, 220 (1993)* (same). The first four assignments of error challenge the county's application of the foregoing administrative rules.

[5]**

[6]**

FIRST ASSIGNMENT OF ERROR

A. Applicability of OAR 660-014-0040

The county viewed the proposed hotel to be "urban development," and accordingly evaluated the proposed reasons exception under the standards set out in OAR 660-014-0040. Petitioners contend that the proposed hotel is not "urban development," given the emphasis the applicant and county place on locating the hotel in a rural setting. If the proposed hotel is not "urban development," petitioners argue, OAR 660-004-0020 and 660-004-0022 supply the standards governing the proposed exception, and the county erred in applying OAR 660-014-0040. Specifically, petitioners contend that the catch-all standards set out in OAR 660-004-0022(1) potentially apply, and therefore the county may be required to determine that there is a "demonstrated need" for the proposed use, and either that "[a] resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource," or "[t]he proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site." OAR 660-004-0022(1). **[**7]** *See* n 3.

Intervenors respond, and we agree, that the county correctly concluded that the proposed hotel is "urban development" for purposes of OAR 660-014-0040. While it is frequently difficult to draw clear distinctions between "urban" and "rural" development, a 50-unit deluxe hotel that, in the county's words, is intended to "allow wine country tourists to stay in Yamhill County rather than in [the City of] Portland" is more accurately viewed as urban development. It is true, as

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"(1) As used in this rule, 'undeveloped rural land' includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

"(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

"(3) To approve an exception under section (2) of this rule, a county must also show:

"(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

"(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

"(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

"(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

"(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

"(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

"(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured."

petitioners point out, that the applicant and the county describe the proposed hotel in ways that emphasize the desirability, at least, of a rural setting for the hotel. However, for reasons discussed below we do not believe the cited desirability of a ″rural setting″ renders the proposed 50-unit deluxe hotel a rural **[*524]** use, for purposes of adopting a reasons exception under OAR 660-014-0040.

Petitioners also argue that while the ***hotel*** may be an ***″urban″ use*** in a general sense, it is not ″urban development″ as that term is used in OAR 660-014-0040. Petitioners note that OAR 660-014-0040(2) gives an example of a reason that suffices to justify ″urban development″ in rural areas, that is, an ″urban population **[**8]** and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.″ *See* n 4. Petitioners contend that the only ″economic activity″ here is the hotel itself, and that it is bootstrapping for the county to find that the economic activity that makes urban facilities and services necessary will also supply those services and facilities.

OAR 660-014-0040(2) provides that the reasons that justify urban development on rural land ″include but are not limited to″ circumstances where ″urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.″ We address below, under the third assignment of error, petitioners' challenges to the county's findings directed at that reason. However, for present purposes, it is clear that the scope of the term ″urban development,″ as used in OAR 660-014-0040, is not limited to the non-exclusive example set out OAR 660-014-0040(2). As we already have explained, we agree with the county that a 50-unit deluxe hotel is properly viewed as urban development.

B. Applicability [9] of OAR 660-004-0020 and 660-004-0022**

Alternatively, petitioners argue that if the proposed hotel is urban development and OAR 660-014-0040 applies, that rule does not constitute the exclusive set of applicable rule standards. According to petitioners, OAR 660-004-0020 and 660-004-0022 interpret the requirements of ORS 197.732 and Goal 2, Part II, and therefore those rule provisions apply to any exception taken under the statute and goal, including the present reasons exception. Petitioners argue that the holding in *1000 Friends of Oregon v. Yamhill County, 203 Or App 323, 332-334, 126 P3d 684 (2005),* supports their view that OAR 660-004-0020 and 660-004-0022 apply in addition to the requirements of OAR 660-014-0040.

As intervenors note, OAR 660-004-0000(1) states that OAR chapter 660, division 004 interprets the exception process as it applies to statewide Goals 3 to 19, ″[e]xcept as provided for in OAR chapter 660, division 14[.]″ [5] Similarly, OAR 660-004-0022(1) appears to exempt from that rule ″uses not specifically provided for in * * * OAR chapter 660, division 14[.]″ *See* n 3. Reading those rules together, it is reasonably **[**10]** clear that the Land Conservation and Development Commission (LCDC) intends that a reasons exception for proposed urban development on rural land be evaluated under OAR chapter 660, division 014, instead of OAR 660-004-0020 or 660-004-0022, as we held in *DLCD v. Umatilla County* and *Caine v. Tillamook County.*

The more recent case petitioners cite, *1000 Friends of Oregon v. Yamhill County,* lends little assistance to petitioners. That case **[**11]** involved a reasons exception for a transportation facility under *former* OAR 660-012-0070. The Court of Appeals held that the county must apply both the Goal 12 rule and OAR 660-004-0020. Significantly, the then-applicable versions of OAR 660-004-0000 and OAR 660-004-0022(1) did not include the language that exists in the present rule, which exempts reasons exceptions under OAR 660-012-0070 from the requirements of OAR chapter 660, division 004. In other words, following *1000 Friends of Oregon v. Yamhill County,* LCDC apparently amended the relevant rules to effectively overturn the holding that petitioners rely on. OAR 660-004-0000(1) and OAR 660-004-0022(1) now specify in

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[5] OAR 660-004-0000(1) provides:

″The purpose of this rule is to explain the three types of exceptions set forth in Goal 2 '***Land Use*** Planning, Part II, Exceptions.' *Except as provided for in OAR chapter 660, division 14, 'Application of the Statewide Planning Goals to Newly Incorporated Cities and to Urban Development on Rural Lands' and OAR chapter 660, division 12, 'Transportation Planning', section 0070, 'Exceptions for Transportation Improvements on Rural Land,',* this division interprets the exception process as it applies to statewide Goals 3 to 19.″ (Emphasis added.)

Permit A—4M—7-70 SP*456 .119

STATE OF OREGON

COUNTY OF HOOD RIVER

CERTIFICATE OF WATER RIGHT

This Is to Certify, *That* **U.S. PLYWOOD CORPORATION**

of **P. O. Box 210, Hood River 97031** *, State of* **Oregon** *, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of* **Tony Creek**

a tributary of **Middle Fork Hood River** *for the purpose of* **manufacturing (Hardboard plant)**

under Permit No. **30324** *of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from* **March 30, 1965**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed **2.50 cubic feet per second**

or its equivalent in case of rotation, measured at the point of diversion from the stream The point of diversion is located in the **SE¼ NW¼, Section 25, T. 1 N., R. 9 E., W. M., 1710 feet South and 2675 feet West from NE Corner, Section 25.**

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to of one cubic foot per second per acre,

The right allowed herein is subject to the terms and conditions of a stipulation recorded on pages 695 and 696, Volume 4, Miscellaneous Records of the State Engineer, and by reference is made a part hereof.

and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

Lot 1 (NW¼ NW¼)
Lot 2 (SW¼ NW¼)
Lot 3 (NW¼ SW¼)
Section 7
T. 1 N., R. 10 E., W. M.

