Oregon
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September 18, 2015

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director

SUBJECT: **Agenda Item 8, September 24-25, 2015, LCDC Meeting**

Public Hearing Regarding Proposed Administrative Rules Establishing Streamlined Urban Growth Boundary Process

Under this item, the Land Conservation and Development Commission (LCDC or the commission) will hold a public hearing regarding proposed new and amended administrative rules (see Attachments A and B). These rules would establish a new "streamlined process" for cities to evaluate or amend an urban growth boundary (UGB). The draft rules also provide new and amended requirements for adding land to a UGB that are applicable to all cities outside of Metro that amend a UGB (these statutes do not apply to Metro). After January 1, 2016, these requirements would apply both to cities that use the proposed new streamlined process and cities that use the current or "traditional" UGB process. Such requirements concern determination of "UGB study areas" and interpret "priority" requirements for selecting land in the study area.[1]

The Department of Land Conservation and Development (DLCD or the department) issued broad public notice and legislator notice on September 1 and 2, 2015, and issued the first public draft of these rules on September 10, 2015. The notice requested that written and oral comments to regarding the public draft be submitted to the commission for this item.

The department is recommending that the commission not adopt the proposed rules at this (September 24) meeting; rather, a second and final public hearing on the proposed rules will be scheduled for the commission's December 3-4, 2015, meeting in Salem and the department will recommend that the commission adopt the proposed administrative rules at that time.

The attached proposed rules and rule amendments are in response to 2013 legislation (ORS 197A) that goes into effect January 1, 2016, and which requires LCDC to adopt implementing rules. These rules are proposed as a new LCDC rule division 38, titled "Simplified Urban Growth Boundary Method." In addition, the department is proposing amendments to existing UGB rules in OAR 660, division 24.

[1] Note: for purposes of this report and in the proposed new rules, the department uses the term "streamlined process" to describe the new optional UGB process and the "traditional process" to describe the UGB process in current LCDC rules under OAR 660, division 24.

NOTE: at the commission's December 3-4 meeting, the department will also describe technical amendments to Statewide Planning Goal 14 to conform the goal to these new statutes (see Attachment C and Section V of this report). These amendments are not proposed as formal rule and goal amendments at this time, but may be proposed in December 2015.

Under this item, the staff will present a report to the commission describing the proposed rules and the process to develop them, followed by oral testimony from the public. The commission may consider and discuss the testimony and the proposed rules and provide direction to the department.

For additional information about this report, please contact Bob Rindy, Senior Policy Analyst, 503-934-0008, or email bob.rindy@state.or.us.

I. AGENDA ITEM SUMMARY

This item is a public hearing and an opportunity for the commission to hear testimony and provide direction to the staff and the UGB rules advisory committee (UGBRAC) regarding proposed new and amended rules (Attachment A and B). These rules concern the adoption and amendment of UGBs, and would establish a new streamlined UGB evaluation and amendment process. The department is recommending that the commission hold at least one additional public hearing before adopting the UGB rules, tentatively scheduled for LCDC's December 3-4, 2015, meeting in Salem.

II. BACKGROUND

In June 2013 the legislature enacted House Bill (HB) 2254, which provided new state laws at ORS 197A.300 to 197A.325 directing LCDC to "develop and adopt simplified methods for a city that is outside Metro to evaluate or amend the urban growth boundary of the city."[2]

This legislation was a product of a special committee – the "Design Team" – appointed by the Governor's office in January 2012. The team was selected and presided over by the Governor's Natural Resource Advisor, Richard Whitman, and included local governments, interest groups, planning consultants, land use attorneys, former LCDC chairs, and others with experience and expertise in the UGB process. The design team met from January 2012 until February 2013. This effort was begun as a response to continuing concerns that had been expressed by cities, legislators, and other interest groups about the high cost and complexity of UGB amendments, and about delay and uncertainty due to appeals of local amendments. A coinciding effort by the department, cities and counties proposed HB 2253 (also enacted in 2013), which established that population forecasts must be issued by the Portland State University Population Research Center.

[2] Depending on context, this report will usually cite "ORS 197A" rather than "HB 2254." They are the same. However, the 2015 legislature corrected a drafting error in ORS 197A that is not yet reflected in the official statute on the Legislative Counsel Website. Attachment D to this report includes a link to a version of 197A that indicates the amended 197A (with bold and strikeouts). While the department believes this accurately portrays the statute as amended, this is not an "official" version of the statute.

The general design of the proposal by the design team (which had a high degree of consensus and was reflected in the legislation) was twofold. First, there should be a new optional streamlined process that cities could use to amend a UGB. The "traditional" UGB process would remain in effect, but the intent of the law would be to encourage most cities to use the new process, eventually. Second, the new process would streamlined the UGB process, make it simpler, especially for small cities, and apply a 14-year rather than a 20-year planning horizon for UGB planning. Also, the new process would have, as a central component, a series of "ranges" that cities could choose in evaluating or amending a UGB. These ranges would provide essentially a "safe harbor" for cities (although that term has not been used) and are reflected in a new LUBA standard of review. If a city selects a value within the range, LUBA would affirm that decision.

Unlike many statutes enacted in the 2013 legislative session, HB 2254 was not applicable on January 1, 2014. Instead, the commission was provided with two+ years to adopt the rules – ORS 197A goes into effect January 1, 2016. This time frame recognized the complexity of the rulemaking task, including the need for substantial new research.

The law requires LCDC to adopt new and amended administrative rules to provide standards for cities wishing to use the new optional streamlined process. However, one of the new laws, ORS 197A.320 concerning "locational aspects" of UGB expansion, does not only apply to the new streamlined UGB process – this law also applies to the current traditional process for cities outside of Metro. The new location statute amends previous state law concerning the priorities for selecting land for such expansion. Therefore, to implement this particular law, LCDC must also amend current rules in division 24, and must adopt new rules in that division as well as new rules implementing rules to implement the streamlined process.

The new statutes under ORS 197A provide requirements for LCDC to follow in designing the new UGB process. They also provide a set of principles to guide and evaluate the administrative rules adopted by LCDC. The intent of the legislature was that the new rules would be adopted by LCDC prior to the effective date of the new statutes (see Section 14 of HB 2254, which requires the commission to adopt rules before the operative date of the statute). It is important to note that the statute goes into effect on January 1, 2016 (whether or not the commission has adopted rules), and cities will be allowed to apply key provisions, especially the new UGB study area and location requirements. As such, it is critical that LCDC provide rules consistent with the intent of the law, not only for the new streamlined process but for the traditional process as well.

Cities that follow the streamlined process will not be required to submit UGB amendments to LCDC. Instead, these UGB amendments would be deemed "acknowledged" after 21 days unless appealed to LUBA. The law includes new "standards of review" for LUBA and the courts in review of such appeals, also discussed below.

The central elements of these laws require that LCDC adopt rules to establish a simple UGB evaluation and amendment method for both "small cities" (under 10,000 in population) and

"large cities" (over 10,000) cities.[3] The new methods must allow a city to estimate how much land is needed for long term growth and to determine whether those needs can be accommodated within the existing UGBs or, if not, through expansion of the UGB. The new laws (and required rules) also specify how cities decide *where* to grow their UGB when they determine a need for additional land. This "locational analysis" is similar to current laws (ORS 197.298), rules and practices, but with some important differences described in this report. The location elements of the law apply to all UGB amendments after January 1, 2016, except for Metro, regardless of which process is used.

Substantial research was required to inform the rulemaking for several elements of the new process. The rules must provide "standard ranges" to guide city's choices regarding land need determinations and for other aspects of the UGB process (the new LUBA standard of review provides that any choice within such a range is deemed acceptable). In order to provide this research, the department commissioned studies by the University of Oregon, both to provide data to inform the rulemaking and help establish the ranges. These research projects are described further in this report (see Section IV, below).

The law requires LCDC to create new optional, simplified ways for growing cities to evaluate the capacity of their UGBs, especially their need for additional land and development capacity over a fourteen year period, rather than over the current 20-year period. The new law provides a method for UGB evaluation and, if necessary, UGB amendment based on a city's population and employment forecast.

The law intends that new rules will establish one simple method for small cities and another method (streamlined from the current process) for larger cities. The new methods will allow cities to estimate how much future growth can be accommodated within their existing UGBs, and will clarify how cities decide where to grow when they have shown a need for additional land. The new process to be established by the rules is optional – cities that want to continue using the current system may do so. Substantial research will be needed to inform this rulemaking. The new law requires that the rules provide a "standard range" of choices for growth, such that any choice within this range is acceptable. The ranges are to be determined and adjusted over time for different areas of the state. The legislation provides that the rules would not be effective until 2016.

III. RULES ADVISORY COMMITTEE

On September 27, 2013, LCDC appointed a rules advisory committee to provide advice to the department as it considers draft rules to implement ORS 197A. The urban growth boundary rules

[3] The proposed rules do not, however, include a separate set of requirements for small cities and a different set for large cities. Since almost all the requirements in the statute are identical, with a couple of differences, the department's proposed rules are organized around topics and the streamlined path. Within that structure, they do specify some differing requirements for large and small cities.

advisory committee (UGBRAC) was chaired by former Commissioner Marilyn Worrix[4] and included many members of the Governor's office "Design Team" that had developed the concepts for the streamlined process, which later became HB 2254 in the 2013 session. Although the department tried to appoint membership from a variety of local governments and other organizations, the department suggested members, not as "representatives" of various originations, but rather as people who had particular experience and expertise in the UGB process. LCDC Commissioner Catherine Morrow serves as the LCDC liaison to the committee.

The appointed UGBRAC includes the following members: Marilyn Worrix (Chair); Erin Doyle (LOC); Gil Kelley, Terry Moore (ECO Northwest), Jeff Condit (Miller Nash), Mary Kyle McCurdy (1000 Friends of Oregon), Jon Chandler (Oregon Homebuilders Association), Christie White (Radler White Parks & Alexander LLP), Dick Benner, Stephan Lashbrook (City of Wilsonville), Nick Lelack (Deschutes County), Alissa Hansen (City of Eugene), Damian Syrnyk (City of Bend), Greg Winterowd (Winterbrook Planning), Mike Freese (Oregon Farm Bureau), Jon VanLandingham (former LCDC Chair), Peggy Lynch, (League of Woman Voters), Shaun Jillions (Tonkon Torp LLP) and Steve Faust (CIAC Chair). State agencies were also asked to designate staff from their agencies to sit as committee members (ODOT, ODA, OBDD, OHCD, ODFW and DSL).

Meetings: By the time of the LCDC meets on September 24th, the UGBRAC will have met 13 times, starting in October 2013, and will have held its most recent meeting on September 17, 2015. The early work of the UGBRAC focused largely on the research needed to provide an empirical base for the streamlined method and for "ranges" found throughout the draft rule, but also to help inform some "policy issues" identified in the legislation. As was discussed with the commission, no such research on development trends and statistics had been previously developed. Consequently, there was significant UGBRAC discussion about research topics, sources, and methodologies. Once the research was close to completion, the work focused on the development of the residential needs path, the employment needs path, locational analysis, and defining key terms in the statute, such as the requirement that lands be "serviceable" and a provision that allows lands that are "impracticable to serve" to be excluded from study for a UGB expansion.

On August 20, 2015, the department presented a draft of the proposed rule to the UGBRAC for review. That draft was first discussed at the August 26th UGBRAC meeting. To aid in discussion, the department requested that UGBRAC provide written comments to the department; members did so and these comments have been reviewed by department staff. While those comments were not intended to be directed to the commission, they have informed staff about the various concerns and perspectives of many UGBRAC members, and those concerns and perspectives are reflected in discussion throughout this staff report.

Some UGBRAC members are concerned that there has been insufficient time to complete the

[4] Marilyn Worrix chaired this committee until April of 2015, at which time she announced that due to her retirement and other responsibilities, she would no longer be able to serve as chair. Since then, the committee has been chaired by DLCD Deputy Director Carrie MacLaren, and most recently by LCDC Chair Greg Macpherson.

rulemaking and that the commission should extend the rulemaking period by another three to six months. The department respectfully disagrees. While there is significant work that still needs to be completed, the department believes that it can complete a draft proposed rule in time for the December 3-4 commission meeting. The department also notes that the statute requires the commission to complete its rulemaking by January 1, 2016, when the new statutes at ORS 197A go into effect. The department suggests that the question as to whether there is enough time to propose rules for LCDC adoption prior to January 1, 2016, should be determined at the December meeting rather than at this meeting.

Technical Work Groups: In addition to the RAC meetings described above, the department has periodically convened other small groups to give consideration to a range of topics. These groups are intended to provide ideas for the RAC to consider on particular topics; they are not intended to make "policy decisions" on such topics. The workgroups include:

- The Location Workgroup – to provide input on requirements concerning the Study Area and UGB location priorities. Members: Dick Benner, Jeff Condit, Mary Kyle McCurdy, Christe White. This group met in December 2014 and January 2015.
- Housing Path Workgroup – to provide input on the "path" for determining residential land need. Members: Brandon Reich, Mia Nelson, Justin Wood (OHBA). This workgroup met three times beginning on March 2nd and the RAC has reviewed their proposals.
- Buildable Lands Inventory Workgroup – to provide input regarding buildable lands regarding the housing path. This group met once in July 2014 and its work evolved into the housing path work group discussed above. Members: Alissa Hansen, Brandon Reich, Damian Syrnyk, Erin Doyle, Heather O'Donnell, Jim Jacks, Jon Chandler, Mary Kyle McCurdy, Matt Hastie, Mia Nelson, Ted Reid.
- Housing Measures Workgroup – to provide input into the list of housing measures required for cities over 10,000. Members included: Gil Kelley, Jon Chandler, Mary Kyle McCurdy, Damian Syrnyk, Kim Travis, and John VanLandingham. This group met three times beginning September 2014 and the RAC has discussed their proposal.
- Employment Path Workgroup – to provide input on the "path" for determining employment land need. Members: Andrea Logue, Brendan Buckly, Eric Hovee, Gil Kelley, Jerry Johnson, Ted Reid, Terry Moore. This group met five times beginning January 2014. For the last two meetings and for future meetings, some additional members with experience regarding employment land needs have been added to the group: Jessica Pelz, Mia Nelson, Jim Hendryx, Suzanne Dufner.
- Serviceability Workgroup – to provide input on rules to interpret the requirements that lands included within the UGB be "serviceable" within seven or 14 years. Members: Stephan Lashbrook, D.J. Heffernan, Jerri Bohard, Damian Syrnyk and Jon Chandler. This group has met primarily through electronic communication rather than in person meetings. Input from the group was discussed in at least two RAC meetings, and placed into the September draft rules. Draft rule language was discussed by the RAC at the August 2015 meeting, and discussion has been carried over.
- Public Facilities Workgroup – to provide input on the rules to define "impracticability" of providing public facilities and services, which provides a basis for cities to exclude such

areas from study and therefore inclusion in the UGB. Members: DJ Heffernan, Greg Mott, Michelle Owen, Nick Lelack, Stephan Lashbrook, Terry Moore. The group met two times beginning August 2014, and presented concepts for discussion by the UGBRAC.

