

FILED: July 13, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, FRIENDS OF YAMHILL COUNTY
and ILSA PERSE,
Petitioners,

v.

LAND CONSERVATION AND DEVELOPMENT COMMISSION
and CITY OF MCMINNVILLE,
Respondents.

Land Conservation and Development Commission
06WKTASK001709, 08WKTASK001760

A134379

Argued and submitted on September 28, 2010.

Mary Kyle McCurdy argued the cause and filed the briefs for petitioners.

Steven Shipsey, Assistant Attorney General, argued the cause for respondent Land Conservation and Development Commission. On the brief were John R. Kroger, Attorney General, Jerome Lidz, Solicitor General, and Denise G. Fjordbeck, Attorney-in-Charge Civil/Administrative Appeals.

Jeffrey G. Condit argued the cause for respondent City of McMinnville. With him on the brief was Miller Nash LLP.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Landau, Judge pro tempore.

SERCOMBE, J.

Reversed and remanded.

1 begin by describing the legal framework for regulation of the future uses of land around
2 an incorporated city and the periodic review planning process used to adopt those
3 regulations. ORS 197.175(1) requires cities and counties to exercise their planning and
4 zoning responsibilities in accordance with state land use statutes and special rules (goals)
5 approved by LCDC. ORS 197.175(2) specifically directs that each city and county
6 "adopt, amend and revise comprehensive plans in compliance with goals approved by
7 [LCDC]." The LCDC goals, in turn, set out substantive standards for the content of
8 comprehensive plans. However, a city or county can take an "exception" to the
9 application of a goal to particular property regulated by the comprehensive plan.

10 We recently described the relationship of the goals and the exception
11 process in [Waste Not of Yamhill County v. Yamhill County](#), 240 Or App 285, 287-89, 246
12 P3d 493 (2010), [adh'd to as modified on recons](#), 241 Or App 199, ___ P3d ___ (2011):

13 "Some of those goals require plans to restrict the use or development of
14 different types of resource lands, *e.g.*, Goal 3 (Agricultural Lands), OAR
15 660-015-0000(3), and Goal 4 (Forest Lands), OAR 660-015-0000(4).
16 When a city or county wishes to adopt a property-specific plan provision
17 that is inconsistent with a goal requirement, it approves an exception to that
18 goal requirement as part of the comprehensive plan. * * *

19 "ORS 197.732(2) [and Goal 2, Part II] * * * describe[] three types
20 of exceptions: for physically developed land that is not available for the
21 goal use; for land that is 'irrevocably committed' to a nongoal use; and for
22 land needed for a use not allowed by a goal policy. The latter type of
23 exception, a 'reasons' or 'need' exception is allowed by ORS 197.732(2)(c)
24 [and Goal 2]:

25 "A local government may adopt an exception to a goal if:

26 ""* * * * *

27 ""(c) The following standards are met:

1 "(A) Reasons justify why the state policy embodied in the
2 applicable goals should not apply;

3 "(B) Areas that do not require a new exception cannot reasonably
4 accommodate the use;

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

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

12 Thus, when a city amends its comprehensive plan, including any amendment to its UGB,
13 the city must justify the change as being consistent with the LCDC goals, except to the
14 extent that compliance with a goal is excused by an exception to its application.

15 Goal 14 (Urbanization), OAR 660-015-0000(14), provides particular
16 standards for setting or changing a UGB:¹

17 "Urban growth boundaries shall be established to identify and
18 separate urbanizable land from rural land. Establishment and change of the
19 boundaries shall be based upon considerations of the following factors:

20 "(1) Demonstrated need to accommodate long-range urban
21 population growth requirements consistent with LCDC goals;

22 "(2) Need for housing, employment opportunities, and livability;

¹ The provisions of Goal 14 were amended by LCDC on April 28, 2005. The amendments allow local governments "that initiated an evaluation of the [UGB] land supply prior to April 28, 2005, and consider[ed] an amendment of the UGB based on that evaluation" to apply the former version of Goal 14 to that amendment. The city applied the former version of Goal 14. All references to Goal 14 and its implementing regulations in this opinion pertain to the former Goal 14 and the regulations in effect prior to the goal amendments, unless otherwise noted.

1 "(3) Orderly and economic provision for public facilities and
2 services;

3 "(4) Maximum efficiency of land uses within and on the fringe of
4 the existing urban area;

5 "(5) Environmental, energy, economic and social consequences;

6 "(6) Retention of agricultural land as defined, with Class I being the
7 highest priority for retention and Class VI the lowest priority; and,

8 "(7) Compatibility of the proposed urban uses with nearby
9 agricultural activities.

10 "The results of the above considerations shall be included in the
11 comprehensive plan. In the case of a change of a boundary, a governing
12 body proposing such change in the boundary separating urbanizable lands
13 from rural land, shall follow the procedures and requirements as set forth in
14 the Land Use Planning goal (Goal 2) for goal exceptions."

15 The referenced Goal 2 standards for exceptions are to the exception standards noted
16 above. ___ Or App at ___ (slip op at 2-3).

17 ORS 197.298 supplements the Goal 14 criteria used to justify a UGB
18 change. The statute requires that land be added to a UGB in a priority sequence:

19 "(1) In addition to any requirements established by rule addressing
20 urbanization, land may not be included within an urban growth boundary
21 except under the following priorities:

22 "(a) First priority is land that is designated urban reserve land under
23 ORS 195.145, rule or metropolitan service district action plan.

24 "(b) If land under paragraph (a) of this subsection is inadequate to
25 accommodate the amount of land needed, second priority is land adjacent to
26 an urban growth boundary that is identified in an acknowledged
27 comprehensive plan as an exception area or nonresource land. Second
28 priority may include resource land that is completely surrounded by
29 exception areas unless such resource land is high-value farmland as
30 described in ORS 215.710.

1 (c) If land under paragraphs (a) and (b) of this subsection is
2 inadequate to accommodate the amount of land needed, third priority is
3 land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

4 (d) If land under paragraphs (a) to (c) of this subsection is
5 inadequate to accommodate the amount of land needed, fourth priority is
6 land designated in an acknowledged comprehensive plan for agriculture or
7 forestry, or both.

8 (2) Higher priority shall be given to land of lower capability as
9 measured by the capability classification system or by cubic foot site class,
10 whichever is appropriate for the current use.

11 (3) Land of lower priority under subsection (1) of this section may
12 be included in an urban growth boundary if land of higher priority is found
13 to be inadequate to accommodate the amount of land estimated in
14 subsection (1) of this section for one or more of the following reasons:

15 (a) Specific types of identified land needs cannot be reasonably
16 accommodated on higher priority lands;

17 (b) Future urban services could not reasonably be provided to the
18 higher priority lands due to topographical or other physical constraints; or

19 (c) Maximum efficiency of land uses within a proposed urban
20 growth boundary requires inclusion of lower priority lands in order to
21 include or to provide services to higher priority lands."

22 Thus, ORS 197.298(1) requires that the statutory priorities be applied to
23 UGB amendments "[i]n addition to any requirements established by rule addressing
24 urbanization," *i.e.*, Goal 14 and its implementing administrative rules. The priority
25 statute directs the application of different, but somewhat analogous, factors in approving
26 UGB changes than those mandated by Goal 14. This case raises questions about the fit
27 between Goal 14 and ORS 197.298: whether Goal 14 is applied to the classification of
28 lands as eligible for prioritization under ORS 197.298, how Goal 14 works in
29 determining whether higher-priority land is "inadequate to accommodate the amount of

1 land needed," and the ways the two policies are otherwise integrated in their application.

2 One final legal setting is worthy of discussion at this point. The plan
3 amendments in this case arose in the context of "periodic review" of the city's
4 comprehensive plan. The statutes that define the periodic review process provide context
5 to an understanding of the demands of Goal 14 and ORS 197.298 when a UGB is
6 changed as part of a plan update.

7 Once a local comprehensive plan has been approved or "acknowledged" by
8 LCDC as consistent with the statewide planning goals, ORS 197.628(1) requires that the
9 plan and implementing land use regulations be periodically updated

10 "to respond to changes in local, regional and state conditions to ensure that
11 the plans and regulations remain in compliance with the statewide planning
12 goals adopted pursuant to ORS 197.230, and to ensure that the plans and
13 regulations make adequate provision for economic development, needed
14 housing, transportation, public facilities and services and urbanization."

15 ORS 197.296 specifies particular work tasks for larger cities during
16 periodic review to accommodate demand for new housing. A locality must "demonstrate
17 that its comprehensive plan * * * provides sufficient buildable lands within the urban
18 growth boundary * * * to accommodate estimated housing needs for 20 years." ORS
19 197.296(2). To do this, ORS 197.296(3) requires that a local government shall

20 (a) Inventory the supply of buildable lands within the urban growth
21 boundary and determine the housing capacity of the buildable lands; and

22 (b) Conduct an analysis of housing need by type and density range,
23 in accordance with ORS 197.303 and statewide planning goals and rules
24 relating to housing, to determine the number of units and amount of land
25 needed for each needed housing type for the next 20 years."

1 downtown area and along major roads, infill and redevelopment of underutilized land,
2 and creation of "neighborhood activity centers" (NACs), in order to intensify land uses in
3 the UGB expansion areas.

4 The plan described NACs as follows:

5 "Under this concept, neighborhoods are each centered or organized around
6 an activity center that would provide a range of land uses within walking
7 distance of neighborhoods--preferably within a one-quarter mile area--
8 including neighborhood-scaled [commercial and civic uses]. Surrounding
9 the activity center (or **focus area**) are **support areas**, which include the
10 highest-density housing within the neighborhood, with housing densities
11 progressively decreasing outward.

12 "These activity centers would be selected due to their location, distribution,
13 proximity to vacant buildable lands, ability to accommodate higher
14 intensity and density development, and their context and ability to foster the
15 development of a traditional, or complete, neighborhood. The selected
16 Neighborhood Activity Centers should be equally spaced around the edge
17 of the McMinnville urban area, with the downtown area serving as the
18 geographic center or hub."

19 (Boldface in original.) After further specifying those technical parameters for an NAC,
20 which require a high degree of comprehensive master planning and a defined amount of
21 land, the plan concludes that

22 "Neighborhood Activity Centers should not be located in areas that are
23 heavily parcelized, or characterized by numerous individual ownerships.
24 Priority should be given to locations that consist primarily of large vacant
25 parcels in order to maximize the ability to realize such development in a
26 cost effective, comprehensively planned manner."

27 The city determined that the NAC form of development would facilitate the construction
28 of new medium-density to high-density housing, as compared with the low-density
29 residential development pattern of the past, and decrease the quantity of land that needed
30 to be added to the UGB by approximately 225 acres.

1 With those assumptions, the city determined that it needed to expand the
2 UGB by 1,188 gross acres, including 890 buildable acres. The city concluded that this
3 was necessary to accommodate a need for 537 acres for residential use (341 acres for
4 low-density residential development and 106 acres for medium-density and high-density
5 residential use), 193 acres for office and commercial uses, and 314 acres for parks in
6 order to serve an estimated population of 44,055 by 2023.² The plan and its findings
7 quantified needs for additional land supply, both inside and outside of the existing urban
8 growth boundary, by land use type (*e.g.*, single-family detached housing, manufactured
9 dwellings, row/townhouses, and apartments) and zoning designation.

