

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

CENTRAL OREGON LANDWATCH,

Petitioner,

v.

DESCHUTES COUNTY,

Respondent,

and

CENTRAL OREGON IRRIGATION
DISTRICT,

Intervenor-Respondent.

LUBA Case No. 2024-080

PETITIONER'S PETITION FOR REVIEW

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I. STANDING OF PETITIONER

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Petitioner Central Oregon LandWatch (hereinafter “Petitioner”) appeared before Respondent Deschutes County during the proceedings leading to the challenged decision. Petitioner timely filed a Notice of Intent to Appeal pursuant to ORS 197.830 and thus has standing to appeal pursuant to ORS 197.830(2).

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II. STATEMENT OF THE CASE

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A. NATURE OF THE LAND USE DECISION

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This is an appeal of an October 2, 2024 land use decision made by the Deschutes County Board of County Commissioners (the “decision” or “Ordinance No. 2024-007”) that adopts a new 2040 Deschutes County Comprehensive Plan (“DCCP”). The decision repeals the prior 2030 Deschutes County Comprehensive Plan and replaces it with the new 2040 DCCP.

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The County’s decision is a final land use decision subject to review by the Land Use Board of Appeals (“LUBA”). The County Board’s decision, including the adoption Ordinance 2024-007, the new DCCP, and findings, is found at Record (“Rec.”) 24, and is attached at Appendix (“App.”) 1.

18

B. RELIEF SOUGHT

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Petitioner respectfully requests that LUBA reverse or, in the alternative, remand the decision.

1 **C. SUMMARY OF ARGUMENT**

2 This case is about a lack of comprehensive planning in the newly-
3 adopted Deschutes County Comprehensive Plan (DCCP), leading to violations
4 of statewide land use planning Goal 14. The new DCCP, at Policy 3.3.6.a and
5 Policies 9.2.1-9.3.15 allows unlimited conversion of Agricultural- and Forest-
6 designated properties to residential, industrial, and commercial uses. Some of
7 those residential uses have no minimum lot size. DCC 18.128.210(D)(3). The
8 closer those residential uses are to an urban growth boundary (UGB), the
9 greater the residential density is allowed. DCC 18.32.040(A). For industrial
10 uses, the new DCCP allows concrete plants, freight depots, manufacturing,
11 distribution outlets, and wrecking yards, anywhere throughout the county. DCC
12 18.100.010-020.

13 The plan requires no Goal 14 analysis for these conversions, which is
14 counter to the Oregon Supreme Court's decision in *1000 Friends of Oregon v.*
15 *Land Conservation & Development Commission ("Curry County")*, 301 Or
16 447, 724 P2d 268 (1986) and many subsequent LUBA decisions.

17 Whether a land use on land outside of an urban growth boundary (UGB)
18 maintains land as rural land, or urbanizes rural land in violation of Goal 14,
19 requires a locational inquiry. *Curry County*, 301 Or at 504 n33; *Doob v.*

1 *Josephine County*, 32 Or LUBA 376, 381 (1997). The new DCCP allows
2 conversions of Agricultural and Forest lands without requiring this locational
3 inquiry.

4 The zones to which the new DCCP allows conversion of Agricultural and
5 Forest lands were developed to accommodate areas subject to “previously built”
6 and “irrevocably committed” goal exceptions, and the new DCCP’s
7 authorization of extending those zones to new lands without taking new goal
8 exceptions violates Goal 14 and OAR 660-004-0018.

9 The haphazard, unplanned development allowed by the new DCCP is
10 contrary to Goal 14’s mandate “[t]o provide for an orderly and efficient
11 transition from rural to urban land use, to accommodate urban population and
12 urban employment inside urban growth boundaries, to ensure efficient use of
13 land, and to provide for livable communities.”

14 **D. SUMMARY OF MATERIAL FACTS**

15 The County’s prior comprehensive plan was adopted in 2011. Rec. 225.
16 The County began developing a new DCCP in April of 2022. Rec. 1436. This
17 work including several Planning Commission (“PC”) meetings on September 8,
18 2022, October 12, 2022, November 10, 2022, December 8, 2022, March 9,
19 2023, March 23, 2023, March 30, 2023, June 8, 2023, June 22, 2023, July 27,

1 2023, and August 24, 2023. During this time period, extensive public input was
2 gathered, both during PC meetings, at various outreach events, and through an
3 “on-line open house.” The County won an award for its extensive community
4 engagement work. Rec. 1436. The County notified DLCD of its proposed
5 post-acknowledgment plan amendment (PAPA) to adopt a new DCCP on
6 August 30, 2023. Rec. 4953. The extensive public input informing the new
7 DCCP received by the County prior to this date is not included in the Record.

8 A large majority of respondents to the County’s on-line open house
9 indicated that they oppose “encourag[ing] rural residential development outside
10 urban areas.” Rec. 3415. Similarly, a large majority of respondents oppose
11 “rezoning low productivity farmland with poor soil to allow greater
12 opportunities for housing.” Rec. 3418.

13 The PC held a hearing on the draft 2040 DCCP on October 26, 2023.
14 Rec. 4703. The PC held continued public hearings on the draft 2040 DCCP on
15 November 2, 2023, Rec. 3826, November 9, 2023, Rec. 3774, December 7,
16 2024, Rec. 3261, and December 14, 2024, Rec. 3246.

17 The Board of County Commissioners (“BOCC”) held a public hearing on
18 the draft 2040 DCCP on April 10, 2024. Rec. 2464. The BOCC held continued
19 public hearings on April 23, 2024 in the Sunriver unincorporated community,

1 Rec. 1964, on April 30, 2024 in the City of Sisters, Rec. 1528, and on May 8,
2 2024. Rec. 1220. On October 2, 2024, the BOCC voted 2-1 to adopt the new
3 DCCP and adopted Ordinance 2024-007. Rec. 24-25, App. 1-2.

4 III. LUBA'S JURISDICTION

5 The Deschutes County Board of Commissioners made a final decision
6 under ORS 197.015(10)(a). LUBA has jurisdiction to review such local land
7 use decisions pursuant to ORS 197.825(1).

8 IV. FIRST ASSIGNMENT OF ERROR

9 **The decision at Policy 3.3.6.a violates Goal 14 by**
10 **allowing unlimited conversion of rural farm and forest lands**
11 **protected by Goal 3 and Goal 4 to residential uses.**

12 A. PRESERVATION OF ERROR

13 The “raise it or waive it” waiver doctrine in ORS 197.835(3) and ORS
14 197.797 applies only to local government quasi-judicial proceedings and not to
15 legislative land use proceedings. *Hatley v. Umatilla County*, 256 Or App 91,
16 109 n6, 301 P3d 920 (2013); *DLCD v. Columbia County*, 24 Or LUBA 32, 36
17 (1992); *Parmenter v. Wallowa County*, 21 Or LUBA 490, 492 (1991), *aff'd*, 114
18 Or App 362, 835 P2d 152, *rev den*, 314 Or 574, 840 P2d 1296 (1992); *Roads*
19 *End Sanitary District v. City of Lincoln City*, 48 Or LUBA 126, 129 (2004).

1 Nevertheless, Petitioner did raise below that DCCP Policy 3.3.6.a would
2 violate state law by allowing unlimited rezoning of farmland. Rec. 970, 971,
3 4383, 4389, 4401.

4 **B. LEGAL STANDARDS OF REVIEW**

5 LUBA shall reverse or remand an amendment to a comprehensive
6 plan if the amendment is not in compliance with the statewide planning goals.
7 ORS 197.853(6). Local governments must prepare, adopt, amend, and revise
8 comprehensive plans in compliance with the statewide planning goals, ORS
9 197.175(2)(a), and must enact land use regulations to implement their
10 comprehensive plans. ORS 197.175(2)(b). LUBA must reverse or remand a
11 local decision if it concludes the local government improperly construed the
12 applicable law. ORS 197.835(9)(a)(D). LUBA shall reverse a land use
13 decision when the decision violates a provision of applicable law and is
14 prohibited as a matter of law. OAR 661-010-0071(1)(c).

