

E. Residential and Related Land Need

The City of Bend is the seventh largest city in Oregon, and from 2000 to 2005 the city grew rapidly—more rapidly than projected by the city at the last major update of its comprehensive plan (in 1998). [R. at 2116, 1059] Deschutes County completed a coordinated 20-year population forecast for the cities of Bend, Redmond and Sisters and the remainder of the county in 2004. [R. at 1981] That forecast projects the population of Bend to grow from 52,800 in 2000 to 109,389 in 2025. [R. at 1981] As the first step in its analysis of the capacity of its urban growth boundary (UGB), the city extrapolated the county’s population forecast to 2028 (in order to have a 20-year forecast for its review of its UGB). The forecast includes a 2028 population for Bend of 115,063. [R. at 1067, 1301] [ORS 195.034(1)] The city initiated a process for formal analysis of its UGB capacity and the consideration of a potential UGB amendment on June 11, 2007 by mailing notice of its initial evidentiary hearing to the department. [R. at 1053] The city adopted an amendment to the UGB and supporting analysis and related comprehensive plan amendments on (January 5, 2009).

This section of the directors report and decision addresses whether the UGB amendment complies with applicable state laws that guide local governments in determining: (1) the amount of land needed inside a UGB over the 20-year period for housing and other land uses (except for employment-related land need, which is addressed in section III.F of this report), (2) how much of this land need could be provided on land already inside the UGB, and (3) how much of this land need can be met only through expansion of the current UGB. The final subsection addresses the relation between the city’s UGB amendment and existing policies in the acknowledged Bend General Plan concerning needed housing.

The director’s analysis and decisions are based on his evaluation of the city and county decisions and the objections to those decisions, as well as the information and findings provided in the submittal.

1. The Quantity of Land Required for Needed Housing

a. Legal standards

ORS 197.295–197.314, 197.475–197.492 and 197.660–197.670, Statewide Land Use Planning Goals 10 and 14, and OAR 660, divisions 8 and 24 are the applicable state laws.¹

The fundamental requirement of these state laws is that cities over 25,000 in population must periodically demonstrate that their comprehensive plans provide for sufficient buildable lands within their urban growth boundary to accommodate needed housing for 20 years. A city meets this requirement by:

1. Forecasting what the population within the UGB will be in 20 years, usually relying on a coordinated population forecast adopted by the county; [ORS 195.036; 195.034; OAR 660-024-0030(3) and (4)]
2. Inventorying the supply of “buildable lands”⁷ within the existing UGB and determining the capacity of those lands for additional residential development over the 20-year period under current zoning [ORS 197.296(3)(a)];
3. Determining what is “needed housing” (ORS 197.303⁸ and OAR 660-024-0010(3)⁹) for the community by “housing type”¹⁰ and density, and determining the number of

⁷ Under Statewide Land Use Planning Goal 10, the term “buildable lands – refers to lands in urban and urbanizable [lands within a UGB that still have rural zoning] areas that are suitable, available and necessary for residential use.” See also, ORS 197.295(1) (same). The term is further defined by LCDC rule as:

residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered “suitable and available” unless it:

- (a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;
- (b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 15, 16, 17, or 18;
- (c) Has slopes of 25 percent or greater;
- (d) Is within the 100-year floodplain; or
- (e) Cannot be provided with public facilities.

[OAR 660-008-0005(2); OAR 660-024-0010 (definitions for UGB management)]

⁸ ORS 197.303 provides:

(1) As used in ORS 197.307 * * * “needed housing” means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. * * * “[N]eeded housing” also means:

- (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
 - (b) Government assisted housing;
 - (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
 - (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.
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The housing types listed in the statute, namely “attached single family housing,” “detached single family housing,” and “multiple family housing” also are defined by LCDC rule. OAR 660-008-0005.

⁹ OAR 660-024-0010(3) provides that:

- (3) “Housing need” or “housing need analysis” refers to a local determination as to the needed amount, types and densities of housing that will be:
 - (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the 20-year planning period;
 - (b) Consistent with any adopted regional housing standards, state statutes regarding housing need and with Goal 10 and rules interpreting that goal; and

housing units needed and the amount of land needed for each needed housing type for the 20-year period; [ORS 197.296(3)(b)]

4. If a city determines that its housing need (third step) exceeds its UGB's capacity (second step), the city must first determine whether land inside the UGB can be rezoned to accommodate the additional need. If so, the city must also amend its land use regulations to add new measures that demonstrably increase the likelihood that lands within the existing UGB will accommodate the remaining need. If the city determines it must add lands to its UGB to meet some or all of its projected housing needs, it may do so only after demonstrating that those needs cannot reasonably be accommodated on land already inside the UGB. Statewide Land Use Planning Goal 14.¹¹
5. As part of step 4, a city must determine the density and mix of needed housing types that must occur to meet projected overall housing needs for the 20-year planning period. If that planned density is greater than the actual density of development that has occurred within the UGB since the last periodic review (1998 in the case of Bend), the city must adopt measures to demonstrably increase the likelihood that future residential development in the UGB will occur at the density required to meet the projected housing needs. Similarly, if the overall mix of needed housing types during the 20-years planning period is different from the actual mix that has occurred within the UGB since the last periodic review (1998 for Bend [R. at 1074]), the city must adopt measures to demonstrably increase the likelihood that future residential development will occur in a manner that meets projected housing needs. [ORS 197.296(7)-(9)]
6. If the city determines that some or all of its additional need cannot be met by rezoning and other efficiency measures inside the current UGB (steps 4 and 5), the city must add land to its UGB to accommodate the remaining need. [See ORS 197.296(6)]

The needed housing statutes at ORS 197.295 to 197.314 and Statewide Land Use Planning Goal 10 require cities to *plan* for an adequate supply of land for needed housing. For the most part, they do not directly require cities to *ensure* that needed housing will be developed; that will depend on the market and other programs such as public and non-profit housing programs, tax incentives, and government subsidies.

(c) Consistent with Goal 14 requirements.

¹⁰ The housing types that must be analyzed include, but are not limited to, owner and renter occupied: attached single-family housing, detached single-family housing, and multiple family housing, along with the other three housing types listed in ORS 197.303(1)(b)-(d)) (in footnote 2, above).

¹¹ Statewide Land Use Planning Goal 14 provides, in pertinent part, that: "Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary."

Two other important aspects of Goal 10 and the needed housing statutes and rules bear emphasis in this regard. They are: (a) that the Goal 10 rule requires cities and counties to consider the needs of the relevant *region* in arriving at a fair allocation of housing types within the UGB [OAR 660-008-0030]—in other words, the planning requirements of these laws apply regionally to some degree; and (b) ORS 197.296(7) not only requires planning—it requires “measures that demonstrably increase the likelihood that residential development will occur [at particular density levels, and in particular forms or types].” [ORS 197.296(7)] Such measures may include land use planning actions, but may also include financial incentives, density bonus incentives, redevelopment and infill strategies (such as urban renewal), authorization of new housing types, etc. [ORS 197.297(9)]

b. Summary of Local Actions

On January 5, 2009, the City of Bend adopted three ordinances. The first ordinance (Ordinance NS-2111) amended the city’s Public Facilities Master Plan. [R. at 35]. The second ordinance (Ordinance NS-2112) amended the city’s comprehensive plan map, including its map of its UGB, along with certain provisions of the urban area comprehensive plan text. [R. at 1050-1051] The third ordinance amends the city’s development code in certain respects to implement ordinance NS-2112 (the UGB amendment). [R. at 1836-1837]

The city initiated the evaluation and amendment of its UGB in June of 2007. The first step was to develop an estimate of the total number of new housing units needed over the planning period (from 2008 to 2028). [R. at 1069] The city utilized some of the safe harbors set forth in OAR 660, division 24 in projecting the number of new households, and used a vacancy factor based on 2000 census data. [R. at 1069] The total number of projected households, and thus the number of housing units, that the city found is needed for the 2008–2028 period is 16,681. [R. at 1070]

The city also produced several iterations of a buildable lands inventory (BLI), beginning in 2005, and updated several times through October of 2008. Based on the BLI, the city determined that there were 2,909 acres of vacant or redevelopable residential land within the UGB (prior to the expansion). [R. at 1071] The city then determined that buildable lands within the UGB had the capacity to accommodate 11,159 housing units (or 67 percent of the projected housing units needed for the 2008–2028 planning period) [R. at 1071-1072], leaving 5,522 units needed, to be accommodated by expanding the UGB.

The city prepared three alternate housing needs assessments: the “2709 Trend Forecast,” the “Goal 10 Housing Need Forecast,” and the “Transition Forecast.” [R. at 1075-1078] The findings state that the Transition Forecast satisfies Goal 10. [R. at 1078] The Transition Forecast projects a need for 10,843 (65 percent) detached units and 5,838 (35 percent) attached units for the 2008–2028 planning period.¹² The city then derived a

¹² The city *adopted* a housing *type* mix of 65 percent detached and 35 percent attached, because this was the built mix in 2008. [R. at 1306-07] The city didn’t adopt a separate housing *tenure* mix because it considered the housing type mix of 65 percent detached and 35 percent attached to be “a surrogate measure for tenure.” [R. at 1306]

“need” for additional residential land in an expanded UGB totaling 941 acres, based on the projected 65/35 housing type mix, using the same allocation of planning designations for the new units that exists in the current UGB (52 percent RS, 35 percent RM, and 13 percent RH) [R. at 1079-1080] The city’s estimate of land need reflects some projected increase in average density within these zones, from approximately four units per net acre within the existing UGB to approximately six units per net acre on the lands added to the UGB for residential purposes. [R. at 1080, 1081]

The city has taken several actions to increase the capacity for residential development within the existing UGB. [R. at 1083-1084] These include amendments to the Bend Development Code in 2006, as well as two new efficiency measure proposed in this amendment (beginning to *plan* for 500 units of attached housing in the Central Area Plan, and plan for 600 units of additional housing along transit corridors). [R. at 1085] These two new efficiency measures are reflected in amendments to Chapter 5 of the city’s General Plan. [R. at 1085, note 48; see also R. at 1311 (transit corridor planning to be done prior to 2012, no date is provided for Central Area planning)]

The city also estimated land need for several other uses related to residential use. First, the city prepared a separate estimate of land needed for second homes. [R. at 1086-1088] The city estimates that 18 percent of the number of the total additional housing units projected as needed for the planning period from 2008 to 2028 will be needed for second homes, or an additional 3,002 units. The city also projected that these second-home units will develop at a net density of six units per acre, leading to a land need of 500 acres for second homes. The city estimated that 377 acres of land were consumed over the prior seven years by second home development. [R. at 1086]

The city also estimated land need for schools (192 acres) [R. at 1089], parks (474 acres) [R. at 1090], private open space and private rights-of-way and institutional uses (other than schools and parks). Based on data for the land area of these uses within the existing UGB, the city added 15 percent to the amount of land need for housing to account for these uses. [R. at 1091] Finally, the city added another 21 percent for land needed for streets and other public rights-of-way. [R. at 1092]

The city adopted a Framework Plan Map as part of its UGB expansion. The map identifies seven master plan areas. The General Plan states, “The framework plan functions somewhat like a general plan map by indicating general locations, land use types, and densities of a variety of future urban uses,” [p. 1-5] and, “* * * Owners of large parcels will be required to demonstrate how projects will be developed after annexation in ways that are consistent with the illustrations of the framework plan and the identified land need.” [p. 1-6]

The following table, which is a copy of table III-14 from the city’s findings, summarizes the amount of land the city found was needed for expansion of its UGB for residential and other non-employment purposes during the 2008-2028 planning period. [R. at 1092]

Table 1. Summary of UGB Expansion Needed for Housing and Related Uses (2028)

Acres for new housing units	941
Acres for public schools	192
Acres for public parks and trails	474
Acres for second homes	500
Subtotal	2,107
Acres for other land uses (institutional, private open space, private ROW)	442
Acres for public rights of way	316
Estimate of Total Acres Needed	2,886

The city also included almost 3,000 acres of land in the UGB expansion that are not identified as being needed for housing or employment, or any other land need. [R. at 1054] While it appears that the city considers these acres to be unsuitable for any urban land needs, the city does not explain why these additional lands are included within the UGB if they cannot serve an urban need for land. There are no findings addressing these lands other than the two sentences at R. 1054.

c. Objections

The following subsection summarizes and paraphrases objections filed relating to the amount of land in the UGB expansion area for residential and other non-employment uses. The department also commented on these issues in letters to the city dated October 24, 2008 and November 21, 2008. Responses to these objections are provided in subsections 1.e and 2.e, below.

