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November 23, 2015

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director

SUBJECT: **Agenda Item 4: December 3-4, 2015, LCDC Meeting**

Public Hearing and Adoption of Proposed New and Amended Administrative Rules and Amendments to Goal 14 Regarding the Urban Growth Boundary Process

Under this item, the Land Conservation and Development Commission (LCDC or the commission) will hold a public hearing, receive public testimony, and may adopt proposed new and amended administrative rules (see Attachments A – C). The proposed rules and amendments are in response to 2013 legislation (197A.300 to 197A.325) that goes into effect January 1, 2016, and which requires LCDC to adopt implementing administrative rules. The rules would establish a new, optional “simplified process” which a city outside of Metro may use to evaluate or amend its urban growth boundary (UGB).¹ The new rules will be codified under OAR chapter 660, division 38. Other amendments to current administrative rules and to Goal 14 regarding UGBs are also proposed in order to implement these new laws.

The Department of Land Conservation and Development (DLCD or the department) issued broad public notice about this hearing, including legislator notice, on September 2, 2015. The department issued the first public draft of the proposed rules and rule amendments on September 10, 2015, and the commission held a public hearing on those drafts in Astoria on October 23, 2015. The department issued a second set of public notices November 1 and 5, 2015, and issued the second public drafts of rules on November 13, 2015. A third set of public drafts was issued simultaneously with this report on November 23, 2015 (See Attachments A – C). The public notices invite the public to provide written and oral comments to the commission regarding the public drafts, and indicated that LCDC may adopt the rules and rule amendments at its hearing on December 3, 2015. The notices indicated that comments will be accepted until the close of the hearing on December 3, 2015.

In addition to the new simplified rules, the department is also proposing new and amended rules under OAR chapter 660, division 24 to implement one of the new state laws, ORS 197A.320,

¹ For purposes of this report and in the proposed new rules, the department uses the term “simplified process” to describe the new optional UGB process and the “traditional process” to describe the longstanding UGB process in current LCDC rules under OAR 660, division 24.

which alters the current “traditional process” for amending a UGB. These rule amendments will be applicable to all cities outside of Metro, regardless of whether they use the new simplified process. The amended rules will pertain to “study areas” and the “priority of land” requirements for proposed UGB amendments (ORS 197A.320 does not apply to Metro)

Under this item the department is also proposing minor amendments to Statewide Planning Goal 14 regarding UGBs, to conform the goal to the new statutes (see Attachment C and Section VIII of this report).

For additional information about this report and the proposed amendments to the UGB process, please contact Bob Rindy, Senior Policy Analyst, at 503-934-0008 or bob.rindy@state.or.us.

I. DEPARTMENT RECOMMENDATION

The department recommends that the commission take public testimony, and adopt the proposed rules, rule amendments, and Statewide Planning Goal 14 amendments provided as “draft 3” in Attachments A – C of this report.

II. KEY POLICY QUESTIONS AND OUTLINE OF STEPS

While many policy issues have been resolved with consensus support by the UGB rules advisory committee – including the structure and steps for the simplified process – significant policy issues for which there is not consensus remain. The final committee meeting was held on November 18, 2015, and the department is in the process of synthesizing written and oral comments from committee members into an “issues list” to help the commission’s deliberations. In the meantime, note that most of the comments are addressed in this staff report.

Given the length and detailed nature of the proposed rules, the department developed a six-step **Flow Chart** (Attachment D). With the exception of the three “general rules” the flow chart has been updated to show which rules correspond to each of the six steps.

In addition, the rules are categorized by step in the outline below.

General:

- 660-038-0000 – Purpose (p. 1)
- 660-038-0010 – Definitions (p. 2)
- 660-038-0020 – Applicability (p. 3)

Step 1: Determine Land Need

Residential

- 660-038-0030 – Residential Land Need (p. 6)
- 660-038-0040 – Determine the Mix of Dwelling Units Needed (p. 8)
- 660-038-0050 – Determine Amount of Land Needed for Each Housing Type (p. 9)

Employment

- 660-038-0090 – Employment Land Need (p. 13)
- 660-038-0100 – Forecast Employment Need Based on Population Growth (p. 14)
- 660-038-0110 – Forecast Employment Need Based on Employment Dept. Forecast (p.15)
- 660-038-0140 – Translate Job forecast to Employment Land Need (p. 18)

Step 2: Determine Land Supply (Capacity of Current UGB)

Residential

- 660-038-0060 – Buildable Lands Inventory (BLI) for Residential Land in the UGB (p. 9)
- 660-038-0070 – Adjust Residential Lands BLI to Account for Constrained Lands (p. 11)

Employment

- 660-038-0120 – Inventory Buildable Employment Land within the UGB (p. 16)
- 660-038-0130 – Adjust Employment BLI to Account for Constrained Lands (p. 16)

Step 3: Determine if a UGB Expansion is Necessary

- 660-038-0080 – Compare Residential Land Need to Land Supply (p. 13)
- 660-038-0150 – Determine if UGB Expansion Necessary for Employment Need (p. 20)

Step 4: Establish a Study Area

- 660-038-0160 – Establishment of Study Area to Evaluate Land for Inclusion in UGB (p. 21)

Step 5: Add Land to UGB

- 660-038-0170 – Evaluation of Land in the Study Area; Priorities (p. 25)

Step 6: Planning and Zoning

- 660-038-0180 – Planning Requirements for Land added to a UGB (p. 29)
- 660-038-0190 – Additional Planning for Residential Lands Added to the UGB (p. 30)
- 660-038-0200 – Serviceability (p. 31)

This report describes key aspects of each of the proposed new rules under division 38, indicates the intent of various proposals, and describes key policy issues. This report also indicates various “options” which provide alternatives to certain proposals in the rule, proposed by the department or by various commenters (the “options” are shown in italics in the staff report and in the proposed rules). These are centered on key policy discussions, since in several cases there are at least two distinct ways to respond to a policy issue. Finally, this report describes proposed amendments to current UGB rules at OAR chapter 660, division 24, and to Goal 14.

III. BACKGROUND

In June 2013 the Oregon 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 2013, legislation was a product of a special committee – the “Design Team” – appointed by the Governor’s office in January 2012. The team was appointed and led by the Governor’s Natural Resource Advisor, Richard Whitman, and included members from 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 initiated in response to concerns expressed by cities, legislators, and other interest groups about the high cost and complexity of UGB amendments, and about delay and uncertainty due to lengthy appeals of UGB amendments. A coinciding effort by the department, cities, and counties proposed HB 2253 (also enacted in 2013), which established that population forecasts for UGBs must be issued on a regular cycle by the Portland State University Population Research Center.

The final 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 “simplified” 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 (eventually) use the new process. Second, the legislation would change ORS 197.298 regarding “priorities” for land selection under a UGB amendment, for both the “traditional” process and the new process. The intent of the Design Team was that the traditional process would remain largely unchanged except for the new land selection process. The new statutes under ORS 197A.302 indicate the “purpose” of the law; this section essentially provides principles for LCDC to consider in designing the new UGB process and in evaluating its effects over time.

The intent of the Design Team was that the proposed optional UGB process will be simpler and more simplified, especially for small cities, and will require a 14-year rather than a 20-year “planning horizon” for UGB planning. This shorter horizon is primarily intended to provide increased attention to making sure land in UGBs is serviceable in the near term. Also, in order to provide a simpler method, the proposed new process is to have, as a central component, a series of “numbers” and “ranges” that cities could choose from in making key policy decisions necessary in evaluating or amending a UGB. These ranges would provide, essentially, “safe harbors” for cities (although that term is not used) and are reflected in a new Land Use Board of Appeals (LUBA) standard of review which requires that, if a city selects a number or a value within a stated range, LUBA must affirm that decision.

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 legislative drafting error in ORS 197A that is not yet reflected in the official statute provided on the Oregon Legislative Counsel Website. Attachment E to this report includes a link to a version of 197A that displays the amended 197A. While the department believes this accurately portrays the statute as amended, this is not an “official” version of the statute.

Unlike many statutes enacted in the 2013 legislative session, HB 2254 did not take effect on January 1, 2014. Instead, the commission was provided with two plus years to adopt the rules: the law (codified at ORS 197A) goes into effect January 1, 2016. This time frame was in recognition of the complexity of the rulemaking task, including the need for substantial new research by the department in order to determine “ranges” and provide other policy choices within the rules.

Importantly, and with regard to this agenda item, the law requires that LCDC must adopt new and amended administrative rules to implement the new optional simplified process (see ORS 197A.305, which requires the commission to adopt rules before the operative date of the statute). The new rules must include the “ranges” described above, and must provide for simplified buildable lands inventories (BLIs), and other components of the new process in the statutes.

One of the new laws, ORS 197A.320 concerning “locational aspects” of a UGB expansion, applies *not only* to the new simplified UGB process but also to the current traditional process for cities outside of Metro that expand a UGB. The new location statute amends previous state law (ORS 197.298) concerning the priorities for selecting land for a UGB expansion. Therefore, to implement this particular law, LCDC must also amend current rules in OAR chapter 660, division 24, and include new provisions similar to those required in the simplified process rules pertaining to UGB study areas and priorities of land for UGB amendments. We note that the new locational requirements of the law will go into effect whether or not LCDC adopts implementing rules. If new rules are not in effect to interpret these requirements when they take effect, it is possible that local amendments to UGBs will provide widely varying interpretations of the law, and interpretations by LUBA and the courts, rather than by LCDC, will shape the meaning of terms and requirements in the law.

Because of the new laws, LCDC must also adopt minor amendments to Statewide Planning Goal 14 (goal) to conform the goal to the new statutes. First, where the goal currently indicates that a UGB must be based on a 20-year coordinated population forecast, the amended goal would indicate that cities applying the simplified process under ORS 197A should base the UGB on a 14-year forecast. Second, where the goal currently references ORS 197.298 regarding UGB location priorities, the amended goal would also reference ORS 197A.320, the new priorities statute applicable to all UGBs except Metro. These changes to the goal may be considered and adopted by LCDC in one hearing, as authorized by ORS 197.235(4).

Other important elements of the laws are as follows: cities that follow the new simplified process will not be required to submit UGB amendments for LCDC approval. Instead, UGB amendments would be reviewed in the same manner as other post-acknowledgment plan amendments, and thus would be “deemed acknowledged” after 21 days unless appealed to LUBA. The law includes new “standards of review” for LUBA in review of such appeals. The intent of the new process is that cities should be able to evaluate and, if necessary, amend a UGB with considerably lower expense, time and effort compared to the traditional process. Appeals of local UGB decisions will be considered in a more expedited manner by the courts, in part due to new LUBA standards of review and since the Court of Appeals is required to expedite any appeals

from LUBA (appeals of LCDC decisions under the traditional process are not expedited at the Court of Appeals).

The new 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).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 city’s existing UGB or, if not, through expansion of the UGB. The new laws (and required rules) also specify how cities must decide *where* to grow their UGB when they determine a need for additional land. This “locational analysis” is similar to longstanding laws (ORS 197.298), rules, and practices, but with some important differences described in this report. As indicated above, the location elements of the law apply to all UGB amendments after January 1, 2016, except for Metro, regardless of whether the city uses the new simplified process or the traditional process.

Substantial research was required to inform the rulemaking concerning several elements of the new process. For example, the rules must provide “standard ranges” to guide cities’ choices regarding land need determinations and other aspects of the UGB process (the new LUBA standard of review provides that any choice within such a range is deemed acceptable). These ranges must be informed by research about land development in Oregon. In order to provide this research, the department commissioned studies by the University of Oregon, to provide data to inform the rulemaking and to help establish the ranges. These research projects are described further in this report (see Section V).

IV. RULES ADVISORY COMMITTEE

On September 27, 2013, LCDC appointed a rules advisory committee to provide advice to the department in drafting rules to implement ORS 197A. The UGB rules advisory committee (UGBRAC) was initially chaired by former LCDC Commissioner Marilyn Worrix⁴ and included many members of the “Design Team” that had developed the “concepts” for the simplified process, proposed as HB 2254 in the 2013 session. LCDC Commissioner Catherine Morrow was appointed as the LCDC liaison to the committee. More recently, the committee has been chaired by LCDC Chair Greg Macpherson.

The appointed UGBRAC included the following members: Marilyn Worrix (Chair); Erin Doyle (League of Oregon Cities); Terry Moore (ECONorthwest), Jeff Condit (Miller Nash LLP), Mary Kyle McCurdy (1000 Friends of Oregon), Gil Kelley (former Portland planning director), Jon Chandler (Oregon Homebuilders Association), Christie White (Radler White Parks & Alexander

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 for large and small cities, with minor differences, the department’s proposed rules are organized around topics and around the streamlined “path.” Within that structure, the proposed rules specify some differing requirements for large vs. small cities.

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.

LLP), Dick Benner (former DLCD Director), Stephan Lashbrook (City of Wilsonville), Nick Lelack (Deschutes County), Peggy Lynch (Oregon League of Women Voters), Shaun Jillions (Deckert Jillions LLP), Alissa Hansen (City of Eugene), Damian Syrnyk (City of Bend), Greg Winterowd (Winterbrook Planning), Mike Freese (Oregon Farm Bureau), Jon VanLandingham (former LCDC Chair), and Steve Faust (CIAC Chair). State agencies were also asked to designate staff from their agencies to sit as committee members (ODOT, ODA, OED, OHCD, ODFW, and DSL).

Meetings: The UGBRAC met 17 times, starting in October 2013 and concluding November 18, 2015. The committee was not formed as a voting committee, but rather as a resource to provide advice, to act as a sounding board, and to attempt to achieve consensus on key policy issues.

The early work of the UGBRAC focused on research that would be needed to provide an empirical basis for the simplified method. Research on Oregon development trends and statistics necessary to inform the methods was not available at the outset of this project. Consequently, there was significant UGBRAC discussion about research topics, sources, and methodologies. As the department commissioned this research, and as the research was underway, the committee provided input and discussed its implications for the proposed rules. The committee discussed key policy topics and helped guide development of “paths” for cities to use in determining long term residential and employment needs. Other key topics included UGB “locational analysis” and requirements that land included in UGBs must be “serviceable.”

Technical Workgroups: In addition to the UGBRAC described above, the department convened other small workgroups to give consideration to particular topics. These groups included members with particular expertise in addition to that of the UGBRAC. The workgroups were intended to provide and develop ideas for the UGBRAC to consider regarding the particular topics assigned; the groups were not asked to recommend “policy decisions” on such topics. The workgroups included:

- The Location Workgroup – to provide input on requirements concerning the UGB Study Area and UGB location priorities. Members: Dick Benner, Jeff Condit, Mary Kyle McCurdy, Christie 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 described 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 special 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.

- Employment Path Workgroup – to provide input on the “path” for determining employment land need. Members: Andrea Logue, Brendan Buckley, Eric Hovee, Gil Kelley, Jerry Johnson, Ted Reid, Terry Moore. This group met five times beginning January 2014. For the last two meetings additional members were added to the group to broaden its perspective and to provide input by local planners: Jessica Pelz, Jim Hendryx, Suzanne Dufner, Mia Nelson.
- Serviceability Workgroup – to help interpret the law’s 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 met primarily through electronic communication rather than in person meetings. Input from the group was discussed in at least three RAC meetings.
- Public Facilities Workgroup – to provide input on rules to determine “impracticability” of providing public facilities and services, as a basis for cities to exclude such areas from study for UGB expansion. 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 simplified 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 could not conclude until several major policy topics in the new UGB rules are decided, especially regarding public facilities and transportation planning. As a result, the periodic review replacement aspect of the new rules has been postponed until January of 2016, after the other aspects of the rules are decided.

V. RESEARCH TO INFORM THE NEW SIMPLIFIED UGB PROCESS

ORS 197A requires that the “ranges” and other factors in the rules must be based on information that would 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 ECONorthwest and the University of Oregon to conduct additional research regarding long term trends.

This research included the following (wording of the bulleted items below that is directly from the requirements of 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 research 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 RAC 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. 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.* UO’s report includes detailed information comparing development densities and efficiencies amongst cities throughout the state (outside of Metro). As a general finding, the report determined that there exist few regional variations in density and efficiency that are statistically significant among Oregon cities, except minor differences for Eastern Oregon. Instead, the report found that many indicators of development densities and efficiencies are more directly correlated with city population, regardless of the location of the city. The research provided the basis for the “ranges of numbers” for low and medium density residential development that are proposed in OAR 660-038-0050(1) Table 2, which require larger cities to forecast higher densities of future residential 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.* UO 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.* UO’s report provides useful information for the department to use in proposing various “ranges” that cities must use to forecast the long term density of residential and employment lands that may be added to an urban growth boundary under the proposed new simplified process.
- *Significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state.* UO’s report included a literature review of demographics and market trends and concluded that predicted long term changes (such as decreased household size) are addressed in the proposed methods and “paths” in the draft rules.
- *For lands considered for addition to UGBs, evaluation of how similarly situated lands have, or have not, developed over time.* UO prepared a supplemental report that analyzed past rates of development of “rural residential lands” that were brought into UGBs from 1999 to 2012. The information within that report, which is based upon tax assessor data from a significant sample of Oregon cities and counties, has been reflected in the proposed rules for forecasting the development capacity of lands considered for addition to UGBs.⁵

All of this research was used to inform the new UGB rules. In some cases, researchers could not determine certain aspects that were required by ORS 197A. This report notes those gaps. All of the research that was conducted under this project is provided on DLCD’s website: <http://www.oregon.gov/LCD/Pages/UGB-Streamlining.aspx#Research>.

VI. INTENT OF THE SIMPLIFIED PROCESS

ORS 197A.302 indicates that “the purpose of ORS 197A.300 to 197A.325 is to direct the Land Conservation and Development Commission to develop and adopt simplified methods for a city that is outside Metro to evaluate or amend the urban growth boundary of the city.” This statute goes on to indicate a list of intents or outcomes that should be achieved by the new rules. These assert fundamental principles that the commission should consider in drafting these rules.

The statute states that the commission should design the methods to:

- (1) Become, as a result of reduced costs, complexity and time, the methods that are used by most cities with growing populations to manage the urban growth boundaries of the cities;
- (2) Encourage, to the extent practicable given market conditions, the development of urban areas in which individuals desire to live and work and that are increasingly efficient in terms of land uses and in terms of public facilities and services;

⁵ These research findings are reflected in the proposed OAR 660-038-0160(6), which allows cities to assume that rural residential lots and parcels less than two acres in size will have a reduced additional development capacity when brought into a UGB.

- (3) Encourage the conservation of important farm and forest lands, particularly lands that are needed to sustain agricultural and forest products industries;
- (4) Encourage cities to increase the development capacity within the urban growth boundaries of the cities;
- (5) Encourage the provision of an adequate supply of serviceable land that is planned for needed urban residential and industrial development; and
- (6) Assist residents in understanding the major local government decisions that are likely to determine the form of a city's growth.

The department gave consideration to these intents in drafting the rules. They are also proposed to be included in the first proposed rule of the new division (OAR 660-038-0000), discussed below. It should be noted that there is no particular priority to these intent statements. In other words they should be considered as a whole; no one purpose described above exceeds the value of any of the others, even though satisfying some individual principles may impact the others.

VII. PROPOSED NEW SREAMLINED UGB PROCESS RULES

Table of Contents: 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 (p. 1)
- 660-038-0010 – Definitions (p. 2)
- 660-038-0020 – Applicability (p. 3)
- 660-038-0030 – Residential Land Need (p. 6)
- 660-038-0040 – Determine the Mix of Dwelling Units Needed (p. 8)
- 660-038-0050 – Determine Amount of Land Needed for Each Housing Type (page 9)
- 660-038-0060 – Buildable Lands Inventory (BLI) for Residential Land in the UGB (p. 9)
- 660-038-0070 – Adjust Residential Lands BLI to Account for Constrained Lands (p. 11)
- 660-038-0080 – Compare Residential Land Need to Land Supply (p. 13)
- 660-038-0090 – Employment Land Need (p. 13)
- 660-038-0100 – Forecast Employment Need Based on Forecast Population Growth (p. 14)
- 660-038-0110 – Forecast Employment Need Based on Employment Dept. Forecast (p. 15)
- 660-038-0120 – Inventory Buildable Employment Land within the UGB (p. 16)
- 660-038-0130 – Adjust Employment BLI to Account for Constrained Lands (p. 17)
- 660-038-0140 – Translate Job forecast to Employment Land Need (p. 18)
- 660-038-0150 – Determine if UGB Expansion Necessary for Employment Need (p. 21)
- 660-038-0160 – Establishment of Study Area to Evaluate Land for Inclusion in UGB (p. 22)
- 660-038-0170 – Evaluation of Land in the Study Area for Inclusion in UGB; Priorities (p. 26)

660-038-0180 – Planning Requirements for Land added to a UGB (p. 30)

660-038-0190 – Additional Planning for Residential Lands Added to the UGB (p. 31)

660-038-0200 – Serviceability (p. 32)

Tables: Pages 36 through 45.

A detailed description of each proposed new rule in division 38 is provided below.

Rule 0000: Purpose (page 1)

General: Most LCDC rule divisions begin with a “purpose” rule, as does the proposed new division 38. Purpose rules describe the intent of an entire division of rules, and may indicate which particular goals or statutes are implemented. There are three proposed sections for the proposed “Purpose Rule” for division 38, described below.

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

Section (2) clarifies that both the new simplified method and changes to the traditional method become effective January 1, 2016. This also indicates that cities have an option to choose which of these methods (simplified or traditional) to use in amending a UGB, as described further in the “applicability” rule in OAR 660-038-0020 (see below).

Section (3) provides the “intent” for the new simplified process, repeating the intent provided in law at ORS 197A.302. The various objectives in this intent rule are identical to those in the statute. They provide guideposts for LCDC in adopting the rules, and will also help with evaluating the effects of the rules over time.

0010: Definitions (Page 2)

General: As in most LCDC rule divisions, the new division 38 includes a set of definitions for terms used in rules throughout the division. Occasionally a term is used in only one particular rule in the division, and as such that definition will not appear in this general definition rule but will instead only appear in that particular rule. The preamble to this rule notes that all definitions for Oregon land use statutes in ORS 197.015 apply, as well as definition in the statewide planning goals, apply to this rule (if applicable).

Some of the specifically defined terms in this rule are repeats of terms in the new statutes at ORS 197A. Some of these definitions are repeated from other LCDC rules or statutes, and one of the definitions is from the statewide goals, repeated here for convenience because it is used in the division.

Staff notes that LCDC has the authority to change the definition of terms used in its rule divisions as it amends rules or creates new rules. However, the department suggests that, for the new division 38, the commission should not create different definitions of terms that are defined in other rules unless there is a compelling need for a new definition of that term, as is the case for the term in section (1) of this rule. In general, the commission does not have authority to change statutory definitions, although usually it has authority to provide additional interpretive guidance.

This report provides explanation for 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). 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 (OAR chapter 660, division 9) around 2005, and drafted the first set of UGB rules (OAR chapter 660, division 24) in about the same timeframe. Both of these rules needed a different or broader definition than was provided for Goal 10 in order to describe essentially the same concept for employment lands. Being unable to use the term “buildable lands” because statute limited it to residential lands, LCDC opted for “parallel terms” such as “vacant lands,” “suitable”, and “developed lands” and, in division 24, “suitable vacant and developed land” indicating commercial and industrial land.

The drafters of HB 2254 decided to avoid this confusion for the simplified process by simply using a broader definition of “buildable lands,” which is reflected here. In this case, the definition applies to both residential land *and* 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 ORS 197 regarding housing has not been changed, and as such the earlier more narrow definition of buildable lands still exists for the “traditional process” in division 24.

Section (2): “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 (OED). This data is provided by the Oregon Employment Department in reference to the North American Industry

Classification System (NAICS). Jobs in these NAICS categories for each city would be provided in a “look up table” (see Table 6 in division 38, page) which would need to be updated annually. The proposed “employment need path” requires the city to sort 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 serves that purpose, indicating the NAICS categories that would be commercial.

Section (3): “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 employed in land use laws. 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 simplified UGB process in the initial public draft, the proposed rules provide direction to local governments in “sorting” jobs into various Categories described by the North American Industry Classification System (NAICS). In the “employment path” rules in this division, NAICS categories are divided into “commercial” and “industrial,” in order to classify current and projected jobs in the UGB, and with respect to the city’s zoning districts. For purposes of industrial jobs and districts, applicable NAICS Categories are 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 applicable to the simplified process.

Section (4): Definition of “Initiates.” 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 simplified process. The term was previously defined in LCDC’s rule at OAR 660-024-0000(3) but in this division the definition is slightly different in that it does not mention

periodic review. ORS 197A provides that periodic review is no longer required for cities that use the new method. While 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, in this case there is such a reason. In the proposed new rules, this term becomes important in order to mark the beginning of a particular local government's 14-year UGB planning period, and therefore the term is mentioned in several rules throughout the proposed division 38.

Section (5): “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): This definition provides that “Range” means a range of numbers. The new laws at ORS 197A indicate that the commission rules must provide cities with a range of choices for various policy choices in the rules. A city may choose to use the number at either end of a stated range or any number between. Ranges allow a city to make choices regarding its future growth. ORS 197A.325 also includes new “standards of review” for LUBA to use in considering an appeal of a UGB. That statute provides that “...in circumstances in which the Land Conservation and Development Commission has specified by rule a number or a range of numbers that the city may use ... the city is not required to adopt findings to support the use of the number or a number within the range of numbers; and ... [LUBA’s] review of the number may determine only that the city has used a number that is allowed by the rule.”

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 even though there may be some interpretation issues with the way it is worded. The proposed definition of “serviceable” is “that: “adequate sewer, water and transportation capacity for planned urban development is available or can be either provided or made subject to committed financing; or committed financing can be in place to provide adequate sewer, water and transportation capacity for planned urban development.”

This definition has been the source of some confusion as indicated in comments. ORS 197A requires cities to demonstrate that, within a UGB (when a city uses the simplified method) at least seven years of land *is serviceable*, which can be achieved through a showing that committed financing “can be in place.” 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 14-year 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 a serviceability rule at OAR 660-038-0200 that provides separate parameters for each (see discussion below in this report regarding the proposed serviceability rule at OAR 660-038-0200).

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 in the same way as it is in the Statewide Planning Goals.

0020: Applicability (Page 3)

General: This rule indicates *when* the rules in this proposed new division would take effect (January 1, 2016). The proposed Applicability rule is also a 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 simplified process and the department proposes that these be reflected in this rule, in most cases word for word from the statute.

This rule also collects a series of generalized requirements for UGBs that exist today in division 24. These requirements should apply whether a city uses the simplified process or the traditional process. As such, it is important to include those requirements in the new division. The department considered whether this collection of requirements could instead be broken into two or three different rules; division 24 provides a similar set of requirements distributed among three different rules (OAR 660-024-0000, 660-024-0020 and 660-024-0040). For simplicity, the department proposes that these policies be provided together, in this (the Applicability) rule.

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 indicates that the method is optional, and it provides that if a city uses division 38 for a UGB evaluation or amendment, division 24 does not apply to that amendment.

Sections (2) and (3) repeat fundamental requirements of the simplified path from ORS 197A.305 and with the same wording as that statute. Cities using this method must demonstrate that they provide for a 14-year supply of housing and employment land, consistent with the population or employment forecast, and such land must be serviceable. A city is not required to adopt findings to support a number or a range provided in this division.

Section (4) indicates that once a city has used the simplified method it may not use it again until half the amount of growth forecast has been accommodated, or until half the buildable lands have been developed. This is repeated directly from statute. Note that it does not indicate whether a city may use the traditional method after it uses the simplified method; that is provided in section (6), below.

Section (5) is also based on the statute; it provides that after using the simplified method a city must evaluate whether the city needs to include additional land for residential or employment uses within the UGB before the population of the city has grown by 100 percent. The statute does not indicate the consequence if a city fails to do this.

Section (6) concerns whether a city that has used the simplified method may subsequently use the traditional method to reevaluate and if necessary amend the UGB. The statute (ORS 197A) is silent on this important question. The department has proposed two *options* for this policy. The first, more narrow option proposes that reuse of the traditional method is authorized only in certain circumstances. The second option is broader, and simply authorizes a city to use the “traditional” method after use of the simplified method. However, the city may not rely on need determinations that were derived from the housing or employment paths in division 38, since those paths were intended to provide a simplified methodology for 14-year need and were not intended to be “extrapolated” to a 20-year need.

The department believes that restricting use of the traditional method after use of the simplified method may give many cities pause in deciding to use the simplified method in the first place. Since a fundamental principle with this project is to try and encourage “most” cities to eventually use the simplified method (see purpose section), the commission should evaluate the options with consideration as to whether they discourage use of the simplified process.

Under the first option, the city may reuse the traditional process only in four circumstances. First, 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, as provided in OAR 660-024-0065(3). The ability to provide for a particular use is not available in the simplified process, so if a city wants to consider UGB amendment for these circumstances their only recourse may be reverting to the traditional method.

Second, the city may use to the traditional process after using the simplified method if they wish to designate Regional Large Lot Industrial Land pursuant to rules about that process in OAR 660-024-0045. The proposed simplified process would not allow use of the regional large lot process, primarily because it concerns a time horizon that is at least 20 years but also because other elements of that process do not comport with certain requirements in law under the simplified method. As such, a city that has already used the simplified process, but at some point wishes to add a regional industrial site could only do so using the traditional process.

Third, this option allows a city to revert to the traditional process so as to consider a “quasi-judicial” plan amendment; i.e., a proposal for adding certain land to a UGB even though doing so would not satisfy the entire 20-year land need deficiency. The simplified process does not allow this, so only by allowing reversion to the traditional process would cities have this opportunity. Many UGB amendments in the past 10 years have been under this provision.

Fourth and finally, the proposed Option 1 would allow a city to add land under the traditional process (after using the simplified process) if “one or more of the circumstances in section (4) have occurred”; i.e., the population of the city has grown by at least 50 percent of the amount of growth forecast to occur in conjunction with the previous use of the method by the city or at least one-half of the lands identified as buildable lands for employment needs or for residential needs

during the previous use of the method by the city have been developed. This is reasonable because in that circumstance a city could use the simplified method again if it wishes.

Under the second option (recommended), a city is authorized to use the “traditional” method after use of the simplified method at any point. However, the city may not rely on need determinations that were derived from the housing or employment paths in division 38.

Section (7) provides that the simplified 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 horizon.

Sections (8) through (11) include requirements directly from ORS 197A, using exact language from that statute where applicable.

Section (12) 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 simplified 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 one of the main intents of this new path is to provide a set of “clear and objective requirements” rather than requirements that demand complex and likely appealable findings. The department notes that ORS 197.296 is anything but clear and objective, since it demands a detailed set of findings concerning housing needs (for large cities). If this requirement was not “deemed to be satisfied” by the steps in the simplified housing 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.

Finally, this section deems that use of the simplified method means that all the requirements of ORS 197.296 are met, including the requirement for a housing need analysis in ORS 197.296(3).

Section (13) declares certain goals or rules are not applicable to a UGB amendment. This is identical to a section in current rules for the traditional process at OAR 660-024-0020, which has been in effect for more than 10 years. 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 than the traditional process.

Section (14) is intended to clarify that a city considering a UGB evaluation or amendment under the simplified 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 [simplified] methods to assist residents in understanding the major local government decisions that are likely to determine the form of a city's growth."

Section (15) 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 simplified 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. The department does not propose such alternate means at this time, as explained below.

Before we discuss the new alternate periodic review process, below, we note that the department has suggested adding an additional policy to this section 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 simplified 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. In other words, a city that has evaluated its UGB land supply using the new simplified rules, and determines that no new land is necessary to meet housing and employment needs, may declare that it has a sufficient UGB land supply, in a manner equivalent to a city that actually amends its UGB under the simplified process.

Regarding the new alternative process for periodic review, after amendment of a UGB under the new process (or a finding of adequate land supply), ORS 197A requires LCDC to provide an 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 settled as to what planning work would be completed as part of the simplified process. In other words, without a final determination (by adoption of the proposed simplified path), it is difficult to determine which work is still required of cities moving forward. The department is therefore recommending that this alternate periodic review process rulemaking 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), even though those rules do not exist at this time.

Section (16) repeats a provision from ORS 197A.305(5) requiring the commission to evaluate these rules every five years to determine their impact on urban efficiency, farm and forest land preservation, and the provision of urban facilities.

0030 - 0080: Residential Land Path (Page 6 - 13)

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.

The department developed a spreadsheet-based model to test the various thresholds and ranges contained in this sequence of rule. The model allowed variables to be adjusted and the effect on the outcome (i.e., needed dwelling units and acres of residential land) to be observed. Department staff ran the model for a variety of cities in various regions and size ranges. The results of this modelling informed the department's recommendations regarding appropriate rule requirements.

0030: Residential Land Need (Page 6)

General: 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) sets forth language directly from the statute summarizing a city's requirements for determination of residential land need.

Section (2) 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 census, and then carry forward that percentage to reduce the expected number of new residents that require new dwelling units.

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 vacancy rate throughout the country. This is the rate that will occur in a normally functioning real estate market. The city would then determine its vacancy rate due to “seasonal, recreational, or occasional” vacancies within the city and add that to the base rate. This number is determined by the decennial census. However, the “seasonal, recreational, or occasional” vacancy rate would be capped at 10 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 10 percent maximum that could be used under this section of the rule. The exceptions are the city of Sisters (12 percent) and a number of cities 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 chapter 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.

UO 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 five-year review of the simplified UGB process outlined in these rules.

Several commenters have recommended alternatives to the department recommendation:

- 1000 Friends of Oregon and the City of Eugene recommend that the redevelopment and mixed use residential development ranges be higher, and that cities be prohibited from going below current rates of such development.
- The Home Builders Association recommends that cities be required to use the current rate of redevelopment and mixed-use residential development occurring in the city, and be required to make findings if it uses a higher rate.

Both of these alternatives suffer from two basic problems. First, most cities would have to conduct original research to determine the amount of redevelopment and mixed-use residential development occurring in the city currently, since most cities don't collect this data.

Furthermore, it is unclear over what time period the existing rate of redevelopment is to be measured. Second, requiring cities to make legally challengeable findings regarding a proposed redevelopment and mixed use residential development rate would defeat the purpose of having a simplified process for amending UGBs.

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 (ADU) 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 for cities with population of 25,000 or greater the range would be between one and three percent of the overall dwelling unit need.

Two commenters recommended changes to this section:

- 1000 Friends of Oregon recommends that lower levels for smaller cities be set higher than zero, and that all cities be allowed to project up to 5 percent of future units as ADUs.
- The Home Builders Association recommends that cities should not be allowed to assume ADUs would be built unless the city actually allows them in its code, and also believes that the current language would allow “double counting” of projected accessory dwelling units as units attributable to redevelopment in subsection (6) of this rule.

The department does not concur because: (1) actual data collected regarding accessory dwelling unit construction in Oregon cities finds only one non-Metro city (Medford) with rates above three percent annually, (2) many smaller cities do not allow accessory dwelling units in their zoning codes (almost all larger cities allow accessory dwelling units in their zoning codes), and a non-zero minimum accessory dwelling unit assumption for such cities will act as an incentive for them to amend their zoning codes to permit ADUs, and (4) it is clear from the context, and it is the intent of this rule, that accessory dwelling units cannot be “double counted” as redevelopment units.

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). The remaining need must then 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.

0040: Determine the Mix of Dwelling Units Needed (Page 8)

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

Section (1) 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) 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, the proposed rule requires only two categories (lower density and higher density) to keep it simple, and because ORS 197.303, which defines various “needed housing” types, does not apply to cities with a population less than 2,500. The department recommends that “mobile homes,” identified as a separate building type in the ACS, should be classified as low density dwellings, because (1) many of these homes are placed on individual lots and are thus indistinguishable from other detached single-family dwellings, and (2) the units in manufactured home parks are not distinguished from other mobile homes by the ACS, and also manufactured home parks vary in density between low and medium density ranges.

Section (3) requires cities to project a mix of housing types needed for new residential development using Table 1, which is attached to the draft rule. 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 categories based on population and density.
- 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 a significant increase in medium or high density housing percentages going forward of at least three 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 an increase of one percent above their current medium or high density housing percentage going forward.
- 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 one percent increase above their current medium or high density housing percentage 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.
- 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.

Several commenters recommended changes to this section:

- The League of Women Voters of Oregon recommends that cities with population less than 2,500 be required to determine housing mixes based upon three categories as with other cities, rather than two, so that these small cities would be required to increase residential “efficiency” standards similar to larger cities.
- 1000 Friends of Oregon recommends use of a higher “push” factor to determine the required medium and high density housing percentages needed, for all cities, because the department’s proposal “won’t provide enough of an increase in medium and high density housing.”
- The Home Builders Association recommends that cities be required to assume their current mix of housing types will be maintained going forward, and not be allowed to forecast that significant increases in percentages of medium and high density housing will occur, since such forecasts are speculative, and if they do not actually occur it may mean that UGBs do not provide a sufficient supply of land for needed housing.

The department does not concur with these recommendations, for the following reasons:

- The statutes in question, ORS 197A.310 and ORS 197A.312, require that the method be designed such that a city using the 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 require that under the method “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, require that the department’s recommendations or something equivalent must be in these rules, so as to require cities to forecast long term increases in housing densities in the manner of the suggested ranges.

- ORS 197.303, which defines needed housing types, does not apply to cities with population less than 2,500. As such, cities of that size should not be required to go beyond that statute in the simplified process, and would probably not use it.
- As a practical matter, cities will have a choice to determine residential land need and housing mixes using either the traditional UGB evaluation or amendment method or the new simplified method. If the method requires housing mix ranges perceived by small cities as unrealistic or unattainable, those cities will probably not choose to use the new simplified method for UGB evaluation and amendment.
- The 1000 Friends of Oregon comment on this issue seems to imply a concern that cities will 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. Regardless, many cities in Oregon realize the need to provide higher density housing options to meet the housing needs of their residents, and many will likely take advantage of the range offered to significantly increase percentages of medium and higher density housing mixes within their UGBs.
- The Oregon Home Builders Association comment on this issue implies that cities will make housing mix assumptions that are unrealistic in relation to the real estate market and cities that make such aggressive housing mix assumptions will not plan to carry these out. The department believes that the density increases cities may attain using the high end of the ranges are not so high as to be unreasonable from a real estate market perspective based on a historic view of that market. In addition, the rules require a city to provide plan and zone designations and codes that will realistically allow implementation of the mix assumptions, using clear and objective standards for needed housing.
- As a technical matter, if a city already has experienced 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 provides for will be higher than the long term residential mix mandated through use of Table 1. This is because Table 1 accounts only for development by increasing the land need the city must forecast – redevelopment and mixed-use residential development (and ADU 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 predominantly, 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.

If the commission wishes to accept an alternative to the department's recommendation on this issue in terms of changing the required mix numbers for cities, it would be accomplished through changes to proposed Table 1.

Section (4) 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.

0050: Determine Amount of Land Needed for Each Housing Type (Page 9)

General: 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 rule. The low density and medium density residential ranges reflect the findings of UO 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 in UO research.

Sections (3) and (4) provide a “check” on 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.

1000 Friends of Oregon recommends that this standard be strengthened by requiring a city to meet the density that has been achieved by more recent residential development within its boundaries, which they assert can be approximated at approximately 20 percent greater than the overall historic residential densities occurring within a city. 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 more efficient than has occurred over any particular time period, and the department does not recommend that the commission read this requirement into the statute.

However, if the Commission agrees with the 1000 Friends of Oregon position, the following replacement language would meet the Department’s other concern – that a 20% increase in overall historic densities applied at every future instance the city analyzed its urban growth boundary would result in a “never-ending cycle” of higher and higher required residential density. The alternative language puts a reasonable cap in terms of dwelling units per acre on densities required by this section:

Option: (3) *If necessary, adjust the density assumptions used in the residential land need analysis so that the overall net density for all residential land need is at least 20% greater than the density determined in OAR 660-038-0050(2), up to a maximum of:*

(a) *Eight dwelling units per net acre for cities with population less than 10,000.*

(b) *10 dwelling units per net acre for cities with population greater than or equal to 10,000.*

0060: Buildable Lands Inventory (BLI) for Residential Land (Page 9)

General: 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 the introductory statement of this rule.

Section (1) 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 city's comprehensive plan map with the 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.

This section also provides requirements for 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 districts with residential densities that don't fit neatly into the low, medium, and high density categories set forth in these rules, the rule allows for some flexibility in the city's classifications.

Section (2) directs cities to identify all vacant, residentially designated parcels 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 (3) directs cities to identify all partially vacant, residentially-designated parcels within the city's UGB. Identification of partially vacant land will require use of aerial photos, but such photos are readily available.

The Oregon Home Builders Association believes that (1) the vacant land minimum lot size, which is set at 3,000 square feet in conducting a buildable land inventory, is too low, and should be raised to 5,000 square feet; and (2) that a lot should be considered fully developed and not partially vacant if it less than one acre, rather than one-half acre. The department does not agree with these recommendations, because (1) a survey of buildable lands inventories shows that the 3,000 square-foot threshold has been commonly used by cities; and (2) the one-half acre

threshold is consistent with current “safe harbors” for buildable lands inventories in ORS 660-024-0050(2)(a).

Section (4) 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.

Many cities, based upon findings and evidence from past development rates, do not assume that all partially vacant land as determined by a buildable lands inventory will develop during a 14-year or 20-year planning period. Some of these properties contain existing residential improvements of such value that the owners are unlikely to add additional homes, and others may be constrained by private codes, covenants, and restrictions that prevent additional development. However, such determinations are subjective, and cannot be accommodated in a simplified process based upon relative certainty and reduction of possibilities for litigation. The department believes, also, that factors throughout the process that may introduce inaccuracy are balanced between those that would increase and decrease development capacity, and thus should be tolerated in the proposed simplified process (see discussion under OAR 660-038-0070(2) regarding constraints).

Section (5) 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 (Page 11)

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

Section (1) 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) 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 a 100 percent reduction as is allowed in the current “safe harbor” rules for residential buildable lands inventories under OAR 660-008-0005(2).

The initial department recommendation proposed reductions of 50 percent from capacity of lands within special flood hazard areas (also known generally as the 100-year floodplain) and lands with slopes greater than 25 percent. However, based upon a comment received from the Oregon Chapter of the American Planning Association, the department has changed its recommendation

to match existing state policy regarding the residential development capacity of such areas. The UO research shows that some residential development has occurred in special flood hazard areas (although much of this development occurred during times when such development was not restricted), and most cities have zoning codes that allow some, often limited, development on steep slopes greater than 25 percent. However, determining the precise amount of such development would require development of subjective findings, which cannot be accommodated in a simplified process based upon relative certainty and reduction of possibilities for litigation. The department believes, also, that factors throughout the process that may introduce inaccuracy into the inventory are balanced between those that would increase development capacity and decrease it, and thus should be tolerated in the proposed simplified process (see discussion under OAR 660-038-0060(5) regarding development on partially vacant lands).

Section (3) directs a city to reduce the amount of residential buildable lands in its inventory to account for the documented constraints.

The draft of this rule presented at the September LCDC meeting included a section allowing cities the 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 deed 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. Because of these difficulties, such deed restrictions cannot be considered in a way that does not involve findings and potential legal challenge – thus, the department does not recommend its inclusion in the proposed simplified UGB process.

Language included in the first public draft (September 10) is recommended by the City of Bend and Deschutes County. It is not included in the third public draft, but still may be considered an alternative *Option*, and should the commission choose to include it, it would be as follows:

Option: *The city may identify lands encumbered with easements or recorded deed restrictions that restrict additional residential development. The property or area of land encumbered with such easements or recorded deed restrictions shall not be counted in this category if any development that violates the easement or deed restriction exists on the property or area of land subject to such restrictions. The city may reduce the residential development capacity on lands encumbered to the level of development allowed by the easement or recorded deed restriction. A city's decision to reduce residential development capacity based upon this section must be supported by substantial evidence in the whole record. A city is not required to identify lands encumbered with easements or recorded deed restrictions under this section even if presented with evidence that such restrictions exist on residential buildable land within the city's UGB.*

0080: Compare Residential Land Need to Land Supply (Page 13)

General: 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) reference Tables 3 through 5, which are attached to the rule. 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 straightforward. 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 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, except for specific types of industrial land, which cannot be redesignated even if a surplus of them exists. However, the proposed rule does not require such redesignation – employment land and

residential land often have characteristics that make them unsuitable for this kind of change of use.

1000 Friends of Oregon recommends that Tables 3, 4, and 5 be eliminated, and that cities facing surpluses and deficits of different types of industrial land should be required to make findings to determine, on an individualized basis, whether redesignation is appropriate. The department does not agree with this recommendation because it is directly opposite the “simplified” approach behind the division 38 rules. The decisions and findings of cities on this topic would be subject to legal challenge. The department believes that the generalized permissive aspect of this rule, with the significant policy exceptions included, provides adequate and certain direction to cities.

Overview of Employment Land Need Path

General: The seven proposed rules from 0090 to 0150 provide the “Employment Land Need Path,” under which cities will determine long term commercial and industrial land need, determine the supply of such land in the UGB, and determine whether a UGB amendment is necessary. Changes to this path since the September version of the draft, an overview of testing results and some comments are discussed briefly in this general overview.

We note that there are also changes between the public Draft 2 of this path, published November 13, and Draft 3, published with this report on November 23. The RAC meeting on November 18, and comments received in the same time frame, identified some important citation errors and other issues in the draft 2 wording; these have been corrected in draft 3.

Table 6: The proposed methods in rules 0100 and 0110 require that cities use their most recent job counts, sorted in to “commercial” and “industrial” land. To help with this, the department is proposing Table 6, which will provide data from OED indicating current jobs counts within all existing UGBs based on geo-coded employment data and on the current UGB maps for each city maintained by DLCD. The department is recommending that LCDC update the data in this table annually as a minor rule amendment. Table 6 is quite large, since it includes employment data for every city in the state. Therefore it is provided as a link.