15 **C. ARGUMENT**

16 The decision violates Goal 14 by adopting land use regulations that allow
17 unlimited redesignation and rezoning of land designated Agriculture and Forest,
18 and zoned Exclusive Farm Use (“EFU”) and Forest, to residential uses. All
19 comprehensive plan amendments must comply with the 19 statewide planning
20 goals. ORS 197.175(2)(a); ORS 197.835(6); *DLCD v. Clackamas County*

1 (“*Clackamas County*”), 335 Or App 205 (2024). Goal 14 is no exception.
2 “[A]ny decision which *allows* ‘urban uses’ of ‘rural land’ *converts* that land and
3 must comply with or take exception to Goal 14, even if that decision does not
4 change the use of the land.” *Curry County*, 301 Or 447 at 501-02 (emphasis
5 original).

6 The decision here repeals the County’s former comprehensive plan in its
7 entirety and replaces it with a new DCCP. App. 1, Rec. 24. The plan policies
8 in Deschutes County’s new comprehensive plan challenged here may have
9 existed in its prior comprehensive plan, which was acknowledged by DLCD.
10 But the ordinance adopting the County’s new plan ordains that “[t]he 2010
11 Deschutes County Comprehensive Plan, adopted by Ordinance 2011-003, is
12 repealed and replaced with the 2040 Deschutes County Comprehensive Plan[.]”
13 Rec. 24 (Ordinance No. 2024-007). With the former plan entirely repealed and
14 replaced, the entirety of the new plan must satisfy ORS 197.175(2)(a) and ORS
15 197.835(6), both of which require comprehensive plans to comply with the
16 goals. The new DCCP is specifically not “acknowledged.” ORS
17 197.625(1)(b). Any prior acknowledgment of the County’s former
18 comprehensive plan does not control whether the new DCCP complies with the
19 Goals.

1 In the new DCCP, the County adopts Policy 3.3.6.a, which allows plan
2 and zoning map amendments for individual EFU parcels:

3 “Allow comprehensive plan and zoning map amendments,
4 including for those that qualify as non-resource land, for individual
5 EFU parcels as allowed by State Statute, Oregon Administrative
6 Rules and this Comprehensive Plan.” (App. 38, Rec. 61)

7 The decision’s findings in response to Goal 14 offer no findings supporting
8 whether Policy 3.3.6.a complies with Goal 14. Rec. 222-223.

9 By failing to assure that the conversion of Goal 3- and Goal 4-protected
10 lands to nonresource uses under Policy 3.3.6.a will not urbanize rural land, the
11 decision violates Goal 14’s prohibition against allowing urban uses on rural
12 land. *Curry County*, 301 Or 447, 724 P2d 268 (1986). Below, Petitioner
13 asserts five sub-assignments of error that independently explain why Policy
14 3.3.6.a violates Goal 14.

15 **1. First sub-assignment of error: The decision violates Goal 14 by**
16 **not ensuring that future PAPA decisions will comply with Goal**
17 **14 as required by the *Curry County* decision.**

18 Goal 14 of the state land use planning goals is “[t]o provide for an
19 orderly and efficient transition from rural to urban land use, to accommodate
20 urban population and urban employment inside urban growth boundaries, to
21 ensure efficient use of land, and to provide for livable communities.”

1 Prior to the Oregon Supreme Court’s decision in *Curry County*, Goal 14
2 compliance was not required for decisions that removed Goal 3 or Goal 4
3 protections from rural land. *Central Oregon LandWatch v. Deschutes County*
4 (“*Aceti V*”), __ Or LUBA __, slip op at 17-18 (LUBA No 2022-075, Dec 6,
5 2022), *aff’d*, 324 Or App 655, 525 P3d 895 (2023) (“In 1979 and 1981,
6 exceptions to Goal 14 were not required for rural commercial and industrial
7 uses.”) In *Curry County*, the Court held that exceptions to Goal 3 or Goal 4 did
8 not ensure compliance with Goal 14, and described several factors that must be
9 considered in the Goal 14 inquiry absent more specific guidance from the Land
10 Conservation and Development Commission:

11 “Exceptions to Oregon Statewide Planning Goals 3, 4 and other
12 resource goals cannot generally suffice as exceptions to Goal 14
13 because the former necessitate only a determination that a narrow
14 category of uses, the particular resource uses that are required by
15 the Goal, are impracticable, while the latter necessitates a finding
16 that not merely resource uses, but all other rural uses, are
17 impracticable.” *Curry County*, 301 Or 447 at 485.

18 ***

19 “1000 Friends’ three-acre rule proposes a larger lot size than
20 LCDC and LUBA have considered as possibly urban in most
21 cases; it also makes no allowance for considering other factors
22 which LCDC and LUBA have treated as important, such as the
23 size of the area, its proximity to acknowledged UGBs, and the
24 types and levels of services which must be provided to it. LCDC’s
25 lawyer stated at oral argument that ‘because of the varying density
26 of urban fabric you’ll find in the State of Oregon, it’s virtually

1 impossible to draw a line and say, one-acre lots are urban, two-acre
2 lots are rural.” *Curry County*, 301 Or 447 at 505-506.

3 LUBA summarized the *Curry County* factors and applied them to a
4 residential development proposal outside of a UGB in *Oregon Shores*

5 *Conservation Coalition*:

6 “(a) the size of the area in relationship to the developed use
7 (density); (b) its proximity to an acknowledged UGB and whether
8 the proposed use is likely to become a magnet attracting people
9 from outside the rural area; and (c) the types and levels of services
10 which must be provided to it.” *Oregon Shores Conservation*
11 *Coalition v. Coos County*, 55 Or LUBA 545, 550 (2008).

12 *See also Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 240, 243
13 (2010); *1000 Friends of Oregon v. Josephine County (“Marvin II”)*, __ Or
14 LUBA __, slip op at 9 (LUBA No. 2021-116, June 2, 2022) (“an exception to
15 Goal 14 would only be required if the factors discussed in [*Curry County*] make
16 such an exception necessary. Those factors include lot size, density, proximity
17 to urban growth boundaries, and services that will be needed for the residential
18 development.”). (internal citations omitted)

19 The Court of Appeals recently held that Goal 14 prohibits county land
20 use decisions that authorize rezoning of rural lands to allow increased
21 residential density. *Clackamas County*, 335 Or App 205 (2024). That case
22 largely dealt with “rural residential areas,” defined and regulated by OAR 660-
23 004-0040. Importantly, it also clarified that prior acknowledgment of a

1 comprehensive plan by LCDC does not insulate a county from the requirement
2 that future amendments to a county's land use regulations must independently
3 comply with the Goals and any other relevant state law. *Clackamas County*,
4 335 Or App at 223.

5 Together, these cases (*Curry County, Oregon Shores Conservation*
6 *Coalition, Columbia Riverkeeper, Marvin II, and Clackamas County*) provide
7 that Goal 14 applies to plan amendments affecting rural land, that counties must
8 apply the factors derived from *Curry County* to development proposals outside
9 a UGB to determine whether Goal 14 is met, and that prior acknowledgment of
10 a comprehensive plan by LCDC does not insulate a county from the
11 requirement that future comprehensive plans or amendments to a county's land
12 use regulations must independently comply with Goal 14.

13 Here, the decision, via Policy 3.3.6.a, fails to ensure that plan
14 amendments authorized by that policy will apply the *Curry County* factors to
15 show compliance with Goal 14. The absence of any requirement in the DCCP
16 or DCC to show that conversions of Agricultural or Forest land under Policy
17 3.3.6.a do not urbanize rural land violates *Curry County* and Goal 14.

18 As discussed below, past experience shows that compliance with Goal 14
19 has not been required for PAPAs authorized under the County's prior

1 comprehensive plan, which included the same language as the new DCCP's
2 Policy 3.3.6.a. The new DCCP, at Policy 3.3.6.a, violates Goal 14 by not
3 ensuring that compliance with Goal 14 must be shown for the plan amendments
4 that Policy enables.