- Habitat and Wetlands Agency Discussion Group – to discuss and propose ideas for study area exclusion for natural resources. Members: Joy Vaughan (ODFW) and Kathy Verble (DSL). The group met two times, in addition to several individual meetings, but did not reach agreement on a proposal to the RAC. Further discussions with these two agencies took place subsequently, but RAC discussion of this topic did not occur until September 17, 2015.
- Periodic Review Replacement Workgroup – to provide input to help design a replacement periodic review process for large cities that use the streamlined method. Members: Jon Adam (City of Medford), Lisa Anderson-Ogilvie (City of Salem), Jerri Bohard (ODOT), Jon Chandler, Erin Doyle, Peggy Lynch (League of Women Voters of Oregon), Mary Kyle McCurdy, Clint Spencer (City of Hermiston), Becky Steckler (Oregon Chapter of the American Planning Association). This group met only one time and determined it needed more information regarding what level of planning the new UGB rules will require, especially regarding public facilities and transportation planning. This is needed in order to determine how much follow-up work a city will be required to complete, which in turn affects the best options for periodic review replacement.

The department will continue to convene some of these groups after the September 23-24 hearing, especially the Employment Path Workgroup and the Periodic Review Replacement Group. However, for most of these topics, there is a diminishing need for new ideas to propose to the RAC; rather, most topics are at a stage where the discussion concerns policy issues. The department does not intend to have small groups rather than the RAC try and reach consensus on these policy topics (a majority of individuals on the small groups are not RAC members).

IV. RESEARCH TO INFORM THE NEW STREAMLINED UGB PROCESS

ORS 197A requires that the "ranges" and other factors in the rules must be based on information that could only be provided through new research into statewide development patterns and related matters. In May 2014 the department contracted with the University of Oregon Community Service Center (UO) to conduct most of this research. In January 2015 the department contracted with ECO Northwest and the University of Oregon to conduct research on long term trends.

This research included the following (wording of the bulleted items below from ORS 197A is in *italics*):

- *The relation between population and employment growth and the rate and trends of land utilization in the recent past in the applicable major region of the state*. The University of Oregon's Community Service Center completed a report April 2015, which provided important data and information on this topic. The research report analyzed tax assessor data from most of Oregon's cities and counties, and provided useful and relevant

information on a number of topics, such as trends in densities of residential development, current densities of different types of residential development, calculations of employees per acre for existing types of employment lands within the state, and the percentage of city territory devoted to public uses and public infrastructure such as streets. The research findings have provoked much discussion with the Rules Advisory Committee and have provided valuable input into the creation of appropriate ranges for cities to use within these rules. The research provided the basis for the low and medium density residential density ranges in proposed OAR 660-038-0050(1), Table 2, and is the basis for the employees per acre ranges set forth in proposed OAR 660-338-0120(1) and (2). It also provided the basis for the "public land" assumptions associated with residential development contained in OAR 660-038-0050(2) and for employment land in OAR 660-038-0120(1)(a)(B).

- *The population and employment growth that has occurred on similarly situated lands through development and redevelopment.* The University of Oregon report includes detailed information comparing development densities and efficiencies amongst cities throughout the state. As a general finding, the report determined that there exist few regional variations (except for Eastern Oregon) that are statistically significant among Oregon cities, but that many indicators of development densities and efficiencies can be directly correlated with city population. The research provided the basis for the ranges of numbers for low and medium density residential development in OAR 660-038-0050(1) Table 2, which require larger cities to assume higher densities of future residential development than smaller cities. It also provided the basis for the assumptions set forth in OAR 660-038-0120(1) and (2) that require larger cities to assume higher numbers of employees per acre for future employment land development than smaller cities.
- *The median rate of redevelopment and infill for cities with a population of 10,000 or more that are outside of the boundaries of Metro.* The University of Oregon prepared a supplemental report that attempted to determine measurable rates of redevelopment. However, that research was inconclusive as the information is not readily available because most Oregon cities do not systematically collect information on rates of redevelopment within their boundaries.
- *The development capacity forecast for the lands over the planning period, based on an evaluation of how similarly situated lands have, or have not, developed over time.* The University of Oregon's report provides useful information allowing the setting of ranges for assumed densities and efficiencies of residential and employment lands that are brought into an urban growth boundary as part of this streamlined process. These ranges are found in OAR 660-038-0050 and OAR 660-038-0120.
- *Significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state.* The University of Oregon's report included a literature of review of demographics and market trends and concluded that the known changes (such as decreased household size) have been addressed in the proposed paths under discussion by the RAC (and in the draft rule).
- *For lands considered for addition to UGBs, evaluation of how similarly situated lands have, or have not, developed over time*. The University of Oregon prepared a supplemental report that analyzed rates of development on rural residential lands that were brought into city UGBs during the 1999-2012 study period. The information within

that report, which is based upon tax assessor data from a significant sample of Oregon cities and counties, has been used to make assumptions about the development capacity of lands considered for addition to UGBs. The research findings were used in drafting OAR 660-038-0160(6), which allows cities to assume that rural residential lots and parcels less than two acres in size can be assumed to have no additional development capacity when brought into a UGB.

V. PROPOSED NEW UGB RULES

The proposed rules under OAR 660, division 38, span a broad range of subjects. The department has organized the rules as follows:

660-038-0000 – Purpose (page 1)
660-038-0010 – Definitions (page 2)
660-038-0020 – Applicability (page 3)
660-038-0030 – Residential Land Need (page 6)
660-038-0040 – Determine the Mix of Dwelling Units Needed (page 7)
660-038-0050 – Determine Amount of Land Needed for Each Housing Type (page 8)
660-038-0060 – Buildable Lands Inventory (BLI) for Residential Land in the UGB (pg. 9)
660-038-0070 – Adjust Residential Lands BLI to Account for Constrained Lands (page 11)
660-038-0080 – Compare Residential Land Need to Land Supply (page 12)
660-038-0090 – Employment Land Need (page 13)
660-038-0100 – Forecasting Employment Need Based on Forecast Population Growth (page 14)
660-038-0110 – Forecasting Employment Need Based on Oregon Employment Department Forecast (pg. 14)
660-038-0120 – Translate Job forecast to Employment Land Need (page 15)
660-038-0130 – Buildable Land Inventory for Employment land within the UGB (page 17)
660-038-0140 – Adjust Employment BLI to Account for Constrained Lands (page 17)
660-038-0150 – Determine if UGB Expansion is Necessary to Accommodate Employment Need (page 18)
660-038-0160 – Establishment of Study Area to Evaluate Land for Inclusion in UGB (page 19)
660-038-0170 – Evaluation of Land in the Study Area for Inclusion in UGB; Priorities (page 20)
660-038-0180 – Planning Requirements for Land added to a UGB (page 24)
660-038-0190 – Additional Planning for Residential Lands Added to the UGB (page 25)
660-038-0210 – Serviceability (page 26)

This report describes key aspects of each of the proposed rules below, indicating the intent of various proposals in the draft rules (Attachment A).

Rule 0000: Purpose

General: Most LCDC rule divisions begin with a “purpose” rule as does the proposed draft. Purpose rules describe the intent of a division and may indicate which particular goals or statutes

are implemented. There are three proposed sections for the proposed Purpose Rule in division 38, described below.

Section (1) describes the purpose of this new division of administrative rules: to establish a new streamlined UGB process and to implement state laws under ORS 197A.300 to 197A.325, which requires simplified UGB rules. A "note" is also provided to clarify that there is one particular statute in this string of statutes, ORS 197A.320, that applies to both the new method and to the traditional method in OAR 660, division 24. This is an important note to someone reading this division, so that the overall scope of the new statutes is understood. It also provides a guidepost for those reading the division as to where the "new" locational provisions are reflected with respect to the traditional method – a different division of rules, division 24 (see description of proposed amendments to OAR 660, division 24, later in this report and Attachment B to this report).

Section (2) is to clarify that both the traditional and the streamlined method remain in effect, but that cities have an option to choose which of these to use, as further described further in the "applicability" rule in 0020 (see below).

Section (3) provides the "objectives" for the new streamlined process that are provided in law (ORS 197A.302). These are identical to the statute.

0010: Definitions

General: As in most LCDC rule divisions, the new division 38 includes a set of definitions for terms used in different rules throughout the division. Occasionally a term is used in only one particular rule and that definition will not appear in this definition rule but will instead only appear in that particular rule. But in general, the department has tried to put all the key definitions here, i.e., in the same place in the division.

Some of these terms are taken directly from ORS 197A, as noted in the more detailed explanation below. Some of these definitions are from other LCDC rules or statutes, and one of the definitions is from the statewide goals. Technically, LCDC has the authority to change terms in its divisions as it creates new rules, but the department suggests that it should not create new or different definitions of terms that are defined in other rules unless there is a compelling need for a new definition of that term, such as in section (1) of this rule, see below. In general the commission does not have authority to change statutory definitions, although usually it does have authority to provide additional interpretive guidance.

The department expects that this definition rule will expand in response to suggestions for additional definitions as we continue to refine this product. There are probably several other terms in the division that need definition.

The department has provided explanation for some of the definitions, below:

Section (1): "Buildable lands." This term is repeated verbatim from the new statutes at ORS 197A, but it could be a source of confusion. Since it is in the law, it must be used in this division,

and cannot be changed. However, the draft includes a note to alert readers that a different definition of "buildable lands" is provided in other (previous) LCDC rules concerning needed housing and in state law at ORS 197.295 (enacted in 1981 and unchanged since then). By the way, this illustrates the confusion that could arise if the commission defines terms differently in this division than in other LCDC rules. In this particular case, we have no choice.

The term "buildable lands" was originally intended to apply only in the context of Goal 10 and housing policy. That was a bit of problem when the department refined Goal 9 rules around 2005, and drafted the first set of UGB rules in about the same time frame. Both these rules needed a different or broader definition, in order to describe essentially the same concept for employment lands as had been in effect for housing lands. Being unable to use the term "buildable lands" due to statutory constraints, LCDC opted for parallel terms now in divisions 9 and 24: "vacant lands," "suitable" and "developed lands," and some of these combined in division 24 as "Suitable vacant and developed land" for employment opportunities.

The drafters of HB 2254 decided to avoid this confusion for the streamlined process by simply using a broader definition of "buildable lands," which is reflected here. In this case, the definition applies to both residential land <u>and</u> to employment land (and probably other categories as well). However, the department recommends that a note be inserted here to remind the readers that the law at 197 regarding housing has not been changed, and as such the earlier more narrow definition of buildable lands still exists for the "traditional process."

<u>Section (2)</u>: "Commercial" and "Commercial use." This term means retail, office institutional, public employment and several similar uses. The proposed "employment path" (see proposed rules at OAR 660-038-0090 to 660-038-0150 requires cities to determine current employment (jobs) from data provided by the Oregon Employment Department. This data will be provided in reference to the North American Industry Classification System (NAICS) categories, and would be in a "look up table" (see Table 6) which would need to be updated annually. The proposed path requires the city to sort these jobs into two categories: "commercial" and "industrial." As such, there needs to be a definition of the term "commercial" that helps with this sorting. This definition provides that definition, indicating the categories that would be commercial.

We note that land use statutes do not provide a definition even though the term commercial appears more than 30 times in those statutes. Also, neither the Goal 9 nor Goal 14 rules provide a definition. The department's proposed definition is necessary for purposes of the streamlined process concerning employment land need. This is discussed further later in this report regarding the Employment Land Need Path. The proposed definition is that "commercial" means the typical zoning of land for the variety of office, retail, institutional and public employment jobs in the NAICS Categories 44, 45, 51 – 56, 61, 62, 71, 72, 81, 92 and 99.

<u>Section (3):</u> "Industrial" and "Industrial use" are proposed to mean "employment activities including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development, that generate income from the production, handling or distribution of goods or services, including goods or services in the traded sector, as defined in ORS 285A.010. "Industrial use" includes NAICS Categories 11, 21, 22, 23, 31, 32, 33, 42, 48, and 49.

There are at least two definitions of "industrial use" that have been used in the land use program. One of these is in statute at 197.722**,** but that definition is clearly limited to a special string of statutes at ORS 197.722 to 197.728 concerning regionally significant industrial areas. That definition states that "industrial use" means "employment activities, including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development, that generate income from the production, handling or distribution of goods or services, including goods or services in the traded sector, as defined in ORS 285A.010."

The definition in the Goal 9 rule at OAR 660-009-0005, is very similar, but not identical to the proposed definition. It says "'Industrial Use' means employment activities generating income from the production, handling or distribution of goods. Industrial uses include, but are not limited to: manufacturing; assembly; fabrication; processing; storage; logistics; warehousing; importation; distribution and transshipment; and research and development. Industrial uses may have unique land, infrastructure, energy, and transportation requirements. Industrial uses may have external impacts on surrounding uses and may cluster in traditional or new industrial areas where they are segregated from other non-industrial activities."