Anderson – The city and county underestimate the amount of land needed for right-of-way, and therefore fail to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management. [May 7, 2009 letter from Andrew Stamp]

Toby Bayard – The proposal doesn’t plan for needed housing types to meet the housing needs of all residents as required by Goal 10, particularly lower income and multifamily housing. The proposal underestimates the land need for housing for lower income households.

The UGB amendment includes approximately 3,500 acres above the city’s projected land needs, evidently including a variety of lands that are not suitable for urban uses. These lands include land in rural subdivisions, and appear to include lands that contain Goal 5 resources, but none of the reasons for inclusion are contained in the city’s findings. State law does not allow a buffer or cushion (the city included a cushion of 519 acres).

The city has failed to show that residential uses cannot be reasonably accommodated within the existing UGB. The city estimates a potential capacity within the UGB of 44,738 units, but assumes that only 25 percent of this capacity will be utilized. Existing residential density in Bend is less than half that of other Oregon cities of the same size.

The city fails to plan for efficient use of the lands added to the UGB, by assuming that 76 percent of that land will be zoned RS (average density of 4 du/acre). Only 33 acres of the total 941 acres is assumed to be zoned RH (average density of 22 du/acre).

Bend's 1998 General Plan projected a housing mix of 55 percent single-family and 45 percent multi-family (including 10 percent mobile home parks), but actual development since 1998 has been 77 percent single-family and 23 percent multi-family (with 0 percent mobile home parks). The city assumes that housing density and mix will continue to produce the same housing types, without regard for current and future housing needs of the city's population over the next 20 years. The 1998 planned mix of 55/45 percent is identical to the mix provided by the Oregon Housing and Community Services Department's Housing Needs Model, which the city rejected and replaced with a much higher percentage of single-family housing and a much lower percentage of multi-family housing. The city also changed to a different type of housing mix, "detached percent and attached percent" instead of "single-family percent and multi-family percent," which includes single-family housing in the form of high end, low density detached housing, and attached housing in the form of attached housing in the form of high end townhomes, condos, and resort communities. The new mix terminology does less to ensure that both detached and attached housing types more affordable to lower and middle income households are likely to develop. The proposal includes medium and high density development only in the Central Area and on Transit Corridors without demonstrating that this will meet the 20-year housing needs of all residents.

The city has reduced the density in the RL (Residential Low Density) and RS (Residential Standard Density) zones.

The city's estimate of land need for second homes is too high, and is not supported by the evidence in the record.

The city's estimate of land need for public right-of-way is too high.

The city did not sufficiently consider efficiency measures inside the existing UGB as required by ORS 197.296(9). The efficiency measures that were adopted lack documentation to assure that they will be effective. [April 29, 2009 letter]

Carpenter/McGilvary – The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management. [May 5, 2009 letter from Bruce White]

Central Oregon LandWatch – The city does not explain how or why unsuitable lands are added to the UGB to arrive at a gross acreage total of 8,462 acres. The city's findings do not explain why some lands are considered unsuitable, nor why they are nevertheless added to the UGB. The city's determination that lots less than 3 acres in size are

unsuitable if they have existing development is not explained, not does it comply with Goal 14.

The city has not complied with OAR 660-015-0000(14)(2), in that it has not demonstrated that its projected needs cannot be met within the existing UGB.

The city's projected land need of 500 acres for second home development is not justified and is based on incorrect data.

The city's projected land need of 474 acres for parks is not justified, and is based on plans not incorporated into the city's comprehensive plan. In addition, the city fails to account for the fact that some of this need is and will continue to be met on lands outside of the UGB.

Regarding land need for public right-of-way, the city's estimate is based on existing development patterns and does not consider provisions for skinny streets that can and have reduced the amount of land required in newer developments in the city.

Regarding land needed for private rights-of-way and open space, there is no showing of why this type of private land use is needed under Goal 14, when public parks are already provided.

The city misconstrues 660-024-0040(1) in including a "buffer" of 519 acres over and above its demonstrated land need for residential use.

The city fails to consider the approval of the Tetherow destination resort and its effect on land need within the UGB for this type of use.

The city relied on current market conditions as the basis for determining that a greater degree of redevelopment will not occur within the 20-year planning period. The proposed housing mix of 65 percent single-family detached and 35 percent multi-family will not correct a historic shortfall of land for medium and higher density housing types. The city has not done enough to promote infill and redevelopment within the existing UGB, and must adopt more measures to plan for more multi-family housing. [May 7, 2009 letter from Paul Dewey]

Barbara I. McAusland – Bend's Development Code lacks incentives needed for the construction of affordable housing. Providing for second homes in the residential lands need consumes residential land without providing for the primary affordable housing needs of residents. Too much land is added to the UGB. [May 5, 2009 letter]

Newland Communities – The city underestimates the residential land need through the planning period. The assumptions used by the city concerning redevelopment and infill are overly optimistic, and do not account for various livability land needs such as parks and schools. The city also did not adjust its capacity analysis to reflect infrastructure of lot configuration constraints. The city failed to consider the presence of dwellings on lots

in its capacity analysis. The proposed expansion improperly provides less “room” or “livability” per person than existed during the period 1981–2008. The buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB.

The city’s use of the Oregon Housing and Community Services Department’s Housing Needs Model is in error, and will likely result in an underestimate of land need outside the existing UGB during the planning period. The Housing Needs Model should not be used in a UGB expansion, and Bend’s use of it should be disregarded. The state should disregard the city’s discussion or application of the Housing Needs Model and rely on actual trends (77/23 split) or the transition forecast of 65/35. The city must use the 1998-2005 housing mix and densities as required by HB 2709. [ORS 197.296]

The city is required to project housing density and mix, not housing tenure, and not a particular single family/multi-family split.

The theoretical surplus of 519 acres is needed to fulfill land needs, and to provide for effective delivery of infrastructure and complete communities. [May 7, 2009 letter from Christie White]

Oregon Department of State Lands – The city did not properly analyze housing need by type and density as required by ORS 197.296(3)(b) and failed to plan for needed housing as required by ORS 197.303. The city’s conclusion concerning a 65/35 detached/attached housing mix is too generalized to comply with the specificity required under ORS 197.296(3)(b), 197.296(9) and 197.303 for a determination of the number of units and amount of land needed for each housing type (attached and detached single-family housing, and multiple family housing, each for both owner and renter occupancy) for the next 20 years.

The city also fails to adequately consider regional housing needs and a fair allocation of housing types, as required by OAR 660-008-0030.

As a result of these deficiencies, the proposal fails to demonstrate that the UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years. [May 7, 2009 letter from Gary Vrooman]

Swalley Irrigation District – The city and county violated Goal 10 by failing to show that there are measures to achieve needed housing types.

The amount of land determined to be needed is too large and beyond what the city determined was needed. The 519-acre cushion must be removed.

The buildable land inventory does not include all buildable land as defined in ORS 197.295, *e.g.*, by excluding vacant land accessed by private road, by very narrowly defining “redevelopable” land, by excluding “split-zoned” parcels, and by not including

all “partially vacant” land planned or zoned for residential use. The city’s buildable land inventory and housing need analysis ignores or minimizes manufacture home parks as a needed housing type without a factual basis. The city ignores, contrary to Goal 10, the shortage of workforce housing. The city double-counts land need for open space, parks and schools. Parcels 3 acres or smaller with a house are arbitrarily rejected as “unsuitable” for future infill or redevelopment.

The city has selected the most expensive lands to serve with public facilities, making it impossible for affordable housing to be provided.

The city ignored the housing that is planned within two destination resort sites in its housing needs assessment.

The city has failed to include efficiency measures for the existing UGB as required by Goal 14 and ORS 197.296. [May 6, 2009 letter from Wendie Kellington, pp. 63-65, 72, 77-78]

d. Analysis and Conclusions

Population (Statewide Planning Goal 14, Factor 1; and OAR 660-024-0030). The city’s extension of Deschutes County’s acknowledged population forecast, from 2025 to 2028 complies with relevant state law. [ORS 195.036; 195.034] The city used a 1.7 percent annual growth rate for the 2025–2028 period, which is the same average annual growth rate that the County forecast for Bend for 2025. [ORS 195.034(1); R. at 1067-1068]

Buildable Lands Inventory/Capacity Analysis (ORS 197.296(3)–(5); Statewide Planning Goal 10; OAR 660-024-0050; OAR 660-008-0010).

Quantity of Buildable Lands Within the Prior UGB – OAR 660-008-0010 requires that the BLI document the amount of buildable land in each residential plan designation. The BLI must further break down the analysis into the amount of land in each plan designation that is vacant, and the amount that is redevelopable. [OAR 660-024-0050(1)] Buildable lands are residentially designated lands within the UGB that are suitable, available and necessary for residential uses. [OAR 660-008-005(2)] Lands are generally considered suitable and available unless severely constrained by natural hazards, subject to protection measures such as those required by Goal 5, have slopes over 25 percent, are within the 100-year floodplain, or cannot be provided with public facilities. [OAR 660-008-005(2)] In addition, “redevelopable lands” are lands zoned for residential use that are already developed, but where there is a strong likelihood that existing development will be converted to more intense residential uses during the planning period. [OAR 660-008-0050(6)]

Buildable lands include lands that may be used for a mix of residential and employment uses. [ORS 197.296(4)(a)] Finally, the city must create a map or document to verify and identify specific lots or parcels that have been determined to be buildable. [ORS 197.296(4)(c)]

The findings do not clearly explain how the city determined the amount of land that is redevelopable or vacant (the total quantity of vacant and redevelopable lands is determined to be 2,909 acres). [R. at 1071] Generally, the city indicates that the BLI is based on a parcel-level database, where city staff reviewed each tax lot to determine its development status (vacant, vacant platted, vacant with constraints, and redevelopable). [R. at 1071] The city included a summary of the BLI in its newly adopted Chapter 5 of the Bend Area General Plan. [R. at 1288, Table 5-4] However, there does not appear to be a map of the lands determined to be buildable in the record—making it impossible to identify the quantity or location of redevelopable or vacant lands. In addition, the city’s most recent BLI indicates in notes that:

- (a) Developed residential lots contain existing dwellings and do not meet the [redevelopment] criteria below, or are used for employment, schools, parks, open space, institutional uses, or parking lots[;] and
- (b) Redevelopable residential lots can double the number of dwelling units on the lot, are greater than 0.5 acre, have a land value greater than improvement value, [and] have no CC&Rs prohibiting future land division[;] and
- (c) Constrained lots are those with development constraints (no public road access) or with physical constraints over 50% of the lots (includes slopes greater than 25%, areas of special interest, and floodplains. [R. at 2042]

Based on these notes from the most recent BLI, it appears that the city excluded “constrained” lands that may qualify as “buildable land” under OAR 660-008-005(2). That rule provides that lands are generally considered suitable unless they meet certain specific criteria. It also appears that the city concluded that no redevelopment will occur on lots unless they contain at least 0.5 acres and have a land value exceeding improvement value. The criteria in the rule do not correspond to the criteria used by the city.

