

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

DEPARTMENT OF LAND
CONSERVATION AND DEVELOPMENT,
Petitioner,

and

FRIENDS OF YAMHILL COUNTY,
COMMUNITY DEVELOPMENT LAW
CENTER and 1000 FRIENDS OF OREGON,
Intervenors-Petitioner,

vs.

CITY OF McMINNVILLE,
Respondent.

LUBA No. 2001-093

FINAL OPINION
AND ORDER

Appeal from City of McMinnville.

Steven E. Shipsey, Assistant Attorney General, Salem, filed a petition for review and argued on behalf of petitioner. With him on the brief were Hardy Myers, Attorney General, and Michael D. Reynolds, Solicitor General.

Mary Kyle McCurdy, Portland, filed a petition for review and argued on behalf of intervenors-petitioner.

Jeffrey G. Condit, Portland, filed the response brief and argued on behalf of respondent. With him on the brief was Miller Nash LLP.

BASSHAM, Board Member; BRIGGS, Board Chair; HOLSTUN, Board Member, participated in the decision.

REMANDED

12/19/2001

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

197.296
Housing
Needs
Analysis!

- Adopting analysis into comp plan w/o implementing measures to meet future need is not OK (es, only partial compliance)

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner challenges a city ordinance adopting a residential land needs analysis as an amendment to the city's comprehensive plan.

MOTION TO INTERVENE

Friends of Yamhill County, Community Development Law Center and 1000 Friends of Oregon (collectively, Friends) move to intervene on the side of petitioner. There is no opposition to the motion, and it is allowed.

FACTS

In 1983, the city adopted chapter 5 of its comprehensive plan, governing housing and residential needs. The Land Conservation and Development Commission (LCDC) acknowledged that chapter the same year. The city's last periodic review was completed in September 1988. In August 2000, the city commenced a legislative review of its urban growth boundary (UGB) with a formal analysis of its buildable lands inventory and its housing needs, pursuant to ORS 197.296.

The city hired ECONorthwest, a consultant, to draft the housing needs analysis required by ORS 197.296(3). The city circulated a draft analysis dated January 2001 as a proposed amendment to chapter of its comprehensive plan. Petitioner Department of Land Conservation and Development (DLCD) submitted a series of comments, expressing concerns that the planned housing densities and mix of housing types did not comply with Statewide Planning Goal 10 (Housing), and recommending that the city use a different housing needs model developed by DLCD.^[1] A final analysis was circulated in early May 2001. As discussed below, the final analysis concludes, in relevant part, that the city's housing needs over the period ending in 2020 may require expansion of the city's UGB to include an additional 449 acres for housing and an additional 412 acres for parks, schools and other public services.

On May 22, 2001, the city planning commission and city council held a joint public hearing, at which the planning commission voted to recommend adoption of the final report as a post-acknowledgment plan amendment. The city council voted at the same hearing to adopt the final report (hereafter, housing needs analysis or analysis), as an amendment to chapter 5 of the city's comprehensive plan, and adopted an ordinance to that effect. This appeal followed.

INTRODUCTION

Most of the parties' arguments turn on whether the city complied with ORS 197.296. We therefore

provide the following overview of the statute, and a summary of the challenged housing needs analysis.

A. ORS 197.296

ORS 197.296(2) mandates that “[a]t periodic review or any other legislative review of the urban growth boundary, comprehensive plans or functional plans shall provide sufficient buildable lands within urban growth boundaries established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years.” The remaining provisions of ORS 197.296 set forth the prescribed procedure for complying with that mandate. The first step is described in ORS 197.296(3):

“As part of its next periodic review pursuant to ORS 197.628 to 197.650 following September 9, 1995, or any other legislative review of the urban growth boundary, a local government shall:

- “(a) Inventory the supply of buildable lands within the urban growth boundary;
- “(b) Determine the actual density and the actual average mix of housing types of residential development that have occurred within the urban growth boundary since the last periodic review or five years, whichever is greater; and
- “(c) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the amount of land needed for each needed housing type for the next 20 years.”