Table 7: The rules provide an optional method for cities to forecast employment needs based on OED’s long term (10-year) employment forecast for each of the OED regions. Table 7 will provide the 10-year regional forecast for each OED region, simply as the growth rate for commercial and (separately) for industrial jobs over the 10-year period. These forecasts are issued by OED on a two-year cycle, and as such the department recommends that LCDC update this table every two years as that forecast is issued. In the future, OED is considering shifting to an 8 year forecast period, perhaps delivered annually.

The UO research discussed earlier in this report found that, with respect to current jobs reported by OED in UGBs, on average 20% of these jobs do not occur on land zoned for commercial or industrial use. Rather, they occur on residential land or land zoned for other uses. As such, the job forecasts that are provided in Tables 6 and 7 must be reduced by 20%, since those jobs do not require land planned and zoned for commercial and industrial use. That 20% reduction had not

been previously documented, and as such, it has not been raised in the past as cities determine employment land need under the “traditional” path. It is an important difference between the forecasts of jobs under the traditional method and the forecasts under the proposed simplified method. This report does not consider whether the UO research finding on this matter will be or should be addressed in the future when a city forecasts jobs under the traditional method.

It should be noted that the UO research, as well as Tables 6 and 7, are reporting “covered employment” data; that is, payroll employees that pay into unemployment insurance. Jobs that are not covered, including sole proprietorships and many agricultural workers, are not included in the data. The department does not believe that fact significantly affects the paths, either for the traditional or simplified methods, since many uncovered jobs occur on farmland outside the UGB, and those that occur inside UGBs most often occur in residences rather than on zoned employment land. Since the proposed rules only forecasts of new jobs that require commercially or industrially zoned land, covered employment is acceptable data for use.

Testing: DLCD conducted some testing of the proposed methods using actual employment data. The department used data from OED, and also used Portland State University (PSU) population forecast data, primarily testing cities in the southwest of the state (since those forecasts are already issued). PSU will issue Eastern Oregon forecasts in June 2016. Forecasts for northwest counties, including the Willamette Valley north of Lane county (approximately one third of the state) will not be issued until June of 2017.

The results of the DLCD testing were more revealing when comparing the proposed population-based forecasting methods (in rule 0100) with the OED forecast-derived methods (in rule 0110) to each other. The proposed new population-based method, in most cases, predicts a larger long term employment land need than the proposed OED forecast method. This is likely because most cities are growing in population at a faster rate than jobs are increasing, especially in bedroom communities.

Testing also attempted to compare the proposed new simplified methods with the methods under the traditional path in division 24 (using a “safe harbor” in that division which may be interpreted to allow use of a 20-year extrapolated OED forecast). In general, the comparisons of the new methods with traditional methods using EOAs were not conclusive, primarily because the two methods are quite different. This testing suggested that the proposed new methods will predict lower job forecasts, and thus lower employment land need projections than the “traditional” methods. This difference continues even when OED’s 10-year forecast is extended to 14 years in the new method (not allowed under the recommended method) using a straight line extrapolation. The difference between the need forecasts in using the old and the new method is most likely due to the fact that the traditional method has a longer (20-year) planning horizon, but also because of the 20% reduction factor in the new method to account for jobs that do not occur on employment land (mostly residential), as discussed above.

These tests may suggest that the new rules will be less attractive than the traditional method to cities that are primarily interested in maximizing their employment forecasts and thus maximizing the size of a UGB amendment to add employment land. However, it must be noted

that this difference was anticipated and discussed by the Design Team (for the new residential and employment processes). The Design Team concluded that since the intent of the simplified process is that it will be faster, cheaper and more insulated from appeal, many cities will therefore opt for the new process. In part, this would be because cities are encouraged to look at employment land needs on a more frequent basis than has occurred in the past under the traditional method, since it would be faster and simpler. If cities update their UGBs more frequently than they would under the traditional method, the differences in forecasts for 20-years versus 14 years are not determinative. This alone may mitigate the perceived differences in the two processes.

0090: Employment Land Need (Page 13)

General: This rule is a preamble to the six “employment path” rules that come after it. The rule provides an overarching set of requirements repeating 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) clarifies that the need for employment land is determined for a 14-year planning period under this process.

Section (2) indicates that a city must forecast growth for the 14-year planning period beginning the year the UGB analysis was initiated, and may use either the population based method or the employment forecast method.

0100: Forecasting Employment Need Based on Forecast of Population Growth (Page 14)

Sections (1) through (7) of this rule provide a method for forecasting long term (14-year) employment need based on the PSU population forecast for the UGB. A city must determine the current relationship between jobs and population in the UGB. Under the method, the city must assume that in fourteen years its current ratio of population-to-jobs, in the UGB, would be the same as it is currently. Under the method, current jobs in the UGB (provided in Table 6) at the time the city begins its analysis would be sorted into two categories (commercial and industrial). These jobs (for each category) are simply multiplied by the forecast population growth rate. 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, as discussed in the overview above.

OAR 660-038-0110

Forecast Employment Growth Based on Oregon Employment Department Forecast

As an alternative to the population-based method provided in rule 0100, discussed above, this rule provides a way for cities to forecast 14-year employment growth based on the most recent long-term job forecast issued by the Oregon Employment Department (OED).

Under section (1), the city must determine the number of “commercial” and “industrial” jobs currently in the UGB as provided in Table 6. Then, in section (2), Using Table 7, the city must

determine the long-term growth rates forecast by OED for commercial jobs and for industrial jobs in the OED region that includes the city. (“OED region” means Workforce Innovation and Opportunity Act (WIOA) Areas for which OED forecasts long-term job growth). Next, in section (3), the city must simply multiply the number of jobs currently in the UGB determined in section (1) by the forecast rate of growth determined in section (2). This provides the long term forecast of jobs. Finally, 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, discussed in the overview above.

The proposed OED forecast method in rule 0110 relies on the 10-year forecast growth rate for commercial jobs, and separately for industrial jobs, rather than an “annual growth rate” or a 14-year growth rate that could, theoretically, be inferred from OED’s 10-year forecast. In the employment path workgroup, and in the RAC meetings, OED representatives indicated that the methodology for the forecast does not lend itself to any simple method to infer an annual growth rate, nor to extension of the forecast to 14-years using a “straight-line projection.” Furthermore, OED has warned that its long term jobs forecast has historically overestimated jobs that actually occur over time, often by a large amount. The department notes that, by restricting use of the forecast such that cities may only use the rate that is actually forecast (a 10-year growth rate), rather than an “extended” 14-year rate, the overestimation of jobs (should this continue to occur in the future) is mitigated.

Comments have expressed a concern that this forecast may under-represent growth for the 14-year planning period, and therefore cities should be allowed to extend the regional forecast by a straight line method to 14 years, and have noted that, in fact, such extension is already allowed in the “traditional” UGB method (see safe harbor in 660-024-0040(9)). The department agrees that the authorization in the current “traditional process” (included as a “safe harbor”) allows a 20-year “extrapolated forecast” rather than the proposed 10-year forecast under the recommended simplified process. If the commission determines that it would like to increase the employment needs forecast under the proposed simplified process, with respect to the OED forecast method, it may consider allowing cities to extrapolate the 10-year OED forecast to 14-years. While not recommended by OED, allowing such extrapolation would mitigate some of the difference between forecasts under the traditional method and the new method, at least compared to cities that use the OED forecasts under the traditional method (apparently the safe harbor has been used infrequently in the past). This has not been provided as an “Option” in the rule, but could be easily inserted at the request of the commission.

0120: Buildable Land Inventory for Employment Land within the UGB (Page 16)

General: This rule provides a method to inventory vacant and partially vacant land (BLI) within a UGB. The new statutes at ORS 197A require use of a BLI, and it has historically been a basic part of UGB need analysis. The rule at 0120 is paired with another rule at 0130, which adjusts the BLI based on constraints to land development. After applying both rules, the city will produce a simple BLI for employment land. It should be noted that the department has changed its recommendation from that provided in the September draft. Draft 3 of the rule recommends some simple rules of thumb for determining vacant, partially vacant, and developed employment

land that are based on a simple methodology using land value rather than on a map-based or GIS method based method.

Section (1) directs the city to classify existing employment zoning districts within the UGB as either “commercial” or “industrial.” Districts that allow both commercial and industrial uses must be classified as one or the other, based on the predominant use.

Section (2) directs the city to use assessor tax lot data to categorize each tax lot in the employment land inventory as vacant, partially vacant, or developed. The city must examine the ratio of real market improvement value to the real market land value. Tax lots where the improvement value is greater than 40 percent of the land value are considered developed. Tax lots where the improvement value is greater than five percent and less than 40 percent are considered partially vacant. Tax lots where the improvement value is less than five percent or the improvement value is less than \$5,000 are considered vacant.

This proposed method of categorizing existing inventory relies on easily available data. As discussed above, completing a parcel-by-parcel survey or GIS-based lot coverage analysis would be an alternative method. Neither method is precise, but ORS 197A requires the rules to include a simplified method.

In the traditional process, land inside the UGB was sorted in two categories, vacant and developed. ORS 197A provides that partially vacant land must also be considered. Comments suggest that the evaluation of partially vacant lands should be more elaborate than it is in the method proposed in Draft 3, and should be based on a spatial inspection rather than on the suggested rule of thumb that uses land and improvement value. The department recommends the simple land value method. We note that, historically, many cities have used the rules of thumb outlined here for determining “vacant” and “developed” land. There is not as much historical use or agreement on the proposed rule of thumb for “partially vacant” land. However, the numbers suggested for the proposed rule of thumb lie between those used for “developed” and “vacant” land, and certainly provide a simple methodology.

It may be helpful to think about partially vacant as land that is underutilized for any number of reasons. A site may have few structures and clearly part of it may allow additional development; thus it is partially vacant. However, due to outdoor use requirements or other factors, sometimes such sites should be considered fully utilized. Also, some sites may be significantly developed but with structures that are idle or dilapidated. Each situation would require individual examination and probably a set of findings under the traditional method. To provide a simplified method, a standard must be provided under which a city may evaluate all employment zoned land and its capacity to accommodate future employment. No method will be perfect, but the proposed rule of thumb seems to be the best way unless a parcel by parcel method is employed, which would require detailed findings and often GIS capability, which many small cities do not have.

The department also recommends that it would be inaccurate to split portions of existing tax lots when assembling the BLI-based determination of current employment density. One commenter

advocates for this, but the department believes it would probably result in an artificial inflation of land supply and density. The department expects that LCDC will hear testimony on this point.

0130: Adjust Employment BLI to Account for Constrained Lands (Page 17)

Sections (1) and (2) provide a method to adjust the inventory of employment land determined under rule 0120, 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.

A city is authorized to determine that industrial land with a slope greater than 10 percent is not suitable for industrial use. Some comments have proposed that the constraint threshold for industrial land slope should be instead set at five percent (which is a longstanding standard used in Oregon and in other states). Other comments have suggested it should be set even higher, at 15 percent. Although examples can be found of industrial facilities on slopes greater than five percent, such sites are considered constrained or problematic by site users and economic development professionals (the example provided by a commenter is the Hynix site in Eugene). It should be noted that the standard in the Goal 9 handbook, which has long been used in the traditional method, is 10 percent. As such, there is historical precedent for this standard in the land use program. A more conservative proposal such as 15% may provide a reason for cities to decline to use the new simplified method since many cities do not believe sites of that slope or greater will not be attractive to industrial land developers.

0140: Translate Job forecast to Employment Land Need (Page 18)

Sections (1) through (7) provide a way for cities to convert the long term jobs forecast, determined under either the population based or OEA based forecast methods discussed above, into a long term net “employment land need.” The method proposes that this be done by directing cities to calculate the current, local “employees per acre” job density of commercial and industrial lands in the city. This current density would be adjusted long term to account for anticipated redevelopment and to account for an anticipated increase in density, especially for commercial land.

Accounting for long term redevelopment of both developed and partially vacant land is shown in public draft 3 as an *OPTION*. This long term redevelopment is proposed to be forecast by increasing the actual density calculated by a stated percentage amount based on city size and the type of land (commercial or industrial). We note that projected redevelopment is proposed to be accounted for in a similar manner as that provided in the residential path, in this case by increasing the employees per acre by a set percentage amount (based on city size). This is an indirect way to account for redevelopment, and was proposed this way for simplicity and in order to maintain consistency with the method used for residential redevelopment. In practice, redevelopment will be a factor for those lots that are shown as developed or (to a lesser extent) partially developed employment land in the BLI.

It should be noted that the RAC did not discuss the proposed (optional) redevelopment “factors” provided in this option, although the need for an adjustment for redevelopment was discussed.

UO was unable to determine the statewide redevelopment amount in their research; they found that this data is not generally recorded by cities and as such there is no way to research it. The department's proposal for these amounts is a judgement call that has not been agreed to by the RAC. As such, it is shown in the 3rd public draft as an *Option*, both for commercial and industrial. However, the remaining sections of the rule are provided as if this option is accepted by the commission. If it is instead decided to omit this option, some renumbering of subsequent sections will be required.

Finally, in section (5), the rule proposes a “push factor” (which is a term the RAC has used) to indicate an anticipated long term increase in density for employment land overall. The values in this proposed section were a result of a consensus during discussion with the RAC. As applied, they ensure that the simplified method increases efficiency long term, as required by ORS 197A. The department believes the intent of this push factor would or could also account for redevelopment, and in a more simple manner than in the option described above.

**0150: Determine if UGB Expansion is Necessary to Accommodate Employment Needs
(Page 21)**

Sections (1) through (4) provide a method to determine whether the existing inventory of employment land is sufficient to meet the projected 14-year needs. If the current inventory is sufficient, no UGB expansion is necessary. If there is a surplus of one category (commercial or industrial), but a deficit of the other category, the city must consider redesignating the surplus for the deficit in the other category. Section (3) provides requirements for redesignating land from one employment category to another to meet the employment land need within the UGB when there is a surplus of one or the other. Goal 14 requires that land within a UGB must be considered for redesignation before the UGB is expanded, and as such, this requirement fulfills that general overall UGB requirement.

It should be noted that this redesignation raises concerns with local governments and other interests, for several reasons. First, land provided for one category may not be suitable for the other. Redesignation may constitute a downzoning. Also, the supply of industrial sites has been a frequent subject of discussion by the commission and the legislature, so redesignating such sites for commercial use raises several concerns. The proposed rules try and address these concerns by indicating certain categories of industrial use that should not be redesignated.

Location rules: Overview of UGB “study area” and “priority of land” rules.

The rules at 0160 and 0170 are intended to implement ORS 197A.320, which provides a somewhat different set of standards for determining the location of a UGB amendment than has been used historically. That statute replaces ORS 197.298 (except for Metro).

ORS 197A.320 provides that LCDC must adopt new criteria for determining a study area for possible UGB expansion. As provided in the next rule at 0170 (paired with this one), land from the study area must be selected based on “priorities” when a UGB is expanded. The new law at ORS 197A.320 provides that LCDC's new priorities rules will apply to all cities outside of Metro that amend their UGB, whether using the simplified or traditional process. The fact that

this new statute, effective January 1, 2016, affects both the new simplified process and the existing traditional process is announced in the first rule (0000) at the beginning of division 38. That rule indicates that for the traditional process, cities will find (new) location rules in OAR chapter 660, division 24 interpreting these new requirements (see Attach B).

We emphasize that, rather than providing criteria for study areas directly, ORS 197A.320 requires LCDC to adopt rules that implement the study area (and priorities) requirements in the statute. The statute indicates that “the Land Conservation and Development Commission shall provide [these requirements] by rule.” In other words (as intended by the Design Team), beginning in 2016, the “location” and “priority” requirements are intended to reside in rule rather than in statute. Cities should not implement the statute directly in the manner of ORS 197.298 in the past. This means that ORS 197A.320 should not be considered a statute that applies directly to any city in amending its UGB; it only applies to LCDC in adopting implementing rules, and those rules (at 0160 and 0170) in turn apply to individual cities.

The department proposes that the new rules reflecting these new location requirements be basically identical in divisions 24 and 38. However, the division 24 rules end up looking slightly different, since some additional provisions that don’t apply to the simplified process in division 38 do need to apply in the traditional division 24 rules. These differences include rules in division 24 as follows:

- Provisions for “in-progress” cities, i.e., cities that have already begun a UGB amendment using the rules in effect at the time they initiated the UGB amendment.
- Changes to essentially keep (unchanged) current location provisions in division 24 that apply to the Metro UGB (see proposed amendments to OAR 6660-024-0060).
- Citations for the “need” determinations are different in division 24 than in division 38.
- The authorization to determine a “particular industrial use” or a “particular public facility use” is only provided for the traditional process in division 24.
- Division 38 has separate rules governing how lands added to the UGB are “planned.” Those separate rules don’t exist in division 24, so certain “planning” requirements are included in the division 24 location rules that are not reflected in division 38 location rules (because they are provided later in the planning rules).

It should be noted that the traditional process, ORS 197.298, sets priorities but does not require establishing the study area; it simply requires studying “land adjacent to the UGB.” Similarly, the implementing rules currently 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.” As such, the more detailed requirements for study areas end up being the only major change to the traditional process that is required by ORS 197A.

It is also important to note that the location (and priorities) rules are only applicable if a city finds that it has a need deficiency (using other rules in the division), and 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.

0160: Establishment of Study Area to Evaluate Land for Inclusion in the UGB (Page 22)

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

- The city’s acknowledged urban reserve, if any.
- For cities under 10,000 (small cities) – a distance that is at least one-half mile miles in all directions from the acknowledged UGB.
- For cities over 10,000 (large cities) – a distance that is at least one mile in all directions from the acknowledged UGB.

Furthermore, the department proposes that this distance must expand for any exception area that lies partly within the distance above. For small cities, that additional expansion would be to a distance that is at least one mile from the UGB, and for large cities, to a distance that is at least one and one-half miles.

The proposed rules authorize a city to study a greater distance, at their discretion.

The department prepared maps to share with the UGBRAC for several test cities, showing the existing UGB and concentric rings around the UGB at distances of one-quarter, one-half, one, and two miles. From these maps, the department was able to calculate the acreage for typical cities within the preset distances of its UGB. Building off the UGB maps, the department also created an online interactive map showing not only the concentric rings but also possible development constraints such as flood hazards, high-value farmland, landslides, and big game habitat ([link](#)). With all of this information, the department was able to determine not only the amount of land within a certain distance of a UGB but also the land that was actually suitable for development. This testing helped inform the decision about these distances, included in this rule section.

The department has proposed that the initial study area be a “preliminary study area” because this area would later be reduced based on the exclusions described below.

Section (2) provides that a city may exclude land from the preliminary study area based on four different criteria, described below. This is based on requirements in ORS 197A.320, modified somewhat to provide necessary details to assist cities in interpreting the requirements.

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

Subsection (b): The city may exclude land if it is subject to significant development hazards, due to three defined “risks”, landslides, flooding and Tsunamis. 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, and land within a tsunami inundation zone.

With regard to landslide mapping, the Oregon Department of Geology and Mineral Industries (DOGAMI) has advised the department that all land on the Statewide Landslide Information Database for Oregon (SLIDO) should be considered at risk due to landslides. Under ORS 197A.320, the rules must authorize cities to exclude landslide areas. A commenter has maintained that land inventoried in SLIDO should not be considered at risk unless the city makes a separate determination that building codes cannot ensure the safety of the land. DOGAMI has indicated that, first, such individual determinations would be extremely expensive or impossible, but moreover, that the intent of the SLIDO is for definitive State of Oregon mapping of landslide risks and the map should be considered determinative.

Subsection (c): ORS 197A.320 indicates that cities may exclude land from the UGB study area 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 has not been an easy task, in part because of the broad nature of Goal 5 and related rules. These rules provide a detailed process for determining at least 16 categories of significant resources, and that process does not easily convert to a simplified process. By their very nature, Goal 5 inventories 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. Resources are, in many cases, inadequately inventoried by counties outside of UGBs at this time – many inventories in acknowledged plans have not been revised since the early 1980’s. Many of the 16 categories of resources could be adequately accommodated and protected in a UGB. The statute requires exclusion only of such areas that must be excluded in order to protect the resources.

There has been considerable discussion between the department and the Oregon Department of Fish and Wildlife (ODFW) and Division of State Lands (DSL) with regard to this requirement and RAC discussion as well. As a result of those discussions, the department has proposed certain limited resource area exclusions, for areas mapped on an ODFW Inventory as either: (1) Critical or essential big game winter range or big game migration corridors, and (2) critical habitat for a species listed by a state or federal agency as threatened or endangered, (3) Core habitat for Greater Sage Grouse; or (4) big game winter range or migration corridors. Providing these exclusions based on ODFW mapping rather than local plan mapping is in recognition that agency inventories are, for many areas, the only up-to-date inventories. Many counties have not updated their corresponding inventories since the county plans were acknowledged in the mid 1980’s, and as such, basing this measure only on local plans would not provide proper consideration of more up to date inventories provided by ODFW.

This broad category of possible exclusion areas (from the preliminary study area) 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, and there is apparently no controversy about these proposals.

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. However, providing such a definition is problematic and is likely not necessary.

Section (3) requires that the study area include an amount of land that is at least 200 percent of the combined need deficiency for residential, employment and other land. The minimum is to be calculated after excluding areas described in section (3) of this rule. This is intended to make sure that there are adequate alternative sites for a city to choose from as a city decides where to expand. The 200 percent (or twice the amount of land needed) is an arbitrary factor chosen by the department. In examining distances that are half a mile or a mile from current UGBs, the department has determined that in almost all cases the study area would include a very large supply of land, probably 10 times or more the amount of need in a typical case. As such, this standard would not be a burden for cities, and may have an effect in only a very limited number of cases, probably involving cities that identify a limited type of specific land need under division 24 rather than in the simplified process.

Section (4) provides that the final “study area” is the preliminary study area after exclusions described in other sections of this rule.

Section (5): implements ORS 197A.320(3), which specifically directs the commission to define 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 remove lands from the preliminary study area that cannot reasonably be served and therefore do not warrant further study or consideration through the priority evaluation process. Cities are thus able to avoid a potentially costly study and evaluation process where readily available information and data show that the land is obviously unsuitable for urban services. For additional background on the impracticability provisions of the statute and issues raised by commenters, see the discussion of this rule section found on page 31 of the September staff report (note, at the time of that report, this was section (4)).

The department’s initial approach in developing rule language for determining impracticability was to create identifying criteria that could be relatively simply expressed and readily applied, preferably via a numerical or other measureable standard, using available data. This concept was questioned by some UGBRAC members and a number of commenters who expressed concerns

that the impracticability measures as proposed in the September 10 draft rule were overly simplistic and could inappropriately permit the exclusion of some lands from the study area.

In response to this input, the department proposed three alternative concepts for determining impracticability which were presented and discussed at the October 29 UGBRAC meeting. Those alternatives were: (1) retain (and refine) the current draft rule approach of simplified, measurable identifiers; (2) retain only the slope based identifier from the current draft; incorporate the other identifiers into a non-exclusive list of “impediments to service delivery” that could be the basis for study area exclusion based on specific findings that consider both cost of services and development yield of land to be excluded; and, (3) retain some or all of the simplified identifiers from the current draft rule for division 38 (i.e. the simplified process) only. Division 24 (traditional process) would provide only for the findings based impracticability exclusion.

While there was support from some UGBRAC members for retaining the concept of objective measures represented by alternative (1), other members expressed the view that such simple factors are too coarse, and that more refined, fact specific analysis, is necessary. There was general acknowledgment that the array of variables involved in evaluating the feasibility of public service delivery is difficult to fully account for using only simple, objective measures. Based on this discussion, the department has proposed rule language for this section that combines features of the three alternatives.

Subsections (5)(a) and (b): retain two measureable qualifiers based on slope and major freeway improvements, respectively.

Subsection (c): provides for a general determination of impracticability, to be justified by findings that must address specified considerations, but without distinct, measureable thresholds.

Subsection (d): sets forth a non-exclusive list of impediments that may provide the basis for such findings.

Finally, the impracticability section for division 24 retains the slope based standard as the single categorical qualifier. Major freeway improvement was eliminated as a categorical qualifier due to the longer planning period (20 years vs. 14 years) specified for UGB amendments using the traditional process. The findings based determination requirements and list of impediments are the same as those in division 38.

For purposes of division 38, fashioning impracticability as a findings-based determination without measureable thresholds for compliance introduces an element of subjectivity into the study area identification process. This does represent a departure in concept from the otherwise mostly objective measures of division 38. However, given the complex, fact-specific nature of the impracticability determination, and the necessity to ensure that the factors set forth in the statute are considered in every case, the department has concluded that this is necessary.

Section (6) 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 simplified 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 (Page 26)

General: This rule interprets the “priority of land” requirements of ORS 197A.320. That statute replaces the priority method in ORS 197.298 for non-Metro cities. The general methodology from ORS 197.298 has not been altered with regard to priorities by this new statute, but there are important differences in the way the priorities are described.

NOTE: There are several changes between the rules proposed in public draft 2, published November 13, and public draft 3, published with this report on November 20. The RAC meeting on November 18, and comments in the same time frame, identified some important issues that needed to be addressed with regard to the priorities rule in draft 2; these are addressed in draft 3.

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 0160 rule described above. The subsections in this section provide direction for analysis that mirror the statute. However, we note that this section also references section (5) (see discussion about that section below). Section (5) 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 (7), described below.

Section (1)(d) provides that a city may consider factors that reduce the capacity of the land to meet the need as provided by sections (5) and (6) of this rule. While the priority scheme (both for ORS 197.298 or the new one at ORS 197A.320) presumes that cities must evaluate land in particular order of priority, those statutes are silent as to how much capacity to assign land within the priorities. While it may be assumed (and has been previously) that cities have a broad authority to do so, absent particular requirements of these statutes, the department proposes this subsection to clarify that principle.

Section (1)(e) provides that land determined to not be suitable to satisfy the need deficiency is not required to be selected for inclusion in the UGB unless its inclusion is necessary to serve other higher priority lands.

Section (2)(a): First Priority – Urban reserve, exception land, and nonresource land. Cities are required to evaluate land in the study area that is such land. Each of the areas described in subsections (a) - (c) (urban reserve, exceptions areas and nonresource land) are of equal priority. This is a change from the previous traditional process, where urban reserve was a higher priority than the other two categories. This raises a question that is not necessarily resolved by the statute. Under OAR chapter 660, division 21, if a city designates land as urban reserve, it must use all of that land before it amends a UGB to include other land. As such, while the other categories listed here (exceptions and non-resource) are given equal priority, a city could not actually consider those until it uses all land in its urban reserve. An alternative interpretation would demand that LCDC amend its urban reserves rules to allow use of this other land in an equal manner as specified in this section. The department has not proposed such a change at this time.

Section (2)(b): 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, referenced in this rule.

Section (2)(c): 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, 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 (2)(d): 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. In addition, the Oregon Department of Agriculture requests that the rule be amended to provide that a city must select lower capability or cubic site class lands first. Finally, a proposed rule below, in section (4), would define “land” for this purpose.

Section (3) 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.” This proposal repeats wording in the statute.

Section (4) is intended as a set of Options for a definition of “land” for purposes of sections (2)(c) and (d), described above, which is necessary because the definition of high value farmland

is based on the “predominance” of soils types. In addition, the Oregon 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. Two options are shown in the draft 3. The first allows a local government to make this determination in 200-acre areas, or larger areas of similar soil types. The second definition is a property by property analysis. The department recommends Option 1, as that scale of analysis is more appropriate for a UGB expansion and because it provides objective guidance to cities. Generally speaking, UGBRAC members concur, but several (including the Oregon Department of Agriculture and 1000 Friends of Oregon) request that the ability to study areas of 200 acres be eliminated, which would effectively only leave the option of “similarly soils.”

The Oregon Department of Agriculture has additional comments concerning the definition of predominant in (4)(d), which the department is working to resolve.

Sections (5) is intended to be the “criteria established by the commission” referred to in 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.

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 is further complicated by the fact that there is a definition of “suitable” in division 9 that is not as broad as proposed here. This term has also caused considerable debate in local UGB proceedings, in part because the term was not defined in division 24. The redrafting of the priority requirement in ORS 197A did not resolve this controversy although that may have been the intent; rather, ORS 197A simply uses slightly different terminology and requires LCDC to provide a definition. In the end, this discussion is about whether or not cities will have direction as to how they determine whether land in the study area can reasonably accommodate a need.

This section provides that a city must assume that vacant or partially vacant land in a particular priority category is “suitable” to satisfy a need deficiency unless it demonstrates that the land cannot satisfy the need based on one or more of the conditions described in subsections (a) through (e) of this section. This is intended as a closed list to describe conditions under which land might be unsuitable. The department notes that the ability to determine suitability is difficult to pin down to four precise categories, so commenters may suggest more than are listed here.

The City of Eugene has suggested that land in an adjacent public use airport should be on this list (i.e., may be considered unsuitable with no additional reasons provided). The department does not agree. We note that in Eugene’s case the adjacent airport includes land in an exception area that has potential development capability. This priority one exception land should not be declared unsuitable simply because it is in public ownership, when in fact it is zoned to allow further commercial and industrial development. In general, land should not be determined to be

unsuitable simply because a public entity owns it. In fact, much land owned by state or local governments is available or intended for development.

Section (6) provides a requirement from ORS 197A.320 regarding land in a study area that is parcelized due to rural residential development.

Section (7) is a standard that applies if the amount of suitable land in a particular priority category under sections (2)(a) through (d) exceeds the amount necessary to satisfy the need deficiency. This criterion is provided in the statute but the statute indicates the city must use *criteria established by the commission* and applicable criteria in the acknowledged comprehensive plan and land use regulations. The department has proposed that the Goal 14 location factors are the deciding policy for choosing land within a particular priority, as in the traditional process.

The draft rule also proposes that, while “local plan criteria” may be employed to help select land *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.

Section (8) imports a “coordination” standard from division 24 which should also apply in the simplified process, but expands it somewhat, so that ODFW and DSL are added to the list of state agencies that local governments are required to coordinate with as they make decisions about alternative areas within a priority. These two agencies requested this coordination so that cities may consider possible Goal 5 resources in evaluating alternative UGB locations, but only after consulting with the agencies.

Section (9) imports a standard from division 24 for use in the simplified 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, storm water management and transportation facilities.

This section instructs local governments that, in applying Goal 14 location Factor 2, it must evaluate alternative locations, and 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 (Page 30)

General: This rule implements ORS 197A.310(3)(e) and ORS 197A.312(3)(e), which concern the planning and zoning for lands added to 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 660-038-0190, 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 require the application of Goal 5 rule (OAR chapter 660, division 24) requirements only to those resources that may be present on lands that are to be added to the UGB. In other words, a UGB amendment does not trigger broader application of Goal 5 for lands already in 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.

The department notes that commenters have indicated concern as to whether and how Goal 5 applies in the simplified process, throughout the term of the RAC's consideration. Section (4) is a way to indicate that Goal 5 applies in the new process in exactly the same manner that it has applied (and continues to apply) in the traditional process.

Section (5) implements the basic Goal 14 requirement for the designation and management of urbanizable land, in the same way as is done in the traditional process.

Section (6) implements ORS 197A.310(8) and 197A.312(8) by requiring that cities that add land to a UGB for residential or industrial purposes must keep that designation in place for a minimum of 20 years before considering a redesignation of such lands for other purposes. The statutory language allows the commission to adopt rules allowing a change of designation for such lands "based upon a significant change in circumstance," and the department recommends that a long period of time (at least 20 years) with no development of residential or industrial uses on such property would constitute an acceptable and clearly measurable "change of circumstance."

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.

Section (9) provides a numeric definition of “roughly proportional” to help local governments interpret this new statutory requirement.

**0190: Additional Planning Requirements for Residential Lands Added to the UGB
(Page 31)**

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 general planning requirements set forth in OAR 660-038-0180 (described above). This is necessary because ORS 197A includes additional planning requirements for residential land (but not other types of land) added to a UGB using the new simplified methods.

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.

1000 Friends of Oregon recommends deletion of references to and requirements for clear and objective standards for needed housing under the theory that this requirement will deter cities from using the simplified process. The department strongly disagrees with this recommendation. Cities must have clear and objective standards by state statute (ORS 197.307). In addition, both ORS 197A.310 and ORS 197A.312 include provisions requiring cities to plan and zone lands “to meet the requirements for needed housing,” of which the clear and objective standards requirement is a key provision.

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 31 measures that promote housing choice and affordability, 13 of which are classified as “major,” and 18 of which are classified as “minor.” A city with a UGB population of 10,000 or more would be required 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 eight 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. UO was unable to determine median rates of redevelopment and infill for cities because Oregon cities generally do not collect this data. In the absence of data, the department recommends a specific numerical target for an infill and redevelopment rate that is clearly above the median for Oregon cities – the recommendation is to adopt the upper end of the redevelopment and mixed use residential development range set forth in OAR 660-038-0030(6) as the target.

0200: Serviceability (Page 32)

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.

A detailed discussion of the draft rule provisions for serviceability can be found on page 37 of the September staff report to LCDC (see Attachment N).

Previous comments related to serviceability have been primarily directed to issues regarding the required showing of “committed financing.” Specifically, questions were raised concerning the level of certainty to be established for proposed infrastructure financing mechanisms. Some commenters suggested, for example, that standards or thresholds for this showing should

incorporate a measure of a city's past performance in implementing infrastructure financing methods.

Additional discussion of the draft rule serviceability provisions, and specifically the questions around the certainty of committed financing, took place at the October 1 UGBRAC meeting. In general the discussion acknowledged the difficulty in establishing certainty for financing mechanisms that are prospective in nature and will involve discretionary decisions to be made by future governing bodies. City representatives in particular expressed the opinion that it would be problematic to attempt to establish a meaningful measure of the likelihood that proposed funding mechanisms will be approved by local legislative bodies or voters.

Based on this input and the other comments received to date, in Draft 3, the department has proposed no substantive changes to the September 10 draft (Draft 1) rule provisions for serviceability.

VIII. PROPOSED AMENDMENTS TO OAR 660, DIVISION 24

With regard to the “traditional process”, the commission's current rules interpreting Goal 14 and related statutes concerning UGBs are at OAR chapter 660, division 24 (this report abbreviates that as “division 24” as it describes these rules below). The rules in division 24 are essentially “the traditional UGB amendment 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.320. 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. These requirements are proposed to be the same for both the new simplified process and the traditional process.

In other words, ORS 197A.320 concerning “locational aspects” of UGB expansion, not only applies to the new simplified 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) the 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, the commission 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 for OAR chapter 660, division 24.

Since this statute is the only one in the string of statutes in the new laws at ORS 197A that affects the traditional UGB process, the department's proposed amendments to division 24 primarily concern the location rules in that division. There is currently only one rule in division 24 for determining something similar to 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; and, (2) the rules for all cities outside of Metro are basically the same as those that have been proposed in division 38.

Comments from the cities of Bend, Eugene, and Springfield express concern about the application the ORS 197A.320 and the new rules to their particular efforts already underway to evaluate or amend their UGB. The department is sympathetic to the cities' concerns, and is therefore recommending that cities "in progress" be authorized to continue under the existing rules for location analysis. The RAC concurs with this recommendation.

The proposed amendments to division 24, and proposed new rules, are as follows (See Attachment B). Rules that exist in this division that are not proposed for amendment are not described here.

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 simplified process under proposed division 38. The department also proposes to add a section indicating that the amendments proposed in this draft would be effective January 1, 2016, with the exception of cities who have already initiated a UGB evaluation. Such cities would have the authority to elect whether to use the new rules in OAR 660-024-0065 and OAR 660-024-0067, or to utilize the current administrative rules in division 24 that govern the locational analysis for UGB expansions. This amendment addresses "in progress" city concerns, and is a consensus recommendation of the RAC, supported by the department.

660-024-0040 Land Need: No amendments to these rules are proposed, they are included only for context, and since they are referred to in later rules that are proposed for amendment.

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 the current priorities rules. It is unchanged, except that it is amended (and 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 as proposed for division 38, some changes are necessary, particularly regarding citations, but also in order to retain existing division 24 rules that should be applicable only to the traditional process but not to division 38, described below. Otherwise, there should ultimately be no substantive differences in this rule and the one in division 38.

One particular difference should be noted: 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 department does not believe this statutory provision was included in ORS 197A.230 because it applies in the simplified UGB process only, and as such it is not included in division 38 proposed rules. None of the proposed division 38 “paths” for land need concern a particular industrial or public facilities need.

The department also believes that the study area rule should be crafted to provide standards 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, such that some “in progress” with a UGB amendment would elect to use the new location rules.

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, the department has proposed essentially the same location rule as provided in division 38.

IX. PROPOSED AMENDMENTS TO GOAL 14

Two amendments are necessary to conform Statewide Planning Goal 14 to the new amended statutes at ORS 197A (See Attachment C). Goal 14 is an administrative rule adopted under OAR 660-015-0000(14).

In general, and in most cases, adoption or amendment of a statewide planning goal requires that LCDC hold at least 10 public hearings throughout the state (see ORS 197.235). 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 and it is proposed for amendment only so far as necessary to correct that inconsistency. As such, this statute can be invoked in this case. The proposed goal amendment is only that which is “necessary to conform the goal to the legislative enactment.” The law requires that the amendment to 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 instead base the UGB on a 14-year forecast.

Second, 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. 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 department submit any proposed Goal amendments to the Citizen Involvement Advisory Committee and the Local Officials Advisory Committee. As such, the department presented the amendments to the Citizen Involvement Advisory Committee (CIAC) on October 1, 2015, and to the Local Officials Advisory Committee (LOAC) on November 4, 2015.

ORS 197.235 provides the following regarding amendments to statewide planning goals. Note section (4), applicable to the proposed Goal 14 amendments in Attachment C to this report:

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.

X. COMMENTS

The following comments were received subsequent to the commission's September 24, 2015, staff report and prior to this report. Comments received prior to the September staff report are

listed in that report (see Attachment N). Later comments are listed below. The department expects that additional comments will be arriving until the commission concludes its hearing on this matter (see Attachment H, below).

<i>Date received:</i>	<i>Submitted by:</i>
<i>October 28, 2015</i>	<i>Joy Vaughan, Oregon Department of Fish and Wildlife</i>
<i>November 2, 2015</i>	<i>Beth Goodman and Bob Parker, ECONorthwest</i>
<i>November 3, 2015</i>	<i>Stuart Cowie, Douglas County Planning Department</i>
<i>November 5, 2015</i>	<i>Mia Nelson, 1000 Friends of Oregon</i>
<i>November 5, 2015</i>	<i>Jim Johnson, Oregon Department of Agriculture</i>
<i>November 5, 2015</i>	<i>Alissa Hansen, City of Eugene</i>
<i>November 9, 2015</i>	<i>Joy Vaughan, Oregon Department of Fish and Wildlife</i>
<i>November 13, 2015</i>	<i>Jevra Brown, Department of State Lands</i>
<i>November 18, 2015</i>	<i>Jim Johnson, Oregon Department of Agriculture</i>
<i>November 19, 2015</i>	<i>Mia Nelson, 1000 Friends of Oregon, email re division 24</i>
<i>November 19, 2015</i>	<i>Mia Nelson, 1000 Friends of Oregon, email re division 38</i>

XI. SUMMARY OF RECOMMENDED ACTION

The department recommends that the commission receive public testimony and adopt the proposed rules, rule amendments, and Statewide Planning Goal 14 amendments provided as “draft 3” in Attachments A – C of this report.

XII. ATTACHMENTS

- A. [Proposed Draft Rules to Implement ORS 197A \(Simplified UGB Method- div 38\) - Public Draft 3, dated September 19, 2015](#)
- B. [Proposed Amendments to OAR 660, div 24 – Public Draft 3 dated September 19, 2015](#)
- C. [Suggested Amendments to Goal 14 to conform to ORS 197A, - Public Draft #2, dated November 13, 2015](#)
- D. [Flow Chart – Steps in Simplified UGB Process](#)
- E. [ORS 197A \(HB 2254\)](#)

- F. [University of Oregon Research Reports](#)
- G. [Public Notices](#)
- H. Comments Received after October 1, 2015, directed to the Commission
Note: Comments received [prior to](#) or at the September 2015 LCDC meeting are available [here](#)
- I. [Public Draft 2 of Division 38, dated November 14, 2015](#)
- J. [Public Draft 2 of Division 24, dated November 14, 2015](#)
- K. [Proposed Draft Rules to Implement ORS 197A \(Simplified UGB Method\) - Public Draft, dated September 10, 2015](#)
- L. [Proposed Amendments to OAR chapter 660, div 24 – Public Draft dated September 15, 2015](#)
- M. [Suggested Amendments to Goal 14 to conform to ORS 197A, dated September 18, 2015](#)
- N. [September Staff Report to LCDC](#)

**Proposed New Rules to Implement ORS 197A
Public Draft 3 November 23, 2015**

**OAR CHAPTER 660, DIVISION 38
Simplified Urban Growth Boundary Method**

1 **OAR 660-038-0000**

2 **Purpose**

3 (1) The purpose of this division is to implement ORS 197A.300 to 197A.325 by providing
4 simplified methods to evaluate and amend an urban growth boundary (UGB) for a city outside
5 Metro. (Note: ORS 197A.320 regarding the establishment of study areas and the priority of lands
6 for UGB amendment applies both to the “simplified” UGB methods under this rule and to the
7 “traditional” UGB method described in OAR chapter 660, division 24. This division interprets
8 that statute only with respect to the simplified methods. OAR 660-024-0065 and 660-024-0067
9 interpret ORS 197A.320 for purposes of the traditional method).

10 (2) The method for UGB evaluation and amendment described in OAR chapter 660, division 24
11 (the traditional UGB method) is not modified by this division. Cities may choose to apply the
12 methods described in this division instead of division 24 in order to evaluate or amend a UGB, as
13 described in OAR 660-038-0020.

14 (3) The methods described in this division are intended to achieve the following objectives
15 provided in ORS 197A.302:

16 (a) Become, as a result of reduced costs, complexity and time, the methods that are used by
17 most cities with growing populations to manage their urban growth boundaries;

18 (b) Encourage, to the extent practicable given market conditions, the development of urban
19 areas in which individuals desire to live and work and that are increasingly efficient in terms
20 of land uses and in terms of public facilities and services;

21 (c) Encourage the conservation of important farm and forest lands, particularly lands that are
22 needed to sustain agricultural and forest products industries;

23 (d) Encourage cities to increase the development capacity within their urban growth
24 boundaries;

25 (e) Encourage the provision of an adequate supply of serviceable land that is planned for
26 needed urban residential and industrial development; and

27 (f) Assist residents in understanding the major local government decisions that are likely to
28 determine the form of a city’s growth.

1 **OAR 660-038-0010**

2 **Definitions**

3 The definitions in ORS 197.015, the statewide planning goals, and the following definitions
4 apply to this division:

5 (1) “Buildable lands” means land in urban or urbanizable areas that are suitable for urban uses,
6 as provided in ORS 197A.300(1). Note: This definition applies to this division only; a different
7 definition of “buildable lands” is provided in laws and rules concerning needed housing (ORS
8 197.295; OAR 660-007-0005 and 660-008-0005 and OAR chapter 660, division 24).

9 (2) “Commercial” and “commercial use” mean office, retail, institutional and public employment
10 land uses described by the North American Industry Classification System (NAICS) Categories
11 44, 45, 51, 52, 53, 54, 55, 56, 61, 62, 71, 72, 81, 92, and 99. These are land uses that generally do
12 not require significant space for indoor or outdoor production or logistics.

13 (3) “Industrial” and “industrial use” mean employment activities including, but not limited to,
14 manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation,
15 distribution and transshipment, and research and development, that generate income from the
16 production, handling or distribution of goods or services, including goods or services in the
17 traded sector, as defined in ORS 285A.010. “Industrial use” means NAICS Categories 11, 21,
18 22, 23, 31, 32, 33, 42, 48, and 49. These are land uses that generally require significant space for
19 indoor or outdoor production or logistics.

20 (4) “Initiate” means that the local government issues a public notice specified in OAR 660-018-
21 0020, including a notice to the department, for a proposed plan amendment that concerns
22 evaluating or amending a UGB.

23 (5) “Nonresource land” has the meaning specified in OAR 660-004-0005(3).

24 (6) “Range” means a range of numbers specified in rules in this division (see ORS
25 197A.325(2)(a)). A city may choose to use the number at either end of a stated range or any
26 number between. Ranges allow a city to make choices regarding its future growth.

27 (7) “Serviceable” means, with respect to land supply in a UGB, and as described in OAR 660-
28 038-0200, that:

29 (a) Adequate sewer, water and transportation capacity for planned urban development is
30 available or can be either provided or made subject to committed financing; or

31 (b) Committed financing can be in place to provide adequate sewer, water and transportation
32 capacity for planned urban development.

33 (8) “UGB” means “urban growth boundary.”

1 (9) “Urbanizable land” means land inside a UGB that, due to the present unavailability of urban
2 facilities and services, or for other reasons, either retains the zone designations assigned prior to
3 inclusion in the UGB or is subject to interim zone designations intended to maintain the land’s
4 potential for planned urban development until appropriate public facilities and services are
5 available or planned.

6 **OAR 660-038-0020**

7 **Applicability**

8 (1) This division takes effect January 1, 2016. Rules in this division provide optional simplified
9 methods for a city outside Metro to evaluate or amend its UGB. These methods are available to
10 cities in addition to and not in lieu of the methods provided in OAR chapter 660, division 24. If a
11 city uses this division to evaluate or amend a UGB, the requirements of division 24 do not apply
12 to the UGB evaluation or amendment.

13 (2) A city that evaluates or amends its UGB using this division must demonstrate that:

14 (a) It has sufficient buildable lands and other development capacity, including land and
15 capacity for needed housing and employment opportunities, within its UGB to meet the
16 growth in population and employment that is forecast to occur over a 14-year period,

17 (b) It based its determination of the amount of buildable lands needed for housing,
18 employment and other urban uses on the population and employment growth forecast to
19 occur over a 14-year period, consistent with rules in this division, and

20 (c) Lands included within the UGB include sufficient serviceable land for at least a seven-
21 year period and can all be serviceable over a 14-year period as provided in OAR 660-038-
22 0200.

23 (3) A city using this division is not required to adopt findings to support the use of a number or a
24 number within a range that is expressed by a rule in this division.