It also appears that the city considered some lands as “developed residential lots” that could be redeveloped, such as lands used for open space or parking lots. The criteria for “redevelopable residential lots” do not appear to comply with OAR 660-008-0005(6). Although consideration of land and improvement values and CC&Rs is relevant to the likelihood of existing development being converted to more intense residential uses over 20 years, there is no finding or reasoning in the city’s decision that documents the determination required by the rule (i.e., that there is a strong likelihood that existing development will be converted to the capacities the city projects).

Finally, the BLI does not include consideration of potential development in lands that may be used for a mix of residential and employment uses. [R. at 2129] In sum, the department is unable to determine whether the *amount* of vacant and redevelopable land projected by the city for each residential plan designation complies with OAR 660-008-0005, 660-008-0010, 660-024-0050, and ORS 197.295 and 197.296(3) and (4). The director remands the city and county decisions with direction to:

1. Include a map of buildable lands, as required by ORS 197.296(4)(c), as well as a zoning map and a comprehensive plan map for the lands within the prior UGB.
2. Include as its inventory of buildable lands, an analysis for each residential plan district of those lands that are “vacant,” and of those lands that are “redevelopable” as those terms are used in ORS 197.296(4)-(5) and OAR 660-008-005(6). As part of this inventory, include an analysis of what amount of redevelopment and infill has occurred, and the density of that development, by plan district, since 1998. The inventory must include the UAR and SR 2 ½ plan districts, as well as the RL, RS, RM and RH districts.
3. If the city excludes lands on the basis that there is not a strong likelihood that existing development will be converted to more intense residential uses during the planning period, include an analysis of lands within all districts showing the extent to which infill and redevelopment has or has not occurred since 1998.

Capacity Analysis for the Prior UGB – In determining the capacity of buildable lands, the city estimated that *all* vacant and redevelopable land will develop during the planning period. [R. at 1071] However, the city also bases its capacity analysis on the assumption that development in the RL, RS and RM plan designations will occur at the minimum density allowed by zoning for vacant lands in these districts, and that development in the RH district will occur at a lower density than the minimum allowed due to parcelization patterns. [R. at 1071] Most of the buildable lands capacity is estimated to be vacant lots and parcels rather than from lands that might redevelop. [R. at 1071, Table III-4]

The findings refer to a March 3, 2008 memorandum as providing the detail for the city’s assumptions on buildable land capacity. [R. at 1071, 8408-8414] That memorandum indicates the city used the following assumptions regarding the projected density of new housing units per *acre* through *redevelopment*: one unit per acre for RL; two units per acre for RS; five units per acre for RM; and essentially no redevelopment for RH lands. For *vacant* lands that are *already platted* (or in the process of division), the assumed densities per *lot* are: one unit per lot for RL and RS, and two units per lot for RM and RH. For *vacant acreage*, the densities per *acre* are: two units per acre for RL, four units per acre for RS; eight units per acre for RM; and fourteen units per acre for RH. These calculations net out land for right-of-way (at 31 percent; later changed to 21 percent). [R. at 8409-8410; 1072] The findings do not include an analysis of lands zoned UAR or SR 2½ within the prior UGB (there appear to be UAR areas at Cooley Road, and at Juniper Ridge, and SR 2 ½ areas north of Roper Road, as well as other scattered UAR areas on the west side of the city, all within the prior UGB).

The city’s minimum densities for its residential plan designations per its Development Code (Section 2.1.600), and the total acreage within the prior UGB for each as reported by the city, [R. at 8412] are:

- Urban Area Reserve (UAR) one unit per ten gross acres (acreage not listed)

- Suburban Low Density Residential (SR 2½) one unit per 2½ gross acres (single family detached housing) (acreage not listed)
- Low Density Residential (RL) 1.1 units per gross acre (single family detached housing) (1,527 total acres)
- Standard Density Residential (RS) 2.0 units per gross acre (single family detached housing) (9,611 acres)
- Medium Density Residential (RM-10) 6.0 units per gross acre (manufactured homes and attached housing) Note that single-family detached housing is a permitted use in this zone, with no apparent minimum density. (1,336 acres, include RM)
- Medium Density Residential (RM) 7.3 units per gross acre (attached multi-family housing) Note that single-family detached housing is a permitted use in this zone, with no apparent minimum density.
- High Density Residential (RH) 21.7 units per gross acre (attached multi-family housing) (316 acres) [R. at 8411]

While the assumption that *all* buildable lands will be developed during the planning period is aggressive, assumptions regarding the amount of development that will occur on those lands is quite conservative, particularly given the predominance of land planned for lower density within the existing UGB (RL and RS, with the latter allowing a minimum lot size of one-half acre and the former a minimum lot size of just under one acre). In addition, the city apparently failed to analyze lands zoned UAR or SR 2½ at all in terms of development capacity. The final determination of capacity within the existing UGB, which uses these assumptions, yields a total of 10,059 units (before new efficiency measures are considered). [R. at 1071, Table III-4]

Under ORS 197.296(3) and (5)(a), the determination of capacity must be based on data relating to land within the UGB that has been collected since the last periodic review (the city completed its last periodic review in 1998). More specifically, ORS 197.296(5)(a) requires that the determination of housing capacity be based on:

- (A) The number, density and average mix of housing types of urban residential development that have actually occurred;
- (B) Trends in density and average mix of housing types of urban residential development;
- (C) Demographic and population trends;
- (D) Economic trends and cycles; and
- (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

The findings do not relate the capacity analysis to the factors that the statute requires. Although some of the city's earlier efforts were based on actual infill and redevelopment

data from 1998 to 2008,¹³ the decision simply uses assumptions based on minimum allowed density.¹⁴ The analysis also leaves out any analysis of the extent to which lands have been, or are likely to be, rezoned to higher densities. As a result, the director determines that the city's capacity analysis does not comply with Goal 10 or ORS 197.296(3) or 197.296(5)(a). The director remands the city and county decisions with direction to:

1. For each zoning district, analyze the number of units, density and average mix of housing types of urban residential development that has actually occurred since 1998 (including through rezoning) and how much of this occurred on vacant lands, and how much occurred through redevelopment;
2. For each zoning district, analyze whether future trends over the 20-year planning period are reasonably expected to alter the amount, density and mix of housing types that has actually occurred since 1998; and
3. For each zoning district, adopt findings and conclusions regarding the number of units, the density, and the mix of housing types that the city concludes is likely to occur over the planning period, and identify how much is expected to occur on vacant lands, and how much is expected to occur through redevelopment.

Housing Needs Analysis (ORS 197.296(3)(b)(5); Statewide Planning Goal 10; OAR 660-024-0040 and 0050; OAR 660-008-0005, 0010 and 0030; Goal 14). Like the statutorily required analysis of housing capacity within the existing UGB, the scope and basis for the housing needs analysis is largely dictated by state statute. ORS 197.296(3)(b) and (5) require that the city:

Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed *for each needed housing type* for the next 20 years.” ORS 197.296(3)(b)(emphasis added); and that

The determination of housing * * * need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has

¹³ Using 1998-2005 built densities and the current distribution of residential land among the different residential zones would appear to result in a capacity of 12,280 housing units within the existing UGB rather than 10,059 units as the city ended up finding. [Table 13, R. at 2132] The low average built densities in the RL zone (two units per net acre) and RS zone (four units per net acre), and the predominance of those zones (84 percent of the city's total residentially-designated land is RL or RS [Table 5-4, R. at 1288] results in a lower capacity within the existing UGB.

¹⁴ It also appears that the city excluded certain developed lands from consideration for redevelopment potential. Even developed lands must be considered for redevelopment under Goal 10. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670, 693-695 (1995).

[sic] been collected since the last periodic review or five years, whichever is greater. The data shall include:

- (A) The number, density and average mix of housing types of urban residential development *that have actually occurred*;
- (B) *Trends* in density and average mix of housing types of urban residential development;
- (C) Demographic and population *trends*;
- (D) Economic *trends* and cycles; and
- (E) The number, density and average mix of housing types *that have occurred* on the buildable lands described in subsection (4)(a) of this section. [ORS 197.296(5)] [emphasis added]

In addition, ORS 197.303 defines “needed housing” as:

* * * housing types determined to meet the need shown for housing within an urban growth boundary *at particular price ranges and rent levels*. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” also means:

- (a) Housing that includes, but is not limited to, *attached and detached single-family housing and multiple family housing for both owner and renter occupancy*;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.” [ORS 197.303(1)] [emphasis added]

OAR 660-008-0005 defines several terms used in the preceding statutes that are pertinent to the scope of a city’s required housing needs analysis, including: “attached single family housing,” “detached single family housing,” “housing needs projection,” and “multiple family housing.” In particular, the term “housing needs projection” (which is the same as the “housing needs analysis” under 197.296(3)) is:

* * * a local determination, justified in the plan, of the mix of housing types and densities that will be:

- (a) *Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period*;
- (b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and
- (c) Consistent with Goal 14 requirements. [OAR 660-008-0005(4)] [emphasis added]

The city must estimate housing need for each housing type for *both* owner and renter occupancy. ORS 197.303(1)(a). Needed housing also requires that the city evaluate the need for housing at particular price ranges (owner occupancy) and rent levels (renter occupancy), and (as noted above) commensurate with the financial capabilities of *current and future* residents. [Statewide Planning Goal 10, Goal 10 definition of “Needed Housing Units;” OAR 660-008-0005(4) (definition of “housing needs projection”)] Finally, OAR 660-008-0010 and ORS 197.307(3) require that “[s]ufficient buildable lands shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection.” See generally, *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001).

OAR 660-024-0040(7) provides several safe harbors used by the city, under which a city is not required to separately estimate the need for certain housing types (government-assisted housing, manufactured dwellings on individual lots, manufactured dwelling parks).

The collective result of these requirements as applied to the City of Bend is that the city is required to estimate housing need for at least three housing types:

- Attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot, OAR 660-008-0005(1));
- Detached single family housing (a housing unit that is free standing and separate from other housing units, OAR 660-008-0005(3); and
- Multiple family housing (attached housing where each dwelling unit is not located on a separate lot, OAR 660-008-0005(5)).

In addition, the city must estimate housing need for each of these three housing types for *both* owner and renter occupancy. [ORS 197.303(1)(a)] This estimate must be based both on data concerning the development that has actually occurred since the last periodic review, and on demographic and housing trends. [ORS 197.296(5)(a)] The city must consider the housing needs of both present and future residents. OAR 660-008-0005(4) and OAR 660-008-0010. See generally, *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001).

Projected Overall Need for Housing Units – The city projected its overall need for housing during the planning period by dividing the total forecasted population increase (less persons in group quarters) by its projected household size (based on the 2000 census) to derive a forecast for needed new housing units. [R. at 1070, Table III-2] The city utilized several safe harbor provisions of OAR 660-024-0040 in making these forecasts. The findings show that it is qualified to use of these safe harbor provisions, and that the forecast of new housing units needed in the 2008–2028 period complies with state laws. The total of new housing units needed during the planning period is 16,681. [R. at 1070] The director finds that the city’s projection of overall need for housing units complies with applicable state law.

Projected Need by Density and Housing Type – The city carried out three different housing needs analyses: a “HB 2709 Forecast;”¹⁵ a “Housing Needs Model;” and a “Transition Forecast.” [R. 1074-1078]. It appears that the city relied on the “Transition Forecast” for its final decision. [R. at 1078 (“The city finds that this final forecast (aka transition forecast) will meet Goal 10.”)] However, the city *adopted* as its final housing need analysis a new Chapter 5 of its General Plan. [R. at 1050, 1280-1315 (“This section of Chapter 5 represents Bend’s Housing Needs Analysis.” R. at 1285)] Nevertheless, the city’s findings refer to the three prior analyses rather than to Chapter 5, for reasons that are not clear. As a result, it is extremely difficult to understand the city’s reasoning.