In developing a definition for the new streamlined UGB process in the initial public draft, the department needed to provide direction to local governments in "sorting" jobs in various NAICS categories into "commercial" and "industrial." For purposes of industrial, those are proposed as NAICS Categories 11, 21, 22, 23, 31, 32, 33, 42, 48, and 49. The department combined the definition in the Goal 9 rule with this list of categories to create the definition for the streamlined process. Since addition of this information means that this definition could not be identical to the Goal 9 rule definition, the department also proposed removed the phrase "industrial uses may have external impacts on surrounding uses and may cluster in traditional or new industrial areas where they are segregated from other non-industrial activities," since this may easily be construed as a "policy" rather than as a pure definition. This proposal has not been discussed by the RAC and the department does not feel strongly about whether the wording is included provided it is clear that it does not assert a policy rather than a definitional matter.

Section (4): "Initiates" definition. This is an important term because ORS 197A.305 allows cities that have "initiated" a UGB amendment using the old method to withdraw the amendment and use the streamlined process. The term was previously defined in LCDC's rule at OAR 660-024-0000(3) and is simply repeated here. Again, the department recommends that key definitions that are used in other rules should not be different in the new division 24 unless there is a compelling reason – that would be the source of confusion. In the proposed new rules, this term becomes important in order to mark the beginning of the 14-year UGB planning period, and therefore it shows up in several rules throughout the proposed division 38.

<u>Section (5):</u> "Nonresource land" is an important new term in the "location and priorities" portion of the division (see rules at OAR 660-038-0160 and 0170). The term is not defined in law, but does have a previous definition in LCDC's division 4 exceptions rule. Therefore, the department proposes that for purposes of division 38, this term shall have that meaning, specified in OAR 660-004-0005(3).

Section (6): "Roughly proportional": ORS 197A.310 and 197A.312 both provide that lands added to a UGB under the streamlined process "must be planned and zoned for categories of land uses in amounts that are roughly proportional to the land need determined for each category of use." The department suggests that this term needs more specificity. The draft rules in Attachment A propose a "placeholder" definition indicating that the term means, with respect to planning of land added to a UGB in response to a need determination "the amount of land provided for particular categories of is within X percent of the amount needed." The RAC has not discussed this topic, so the "X percent" is intended as a placeholder and to alert readers that a key value is necessary here. The department cannot conceive of any "research" or other accepted way to arrive at this number, it will simply have to be a number that is chosen through consensus on the RAC or by the department and, failing at that, by having the commission choose a number.

Section (7): "Serviceable" is defined in the new statute at ORS 197A.300(2). The department has repeated the definition word for word from the statute – legal counsel has advised that the commission does not have the authority to change this definition. The proposed definition of "serviceable" is:

> With respect to land supply in a UGB, and as described in proposed OAR 660-038-0210, that:
>
> (a) Adequate sewer, water and transportation capacity for planned urban development is available or can be either provided or made subject to committed financing; or
>
> (b) Committed financing can be in place to provide adequate sewer, water and transportation capacity for planned urban development.

This definition may be the source of some confusion. ORS 197A requires cities to demonstrate that at least seven years of land *is serviceable*, which can be achieved through a showing that committed financing "can be in place" in accordance with subsection (b). The required showing for the remainder of the 14-year supply is that the land *can be serviceable*; a distinction clearly intended to place a lower threshold for demonstrating service capability for the second seven years of the planning period. However, the similarity between the "can be in place" language in the definition of serviceable, and the required "can be serviceable" showing for the remainder of the 14-year land supply seems to blur that distinction. To provide appropriate meaning to both of these statutory elements of the serviceability test, the department has proposed language at OAR 660-038-210 that provides separate parameters for each (see discussion below in this report regarding the serviceability rule at OAR 660-038-0210).

Section (8): the definition of UGB is noncontroversial and repeats a definition in the current UGB rules at OAR 660, division 24.

Section (9): The definition of Urbanizable land is defined here as it is in the Statewide Planning Goals. Three commenters (1000 Friends, City of Eugene, and League of Women Voters) have provided comments taking issue with this definition. The department notes that this definition was placed in Goal 14 in 2005 after ten goal hearings around the state and with broad consensus. It would take another ten hearings to change it again, and there seems to be no compelling need to do so.

Section (10): The proposed definition of "Vacant Land" (with respect to Employment Land), is proposed to be:

A lot or parcel:

(a) Equal to or larger than one half-acre not currently containing permanent buildings or improvements; or

(b) Equal to or larger than five acres where less than one half-acre is occupied by permanent buildings or improvements.

This definition is taken from the current Goal 9 rule at OAR 660-009-0005(14). It is also repeated in the current UGB rules at OAR 660-024-0050(3) as a safe harbor. As such, the department proposes that it be used in the streamlined process as well. However, this proposal needs further discussion with the RAC, especially since some members have proposed an additional definition regarding partially vacant land.

The department is also considering whether to suggest or allow using a ratio of improvement to land value as another option for cities evaluating vacant employment land. However, this has not been discussed with the employment work group or with the RAC so a proposal is not yet provided in the draft. Because there is no readily available data source for site coverage details, a city performing an Employment Opportunity Analysis (EOA) under Goal 9 must either conduct a windshield survey or an aerial survey to determine vacant and partially vacant land, or else use another method as a proxy. Cities often use an improvement to land value ratio because such data is typically available from the county assessment records. For example, if improvements on a tax lot are assessed at less than 10 percent of the value of the land, the site could be considered vacant for planning purposes. This technique is most often used as a way to evaluate lands likely to redevelop during the period; for this a 0.25 is common.

0020: Applicability

General: This rule indicates when the rules in this proposed division would take effect (January 1, 2016). The proposed Applicability rule is also a miscellaneous collection of requirements that address when a city may or must use the rules, when the city may use them again, and related topics. There are several general requirements in ORS 197A on the subject of using or reusing the streamlined process and the department is suggesting that these be reflected in this rule.

This rule also collects a series of generalized requirements for UGBs that are also in division 24. The department reflected on whether this collection of requirements could instead be broken into two or three different rules. Indeed, the current UGB rules under division 24 provide a similar set of requirements distributed among three different rules (OAR 660-024-0000, 660-024-0020 and 660-024-0040). The department proposes instead that the policies expressed by these sections remain together in one rule, but will consider any comments that indicate this causes confusion.

Section (1): provides the most basic, overarching requirements for the new process, taken directly from ORS 197A. It provides that this division takes effect January 1, 2016. It provides

that the method is optional, and it provides that if a city uses division 38, then division 24 does not apply.

Sections (2): through (4) repeat very fundamental requirements of the streamlined path reflecting requirements from ORS 197A.305 and with the same wording as that statute.

Section (5): concerns whether a city that has used the streamlined method may subsequently use the traditional method. ORS 197A is silent on this very important policy matter. The fact that it is unresolved in the statute has come up in RAC meetings, but the department has not yet proposed a policy resolution idea on this to the RAC. As such, this section in the proposed rule should be considered a preliminary "placeholder" or "strawman," as a means to solicit comment from interested cities and other interests.

For this section, the department has preliminarily proposed that a city that adopts a UGB amendment using the streamlined process may subsequently add land to the UGB using the "traditional" method "only if the primary purpose for expansion of the UGB is to accommodate a particular industry use that requires specific site characteristics or to accommodate a public facility that requires specific site characteristics, as provided in ORS 197A.320(6)." The department has discussed at least four other possible instances that might be added to this rule in a subsequent draft. These should be discussed by the RAC of course. First we note that public facilities will need to be defined broadly here to include more than simply sewer, water, and transportation. For example, new or expanded schools should be in this definition because indeed some UGBs have been amended to simply add a school site.

Second, it may be reasonable to allow reuse of the traditional process if the primary purpose of the UGB amendment is to plan for a substantial change to the long term employment characteristics of the city as informed by an Employment Opportunity Analysis described in OAR 660-009-0015. The Design Team discussed this eventuality and it was generally agreed that jurisdictions wanting to pursue this course should use the traditional process. That discussion is not necessarily reflected in the statute, but based on that understanding, the department proposes that an opportunity should be provided for cities to pursue this course, even after a city uses the streamlined method at least once.

A third idea mentioned by Bend (and implied by comments from Deschutes County), but that has not had broad discussion, is that the traditional method could be reverted to if a city is amending the UGB to add a Regional Large Lot Industrial Site as provided by OAR 660-024-0045. Use of that rule is not allowed for the new process in proposed section (6), discussed below. As such, the regional large lot process could only be pursued under the traditional process.
Finally, the commission should consider whether a city could revert to the traditional method if it wants to consider a quasi-judicial amendment to add a particular parcel or portion of a parcel, rather than provide for all housing and employment needs for a 14-year period. ORS 197A clearly requires cities to consider and provide for all needs for a 14-year horizon. If a city simply wants to pursue a small scale UGB amendment for a particular parcel of land, its only option might be to use the traditional method. If the new rules indicate that once a city uses the streamlined method it is barred from using the traditional method for a quasi-judicial purpose, this provision may have the effect of making the streamlined method less desirable. We note that

many UGB amendments of this nature have been approved over the last 20 years. However, we should note that such an authorization in the new rules could be controversial and needs to be carefully considered (and carefully drafted).

Section (6): provides that the streamlined process is not available for a jurisdiction that wishes to add land under the Regional Large Lot Industrial process in OAR 660-024-0045. That is a special process for a few Central Oregon counties and presumes a 20-year rather than a 14-year UGB (see discussion above).

Sections (7): through (10) include requirements that are taken directly from ORS 197A, for the most part using exact language from that statute.

Section (11): provides that use of a method under this division is deemed to satisfy ORS 197.296 for cities subject to that statute. ORS 197.296 applies only to cities over 25,000 and Metro. It is a fairly complex statute that repeats many Goal 10 housing requirements but often with slightly different language and with several details that are not included in Goal 10 rules. Most significantly, the statute requires that cities consider "new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary." In other words, measures that require consideration of rezoning or upzoning land in the UGB, and that provide for redevelopment and infill prior to expanding the UGB. Since the proposed rules for the residential and employment path also address these topics, the department suggests that use of the streamlined method should be deemed to satisfy that statute. The commission may not indicate that the statute does not apply, but may indicate that the new process satisfies the statute.

We note as an additional consideration that, since one of the main intents of this new path is to provide clear and objective requirements, it should be recognized that ORS 197.296 is anything but clear and objective. If this requirement is not satisfied by the streamlined path, for cities subject to ORS 197.296, the new process will fail in this most fundamental objective and we should not expect that cities over 25,000 will use it.

Section (12): is identical to a section in current rules at OAR 660-024-0020, which has been in effect for the last 10 years under the traditional process. The proposed new rules in this section are fairly self-explanatory and will likely be viewed as very helpful to local governments; omitting them could make the new process less desirable.

Section (13): is intended to clarify that a city considering a UGB evaluation or amendment under the streamlined process must apply its acknowledged citizen involvement program to ensure adequate notice and participation opportunities for the public, and must assist the public in understanding the major local government decisions that are likely to determine the form of the city's growth. The department has proposed this as a way to implement ORS 197A.302, which indicates that "the commission should design the [streamlined] methods to assist residents in understanding the major local government decisions that are likely to determine the form of a city's growth." We note that this proposal has not been subject to RAC discussion, but was provided at the suggestion of Steve Faust, the Chair of the state Citizen Involvement Advisory Committee (also a RAC member).

Section (14): repeats a provision in ORS 197A.325(3), which states that "a city that is scheduled to commence periodic review as required by OAR 660-025-0030 is not required to commence periodic review if the city has amended the urban growth boundary pursuant to" the streamlined process. The law indicates that instead, the commission shall, by rule, specify alternate means to ensure that the comprehensive plan and land use regulations of the city comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs.

Before we discuss the new alternate periodic review process, below, we note that the department has suggested adding an additional policy to this which is not in the statute, but which is within the commission's authority: The proposed rule would state that, if the city has evaluated the UGB need and land supply using the streamlined process, "and determined that the current UGB contains sufficient buildable land for a 14-year period, including a supply that is serviceable for a seven-year period and a supply that can be serviceable for a 14-year period," the city is also excused from periodic review.

ORS 197A requires LCDC to provide and alternate means to ensure that a city's comprehensive plan and land use regulations comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs. The department has appointed a working group to discuss ideas for this alternate process, but that group agreed that it would be difficult to craft the process until it is more settled as to what work would be done as part of the streamlined process. The department is therefore recommending that this rule be postponed until after January 1, 2016. It is not likely that a city will need to use such process within the first six months of the new process. The draft rules at Section (14) are therefore a placeholder, and for the time being they indicate that instead of periodic review, the city shall follow the procedures in OAR chapter 660, division 25, (the ultimate division where the alternate process will reside.

0030 - 0080: Residential Land Path

General: These six rules provide a process for determining if a city needs to add land to its UGB during the 14-year planning period for residential development. These rules have been discussed extensively, both by small workgroups and by the RAC. Despite this considerable amount of discussion, and while there is more consensus on these proposals than for the employment path and for some other elements of the rule, nevertheless there is not complete consensus on all aspects of this path.

0030: Residential Land Need

This rule sets forth the process for determining the number of new residential units needed by a city during the 14-year planning period.

Section (1): This section sets forth language directly from the statute summarizing a city's requirements for determination of residential land need.

Section (2): This section requires a city to use the most recent final population forecast issued by Portland State University as the population basis for the eventual land need determination.

Section (3): Before converting its projected 14-year population increase into residential dwelling unit need, a city must subtract the number of persons expected to live in group quarters, since these persons will not require new residential dwelling units. The decennial United States Census tabulates the number of residents in each city that live in group quarters, such as residential care facilities, group homes, and correctional institutions. A city would be required to calculate the percentage of its residents who lived in group quarters at the time of the last decennial United States Census, and then carry forward that percentage to reduce the expected number of new residents that require new dwelling units.