5 **2. Second sub-assignment of error: The decision violates Goal 14**
6 **by allowing the unlimited rezoning of rural Agricultural and**
7 **Forest lands without Goal 14 review.**

8 The decision here repeals the County's former comprehensive plan in its
9 entirety and replaces it with a new DCCP. App. 1, Rec. 24. In the new DCCP,
10 the County adopts Policy 3.3.6.a, which allows plan and zoning map
11 amendments for individual Agricultural parcels:

12 "Allow comprehensive plan and zoning map amendments,
13 including for those that qualify as non-resource land, for individual
14 EFU parcels as allowed by State Statute, Oregon Administrative
15 Rules and this Comprehensive Plan." (App. 38, Rec. 61)

16 This policy violates Goal 14. This policy may be interpreted to mean,
17 and has in fact been interpreted to mean, that the County may amend the plan
18 designation and zoning of individual properties but without analyzing those
19 decisions for compliance with Goal 14, because other properties zoned with the
20 County's residential and Rural Industrial zones have been previously
21 acknowledged as compliant with the Goals, including Goal 14. However, a
22 "zoning map change [is] an amendment of a land use regulation; thus, it [is]

1 subject to the requirements for a plan amendment, including evaluation under
2 the goals.” *Clackamas County*, 335 Or App at 222. That the current decision
3 does not actually amend the plan designation of any property is immaterial; it is
4 Policy 3.3.6.a that enables all future plan and zoning map amendments.

5 Recent plan amendment decisions by Deschutes County have evaded
6 Goal 14 review on the grounds that the County’s comprehensive plan and
7 zoning ordinance had been acknowledged as in compliance with Goal 14. For
8 example, in 2023 LUBA relied on past acknowledgment of the County’s
9 comprehensive plan, which included similar policies allowing comprehensive
10 plan and zoning map amendments for individual EFU parcels, as sufficient to
11 forego site-specific Goal 14 analysis for a decision that rezoned a 710-acre
12 Agricultural property for residential use:

13 “[T]he board of commissioners did not err in relying on DLCD's
14 acknowledgment of the 2016 amendments and in concluding that it
15 was not necessary to conduct a site-specific analysis for
16 compliance with Goal 14.” *Central Oregon LandWatch v.*
17 *Deschutes County (“710 Properties”)*, __ Or LUBA __, slip op at
18 36 (LUBA No. 2023-006, July 28, 2023), *aff’d*, 330 Or App 321
19 (2024).

20 Similarly, LUBA has relied on past acknowledgment of DCCP policies
21 allowing comprehensive plan and zoning map amendments of individual EFU

1 properties was sufficient to forego site-specific Goal 14 analysis for a decision
2 that rezoned a 20-acre EFU property for industrial use:

3 “We conclude that the county correctly determined that the
4 policies and provisions of the DCCP and DCC that apply to the RI
5 zone are independently sufficient to demonstrate that PAPAs that
6 apply the RI plan designation and zone to rural land are consistent
7 with Goal 14 and that uses and development permitted pursuant to
8 those acknowledged provisions constitute rural uses, do not
9 constitute urban uses, and maintain the land as rural land.” *Aceti V*,
10 slip op at 8.

11 In yet another case, LUBA found that the County may forego a site-specific
12 Goal 14 analysis for a decision that rezoned another 20-acre EFU property for
13 industrial use because of existing comprehensive plan policies and land use
14 regulations:

15 “For the reasons set out in *Aceti V*, we conclude that the county
16 was entitled to rely on its acknowledged RI zone to ensure
17 compliance with Goal 14, and we do not address this element of
18 the assignment of error further.” *Central Oregon LandWatch v.*
19 *Deschutes County (“LBNW LLC”), __ Or LUBA __*, slip op at 12
20 (LUBA No. 2023-008, April 24, 2023).

21 All three of these cases relied on comprehensive plan policies similar to those
22 included in the new DCCP. We reiterate, though, that those former plan
23 policies were repealed, and the new DCCP is unacknowledged. App. 1, Rec.
24 24.

25 In *Clackamas County*, LUBA and the Court of Appeals addressed the
26 applicability of Goal 14 to a proposal to upzone a rural residential-zoned

1 property to a different county zone that allowed a higher density. *Clackamas*
2 *County*, 335 Or App at 207. Even when the comprehensive plan designation of
3 land would not change, but the zoning would, LUBA and the Court concluded
4 that “Goal 14 is intended to apply also to zoning map changes that increase
5 density.” *Id.* at 221.

6 This holding from *Clackamas County* stands in contrast with the three
7 Deschutes County PAPA decisions cited above (*710 Properties*, *Aceti V*, and
8 *LBNW LLC*) that have redesignated and rezoned Agricultural land for higher-
9 density uses but have found that a site-specific analysis is unnecessary to show
10 compliance with Goal 14.

11 The new DCCP violates Goal 14 by allowing unlimited conversion of
12 Agricultural and Forest lands to residential, industrial, and commercial uses
13 without any Goal 14 review. Goal 14’s prohibition on urbanizing rural land
14 requires site-specific inquiries. The County’s decision adopting Policy 3.3.6.a
15 into the new DCCP violates Goal 14 by not requiring such site-specific
16 analyses. The result is a plan that allows unplanned, disorderly, and inefficient
17 siting of residential, industrial, and commercial uses both in far-flung corners of
18 the County and near UGBs. Under the new DCCP, these conversions of
19 Agricultural and Forest land can occur without any future inquiry into the

1 factors for urbanization of rural land from *Curry County. 710 Properties*, __ Or
2 LUBA __, slip op at 36.

3 In these previous Deschutes County decisions, LUBA and the Courts
4 have held that redesignating and rezoning individual farm properties to the
5 County's RREA plan designation and RR and MUA zone did not violate Goal
6 14's prohibition on urbanizing rural lands. In this appeal of the DCCP policies
7 that authorize all such conversions, LandWatch asserts that unlimited
8 redesignating and rezoning individual farm properties to the County's RREA
9 plan designation and RR and MUA zone does violate Goal 14. At the County's
10 current rate of conversion – around 3,000 acres spread across 24 individual
11 Agricultural-designated properties have been rezoned, or are pending rezoning,
12 to residential and industrial use in the past 15 years – 50, 100, or 500 properties
13 could be rezoned in the coming years. Redesignating and rezoning 100
14 additional properties, assuming each is 80 acres in size, would convert 8,000
15 acres of Agricultural and Forest lands to residential, industrial, or commercial
16 uses. Assuming a 10-acre minimum lot size, this could allow 800 new
17 dwellings and/or industrial or commercial uses on the County's rural lands.
18 Allowing this level of new residential, industrial, and commercial development
19 scattershot throughout the County violates Goal 14.

1 Goal 14 is “[t]o provide for an orderly and efficient transition from rural
2 to urban land use, to accommodate urban population and urban employment
3 inside urban growth boundaries, to ensure efficient use of land, and to provide
4 for livable communities.” As explained in the fifth subassignment of error,
5 *infra*, the residential zones (MUA and RR) allowed by Policy 3.3.6.a include
6 conversion to planned developments with urban-scale minimum lot sizes.
7 Petitioner asserts that Goal 14, which mandates “an orderly and efficient
8 transition from rural to urban land use,” imposes a limit on the amount of
9 unplanned residential and industrial sprawl a county may allow. The recently-
10 adopted DCCP surpasses that limit by allowing unlimited residential and
11 industrial sprawl, without any regard to where or how much such sprawl is
12 allowed.

13 The decisions in *710 Properties*, *Aceti V*, and *LBNW LLC* cited above
14 found that no site-specific Goal 14 inquiry need be made for a quasi-judicial
15 PAPA application that rezones individual Agricultural-designated properties.
16 In each case, LUBA held that prior acknowledgment of the County’s
17 comprehensive plan as compliant with Goal 14 was sufficient to ensure that
18 PAPAs would comply with Goal 14. In other words, LUBA held that the only
19 opportunity to challenge Goal 14 compliance of a decision that converts

1 Agricultural land to residential or industrial use is upon comprehensive plan or
2 zoning ordinance adoption and acknowledgment. Petitioner makes such a
3 challenge now in the current appeal. The County’s decision here adopting a
4 new DCCP, which includes policies allowing the piecemeal and unlimited
5 upzoning of lands currently protected by Goal 3 and Goal 4, violates Goal 14.

6 Unless the County’s new comprehensive plan is remanded directing the
7 County to limit the proliferation of new residential, industrial, and commercial
8 uses throughout the County, Goal 14 review will continue to be evaded. The
9 Oregon Supreme Court in *Curry County* made clear that Goal 14 review of uses
10 located outside UGBs requires inquiries into both locational (where in relation
11 to UGBs) and intensity (density of development, number of employees, reliance
12 on public services and infrastructure, etc.) factors. The County’s new
13 comprehensive plan violates Goal 14 by failing to include any policies requiring
14 such review for future PAPAs.