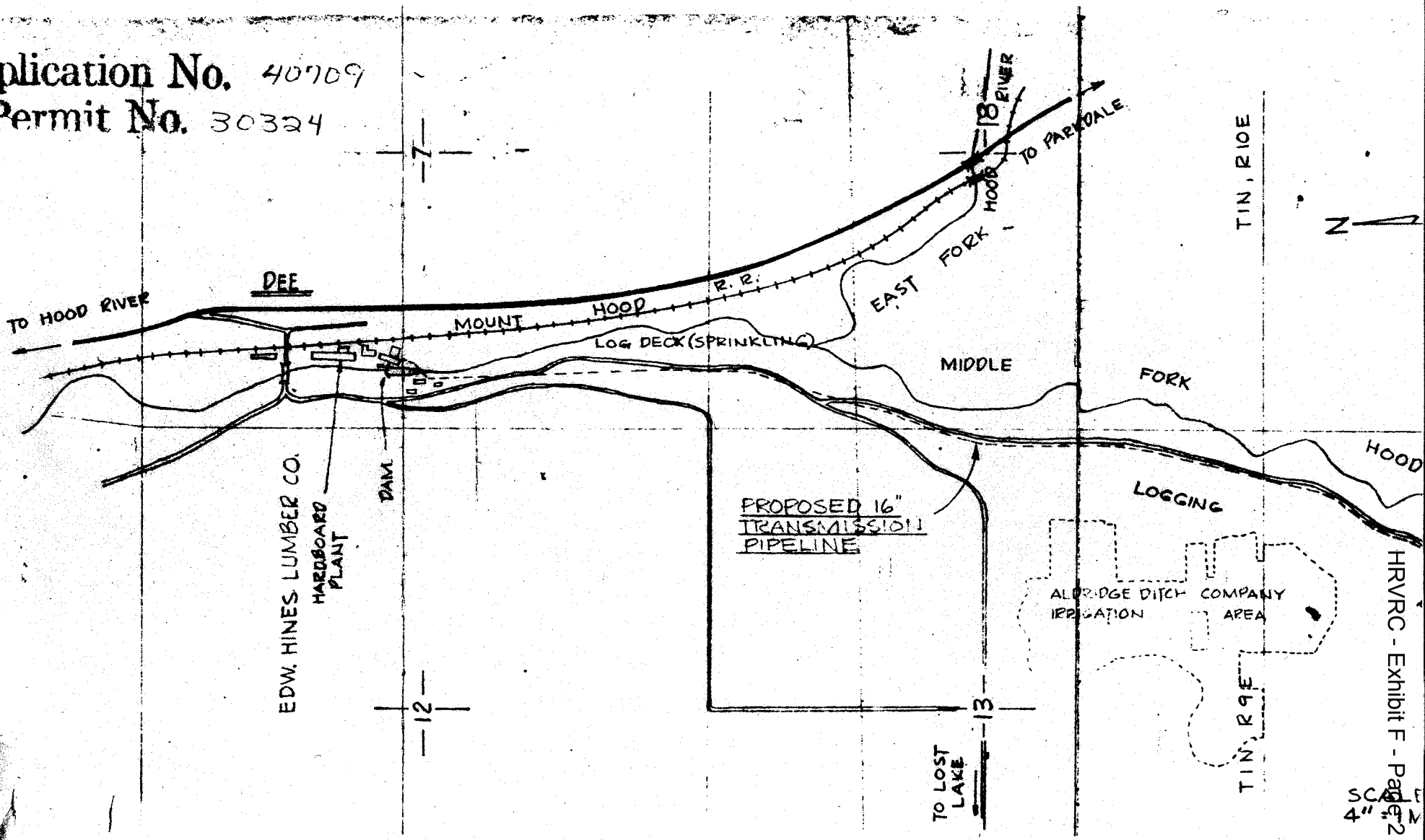
The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed this date. **March 20, 1973**

CHRIS L. WHEELER
State Engineer

Recorded in State Record of Water Right Certificates, Volume **31** *, page* **39054**

Application No. 40709
Permit No. 30324



RECEIVED
MAR 30 1965
STATE ENGINEER
SALEM OREGON

Permit No. 30324

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Oregon

I, Edward Hines Lumber Company
(Name of applicant)

of P. O. Box 210, Hood River
(Mailing address)

State of Oregon, do hereby make application for a permit to appropriate the following described public waters of the State of Oregon, SUBJECT TO EXISTING RIGHTS:

If the applicant is a corporation, give date and place of incorporation August 9, 1889, Ogden, Utah

1. The source of the proposed appropriation is Tony Creek
(Name of stream)
, a tributary of Hood River (Middle Fork)

2. The amount of water which the applicant intends to apply to beneficial use is 14.0 cubic feet per second.
(If water is to be used from more than one source, give quantity from each)

**3. The use to which the water is to be applied is manufacturing
(Irrigation, power, mining, manufacturing, domestic supplies, etc.)

4. The point of diversion is located 1710.0 ft. S (N. or S.) and 2675.0 ft. W (E. or W.) from the N. E. corner of Section 25, TIN, R9E, W. M.
(Section or subdivision)

(If preferable, give distance and bearing to section corner)

(If there is more than one point of diversion, each must be described. Use separate sheet if necessary)

being within the SW 1/4 of NW 1/4 (Give smallest legal subdivision) of Sec. 25, Tp. I N (N. or S.), R. 9 E (E. or W.), W. M., in the county of Hood River, Oregon

5. The steel pipeline (Main ditch, canal or pipe line) to be approximately 15,000 ft. (Miles or feet) in length, terminating in the W 1/2 (Smallest legal subdivision) of Sec. 7, Tp. I N (N. or S.), R. 10 E (E. or W.), W. M., the proposed location being shown throughout on the accompanying map.

DESCRIPTION OF WORKS

Diversion Works—

6. (a) Height of dam 0 feet, length on top 40± feet, length at bottom ..... feet; material to be used and character of construction Reinforced concrete
(Loose rock, concrete, masonry, rock and brush, timber crib, etc., wasteway over or around dam)
sill structure with diversion and screening box

(b) Description of headgate Removable stop logs and guides for pool level control
(Timber, concrete, etc., number and size of openings)

(c) If water is to be pumped give general description None
(Size and type of pump)

(Size and type of engine or motor to be used, total head water is to be lifted, etc.)