Several commenters have stated that a definition of "group quarters" is necessary in this rule. However, since a city will be using numbers directly from the decennial United States Census to determine the number of future group quarters residents, there is no need for a separate definition different than that published in the census.

Section (4): To convert the projected 14-year population increase into an overall residential dwelling unit need, the city would then divide the population growth by the number of persons per household. The city must use the number of persons per household determined at the time of the most recent decennial United States Census.

Section (5): Next, a city must adjust the number of needed dwelling units by a vacancy factor, which will increase the number of needed dwelling units. The city must use a "base" vacancy rate of five percent, which is a generally accepted (throughout the United States) vacancy rate that will occur in a normally functioning real estate market. To this number the city would determine its vacancy rate due to "seasonal, recreational, or occasional" vacancies within the city. This number is determined by the decennial United States Census. However, the "seasonal, recreational, or occasional" vacancy rate would be capped at ten percent, meaning that a city's maximum assumed vacancy rate would be 15 percent.

Most cities within Oregon have "seasonal, recreational, or occasional" vacancy rates from the 2010 decennial United States Census that are well below the ten percent maximum that could be used under this section of the rule. The exceptions, other than the city of Sisters (12 percent), are entirely along the Oregon coast, where "seasonal, recreational, or occasional" vacancy rates are as high as 71 percent in the city of Manzanita. In discussions with DLCD coastal staff, it is highly unlikely that any coastal cities will see population growth rates in the foreseeable future that would justify a UGB expansion under any circumstances other than the City of Seaside, which is currently considering a UGB expansion under the existing rule set forth in OAR 660 division 24. The introduction of "seasonal, recreational, or occasional" vacancy rates above 10 percent could result in unusual and anomalous residential land need calculations, and might not represent a true need for residential land. Additionally, a city has some control over the use of residences as vacation rentals (but not as "second homes") through the use of zoning and licensing regulations.

Section (6): Next, a city would subtract from its residential dwelling unit need calculation a projection of the number of dwelling units expected to occur as a result of residential redevelopment and mixed-use residential/commercial development on commercially zoned lands. Such a subtraction is necessary because, (a) the land upon which residential redevelopment occurs is already considered fully developed (example: a single-family residence or duplex is torn down and replaced with an apartment building), and (b) the land upon which mixed-use residential/commercial development occurs is not zoned primarily for commercial development.

The University of Oregon's Community Service Center conducted a survey and analysis of cities in Oregon to determine an appropriate rate of residential redevelopment and mixed use residential/commercial development in Oregon cities. While some data and information was obtained as a result of the survey, the final study indicates that few cities in Oregon collect data on rates of such development. The only general finding was that rates of redevelopment and mixed use residential/commercial development are smaller or non-existent in cities with a population less than 10,000, and showed a general increase correlating with increase in city population.

In the absence of good empirical data, the setting of projected ranges for residential redevelopment and mixed-use should be guided primarily by policy considerations. Those considerations are:

- Intensification of residential development on existing developed lands and in concert with commercial development in a mixed-use setting should be encouraged because it results in more efficient use of existing urban land, with reductions in use of and cost of needed public services.
- While there is some dispute on the magnitude of the trend, evidence suggests a national trend, correlating with the size of cities, toward preferences for living in higher density areas closer to services and amenities.
- Overestimation of future residential redevelopment and mixed-use residential development on commercially-zoned lands could result in an underestimation of lands needed for new residential development, with resulting increases in housing costs and decreases in housing availability and choice.
- As cities grow larger in size, they tend to see more residential redevelopment and mixed-use residential development in commercially zoned areas.

Based upon these considerations, the department recommends that cities be given significant flexibility in picking a projection for residential redevelopment and mixed-use residential development that comports with a city's planning goals and long-range vision. While state policy considerations call for cities to plan for at least some development in this category, its magnitude should be left to city discretion. The proposed ranges are:

- Cities less than 10,000 population: Between one and 10 percent
- Cities between 10,000 and 50,000 population: Between five and 15 percent.
- Cities greater than 50,000 population: Between five and 25 percent.

Finally, this may be a calculation which changes over time, if trends toward more efficient, centrally located development intensify in coming years. The commission will have the ability to revisit this issue in its 5-year review of the streamlined UGB process outlined in these rules.

Section (7): Next, a city would subtract from its residential dwelling unit need calculation a projection of the number of dwelling units expected to occur as a result of accessory dwelling unit construction. Because such units are constructed on developed lots with existing single-family residences, they do not generate additional residential land need. Based upon research of actual accessory dwelling unit rates in Oregon cities, the draft rule proposes that cities be allowed to subtract a number within a range, constituting a percentage of the overall dwelling unit need. For cities with population under 25,000 the range would be between zero and two percent, and cities with population of 25,000 or greater the range would be between one and three percent of the overall dwelling unit need. Cities with a documented percentage rate greater than the range from 2000 to the present could use their documented percentage (Medford is the only known city that meets this criterion).

There was some discussion in the UGB Rules Advisory Committee that these ranges are "too low," and recent increases in accessory dwelling unit development in Portland show that higher rates are feasible. However, while permitting of accessory dwelling units is encouraged as a method to increase infill and more efficiently use existing public facilities, Oregon's cities are not required by state law to permit accessory dwelling units, and many (the largest being Salem) do not permit them, at least legally. Other cities allow them, but have established development standards, such as size restrictions and off-street parking requirements, that in practice discourage property owners from building them. Additionally, the research conducted by the Department found current rates of accessory dwelling unit development in most Oregon cities that are consistent with the ranges proposed. Finally, in the Design Team, there was a consensus that experience for housing or other land use topics in Portland and Metro should not be used to guide decisions on the streamlined process; most cities and especially small cities do not have the sorts of market forces and other factors that have occurred in the Metro area.

Sections (8) and (9): These sections require cities to determine a final residential dwelling unit need after all of the adjustments carried out in Sections (3) through (7), and then state that the remaining need is to be accommodated on vacant and partially vacant land either within the current UGB or, if the current UGB cannot accommodate the need, on lands added to the UGB pursuant to the rules following later in division 38.

0040: Determine the Mix of Dwelling Units Needed

Before calculating residential land need, a city must determine an appropriate mix of low density, medium density, and high density residential development. This rule presents the process by which a city comes to that determination.

Section (1): This section requires cities to use the data available in the American Community Surveys (ACS) prepared by the United States Census to determine their existing mix of different housing types. The ACS classifies residential dwellings in each city by dwelling type, and is the

best generalized data that is readily available, in lieu of an individualized inventory conducted by each city.

Section (2): This section correlates the different dwelling types in the ACS with low density, medium density, and high density residential development. For cities with a UGB population less than 2,500 only two categories (lower density and higher density) are required for reasons of simplification, and because ORS 197.303, which defines various "needed housing" types, does not apply to cities with a population less than 2,500. It has been pointed out by UGB RAC members that manufactured homes were omitted from the list of dwelling unit types in the rule – the Department will correct this omission by including manufactured homes in manufactured home parks as a medium density residential type.

Section (3): This section requires cities to project a mix of housing types needed for new residential development using Table 1, which is attached to the back of the draft rule document. This table allows cities to determine a range of housing type mixes based upon the city's existing housing mix (determined from the ACS data per Sections 1 and 2). The table includes ranges of numbers that allow cities to make some policy choices regarding an appropriate housing mix. The table is constructed using the following principles:

- Cities are divided into four population categories.
- Cities with UGB populations under 25,000 and with medium or high density housing percentages less than the median percentage for cities in the same population category must project at least the median percentage going forward. For example, a city with a UGB population under 2,500 and an existing higher density mix of housing within the city of only two percent would be required to project at least nine percent of higher density housing going forward, because an analysis of all cities in Oregon outside of the Portland Metro area in the under 2,500 population size category found that the median percentage of higher density housing for such cities was nine percent.
- Cities with UGB populations under 25,000 and with medium or high density housing percentages greater than the median percentage for cities in the same population category, but less than the top 25 percent of such cities, would be required to project at least a slight increase of one percent above their current medium or high density housing percentage going forward. For example, a city with a UGB population under 2.500 and an existing higher density mix of housing within the city of 11 percent would be required to project at least 12 percent of higher density housing going forward, because an analysis of all cities in Oregon outside of the Portland Metro area in the under 2,500 population size category found that the median percentage of higher density housing for such cities was nine percent and the top 25 percent of such cities had median percentages of higher density housing greater than 15 percent.
- Cities with UGB populations of 25,000 or greater and with medium or high density housing percentages less than the highest percentages among such cities (for medium density housing, Springfield, for high density housing, Eugene and Corvallis), would be required to project at least a slight increase of one percent above their current medium or high density housing percentage going forward. For example, a city in this population category and an existing medium density mix of housing within the city of 12 percent

would be required to project at least 13 percent of medium density housing going forward.

- Cities with UGB populations under 25,000 and with medium or high density housing percentages in the top 25 percent for cities in the same population category would be required to at least maintain their current percentage of such housing going forward. For example, a city with a UGB population less than 2,500 and an existing higher density mix of housing within the city of 18 percent would be required to project at least 18 percent of higher density housing going forward, because an analysis of all cities in Oregon outside of the Portland Metro area in the under 2,500 population size category found that the top 25 percent of such cities had median percentages of higher density housing greater than 15 percent.
- Cities with UGB populations of 25,000 or greater that had attained the highest percentages among such cities would be required to at least maintain their current percentage of such housing going forward.
- The upper range for medium and high density housing allowed to cities in determining their housing mix would be significantly higher than current percentages. For example, a city with a UGB population less than 2,500 and an existing higher density mix of housing within the city of 16 percent would be allowed to project at least 31 percent of higher density housing going forward, because the city would be allowed to project a mix of up to 15 percent higher than its current percentage of higher density housing.

The UGBRAC and its technical working groups have had considerable discussion about the housing mix issue, with criticism generally from some members that the "low" end of the housing mix range for cities does not require them to sufficiently increase current percentages of medium and high density housing. The commission should consider the following policy and technical issues when making a determination on this issue:

- The statutes in question, ORS197A.310 and ORS197A.312, contain policy direction to the commission that the UGB evaluation and amendment method, "[w]ill not become less efficient in its use of land as a result of a change to the urban growth boundary." Also the statutes state that "urban population per square mile will continue, subject to market conditions, to increase over time on a statewide basis and in major regions of the state, including that portion of the Willamette Valley outside of Metro." The department believes that these two statutory directives, when taken in combination, justify the current recommended ranges.
- As a practical matter, cities outside of the Metro area will have a choice to determine residential land need and housing mixes using either the existing UGB evaluation or amendment method, or this streamlined method. Housing mix ranges which are perceived by cities as being unrealistic, unattainable, or unpalatable will result in those cities choosing not to use the new streamlined method for UGB evaluation and amendment.
- Conversely, some comments received so far on this issue seems to imply that there is concern if cities opt to choose the lowest possible numbers within the housing mix ranges offered. The department has proposed these ranges with an expectation that the low end of each range would still achieve the intended goals of this method. In addition, many cities in Oregon realize the need to provide greater diversity and additional higher density

housing options to meet the housing needs of their residents, and will take advantage of the range offered to significantly increase percentages of medium and higher density housing mixes within their UGBs.

- As a technical matter, if a city has any significant amount of redevelopment or mixed-use development, or development of accessory dwelling units, the actual percentages of medium and high density residential development the city will be planning for will be higher than the residential mix determined through use of Table 1. This is because Table 1 accounts only for development requiring a land need – redevelopment and mixed-use residential development (and also accessory dwelling unit development), which occurs on already developed land, is accounted for separately because such development does not generate need for vacant or partially vacant land. And since redevelopment and mixed-use development is predominately, if not entirely, of a medium density or high density nature, it will skew the mixes shown in Table 1 further toward these types of residential development.

As a final note regarding this section, there is some confusion in terminology for the two residential density categories that apply to cities with population less than 2,500 – the use of the terms "lower" and "higher" causes confusion when compared to the "low," "medium", and "high" categories for larger cities. The department will provide consistent terminology in the final rule language.

Section (4): This section directs cities to apply the housing mix percentages determined in Section 3 to the total housing need number to determine the actual numbers of low, medium, and high density dwelling units needed. It has been pointed out by members of the UGBRAC that Table 1 does not actually provide percentages for low density housing. However, it is implicit that the percentage of such housing will consist of the remainder of the housing that is not medium or high density – the department will attempt to clarify this point in the final draft.

0050: Determine Amount of Land Needed for Each Housing Type

This rule requires cities to convert the numbers of needed housing units into an amount of needed land for those units.

Section (1): In this section, a city will divide the number of needed housing units for low, medium, and high density housing as determined in the housing mix rule by projected residential densities to arrive at the amount of net residential land need. These densities are contained in Table 2, which is attached to the back of the rule document. The low density and medium density residential ranges reflect the findings of the University of Oregon's Community Services Center in their research. The high density residential ranges reflect a review of recent buildable lands inventories completed by Oregon cities.

Section (2): This section directs cities to convert the amount of net residential land need determined in Section (1) to gross land need by adding an amount equal to 25 percent of the net land need to account for public lands such as streets, parks and schools. This number is the same as the "safe harbor" in the existing UGB analysis method in division 24, and approximates the

amount of public land within cities found by the University of Oregon Community Service Center research.

Sections (3) and (4): These sections provide a "check" upon the assumptions and ranges used by cities to calculate residential land need. ORS 197A.310 and 197A.312 both contain requirements a city "[w]ill not become less efficient in its use of land as a result of a change to the urban growth boundary." These sections require a city to calculate the existing density of its developed residential lands, and then show that its assumptions will not result in new residential development at densities less than those of the existing city.