The beginning of the newly adopted General Plan Chapter 5 includes a series of important findings, including:

- “The inadequate supply of land has led to a lack of multi family units * * *.”
- “Central Oregon has the highest net migration in the state. The inadequate supply of land has led to a lack of multi-family units.”
- “The rapid increase in population has resulted in a growth in demand for workforce housing that has outpaced the production of workforce housing units. Between 2000 and 2005, job growth created a demand for 9,057 units of workforce housing while only 8,230 units were produced.”
- “* * * [M]ore affordable forms of housing, such as multi-family units, are currently being priced out of the Bend market.”
- “Affordable housing for service workers, both for individuals and families, is in short supply in Bend. * * * * While the cost of rental housing has not increased as rapidly as house prices, recent rent increases are starting to place additional

¹⁵ The city states that its “House Bill 2709 trend forecast” -- an “extrapolation of actual housing mix and density trends between 1998 and 2005” [R. at 2121] -- is consistent with ORS 197.296. The department does not agree. ORS 197.296(5) sets out the state’s UGB housing capacity and need methodology for cities like Bend that have 25,000 or more people in their UGBs. The UGB data on which the city must rely include:

- The number, density and average mix of housing types of urban residential development that have actually occurred;
- Trends in density and average mix of housing types of urban residential development;
- Demographic and population trends;
- Economic trends and cycles; and
- The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section. [ORS 197.296(5)(a)]

Only two of these data sources, the first and last, address *past* housing development; the others address future housing *trends*. This means that the city cannot rely exclusively on past data to determine housing need and capacity within the existing UGB. The analysis must also be based on current and future trends.

pressure on low-income households. Further complicating the issue is the seasonality of many jobs in the region * * * making it difficult for the region to meet peak housing needs. * * *

- “The lack of affordable housing for the workforce has a negative affect on employers in Central Oregon. * * *
- “The increasing lack of housing affordable to low and moderate income households is resulting in many area workers purchasing homes and living in other communities, including Redmond, Prineville and others. * * * This is exacerbating traffic congestion and other issues caused by rapid growth in the community. It also affects the ability of area employers to attract workers for jobs at many income levels, including service and professional workers.” [R. at 1282-1284].¹⁶
- “In 2000, there were 2,087 and 2,285 very low and low income households, respectively, in Bend. There were only approximately 1,300 housing units available at prices at or under 30% of these households’ monthly income * * *. Over 90% of these were rental units.” [R. at 1309]

The city analyzed the housing development that occurred within its prior UGB between 2000 and 2008 for two housing types: attached and detached. [R. at 1286] There is no separate analysis of single family attached housing (the data for this housing type are combined with the detached single family housing data). The data show that the proportion of single family housing within the UGB has increased from 70 percent to 78 percent of all units over this period, while the proportion of multi-family housing has held steady (at 20 percent). The proportion of housing in manufactured home parks has decreased rapidly. [R. at 1286, Table 5-3 (note, there are math errors in the cited percentages)] The city also (in narrative, summary form) analyzed the change in density for single family and multi-family housing, finding that single family housing density has increased by 54 percent since 1999, and that the density of some types of multi-family housing has increased by 10 percent (there is no narrative regarding apartments or condominiums). [R. at 1289-1290] The findings also show a significant *decrease* in rental housing as a proportion of the total between 1990 and 2000. [R. at 1290, Table 5-7].

Like Chapter 5, the findings concerning the Transition Forecast consider housing need only for two categories: detached units and attached units. [R. at 1078, Table III-10] The projected housing mix of these two categories is 65 percent detached, and 35 percent attached. The findings indicate that most detached units will be owner-occupied, and that 38 percent of the attached units also are currently owner-occupied, with that percentage

¹⁶ “It is clear that the city has a shortage of land in the higher density zones. A comparison of the land need and land supply by zones shows an overall deficit of about 250 net acres in the RM zone and a deficit of about 200 acres in the RH zone. From a planning perspective, it doesn’t make sense to expect that this shortage of RM and RH land will be met entirely in the UGB expansion area(s).” [R. at 2133, City of Bend, Residential Lands Study, April 25, 2005]

expected to increase. [R. at 1078-1079] In other words, the Transition Forecast assumes that at least 78 percent of the housing needed between 2008 and 2028 will be owner-occupied (65% + 38% of 35%).

There are two main problems with the analysis. First, the lack of a clear connection between the findings and its adopted housing needs analysis (Chapter 5), along with the collapsing of housing types into two summary categories (attached and detached), makes it effectively impossible to determine whether the amendment complies with the substantive requirements of Goal 10 and ORS 197.296 to designate sufficient lands to satisfy housing needs by housing type and density. As a result of the use of varying categories and terminology, the director is unable to determine whether the housing needs analysis complies (in form) with ORS 197.296 and Goal 10.

This is not simply a technical problem; the use of varying housing type categories and labels in the findings makes it impossible to evaluate whether they comply with Goal 10 and ORS 197.296 (compare Tables III-5, III-6, III-8, III-9 and III-10). The terminology also makes it impossible to determine whether and how the city's residential zones provide for various housing types as contemplated by OAR 660, division 8. The "transition forecast," which blends actual development with future needs, provides an estimated future housing *type* mix of 54 percent detached and 46 percent attached. [R. at 2130] It is impossible for the director to compare this result with the other two forecasts, the 1998–2005 built mix, and with the 1998 planned mix, because the findings express housing mix in terms of single-family vs. multi-family housing types, not detached versus attached housing types.

More substantively, it is clear from the findings that there is a current and projected future shortage of land for multi-family housing. [R. at 1075] In addition, the city has identified a significant need for additional workforce housing to reduce the growing trend of commuting into Bend from surrounding communities [R. at 1282], and a need for additional seasonal worker housing. [R. at 1282] Neither the findings nor the Housing Needs Analysis explain how the current and future planning designations of land will provide for these housing needs. Instead, the decision simply assumes (and does not attempt to alter) the recent trends that have created these housing needs.

Specifically, the city has planned most of its residential lands (87 percent) within the prior UGB for low-density, single family residential use (RL (1.1 dwelling per gross acre minimum density) and RS (2.2 dwellings per gross acre minimum density)). Multi-family housing (buildings with more than 3 units) is not allowed within the RL and RS zones (duplexes and triplexes are conditional uses in the RS zone). [Bend Code section 2.1.200, R. 1287-1288].

Further, the city is planning for an equivalent distribution of lands among residential districts for the lands the UGB expansion area. [R. at 1079; 1080] (Table III-12 shows 76 percent of the total acreage as being in the RS zone; note that lands in the RL zone are not included in this table at all because, according to the city, this zone will not provide

needed housing.) [R. at 1079; see also R. at 1098 (Framework Plan¹⁷ allocates 84 percent of (non-employment) lands added to the UGB as RS)]. The record lacks findings on why the existing distribution by zone is appropriate for the expansion area, and why it is appropriate for the 20-year planning period, especially in light of other findings in the record about demographic, household income, and housing affordability trends for the Bend area that indicate the existing distribution is not appropriate for the future.¹⁸

Conversely, previous planning decisions may have undermined the city's ability to provide needed multi-family and high density housing. The city's 2008 BLI reports that there are 341 acres designated as high density residential (RH), which contained 1,246 dwelling units, of which 172 units are single family dwellings. [Table 5-4, R. at 1288, Table 5-5, R. at 1289] This amounts to a gross density of 3.65 dwelling units per acre for the 341-acre inventory of RH-designated land.

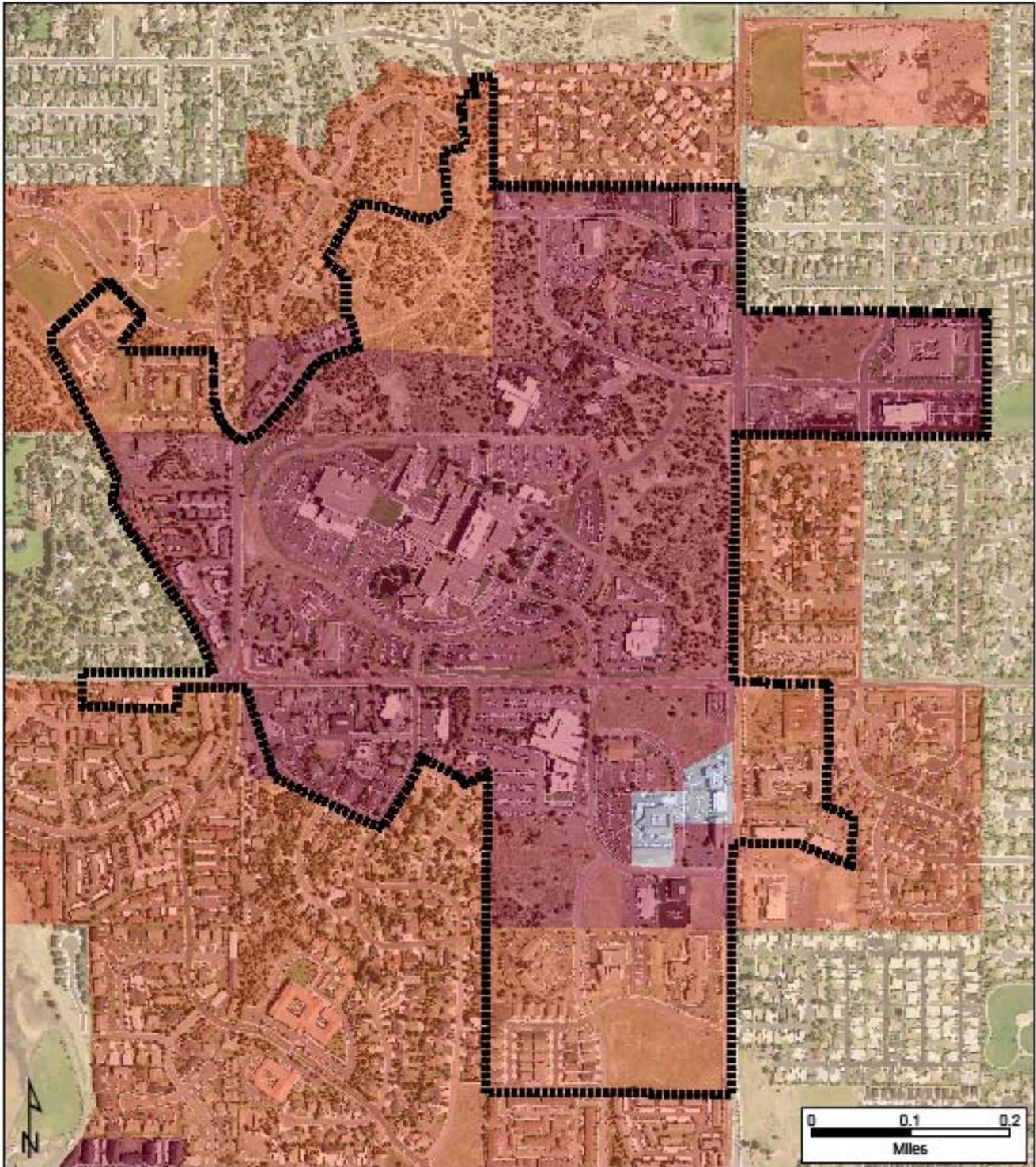
In attempting to understand the low unit per acre yield from the RH inventory, the department has determined that approximately 215 acres of the 341 RH inventory is included within the Medical District Overlay Zone, which is anchored by St. Charles Hospital. (See Figure 2 on the following page). A review of existing land uses within the overlay zone's RH-designated area shows that a majority is devoted to the hospital and related medical uses, including satellite facilities and offices, as well as what appears to be a potential hospital expansion area. Most of the assisted living and nursing home units within the overlay district are actually located on medium density (RM) designated and zoned land. Very little high density housing is found in the approximately 215-acre area of RH. This is partially confirmed by the 2008 BLI, which shows only 29 nursing home dwelling units in the city's RH inventory.

It can be fairly concluded from this data that these approximately 215 acres of RH lands have and will yield very little actual multi-family housing. This "non-yielding" area represents 63 percent of the city's entire RH inventory, leaving only 126 acres of RH land citywide to meet the needs of this needed housing type.