*A different form of application is provided where storage works are contemplated.

**Application for permits to appropriate water for the generation of electricity, with the exception of municipalities, must be made to the Hydroelectric Commission. Either of the above forms may be secured, without cost, together with instructions by addressing the State Engineer, Salem, Oregon.

30324

Canal System or Pipe Line—

7. (a) Give dimensions at each point of canal where materially changed in size, stating miles from headgate. At headgate: width on top (at water line) ..... feet; width on bottom ..... feet; depth of water ..... feet; grade ..... feet fall per one thousand feet.

(b) At ..... miles from headgate: width on top (at water line) ..... feet; width on bottom ..... feet; depth of water ..... feet; grade ..... feet fall per one thousand feet.

(c) Length of pipe, 15,000 ± ft.; size at intake, 16 in.; size at ..... ft. from intake ..... in.; size at place of use 16 in.; difference in elevation between intake and place of use, 450 to 460 ft. Is grade uniform? Approximately Estimated capacity, 14 sec. ft.

8. Location of area to be irrigated, or place of use .....

Township North or South	Range E. or W. of Willamette Meridian	Section	Forty-acre Tract	Number Acres To Be Irrigated
I N	10 E	7	NW 1/4 of NW 1/4	
			SW 1/4 of NW 1/4	
			NW 1/4 of SW 1/4	
			SW 1/4 of SW 1/4	
I N	10 E	18	NW 1/4 of NW 1/4	

(If more space required, attach separate sheet)

(a) Character of soil .....

(b) Kind of crops raised .....

Power or Mining Purposes—

9. (a) Total amount of power to be developed ..... theoretical horsepower.

(b) Quantity of water to be used for power ..... sec. ft.

(c) Total fall to be utilized ..... (Head) feet.

(d) The nature of the works by means of which the power is to be developed .....

.....

(e) Such works to be located in ..... (Legal subdivision) of Sec. ....., Tp. ..... (No. N. or S.), R. ..... (No. E. or W.), W. M.

(f) Is water to be returned to any stream? ..... (Yes or No)

(g) If so, name stream and locate point of return .....

....., Sec. ....., Tp. ..... (No. N. or S.), R. ..... (No. E. or W.), W. M.

(h) The use to which power is to be applied is .....

(i) The nature of the mines to be served .....

Municipal or Domestic Supply—

30324

10. (a) To supply the city of _____ (Name of) _____ County, having a present population of _____ and an estimated population of _____ in 19____

(b) If for domestic use state number of families to be supplied _____

(Answer questions 9, 10, 11, and 14 in all cases)

11. Estimated cost of proposed works, $ 160,000

12. Construction work will begin on or before 1 July 1965

13. Construction work will be completed on or before 1 November 1965

14. The water will be completely applied to the proposed use on or before 1 December 1965

W. F. Turnbull, General Manager
(Signature of applicant)
Edward Hines Lumber Co., Dee Division

Remarks:

STATE OF OREGON,
County of Marion, } ss.

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for _____

In order to retain its priority, this application must be returned to the State Engineer, with corrections on or before _____, 19____

WITNESS my hand this _____ day of _____, 19____

_____
STATE ENGINEER

By _____
ASSISTANT

PERMIT

STATE OF OREGON, } ss.
County of Marion, }

This is to certify that I have examined the foregoing application and do hereby grant the same, SUBJECT TO EXISTING RIGHTS and the following limitations and conditions:

The right herein granted is limited to the amount of water which can be applied to beneficial use and shall not exceed 14.0 cubic feet per second measured at the point of diversion from the stream, or its equivalent in case of rotation with other water users, from Tony Creek.

The use to which this water is to be applied is manufacturing (hardboard plant and mill)

This permit is issued subject to the terms and conditions of a stipulation recorded on pages 695 and 696, Volume 4, Miscellaneous Records of the State Engineer, and by reference made a part hereof.

If for irrigation, this appropriation shall be limited to - - of one cubic foot per second or its equivalent for each acre irrigated

and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

The priority date of this permit is March 30, 1965

Actual construction work shall begin on or before May 24, 1966 and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 1967

Complete application of the water to the proposed use shall be made on or before October 1, 1968

WITNESS my hand this 24th day of May, 1965

STATE ENGINEER

Application No. 40709
Permit No. 30324

PERMIT
TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF OREGON

This instrument was first received in the office of the State Engineer at Salem, Oregon, on the 30th day of March, 1965, at 2:00 o'clock P. M.

Returned to applicant:

Approved:
May 24, 1965

Recorded in book No. 30324 of Permits on page

CURTIS L. [illegible], STATE ENGINEER

Drainage Basin No. 4 page 24

Fees

State Printing 9137

assigned to U.S. Plywood Corp.

STATE OF OREGON

COUNTY OF HOOD RIVER

CERTIFICATE OF WATER RIGHT

This Is to Certify, *That* EDWARD HINES LUMBER COMPANY, Dee Division

of P. O. Box 210, Hood River *, State of* Oregon *, has a right to the use of*

the waters of East Fork Hood River

for the purpose of fire protection, log washing, condenser cooling, cold deck sprinkling, and process water,

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Hood River *County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume* 6 *, at page* 200 *; that the priority of the right thereby confirmed dates from* September, 1905;

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 29.3 cubic feet per second, being 5.1 c.f.s. for fire protection, 2.7 c.f.s. for log washing, 15.5 c.f.s. for condenser cooling, 5.0 c.f.s. for process water, and 1.0 c.f.s. for cold deck sprinkling.

A description of the lands irrigated under such right, and to which the water is appurtenant (or, if for other purposes, the place where such water is put to beneficial use), is as follows:

W½ NW¼
W½ SW¼
Section 7
T. 1 N., R. 10 E., W. M.

The certificate of water right issued to Oregon Lumber Company and recorded at page 15008, Volumo 12, State Record of Water Right Certificates, was superseded by a certificate issued to Edward Hines Lumber Company and recorded at page 29370, Volume 21, after the right to the use of 284.5 c.f.s. for development of power was cancelled and the right to the use of 37.5 c.f.s. for the development of power was transferred to other uses by order of the State Engineer. This certificate is issued to confirm the uses of 29.3 c.f.s. for the purposes described herein, approved by an order of the State Engineer, entered January 31, 1962, pursuant to the provisions of ORS 540.510 to 540.530.