Some members of the UGBRAC believe that this standard is "too lenient," and that cities should be required to meet the density that has been achieved by more recent residential development within its boundaries. The UO research shows that cities have increased residential density and efficiency in the 21st century. However, the statutory language does not require that cities become less efficient than has occurred over any particular time period, and the department does not recommend that the commission read this requirement into the statute.

0060: Buildable Lands Inventory (BLI) for Residential Land

This rule governs how cities must conduct a residential buildable lands inventory to determine the available land within the existing UGB. The city is determining how much vacant and partially vacant land is available to satisfy the residential land need. This overall requirement is summarized in Section (1) of this rule.

Section (2): This section requires cities to classify existing residential areas into low, medium, or high density categories, consistent with the determination of land need. The basis for this classification should be the city's comprehensive plan land use map. However, some cities do not differentiate residential districts by density or type of housing, while other cities have a "one map" system that combines the comprehensive plan land use map with the city's zoning map. In these situations the city is required to use its zoning map. For lands that are within a city's UGB but not annexed, the city must use the applicable county land use or zoning map.

The second half of this section directs the city regarding its classification of land use or zoning districts, correlating them with the low, medium, and high density residential need categories. Since cities vary in the densities of their residential zoning districts, and may have district residential densities that don't fit neatly into the low, medium, and high density residential categories set forth in these rules, the rule allows for some flexibility in the city's classifications.

Section (3): This section directs cities to identify all vacant residentially-designated parcels of land within the city's UGB. The lot size and assessed value thresholds have been commonly used in buildable lands inventories conducted by cities in the past.

Section (4): This section directs cities to identify all partially vacant residentially-designated parcels of land within the city's UGB. Identification of partially vacant land will require use of aerial photos, but such photos are readily available.

Section (5): This section requires cities to tally all of the vacant and partially vacant land, correlate it with low, medium, and high density residential districts, and then determine the amount of available land within the city's UGB for each of the three residential categories.

Section (6): This section requires cities to identify all developed residential land within the UGB, the number of units on such land, and the overall existing developed residential density. This figure will be used in OAR 660-038-0060 (the previous rule regarding land need determination) as a "check" against a city's residential density assumptions, ensuring that cities do not become less efficient in its residential use of land within the UGB.

0070: Adjust Residential Lands BLI to Account for Constrained Lands

This rule directs cities to adjust the buildable land inventory completed in 660-038-0060 above to account for residentially-designated lands that cannot accommodate projected residential development.

Section (1): This section directs cities to identify physically constrained land, including floodways and water bodies, special flood hazard areas, lands within a tsunami inundation zone, steeply sloped lands (greater than 25 percent slope), lands subject to Goal 5 or Goal 6 resource protection programs, and lands subject to protections related to Coastal Goals 16, 17, and 18.

Section (2): This section requires cities to discount the development capacity of various physically constrained lands. For both special flood hazard areas and areas of steep slopes, the proposed reductions are for 50 percent of the development capacity, in contrast to the 100 percent reduction allowed in the current "safe harbor" rules for residential buildable lands inventories. Regarding special flood hazard areas, the University of Oregon Community Service Center research showed that residential development occurs on floodplains in this state. Regarding steeply sloped lands, cites generally allow reduced residential development on such lands, or allow transfer of development to less steeply sloped lands, rather than prohibiting residential development entirely.

Section (3): This section gives cities an option of considering constraints on residential development that result from private legal encumbrances or restrictions that do not allow development at densities allowed by city codes. Such restrictions are difficult to quantify for several reasons: they may not be readily known without extensive real estate research, they are enforced through judicial action, not city action, and they may be determined to be unenforceable by courts as contrary to public policy or due to past non-enforcement. However, the issue of private deed restrictions has arisen in some Oregon communities, most notably in Bend, and could in some circumstances have a significant impact on the amount of buildable land available to satisfy a residential land need. Therefore, the department recommends this section be included in the rule as an option for cities to explore when conducting a residential buildable lands inventory.

Section (4): This section directs a city to reduce the amount of residential buildable lands in its inventory to account for the documented constraints.

0080: Compare Residential Land Need to Land Supply

This rule requires cities to compare the amount of buildable lands with the residential land need, and then determine if any additions to an urban growth boundary to meet residential land needs are necessary. This direction is summarized in Section (1).

Sections (2) through (4): These sections reference Tables 3 through 5, which are attached to the back of the rule document. Table 3 applies to cities with a UGB population of less than 2,500, Table 4 applies to cities with population between 2,500 and 10,000, and Table 5 applies to cities with population greater than 10,000. The tables deal with all possible combinations of surplus and deficit for low, medium, and high density categories of residential land within an existing UGB.

When all categories of land show a surplus or a deficit then the city's action is straight-forward. A surplus means that no UGB expansion for residential land need is necessary. If a city has a deficit in all categories it may either add land to its UGB to satisfy the deficit, or alternatively it may redesignate low density land within the existing UGB to meet a medium or high density land deficit, and then add enough low density land to the UGB to satisfy that need as well.

The tables also cover situations involving cities with a deficit of one type of residential land, and a surplus of another type. To summarize the tables for these situations:

- Cities may not redesignate surplus high or medium density land to satisfy a low density land deficit. Land that has an existing high or medium density residential designation should be preserved for those uses even if 14-year projections show a surplus, due to the difficulty cities often have in identifying and designating such lands in their comprehensive plans.
- Cities with UGB population less than 10,000 are allowed to redesignate low density surplus lands to satisfy or partially satisfy a medium or high density deficit, but are not required to do so. This Department recommendation recognizes the difficulties cities have in "upzoning" lands within an existing UGB. Such difficulties outweigh the benefits of having higher density residential development adjacent to existing city facilities and services because of the overall compact size of smaller cities.
- Cities with UGB population greater than 10,000 are required to satisfy at least half of a high or medium density deficit by redesignating surplus low density residential lands. In larger cities the benefits of having higher density residential development adjacent to existing city facilities and services justifies the difficulty cities may have in "upzoning" land within an existing UGB.

Section (5) authorizes cities to designate surplus employment land as determined through the employment land need analysis to satisfy all or part of a residential land deficit. However, it does not require such redesignation – employment land and residential land often have characteristics that make them unsuitable for this kind of change of use.

0090 – 0150: Employment Land Need Path

General: These seven rules provide the "Employment Land Need Path." This path is still under discussion by a workgroup and RAC. There have been at least two discussions of the general path by the RAC, and those discussions indicated that there is little consensus on several key features of the path provided in the draft, most significantly regarding the proposed density of employment land that cities should assume. The department will be continuing to discuss the path in both the workgroup and in the RAC.

0090: Employment Land Need

This rule is a preamble to the six rules that come after it. The rule provides an overarching set of requirements based on the general statutory requirements in ORS 197A for both large and small cities. In particular, sections (1) and (2) paraphrase the requirements in ORS 197A.

Section (1): of this rule clarifies that the need for employment land is determined for a 14 year planning period under this process.

Section (2): indicates that a city may determine its need for employment land by either a method based on the population forecast or, alternatively, a method based on the long term employment forecast issued annually by the Oregon Employment Department. This proposed policy is based on ORS 197A.310(4) for small cities, and 197A.312(4) for large cities, which requires that LCDC rules provide these two options.

There has been UGBRAC discussion as to whether the intent of ORS 197A was to simply suggest, rather than require, that LCDC provide an employment need path based on the long term employment forecast. However, the department's legal counsel has advised the department that the statute clearly requires that both options be provided in the rules. It is also important to note that the "traditional" method (OAR 660, divisions 9 and 24) already allow cities to use the employment forecast for the same purposes as proposed here. The methodology for such use under the traditional method is not carefully defined, but in general, it provides a very broad allowance for local government to use and interpret the forecast, much more broadly than in any of the ideas proposed so far by the department. If the traditional method provides a strong option to use this forecast (and it currently does), but the new streamlined method does not, then that could become a reason for local governments to choose the traditional method over the new streamlined method.

Section (3): of this rule defines "Region" as the "workforce analysis areas" used by the OED for its long term employment forecasts.

Comments available at the time of this report fall into two major themes. First, there are comments indicating work on the employment path has not progressed sufficiently and thus did not provide adequate time to resolve important issues. Discussions about employment began in January of 2015, and the department's work group on this topic began in January of 2015. Based on these discussions, and work by the department in between, a more fleshed out path was presented to the UGBRAC in June. However, by August it was apparent to the department from

discussions in the workgroup and in the UGBRAC that there are strongly held and generally opposing positions on several key principles that must be decided for the employment path.

It is not necessarily surprising that there is substantial disagreement between cities and various interests regarding the path to determine employment land need. A "debate" about Goal 9 and about employment need under Goal 14 has occurred for at least two decades (or longer) at the local government level, at LCDC, in the courts, and in the legislature. When HB 2254 was proposed, it was paired with a second legislative proposal concerning employment land (HB 2255), also from the governor's office, which did not pass. Regardless, HB 2254 left many important details for LCDC to decide by rule regarding the streamlined path; these details are the source of much disagreement.

As such, the department drafted the rules in Attachment A to propose a rudimentary structure of at least one path, based on the discussions to date, but with the expectation that several key concepts will need additional discussion that ultimately may not achieve reasonable consensus. If so, this may lead to a set of options be presented to LCDC for selection under a final rule proposal. The department is by no means "recommending" all the elements of the path in the current draft, but has provided the path to illustrate one reasonable way to streamline the method and to help the public analyze the current direction of the discussion. Comments at the time of this report address particulars the draft rules that could be adjusted to achieve a more desirable result. Some comments are addressed within the appropriate rule below.

0100: Forecasting Employment Need Based on Forecast of Population Growth

<u>Sections (1) through (6):</u> of this rule provide a method of forecasting long term (14-year) employment need based on the PSU population forecast for the UGB, and based on a jobs-to-population ratio within two broad categories of need: commercial and industrial. The method relies on "look-up tables" (Tables 6 and 7) that are not available at this time but would be provided as part of this rule based on information from the Employment Department, updated annually. The department is of the understanding that the tables could be ready for adoption by December. Table 6 would, for each city in the state, "sort" current (2014) employment data (number of jobs) into either a commercial or industrial category (see definitions). Thus, each city would be able to easily determine current employment data and as such, could determine its current jobs to population ratio. Table 7 would provide long-term employment for each region sorted into commercial and industrial categories.

Part of the simplicity of this method derives from the assumption that employment forecasts could be provided by considering only two overarching categories of "commercial" and "industrial." While there could be a more detailed set of categories (for example, DLCD's work group discussed four categories – retail, office, manufacturing and warehouse), many city plans and ordinances have only two (commercial and industrial). Furthermore, the University of Oregon research only determined densities for two categories. At its June meeting, the UGBRAC was polled and indicated substantial agreement that the path should be based on these two categories.

Regarding the manner in which cities would sort "jobs", both from current Oregon Employment Department information and from long term forecasts, into these two categories, the department proposes using the NAICS. This is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. It is common for land planning projects to assign NAICS codes to broad land use categories of commercial and industrial. There is great deal of uniformity to how cities and consultants have made this assignment, with some exceptions discussed below.

Historically, planning efforts by cities have sometimes included, but sometimes ignored, jobs in the NAICS super-category 11 (Agriculture, Forestry, Fishing and Hunting). NAICS super-categories 22 (utilities) and 23 (construction) include jobs that take place at remote work locations. With the advent of geocoding and improvements in assigning jobs to actual work locations made by OED, it is now less problematical than in the past to assign reported job numbers to land use types. For convenience, the department has assigned all three of these NAICS super-categories to the industrial category which is typical when they are included. This assignment recognizes that such jobs, when geocoded within cities, may often be at business locations that include operational space not under a roof, such as lay down yards, product loading space and outdoor inventory storage.

Also for convenience, jobs in NAICS categories 92 (public administration) and 99 (unclassified) have been assigned to the commercial category in the draft path. There is no compelling reason to assign them to the more land extensive industrial category. For example, public use land such as parks and water treatment facilities need not be accommodated as an employment land need even if lots of jobs take place there.

The assignment of categories is ultimately about how much land should be provided to accommodate job growth, either more (industrial) or less (commercial). It should be noted that Metro uses an intermediate step of assigning NAICS coded jobs to one or more building types before deriving land demand. And at least one city in the Metro region has broken out certain types of manufacturing to assign it to a large lot land need category. The department does not recommend these techniques be included in the new rule, primarily because the methods are intended to be simpler than the traditional method.

The proposed method provides that a city should assume that in fourteen years its ratio of population-to-commercial-jobs and population-to-industrial-jobs, for the UGB, would be the same as the <u>current ratios</u>, i.e., the ratios determined at the time the city begins its analysis. We note that this assumption could also include a "range" rather than require that the ratio be exactly the same. Currently no range is proposed, but the department will suggest that the UGBRAC discuss this. Also, the method requires a 20% reduction of long term jobs, to reflect that 20% of jobs forecast long term will occur on residential or other areas. This was determined based on the University of Oregon research.

0110: Forecasting Employment Need Based on Oregon Employment Department Forecast

<u>Sections (1) through (8):</u> of this rule provide one of several possible methods to creating a job

forecast using the Employment Department jobs forecast for the region. This method, and whether the rule should even have such a method, has been a subject of much debate with the workgroup and the RAC. Using the long term employment forecast for UGB purposes does present some issues when we attempt to use this forecast for land use purposes. The Oregon Employment Department has been clear that the forecast was not designed for that purpose. These issues have been presented to and discussed by the workgroup and the UGBRAC. The department continues to believe that, in order to provide this option, the concerns describe below must be dealt with in some manner. Otherwise we cannot provide a reasonable path to forecast employment based on the Oregon Employment Department long term jobs forecast.