25 (4) A city that uses this division to add land to the UGB may not use a method in this division
26 again to add land to the UGB until:

27 (a) The population of the city has grown by at least 50 percent of the amount of growth
28 forecast to occur in conjunction with the previous use of the method by the city; or

29 (b) At least one-half of the lands identified as buildable lands for employment needs or for
30 residential needs during the previous use of the method by the city have been developed.

31 (5) A city that adopts a UGB amendment using this division must evaluate whether the city
32 needs to include additional land for residential or employment uses within the UGB before the

1 population of the city has grown by 100 percent of the population growth forecast to occur in
2 conjunction with the city's previous use of this division.

3 (6) A city that adopts a UGB amendment using this division may subsequently add land to the
4 UGB using division 24 instead of the method described in this division (*see options, below*)

5 **OPTION 1:** (*limited authority to use traditional method after use of simplified method*)

6 ... *provided the purpose for expansion of the UGB is:*

7 (a) *To accommodate a particular industry use that requires specific site characteristics, or to*
8 *accommodate a public facility that requires specific site characteristics and the site*
9 *characteristics may be found in only a small number of locations as provided in OAR 660-*
10 *024-0065(3);*

11 (b) *To designate Regional Large Lot Industrial Land pursuant to OAR 660-024-0045;*

12 (c) *To add an amount of land less than necessary to satisfy the land need deficiency under*
13 *OAR 660-024-0065(9); or*

14 (d) *After one or more of the circumstances in section (4) have occurred.*

15 **OPTION 2:** (*broad authority to use traditional method after use of simplified method*)

16 ... *provided, however, that a city's determination of land need resulting from the previous use of*
17 *this method shall not by itself be considered sufficient to support a housing and employment need*
18 *determination under OAR chapter 660, division 24.*

19 (7) A city may not use this division in order to evaluate or amend a UGB for purposes of OAR
20 660-024-0045 concerning Regional Large Lot Industrial Land.

21 (8) A city that elects to use this division shall notify the department in the manner required by
22 ORS 197.610, ORS 197.615 and OAR chapter 660, division 18 regarding notice of a post-
23 acknowledgment plan amendment. The city may revoke its election under this section at any
24 time until the city makes a final decision to amend the UGB.

25 (9) A city that initiated an amendment of its UGB under OAR chapter 660, division 24, but has
26 not submitted that amendment to the department, may withdraw the proposed amendment and
27 use a method described in this division by filing notice of the election with the department in the
28 manner required by ORS 197.610, 197.615, and OAR chapter 660, division 18 for notice of a
29 post-acknowledgment plan amendment.

30 (10) Notwithstanding ORS 197.626, when a city evaluates or amends the UGB pursuant to this
31 division, the Land Use Board of Appeals rather than the commission has jurisdiction for review

1 of the final decision of the city.

2 (11) Where this division provides a number or a range of numbers that a city may use, the city is
3 not required to adopt findings to support the use of the number or a number within the range of
4 numbers.

5 (12) Use of this division to amend a UGB is deemed to satisfy the requirements of ORS 197.296
6 applicable to a UGB amendment for cities subject to that statute.

7 (13) All statewide planning goals and related administrative rules are applicable when
8 establishing or amending a UGB, except as follows:

9 (a) The exceptions process in Goal 2 and OAR chapter 660, division 4, is not applicable to a
10 UGB amendment unless a local government chooses to take an exception to a particular goal
11 requirement, for example, as provided in OAR 660-004-0010(1), provided however that a
12 local government may not take an exception to the UGB requirements of Goal 14.

13 (b) Goals 3 and 4 are not applicable;

14 (c) Goal 5 and related rules under OAR chapter 660, division 23, apply only to lands added
15 to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;

16 (d) The transportation planning rule requirements under OAR 660-012-0060 need not be
17 applied at the time of a UGB amendment if the land added to the UGB is zoned as
18 urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the
19 UGB or by assigning interim zoning that does not allow development that would generate
20 more vehicle trips than development allowed by the zoning assigned prior to inclusion in the
21 UGB;

22 (e) Goal 15 is not applicable to land added to the UGB unless the land is within the
23 Willamette River Greenway Boundary;

24 (f) Goals 16 to 18 are not applicable to land added to the UGB unless the land is subject to
25 acknowledged comprehensive plan provisions that implement these goals;

26 (g) Goal 19 is not applicable to a UGB amendment.

27 (14) A city considering a UGB evaluation or amendment must apply its acknowledged citizen
28 involvement program to ensure adequate notice and participation opportunities for the public and
29 must assist the public in understanding the major local government decisions that are likely to
30 determine the form of the city's growth.

31 (15) A city that is scheduled to commence periodic review as required by OAR 660-025-0030 is
32 not required to commence periodic review if the city has amended the UGB pursuant to this

1 division, or if the city has evaluated the UGB need and land supply using this division and
2 determined that the UGB contains sufficient buildable land for a 14-year period, including a
3 supply that is serviceable for a seven-year period and a supply that can be serviceable for a 14-
4 year period.

5 (16) Beginning on or before January 1, 2023, the commission shall:

6 (a) Evaluate, every five years, the impact of this division on the population per square mile,
7 livability in the area, the provision and cost of urban facilities and services, the rate of
8 conversion of agriculture and forest lands and other considerations;

9 (b) Consider changes to the statewide land use planning goals or rules to address adverse
10 outcomes; and

11 (c) Make recommendations to the Legislative Assembly, as necessary, for statutory changes.

12 **OAR 660-038-0030**

13 **Residential Land Need**

14 OAR 660-038-0030 through 660-038-0080 provides steps that a city must take to determine
15 residential land need over the 14-year planning period.

16 (1) A city that applies the UGB method in this division:

17 (a) Must forecast the amount of buildable lands that it will need for housing based on the
18 population forecast for the 14-year period commencing on the date it initiates and consistent
19 with OAR 660-038-0040 through OAR 660-038-0090, and

20 (b) Must provide within its UGB sufficient buildable lands and other development capacity,
21 for needed housing to accommodate the growth in population forecast to occur over a 14-
22 year period.

23 (2) The city must use the most recent final forecast issued by the Portland State University
24 Population Research Center under ORS 195.033 in effect at the time the city initiates a UGB
25 review to forecast the UGB population growth for a 14-year period.

26 (3) The city must subtract from the forecast population growth the number of persons projected
27 to live in group quarters in the UGB during the planning period. The city shall determine this
28 number by calculating the percentage of the city's population living in group quarters at the last
29 decennial United States Census and subtracting the same percentage from projected population
30 growth. For the purpose of this rule, "group quarters," as defined by the United States Census,
31 are places where people live or stay, in a group living arrangement, which is owned or managed
32 by an entity or organization providing housing or services for the residents.

- 1 (4) To determine the gross number of dwelling units needed for the 14-year period, the city must
2 divide the projected growth reduced as determined in section (3) by the persons per household
3 within the city determined at the most recent decennial United States Census.
- 4 (5) The city must adjust the gross number of needed dwelling units to account for the vacancy
5 rate projected to occur during the planning period, as follows: Multiply the result calculated in
6 section (4) by the vacancy rate and add the resulting product to the gross number of dwelling
7 units needed. The vacancy rate used shall be five percent plus the portion of the vacancy rate that
8 is comprised of seasonal, recreational, or occasional vacancies within the city, determined at the
9 last decennial United States Census. However, the total vacancy rate used may not exceed 15
10 percent.
- 11 (6) The city must account for projected redevelopment expected to occur in residentially zoned
12 areas, and for mixed use residential development expected to occur in commercially zoned areas,
13 as follows: multiply the result calculated in section (5) by the applicable percentage in
14 subsections (a) through (c) of this section.
- 15 (a) For cities with a current UGB population less than 10,000, the percentage shall be within
16 a range from 1 percent to 10 percent of the result calculated in section (5).
- 17 (b) For cities with a current UGB population equal to or greater than 10,000 and less than
18 25,000, the percentage shall be within a range from 5 percent to 15 percent of the result
19 calculated in section (5).
- 20 (c) For cities with a current UGB population equal to or greater than 25,000, the percentage
21 shall be within a range from 5 percent to 25 percent of the result calculated in section (5).
- 22 (7) The city must account for accessory dwelling units expected to occur during the planning
23 period by multiplying the result calculated in section (5) by the applicable percentage in
24 subsection (a) or (b) of this section:
- 25 (a) For cities with UGB population less than 10,000, the percentage shall be within a range
26 from zero percent to two percent of the result calculated in section (6).
- 27 (b) For cities with UGB population equal to or greater than 10,000, the percentage shall be
28 within a range from one percent to three percent of the result calculated in section (6).
- 29 (8) The city must subtract the numbers determined in sections (6) and (7) from the result
30 calculated in section (5). The resulting number is the identified need for new dwelling units for
31 14 years.
- 32 (9) The city shall accommodate the dwelling unit need identified in section (8):

- 1 (a) On vacant and partially vacant residentially zoned lands within the UGB, and
2 (b) If the amount of land described in subsection (a) is insufficient to accommodate all of the
3 identified need, the remaining need must be accommodated on lands to be added to the UGB
4 for residential development consistent with OAR 660-038-0180.

5 **OAR 660-038-0040**

6 **Determine the Mix of Dwelling Units Needed**

- 7 (1) A city must determine the current mix of housing types within the city based on the
8 percentages of low density, medium density, and high density residential dwellings using:
- 9 (a) For cities with UGB population less than 2,500, the percentages determined in the most
10 recent five-year American Community Survey conducted by the United States Census;
- 11 (b) For cities with UGB population greater than or equal to 2,500, using either the
12 percentages determined in:
- 13 (A) The most recent American Community Survey conducted by the United States
14 Census, or
- 15 (B) An average of the two most recent American Community Surveys conducted by the
16 United States Census.
- 17 (2) For the purposes of this rule and for OAR 660-038-0050:
- 18 (a) For cities with a UGB population less than 2,500, single-family detached dwellings and
19 mobile homes shall be considered low density residential, and all other dwellings shall be
20 considered medium density residential.
- 21 (b) For cities with a UGB population greater than or equal to 2,500, single-family detached
22 dwellings and mobile homes shall be considered low density residential, single-family
23 attached dwellings and multiplexes with two to four units shall be considered medium
24 density residential, and multi-family dwellings with five or more units shall be considered
25 high density residential.
- 26 (3) A city must project the mix of housing types needed for new development over the 14-year
27 period using the ranges of numbers in Table 1. The percentage of low density residential
28 development is calculated by subtracting the percentage of medium density and high density
29 residential development selected by the city.
- 30 (4) To determine the number of low density, medium density and high density dwelling units
31 needed over the 14-year period, the city must multiply the percentages of needed housing for

1 different housing categories determined in section (3) by the total housing need determined in
2 OAR 660-038-0030.

3 **OAR 660-038-0050**

4 **Determine Amount of Land Needed for Each Housing Type**

5 A city must:

6 (1) Determine the land needed for each category of residential development over the 14-year
7 period by dividing the number of needed units determined in OAR 660-038-0040 by the
8 projected number of net dwelling units per acre using the ranges in Table 2.

9 (2) Calculate the overall net density (total dwelling units divided by total land need) for all
10 residential land need in terms of dwellings per acre and compare the result with the current
11 density of the developed lands shown in the buildable lands inventory within the city's UGB
12 completed under OAR 660-038-0060(5).

13

14 (3) If necessary, adjust the density assumptions used in the residential land need analysis so that
15 the overall net density for all residential land need is at least equal to the density determined in
16 OAR 660-038-0050(2).

17

18 (4) Add an amount equal to 25 percent of the total residential land needed to account for public
19 land need for infrastructure and facilities such as schools and parks and to account for private
20 institutional land need.

21

22 **OAR 660-038-0060**

23 **Buildable Lands Inventory (BLI) for Residential Land within the UGB**

24 A city must determine the supply and development capacity of lands within its UGB by
25 conducting a buildable lands inventory (BLI) as provided in this rule.

26 (1) For purposes of the BLI, the city shall classify the existing residential comprehensive plan
27 and zoning designations within its UGB based on allowed density. The classification shall be
28 based on either:

29 (a) The allowed density and housing types on the comprehensive plan map; or

30 (b) If the comprehensive plan map does not differentiate residential districts by density or
31 type of housing, the applicable city or county zoning map, as follows:

32 (A) For cities with a UGB population less than 2,500, districts shall be classified as
33 follows:

1 (i) Districts with a maximum density less than or equal to eight dwelling units per
2 acre: low density residential. A city may classify a district as low density residential
3 despite a maximum density of greater than eight dwelling units per acre if the
4 majority of existing residences within the district are single-family detached and if
5 the city has a high density residential district as determined by subparagraph (ii);

6 (ii) Districts with a maximum density greater than eight dwelling units per acre:
7 medium density residential.

8 (B) For cities with UGB populations greater than or equal to 2,500, districts shall be
9 classified as follows:

10 (i) Districts with a maximum density less than or equal to eight dwelling units per
11 acre: low density residential. A city may classify a district as low density residential
12 despite a maximum density of greater than eight dwelling units per acre if the
13 majority of existing residences within the district are single-family detached and the
14 city has a medium density residential district as determined by subparagraph (ii);

15 (ii) Districts with a maximum density greater than eight dwelling units per acre and
16 less than or equal to 16 dwelling units per acre: medium density residential, unless the
17 district has been classified as low density residential pursuant to subparagraph (i). A
18 city may classify a district as medium density residential despite a maximum density
19 of greater than 16 dwelling units per acre if the majority of development within the
20 district is developed at densities of between eight and 16 dwelling units per net acre
21 and the city has a high density residential district as determined by subparagraph (iii);

22 (iii) Districts with a maximum density greater than 16 dwelling units per acre: high
23 density residential, unless the district has been classified as medium density
24 residential pursuant to subparagraph (ii);

25 (iv) A city may not classify as low density a district that allows higher residential
26 densities than a district the city has classified as medium density. A city may not
27 classify as medium density a district that allows higher residential densities than a
28 district the city has classified as high density.

29 (2) The city must identify all vacant lots and parcels with a residential comprehensive plan
30 designation. A city shall assume that a lot or parcel is vacant if it is at least 3,000 square feet with
31 a real market improvement value of less than \$10,000.

32 (3) The city must identify all partially vacant lots and parcels with a residential comprehensive
33 plan designation, as follows:

- 1 (a) For lots and parcels at least one-half acre in size that contain a single-family residence,
2 the city must subtract one-quarter acre for the residence, and count the remainder of the lot or
3 parcel as vacant land, and
- 4 (b) For lots and parcels at least one-half acre in size that contain more than one single-family
5 residence, multiple-family residences, non-residential uses, or ancillary uses such as parking
6 areas and recreational facilities, the city must identify vacant areas using an orthophoto or
7 other map of comparable geometric accuracy. For the purposes of this identification, all
8 publicly owned park land shall be considered developed. If the vacant area is at least one-
9 quarter acre, the city shall consider that portion of the lot or parcel to be vacant land.
- 10 (4) The city must determine the amount and mapped location of low density, medium density,
11 and high density vacant and partially vacant land in residential plan or zone districts within the
12 city's UGB.
- 13 (5) The city must:
- 14 (a) Identify all lots and parcels within a residential district that are developed;
- 15 (b) Identify all portions of partially vacant parcels within a residential district that are
16 developed with residential uses;
- 17 (c) Calculate the total area of land identified in (a) and (b);
- 18 (d) Calculate the total number of existing dwelling units located on the land identified in (a)
19 and (b); and
- 20 (e) Calculate the net density of residential development on the land identified in (a) and (b).

21 **OAR 660-038-0070**

22 **Adjust Residential Lands Inventory to Account for Constrained Lands**

23 A city must adjust the inventory of residential lands prepared under OAR 660-038-0060 to
24 account for constrained lands using this rule.

25 (1) The city must identify the following physical constraints on land inventoried as vacant or
26 partially vacant under OAR 660-038-0060:

- 27 (a) Floodways and water bodies. For the purpose of this subsection, "water bodies" includes;
- 28 (A) Rivers; and
- 29 (B) Lakes, ponds, sloughs, and coastal waters at least one-half acre in size.
- 30 (b) Other lands within the Special Flood Hazard Area as identified on the applicable Flood
31 Insurance Rate Map.

- 1 (c) Lands within the tsunami inundation zone established pursuant to ORS 455.446,
2 (d) Contiguous lands of at least one acre with slopes greater than 25 percent. Slope shall be
3 measured as the increase in elevation divided by the horizontal distance at maximum 10-foot
4 contour intervals,
5 (e) Lands subject to development restrictions as a result of acknowledged zoning adopted to
6 implement Statewide Planning Goals 5 or 6, and
7 (f) Lands subject to development prohibitions, natural resource protections, or both in
8 acknowledged comprehensive plan provisions that implement Statewide Planning Goals 16,
9 17, or 18.
- 10 (2) For lands identified in section (1), the city may reduce the estimated residential development
11 capacity by the following factors in terms of acreage:
- 12 (a) For lands within floodways and water bodies, a 100 percent reduction.
13 (b) For other lands within Special Flood Hazard Area as identified on the applicable Flood
14 Insurance Rate Map, a 100 percent reduction.
15 (c) For lands within the tsunami inundation zone, no reduction unless the city's existing
16 zoning classification of such areas prohibits or reduces residential development, in which
17 case, the reduction shall be based upon the maximum density allowed by the city's existing
18 zoning classification.
19 (d) For lands with slopes that are greater than 25 percent, a 100 percent reduction. If a parcel
20 of land has lands with slopes greater than and less than 25 percent, the reduction applies only
21 to the lands with slopes greater than 25 percent.
22 (e) For lands subject to development restrictions in an acknowledged comprehensive plan or
23 zoning program developed pursuant to Statewide Planning Goal 5 or 6, a reduction to the
24 levels authorized by the acknowledged comprehensive plan provisions and implementing
25 land use regulations.
26 (f) For lands subject to development prohibitions, natural resource protections, or both in
27 acknowledged comprehensive plan provisions that implement Statewide Planning Goals 16,
28 17, or 18, a reduction to the levels authorized by the applicable comprehensive plan
29 provisions and implementing land use regulations.
- 30 (3) The residential BLI amount for each type of needed housing for a city is the amount of
31 buildable land for that needed housing type determined in OAR 660-038-0060 reduced by the
32 constraints as determined in this rule.

1 **OAR 660-038-0080**

2 **Compare Residential Land Need to Land Supply**

3 (1) To determine whether to expand the UGB, a city must compare the amount of land needed
4 for each category of residential development, as determined in OAR 660-038-0050, with the
5 amount of buildable land available for each category of residential development, as determined
6 in OAR 660-038-0070(3).

7 (2) Cities with a UGB population of less than 2,500 shall determine whether to expand the UGB
8 based on Table 3.

9 (3) Cities with a UGB population greater than or equal to 2,500 and less than 10,000 shall
10 determine whether to expand the UGB based on Table 4.

11 (4) Cities with a UGB population greater than or equal to 10,000 shall determine whether to
12 expand the UGB based on Table 5.

13 (5) A city may also redesignate surplus employment land as determined in OAR 660-038-0150
14 to satisfy all or part of a residential land deficit, except for employment lands that are prohibited
15 from redesignation as provided by OAR 660-038-0150(4).

16 (6) If a city determines that the UGB must be expanded to meet residential land needs, the city
17 must apply:

18 (a) OAR 660-038-0160 and 660-038-0170 to evaluate which lands to include in the UGB in
19 order to meet the need deficit, and

20 (b) OAR 660-038-0190 to plan and zone lands that are added and, if necessary, to adjust
21 planning and zoning of residential lands currently in the UGB.

22 **OAR 660-038-0090**

23 **Employment Land Need**

24 OAR 660-038-0090 to 660-038-0150 provides steps that a city must follow to determine
25 employment land need over the 14-year planning period.

26 (1) A city that applies the UGB method in this division:

27 (a) Must forecast the amount of buildable lands that will be needed for projected employment
28 in the UGB over a 14-year period using rules in OAR 660-038-0100 through 660-038-0150,
29 and

1 (b) Must provide within its UGB sufficient buildable lands and other development capacity
2 to accommodate the growth in employment that is forecast to occur over a 14-year period
3 and plan those lands as required by OAR 660-038-0180.

4 (2) The city must forecast employment growth within the UGB for a 14-year period from the
5 year in which the UGB analysis was initiated. As provided in ORS 197A.310(4) and
6 197A.312(4), employment growth may be forecast based on either:

7 (a) The population growth forecast for the city in the most recent final forecast issued by the
8 Portland State University Population Research Center under ORS 195.033 applying the
9 requirements of OAR 660-038-0100, or

10 (b) The most recent long term employment growth forecast issued by the Oregon
11 Employment Department (OED) for the applicable region, applying the requirements of
12 OAR 660-038-0110.

13 **OAR 660-038-0100**

14 **Forecast Employment Growth Based on Population Growth**

15 To forecast 14-year employment growth based on the PSU long term forecast of population
16 growth, a city must:

17 (1) Determine the forecast population of the city's UGB for the 14-year period from the year in
18 which the UGB analysis was initiated based on the most recent forecast issued by the Portland
19 State University Population Research Center.

20 (2) Determine the current population of the UGB using the most recent population estimate
21 issued by the Portland State University Population Research Center.

22 (3) Determine the rate of population growth for the city over the 14-year period based on
23 sections (1) and (2).

24 (4) Using Table 6, determine the current number of "commercial" and "industrial" jobs in the
25 UGB, based on the definitions in OAR 660-038-0010.

26 (5) To forecast the number of new commercial and new industrial jobs anticipated to occur in the
27 UGB for the 14-year planning period, the city must:

28 (a) Multiply the number of commercial jobs currently in the UGB determined in section (4)
29 by the rate of population growth rate determined in section (3), and

30 (b) Multiply the number of industrial jobs currently in the UGB determined in section (4) by
31 the rate of population growth determined in section (3).

1 (6) To account for jobs that are likely to occur on land that is zoned for uses other than
2 commercial or industrial (and which therefore will not require buildable “employment land”), the
3 city must reduce the forecast of new jobs determined in section (5) by 20 percent.

4 (7) The result is the number of new commercial and industrial jobs forecast for the planning
5 period to be accommodated on employment lands in the UGB. The city must use this result or
6 the result in OAR 660-038-0110 as a basis for determining land needs under OAR 660-038-
7 0140.

8 **OAR 660-038-0110**

9 **Forecast Employment Growth Based on Oregon Employment Department Forecast**

10 As an alternative to the method provided in OAR 660-038-0100, to forecast 14-year employment
11 growth based on the most recent long-term job forecast issued by the Oregon Employment
12 Department (OED), a city must:

13 (1) Determine the number of “commercial” and “industrial” jobs currently in the UGB as
14 provided in Table 6.

15 (2) Using Table 7, determine the long-term growth rates forecast by OED for commercial jobs
16 and for industrial jobs in the OED region that includes the city. For purposes of this rule, “OED
17 region” means Workforce Innovation and Opportunity Act (WIOA) Areas for which OED
18 forecasts long-term job growth.

19 (3) To forecast the number of new commercial and new industrial jobs anticipated to occur in the
20 UGB for the 14-year planning period, the city must:

21 (a) Multiply the number of commercial jobs currently in the UGB determined in section (1)
22 by the forecast rate of growth determined in section (2), and

23 (b) Multiply the number of industrial jobs currently in the UGB determined in section (1) by
24 the forecast rate of growth determined in section (2).

25 (4) To account for jobs that are likely to occur on land that is zoned for uses other than
26 commercial or industrial (and which therefore will not require buildable “employment land”), the
27 city must reduce the forecast of new commercial and industrial jobs determined in subsection
28 (3)(a) by 20 percent.

29 (5) The result is the number of new commercial and industrial jobs forecast for the 14-year
30 planning period. The city must use this result or the result in OAR 660-038-0100 as a basis for
31 determining land needs under OAR 660-038-0140.

1 **OAR 660-038-0120**

2 **Inventory of Buildable Employment Land within the UGB**

3 A city must determine the supply and development capacity of employment lands within its
4 UGB at the time of initiation by conducting a buildable lands inventory (BLI) for employment
5 land as provided in this rule and OAR 660-038-00130.

6 (1) For purposes of the employment BLI, the city shall classify the existing employment zone
7 districts and plan districts within its UGB as either “commercial” or “industrial” based on the
8 applicable definitions in OAR 660-038-0010. Districts that allow both commercial and industrial
9 uses as per the definition must be classified as one or the other, based on the intent of the plan
10 and with consideration of whether the predominant NAICS categories allowed by the district are
11 characteristic of a commercial or industrial use.

12 (2) The city must identify all lots and parcels in the UGB with either a commercial or industrial
13 comprehensive plan designation or zoning district, determine which lots or parcels are vacant,
14 partially vacant, or developed and calculate the total area of such land, as follows:

15 ***OPTION 1 (recommended):***

16 *(a) A city may assume that a lot or parcel is vacant if the real market improvement value is*
17 *less than \$5,000 or if the real market improvement value is less than or equal to 5 percent of*
18 *the real market land value.*

19 *(b) A city may assume that a lot or parcel is partially vacant if the real market improvement*
20 *value is greater than five percent and less than 40 percent of the real market land value.*

21 *(c) A city may assume that a lot or parcel is developed if the real market improvement value*
22 *is greater than or equal to 40 percent of the real market land value.*

23 ***OPTION 2:***

24 *(a) A city may assume that a lot or parcel is vacant if it is:*

25 *(A) Equal to or larger than one-half acre, if the lot or parcel does not contain a*
26 *permanent building; or*

27 *(B) Equal to or larger than five acres, if less than one-half acre of the lot or parcel is*
28 *occupied by a permanent building.*

29 *(b) A city may assume that a lot or parcel is partially vacant if it is greater than one acre in*
30 *size with at least one-half acre that is not improved.*

31

1 (3) The city must use the result of section (2) to determine the current density of employment
2 land within the UGB under OAR 660-038-0140

3 **OAR 660-038-0130**

4 **Adjust Employment Inventory to Account for Constrained Lands**

5 A city must adjust the employment lands inventory determined under OAR 660-038-0120 to
6 account for constrained lands using this rule.

7 (1) The city must identify the following physical constraints on employment land inventoried
8 under OAR 660-038-0120:

9 (a) Floodways and water bodies. For the purpose of this subsection, “water bodies” includes;

10 (A) Rivers; and

11 (B) Lakes, ponds, sloughs, and coastal waters at least one-half acre in size.

12 (b) Other lands within the Special Flood Hazard Area as identified on the applicable Flood
13 Insurance Rate Map.

14 (c) Lands within the tsunami inundation zone established pursuant to ORS 455.446,

15 (d) Contiguous lands planned and zoned for commercial use of at least one acre with slopes
16 that are 25 percent or more. For purposes of this rule, slope shall be measured as the increase
17 in elevation divided by the horizontal distance at maximum 10-foot contour intervals,

18 (e) Contiguous lands planned and zoned for industrial use of at least one acre with slopes that
19 are 10 percent or more. For purposes of this rule, slope shall be measured as the increase in
20 elevation divided by the horizontal distance at maximum 10-foot contour intervals,

21 (f) Lands subject to development restrictions as a result of acknowledged zoning adopted to
22 implement Statewide Planning Goals 5 or 6, and

23 (g) Lands subject to development prohibitions, natural resource protections, or both in
24 acknowledged comprehensive plan provisions that implement Statewide Planning Goals 16,
25 17, or 18.

26 (2) For lands identified in section (1), the city may reduce the estimated development capacity by
27 the following factors in terms of acreage:

28 (a) For lands within floodways and water bodies, a 100 percent reduction.

29 (b) For other lands within Special Flood Hazard Area (SFHA) as identified on the applicable
30 Flood Insurance Rate Map (FIRM), a 100 percent reduction.

1 (c) For lands within the tsunami inundation zone, no reduction unless the city's existing
2 zoning classification of such areas prohibits or reduces allowed development, in which case,
3 the reduction shall be based upon the maximum density allowed by the city's existing zoning
4 classification.

5 (d) For lands designated for commercial use, contiguous lands of at least one acre with slope
6 greater than 25 percent, a 100 percent reduction. If a lot or parcel has areas with slopes
7 greater than 25 percent, the reduction applies only to those areas with slopes greater than 25
8 percent.

9 (e) For lands designated for industrial use, contiguous lands of at least one acre with slope
10 greater than 10 percent, a 100 percent reduction. If a lot or parcel with slopes greater than 10
11 percent has at least five contiguous acres with slopes less than 10 percent, the reduction does
12 not apply to those areas.

13 (f) For lands subject to restrictions in density or location of development in an acknowledged
14 comprehensive plan or zoning program developed pursuant to Statewide Planning Goal 5 or
15 6, a reduction to the levels required by the acknowledged zoning.

16 (g) For lands subject to development prohibitions, natural resource protections, or both in
17 acknowledged comprehensive plan provisions that implement Statewide Planning Goals 16,
18 17, or 18, a reduction to the levels required by the applicable comprehensive plan provisions
19 and implementing land use regulations.

20 (3) The amount of buildable land in the UGB designated for commercial and industrial uses is
21 that amount determined in OAR 660-038-0120 reduced by the constraints determined under
22 section (2) of this rule.

23 **OAR 660-038-0140**

24 **Translate Job Forecast to Employment Land Need**

25 *OPTION to consider redevelopment (if the commission does not adopt this option, subsequent*
26 *rules in this division, and references to those rules, would be renumbered accordingly)*

27 *(1) Account for redevelopment of commercial land anticipated during the planning period, as*
28 *follows:*

29 *(a) Multiply the number of new commercial jobs forecast for the planning period to be*
30 *accommodated on employment lands in the UGB in either OAR 660-038-0100(7) or OAR*
31 *660-038-0110(5) by the applicable percentages in paragraphs (A) through (C) of this*
32 *subsection:*

1 (A) For cities with a UGB population less than 10,000, the redevelopment factor shall be
2 two percent.

3 (B) For cities with a UGB population greater than 10,000 but less than 25,000, the
4 redevelopment factor shall be five percent.

5 (C) For cities with a UGB population equal to or greater than 25,000, the redevelopment
6 factor shall be between five and 10 percent.

7 (b) Subtract the resulting number in subsection (a) from the number of new commercial jobs
8 forecast to be accommodated on commercial lands in the UGB determined in either OAR
9 660-038-0100(7) or OAR 660-038-0110(5). The result is the number of new commercial jobs
10 adjusted to account for redevelopment of commercial land.

11 (2) Account for redevelopment of industrial land anticipated during the planning period, as
12 follows:

13 (a) Multiply the number of new industrial jobs forecast for the planning period to be
14 accommodated on employment lands in the UGB in either OAR 660-038-0100(7) or OAR
15 660-038-0110(5) by the applicable percentages in paragraphs (A) or (B) of this subsection:

16 (A) For cities with a UGB population less than 10,000, the redevelopment factor shall be
17 one-half of a percent.

18 (B) For cities with a UGB population equal to or greater than 10,000, the redevelopment
19 factor shall be one percent.

20 (b) Subtract the resulting number in subsection (a) from the number of new industrial jobs
21 forecast to be accommodated on employment lands in the UGB determined in either OAR
22 660-038-0100(7) or OAR 660-038-0110(5). The result is the number of new industrial jobs
23 adjusted to account for redevelopment of industrial land.

24 (3) Determine the current density (jobs per acre) for developed commercial land, as follows:

25 (a) Identify all developed lots and parcels and partially vacant lots and parcels within the
26 UGB that are zoned for and developed with commercial uses and calculate the total area of
27 such land (from OAR 660-038-0120).

28 (b) Determine current number of commercial jobs in the UGB from Table 6.

29 (c) Subtract 20 percent from (b) to account for current commercial jobs that occur on land not
30 zoned commercial or industrial.

- 1 (d) Divide the number of jobs determined in subsection (c) by the amount of developed
2 commercial land determined in subsection (a). The result is the current density of commercial
3 uses (jobs per acre) on commercial land in the UGB.
- 4 (4) Determine the current density (jobs per acre) for developed industrial land, as follows:
- 5 (a) Identify all developed lots and parcels and partially vacant lots and parcels within the
6 UGB that are zoned for and developed with industrial uses and calculate the total area of
7 such land (from OAR 660-038-0120).
- 8 (b) Determine current number of industrial jobs in the UGB from Table 6.
- 9 (c) Subtract 20 percent from (b) to account for current industrial jobs that occur on land not
10 zoned commercial or industrial.
- 11 (d) Divide the number of jobs determined in subsection (c) by the amount of developed
12 industrial land determined in subsection (a). The result is the current density of industrial
13 uses (jobs per acre) on industrial land in the UGB.
- 14 (5) To account for the anticipated long term increase in efficiency of employment land, the city
15 must
- 16 (a) Multiply the result of section (3) for commercial uses, and section (4) for industrial uses,
17 by the applicable factors in paragraphs (A) or (B) of this subsection:
- 18 (A) For cities with a UGB population less than 10,000, the factor shall be a range from
19 one to three percent for commercial, and one-half of a percent for industrial.
- 20 (B) For cities with a UGB population equal to or greater than 10,000 the factor shall be a
21 range of three to five percent for commercial and one percent for industrial.
- 22 (b) Add the result from subsection (a) to the result in sections (3) for commercial uses, and
23 section (4) for industrial uses. The result is the anticipated density of commercial and
24 industrial land (jobs per acre) in the UGB.
- 25 (6) Divide the number of commercial and industrial jobs forecast in sections (1) and (2) by the
26 applicable results in section (5) to determine the net new land need for commercial and industrial
27 uses over the planning period.
- 28 (7) The city must increase the results of section (6) by 15 percent to convert net land need to
29 gross land need in consideration of land need for streets, roads and other public facilities due to
30 employment land growth over the planning period.

31

1 **OAR 660-038-0150**

2 **Determine if UGB Expansion is Necessary to Accommodate Employment Needs**

3 (1) To determine whether to expand the UGB, a city using the method in this division must
4 compare the amount of new land needed for commercial and industrial development determined
5 under OAR 660-038-0140 with the amount of vacant or partially vacant buildable employment
6 land designated for commercial and industrial development as determined in the employment
7 BLI as per OAR 660-038-0130.

8 (2) If the amount of buildable employment land is greater than the amount of land needed for
9 both commercial and industrial development, then no UGB expansion for employment land need
10 is allowed.

11 (3) If the amount of buildable employment land is less than the amount of land needed for either
12 commercial or industrial development, then the UGB may be expanded to provide the amount of
13 land needed, provided that:

14 (a) If the amount of buildable land is less than the amount of land needed for industrial
15 development, but is greater than the amount of land needed for commercial development,
16 then the city must consider re-designating surplus commercial land within the existing UGB
17 for industrial development provided the city determines that the land is suitable to meet that
18 industrial need, as provided in (cite goal 9 rule), and except as provided in section (4) of this
19 rule.

20 (b) If the amount of buildable land available is less than the amount of land needed for
21 commercial development, but is greater than the amount of land needed for industrial
22 development, then the city must consider re-designating surplus industrial land within the
23 existing UGB for commercial development provided the land is suitable to meet that need, as
24 provided in (cite goal 9 rule), and except as provided in section (4) of this rule.

25 (c) A city must also consider redesignating surplus residential land as determined in OAR
26 660-038-0080 to satisfy all or part of an employment land deficit.

27 (4) The following existing commercial or industrial lands may not be re-designated for another
28 use under this division, including in response to section (3):

29 (a) Land within industrial sanctuaries identified on the acknowledged comprehensive plan,
30 including lands added to UGB as Regional Large Lot Industrial Land under to OAR 660-
31 024-0045.

32 (b) Land owned by a port district or other public entity for the purpose of economic
33 development.

- 1 (c) Land within
- 2 (A) An urban renewal district;
- 3 (B) An enterprise zone, rural enterprise zone, or urban enterprise zone, as defined in ORS
4 285C.050; or
- 5 (C) A strategic investment zone, as defined in ORS 285C.623.
- 6 (d) Sites served by state or regional infrastructure investments, such as the Strategic Reserve
7 Fund (ORS chapter 285B), Connect Oregon, Immediate Opportunity Fund, or grant or loan
8 programs administered by the Infrastructure Finance Authority.
- 9 (e) Sites that include working port access or Class A rail access (e.g., access to existing
10 sidings or loops).
- 11 (f) Sites that have been certified as a shovel ready site by the Oregon Business Development
12 Department, or has received designation as a Regionally Significant Industrial Area by the
13 Economic Recovery Review Council.
- 14 (g) Land that was previously designated as industrial under rules under this division and may
15 not be redesignated as provided in OAR 660-038-0180(6).
- 16 (h) Land that is designated for a particular land need under OAR 660-024-0065(10).

17 **OAR 660-038-0160**

18 **Establishment of Study Area to Evaluate Land for Inclusion in the UGB**

19 Cities outside of Metro shall comply with this rule and OAR 660-038-0170 when determining
20 which lands to include within the UGB in response to a deficit of land to meet long-term needs
21 that has been determined under OAR 660-038-0080, OAR 660-038-0150, or both.

22 (1) The city shall determine which land to add to the UGB by evaluating alternative locations
23 within a “study area” established pursuant to this rule. To establish the study area, the city must
24 first identify a “preliminary study area” which shall not include land within a different UGB or
25 the corporate limits of a city within a different UGB. The preliminary study area shall include:

- 26 (a) All lands in the city’s acknowledged urban reserve, if any;
- 27 (b) All lands that are within the following distance from the acknowledged UGB, except as
28 provided in subsection (d) of this section:

- 1 (A) For cities with a UGB population less than 10,000: one-half mile;
- 2 (B) For cities with a UGB population equal to or greater than 10,000: one mile;
- 3 (c) All exception areas that are within the following distance from the acknowledged UGB
4 provided they are contiguous to an exception area that includes land within the distance
5 specified in subsection (b):
- 6 (A) For cities with a UGB population less than 10,000: one mile;
- 7 (B) For cities with a UGB population equal to or greater than 10,000: one and one-half
8 miles;
- 9 (d) At the discretion of the city, land that is beyond the distance specified in subsections (b)
10 and (c).
- 11 (2) The city may exclude land from the preliminary study area if it determines that any of the
12 conditions in this section apply to the land:
- 13
- 14 (a) Based on the standards in section (5) of this rule, it is impracticable to provide necessary
15 public facilities or services to the land;
- 16 (b) The land is subject to significant development hazards, due to a risk of:
- 17 (A) Landslides: The land consists of a landslide deposit or scarp flank that is described
18 and mapped on the Statewide Landslide Information Database for Oregon (SLIDO)
19 Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral
20 Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the
21 data source is mapped at a scale of 1:40,000 or finer;
- 22 (B) Flooding, including inundation during storm surges: the land is within the SFHA
23 identified on the applicable FIRM; or
- 24 (C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS
25 455.446.
- 26 (c) The land consists of a significant scenic, natural, cultural or recreational resource
27 described in this subsection:

1 (A) Lands that are designated on an acknowledged comprehensive plan prior to initiation
2 of the UGB amendment, or that are mapped on a published state or federal inventory at a
3 scale sufficient to determine its location for purposes of this rule, as:

4 (i) Critical or essential habitat for a species listed by a state or federal agency as
5 threatened or endangered;

6 (ii) Core habitat for Greater Sage Grouse; or

7 (iii) Big game winter range or migration corridors.

8 (B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related
9 Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal
10 agency responsible for that scenic program;

11 (C) Designated Natural Areas on the Oregon State Register of Natural Heritage
12 Resources;

13 (D) A wellhead protection area described under OAR 660-023-0140 and delineated on a
14 local comprehensive plan;

15 (E) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or
16 Conservation management unit designated in an acknowledged comprehensive plan;

17 (F) Lands subject to acknowledged comprehensive plan provisions that implement
18 Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

19 (G) Lands subject to acknowledged comprehensive plan provisions that implement
20 Statewide Planning Goal 18, Implementation Requirement 2.

21 (d) The land is owned by the federal government and managed primarily for rural uses.

22 (3) After excluding land from the preliminary study area under section (2), the city must adjust
23 the study area, if necessary, so that it includes an amount of land that is at least twice the amount
24 of land needed to satisfy the combined need deficiency determined under OAR 660-038-0080
25 and OAR 660-038-0150. Such adjustment shall be made by expanding the applicable distance
26 specified under section (1) and applying section (2) to the expanded area.

27 (4) For purposes of evaluating the priority of land under OAR 660-038-0170, the “study area”
28 shall consist of all land that is included in the preliminary study area described in section (1) of
29 this rule after adjustments to the area based on sections (2) and (3).

1 (5) For purposes of subsection (2)(a), the city may consider it impracticable to provide necessary
2 public facilities or services to the following lands:

3 (a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of
4 25 percent or greater. Slope shall be measured as the increase in elevation divided by the
5 horizontal distance at maximum ten-foot contour intervals;

6 (b) Lands requiring the construction of a new freeway interchange, overpass, underpass, or
7 similar improvement to accommodate planned urban development providing such
8 improvement is not currently identified in the Statewide Transportation Improvement
9 Program (STIP) for construction within the planning period;

10 (c) Land that is isolated from existing service networks by physical, topographic, or other
11 impediments to service provision such that it is impracticable to provide necessary facilities
12 or services to the land within the planning period. The city's determination shall be based on
13 an evaluation of:

14 (A) The likely amount of development that could occur on the land within the planning
15 period;

16 (B) The likely cost of facilities and services; and,

17 (C) Any substantial evidence collected by or presented to the city regarding how
18 similarly situated land has, or has not, developed over time.

19 (d) As used in this section, "impediments to service provision" may include but are not
20 limited to:

21 (A) Major rivers or other water bodies that would require new bridge crossings to serve
22 planned urban development;

23 (B) Topographic features such as canyons or ridges with slopes exceeding 40 percent and
24 vertical relief of greater than 80 feet;

25 (C) Freeways, rail lines, or other restricted access corridors that would require new grade
26 separated crossings to serve planned urban development;

27 (D) Significant scenic, natural, cultural or recreational resources on an acknowledged
28 plan inventory and subject protection measures under the plan or implementing
29 regulations, or on a published state or federal inventory, that would prohibit or substantially
30 impede the placement or construction of necessary public facilities and services.

1 (6) Land may not be excluded from the preliminary study area based on a finding of
2 impracticability that is primarily a result of existing development patterns. However, a city may
3 forecast development capacity as provided in OAR 660-038-0170(1)(c).

4 (7) A city that has a population of 10,000 or more that evaluates or amends its UGB using a
5 method described in this division, must notify districts and counties that have territory within the
6 study area as required by ORS 197A.315 and meet other applicable requirements in that statute.

7 **OAR 660-038-0170**

8 **Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities**

9 (1) A city considering a UGB amendment must decide which land to add to the UGB by
10 evaluating all land in the study area determined under OAR 660-038-0160, as follows:

11 (a) Beginning with the highest priority category of land described in section (2), the city must
12 apply section (5) of this rule to determine which land in that priority category is suitable to
13 satisfy the need deficiency determined under OAR 660-038-0080 and OAR 660-038-0150
14 and select for inclusion in the UGB as much of the land as necessary to satisfy the need.

15 (b) If the amount of suitable land in the first priority category is not adequate to satisfy the
16 identified need deficiency, the city must apply section (5) to determine which land in the next
17 priority is suitable and select for inclusion in the UGB as much of the suitable land in that
18 priority as necessary to satisfy the need. The city must proceed in this manner until all the
19 land need is satisfied.

20 (c) If the amount of suitable land in a particular priority category in section (2) exceeds the
21 amount necessary to satisfy the need deficiency, the city must choose which land in that
22 priority to include in the UGB by applying the criteria in section (7) of this rule.

23 (d) In evaluating the sufficiency of land to satisfy a need under this section, the city may
24 consider factors that reduce the capacity of the land to meet the need, including factors
25 identified in sections (5) and (6) of this rule.

26 (e) Land that is determined to not be suitable under section (5) of this rule to satisfy the need
27 deficiency determined under OAR 660-038-0080 or OAR 660-038-0150 is not required to be
28 selected for inclusion in the UGB unless its inclusion is necessary to serve other higher
29 priority lands.

30 (2) Priority of Land for inclusion in a UGB:

31 (a) First priority is urban reserve, exception land, and nonresource land. Lands in the study
32 area that meet the description in paragraphs (A) through (C) of this subsection are of equal
33 (first) priority:

1 (A) Land designated as an urban reserve under OAR chapter 660, division 21, in an
2 acknowledged comprehensive plan;

3 (B) Land that is subject to an acknowledged exception under ORS 197.732; and

4 (C) Land that is nonresource land.

5 (b) Second priority is marginal land: land within the study area that is designated as marginal
6 land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

7 (c) Third priority is farm or forest land that is not predominantly high-value farmland: land
8 within the study area that is designated for agriculture or forest uses in the acknowledged
9 comprehensive plan that is not predominantly high-value farmland, as defined in ORS
10 195.300, or that does not consist predominantly of prime or unique soils, as determined by
11 the United States Department of Agriculture Natural Resources Conservation Service. In
12 selecting as much of the suitable land as necessary to satisfy the need, the city must use the
13 predominant capability classification system or the predominant cubic site class, as
14 appropriate for the acknowledged comprehensive plan designation, to select lower capability
15 or cubic site class lands first.

16 (d) Fourth priority is farmland that is predominantly high-value farmland: land within the
17 study area that is designated as farmland in an acknowledged comprehensive plan and is
18 predominantly high-value farmland as defined in ORS 195.300(10). A city may not select
19 land that is predominantly made up of prime or unique farm soils, as defined by the United
20 States Department of Agriculture Natural Resources Conservation Service, unless there is an
21 insufficient amount of other land to satisfy its land need. In selecting as much of the suitable
22 land as necessary to satisfy the need, the city must use the predominant capability
23 classification system or the predominant cubic site class, as appropriate for the acknowledged
24 comprehensive plan designation, to select lower capability or cubic site class lands first.

25 (3) Notwithstanding subsections (2)(c) or (d) of this rule, land that would otherwise be excluded
26 from a UGB may be included if:

27 (a) The land contains a small amount of third or fourth priority land that is not important to
28 the commercial agricultural enterprise in the area and the land must be included in the UGB
29 to connect a nearby and significantly larger area of land of higher priority for inclusion
30 within the UGB; or

31 (b) The land contains a small amount of third or fourth priority land that is not predominantly
32 high-value farmland or predominantly made up of prime or unique farm soils and the land is
33 completely surrounded by land of higher priority for inclusion into the UGB.