And said right shall be subject to all other conditions and limitations contained in said decree.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

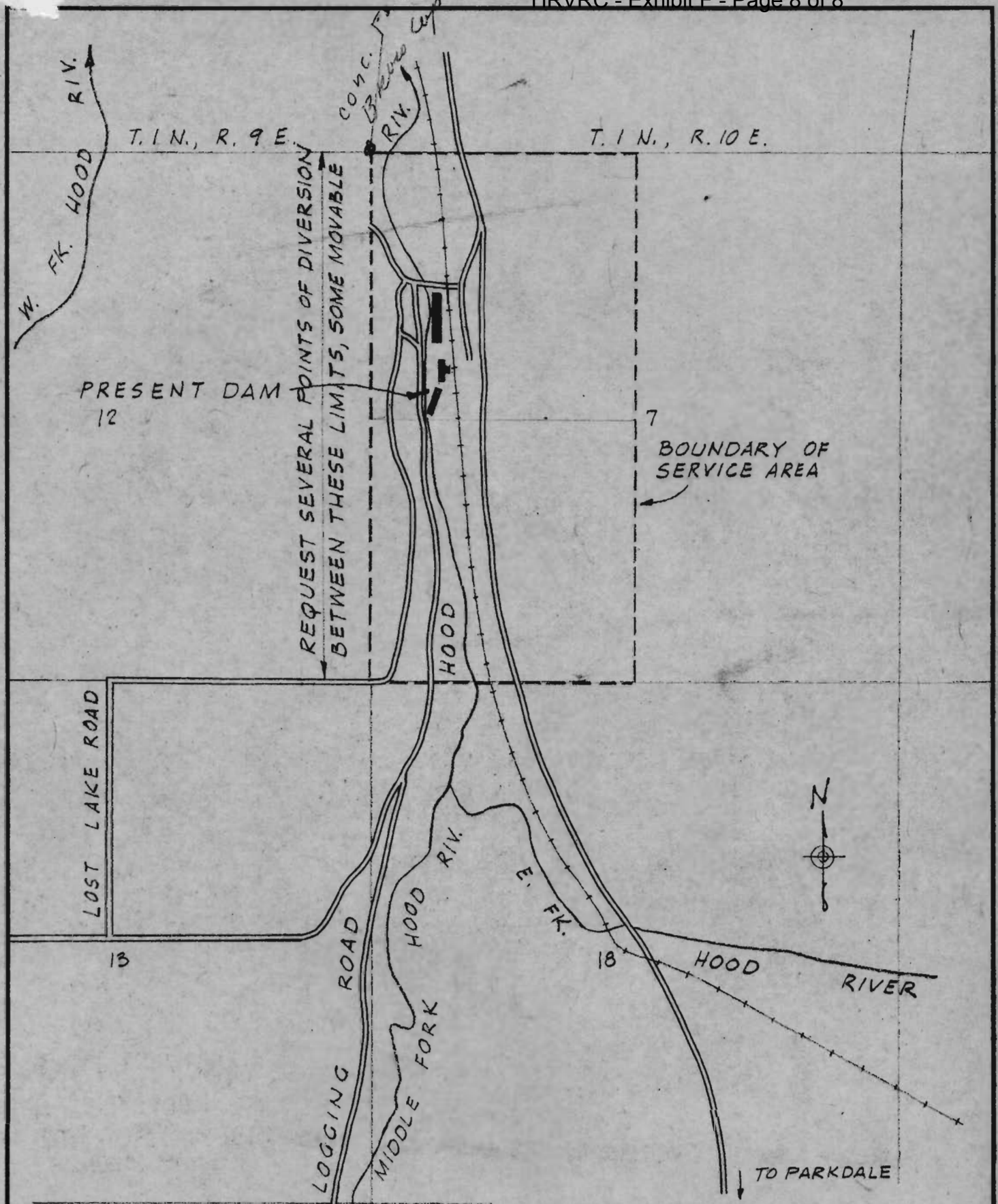
WITNESS the signature of the State Engineer, affixed

this 11th *day of* December *,* 1962 .

CHRIS L. WHEELER

State Engineer

Recorded in State Record of Water Right Certificates, Volume 22 *, page* 30440



EDWARD HINES LUMBER CO., DEE DIVISION, DEE, ORE.