15 **3. Third sub-assignment of error: The decision violates Goal 14**
16 **by allowing future conversion of Agricultural and Forest lands**
17 **to residential uses without any locational inquiry.**

18 The locational component of Goal 14 was first articulated in *Curry*
19 *County*, where the Oregon Supreme Court discussed lot size, density,
20 “proximity to acknowledged UGBs,” and types and levels of services and

1 infrastructure as relevant to the Goal 14 inquiry. *Curry County*, 301 Or at 505.

2 The Court wrote: “LCDC says that ‘what is urban will depend greatly on the
3 locale and the factual situation at a specific site[.]’ We agree with LCDC that
4 what is ‘urban’ depends heavily on the context[.]” *Id.* at 504 n33.

5 LUBA later clarified the site-specific nature of the Goal 14 inquiry in
6 *Doob v. Josephine County*, where LUBA found that the Supreme Court’s
7 holding in *Curry County* means that PAPAs on rural lands require a site-
8 specific analysis to determine compliance with Goal 14:

9 “[A] determination that a decision does not allow urban uses must
10 address the relevant site-specific factors identified in *Curry*
11 *County*. These include the location of the use relative to urban
12 growth boundaries and availability of urban services. *Curry*
13 *County*, 301 Or at 505, 508-511. Neither parcel size nor the
14 presence (or absence) of urban services such as public water and
15 sewer is necessarily determinative. The county may not simply rely
16 on the acknowledged status of its zoning ordinance if the ordinance
17 and acknowledgment order do not establish a determination by
18 LCDC that zoning at one-acre density complies with Goal 14
19 regardless of where it may be sited.” *Doob v. Josephine County*, 32
20 Or LUBA 376, 381 (1997) (citing *Shaffer v. Jackson County*, 16
21 Or LUBA 871, 874 (1988).

22 Goal 14 requires a site-specific analysis, which is especially evident in
23 the factor requiring an examination of a property’s proximity to a UGB. Policy
24 3.3.6.a in the County’s new DCCP does exactly what *Doob* prohibits: it allows
25 the County to rely on the acknowledged status of its zoning ordinance to assert

1 that rezoning EFU- and Forest-zoned land throughout the county does not
2 violate Goal 14. This lack of a locational inquiry in Agricultural and Forest
3 land conversions that the DCCP authorizes is a misinterpretation and
4 misapplication of Goal 14, *Curry County*, and *Doob*.

5 **4. Fourth sub-assignment of error: The MUA and RR zones were**
6 **created to apply to exception lands and facilitate specific land**
7 **uses for which goal exceptions were taken, and the decision’s**
8 **extension of those zones to non-exception areas absent new**
9 **goal exceptions violates Goal 14 and OAR 660-004-0018.**

10 The County created its Rural Residential Exception Area plan
11 designation when it adopted its first comprehensive plan in 1979:

12 “During the preparation of the 1979 Comprehensive Plan it was
13 apparent that many rural lands had already received substantial
14 development and were committed to non-resource uses. Areas
15 were examined and identified where Goal 3 and 4 exceptions were
16 taken. At this time exceptions to Goals 11 and 14 were not
17 required. The total area excepted was 41,556 acres. These lands
18 were residentially developed, committed to development or needed
19 for rural service centers.” (App. 167, Rec. 190 (DCCP at E-41))

20 The County applied its Rural Residential (RR) and Multiple Use
21 Agricultural (MUA) zones to the RREA plan designation, created in 1979.
22 Land in the RREA plan designation and MUA and RR zones were areas where
23 “previously built” and “irrevocably committed” exceptions to the Goals were
24 taken upon acknowledgment of the County’s first comprehensive plan. App.
25 167, Rec. 190. The uses allowed in these zones were tailored to allow the

1 continuation of land uses already in existence on those exception lands,
2 pursuant to OAR 660-004-0018(1) (“Physically developed or irrevocably
3 committed exceptions [...] are intended to recognize and allow continuation of
4 existing types of development in the exception area.”).

5 New DCCP Policy 3.3.6.a allows the MUA and RR zones to be applied
6 to lands not subject to goal exceptions, permitting all the uses allowed in those
7 zones to occur without justifying new goal exceptions. Although the MUA and
8 RR zones were previously acknowledged to properly implement the goal
9 exceptions taken for the County’s “previously built” and “irrevocably
10 committed” residential areas, which comprised 41,556 acres, App. 167, Rec.
11 190, it does not follow that the MUA and RR zones do not urbanize rural land
12 in violation of Goal 14 when applied to areas not subject to “previously built”
13 and “irrevocably committed” goal exceptions. Allowing the expansion of uses
14 for which goal exceptions have been taken to lands where no goal exception has
15 been taken violates Goal 14 and OAR 660-004-0018.

16 OAR 660-004-0018(1) explains how planning and zoning for goal
17 exception areas is limited to allowing continuation of existing types of
18 development exclusively in the exception area:

19 “Exceptions to one goal or a portion of one goal do not relieve a
20 jurisdiction from remaining goal requirements and do not authorize

1 uses, densities, public facilities and services, or activities other
 2 than those recognized or justified by the applicable exception.
 3 Physically developed or irrevocably committed exceptions
 4 under OAR 660-004-0025 and 660-004-0028 and 660-014-
 5 0030 are intended to recognize and allow continuation of existing
 6 types of development in the exception area. Adoption of plan and
 7 zoning provisions that would allow changes in existing types of
 8 uses, densities, or services requires the application of the standards
 9 outlined in this rule.”

10 At OAR 660-004-0018(2), the rule limits residential uses allowed in exception
 11 areas:

12 “(2) For ‘physically developed’ and ‘irrevocably committed’
 13 exceptions to goals, residential plan and zone designations shall
 14 authorize a single numeric minimum lot size and all plan and zone
 15 designations shall limit uses, density, and public facilities and
 16 services to those that satisfy (a) or (b) or (c) and, if applicable, (d):
 17 (a) That are the same as the existing land uses on the
 18 exception site;
 19 (b) That meet the following requirements:
 20 (A) The rural uses, density, and public facilities and
 21 services will maintain the land as ‘Rural Land’ as
 22 defined by the goals, and are consistent with all other
 23 applicable goal requirements;
 24 (B) The rural uses, density, and public facilities and
 25 services will not commit adjacent or nearby resource
 26 land to uses not allowed by the applicable goal as
 27 described in OAR 660-004-0028; and
 28 (C) The rural uses, density, and public facilities and
 29 services are compatible with adjacent or nearby
 30 resource uses[.]”

31 OAR 660-004-0018(2)(a) requires that “residential plan and zone designations”
 32 shall authorize land uses “that are the same as the existing land uses **on the**
 33 **exception site.**” (emphasis added)

1 LUBA has repeatedly held that local governments may not authorize new
2 land uses in goal exception areas that vary from the land uses for which Goal
3 exceptions were taken, and may not extend zones created to facilitate goal
4 exceptions to new lands absent a new goal exception. *Geaney v. Coos County*,
5 34 Or LUBA 189, 200 (1998) (redesignating and rezoning land for commercial
6 uses without taking a new goal exception violates Goal 14 and OAR 660-004-
7 0018(2)(c)); *DLCD v. Klamath County*, 40 Or LUBA 221, 227 (2001) (that a
8 zone has been applied to rural property and acknowledged does not mean that
9 zone can be applied to any rural property in the future without allowing an
10 urban use in violation of Goal 14); *Doty v. Coos County*, 42 Or LUBA 103, 115
11 (2002) (“The acknowledgment of a zone as being generally in compliance with
12 the goals does not *ipso facto* mean that all uses that may be approved under that
13 zone are necessarily rural in nature.”); *Hood River Valley Residents Committee*
14 *v. Hood River County*, __ Or LUBA __ (LUBA No. 2017-014, June 29, 2017)
15 (holding that a prior goal exception to permit an industrial use on land protected
16 by Goal 4 did not permit a new commercial use absent a new exception to Goal
17 14).

18 Here, new DCCP Policy 3.3.6.a allows all of the uses of the RR and
19 MUA zones to be applied to unlimited acres of new lands without taking new

1 exceptions to Goal 14. OAR 660-004-0018 and *Geaney*, 34 Or LUBA at 200,
2 disallow extending the RR and MUA zones to new lands absent new goal
3 exceptions.