34 ***OPTION 1 (Recommended) regarding sorting land into priorities***

1 (4) For purposes of subsections (2)(c) and (d) and section (3) of this rule:

2 (a) Areas of land not larger than 200 acres may be grouped together and studied as a single
3 unit of land;

4 (b) Areas of land larger than 200 acres that are similarly situated and have similar soils may
5 be grouped together provided, however, that soils of lower agricultural or forest capability
6 may not be grouped with soils of higher capability in a manner inconsistent with the intent of
7 section (2) of this rule which establishes that higher capability resource lands are the last
8 priority for inclusion in a UGB;

9 (c) Notwithstanding subsection (4)(a), if a city initiated the evaluation or amendment of its
10 UGB prior to January 1, 2016, and if the analysis involves more than one parcel or area
11 within a particular priority category for which circumstances are reasonably similar, these
12 parcels or areas may be considered and evaluated as a single group;

13 (d) When determining whether the land is predominantly high-value farmland, or
14 predominantly prime or unique, or when using the predominant capability classification
15 system or the predominant cubic site class of the subject land, “predominantly” means more
16 than 50 percent. (b) Notwithstanding subsection (4)(a), where a city initiated the evaluation
17 or amendment of its UGB prior to January 1, 2016, where the analysis involves more than
18 one parcel or area within a particular priority category for which circumstances are
19 reasonably similar, these parcels or areas may be considered and evaluated as a single
20 group.

21 **OPTION 2**

22 (a) When evaluating the agricultural or forest capability of land within a study area, “land”
23 means the land in a tract as defined at ORS 215.010.

24 (b) When determining whether the land is predominantly made up of prime or unique farm
25 soils, “predominantly” means at least 50 percent of a tract as defined at ORS 215.010.

26 (5) With respect to subsection (1) of this rule, a city must assume that vacant or partially vacant
27 land in a particular priority category is “suitable” to satisfy a need deficiency identified in OAR
28 660-038-0080 or OAR 660-038-0150, whichever is applicable, unless it demonstrates that the
29 land cannot satisfy the need based on one or more of the conditions described in subsections (a)
30 through (d) of this section:

31 (a) Existing parcelization, lot sizes or development patterns of rural residential land make the
32 land unsuitable for an identified employment need;

33 (b) The land would qualify for exclusion from the preliminary study area under the factors in
34 OAR 660-038-0160(2) but the city declined to exclude it pending more detailed analysis.

- 1 (c) The land is, or would be upon inclusion in the UGB, subject to natural resources
2 protections under Statewide Planning Goals 5 such that that no development capacity should
3 be forecast with respect to the need.
- 4 (d) With respect to needed industrial uses only, the land is over 10 percent slope, as measured
5 in the manner described in OAR 660-038-0160(5), or is an existing lot or parcel that is
6 smaller than 5 acres in size, or both.
- 7 (6) For lands added to the UGB to provide for residential uses:
- 8 (a) Existing lots or parcels one acre or less may be assumed to have a development capacity
9 of one dwelling unit per lot or parcel. Existing lots or parcels greater than one acre but less
10 than two acres shall be assumed to have an aggregate development capacity of two dwelling
11 units per acre.
- 12 (b) In any subsequent review of a UGB pursuant to this division, the city may use a
13 development assumption for land described subsection (a) of this section for a period of 14
14 years from the date the lands were added to the UGB.
- 15 (7) As provided in subsection (1)(c), if the amount of suitable land in a particular priority
16 category under section (2) exceeds the amount necessary to satisfy the need deficiency, the city
17 must choose which land in that priority to include in the UGB by first applying the Boundary
18 Location Factors of Goal 14 and then applying applicable criteria in the comprehensive plan and
19 land use regulations acknowledged prior to initiation of the UGB evaluation or amendment. The
20 city may not apply local comprehensive plan criteria that contradict the requirements of the
21 Boundary Location Factors of Goal 14. The Boundary Location Factors are not independent
22 criteria; when the factors are applied to compare alternative boundary locations and to determine
23 the UGB location the city must demonstrate that it considered and balanced all the factors.
- 24 (8) The city must apply the Boundary Location Factors in coordination with service
25 providers and state agencies, including the Oregon Department of Transportation with
26 respect to Factor 2 regarding impacts on the state transportation system, and the Oregon
27 Department of Fish and Wildlife and the Oregon Department of State Lands with respect to
28 Factor 3 regarding environmental consequences. “Coordination” includes timely notice to
29 agencies and service providers and consideration of any recommended evaluation
30 methodologies.
- 31 (9) In applying Boundary Location Factor 2, to evaluate alternative locations under
32 section(6), the city must compare relative costs, advantages and disadvantages of alternative
33 UGB expansion areas with respect to the provision of public facilities and services needed to
34 urbanize alternative boundary locations. For purposes of this section, the term “public
35 facilities and services” means water, sanitary sewer, storm water management, and
36 transportation facilities. The evaluation and comparison under Boundary Location Factor 2

1 must consider:

2 (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities
3 that serve nearby areas already inside the UGB;

4 (b) The capacity of existing public facilities and services to serve areas already inside the
5 UGB as well as areas proposed for addition to the UGB; and

6 (c) The need for new transportation facilities, such as highways and other roadways,
7 interchanges, arterials and collectors, additional travel lanes, other major improvements
8 on existing roadways and, for urban areas of 25,000 or more, the provision of public
9 transit service.

10 (10) The adopted findings for UGB adoption or amendment must describe or map all of the
11 alternative areas evaluated in the boundary location alternatives analysis.

12 **OAR 660-038-0180**

13 **Planning Requirements for Land added to a UGB**

14 (1) A city must plan and zone lands included within the UGB:

15 (a) For categories of land uses in amounts that are roughly proportional to the land need
16 determined for each category of use; and

17 (b) For an intensity of use that is generally consistent with the estimates that were used to
18 determine the amount of land needed.

19 (2) All land added to a UGB under this division must be planned and zoned such that the lands
20 will not significantly affect a state highway, a state highway interchange, or a freight route
21 designated in the Oregon Highway Plan, based on the requirements of OAR 660-012-0060(1)
22 and on written concurrence provided by the Department of Transportation. However, a city may
23 add land that does not meet this requirement provided the land is planned and zoned either:

24 (a) For industrial uses only, or

25 (b) Compact urban development consisting of a mixed-use, pedestrian friendly center or
26 neighborhood as described in OAR 660-012-0060(8).

27 (3) For lands added to the UGB to provide for residential uses, the city must also satisfy
28 applicable requirements of OAR 660-038-0190.

29 (4) If factual information is submitted demonstrating that a Goal 5 resource site, or the impact
30 areas of such a site, is included in the area proposed to be added to the UGB, the city shall apply
31 the applicable requirements of OAR chapter 660, division 23, concurrent with adoption of a

1 UGB amendment. For purposes of this section, “impact area” is a geographic area within which
2 conflicting uses could adversely affect a significant Goal 5 resource, as described in OAR 660-
3 023-0040(3).

4 (5) Concurrently with adoption of a UGB amendment pursuant to this division, a city must
5 assign appropriate urban plan designations to land added to the UGB consistent with the need
6 determination. The city must also apply appropriate zoning to the added land consistent with the
7 plan designation or may maintain the land as urbanizable land until the land is rezoned for the
8 planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the
9 boundary or by applying other interim zoning that maintains the land’s potential for planned
10 urban development.

11 (6) When lands added to the UGB pursuant to rules in this division are planned and zoned for
12 industrial or residential uses, the lands must remain planned and zoned for the use for 20 years
13 beyond the date of adoption by the city.

14 (7) The UGB and amendments to the UGB must be shown on the applicable city and county
15 plan and zone maps at a scale sufficient to determine which particular lots and parcels are
16 included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide
17 sufficient information to determine the precise UGB location.

18 (8) Amendment of a UGB shall be a cooperative process among cities and counties. A UGB and
19 amendments to the UGB shall be adopted by all cities within the boundary and by the county or
20 counties within which the boundary is located. Cities and counties shall follow the requirements
21 of OAR 660-018-0021 regarding coordinated notice of a UGB amendment.

22 (9) “Roughly proportional” means, with respect to planning of land added to a UGB in response
23 to a need determination, the amount of land provided for a particular category of need is within
24 five percent of the amount needed or within 10 acres, whichever is less.

25 **OAR 660-038-0190**

26 **Additional Planning for Residential Lands Added to the UGB**

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

30 (1) The comprehensive plan and implementing zoning shall allow the housing types and
31 densities determined to be needed in OAR 660-038-0040 and 660-038-0050 under clear and
32 objective standards and shall meet other applicable needed housing requirements specified in
33 ORS 197.307 and OAR chapter 660, division 8.

1 (2) The city and appropriate counties must assign appropriate urban plan designations to the
2 added residential land consistent with the need determination, and either:

3 (a) Apply appropriate zoning to the added land consistent with the plan designation, or

4 (b) Adopt measures to maintain the land as urbanizable land until the land is rezoned for the
5 planned urban uses by retaining the zoning that was assigned prior to inclusion in the
6 boundary or by applying other interim zoning that maintains the land's potential for planned
7 urban development. Measures for rezoning urbanizable land for needed housing shall be
8 clear and objective and consistent with other requirements of ORS 197.307.

9 (3) Cities with UGB population of 10,000 or greater must either:

10 (a) Consider the housing measures listed in the Table 8 and adopt at least one high impact
11 measure or three low impact measures, or

12 (b) Satisfy the alternate performance standard in section (4).

13 (4) A city has satisfied the alternate performance standard section (3)(b) if the city:

14 (a) Has a development code that contains the provisions specified in items 1 through 5 and 29
15 through 31 of Table 8; and

16 (b) Demonstrates with substantial evidence in the record that, during the preceding planning
17 period or preceding seven years, whichever is less, development in the city equaled or
18 exceeded the maximum percentage set forth in the ranges for redevelopment in residentially
19 zoned and developed areas and mixed use residential development in commercially zoned
20 areas in OAR 660-038-0030(6)(a) through (c).

21 **OAR 660-038-0200**

22 **Serviceability**

23 (1) Pursuant to ORS 197A.310(3) or 197A.312(3), a city that amends its UGB using this division
24 shall demonstrate that lands included within the UGB:

25 (a) Provide sufficient serviceable land for at least a seven-year period, and

26 (b) Can all be serviceable over a 14-year period.

27 (2) For purposes of subsection (1)(a) of this rule, a city shall demonstrate adequate sewer, water
28 and transportation capacity to serve at least seven years of planned urban development based on
29 system capacity and system improvements that are identified and described in an acknowledged
30 public facilities plan, an acknowledged Transportation System Plan, a capital improvement plan,
31 or the findings adopted by a city in support of a decision to amend its UGB. This shall consist of

1 sewer, water and transportation capacity that is available or can be provided based on subsection
2 (a) or (b) of this section, or both:

3 (a) Capacity is available: existing sewer, water and transportation system capacity sufficient
4 to serve some or all of the anticipated seven-year demand is available. To demonstrate
5 available sewer and water capacity, a city may rely upon the system capacity documentation
6 contained in the acknowledged Public Facilities Plan adopted pursuant to OAR chapter 660,
7 division 11, and documentation from city or other service provider records of current system
8 condition and demand. To demonstrate available transportation system capacity, a city may
9 rely upon the system capacity documentation contained in an acknowledged Transportation
10 System Plan (TSP) adopted pursuant to OAR chapter 660, division 12;

11 (b) Capacity can be provided within seven years: sewer, water and transportation system
12 capacity sufficient to serve the anticipated seven-year demand can be provided by identified
13 system improvements that:

14 (A) Are fully funded and scheduled for construction within a seven-year period;

15 (B) Can be made subject to committed financing, which means a city or other service
16 provider has one or more dedicated funding mechanisms in place that will generate
17 sufficient revenue to fund the construction of such improvements within a seven-year
18 period; or

19 (C) Can have committed financing in place, which means a city or other service provider
20 does not have dedicated funding mechanisms in place but has identified funding sources
21 and methods that will be implemented by the city or other service provider, and that will
22 generate sufficient revenues to fund the construction of such improvements within a
23 seven-year period.

24 (3) For purposes of subsection (1)(b) of this rule, to demonstrate that adequate sewer, water and
25 transportation capacity can be in place for that portion of the 14-year period for which capacity
26 has not been demonstrated in accordance with section (2) of this rule, a city shall:

27 (a) Identify the type and amount of the needed capacity;

28 (b) Identify the system improvements required to provide the needed capacity; and,

29 (c) Identify the funding method(s) that is or can be in place to provide committed financing
30 in an amount sufficient to provide the needed capacity within the 14-year period. This
31 identification shall include:

32 (A) The type of proposed funding method(s);

- 1 (B) The statutory or other legal authority for establishing the proposed funding
2 method(s);
- 3 (C) The timing of the establishment of the proposed funding method(s); and,
- 4 (D) The projected revenues to be generated by the proposed funding method(s).
- 5 (4) For purposes of this rule, “sewer, water and transportation capacity for planned urban
6 development” includes:
- 7 (a) Sewer capacity, which consists of wastewater treatment facility capacity and collection
8 system capacity, including interceptors, lift or pump stations, force mains, and main sewer
9 lines;
- 10 (b) Water capacity, including:
- 11 (A) Available water rights;
- 12 (B) Water treatment capacity;
- 13 (C) Water storage capacity, including system reserves needed for fire suppression; and,
- 14 (D) Distribution system capacity, including pumping facilities, primary and secondary
15 feeders, and distributor mains; and
- 16 (c) Transportation capacity, including:
- 17 (A) Networks of pedestrian, bicycle, transit, and street facilities; and
- 18 (B) Performance of the planned transportation system measured against adopted
19 transportation performance standards set forth in the applicable acknowledged TSP.
- 20 (5) For purposes of this rule, “committed financing” means financing methods for which a city or
21 other service provider has identified and documented the following: the authority to establish and
22 implement the method, the amount of funding to be generated, the purpose to which the funding
23 will be dedicated, and the repayment method and schedule for any bonded or credit indebtedness
24 is identified and documented. Committed financing includes, but is not limited to, funding that
25 is:
- 26 (a) Included in the adopted budget of the service provider;
- 27 (b) Designated for projects included in the Statewide Transportation Improvement Program;
- 28 (c) Provided by the Department of Interior through the BIA Tribal Transportation Plan (TTP)
29 program pursuant to 25 CFR Part 170;

- 1 (d) Provided through a development agreement entered into pursuant to ORS 94.504 to
2 94.528;
- 3 (e) Provided by system development charges established pursuant to ORS 223.997 to
4 223.314 or by other authorized development fees and exactions;
- 5 (f) Provided by utility fees;
- 6 (g) Provided through Local Improvement District or Reimbursement District assessments; or
- 7 (h) Provided by revenue bonds, financing agreements, voter approved general obligation
8 bonds or other authorized debt instruments.
- 9 (6) For lands that are added to a UGB pursuant to a method described in this this division but not
10 made “serviceable” within 20 years after the date of their inclusion:
- 11 (a) The lands must be removed from within the UGB the next time the city evaluates the
12 UGB; or
- 13 (b) If there have been significant increases in the cost of making the lands serviceable, the
14 planned development capacity of the lands must be reduced by an amount based on such
15 costs the next time the city evaluates the need for land in the UGB.
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Tables for OAR chapter 660, division 38

2 Table 1: Housing Mix

Table 1 OAR 660-038-0040(3): A city shall project the mix of housing types needed for new development over the 14-year period using the ranges of numbers in Table 1

UGB POPULATION	MEDIUM DENSITY		HIGH DENSITY	
	Existing	Required*	Existing	Required*
UNDER 2,500	0-9 percent	n+3 to n+13percent	N/A	N/A
	9-15 percent	n+1 percent to n+15 percent	N/A	N/A
	>15percent	n percent to n+15percent	N/A	N/A
2,500-10,000	0-11 percent	n+3 to n+13 percent	0-11 percent	n+3 to n+13 percent
	11-16 percent	n+1 percent to n+11 percent	11-17 percent	n+1 percent to n+11 percent
	>16 percent	n percent to n+10percent	>17 percent	n percent to n+10 percent
10,000-25,000	0-14 percent	n+3 to n+13 percent	n+3 to n+13 percent	14-24 percent
	14-17 percent	n+1 percent to n+11 percent	14-17 percent	n+1 percent to n+11 percent
	>17 percent	n percent to n+10percent	>17 percent	n percent to n+10 percent
OVER 25,000	0-17 percent	17-27 percent	0-17 percent	17-27 percent
	17-18percent	n+1 percent to n+11 percent	17-21 percent	n+1 percent to n+11 percent
	>18 percent	n percent to n+10 percent	>21 percent	n percent to n+10 percent

3 *n = existing percentage of medium or high density housing within the city boundaries*
 4 ** Required percentage may be any whole number or whole number plus a fraction of a whole*
 5 *number within the allowed range*

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1 Table 2: Land Need

Table 2 OAR 660-038-0050(1): To determine the net land needed for each category of residential development over the 14-year period, the city must divide the number of needed units determined in OAR 660-038-0040 by the number of dwelling units per acre from the ranges in Table 2.

	Low	Medium	High
Eastern Oregon*			
Population Less than 2,500	5 to 6.5 du/ac.	10-15 du/ac.	
Population 2,500-10,000	5 to 6.5 du/ac.	10-12 du/ac.	15-24 du/ac.
Population 10,000-25,000	5 to 6.5 du/ac.	10-12 du/ac.	15-24 du/ac.
Population 25,000 or greater	5 to 6.5 du/ac.	10-14 du/ac.	15-33 du/ac.
Outside of Eastern Oregon			
Population Less than 2,500	5 to 6 du/ac.	10-15 du/ac.	
Population 2,500-10,000	5 to 6 du/ac.	10-12 du/ac.	15-24 du/ac.
Population 10,000-25,000	6 to 7 du/ac.	10-12 du/ac.	15-24 du/ac.
Population 25,000 or greater	6 to 7 du/ac.	12-15 du/ac.	20-33 du/ac.

2 *Eastern Oregon consists of the following counties: Baker, Gilliam, Grant, Harney, Klamath,
 3 Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, and Wheeler.

4
 5 Table 3: UGB Expansion Determination for cities less than 2,500 population

Table 3 OAR 660-038-0080(2): Cities with a UGB population of less than 2,500 shall determine whether to expand the UGB based on Table 3

CITIES WITH UGB POPULATION LESS THAN 2,500 - SCENARIOS FOR LAND DEFICIT AND SURPLUS

Scenario	Low Density	High Density	Result
1	Surplus	Surplus	No UGB Expansion
2	Deficit	Deficit	UGB expansion to satisfy all land needs. A city may redesignate low density land within the UGB to meet in all or in part a high density land need, and then expand the UGB to satisfy land needs as modified.
3	Surplus	Deficit	UGB expansion to satisfy high density land need, alternatively satisfy all or part of high density land need by redesignating surplus low density land.
4	Deficit	Surplus	UGB expansion to satisfy low density land need. Do not reduce high density land surplus.

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1 Table 4: UGB Expansion Determination for cities between 2,500 and 10,000 population

Table 4 OAR 660-038-0080(3) Cities with a UGB population greater than or equal to 2,500 and less than 10,000 shall determine whether to expand the UGB based on Table 4:				
CITIES WITH UGB POPULATION GREATER THAN OR EQUAL TO 2,500 AND LESS THAN 10,000				
Scenario	Low Density	Medium Density	High Density	
1	Surplus	Surplus	Surplus	No UGB expansion
2	Deficit	Deficit	Deficit	UGB expansion to satisfy all land needs. A city may redesignate low density land within the UGB to meet in all or in part a medium or high density land need, and then expand the UGB to satisfy land needs as modified
3	Surplus	Deficit	Deficit	UGB expansion to satisfy medium and high density land need – alternatively, satisfy all or part of medium and high density land need by redesignating surplus low density land.
4	Surplus	Surplus	Deficit	UGB expansion to satisfy high density land need – alternatively, satisfy all or part of high density land need by redesignating surplus low and medium density land.
5	Surplus	Deficit	Surplus	UGB expansion to satisfy medium density land need – alternatively, satisfy all or part of medium density land need by redesignating surplus low density land. Do not reduce high density land surplus.
6	Deficit	Surplus	Surplus	UGB expansion to satisfy low density land need. Do not reduce medium or high density land surplus.
7	Deficit	Deficit	Surplus	UGB expansion to satisfy low and medium density land need. Do not reduce high density land surplus.
8	Deficit	Surplus	Deficit	UGB expansion to satisfy low density land need. UGB expansion to satisfy high density land need – alternatively, satisfy all or part of high density land need by redesignating surplus medium density land. Do not reduce medium density land surplus to satisfy low density land need.

Table 5: UGB Expansion Determination for cities 10,000 or more

Table 5 OAR 660-038-0080(4) Cities with a UGB population greater than or equal to 10,000 shall determine whether to expand the UGB based on Table 5:				
CITIES WITH UGB POPULATION GREATER THAN 10,000 – SCENARIOS FOR LAND DEFICIT AND SURPLUS				
Scenario	Low Density	Medium Density	High Density	
1	Surplus	Surplus	Surplus	No UGB expansion
2	Deficit	Deficit	Deficit	UGB expansion to satisfy all land needs. A city may redesignate low density land within the UGB to meet in all or in part a medium or high density land need, and then expand the UGB to satisfy land needs as modified.
3	Surplus	Deficit	Deficit	Satisfy at least 50 percent of medium and high density deficit by redesignating low density land or employment land inside UGB, unless this would result in a deficit of low density land or employment land.
4	Surplus	Surplus	Deficit	Satisfy at least 50 percent of high density deficit by redesignating low and medium density land or employment land inside UGB, unless this would result in a deficit of low or medium density land or employment land.
5	Surplus	Deficit	Surplus	Satisfy at least 50 percent of medium density deficit by redesignating low density land or employment land inside UGB, unless this would result in a deficit of low density land or employment land. Do not reduce high density land surplus.
6	Deficit	Surplus	Surplus	UGB expansion to satisfy low density land need. Do not reduce medium or high density land surplus.
7	Deficit	Deficit	Surplus	UGB expansion to satisfy low and medium density land need. Do not reduce high density land surplus.
8	Deficit	Surplus	Deficit	UGB expansion to satisfy low density land need. Satisfy at least 50 percent of high density deficit by redesignating medium density land or employment land inside UGB, unless this would result in a deficit of medium density land or employment land. Do not reduce medium density land surplus to satisfy low density land need.

1 **Table 6: Jobs currently in the UGB**

2 Determine the jobs currently in the UGB, sorted into two categories: “commercial” and
 3 “industrial”

4 (NOTE: This “look-up table” has been provided to DLCD by the Employment Department and
 5 will be provided via a link. The table is available on request from DLCD).

6 **Table 7:** As an option to forecast new commercial and industrial jobs in the city for the 14-year
 7 planning period, the city must use the growth rate of “new” jobs projected to occur in the region
 8 that includes the city, by the Oregon Employment Department (OED) long term Employment
 9 Forecast. Growth rates are sorted into two “commercial” and “industrial” categories.

10 (NOTE: This is a “look-up table” provided to DLCD by the Employment Department. The table
 11 provides the growth rate for commercial and industrial jobs in various OED regions. OED has
 12 provided the information for the table but it has not been formatted at the time of this draft; it
 13 will be available prior to rule adoption).

14 **Table 8: Measures to Accommodate Housing Needs**

Table 8: OAR 660-038-0190(5) Table of measures to accommodate housing needs within the UGB:			
Item	Current Zoning Code Provision	Adopted change (note: none of these changes may require approval of a conditional use permit)	High or Low Impact
1	Does not allow accessory dwelling units	Allows accessory dwelling units: No off-street parking requirement Any type of structure Owner may live in either dwelling Allowed in any zoning district that allows detached single-family No Systems Development Charges for Water or Sewer	High
2	No minimum density standards	Minimum density standard at least 70 percent of maximum density for all residential zoning districts. Exemptions for constrained lands as defined in OAR 660-38-0070 and for minor partitions.	High
3	Single-family detached homes allowed in medium density zoning district (as defined by residential need path standards)	No more than 25 percent of residences in development application in medium density zoning district may be single-family detached homes. Minor partitions exempted.	High
4	Off-street parking	Change parking requirements to maximum of no	High

Table 8: OAR 660-038-0190(5) Table of measures to accommodate housing needs within the UGB:

Item	Current Zoning Code Provision	Adopted change (note: none of these changes may require approval of a conditional use permit)	High or Low Impact
	requirements of one space per multi-family dwelling or greater	more than one space per multi-family dwelling and no more than .75 spaces per multi-family dwelling within ¼ mile of high frequency transit service (defined as transit service with weekday peak hour service headway of 20 minutes or less). Allow provision of on-street parking spaces to meet off-street parking requirements. Allow reductions below one space per multi-family dwelling for developments that provide spaces for car-share vehicles or free transit passes to residents.	
5	No density bonus for affordable housing	Establish density bonus for affordable housing of at least 25 percent with no additional development review standards vs. development applications that do not include a density bonus. The affordable housing units shall constitute at least 25 percent of the overall dwelling units in the development application granted the density bonus. The affordable housing units must be reserved as affordable housing for a minimum of 50 years. Affordable housing is defined as housing that is reserved for households with a maximum household income of 80 percent of a city's mean household income. The percentage threshold for the household affordable housing reservation may also be less than 80percent of a city's mean household income.	High
6	Current land use/zoning designations	Rezone from low density to medium or high density: City UGB 10,000 to 25,000: at least 10 acres City UGB 25,000 to 50,000: at least 25 acres City UGB > 50,000: at least 50 acres	High
7	Does not allow duplexes in single-family residential zoning districts	Permit duplexes on any lot in single-family residential zoning districts with no additional development review standards vs. single-family detached residences.	High
8	Current public street standards	Reduction in public street right of way width standard by at least two feet.	High
9	Does not allow residences in some commercial zoning districts	Allow residences above the first floor and behind commercial uses on additional commercially-zoned lands, with no off-street parking requirement greater than one space per residence, with provisions for additional parking reductions for shared commercial and residential uses and in areas	High

Table 8: OAR 660-038-0190(5) Table of measures to accommodate housing needs within the UGB:			
Item	Current Zoning Code Provision	Adopted change (note: none of these changes may require approval of a conditional use permit)	High or Low Impact
		with approved parking management districts. UGB population 10,000 to 25,000: at least 20 acres UGB population 25,000 to 50,000: at least 50 acres UGB population > 50,000: at least 100 acres	
10	Systems Development Charges reductions or waivers	Adopt provisions that eliminate systems development charges for affordable housing units, or reduce systems development charges for such units by a minimum of 75 percent of the total systems development charges assessed to similar units that are not reserved for affordable housing. The affordable housing units must be reserved as affordable housing for a minimum of 50 years. Affordable housing is defined as housing that is reserved for households with a maximum household income of 80 percent of a city's mean household income. The percentage threshold for the household affordable housing reservation may also be less than 80 percent of a city's mean household income.	High
11	Does not authorize property tax exemptions for low income housing development pursuant to ORS 307.515 to 307.537	Authorizes property tax exemptions for low income housing development pursuant to ORS 307.515 to 307.537 under both the criteria set forth in ORS 307.517 and the criteria set forth in ORS 307.518, for all zoning districts within the city that permit multiple-family dwellings, with no additional development review standards vs. equivalent residential development that does not receive the exemption.	High
12	Does not authorize property tax exemptions for non-profit corporation low-income housing development pursuant to ORS 307.540 to 307.548.	Authorizes property tax exemptions for non-profit corporation low-income housing development pursuant to ORS 307.540 to 307.548, with no additional development review standards vs. equivalent residential development that does not receive the exemption.	High
13	Does not authorize property tax exemptions for multiple-unit housing pursuant to ORS 307.600 to 307.637	Authorizes property tax exemptions for multiple-unit housing pursuant to ORS 307.600 to 307.637, with no additional restrictions on location of such exemptions above those set in the statutes, and with required benefits pursuant to ORS 307.618 that are clear and objective and do not have the effect of discouraging the use of the property tax exemption by otherwise qualifying developments through the	High

Table 8: OAR 660-038-0190(5) Table of measures to accommodate housing needs within the UGB:			
Item	Current Zoning Code Provision	Adopted change (note: none of these changes may require approval of a conditional use permit)	High or Low Impact
		imposition of unreasonable cost or delay.	
14	Allows accessory dwelling units, but missing one or more of desired attributes	Allows accessory dwelling units: No off-street parking requirement Any type of structure Owner may live in either dwelling Any zoning district that allows detached units No Systems Dev. Charges for Water or Sewer	Low
15	Does not allow accessory dwelling units	Allows accessory dwelling units, but with at least one of the attributes from measure #14 above not adopted.	Low
16	Off-street parking requirements greater than one space per multi-family dwelling	Change parking requirements to maximum of one space per multi-family dwelling.	Low
17	No minimum density standards	Minimum density standards at least 50 percent of maximum density for all residential zoning districts. Exemptions for constrained lands as defined in OAR 660-38-0070 and for minor partitions.	Low
18	Minimum density standard less than 70percent of maximum density	Raise minimum density standards to at least 70 percent of maximum density for all residential zoning districts. Exemptions for constrained lands as defined in OAR 660-038-0070 and for minor partitions.	Low
19	Current land use/zoning designations	Rezone from low density to medium or high density: City UGB 10,000 to 25,000: 5 to 10 acres City UGB 25,000 to 50,000: 10 to 25 acres City UGB > 50,000: 20 to 50 acres.	Low
20	Density bonus for affordable housing less than 25 percent or with additional development review restrictions vs. standard housing	Increase density bonus for affordable housing to at least 25 percent with no additional development review standards vs. standard housing	Low
21	Current land use/zoning designations	Reduce minimum lot size for single-family residential zoning districts by at least one-quarter of the current minimum: City UGB 10,000-25,000: at least 25 acres City UGB 25,000-50,000: at least 50 acres City UGB >50,000: at least 100 acres	Low
22	Does not allow residences in some commercial zoning districts	Allow residences above the first floor and behind commercial uses on additional commercially-zoned lands, with no off-street parking requirement greater than one space per residence.	Low

Table 8: OAR 660-038-0190(5) Table of measures to accommodate housing needs within the UGB:			
Item	Current Zoning Code Provision	Adopted change (note: none of these changes may require approval of a conditional use permit)	High or Low Impact
		UGB population 10,000 to 25,000: 10 to 20 acres UGB population 25,000 to 50,000: 20 to 50 acres UGB population > 50,000: at least 40 to 100 acres	
23	Does not have a cottage housing code provision	Adopt a cottage housing code provision authorizing at least 12 du/ac.	Low
24	Does not allow duplexes in single-family residential zoning districts	Permit duplexes on corner lots in single-family residential zoning districts with no additional development review restrictions vs. single-family detached residence.	Low
25	Off-street parking requirements for detached single-family units, attached single-family units, duplexes, or triplexes greater than one space per unit.	Reduce parking requirements for detached single-family units, attached single-family units, duplexes, and triplexes to no greater than one space per unit.	Low
26	No systems development charge deferrals	Adopt provisions that defer payment of systems development charges for affordable housing units to the date of occupancy of the unit. The affordable housing units must be reserved as affordable housing for a minimum of 50 years. Affordable housing is defined as housing that is reserved for households with a maximum household income of 80 percent of a city's mean household income. The percentage threshold for the household affordable housing reservation may also be less than 80 percent of a city's mean household income.	Low
27	Does not authorize property tax exemptions for single-unit housing in distressed areas pursuant to ORS 307.651 to 307.687	Authorizes property tax exemptions for single-unit housing pursuant to ORS 307.651 to 307.687, with design standards pursuant to ORS 307.657(3) that are clear and objective and do not have the effect of discouraging the use of the property tax exemption by otherwise qualifying developments through the imposition of unreasonable cost or delay.	Low
28	Does not authorize freeze in property tax assessment valuation for rehabilitated residential property pursuant to ORS 308.450 to 308.481	Authorizes freeze in property tax assessment valuation for rehabilitated residential property pursuant to ORS 308.450 to 308.481. The boundaries of the area that qualifies for the assessment freeze shall be between 10 percent and 20 percent of the city's total land area. The city shall promulgate standards and guidelines for review of	Low

Table 8: OAR 660-038-0190(5) Table of measures to accommodate housing needs within the UGB:

Item	Current Zoning Code Provision	Adopted change (note: none of these changes may require approval of a conditional use permit)	High or Low Impact
		applications under the program pursuant to ORS 308.456(3) that are clear and objective and do not have the effect of discouraging use of the program by otherwise qualifying rehabilitations through the imposition of unreasonable cost and delay.	
29	Single-family homes allowed in high density zoning district (as defined by residential need path standards)	New single-family homes not allowed in high density zoning district	Low
30	Does not allow attached-single family residences in a single-family residential district with a minimum lot size 5,000 square feet or less	Permit attached single-family residences in a single-family residential district with a minimum lot size of 5,000 square feet or less.	Low
31	No maximum lot size for single-family detached dwellings in zoning districts that permit attached and multi-family housing	Maximum lot size for single-family detached dwellings in zoning districts that permit attached and multi-family housing of 5,000 square feet. Minor partitions exempted.	Low

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Version: [http://intranet.dlcd.state.or.us/projects/UGBRAC/Reference Documents/Public Draft 2 \(WorkingDraft\).docx](http://intranet.dlcd.state.or.us/projects/UGBRAC/Reference Documents/Public Draft 2 (WorkingDraft).docx)

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

**DIVISION 24
URBAN GROWTH BOUNDARIES**

*Proposed New rules and Rule Amendments in Response to ORS 197A
Second public draft November 13, 2015*

Note: No changes are proposed to existing rules at OAR 660-024-0010, 660-024-0020, 660-024-0040, 660-024-0045 and 660-024-0080 (note: 660-024-0040 is shown for context only)

1 **660-024-0000**

2 **Purpose and Applicability**

3 (1) The rules in this division clarify procedures and requirements of Goal 14 regarding a local
4 government adoption or amendment of an urban growth boundary (UGB). **The rules in this**
5 **division do not apply to the simplified UGB process under OAR chapter 660, division 38.**

6 (2) The rules in this division interpret Goal 14 as amended by Land Conservation and
7 Development Commission (the Commission) on or after April 28, 2005, and are not applicable to
8 plan amendments or land use decisions governed by previous versions of Goal 14 still in effect.

9 (3) The rules in this division adopted on October 5, 2006, are effective April 5, 2007. The rules
10 in this division amended on March 20, 2008, are effective April 18, 2008. The rules in this
11 division adopted March 13, 2009, and amendments to rules in this division adopted on that date,
12 are effective April 16, 2009, except as follows:

13 (a) A local government may choose to not apply this division to a plan amendment
14 concerning the evaluation or amendment of a UGB, regardless of the date of that amendment,
15 if the local government initiated the evaluation or amendment of the UGB prior to April 5,
16 2007;

17 (b) For purposes of this rule, "initiated" means that the local government either:

18 (A) Issued the public notice specified in OAR 660-018-0020 for the proposed plan
19 amendment concerning the evaluation or amendment of the UGB; or

20 (B) Received LCDC approval of a periodic review work program that includes a work task
21 to evaluate the UGB land supply or amend the UGB;

22 (c) A local government choice whether to apply this division must include the entire division
23 and may not differ with respect to individual rules in the division.

24 **(4) The rules in this division adopted on December 4, 2015, are effective January 1, 2016,**
25 **except that a local government may choose not to apply the rules adopted December 4,**
26 **2015 to a plan amendment concerning the evaluation or amendment of a UGB, regardless**

1 **of the date of that amendment, if the local government initiated the evaluation or**
2 **amendment of the UGB prior to January 1, 2016.**

3 **660-024-0040**

4 **Land Need**

5 (1) The UGB must be based on the appropriate 20-year population forecast for the urban area as
6 determined under Rules in OAR 660, div 32, and must provide for needed housing, employment
7 and other urban uses such as public facilities, streets and roads, schools, parks and open space
8 over the 20-year planning period consistent with the land need requirements of Goal 14 and this
9 rule. The 20-year need determinations are estimates which, although based on the best available
10 information and methodologies, should not be held to an unreasonably high level of precision.
11 Local governments in Crook, Deschutes or Jefferson Counties may determine the need for
12 Regional Large-Lot Industrial Land by following the provisions of OAR 660-024-0045 for areas
13 subject to that rule.

14 (2) If the UGB analysis or amendment is conducted as part of a periodic review work program,
15 the 20-year planning period must commence on the date initially scheduled for completion of the
16 appropriate work task. If the UGB analysis or amendment is conducted as a post-
17 acknowledgement plan amendment under ORS 197.610 to 197.625, the 20-year planning period
18 must commence either:

19 (a) On the date initially scheduled for final adoption of the amendment specified by the local
20 government in the initial notice of the amendment required by OAR 660-018-0020; or

21 (b) If more recent than the date determined in subsection (a), at the beginning of the 20-year
22 period specified in the appropriate coordinated population forecast for the urban area as
23 determined under Rules in OAR 660, div 32, unless ORS 197.296 requires a different date
24 for local governments subject to that statute.

25 (3) A local government may review and amend the UGB in consideration of one category of land
26 need (for example, housing need) without a simultaneous review and amendment in
27 consideration of other categories of land need (for example, employment need).

28 (4) The determination of 20-year residential land needs for an urban area must be consistent with
29 the appropriate 20-year coordinated population forecast for the urban area determined under
30 Rules in OAR 660, div 32, and with the requirements for determining housing needs in Goals 10
31 and 14, OAR chapter 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314
32 and 197.475 to 197.490.

33 (5) Except for a metropolitan service district described in ORS 197.015(13), the determination of
34 20-year employment land need for an urban area must comply with applicable requirements of
35 Goal 9 and OAR chapter 660, division 9, and must include a determination of the need for a

1 short-term supply of land for employment uses consistent with 660-009-0025. Employment land
2 need may be based on an estimate of job growth over the planning period; local government
3 must provide a reasonable justification for the job growth estimate but Goal 14 does not require
4 that job growth estimates necessarily be proportional to population growth. Local governments
5 in Crook, Deschutes or Jefferson Counties may determine the need for Regional Large-Lot
6 Industrial Land by following the provisions of 660-024-0045 for areas subject to that rule.

7 (6) Cities and counties may jointly conduct a coordinated regional EOA for more than one city in
8 the county or for a defined region within one or more counties, in conformance with Goal 9,
9 OAR chapter 660, division 9, and applicable provisions of ORS 195.025. A defined region may
10 include incorporated and unincorporated areas of one or more counties.

11 (7) The determination of 20-year land needs for transportation and public facilities for an urban
12 area must comply with applicable requirements of Goals 11 and 12, rules in OAR chapter 660,
13 divisions 11 and 12, and public facilities requirements in ORS 197.712 and 197.768. The
14 determination of school facility needs must also comply with 195.110 and 197.296 for local
15 governments specified in those statutes.

16 (8) The following safe harbors may be applied by a local government to determine housing need
17 under this division:

18 (a) A local government may estimate persons per household for the 20-year planning period
19 using the persons per household for the urban area indicated in the most current data for the
20 urban area published by the U.S. Census Bureau.

21 (b) If a local government does not regulate government-assisted housing differently than
22 other housing types, it is not required to estimate the need for government-assisted housing
23 as a separate housing type.

24 (c) If a local government allows manufactured homes on individual lots as a permitted use in
25 all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not
26 necessary to provide an estimate of the need for manufactured dwellings on individual lots.

27 (d) If a local government allows manufactured dwelling parks required by ORS 197.475 to
28 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a
29 separate estimate of the need for manufactured dwelling parks is not required.

30 (e) A local government outside of the Metro boundary may estimate its housing vacancy rate
31 for the 20-year planning period using the vacancy rate in the most current data published by
32 the U.S. Census Bureau for that urban area that includes the local government.

33 (f) A local government outside of the Metro boundary may determine housing needs for
34 purposes of a UGB amendment using the combined Housing Density and Housing Mix safe
35 harbors described in this subsection and in Table 1, or in combination with the Alternative

1 Density safe harbor described under subsection (g) of this section and in Table 2. To meet the
2 Housing Density safe harbor in this subsection, the local government may Assume For UGB
3 Analysis that all buildable land in the urban area, including land added to the UGB, will
4 develop at the applicable average overall density specified in column B of Table 1. Buildable
5 land in the UGB, including land added to the UGB, must also be Zoned to Allow at least the
6 average overall maximum density specified as Zone To Allow in column B of Table 1.
7 Finally, the local government must adopt zoning that ensures buildable land in the urban
8 area, including land added to the UGB, cannot develop at an average overall density less than
9 the applicable Required Overall Minimum density specified in column B of Table 1. To meet
10 the Housing Mix safe harbor in this subsection, the local government must Zone to Allow the
11 applicable percentages of low, medium and high density residential specified in column C of
12 Table 1.

13 (g) When using the safe harbor in subsection (f), a local government may choose to also use
14 the applicable Alternative Density safe harbors for Small Exception Parcels and High Value
15 Farm Land specified in Table 2. If a local government chooses to use the Alternative Density
16 safe harbors described in Table 2, it must

17 (A) Apply the applicable Small Exception Parcel density assumption and the High Value
18 Farm Land density assumption measures specified in the table to all buildable land that is
19 within these categories, and

20 (B) Apply the Housing Density and Mix safe harbors specified in subsection (f) of this
21 section and specified in Table 1 to all buildable land in the urban area that does not consist
22 of Small Exception Parcels or High Value Farm Land.

23 (h) As an alternative to the density safe harbors in subsection (f) and, if applicable,
24 subsection (g), of this section, a local government outside of the Metro boundary may assume
25 that the average overall density of buildable residential land in the urban area for the 20-year
26 planning period will increase by 25 percent over the average overall density of developed
27 residential land in the urban area at the time the local government initiated the evaluation or
28 amendment of the UGB. If a local government uses this Incremental Housing Density safe
29 harbor, it must also meet the applicable Zoned to Allow density and Required Overall
30 Minimum density requirements in Column B of Table 1 and, if applicable, Table 2, and must
31 use the Housing Mix safe harbor in Column C of Table 1.

32 (i) As an alternative to the Housing Mix safe harbor required in subsection (f) of this section
33 and in Column C of Table 1, a local government outside the Metro boundary that uses the
34 housing density safe harbor in either subsection (f), (g) or (h) of this section may estimate
35 housing mix using the Incremental Housing Mix safe harbor described in paragraphs (A) to
36 (C) of this subsection, as illustrated in Table 3:

- 1 (A) Determine the existing percentages of low density, medium density, and high density
2 housing on developed land (not “buildable land”) in the urban area at the time the local
3 government initiated the evaluation or amendment of the UGB;
- 4 (B) Increase the percentage of medium density housing estimated in paragraph (A) of this
5 subsection by 10 percent, increase the percentage of high density housing estimated in
6 paragraph (A) of this subsection by five percent, as illustrated in Table 3, and decrease the
7 percentage of low density single family housing by a proportionate amount so that the
8 overall mix total is 100 percent, and
- 9 (C) Zone to Allow the resultant housing mix determined under subparagraphs (A) and (B)
10 of this subsection.
- 11 (j) Tables 1, 2 and 3 are adopted as part of this rule, and the following definitions apply to
12 terms used in the tables:
- 13 (A) “Assume For UGB Analysis” means the local government may assume that the UGB
14 will develop over the 20-year planning period at the applicable overall density specified in
15 Column B of Tables 1 and 2.
- 16 (B) “Attached housing” means housing where each unit shares a common wall, ceiling or
17 floor with at least one other unit. “Attached housing” includes, but is not limited to,
18 apartments, condominiums, and common-wall dwellings or row houses where each
19 dwelling unit occupies a separate lot.
- 20 (C) “Average Overall Density” means the average density of all buildable land in the UGB,
21 including buildable land already inside the UGB and buildable land added to the UGB,
22 including land zoned for residential use that is presumed to be needed for schools, parks
23 and other institutional uses.
- 24 (D) “Coordinated 20-year Population Forecast” and “20-year Population Forecast” under
25 Column A of the Tables refers to the appropriate population forecast for the urban area
26 determined under rules in OAR 660, div 32.
- 27 (E) “Density” means the number of dwelling units per net buildable acre.
- 28 (F) “High Value Farm Land” has the same meaning as the term defined in ORS
29 195.300(10).
- 30 (G) “Required Overall Minimum” means a minimum allowed overall average density, or a
31 “density floor,” that must be ensured in the applicable residential zones with respect to the
32 overall supply of buildable land for that zone in the urban area for the 20-year planning
33 period.

1 (H) “Single Family Detached Housing” means a housing unit that is free standing and
2 separate from other housing units, including mobile homes and manufactured dwellings
3 under ORS 197.475 to 197.492.

4 (I) “Small Exception Parcel” means a residentially zoned parcel five acres or less with a
5 house on it, located on land that is outside a UGB prior to a proposed UGB expansion,
6 subject to an acknowledged exception to Goal 3 or 4 or both.

7 (J) “Zone To Allow” or “Zoned to Allow” means that the comprehensive plan and
8 implementing zoning shall allow the specified housing types and densities under clear and
9 objective standards and other requirements specified in ORS 197.307(3)(b) and (6).

10 (9) The following safe harbors may be applied by a local government to determine its
11 employment needs for purposes of a UGB amendment under this rule, Goal 9, OAR chapter 660,
12 division 9, Goal 14 and, if applicable, ORS 197.296.

13 (a) A local government may estimate that the current number of jobs in the urban area will
14 grow during the 20-year planning period at a rate equal to either:

15 (A) The county or regional job growth rate provided in the most recent forecast published
16 by the Oregon Employment Department; or

17 (B) The population growth rate for the urban area in the appropriate 20-year coordinated
18 population forecast determined under Rules in OAR 660, div 32.

19 (b) A local government with a population of 10,000 or less may assume that retail and
20 service commercial land needs will grow in direct proportion to the forecasted urban area
21 population growth over the 20-year planning period. This safe harbor may not be used to
22 determine employment land needs for sectors other than retail and service commercial.