MAP TO ACCOMPANY REQUEST FOR CHANGE IN USE & POINT OF DIVERSION UNDER CERT. 15008

SCALE: 4" = 1 MILE	SEPT. 20, 1961	SHEET 1 OF 1

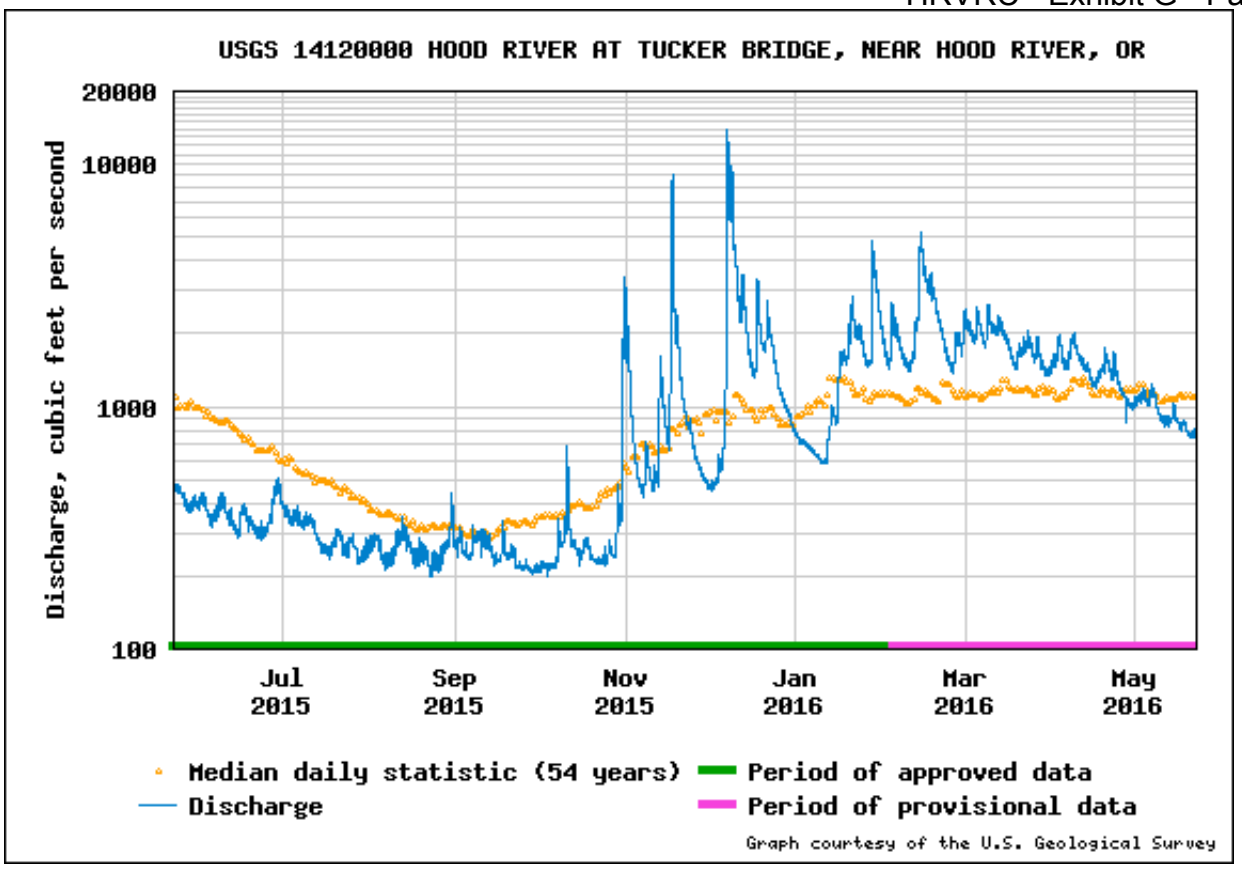
NN
NH2

CORNELL, HOWLAND, HAYES & MERRYFIELD
CORVALLIS, OREGON — BOISE, IDAHO

A1238-8

KILHAM STATIONERY & PRINTING CO., PORTLAND, ORE. 214000

E-36


USGS 14120000 HOOD RIVER AT TUCKER BRIDGE, NEAR HOOD RIVER, OR
Discharge, cubic feet per second
20000
10000
1000
100
Jul 2015
Sep 2015
Nov 2015
Jan 2016
Mar 2016
May 2016
Median daily statistic (54 years)
Discharge
Period of approved data
Period of provisional data
Graph courtesy of the U.S. Geological Survey

Oregon Department of Environmental Quality
Dee Forest Products - Linseed Disposal Pit

General Site Information

Site:	**Dee Forest Products - Linseed Disposal Pit (ECSI Site ID: 817)**	**CERCLIS (EPA) Id**	**089456370**
Project Manager:	**N/A - Project Completed.**	**Investigative Status:**	**Listed on the Confirmed Release List or Inventory**
PM Phone:		**NPL(National Priority Listing):**	**No**
Address:	**17542 River RD**	**Is this site an Orphan?**	**No**
	Dee, 97031	**Is this site a brownfield?**	**No**
County:	**HOOD RIVER**	**Action Underway or Needed:**	**No Further Action (Conditional)**
Region:	**Eastern Region**	**Click for more details ...**	

NOTE: This site has one or more long-term controls designed to manage site risks. Click here for details.

Click on the Photograph to see a larger version.

ECSI 817

5/1/2005

Oregon Department of Environmental Quality
Headquarters: 811 Sixth Ave., Portland, OR 97204-1390
phone: 503-229-5696 or toll free in Oregon 800-425-4011
TTY: 503-229-6993 FAX: 503-229-6124

983711 (7)

EQUITABLE SERVITUDE AND EASEMENT

This Equitable Servitude and Easement is made August 5, 1998 between Dee Forest Products Inc. (DFPI or Grantor) and the Oregon Department of Environmental Quality (DEQ or Grantee).

RECITALS

A. Grantor is the owner of certain real property located in Hood River County, Oregon, the location of which is more particularly described in Attachment A to this Equitable Servitude and Easement.

B. On June 15, 1998, the Oregon Department of Environmental Quality completed review of the Removal Completion Report. The Report provides a detailed account of investigation and cleanup work completed at two areas of the site located within the boundaries of the DFPI real property herein referred to as, the "Linseed Area" and the "Paint/Ash area", see definitions.

C. On August 4, 1997, DFPI entered into a letter agreement with DEQ, under which DFPI proposed and agreed to implement certain removal actions of which this institutional control is the final action necessary to ensure protectiveness under ORS 465.315 at the Linseed Area and the "Paint/Ash" area.

D. The provisions of this Equitable Servitude and Easement are intended to protect human health and the environment.

1. GENERAL DECLARATION

Grantor declares that all real property located at tax lot 201, at DEE, in Hood River County, State of Oregon, and described in Attachment A to this Equitable Servitude and Easement, is and shall be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Equitable Servitude and Easement. Each condition and restriction set forth in this Equitable Servitude and Easement touches and concerns the Property and the easement granted in paragraph 4 herein, shall run with the land for all purposes, shall be binding upon all Owners as set forth in this Equitable Servitude and Easement, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the

perpetual right to enforce the conditions and restrictions set forth in this Equitable Servitude and Easement.

2. DEFINITIONS

2.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives acting on its behalf. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

2.2 "Owner" means any person or entity, including Grantor, who is the record owner of fee simple title or a vendee's interest of record to any portion of the Property, including any successor or holder of fee simple title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation.

2.3 "Linseed Area". The "Linseed Area" is defined by an area 40' radius around a point (701,060.5, E: 7,913,751.8) within Tax Lot #201, T1N R10E Sec 7, Hood River County (description and survey attached, Attachments A & B).

2.4 "Paint/Ash Area" is defined by an area 80' radius around a point (N: 701,193.3 E: 7,913,730.0) within Tax Lot #201, T1N R10E Sec 7, Hood River County (description and survey attached, Attachments A & B).

3. EQUITABLE SERVITUDE (RESTRICTIONS ON USE)

3.1 At the Linseed Area, No use shall be made of groundwater by extraction through wells or by other means, which use involves consumption or residential use of the groundwater for drinking water purposes. This prohibition shall not apply to extraction of groundwater associated with temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property.

983711

3.2 At the Paint/Ash Area, no use shall be made of groundwater by extraction through wells or by other means, which use involves consumption or residential use of the groundwater for drinking water purposes. This prohibition shall not apply to extraction of groundwater associated with temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property.

In addition, The following operations and uses are prohibited at the Paint/Ash Area of the Property:

3.2.a Construction of a residential building of any type;

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ as Grantee shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Equitable Servitude and Easement have been or are being complied with. Violation of any condition or restriction contained in this Equitable Servitude and Easement shall give to DEQ the right, privilege, and license to enter upon the Property where such violation exists and to abate, mitigate, or cure such violation at the expense of the Owner, provided written notice of the violation is given to the Owner describing what is necessary to correct the violation and the Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to the Owner of the Property for such entry and any action taken to abate, mitigate, or cure a violation.