Housing densities within the city appear to have increased to some extent since the last periodic review, and in this sense the city may be moving toward compliance with the intent of Goal 10, OAR 660-008-0020, ORS 197.296 and ORS 197.307(3). Further, the overall amount of land identified as needed by the city for residential uses (941 acres), *may* be reasonable given the city's rapid growth. However, without findings that connect the identification of housing needs with a showing that sufficient lands have been

¹⁷ The Framework Plan referred to in the findings at R. 1098 is referred to elsewhere as the draft Framework Plan. R. 1056]. The Framework Plan is referenced in the City's General Plan, but it is not clear that the city has adopted the Framework Plan.

¹⁸ The city adopted a housing *type* mix of 65 percent detached and 35 percent attached because this was the built mix in 2008. [R. at 1306-07] It is not clear whether this mix applies to the entire amended UGB, or only to the expansion area.



Medical District Overlay Zone

Figure 2



Oregon
Department of Land
Conservation & Development

This product is for informational purposes and may not have been prepared for or be suitable for legal engineering, or for any other purpose. Users of this information should review or consult the primary data and/or other sources to ascertain the usability of the information.

- RH - Res Urb High Density
- RM - Res Urb Medium Density
- RS - Res Urb Standard Density

- Other City Zones (Employ, Mo Use, & Pub. Pac.)
- Overlay Zone Boundary

Aerial image: 2009 NADP
LIDAR and zoning information extracted
from maps provided by City of Bend
and Deschutes County
DLCD GIS and Planning
Hospital of Bend

provided to meet those needs, the director is unable to conclude that the city's decision complies with Goal 10, the Goal 10 rules, the needed housing statutes, or Goal 14 and OAR 660, division 24.

For the foregoing reasons, the director remands the city and county decisions, with direction to:

1. Revise the Housing Needs Analysis to comply with ORS 197.296, OAR 660-008-0020, and ORS 197.303. The Housing Needs Analysis must include an evaluation of the need for at least three housing types at particular price ranges (owner occupancy) and rent levels (renter occupancy), and commensurate with the financial capabilities of *current and future* residents. Those housing types include: (a) attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot pursuant to OAR 660-008-0005(1)); (b) detached single family housing (a housing unit that is free standing and separate from other housing units pursuant to OAR 660-008-0005(3); and (c) multiple family housing (attached housing where each dwelling unit is not located on a separate lot pursuant to OAR 660-008-0005(5));
2. Adopt the revised Housing Needs Analysis as an element of the comprehensive plan, along with findings that demonstrate how the revised Housing Needs Analysis complies with the applicable statutory, goal and rule requirements described above.

Amount of Land Added to the UGB for Residential Land Need – The amendment includes a conclusion that there is a need for 941 acres of additional land for needed housing, for 5,522 dwelling units that cannot be accommodated within the prior UGB. [R. at 1082] As noted above, without findings that connect this amount to needed housing types as identified by the city in its own findings, and as required by state law, the director is unable to determine whether the amount of land added to the UGB is lawful.

A final key assumption used by the city to determine the quantity of land required in an expansion area for needed housing is that new residential development in the expansion area will occur at an overall density of six units to the net acre, not including lands planned for low density development. [R. at 1079, 1080]¹⁹ The findings state that this density:

* * * would be higher than densities seen in recent development because the 2006 Development Code requires minimum densities of development to ensure housing

¹⁹ The General Plan amendments assumed an average net density of 5.9 dwelling units per net acre, for the expansion area only, based on average net densities for the RS, RM and RH Zones. [R. at 1308] These densities don't appear consistent with the 2006 built densities or the planned densities for the existing UGB or the "Needed density by housing types," and the plan doesn't include findings for the decision to use these numbers. Compare Table 13 [R. at 2132], Table 5-28 [R. at 1308], Table 5-29 [R. at 1308], and Table 5-29A [R. at 1309].

developed in the RM and RH zone occurs at densities higher than the assumed overall coverage of six units to the net acre. The city feels compelled to point out that the needed density of six units to the net acre is 50 percent higher than the current net density of just under 4 units to the acre. [R. at 1081]

As described in more detail below, the director does not agree that the minimum density provisions of the city's 2006 Development Code ensure or otherwise encourage any increase in density given the current and planned allocations of land between the SR 2½, RL, RS, RM and RH districts within the city and within the UGB expansion area. There is simply too much land planned as SR 2½, RL and RS, combined with minimum densities for these districts of one unit per 2.5 acres, 1.1 unit per acre, and two units per acre, respectively, to ensure anything but large lot residential development.

The use of an overall average residential density for the UGB expansion area of 6.0 units per net acre assumes that the city will maintain the same proportional allocation of zones within its prior UGB in the expansion area, providing no progress toward planning for more efficient urban development. This results in the city adding more land to its UGB than is necessary to provide needed housing, and in the long term this will only exacerbate the transportation and public facility challenges facing the city. As a result, the director finds that the city has not demonstrated that the amount of land added to the city's UGB for needed housing complies with Goal 10 or Goal 14, or their implementing rules, or with the needed housing statutes. The director remands the city and county decisions, with direction to:

Analyze what the mix of plan designations should be in the UGB expansion area in direct relation to the city's projected housing needs, and consider the adoption of new residential plan districts that encourage more multi-family, higher density single family housing, and other needed housing types for a greater proportion of the expansion area, in order to meet the city's and the region's demonstrated housing needs.

Measures – In order to approve the UGB expansion, the director also must determine whether the identified needs for residential land can reasonably be accommodated on land within the prior UGB. [Goal 14; OAR 660-024-0050(4)] In addition, Goal 10 and ORS 197.307(3) require that, when the city identifies a need for housing at particular price ranges and rent levels, sufficient buildable lands must be provided to satisfy that need. ORS 197.296(7) also requires adoption of measures that “demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet needs over the next 20 years.”

As part of its decision, the city adopted two new measures intended to increase the proportion of its housing need that could be satisfied within the existing UGB. These measures add 500 units of housing in the Central Area Plan, and up-zone areas along

transit corridors for another 600 units. Chapter 5 of the General Plan (Housing) requires that transit corridor amendments be implemented prior to 2012 [R. at 1311]; there is no timeframe associated with the Central Area Plan work. Nor does Chapter 5 include any specific commitment in terms of number of housing units. Although these units are “assumed” to be attached, the numbers are described as an estimate. [R. at 1303] As a result, the director is unable to determine that these measures “demonstrably increase the likelihood” that the additional residential development will occur.

The city also notes in its findings that it has taken *prior* efficiency measures. [R. at 1083] With respect to these measures, the director believes that the main efficiency measures identified by the city are not likely to be effective. The minimum adopted densities range from 1.1 unit per gross acre to 2.0 units per gross acre for most residentially zoned lands. Even in the city’s medium-density zones, the minimum densities are 6.0 to 7.3 units per acre. These densities do little or nothing to address the city’s identified need for multi-family, lower income, or workforce housing. As noted above, multi-family housing is not allowed at all in the RS zone (other than duplexes and triplexes, which are conditional uses). The 2007 Residential Lands Study does not demonstrate how much these actions have increased housing densities, how many additional housing units they provided, or how much urban land they saved in the past, nor does it show how much of the city’s needed housing types and units, and what amount of residential land, these actions will provide within the next 20 years. As a result, the director determines that the city has failed to demonstrate that the estimated needs cannot reasonably be accommodated on land already within the UGB. The director remands the city and county decisions, with direction to:

1. Consider measures to encourage needed housing types within additional areas of the city, including rezoning of areas along transit corridors and in neighborhood centers.
2. Consider splitting the existing RS zone, which covers most of the residential areas of the city, into two or more zones in order to encourage redevelopment in some areas while protecting development patterns in well-established neighborhoods.
3. In areas where the city is planning significant public investments, consider up-zoning as a means to help spread the costs of such investments.
4. Consider strengthening the minimum density provisions in the existing UAR and SR 2½ zones by eliminating PUDs and other clustering tools.
5. Consider strengthening the minimum density provisions in the existing RS and RM zones to encourage development of needed housing types, rather than relying on low density residential development.

As noted above, the director believes the city likely will be able to make a showing that some amount of residential land is needed in an expanded UGB due to the city’s rapid growth rate, but the director believes there are other reasonable measures that the city can

take to accommodate more of the needed housing within the prior UGB over the next 20 years.

e. Response to Objections

Toby Bayard –

Objection: The UGB amendment includes approximately 3,500 acres above the projected land needs, evidently including a variety of lands that are not suitable for urban uses. These lands include land in rural subdivisions, and appear to include lands that contain Goal 5 resources, but none of the reasons for inclusion are contained in the findings. State law does not allow a buffer or cushion (the city included a cushion of 519 acres).

Response: This objection is sustained. As noted in the department’s analysis, the findings provide no basis for including lands beyond the roughly 5,000 acres shown as needed for residential and employment related land needs.

Objection: The city has failed to show that residential uses cannot be reasonably accommodated within the existing UGB. The city estimates a potential capacity within the UGB of 44,738 units, but assumes that only 25 percent of this capacity will be utilized. Existing residential density in Bend is less than half that of other Oregon cities of the same size.

Response: This objection is sustained. Goal 14 and OAR 660-024-0050 require the city to show that its needs for urban land cannot reasonably be accommodated within the existing UGB.

Objection: The city has assumed no redevelopment of RL and RS lands within the UGB. Goal 14 and Goal 10 requires the city to analyze what redevelopment has actually occurred on these lands since 1998, and to estimate redevelopment based on actual experience as well as future trends, rather than simply concluding that no redevelopment will occur.

Response: This objection is sustained. As noted above, state statute requires the city to base its estimate of redevelopment on what has actually occurred within the UGB as well as future trends. The city’s findings do not address redevelopment or infill that has occurred on UAR, SR 2½, RL, or RS lands.

Objection: The city fails to plan for efficient use of the lands added to the UGB, by assuming that 76 percent of that land will be zoned RS (average density of four dwelling units per acre). Only 33 acres of the total 941 acres is assumed to be zoned RH (average density of 22 dwelling units per acre).

Response: This objection is sustained. The city’s Framework Plan and findings, as well as Chapter 5 of the General Plan, indicate that only a very small percentage of land added to the UGB will be planned for moderate or high-density residential uses. Given the findings that there is a shortage of multi-family housing, and shortages of affordable and workforce housing, the decision to follow existing land allocations in the expansion lands violates both Goal 10 and Goal 14, and their implementing rules.

Objection: Bend's 1998 General Plan projected a housing mix of 55 percent single-family and 45 percent multi-family (including 10 percent mobile home parks), but actual development since 1998 has been 77 percent single-family and 23 percent multi-family (with 0 percent mobile home parks). The city assumes that housing density and mix will continue to produce the same housing types, without regard for current and future housing needs of the city's population over the next 20 years. The 1998 planned mix of 55/45 percent is identical to the mix provided by the Oregon Housing and Community Services Department's Housing Needs Model, which the city rejected and replaced with a much higher percentage of single-family housing and a much lower percentage of multi-family housing.

The city also changed to a different type of housing mix, "detached percent and attached percent" instead of "single-family percent and multi-family percent," which includes single-family housing in the form of high end, low density detached housing, and attached housing in the form of attached housing in the form of high end townhomes, condos, and resort communities. The new mix terminology does less to ensure that both detached and attached housing types more affordable to lower and middle income households are likely to develop. The proposal includes medium and high density development only in the Central Area and on Transit Corridors without demonstrating that this will meet the 20-year housing needs of all residents.

Response: This objection is sustained for the reasons set forth in the department's analysis. The form of the city's Housing Needs Analysis makes it impossible to determine what housing needs are, and whether the city's UGB expansion will meet those needs.

Objection: The city did not sufficiently consider efficiency measures inside the existing UGB as required by ORS 197.296(9). The efficiency measures that were adopted lack documentation to assure that they will be effective.