10 The adopted UGB changes designated four parts of the added land for
11 neighborhood activity centers (Three Mile Lane, Southwest, Northwest, and Grandhaven
12 NACs). For the most part, those boundary changes captured prime agricultural land.
13 Another area of agricultural land was added, a good part of which had already been
14 developed as a city park (Norton Lane). The city also proposed to add four exception
15 areas to the boundary to meet residential needs (Fox Ridge Road, Redmond Hill Road,
16 Riverside South, and Lawson Lane). The city decided, however, not to add five
17 exception areas (Westside Road, Bunn's Village, Old Sheridan Road, Riverside North,
18 and Booth Bend Road) for various reasons.

19 The findings adopted to justify those actions evaluated a number of
20 considerations in applying ORS 197.298(1) to nine alternative exception areas, including

² The remaining acres were needed for institutional and governmental uses.

1 potential for annexation, costs of water service, transportation circulation issues,
2 consistency with a compact urban form (distance from commercial services and schools),
3 compatibility with adjacent land uses, and environmental concerns. The findings
4 analyzed whether the exception areas would be suitable for an NAC. Both the plan and
5 the adopted findings concluded that the five excluded exception areas would be
6 insufficient to meet that need:

7 "These sub-areas are, in summary, extensively parcelized; held in multiple
8 ownerships; require costly extension or upgrades to existing public utilities
9 to support urban density development; are located some distance from
10 existing public utilities, schools, and other services; in some cases, located
11 adjacent to heavy industrial development and rail; and have extensive
12 amounts of rural residential development in locations and patterns that
13 make higher density development impracticable or [un]timely."

14 The findings further explained, "Absent supporting urban residential development, it is
15 not appropriate that these sub-areas be considered for other identified residential land
16 needs, such as schools, parks, and churches, or for commercial land needs." The plan
17 assumed that future low-density residential land need could be satisfied by land within
18 the existing UGB. The findings then evaluated the included exception areas and five
19 parcels of high-quality agricultural land (Norton Lane, Three Mile Lane, Northwest,
20 Grandhaven, and Southwest properties) for consistency with the Goal 14 locational
21 factors.³

22 The city presented the MGMUP amendments and supporting

³ Another agricultural area, West Hills South, was analyzed but not proposed to be added to the UGB at that time.

1 documentation to the Department of Land Conservation and Development (DLCD or
2 department) for approval as a completed work task.⁴ Petitioners 1000 Friends of Oregon
3 and Friends of Yamhill County objected to the city's submissions and appealed the
4 director's decisions on those objections to LCDC. After a hearing, the commission
5 approved inclusion of three exception areas in the UGB (Riverside South, Fox Ridge
6 Road, and Redmond Hill), and remanded the proceeding to the city for an evaluation of
7 adding lower-quality agricultural land, as well as, among other things, consideration of
8 parkland needs and the exclusion of floodplain areas from the proposed UGB. On
9 remand, the city adopted ordinances to remove floodplains from three expansion
10 subareas, adjust slightly the calculations of needed lands, change the boundaries of the
11 added areas, correct implementing zoning, justify its parklands assumptions, and
12 otherwise respond to the remanding directives. In particular, the city added some lower-
13 quality agricultural land (Fox Ridge North and West Hills South), and adopted new
14 findings to justify its exclusion of other lower-quality agricultural lands.

15 Ultimately, the city determined that it needed to add 663 gross acres to the
16 UGB for residential land needs to be developed at a higher density (6.3 dwellings/acre)

⁴ Under the periodic review process, when a work task is completed, the actions are submitted to the DLCD director for approval. ORS 197.633(4). The director can approve or remand the work task, or refer the work task to LCDC. *Id.* If the director approves completion of the work task, the action is final unless an interested party files an objection to the approval. If a work task is referred or appealed, LCDC will consider the matter under a process set out by its rules. ORS 197.633(5). *See also* ORS 197.633(2) (required rulemaking for periodic review process); OAR ch 660, div 25 (periodic review rules).

1 than allowed under low-density residential zoning. It proposed to add four NAC areas to
2 meet 488 acres of that need, two additional parcels of agricultural land to address 175
3 acres of that need (Norton Lane and West Hills South), and the three previously approved
4 exception areas to be developed for residences at lower densities (Riverside South, Fox
5 Ridge Road, and Redmond Hill Road).

6 And so, the city sought DLCD approval of the retooled UGB amendments.
7 Petitioners filed extensive and particular objections to the submission with the DLCD
8 director. In general, petitioners asserted that the city zoning map and regulations did not
9 adequately implement the plan directives, the large size of the proposed UGB expansion
10 was not justified, and the expansion improperly included prime agricultural land instead
11 of available exception areas and areas of poorer soils. Petitioners argued that those
12 actions were inconsistent with ORS 197.298, Goal 14, and the Goal 2 exception criteria.
13 Petitioners objected to particular city findings that ruled out individual exception areas
14 and lower-quality agricultural lands, complaining either that the findings lacked factual
15 support or were insufficient to explain the particular decision under all applicable
16 decisional standards. The objections were not sustained by the DLCD director, who
17 approved the UGB changes.

18 Petitioners appealed to LCDC. Petitioners took issue with DLCD's
19 response to their objections. They complained that the DLCD report did not respond to
20 their objections and that DLCD otherwise erred in sustaining factual findings and making
21 legal determinations about the various parcels included and excluded from the proposed

1 UGB change. Among the many specific assertions, petitioners argued that the NAC
2 designations over-allocated needed amounts of commercial land and parkland, the
3 boundary expansion excluded over 225 buildable acres of exception lands, and the
4 relevant legal standard was "whether exception areas can accommodate the use at all, not
5 whether they can do so as efficiently or beneficially as farmland." Specifically,
6 petitioners alleged that "the city's identified land needs are not limited to pedestrian- and
7 transit-oriented development in neighborhood activity centers" and added that,
8 "[u]nder ORS 197.298, resource land cannot be included in a UGB instead
9 of exception land if the exception land can reasonably accommodate some
10 portion of identified needs. It cannot be excluded simply because it cannot
11 meet one type of identified land need."

12 Petitioners reiterated that the exclusion of parcels with lower-quality agricultural lands
13 could not be justified because of their inability to accommodate an NAC when "the city
14 has [a] specific, identified land need for low density housing that exceeds the capacity of
15 all the exception areas it has included within the UGB."

16 Following a hearing, the commission upheld the department's approval of
17 the plan amendments. Petitioners sought review in this court. After petitioners filed their
18 opening brief, LCDC withdrew its original order for reconsideration.

19 The order on reconsideration generally approved the exclusion of the
20 exception areas because "they could not accommodate the identified land need
21 (MGMUP, pp. 6-5 to 6-10)"⁵ based on physical constraints, location relative to existing

⁵ The referenced part of the MGMUP is a summary of the analysis of alternative sites for a UGB expansion. It describes the city's "identified land needs" as needs for "an

1 and planned facilities, surrounding uses, market demand, and "[e]xisting development
2 patterns and other factors affecting urbanization." LCDC more particularly justified the
3 failure to include particular exception areas because the area could not (1) be served with
4 public facilities under ORS 197.298(3)(b); (2) "reasonably accommodate the need for
5 pedestrian- and transit-oriented development in a neighborhood activity center"; (3)
6 "accommodate residential use"; or (4) "reasonably accommodate the need for a compact,
7 pedestrian-friendly urban area." As to the omitted lower-quality resource land, West
8 Hills was excluded because it could not "reasonably accommodate the city's identified
9 need [for 'medium- or high-density housing']" and because of topographic constraints to
10 the supply of water under ORS 197.298(3)(b). The resource area north of Fox Hills Road
11 was left out because, "pursuant to Goal 2, the city did not need to consider lands under
12 ORS 197.298 that could not reasonably accommodate its identified need." The resource
13 land near the airport was determined to not "accommodate an identified need due to
14 safety issues." Based on these and other extensive findings, LCDC concluded that "the
15 city has adequately justified those areas included and excluded from the UGB based on
16 relevant criteria." The LCDC order is before us on review.

17

increased percentage of multi-family, or single-family attached, housing," in general, and neighborhood activity centers, in particular, and for "314 acres of public parkland, 96 acres for public school use, and 106 acres for future commercial development." The summary further notes the "identified residential land needs as they are described in the 'McMinnville Residential Land Needs Analysis' (and the revisions to that document), and the 'Urbanization Element Update.'" The residential land needs analysis describes generic residential land needs.

1 III. CONTENTIONS OF THE PARTIES

2 Petitioners raise three assignments of error. We reject the second and third
3 assignments of error without further discussion. The remaining assignment of error
4 raises a number of general concerns about whether the city properly applied Goal 14 and
5 ORS 197.298 to sort through potentially eligible property for inclusion in the UGB.
6 Those concerns are that the city initially erred in amending the UGB and LCDC erred in
7 upholding the UGB decisions because (1) the city did not apply the Goal 14 standards
8 completely or consistently when it assessed exception areas by, on the one hand, using a
9 particular factor to rule out some land with a disqualifying characteristic, but, on the other
10 hand, including land in the boundary with that same quality; and (2) the city ruled out
11 some land for consideration by defining its land needs too particularly at the front end of
12 the ORS 197.298 prioritization--*i.e.*, land needed for use as an NAC or for particularized
13 residential land needs--so that less exception land was available for the city's particular
14 needs and more agricultural land was included in the boundary than otherwise would
15 have been included had the city's needs been defined more generically.

16 As to the latter contention, respondents argue that ORS 197.296(3)(b)
17 requires the city to determine "housing need by type and density range, in accordance
18 with ORS 197.303 and statewide planning goals and rules relating to housing." To the
19 extent that need cannot be met by zoning changes inside the UGB, then land can be
20 added to the UGB under ORS 197.298 to address those particular housing needs.
21 Respondents claim that that is what the city did.

1 LCDC defends its decision more specifically. The commission contends
2 that Goal 14, in general, and its incorporated Goal 2 exception factors can be used to
3 define even more particular land needs at the front end of the ORS 197.298 analysis.
4 Thus, LCDC asserts that the city defined the NAC land form as the need to be evaluated
5 under the priorities statute and relied on the desired characteristics of an NAC site as
6 reasons to rule out higher-priority land in order to resort to lower-priority land under ORS
7 197.298. Petitioners disagree and counter that, even if an NAC does qualify as a generic
8 or specific land need under ORS 197.298, the land added through the NACs does not
9 satisfy all of the city's quantitative needs for additional residential land and a more
10 rigorous application of ORS 197.298 is required to justify bringing agricultural land into
11 the boundary for that non-NAC need.

12 Petitioners also dispute the sufficiency of LCDC's findings on their
13 objections to the city's rationale for not including particular exception areas in the UGB
14 (Old Sheridan Road, Riverside North, and Booth End Road) or not adding lower-quality
15 agricultural land (West Hills, north of Fox Ridge Road, north of McMinnville Airport,
16 and various smaller tracts) before including prime agricultural land. The city and LCDC
17 respond that the locational factors in Goal 14 were properly applied to categorize those
18 exception and lower-value agricultural lands as insufficient.