Also relevant to understanding of ORS 197.296(3) is OAR 660-008-0010, which implements Goal 10 ORS 197.295 to 197.314. OAR 660-008-0010 provides in pertinent part that “[t]he mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection.” In turn, OAR 660-008-0005(5) defines “housing needs projection” as

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

- “(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;
- “(b) Consistent with any adopted regional housing standards, state statutes and [LCDC] administrative rules; and
- “(c) Consistent with Goal 14 requirements.”

If the determinations required by ORS 197.296(3) show that the UGB does not include sufficient buildable lands to accommodate housing needs for the next 20 years, ORS 197.296(4) requires the city to either amend the UGB, amend its legislation to increase densities within the UGB, or some combination of these actions.^[2] Further, ORS 197.296(5) requires the city to use the housing needs analysis developed under ORS 197.296(3)(c) to evaluate whether changes in density or housing type mix are necessary to meet housing

needs over the next 20 years.^[3] ORS 197.296(6) and (7) set forth further requirements applicable to any actions taken under ORS 197.296(4) or (5).^[4]

In sum, ORS 197.296(3) requires that the city conduct certain analyses, including a housing needs analysis. Depending on the results of those analyses, the city may be required to undertake certain actions specified in ORS 197.296(4) through (7). In the present case, the city's decision purports to provide only the analyses required by ORS 197.296(3), and does not purport to take any actions under ORS 197.296(4) through (7).^[5] We now turn to the city's housing needs analysis.

B. Housing needs analysis

To satisfy the requirements of ORS 197.296(3), the city's analysis follows a methodology suggested in a document entitled "Planning for Residential Growth: A Workbook for Oregon's Urban Areas" (workbook), produced by the Transportation and Growth Management Program for petitioner DLCD. The workbook, found at supplemental record 21 through 167, describes the authors' understanding of ORS 197.296 and sets forth detailed step-by-step explanations for satisfying the statute's requirements.^[6]

The city's analysis is divided into several chapters that address the statutory requirements, as expressed in the workbook. Chapter 3 conducts the buildable lands inventory required by ORS 197.296(3)(a), and concludes that the city's existing UGB contains 934 gross acres of buildable residential lands, including vacant, partially vacant and redevelopable lands. Chapter 4 conducts an analysis of historical development trends for the period 1988-2000, as required by ORS 197.296(3)(b), and concludes in relevant part that (1) the city has averaged 5.9 dwelling units per net buildable acre; (2) 78 percent of building permits were issued for single-family dwellings, including detached, attached, duplexes and manufactured housing; and (3) 22 percent of building permits were issued for multi-family dwellings.^[7] Chapter 4 also contains a breakdown of actual residential development among the city's four residential zones during the period 1988-2000.^[8]

Chapter 5 examines housing demand and need, pursuant to ORS 197.296(3)(c). Chapter 5 first considers population growth, and accepts a population projection coordinated with Yamhill County that the city's population in the year 2020 will be 38,720, a net increase of 13,567 over the estimated year 2000 population of 25,153. Record 40-41. The analysis adjusts that population estimate by the number of persons accommodated in group quarters, such as college dormitories or nursing homes.

To calculate housing demand based on that population increase, the analysis assumes that household size through the year 2020 will average 2.54 persons per household, the same average shown in the 199

census. Record 43-46. The analysis also assumes a vacancy rate of 2.5 percent for single-family dwellings and 5.0 percent for multiple-family dwellings. Based on those assumptions, the analysis estimates 5,384 new dwelling units will be required to accommodate the estimated population increase through the year 2020. Record 52. In addition, the analysis estimates that another 200 group quarter dwelling units will be needed, for a total of 5,584 new units.

Chapter 5 then develops two different housing need projections, based on different variables. The first projection, called the baseline forecast, is an extrapolation of the actual housing mix and density patterns between 1988 and 2000 for the period 2000-2020. Based on the historic housing mix (78 percent single-family/22 percent multiple-family) and density patterns, and application of the household size and vacancy variables described above, the baseline forecast estimates that meeting the housing demand of 5,584 new units will require 1,158 gross acres. Record 52. The analysis explains that the baseline forecast represents a preliminary forecast that gives the city a starting point for more refined adjustments. *Id.*

The second projection, called the alternative forecast, considers demographic shifts, trends in national, state, and local housing markets, land development costs, household income trends and housing affordability, among other variables.^[9] Based on these variables, the alternative forecast determines that meeting the city's housing needs through the year 2020 will require changing the mix of future housing types to 75 percent single-family dwellings and 25 percent multiple-family dwellings, under the city's definition of those dwellings. Record 63.^[10] Under that mix of housing types and the average densities associated with those types, the alternative forecast estimates that meeting the housing demand of 5,584 units will require 1,116 gross acres. Record 64.