5. GENERAL PROVISIONS

5.1 All conditions and restrictions contained in this Equitable Servitude and Easement shall run with the land, until such time as any condition or restriction is removed by written certification from DEQ that the condition or restriction is no longer required in order to protect human health or the environment.

5.2 Any person who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Equitable Servitude and Easement, whether or not any reference to this Equitable Servitude and Easement is contained in the instrument by which such person or entity acquired an interest in the Property.

5.3 The Owner of any portion of the Property shall notify DEQ at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the Owner's interest in the Property.

5.4 The Owner of the Property shall notify DEQ within thirty (30) days following Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Hood River County zoning code or any successor code.

5.5 Upon any violation of any condition or restriction contained in this Equitable Servitude and Easement, DEQ, in addition to the remedies described in paragraph 4, may revoke any "No Further Action" status for this site.

IN WITNESS WHEREOF Grantor and Grantee have executed this Equitable Servitude and Easement as of the date and year first set forth above.

GRANTOR: Andrea Ellingson
(Name, DFPI) Site Manager

STATE OF OREGON)
) ss.
County of ~~Hood River~~ WASCO

The foregoing instrument is acknowledged before me this 5 day of August, 1998, by Andrea Ellingson of Lee Forest Products, on its behalf.

OFFICIAL SEAL
JENNIE S OLDFIELD
NOTARY PUBLIC - OREGON
COMMISSION NO. 058418
MY COMMISSION EXPIRES OCT. 10, 2000

Jennie S. Oldfield
NOTARY PUBLIC FOR OREGON
My commission expires: 10-10-00

GRANTEE:

Langdon Marsh

State of Oregon Department of
Environmental Quality

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this 13th day of August, 1998, by Langdon Marsh, Director of Oregon DEQ, on its behalf.

Barrett MacDougall

NOTARY PUBLIC FOR OREGON
My commission expires: 7-12-02

OFFICIAL SEAL
BARRETT MAC DOUGALL
NOTARY PUBLIC-OREGON
COMMISSION NO. 313377
MY COMMISSION EXPIRES JUL 12, 2002

OFFICIAL SEAL
BARRETT MAC DOUGALL
NOTARY PUBLIC-OREGON
COMMISSION NO. 313377
MY COMMISSION EXPIRES JUL 12, 2002

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ATTACHMENT A

DESCRIPTION OF REAL PROPERTY

1. This description was obtained from the Hood river County Assessor's office as tax lot #201.

A tract of land in the NW 1/4 of sec 7 T1N R10E WM being more particularly described as follows. Bg at the c/l of the Ely of a Hood River County Bridge sd pt being S 29° 23' 30" E 1481 ft from the NW cor of Sec 7 in sd T&R.

th alg the extended c/l of sd bridge N 83°17'20" E 172.33 ft.

th leaving sd extended c/l&run S16°20'E 457,14 tap;

th run S 1°05'W264.89 ft tap;

th run N 88°55' W 180.54 ft tap;

th run 1°21'48" E 252.18 ft tap;

th run 83°37' W 70.14 ft tap

th N 6°23'10' W 939.27 ft tap in the c/l of sd Hood River Bridge;

th alg sd c/l N 83°17'30" E 54.38 ft to the pob

983 711

TOPOGRAPHIC SURVEY for DEE FOREST PRODUCTS INC.

NARRATIVE:

FOUND NO MAJOR DISCREPANCIES

BASIS OF BEARING:

ESTABLISHED A GLOBAL POSITIONING DATUM AT THE RAILROAD SPIKE SET IN THE ASPHALT AS SHOWN. THE DATUM BEING THE NORTH AMERICAN DATUM, 1983. ALL BEARINGS ARE: 1983, OREGON - NORTH ZONE 3601 NAD. 1983

LOCATION OF SURVEY:

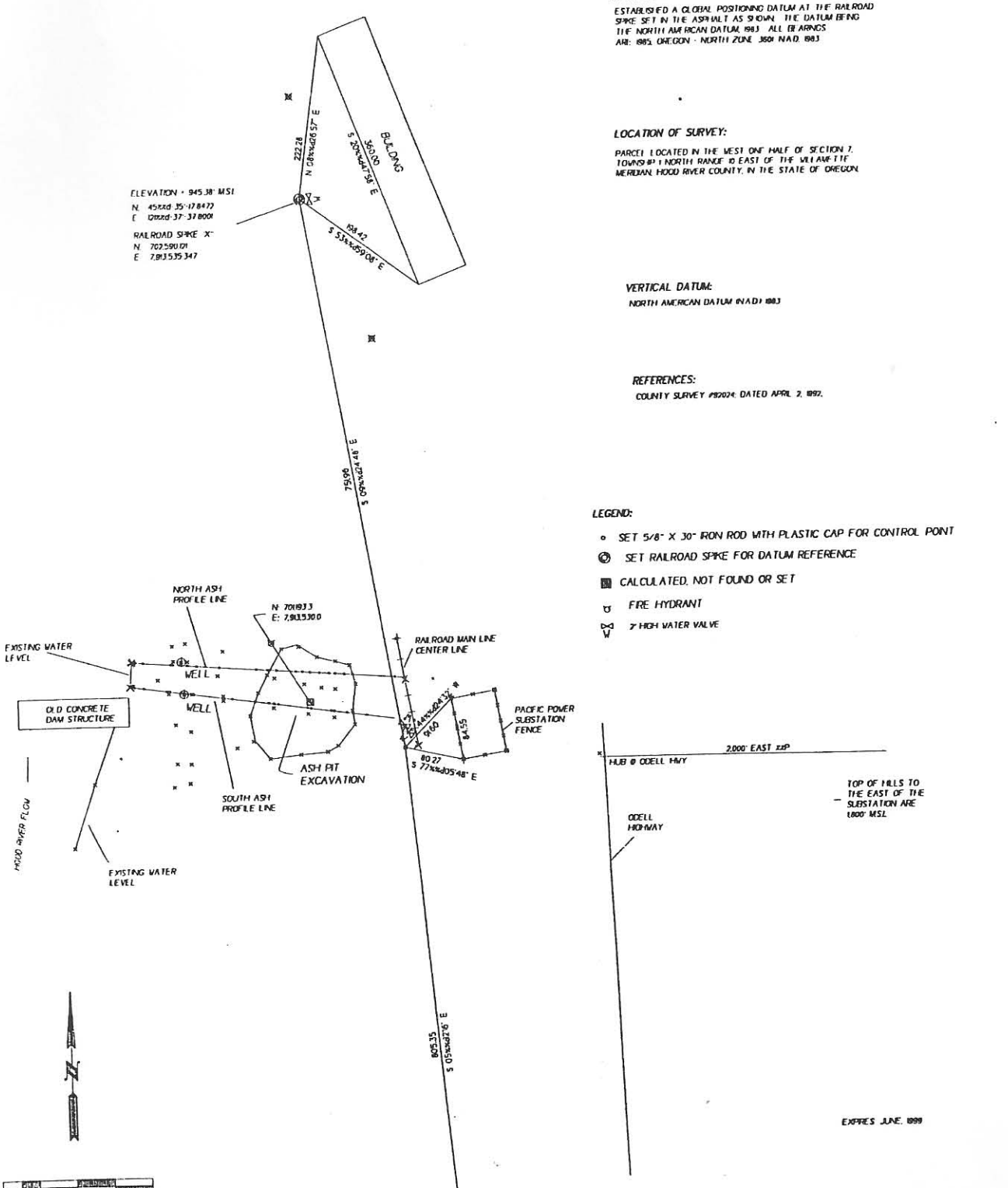
PARCEL LOCATED IN THE WEST ONE HALF OF SECTION 7, TOWNSHIP 1 NORTH, RANGE 10 EAST OF THE WILLAMETTE MERIDIAN, HOOD RIVER COUNTY, IN THE STATE OF OREGON.