19 Many of the general differences between the parties stem from their
20 different understandings about how ORS 197.298 works to sort land available for
21 inclusion within a UGB. In petitioners' view, the priorities statute works to categorize

1 guided primarily by the text and context of the statute, in light of any pertinent legislative
2 history. [State v. Gaines](#), 346 Or 160, 171-72, 206 P3d 1042 (2009). In the analysis of the
3 text of the statute, we give words of common usage their "plain, natural, and ordinary
4 meaning." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143
5 (1993). That textual analysis, of course, is assisted by our prior construction of the
6 statutory terms. [Waite v. Dempsey](#), 203 Or App 136, 141, 125 P3d 788 (2005). The
7 context of a statute includes the entire enactment of which it was a part, [State v. Ortiz](#),
8 202 Or App 695, 699-700, 124 P3d 611 (2005), as well as related statutes on the same
9 subject, *State v. Carr*, 319 Or 408, 411-12, 877 P2d 1192 (1994).

10 A. *Step One: Determine the land needed under ORS 197.298(1)*

11 The first issue concerns how to categorize land needs that arise from
12 periodic review for purposes of the application of ORS 197.298 to a large-scale
13 expansion of a UGB. LCDC and the city argue that ORS 197.298 can be applied to
14 prioritize areas of potential UGB expansion based upon the functional needs of
15 particularly intended land uses (*i.e.*, an NAC). Petitioners, by contrast, suggest that the
16 statute is applied to broad, generic types of land use needs that are identified during
17 periodic review (*e.g.*, 250 acres for residential uses) and that adequacy determinations
18 under ORS 197.298(1) are less particular in focus.

19 Again, the descending priorities in ORS 197.298(1) are applied to
20 determine whether the priority land is "inadequate to accommodate the amount of land
21 needed." The first step is to determine the "amount of land needed." That determination

1 is necessarily made by the application of Goal 14, which provides that "[e]stablishment
2 and change of the boundaries shall be based upon considerations of the following factors:

3 (1) Demonstrated need to accommodate long-range urban population growth
4 requirements consistent with LCDC goals; (2) Need for housing, employment
5 opportunities, and livability * * *." In [*Residents of Rosemont v. Metro*](#), 173 Or App 321,
6 328, 21 P3d 1108 (2001), we explained that

7 "[w]e held in *Baker [v. Marion County]*, 120 Or App 50, 852 P2d 254, *rev*
8 *den*, 317 Or 485 (1993),] that factors 1 and 2 of Goal 14 are interdependent
9 and that, if one of the factors is not fully satisfied, or is less determinative,
10 that factor must still be considered and discussed in deciding if a need for
11 expansion of a UGB has been shown under factors 1 and 2 of Goal 14."

12 (Footnote omitted.) In the context of periodic review, Factor 1 pertains to a
13 determination of overall land need in order to accommodate population growth. Factor 2
14 requires subcategorization of that need at least to specify separate quantities of land
15 needed for "housing, employment opportunities, and livability." Because different types
16 of land use consume different amounts of land (*e.g.*, the dwellings/acre densities for low-,
17 medium-, and high-density residential development), determining the amount of land
18 needed to be added to a UGB during periodic review under Factors 1 and 2 necessarily
19 requires differentiation of land use types according to their land consumption attributes.
20 The coordinated application of ORS 197.298 with Goal 14 ("[i]n addition to any
21 requirements established by rule addressing urbanization") implies that ORS 197.298 is
22 applied during periodic review to the quantified land use needs identified by the
23 operation of Factors 1 and 2 of Goal 14.

1 That application of ORS 197.298 is more directly required by ORS 197.296
2 during the periodic review process. That statute prompts a quantification of the amounts
3 of land needed for specific residential purposes prior to UGB amendments that result
4 from the periodic review process.⁶ As part of that process, ORS 197.296(3) requires an
5 analysis of "housing need by type and density range * * * to determine the number of
6 units and amount of land needed for each needed housing type for the next 20 years." If
7 those needs cannot be met within the existing UGB through rezonings or infill, then the
8 locality must "[a]mend its urban growth boundary to include sufficient buildable lands to
9 accommodate housing needs." ORS 197.296(6)(a). The statutory direction to amend the
10 UGB "to accommodate housing needs" that are classified "by type and density" strongly
11 implies that the next step--the operation of ORS 197.298--works on those same
12 inventoried needs. Thus, for purposes of periodic review, ORS 197.298 works on types
13 of land uses that generate the need for specific quantities of land as a result of the
14 application of the need factors of Goal 14 and related statutory directives, including ORS
15 197.296.⁷ We reject petitioners' general contention that LCDC erred in applying ORS

⁶ The 1995 Legislative Assembly adopted the initial versions of ORS 197.296 and ORS 197.298 as part of one law. Or Laws 1995, ch 547. In construing the meaning of a statute, we have looked at the context of related statutes in the same chapter in which a provision has been codified, *Morsman v. City of Madras*, 203 Or App 546, 561, 126 P3d 6, *rev den*, 340 Or 483 (2006), and at other provisions of the bill enacting that statute, *Ortiz*, 202 Or App at 699-700.

⁷ LCDC did not approve any addition to the McMinnville UGB because "[s]pecific types of identified land needs cannot be accommodated on higher priority lands" under ORS 197.298(3)(a). We need not apply that part of the statute to dispose of the contentions in this review proceeding. ORS 197.298(3)(a) does have contextual

1 197.298(1) to evaluate the city's need for higher-density residential land, as opposed to all
2 residential needs.⁸

3 B. *Step Two: Determine the adequacy of candidate lands under ORS*
4 *197.298(1) and (3)*

5
6 1. *General scheme characteristics--the tension between ORS 197.298*
7 *and Goal 14*

8
9 The next step is somewhat more complicated--the application of ORS
10 197.298(1) and (3), together with Goal 14, to locate and justify the inclusion of land to
11 fill that quantified need. ORS 197.298(1) provides that its prioritization scheme, which
12 allows for bringing prime resource land into the UGB as a last resort, is "[i]n addition to

relevance, however, in contrasting the types of "[s]pecific * * * land needs" under ORS 197.298(3) with the types of land use needs identified at the front end of ORS 197.298 as the statute is applied during the periodic review process. The text of ORS 197.298(3) suggests that its "specific types" pertain to need for land of a particular quality or situation, such as size, site characteristics, service levels, or proximity to other land uses, that occurs only on lower-priority land. For example, ORS 197.712(2)(c) requires comprehensive plans to "provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies." That more discrete land need is in contrast to the more generic land use needs identified during periodic review and used in making adequacy determinations under ORS 197.298(1).

⁸ We need not decide the relationship of the current Goal 14 to ORS 197.298. The land need portion of Goal 14 now requires that a UGB change be based on

"(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).

"In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need."

1 any requirements established by rule addressing urbanization"--a plain reference to Goal
2 14 (Urbanization) and its implementing rules. As noted above, Goal 14 sets out seven
3 factors for changing a UGB: two "need" factors relate to determining the need for
4 additional land ("[d]emonstrated need to accommodate long-range population growth"
5 and "[n]eed for housing, employment opportunities, and livability") and five "locational"
6 factors relate to justifying the selection of land to satisfy those determined needs (either
7 inside the existing UGB or at specific locations outside the UGB) based on public
8 facilities and services, efficiency of land uses, consequences of any allowed development,
9 retention of agricultural land for farm use, and compatibility of development with nearby
10 agricultural activities.⁹

11 In prior decisions concerning the application of Goal 14 to UGB changes,
12 we have required that all five locational factors be considered together and balanced in
13 assessing the alternative locations for a UGB change. In [*Citizens Against Irresponsible*](#)
14 [*Growth v. Metro*](#), 179 Or App 12, 17, 38 P3d 956 (2002), we concluded that the
15 locational factors in Goal 14 "do not stand alone but represent * * * several factors to be
16 considered and balanced when amending a UGB. * * * No single factor is of such
17 importance as to be determinative in a [] UGB amendment proceeding, nor are the

⁹ The incorporated Goal 2 exception standards also require an analogous assessment of the reasons for a UGB change (comparable to Goal 14, Factors 1 and 2); why areas that do not require an exception to Goal 14 (*i.e.*, areas already inside the UGB) "cannot reasonably accommodate the use"; the long-term environmental, economic, social, and energy consequences of expanding at a particular location, as opposed to other possible locations; and the compatibility of development allowed by the expansion with adjacent uses.

1 individual factors necessarily thresholds that must be met." Similarly, in [1000 Friends of](#)
2 [Oregon v. Metro](#), 174 Or App 406, 409-10, 26 P3d 151 (2001), we noted that

3 "the locational factors are not independent approval criteria. It is not
4 necessary that a designated level of satisfaction of the objectives of each of
5 the factors must always be met before a local government can justify a
6 change in a UGB. Rather, the local government must show that the factors
7 were 'considered' and balanced by the local government in determining if a
8 change in the UGB for a particular area is justified. It is within a local
9 government's authority to evaluate the Goal 14 factors and exercise its
10 judgment as to which areas should be made available for growth."

11 In other words, under Goal 14, an expansion of a UGB to include agricultural land could
12 be justified if considerations of the cost of public facilities, land use efficiency, and
13 environmental, energy, economic, and social consequences and compatibility with nearby
14 land were favorable.

15 By contrast, ORS 197.298 appears to operate less flexibly. Under the
16 priorities statute, prime agricultural land can be included within a UGB *only if* urban
17 reserve land, nonresource land, exception land, and marginal land are "inadequate to
18 accommodate the amount of land needed" for identified urban uses.

19 So, which scheme ultimately controls the choice of where to expand a
20 UGB--the flexible Goal 14 or the more rigid ORS 197.298? Our case law--in a very
21 imprecise way--suggests that the answer may be either or both.

22 We have previously determined that Goal 14 interacts with ORS 197.298 in
23 two ways. First, the two operate *independently* to justify a UGB expansion. Compliance
24 with ORS 197.298 does not absolve the independent and separate requirement to apply
25 the Goal 14 factors to a proposed UGB change. In *Residents of Rosemont*, two cities

1 challenged Metro's decision to expand the Portland-area UGB in order to address a need
2 for housing in a particular part of the metropolitan area. An issue on review was whether
3 a subregional need for housing could qualify under the Goal 14 need factors as a basis for
4 expanding the UGB without considering that need in the context of the overall regional
5 need for housing. We held that it could not, at least in the context presented. We also
6 concluded that compliance with the criteria in ORS 197.298 did not excuse the separate
7 application of Goal 14 to the UGB amendment:

8 "Those priority concerns [in ORS 197.298] do not purport to be the
9 exclusive considerations governing the location of UGBs, and ORS
10 197.298(3) does not purport to excuse compliance with Goal 14's
11 requirements for the establishment or change of UGBs. ORS 197.298
12 specifically provides that the priorities for UGB inclusion that it sets forth
13 are '[i]n addition to any requirements established by rule addressing
14 urbanization.' Metro contends that it is impossible to implement the
15 requirements of ORS 197.296 and 197.298 *and* the requirements of Goal
16 14. Because of that, it asserts that the provisions must be read together.
17 The problem with that argument, however, is that, because ORS 197.298
18 specifically provides that its requirements are *in addition* to the
19 urbanization requirements of Goal 14, which are particularly directed to the
20 establishment and change of UGBs, it cannot be said that the statute was
21 intended to supersede Goal 14."