Chapter 5 also estimates land needs for public and semi-public uses, such as parks, schools, and similar uses, as a component of the "total residential land need." Record 67. The analysis estimates that approximately 412 gross acres are necessary to accommodate these public and semi-public uses, and therefore the "total residential land need" under the alternative forecast is for 1,528 gross acres (1,116 acres plus 412 acres). Record 73.

Finally, in chapter 6 the analysis compares the supply of land within the UGB against the demand and need identified in chapter 5. The analysis estimates that the 934 gross acres of buildable residential land within the UGB can accommodate 3,407 of the needed 5,584 dwelling units, for a deficit of 2,178 units. The analysis concludes that, at densities observed between 1988 and 2000, the city will need an additional 449 acres of residential land to accommodate the deficit. Record 77. The analysis then adds to the identified 449 acres the

412 acres for parks and schools identified in chapter 5, for a total land need of 861 gross acres. Record 78.

The analysis concludes by answering several questions posed by the workbook, which apparently relate to inquiries required by ORS 197.296(4) and (5):

“Is *needed* density the same as or less than *actual* historic density? Actual density of residential development in McMinnville between 1988 and 2000 was 4.7 dwelling units per gross acre or 5.9 dwelling units per net acre. The alternative forecast estimates *needed* density at 5.0 dwelling units per gross acre or 6.3 dwelling units per net acre.

“Is *needed* mix the same as *actual* historic mix? Figure 5-1 [Record 66] indicates that needed and actual mix as shown by comparing the baseline and alternative forecasts is different. The alternative forecast (needed mix) indicates that the City will need a slightly higher percentage of multiple-family units and a significantly higher percentage of manufactured homes.

“Does the UGB contain enough buildable lands at *actual* historic densities? No. The data presented in chapters 5 and 6 indicate the UGB will not accommodate the number of new dwelling units between 2000 and 2020 at actual historic, or needed, densities.” Record 78 (emphasis in original).

With that introduction, we turn to the issues raised in this appeal.

MOTION TO DISMISS

In a previous order, we denied a motion to dismiss that argued, in relevant part, that the city’s attempt to satisfy only the requirements of ORS 197.296(3) without also taking actions under ORS 197.296(4) and (5) meant that the city’s decision was not a “final” land use decision subject to LUBA’s jurisdiction. *DLCD v. City of McMinnville*, 40 Or LUBA 591, 596 (2001). We also rejected arguments that the decision effectively amends the city’s UGB to include over 50 acres of land and is thus subject to LCDC’s exclusive jurisdiction under ORS 197.626. *Id.* at 597-98. Finally, we rejected the argument that LCDC has exclusive jurisdiction over the challenged decision pursuant to ORS 197.628 to 197.650, because the city has been in periodic review since 1994 and the challenged decision will impact the city’s remaining periodic review work tasks, involving transportation and commercial lands. *Id.* at 599-600.

Intervenors renew those arguments in their petition for review. In our discussion below of the merits of this appeal, we find it necessary to qualify certain language in our previous order. However, we adhere to the ultimate conclusions in that order, and accordingly deny the renewed motion to dismiss.

DECISION

The two petitions for review contain seven assignments of error that challenge the city’s decision adopting the housing needs analysis in a number of ways. Friends’ first assignment of error challenges the city’s population projection, a necessary ingredient of the housing needs analysis. Friends’ second assignment

of error, and DLCD's first assignment of error, argue that the city's housing needs analysis is not supported by substantial evidence, and violates ORS 197.296, ORS 197.303, Goal 10, and OAR chapter 660, division 008 (Goal 10 rule), in various ways. Friends' third assignment of error challenges the city's inventory of buildable lands under ORS 197.296(3)(a). Friends' fourth assignment of error challenges the evidentiary support for the city's determination of future household size, a key number in the city's calculations under ORS 197.296(3)(c). Friends' fifth assignment of error and DLCD's second assignment of error challenge the city's projections for future park and school land needs. For the reasons explained below, we conclude that a larger issue raised in the petitions for review, and amplified at oral argument, is dispositive and requires remand of the challenged decision. As a result of that disposition, we decline, for reasons explained below, to resolve DLCD's and Friends' specific challenges.