4 **5. Fifth sub-assignment of error: The decision violates Goal 14 by**
5 **allowing the application of the County’s MUA and RR zones to**
6 **lands designated Agricultural and Forest.**

7 The two residential zones that DCCP Policy 3.3.6.a allows to be applied
8 to lands designated Agricultural and Forest are the MUA and RR zones.

9 Policies similar to Policies 3.3.6.a may have existed in the County’s prior
10 comprehensive plan, which was acknowledged by DLCD. But, again, the
11 ordinance adopting the County’s new DCCP ordains that “[t]he 2010 Deschutes
12 County Comprehensive Plan, adopted by Ordinance 2011-003, is repealed and
13 replaced with the 2040 Deschutes County Comprehensive Plan[.]” App. 1, Rec.
14 24. With the former plan entirely repealed and replaced, the entirety of the new
15 plan must satisfy ORS 197.175(2)(a) and ORS 197.835(6), both of which
16 require comprehensive plans to be in compliance with the goals. The new
17 DCCP is not “acknowledged.” ORS 197.625(1)(b). The entirety of the new
18 DCCP must be acknowledged as in compliance with the Goals, notwithstanding
19 any prior acknowledgment of the prior comprehensive plan.

1 Further, the Deschutes County Code (DCC) cannot conflict with the
2 DCCP; in other words, any section of the DCC that is not authorized by an
3 acknowledged DCCP or that conflicts with the DCCP is invalid. *Baker v. City*
4 *of Milwaukie*, 271 Or 500, 514, 533 P2d 772, 779 (1975) (“[W]e conclude that
5 a comprehensive plan is the controlling land use planning instrument for a city.
6 **Upon passage of a comprehensive plan a city assumes a responsibility to**
7 **effectuate that plan and conform prior conflicting zoning ordinances to it.**
8 We further hold that the zoning decisions of a city must be in accord with that
9 plan and a zoning ordinance which allows a more intensive use than that
10 prescribed in the plan must fail.”) (emphasis added). The seminal Oregon land
11 use case *Baker v. City of Milwaukie* is directly applicable here, as it requires
12 local governments to conform zoning codes to newly-adopted comprehensive
13 plans. *Id.*

14 In challenging Deschutes County’s newly-adopted comprehensive plan,
15 we implicitly also challenge the County’s MUA and RR zones which the Plan
16 effectuates. However, this appeal is not a collateral attack on the MUA and RR
17 zones; it is an attack on the new DCCP that authorizes those zones’ application
18 to Agricultural and Forest lands converted to nonresource lands.

1 Deschutes County implements its Rural Residential Exception Area
2 (RREA) plan designation through two zones, the MUA zone and the RR zone.
3 The minimum lot size of the MUA zone is 10 acres, except that the DCC allows
4 a “five-acre minimum lot size or equivalent density” in the MUA zone when a
5 property is within one mile of a UGB:

6 “The minimum lot size shall be 10 acres, except planned and
7 cluster developments shall be allowed an equivalent density of one
8 unit per seven and one-half acres and planned and cluster
9 developments within one mile of an acknowledged urban growth
10 boundary shall be allowed a five acre minimum lot size or
11 equivalent density.” (DCC 18.32.040(A)) (emphasis added)

12 The RR zone also has a minimum lot size of 10 acres, and the DCC also allows
13 a “five-acre minimum lot size or equivalent density” when property is within
14 one mile of a UGB in the RR zone:

15 “Minimum lot size shall be 10 acres, except planned and cluster
16 developments shall be allowed an equivalent density of one unit
17 per 7.5 acres. Planned and cluster developments within one mile of
18 an acknowledged urban growth boundary shall be allowed a five-
19 acre minimum lot size or equivalent density. For parcels separated
20 by new arterial rights of way, an exemption shall be granted
21 pursuant to DCC 18.120.020.” (DCC 18.60.060(C))

22 For both the MUA and RR zones, a density of one dwelling unit per five acres
23 is allowed within one mile of a UGB.

24 Both the MUA and RR zones conditionally allow cluster developments.
25 DCC 18.32.030(P), DCC 18.60.030(F). In a cluster development, the minimum

1 lot size for residential dwellings in both the MUA and RR zone is two acres,
2 with a maximum of three acres:

3 “The area not dedicated to open space or common use may be
4 platted as residential dwelling lots or parcels that are a minimum of
5 two acres and a maximum of three acres in size. Their use shall be
6 restricted to single-family use. Single-family use may include
7 accessory uses and County authorized home occupations. Uses
8 permitted in the open space area may include the management of
9 natural resources, trail systems or other outdoor uses that are
10 consistent with the character of the natural landscape.” (DCC
11 18.128.200(B)(2))

12 Both the MUA and RR zones also conditionally allow planned
13 developments. DCC 18.32.030(O), DCC 18.60.030(E). In a planned
14 development in both the MUA and RR zones, there is no minimum lot size:

15 “The minimum lot area, width, frontage and yard requirements
16 otherwise applying to individual buildings in the zone in which a
17 planned development is proposed do not apply within a planned
18 development. An equivalent overall density factor may be utilized
19 in lieu of the appropriate minimum lot area.” (DCC
20 18.128.210(D)(3))

21 A county zone with “no minimum parcel size” in planned developments
22 allows residential “densities that clearly could be inconsistent with Goal 14.”
23 *Wood v. Crook County*, 49 Or LUBA 682, 693 (2005). Deschutes County’s
24 MUA and RR zones impose no minimum lots sizes for planned developments.
25 DCC 18.128.210(D)(3). The new DCCP at Policy 3.3.6.a allows these zones to
26 be applied to new lands without taking exceptions to Goal 14. The DCCP, as

1 implemented by the MUA and RR zones, is inconsistent with Goal 14. *Wood*,
2 49 Or LUBA at 693.

3 The MUA and RR zones' allowance of planned developments with lot
4 sizes lower than the minimum lot size of the zones, which is 10 acres,
5 authorizes an urban level of density. This is precisely the conclusion of LUBA
6 in *Marvin II*, slip op at 9:

7 "Because the JCC allows the creation of PUDs with lot sizes lower
8 than the zone minimum lot size and the board of commissioners
9 relied on the ability to form PUDs to meet applicable criteria,
10 petitioners argue that there is not substantial evidence in the record
11 that density will not be at an urban level. We agree."

12 Nearly the same was found in *Doob v. Josephine County*, 32 Or LUBA 364,
13 373-374 (1997) (rural residential zone that only limits the number of lots but
14 does not impose minimum lot sizes is insufficient to show compliance with
15 Goal 14). The new DCCP at Policy 3.3.6.a allows these zones to be applied to
16 new lands without taking exceptions to Goal 14. The DCCP, as implemented
17 by the MUA and RR zones, is inconsistent with Goal 14. *Marvin II*, slip op at
18 9.

19 Aside from densities and minimum lot sizes, the new DCCP at Policy
20 3.3.6.a allows conversion of Agricultural and Forest lands to the RREA plan
21 designation and its MUA and RR zones in close proximity to UGBs. History

1 shows that the County will rezone Agricultural-designated properties to these
2 zones for lands adjacent to UGBs. *Central Oregon LandWatch v. Deschutes*
3 *County (“Marken”), ___ Or LUBA ___* (LUBA No. 2023-049, February 15,
4 2024). Proximity to UGBs is one of the *Curry County* factors. *Doob*, 32 Or
5 LUBA at 381; *Oregon Shores Conservation Coalition*, 55 Or LUBA at 550. As
6 described above, the MUA and RR zones specifically allow an increased
7 density of residential development, and smaller lot sizes, when within close
8 proximity (1 mile) to a UGB. New DCCP Policy 3.3.6.a violates Goal 14 by
9 failing to require any consideration of proximity to a UGB when rezoning
10 Agricultural and Forest lands to the MUA and RR zones.