22 173 Or App at 332-33 (emphases in original). *See also 1000 Friends of Oregon*, 174 Or
23 App at 412-14 (compliance with ORS 197.298 in justifying a UGB change does not
24 excuse the need to separately apply Goal 14, Factor 6 (retention of agricultural land), to
25 the proposed change).

26 Subsequently, though, we have held that ORS 197.298 is to be applied in an
27 *integrated* way with Goal 14. In [City of West Linn v. LCDC](#), 201 Or App 419, 422, 119
28 P3d 285 (2005), we reviewed an LCDC approval of another amendment to the Portland-

1 area UGB by Metro. In that case, the petitioner argued that the particular UGB
2 expansion was inconsistent with ORS 197.298 because lower-priority resource land had
3 been added without determining that there was inadequate land of higher priority
4 anywhere in the region. We agreed with LCDC that the locational factors of Goal 14
5 were relevant in determining whether land of a particular priority in ORS 197.298(1) is
6 "inadequate to accommodate the amount of land needed." We reasoned that

7 "[t]he operative term is 'inadequate.' Whether there is adequate land to
8 serve a need may depend upon a variety of factors. In particular, the
9 adequacy of land may be affected by locational characteristics that must be
10 taken into account under Goal 14. As LCDC correctly noted, ORS
11 197.298(1) expressly provides that the priorities that it describes apply '[i]n
12 addition to any requirements established by rule addressing urbanization,'
13 such as the locational factors described in Goal 14. As a result, the fact that
14 other, higher priority land may exist *somewhere* adjacent to the UGB does
15 not necessarily mean that that land will be '[]adequate to accommodate the
16 amount of land needed,' if using it for an identified need would violate the
17 locational considerations required by Goal 14. In other words, the statutory
18 reference to 'inadequate' land addresses suitability, not just quantity, of
19 higher priority land."

20 *City of West Linn*, 201 Or App at 440 (emphasis in original). In [Hildenbrand v. City of](#)
21 [Adair Village](#), 217 Or App 623, 634, 177 P3d 40 (2008), we summarized the holding in
22 *City of West Linn* and stated that determining "whether there is 'inadequate' land to serve
23 a need depends on not only the constraints identified by ORS 197.298(3), but also the
24 criteria for locating an urban growth boundary expansion under Goal 14."

25 This relationship between the overlapping policies in Goal 14 and ORS
26 197.298--that the policies are to be applied separately as well as together--creates, at the
27 very least, some awkwardness in their application. Complete integration of the policies is

1 inconsistent with their independent viability. What might reconcile that tension,
2 however, is if ORS 197.298 is not completely conflated with Goal 14--only partially
3 integrated with the goal--in its application, and if Goal 14 is separately and fully applied
4 to the candidate land identified under ORS 197.298 in order to determine if that land is
5 suitable for inclusion in the UGB. We examine that possibility next.

6 2. *Integration of Goal 14 and ORS 197.298*

7 We turn, then, to the adequacy assessment under ORS 197.298(1),
8 specifically the factors used to determine when priority "land * * * is inadequate to
9 accommodate the amount of land needed." Petitioners contend that a jurisdiction can use
10 lower-priority land for its land needs only when higher-priority land is not available to
11 accommodate the need because of one of the limitations in ORS 197.298(3) (specific type
12 of identified need, urban services unavailability due to topographical or physical
13 constraints, needed to provide services to higher-priority land). The Goal 14 locational
14 factors, according to petitioners, must be applied in the process of selecting among
15 alternative locations in the same priority class. Respondents disagree and argue that all
16 of the Goal 14 locational factors are used to determine if priority land is "inadequate to
17 accommodate the amount of land needed" under ORS 197.298.

18 The parties agree, and we concur, that any necessary UGB amendment
19 process for purposes of land development begins with the identification of buildable land
20 that is contiguous to the existing boundary. ORS 197.296(6)(a) makes this step explicit
21 for housing needs, requiring the locality to "[a]mend its urban growth boundary to

1 include sufficient buildable lands to accommodate housing needs." For this and other
2 purposes, ORS 197.295(1) defines "buildable lands" as "lands in urban and urbanizable
3 areas that are suitable, available and necessary for residential uses * * * [including] both
4 vacant land and developed land likely to be redeveloped." LCDC has further defined
5 "suitable and available" buildable lands to exclude land that is severely constrained by
6 natural hazards under Goal 7; subject to natural resource protection measures under Goals
7 5, 15, 16, 17, or 18; severely sloped; within a floodplain; or to which public facilities
8 "[c]annot be provided." OAR 660-008-0005(2).

9 The adequacy assessment under ORS 197.298(1), then, applies to land that
10 could be developed. The candidate land, whether exception land or different types of
11 agricultural land, must be "buildable." So, evaluating whether candidate land is
12 "inadequate" under ORS 197.298(1) requires considering qualities other than whether the
13 land is buildable.

14 *City of West Linn* established that Goal 14 is applied in the prioritization of
15 land under ORS 197.298(1) to determine if land of a particular priority "is inadequate to
16 accommodate the amount of land needed." 201 Or App at 440. However, petitioners
17 read *City of West Linn* too narrowly in confining the Goal 14 analysis in ORS 197.298(1)
18 to the selection of land within a single priority class of lands, rather than as general
19 criteria on the inadequacy of land within that priority class to meet the need and allow
20 resort to lower-priority land.

21 Rather, the question becomes whether all of the Goal 14 locational factors

1 are used to disqualify higher-priority land under ORS 197.298(1), or whether a more
2 limited sorting occurs that leaves land available for the potential application of ORS
3 197.298(3). Based on the text of both policies--including a comparison of the more
4 specific locational criteria in ORS 197.298(3) with their Goal 14 analogues, and the
5 textual dynamic within ORS 197.298 between subsections (1) and (3)--we conclude that
6 the legislature likely intended the latter option.

7 In the context of expanding a UGB to include lower-priority land, ORS
8 197.298(3) states more specific limitations than the analogous factors in Goal 14 do:
9 Factor 3 of Goal 14 requires consideration of the "[o]rderly and economic provision for
10 public facilities and services," but ORS 197.298(3)(b) prefers higher-priority land over
11 resource land unless "[f]uture urban services could not reasonably be provided to the
12 higher priority lands due to topographical or other physical constraints." Goal 14, Factor
13 4, directs consideration of the "[m]aximum efficiency of land uses within and on the
14 fringe of the existing urban area," whereas ORS 197.298(3)(c) inhibits urbanization of
15 lower-priority land unless "[m]aximum efficiency of land uses within a proposed urban
16 growth boundary requires inclusion of lower priority lands in order to include or to
17 provide services to higher priority lands."

18 The particular limitations in ORS 197.298(3)(b) and (c) have no practical
19 effect if the broader and less restrictive Goal 14 factor counterparts must be used to
20 determine whether to include lower-priority land under ORS 197.298(1). If land is
21 "inadequate" under Factor 3 because the relative cost of delivery of public facilities and

1 services to the area is high, then the more specific limitation in ORS 197.298(3)(b)--
2 permitting an inadequacy conclusion only when public services cannot be extended
3 because of topographic or physical constraints--has no independent force. Because ORS
4 197.298(3) relates "only to the inclusion of land that comes within the priority concerns
5 described in [ORS 197.298(1)]," *Residents of Rosemont*, 173 Or App at 332, it follows
6 that ORS 197.298(1) must use different kinds of limitations to determine inadequacy than
7 those set out in ORS 197.298(3). Otherwise, ORS 197.298(3) is redundant or incapable
8 of application. We are constrained to construe ORS 197.298 in a way that gives effect to
9 all of its terms. "As a general rule, we assume that the legislature did not intend any
10 portions of its enactments to be meaningless surplusage." [*State v. Stamper*](#), 197 Or App
11 413, 417, 106 P3d 172, *rev den*, 339 Or 230 (2005); *see also* ORS 174.010 ("In the
12 construction of a statute, * * * where there are several provisions or particulars such
13 construction is, if possible, to be adopted as will give effect to all.").

14 It follows, then, that the more specific limitations in ORS 197.298(3)
15 displace the application of their more generic and flexible Goal 14 counterparts in the
16 application of ORS 197.298(1). That displacement gives meaning to ORS 197.298(3),
17 which reads that it--as opposed to other factors--is applied to determine "if land of higher
18 priority is * * * inadequate to accommodate the amount of land estimated in subsection
19 (1)." That explicit requirement precludes the application of any analogous, but less
20 restrictive, suitability criteria under ORS 197.298(1) to make that same determination,
21 *i.e.*, whether higher-priority land "is inadequate to accommodate the amount of land

1 needed." That limited use of Goal 14 in applying ORS 197.298(1) avoids the complete
2 conflation of Goal 14 and ORS 197.298 and allows for the sequential application of ORS
3 197.298(3).

4 Instead, the Goal 14 locational factors that are applied under ORS
5 197.298(1) and *City of West Linn* are those that are *not* the counterparts to the ORS
6 197.298(3) factors: Factor 5 ("Environmental, energy, economic and social
7 consequences") and Factor 7 ("Compatibility of the proposed urban uses with nearby
8 agricultural activities"). The application of Goal 14, Factors 5 and 7, at this point
9 parallels the separate considerations for determining the location of a UGB amendment
10 that are required by the Goal 2 exception criteria that are incorporated into Goal 14; that
11 parallel reinforces the logic of a limited use of Goal 14 as part of the application of ORS
12 197.298. Those Goal 2 considerations are:

13 "(3) The long term environmental, economic, social and energy
14 consequences resulting from the use of the proposed site with measures
15 designed to reduce adverse impacts are not significantly more adverse than
16 would typically result from the same proposal being located in areas
17 requiring a goal exception other than the proposed site; and

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

20 OAR 660-015-0000(2), Part II.¹⁰ Thus, those specific Goal 2 exception criteria and their

¹⁰ The remaining exception criteria are less relevant in determining where a UGB should be expanded. The first criterion goes to the reasons for expanding the UGB and is satisfied through the general application of Goal 14, particularly Factors 1 and 2. OAR 660-004-0010(1)(d)(B)(i) (reasons factor for UGB change under former Goal 14 "satisfied by compliance with the seven factors of Goal 14"). The second criterion requires consideration of "[a]reas which do not require a new exception." In the case of a Goal 14 exception, that area is the land already in the UGB. *See* ___ Or App at ___ (slip

1 Goal 14 factor counterparts (Factors 5 and 7) are the relevant Goal 14 considerations in
2 assessing the adequacy of land in a priority class under ORS 197.298(1).

3 Based upon the text and context of ORS 197.298, we conclude that not all
4 of the Goal 14 locational criteria are applied under ORS 197.298(1) to determine if
5 priority land "is inadequate to accommodate the amount of land needed." Instead, only
6 the consequences and compatibility factors of Goal 2, Part II, and Goal 14 are applied.
7 Whether the priority land is inadequate due to the unavailability of public facilities and
8 services or because of land use efficiencies is determined by the separate application of
9 ORS 197.298(3). Thus, we agree with petitioners' general claim that LCDC improperly
10 applied ORS 197.298(1) in approving the city's resort to lower-priority land because of
11 the relatively higher costs of providing a particular public facility or service to the higher-
12 priority area.