VERTICAL DATUM:

NORTH AMERICAN DATUM (NAD) 1983

REFERENCES:

COUNTY SURVEY #12024; DATED APRIL 2, 1992.



LEGEND:

- ○ SET 5/8" X 30" IRON ROD WITH PLASTIC CAP FOR CONTROL POINT
- ⊙ SET RAILROAD SPIKE FOR DATUM REFERENCE
- ▣ CALCULATED, NOT FOUND OR SET
- FIRE HYDRANT
- ⋈ 2" HIGH WATER VALVE

EXPIRES JUNE, 1999

TERRA SURVEYING

DATE: JUNE, 1998
SCALE: 1" = 100'
PROJECT: 9835

P.O. BOX 617
HOOD RIVER, OREGON 97031

PHONE & FAX: (541) 386-4531
EMAIL: terra@gorge.net

2014 TRANSPORTATION VOLUME TABLES

OREGON DEPARTMENT OF TRANSPORTATION

TRANSPORTATION DATA SECTION
TRANSPORTATION SYSTEMS MONITORING UNIT
555 13TH STREET N.E., SUITE #2
SALEM, OR. 97301-4178

September 2015

2014 TRAFFIC VOLUMES ON STATE HIGHWAYS

Milepoint	2014 AADT All Vehicles	ATR AVC	Location Description
			HOOD RIVER HIGHWAY NO. 281 (Continued)
4.16	7300		0.02 mile south of Portland Drive
5.11	2200		0.02 mile west of Odell Highway
7.38	2400		0.05 mile west of Summit Drive
11.42	2300		0.02 mile north of Lost Lake Road
14.23	1700		0.02 mile north of Alexander Drive
15.65	1100		0.02 mile north of Bassler Drive
16.75	1600		0.02 mile west of Clear Creek Road at Parkdale
16.81	2200		0.02 mile east of 2nd Street
17.18	2200		0.02 mile east of Allen Road
19.02	1600		0.05 mile west of Mt. Hood Highway (OR35)
			ODELL HIGHWAY NO. 282
			Milepoint indicates distance from Hood River Highway, north of Odell
0.02	4600		0.02 mile south of Hood River Highway
0.72	4100		0.02 mile south of Wy'East Road
1.78	4800		0.04 mile north of Summit Drive
1.84	4300		0.02 mile south of Summit Drive
2.25	3200		0.02 mile east of "A.G.A." Road
2.67	3100		0.05 mile north of Davis Road
2.74	3600		0.02 mile east of Davis Road
3.34	4200		0.11 mile west of Mt. Hood Highway No. 26 (OR35)
			SHERARS BRIDGE HIGHWAY NO. 290
			Milepoint indicates distance from The Dalles - California Highway (US197), at Tygh Valley
0.05	210		0.10 mile east of The Dalles-California Highway (US197)
4.72	70		0.02 mile east of Conroy Road
6.97	60		Railroad Undercrossing at Sherar Station
8.30	80		Wasco-Sherman County Line
16.06	60		0.02 mile west of Payne Road (East Jct.)
18.61	70		0.07 mile north of Finnegan Road (Ball Lane, South Jct.)
21.33	70		0.02 mile north of Davis Lane
24.76	90		0.02 mile east of Stradley Road
25.81	100		0.02 mile east of Finnegan Road
28.23	130		0.02 mile south of South Street
28.40	160		0.02 mile west of Sherman Highway (US97)
			SHANIKO-FOSSIL HIGHWAY NO. 291
			Milepoint indicates distance from Sherman Highway (US97), in Shaniko
0.03	110		0.03 mile south of Sherman Highway (US97)
0.56	100		South city limits of Shaniko, 0.46 mile south of 3rd Street
4.39	90		At the Summit, 0.66 mile south of Rooper Road
7.79	140		0.02 mile northwest of Union Street
7.95	150		0.01 mile north of Antelope Highway
			Equation: MP 8.04 BK = MP 8.11 AH
8.24	190		East city limits of Antelope
11.81	130		0.02 mile east of Cold Camp Road
			Equation: MP 17.11 BK = MP 17.21 AH
23.07	140		Wasco-Wheeler County Line
			Equation: MP 24.93 BK = MP 25.30 AH

Traffic Impacts of DeeTour

An accurate assessment—from the right time of year—of existing traffic is essential to establish a baseline for any calculation of the traffic impacts of this development. A winter traffic count on Highway 281 misses Fruit Loop traffic, Lost Lake and Punchbowl traffic, most farm traffic, tourists, second homes etc.

The DKS report uses a seasonal adjustment factor derived from Highway 35. The seasonal adjustment factor from Highway 35 is quite small because Highway 35 gets a substantial winter bump from ski traffic to Mt. Hood.

Data from Highway 281 would likely yield a much higher seasonal adjustment factor resulting in higher existing 30th hour numbers. This is because the difference in summer and winter traffic is much greater on Highway 281. Highway 281 is much busier in summer than winter.