11 Policy 3.3.6.a of the new DCCP authorizes redesignating and rezoning
12 Agricultural and Forest lands to the MUA and RR zones. The closer those
13 zones are to UGBs, the more likely their residents will also rely on urban public
14 services and infrastructure. The “types and levels of services,” *Oregon Shores*,
15 55 Or LUBA at 550, that would be provided to residents of properties converted
16 to RREA under Policy 3.3.6.a would nearly all be from urban service providers,
17 especially when within one mile of a UGB. Future residents of such lands
18 would drive on urban roads, attend urban schools, ride urban public transit, visit
19 urban libraries, use urban healthcare services, rely on urban public safety

1 services, and patronize urban commercial services. Any new development in
 2 the MUA and RR zones near UGBs will undoubtedly rely on a variety of urban
 3 services, becoming essentially an extension of urban populations, but existing
 4 outside UGBs and outside acknowledged exception areas. Policy 3.3.6.a
 5 frustrates the effectiveness of Deschutes County’s UGBs, which also violates
 6 Goal 14.

7 **V. SECOND ASSIGNMENT OF ERROR**

8 **The decision at Policies 9.2.1-9.3.15 violates Goal 14 by**
 9 **allowing unlimited conversion of rural Agricultural- and**
 10 **Forest-designated lands to commercial and industrial uses.**

11 **A. PRESERVATION OF ERROR**

12 See the Preservation of Error for the First Assignment of Error.

13 Petitioner raised below that DCCP Policies 9.2.1-9.3.15 would violate
 14 state law by allowing unlimited rezoning of farmland for industrial and
 15 commercial uses. Rec. 969-971, 4393-4397, 4401.

16 **B. LEGAL STANDARDS OF REVIEW**

17 See the Standards of Review under the First Assignment of Error.

18 **C. ARGUMENT**

19 In addition to Policy 3.3.6.a, the subject of Petitioner’s First Assignment
 20 of Error, the decision adopts policies into the new DCCP that allow unlimited
 21 redesignation and rezoning land designated Agriculture and Forest and zoned

1 Exclusive Farm Use and Forest to industrial and commercial uses. The new
2 DCCP adopts several goals and policies that allow and support the unlimited
3 siting of new industrial and commercial uses throughout the rural county:

4 “Goal 9.2: Support creation and continuation of rural commercial
5 areas that support rural communities while not adversely affecting
6 nearby agricultural and forest uses.” (App. 85, Rec. 108)

7 “Policy 9.2.1: Allow for new Rural Commercial zoning
8 designations if otherwise allowed by Oregon Revised Statute,
9 Administrative Rule, and this Comprehensive Plan.” (App. 85,
10 Rec. 108)

11 “Goal 9.3: Support the creation and continuation of rural industrial
12 areas that support rural communities while not adversely affecting
13 nearby agricultural and forest uses.” (App. 86, Rec. 109)

14 “Policy 9.3.2. To assure that urban uses are not permitted on rural
15 industrial lands, land use regulations in the Rural Industrial zones
16 shall ensure that the uses allowed are less intensive than those
17 allowed for unincorporated communities in OAR 660-22 or any
18 successor.” (App. 86, Rec. 109)

19 “Policy 9.3.15: Properties for which a property owner has
20 demonstrated that Goals 3 and 4 do not apply may be considered
21 for Rural Industrial designation as allowed by State Statute,
22 Oregon Administrative rules and this Comprehensive Plan. Rural
23 Industrial zoning shall be applied to a new property that is
24 approved for the Rural Industrial Plan designation.” (App. 87,
25 Rec. 110)

26 Similarly to Policy 3.3.6.a, the decision’s findings in response to Goal 14 offer
27 no findings supporting whether these policies comply with Goal 14. App. 199-

1 200, Rec. 222-223. Interestingly, the findings do discuss these policies in
2 response to Goal 9: Economic Development:

3 “Policies 9.2.1-9.3.15 are retained from the 2011/1979 Plan. These
4 policies govern existing Rural Commercial and Rural Industrial
5 designated properties. These properties were previously evaluated
6 under OAR 660-023 and determined to have pre-existing
7 commercial or industrial uses that do not fit into any of the
8 unincorporated community categories.” (App. 196, Rec. 219)

9 In this finding, the County accurately describes how most of its Rural Industrial
10 and Rural Commercial lands are subject to “previously built” and “irrevocably
11 committed” goal exceptions, and the County’s RI and RC zones were
12 developed to allow the continuation of those uses on exception lands. These
13 findings are inadequate, however, to justify what Policies 9.2.1-9.3.15 actually
14 allow, which is the unlimited application of the RI and RC zones to Agricultural
15 and Forest lands across the County without taking new goal exceptions.

16 Similar to the First Assignment of Error, Petitioner asserts five
17 subassignments of error below, each independently arguing that Policies 9.2.1-
18 9.3.15 violate Goal 14. Several of these subassignments are similar to the
19 subassignments argued in the First Assignment of Error, but with meaningful
20 distinctions applicable to Policies 9.2.1-9.3.15 that specifically authorize
21 industrial and commercial uses on lands designated Agriculture and Forest.

1 **1. First sub-assignment of error: The decision violates Goal 14 by**
 2 **not ensuring that future PAPA decisions will comply with Goal**
 3 **14 as required by the *Curry County* decision.**

4 Petitioner incorporates by reference the entire First sub-assignment of
 5 error of the First Assignment of Error, *supra*, as applied to Policies 9.2.1-9.3.15.

6 Just as Policy 3.3.6.a violates Goal 14 by not ensuring that compliance
 7 with Goal 14 must be shown for plan amendments that redesignate resource
 8 land to rural residential uses, Policies 9.2.1-9.3.15 violate Goal 14 by not
 9 ensuring that compliance with Goal 14 must be shown for plan amendments
 10 that redesignate resource land to industrial and commercial uses.

11 **2. Second sub-assignment of error: The decision violates Goal 14**
 12 **by allowing the unlimited rezoning of rural Agricultural and**
 13 **Forest lands without Goal 14 review.**

14 Petitioner incorporates by reference the entire First sub-assignment of
 15 error of the First Assignment of Error, *supra*, as applied to Policies 9.2.1-9.3.15.

16 Just as Policy 3.3.6.a allows unlimited rezoning of “EFU” lands to rural
 17 residential uses, Policy 9.3.15 allows unlimited redesignation of lands currently
 18 designated under “Goals 3 and 4” to industrial uses:

19 “Policy 9.3.15: Properties for which a property owner has
 20 demonstrated that Goals 3 and 4 do not apply may be considered
 21 for Rural Industrial designation as allowed by State Statute,
 22 Oregon Administrative rules and this Comprehensive Plan. Rural
 23 Industrial zoning shall be applied to a new property that is
 24 approved for the Rural Industrial Plan designation.” (App. 87,
 25 Rec. 110)

1 LUBA has found that past acknowledgment of DCCP policies allowing
2 comprehensive plan and zoning map amendments of individual EFU properties
3 was sufficient to forego site-specific Goal 14 analysis for a decision that
4 rezoned a 20-acre EFU property for industrial use:

5 “We conclude that the county correctly determined that the
6 policies and provisions of the DCCP and DCC that apply to the RI
7 zone are independently sufficient to demonstrate that PAPAs that
8 apply the RI plan designation and zone to rural land are consistent
9 with Goal 14 and that uses and development permitted pursuant to
10 those acknowledged provisions constitute rural uses, do not
11 constitute urban uses, and maintain the land as rural land.” *Aceti*
12 *V*, slip op at 8.

13 In another case, LUBA found that the County may forego a site-specific Goal
14 14 analysis for a decision that rezoned another 20-acre EFU property for
15 industrial use because of existing comprehensive plan policies and land use
16 regulations:

17 “For the reasons set out in *Aceti V*, we conclude that the county
18 was entitled to rely on its acknowledged RI zone to ensure
19 compliance with Goal 14, and we do not address this element of
20 the assignment of error further.” *LBNW LLC*, slip op at 12.

21 Goal 14’s prohibition on urbanizing rural land requires site-specific and
22 locational inquiries. The County’s decision to adopt Policies 9.2.1-9.3.15
23 violates Goal 14 by including policies that allow unlimited rezoning of
24 Agricultural and Forest lands but without requiring such site-specific Goal 14
25 analyses. The result is a plan that allows unplanned, disorderly, and inefficient

1 siting of industrial and commercial uses both in far-flung corners of the County
2 and near UGBs. Under the new DCCP, these conversions of Agricultural and
3 Forest land can occur without any future inquiry into the factors for
4 urbanization of rural land from *Curry County* and LUBA’s decision in *Shaffer*
5 *v. Jackson County*, 17 Or LUBA 922, 928 (1989).