13 C. *Step Three: Determine which candidate lands should be included under*
14 *Goal 14*

15 Goal 14 is independently applied, then, *after* land has been prioritized
16 under ORS 197.298 as adequate to accommodate the identified need. ORS 197.298
17 operates, in short, to identify land that *could* be added to the UGB to accommodate a
18 needed type of land use. Thereafter, Goal 14 works to qualify land that, having been
19 identified already under ORS 197.298, *should* be added to the boundary. This works in
20 two ways--both to make choices among land in the lowest rung of the priority scheme
21 and to justify the inclusion of the entire set of lands selected under ORS 197.298. Once

op at 40).

1 candidate lands have been located under ORS 197.298 (*i.e.*, the higher-priority lands that
2 have been identified as adequate to satisfy part of a land need and any remaining lower-
3 priority lands that exist in quantities sufficient to accommodate the remaining need), the
4 location of the boundary changes is determined by the full and consistent application of
5 the Goal 14 locational factors, the Goal 2 exception criteria to those candidate lands, and
6 relevant plan and ordinance criteria.

7 It is at this point in the analysis that cost efficiencies in the provision of
8 public facilities and services become relevant. Considerations of Goal 14, Factor 3
9 (provision of public facilities and services) and Factor 4 (efficiency of land uses), at this
10 point--in combination with the other Goal 14 locational factors--may prompt the
11 discarding of candidate land identified under ORS 197.298, and the selection of land
12 otherwise consistent with the Goal 14 factors.

13 That application of all of the provisions in Goal 14 to the resulting UGB
14 change is required under *Citizens Against Irresponsible Growth* and *1000 Friends of*
15 *Oregon*. The application of Goal 14 to the land that results from the prioritization of
16 ORS 197.298 allows the separate and full use of both policies in justifying a UGB change
17 that is contemplated by the priorities statute ("[i]n addition to any requirements
18 established by rule addressing urbanization, land may not be included within an urban
19 growth boundary except under the following priorities") and our holdings in *Residents of*
20 *Rosemont* and *1000 Friends of Oregon*.

21 With those principles in mind, we turn to petitioners' remaining

1 contentions.

2 V. JUSTIFICATION FOR THE PROPOSED CHANGES

3 A. *Standards of review*

4 We begin with our standards of review. ORS 197.650(1) provides that we
5 review the LCDC order "in the manner provided in ORS 183.482." That part of the
6 Administrative Procedures Act sets out the standards of review of a contested case order
7 and provides:

8 "(a) The court may affirm, reverse or remand the order. If the court
9 finds that the agency has erroneously interpreted a provision of law and that
10 a correct interpretation compels a particular action, the court shall:

11 "(A) Set aside or modify the order; or

12 "(B) Remand the case to the agency for further action under a
13 correct interpretation of the provision of law.

14 "(b) The court shall remand the order to the agency if the court finds
15 the agency's exercise of discretion to be:

16 "(A) Outside the range of discretion delegated to the agency by law;

17 "(B) Inconsistent with an agency rule, an officially stated agency
18 position, or a prior agency practice, if the inconsistency is not explained by
19 the agency; or

20 "(C) Otherwise in violation of a constitutional or statutory
21 provision.

22 "(c) The court shall set aside or remand the order if the court finds
23 that the order is not supported by substantial evidence in the record.
24 Substantial evidence exists to support a finding of fact when the record,
25 viewed as a whole, would permit a reasonable person to make that finding."

26 ORS 183.482(8).

27 We recently explained that the requirements that an agency correctly

1 interpret the law, explain inconsistencies, and have evidentiary support for the decision
2 implies that LCDC must "demonstrate in [its] opinion[] the *reasoning* that leads the
3 agency from the *facts* that it has found to the *conclusions* that it draws from those facts."
4 [*1000 Friends of Oregon v. LCDC*](#), 237 Or App 213, 225, 239 P3d 272 (2010)
5 (*Woodburn*) (quoting *Drew v. PSRB*, 322 Or 491, 500, 909 P2d 1211 (1996)) (emphasis
6 in *Drew*). See also *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271, 639
7 P2d 90 (1981) (stating the test as "whether there is a basis in reason connecting the
8 inference [of compliance with the decisional standard] to the facts from which it is
9 derived"). In connection with substantial evidence review, we do not review the city's
10 decision for evidentiary support. Rather, "[o]ur role is to determine whether [LCDC]
11 applied the correct legal test in deciding whether [the city's] decision is supported by
12 substantial evidence." *Citizens Against Irresponsible Growth*, 179 Or App at 21.¹¹

13 Finally, the focus of our review is on the issues presented on appeal that
14 have been preserved before LCDC. As we said in *Marion County v. Federation For*

¹¹ In *City of West Linn*, we concluded, based on *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384, 404-05, 752 P2d 271 (1988), that an LCDC order approving a legislative UGB change under ORS 197.650 "implicates the substantial evidence standard that is described in [ORS 183.482]." 201 Or App at 428. More precisely, LCDC reviews UGB and periodic review submissions for "compliance with the statewide planning goals." ORS 197.628(1). Goal 2, in turn, requires that land use decisions have an "adequate factual base." LCDC's review of a legislative UGB change for an "adequate factual base" is synonymous with the requirement that a decision be supported by substantial evidence. Substantial evidence review of an LCDC periodic review order may directly occur when the commission requests and obtains new evidence for the periodic review submission and then makes factual findings on that enhanced record. See OAR 660-025-0160(5) (allowing supplement to periodic review record).

1 *Sound Planning*, 64 Or App 226, 237, 668 P2d 406 (1983), "[a] petitioner seeking
2 judicial review under the terms of [ORS 197.650] must base the arguments on the
3 objections (or comments) filed with DLCD; those objections will therefore frame the
4 issues on appeal."¹² This requires objectors before LCDC to make an explicit and
5 particular specification of error by the local government. ORAP 5.45(1) requires
6 preservation of error in a lower court in order to consider the error on appeal. We apply
7 that preservation requirement to administrative proceedings. [Veselik v. SAIF](#), 177 Or
8 App 280, 288, 33 P3d 1007 (2001), *rev den*, 344 Or 121 (2002); *see also* [VanSpeybroeck](#)
9 [v. Tillamook County](#), 221 Or App 677, 690, 191 P3d 712 (2008) (applying preservation
10 requirements in proceedings to review LUBA orders). A party's claim of error by LCDC
11 in its periodic review order, therefore, is limited to the commission's resolution of
12 objections raised in the periodic review proceedings.

13 B. *The commission's defense*

14 We turn--at long last--to petitioners' contentions about the deficiencies in

¹² Moreover, under ORS 197.633(2), LCDC is obliged to "adopt rules for conducting periodic review." The rules require persons who object to a work task submittal to file written objections with DLCD that "[c]learly identify an alleged deficiency in the work task sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated." OAR 660-025-0140(2)(b). OAR 660-025-0150(4)(d)(B) imposes that same specification of error requirement when an appeal is taken to LCDC from DLCD decisions on periodic review task completions. Objections that do not meet that standard "will not be considered by the director or commission." OAR 660-025-0140(3). If no objections are received, "the work task shall be deemed approved." OAR 660-025-0150(3)(a). Standing to appeal an LCDC periodic review order is limited to "[p]ersons who submitted comments or objections" to the agency. ORS 197.650.

1 LCDC's order and findings in light of the specific objections and exceptions they filed
2 with the agency. Petitioners' assignment of error contends that (1) LCDC erroneously
3 interpreted ORS 197.298, Goal 14, *former* ORS 197.732(1)(c)(B) (2005), *amended by* Or
4 Laws 2007, ch 71, § 68, *renumbered as* ORS 197.732(2)(c)(B) (2007) ("[a]reas which do
5 not require a new exception cannot reasonably accommodate the use"), and Goal 2, Part
6 II(c), OAR 660-004-0020 (an administrative rule detailing the requirements for a
7 "reasons" exception to a goal); (2) LCDC made a decision not supported by substantial
8 evidence; and (3) LCDC acted inconsistently with an official agency position in adding
9 agricultural land rather than other lands. Although petitioners' contentions are framed
10 with respect to the exclusion of particular exception and higher-priority resource lands
11 from the area of the proposed UGB change, their arguments attack the *manner* in which
12 the city and LCDC applied ORS 197.298. Petitioners complain that the city defined the
13 needed land--higher-density residential land--too specifically under Step One so that ORS
14 197.298(1) was applied to allow the exclusion of some land that could be used for low-
15 density residential needs and that lands were excluded under Step Two because of a
16 single deficiency rather than an overall adequacy assessment based on balancing all of
17 the considerations. Moreover, petitioners argue that various locational factors in Goal 14
18 were not considered as part of Step Three in evaluating the alternatives for the UGB
19 expansion.

20 In its brief, LCDC offers a broad justification for its order and joins the
21 city's more specific defenses. LCDC explains that the city identified neighborhood

1 activity centers as a form of land need to which the prioritization scheme of ORS
2 197.298(1) was then applied, and that the commission was correct in approving the
3 exclusion of exception areas and higher-priority resource lands that could not
4 accommodate NACs. LCDC further argues that, under the Goal 2 exceptions criteria, a
5 broad test should be employed under ORS 197.298 to determine whether candidate lands
6 are "inadequate to accommodate the amount of land needed." LCDC reasons that (1)
7 ORS 197.298 is administered "[i]n addition to" Goal 14; (2) Goal 14 includes the
8 "reasons" exception criteria in Goal 2; (3) ORS 197.298(1) incorporates the exceptions
9 criterion in Goal 2 that "[a]reas that do not require a new exception cannot reasonably
10 accommodate the use"; and, therefore, (4) the statute allows a broad assessment of
11 whether land is "inadequate to [reasonably] accommodate" an identified land need.

12 LCDC's first defense--that the city appropriately identified a quantity of
13 needed NAC land and applied ORS 197.298(1) to that quantified need--fails because that
14 is not what the city did. The city did determine that the NAC mixed-use category of land
15 use would use less land than the traditional low-density residential development for
16 housing needs. But the city did not quantify the amount of any needed mixed-use
17 category of commercial and residential land uses and then apply the ORS 197.298(1)
18 priorities to that quantified mixed-use need. To recall, ORS 197.298(1) is applied to
19 determine if land of a particular priority "is found to be inadequate to accommodate the
20 *amount of land*" determined to be needed. (Emphasis added.) Here, the city quantified
21 the need for categories of residential, commercial, industrial, parkland, and other land

1 uses and then applied the priorities to those quantitative needs. However, the city used
2 the defined qualities of an NAC (*e.g.*, size, location to downtown, and urban form) as a
3 basis to rule out higher-priority land under ORS 197.298(1), and, in doing so, proved the
4 wrong point.