Response: This objection is sustained. As determined above, the city needs to evaluate additional measures to assure that it provides lands for needed housing, and the two efficiency measures that the city has adopted are not adequately assured based on the lack of specificity in Chapter 5.

Central Oregon LandWatch –

Objection: The city has not complied with OAR 660-015-0000(14)(2), in that it has not demonstrated that its projected needs cannot be met within the existing UGB.

Response: This objection is sustained. Both Goal 14 and ORS 197.296 require the city to adopt measure to provide needed housing within its UGB before looking to lands outside of the UGB.

Objection: The city relied on current market conditions as the basis for determining that a greater degree of redevelopment will not occur within the 20-year planning period. The proposed housing mix of 65 percent single-family detached and 35 percent multi-family will not correct a historic shortfall of land for medium and higher density housing types. The city has not done enough to promote infill and redevelopment within the existing UGB, and must adopt more measure to plan for more multi-family housing.

Response: This objection is sustained for the reasons set forth in the director’s decision.

Barbara I. McAusland –

Objection: Bend’s Development Code lacks incentives needed for the construction of affordable housing. Providing for second homes in the residential lands need consumes residential land without providing for the primary affordable housing needs of residents. Too much land is added to the UGB.

Response: These objections are sustained in part. As set forth in the director’s decision above, the city must consider additional measure to assure that lands are provided for the development of needed housing. The director agrees with the city and with the objector that second home development competes with other needed housing types, and should be considered in the city’s decisions, and that the city’s planning for expansion areas can influence whether the lands are used for second home development or other forms of housing. The director agrees that the city has not justified the amount of land added to the UGB.

Newland Communities –

Objection: The city underestimates the residential land need through the planning period. The assumptions used concerning redevelopment and infill are overly optimistic, and do not account for various livability land needs such as parks and schools. The city also did not adjust its capacity analysis to reflect infrastructure of lot configuration constraints. The city failed to consider the presence of dwellings on lots in its capacity analysis. The proposed expansion improperly provides less “room” or “livability” per person than existed during the period 1981-2008. The buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB.

Response: The director denies Newland’s objection that the city has underestimated the need for residential land through the planning period. As set forth above, the director is unable to determine whether the city has underestimated or overestimated its need for residential land due to problems with the city’s BLI and HNA.

The director does not agree that the assumptions used by the city concerning redevelopment and infill are overly optimistic. Again, those assumptions are inadequately documented under ORS 197.296.

The director does not agree that the city failed to consider livability needs. The city has included estimated land need for parks and schools. Again, however, the amounts of land included for these needs are not adequately documented under Goal 14 or OAR 660, division 24.

The director denies the objection that the city’s capacity analysis should reflect infrastructure of lot configuration constraints without more specific evidence that lands cannot be served during the planning period. The city did consider the presence of dwellings on lots in its capacity analysis, as set forth above.

The director denies the objection that the proposed expansion improperly provides less “room” or “livability” per person than existed during the period 1981-2008. There is evidence in the record that the density of the city is significantly lower than other large cities in Oregon, and there is nothing in state law that prevents the city from increasing the efficiency of its development pattern and lowering its costs for public services.

The director denies the objection that the buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB for the reasons set forth in the director’s analysis, above. In its current form, it is not possible to conclude whether the city’s BLI complies with ORS 197.296 and Goal 10.

Objection: The city’s use of the Oregon Housing and Community Services Department’s Housing Needs Model is in error, and will likely result in an underestimate of land need outside the existing UGB during the planning period. The Housing Needs Model should not be used in a UGB expansion, and Bend’s use of it should be disregarded. The state should disregard the city’s discussion or application of the Housing Needs Model and rely on actual trends (77/23 split) or the transition forecast of 65/35. The city must use the 1998-2005 housing mix and densities as required by HB 2709 [ORS 197.296].

Response: Based on the city’s findings, it does not appear that the city relied on the Housing Needs Model. Instead, the city relied on the HNA in Chapter 5 of its General Plan and (as set forth in its findings) its “Transition Forecast.” The Housing Needs Model is one source of evidence of needed housing, and one which the city apparently did not rely on. As a result, this objection provides no basis for remand of the city’s decision. The director agrees that 1998-2008 housing mix and densities (for each of the city’s residential districts) is one of the bases that the city must consider (along with future trends), as set forth in the analysis above.

Objection: The city is required to project housing density and mix, not housing tenure, and not a particular single family/multi-family split.

Response: This objection is denied, in part. The city is required to project housing density and mix for both owner-occupied and rental housing, for each residential district, for single family detached, single family attached, and multi-family housing. ORS 197.296(3) and (5).

Oregon Department of State Lands –

Objection: The city did not properly analyze housing need by type and density as required by ORS 197.296(3)(b) and failed to plan for needed housing as required by ORS 197.303. The city’s conclusion concerning a 65/35 detached/attached housing mix is too generalized to comply with the specificity required under ORS 197.296(3)(b), 197.296(9) and 197.303 for a determination of the number of units and amount of land needed for each housing type (attached and detached single-family housing, and multiple family housing, each for both owner and renter occupancy) for the next 20 years.

Response: This objection is sustained, for the reasons set forth in the director’s analysis, above.

Objection: The city also fails to adequately consider regional housing needs and a fair allocation of housing types, as required by OAR 660-008-0030.

Response: This objection is sustained. The city is obligated under Goal 10, and the cited rule, to consider needed housing on a regional basis. The city's findings indicate that much needed housing for the City of Bend is being provided outside of the city, forcing the region's residents to drive long distances and creating imbalances between cities in Central Oregon. The city and the county must address these regional issues on remand.

Objection: As a result of these deficiencies, the proposal fails to demonstrate that the UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years.

Response: This objection is sustained. Until the city completes the tasks required on remand, it has not demonstrated that its UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years.

Swalley Irrigation District –

Objection: The city and county violated Goal 10 by failing to adopt measures to achieve needed housing types.

Response: This objection is sustained, for the reasons set forth in the director's analysis above.

Objection: The buildable land inventory does not include all buildable land as defined in ORS 197.295, e.g., by excluding vacant land accessed by private road, by very narrowly defining "redevelopable" land, by excluding "split-zoned" parcels, and by not including all "partially vacant" land planned or zoned for residential use. The city's buildable land inventory and housing need analysis ignores or minimizes manufactured home parks as a needed housing type without a factual basis. The city ignores, contrary to Goal 10, the shortage of workforce housing. The city double-counts land need for open space, parks and schools. Parcels 3 acres or smaller with a house are arbitrarily rejected as "unsuitable" for future infill or redevelopment.

Response: This objection is sustained for the reasons set forth in the director's analysis above.

Objection: The city has selected the most expensive lands to serve with public facilities, making it impossible for affordable housing to be provided.

Response: This objection is sustained, in part. ORS 197.296(9) requires cities to ensure that land for needed housing is in locations appropriate for the housing types identified as needed. The city has identified needs for multi-family, workforce, and seasonal worker housing, and a general housing affordability problem, and yet at least some of the lands included within the expansion area are shown by the city's analyses to have very high service costs. The city's revised HNA should address and link needed housing types with its existing analysis of service costs.

Objection: The city ignored the housing that is planned within two destination resort sites in its housing needs assessment.

Response: This objection is sustained for the reasons set forth in response to the similar objection from Central Oregon LandWatch.

Objection: The city has failed to include efficiency measures for the existing UGB as required by Goal 14 and ORS 197.296.

Response: This objection is sustained, in part. The city has included two new efficiency measures and referred to some existing efficiency measures as described in the director's analysis above. However, as set forth in detail above, these measures are both too uncertain, and inadequately related to the city's housing needs, to ensure that the city is complying with the need criteria of Goal 14, or with the requirements of ORS 197.296 to adopt measures to ensure that the city is planning for needed housing.

f. Summary of Decision on Housing and Residential Land Needs

The director remands the UGB amendment with the following instructions:

1. Include a map of buildable lands, as required by ORS 197.296(4)(c), as well as a zoning map and a comprehensive plan map for the lands within the prior UGB;
2. Include as its inventory of buildable lands, an analysis for each residential plan district of those lands that are "vacant," and of those lands that are "redevelopable" as those terms are used in ORS 197.296(4)-(5) and OAR 660-008-005(6). As part of this inventory, include an analysis of what amount of redevelopment and infill has occurred, and the density of that development, by plan district, since 1998. The inventory must include the UAR and SR 2 ½ plan districts, as well as the RL, RS, RM and RH districts;
3. If the city excludes lands on the basis that there is not a strong likelihood that existing development will be converted to more intense residential uses during the planning period, include an analysis of lands within all districts showing the extent to which infill and redevelopment has or has not occurred since 1998;
4. For each zoning district, analyze the number of units, density and average mix of housing types of urban residential development that has actually occurred since 1998 (including through rezoning) and how much of this occurred on vacant lands, and how much occurred through redevelopment;
5. For each zoning district, analyze whether future trends over the 20-year planning period are reasonably expected to alter the amount, density and mix of housing types that has actually occurred since 1998;
6. For each zoning district, adopt findings and conclusions regarding the number of units, the density, and the mix of housing types that the city concludes is likely to occur over the planning period, and identify how much is expected to occur on vacant lands, and how much is expected to occur through redevelopment;

7. Revise the Housing Needs Analysis to comply with ORS 197.296, OAR 660-008-0020, and ORS 197.303. The Housing Needs Analysis must include an evaluation of the need for at least three housing types at particular price ranges (owner occupancy) and rent levels (renter occupancy), and commensurate with the financial capabilities of *current and future* residents. Those housing types include: (a) attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot pursuant to OAR 660-008-0005(1)); (b) detached single family housing (a housing unit that is free standing and separate from other housing units pursuant to OAR 660-008-0005(3); and (c) multiple family housing (attached housing where each dwelling unit is not located on a separate lot pursuant to OAR 660-008-0005(5));
8. Adopt the revised Housing Needs Analysis as an element of the comprehensive plan, along with findings that demonstrate how the revised Housing Needs Analysis complies with the applicable statutory, goal and rule requirements described above;
9. Analyze what the mix of plan designations should be in the UGB expansion area in direct relation to the city's projected housing needs, and consider the adoption of new residential plan districts that encourage more multi-family, higher density single family housing, and other needed housing types for a greater proportion of the expansion area, in order to meet the city's and the region's demonstrated housing needs;
10. Consider measures to encourage needed housing types within additional areas of the city, including rezoning of areas along transit corridors and in neighborhood centers;
11. Consider splitting the existing RS zone, which covers most of the residential areas of the city, into two or more zones in order to encourage redevelopment in some areas while protecting development patterns in well-established neighborhoods;
12. In areas where the city is planning significant public investments, consider up-zoning as a means to help spread the costs of such investments;
13. Consider strengthening the minimum density provisions in the existing UAR and SR 2½ zones by eliminating PUDs and other clustering tools; and
14. Consider strengthening the minimum density provisions in the existing RS and RM zones to encourage development of needed housing types, rather than relying on low density residential development.

2. Land Added to the UGB for Related (Non-Employment) Uses

a. Legal standards

Goals 10 and 14 and OAR 660, divisions 8 and 24 are the applicable state laws.

b. Summary of Local Actions

As noted in the introduction to this section, in addition to the 941 acres of land added to the UGB for residential uses, the city has added 1,925 acres to meet its estimated land need for public schools, parks, second homes, private open space and rights-of-way, and public rights-of-way. The amount of land the city estimates is needed for each of these uses (based partially on its analysis of land use within the prior UGB) is summarized in Table 1, in subsection 1.b of this section. [R. at 1092]

c. Objections.

Objections related to land need are itemized in subsection 1.c, above, and the department's responses related to those objections specific to non-residential, non-employment land need are provided in section 2.e, below.

d. Analysis and Conclusions.