23 (10) As a safe harbor during periodic review or other legislative review of the UGB, a local
24 government may estimate that the 20-year land needs for streets and roads, parks and school
25 facilities will together require an additional amount of land equal to 25 percent of the net
26 buildable acres determined for residential land needs under section (4) of this rule, and in
27 conformance with the definition of “Net Buildable Acre” as defined in OAR 660-024-0010(6).

1 **660-024-0050**

2 **Land Inventory and Response to Deficiency**

3 (1) When evaluating or amending a UGB, a local government must inventory land inside the
4 UGB to determine whether there is adequate development capacity to accommodate 20-year
5 needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must
6 include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045
7 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to
8 that statute. For employment land, the inventory must include suitable vacant and developed land
9 designated for industrial or other employment use, and must be conducted in accordance with
10 OAR 660-009-0015.

11 (2) As safe harbors, a local government, except a city with a population over 25,000 or a
12 metropolitan service district described in ORS 197.015(13), may use the following assumptions
13 to inventory the capacity of buildable lands to accommodate housing needs:

14 (a) The infill potential of developed residential lots or parcels of one-half acre or more may
15 be determined by subtracting one-quarter acre (10,890 square feet) for the existing dwelling
16 and assuming that the remainder is buildable land;

17 (b) Existing lots of less than one-half acre that are currently occupied by a residence may be
18 assumed to be fully developed.

19 (3) As safe harbors when inventorying land to accommodate industrial and other employment
20 needs, a local government may assume that a lot or parcel is vacant if it is:

21 (a) Equal to or larger than one-half acre, if the lot or parcel does not contain a permanent
22 building; or

23 (b) Equal to or larger than five acres, if less than one-half acre of the lot or parcel is occupied
24 by a permanent building.

25 (4) If the inventory demonstrates that the development capacity of land inside the UGB is
26 inadequate to accommodate the estimated 20-year needs determined under OAR 660-024-0040,
27 the local government must amend the plan to satisfy the need deficiency, either by increasing the
28 development capacity of land already inside the city or by expanding the UGB, or both, and in
29 accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local
30 government must demonstrate that the estimated needs cannot reasonably be accommodated on
31 land already inside the UGB. If the local government determines there is a need to expand the
32 UGB, changes to the UGB must be determined by evaluating alternative boundary locations
33 consistent with Goal 14 and applicable rules at OAR 660-024-0060 or **OAR 660-024-0065 and**
34 **OAR 660-024-0067.**

1 (5) In evaluating an amendment of a UGB submitted under ORS 197.626, the director or the
2 Commission may determine that a difference between the estimated 20-year needs determined
3 under OAR 660-024-0040 and the amount of land and development capacity added to the UGB
4 by the submitted amendment is unlikely to significantly affect land supply or resource land
5 protection, and as a result, may determine that the proposed amendment complies with
6 section (4) of this rule.

7 (6) When land is added to the UGB, the local government must assign appropriate urban plan
8 designations to the added land, consistent with the need determination. The local government
9 must also apply appropriate zoning to the added land consistent with the plan designation or may
10 maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either
11 by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other
12 interim zoning that maintains the land's potential for planned urban development. The
13 requirements of ORS 197.296 regarding planning and zoning also apply when local governments
14 specified in that statute add land to the UGB.

15 (7) As a safe harbor regarding requirements concerning “efficiency,” a local government that
16 chooses to use the density and mix safe harbors in OAR 660-024-0040(8) is deemed to have met
17 the Goal 14 efficiency requirements under:

18 (a) Sections (1) and (4) of this rule regarding evaluation of the development capacity of
19 residential land inside the UGB to accommodate the estimated 20-year needs; and

20 (b) Goal 14 regarding a demonstration that residential needs cannot be reasonably
21 accommodated on residential land already inside the UGB, but not with respect to:

22 (A) A demonstration that residential needs cannot be reasonably accommodated by
23 rezoning non-residential land, and

24 (B) Compliance with Goal 14 Boundary Location factors.

25 **660-024-0060**

26 **Metro Boundary Location Alternatives Analysis**

27 (1) When considering a **Metro** UGB amendment, [~~a local government~~] **Metro** must determine
28 which land to add by evaluating alternative **urban growth** boundary locations. **For Metro,**
29 ~~t~~**his** determination must be consistent with the priority of land specified in ORS 197.298 and
30 the boundary location factors of Goal 14, as follows:

31 (a) Beginning with the highest priority of land available, [~~a local government~~] **Metro** must
32 determine which land in that priority is suitable to accommodate the need deficiency
33 determined under OAR 660-024-0050.

1 (b) If the amount of suitable land in the first priority category exceeds the amount
2 necessary to satisfy the need deficiency, [~~a local government~~] **Metro** must apply the
3 location factors of Goal 14 to choose which land in that priority to include in the **Metro**
4 UGB.

5 (c) If the amount of suitable land in the first priority category is not adequate to satisfy
6 the identified need deficiency, [~~a local government~~] **Metro** must determine which land in
7 the next priority is suitable to accommodate the remaining need, and proceed using the
8 same method specified in subsections (a) and (b) of this section until the land need is
9 accommodated.

10 (d) Notwithstanding subsection (a) to (c) of this section, [~~a local government~~] **Metro** may
11 consider land of lower priority as specified in ORS 197.298(3).

12 (e) For purposes of this **section** [~~rule~~], the determination of suitable land to accommodate
13 land needs must include consideration of any suitability characteristics specified under
14 section (5) of this rule, as well as other provisions of law applicable in determining
15 whether land is buildable or suitable.

16 (2) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during
17 periodic review or other legislative review of the **Metro** UGB, [~~a local government~~] **Metro** may
18 approve an application under ORS 197.610 to 197.625 for a **Metro** UGB amendment proposing
19 to add an amount of land less than necessary to satisfy the land need deficiency determined under
20 OAR 660-024-0050(4), provided the amendment complies with all other applicable
21 requirements.

22 (3) The boundary location factors of Goal 14 are not independent criteria. When the factors are
23 applied to compare alternative boundary locations and to determine the **Metro** UGB location,
24 **Metro**[~~a local government~~] must show that all the factors were considered and balanced.

25 (4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the
26 UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the
27 vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

28 (5) If [~~a local government~~] **Metro** has specified characteristics such as parcel size, topography,
29 or proximity that are necessary for land to be suitable for an identified need, [~~a local~~
30 ~~government~~] **Metro** may limit its consideration to land that has the specified characteristics when
31 it conducts the boundary location alternatives analysis and applies ORS 197.298.

32 (6) The adopted findings for **a Metro** UGB adoption or amendment must describe or map all of
33 the alternative areas evaluated in the boundary location alternatives analysis. If the analysis
34 involves more than one parcel or area within a particular priority category in ORS 197.298 for

1 which circumstances are the same, these parcels or areas may be considered and evaluated as a
2 single group.

3 (7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means
4 water, sanitary sewer, storm water management, and transportation facilities.

5 (8) The Goal 14 boundary location determination requires evaluation and comparison of the
6 relative costs, advantages and disadvantages of alternative **Metro** UGB expansion areas with
7 respect to the provision of public facilities and services needed to urbanize alternative boundary
8 locations. This evaluation and comparison must be conducted in coordination with service
9 providers, including the Oregon Department of Transportation with regard to impacts on the state
10 transportation system. "Coordination" includes timely notice to service providers and the
11 consideration of evaluation methodologies recommended by service providers. The evaluation
12 and comparison must include:

13 (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities
14 that serve nearby areas already inside the **Metro** UGB;

15 (b) The capacity of existing public facilities and services to serve areas already inside the
16 UGB as well as areas proposed for addition to the **Metro** UGB; and

17 (c) The need for new transportation facilities, such as highways and other roadways,
18 interchanges, arterials and collectors, additional travel lanes, other major improvements on
19 existing roadways and, for urban areas of 25,000 or more, the provision of public transit
20 service.

21 **660-024-0065**

22 **Establishment of Study Area to Evaluate Land for Inclusion in the UGB**

23
24 **(1) When considering a UGB amendment to accommodate a need deficit identified in OAR**
25 **660-024-0050(4), a city outside of Metro must determine which land to add to the UGB by**
26 **evaluating alternative locations within a "study area" established pursuant to this rule. To**
27 **establish the study area, the city must first identify a "preliminary study area" which shall**
28 **not include land within a different UGB or within the corporate limits of a city that is**
29 **within a different UGB. The preliminary study area shall include:**

30 **(a) All lands in the city's acknowledged urban reserve, if any;**

31 **(b) All lands that are within the following distance from the acknowledged UGB:**

32 **(A) For cities with a UGB population less than 10,000: one-half mile;**

33 **(B) For cities with a UGB population equal to or greater than 10,000: one mile;**

1 **(c) All exception areas that are within the following distance from the acknowledged**
2 **UGB provided they are contiguous to an exception area that includes land within the**
3 **distance specified in subsection (b):**

4 **(A) For cities with a UGB population less than 10,000: one mile;**

5 **(B) For cities with a UGB population equal to or greater than 10,000: one and one-**
6 **half miles;**

7 **(d) At the discretion of the city, the preliminary study area may include land that is**
8 **beyond the distance specified in subsections (b) and (c).**

9 **(2) A city that initiated the evaluation or amendment of its UGB prior to January 1, 2016,**
10 **may choose to identify a preliminary study area applying the standard in this section**
11 **rather than section (1). For such cities, the preliminary study area shall consist of:**

12 **(a) All land adjacent to the acknowledged UGB, including all land in the vicinity of the**
13 **UGB that has a reasonable potential to satisfy the identified need deficiency, and**

14 **(b) All land in the city's acknowledged urban reserve established under OAR chapter**
15 **660, division 21, if applicable.**

16 **(3) When the primary purpose for expansion of the UGB is to accommodate a particular**
17 **industrial use that requires specific site characteristics, or to accommodate a public facility**
18 **that requires specific site characteristics, and the site characteristics may be found in only a**
19 **small number of locations, the preliminary study area may be limited to those locations**
20 **within the distance described in section (1) or (2), whichever is appropriate, that have or**
21 **could be improved to provide the required site characteristics. Site characteristics may**
22 **include but are not limited to size, topography and proximity. For purposes of this section:**

23 **(a) The definition of "site characteristics" in OAR 660-009-0005(11) applies for**
24 **purposes of identifying a particular industrial use.**

25 **(b) A "public facility" may include a facility necessary for public sewer, water, storm**
26 **water, transportation, parks, schools, or fire protection.**

27 **(4) The city may exclude land from the preliminary study area if it determines that:**

28 **(a) Based on the standards in section (7) of this rule, it is impracticable to provide**
29 **necessary public facilities or services to the land;**

30 **(b) The land is subject to significant development hazards, due to a risk of:**

31 **(A) Landslides: the land consists of a landslide deposit or scarp flank that is**
32 **described and mapped on the Statewide Landslide Information Database for**
33 **Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of**

1 **Geology and Mineral Industries (DOGAMI) December 2014, provided that the**
2 **deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer;**

3 **(B) Flooding, including inundation during storm surges: the land is within the**
4 **Floodway or Special Flood Hazard Area (SFHA) identified on the applicable Flood**
5 **Insurance Rate Map (FIRM);**

6 **(C) Tsunamis: the land is within a tsunami inundation zone established pursuant to**
7 **ORS 455.446;**

8 **(c) The land consists of a significant scenic, natural, cultural or recreational resource**
9 **described in this subsection:**

10 **(A) Lands that are designated on an acknowledged comprehensive plan prior to**
11 **initiation of the UGB amendment, or that are mapped on a published state or**
12 **federal inventory at a scale sufficient to determine its location for purposes of this**
13 **rule, as:**

14 **(i) Critical or essential habitat for a species listed by a state or federal agency**
15 **as threatened or endangered;**

16 **(ii) Core habitat for Greater Sage Grouse; or**

17 **(iii) Big game winter range or migration corridors;**

18 **(B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related**
19 **Adjacent Lands described by ORS 390.805, as mapped by the applicable state or**
20 **federal agency responsible for the scenic program;**

21 **(C) Designated Natural Areas on the Oregon State Register of Natural Heritage**
22 **Resources;**

23 **(D) A wellhead protection area described under OAR 660-023-0140 and delineated**
24 **on a local comprehensive plan;**

25 **(E) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or**
26 **Conservation management unit designated in an acknowledged comprehensive**
27 **plan;**

28 **(F) Lands subject to acknowledged comprehensive plan provisions that implement**
29 **Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;**

1 **(G) Lands subject to acknowledged comprehensive plan provisions that implement**
2 **Statewide Planning Goal 18, Implementation Requirement 2; or**

3 **(d) The land is owned by the federal government and managed primarily for rural uses.**

4 **(5) After excluding land from the preliminary study area under section (4), the city must**
5 **adjust the area, if necessary, so that it includes an amount of land that is at least twice the**
6 **amount of land needed for the deficiency determined under OAR 660-024-0050(4) [ALT:**
7 **or, if applicable, twice the particular land need described in section (3)]. Such adjustment**
8 **shall be made by expanding the distance specified under the applicable section (1) or (2)**
9 **and applying section (4) to the expanded area.**

10
11 **(6) For purposes of evaluating the priority of land under OAR 660-024-0067, the “study**
12 **area” shall consist of all land that is included in the preliminary study area described in**
13 **section (1) or (2) of this rule after adjustments to the area based on sections (4) and (5).**

14 **(7) For purposes of subsection (4)(a), the city may consider it impracticable to provide**
15 **necessary public facilities or services to the following lands:**

16 **(a) Contiguous areas of at least five acres where 75 percent or more of the land has a**
17 **slope of 25 percent or greater. Slope shall be measured as the increase in elevation**
18 **divided by the horizontal distance at maximum ten-foot contour intervals;**

19 **(b) Land that is isolated from existing service networks by physical, topographic, or**
20 **other impediments to service provision such that it is impracticable to provide**
21 **necessary facilities or services to the land within the planning period. The city’s**
22 **determination shall be based on an evaluation of:**

23 **(A) The likely amount of development that could occur on the land within the**
24 **planning period;**

25 **(B) The likely cost of facilities and services; and,**

26 **(C) Any substantial evidence collected by or presented to the city regarding how**
27 **similarly situated land in the region has, or has not, developed over time.**

28 **(c) As used in this section, “impediments to service provision” may include but are not**
29 **limited to:**

30 **(A) Major rivers or other water bodies that would require new bridge crossings to**
31 **serve planned urban development;**

32 **(B) Topographic features such as canyons or ridges with slopes exceeding 40 percent**
33 **and vertical relief of greater than 80 feet;**

1 **(C) Freeways, rail lines, or other restricted access corridors that would require new**
2 **grade separated crossings to serve planned urban development;**

3 **(D) Significant scenic, natural, cultural or recreational resources on an**
4 **acknowledged plan inventory and subject to protection measures under the plan or**
5 **implementing regulations, or on a published state or federal inventory, that would**
6 **prohibit or substantially impede the placement or construction of necessary public**
7 **facilities and services.**

8 **(8) Land may not be excluded from the preliminary study area based on a finding of**
9 **impracticability that is primarily a result of existing development patterns. However, a city**
10 **may forecast development capacity as provided in OAR 660-024-0067(1)(c).**

11 **(9) Notwithstanding OAR 660-024-0050(4) and section (1) of this rule, except during**
12 **periodic review or other legislative review of the UGB, the city may approve an application**
13 **under ORS 197.610 to 197.625 for a UGB amendment to add an amount of land less than**
14 **necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4),**
15 **provided the amendment complies with all other applicable requirements.**

16 **(10) Lands included within a UGB pursuant to section (3) to provide for a particular**
17 **industrial use, or a particular public facility, must be planned and zoned for the intended**
18 **use and must remain planned and zoned for that use unless the city removes the land from**
19 **the UGB.**

20 **OAR 660-024-0067**

21 **Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities**

22 **(1) A city considering a UGB amendment must decide which land to add to the UGB by**
23 **evaluating all land in the study area determined under OAR 660-024-0065, as follows**

24 **(a) Beginning with the highest priority category of land described in section (2), the**
25 **city must apply section (5) to determine which land in that priority category is**
26 **suitable to satisfy the need deficiency determined under OAR 660-024-0050 and**
27 **select for inclusion in the UGB as much of the land as necessary to satisfy the need.**

28 **(b) If the amount of suitable land in the first priority category is not sufficient to satisfy**
29 **all the identified need deficiency, the city must apply section (5) to determine which**
30 **land in the next priority is suitable and select for inclusion in the UGB as much of the**
31 **suitable land in that priority as necessary to satisfy the need. The city must proceed in**
32 **this manner until all the land need is satisfied.**

33 **(c) If the amount of suitable land in a particular priority category in section (2)**
34 **exceeds the amount necessary to satisfy the need deficiency, the city must choose**
35 **which land in that priority to include in the UGB by applying the criteria in section**
36 **(7) of this rule.**

37 **(d) In evaluating the sufficiency of land to satisfy a need under this section, the city**

1 may use the factors identified in sections (5) and (6) of this rule or 660-024-0065(8)
2 to reduce the forecast development capacity of the land to meet the need.

3 (e) With respect to particular uses identified as per OAR 660-024-0065(3), the land
4 ~~does~~ not have, and cannot be improved to provide, the particular site
5 characteristics required for the use.

6 (f) Land that is determined to not be suitable under section (5) of this rule to satisfy
7 the need deficiency determined under OAR 660-024-0050 is not required to be
8 selected for inclusion in the UGB unless its inclusion is necessary to serve other
9 higher priority lands.

10 (2) Priority of Land for inclusion in a UGB:

11 (a) First Priority is Urban reserve, exception land, and nonresource land. Lands in the
12 study area that meet the description in paragraphs (A) through (C) of this subsection
13 are of equal (first) priority:

14 (A) Land designated as an urban reserve under OAR chapter 660, division 21, in
15 an acknowledged comprehensive plan;

16 (B) Land that is subject to an acknowledged exception under ORS 197.732; and

17 (C) Land that is nonresource land.

18 (b) Second Priority is Marginal Land: land within the study area that is designated as
19 marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive
20 plan.

21 (c) Third Priority is farm or forest land that is not predominantly high-value farm land:
22 land within the study area that is designated for agriculture or forest uses in the
23 acknowledged comprehensive plan and that is not predominantly high-value farmland
24 as defined in ORS 195.300, or that does not consist predominantly of prime or unique
25 soils as determined by the United States Department of Agriculture Natural Resources
26 Conservation Service. In selecting which lands to include to satisfy the need, the city
27 must use the predominant capability classification system or the predominant cubic site
28 class, as appropriate for the acknowledged comprehensive plan designation, to select
29 lower capability or cubic site class lands first.

30 (d) Fourth Priority is agricultural land that is predominantly high-value farmland: land
31 within the study area that is designated as agricultural land in an acknowledged
32 comprehensive plan and is predominantly high-value farmland as defined in ORS
33 195.300(10). A city may not select land that is predominantly made up of prime or
34 unique farm soils, as defined by the United States Department of Agriculture Natural
35 Resources Conservation Service, unless there is an insufficient amount of other land to
36 satisfy its land need. In selecting which lands to include to satisfy the need, the city must

1 **use the predominant capability classification system or the predominant cubic site class,**
2 **as appropriate for the acknowledged comprehensive plan designation, to select lower**
3 **capability or cubic site class lands first**

4
5 **(3) Notwithstanding section (2)(c) or (d) of this rule, land that would otherwise be**
6 **excluded from a UGB may be included if:**

7 **(a) The land contains a small amount of third or fourth priority land that is not**
8 **important to the commercial agricultural enterprise in the area and the land must**
9 **be included to connect a nearby and significantly larger area of land of higher**
10 **priority for inclusion within the UGB; or**

11 **(b) The land contains a small amount of third or fourth priority land that is not**
12 **predominantly high value farmland or predominantly made up of prime or unique**
13 **farm soils and the land is completely surrounded by land of higher priority for**
14 **inclusion into the UGB.**

15 **OPTION 1 (recommended)**

16 **(4) For purposes of subsections (2)(c) and (d) and section (3) of this rule,**

17 **(a) areas of land not larger than 200 acres may be grouped together and studied as a single**
18 **unit of land;**

19 **(b) Areas of land larger than 200 acres that are similarly situated and have similar soils**
20 **may be grouped together provided, however, that soils of lower agricultural or forest**
21 **capability may not be grouped with soils of higher capability in a manner inconsistent with**
22 **the intent of section (2) of this rule which establishes that higher capability resource lands**
23 **are the last priority for inclusion in a UGB;**

24 **(c) Notwithstanding subsection (4)(a), if a city initiated the evaluation or amendment of its**
25 **UGB prior to January 1, 2016, and if the analysis involves more than one parcel or area**
26 **within a particular priority category for which circumstances are reasonably similar, these**
27 **parcels or areas may be considered and evaluated as a single group;**

28 **(d) When determining whether the land is predominantly high-value farmland, or**
29 **predominantly prime or unique, or when using the predominant capability classification**
30 **system or the predominant cubic site class of the subject land, “predominantly” means**
31 **more than 50 percent.**

32 **OPTION 2**

33 **(4) For purposes of subsections (2)(c) and (d) and section (3) of this rule,**

34 **(a) When evaluating the agricultural or forest capability of land within a study area,**
35 **“land” means the land in a tract as defined at ORS 215.010.**

1 *(b) When determining whether the land is predominantly made up of prime or unique*
2 *farm soils “predominantly” means at least 50 percent of a tract as defined at ORS 215.010.*

3 (5) With respect to section (1) of this rule, a city must assume that vacant or partially
4 vacant land in a particular priority category is “suitable” to satisfy a need deficiency
5 identified in OAR 660-024-0050(4) unless it demonstrates that the land cannot satisfy the
6 specified need based on one or more of the conditions described in subsections (a) through
7 (e) of this section:

8 (a) Existing parcelization, lot sizes or development patterns of rural residential land
9 make the land unsuitable for an identified employment need;

10 (b) The land would qualify for exclusion from the preliminary study area under the
11 factors in OAR 660-024-0065(4) but the city declined to exclude it pending more
12 detailed analysis.

13 (c) The land is, or would be upon inclusion in the UGB, subject to natural resources
14 protections under Statewide Planning Goals 5 such that that no development capacity
15 should be forecast with respect to the need.

16 (d) With respect to needed industrial uses only, the land is over 10 percent slope, or is
17 an existing lot or parcel that is smaller than 5 acres in size, or both. Slope shall be
18 measured as the increase in elevation divided by the horizontal distance at maximum
19 ten-foot contour intervals.

20 (e) The land does not have, and cannot be improved to provide, one or more of the
21 specific site characteristics for a particular industrial use or public facility use
22 described in OAR 660-024-0065(3).

23 (6) For lands added to the UGB to provide for residential uses:

24 (a) Existing lots or parcels one acre or less may be assumed to have a development
25 capacity of one dwelling unit per lot or parcel. Existing lots or parcels greater than one
26 acre but less than two acres shall be assumed to have an aggregate development
27 capacity of two dwelling units per acre.

28 (b) In any subsequent review of a UGB pursuant to this division, the city may use a
29 development assumption for land described subsection (a) of this section for a period of
30 14 years from the date the lands were added to the UGB.

31 (7) Pursuant to section (1)(c), if the amount of suitable land in a particular priority
32 category under section (2) exceeds the amount necessary to satisfy the need deficiency, the
33 city must choose which land in that priority to include in the UGB by first applying the
34 Boundary Location Factors of Goal 14 and then applying applicable criteria in the
35 acknowledged comprehensive plan and land use regulations acknowledged prior to

1 **initiation of the UGB amendment. The city may not apply local comprehensive plan**
2 **criteria that contradict the requirements of the Boundary Location Factors of Goal 14. The**
3 **Boundary Location Factors are not independent criteria; when the factors are applied to**
4 **compare alternative boundary locations and to determine the UGB location the city must**
5 **show that it considered and balanced all the factors.**

6 **(8) The city must apply the Boundary Location Factors in coordination with service**
7 **providers and state agencies, including the Oregon Department of Transportation with**
8 **respect to Factor 2 regarding impacts on the state transportation system, and the**
9 **Oregon Department of Fish and Wildlife and the Department of State Lands with**
10 **respect to Factor 3 regarding environmental consequences. “Coordination” includes**
11 **timely notice to agencies and service providers and consideration of any recommended**
12 **evaluation methodologies.**

13 **(9) In applying Goal 14 Boundary Location Factor 2 to evaluate alternative locations**
14 **under section (6), the city must compare relative costs, advantages and disadvantages of**
15 **alternative UGB expansion areas with respect to the provision of public facilities and**
16 **services needed to urbanize alternative boundary locations. For purposes of this**
17 **section, the term “public facilities and services” means water, sanitary sewer, storm**
18 **water management, and transportation facilities. The evaluation and comparison under**
19 **Boundary Location Factor 2 must consider:**

20 **(a) The impacts to existing water, sanitary sewer, storm water and transportation**
21 **facilities that serve nearby areas already inside the UGB;**

22 **(b) The capacity of existing public facilities and services to serve areas already**
23 **inside the UGB as well as areas proposed for addition to the UGB; and**

24 **(c) The need for new transportation facilities, such as highways and other roadways,**
25 **interchanges, arterials and collectors, additional travel lanes, other major**
26 **improvements on existing roadways and, for urban areas of 25,000 or more, the**
27 **provision of public transit service.**

28 **(10) The adopted findings for UGB adoption or amendment must describe or map all of**
29 **the alternative areas evaluated in the boundary location alternatives analysis.**

30 **660-024-0070**
31 **UGB Adjustments**

32 (1) A local government may adjust the UGB at any time to better achieve the purposes of
33 Goal 14 and this division. Such adjustment may occur by adding or removing land from the
34 UGB, or by exchanging land inside the UGB for land outside the UGB. The requirements of
35 section (2) of this rule apply when removing land from the UGB. The requirements of Goal
36 14 and this division~~and ORS 197.298~~ apply when land is added to the UGB, including land
37 added in exchange for land removed. The requirements of ORS 197.296 may also apply
38 when land is added to a UGB, as specified in that statute. If a local government exchanges

1 land inside the UGB for land outside the UGB, the applicable local government must adopt
2 appropriate rural zoning designations for the land removed from the UGB [~~before the local~~
3 ~~government applies 197.298 and other UGB location requirements necessary for adding~~
4 ~~land to the UGB~~] **prior to or at the time of adoption of the UGB amendment and must**
5 **apply applicable location and priority provisions of OAR 660-024-0060 through OAR**
6 **660-020-0067.**

7 (2) A local government may remove land from a UGB following the procedures and
8 requirements of ORS 197.764. Alternatively, a local government may remove land from the
9 UGB following the procedures and requirements of 197.610 to 197.650, provided it
10 determines:

11 (a) The removal of land would not violate applicable statewide planning goals **and rules**;

12 (b) The UGB would provide a 20-year supply of land for estimated needs after the land is
13 removed, **or would provide roughly the same supply of buildable land as prior to the**
14 **removal,** taking into consideration land added to the UGB at the same time;

15 (c) Public facilities agreements adopted under ORS 195.020 do not **intend to** provide for
16 urban services on the subject land unless the public facilities provider agrees to removal
17 of the land from the UGB **and concurrent modification of the agreement**;

18 (d) Removal of the land does not preclude the efficient provision of urban services to any
19 other buildable land that remains inside the UGB; and

20 (e) The land removed from the UGB is planned and zoned for rural use consistent with
21 all applicable laws.

22 (3) Notwithstanding sections (1) and (2) of this rule, a local government considering an
23 exchange of land may rely on [~~its acknowledged population forecast and~~] **the** land needs
24 analysis **that provided a basis for its current acknowledged plan,** rather than adopting a
25 new [~~forecast and~~] need analysis, provided:

26 (a) The amount of buildable land added to the UGB to meet:

27 **(A)** A specific type of residential need is substantially equivalent to the amount of
28 buildable residential land removed, or

29 **(B) T**[~~he~~] the amount of [~~suitable and developed~~] employment land added to the UGB to
30 meet an [~~specific~~] employment need is substantially equivalent to the amount of
31 [~~suitable and developed~~] employment land removed, and

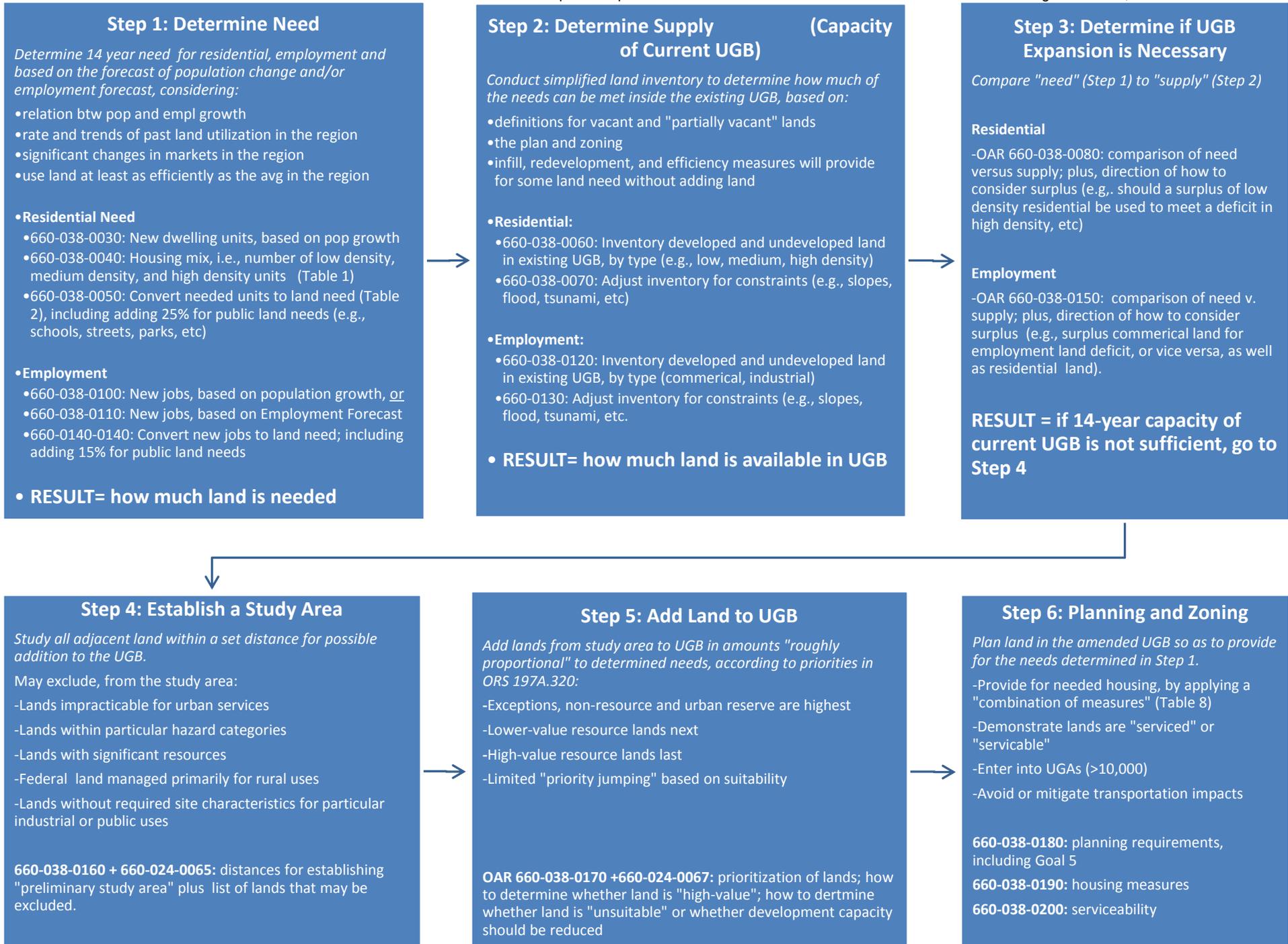
32 (b) The local government **must** [~~applies~~] **apply** comprehensive plan designations and, if
33 applicable, urban zoning to the land added to the UGB, such that the land added is
34 designated:

1 **(A)** For the same **residential** uses and at the same housing [~~or employment~~] density as
2 the land removed from the UGB, **or**

3 **(B) For the same employment uses as allowed on the land removed from the UGB,**
4 **or**

5 **(C) If the land exchange is intended to provide for a particular industrial use that**
6 **requires particular site characteristics, only land zoned for commercial or**
7 **industrial use may be removed, and the land added must be zoned for the**
8 **particular industrial use and meet other applicable requirements of ORS**
9 **197A.320(6).**

Steps in Simplified UGB Process





MEMORANDUM

Department of Fish and Wildlife Wildlife Division

Date: October 28, 2015
To: HB 2254 RAC and DLCD staff
From: Joy Vaughan, Land Use and Waterway Alterations Coordinator
Subject: HB 2254 Rulemaking

ODFW provides the following comments and recommendations in support of our letter submitted to the RAC on 9/8/15 and LCDC on 9/17/15. As mentioned in those letters, it is the policy of the state of Oregon to manage fish and wildlife to prevent serious depletion of indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state (ORS 496.012). In addition, the Statewide Planning Goal 5 Guidelines includes consideration of the carrying capacity of the air, land and water resources of the planning area and Implementation Criteria 4 states that "fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans". In support of these policies, it is critical that the long-term preservation of these natural resources are considered early in the planning phase for UGB expansions. This will help to identify opportunities for maintaining habitat connectivity, avoiding and minimizing impacts to the significant resources and reducing conflicts from urban development and infrastructure. ODFW believes it is important for cities to consider natural resources not only for protection and conservation of those resources for present and future generations, but also in balancing cost, feasibility and public safety associated with urban development.

Therefore, ODFW recommends that DLCD consider three "screens" for cities to apply when evaluating land containing habitat resources. The first "screen" would be those resources captured under OAR 660-038-0160(c) that may be excluded from a study area. The second "screen" would be an opportunity during the study area evaluation for a city to coordinate with ODFW and exclude and/or reduce buildable land capacity for certain lands that require limiting or prohibiting urban development to ensure the long-term preservation of significant natural resources. Depending on how Section 7, Subsection 2 of HB 2254 is interpreted, the provision for exclusion may be more suitable to be "screened" under OAR 660-038-0170. For those resources where limiting urban development are identified, an appropriate reduction of buildable lands would be applied. The final "screen" would help address the local/regional habitat concerns at a finer scale when applying urban plan designations in OAR 660-038-0180. Language should provide an opportunity for more site specific consultations and technical assistance from ODFW to evaluate resources within the UGB to avoid and/or minimize impacts from development actions.

OAR 660-038-0160(c): Establishment of a Study Area to Evaluate Land for Inclusion in the UGB

Establishing a study area is the “first screen” for evaluating resources for inclusion in the UGB. ODFW supports the language for addressing Goals 16, 17 and 18. ODFW also supports the language that allows a city to consider excluding big game winter habitat or habitat for listed wildlife species. Most county acknowledged comprehensive plans include Goal 5 protections for big game habitat, which includes minimum lot size protections to maintain habitat connectivity and viability of the population. For example, Jackson County Comprehensive Plan includes the following language related to big game protections (i.e. minimum lot sizes), “*Specifically the consensus of professional biologists within the Department of Fish and Wildlife is that residential development in big game habitat has a direct and measurable impact on the carrying capacity of winter habitat to sustain high density populations of animals during severe winter conditions*” and that “*these protection measures represent the minimal accepted standards that ODFW can recommend while still maintaining its statutory mission to protect wildlife herds for future generations of Oregonians.*”

Big game winter habitat and migration corridors are a subset of the ODFW big game habitat maps. In 2013, ODFW published an updated map of Big Game Winter Habitat for Eastern Oregon. ODFW also published an accompanying white paper that explains and documents both the development of the winter habitat map and the rationale for why these mapped big game winter habitats are categorized as Category 2 Habitats under the ODFW Fish and Wildlife Habitat Mitigation Policy (OAR 635-415). Winter habitat includes areas identified and mapped as providing essential and limited function and values (e.g., thermal cover, security from predation and harassment, forage quantity, adequate nutritional quality, escape from disturbance) for certain big game species December through April. Winter habitat includes mapped areas of winter range for predominately migratory mule deer and Rocky Mountain elk, but also includes mapped areas of occupied habitat for predominately non-migratory bighorn sheep December through April. These winter habitats are considered essential for the long-term conservation and persistence of these populations. ODFW is currently completing a similar white paper for Big Game Habitat for Western Oregon, which will include mapping of winter concentration areas.

Other examples include Greater Sage-Grouse habitat (recently protected in OAR 660-023-0115) and occupied habitat for Washington Ground Squirrel (WGS). WGS are listed as Endangered under the Oregon Threatened, Endangered and Candidate Fish and Wildlife Species List, and are currently a Candidate species for listing under the Federal Endangered Species Act. Occupied habitat with active WGS colonies is considered Habitat Category 1, under the ODFW Fish and Wildlife Habitat Mitigation Policy. Habitat Category 1 is irreplaceable and essential habitat for a fish or wildlife species and the mitigation goal for Category 1 habitat is no loss of either habitat quantity or quality.

The draft language below is slightly modified from the 9/10 draft to include the option for a city to exclude “*all or portions of land*”, as well as removing the reference to Conservation Opportunity Areas (COAs). While the Oregon Conservation Strategy (OCS) contains valuable data, it may be appropriate to include some areas within COAs (e.g., waterways and associated riparian areas, floodplains, habitat corridors) in a UGB if they are adequately protected as other natural resources should be (Goals 5, 16, 17, 18). ODFW encourages the use of the OCS and COAs as a tool for planning and helping to direct conservation actions, but referencing a COA in its entirety for exclusion from a UGB may not be appropriate without allowing for more regional coordination.

Below is some draft language for OAR 660-038-0160(c):

- (3) *A city may exclude all or portions of land from the study area if it determines that:*
- (c) *The long-term preservation of significant scenic, natural, cultural or recreational resources requires limiting or prohibiting urban development of the land that contains the following resources:*
 - (A) *Habitat that is described and mapped by the Oregon Department of Fish and Wildlife (ODFW) such as:*
 - (i) *Big game winter habitat or migration corridors;*
 - (ii) *Habitat for state or federal special status wildlife species, such as Occupied Washington Ground Squirrel habitat.*

OAR 660-038-0170: Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities

When a city is evaluating the land in the study area, ODFW recommends that this section function as a “second screen” to exclude or reduce development capacity for certain lands that require the limiting or prohibition of urban development to ensure the long-term preservation of significant natural resources. ODFW recommends this section identify an opportunity for cities to either exclude lands with identified resources with zero buildable land capacity, or add the land to the UGB while accounting for physically constrained lands.

The next recommendation is for consideration under Section (8), which will further define “buildable lands”. The adjustment to BLI to account for constrained lands as described in OAR 660-038-0070, or language similar to OAR 660-008-005, may be good templates to consider for how those lands may be excluded and/or development capacity reduced to reflect the percentage of buildable land. The draft Division 24 language provided by 1000 Friends and City of Eugene on 10/24 is also a good template that addresses this concept of accounting for constrained lands during the evaluation process. Language should be considered so that a city could adjust buildable land for all categories included under Section 7, Subsection 2 of HB 2254 (impracticable, hazards, Goal 5), with more specific criteria/direction for each.

For example, to address Goal 5 resources, perhaps consideration of language that allows a city to further coordinate with ODFW, such as:

(A) If factual information is submitted demonstrating that a significant scenic, natural, cultural or recreational resource that requires limiting or prohibiting urban development of the land is present in the study area, and as a result would limit the land suitable to accommodate the need deficiency, the city may determine to:

(i) Exclude the land from further study if it determines the reduction of buildable land is greater than x% and the land is not able to meet a specific need identified in an adopted parks master plan, or

(ii) Continue to evaluate the land for inclusion in the UGB, account for the reduction of buildable land and apply the applicable requirements of OAR Chapter 660, division 23 when land is added to the UGB as described in OAR 660-038-0180(4).

(B) If factual information is submitted demonstrating that a significant fish and wildlife habitat resource is present in the study area, the city must coordinate with appropriate wildlife management agencies, such as the Oregon Department of Fish and Wildlife, with regards to the avoidance and minimization of protected species or habitats.

OAR 660-038-0180: Planning Requirements for Land added to a UGB

ODFW is concerned how resources will be evaluated by a city during the study area evaluation and when amending a comprehensive plan and applying appropriate zoning. Therefore, ODFW recommends a “third screen” to evaluate resources within the UGB that may help address those regional habitat concerns at a finer scale. This draft language includes more site specific consultation which is similar to DLCD’s adopted rules for youth camps and solar energy (Division 33):

(4) If a city is planning for land added to a UGB where factual information has been submitted demonstrating that a resource site, or the impact areas of a such a site, is included on the land, the city shall:

(a) Apply the applicable requirements of OAR Chapter 660, division 23, and;

(b) If after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive), the city shall conduct a site-specific assessment of the land in consultation with all appropriate state, federal, and tribal wildlife management agencies for opportunities to avoid and/or minimize conflict with the resource. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or habitats are anticipated. Based on the results of the biologist’s report, the site shall be planned to avoid adverse effects to state or federal special status species or habitats as described above. If the city’s site-specific assessment shows that

adverse effects cannot be avoided, the city and the appropriate wildlife management agency will cooperatively develop an agreement for mitigation to offset the potential adverse effects at the time the land will be subject to urban development. Where the city and the resource management agency cannot agree on what mitigation may be carried out, the city is responsible for determining appropriate mitigation, if any, required for the urban development.

Additional comments/questions:

- OAR 660-038-0020(14): ODFW understands that Goal 5 may be applied to newly added lands, as stated in OAR 660-038-0180(4). However, it is still not clear when a city may be required to commence periodic review and apply Goal 5 protections. Can you please help to clarify at what point in the process this would occur? Can you please further explain the reference to waiving periodic review, as noted on page 12-13 in the DLCD staff report (dated 9/18/15) for LCDC? As ODFW understands it, cities which never completed Goal 5, yet evaluated land within their current UGB using Division 38 “and determined that the current UGB contains sufficient buildable land”, will be excused from periodic review and inventorying Goal 5 resources.
- In OAR 660-038-0170, it is not clear to ODFW how Goal 14 Boundary Location Factor 3 (to address comparative environmental, energy, economic and social consequences) is currently evaluated and documented. Why do the Division 24 and 38 rules only provide clarification for “public facilities and services” and not additional clarification on how to evaluate the other boundary location factors, such as “environmental consequences”?
- OAR 660-038-0070(1) and OAR 660-038-0140(1): Recommend consistent language identifying physical constraints for residential and employment land BLI.

Thank you for the opportunity to provide these comments and recommendations for the RAC and DLCD to consider. ODFW is supportive of developing a streamlined method for cities to grow efficiently, while retaining the core values of the Oregon land use planning program for present and future generations of the citizens of this state. It is not clear how a city will determine where it should expand to avoid and/minimize Goal 5 resources, without knowledge of the resources present and consideration of buildable land. Therefore, ODFW continues to recommend that the draft rules provide a transparent process for a city to consult with ODFW on opportunities to avoid and/or minimize impacts to fish, wildlife and habitat resources of the state when cities are evaluating a study area and planning for land added to the UGB.

DATE: November 2, 2015
TO: Land Conservation and Development Commission (LCDC)
CC: Carrie MacLaren, Bob Rindy and Gordon Howard
FROM: Beth Goodman and Bob Parker
SUBJECT: COMMENTS ON OAR 660-038

The purpose of this memorandum is to submit comments on the September 10, 2015 draft of OAR 660-038. We request our comments be placed in the official record of decision for the proceedings related to adoption of OAR 660-038. Thank you for the opportunity to comment; our intent is to provide useful input for the rulemaking process.

As a backdrop, ECONorthwest has worked with Oregon municipalities for decades on Urban Growth Boundary (UGB) amendments. Through our involvement with McMinnville, Woodburn and many other cities, we have developed a deep understanding of the current program. As HB 2254 articulates, the current process is too uncertain, too complicated, and too expensive, The millions of dollars many cities invest in UGB review could better be applied to other services, including planning efforts that will better achieve the desired outcomes of the Oregon land use program.

We organize our comments as follows:

- **Areas of Concern, with Suggestions for Changes.** This section is the list of the items that we are most concerned about, with our suggestions for changes to OAR 660-038.
- **Areas for Clarification.** This section lists the items that we think need to be clarified in the revised version of OAR 660-038. These are lower priority concerns or sections of the rule that we think are ambiguous.
- **Items to Keep.** This section describes the portions of the rule that we think are addressed particularly well or where we think the proposed solution is both relatively simple and sufficiently addresses the issues.

As a general comment, we appreciate the effort and thoughtfulness of DLCD staff in drafting the rule. We understand how difficult it is to interpret legislative direction and strike a balance between simplicity and good planning. The draft rule is a good start and it is, in our view, imperative that the rule achieve the stated objective of being the preferred pathway for UGB amendments.

The HB 2254 legislation articulates the shorter, faster, cheaper objective for the new rule. While the window has closed on opportunity to comment on the legislation, we are concerned that the 14-year planning period required by the rule will only serve to compound complications with public facilities planning that cities face as a result of the UGB program. This is both an issue of timing and uncertainty. Coordination of land use and public facility plans is a cornerstone of the Oregon program. The legislation attempts to address this by requiring cities to demonstrate that they can provide services to land prior to inclusion in a UGB. This is a laudable goal,

however, the uncertainty that is inherent in boundary reviews (and will continue to be after OAR 660-038 is adopted) makes long-range public facilities planning difficult. This is a function of the uncertainty about what lands might be included in the UGB in the future.

As a general observation, we think the rule is moving the right direction on the needs component. The alternatives analysis looks a lot like it did before and will continue to require considerable time and effort on the part of cities. Our conclusion is that it is very difficult to streamline parts of the process and continue to be true to other requirements of the program—particularly citizen involvement and priority of lands to be included in the UGB. This is the issue that would most likely prevent the Division 38 rule from being the preferred pathway—that is, it doesn't simplify the process enough.

Areas of Concern, with Suggestions for Changes

This section describes the areas of OAR 660-038 that we have the largest concerns or questions about. We organize the issues in this section roughly in order of priority, with highest priority issues presented first.