First, the Oregon Employment Department forecast is for ten years rather than fourteen years, and in future years it is expected to turn into an eight year forecast. The Oregon Employment Department has advised that the methodology for this forecast does not lend itself to a straight line projection to fourteen years, a method often employed by planners. The forecast is issued for nine regions in the state (Workforce Analysis Areas), which are quite broad and not necessarily cohesive. As such, the path would need some method to estimate a long term forecast for individual cities. Further, the forecast is strongly influenced by one or more "employment centers" within particular regions and thus it is not easily adjusted to reflect anticipated employment for those cities that are distant from such centers. Finally, the forecast has historically over-projected employment compared to jobs have actually occurred.

The path that is provided in the September draft rules is one of several possibilities explored by the department and presented to the UGBRAC. The various options were all comprised of ways to try and resolve the "problems" described above that arise when trying to use the Oregon Employment Department forecast for land use purposes.

In exploring different options for such methods, the department considered whether to allow the cities to base their long term employment need on the actual number of (commercial and industrial) jobs forecast. That would require a method to somehow determine the city's share of the regional forecast by the Oregon Employment Department. As noted above, since the regional forecast is weighted toward certain employment centers in a region, this adjustment would probably be suspect if it were "simple," such as allowing the city to adjust the regional jobs forecast based on the city's current (or projected) share of the region.

The department also explored a method that relied on the ratio of commercial and industrial jobs forecast for the region, rather than the actual job numbers. The Oregon Employment Department has indicated to the department that this ratio has a higher probability of accuracy than the job numbers forecast. However, a method proposed by DLCD to allow a city to use the regional ratio was also considered to be too complex for a simplified method (by several but not all of the workgroup members). Also in this attempt, DLCD proposed that the long term forecast by the Oregon Employment Department should be the standard by which the city would determine its forecast, even if it is only a ten year forecast (or in the future, and eight year forecast). That would eliminate concerns about "straight lining" the forecast to 14 years. However, this was not necessarily acceptable by all members of the workgroup.

Finally, for purposes of showing at least some structure to this necessary option, DLCD has proposed a "lite" version of the forecast, one which simply uses the forecast long term ratio of commercial to industrial jobs as a vector rather than an actual ratio. By that, we mean that the method in the draft simply allows the city to predict its ratio would move toward that regionally projected ratio by "x" percent. While it may be argued that this method is using the long term Oregon Employment Department forecast, it is certainly true that it would not authorize using that forecast "very much."

This proposed rule relies on an automated "look up table" to be provided by OED (and presumably updated annually) which would indicate OED's projected long term jobs by commercial or industrial category (see table 7). Jobs are sorted into two broad land type categories commercial and industrial based on the NAICS code as per the definition of these two categories (see definition section). Thus, a city could easily determine its long term job forecast, or simply the ratio of commercial to industrial jobs in a region for purposes of the method.

0120: Translate Job forecast to Employment Land Need

Sections (1) and (2): of this rule provide a way for cities to convert the jobs forecast determined from either of the preceding rules into a net employment land demand. This is proposed to be done by using job density factors derived from the research conducted by the University of Oregon's Center for Community Services. This is a major point of contention in the workgroup since there is substantial disagreement as to whether the University of Oregon research reasonably determined current employment densities.

A lot of employment sub-group time has been consumed debating the merits of the empirical University of Oregon research on job density and whether a different method would be better, such as using "floor area ratios" (FARs). A brief analysis of the two methods and a recommendation follow.

The University of Oregon research combined GIS based assessor tax lot shape information with Employment Department job count point data. This method creates a jobs-per-main-tax-lot result. Additional tax lots that may be part of the business operation – but do not have job point data – are not counted. In this way it may be asserted that University of Oregon determined land totals are too low, and job densities are thus too high. Counter balancing this is the fact that, in the research, tax lots that have jobs located on them but for some reason are underutilized. In this way the land totals are too high and job densities are too low. The research calculates job density as the total jobs per acre of tax lots with jobs reported on them. The results distinguish between commercial and industrial land use zoning. The research removes constrained land.

There is no ready source of data for land performance. Some work group members argue that the University of Oregon research is fatally flawed and should be discarded. Most others accept that using the large data set from many cities in Oregon in effect smooths out variability. The results are an empirical reflection of actual land performance as it exists which conforms to their general experience doing employment land planning projects.

The alternative discussed is based on floor area ratios (FAR) which is the ratio of building floor space to the land area used. FARs are used by building users when designing a building program, especially for considerations of common areas in the building and open space outside the building to achieve a desired effect. FARs are also used by site developers when attempting to maximize their return on site development given the circumstances of the site, regulation and market.

For land use planning projects it is typical to use a standardized floor space per employee and assumptions about building height to calculate a net site size need. Assumptions about building height are very much dependent on type of use, land value and market achievable rents needed to justify more expensive building formats. Local requirements for open space and storm water management must be considered as well as any irregularities of a particular site. Added to this net site would be net to gross assumptions about roads and utilities.

As one UGBRAC member put it, while the FAR approach may be considered the ideal, assuming availability of necessary market information and other data, but, the University of Oregon research reflects what is possible and is based on a large sample of available data. Put differently, a FAR analysis is very useful to determine a net site land need when data about the particular location and development markets is available. Absent such data and individualized evaluation, the department has concerns that such an approach will not yield reliable results. The University of Oregon research avoids the impossible task of gathering complete market data and measures the 'warts and all' actual performance of employment land outside of Metro. The University of Oregon research more closely aligns with the experience of most cities planning from raw land in less urban locations. At this point, the department recommends that the new rules rely on University of Oregon researched densities; however, the department has committed to exploring additional options for adjustment of the results in that research, where possible.

<u>Section (3):</u> of this rule would apply an adjustment factor to the commercial land need to account for redevelopment opportunities. The amount of this redevelopment is not known. The University of Oregon attempted to find this in its research, but was unable to determine it. As such, this important factor is not proposed at this time. A similar problem exists for residential redevelopment, discussed above for the residential path. This was the subject of extended discussion in the September 17 UGBRAC meeting, and there was some consensus on a range of numbers proposed by the department that was based to some extent on recent proposals by various cities. In the end, the ranges are simply best guesses by the UGBRAC, and that is likely to be necessary for the employment redevelopment path as well.

Finally, the path directs cities to convert the amount of "net employment land need" to "gross land need" by adding an amount equal to 15 percent of the net land need, to account for public lands such as streets and parks. This number is not the same as the 25 percent "safe harbor" in the existing UGB analysis method in division 24, which applies only to residential lands, and is not the amount of all public land (in all zones) within cities found by the University of Oregon research – that number was 25 percent. However, the department proposed as a starting point that employment land does not typically need the full 25 percent conversion factor since employment land, unlike residential land, does typically accommodate schools and parks. The

department notes that the proposal to reduce this percentage to 15 percent is not recommended by all members of the employment workgroup and needs further discussion.

0130: Buildable Land Inventory for Employment Land within the UGB

Sections (1) and (2): provide a method to inventory vacant and partially vacant land within a UGB. This methodology is also a matter of debate. UGBRAC members have noted that the terms ”permanent building” and “partially vacant” lack definition. One noted that a 1-acre unimproved parcel could somehow be both vacant and partially vacant. Other UGBRAC comments objected to excluding small lots from the inventory, and recommended using an improvement-to-land-value-ratio method to identify vacant or partially vacant employment land.

The concept of using “partially vacant” land as a component in the path is also difficult, in part because there are many topographic and business operational factors that result in an employment site that is not 100 percent utilized. However, ORS 197A provides that cities must determine their supply and development capacity of lands within the UGB based on both the “vacant and partially vacant” land within the UGB. *See* ORS 197A.310(3)(b)(A) (small cities) and 197A.312(3)(b)(A) (large cities).

More important, the proposed rule to determine vacant land requires a site inspection method, either a windshield or aerial survey, or possibly more recent methods such as google earth. The department may recommend an improvement-to-land-value method instead, or at least adding such a method as an option. Although not perfect, an improvement-to-land-value method has the advantage of using readily available assessor data. And since the analysis can be automated, it is better able to consider even small tax lots. One suggested value for this method (0.3) is probably too high. It would be better to use a lower value to identify vacant (and easily re-developable) land and abandon the notion of partially vacant land, at least for industrial land. However, the UGBRAC has not discussed either of these options in detail.

0140: Adjust Employment BLI to Account for Constrained Lands

Sections (1) to (3): of this rule provide a method to reduce the existing inventory of employment land, and the capacity of the inventory, to account for constrained lands. The rule provides a list of types of constrained lands, identical to that provided in the residential path.

UGBRAC comments have proposed that the constraint threshold for industrial land slope be set at 5 percent to as much as 15 percent. Although examples can be found of industrial facilities on slopes greater than 5 percent, such sites are considered constrained or problematic sites by site users and economic development professionals. The example provided by a commenter is the Hynix site in Eugene.

0150: Determine if UGB Expansion is Necessary to Accommodate Employment Needs

Sections (1)-(3): of this rule provide a method to determine whether the existing inventory of employment land is sufficient to meet the needs. Section (3) provides requirements to redesignate land from one employment category to another to meet the employment land need

within the UGB to the greatest extent possible.

Commenters noted that employment land is not fungible – not easily swapped acre for acre. Topography, compatibility and previous investment are suitability factors that must be considered. Several comments about re-designation requirements for converting a surplus of one category of employment land to meet a deficit of the other category. Considerable discussion has already occurred in the UGBRAC on this topic and no apparent consensus has been approached.

0160: Establishment of Study Area to Evaluate Land for Inclusion in the UGB

General: ORS 197A.320 provides new rules for determining a study area and selecting land from the study area when a UGB is expanded. This statute applies to all cities outside of Metro that amend their UGB, whether using the streamlined process or the traditional process. The fact that this new statute (effective January 1, 2016) affects both the new streamlined process and the existing "traditional" process is announced in the first rule at the beginning of the division. That rule indicates that for the traditional process, cities will find (new) rules in OAR 660, division 24, interpreting these new requirements. For the streamlined process, the department is proposing two rules to interpret this statute. The first rule, OAR 660-038-0160, pertains to establishment of a study area. The second proposed rule at OAR 660-038-0170 pertains to selection of land in the study area using the priority statutes.

With respect to the study area rules, it should be noted that the traditional process in ORS 197.298 sets priorities but does not require establishing the study area; it simply requires studying "land adjacent to the UGB." Similarly, the rules in OAR 660-024-0060 provide very little guidance for a "study area" (the term is not used). That rule says "in determining alternative land for evaluation under ORS 197.298, 'land adjacent to the UGB' is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency."

It is interesting to note that ORS 197A.320 requires LCDC to adopt rules that implement study area (and priorities) requirements. The statute indicates that "the Land Conservation and Development Commission shall provide [these requirements] by rule." In other words, as discussed in the Design Team, the requirements are intended to reside in rule, rather than have cities implement the statute directly.

It is also important to note that the rules in this section are only applicable if a city finds that it has a need deficiency (using previous rules in this division), has determined that the deficiency cannot be reasonably accommodated on land already in the UGB (again, based on other rules in the division) and therefore needs to expand its UGB.

Section (1): This section indicates that, when evaluating lands for inclusion within the urban growth boundary, the city shall establish a study area that includes all land within:

(a) For cities under 10,000 – a distance that is at least ***X*** miles in all directions from the acknowledged UGB.

(b) For cities over 10,000 – a distance that is at least ***X***[+] miles in all directions from the acknowledged UGB.

The department briefly discussed ideas for this "X distance" with the workgroup some time ago, but the workgroup did not propose specific distances. As such, the department did not insert proposed numbers in this rule. It is preferred that the UGBRAC discuss this and attempt to find a consensus before the department proposes actual distances. The ideas for a distance have ranged from a mile to 3 miles, depending on city size. The location workgroup also discussed having this distance vary according to UGB size.

Section (2): This section requires that the study area must include an amount of land that is at least 200 percent of the combined need deficiency for residential, employment and other land. This is a minimum and area requirement for the study area. The minimum is to be applied after excluding areas described in section (3) of this rule. This is intended to make sure that the city evaluates a reasonable amount of alternative areas.

Section (3): This section includes requirements taken directly from ORS 197A.320, but provides necessary details to assist cities in interpreting the requirements. A city may exclude land from the study area based on four different criteria, as follows:

Subsection (a): First the city may exclude land where it is impracticable to provide necessary public facilities or services. Section (4), described below, assists cities with this interpretation.

Subsection (b): The city may exclude land if it is subject to significant development hazards, due to four defined "risks." The statute provides these in general but does not define them. This subsection proposes definitions for each. They include landslides, land subject to flooding or inundation during storm surges, land within a tsunami inundation zone.

Subsection (c): Under ORS 197A.320 indicates that cities may exclude land where the long-term preservation of significant scenic, natural, cultural or recreational resources requires limiting or prohibiting urban development of the land. The statute requires LCDC to provide more specificity about such lands. This is proving to be a difficult task, in part because it Goal 5 and related rules. These rules do not easily convert to a streamlined process. By their very nature, they involve complexity, cost and time, since (1) there is a great variety of "resources" under Goal 5, and especially (2) each one of these requires detailed site specific determinations that are, in many cases, inadequately inventoried outside of UGBs at this time.

There has been a considerable discussion between the department and the Oregon Department of Fish and Wildlife (ODFW) with regard to this requirement, and a brief UGBRAC discussion on September 17th. At the time of this report, it is clear that there is disagreement as to whether habitat and a range of other resources should or should not be excluded from study areas. The department proposed a limited amount of exclusions, for areas mapped on an *[adopted]* ODFW Inventory as either: (i) big game winter range or big game migration corridors, and (ii) critical habitat for state or federal special status species (threatened, endangered, candidate, or sensitive). However, from the UGBRAC discussion, this aspect of the rule does not have broad support at this time. Concerns range from the inadequacy of current maps for such areas, the fact that ODFW inventories were not intended to be regulatory, and the possibility that excluding these areas will result in farmland being disproportionately represented in the study area.

This broad category of possible exclusion areas also includes coastal resources under Goals 16, 17 and 18. The draft proposes exclusion of certain coastal resources from the study area based on recommendations from DLCD coastal staff. Since these areas are typically inventoried and protected under county plans, the department is confident that the recommended rules properly describe these areas.