Public schools and parks. The estimates of land need for public schools [R. 1088-1089] and parks [R. 1089-1090] are based on per-capita service standards recommended by the school district and the parks district. While there may be no inherent problem with the use of service standards, the city's application of the standards assumes that *all* new school and park facilities to serve new residents in Bend will be located on expansion lands outside of the prior UGB. The findings do not address whether the estimated land needs for schools can reasonably be accommodated within the UGB, as required by OAR 660-024-0050(4). Similarly, the findings for parks do not address whether the estimated need can be met within the UGB, or the extent to which the need may already be met by existing or planned facilities *outside* of the UGB (some types of park facilities are allowed outside of UGBs; see, OAR 660, division 34).

In addition, the land need estimate for public parks was increased from 362 acres to 474 acres at the very end of the city's review process, based not on the district's service standards but on an estimate of land need "on a quadrant basis using the city's Framework Plan." [R. at 1090] The findings do not clearly explain the basis for this increase,²⁰ and given the director's action with regard to the Framework Plan (see below) do not have an adequate factual base. As a result, the director is unable to find that there is an adequate factual basis for the increased estimate of land needed for public parks. The director remands the city and county decisions, with direction to:

1. Determine whether the need for land for public schools can reasonably be accommodated within the existing UGB;

²⁰ The city's acceptance of this estimate was based on city council direction to err on the side of including too much, rather than too little land. [R. at 1090, note 55; R. at 8801]

2. Determine whether the need for land for public parks (including trails) can reasonably be accommodated within the existing UGB, and whether this need is already met in whole or in part by facilities planned or existing outside of the UGB; and
3. Adopt findings that justify the increase in land needed on a “quadrant” basis for parks, or use the prior estimate of the district for a lesser acreage.

Second homes. The director agrees with the city that second homes are a “legitimate Goal 10 issue.” The city has estimated a land need for 500 acres for second home development. This acreage represents over half (again) the amount of land added for new housing units (first homes).

The city received testimony estimating that 377 acres of land were developed with second homes during the seven years prior to its decision. [R. at 1086] The city also received testimony that 20 percent of the total number of homes that would be developed during the planning period would be second homes. [R. at 1087] However, the city elected to use an 18 percent factor instead. [R. at 1087]

The director believes there is substantial evidence in the record to support the city’s determination concerning the number of *units* of second home development during the planning period (between 18 and 20 percent of the total units needed). However, the city’s findings do not identify or explain why the city used an average density of six units per net acre (the same density used for the expansion area generally) for this housing type. The findings do not explain why second homes require the same amount of land as the city is planning for first home development. Nor do the findings evaluate whether (or to what extent) this use might be accommodated within the prior UGB. [OAR 660-024-0050] Instead, the findings assume the entire need must be met on expansion lands at the same density as first home development. The result is that, although the city estimates second homes will be 18 percent of the total units developed over the next 20 years, it then allocates second homes more than half of the amount of land allocated to first home development. As a result, the director is unable to determine that land need for this use complies Goals 10 or 14, or their implementing rules, or with ORS 197.296. The director remands the city and county decisions, with direction to:

1. Coordinate with the county specifically concerning the need for second-home housing, and where this need should be satisfied regionally;
2. Evaluate whether this need can reasonably be accommodated on lands within the existing UGB;
3. To the extent that additional lands are required, establish a reasonable, specific density of development for this housing type for the next 20 years.

Private Open Space and Private Rights-of-way. The city applied a 15 percent factor to its projected residential (and park and school and second home) land needs to reflect projected land need for private open space and private rights-of-way. This figure is based on an analysis of the proportion of land within the prior UGB devoted to this use, and assumes the same land allocation within the expansion area. [R. at 1092] However, projecting a land need for private open space and rights-of-way for public parks and for public schools does not appear logical (unless the 15 percent figure was derived for all non-employment lands within the existing UGB, which is not clear from the findings). Further, there is no explanation in the record why prior development patterns, with a relatively large amount of private open space, is needed within the expansion area. Elsewhere in its decision, the city determines that lots that have access through private rights-of-way are not suitable for urbanization. Simply adopting past development patterns is not a sufficient basis to demonstrate a land need under Goal 14 or under ORS 197.296. For all these reasons, the director is unable to determine that this element of the city’s decision complies with Goal 14 or OAR 660-024-0040.

The director remands the city and county decisions, with direction to either remove private open space and private rights-of-way as categories of land need, or justify why private open space and private rights-of-way are needed within the UGB expansion area in addition to estimated land needs for public parks and public rights-of-way.

Surplus Acreage. The amendment expands the UGB by 5,475 “suitable” acres to meet the estimated land need of 4,956 acres, yielding a surplus of 519 acres. [R. at 1193] The city’s findings explain this excess acreage by referring to OAR 660-024-0040(1), which acknowledges that 20-year projections of land needs are estimates that should not be held to an unreasonably high level of precision. The city also appears to believe that this amount of acreage is needed for several specific reasons, including efficient provision of public services (e.g., including land on both sides of roads in some expansion areas), to facilitate the development of complete neighborhoods, and to make it possible to distribute employment lands throughout the expansion area. [R. at 1193] The findings, however, simply state these reasons, without explaining where these areas are, or why it is not possible to reduce acreage elsewhere in order to keep the total acreage consistent with its estimated land need.

The state does not require precision in estimating land need, and the city’s estimates for residential, employment, and other land needs necessarily involve some degree of uncertainty.²¹ But once the city *makes* its estimate, state law does not allow the city to simply add a cushion. Instead, state law requires the city to make its best effort to arrive at a reasonable estimate of land need and then stick with that number. The inclusion of a specific amount of land in the UGB in addition to estimated need appears to be driven by its desire to include particular properties in the expansion area rather than first

²¹ As an example, the Goal 10 findings state that the “[c]ity identified a need for 2,714 acres of additional land for housing based on the inventory, the coordinated population forecast, and the housing needs analysis.” [R. at 1219] However, elsewhere the findings state that the estimated residential land need is 2,866 acres. [R. at 1092, 1167]

determining an amount of land need, and then deciding where to satisfy that need. [R. at 1193]

In addition, as noted at the introduction to this section, the city has included almost 3,000 additional acres of land within its UGB expansion area with no need determination at all. The city's decision appears to reflect an interpretation of state law that if lands are not suitable for urbanization,²² they may nevertheless be included within a UGB with no need showing. That interpretation turns the state's urban growth management statutes, goals and rules on their heads.²³

The city has provided no justification or explanation for the inclusion of these lands in its findings. As a result, the director remands the city and county decisions, with direction to remove the approximately 3,000 acres of lands from the UGB expansion area that the city has found are not suitable for urbanization, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

Buffer Areas and Land Shown as RL in the Framework Plan. The adopted "Alternative 4A" UGB includes a 29-acre strip of Urban Low Density Residential (RL) along the central west edge of the proposed UGB, north of Skyliners Road and west of Master Plan Areas 3 and 4. [See Bend Urban Area Framework Plan Map, R. at 3; map of "Alternative 4A – Preliminary UGB Expansion December 3, 2008," Supp. R. at 3; and Supp. R. at 207-08] Neither the 2007 Residential Lands Study nor the General Plan amendments provide an adequate factual basis for a need for this land for this use and, in fact, the findings provide that lands proposed for RL plan designations are not serving an urban need. [R. at 1079] The city has not demonstrated a Goal 10 or 14 need for a very low density residential buffer with housing at two units per acre along the west side of the existing UGB between Skyliners Road and Shevlin Park.

More generally, the Framework Plan shows a substantial amount of lands planned as RL (Low Density Residential, 1.1 to 2.2 dwelling units per acre). As noted above, the city does not anticipate that the housing in these lands will serve any urban need. [R. at 1079] We find no findings explaining why it is appropriate to bring these lands within the UGB or what the urban land need is for them. The Framework Plan indicates that the city has no expectation that these lands will ever become urban. In fact, much of the lands were found by the city to not be suitable for urbanization.

²² The city's bases for determining that lands in the expansion area are not suitable for urbanization also contain multiple problems, including that: (a) the conclusion that a parcel smaller than three acres with an existing dwelling on it is not suitable for urbanization lacks an adequate factual basis, and is not consistent with Goal 14; (b) the city's conclusion that lands within certain rural subdivisions cannot urbanize due to their CC&Rs is not supported by the city's own findings, which do *not* show that these lands cannot undergo additional development except in the case of a couple of the subdivisions. These issues are addressed in more detail in the portion of this decision concerning the city's decision about *where* to expand its UGB.

²³ For example, see *Collins v. LCDC*, 75 Or App 517 (1985).

As a result, the director finds that their inclusion in the UGB violates Goal 14 and Goal 10 and their implementing rules, as well as ORS 197.296. The director remands the city and county decisions, with direction to remove the lands from the UGB expansion area that the city has designated as RL in its Framework Plan map, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

e. Response to Objections

Anderson –

Objection: The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for standard existing rights-of-way and for needs attributable to stormwater management.

Response: This objection is denied. While additional right-of-way may be required for stormwater management, the city has included a 15 percent factor for private rights-of-way and open space that should provide more than enough land area for stormwater management needs. In addition, the city’s assumption that most of the added residential land will be planned RL or RS provides substantial excess land beyond that required for needed housing. There is no specific evidence regarding the quantity of land needed for stormwater management and public right-of-way, or that the amount of land the city has added to the UGB cannot accommodate these uses. The city should evaluate the amount of land needed for stormwater management in connection with its reevaluation of land need for the UGB expansion area, but no separate remand is required.

Toby Bayard –

Objection: The proposal doesn’t plan for needed housing types to meet the housing needs of all residents as required by Goal 10, particularly lower income and multifamily housing. The proposal underestimates the land need for housing for lower income households.

Response: This objection is sustained. As noted above, the city’s Housing Needs Analysis fails to analyze needed housing types as required by Goal 10, the Goal 10 rule, and ORS 197.296. The city’s Framework Plan would devote most of the expansion area to low density residential uses, where large lots would likely not provide needed housing for lower income households.

Objection: The city’s estimate of land need for second homes is too high, and is not supported by the evidence in the record.

Response: This objection is denied in part. As noted in the department’s analysis, second home housing is an appropriate Goal 10 issue, and there is substantial evidence to support the city’s determination concerning the need for second home units. However, as to the acreage of land needed in a UGB expansion area, the objection is sustained. As explained above, the city has not explained whether this need can be accommodated within the existing UGB, or the amount of land needed in the expansion area.

Objection: The city’s estimate of land need for public right-of-way is too high.

Response: This objection is denied. There is substantial evidence in the record to support the city's use of a 21 percent factor in estimating right-of-way for lands added to the UGB (the amount of land devoted to right-of-way within the existing UGB).

Carpenter/McGilvary –

Objection: The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management.

Response: This objection is denied for the same reasons that the objection of Anderson was denied (above).

Central Oregon LandWatch –

Objection: The city does not explain how or why unsuitable lands are added to the UGB to arrive at a gross acreage total of 8,462 acres. The city's findings do not explain why some lands are considered unsuitable, nor why they are nevertheless added to the UGB. The city's determination that lots less than 3 acres in size are unsuitable if they have existing development is not explained, not does it comply with Goal 14.

Response: These objections are sustained. State law does not allow lands that are not needed, and not suitable, for urban development to be added to an urban growth boundary. The city's findings do not explain its justification for adding lands beyond the approximately 5,000 acres of land need shown for housing, housing-related, and employment needs.

Objection: The city's projected land need of 500 acres for second home development is not justified and is based on incorrect data.

Response: This objection is denied in part and sustained in part. The objection is denied with respect to the city's estimate of needed units. The objection is sustained with regard to the acreage needed within the UGB expansion area, for the reason set forth above with regard to the similar Bayard objection.

Objection: The city's projected land need of 474 acres for parks is not justified, and is based on plans not incorporated into the city's comprehensive plan. In addition, the city fails to account for the fact that some of this need is and will continue to be met on lands outside of the UGB.