We formulate the dispositive issue as follows: did the city commit legal error in adopting a final comprehensive plan amendment addressing the requirements of ORS 197.296(3), that concludes that action will be required under ORS 197.296(4) and (5), but that fails to complete the process set forth in the statute by taking such action (*i.e.*, amending the UGB and/or adopting other measures) as required by ORS 197.296(4) and (5)? In other words, is it reversible error for the city to fail to complete, in this final comprehensive plan amendment, the process it commenced under ORS 197.296(2) and (3)?

Although the parties do not approach the question as we have formulated it, we understand DLCD and Friends to urge that the answer to that question is yes. Specifically, DLCD argues that the housing needs analysis adopted under ORS 197.296(3)(c) must be consistent with the requirements of Statewide Planning Goal 14 (Urbanization).^[11] OAR 660-008-0005(5). DLCD argues further that, as an amendment to the city's comprehensive plan, the city's decision must be consistent with all applicable statewide planning goals, including Goal 14. According to DLCD, an amendment to the plan cannot be affirmed if it only *partially* complies with an applicable goal; therefore, the city's decision cannot be affirmed if it only partially complies with Goal 14. *See Dept. of Transportation v. Douglas County*, 157 Or App 18, 23-24, 967 P2d 901 (1998) (LUBA may review county's adoption of transportation system plan implementing the requirements of the transportation planning rule for failure to completely implement the rule). In other words, DLCD argues, the city cannot amend its comprehensive plan to conclude that the current UGB (1) includes insufficient land to satisfy the identified housing need and (2) may need to be expanded to include an additional 861 acres, unless the city demonstrates that the city's comprehensive plan, as amended by the decision, complies with the requirements of Goal 14. The only way to do so, we understand DLCD to argue, is to complete the statutory

process and take action under ORS 197.296(4) or (5) to redress the identified deficit. At the very least, DLCD argues, the city must evaluate whether its housing needs analysis is consistent with Goal 14, factors 1 and 2, the so-called “need” factors, and with Goal 14, factor 4, which requires that the city consider the maximum efficiency of land uses within and on the fringes of the existing urban area.

The city’s position, we understand, is that the determinations and analysis required by ORS 197.296(3) are the necessary foundation for the policy choices required by ORS 197.296(4) and (5), and that the city did not err in providing *only* that foundation and no more. We understand the city to argue that the challenged decision does not make any of the policy choices described by ORS 197.296(4) and (5), or foreclose the city from later adopting some or all of the options described in ORS 197.296(4) through (7).^[12] The city contends that it is entirely consistent with the statute and other applicable law to amend its comprehensive plan to include the results of its analysis under ORS 197.296(3), while reserving to subsequent decisions its choice as to what actions it will take to satisfy the housing needs that are identified in that analysis. With respect to Goal 14, the city argues that Goal 14 is not applicable to the city’s adoption of the housing needs analysis, and the Goal 14 factors are not applicable as decisional criteria unless and until the city amends its UGB.

As indicated in our order denying the motion to dismiss, the city’s decision is, on its face, a final comprehensive plan amendment that is subject to our jurisdiction. However, if the city’s decision only partially complies with a set of legal requirements that do not allow partial compliance, it may be remanded on that basis. *Dept. of Transportation*, 157 Or App at 25. In determining whether remand is required in this appeal for that reason, there are three relevant questions. First, what are the governing standards? Second, how far do those standards require the city to go in making a decision under ORS 197.296? Third, does the city’s decision go far enough? *Id.* at 24-25; *see also Volny v. City of Bend*, 168 Or App 516, 522, 4 P3d 768 (2000) (rejecting argument that the transportation planning rule prohibits a city from amending the transportation element of its comprehensive plan until it adopts the transportation system plan required by the transportation planning rule); *Volny v. City of Bend*, 37 Or LUBA 493, 516-17, *aff’d* 168 Or App 516 (2000) (rejecting argument that the Goal 9 rule prohibits the city from adopting an industrial lands inventory showing a 20-year deficit of industrial lands, without also taking action to remedy that deficit).^[13]