5 LCDC's argument that its order is justified because of the need for land for
6 NACs is not supported by the order's reasoning or result. First, the order is unclear on the
7 specifics of the identified need under ORS 197.298--whether the need is for residential
8 land in general; higher-density residential land; mixed-use land for specified residential,
9 commercial, and parkland needs; or NACs. The order upholds the exclusion of the
10 Westside Road exception area from the UGB amendment under ORS 197.298(3)(b)
11 (unavailability of services due to topographic or other physical constraints), rather than
12 because the area is unsuitable for use as an NAC. Another part of the order approves
13 exclusion of the Bunn's Village exception area under ORS 197.298(3)(b) as well as under
14 ORS 197.298(1) for its unsuitability for "pedestrian- and transit-oriented development in
15 a neighborhood activity center." LCDC determined that the Booth Bend Road exception
16 area "cannot reasonably accommodate the identified need," but purports to identify the
17 need as one for a "compact, pedestrian-friendly urban area." The city's failure to include
18 the Old Sheridan Road exception area into the boundary change was approved because
19 "this area cannot reasonably accommodate the identified need," yet that approval was
20 made without any elaboration on the nature of that identified need. The Riverside North
21 area was not included because "this area cannot reasonably accommodate residential

1 use." If ORS 197.298 is applied to address separate types of land needs, then the amount
2 of each of those land needs must be quantified, and the land supply examined to see if it
3 is "inadequate to accommodate [each] amount of land needed."

4 Second, the order, in fact, approves the inclusion of some of the lower-
5 priority agricultural land (Norton Lane, West Hills South, and part of Fox Ridge North)
6 ahead of some exception areas even though those agricultural areas were not designated
7 as NACs. Thus, the adopted justification for the UGB amendments as well as the actual
8 inclusion of agricultural land for general residential use suggests that lower-priority land
9 was not added solely to meet the need for an identified quantity of land for mixed-use
10 development. The adopted order fails to explain why the failure of an exception area to
11 accommodate the need for an NAC justifies its exclusion from the expansion area when
12 lower-priority land is being added to accommodate a less specific need for residential
13 land. As we held in *Woodburn*, 237 Or App at 224-26, when an LCDC order fails to
14 explain its reasoning for finding consistency with the standards for a UGB expansion, the
15 order lacks substantial reason and becomes inadequate for judicial review. The failure of
16 LCDC to consistently identify the needed categories and quantities of land uses--the
17 fundamental premises of its justification of the UGB change under ORS 197.298--
18 requires the same conclusion here.

19 LCDC's second point--that the "[a]reas that do not require a new exception
20 cannot reasonably accommodate the use" criterion in the Goal 2 exception standards can
21 be used to rule out higher-priority land under ORS 197.298(1), presumably no matter

1 how the need for residential land is described--also does not withstand scrutiny. As noted
2 earlier, Goal 14 requires that a UGB change "follow the procedures and requirements as
3 set forth in the Land Use Planning goal (Goal 2) for goal exceptions." The standards for
4 such an exception include a determination that "[a]reas which do not require a new
5 exception cannot reasonably accommodate the use." But that criterion applies to land
6 that does not require an exception to Goal 14, *i.e.*, land already within the UGB or
7 specially designated land in unincorporated communities outside of a UGB. [VinCEP v.](#)
8 [Yamhill County](#), 215 Or App 414, 425, 171 P3d 368 (2007) ("areas which do not require
9 a new exception" criterion under Goal 14 are "lands within urban growth boundaries and
10 areas for which a Goal 14 exception has already been taken"). The exception standard
11 requires an evaluation of whether land inside of a UGB can be developed in a way that
12 eliminates or minimizes the need to expand a UGB. The criterion is not a factor to
13 distinguish among lands that do require an exception to Goal 14--the exception and
14 resource lands outside the UGB that could qualify for inclusion within the boundary.¹³
15 So the second exception criterion, by its terms, is not relevant to classify exception and

¹³ DLCD understood that the second exception criterion did not require an alternatives analysis of lands outside the existing UGB. In its decision on petitioners' objections in the first LCDC proceeding, the department noted:

"It is not clear that [the alternative lands exception criterion] distinguishes between Goal 3 exception lands and resource lands outside of a UGB. Both require that the city follow the exceptions process for a UGB amendment and can be said to 'require a new exception.' The department understands this standard to mean that a UGB amendment is needed only if lands inside a UGB or rural lands for which an exception to Goal 14 has been taken cannot reasonably accommodate the use."

1 resource lands outside the existing UGB as suitable for growth.¹⁴

2 The order under review approves the city's decision not to include the North
3 Fox Ridge Road resource area in the UGB because, "pursuant to Goal 2, the city did not
4 need to consider lands under ORS 197.298 that could not reasonably accommodate its
5 identified need." In other parts of the order, the exclusions are justified under a generic
6 "reasonably accommodate" standard (presumably tied to Goal 2), rather than the more
7 discrete accommodation standards of ORS 197.298(1) and (3). In those respects, LCDC
8 erred in applying the wrong standards and misconstrued the applicable law. ORS
9 183.482(8)(a).

10 We must next determine if those Step One and Step Two errors compel a
11 different result under ORS 183.482(8)(a) (allowing remedy if "the agency has
12 erroneously interpreted a provision of law and * * * a correct interpretation compels a
13 particular action"). We turn then to petitioners' specific contentions about the application
14 of ORS 197.298. LCDC and the city defend the LCDC order by arguing that the

¹⁴ The reference to the Goal 2 exception requirements in Goal 14 was eliminated in the revision to Goal 14 adopted in 2005. In its place, the goal now requires that,

"[p]rior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary."

In addition, OAR 660-004-0010(1)(c)(C) now provides that,

"[w]hen a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals[.]"

1 exclusions are justified under ORS 197.298, no matter how the residential land need is
2 defined--whether as a need for higher-density residential land or for land suitable for an
3 NAC.

4 C. *Application of ORS 197.298*

5 Petitioners claim that LCDC erred in endorsing the exclusion of three
6 exception areas--Old Sheridan Road, Riverside North, and Booth Bend Road--that should
7 have been added to the boundary under ORS 197.298. They reason that those areas were
8 excluded because they were unsuitable for medium-density and high-density housing, but
9 that such a specification of need is inappropriate for the application of ORS 197.298.
10 Rather, petitioners argue, the statute should have been applied to residential land needs as
11 a whole. Moreover, the quantity of needed low-density residential land (341 acres)
12 exceeded the buildable land added through the included exception areas, so petitioners
13 reason that the other exception areas should have been brought into the boundary to meet
14 low-density residential land needs. Finally, petitioners claim that there is no substantial
15 evidence that the excluded exception areas could not accommodate some medium-density
16 or high-density housing. More specifically, petitioners contest LCDC's findings on the
17 excluded exception areas as well as the three excluded lower-quality resource lands tracts
18 (West Hills, Fox Ridge Road North, and the area north of McMinnville Airport).

19 1. *Old Sheridan Road exception area*

20 In its findings on ORS 197.298(1), the city evaluated this exception area
21 under factors that it also applied to other exception areas (annexation potential, ability to

1 develop with adequate internal transportation circulation, limited traffic access from
2 Highway 18, consistency with compact urban form, and public safety issues). As stated
3 earlier, considerations of the *general availability* of public facilities and services are
4 immaterial as part of the Step Two application of ORS 197.298. The remaining
5 determinations by the city are relevant under ORS 197.298(1) (comparative long-term
6 environmental, economic, social and energy (EESE) consequences resulting from the use
7 at the proposed site). The city's decision to exclude the Old Sheridan Road exception
8 area was based upon a balancing of those determinations.

9 Petitioners objected to DLCD that the city's findings failed to establish that
10 the Old Sheridan Road exception area could not accommodate a portion of the city's
11 residential land needs. More specifically, petitioners claimed that the city findings
12 showed that the comparative costs of providing city facilities and services to the area
13 varied, depending upon the service, but were not prohibitive. Petitioners disputed that
14 there was evidence in the record to support the city's findings that Old Sheridan Road
15 provided the sole access to the area and that the area was distant from existing public
16 utilities and schools.

17 DLCD did not resolve those objections under ORS 197.298(1). Instead,
18 DLCD concluded that it "agrees with the city's findings that transportation facilities
19 cannot reasonably be provided to this area under ORS 197.298(3)(b)." Again, ORS
20 197.298(3)(b) allows resort to lower-priority land if "[f]uture urban services could not
21 reasonably be provided to the higher priority lands due to topographical or other physical

1 constraints." LCDC appeared to affirm on that basis, largely because Highway 18 is a
2 limited access highway.

3 On review, petitioners argue that ORS 197.298(3)(b) allows resort to lower-
4 priority land only if a package of future urban services could not be reasonably provided.
5 Petitioners contend that LCDC's findings failed to evaluate the entire suite of urban
6 services in excluding the Old Sheridan Road exception area and that the deficiency in the
7 provision of transportation facilities was not due to topographical or other physical
8 constraints. Moreover, petitioners claim that there is no substantial evidence to support
9 the finding of unavailable transportation facilities because local streets could be extended
10 to the area. Respondents counter that LCDC approved the exclusion of Old Sheridan
11 Road, in part, because lack of access to Highway 18 required prohibitively expensive
12 road improvements to the area and congestion in other access points to the highway.

13 We disagree with petitioners' contention that a composite of urban services
14 must to be considered under ORS 197.298(3)(b). Although the term "urban services" is
15 not defined in the statute, a related term, "urban facilities and services" is defined under
16 Goal 11 to include "police protection; sanitary facilities; storm drainage facilities;
17 planning, zoning and subdivision control; health services; recreation facilities and
18 services; energy and communication services; and community governmental services."
19 OAR 660-015-0000(11). That definition does not include water supply systems or roads.
20 Goal 12 separately deals with transportation facilities, a utility that is neither "urban,"
21 being necessary to both rural and urban land uses, nor a "service." ORS 197.298(3), by

1 its plain text, refers only to those "urban services" that could be constrained "due to
2 topographical or other physical constraints." Thus, the text of the provision refers to a
3 service that is urban in character and that can be physically constrained in its provision.
4 What is a constrained urban service is a matter of proof in a particular UGB amendment
5 proceeding, but it surely does not mean the full panoply of urban facilities and services
6 described in Goal 11.

7 We do agree, however, with petitioners' contention that inefficiencies in the
8 provision of roads to a potential urbanizing area is not sufficient to exclude that area
9 under ORS 197.298(3)(b). Transportation facilities are not an "urban service" under the
10 statute. It may be that LCDC's order also implicitly rests upon excluding the Old
11 Sheridan Road exception area from the category of candidate lands under ORS
12 197.298(1). As noted earlier, however, any inefficiency in the provision of urban
13 services and facilities is not material to the analysis under ORS 197.298(1). LCDC erred
14 in approving the exclusion on either of those bases; it should have addressed whether the
15 city's findings were otherwise factually and legally sufficient under ORS 197.298(1).

16 2. *Riverside North exception area*

17 Petitioners next contend that the basis for excluding the Riverside North
18 exception area--unsuitability for residential use due to "noise and odor associated with
19 the adjacent sewage treatment plant, industrial use, and railroad"--was insufficient under
20 ORS 197.298(3)(a) because residential use is not a "[s]pecific type[] of identified land
21 need[]" under that statutory provision, but a more generic need that is subject to the

1 priorities of ORS 197.298(1). Petitioners argue that LCDC's findings are deficient in
2 failing to assess whether the Riverside North exception area could be used to satisfy
3 nonresidential land needs, in general, or for industrial uses, in particular, thereby allowing
4 redesignation of existing industrial land within the UGB for residential uses. Petitioners
5 finally assert that the city's decision to exclude Riverside North was inconsistent with its
6 decision to include the Riverside South exception area, and that, in approving both
7 actions, LCDC acted "inconsistently with official agency position or practice" and
8 without substantial evidence.