Transferable Pathways (OAR 660-038-0020(5))

Issue

DLCD staff have consistently stated that a city may choose to use the streamlined pathway or the traditional pathway and that the choice of one or the other would not prevent them from selecting a different pathway in the future. OAR 660-038-0020(2) suggests that using the traditional pathway after using the streamlined pathway is only allowable in very narrow circumstances:

(5) A city that adopts a UGB amendment using this division may subsequently add land to the UGB using the “traditional” method described in OAR chapter 660, division 24, instead of a method described in this division, *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 13 197A.320(6).*

[emphasis added]

Suggested changes

We recommend that OAR 660-038-0020(5) be deleted or otherwise amended to make it clear that a city may choose to use the traditional pathway at any time.

Addressing Employment Land Deficits (OAR 660-038-015(3))

Issue

OAR 660-038-0150(3)(a) requires a city to redesignate commercial surplus for industrial uses. OAR 660-038-0150(3)(b) requires a city to redesignate industrial surplus for commercial uses.

This direction goes against the policy direction of Goal 9. OAR 660-009 correctly recognizes that many businesses have a need for sites with specific, and often, unique characteristics. The September 10 draft rule appears to treat all employment land as substitutable. The characteristics of commercial land may not meet the identified needs for industrial uses, in terms of location of the parcel, physical characteristics (size, configuration, or topography), access to transportation and freight facilities, or compatibility of surrounding uses. In addition, rezoning commercial land to industrial land is often a down-zone.

Cities should be cautious about redesignating industrial land for commercial uses, despite the common pressure to do so. Industrial land, especially prime industrial land, may have unique characteristics that will be difficult to replace (e.g., access to the highway) or may have considerable infrastructure investments designed for industrial uses.

Suggested changes

We suggest that cities be encouraged to consider redesignating land when it is appropriate, but have concerns about requiring cities redesignate commercial lands for industrial purposes and that cities be requiring to convert surplus industrial lands to commercial designations. Thus, we recommend deleting or substantially amending OAR 660-038-015(3)(a) and (b).

Employment Forecast, Employment Base (OAR 660-038-0100 and OAR 660-0380-110)

Issue

OAR 660-038-0100(3) and OAR 660-038-110(2) require the city to determine the number of jobs in the city, based on a lookup table from DLCD based on the OED's most recent employment data. We assume that cities will have access to a current lookup table at the time they initiate a Division 38 boundary review, We point out three potential issues here:

1. The definitions provided on 660-038-0010(2) and (3) are not inclusive of all employment, NAICS code 92 is public employment and 99 is firms that are unclassified, It is unclear on how the rule intends for cities to address public and unclassified employment. The key point is that government employment requires land and the rule seems to ignore that, or lump it in with the public land factors defined in 660-038-0050(2).
2. The OED employment data tends to lag 1-2 years behind. Cities will require an employment base estimate for the base year of the 14-year planning period. The rule is silent on how the base employment will be adjusted to the base year, This may be intentional, but in the absence of guidance, different cities may use different methods.

3. The OED's data is for covered employment, not total employment. Covered employment typically excludes groups like sole proprietors, independent contractors, railroad workers, etc. In most counties covered employment is two-thirds to three-quarters of total non-farm employment. These non-covered employees require workspace the same as covered employees, such as retail stores or office space.

For example, in 2012...Seventy-seven percent of total employment in was covered employment in the Salem MSA (Marion and Polk County). The City of Salem had about 92,000 covered employees. We estimated that Salem had about 120,000 total employees, assuming that 77% of all employees in Salem were covered employees.¹

We are aware that the UO research based employment densities off of covered employment and that the draft rule uses that data to establish employee per acre ranges and that the methodology, as proposed, is consistent with that methodology.

Suggested changes

1. Clarify how public employment is factored into the land need calculations. This could be done by creating a definition or by articulating where public land need is addressed or by amending the language in OAR 660-038-100 and 110(3) to read "private employment."
2. If this is an issue, then additional language will be required to define the planning period dates similar to the way that OAR 660-024 addresses dates.
3. The key issue here is consistency, If the intent is to keep the forecast consistent with the UO research, then we have no recommended changes.

Residential Buildable Lands Inventory, Definition of Partially Vacant Land (OAR 660-038-0050(4))

Issue

OAR 660-038-0050(4)(a) requires the city to identify all partially vacant parcels at are at least 1/2 acre in size and contain a single-family residence. The city ~~must subtract~~ the residence, and count the rest of the parcel as vacant ~~and~~. The implicit assumption is that these lands will subdivide in the 14-year period.

Our concern is about the likelihood that parcels between ½ and 2 acres will in fact subdivide over the 14-year period. There are a number of factors that may make this unlikely, such as placement of the dwelling on the property (i.e., a house in the center of the parcel) or owner preference against subdividing. This assumption may considerably overstate partially vacant land capacity based on the UO research on development in unincorporated areas of UGBs and areas of large lot development that get annexed.

¹ The math was 92,000 covered employees divided by 77%, which equaled 120,000 total employees

Suggested changes

We suggest allowing a city to assume that some portion of partially vacant land will develop over the 14-year period. This might be accomplished through an examination of the average number of partitions and minor subdivisions of single-family parcels over the past five to 10 years. Allow the city to assume the average number of new lots will be created this way over the next 14 years or the average number plus 25% or 50% (assuming increasing levels of density).

Initiating the Process (OAR 660-038-0010(4))

Issue

OAR 660-038-0010(4) defines what it means to initiate the process. Initiating the process is a public notice for a proposed plan amendment that concerns evaluating or amending the UGB or approval of a periodic review work program that includes a work task concerning a UGB.

While this process is intended to be faster and easier than the existing process, problems may arise that delay the process. For example, we find that completing the technical analysis often happens relatively quickly but issues arise with the public process, requiring the city to take time to address concerns or discuss policies to address concerns. This process can take months or longer.

Suggested changes

We suggest that there is a notification that cities can use to notify DLCD that they are initiating the process for a specific 14-year time period. That way, if the process takes a year, rather than six months, the city does not have to update the technical analysis to make it a new 14-year period.

Determine Amount of Land Needed for Each Housing Type (OAR 660-038-0050 and OAR 660-038-0060).

Issue

The implementation of OAR 660-038-0050(3) and OAR 660-038-0060(6) is neither clear nor simple. We think the intent is that cities would develop a current estimate of the average density of needed housing and compare that with the existing density of housing.

(6) The city must identify all residentially-designated developed parcels and those portions of partially vacant parcels within the UGB that are developed and calculate the total area of developed residentially-designated land, *the total number of existing dwelling units located on residentially-designated land, and the net density of developed residentially-designated land within the UGB.* [emphasis added]

The UO research pretty clearly demonstrates that unit counts by tax lot are not available in most Oregon counties. Thus, cities will be left to figure out how to do the analysis (our guess is most

would choose to use a Census dwelling unit count for the city limit and compare that to the developed land area),

We read the excerpt above several times and still don't fully understand why the rule requires that analysis that is in italics.

Our experience is that there is considerable debate on how to calculate "net densities" (one example is whether net density should net out dedicated open space areas on private tax lots).

Suggested changes

We recommend that OAR 660-038-0060(6) be deleted or otherwise amended to make it clearer how to do this analysis.

Buildable Lands Inventory (BLI) for Residential Land within the UGB – Partially Vacant Land (OAR 660-038-0060)

Issue

The rule requires determination of partially vacant land as follows (OAR 660-038-0060)(4)(b):

For parcels at least one-half acre in size that contain more than one single-family residence, multiple-family residences, non-residential uses, or ancillary uses such as parking areas and recreational facilities, the city must identify vacant areas using an Orthophoto or other map of comparable geometric accuracy. If the vacant area is at least one-quarter acre, consider that portion of the parcel to be vacant land.

We don't necessarily disagree with the requirement, but note that this determination is both time-consuming and subjective. Other methods exist to simplify the BLI, but the committee discussed them and dismissed them so we make no further comment here.

Serviceability (OAR 660-038-0210)

Issue

The HB 2254 legislation required the rule address serviceability. We had, and continue to have, concerns about how to operationalize this requirement, The current draft addresses serviceability, but the language is vague and provides only general direction. If that is the intent, that is fine, but our concern is that it will (1) be difficult for cities to figure out how to comply with the requirement, (2) require considerable effort, and (3) be one of the first areas of the rule that will be subject of LUBA appeals.

Areas for Clarification

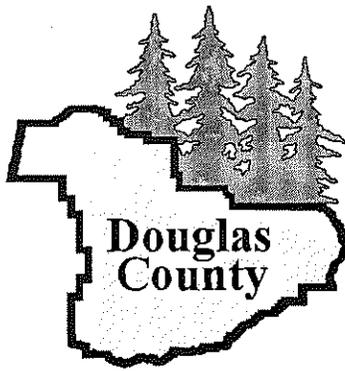
Below are some suggestions for issues to clarify.

- **Sufficiency of buildable lands.** OAR 660-038-0020(2) says that a city must demonstrate that they have enough development capacity for housing and employment opportunities. What if a city has enough for housing but not employment? Does a city have to expand their UGB if they find they do not have enough capacity to accommodate 14-years of growth? Does the city have to expand their UGB for employment? Can a city review one class of land (e.g., employment) without addressing others?
- **Housing mix.** OAR 660-038-0040(2) says that single-family detached dwellings shall be considered low density residential. Does single-family dwellings include manufactured dwellings on parks or in lots? Does it include accessory dwelling units?
- **Residential redevelopment.** The UO research showed that residential redevelopment was happening relatively infrequently, especially in smaller cities. We agree with the direction the rule is taking and recommend that the required percentages be kept low (5% to 10%) at least until better data on redevelopment exists. Many instances exist of local backlash against planning for redevelopment—particularly when it involves low-density neighborhoods.
- **Vacant residential parcels.** OAR 660-038-0060(3) says that vacant parcels are parcels of at least 3,000 square feet in size. What if a 3,000 square foot parcel is not a legal lot?
- **Addressing residential land deficits.** OAR 660-038-0080 directs cities to Tables 3 and 4, which allows a city with a surplus of low-density land and a deficit of medium or high-density land to redesignate low density land to satisfy the higher density land deficits. What does the city do if the redesignation creates a deficit of low-density land? Can they contemplate UGB expansion?
- **Categorizing employment.** OAR 660-038-0010(2) and (3) defines commercial and industrial land. Do these definitions separate government employment from private employment? For example, federal postal carriers are classified under NAICS code 491 (under warehouse and distribution), along with private mail carriers like Federal Express. Put another way, will the employment estimates include government and private employment or only private employment?
- **Additional Planning for Residential Lands Added to the UGB (OAR 660-038-0190 12).** The UO research is clear that parcelization below two acres is detrimental to achieving future urban densities. Consider requiring the planning to prohibit land divisions that result in parcels of less than two acres without annexation or a similar provision that would discourage creation of lots that are less than two acres but not urban density.

Items to keep

Finally, it is worth mentioning areas of the rule we agree with and think should be kept.

- **Appeal to LUBA.** This provides a streamlined ladder of appeal and more certainty about timing.
- **The population forecasting program.** We understand that was the result of a different set of legislation, but it will significantly streamline the Division 38 process.
- **Encouragement for accessory dwellings.** While this does not account for a lot of housing in most cities, small percentages will add up over time and the rule provides incentives for cities to adopt accessory dwelling unit ordinances if they do not already have them.
- **Net to gross factor for employment land.** The rule recognizes that public uses also occur in employment zones.
- **Use of reasonable, evidence-based employment density factors.** The Committee had considerable discussion around this issue and received testimony from several experts. The use of the employee-per-acre methods and assumptions that build from the UO research is an appropriate approach.



PLANNING DEPARTMENT

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“A Program With Great Spirit”

November 3, 2015

Land Conservation and Development Commission
c/o Casaria Taylor
635 Capitol St., Ste. 150
Salem, Oregon 97301

To Whom It May Concern:

Re: Proposed Administrative Rules Establishing Streamlined UGB Process.

Thank you for giving Douglas County the opportunity to offer a few comments regarding the draft new rules and rule amendments (Division 24, Urban Growth Boundaries) in response to ORS 197A.

The major concern we have regarding the new rules deal with the fourth type of land that must be evaluated in the study area for inclusion in the UGB identified in OAR 660-024-0067(5). This fourth priority allows for the evaluation of agricultural land that is predominantly high value farmland, but fails to capture the opportunity to evaluate timber land that is predominantly high value forestland.

Not including the opportunity to evaluate forest land, will limit the opportunity for many Oregon cities to possibly expand their UGB, simply because they are surrounded primarily or in some cases completely by forestland rather than farmland.

The third priority identified in 660-024-0067(4), includes the opportunity to evaluate forestland, but only in regards to whether it is considered not predominantly high value farmland. Given that many of the twelve cities in Douglas County have a UGB surrounded by forestland, we feel these lands should be equally considered within the four types of prioritized land identified in 660-024-0067.

Prohibiting forestlands from being considered will limit the opportunity for cities within different regions of the state the opportunity to determine whether they might qualify for a possible UGB expansion simply due to the fact that they are not surrounded by an adequate supply of farmland.

We hope this issue can be addressed and that forestland areas may also be given equal consideration when evaluating possible UGB expansions.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Cowie", with a long horizontal flourish extending to the right.

Stuart Cowie
Planning Manager

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
DIVISION 24
URBAN GROWTH BOUNDARIES
Draft new rules to implement ORS 197A.320 – Preliminary Version 2

Note to RAC: current “location” rules at OAR 660-024-0060 would be modified to apply only to Metro. New study area and location rules (0065 and 0067, below) would be added to division 24 to implement requirements of ORS 197A.320 with respect to the traditional process. This draft would replace the draft issued September 15.

1 **660-024-0065**

2 **Establishment of Study Area to Evaluate Land for Inclusion in the UGB**

3
4 (1) When considering a UGB amendment to accommodate a need deficit identified in OAR 660-
5 024-0050(4), a local government outside of Metro must determine which land to add to the UGB
6 by evaluating alternative locations within a “study area” established pursuant to this rule. To
7 establish the study area, the local government must first identify a “preliminary study area”
8 which shall not include land within a different UGB or within the corporate limits of a city that is
9 within a different UGB. The preliminary study area shall include:

10 (a) All lands in the local government’s acknowledged urban reserve, if any;

11 (b) All lands that are within the following distance from the acknowledged UGB:

12 (A) For local governments with a UGB population less than 10,000: one-half mile;

13 (B) For local governments with a UGB population equal to or greater than 10,000: one
14 mile;

15 (c) All exception areas that are within the following distance from the acknowledged UGB
16 provided they are contiguous to an exception area that includes land within the distance
17 specified in subsection (b):

18 (A) For local governments with a UGB population less than 10,000: one mile;

19 (B) For local governments with a UGB population equal to or greater than 10,000: one
20 and one half miles;

21 (d) At the discretion of the local government, the preliminary study area may include land
22 that is beyond the distance specified in subsections (b) and (c).

23 (2) A local government that initiated the evaluation or amendment of its UGB prior to January 1,
24 2016, may choose to identify a preliminary study area applying the standard in this section rather
25 than section (1). For such local governments, the preliminary study area shall consist of:

26 (a) All land adjacent to the acknowledged UGB, including all land in the vicinity of the UGB
27 that has a reasonable potential to satisfy the identified need deficiency, and

28 (b) All land in the local government’s acknowledged urban reserve established under OAR
29 Chapter 660, division 21, if applicable.

1 | (3) When at the primary purpose for expansion of the UGB is to accommodate a particular
2 | industrial use that requires specific site characteristics, or to accommodate a public facility that
3 | requires specific site characteristics, and the site characteristics may be found in only a small
4 | number of locations, the preliminary study area may be limited to those locations within the
5 | distance described in section (1) or (2), whichever is appropriate, that have or could be improved
6 | to provide the required site characteristics within the planning period. This limitation shall be
7 | only for purposes of evaluating land for that particular industry use or public facility. Site
8 | characteristics may include but are not limited to size, topography and proximity. For purposes
9 | of this section:

10 | (a) The definition of "site characteristics" in OAR 660-009-0005(11) applies for purposes of
11 | identifying a particular industrial use.

12 | (b) A "public facility" may include a facility necessary for public sewer, water, storm water,
13 | transportation, parks, schools, or fire protection.

14 | (4) The local government may exclude land from the preliminary study area if it determines that:

15 | (a) Based on the standards in section (7) of this rule, it is impracticable to provide water,
16 | sanitary sewer, storm water management, fire protection, or transportation facilities necessary
17 | public facilities or services to the land;

18 | (b) The land is subject to significant development hazards, due to a risk of:

19 | (A) Landslides: substantial evidence demonstrates that the land is subject to risk of
20 | landslide that cannot be mitigated using commonly accepted construction techniques; the
21 | land consists of a landslide deposit or scarp flank that is described and mapped on the
22 | Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2
23 | Geodatabase published by the Oregon Department of Geology and Mineral Industries
24 | (DOGAMI) December, 2014, provided that the deposit or scarp flank in the data source
25 | is mapped at a scale of 1:40,000 or finer;

26 | (B) Flooding, including inundation during storm surges: the land is within the Floodway
27 | or Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate
28 | Map (FIRM);

29 | (C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS
30 | 455.446;

31 | (c) The land consists of a significant scenic, natural, cultural or recreational resource
32 | described in this subsection:

33 | (A) Lands that are designated on an acknowledged comprehensive plan prior to
34 | initiation of the UGB amendment, or that are mapped on a published state or federal
35 | inventory at a scale sufficient to determine its location for purposes of this rule, as:

Comment [MN1]: This should be changed to ensure that cities don't have to do a separate PAPA for each of these uses. The commission should interpret the statute to mean the primary purpose of that PART of a UGB expansion is to site a particular industrial or public use.

Comment [MN2]: remove comma? it's not in the statute and may change the meaning. Eugene's suggestion

Comment [MN3]: Eugene wants this added.

Comment [MN4]: this needs to be defined to mean water, sewer, storm, fire, transportation, not left open ended like this. otherwise, we'll be having battles over what's "necessary"

Comment [MN5]: The SLIDO database does not map known landslide risks. It maps known historic slide areas, which may have happened in prehistoric times. The SLIDO website is clear that this mapping is appropriate for regional planning only, and is not a substitute for a site specific analysis - that's what's needed to determine whether there is a real risk today. The website states that SLIDO data should not be used to make legally binding decisions. Also, many risks can be mitigated with construction techniques - there's no need to exclude the lands. Again this is where a site specific analysis comes in. If this isn't changed, it will cause unnecessary loss of farmland.

Comment [MN6]: DLCD still hasn't acknowledged the fundamental problem with relying on county, state or federal habitat mapping to determine whether an area is so significant that cannot be urbanized.

We should only list resources here if we can be sure than in every case, the resource is so valuable that it justifies jumping the priority scheme. When we exclude at this level, we are making a policy choice that no matter how good the farmland may be, it is not as important as this habitat resource. It that really Oregon policy?

We cannot rely on county or state determinations of Goal 5 protections for rural land, to tell us whether or not a resources is significant enough to warrant sacrificing farmland. That's because a county would not have evaluated that question in an ESEE analysis, since rural land by definition is not going to be urbanized. Just because a county decided to protect big game range by limiting rural parcel sizes (for example), that doesn't constitute a decision that the resource is so significant that we have to avoid urbanizing it forever.

Similarly, a state or federal mapping of habitat hasn't made that determination. Nobody has done an ESEE for these areas, to determine that in every case, prime farmland is less important than preserving the habitat. It's just an inventory of habitat.

It seems the right approach here is to start with those areas that are already under regulatory limitations that prohibit destruction of habitat. For example, if there is an ESA nest site, that can't be disturbed no matter what. But federal critical habitat has no such restrictions.

(i) ~~Federally designated~~ ~~Critical or essential~~ habitat for a species listed by a ~~state or~~ federal agency as threatened or endangered;

Comment [MN7]: Critical habitat is a creature of the feds. Oregon doesn't have this as an official mapped thing.

(ii) Core habitat for Greater Sage Grouse; or

Comment [MN8]: This may be OK if there are no conflicts with farmland

(iii) Big game winter range or migration corridors, when a finding has been made by the Oregon Department of Fish and Wildlife, in consultation with the Oregon Department of Agriculture, that the area should not be urbanized;

Comment [MN9]: Where are these areas, and where could their preservation push development onto farmland? We already know Prineville is a possibility - are there others? This needs to be changed to exclude only those lands where a determination has been made that the resources is so significant that urbanization must be completely prevented. This is definitely NOT all of these areas. For example, the Deschutes comp plan does not prohibit development in deer corridors, it just limits it. See 23.104.030(3): "In the Bend/La Pine deer migration corridor identified in the comprehensive plan resource element, new land divisions, where the underlying zone is Rural Residential - 10, shall be cluster developments."
This suggested change is to have ODFW make the call of whether or not it can be urbanized.

(iv) Essential habitat Category 1, as defined in OAR 635-415-0025(1), for a species listed by a state or federal agency as threatened or endangered.

Comment [MN10]: We have been unable to find the state essential habitat mapping. But OARs say Category 1 is the only type of state essential habitat that requires avoidance. Category 2 can be mitigated, and Category 3 is not in limited supply.

(B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal agency responsible for the scenic program;

(C) Designated Natural Areas on the Oregon State Register of Natural Heritage Resources;

(D) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or Conservation management unit designated in an acknowledged comprehensive plan;

(E) Lands subject to acknowledged comprehensive plan provisions that implement Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

(F) Lands subject to acknowledged comprehensive plan provisions that implement Statewide Planning Goal 18, Implementation Requirement 2; or

(G) Lands subject to acknowledged comprehensive plan provisions that implement Statewide Planning Goal 6.

Comment [MN11]: We understand that Springfield wants to include these because of municipal well heads. We are not sure if excluding all Goal 6 lands makes sense in every situation, and do not know the extent of Goal 6 resources. Maybe there is another way to do this?

(d) The land is owned by the federal government and managed primarily for rural uses.

(5) After excluding land from the preliminary study area under section (4), the local government must adjust the area, if necessary, so that it includes an amount of land that is at least twice at least the amount of land needed ~~for to meet~~ the deficiency determined under OAR 660-024-0050(4). The city may add back lands excluded under (4), expand the preliminary study area boundary to include additional land, or both ~~ALT: or, if applicable, twice the particular land need described in section (3)~~, but must first include all available ex-ception lands and urban reserves before resorting to lower priority lands.

Comment [MN12]: The proposed 200 percent of the need remaining in the study area after all exclusions isn't enough to medicate a too-small study area or overly broad exclusions. In fact, it gives a false sense of security. There's nothing to ensure that higher priority lands won't still be excluded from the 200 percent area, because there is no requirement that when adding back lands to reach 200 percent, that higher priority areas be chosen first. For example, the preliminary study area might include only prime farmland, but not be 200 percent of the need. If the city could just add back more prime farmland to get to 200 percent - what have we achieved?
ALSO - cities should not be forced to study genuinely unsuitable lands, just because they can't come up with 200% of the need. Such as Springfield. What if they need an industrial site, and there just isn't enough suitable land in existence? What's the point of making them study (and potentially have to select) unsuitable land?

(6) For purposes of evaluating the priority of land under OAR 660-024-0067, the "study area" shall consist of all land that is included in the preliminary study area described in section (2) of this rule after adjustments to the area based on sections (3) through (5). Provided, however, that when the UGB expansion includes land for park use:

1 (a) Land that could be otherwise be excluded from the study area under subsections (4)(a)
2 through (4)(c) shall remain in the study area, but only for purposes of evaluating the land
3 for park use.

4 (b) The local government is not required to select land described under subsection (6)(a)
5 to meet a specific need identified in an adopted parks master plan that:

6 (A) Requires a public facility or service that the local government has determined
7 would be impracticable to extend to the land under subsection (4)(a);

8 (B) Requires a site that is not subject to a development hazard risk that the local
9 government has determined exists on the land under subsection (4)(b); or

10 (C) Would be incompatible with the long-term preservation of a significant
11 scenic, natural, cultural or recreational resource that the local government has
12 identified under subsection (4)(c).

Comment [MN13]: Text added here to require consideration of excluded land for park use. The commission asked for this.

13 (7) For purposes of subsection (4)(a), the local government may consider it impracticable to
14 provide water, sanitary sewer, storm water management, fire protection, or transportation
15 facilities necessary public facilities or services to the following lands:

Comment [MN14]: this needs to be defined to mean water, sewer, storm, fire, transportation.

16 (a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of
17 25 percent or greater, provided the areas do not contain any contiguous portions larger than
18 five acres that are less than 25 percent slope. Slope shall be measured as the increase in
19 elevation divided by the horizontal distance at maximum ten-foot contour intervals;

Comment [MN15]: Sideboard to prevent impropo exclusion of a flatter area just because it's next to a steep site. The way it's written now, a 20-acre flat area could be excluded just by combining it with an adjacent 60 acre hillside.

20 (b) Land that is isolated from existing service networks by physical, topographic, or other
21 impediments to service provision such that it is impracticable to provide water, sanitary
22 sewer, storm water management, fire protection, or transportation facilities necessary
23 facilities or services to the land within the planning period. The local government's
24 determination shall be based on an evaluation of:

25 (A) The likely amount of development that could occur on the land within the planning
26 period;

27 (B) The likely cost of facilities and services; and,

28 (C) Any substantial evidence collected by or presented to the local government regarding
29 how similarly situated land in the region has, or has not, developed over time.

30 (c) As used in this section, "impediments to service provision" may include but are not
31 limited to:

32 (A) Major rivers or other water bodies that would require new bridge crossings to serve
33 planned urban development;

34 (B) Topographic features such as canyons or ridges with slopes exceeding 40 per cent
35 and vertical relief of greater than 80 feet;

1 (C) Freeways, rail lines, or other restricted access corridors that would require new grade
2 separated crossings to serve planned urban development;

3 (D) Significant scenic, natural, cultural or recreational resources on an acknowledged
4 plan inventory and subject to protection measures under the plan or implementing
5 regulations ~~[ALT: or on a published state or federal inventory]~~ that would prohibit or
6 substantially impede the placement or construction of necessary public facilities and
7 services.

Comment [MN16]: NO. just because something is on an inventory, that doesn't mean there are restrictions on how the property can be used. This provision should ONLY apply when there are clear, legally binding restrictions to placing services

8 (8) Land may not be excluded from the preliminary study area based on a finding of
9 impracticability that is primarily a result of existing development patterns. However, a local
10 government may forecast residential development capacity as follows:

11 (a) Existing lots or parcels greater than one acre but less than two acres may be assumed to
12 have an aggregate development capacity of two dwelling units per acre.

13 (b) Existing vacant lots or parcels one acre or less may be assumed to have a development
14 capacity of one dwelling unit per lot or parcel.

Comment [MN17]: why is this just vacant?

15 (9) Notwithstanding OAR 660-024-0050(4) and section (1) of this rule, except during periodic
16 review or other legislative review of the UGB, the local government may approve an application
17 under ORS 197.610 to 197.625 for a UGB amendment to add an amount of land less than
18 necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided
19 the amendment complies with all other applicable requirements.

20 (10) Lands included within a UGB pursuant to section (3) to provide for a particular industrial
21 use, or a particular public facility, must be planned and zoned for the intended use and must
22 remain planned and zoned for that use unless the local government removes the land from the
23 UGB.

Comment [MN18]: Should this be later on, in the planning and zoning section in -0067?

24 **OAR 660-024-0067**
25 **Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities**

26 (1) When considering a UGB amendment, a local government outside of Metro must decide
27 which land to add to the UGB by evaluating all land in the study area determined under OAR
28 660-024-0065, as follows:

29 (a) Beginning with the highest priority category of land described in section (2) of this rule,
30 the local government must apply section (5) to determine which land in that priority category
31 is suitable to satisfy the need deficiency determined under OAR 660-024-0050 and select as
32 much of the land as necessary to satisfy the need.

33 (b) If the amount of suitable land in the first priority category in section (2) is not sufficient to
34 satisfy all the identified need deficiency, the local government must apply section (5) to
35 determine which land in the next priority is suitable and must select as much of the suitable
36 land in that priority as necessary to satisfy the need. The local government must proceed in
37 this manner until all the land need is satisfied.

1 (c) If the amount of suitable land in a particular priority category in section (2) exceeds
2 the amount necessary to satisfy the need deficiency, the local government must choose
3 which land in that priority to include in the UGB by applying the criteria in section (6) of
4 this rule.

5 (2) Priority of Land for inclusion in a UGB:

6 (a) First Priority – Urban reserve, exception land, and nonresource land. Lands in the study
7 area that meet the description in paragraphs (A) through (C) of this subsection are of equal
8 (first) priority:

9 (A) Land designated as an urban reserve under OAR chapter 660, division 21, in an
10 acknowledged comprehensive plan;

11 (B) Land that is subject to an acknowledged exception under ORS 197.732; and

12 (C) Land that is nonresource land.

13 (b) Second Priority – Marginal Land: land within the study area that is designated as
14 marginal land under ORS 197.247 (1991 Edition) in ~~the an~~ acknowledged comprehensive
15 plan.

16 (c) Third Priority – Farm or forest land that is not predominantly high value farm land: land
17 within the study area that is designated for agriculture or forest uses in the acknowledged
18 comprehensive plan and that is ~~not predominantly less than 50 percent~~ high-value farmland
19 as defined in ORS 195.300; ~~or that does not consist predominantly of prime or unique soils as~~
20 ~~determined by the United States Department of Agriculture Natural Resources Conservation~~
21 ~~Service.~~ In selecting as much of the suitable land as necessary to satisfy the need, the local
22 government must use the predominant capability classification system or the predominant
23 cubic site class, as appropriate for the acknowledged comprehensive plan designation, to
24 select lower capability or cubic site class lands first. The criteria in section (6) of this rule
25 shall not be used to select lands having higher capability or cubic site class ahead of lands
26 having lower capability or cubic site class.

Comment [MN19]: redundant - these soils are part of the ORS 195.300 group

Comment [MN20]: This needs to be made clear.

27 (d) Fourth Priority – Agricultural land that is predominantly high value farmland: land within
28 the study area that is designated as agricultural land in an acknowledged comprehensive plan
29 and is ~~predominantly at least 50 percent~~ high value farmland as defined in ORS 195.300(10).
30 A local government may not select land that is ~~predominantly~~ made up of at least 50 percent
31 prime or unique farm soils, as defined by the United States Department of Agriculture
32 Natural Resources Conservation Service, unless there is an insufficient amount of other land
33 to satisfy its land need.

34
35 (3) Notwithstanding section (2) ~~(d)~~ of this rule, land that would otherwise be excluded from
36 a UGB may be included if:

Comment [MN21]: this "escape hatch" isn't just reserved for fourth priority land. it can apply anywhere along the priority chain.

37 (a) The land contains a small amount of resource land that is not important to the
38 commercial agricultural enterprise in the area and the land must be included to connect a
39 nearby and significantly larger area of land of higher priority for inclusion within the
40 urban growth boundary; or

Comment [MN22]: for this section, it would be a mistake to define "land" as meaning an entire parcel or tract. this just means - enough land to meet the need, and shouldn't be allowed to bring in an entire parcel if that doesn't make sense or isn't actually necessary.

(b) The land contains a small amount of resource land that is ~~not less than 50 percent 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 for inclusion into the urban growth boundary.

(4) For purposes of subsections (2)(c) and (d) ~~and section (3)~~ of this rule,

~~(a) Areas that are similarly situated and that have similar soils may be grouped together and studied as a single unit of land. Provided, however, that soils of lower agricultural or forest capability may not be grouped with soils of higher capability in a way that would subvert the intent of the subsection (2) priorities.~~

~~(b) Notwithstanding the foregoing, where a local government initiated the evaluation or amendment of its UGB prior to January 1, 2016, where the analysis involves more than one parcel or area within a particular priority category for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.~~

~~(c) When determining predominant capability classification system or the predominant cubic site class of the subject land, "predominantly" means the capability or site class making up the greatest percentage of the area of the land.~~

~~(a) When evaluating the agricultural or forest capability of land within a study area, "land" means the land in a tract as defined at ORS 215.010.~~

~~(b) When determining whether the land is predominantly made up of prime or unique farm soils "predominantly" means at least 50 percent of a subject lot, parcel or tract.~~

(5) With respect to subsection (1)(a) of this rule, a local government must assume that vacant or partially vacant land in a particular priority category is "suitable" to satisfy a need deficiency identified in OAR 660-024-0050(4) or OAR 660-024-0065(3) unless it demonstrates that the land cannot satisfy the specified need, ~~or that its capacity to meet the need must be reduced,~~ based on one or more of the conditions described in subsections (a) through (e) of this section:

~~(a) With respect to needed industrial uses only, the land is an existing lot or parcel that is smaller than five acres in size. Existing parcelization, lot sizes or development patterns of the land make the land unsuitable for an identified need, or require that the development capacity of the lands be forecast at a lower level over the planning period than for unconstrained lands;~~

(b) The land would qualify for exclusion from the preliminary study area under the factors in OAR 660-024-0065(4) but the local government declined to exclude it pending more detailed analysis under this (the priorities) rule. ~~In evaluating this land, the local government must determine that those factors either require that the development capacity be forecast at a lower level over the planning period than for unconstrained land, or that no development capacity should be forecast with respect to the need;~~

Comment [MN23]: redundant - included in HVF definition

Comment [MN24]: switch subsections (3) and (4)?

Comment [MN25]: no longer necessary, defined within (3)

Comment [MN26]: Different concept that allows reasonable study areas, similar to current rule but with sideboards. Don't use parcel concept, explained below.

Comment [MN27]: Escape hatch for cities that have already initiated.

Comment [MN28]: In this case, predominantly cannot mean 50 percent. we could have 35% Class 1, 40% Class 2, 25% Class 6 - with no one class making up a majority.

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Comment [MN29]: I don't think the lot/parcel/tract concept works. Cities would be left with a patchwork quilt of different priorities they'd have to string together. Other problems:

Tracts can be manipulated, and can be much too large to paint an accurate picture of the resource. True also for parcels to a lesser extent.

Also - cities don't have a great way to know the legal lot/parcel status of property unless the land has been platted

And- sometimes only part of a tract or parcel will be in the study area.

Comment [MN30]: I'm not even sure what (b) means, since it allows this to be calculated two different ways. It can't say both lot/parcel and tract...it has to be one or the other.

Comment [MN31]: this condition does NOT render the land "unsuitable" it only reduces capacity. For residential, HB 2254 clearly intended that lands with reduced capacity be brought into the UGB - this provision would subvert that since it would allow the city to leave it out of the UGB.

Comment [MN32]: this is unacceptable, it's completely open ended and vague, a blank check - it needs to spell out exactly what this means. and most of it's unnecessary and /or contradicts other parts of this rule.

For residential, the parcelization issue has already been resolved via OAR 660-024-0065(8) - the land is suitable, and must be included.

Comment [MN33]: The situation for residential lands has already been resolved via OAR 660-024-0065(8) - this land is suitable, and must be included.

Comment [MN34]: again - this is contemplating that the land WILL be included in the UGB, but forecast at a lower capacity. but this function of a declaration that land is not "suitable" is that it ge...

1 (c) The land is committed to a public use, or to a private cemetery, airport, school, or church
2 use or semi-public use that is not reasonably likely to be discontinued during the planning
3 period, for example, land within the boundaries of a public use airport or within an area
4 governed by compatibility requirements for public use airports described in OAR 660-013-
5 0080.

Comment [MN35]: there is no definition for semi-public use - when this language was proposed by Eugene/1KF we were clear that this is an unacceptable term that needs to be narrowed.

6 (d) The land is over 25% slope, or with respect to needed industrial uses only, the property is
7 over 15% slope, as measured in the manner described in OAR 660-024-0065(7)(a).

Comment [MN36]: should be 15% - what is the 5% based on? we have already submitted evidence of major industrial development on slopes over 5%. furthermore, not all industrial uses require the same site characteristics. The proposed 5% slope represents a major policy departure from past practice and will lead to the unnecessary loss of farmland.

8 (e) The land is subject to a conservation easement described in ORS 271.715 that prohibits
9 urban development.

10 (6) Pursuant to section (1)(c), if the amount of suitable land in a particular priority category
11 under section (2) exceeds the amount necessary to satisfy the need deficiency, the local
12 government must choose which land in that priority to include in the UGB by first applying the
13 Boundary Location Factors of Goal 14 and then applying applicable criteria in the acknowledged
14 comprehensive plan and land use regulations acknowledged prior to initiation of the UGB
15 amendment. The local government may not apply local comprehensive plan criteria that
16 contradict the requirements of the Boundary Location Factors of Goal 14. The Goal 14 Boundary
17 Location Factors are not independent criteria; when the factors are applied to compare alternative
18 boundary locations and to determine the UGB location the local government must show that it
19 considered and balanced all the factors.

20 (7) The local government must apply the Goal 14 Location Factors in coordination with
21 service providers and state agencies, including the Oregon Department of Transportation
22 with respect to Factor 2 regarding impacts on the state transportation system, and the Oregon
23 Department of Fish and Wildlife with respect to Factor 3 regarding environmental
24 consequences. "Coordination" includes timely notice to agencies and service providers and
25 consideration of any recommended evaluation methodologies.

26 (8) In applying Goal 14 Boundary Location Factor 2 to evaluate alternative locations under
27 section (6), the local government must compare relative costs, advantages and disadvantages
28 of alternative UGB expansion areas with respect to the provision of public facilities and
29 services needed to urbanize alternative boundary locations. For purposes of this section, the
30 term "public facilities and services" means water, sanitary sewer, storm water management,
31 fire protection, and transportation facilities. The evaluation and comparison under Location
32 Factor 2 must consider:

Comment [MN37]: Fire protection is also necessary.

33 (a) The impacts to existing water, sanitary sewer, storm water, fire protection, and
34 transportation facilities that serve nearby areas already inside the UGB;

35 (b) The capacity of existing public facilities and services to serve areas already inside the
36 UGB as well as areas proposed for addition to the UGB; and

37 (c) The need for new transportation facilities, such as highways and other roadways,
38 interchanges, arterials and collectors, additional travel lanes, other major improvements
39 on existing roadways and, for urban areas of 25,000 or more, the provision of public

- 1 transit service.
- 2 (9) The adopted findings for UGB adoption or amendment must describe or map all of the
- 3 alternative areas evaluated in the boundary location alternatives analysis.

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URBAN GROWTH BOUNDARIES
Draft new rules to implement ORS 197A.320 – Preliminary Version 2

Note to RAC: current “location” rules at OAR 660-024-0060 would be modified to apply only to Metro. New study area and location rules (0065 and 0067, below) would be added to division 24 to implement requirements of ORS 197A.320 with respect to the traditional process. This draft would replace the draft issued September 15.

1 **660-024-0065**

2 **Establishment of Study Area to Evaluate Land for Inclusion in the UGB**

3

4 (1) When considering a UGB amendment to accommodate a need deficit identified in OAR 660-
5 024-0050(4), a local government outside of Metro must determine which land to add to the UGB
6 by evaluating alternative locations within a “study area” established pursuant to this rule. To
7 establish the study area, the local government must first identify a “preliminary study area”
8 which shall not include land within a different UGB or within the corporate limits of a city that is
9 within a different UGB. The preliminary study area shall include:

10 (a) All lands in the local government’s acknowledged urban reserve, if any;

11 (b) All lands that are within the following distance from the acknowledged UGB:

12 (A) For local governments with a UGB population less than 10,000: one-half mile;

13 (B) For local governments with a UGB population equal to or greater than 10,000: one
14 mile;

15 (c) All exception areas that are within the following distance from the acknowledged UGB
16 provided they are contiguous to an exception area that includes land within the distance
17 specified in subsection (b):

18 (A) For local governments with a UGB population less than 10,000: one mile;

19 (B) For local governments with a UGB population equal to or greater than 10,000: one
20 and one half miles;

21 (d) At the discretion of the local government, the preliminary study area may include land
22 that is beyond the distance specified in subsections (b) and (c).

23 (2) A local government that initiated the evaluation or amendment of its UGB prior to January 1,
24 2016, may choose to identify a preliminary study area applying the standard in this section rather
25 than section (1). For such local governments, the preliminary study area shall consist of:

26 (a) All land adjacent to the acknowledged UGB, including all land in the vicinity of the UGB
27 that has a reasonable potential to satisfy the identified need deficiency, and

28 (b) All land in the local government’s acknowledged urban reserve established under OAR
29 Chapter 660, division 21, if applicable.

1 (3) When the primary purpose for expansion of the UGB is to accommodate a particular
2 industrial use that requires specific site characteristics, or to accommodate a public facility that
3 requires specific site characteristics, and the site characteristics may be found in only a small
4 number of locations, the preliminary study area may be limited to those locations within the
5 distance described in section (1) or (2), whichever is appropriate, that have or could be improved
6 to provide the required site characteristics. Site characteristics may include but are not limited to
7 size, topography and proximity. For purposes of this section:

8 (a) The definition of “site characteristics” in OAR 660-009-0005(11) applies for purposes of
9 identifying a particular industrial use.

10 (b) A “public facility” may include a facility necessary for public sewer, water, storm water,
11 transportation, parks, schools, or fire protection.

12 (4) The local government may exclude land from the preliminary study area if it determines that:

13 (a) Based on the standards in section (7) of this rule, it is impracticable to provide necessary
14 public facilities or services to the land;

15 (b) The land is subject to significant development hazards, due to a risk of:

16 (A) Landslides: the land consists of a landslide deposit or scarp flank that is described
17 and mapped on the Statewide Landslide Information Database for Oregon (SLIDO)
18 Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral
19 Industries (DOGAMI) December, 2014, provided that the deposit or scarp flank in the
20 data source is mapped at a scale of 1:40,000 or finer;

21 **Concern/question: Are all landslide deposits or scarp flanks created equal? What**
22 **is a significant landslide?**

23 (B) Flooding, including inundation during storm surges: the land is within the Floodway
24 or Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate
25 Map (FIRM);

26 (C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS
27 455.446;

28 (c) The land consists of a significant scenic, natural, cultural or recreational resource
29 described in this subsection:

30 (A) Lands that are designated on an acknowledged comprehensive plan prior to
31 initiation of the UGB amendment, or that are mapped on a published state or federal
32 inventory at a scale sufficient to determine its location for purposes of this rule, as:

1 (i) Critical or essential habitat for a species listed by a state or federal agency as
2 threatened or endangered;

3 (ii) Core habitat for Greater Sage Grouse; or

4 (iii) Big game winter range or migration corridors;

5 **Concern/question: What about portions of such areas that may be compromised**
6 **by the configuration of the adjacent urban area? Are there areas that may be**
7 **pinched by urban uses and other nonresource land uses? Notches in urban areas?**
8 **Should allow for carve outs of conflicted parts of such areas.**

9
10 (B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related
11 Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal
12 agency responsible for the scenic program;

13 **Concern/question: What about situations where suitable lands for urbanization**
14 **may exist on both sides of a designated waterway? Are there any such situations?**
15 **If so, can protection exist within an urban area with use of such tools as setbacks,**
16 **design standards, etc.?**

17 (C) Designated Natural Areas on the Oregon State Register of Natural Heritage
18 Resources;

19 (D) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or
20 Conservation management unit designated in an acknowledged comprehensive plan;

21 (E) Lands subject to acknowledged comprehensive plan provisions that implement
22 Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

23 (F) Lands subject to acknowledged comprehensive plan provisions that implement
24 Statewide Planning Goal 18, Implementation Requirement 2; or

25 (d) The land is owned by the federal government and managed primarily for rural uses.

26 **Concern/question: What are rural uses? Farm, forest, recreational development...?**

27 (5) After excluding land from the preliminary study area under section (4), the local
28 government must adjust the area, if necessary, so that it includes an amount of land that is at

1 least twice the amount of land needed for the deficiency determined under OAR 660-024-
2 0050(4) [ALT: or, if applicable, twice the particular land need described in section (3)].

3 (6) For purposes of evaluating the priority of land under OAR 660-024-0067, the “study area”
4 shall consist of all land that is included in the preliminary study area described in section (2) of
5 this rule after adjustments to the area based on sections (3) through (5).

6 (7) For purposes of subsection (4)(a), the local government may consider it impracticable to
7 provide necessary public facilities or services to the following lands:

8 (a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of
9 25 percent or greater. Slope shall be measured as the increase in elevation divided by the
10 horizontal distance at maximum ten-foot contour intervals;

11 (b) Land that is isolated from existing service networks by physical, topographic, or other
12 impediments to service provision such that it is impracticable to provide necessary facilities
13 or services to the land within the planning period. The local government’s determination
14 shall be based on an evaluation of:

15 (A) The likely amount of development that could occur on the land within the planning
16 period;

17 (B) The likely cost of facilities and services; and,

18 (C) Any substantial evidence collected by or presented to the local government regarding
19 how similarly situated land in the region has, or has not, developed over time.

20 (c) As used in this section, “impediments to service provision” may include but are not
21 limited to:

22 (A) Major rivers or other water bodies that would require new bridge crossings to serve
23 planned urban development;

24 (B) Topographic features such as canyons or ridges with slopes exceeding 40 per cent
25 and vertical relief of greater than 80 feet;

26 (C) Freeways, rail lines, or other restricted access corridors that would require new grade
27 separated crossings to serve planned urban development;

28 (D) Significant scenic, natural, cultural or recreational resources on an acknowledged
29 plan inventory and subject protection measures under the plan or implementing
30 regulations [ALT: or on a published state or federal inventory] that would prohibit or
31 substantially impede the placement or construction of necessary public facilities and
32 services.

1 (8) Land may not be excluded from the preliminary study area based on a finding of
2 impracticability that is primarily a result of existing development patterns. However, a local
3 government may forecast development capacity as follows:

4 (a) Existing lots or parcels greater than one acre but less than two acres may be assumed to
5 have an aggregate development capacity of two units per acre.

6 (b) Existing vacant lots or parcels one acre or less may be assumed to have a development
7 capacity of one unit.

8 (9) Notwithstanding OAR 660-024-0050(4) and section (1) of this rule, except during periodic
9 review or other legislative review of the UGB, the local government may approve an application
10 under ORS 197.610 to 197.625 for a UGB amendment to add an amount of land less than
11 necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided
12 the amendment complies with all other applicable requirements.