Subsection (d): The statute allows exclusion of land that is owned by the federal government and managed primarily for rural uses. While this seems a fairly simple requirement, it has been noted that "rural uses" in this context is undefined in the law. At this point, no definition has been offered either by the department or others.

Section (4): implements ORS 197A.320(3), which specifically directs the commission to determine impracticability by rule, considering:

- The likely amount of development that could occur;
- The likely cost of facilities and services;
- Physical, topographical or other constraints;
- Whether urban development has occurred on similarly situated lands (such that it is likely that the lands will be developed during the planning period).

"Impracticability" is intended to screen out lands from the study area that cannot reasonably be served and therefore do not warrant study or consideration through the priority evaluation process. Cities are thus able to avoid a study and evaluation process where readily available information and data show that the land is obviously unsuitable for urban services.

Based on the required considerations set forth in the statute, the focus of the impracticability test is on physical or other constraints that make the actual construction and delivery of services too costly or difficult. To translate this concept into rule, the department worked to identify site characteristics or attributes that typically constrain service delivery, with a focus on attributes that could be relatively simply expressed and readily applied, preferably via a numerical or other measureable standard, using available data. The following attributes that constrain service delivery were identified and developed into rule subsections as follows:

Subsection (a): addresses topographic constraints/slope. It is expressed in terms of a minimum area (5 acres) consisting of slopes of 25 percent or greater. Subsection (b) addresses elevation, which can act as a constraint on water service delivery for cities where the prospective service area includes lands with significant relief. Subsection (c) addresses accessibility/isolation, and is intended to permit the exclusion of areas that are isolated from existing service networks by either natural or man-made barriers.

Developing simple and relatively objective measures for identifying lands that are impracticable to serve is challenging. Given the complexity of variables involved in evaluating the feasibility of public service delivery and the charge to develop criteria that allow an area to be excluded without study, it is acknowledged that the relatively simple measures set forth in the rule are fairly coarse in nature. As such, the application of this portion of the rule is intended not to yield a highly refined analysis of service feasibility, but rather to allow the ready identification of those areas that are most obviously unsuitable for urban service delivery, i.e., those areas where

urban services are "impracticable." The end purpose of this identification is to eliminate the need to study such areas.

The department received written comments addressing this topic from UGBRAC participants 1000 Friends of Oregon and the League of Women Voters of Oregon. These comments focus generally on concerns that the draft impracticability measures are overly simplistic and thus may inappropriately permit the exclusion of some lands from the study area. In particular the comments state that two of the measures for impracticability, water service elevation limits and physical barriers, should not be included in the rule as proposed. As an alternative, commenters suggest that exclusions based on service impracticability should be based on more detailed, location specific analyses that include comparisons of infrastructure costs and development yield.

As noted, the commission is specifically directed by ORS 197A to determine impracticability by rule, so including standards to measure impracticability is a mandatory element of this rulemaking. As also noted, impracticability is one of several "screens" to be applied in identifying lands that may be excluded from the study area. Accordingly, the identification of lands deemed to be impracticable to serve must be accomplished as an initial step in establishing a study area; the express purpose of this identification is to eliminate the need to subject these lands to detailed study. It was therefore the department's intent in drafting these rules to establish simple, generally measurable standards that can be readily applied in this initial step of the process, and that would not require detailed cost or engineering analyses.

Section (5): repeats a specific requirement in ORS 197A.315. When a city that has a population of 10,000 or more evaluates or amends its UGB using the streamlined method, the city must notify districts and counties that have territory within the study area and meet other applicable requirements in that statute.

0170: Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities

This rule interprets the "priority of land" requirements of ORS 197A.320. That statute replaces the priority method currently found in ORS 197.298.

Section (1): indicates that, when considering a UGB amendment, a city must decide which land to add to the UGB by evaluating all land in the study area determined in the rule described above. The subsections in this rule provide direction for analysis that mirror the statute. However, we note that this section also references section (8) (see discussion about that section below). Section (8) would provide more detailed direction as to how a city evaluates land in a particular priority and "select(s) as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations."

Reflecting the statute, section (1) indicates that, beginning with the highest priority of land available, a city must determine which land in that priority is suitable to accommodate the need deficiency determined under either the housing path or the employment path or both (OAR 660-038-0080 and OAR 660-038-0150). It then goes on to indicate that, if the amount of suitable land

in a particular priority category exceeds the amount necessary to satisfy the need deficiency, a city must choose which land in that priority to include in the UGB by applying the criteria in section (9) of this rule.

Section (2): First Priority – Urban reserve, exception land, and nonresource land: The city shall evaluate land in the study area that is such land. Each of the areas described in subsections (a) - (c) of this section are of equal priority.

Section (3): Second Priority – Marginal Land: If the amount of land appropriate for selection under the first priority (section (2), above) is not sufficient, the city must evaluate the land within the study area that is designated as marginal land. A definition is provided in the law and in this rule.

Section (4): Third Priority – If the amount of land appropriate for selection under section (3) is not sufficient to satisfy the amount of land needed, the city must evaluate land within the study area that is designated for agriculture or forest uses in the acknowledged comprehensive plan and that is not predominantly high-value farmland, as defined in ORS 195.300, or that does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service, and select as much of that land as necessary to satisfy the need for land. The city must select lower capability or cubic site class lands first.

Section (5): Fourth Priority – If the amount of land appropriate for selection under section (4) is not sufficient to satisfy the need for land, the city must evaluate land within the study area that is predominantly high value farmland and select as much of that land as necessary to satisfy the need. A local government may not select land that is predominantly made up of prime or unique farm soils unless there is an insufficient amount of other land to satisfy its land need. A proposed rule below, in section (7), would define "land" for this purpose.

Section (6): allows a city to consider land that would otherwise be excluded in the priorities above if "the land contains a small amount of resource land that is not important to the commercial agricultural enterprise in the area and the land must be included to connect a nearby and significantly larger area of land of higher priority, or if the land contains a small amount of resource land that is not predominantly high value farmland or predominantly made up of prime or unique farm soils and the land is completely surrounded by land of higher priority land.

Section (7): is intended as a placeholder for a definition of "land" for purposes of sections (4) and (5) above. The Department of Agriculture has suggested that such a definition is necessary to prevent cities from "gerrymandering" the study area in a manner that inappropriately reduces high value farm land. This definition has been under discussion by the department and identified as an issue in UGBRAC discussions and comment, but recommendations have not yet been made by the UGBRAC. As such, a definition was not provided here for this draft. The department notes that it may be necessary to indicate that this definition also applies to section (6) of this rule.

Sections (8) and (9): are intended to be "criteria established by the commission" as per ORS 197A.320. Such criteria would define the method by which cities determine whether land in a

particular priority is *appropriate for selection* to accommodate a need deficiency. The statute uses the terminology of "appropriate for selection" and also requires selection of land "to satisfy the need for land." The proposed rule would clarify that we mean the need for land to accommodate a deficit of either employment land or housing land determined under the housing or employment path.

This standard is not fleshed out in the proposed rule because this is a highly controversial issue and the discussions by the UGBRAC have not concluded (the UGBRAC has had discussions about the priorities of land, but has not seen a proposal worded to resolve this particular question). The department anticipates that there will be disagreement among UGBRAC members about this standard, and perhaps even as to whether there needs to be such a standard. We note that in the "traditional" method, in division 24, this requirement was worded so as to require a city to determine "suitable land" to meet a need deficit. This term also caused considerable debate in local UGB proceedings, in part because the term was not defined. The redrafting of the priority requirement in ORS 197A did not resolve this controversy; rather it simply used slightly different terminology and required LCDC to provide a definition. In the end, this discussion is whether or not cities will have direction as to how they determine whether land in the study reasonably accommodates a need.

<u>Section (9):</u> is a related standard that applies if the amount of suitable land in a particular priority category under sections (2)-(5) exceeds the amount necessary to satisfy the need deficiency. Again, this criterion is sketched out in the statute but only so far: A local government must choose which land in that priority to include in the UGB by applying *criteria established by the commission* and applicable criteria in the acknowledged comprehensive plan and land use regulations. As a placeholder for this section the department has proposed that the Goal 14 location factors are the deciding policy for choosing land within a particular priority.

Also, the draft rule proposes that, while local criteria may be employed *after* application of the Goal 14 location factors, a city may not apply local plan criteria that contradict the requirements of the location factors. It is also noted, mirroring current division 24 rules, that the Goal 14 Boundary Location Factors are not independent criteria; when the factors are applied to compare alternative boundary locations and to determine the UGB location, a city must show that it considered and balanced all the factors.

<u>Section (10):</u> imports a standard from division 24 for use in the streamlined process. This section indicates that, for purposes of this rule, the term "public facilities and services" in Goal 14, Boundary Location Factor 2 means water, sanitary sewer, and transportation facilities.

This section then goes on to instruct local governments that, in applying Goal 14 location Factor 2 to evaluate alternative locations, the city must compare relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. Mirroring current division 24 requirements, this provides that the city must conduct this evaluation and comparison in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system.

0180: General Planning Requirements for land added to a UGB

General: This rule implements ORS 197A.310(3)(e) and ORS 197A.312(3)(e), which concern the planning and zoning for lands included within the UGB through the simplified process. (Note that ORS 197.310 (3)(e) and ORS 197.312 (3)(e) are identical provisions that apply to cities of less than 10,000 and to cities of 10,000 or more, respectively.) In general terms, the statute requires lands within the UGB to be zoned in a manner consistent with the assumptions used to determine the land need for each category of use.

Section (1): incorporates the general statutory requirements of ORS 197A.310(3)(e) (A) and (B) and ORS 197A.312(3)(e)(A) and (B). Section (2) incorporates the provisions of ORS 197A.310(3)(e) (D) and ORS 197A.312(3)(e)(D) which establish requirements for addressing transportation impacts resulting from planned urban uses. Section (3) provides a cross reference to OAR 660-038-00190, which is a separate rule that implements the provisions of ORS 197A directing planning and zoning requirements for needed housing.

Section (4): sets forth requirements for cities to address Goal 5 resources for lands to be added to the UGB. These provisions are similar to existing requirements found in OAR 660-024-0020 in that they limit the application of current Goal 5 rule requirements only to those resources that may be present on lands that are to be added to the UGB. This section further limits the potential application of Goal 5 to resources or sites that are specifically identified through factual information submitted as a part of the UGB amendment process. The basic purpose of this limitation is to avoid potentially lengthy and complex new inventory and analysis processes for all Goal 5 resources, while still providing for the application of appropriate Goal 5 considerations for known, identifiable resources.

Section (5): implements the basic Goal 14 requirement for the designation and management of urbanizable land.

Section (7): is an analog to OAR 660-024-0020 (2), establishing the general requirement for mapping the boundary at a scale sufficient to identify specific lots and parcels, and to provide a suitable description that allows identification of the precise location of the boundary.

Section (8): implements the Goal 14 requirement for joint city and county adoption of the UGB and for a coordinated process in the evaluation and amendment of the boundary.

0190: Planning Requirements for Residential Lands Added to the UGB

General: Cities that use the method in this division to provide land for needed housing must plan for residential lands added to the UGB as provided in this rule, in addition to the requirements in OAR 660-038-0180.

Sections (1) and (2): These sections require cities to ensure that the residential densities and mix the city has determined are appropriate in OAR 660-038-0030 to 0080 can be achieved. This means that the city must have residential plan designations and zoning in place that will allow the expected residential development to actually occur, and that the city has adopted clear and

objective standards for review of development applications for needed housing, as is already required by ORS 197.307.

Sections (3) and (4): These sections apply to cities with UGB populations of 10,000 or greater. ORS 197A.312 imposes additional requirements on larger cities – they must either adopt certain measures that promote housing choice and affordability, or prove that they already have adopted certain such measures and are already experiencing above-average levels of efficient residential development.

Section (3): references Table 8, at the back of the draft rules document. This table includes a list of 29 measures that promote housing choice and affordability, 13 of which are classified as "major," and 16 of which are classified as "minor." A city with a UGB population of 10,000 or greater would have to adopt at least one of the "major" measures or three of the "minor" measures concurrently with any UGB amendment. While most of the measures would require amendments to a city's development code, some of the measures would require city participation in state-authorized tax exemption programs, or city reductions or waivers of systems development charges. With a wide range of available measures to choose from, the department is confident that cities would be able to find one or more among them that are compatible with a city's planning vision.

Section (4): fleshes out the alternative performance housing standard for cities with UGB populations greater than 10,000. To implement the first part of the alternative performance standard, requirement for specific development code provisions promoting housing choice and affordability, the department recommends that cities show they have adopted 8 specific measures from among the 29 listed in Table 8.

For the second half of the alternative performance standard, the current language requires a city to demonstrate that it has exceeded median rates of redevelopment and infill for either the entire state or, for cities in the Willamette Valley, those cities. The University of Oregon's Community Service Center was unable to determine median rates of redevelopment and infill for cities because Oregon cities generally do not collect this data. As currently written, a city wishing to use the alternative performance standard would have the burden of conducting its own research to make the appropriate findings, an approach which contradicts the direction to make the new UGB process streamlined. One alternative to this approach would be for the commission to set a specific numerical target for an infill and redevelopment rate that is clearly above the median for Oregon cities. Such a number could be tied to the range of redevelopment and mixed-use development cities are offered as part of the residential needs analysis in OAR 660-038-0030(6).

0210: Serviceability

General: This rule implements the provisions of ORS 197A that require a city proposing to expand a UGB using the simplified process to demonstrate that the UGB provides sufficient serviceable lands. The purpose of this provision is to ensure that, as an integral part of the UGB evaluation and amendment process, cities (and other service providers, as needed) will plan for the delivery of urban services to all lands within the UGB. This planning includes the identification of service capacity needed to accommodate planned urban development, and documentation of the financing mechanisms that will be employed to provide such capacity.