As far as ORS 197.296 is concerned, it is not clear whether anything in the statute would prohibit completing the statutory process by adopting a series of final decisions addressing discrete parts of the statute. The statute itself appears to contemplate that its various provisions *may* be addressed in different contexts and in separate decisions. For example, ORS 197.296(6) requires that any “actions” taken under ORS 197.296(4)

and (5) must also demonstrate that the local government's comprehensive plan and land use regulations comply with applicable goals, rules and statutory requirements. *See* n 4. ORS 197.296(6) does not state a similar obligation for the local government's adoption of the determinations and analyses under ORS 197.296(3). The statute thus appears to distinguish between conduct of the analysis providing the basis for necessary "actions," and the decisions that actually take those actions. That view of the statute supports the city's position.

However, DLCD's arguments under Goal 14 and the Goal 10 rule lead us to conclude that comprehensive plan amendments to comply with ORS 197.296 are not divisible in the manner the city attempts here. The city adopted its housing needs analysis as a post-acknowledgment plan amendment, and that amendment is therefore subject to review for compliance with all applicable statewide planning goals. ORS 197.175(2)(a); 197.835(6). OAR 660-008-0005(5) specifically requires that the housing needs projection required by Goal 10 and specified statutes, including ORS 197.296, be "consistent with Goal 14 requirements." We assume, and there seems no reasonable dispute, that the housing needs projection described by OAR 660-008-0005(5) is the same housing needs analysis described in ORS 197.296(3). For whatever reason, LCDC has chosen to implement Goal 10 and ORS 197.296 by providing that the housing needs analysis required by ORS 197.296(3) must be "consistent with Goal 14 requirements." LCDC is entitled to adopt rules that it considers necessary to carry out ORS chapter 197. ORS 197.040(1)(c); *Lane County v. LCDC*, 325 Or 569, 942 P2d 278 (1997).

The question then becomes: what does it mean that the city's housing needs analysis must be "consistent with Goal 14 requirements"? As the city points out, the Goal 14 *factors* must be considered only when a local government establishes or changes a UGB. *See* n 11. Nonetheless, Goal 14 itself is not limited to circumstances where a local government establishes or changes a UGB. *See 1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 724 P2d 268 (1986) (decision converting rural lands to urban uses outside a UGB must be consistent with Goal 14). Further, LCDC may adopt a rule, and apparently has done so in OAR 660-008-0010 and 660-008-0005(5), that requires an evaluation of Goal 14 requirements, even where it is not clear whether and when the Goal 14 factors will be applied under their own terms to amend the UGB.

Arguably, a housing needs analysis that determines that the city's UGB includes sufficient buildable lands to accommodate the identified 20-year housing need under actual developed densities pursuant to ORS 197.296(4) would, without more, be sufficient to establish that the analysis is "consistent with Goal 14 requirements." Even then, however, a proponent of UGB expansion might be able to appeal a final decision

adopting such an analysis, and argue that the analysis incorrectly calculated the need or buildable lands inventory and is therefore not consistent with Goal 14, factors 1 and 2. Where, as here, the housing needs analysis determines that the UGB does not include sufficient buildable land to accommodate needed housing thereby triggering a requirement for the city to take action under ORS 197.296(4) and perhaps (5), determining what must be done to be “consistent with Goal 14 requirements” is even more problematic.

The housing needs analysis required by ORS 197.296(3) identifies whether and to a limited, preliminary extent what actions the city must take under ORS 197.296(4) and (5). Where, as here, the city’s housing needs analysis identifies a significant deficit in the supply of buildable land, the city must take one or more actions under ORS 197.296(4)–(7). It is highly probable under the present circumstances that whatever actions the city takes under ORS 197.296(4)–(7) will implicate Goal 14. In our view, LCDC’s choice to require that the housing needs analysis required by ORS 197.296(3) be “consistent with Goal 14 requirements” is essentially a choice to require that, in circumstances such as the present one, the city must complete the statutory process and adopt one or more of the actions described in ORS 197.296(4)–(7) to take the necessary actions to plan for the identified housing need and the identified deficit in the supply of buildable lands.