9 Respondents argue that the incompatibility of any proposed residential use
10 of the subarea with nearby industrial and institutional uses is a legitimate consideration in
11 applying ORS 197.298(1). Based on the Step Two analysis noted earlier (that EESE
12 considerations under Goal 2 and Goal 14, Factor 5, are applied under ORS 197.298(1)),
13 we agree with respondents. We also agree with respondents' further contention that
14 LCDC did not misconstrue the applicable law or fail to support its decision by substantial
15 reason in not requiring redesignation of industrial land within the existing UGB for
16 residential uses in order to add Riverside North for industrial purposes. Finally,
17 petitioners' assertion that LCDC made inconsistent determinations on the Riverside South
18 and Riverside North areas was not preserved, because petitioners never asserted to DLCD
19 that the city was constrained to treat both areas in the same way.

20 3. *Booth Bend Road exception area*

21 Again, the city adopted findings on the considered exception areas,

1 including the Booth Bend Road exception area, that evaluated those areas under ORS
2 197.298(1) based upon a balancing of factors that included the area's potential for
3 annexation, internal transportation circulation, urban form, public safety, the overall cost-
4 effectiveness of the provision of urban facilities, and compatibility with adjacent uses,
5 including agricultural uses. The city excluded the Booth Bend Road exception area
6 because of limited potential for annexation, the cost-ineffectiveness of necessary road and
7 sanitary sewer improvements, the lack of supportive neighborhood services and facilities,
8 and incompatibility with adjacent agricultural uses.

9 Before LCDC, petitioners disputed the factual accuracy of some of the
10 city's findings. LCDC overruled those objections because "this area is problematic since
11 it would be an isolated extension of the UGB across the highway, making walking to
12 nearby destinations difficult[,] such that it could not "reasonably accommodate the need
13 for a compact, pedestrian-friendly urban area."

14 On review, petitioners argue that that specification of need is not a
15 "[s]pecific type[] of identified land need[]" under ORS 197.298(3)(a) and, to the extent
16 that the need arises as a consequence of the application of Goal 14, Factor 4 (efficiency
17 of land uses on the fringe of urban areas), that consideration was not balanced with other
18 Goal 14 factors in determining suitability under ORS 197.298(1). Moreover, petitioners
19 assert that excluding the Booth Bend Road exception area because of its isolated location
20 (south of Highway 18) is inconsistent with the inclusion of other areas south of the
21 highway (Three Mile Lane and Lawson Lane areas). Respondents counter that the city's

1 findings appropriately considered urban form and conflicts with agricultural land in its
2 ORS 197.298(1) analysis.

3 We agree with petitioners that the application of ORS 197.298(1) requires
4 more than the consideration of pedestrian circulation. LCDC erred in failing to address
5 whether the city's findings about other ORS 197.298(1) considerations were sufficient
6 and were supported by the record. The city's evaluation of the cost-effectiveness of the
7 provision of public facilities and services is immaterial to the analysis under ORS
8 197.298(1) during Step Two. In the same way, considerations of urban form under Goal
9 14, Factor 4, are more appropriately deferred to Step Three, during the full application of
10 Goal 14 to candidate lands identified under the priorities statute.

11 4. *West Hills resource land area*

12 Following the initial remand of the MGMUP amendments by LCDC, the
13 city analyzed resource areas with poorer soils for potential inclusion within the UGB.
14 The city determined that an area in the West Hills west of Fox Ridge Road and Redmond
15 Hill Road (exception areas included in the UGB in the initial LCDC proceedings) would
16 be unsuitable. The findings in support of that conclusion identified a land need for
17 medium- and high-density housing. The city reasoned that the sloped topography of the
18 subarea would increase the cost of construction "anywhere from \$5,000 to \$15,000 per
19 lot in additional development costs, depending on site-specific conditions"; the area was
20 more likely to be developed with single-family residences; additional water distribution
21 facilities and transportation access would be expensive; the area was too far from

1 commercial areas for feasible higher-density residential development; and development
2 would be incompatible with nearby farm and forestry operations and with a compact
3 urban form. The city concluded that the area should be excluded from the boundary
4 change under ORS 197.298(3).

5 In their DLCD objections, petitioners agreed with the city's rationale for
6 excluding the more steeply sloped portions of the subarea, but claimed that the more
7 gently sloped portions adjacent to the current UGB would be suitable to accommodate
8 identified land needs. Petitioners disagreed with the city's limitation of the identified
9 need to higher-density residential use and with the city's adopted rationale for exclusion
10 that relied upon the expense of water service, the feasibility and likelihood of higher-
11 density housing in the area, and the expense of road extension and distance from
12 commercial areas. After reiterating much of the city's findings, LCDC concluded that

13 "1000 Friends objects to the exclusion of this area, contending that the city
14 erred in its findings and that the area can accommodate specific types of
15 land needs * * *. Specifically, that this higher priority area can
16 accommodate low-, medium-, or high-density housing even with the
17 constraints of slope, water service costs, transportation difficulties, and
18 should therefore be included. The Commission finds that the city
19 established both that the West Hills area could not reasonably
20 accommodate the city's identified need and that under ORS 197.298(3)(b),
21 the city could not reasonably provide water, a future urban service, due to
22 the topographical constraint."

23 On review, petitioner argues that LCDC's determination applies only to the
24 more steeply sloped part of the resource area and not to the more gently sloped area
25 adjacent to the existing UGB. Petitioners further assert that the findings do not identify
26 which land need could not be accommodated, that the reference in the findings to the

1 effects of inclusion of the territory on nearby agricultural land is inappropriate under
2 ORS 197.298(1), and that water services can be extended to the lower portions of the
3 resource area. Respondents claim that the city findings and LCDC restatement of those
4 findings applied to the entire resource area and were sufficient under ORS 197.298(1).

5 We agree with petitioners in part. The city findings identified a need for
6 higher-density housing. We concluded earlier that ORS 197.298(1) could be applied to
7 prioritize land to satisfy that particular need. The city considered some relevant factors
8 under ORS 197.298(1), including compatibility with adjacent agricultural land, in
9 evaluating the resource area. However, LCDC relied upon the city's findings that applied
10 Goal 14, Factor 3 ("[o]rderly and economic provision for public facilities and services"),
11 in determining suitability under ORS 197.298(1). Because that factor is applied under
12 Goal 14 to evaluate, but not determine, candidate lands (Step Three in the analysis),
13 LCDC erred in its application of ORS 197.298 to the city's findings. Petitioners have not
14 otherwise shown that LCDC incorrectly applied ORS 197.298 or misunderstood the
15 substantial evidence test in approving the city's findings on this issue.

16 5. *Area north of Fox Ridge Road*

17 A portion of the area north of Fox Ridge Road (Tax Lot 700) was added to
18 the UGB. Petitioners argue that an additional corridor of land in this area should have
19 been included (Tax Lots 100, 200, 300, and 400). The city determined that Tax Lot 100
20 and portions of Tax Lot 200, although within the boundaries of the Northwest NAC,
21 should be excluded from the UGB because of limited connectivity with the existing road

1 system and "the steep slopes in the southern portions of these two properties leave only
2 perhaps a 200-foot wide buildable corridor extending across tax lots 700, 200 and 100."
3 The city concluded that those properties should not be included in the boundary "as
4 permitted by ORS 197.298(3)(a)."

5 In their DLCD objections, petitioners complained that the city failed to
6 address the potential inclusion of Tax Lots 300 and 400 and that the city's factual findings
7 on the soil composition, road connectivity, and buildable lands in the resource area were
8 not supported by the record. LCDC reiterated the city's findings, concluding that,

9 "[f]or the reasons cited above, the city concluded that the needs identified
10 in the MGMUP cannot be reasonably accommodated by the areas of Class
11 III and Class IV soils within tax lot R4513-00100 or the northern portion of
12 tax lot R4418-00200. The city, therefore, did not include these lands in its
13 expanded UGB, purportedly under ORS 197.298(3)(a). The Commission
14 concludes that the city erred in excluding the lands under ORS
15 197.298(3)(a). However, pursuant to Goal 2, the city did not need to
16 consider lands under ORS 197.298 that could not reasonably accommodate
17 its identified need."

18 After noting petitioners' objections "to the exclusion of tax lot 100, the northern portion
19 of tax lot 200, and land west of tax lot 100 from the proposed UGB" and their assertion
20 that the city's findings on the soil composition of Tax Lots 100 and 200 were wrong,
21 LCDC decided that

22 "[t]he Commission concludes that the city has established that the excluded
23 lots will have limited future connectivity, are constrained by slope that
24 leaves a limited building corridor, and would create an island of agricultural
25 activity and cut off tax lots 1100 and 1000 from existing farm operations."

26 On review, petitioners claim that LCDC's findings addressed only part of
27 the area they argued should have been included and failed to address Tax Lots 300 and

1 400. Petitioners also contend that the reasons for excluding two of the tax lots--road
2 connectivity and cutting off farm parcels--are insufficient if the entire area is included.
3 Respondents argue that LCDC affirmed the city's findings on the unsuitability of Tax
4 Lots 100 and 200 under ORS 197.298 based on a number of relevant considerations
5 (topography, relation to existing and future development, connectivity, and effect on
6 agricultural operations) and that LCDC did not err in its construction of applicable law or
7 application of the substantial evidence test in reaching those determinations.

8 We agree with petitioners that LCDC failed to address their core
9 contention--that the city did not evaluate, in its adopted findings, whether a larger area of
10 properties north of Fox Ridge Road, with lower-class soils, could reasonably
11 accommodate the city's identified need for residential land instead of the lower-priority
12 land added for that purpose, and that such an evaluation was necessary under ORS
13 197.298(1).¹⁵ LCDC should have determined whether the city's rationale for excluding
14 Tax Lots 100 and 200 was based upon consequences and compatibility considerations
15 relevant under ORS 197.298(1) and whether that rationale was legally sufficient without
16 consideration of a larger area. Instead, LCDC sustained the city's determination
17 "pursuant to Goal 2," using a broader and incorrect "reasonably accommodate" standard

¹⁵ On remand of the original UGB decision, DLCD directed the city to "identify areas with class 3 and 4 agricultural soils and either (1) include them in the UGB instead of areas with class 1 and 2 soils, if any, or (2) explain why they should not be included based on the standards in ORS 197.298(3)." The city identified the properties with Class III and IV soils that were within one mile of its 1981 UGB. It is not clear whether Tax Lots 300 and 400 fit within that parameter. The "discussion areas" map of alternative lands attached to petitioners' opening brief appears to exclude Tax Lots 300 and 400.

1 in the application of ORS 197.298. And, LCDC did not deal with petitioners' contention
2 that the city's findings were insufficient under ORS 197.298(1) because the city did not
3 address whether the consequences and compatibility concerns about bringing Tax Lots
4 100 and 200 into the boundary should have been mitigated by including a differently
5 configured area. That determination was necessary to LCDC's conclusion that the city's
6 findings demonstrated its compliance with ORS 197.298(1).