Data Source	Average Daily Traffic (vehicles per day)
DKS Traffic Study Dec. 14-15, 2013	1348
ODOT 2001 Traffic Counts from Hood River Transportation System Plan	1,100- 2,100
Traffic added on Hwy 281 by DeeTour per land-use application	1000

The traffic added by this single development will increase daily traffic on Highway 281 by around 50% on the days the concert venue is in operation. It is highly unusual that a single development has such a significant impact on traffic volume. But 50% doesn't tell the whole story because it will be 50% more traffic compressed into only a few hours, immediately before and after the event.

The DKS study shows the intersection of Highway 281 and Lost Lake Road very close to not meeting the County mobility standard which requires a "C" level of service or better for all roads and intersections with its jurisdiction. For traffic leaving the concert venue by turning left to travel north towards Hood River the LOS is a "C" but barely—the control delay in seconds is 24.8 seconds. If it was 25 seconds, the intersection would be classified a "D" and fail to meet the county standard. We suspect that with a truly accurate assessment of existing summer traffic plus the unique configuration of the site (the need to keep cars from queuing on the railroad tracks), this development would easily cause the intersection to fall to a D or lower level of service.

DKS uses an ODOT mobility target of .85 for Highway 281. We question whether that is the correct standard. ODOT requires a mobility target of .70 for rural highways. In which case, the post-event traffic volume to capacity at .80 is projected to exceed ODOT's standard.

The report analyzes a single intersection but the project is certain to have a significant negative impact on other intersections, especially where Highways 281 and 282 meet. This intersection is already considered "at or near capacity" per the Hood River TSP. When a concert ends, the majority of traffic will travel north toward Hood River and I-84. Most will need to make a left hand turn onto Tucker Road. This intersection has been reconfigured in the last few years to give priority to the Odell Highway. Odell Highway traffic can move thru unimpeded while northbound traffic from the Dee Highway has to wait its turn. 400 cars is a very long time to wait. Allowing 40 feet per car, 437 cars would span over 3 miles.

The code standard is that the development must not cause dangerous intersections or congestion. That standard covers not only the intersection nearest the development but any intersection where a causal relationship can be demonstrated between the development-generated traffic and the operations of the intersection. At minimum, a traffic study must be done on the intersection of Highway 281 and 282, but depending on the applicants traffic plan—still an unknown quantity at this point—there could be other intersections and roads that should be analyzed.

"Congestion" is not defined in your code. In the dictionary it is defined to mean "a condition on road networks that occurs as use increases, and is characterized by slower speeds, longer trip times, and increased vehicular queuing." We would argue that congestion does not just occur when an intersection is failing so badly that a stoplight needs to be added or when a highway needs an additional lane. You can take local circumstances into account. ODOT certainly does. Their mobility standard for a rural road is .70 but rises to 1.0 for urban areas. They allow a greater volume of traffic and longer wait times in cities than they allow in the country. You should do the same. Local residents relied on the County's Comprehensive Plan in their decisions to live where they live. The land along the Dee Highway is zoned farm, forest and very widely dispersed residences. They had the expectation that they were purchasing property and embarking on a lifestyle that was very rural in nature. You should apply your congestion standard in a way that is faithful to the Comp Plan.

Submitted by Hood River Valley Residents Committee, December 10, 2014

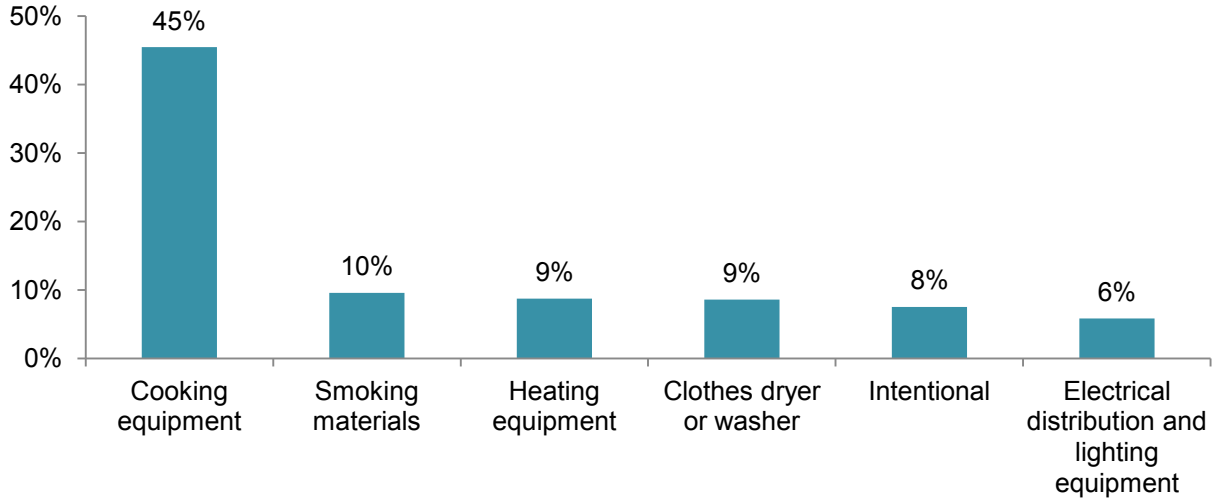
One-Stop Data Shop
Fire Analysis and Research Division
One Batterymarch Park, Quincy, MA 02169
Email: osds@nfpa.org
www.nfpa.org

U.S. Structure Fires in Hotels and Motels Fact Sheet

During 2006-2010, an estimated average of 3,700 structure fires in hotels and motels were reported to U.S. fire departments per year, with associated annual losses of:

- 12 civilian deaths
- 143 civilian injuries
- $127 million in property damage

Structure Fires in Hotels and Motels By Leading Cause 2006-2010 (Top 6 Shown)



- Nearly three-quarters (73%) of fires in hotels and motels didn't spread beyond the object of origin.
- Cooking equipment was involved in nearly half (45%) of fires
- Twelve percent of fires in hotels and motels began in a bedroom/guest sleeping room, but these fires were responsible for 31% of civilian injuries and 72% of civilian deaths.
- Smoking materials were the cause of the fire in 79% of civilian deaths

CODES & STANDARDS USEFUL IN PROTECTING HOTELS AND MOTELS

NFPA 101: Life Safety Code®: www.nfpa.org/101
NFPA 13: Standard for the Installation of Sprinkler Systems: www.nfpa.org/13
NFPA 13R: Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height: www.nfpa.org/13R

Additional resources can be found at www.nfpa.org

Source: *U.S. Hotel and Motel Structure Fires* Ben Evarts, NFPA Fire Analysis and Research, Quincy, MA.