Stated differently, until the city takes action under ORS 197.296(4)–(7), it is not possible to determine whether the city’s housing needs analysis is “consistent with Goal 14 requirements.” That conclusion is supported by the DLCD workbook that the city used to guide its decision. The workbook generally suggests that the analysis required by ORS 197.296(3), the actions and measures described in ORS 197.296(4)–(7), and the requirements of Goal 14 are part of a highly integrated single process. *See* Supplemental Record 33 (overview of ORS 197.296). More importantly, the workbook cautions that the process under the statute is “an iterative process,” and that “[n]ew information resulting from a certain task may create the need to repeat one or more of the tasks.” *Id.* at 35. If the statute prescribes an iterative process that may require revisiting tasks completed earlier, then the city’s attempt to achieve finality with respect to partial completion of that process is at odds with the statutory scheme.

In sum, because LCDC’s rules implementing the statute require that the city’s housing needs analysis *must* be consistent with Goal 14 requirements, the consequence in the present case is that the city committed reversible error in adopting a *final* comprehensive plan amendment that concludes that action will be required under ORS 197.296(4)–(7), but fails to complete the process set forth in the statute by taking action under those provisions. Like the county’s partial compliance with the rule in *Dept. of Transportation v. Douglas County*, the city’s decision partially fulfills a task that under applicable legal requirements must be fully completed

before a final decision is adopted. Partial completion of a task that under applicable legal requirements must be fully completed requires remand for that reason alone.

) The foregoing conclusion is, at least at first blush, inconsistent with language in our previous order on the motion to dismiss in this case. As noted above, the motion to dismiss argued in relevant part that LUBA lacked jurisdiction over the city's decision, because a decision adopting the analysis required by ORS 197.296(3) is not a *final* decision until the city takes action under ORS 197.296(4) and (5). That argument was based on language in an unpublished LUBA opinion, *Partnership for Sensible Growth v. Metro*, ___ Or LUBA ___ (LUBA No. 99-184, January 25, 2000), discussed below. The motion to dismiss also argued that, because the analysis indicated that the city will likely have to amend its UGB to include more than 50 acres, jurisdiction over the city's adoption of the analysis lay with LCDC, pursuant to ORS 197.626.^[14] In rejecting the latter argument, we stated:

“We see no reason under [ORS 197.626 and its implementing rule] why the city may not proceed under ORS 197.296(3) to obtain finality regarding its needs analysis before proceeding under ORS 197.296(4) and (5) to select the measures it chooses to meet the identified need.” 40 Or LUBA at 598.

The quoted language must be significantly qualified in light of our above conclusion that the city erred adopting the housing needs analysis without taking action required under the statute. As explained, the administrative rules implementing ORS 197.296 require that the city's analysis be consistent with Goal 14, which under the present circumstances the city cannot demonstrate until it takes action under the statute. The practical effect of our holding is that, at least where the analysis indicates that the UGB includes insufficient buildable lands, the city *cannot* “obtain finality regarding its needs analysis before proceeding under ORS 197.296(4) and (5),” as our order broadly suggests.^[15]

As this case demonstrates, the question of whether a decision is a *final* decision subject to LUBA's jurisdiction is easily confused with the separate question of whether it is a decision that is or is not subject to remand for failure to complete a required process. At the risk of adding further to that confusion, we offer the following observations.

As our order stated, the city's decision in this case is a *final* land use decision subject to our jurisdiction because it amends the city's comprehensive plan. We have difficulty conceiving of a *provisional* or *nonfinal* comprehensive plan amendment. That jurisdictional conclusion is bolstered by the fact that the city's decision supports on its face to constitute a final appealable decision. These circumstances distinguish the present case from *Partnership for Sensible Growth*, where Metro adopted by resolution a draft revision of its housing needs

analysis under ORS 197.296(3), without adopting that draft into its acknowledged land use legislation. Metro adopted the draft revision solely for purposes of obtaining an extension of time from LCDC for complying with certain statutory mandates that are not applicable here. We concluded that Metro's decision was not a final decision and therefore not a land use decision.^[16]