13 (10) Lands included within a UGB pursuant to section (3) to provide for a particular industrial
14 use, or a particular public facility, must be planned and zoned for the intended use and must
15 remain planned and zoned for that use unless the local government removes the land from the
16 UGB.

17 **OAR 660-024-0067**

18 **Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities**

19 (1) When considering a UGB amendment, a local government outside of Metro must decide
20 which land to add to the UGB by evaluating all land in the study area determined under OAR
21 660-024-0065, as follows:

22 (a) Beginning with the highest priority category of land described in section (2) of this rule,
23 the local government must apply section (5) to determine which land in that priority category
24 is suitable to satisfy the need deficiency determined under OAR 660-024-0050 and select as
25 much of the land as necessary to satisfy the need.

26 (b) If the amount of suitable land in the first priority category in section (2) is not sufficient to
27 satisfy all the identified need deficiency, the local government must apply section (5) to
28 determine which land in the next priority is suitable and must select as much of the suitable
29 land in that priority as necessary to satisfy the need. The local government must proceed in
30 this manner until all the land need is satisfied.

31 (c) If the amount of suitable land in a particular priority category in section (2) exceeds
32 the amount necessary to satisfy the need deficiency, the local government must choose
33 which land in that priority to include in the UGB by applying the criteria in section (6) of
34 this rule.

35 (2) Priority of Land for inclusion in a UGB:

1 (a) First Priority – Urban reserve, exception land, and nonresource land. Lands in the study
2 area that meet the description in paragraphs (A) through (C) of this subsection are of equal
3 (first) priority:

4 (A) Land designated as an urban reserve under OAR chapter 660, division 21, in an
5 acknowledged comprehensive plan;

6 (B) Land that is subject to an acknowledged exception under ORS 197.732; and

7 (C) Land that is nonresource land.

8 (b) Second Priority – Marginal Land: land within the study area that is designated as
9 marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

10 (c) Third Priority – Farm or forest land that is not predominantly high value farm land: land
11 within the study area that is designated for agriculture or forest uses in the acknowledged
12 comprehensive plan and that is not predominantly high-value farmland as defined in ORS
13 195.300, or that does not consist predominantly of prime or unique soils as determined by the
14 United States Department of Agriculture Natural Resources Conservation Service. In
15 selecting as much of the suitable land as necessary to satisfy the need, the local government
16 must use the predominant capability classification system or the predominant cubic site class,
17 as appropriate for the acknowledged comprehensive plan designation, to select lower
18 capability or cubic site class lands first.

19 **Concern/question: Should there be the same protection afforded to prime forest land?**
20 **The USDA defines prime forestland to be lands capable of producing 85 cubic feet per**
21 **acre per year of certain tree species.**

22 (d) Fourth Priority – Agricultural land that is predominantly high value farmland: land within
23 the study area that is designated as agricultural land in an acknowledged comprehensive plan
24 and is predominantly high value farmland as defined in ORS 195.300(10). A local
25 government may not select land that is predominantly made up of prime or unique farm soils,
26 as defined by the United States Department of Agriculture Natural Resources Conservation
27 Service, unless there is an insufficient amount of other land to satisfy its land need.

28
29 (3) Notwithstanding section (2)(d) of this rule, land that would otherwise be excluded from
30 a UGB may be included if:

31 (a) The land contains a small amount of resource land that is not important to the
32 commercial agricultural enterprise in the area and the land must be included to connect a
33 nearby and significantly larger area of land of higher priority for inclusion within the
34 urban growth boundary; or

35 **Concern/question: What is required to determine if land is not important needs to**
36 **be better “defined.” Suggest something such as:**

1 *A determination that land is not important to the commercial agricultural enterprise in*
2 *and area shall be based on consideration of influences including but not limited to the:*

3 *(a) Capability of sustaining long-term agricultural operations;*

4 *(b) Suitability to sustain long-term agricultural operations taking into account:*

5 *A. The existence of a large block of agricultural or other resource land with a*
6 *concentration or cluster of farms;*

7 *B. The adjacent land use pattern, including its location in relation to adjacent*
8 *nonfarm uses and the existence of buffers between agricultural operations*
9 *and nonfarm uses;*

10 *C. The agricultural land use pattern, including parcelization, tenure and*
11 *ownership patterns; and*

12 *D. The sufficiency of needed agricultural infrastructure in the area.*

13
14 (b) The land contains a small amount of resource land that is not predominantly high
15 value farmland or predominantly made up of prime or unique farm soils and the land is
16 completely surrounded by land of higher priority for inclusion into the urban growth
17 boundary.

18 (4) For purposes of subsections (2)(c) and (d) and section (3) of this rule,

19 (a) When evaluating the agricultural or forest capability of land within a study area, “land”
20 means the land in a tract as defined at ORS 215.010.

21 (b) When determining whether the land is predominantly made up of prime or unique farm
22 soils “predominantly” means at least 50 percent of a subject **lot, or parcel or tract.”**

23 **Question/comment: 50/50 does not equate to predominance. Suggest 51%.**

24 **A tract is composed of contiguous lots and/or parcels under the same ownership. Since**
25 **ownership can be changed, tract composition can be manipulated. Suggest removal of the**
26 **term “tract.”**

27 (5) With respect to subsection (1)(a) of this rule, a local government must assume that vacant or
28 partially vacant land in a particular priority category is “suitable” to satisfy a need deficiency
29 identified in OAR 660-024-0050(4) or OAR 660-024-0065(3) unless it demonstrates that the
30 land cannot satisfy the specified need, or that its capacity to meet the need must be reduced,
31 based on one or more of the conditions described in subsections (a) through (e) of this section:

32 (a) Existing parcelization, lot sizes or development patterns of the land make the land
33 unsuitable for an identified need, or require that the development capacity of the lands be
34 forecast at a lower level over the planning period than for unconstrained lands;

1 (b) The land would qualify for exclusion from the preliminary study area under the factors in
2 OAR 660-024-0065(4) but the local government declined to exclude it pending more detailed
3 analysis under this (the priorities) rule. In evaluating this land, the local government must
4 determine that those factors either require that the development capacity be forecast at a
5 lower level over the planning period than for unconstrained land, or that no development
6 capacity should be forecast with respect to the need;

7 (c) The land is committed to a public or semi-public use that is not reasonably likely to be
8 discontinued during the planning period, for example, land within the boundaries of a public
9 use airport or within an area governed by compatibility requirements for public use airports
10 described in OAR 660-013-0080;

11 (d) The land is over 25% slope, or with respect to needed industrial uses only, the property is
12 over 5% slope, as measured in the manner described in OAR 660-024-0065(7)(a).

13 (6) Pursuant to section (1)(c), if the amount of suitable land in a particular priority category
14 under section (2) exceeds the amount necessary to satisfy the need deficiency, the local
15 government must choose which land in that priority to include in the UGB by first applying the
16 Boundary Location Factors of Goal 14 and then applying applicable criteria in the acknowledged
17 comprehensive plan and land use regulations acknowledged prior to initiation of the UGB
18 amendment. The local government may not apply local comprehensive plan criteria that
19 contradict the requirements of the Boundary Location Factors of Goal 14. The Goal 14 Boundary
20 Location Factors are not independent criteria; when the factors are applied to compare alternative
21 boundary locations and to determine the UGB location the local government must show that it
22 considered and balanced all the factors.

23 (7) The local government must apply the Goal 14 Location Factors in coordination with
24 service providers and state agencies, including the Oregon Department of Transportation
25 with respect to Factor 2 regarding impacts on the state transportation system, and the Oregon
26 Department of Fish and Wildlife with respect to Factor 3 regarding environmental
27 consequences. "Coordination" includes timely notice to agencies and service providers and
28 consideration of any recommended evaluation methodologies.

29 (8) In applying Goal 14 Boundary Location Factor 2 to evaluate alternative locations under
30 section (6), the local government must compare relative costs, advantages and disadvantages
31 of alternative UGB expansion areas with respect to the provision of public facilities and
32 services needed to urbanize alternative boundary locations. For purposes of this section, the
33 term "public facilities and services" means water, sanitary sewer, storm water management,
34 and transportation facilities. The evaluation and comparison under Location Factor 2 must
35 consider:

36 (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities
37 that serve nearby areas already inside the UGB;

38 (b) The capacity of existing public facilities and services to serve areas already inside the

- 1 UGB as well as areas proposed for addition to the UGB; and
- 2 (c) The need for new transportation facilities, such as highways and other roadways,
3 interchanges, arterials and collectors, additional travel lanes, other major improvements
4 on existing roadways and, for urban areas of 25,000 or more, the provision of public
5 transit service.
- 6 (9) The adopted findings for UGB adoption or amendment must describe or map all of the
7 alternative areas evaluated in the boundary location alternatives analysis.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
DIVISION 38
URBAN GROWTH BOUNDARIES
Draft new rules to implement ORS 197A.320 – Preliminary Version 2

1 **OAR 660-038-0160**

2 **Establishment of Study Area to Evaluate Land for Inclusion in the UGB**

3 Cities outside of Metro shall comply with this rule and OAR 660-038-0170 when determining
4 which lands to include within the urban growth boundary in response to a deficit of land to meet
5 long term needs determined under OAR 660-038-0080 or OAR 660-038-0150, or both.

6 (1) The city shall determine which land to add to the UGB by evaluating alternative locations
7 within a “study area” established pursuant to this rule. To establish the study area, the local
8 government must first identify a “preliminary study area” which shall not include land within
9 a different UGB or the corporate limits of a city within a different UGB. The preliminary
10 study area shall include:

11 (a) All lands in the city’s acknowledged urban reserve, if any;

12 (b) All lands that are within the following distance from the acknowledged UGB, except as
13 provided in subsection (d) of this rule:

14 (A) For cities with a UGB population less than 10,000: one-half mile;

15 (B) For cities with a UGB population equal to or greater than 10,000: one mile;

16 (c) All exception areas that are within the following distance from the acknowledged UGB
17 provided they are contiguous to an exception area that includes land within the distance
18 specified in subsection (b): :

19 (A) For cities with a UGB population less than 10,000: one mile;

20 (B) For cities with a UGB population equal to or greater than 10,000: one and one half
21 miles;

22 (d) At the discretion of the city, land that is beyond the distance specified in subsections (b)
23 and (c).

24 (2) The city may exclude land from the preliminary study area if it determines that:

25 (a) Based on the standards in section (5) of this rule, it is impracticable to provide necessary
26 public facilities or services to the land;

27 (b) The land is subject to significant development hazards, due to a risk of:

28 (A) Landslides: The land consists of a landslide deposit or scarp flank that is described
29 and mapped on the Statewide Landslide Information Database for Oregon (SLIDO)
30

1 Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral
2 Industries (DOGAMI) December, 2014, provided that the deposit or scarp flank in the
3 data source is mapped at a scale of 1:40,000 or finer;

4 **Concern/question: Are all landslide deposits or scarp flanks created equal? What**
5 **is a significant landslide?**

6 (B) Flooding, including inundation during storm surges: the land is within the Floodway
7 or Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate
8 Map (FIRM);

9 (C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS
10 455.446.

11 (c) The land consists of a significant scenic, natural, cultural or recreational resource
12 described in this subsection:

13 (A) Lands that are designated on an acknowledged comprehensive plan prior to initiation
14 of the UGB amendment, or that are mapped on a published state or federal inventory at a
15 scale sufficient to determine its location for purposes of this rule, as:

16 (i) Critical or essential habitat for a species listed by a state or federal agency as
17 threatened or endangered;

18 (ii) Core habitat for Greater Sage Grouse; or

19 (iii) Big game winter range or migration corridors.

20 **Concern/question: What about portions of such areas that may be compromised**
21 **by the configuration of the adjacent urban area? Are there areas that may be**
22 **pinched by urban uses and other nonresource land uses? Notches in urban areas?**
23 **Should allow for carve outs of conflicted parts of such areas.**

24 (B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related
25 Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal
26 agency responsible for that scenic program;

27 **Concern/question: What about situations where suitable lands for urbanization**
28 **may exist on both sides of a designated waterway? Are there any such situations?**
29 **If so, can protection exist within an urban area with use of such tools as setbacks,**
30 **design standards, etc.?**

1 (C) Designated Natural Areas on the Oregon State Register of Natural Heritage
2 Resources;

3 (D) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or
4 Conservation management unit designated in an acknowledged comprehensive plan;

5 (E) Lands subject to acknowledged comprehensive plan provisions that implement
6 Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

7 (F) Lands subject to acknowledged comprehensive plan provisions that implement
8 Statewide Planning Goal 18, Implementation Requirement 2.

9 (d) The land is owned by the federal government and managed primarily for rural uses.

10 **Concern/question: What are rural uses? Farm, forest, recreational development...?**

11
12 (3) After excluding land from the preliminary study area under section (2), the city must adjust
13 the study area, if necessary, so that it includes an amount of land that is at least twice the amount
14 of land needed for the combined need deficiency determined under OAR 660-038-0080 and
15 OAR 660-038-0150.

16 (4) For purposes of evaluating the priority of land under OAR 660-038-0170, the “study area”
17 shall consist of all land that is included in the preliminary study area described in section (1) of
18 this rule, after adjustments to the area based on sections (2) and (3).

19 (5) For purposes of subsection (4)(a), the city may consider it impracticable to provide necessary
20 public facilities or services to the following lands:

21 (a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of
22 25 percent or greater. Slope shall be measured as the increase in elevation divided by the
23 horizontal distance at maximum ten-foot contour intervals;

24 (b) Lands requiring the construction of a new freeway interchange, overpass, underpass, or
25 similar improvement to accommodate planned urban development providing such
26 improvement is not currently identified in the Statewide Transportation Improvement
27 Program (STIP) for construction within the planning period;

28 (c) Land that is isolated from existing service networks by physical, topographic, or other
29 impediments to service provision such that it is impracticable to provide necessary facilities
30 or services to the land within the planning period. The city’s determination shall be based on
31 an evaluation of:

1 (A) The likely amount of development that could occur on the land within the planning
2 period;

3 (B) The likely cost of facilities and services; and,

4 (C) Any substantial evidence collected by or presented to the city regarding how
5 similarly situated land in the region has, or has not, developed over time.

6 (d) As used in this section, “impediments to service provision” may include but are not
7 limited to:

8 (A) Major rivers or other water bodies that would require new bridge crossings to serve
9 planned urban development;

10 (B) Topographic features such as canyons or ridges with slopes exceeding 40 per cent
11 and vertical relief of greater than 80 feet;

12 (C) Freeways, rail lines, or other restricted access corridors that would require new grade
13 separated crossings to serve planned urban development;

14 (D) Significant scenic, natural, cultural or recreational resources on an acknowledged plan
15 inventory and subject protection measures under the plan or implementing regulations that
16 would prohibit or substantially impede the placement or construction of necessary public
17 facilities and services.

18 (6) When a city that has a population of 10,000 or more evaluates or amends its urban growth
19 boundary using a method described in this division, the city must notify districts and counties
20 that have territory within the study area as required by ORS 197A.315 and meet other applicable
21 requirements in that statute.

22 **OAR 660-038-0170**

23 **Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities**

24 (1) When considering a UGB amendment, a city outside of Metro must decide which land to add
25 to the UGB by evaluating all land in the study area determined under OAR 660-038-0160, as
26 follows:

27 (a) Beginning with the highest priority category of land described in section (2), the city must
28 apply section (5) of this rule to determine which land in that priority category is suitable to
29 satisfy the need deficiency determined under OAR 660-038-0080 and OAR 660-038-0150
30 and select as much of the land as necessary to satisfy the need.

31 (b) If the amount of suitable land in the first priority category is not adequate to satisfy the
32 identified need deficiency, a city must apply section (5) to determine which land in the next

1 priority is suitable and select as much of the land in that priority as necessary to satisfy the
2 need. The city must proceed in this manner until all the land need is satisfied.

3 (c) If the amount of suitable land in a particular priority category in section (2) exceeds the
4 amount necessary to satisfy the need deficiency, the city must choose which land in that
5 priority to include in the UGB by applying the criteria in section (6) of this rule.

6 (2) Priority of Land for inclusion in a UGB:

7 (a) First Priority – Urban reserve, exception land, and nonresource land: Lands in the study
8 area that meet the description in paragraphs (A) through (C) of this subsection are of equal
9 (first) priority:

10 (A) Land designated as an urban reserve under OAR chapter 660, division 21, in an
11 acknowledged comprehensive plan;

12 (B) Land that is subject to an acknowledged exception under ORS 197.732; and

13 (C) Land that is nonresource land.

14 (b) Second Priority – Marginal Land: land within the study area that is designated as
15 marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

16 (c) Third Priority – Farm or Forest land that is not predominantly high value farm land: land
17 within the study area that is designated for agriculture or forest uses in the acknowledged
18 comprehensive plan that is not predominantly high-value farmland, as defined in ORS
19 195.300, or that does not consist predominantly of prime or unique soils, as determined by
20 the United States Department of Agriculture Natural Resources Conservation Service In
21 selecting as much of the suitable land as necessary to satisfy the need, the city must use the
22 predominant capability classification system or the predominant cubic site class, as
23 appropriate for the acknowledged comprehensive plan designation, to select lower capability
24 or cubic site class lands first.

25 **Concern/question: Should there be the same protection afforded to prime forest land?**
26 **The USDA defines prime forestland to be lands capable of producing 85 cubic feet per**
27 **acre per year of certain tree species.**

28 (d) Fourth Priority – Agricultural land that is predominantly high value farmland: land
29 within the study area that is designated as agricultural land in an acknowledged
30 comprehensive plan and is predominantly high value farmland as defined in ORS
31 195.300(10). A city may not select land that is predominantly made up of prime or unique
32 farm soils, as defined by the United States Department of Agriculture Natural Resources
33 Conservation Service, unless there is an insufficient amount of other land to satisfy its land
34 need.

1 (3) Notwithstanding section (2)(d) of this rule, land that would otherwise be excluded from an
2 urban growth boundary may be included if:

3 (a) The land contains a small amount of resource land that is not important to the commercial
4 agricultural enterprise in the area and the land must be included to connect a nearby and
5 significantly larger area of land of higher priority for inclusion within the urban growth
6 boundary; or

7 **Concern/question: What is required to determine if land is not important needs to**
8 **be better “defined.” Suggest something such as:**

9 *A determination that land is not important to the commercial agricultural enterprise in*
10 *and area shall be based on consideration of influences including but not limited to the:*

11 *(a) Capability of sustaining long-term agricultural operations;*

12 *(b) Suitability to sustain long-term agricultural operations taking into account:*

13 *A. The existence of a large block of agricultural or other resource land with a*
14 *concentration or cluster of farms;*

15 *B. The adjacent land use pattern, including its location in relation to adjacent*
16 *nonfarm uses and the existence of buffers between agricultural operations*
17 *and nonfarm uses;*

18 *C. The agricultural land use pattern, including parcelization, tenure and*
19 *ownership patterns; and*

20 *D. The sufficiency of needed agricultural infrastructure in the area.*

21
22 (b) The land contains a small amount of resource land that is not predominantly high value
23 farmland or predominantly made up of prime or unique farm soils and the land is completely
24 surrounded by land of higher priority for inclusion into the urban growth boundary.

25 (4) For purposes of subsections (2)(c) and (d) and section (3) of this rule:

26 (a) When evaluating the agricultural or forest capability of land within a study area, “land”
27 means the land in a tract as defined at ORS 215.010.

28 (b) When determining whether the land is predominantly made up of prime or unique farm
29 soils “Predominantly” means at least 50 percent of a subject **lot, or parcel ~~or tract.~~”**

30 **Question/comment: 50/50 does not equate to predominance. Suggest 51%.**

31 **A tract is composed of contiguous lots and/or parcels under the same ownership. Since**
32 **ownership can be changed, tract composition can be manipulated. Suggest removal of the**
33 **term “tract.”**

1 (5) With respect to subsection (1)(a) of this rule, a city must assume that vacant or partially
2 vacant land in a particular priority category is “suitable” to satisfy a need deficiency identified in
3 OAR 660-024-0050(4) or OAR 660-024-0065(3) unless it demonstrates that the land cannot
4 satisfy the specified need, or that its capacity to meet the need must be reduced, based on one or
5 more of the conditions described in subsections (a) through (e) of this section:

6 (a) Existing parcelization, lot sizes or development patterns of the land make the land
7 unsuitable for an identified need, or require that the development capacity of the lands be
8 forecast at a lower level over the planning period than for unconstrained lands;

9 (b) The land would qualify for exclusion from the preliminary study area under the factors in
10 OAR 660-024-0065(4) but the city declined to exclude it pending more detailed analysis
11 under this (the priorities) rule. In evaluating this land, the city must determine that those
12 factors either require that the development capacity be forecast at a lower level over the
13 planning period than for unconstrained land, or that no development capacity should be
14 forecast with respect to the need;

15 (c) The land is committed to a public or semi-public use that is not reasonably likely to be
16 discontinued during the planning period, for example, land within the boundaries of a public
17 use airport or within an area governed by compatibility requirements for public use airports
18 described in OAR 660-013-0080;

19 (d) The land is over 25% slope, or with respect to needed industrial uses only, the property is
20 over 5% slope, as measured in the manner described in OAR 660-024-0065(7)(a).

21 (6) As provided in section (1)(c), if the amount of suitable land in a particular priority category
22 under section (2) exceeds the amount necessary to satisfy the need deficiency, the city must
23 choose which land in that priority to include in the UGB by first applying the Boundary Location
24 Factors of Goal 14 and then applying applicable criteria in the acknowledged comprehensive
25 plan and land use regulations prior to initiation of the UGB evaluation or amendment. The city
26 may not apply local comprehensive plan criteria that contradict the requirements of the Boundary
27 Location Factors of Goal 14. The Goal 14 Boundary Location Factors are not independent
28 criteria; when the factors are applied to compare alternative boundary locations and to determine
29 the UGB location, the city must show that it considered and balanced all the factors.

30 (7) The city must apply the Goal 14 Location Factors in coordination with service providers
31 and state agencies, including the Oregon Department of Transportation with respect to Factor
32 2 regarding impacts on the state transportation system, and the Oregon Department of Fish
33 and Wildlife with respect to Factor 3 regarding environmental consequences. “Coordination”
34 includes timely notice to agencies and service providers and consideration of any
35 recommended evaluation methodologies.

36 (8) In applying Goal 14, Boundary Location Factor 2, to evaluate alternative locations under

1 section (6), the city must compare relative costs, advantages and disadvantages of alternative
2 UGB expansion areas with respect to the provision of public facilities and services needed to
3 urbanize alternative boundary locations. For purposes of this section, the term “public
4 facilities and services” means water, sanitary sewer, storm water management, and
5 transportation facilities. The evaluation and comparison under Location Factor 2 must
6 consider:

7 (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities
8 that serve nearby areas already inside the UGB;

9 (b) The capacity of existing public facilities and services to serve areas already inside the
10 UGB as well as areas proposed for addition to the UGB; and

11 (c) The need for new transportation facilities, such as highways and other roadways,
12 interchanges, arterials and collectors, additional travel lanes, other major improvements
13 on existing roadways and, for urban areas of 25,000 or more, the provision of public
14 transit service.

15 (9) The adopted findings for UGB adoption or amendment must describe or map all of the
16 alternative areas evaluated in the boundary location alternatives analysis.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
DIVISION 24
URBAN GROWTH BOUNDARIES
Draft new rules to implement ORS 197A.320 – Preliminary Version 2

Note to RAC: current “location” rules at OAR 660-024-0060 would be modified to apply only to Metro. New study area and location rules (0065 and 0067, below) would be added to division 24 to implement requirements of ORS 197A.320 with respect to the traditional process. This draft would replace the draft issued September 15.

1 **660-024-0065**

2 **Establishment of Study Area to Evaluate Land for Inclusion in the UGB**

3
4 (1) When considering a UGB amendment to accommodate a need deficit identified in OAR 660-
5 024-0050(4), a local government outside of Metro must determine which land to add to the UGB
6 by evaluating alternative locations within a “study area” established pursuant to this rule. To
7 establish the study area, the local government must first identify a “preliminary study area”
8 which shall not include land within a different UGB or within the corporate limits of a city that is
9 within a different UGB. The preliminary study area shall include:

10 (a) All lands in the local government’s acknowledged urban reserve, if any;

11 (b) All lands that are within the following distance from the acknowledged UGB:

12 (A) For local governments with a UGB population less than 10,000: one-half mile;

13 (B) For local governments with a UGB population equal to or greater than 10,000: one
14 mile;

15 (c) All exception areas that are within the following distance from the acknowledged UGB
16 provided they are contiguous to an exception area that includes land within the distance
17 specified in subsection (b):

18 (A) For local governments with a UGB population less than 10,000: one mile;

19 (B) For local governments with a UGB population equal to or greater than 10,000: one
20 and one half miles;

21 (d) At the discretion of the local government, the preliminary study area may include land
22 that is beyond the distance specified in subsections (b) and (c).

23 (2) A local government that initiated the evaluation or amendment of its UGB prior to January 1,
24 2016, may choose to identify a preliminary study area applying the standard in this section rather
25 than section (1). For such local governments, the preliminary study area shall consist of:

26 (a) All land adjacent to the acknowledged UGB, including all land in the vicinity of the UGB
27 that has a reasonable potential to satisfy the identified need deficiency, and

28 (b) All land in the local government’s acknowledged urban reserve established under OAR
29 Chapter 660, division 21, if applicable.

1 (3) When the primary purpose for expansion of the UGB is to accommodate a particular
2 industrial use that requires specific site characteristics, or to accommodate a public facility that
3 requires specific site characteristics, and the site characteristics may be found in only a small
4 number of locations, the preliminary study area may be limited to those locations within the
5 distance described in section (1) or (2), whichever is appropriate, that have or could be improved
6 to provide the required site characteristics. Site characteristics may include but are not limited to
7 size, topography and proximity. For purposes of this section:

8 (a) The definition of “site characteristics” in OAR 660-009-0005(11) applies for purposes of
9 identifying a particular industrial use.

10 (b) A “public facility” may include a facility necessary for public sewer, water, storm water,
11 transportation, parks, schools, or fire protection.

12 (4) The local government may exclude land from the preliminary study area if it determines that:

13 (a) Based on the standards in section (7) of this rule, it is impracticable to provide necessary
14 public facilities or services to the land;

15 (b) The land is subject to significant development hazards, due to a risk of:

16 (A) Landslides: the land consists of a landslide deposit or scarp flank that is described
17 and mapped on the Statewide Landslide Information Database for Oregon (SLIDO)
18 Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral
19 Industries (DOGAMI) December, 2014, provided that the deposit or scarp flank in the
20 data source is mapped at a scale of 1:40,000 or finer;

21 (B) Flooding, including inundation during storm surges: the land is within the Floodway
22 or Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate
23 Map (FIRM);

24 (C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS
25 455.446;

26 (c) The land consists of a significant scenic, natural, cultural or recreational resource
27 described in this subsection:

28 (A) Lands that are designated on an acknowledged comprehensive plan prior to
29 initiation of the UGB amendment, or that are mapped on a published state or federal
30 inventory at a scale sufficient to determine its location for purposes of this rule, as:

31 (i) Critical or essential habitat for a species listed by a state or federal agency as
32 threatened or endangered;

Comment [JRV1]: Has DLCD considered an opportunity for a city to exclude “all or portions of land” if the resource is not fully encumbering the land? Or is this the intent of OAR 660-038-0170(5)(b)?

Comment [JRV2]: Per Section 7, Subsection 4 of HB 2254, “the commission by rule shall determine the circumstances in which and the resources to which this exclusion will apply to”. ODFW supports a city having an opportunity to exclude the resources listed in this section, especially given the potential conflict when a development action is proposed. However, there are situations where these resources (i.e., critical/essential habitat, state/federal scenic waterways, scenic/recreation areas), may be within a UGB is they remain protected. ODFW’s concern is a city not excluding and then assuming that these resources/habitats are 100% buildable or compatible with urban uses. ODFW still strongly recommends an opportunity for a second screen with coordination of appropriate agencies, where a city may further evaluate these resources for compatibility and make the determination to exclude prior to finalizing their UGB expansion area, or accounting for the reduction in buildable land capacity. It seems this second screen for excluding the listed resources (as proposed in 660-038-0170(5)(b)), would be consistent with the direction in HB 2254 for the commission to determine the circumstances in which the exclusion will apply to.

- 1 (ii) Core habitat for Greater Sage Grouse; or
- 2 (iii) Big game winter range or migration corridors;
- 3 (B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related
4 Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal
5 agency responsible for the scenic program;
- 6 (C) Designated Natural Areas on the Oregon State Register of Natural Heritage
7 Resources;
- 8 (D) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or
9 Conservation management unit designated in an acknowledged comprehensive plan;
- 10 (E) Lands subject to acknowledged comprehensive plan provisions that implement
11 Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;
- 12 (F) Lands subject to acknowledged comprehensive plan provisions that implement
13 Statewide Planning Goal 18, Implementation Requirement 2; or
- 14 (d) The land is owned by the federal government and managed primarily for rural uses.
- 15 (5) After excluding land from the preliminary study area under section (4), the local government
16 must adjust the area, if necessary, so that it includes an amount of land that is at least twice the
17 amount of land needed for the deficiency determined under OAR 660-024-0050(4) [ALT: or, if
18 applicable, twice the particular land need described in section (3)].
- 19 (6) For purposes of evaluating the priority of land under OAR 660-024-0067, the “study area”
20 shall consist of all land that is included in the preliminary study area described in section (2) of
21 this rule after adjustments to the area based on sections (3) through (5).
- 22 (7) For purposes of subsection (4)(a), the local government may consider it impracticable to
23 provide necessary public facilities or services to the following lands:
- 24 (a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of
25 25 percent or greater. Slope shall be measured as the increase in elevation divided by the
26 horizontal distance at maximum ten-foot contour intervals;
- 27 (b) Land that is isolated from existing service networks by physical, topographic, or other
28 impediments to service provision such that it is impracticable to provide necessary facilities
29 or services to the land within the planning period. The local government’s determination
30 shall be based on an evaluation of:

- 1 (A) The likely amount of development that could occur on the land within the planning
2 period;
- 3 (B) The likely cost of facilities and services; and,
- 4 (C) Any substantial evidence collected by or presented to the local government regarding
5 how similarly situated land in the region has, or has not, developed over time.
- 6 (c) As used in this section, “impediments to service provision” may include but are not
7 limited to:
- 8 (A) Major rivers or other water bodies that would require new bridge crossings to serve
9 planned urban development;
- 10 (B) Topographic features such as canyons or ridges with slopes exceeding 40 per cent
11 and vertical relief of greater than 80 feet;
- 12 (C) Freeways, rail lines, or other restricted access corridors that would require new grade
13 separated crossings to serve planned urban development;
- 14 (D) Significant scenic, natural, cultural or recreational resources on an acknowledged
15 plan inventory and subject protection measures under the plan or implementing
16 regulations [ALT: or on a published state or federal inventory] that would prohibit or
17 substantially impede the placement or construction of necessary public facilities and
18 services.
- 19 (8) Land may not be excluded from the preliminary study area based on a finding of
20 impracticability that is primarily a result of existing development patterns. However, a local
21 government may forecast development capacity as follows:
- 22 (a) Existing lots or parcels greater than one acre but less than two acres may be assumed to
23 have an aggregate development capacity of two units per acre.
- 24 (b) Existing vacant lots or parcels one acre or less may be assumed to have a development
25 capacity of one unit.
- 26 (9) Notwithstanding OAR 660-024-0050(4) and section (1) of this rule, except during periodic
27 review or other legislative review of the UGB, the local government may approve an application
28 under ORS 197.610 to 197.625 for a UGB amendment to add an amount of land less than
29 necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided
30 the amendment complies with all other applicable requirements.
- 31 (10) Lands included within a UGB pursuant to section (3) to provide for a particular industrial
32 use, or a particular public facility, must be planned and zoned for the intended use and must

1 remain planned and zoned for that use unless the local government removes the land from the
2 UGB.

3 **OAR 660-024-0067**

4 **Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities**

5 (1) When considering a UGB amendment, a local government outside of Metro must decide
6 which land to add to the UGB by evaluating all land in the study area determined under OAR
7 660-024-0065, as follows:

8 (a) Beginning with the highest priority category of land described in section (2) of this rule,
9 the local government must apply section (5) to determine which land in that priority category
10 is suitable to satisfy the need deficiency determined under OAR 660-024-0050 and select as
11 much of the land as necessary to satisfy the need.

12 (b) If the amount of suitable land in the first priority category in section (2) is not sufficient to
13 satisfy all the identified need deficiency, the local government must apply section (5) to
14 determine which land in the next priority is suitable and must select as much of the suitable
15 land in that priority as necessary to satisfy the need. The local government must proceed in
16 this manner until all the land need is satisfied.

17 (c) If the amount of suitable land in a particular priority category in section (2) exceeds
18 the amount necessary to satisfy the need deficiency, the local government must choose
19 which land in that priority to include in the UGB by applying the criteria in section (6) of
20 this rule.

21 (2) Priority of Land for inclusion in a UGB:

22 (a) First Priority – Urban reserve, exception land, and nonresource land. Lands in the study
23 area that meet the description in paragraphs (A) through (C) of this subsection are of equal
24 (first) priority:

25 (A) Land designated as an urban reserve under OAR chapter 660, division 21, in an
26 acknowledged comprehensive plan;

27 (B) Land that is subject to an acknowledged exception under ORS 197.732; and

28 (C) Land that is nonresource land.

29 (b) Second Priority – Marginal Land: land within the study area that is designated as
30 marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

31 (c) Third Priority – Farm or forest land that is not predominantly high value farm land: land
32 within the study area that is designated for agriculture or forest uses in the acknowledged
33 comprehensive plan and that is not predominantly high-value farmland as defined in ORS
34 195.300, or that does not consist predominantly of prime or unique soils as determined by the
35 United States Department of Agriculture Natural Resources Conservation Service. In

1 selecting as much of the suitable land as necessary to satisfy the need, the local government
2 must use the predominant capability classification system or the predominant cubic site class,
3 as appropriate for the acknowledged comprehensive plan designation, to select lower
4 capability or cubic site class lands first.

5 (d) Fourth Priority – Agricultural land that is predominantly high value farmland: land within
6 the study area that is designated as agricultural land in an acknowledged comprehensive plan
7 and is predominantly high value farmland as defined in ORS 195.300(10). A local
8 government may not select land that is predominantly made up of prime or unique farm soils,
9 as defined by the United States Department of Agriculture Natural Resources Conservation
10 Service, unless there is an insufficient amount of other land to satisfy its land need.

11
12 (3) Notwithstanding section (2)(d) of this rule, land that would otherwise be excluded from
13 a UGB may be included if:

14 (a) The land contains a small amount of resource land that is not important to the
15 commercial agricultural enterprise in the area and the land must be included to connect a
16 nearby and significantly larger area of land of higher priority for inclusion within the
17 urban growth boundary; or

18 (b) The land contains a small amount of resource land that is not predominantly high
19 value farmland or predominantly made up of prime or unique farm soils and the land is
20 completely surrounded by land of higher priority for inclusion into the urban growth
21 boundary.

22 (4) For purposes of subsections (2)(c) and (d) and section (3) of this rule,

23 (a) When evaluating the agricultural or forest capability of land within a study area, “land”
24 means the land in a tract as defined at ORS 215.010.

25 (b) When determining whether the land is predominantly made up of prime or unique farm
26 soils “predominantly” means at least 50 percent of a subject lot, parcel or tract.”

27 (5) With respect to subsection (1)(a) of this rule, a local government must assume that vacant or
28 partially vacant land in a particular priority category is “suitable” to satisfy a need deficiency
29 identified in OAR 660-024-0050(4) or OAR 660-024-0065(3) unless it demonstrates that the
30 land cannot satisfy the specified need, or that its capacity to meet the need must be reduced,
31 based on one or more of the conditions described in subsections (a) through (e) of this section:

32 (a) Existing parcelization, lot sizes or development patterns of the land make the land
33 unsuitable for an identified need, or require that the development capacity of the lands be
34 forecast at a lower level over the planning period than for unconstrained lands;

35 (b) The land would qualify for exclusion from the preliminary study area under the factors in
36 OAR 660-024-0065(4) but the local government declined to exclude it pending more detailed
37 analysis under this (the priorities) rule. In evaluating this land, the local government must

1 determine that those factors either require that the development capacity be forecast at a
2 lower level over the planning period than for unconstrained land, or that no development
3 capacity should be forecast with respect to the need;

4 (c) The land is committed to a public or semi-public use that is not reasonably likely to be
5 discontinued during the planning period, for example, land within the boundaries of a public
6 use airport or within an area governed by compatibility requirements for public use airports
7 described in OAR 660-013-0080;

8 (d) The land is over 25% slope, or with respect to needed industrial uses only, the property is
9 over 5% slope, as measured in the manner described in OAR 660-024-0065(7)(a).

10 (6) Pursuant to section (1)(c), if the amount of suitable land in a particular priority category
11 under section (2) exceeds the amount necessary to satisfy the need deficiency, the local
12 government must choose which land in that priority to include in the UGB by first applying the
13 Boundary Location Factors of Goal 14 and then applying applicable criteria in the acknowledged
14 comprehensive plan and land use regulations acknowledged prior to initiation of the UGB
15 amendment. The local government may not apply local comprehensive plan criteria that
16 contradict the requirements of the Boundary Location Factors of Goal 14. The Goal 14 Boundary
17 Location Factors are not independent criteria; when the factors are applied to compare alternative
18 boundary locations and to determine the UGB location the local government must show that it
19 considered and balanced all the factors.

20 (7) The local government must apply the Goal 14 Location Factors in coordination with
21 service providers and state agencies, including the Oregon Department of Transportation
22 with respect to Factor 2 regarding impacts on the state transportation system, and the Oregon
23 Department of Fish and Wildlife with respect to Factor 3 regarding environmental
24 consequences. "Coordination" includes timely notice to agencies and service providers and
25 consideration of any recommended evaluation methodologies.

26 (8) In applying Goal 14 Boundary Location Factor 2 to evaluate alternative locations under
27 section (6), the local government must compare relative costs, advantages and disadvantages
28 of alternative UGB expansion areas with respect to the provision of public facilities and
29 services needed to urbanize alternative boundary locations. For purposes of this section, the
30 term "public facilities and services" means water, sanitary sewer, storm water management,
31 and transportation facilities. The evaluation and comparison under Location Factor 2 must
32 consider:

33 (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities
34 that serve nearby areas already inside the UGB;

35 (b) The capacity of existing public facilities and services to serve areas already inside the
36 UGB as well as areas proposed for addition to the UGB; and

37 (c) The need for new transportation facilities, such as highways and other roadways,
38 interchanges, arterials and collectors, additional travel lanes, other major improvements

Comment [JRV3]: ODFW appreciates and supports including some language to address the concern of excluding and/or reducing buildable land capacity. However, ODFW recommends this section be further clarified specific to the coordination on habitat resources and how a city would evaluate/determine development capacity (with respect to conflicting uses/compatibility). Some additional coordination language, such as, "If the land would qualify for an exclusion under OAR 660-024-0065(4)(c) or factual information is submitted demonstrating that a significant fish and wildlife habitat resource is present in the study area, the city must coordinate with appropriate wildlife management agencies, such as the Oregon Department of Fish and Wildlife, with regards to the avoidance and minimization of protected species or habitats". Language could also include coordination with other appropriate natural resource agencies, such as DSL, DEQ and ODA.

Comment [JRV4]: ODFW appreciates the revised language for coordinating on Goal 14. DLCD may want to consider additional natural resource agencies, such as DSL and DEQ, as well as providing further clarification on how a city evaluates "environmental consequences". It is not clear why Boundary Location Factor 2 is clarified, yet the other factors are not given that specificity.

- 1 on existing roadways and, for urban areas of 25,000 or more, the provision of public
- 2 transit service.

- 3 (9) The adopted findings for UGB adoption or amendment must describe or map all of the
- 4 alternative areas evaluated in the boundary location alternatives analysis.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
DIVISION 38
URBAN GROWTH BOUNDARIES
Draft new rules to implement ORS 197A.320 – Preliminary Version 2

1 **OAR 660-038-0160**

2 **Establishment of Study Area to Evaluate Land for Inclusion in the UGB**

3 Cities outside of Metro shall comply with this rule and OAR 660-038-0170 when determining
4 which lands to include within the urban growth boundary in response to a deficit of land to meet
5 long term needs determined under OAR 660-038-0080 or OAR 660-038-0150, or both.

6 (1) The city shall determine which land to add to the UGB by evaluating alternative locations
7 within a “study area” established pursuant to this rule. To establish the study area, the local
8 government must first identify a “preliminary study area” which shall not include land within
9 a different UGB or the corporate limits of a city within a different UGB. The preliminary
10 study area shall include:

11 (a) All lands in the city’s acknowledged urban reserve, if any;

12 (b) All lands that are within the following distance from the acknowledged UGB, except as
13 provided in subsection (d) of this rule:

14 (A) For cities with a UGB population less than 10,000: one-half mile;

15 (B) For cities with a UGB population equal to or greater than 10,000: one mile;

16 (c) All exception areas that are within the following distance from the acknowledged UGB
17 provided they are contiguous to an exception area that includes land within the distance
18 specified in subsection (b): :

19 (A) For cities with a UGB population less than 10,000: one mile;

20 (B) For cities with a UGB population equal to or greater than 10,000: one and one half
21 miles;

22 (d) At the discretion of the city, land that is beyond the distance specified in subsections (b)
23 and (c).

24 (2) The city may exclude land from the preliminary study area if it determines that:

25 (a) Based on the standards in section (5) of this rule, it is impracticable to provide necessary
26 public facilities or services to the land;
27

28 (b) The land is subject to significant development hazards, due to a risk of:

29 (A) Landslides: The land consists of a landslide deposit or scarp flank that is described
30 and mapped on the Statewide Landslide Information Database for Oregon (SLIDO)

Comment [JRV1]: Has DLCD considered an opportunity for a city to exclude “all or portions of land” if the resource is not fully encumbering the land? Or is this the intent of OAR 660-038-0170(5)(b)?

1 Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral
2 Industries (DOGAMI) December, 2014, provided that the deposit or scarp flank in the
3 data source is mapped at a scale of 1:40,000 or finer;

4 (B) Flooding, including inundation during storm surges: the land is within the Floodway
5 or Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate
6 Map (FIRM);

7 (C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS
8 455.446.

9 (c) The land consists of a significant scenic, natural, cultural or recreational resource
10 described in this subsection:

11 (A) Lands that are designated on an acknowledged comprehensive plan prior to initiation
12 of the UGB amendment, or that are mapped on a published state or federal inventory at a
13 scale sufficient to determine its location for purposes of this rule, as:

14 (i) Critical or essential habitat for a species listed by a state or federal agency as
15 threatened or endangered;

16 (ii) Core habitat for Greater Sage Grouse; or

17 (iii) Big game winter range or migration corridors.

18 (B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related
19 Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal
20 agency responsible for that scenic program;

21 (C) Designated Natural Areas on the Oregon State Register of Natural Heritage
22 Resources;

23 (D) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or
24 Conservation management unit designated in an acknowledged comprehensive plan;

25 (E) Lands subject to acknowledged comprehensive plan provisions that implement
26 Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

27 (F) Lands subject to acknowledged comprehensive plan provisions that implement
28 Statewide Planning Goal 18, Implementation Requirement 2.

29 (d) The land is owned by the federal government and managed primarily for rural uses.

Comment [JRV2]: Per Section 7, Subsection 4 of HB 2254, "the commission by rule shall determine the circumstances in which and the resources to which this exclusion will apply to". ODFW supports a city having an opportunity to exclude the resources listed in this section, especially given the potential conflict when a development action is proposed. However, there are situations where these resources (i.e., critical/essential habitat, state/federal scenic waterways, scenic/recreation areas), may be within a UGB if they remain protected. ODFW's concern is a city not excluding and then assuming that these resources/habitats are 100% buildable or compatible with urban uses. ODFW still strongly recommends an opportunity for a second screen with coordination of appropriate agencies, where a city may further evaluate these resources for compatibility and make the determination to exclude prior to finalizing their UGB expansion area, or accounting for the reduction in buildable land capacity. It seems this second screen for excluding the listed resources (as proposed in 660-038-0170(5)(b)), would be consistent with the direction in HB 2254 for the commission to determine the circumstances in which the exclusion will apply to.

1 (3) After excluding land from the preliminary study area under section (2), the city must adjust
2 the study area, if necessary, so that it includes an amount of land that is at least twice the amount
3 of land needed for the combined need deficiency determined under OAR 660-038-0080 and
4 OAR 660-038-0150.

5 (4) For purposes of evaluating the priority of land under OAR 660-038-0170, the “study area”
6 shall consist of all land that is included in the preliminary study area described in section (1) of
7 this rule, after adjustments to the area based on sections (2) and (3).

8 (5) For purposes of subsection (4)(a), the city may consider it impracticable to provide necessary
9 public facilities or services to the following lands:

10 (a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of
11 25 percent or greater. Slope shall be measured as the increase in elevation divided by the
12 horizontal distance at maximum ten-foot contour intervals;

13 (b) Lands requiring the construction of a new freeway interchange, overpass, underpass, or
14 similar improvement to accommodate planned urban development providing such
15 improvement is not currently identified in the Statewide Transportation Improvement
16 Program (STIP) for construction within the planning period;

17 (c) Land that is isolated from existing service networks by physical, topographic, or other
18 impediments to service provision such that it is impracticable to provide necessary facilities
19 or services to the land within the planning period. The city’s determination shall be based on
20 an evaluation of:

21 (A) The likely amount of development that could occur on the land within the planning
22 period;

23 (B) The likely cost of facilities and services; and,

24 (C) Any substantial evidence collected by or presented to the city regarding how
25 similarly situated land in the region has, or has not, developed over time.