7 6. *Other resource land areas*

8 After the remand, the city considered including in the UGB three lower-
9 quality agricultural tracts near the municipal airport: a 197-acre tract north of the airport
10 that is bordered by farmland on three sides; a smaller 35-acre tract on Highway 18 that is
11 situated south of the air museum, and surrounded by the existing UGB except along an
12 access road; and a large tract east of the airport. The city made collective findings on
13 those properties under ORS 197.298, although some of the collective findings appear to
14 be specific to a particular, but unidentified, property (*e.g.*, "[t]his property is also
15 immediately adjacent to the airport approach zone for Runway 17," "[t]his land * * *
16 would be bordered by actively farmed land on three of its four sides"). The findings note
17 concerns with the effects of high-density housing on flight safety and use of adjacent
18 agricultural land as the bases for excluding the properties from the boundary. The city
19 concluded:

20 "For the above noted reasons, the City concludes that specific types of land
21 needs as identified in the MGMUP cannot be reasonably accommodated on
22 the lands north and east of the McMinnville Municipal Airport, on which
23 are found predominantly Class III or Class IV soils. The City, therefore,

1 has not included these lands in its expanded urban growth boundary, as
2 permitted by ORS 197.298(3)(a)."

3 In their DLCD objections, petitioners complained that the city findings
4 made collective assessments about differently situated properties and that the smaller
5 tract next to the museum could be used to satisfy low-density residential land needs.
6 LCDC, after taking administrative notice of the airport master plan, concluded that
7 "[d]evelopment of these lands at urban residential densities would be incompatible with
8 the long range plans for the airport, * * * and would potentially threaten the airport's
9 viability." The commission reiterated some of the city's collective findings that were
10 written as particular to one property. After noting petitioners' concern that the small tract
11 adjacent to the air museum was not analyzed in the findings, LCDC concluded that "the
12 city established that the area cannot reasonably accommodate an identified need due to
13 safety issues related to the airport."

14 On review, petitioners argue that the smaller 35-acre parcel, which is
15 composed of Class III soils, has particular priority under ORS 197.298(1)(b) (giving
16 second priority to exceptions lands and "resource land that is completely surrounded by
17 exception areas"). Petitioners claim that the city and LCDC did not address that property
18 in particular, instead they lumped it with two other properties that have different
19 compatibility issues. Finally, petitioners argue that, if the basis for excluding this parcel
20 is its unavailability for high-density residential use, that basis does not excuse its
21 potential use for low-density residential needs. Respondents counter that airport safety
22 concerns are relevant issues under ORS 197.298(1) in the application of Goal 14, Factor

1 3 (orderly and economic provision of services), Factor 4 (maximum efficiency of land
2 uses), and Factor 5 (EASE consequences).

3 LCDC's findings on this tract are inadequate for judicial review. As noted
4 earlier, the ORS 197.298(1) consequences and compatibility factors apply differently,
5 depending upon whether the quantified land need is for land to be used for low-density
6 residential, mixed-use, or higher-density residential uses. The findings do not explain
7 why the tract was evaluated for higher-density residential land needs alone. Moreover,
8 the findings set out common compatibility concerns caused by proximity to a runway and
9 flight paths for properties located in different areas and, presumably, with different
10 compatibility issues. As such, the findings lack substantial reason because they do not
11 articulate the ORS 197.298 evaluation for the smaller 35-acre parcel.

12 Finally, petitioners claim that they called the city's attention to other
13 potential higher-priority resource lands (the Riverside area, land south of the airport, and
14 land south of Three Mile Lane and west of Booth Bend Road), but that those sites were
15 not evaluated, contrary to the then applicable version of OAR 660-004-0020(2)(b)(C),¹⁶ a
16 rule applicable to UGB changes made under the older version of Goal 14. Petitioners
17 argue that LCDC erred in failing to remand the decision to the city for that consideration.

18 The above-cited rule set policy on how to comply with the reasons
19 exception criterion in Goal 2, Part II(c), that "[a]reas which do not require a new

¹⁶ OAR 660-004-0020 was amended in 2011. Those amendments are not relevant to the contentions on review.

1 exception cannot reasonably accommodate the use." That rule stated that

2 "[s]ite specific comparisons are not required of a local government taking
3 an exception, unless another party to the local proceeding can describe why
4 there are specific sites that can more reasonably accommodate the proposed
5 use. A detailed evaluation of specific alternative sites is thus not required
6 unless such sites are specifically described with facts to support the
7 assertion that the sites are more reasonable by another party during the local
8 exceptions proceedings."

9 As we noted earlier, however, that exception criterion does not apply to
10 evaluating land outside a UGB--all of which required a new exception to Goal 14 as
11 applicable here--for inclusion in the boundary. Instead, it requires determining if land
12 already inside the UGB--land which does not require a new exception--can reasonably
13 accommodate the need. As such, OAR 660-004-0020(2)(b)(C) did not require the city to
14 evaluate any particular alternative site proposed by petitioners.

15 Instead, the city applied particular criteria (*e.g.*, within one mile of the 1981
16 UGB, composition of Class III or IV soils, and within prescribed geographic boundaries)
17 to inventory the lands to be studied. Petitioners did not object to the city or LCDC that
18 those inventory criteria were unlawful or that they had been misapplied to petitioners'
19 suggested alternative resource lands areas. Thus, the commission did not err in failing to
20 require the city to study those areas for inclusion.

21 D. *Application of Goal 14 locational factors*

22 Petitioners' first set of contentions relate to Step Two--the application of
23 Goal 14 in determining whether the quantity of land in the priority class is inadequate
24 under ORS 197.298(1). Petitioners claim that, in separately applying the locational

1 factors of Goal 14 to the areas proposed to be added to the UGB, the city and LCDC
2 erred in failing to consider all of the available exception lands collectively and
3 consistently and did not explain how the locational factors--in particular, Factors 3
4 (public facilities and services), 4 (efficiency of land uses), and 7 (compatibility with
5 agricultural activities)--were balanced to include some exception lands and not others.
6 They assert that Factor 7 was not applied at all in the evaluation of the available
7 exception areas, but was instead applied only to the already included territory.

8 Respondents protest that those arguments were not made to LCDC and that
9 the commission is not obliged to determine on its own whether those particular
10 deficiencies in the local decision existed. As we said before, petitioners' contentions
11 must be particularly raised before LCDC in order to merit review in this court.
12 Petitioners generally asserted below--in the midst of dozens of more specific objections--
13 that "the city has not conducted a coordinated land priority analysis around the entire
14 UGB perimeter." That is insufficient to raise the specific objection that the city failed to
15 completely consider any particular Goal 14 factor in its evaluation of whether exception
16 lands could reasonably accommodate an identified land need.

17 Petitioners next argue that LCDC erred in approving the city's Goal 14
18 evaluation of both the low-value farmland that was excluded from the UGB and the high-
19 value farmland that was included. Petitioners assert that the city and LCDC erred in
20 failing to consider Factor 3 (public facilities and services) in comparing alternative lower-
21 quality resource lands, made no findings about the availability of public services to the

1 Airport North and the Fox Ridge Road North resource areas, and inconsistently evaluated
2 the public services factor in comparing the West Hills resource area with the higher-
3 quality Southwest and Grandhaven areas. According to petitioners, LCDC and the city
4 further erred in not balancing Factor 4 (efficiency of land uses) with other factors in
5 evaluating alternative resource lands, instead subsuming that consideration in the
6 application of ORS 197.298, and in applying Factor 4 to land outside of the "existing
7 urban area." Petitioners also complain that Factor 6 (retention of agricultural lands) was
8 applied in a cursory manner to available resource lands and that LCDC made no findings
9 on that complaint.

10 Some of those contentions were preserved; others were not. Before the
11 agency, petitioners cited ORS 197.298 and Goal 14 as the bases for their contention that
12 the city erred in excluding certain exception areas and higher-priority resource land.
13 Much of the argument was framed around whether those properties could reasonably
14 accommodate an identified land need, a contention apparently rooted in the requirements
15 of ORS 197.298. As we concluded earlier, the relevant Goal 14 factors in the sorting of
16 suitable higher-priority land under ORS 197.298(1) are Factor 5 (EASE consequences)
17 and Factor 7 (compatibility with agricultural activities) and their analogues in the Goal 2
18 exception criteria. We earlier determined the legal sufficiency of the city's consideration
19 of exception lands and higher-priority resource lands under ORS 197.298(1); petitioners'
20 restated Goal 14 contentions about the excluded exception and higher-priority resource
21 lands raise no different and relevant claims.

1 Petitioners' remaining contentions concern Step Three, the application of
2 Goal 14, Factor 7 (compatibility of proposed urban uses with agricultural lands) to the
3 lands considered for inclusion in the boundary. The city's Factor 7 findings from 2003 on
4 the Norton Lane, Three Mile Lane, Southwest, Northwest, and Grandhaven areas
5 described adjacent agricultural land uses in general terms ("actively farmed land," "active
6 farm use," "agricultural farm use," "actively farmed agricultural land," and "large-parcel
7 farm operations") before concluding that,

8 "[t]he Council concludes that the proposed expansion areas will not create
9 compatibility conflicts between uses. Much of the existing UGB is
10 adjacent to resource lands that are currently in agricultural uses. Expansion
11 of the UGB would not create new uses that would create new types of
12 compatibility issues."

13 Before LCDC, among other assertions, petitioners argued that the city's
14 findings on the application of Factor 7 to four of those areas were (1) incomplete because
15 the findings did not consider the particular agricultural activities of nearby land and
16 compare compatibility conflicts among the considered resource lands; and (2) inaccurate
17 because the findings do not examine the boundaries of the redrawn resource lands areas
18 that were altered following remand. In its order, LCDC reiterated the city's findings and
19 affirmed, without further analysis, that the city properly applied Factor 7. We agree with
20 petitioners that LCDC erred in not requiring additional findings on Factor 7. The existing
21 findings were not sufficiently descriptive of nearby agricultural uses to allow comparison
22 among the candidate sites and were inaccurate as to the redrawn boundaries of the
23 resource areas. We reject petitioners' remaining Goal 14 contentions.

1 VI. CONCLUSIONS

2 We conclude that the commission erroneously interpreted ORS 197.298 by
3 failing to require that the city first separately quantify its needs for low-density residential
4 land, higher-density residential land, and mixed-use land (Step One) and then apply ORS
5 197.298(1) and (3) to each of those quantified needs (Step Two), and in permitting the
6 city to exclude land from further consideration under ORS 197.298(1) for immaterial
7 reasons. Further, correct application of ORS 197.298 would compel different actions by
8 the commission in its evaluation of the city's justification for excluding particular
9 exception and resource areas under ORS 197.298. Thus, a remand is appropriate under
10 ORS 183.482(8)(a)(B) (allowing remand to an agency for "further action under a correct
11 interpretation of the provision of law").

12 On remand, LCDC should respond to petitioners' contentions by making
13 additional findings or taking appropriate action in its review of the city's submissions to
14 (1) determine what particular and quantified land use needs are to be accommodated by
15 any additional land to be added to the McMinnville UGB; (2) apply ORS 197.298 to
16 determine the land available to accommodate those quantified land use needs; (3) apply
17 Goal 14 to justify the inclusion of suitable land in any amended UGB; and (4) take any
18 other necessary action under a correct interpretation of the governing standards, including
19 a determination of whether the city's submission, "on the whole, conform[s] with the
20 purposes of the goals and any failure to meet individual goal requirements is technical or
21 minor in nature" under ORS 197.747.

1

Reversed and remanded.