Summarizing, our resolutions of the jurisdictional questions in *Partnership for Sensible Growth* and in this case are different. In *Partnership for Sensible Growth* we were presented with a preliminary, nonfinal and therefore unreviewable decision. In this appeal we are presented with a final, reviewable comprehensive plan amendment. The relevant question that is presented in this appeal, and might have been presented in *Partnership for Sensible Growth* if Metro had adopted a final and reviewable decision to amend its land use legislation, is whether a final decision to amend a comprehensive plan to include a housing needs analysis under ORS 197.296(3) is subject to remand because LCDC's Goal 10 rule and the remaining parts of the statute dictate that the city complete the additional statutory steps beyond adoption of the housing needs analysis. For the reasons we have already explained, the answer is yes.^[17]

The remaining question is whether this Board should resolve some or all of the specific challenges DLCD and Friends make to the city's buildable lands inventory and housing needs analysis. We conclude that it would not be appropriate to do so. The subject of most of those challenges will necessarily be revisited in the course of demonstrating that the housing needs analysis is consistent with Goal 14 requirements such as Goal 14, factors 1 and 2. Others may be revisited in the course of demonstrating that whatever action the city takes is consistent with other Goal 14 requirements and ORS 197.296(4)-(7). Because we cannot identify with reasonable certainty any specific challenges that will not be revisited under the terms of our remand, resolution of the specific challenges in the petitions for review would be advisory and premature.

For the foregoing reasons, the city's decision is remanded.

^[1]Goal 10 is to "provide for the housing needs of citizens of the state." Specifically, Goal 10 requires that:

"Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

^[2]ORS 197.296(4) provides:

"If the determination required by [ORS 197.296(3)] indicates that the urban growth boundary does not contain sufficient buildable lands to accommodate housing needs for 20 years at the actual developed density that has occurred since the last periodic review, the local government shall take one of the following actions:

- “(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for 20 years at the actual developed density during the period since the last periodic review or within the last five years, whichever is greater. As part of this process, the amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;
- “(b) Amend its comprehensive plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or
- “(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.”

[3] ORS 197.296(5) provides:

“Using the analysis conducted under [ORS 197.296(3)(c)], the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under [ORS 197.296(3)(b)], or if that mix is different from the actual mix of housing types determined under [ORS 197.296(3)(b)], the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.”

[4] ORS 197.296(6) and (7) provide:

- “(6) A local government that takes any actions under [ORS 197.296(4) or (5)] shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.
- “(7) In establishing that actions and measures adopted under [ORS 197.296(4) and (5)] demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under [ORS 197.296(3)] and is zoned at density ranges that are likely to be achieved by the housing market using the analysis in [ORS 197.296(3)]. Actions or measures, or both, may include but are not limited to [eight specified measures.]”

[5] The city’s decision states in relevant part:

“This * * * analysis * * * does not, and is not intended to, address the requirements of ORS 197.296(4) and (5), relevant to actions that the City may need to take to avoid or minimize an expansion of the current UGB. These requirements of law will be satisfied by the City subsequent to the completion and adoption of this [housing needs] analysis, and finding that the current UGB contains insufficient land to accommodate the projected residential lands need.” Record 8.

[6] ECONorthwest, the city’s consultant, is one of the authors of the workbook.

[7] The city’s zoning ordinance apparently defines “single-family dwelling” to include common wall and zero lot-line dwellings such as townhouses and condominiums, as well as duplexes. Accordingly, the analysis includes building permits for such dwellings in the category of single-family dwellings. Record 30 n 14. If such dwellings were categorized as multiple-family dwellings, then the respective percentages would be 66 percent for single-family dwellings and 34 percent for multiple-family dwellings. Record 50.

[8] The city’s analysis describes the four residential zones as follows:

“McMinnville has four residential zoning districts: R-1, R-2, R-3, and R-4. Each of these zones, however, allows a variety of housing types. The R-1 and R-2 zones allow single-family units, and duplexes on corner lots (with a minimum of 9,000 and 8,000 square feet, respectively). Multiple family development may [be approved] in both of

these zones through the planned development (PD) process. The R-3 zone allows small-lot single-family units, manufactured dwelling parks, and attached single-family units, as well as multiple family development through the PD process. The R-4 zone allows multiple family housing outright, as well as all of the above housing types.” Record 34.