6 Just as we argue in the Second sub-assignment to the First Assignment of
7 Error, *supra*, the new DCCP violates Goal 14’s “orderly and efficient transition
8 from rural to urban land use” by allowing unlimited industrial and commercial
9 sprawl, without any regard to where or how much such sprawl is allowed. The
10 decisions in *Aceti V* and *LBNW LLC* found that no site-specific Goal 14 inquiry
11 need be made for a quasi-judicial PAPA application rezones individual EFU-
12 zoned properties to industrial use. In both cases, LUBA held that the County
13 could rely on its acknowledged comprehensive plan and zoning ordinance to
14 satisfy Goal 14.

15 Petitioner challenges the unacknowledged new DCCP now. Goal 14
16 requires “orderly and efficient transition from rural to urban land use,” and
17 Policies 9.2.1-9.3.15 fail to ensure such a transition by authorizing unlimited
18 and haphazard industrial and commercial uses throughout the county. With two
19 haphazard conversions already recently completed (*see Aceti V* and *LBNW*

1 *LLC*), and with others pending locally, it is not unreasonable to assume that
 2 Policies 9.2.1-9.3.15 will enable many more haphazard rezonings of
 3 Agricultural and Forest land to industrial and commercial uses. The County’s
 4 new comprehensive plan violates Goal 14 by failing to include any policies
 5 requiring site-specific Goal 14 review for future PAPAs requesting rezoning to
 6 industrial and commercial uses.

7 **3. Third sub-assignment of error: The decision violates Goal 14**
 8 **by allowing future conversion of Agricultural and Forest lands**
 9 **to industrial and commercial uses without any locational**
 10 **inquiry.**

11 Petitioner incorporates by reference the entire Third sub-assignment of
 12 error of the First Assignment of Error, *supra*, as applied to Policies 9.2.1-9.3.15.

13 Three years after the *Curry County* decision, LUBA described the *Curry*
 14 *County* factor test for determining whether a decision converts rural land to
 15 urban industrial uses in violation of Goal 14 in *Shaffer v. Jackson County*, 17
 16 Or LUBA 922, 928 (1989):

17 “Under the Supreme Court's decision in [*Curry County*], it may
 18 well be there is nothing inherently rural or urban about residential,
 19 commercial, industrial or other types of uses. Rather there are
 20 merely a number of relevant factors to be considered, such
 21 as parcel size, intensity of use, necessity for urban facilities **and**
 22 **proximity to a UGB.**” (emphasis added)

1 In that same decision, LUBA declared a number of other factors that must be
2 considered when determining whether a particular land use offends Goal 14’s
3 prohibition on siting urban industrial uses on rural lands:

4 “(1) relevant characteristics of the proposed use (such as number of
5 employees, noise, odor, dust and other pollutants emitted,
6 associated traffic); (2) the ultimate use of the products of the
7 proposed use (e.g., whether for urban or rural uses, and in what
8 proportions); (3) **the characteristics of urban development in
9 nearby UGBs; (4) where other similar uses in the county are
10 located; and (5) whether there is a practical necessity to locate
11 the proposed use in the rural area, close to a site specific
12 resource.”** *Shaffer*, 17 Or LUBA at 946. (emphasis added)

13 The *Shaffer* case, which concerned a Goal 14 challenge to a decision that
14 allowed industrial uses on rural lands, confirmed that Goal 14 requires a
15 locational inquiry. The decision here, through Policies 9.2.1-9.3.15, allows the
16 siting of new industrial and commercial uses on Agricultural and Forest lands
17 without any site-specific or locational analysis. Addressing a property’s
18 proximity to a UGB, the characteristics of urban development in nearby UGBs,
19 where other similar uses in the county are located, and whether there is a
20 practical necessity to locate the proposed use in the rural area close to a site-
21 specific resource, *Shaffer*, 17 Or LUBA at 946, all depend on where a property
22 is located. A county may not rely on the acknowledged status of its zoning
23 ordinance to assert that rezoning EFU- and Forest-zoned land throughout the

1 county to industrial and commercial uses does not violate Goal 14. *Doob*, 32
2 Or LUBA at 381. The new DCCP, through Policies 9.2.1-9.3.15, violate Goal
3 14 by allowing conversion of Agricultural and Forest lands to industrial and
4 commercial uses without any locational inquiry.

5 **4. Fourth sub-assignment of error: The RI and RC zones were**
6 **created to apply to exception lands and facilitate specific land**
7 **uses for which goal exceptions were taken, and the decision’s**
8 **extension of those zones to non-exception areas absent new**
9 **goal exceptions violates Goal 14 and OAR 660-004-0018.**

10 Petitioner incorporates by reference the entire Fourth sub-assignment of
11 error of the First Assignment of Error, *supra*, as applied to Policies 9.2.1-9.3.15.

12 The County adopted its RI plan designation when it adopted its first
13 comprehensive plan in 1979 to facilitate a handful of properties containing
14 commercial and industrial development that predated state land use laws.
15 *Central Oregon LandWatch v. Deschutes County (“Aceti III”)*, 79 Or LUBA
16 253, 255 (2019). The County’s Rural Industrial plan designation and zoning
17 applied to those specific exception areas. *Id.* The RI zone was amended in the
18 early 2000s to ensure uses in the exception areas were less intensive than uses
19 allowed in unincorporated communities following LCDC’s adoption of its
20 unincorporated communities rules. *Id.* at 256.

1 In the *Aceti V* case, LUBA found that application of the County’s RI zone
2 to new lands did not violate Goal 14 because provisions of the DCCP and DCC
3 authorizing the RI zone had previously been acknowledged by LCDC as
4 allowing industrial uses less intensive than the uses allowed in unincorporated
5 communities:

6 “[C]ounty correctly determined that the policies and provisions of
7 the DCCP and DCC that apply to the RI zone are independently
8 sufficient to demonstrate that PAPAs that apply the RI plan
9 designation and zone to rural land are consistent with Goal 14 and
10 that uses and development permitted pursuant to those
11 acknowledged provisions constitute rural uses, do not constitute
12 urban uses, and maintain the land as rural land. The acknowledged
13 DCC chapter 18.100 provisions that will apply to all development
14 on the property will ensure that any allowed uses and development
15 constitute rural use of rural land, consistent with Goal 14.” *Aceti*
16 *V*, slip op at 17-18.

17 Here, the new DCCP repeals and replaces the former comprehensive
18 plan. App. 1, Rec. 24. The policies and provisions of the DCCP that authorize
19 new industrial and commercial uses on Agricultural and Forest lands must be
20 shown to be compliant with Goal 14 anew. Petitioner asserts that Policies
21 9.2.1-9.3.15 violated Goal 14 by allowing the County’s Rural Industrial and
22 Rural Commercial zones to be applied to additional lands without taking
23 exceptions to Goal 14.

1 Although the RI and RC zones may have been acknowledged to properly
2 implement the goal exceptions taken for the County’s “previously built” and
3 “irrevocably committed” industrial and commercial areas, it does not follow
4 that the RI and RC zones do not urbanize rural land in violation of Goal 14
5 when applied to areas not subject to “previously built” and “irrevocably
6 committed” goal exceptions. Allowing the expansion of uses for which goal
7 exceptions have been taken to lands where no goal exception has been taken
8 violates Goal 14 and OAR 660-004-0018.

9 Again, as argued in the Fourth subassignment to the First Assignment of
10 Error, *supra*, LUBA has repeatedly held that local governments may not
11 authorize new land uses in goal exception areas that vary from the land uses for
12 which Goal exceptions were taken, and may not extend zones created to
13 facilitate goal exceptions to new lands absent a new goal exception. *Geaney v.*
14 *Coos County*, 34 Or LUBA 189, 200 (1998); *DLCD v. Klamath County*, 40 Or
15 LUBA 221, 227 (2001); *Doty v. Coos County*, 42 Or LUBA 103, 115, (2002);
16 *Hood River Valley Residents Committee v. Hood River County*, __ Or LUBA __
17 (LUBA No. 2017-014, June 29, 2017).