Specifically, the statute requires a city to demonstrate that at least a seven year supply of land is serviceable, and that the remainder of the required 14 year supply can be serviceable within the planning period. As previously described in the section of the report on definitions, the statute defines "serviceable" as a function of adequate service capacity, and the financing required to provide such capacity.

Section (2): sets forth the requirements for demonstrating adequate capacity to serve at least seven years of planned urban development. This may consist of capacity that is available, or capacity that will be provided through the establishment of committed financing, or a combination of both.

Section (3): establishes the more general standards for the required showing that the remainder of the 14 year supply of land "can be serviceable" within the planning period.

Section (4): describes the service system components that must be included in the demonstration of adequate capacity; Section (5) defines the character and scope of committed financing.

Section (6): incorporates into the rule the statutory requirement that lands added to the UGB that have not been made serviceable within 20 years of inclusion must either be removed from the UGB, or have their planned development capacity reduced based on any increases in the cost of making such lands serviceable.

Comments from UGBRAC members related to serviceability have been primarily directed to issues regarding the required showing of "committed financing." Specifically, questions were raised in discussion at the UGBRAC meeting on August 26 and in subsequent written comments concerning the level of certainty to be established for proposed infrastructure financing mechanisms. Commenters have suggested, for example, that standards or thresholds for this showing might incorporate consideration of a city's past performance in implementing infrastructure financing methods.

The definition of "serviceable" provided in ORS 197A recognizes the prospective nature of infrastructure financing that is required in the case of a UGB expansion. Lands to be added to a UGB are, by definition, rural lands, and therefore are not, at the time of inclusion, subject to plans or financing mechanisms for urban service delivery. Accordingly, the statute provides that the required demonstration of serviceability can be accomplished by a showing that committed financing "can be in place."

The department has proposed rule language that further refines this required showing, requiring the identification of specific needed system improvements and their general costs, identification of proposed funding mechanisms, and a demonstration that such funding mechanisms are legally authorized and can provide revenue adequate to fund the identified improvements. This language does not, however, establish any requirement to consider a city's (or other service provider's) past use of the funding mechanisms proposed, nor does it establish thresholds for demonstrating the likelihood that proposed funding mechanisms will be approved by local legislative bodies or voters.

Based on input to date from the UGBRAC and other parties, the department believes that the general structure and basic content of this rule is sound. However, the department recognizes the issue raised by commenters that the rule language as currently drafted does not establish complete certainty regarding the future implementation of proposed committed financing mechanisms. We anticipate continued discussion with the UGBRAC and other stakeholders to explore options to further address this issue.

VI. PROPOSED AMENDMENTS TO OAR 660, DIVISION 24

The commission's current rules interpreting Goal 14 and related statutes concerning UGBs are at OAR 660, division 24 (this report abbreviates that as "division 24" as it describes these rues below). The rules in division 24 are essentially "the traditional UGB process." As such, in keeping with the intent of the Design Team, the department does not propose to change this process except where required by ORS 197A. The one area where that statute especially requires changing of the traditional process is with respect to the so-called "locational" requirements, which now include the "study area" requirements as well.

In other words, ORS 197A.320 concerning "locational aspects" of UGB expansion, not only applies to the new streamlined UGB process – it also applies to, and changes, the current traditional process for cities outside of Metro. The new location statute amends previous state law (and rules) concerning (1) establishment of study areas for expansion of a UGB and (2) concerning the priorities for selecting land for such expansion. Therefore, to implement this particular law, LCDC must also amend current rules in division 24 and adopt new rules in that division. Attachment B to this report shows the proposed amended rules and new rules.

Comments from the cities of Bend, Eugene, and Springfield indicate that those cities are either surprised or dismayed by the fact that the statute would apply to their particular longstanding efforts to evaluate or amend their UGB. While the department is sympathetic to this concern, and would try and resolve it as possible, we note that neither the commission nor the department have authority to prevent ORS 197A.320 from going into effect (and replacing the previous priorities statute) on January 1, 2016.

Since this statute is the only one in the string of statutes in ORS 197A that affects the traditional UGB process, the department's proposed amendments to division 24 primarily concern the location rule. There is current only one rule in division 24 for determining a study area for UGB amendment and for applying priorities in selecting land to add to the UGB from the study area. Because the priorities statute at ORS 197.298 is superseded, except for Metro, the current priorities rules in division 24 must be amended so that: (1) the current rules apply only to Metro, (2) the rules for all cities outside of Metro are basically the same as those that have been proposed in division 38. However, the department believes there is enough flexibility in ORS 197A. 320 to allow different rules for the traditional process may be drafted to resolve some of the concerns mentioned in the letters by Bend, Eugene and Springfield. Since these concerns were not sent prior to drafting these rules, the current proposed version does not address them.

The proposed amendments to division 24, and proposed new rules, are as follows (See Attachment B):

660-024-0000 Purpose and Applicability: The department proposes to add a note to this opening rule in division 24 to alert readers that rules in this division do not apply to the streamlined process under proposed division 38. The department also proposes to add a section indicating that the amendments would be effective January 1, 2016.

660-024-0010 Definitions: No new or amended definitions are proposed, but the department is still considering whether some definitions of terms from division 38 regarding study area and location requirements should be inserted here. As noted earlier in this report, the department is open to inserting additional definitions into division 38 and the same applies here.

660-024-0050 Land Inventory and Response to Deficiency: Only one amendment to this rule is proposed, citing to the new rules proposed at the end of the division to implement the new study area and priority statutes in ORS 197A.320.

660-024-0060 Boundary Location Alternatives Analysis: This rule is amended (at renamed) so that its scope is narrowed to Metro only.

660-024-0065 Establishment of Study Area to Evaluate Land for Inclusion in the UGB: This is a new rule proposed to mirror the rule proposed in OAR 660-038-0160 regarding study area establishment. While the department has attempted to start with the identical requirements, we do believe there should ultimately be differences in this rule and the one in division 38.

For example, the department believes that the division 24 rule is intended to implement ORS 197A.320(6), which allows that, "when the primary purpose for expansion of the urban growth boundary is to accommodate a particular industry use that requires specific site characteristics, or to accommodate a public facility that requires specific site characteristics and the site characteristics may be found in only a small number of locations, the city may limit the study area to land that has, or could be improved to provide, the required site characteristics."
The draft does not include this as a component of the proposed new rule at OAR 660-024-0065. That was not intentional; the department believes that a section of the rule mirroring that statutory provision must be in this rule. However, the department also believes that simply mirroring this provision is not sufficient. We expect that the "location" workgroup and certainly the UGBRAC will advise that there needs to be additional detail to flesh this requirement out.

The department also believes that the study area rule could be crafted to provide standards for determining the study area that are as close as possible to the current requirements, at least for cities that are underway with a UGB evaluation at the time of rule adoption. That may alleviate some of the concern from cities regarding the new requirements, although it is not clear that the commission has the authority to change the location requirements to fully mirror the current requirements.

OAR 660-024-0067 Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities. This would be a new rule in division 24 to mirror the rule proposed in OAR 660-038-0170

regarding location priorities. Again, for purposes of this draft the department provided the same rule as provided in division 38. However, we believe there is authority for the commission to draft a different version of this rule that is more applicable to the traditional process than the rule drafted for purposes of the streamlined process, especially for cities already underway with a UGB amendment.

VII. PROPOSED AMENDMENTS TO GOAL 14

Three amendments are necessary to conform Statewide Goal 14 to the new amended statutes at ORS 197A, enacted in 2013 (See Attachment C). Goal 14 is an administrative rule adopted under OAR 660-015-0000. The wording of draft amendments have not been discussed by the UGBRAC and have not been subject to notice yet. This section of the report describes the reasons for amending the goal and the nature of the amendments. If the commission agrees, the department will issue notices to allow the commission to consider these amendments at its December 3-4, 2015, meeting.

In general, adoption or amendment of a statewide planning goal requires that LCDC hold at least ten public hearings throughout the state. However, ORS 197.235(4) authorizes the commission to amend a goal with only one public hearing when the goal is inconsistent with a new legislative enactment. As such, this statute should be invoked. It requires that the goal amendment be "necessary to conform the goal to the legislative enactment." It also requires that the amendment shall make no change other than the minimum necessary to include the conforming change. The department believes the proposed changes are described in Attachment C are the minimum necessary and are very minor.

First, where Goal 14 currently indicates that a UGB must be based on a 20-year coordinated population forecast, the goal should be amended to also indicate that cities applying the simplified process under ORS 197A must base the UGB on a 14-year forecast.

Second, the amended goal should state that population forecasts are issued by the Portland State University Population Research Center, as provided by ORS 195.033 which was amended by the legislature in 2013. The commission should decide whether this amendment is absolutely necessary, since necessity is a requirement of the law allowing only one hearing for goal amendment. Currently the goal simply indicates that the UGB should be based on a "coordinated population forecast." The legislature enacted HB 2253 in 2013 indicating that henceforth coordinated population forecasts for land use purposes must be issued by the Center. As such, the department recommends that this be clarified, but if the goal is not amended to clarify it the proposed new rules will certainly do so.

Third, the goal currently references ORS 197.298 regarding UGB location priorities. The amended 2013 statutes at ORS 197A provide that, after January 1, 2016, the current priorities statute at ORS 197.298 applies only to Metro. Instead, ORS 197A.320, the new "priorities statute," is applicable to all cities outside Metro and replaces ORS 197.298. The goal should be amended to simply add this additional statutory reference.

ORS 197.235 is provided below. Note that section (4) – authorizing one hearing for confirming legislative amendments – does not appear to override requirements (1)(b), (2), or (3), although this is not absolutely clear. These sections require the commission to consider comments of CIAC and LOAC. As such, the department will be scheduling this for the CIAC and LOAC agendas and providing the necessary public notices.

The text of ORS 197.235 is provided below:

> *197.235 Public hearings; notice; citizen involvement implementation; submission of proposals. (1) In preparing the goals and guidelines, the Department of Land Conservation and Development shall:*
>
> *(a) Hold at least 10 public hearings throughout the state, causing notice of the time, place and purpose of each hearing to be published in a newspaper of general circulation within the area where the hearing is to be conducted not later than 30 days prior to the date of the hearing. At least two public hearings must be held in each congressional district.*
>
> *(b) Implement any other provision for public involvement developed by the State Citizen Involvement Advisory Committee under ORS 197.160 (1) and approved by the Land Conservation and Development Commission.*
>
> *(2) Upon completion of the preparation of the proposed goals and guidelines, or amendments to those goals and guidelines, the department shall submit them to the commission, the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and the appropriate legislative committee for review.*
>
> *(3) The commission shall consider the comments of the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and the legislative committee before the adoption and amendment of the goals and guidelines.*
>
> *(4) Notwithstanding subsection (1)(a) of this section, when a legislative enactment or an initiative measure is inconsistent with the adopted goals and guidelines or directs the commission to make a specific change to the adopted goals and guidelines, the commission may amend the goals and guidelines after only one public hearing, at a location determined by the commission, if the proposed amendment:*
>
> *(a) Is necessary to conform the goals and guidelines to the legislative enactment or the initiative measure; and*
>
> *(b) Makes no change other than the conforming changes unless the change corrects an obvious scrivener's error. [1973 c.80 §36; 1981 c.748 §28; 2005 c.147 §1; 2007 c.354 §9]*

The department recommends that the commission authorize public notice necessary for the conforming amendments to Goal 14 described in Attachment C to this report.

VIII. COMMENTS

The following comments were received prior to this report. The department expects that additional comments will be arriving until the commission concludes its hearing on this matter (see Attachment G, below).

Date received:	*Submitted by:*	*Summary:*
September 16, 2015	*City of Bend* *Eric King, City Manager*	*10 specific issues listed; attachment: Memo re Housing Needs and Capacity Analysis*
September 16, 2015	*City of Bend* *Eric King, City Manager*	*3 specific issues listed regarding proposed amendments to OAR 660, div 24*
September 4, 2015	*Department of State Lands* *Jevra Brown, Aquatic Resource Planner*	*4 specific issues listed*

September 17, 2015	*Eugene City Attorney's Office* *Emily Jerome, Asst. City Attorney*	*Comments regarding proposed amendments to OAR 660, div 24*
September 17, 2015	*Adam Novick*	*Comments regarding proposed OAR 660-038-0160 and 660-024-0065*
September 17, 2015	*1000 Friends of Oregon* *Mary Kyle McCurdy, Policy Director and Staff Attorney* *Mia Nelson, Urban Specialist*	*Comments regarding proposed OAR 660, div 38 and OAR 660, div 24*
September 17, 2015	*Deschutes County* *Nick Lelack, Director*	*Comments regarding proposed OAR 660, div 38*
September 17, 2015	*City of Springfield* *Jeff Towery, Acting City Manager*	*Comments regarding proposed OAR 660, div 24*
September 17, 2015	*Department of Fish and Wildlife* *Joy Vaughan, Land Use and Waterway Alterations Coordinator*	*Comments regarding proposed OAR 660, div 38*
September 8, 2015	*City of Prineville* *Phil Stenbeck, Planning Director*	*Supports changes as proposed*

VII. SUMMARY OF RECOMMENDED ACTION

The department recommends that the commission receive testimony on the proposed rules and continue the public hearing until the December 3-4, 2015, LCDC meeting in Salem. The department also recommends that the commission consider and discuss the proposed new and amended rules, the testimony presented, and provide additional direction to the department and the UGBRAC.

VIII: ATTACHMENTS

A. Proposed Draft Rules to Implement ORS 197A (Simplified UGB Method) - Public Draft, dated September 10, 2015
B. Proposed Amendments to OAR 660, div 24 – Public Draft dated September 15
C. Suggested amendments to Goal 14 to conform to ORS 197A
D. ORS 197A (HB 2254)
E. Links to University of Oregon Research Reports
F. Public Notices
G. Comments Received