[9] In addressing household income, the analysis concludes that 53 percent of city households in the year 2000 were considered low income, defined as 80 percent (\$42,950) of the median family income (\$53,700). Record 56. Further, the analysis found that 34 percent of households were considered very low income (50 percent of median family income), while 17 percent were considered extremely low income (30 percent). *Id.*

[10] If single-family attached dwellings and duplexes were considered multiple-family housing types, the needed mix would be 60 percent single-family and 40 percent multiple-family. Record 63. The city’s broad definition of “single-family dwelling” tends to mask the differences between the baseline and alternative forecasts, which are shown by comparing the different housing mix each forecast describes. In general, the alternative forecast increases the number and percentage of single-family housing types that are more affordable, and decreases the number and percentage of less affordable types. For example, the number and percentage of manufactured dwellings are increased from 1,052 (20 percent) to 1,454 (27 percent), while single-family detached dwellings are decreased from 2,453 (46 percent) to 1,884 (35 percent). Record 52, 64, 66. Similarly, the number and percentage of multiple-family units (*i.e.*, apartments) are increased from 1,209 (22 percent) to 1,346 (25 percent). *Id.*

[11] Goal 14 is “[t]o provide for an orderly and efficient transition from rural to urban land use.” Goal 14 goes on to provide:

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

- “(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- “(2) Need for housing, employment opportunities, and livability;
- “(3) Orderly and economic provision for public facilities and services;
- “(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- “(5) Environmental, energy, economic and social consequences;
- “(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- “(7) Compatibility of the proposed urban uses with nearby agricultural activities.”

[12] The city’s position on whether the challenged decision forecloses certain actions is actually more complex. The city’s response brief argues that the essential conclusions of the challenged housing needs analysis is that future development at historic densities and mix of housing types will not produce the *needed* density or mix, and that the UGB does not contain sufficient buildable land to accommodate needed housing at needed or historic densities. If those conclusions are valid, the city argues, the possibility of taking *no action*, as implied by the first sentence of ORS 197.296(4), is foreclosed by the challenged decision.

[13] Following the cited holding in LUBA’s *Volny* decision, LCDC promulgated amendments to the Goal 9 rule to provide that changes in the local government’s industrial lands inventory may trigger obligations to evaluate the adequacy of the inventory outside the context of periodic review. OAR 660-009-0010(4).

[14] ORS 197.626 provides:

“A city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve areas under ORS 195.145 shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.644.”

[15] As discussed above, a different result might obtain where the analysis concludes that the UGB includes sufficient buildable lands to accommodate the projected housing need. Presumably the city’s final decision adopting such an analysis into its

comprehensive plan could be appealed to LUBA and evaluated under applicable standards, including Goal 14, factors 1 and 2. Assuming the city's decision was affirmed at all appellate levels, the city would obtain finality (that is, immunity from further challenge) with respect to its needs analysis.

[16] As *Partnership for Sensible Growth* suggests, the city in the present case probably could have avoided both review and in this case by adopting a facially interlocutory (*i.e.*, nonfinal) decision to accept the housing needs analysis without adopting it as part of the city's comprehensive plan, pending further action. Nothing that we are aware of would prevent the city from taking that approach following this remand.

[17] We also note an issue that is not addressed in the briefs, but which may arise on remand as a result of our decision. ORS 197.296(5) requires that the city adopt certain measures "as part of its periodic review." That language, combined with our holding in this case that the city erred in adopting a decision that only partially completes the process prescribed in ORS 197.296, makes the city's procedural options on remand somewhat uncertain. Although ORS 197.296(2) and (3) both require that ORS 197.296 be addressed at periodic review, those statutes also expressly grant *additional authority* for local governments to perform the urban growth boundary review that is required by ORS 197.296 through "legislative review of the urban growth boundary," *i.e.*, outside periodic review. Although we need not and do not attempt to define the city's options on remand, we clarify here that we do not understand anything in the statute or this opinion to prohibit the city from adopting outside periodic review any measures that the city determines to be required by ORS 197.296.