18 The RI and RC zones were amended in the early 2000s to ensure that the
19 uses in the 1979 industrial and commercial exception areas “remain rural and

1 that the uses allowed are less intensive than those allowed in unincorporated
2 communities.” *Aceti III* at 256. A use being “less urban” than uses allowed in
3 an unincorporated community does not suffice to prove an industrial or
4 commercial use complies with Goal 14 on lands not subject to a Goal 14
5 exception. New DCCP Policies 9.2.1-9.3.15, which allow unlimited RI and RC
6 uses throughout the county, would change the legal standard for compliance
7 with Goal 14 from proof of whether a use is urban or rural, the standard set by
8 the Supreme Court in *Curry County*, to a standard of whether a use is simply
9 less urban than a use in an unincorporated community. That standard does not
10 exist in Goal 14 or in any other applicable law.

11 Moreover, this uncodified “less urban than a use in an unincorporated
12 community” rule for Goal 14 compliance is contrary to OAR 660-004-0018,
13 which limits uses in goal exception areas to the uses for which a goal exception
14 was taken. The rule makes clear that “exceptions to one goal or a portion of
15 one goal do not relieve a jurisdiction from remaining goal requirements and do
16 not authorize uses, densities, public facilities and services, or activities other
17 than those recognized or justified by the applicable exception.” OAR 660-004-
18 0018(1). “Physically developed or irrevocably committed exceptions [] are

1 intended to recognize and allow continuation of existing types of development
2 **in the exception area.”** *Id.* (emphasis added).

3 Here, new DCCP Policies 9.2.1-9.3.15 allow all of the uses of the RI and
4 RC zones to be applied to unlimited acres of new lands without taking new
5 exceptions to Goal 14. OAR 660-004-0018 disallows extending the RI and RC
6 zones to new lands absent new goal exceptions.

7 **VI. THIRD ASSIGNMENT OF ERROR**

8 **The decision violates Goal 2 by failing to provide an**
9 **adequate factual base upon which to determine whether**
10 **compliance with Goal 14 is achieved where the decision allows**
11 **unlimited redesignation and rezoning of lands designated**
12 **Agriculture and Forest to residential, industrial, and**
13 **commercial development.**

14 **A. PRESERVATION OF ERROR**

15 See the Preservation of Error for the First and Second Assignments of
16 Error.

17 **B. LEGAL STANDARDS OF REVIEW**

18 Legislative land use decisions must be supported by an adequate factual
19 base. Goal 2; OAR 660-015-0000(2); *Columbia Pacific Building Trades*
20 *Council v. City of Portland*, 289 Or App 739, 755, 412 P3d 258 (2018); *1000*
21 *Friends of Oregon v. LCDC*, 244 Or App 239, 268 n11, 259 P3d 1021 (2011).

1 An “adequate factual base” for a legislative land use decision is
2 synonymous with the requirement that a decision be supported by substantial
3 evidence. *1000 Friends of Oregon v. LCDC*, 244 Or App at 268 n11. LUBA
4 determines if a decision is supported by substantial evidence by determining if,
5 viewing the record as a whole, a reasonable person could make the disputed
6 finding. *Restore Oregon v. City of Portland*, 301 Or App 769, 778, 458 P3d
7 703, 710 (2020); *Columbia Pacific Building Trades Council*, 289 Or App at
8 755. An order adopting a legislative land use decision must clearly and
9 precisely state what the local government found to be the facts and fully explain
10 why those facts lead it to the decision it makes. *Tides Unit v. City of Seaside*, 13
11 Or LUBA 84 (1984).

12 C. ARGUMENT

13 The decision violates Goal 2 because it is unsupported by a factual base
14 that shows that future plan amendments under Policies 3.3.6.a and Policies
15 9.2.1-9.3.15 will not result in the urbanization of rural land in violation of Goal
16 14.

17 Comprehensive plan and zoning code amendments are unsupported by
18 substantial evidence when they allow the creation of new residential lots but
19 without showing that density will not be at an urban level. *Marvin II*, slip op at

1 10 (“Because the JCC allows the creation of PUDs with lot sizes lower than the
2 zone minimum lot size and the board of commissioners relied on the ability to
3 form PUDs to meet applicable criteria, petitioners argue that there is not
4 substantial evidence in the record that density will not be at an urban level. We
5 agree.”).

6 As discussed in the Fifth subassignment to the First Assignment of Error,
7 *supra*, the County’s MUA and RR zones allow planned developments with no
8 minimum lot size, and cluster developments with 2-acre minimum lot sizes.
9 The decision, via Policy 3.3.6.a, allows these zones to be extended to
10 Agricultural and Forest lands throughout the County. Absent evidence in the
11 record to the contrary, the decision is unsupported by an adequate factual base
12 showing that lands rezoned to MUA and RR under Policy 3.3.6.a will not be
13 developed with urban levels of density.

14 The decision is similarly unsupported by an adequate factual base
15 showing that the effectiveness of the County’s UGBs will not be frustrated by
16 rezoning Agricultural and Forest lands throughout the County to the County’s
17 MUA and RR zones under Policy 3.3.6.a and the County’s RI and RC zones
18 under Policies 9.2.1-9.3.15. Proximity to an acknowledged UGB and whether
19 the proposed use is likely to become a magnet that draws people from outside

1 the rural area, and whether the proposed use is likely to rely on urban
2 infrastructure and services, are factors that must be considered in the Goal 14
3 analysis. *Oregon Shores Conservation Coalition*, 55 Or LUBA at 550; *Marvin*
4 *II*, slip op at 9. Nowhere in the decision, its findings, or the whole record does
5 the County point to facts demonstrating that Policy 3.3.6.a and Policies 9.2.1-
6 9.3.15 will not frustrate the effectiveness of UGBs under these factors derived
7 from *Curry County*.

8 The decision is similarly unsupported by an adequate factual base
9 demonstrating that the uses in the RI and RC zones are not urban in nature such
10 that an exception to Goal 14 is required before they may be applied. The RI
11 zone uses include pulp and paper manufacturing, plastic factories, and fiber
12 factories, DCC 18.100.020; the RC zone uses includes grocery stores, taverns,
13 and restaurants. DCC 18.74.020(B). The decision lacks factual information
14 showing that allowing the uses of the RI and RC zones on any Agricultural- or
15 Forest-designated property, as allowed by Policies 9.2.1-9.3.15, will not
16 urbanize rural land in violation of Goal 14.

17 An exception to Goal 14 is required before the zones can be approved for
18 application on rural lands. The decision is unsupported by an adequate factual
19 base showing that Policy 3.3.6.a and Policies 9.2.1-9.3.15 comply with Goal 14.

1

VII. CONCLUSION

2

3

LandWatch respectfully requests that LUBA reverse or, alternatively,
remand the County's decision in this case.

4

DATED this ____ day of February, 2025.

5

Rory Isbell OSB #173780
Attorney for Petitioner Central
Oregon LandWatch

**CERTIFICATE OF COMPLIANCE
WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS**

Brief length

I certify that **PETITIONER’S PETITION FOR REVIEW** complies with the word count limitation for a Petition for Review in OAR 661-010-0030(2)(b) and contains 10,089 words.

Type size

I further certify that the size of the type in **PETITIONER’S PETITION FOR REVIEW** is not smaller than 14 point for both the text of the brief and footnotes as required by OAR 661-010-0030(2)(e).

Rory Isbell OSB #173780
Attorney for Petitioner Central
Oregon LandWatch

CERTIFICATE OF FILING

I hereby certify that on February ____, 2025, I filed the original of **PETITIONER'S PETITION FOR REVIEW** for LUBA Case No. 2024-080 with the Land Use Board of Appeals, 201 High Street SE, Suite 600, Salem, Oregon, 97301-3398, pursuant to OAR 661-010-0075(2)(a)(B), by first-class mail with the U.S. Postal Service.

DATED this ____ day of February, 2025.

Rory Isbell, OSB #173780
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on February ____, 2025, I served a true and correct copy of **PETITIONER'S PETITION FOR REVIEW** for LUBA Case No. 2024-080, by first class mail on the following:

David Doyle
Deschutes County Counsel's Office
1300 Wall Street, 2nd Floor
Bend, OR 97701

D. Adam Smith
Schwabe, Williamson & Wyatt, PC
360 SW Bond Street, Suite 500
Bend, OR 97702

DATED this ____ day of February, 2025.

Rory Isbell, OSB #173780
Attorney for Petitioner

APPENDIX

	Rec.	App.
Deschutes County Ordinance No. 2024-007 (including new DCCP and findings)	24	1