Response: This objection is denied in part, and sustained in part. The district's plans can serve as substantial evidence for the city's decision, even though those plans have not been adopted by the city as part of its comprehensive plan. As a result, the city could chose to base its decision on evidence including service standards recommended by the district. However, the element of the objection with regard to the location of where this land need may be met is sustained, for the reasons set forth above.

Objection: Regarding land need for public right-of-way, the city's estimate is based on existing development patterns and does not consider provisions for skinny streets that can and have reduced the amount of land required in newer developments in the city.

Response: This objection is denied. The city can choose to rely on evidence consisting of development patterns from lands within the prior UGB in estimating land need in the expansion area for public right-of-way unless there is a showing that doing so would violate the city's code or comprehensive plan.

Objection: Regarding land needed for private rights-of-way and open space, there is no showing of why this type of private land use is needed under Goal 14, when public parks are already provided.

Response: This objection is sustained for the reasons set forth in the director's decision.

Objection: The city misconstrues 660-024-0040(1) in including a "buffer" of 519 acres over and above its demonstrated land need for residential use.

Response: This objection is sustained for the reasons set forth in the director's decision.

Objection: The city fails to consider the approval of the Tetherow destination resort and its effect on land need within the UGB for this type of use.

Response: This objection is sustained. Both the city and the county have an obligation to consider other second-home development in the region in determining how much second-home development is needed within Bend's UGB. The director's decision requires the city and the county to coordinate in determining regional need for this type of housing, and what proportion of that need should be accommodated within Bend.

Newland Communities –

Objection: The theoretical surplus of 519 acres is needed to fulfill land needs, and to provide for effective delivery of infrastructure and complete communities.

Response: This objection is denied, in part. The director agrees that the 519 acres in question may only be included if the city documents a need for that amount of land. Otherwise, the objection is denied because the city has failed to provide the required justification of need under Goal 14, as set forth in detail above.

Swalley Irrigation District –

Objection: The amount of land determined to be needed is too large and beyond what the city determined was needed. The 519-acre cushion must be removed.

Response: This objection is sustained, in part. As set forth in more detail above, the city has not adequately documented its 20-year need for land for housing and other non-employment uses. In addition, the city may not include land in addition to its documented 20-year need (e.g., the 519 acres of "cushion").

f. Summary of Decision on Land Need Not Related to Residential or Employment Needs

The director remands the UGB amendment with the following instructions:

1. Determine whether the need for land for public schools can reasonably be accommodated within the existing UGB;

2. Determine whether the need for land for public parks (including trails) can reasonably be accommodated within the existing UGB, and whether this need is already met in whole or in part by facilities planned or existing outside of the UGB;
3. Adopt findings that justify the increase in land needed on a “quadrant” basis for parks, or use the prior estimate of the district for a lesser acreage;
4. Coordinate with the county specifically concerning the need for second-home housing, and where this need should be satisfied regionally;
5. Evaluate whether this need can reasonably be accommodated on lands within the existing UGB;
6. To the extent that additional lands are required, establish a reasonable, specific density of development for this housing type for the next 20 years;
7. Either remove private open space and private rights-of-way as categories of land need, or justify why private open space and private rights-of-way are needed within the UGB expansion area in addition to estimated land needs for public parks and public rights-of-way;
8. Remove the approximately 3,000 acres of lands from the UGB expansion area that the city has found are not suitable for urbanization, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14; and
9. Remove the lands from the UGB expansion area that the city has designated as RL in its Framework Plan map, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

3. Is the UGB amendment consistent with the Bend Area General Plan?

a. Legal standard

Comprehensive Plan data, findings, conclusions, and policies must be complete, comply with the statewide planning goals, and be internally consistent. ORS 197.015(5), ORS 197.250, and Goal 2.

b. Summary of Local Actions

On January 5, 2009, the city adopted a UGB expansion and other Bend Area General Plan amendments. [R. at 1228-1835] The amendments regarding housing and residential land are in Chapter 5 of the Plan. [R. at 1280-1315]

c. Analysis

No objections were received concerning consistency of the action with Bend's General Plan. The UGB amendment findings state: "Adopted policies in the Bend General Plan support the designation of higher-density residential areas in proximity to commercial services, parks and schools." [R. at 2133] However, the only places that the city plans for needed medium density and high density housing is in the Central Plan Area, on some planned transit routes (location undefined), and in the expansion area; no new medium density and high density housing, infill development, or redevelopment is planned for existing neighborhoods. Therefore, this part of the UGB amendment is not consistent with existing plan policies. (For more details, see the discussions in this report regarding (1) compliance with Goal 14 with efficiency measures, and (2) Goal 10 compliance.)

The UGB amendment and related plan amendments are also inconsistent with the following plan policies:

- Housing Policy 4: "Implement strategies to allow for infill and redevelopment at increased densities, with a focus on opportunity areas identified by the city through implementation strategies associated with this policy." [R. at 1311] Evidence of inconsistency: *As discussed elsewhere in this report*, the city is apparently restricting infill and redevelopment to (1) certain areas in the Central Area Plan and along planned fixed route transit corridors, and (2) developed exception parcels in the UGB expansion area that are larger than three acres. The record shows no evidence for planned infill and redevelopment in most of the existing UGB and also much of the exception lands in the expansion area.
- Housing Policy 17: "Implement changes to the city's code that facilitate the development of affordable housing for very low, low and moderate-income residents, as determined by appropriate percentages of Area median Family income, consistent with recent updates to the city's development code and/or new strategies identified in the Plan" [R. at 1313] Evidence of inconsistency: *As discussed elsewhere in this report*, the proposal does not demonstrate for either the 2006 development code or proposed amendments thereto how the code will facilitate the development of needed housing for households of most income levels.
- Housing Policy 21: "In areas where existing urban level development has an established lot size pattern, new infill subdivision or PUD developments shall have a compatible lot transition that compliments the number of adjoining lots, lot size and building setbacks of the existing development while achieving at least the minimum density of the underlying zone. New developments may have smaller lots or varying housing types internal to the development." [R. at 1313] Evidence of inconsistency: *As discussed elsewhere in this report*, the proposed UGB and other plan amendments do not plan for—in fact, do not permit—any infill subdivisions in existing neighborhoods.

d. Conclusion and decision

The Bend Area General Plan is internally inconsistent. The UGB amendment and related plan amendments adopted on January 5, 2009 are not consistent with Housing Policies 4, 17 and 21.

The director remands the proposal with direction to revise the proposal to be consistent with Housing Policies 4, 17 and 21 in Chapter 5 of the Bend Area General Plan.

4. Do the UH-10, UH-2½ and SR 2½ zones comply with Goal 14 and OAR 660, division 24?

a. Legal Standard

Goal 14 and OAR 660-024-0050(5) (2006) address the zoning of land brought into a UGB.²⁴ The goal and rule require county zoning for urbanizable land within the UGB to “maintain [the land’s]²⁵ potential for planned urban development until appropriate public facilities and services are available or planned.”

Retaining the existing rural zoning on land brought into the UGB maintains large parcel sizes, severely restricts new non-resource uses, and limits new primary structures. Allowing parcelization at well below 10 acres and allowing new primary use structures,

²⁴ Goal 14 provides, in part:

Urbanizable Land

Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

The statewide planning goal definitions as amended April 28, 2005 define “urbanizable land” as: “Urban land that, due to the preset unavailability of urban facilities and services, or for other reasons, either:

- (a) Retains the zone designations assigned prior to inclusion in the boundary; or
- (b) Is subject to interim zone designations intended to maintain the land’s potential for planned urban development until appropriate public facilities and services are available or planned.”

[OAR 660, division 15]

Goal 14 planning guideline #2 states: “The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.”

Likewise, OAR 660-024-0050(5) (adopted October 5, 2006) provides: “When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.”

²⁵ “Its” refers to land within the UGB.

especially if they are placed in the middle of a parcel, fails to maintain the expansion area in parcels and in form that can develop efficiently and where it is possible to provide efficient and economic urban services. As the city's findings regarding suitability indicate, urbanizing areas that have developed as suburban subdivisions can be extremely difficult.

b. Summary of Local Actions

The county adopted two holding zones for the UGB expansion area: the Urban Holding-10 (10-acre minimum parcel size) and the Urban Holding-2½ (2½-acre minimum parcel size), in Title 19 of the Deschutes County Code. [R. at 1877-80] The findings state that these zones:

* * * respect the existing pattern of development and permit reasonable use of the land in the interim while retaining the rural densities. Both holding zones allow lot sizes as small as 15,000 square feet provided that the overall density of the development does not exceed the density of the zone. This 'cluster development' provision encourages maximum retention of large lot parcels. Too often holding zones with ten acre minimum lot sizes develop with 'hobby' farms and ranchettes that never redevelop to urban potential. Cluster development allows residential development at the same rural density but preserves the majority of the land for urban development. [R. at 1221]

An existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, was intended to hold parcels within the UGB "until these lands are annexed to the city or until sewer service is available, and such lands are rezoned consistent with planned densities and uses in the Bend Area General Plan."

c. Analysis

The findings quoted above fail to recognize that the "cluster" provisions in the "holding" zones allow substantial low-density suburban development to occur on lands that are planned for urban densities. None of the adopted zones will preserve urbanizable land for future urbanization. As a result, the city and county actions violate Goal 14 and OAR 660-024-0050. Fifteen-thousand square-foot lots (approximately three units per acre) are urban-density lots, albeit at a density that is lower the six units per acre that the city has planned for the expansion area. Urban levels and intensities of development are not permitted within a UGB unless and until urban facilities and services are available and the land is annexed to the city. Even without the provision for "clustering" with 15,000 square foot lots, the UH-2½ and SR 2½ zones' 2.5-acre minimum parcel size is too small to protect urbanizable lands for efficient future urbanization once the lands are annexed and provided with urban public services. State law provides for two ways to preserve urbanizable land for future urban development: retain the existing rural resource zoning, or apply an interim holding zone that maintains large parcel sizes and doesn't

increase vehicle trip generation.²⁶ State law does not allow holding zones that provide for substantial increases in development, increased traffic generation, and inefficient future development patterns prior to urbanization and the application of urban zoning and provision of urban services.

The existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, is intended to hold parcels within the UGB “until these lands are annexed to the city or until sewer service is available, and such lands are rezoned consistent with planned densities and uses in the Bend Area General Plan.” The SR 2½ zone applies only to “existing SR 2½ lands within the UGB.” At first glance, this appears to prohibit *new* lots as small as 2½ acres in the urbanizable area (*i.e.*, outside city limits) of the city’s UGB. However, there is no maximum lot size in this zone, and existing SR 2½ lots larger than 2.5 acres may be divided into lots as small as 2.5 acres.²⁷ As explained above, 2.5 acres is too small a parcel size for a holding zone in an urbanizable area because it does not maintain land for efficient future urbanization. Therefore, the SR 2½ zone also violates Goal 14 and OAR 660-024-0050.

The department advised the city of these issues by letter on October 24, 2008. [R. at 4372]

d. Conclusion and Decision

The UH-10, UH-2½, and SR 2½ zones do not maintain the potential of urbanizable land for planned urban development until appropriate public facilities and services are available or planned and therefore violate Goal 14 and OAR 660-024-0050. The director remands the city and county decisions with direction to:

1. Eliminate the UH-2½ zone, and eliminate application of the SR 2½ zone to lands within the UGB expansion area; and
2. Revise the UH-10 zone to:
 - a. Prohibit land divisions that create any parcels smaller than 10 acres in size; and
 - b. Include development siting standards to avoid future conflicts with the extension of efficient urban transportation, public facilities, and land use patterns; and
3. Apply the UH-10 zone to any and all land acknowledged for addition to the UGB.

²⁶ See, e.g., ORS 197.752(1): “Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards.” Also see OAR 660-024-0020(1)(d): “The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary.”

²⁷ See Bend Code Section 10-10.9C.