26 (d) As used in this section, “impediments to service provision” may include but are not
27 limited to:

28 (A) Major rivers or other water bodies that would require new bridge crossings to serve
29 planned urban development;

30 (B) Topographic features such as canyons or ridges with slopes exceeding 40 per cent
31 and vertical relief of greater than 80 feet;

32 (C) Freeways, rail lines, or other restricted access corridors that would require new grade
33 separated crossings to serve planned urban development;

1 (D) Significant scenic, natural, cultural or recreational resources on an acknowledged plan
2 inventory and subject protection measures under the plan or implementing regulations that
3 would prohibit or substantially impede the placement or construction of necessary public
4 facilities and services.

5 (6) When a city that has a population of 10,000 or more evaluates or amends its urban growth
6 boundary using a method described in this division, the city must notify districts and counties
7 that have territory within the study area as required by ORS 197A.315 and meet other applicable
8 requirements in that statute.

9 **OAR 660-038-0170**

10 **Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities**

11 (1) When considering a UGB amendment, a city outside of Metro must decide which land to add
12 to the UGB by evaluating all land in the study area determined under OAR 660-038-0160, as
13 follows:

14 (a) Beginning with the highest priority category of land described in section (2), the city must
15 apply section (5) of this rule to determine which land in that priority category is suitable to
16 satisfy the need deficiency determined under OAR 660-038-0080 and OAR 660-038-0150
17 and select as much of the land as necessary to satisfy the need.

18 (b) If the amount of suitable land in the first priority category is not adequate to satisfy the
19 identified need deficiency, a city must apply section (5) to determine which land in the next
20 priority is suitable and select as much of the land in that priority as necessary to satisfy the
21 need. The city must proceed in this manner until all the land need is satisfied.

22 (c) If the amount of suitable land in a particular priority category in section (2) exceeds the
23 amount necessary to satisfy the need deficiency, the city must choose which land in that
24 priority to include in the UGB by applying the criteria in section (6) of this rule.

25 (2) Priority of Land for inclusion in a UGB:

26 (a) First Priority – Urban reserve, exception land, and nonresource land: Lands in the study
27 area that meet the description in paragraphs (A) through (C) of this subsection are of equal
28 (first) priority:

29 (A) Land designated as an urban reserve under OAR chapter 660, division 21, in an
30 acknowledged comprehensive plan;

31 (B) Land that is subject to an acknowledged exception under ORS 197.732; and

32 (C) Land that is nonresource land.

1 (b) Second Priority – Marginal Land: land within the study area that is designated as
2 marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

3 (c) Third Priority – Farm or Forest land that is not predominantly high value farm land: land
4 within the study area that is designated for agriculture or forest uses in the acknowledged
5 comprehensive plan that is not predominantly high-value farmland, as defined in ORS
6 195.300, or that does not consist predominantly of prime or unique soils, as determined by
7 the United States Department of Agriculture Natural Resources Conservation Service In
8 selecting as much of the suitable land as necessary to satisfy the need, the city must use the
9 predominant capability classification system or the predominant cubic site class, as
10 appropriate for the acknowledged comprehensive plan designation, to select lower capability
11 or cubic site class lands first.

12 (d) Fourth Priority – Agricultural land that is predominantly high value farmland: land
13 within the study area that is designated as agricultural land in an acknowledged
14 comprehensive plan and is predominantly high value farmland as defined in ORS
15 195.300(10). A city may not select land that is predominantly made up of prime or unique
16 farm soils, as defined by the United States Department of Agriculture Natural Resources
17 Conservation Service, unless there is an insufficient amount of other land to satisfy its land
18 need.

19 (3) Notwithstanding section (2)(d) of this rule, land that would otherwise be excluded from an
20 urban growth boundary may be included if:

21 (a) The land contains a small amount of resource land that is not important to the commercial
22 agricultural enterprise in the area and the land must be included to connect a nearby and
23 significantly larger area of land of higher priority for inclusion within the urban growth
24 boundary; or

25 (b) The land contains a small amount of resource land that is not predominantly high value
26 farmland or predominantly made up of prime or unique farm soils and the land is completely
27 surrounded by land of higher priority for inclusion into the urban growth boundary.

28 (4) For purposes of subsections (2)(c) and (d) and section (3) of this rule:

29 (a) When evaluating the agricultural or forest capability of land within a study area, “land”
30 means the land in a tract as defined at ORS 215.010.

31 (b) When determining whether the land is predominantly made up of prime or unique farm
32 soils “Predominantly” means at least 50 percent of a subject lot, parcel or tract.”

33

1 (5) With respect to subsection (1)(a) of this rule, a city must assume that vacant or partially
2 vacant land in a particular priority category is “suitable” to satisfy a need deficiency identified in
3 OAR 660-024-0050(4) or OAR 660-024-0065(3) unless it demonstrates that the land cannot
4 satisfy the specified need, or that its capacity to meet the need must be reduced, based on one or
5 more of the conditions described in subsections (a) through (e) of this section:

6 (a) Existing parcelization, lot sizes or development patterns of the land make the land
7 unsuitable for an identified need, or require that the development capacity of the lands be
8 forecast at a lower level over the planning period than for unconstrained lands;

9 (b) The land would qualify for exclusion from the preliminary study area under the factors in
10 OAR 660-024-0065(4) but the city declined to exclude it pending more detailed analysis
11 under this (the priorities) rule. In evaluating this land, the city must determine that those
12 factors either require that the development capacity be forecast at a lower level over the
13 planning period than for unconstrained land, or that no development capacity should be
14 forecast with respect to the need;

15 (c) The land is committed to a public or semi-public use that is not reasonably likely to be
16 discontinued during the planning period, for example, land within the boundaries of a public
17 use airport or within an area governed by compatibility requirements for public use airports
18 described in OAR 660-013-0080;

19 (d) The land is over 25% slope, or with respect to needed industrial uses only, the property is
20 over 5% slope, as measured in the manner described in OAR 660-024-0065(7)(a).

21 (6) As provided in section (1)(c), if the amount of suitable land in a particular priority category
22 under section (2) exceeds the amount necessary to satisfy the need deficiency, the city must
23 choose which land in that priority to include in the UGB by first applying the Boundary Location
24 Factors of Goal 14 and then applying applicable criteria in the acknowledged comprehensive
25 plan and land use regulations prior to initiation of the UGB evaluation or amendment. The city
26 may not apply local comprehensive plan criteria that contradict the requirements of the Boundary
27 Location Factors of Goal 14. The Goal 14 Boundary Location Factors are not independent
28 criteria; when the factors are applied to compare alternative boundary locations and to determine
29 the UGB location, the city must show that it considered and balanced all the factors.

30 (7) The city must apply the Goal 14 Location Factors in coordination with service providers
31 and state agencies, including the Oregon Department of Transportation with respect to Factor
32 2 regarding impacts on the state transportation system, and the Oregon Department of Fish
33 and Wildlife with respect to Factor 3 regarding environmental consequences. “Coordination”
34 includes timely notice to agencies and service providers and consideration of any
35 recommended evaluation methodologies.

36 (8) In applying Goal 14, Boundary Location Factor 2, to evaluate alternative locations under

Comment [JRV3]: ODFW appreciates and supports including some language to address the concern of excluding and/or reducing buildable land capacity. However, ODFW recommends this section be further clarified specific to the coordination on habitat resources and how a city would evaluate/determine development capacity (with respect to conflicting uses/compatibility). Some additional coordination language, such as, “If the land would qualify for an exclusion under OAR 660-024-0065(4)(c) or factual information is submitted demonstrating that a significant fish and wildlife habitat resource is present in the study area, the city must coordinate with appropriate wildlife management agencies, such as the Oregon Department of Fish and Wildlife, with regards to the avoidance and minimization of protected species or habitats”. Language could also include coordination with other appropriate natural resource agencies, such as DSL, DEQ and ODA.

Comment [JRV4]: ODFW appreciates the revised language for coordinating on Goal 14. DLCD may want to consider additional natural resource agencies, such as DSL and DEQ, as well as providing further clarification on how a city evaluates “environmental consequences”. It is not clear why Boundary Location Factor 2 is clarified, yet the other factors are not given that specificity.

1 section (6), the city must compare relative costs, advantages and disadvantages of alternative
2 UGB expansion areas with respect to the provision of public facilities and services needed to
3 urbanize alternative boundary locations. For purposes of this section, the term “public
4 facilities and services” means water, sanitary sewer, storm water management, and
5 transportation facilities. The evaluation and comparison under Location Factor 2 must
6 consider:

7 (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities
8 that serve nearby areas already inside the UGB;

9 (b) The capacity of existing public facilities and services to serve areas already inside the
10 UGB as well as areas proposed for addition to the UGB; and

11 (c) The need for new transportation facilities, such as highways and other roadways,
12 interchanges, arterials and collectors, additional travel lanes, other major improvements
13 on existing roadways and, for urban areas of 25,000 or more, the provision of public
14 transit service.

15 (9) The adopted findings for UGB adoption or amendment must describe or map all of the
16 alternative areas evaluated in the boundary location alternatives analysis.



Kate Brown, Governor

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November 13, 2015

State Land Board

HB2254/197A.300-325 RAC and DLCD Staff
And the Land Conservation and Development Commission
c/o Cassaria Taylor
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

Kate Brown
Governor

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

Re: Comments on the 9/10/15 draft Division 38 and Division 24 rules;
and proposed location rule changes of 11/05/2015.

The Department of State Lands (DSL) appreciates being included as a member of the Division 38 Rules Advisory Committee (RAC) and the opportunity to make comment on this rule making effort. DSL provides the following comments on the 9/10/2015 draft Division 38 rules, proposed changes to Division 24 rules and supporting documents. These comments are in addition to the comments that were previously provided on the 8/20/2015 version of these draft rules to the RAC, Department of Land Conservation and Development (DLCD) and Land Conservation and Development Commission (LCDC).

Wetlands Policy in Oregon

It is the policy of the State of Oregon to promote the protection, conservation and best use of wetland resources, their functions and values. This is accomplished by integrating and coordinating statewide planning goals, local comprehensive plans, and state and federal regulatory programs. Further, it is the policy of this State to promote the protection of wetland values on private lands by developing and using public recognition programs, incentives and other nonregulatory actions (196.672(1) & (9)).

The Legislature found that wetlands serve multiple valuable functions as listed in ORS 196.668. These findings continue to be supported and augmented through scientific studies. Examples of functions that may contribute the most to the resilience and livability of urban and urbanizing areas include:

- Flood delay and retention – flow may be slowed and capacity provided to decrease flood risk to the built environment;
- Water quality – wetlands may improve multiple factors contributing to water quality;
- Carbon sequestration; and
- Contribute to habitat and migration corridors for birds, wildlife and fish.

Goal 5 Products for Wetlands and Waterways

In keeping with the above policy and findings, DSL recognizes the established Statewide Planning Goal 5 procedures as vital to promote the protection, conservation and best use of this State's wetland and water resources. The Goal 5 related products important in advanced planning for wetlands and waters (Goal 5 products) are:

- The Local Wetland Inventory (LWI) with the associated functional assessment protocol,
- Locally Significant Wetland (LSW) determination, and
- The Riparian Corridor Inventory.

The integration of these inventory and assessment findings earlier in the Urban Growth Boundary (UGB) planning process gives planners and the public tools to evaluate the UGB study area for serviceability and impracticability. This leads to more accurate, appropriate, and informed development plans. The inventory process includes public outreach that allows further opportunity to increase resident awareness of, and input into local growth plans.

The LWI and associated products support planning at many levels. Advanced planning of appropriate locations for possible mitigation opportunities allows for increased wetland function where it may be of most value within UGBs. Additionally, early planning for strategic mitigation locations increases the likelihood that appropriate mitigation may be available to compensate for development in wetlands. This may increase capacity and surety in the permit process, allowing future development to proceed more easily. Planned mitigation opportunities within a UGB may also decrease pressure to locate mitigation on farmland.

When locations appropriately coincide, existing wetlands and mitigation wetlands may be incorporated to expand Greenway areas. This increases the safety and aesthetics of pedestrian, recreation and transportation corridors. The Goal 5 wetlands and waters products also assist planning for sustainability. For example, these products may assist in locating appropriate areas to reduce flood risk through increasing wetland capacity. Similarly, water quality may be improved through strategic restoration, mitigation or buffer locations, or by maintaining existing high functioning or special wetlands.

DSL also supports the completion of Goal 5 products because, while Counties have carried out Goal 5 compliance work, the inventory used to identify the location of wetlands, the National Wetland Inventory (NWI), has certain limitations that make it a blunt instrument for planning and permitting applications. For example, the NWI does not map farmed wetlands, and because of the scale of the work many wetlands are absent from the inventory. There is also no assessment of wetland functions and values associated with the NWI, and therefore a determination of significance cannot be made per 141-086-0300 through 141-086-0350.

Currently, the main triggers for Goal 5 work are when cities enter periodic review (Division 25 as amended by HB3282) and, to a lesser extent, during UGB expansion (Division 24 and via HB2254, Division 38). DSL recognizes the benefits to wetlands and waters of this state when local governments undertake the creation and adoption of Goal 5 products.

To the extent possible DSL favors rule language that encourages compliance with Goal 5 and completion of Goal 5 wetlands and waters products and other Goal 5 related work tasks during UGB expansion and periodic review by cities that have attained a population size of 10,000 or more.

DSL Comments on Division 38 & 24 draft rules

Please find comments on the draft Division 38 rules below. These comments also apply to the draft changes in the Division 24 rules, to the extent that the draft Division 38 language was inserted into the Division 24 rules.

660-038-0020(12)(c): While this language is similar to 660-024-0020(1)(c), both rules discourage the completion of wetlands and waters related Goal 5 products within existing UGBs. Since UGB expansion is accomplished in response to increased population size, many cities whose population has grown above 10,000 have not previously completed the Goal 5 products within the original UGB. These cities would benefit from the completion of Goal 5 products for the original and proposed UGB during the UGB expansion evaluation period. Access to more accurate information about the locations and functions of wetlands and waters in both UGB areas, provides better estimates for buildable land inventories (BLIs), serviceability, and impracticability. The availability of more accurate information also may increase the quality of public outreach and comments during the planning process. These measures bolster the provisions set forth in 660-038-0000(3)(b) – (f).

660-038-0020(14): This draft rule, and potentially rules drafted in response to HB 3282, may limit periodic review. The Division 38 language states that “A city...is not required to commence periodic review...” with two provisions. The revised language at the end of this section references the OAR 660-025 rules for an ... “alternate means to ensure that the ... city comply with the statewide land use planning goals...” This change appears to be an improvement over the previous draft language. However, it is unclear if, or how, the Division 25 “alternate means” will ensure the completion of the Goal 5 wetlands and waters products. This section also is unclear regarding what compels the initiation of periodic review. This seems particularly important in light of changes that may be made to Division 25 rules. Please discuss the “alternate means” and initiation of periodic review with the RAC at the 11/18/2015 meeting so the RAC may be able to better comment on this draft language.

660-038-0070(3): DSL has questions about the language regarding the release of the requirement that cities identify lands encumbered with easements or deeded restrictions during the buildable lands inventory task. While to some extent such encumbrances may be taken into account later in the process through the adjustment allowed in 660-038-0160(2), ultimately it is important that these encumbered lands be identified. Both DSL’s proprietary and Removal-Fill programs use such instruments to identify limitations or allowances of use on certain properties. DSL understands that the identification and appropriate treatment of encumbered properties brought into a UGB will occur later, outside of the UGB expansion process. However, DSL has the expectation, as a property owner, that all property owners will be notified early in the proposed UGB expansion process. Often DSL does not receive such notification.

660-038-0170(9), (10)(a) [now in -0170(8)] and 038-0210: DSL agrees with the decision of DLCD staff to reinstall “storm water management” in the definition of “public facilities and services.” Sanitary sewers are not a replacement for storm water management. While these two services overlap, urbanizing areas benefit when storm water management takes many forms beyond the sanitary sewer system. In many cities the capacity of the sanitary sewer systems can be overwhelmed by the volume of water during some storm events resulting in decreased water quality. Wetlands perform the functions of flood delay, “desynchronization,” slowing and storage all of which may dampen storm surges into built treatment facilities. Wetlands may also function to assist with water quality at such times that sanitary sewers are overwhelmed by flood events.

660-038-0180(4): DSL provides several comments on this section.

1. Regarding, “If factual information is submitted demonstrating that a Goal 5 resource site...”
 - a. The public and agencies must be notified of the UGB expansion, and asked to comment specifically about “Goal 5 resource sites” in order to submit this information. DSL often does not get noticed when cities begin the UGB expansion process. Please provide cities with a process to ensure public, agencies and property owners are properly noticed. While some notification is required in 660-038-0020(13), this direction is insufficient to direct the timing or notification of State agencies with regard to the presence of Goal 5 resources.
 - b. Cities and Counties already have access to the USFWS NWI, the USDA NRCS hydric soils, the USGS national hydrography dataset and other resources that are recommended for use for a rough estimate of the presence of wetlands and waters resources within the UGB study area. This information is “factual information” that DLCD may consider in rule or guidance for this step.
2. Regarding the definition of “impact area” that includes “significant Goal 5 resource:”
 - a. For wetlands the only method to determine the “significance” of, or designate a wetland as, “significant,” is to go through the LWI and LSW process. In the past DSL staff have had questions from planners and DLCD staff regarding the presence of “significant” wetlands in areas where no LWI, and therefore no significance determination, had been completed. The word “significant” may have meaning for other Goal 5 resources; however, for wetlands this word is a source of confusion when planners only have the NWI. This example illustrates the benefit of completing Goal 5 wetland and water products at the beginning of the UGB expansion process.
 - b. Until the LWI and LSW are completed, cities have to depend upon the less accurate resources listed above in #1b. Generally, wetlands and waterways are better protected within UGBs once the city has completed and adopted the related Goal 5 products and protective ordinances. Therefore, generally, from the protection standpoint, and aside from the potential effects from urbanization, it may be beneficial for the wetlands and waters resources, and for the city, if these resources are brought into the UGB. However, for consideration of 660-038-0170, actively farmed wetlands (again, not mapped on the NWI) may be better left out of the UGB to be maintained as farmland.

660-024-0065(4)(c)(A): As stated above, the NWI is not created at a scale to accurately locate wetland boundaries for the purpose of urban area planning. Also, there is no

determination of significance associated with the NWI. Again, the Goal 5 products are important for accurate and proactive planning for wetlands and waterways.

Additional Comments on related documentation

The 9/10/2015 LCDC **policy agenda** for the 9/24-25/2015 LCDC meeting, **Item III.A.4.**: The staff comments include two policy elements for future review; the replacement of periodic review and changes to the Goal 5 requirements for cities undertaking UGB expansion under the proposed Division 38 rules. Similarly, agenda **Item III.B.1.**, regarding HB 3282 and the related change in statutory language in 197.629(7) states that the LCDC **may** approve a periodic review work program limited to only the changes required on remand. DSL would welcome the opportunity to serve on a technical or rule advisory committee, or to provide comment on proposed rule changes in regard to HB3282-based changes to periodic review (Division 25) rules, and any changes to Goal 5 requirements (Division 23). DSL favors the active support of Goal 5 wetlands and waterways related work tasks when a city has attained a population of 10,000. Further, DSL discourages limitations upon the completion of Goal 5 products during the UGB expansion process or by limiting Goal 5 compliance during periodic review.

DSL recognizes the benefits of a streamlined UGB expansion process and supports this effort. To that end, DSL staff is actively engaged in developing improvements to the Statewide Planning Goal 5 wetland inventory and assessment processes. DSL looks forward to continued engagement and cooperation with DLCD staff in the incorporation and facilitation of natural resource planning in UGB expansion and other related planning efforts.

Sincerely,

Jevra Brown
Aquatic Resource Planner
Department of State Lands
OAR 660-038 RAC Member

**Oregon Department of Agriculture
Recommended Amendments to Division 24 Draft
November 18, 2015**

**FOURTH PRIORITY LANDS - NEEDS REQUIREMENT TO SELECT
POOREST SOILS FIRST**

660-024-0067(2)(d) Fourth priority lands

Recommend addition to end of paragraph:

In selecting which high-value lands to include to satisfy the need, the city must use the predominant agricultural capability classification system to select lower capability lands first.

**GOAL 14 & LOCAL CRITERIA - CLARIFY THEY DO NOT TRUMP
SOIL CLASS**

660-024-0067(7) Description of how to apply Goal 14 and local criteria

Recommend the following addition to end of paragraph:

The criteria in this section may not be used to select lands having higher capability or cubic site class ahead of lands having lower capability or cubic site class.

**SOIL STUDY AREA - SAME CRITERIA FOR ANY SIZE OF AREA
(TO PREVENT GERRYMANDERING)**

660-0067(4)(a) OPTION 1 Recommend:

“Areas of land [~~DELETE: (a) not larger than 200 acres, or (b) larger than 200 acres~~] that are similarly situated and have similar soils, may be grouped together and studied as a single

unit of land; provided, however, that soils of lower agricultural or forest capability may not be grouped with soils of higher capability in a manner inconsistent with the intent of section (2) of this rule which establishes that higher capability resource lands are the last priority for inclusion in a UGB.

DEFINITION OF "PREDOMINANTLY" - CAN'T BE 50 PERCENT FOR SOIL CLASS TEST

660-0067(4)(c) OPTION 1 Recommend:

(c) When determining whether the land is predominantly high-value farmland, or predominantly prime or unique, [~~DELETE: or when using the predominant capability classification system or the predominant cubic site class of the subject land;~~] "predominantly" means more than 50 percent.

Addition of:

(d) When determining the predominant capability classification system or the predominant cubic site class of the subject land, "predominantly" means comprising the greatest percentage of the area of land.

1000 FRIENDS NOTES & SUGGESTED CHANGES - DIVISION 24

*** NOTE: We support all of ODA's requested changes – they are repeated at the end ***

660-02400065(1)(c) – Study area. Correction needed to ensure that urban reserves and non-resource lands are treated the same as exception lands. These are all first priority lands.

(c) All ~~exception areas~~ *first priority lands as defined in OAR 660-025-0067(2)(a) that are within the following distance from the acknowledged UGB provided they are contiguous ~~with to an~~ ~~exception first priority area that includes~~ lands that are within the distance specified in subsection (b):*

660-24-0065(4)(b)(A) – Landslides. The SLIDO database does not map known landslide risks. It maps known historic slide areas, which may have happened in prehistoric times. The SLIDO website is clear that this mapping is appropriate for regional planning only, and is not a substitute for a site specific analysis - that's what's needed to determine whether there is a real risk today. The website states that SLIDO data should not be used to make legally binding decisions.

Also, many risks can be mitigated with construction techniques - there's no need to exclude the lands. Most of Springfield's Thurston Hills is on a SLIDO historic landslide, for example. Again this is where a site-specific analysis comes in. Moreover, the SLIDO database is far from complete, it is not a study of all Oregon, but a compilation of existing data. The way the rule is written now, there is no way for cities to consider real risks that are in unmapped areas, no matter how compelling the data may be.

(A) *Landslides: ~~substantial evidence demonstrates that the land is subject to risk of landslide that cannot be mitigated using commonly accepted construction techniques~~ ~~the land consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer;~~*

660-24-0065(4)(c)A(i) – Critical and essential habitat. These terms must be clearly defined. Our understanding is that “critical habitat” is a federal concept only. State essential habitat has not been mapped statewide, but is defined in OAR 635-415-0025. However, there are three categories of essential habitat, and only one is so significant that urbanization must be avoided. Category 1 is the only type of state essential habitat that requires avoidance. Category 2 can be mitigated, and Category 3 is not in limited supply.

(i) *Federally designated critical habitat, or essential habitat Category 1 as defined in OAR 635-415-0025(1), ~~Critical or essential habitat~~ for a species listed by a state or federal agency as threatened or endangered;*

660-24-0065(4)(c)A(iii) – Big game range & migration corridors. We cannot rely on county or state determinations of Goal 5 protections for rural land, to tell us whether or not a resource is significant enough to warrant sacrificing farmland. That's because a county would not have evaluated that question in an ESEE analysis, since rural land by definition is not going to be urbanized. A county's decision to protect big game range by limiting rural parcel sizes (for example), doesn't constitute a decision that the resource is so "significant" that we must avoid urbanizing it forever. The proposed draft is not sufficient as a substitute for a Goal 14 ESEE analysis. We suggest having cities consult with ODFW to determine the appropriate course of action with these resources.

(iii) Big game winter range or migration corridors, when a finding has been made by the Oregon Dept. of Fish and Wildlife, in consultation with the Oregon Dept. of Agriculture, that the area should not be urbanized;

660-024-0065(5) – Study area adjustment. If the study area needs to be expanded, cities should be directed to add any adjacent first priority lands first.

(5) After excluding land from the preliminary study area under section (4), the city must adjust the area, if necessary, so that it includes an amount of land that is at least twice the amount of land needed for the deficiency determined under OAR 660-024-0050(4). ~~[ALT: or, if applicable, twice the particular land need described in section (3)].~~ Such adjustment shall be made by expanding the distance specified under the applicable section (1) or (2) and applying section (4) to the expanded area. When expanding the study area, all contiguous first priority lands as defined in OAR 660-024-0067(2)(a) that are within ½ mile of the preliminary study area boundary must be included, before resorting to lower priority lands.

660-024-0065(6) – Adding back land to study area for park use. There should be text added here to require consideration of excluded land for park use. The commission asked for this.

(6) For purposes of evaluating the priority of land under OAR 660-024-0067, the “study area” shall consist of all land that is included in the preliminary study area described in section (2) of this rule after adjustments to the area based on sections (3) through (5). Provided, however, that when the UGB expansion includes land for park use:

(a) Land excluded from the study area under subsections (4)(a) through (4)(c) shall nevertheless be evaluated for park use.

(b) The local government is not required to select land described under subsection (6)(a) to meet a specific need identified in an adopted parks master plan that:

(A) Requires a public facility or service that the local government has determined would be impracticable to extend to the land under subsection (4)(a);

(B) Requires a site that is not subject to a development hazard risk that the local government has determined exists on the land under subsection (4)(b); or

(C) Would be incompatible with the long-term preservation of a significant scenic, natural, cultural or recreational resource that the local government has identified under subsection (4)(c).

660-024-0065(7)(a) – 25% slope. This needs a sideboard to prevent gerrymandering and exclusion of a flatter area just because it's next to a steep site. The way it's written now, a 20-acre flat area could be excluded just by combining it with an adjacent 60-acre hillside.

(a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of 25 percent or greater, provided the areas do not contain any contiguous portions larger than five acres that are less than 25 percent slope. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

660-024-0065(8) – Exception lands capacity. In the interests of clarity and consistency, delete this language and refer to -0067(6).

(8) Land may not be excluded from the preliminary study area based on a finding of impracticability that is primarily a result of existing development patterns. However, a city may forecast development capacity in accordance with OAR 660-024-0067(6). ~~as follows:~~

~~(a) Existing lots or parcels greater than one acre but less than two acres may be assumed to have an aggregate development capacity of two units per acre.~~

~~(b) Existing vacant lots or parcels one acre or less may be assumed to have a development capacity of one unit.~~

660-024-0067(5) – Determination of suitability. Per the RAC meeting discussion, this section needs to be solely about lands that are deemed unsuitable and so will not be included in the UGB.

(5) With respect to subsection (1)(a) of this rule, a local government ~~must~~ may assume that vacant or partially vacant land in a particular priority category is not “suitable” to satisfy a need deficiency identified in OAR 660-024-0050(4) or OAR 660-024-0065(3) ~~unless only if~~ it demonstrates that the land cannot satisfy the specified need, ~~or that its capacity to meet the need must be reduced,~~ based on one or more of the conditions described in subsections (a) through (f) of this section:

~~(a) Existing parcelization, lot sizes or development patterns of the land make the land unsuitable for an identified need, or require that the development capacity of the lands be forecast at a lower level over the planning period than for unconstrained lands;~~

(a) The land is, or would be upon inclusion in the UGB, subject to natural resources protections under Statewide Planning Goals 5, 6, 15, 16, 17 or 18 that prohibit urban development, and it cannot meet any other identified need for public facilities, such as public sewer, water, storm water, transportation, parks, schools, or fire protection.

(b) The land would qualify for exclusion from the preliminary study area under the factors in OAR 660-024-0065(4) but the local government declined to exclude it pending more detailed analysis under this (the priorities) rule. ~~In evaluating this land, the local~~

~~government must determine that those factors either require that the development capacity be forecast at a lower level over the planning period than for unconstrained land, or that no development capacity should be forecast with respect to the need;~~

(c) The land is committed to a public use, or to a private cemetery, airport, school, or church use~~or semi-public~~ use that is not reasonably likely to be discontinued during the planning period, including but not limited to land within the boundaries of a public use airport or within an area governed by compatibility requirements for public use airports described in OAR 660-013-0080;

(d) With respect to needed industrial uses only, the land is over 10 percent slope, as measured in the manner described in OAR 660-038-0160(5), ~~or and~~ is an existing lot or parcel that is smaller than 5 acres in size, or both.

(e) With respect to a particular industrial use or public facility, the land does not have, and cannot be improved to provide, one or more of the specific site characteristics required by the use. For purposes of this section:

(a) The definition of “site characteristic” in OAR 660-009-0005(11) applies for purposes of a particular industrial use.

(b) A “public facility” may include a facility necessary for public sewer, water, storm water, transportation, parks, schools, or fire protection. Site characteristics for a public facility may include but are not limited to size, topography and proximity.

(f) The land is subject to a conservation easement described in ORS 271.715 that prohibits urban development.

660-024-0067(6) – Continued use of reduced exception lands capacity. We don't think there is a good rationale for the continued use of reduced capacity beyond the original 14-year period. Consistent with the statute (ORS 197A.302(5)) and one of the key rationales behind creating this process, cities should get these lands served and that will facilitate their development.

(6) For lands added to the UGB to provide for residential uses:

(a) Existing lots or parcels one acre or less may be assumed to have a development capacity of one dwelling unit per lot or parcel. Existing lots or parcels greater than one acre but less than two acres shall be assumed to have an aggregate development capacity of two dwelling units per acre.

~~(b) In any subsequent review of a UGB pursuant to this division, the city may use a development assumption for land described subsection (a) of this section for a period of 14 years from the date the lands were added to the UGB.~~

Oregon Department of Agriculture

Recommended Amendments to Division 24 Draft

November 18, 2015

FOURTH PRIORITY LANDS - NEEDS REQUIREMENT TO SELECT POOREST SOILS FIRST

660-024-0067(2)(d) Fourth priority lands

Recommend addition to end of paragraph:

In selecting which high-value lands to include to satisfy the need, the city must use the predominant agricultural capability classification system to select lower capability lands first.

GOAL 14 & LOCAL CRITERIA - CLARIFY THEY DO NOT TRUMP SOIL CLASS

660-024-0067(7) Description of how to apply Goal 14 and local criteria

Recommend the following addition to end of paragraph:

The criteria in this section may not be used to select lands having higher capability or cubic site class ahead of lands having lower capability or cubic site class.

SOIL STUDY AREA - SAME CRITERIA FOR ANY SIZE OF AREA (TO PREVENT GERRYMANDERING)

660-0067(4)(a) OPTION 1 Recommend:

“Areas of land [~~DELETE: (a) not larger than 200 acres, or (b) larger than 200 acres~~] that are similarly situated and have similar soils, may be grouped together and studied as a single unit of land; provided, however, that soils of lower agricultural or forest capability may not be grouped with soils of higher capability in a manner inconsistent with the intent of section (2) of this rule which establishes that higher capability resource lands are the last priority for inclusion in a UGB.

DEFINITION OF "PREDOMINANTLY" - CAN'T BE 50 PERCENT FOR SOIL CLASS TEST

660-0067(4)(c) OPTION 1 Recommend:

(c) When determining whether the land is predominantly high-value farmland, or predominantly prime or unique, [~~DELETE: or when using the predominant capability classification system or the predominant cubic site class of the subject land,~~] "predominantly" means more than 50 percent.

Addition of:

(d) When determining the predominant capability classification system or the predominant cubic site class of the subject land, "predominantly" means comprising the greatest percentage of the area of land.

1000 FRIENDS NOTES & SUGGESTED CHANGES - DIVISION 38

660-038-0040(2)(b) – Mobile home classification. We understand that mobile homes can occur both on individual lots and within a mobile homes park, and available census data does not distinguish between these situations.

Even though some are sited on individual lots, we think that mobile homes should be treated as medium density, not strictly for density reasons, but also as a reflection of the type of housing people need. Mobile homes, even when on individual lots, are generally chosen because they are much less expensive. Therefore, a city with a higher percentage of mobiles is probably a city with a higher need for affordable housing types. Going forward, denser housing types are going to be the most affordable, and so we don't want to shortchange those uses.

(a) For cities with a UGB population less than 2,500, single-family detached dwellings ~~and mobile homes~~ shall be considered low density residential, and all other dwellings shall be considered medium density residential.

(b) For cities with a UGB population greater than or equal to 2,500, single-family detached dwellings ~~and mobile homes~~ shall be considered low density residential, single-family attached dwellings, mobile homes, and multiplexes with two to four units shall be considered medium density residential, and multi-family dwellings with five or more units shall be considered high density residential.

660-038-0050(3) – Backsliding test. This change is necessary to protect against backsliding when cities select lower density ranges than are appropriate for their actual situation. It is important to note that this 20% increase is calculated on the *overall* city density, not its recent density. UO research found that recent development in cities of all sizes is an average of 22% more dense than it was 15 years ago.

Therefore, it is not a “push factor” – it will not even be as much as cities and town have been experiencing recently. Rather it is merely an adjustment that's necessary to allow this metric to serve as an accurate gauge of likely future development density.

(3) If necessary, adjust the density assumptions used in the residential land need analysis so that the overall net density for all residential land need is at least ~~equal to~~ 20% greater than the density determined in OAR 660-038-0050(2), up to a maximum of:

(a) Eight dwelling units per net acre for cities with population less than 10,000.

(b) Ten dwelling units per net acre for cities with population greater than or equal to 10,000.

660-038-0120(2) and -140(3) & (4) – Partially vacant & redevelopment capacity.

This change is necessary to properly inventory partially vacant land – which is not a

function of land-to-improvement value. The change also allows estimation of redevelopable land capacity as a subtraction from demand, rather than a BLI item. This approach has been taken in recent EOAs, such as Salem's.

660-038-0120(2) *The city must identify all lots and parcels in the UGB with either a commercial or industrial comprehensive plan designation or zoning district, determine which lots or parcels are vacant, partially vacant, or developed and calculate the total area of such land, as follows:*

(a) *A city may assume that a lot or parcel is vacant if the improvement value is less than \$5,000 or if the improvement value less than 5 percent of the land value.*

(b) *A city must identify all partially vacant lots and parcels. Vacant areas shall be identified using an orthophoto or other map of comparable geometric accuracy. If the vacant area is at least one-quarter acre, the city shall consider that portion of the lot or parcel to be vacant land. A city may assume that a lot or parcel is partially vacant if the improvement value is greater than five percent and less than 40 percent of the land value.*

(c) *A city may assume that all other lots or parcels are a lot or parcel with an improvement value greater than 40 percent of the land value is developed.*

660-038-140(3) *Account for projected redevelopment expected to occur in commercial zone districts, as follows: separately multiply the result calculated in section (1)(d) by the applicable percentages in paragraphs (a) and (b) of this subsection and then subtract the resulting number from the gross acre need calculated in subsection (1)(a).*

(a) *For cities with a UGB population less than 10,000, the redevelopment factor shall be ~~two~~ between 10 and 15 percent.*

(b) *For cities with a UGB population greater than 10,000 but less than 25,000, the redevelopment factor shall be ~~five~~ between 15 and 20 percent.*

(c) *For cities with a UGB population equal to or greater than 25,000, the redevelopment factor shall be ~~five~~ 20 and ~~10~~ 30 percent.*

660-038-140(4) *Account for projected redevelopment expected to occur in industrial zone districts, as follows: separately multiply the result calculated in section (2)(d) by the applicable percentages in paragraphs (a) and (b) of this subsection and then subtract the resulting number from the gross acre need calculated in subsection (2)(a).*

(a) *For cities with a UGB population less than 10,000, the redevelopment factor shall be ~~one half of a~~ between 10 and 15 percent.*

(b) *For cities with a UGB population equal to or greater than 10,000, the redevelopment factor shall be ~~one~~ between 15 and 30 percent.*

660-038-0130(b) – Flood plain capacity for employment use. This should be treated the same way as tsunami zone land. Where cities allow employment uses inside flood plain, that capacity should be counted.

(b) For other lands within Special Flood Hazard Area (SFHA) as identified on the applicable Flood Insurance Rate Map (FIRM), ~~a 100 percent reduction~~ no reduction unless the city's existing zoning classification of such areas prohibits or reduces allowed development, in which case, the reduction shall be based upon the maximum density allowed by the city's existing zoning classification.

660-038-0080 & 660-038-0150 – Redesignation. These changes are necessary to make the rule consistent with Goal 14's requirement that "Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary." Cities must look seriously at redesignating surplus land – the rule can't waive this requirement.

The challenge with any redesignation analysis is the determination of what is "suitable" for the new use. We have considered different options for defining this term, and in the end, decided it would be better to leave the term undefined than to try to define and get it wrong. The commission could also do supplemental rulemaking on this later.

Residential portion, 660-038-0080:

(2) If the amount of buildable residential land in each category is equal to or greater than the amount of land needed in each category, no UGB expansion for residential land need is necessary.

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(3) If the amount of buildable residential land in any category is less than the amount of land needed in that category, a city must first attempt to meet the need as follows:

(a) Redesignation of surplus low density residential land that is suitable to meet a need for medium or high density residential land.

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(b) Redesignation of surplus medium density residential land that is suitable to meet the need for high density residential land.

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(c) Redesignation of surplus employment land as determined in OAR 660-038-0150 that is suitable to meet low, medium, or high density residential needs, except for employment lands that are prohibited from redesignation as provided by OAR 660-038-0150(4).

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(d) Redesignation of any publicly-owned lands that have been declared surplus by the public entity, that have not been included in the residential or employment land inventories, and that are suitable to meet low, medium, or high density residential needs.

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~~(4) If, after considering redesignation under section (3), there is still a deficit in any category of residential land, the UGB must be expanded to provide the amount of land needed in that category.~~

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~~(2) Cities with a UGB population of less than 2,500 shall determine whether to expand the UGB based on Table 3.~~

~~(3) Cities with a UGB population greater than or equal to 2,500 and less than 10,000 shall determine whether to expand the UGB based on Table 4.~~

~~(4) Cities with a UGB population greater than or equal to 10,000 shall determine whether to expand the UGB based on Table 5.~~

~~(5) A city may also redesignate surplus employment land as determined in OAR 660-038-0150 to satisfy all or part of a residential land deficit, except for employment lands that are prohibited from redesignation as provided by OAR 660-038-0150(4).~~

Employment portion, 660-038-0150:

~~(3) If the amount of buildable employment land is less than the amount of land needed for either commercial or industrial development, then the UGB may be expanded to provide the amount of land needed, provided that: a city must first attempt to meet the need as follows:~~

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~~(a) Redesignation of surplus industrial land that is suitable to meet a need for commercial land, except for employment lands that are prohibited from redesignation as provided by section (4) of this rule. If the amount of buildable land is less than the amount of land needed for industrial development, but is greater than the amount of land needed for commercial development, then the city must first consider re-designating surplus commercial land within the existing UGB for industrial development provided the land is suitable to meet that need and with consideration of section (4) of this rule.~~

~~b) Redesignation of surplus commercial land that is suitable to meet a need for industrial land, except for employment lands that are prohibited from redesignation as provided by section (4) of this rule. If the amount of buildable land available is less than the amount of land needed for commercial development, but is greater than the amount of land needed for industrial development, then the city must first consider re-designating surplus industrial land within the existing UGB for commercial development provided the land is suitable to meet that need and with consideration of section (4) of this rule.~~

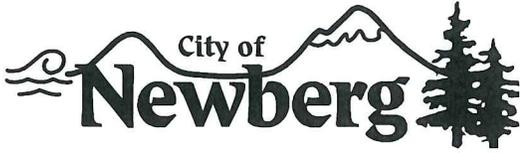
~~(c) A city may also redesignate Redesignation of surplus residential land as determined in OAR 660-038-0080 that is suitable to satisfy all or part of a commercial or industrial re-employment land deficit.~~

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(d) Redesignation of any publicly-owned lands that have been declared surplus by the public entity, that have not been included in the residential or employment land inventories, and that are suitable to satisfy all or part of a commercial or industrial land deficit.

Add Section (5):

(5) If, after considering redesignation under section (3), there is still a deficit of commercial or industrial land, the UGB must be expanded to provide the amount of commercial or industrial land needed.



Community Development Department

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November 23, 2015

Land Conservation and Development Commission
Greg Macpherson, Chair
Department of Land Conservation and Development
Jim Rue, Director
635 Capitol Street, Suite 150
Salem, OR 97301

Re: 12/3/15 LCDC Agenda Item 4 – Rulemaking – Urban Growth Boundary Process

Dear Chair Macpherson and Members of the Commission:

The City of Newberg is extremely interested in the outcome of the UGB streamlining rulemaking process, particularly as we have recently been involved in a time consuming, frustrating, expensive, and ultimately unsuccessful attempt to expand our UGB through the traditional method. We commend the Commission, Department staff, and all involved parties for taking on this difficult task of trying to create a workable UGB process. We are hopeful that the new streamlined rules will provide a clear path for UGB expansions, and that the rules are direct and clear enough to avoid litigation about semantics and interpretations. We have reviewed the new draft rules (OAR 660-038), and while they are definitely on the right track, there are a number of issues of concern we ask the Commission to review and revise and/or provide additional clarity.

Newberg has identified the following areas of concern with the draft rules:

- **660-038-0020(3) or (11):** These two sections seem to say the same thing – are they different? One or both of these should be updated to make it clear that an Economic Opportunities Analysis (EOA) meeting the requirements of Goal 9 and/or a Housing Needs Analysis (HNA) meeting the requirements of Goal 10 are not required as the factual basis for findings if using the streamlined UGB process. We believe this is the intent of the rule, but it needs to be much clearer to protect cities from litigation on this point.
- **660-038-0030(2) & -0100(1):** There should be some ability to rely on previously adopted and acknowledged population forecasts until such time as the regional PSU forecast is complete and available for your specific region. Under this scenario, Newberg would not be able to begin a UGB amendment proposal until after June 2017.
- **660-038-0130(2)(d) & (e):** These subsections don't seem to specify the amount of reduced development capacity for commercial and industrial land with significant slopes, just which lands qualify (the other subsections say "a reduction to..."). How much of a reduction in development capacity would these lands qualify for?

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- **660-038-0150(3)(a) & (b):** These subsections discuss converting surplus industrial land to commercial and vice versa "...provided the land is suitable to meet that need..." This phrase needs significant clarification, and is likely to be litigated unless a clear definition of "suitable" for commercial land and "suitable" for industrial land is added.
- **660-038-0160(5)(c):** This subsection deals with lands a city may consider impracticable to serve. Subsection (5)(c) states that land isolated from existing service networks would require the city to evaluate the impracticality of service by evaluating the "likely amount of development", "likely cost of facilities and services", and "substantial evidence collected by or presented to the city regarding how similarly situated land has, or has not, developed over time." This terminology is vague and almost certain to be litigated.
- **660-038-0170(5)(a):** This subsection is letting cities determine that vacant or partially vacant land is not "suitable" to satisfy a need deficiency based on several factors. Subsection (5)(a) lists one of the factors as "existing parcelization, lot sizes or development patterns of the land make the land unsuitable for an identified need, or require that the development capacity of the lands be forecast at a lower level over the planning period than for unconstrained lands with consideration of section (6) of this rule." Our previous testimony to the commission touched on the idea of including a base suitability requirement for employment land in the rule. This draft comes close by including the idea of parcelization, but the language remains too vague and unsupported, and is likely to be litigated. We recommend the commission clarify this language by adding actual standards such as the following:

660-038-0170(5)(a) Existing parcelization of land into parcels that are 2 acres or less in size, or existing development patterns of the land with respect to the siting of structures and infrastructure that would make future infill development unfeasible, make the land unsuitable to satisfy an employment land deficiency (either commercial or industrial).

- **660-038-0210:** This section depends on using public facilities plans to determine serviceability, but cities don't plan for land outside the UGB. This creates an inherent problem with the rule – how do you make findings to this section when your plans are only to serve areas within the current UGB. We wouldn't absolutely know where a future UGB amendment would be until the location and priority analysis is done. Would this require cities to do a public facilities analysis (or an update of their public facility plans since the rule references acknowledged plans?) for lands they want to bring in to the UGB as part of the UGB analysis? That would be time and cost prohibitive. Additionally, the funding portion of this section seems to assume city funding, but often infrastructure is paid for by development – how would that be permitted or addressed?

Section (3) requires a city to determine infrastructure capacity "for that portion of the 14-year period for which capacity has not been demonstrated in accordance with section (2)" [the 7-year portion] by identifying the type and amount of needed capacity, identifying the necessary system improvements, and identifying the funding mechanisms. Again, it is unclear how a city is supposed to undertake this task, how much detail will be required in this analysis, and if there is any specific methodology to be followed.

This section is almost certain to be litigated if not further clarified on terminology and process.

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As planning practitioners, our goal is a clear and concise path that avoids litigation. Our last UGB attempt cost well over \$200,000 in staff time alone, not counting legal department time. We respectfully ask the Commission to provide as much clarity and plain language in the rule as possible in the hopes that litigation over the details might be avoided.

Lastly, we would like to communicate a point of frustration with this process as a whole. We find it a bit frustrating that something as vitally important to planning practitioners as UGB rulemaking is not more inclusive of planners who will be implementing the rules. The UGB rulemaking was largely off our radar until the end of the process when we started participating on one of the sub-workgroups. With all of the available technology, we would have liked to see more outreach on this issue, much earlier, such as webinars, surveys, focus groups, regional meetings, etc., to adequately gather and incorporate input from practitioners. We hope that future rulemaking efforts will continue to improve on this front.

Thank you for considering our comments.

Sincerely,



Doug Rux, AICP
Community Development Director



Jessica Pelz, AICP
Associate Planner