URBAN GROWTH BOUNDARY REMAND

Meeting Agenda

Urban Growth Boundary Steering Committee
Thursday, September 4, 2014 3-5 PM

DeArmond Room - Deschutes Services Building
1300 NW Wall Street, Bend

1. Welcome 3:00 PM

a. Welcome by Victor Chudowsky
b. Agenda overview (Joe Dills)

2. TAC Recommendations 3:10 PM

The TAC chairs and vice chairs will join the USC to present recommendations from their respective TACs.

Residential (USC Decision)

- Housing need and mix

Employment (USC Decision)

- Market factor for employment lands

Boundary (USC Decisions)

- Use of suitability criteria for screening of expansion areas
- Aggregation of lands for alternatives analysis
- Study Area map
- Applicability of McMinnville case to Bend's boundary methodology
- Evaluation measures for Goal 14: Factor 1 – efficient accommodation of identified land need (preliminary recommendation)

Action: Approve TAC recommendations

For additional project information, visit the project website at http://bend.or.us or contact Brian Rankin, City of Bend, at brankin@bendoregon.gov or 541-388-5584

Accessible Meeting/Alternate Format Notification
This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the City Recorder no later than 24 hours in advance of the meeting at rchristie@ci.bend.or.us, or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

3. Project Goals 4:10 PM

a. Overview and briefing (Brian Rankin, Joe Dills)
b. Discussion

Action: Approve Project Goals

4. Other Issues and Work Underway at the TACs 4:30 PM

a. Inter-TAC coordination
b. Issues and Work Underway - Residential, Employment, Boundary TACs

5. Public Comment 4:45 PM

6. Adjourn 5:00 PM

This agenda packet includes:

- Agenda
- Resolution and Meeting Protocols
- TAC Recommendations Memorandum
- Project Goals Memorandum
- Project Goals (tracked-change version)

RESOLUTION NO. 2958

A RESOLUTION ESTABLISHING A UGB REMAND STEERING COMMITTEE (USC) AND THREE TEMPORARY TECHNICAL ADVISORY COMMITTEES (TACs) TO WORK ON THE UGB REMAND ORDER

Findings

A. The City Council is moving forward with preparing a revised UGB expansion proposal for adoption which meets the requirements of the November, 2010 Land Conservation and Development Commission Remand Order (UGB Remand Order).

B. The City Council established the following goals with respect to this process:
   1. Complete local adoption by April 2016
   2. Use a collaborative decision making process involving local experts and interested parties in a facilitated and expertly assisted process as described
   3. Apply best planning and engineering practices involving scenario development and analysis
   4. Engage, inform, and receive input from the public with techniques best suited for the project

C. The City Council approved a scope of work and contract with Angelo Planning Group (APG) in July, 2014 which describes the process and products to achieve these goals. This contract approaches the project by creating three phases of work. Phase 1 began July 2014 and is anticipated to end in February 2014. Phase 2 will begin in February 2014 and end in November 2015. Phase 3 will being November of 2015 and conclude in April of 2016. Phase 1 is under contract and has a specific scope of work. Subsequent phases will require additional detailed scopes of work and contract approval. All dates are approximate, but serve to create an aggressive schedule to achieve the City Council's goals to complete City Council adoption by April, 2016. Key deliverables and dates are described below by phase.
   1. Phase 1
      i. Phase 1's key outcomes include the project goals, land need determinations, capacity analysis for the current UGB, and methodology for UGB expansion that will be applied in Phase 2. The goals will be established by the UGB Steering Committee (USC), with web-based and other community input in August. The other outcomes comprise much of the work that will be prepared by the Technical Advisory Committees (TACs). Phase 1 will produce updates to the City's Housing Needs Analysis, Economic Opportunities Analysis, and Buildable Lands Inventory. These products, and TAC review, may continue into Phase 2 as determined through subsequent scope development and the progress achieved in Phase 1. UGB analysis conclusions will be captured in an Urban Growth Report.
      ii. Phase 1 has a detailed scope of work and schedule. The

sequence of work includes:

1. June through September, 2014 – Kick-off meeting by USC, appointment of TACs, preparation of and community outreach for project goals.
2. August through October, 2014 – The TACs complete estimates of land needs, initial testing of efficiency measures, and methodologies for UGB expansion evaluation.
3. December through January, 2015 – Joint USC-TAC work sessions will include: review of technical analyses on how various efficiency measures perform; analysis of compliance with the Transportation Planning Rule (including per capita vehicle miles traveled or VMT reduction and integrated land use and transportation plan provisions); estimates of current UGB capacity when various efficiency measures are assumed; and other topics related to Remand requirements for the current UGB.
4. February, 2015 – USC approval of Phase 1 recommendations (updated Housing Needs Analysis, Economic Opportunities Analysis, Phase 2 Boundary Methodology, Urbanization Report sections related to growth inside the current UGB).

2. Phase 2
   i. Phase 2 will apply the UGB methodology developed in Phase 1. Phase 2's key outcomes include the preparation of alternative growth scenarios (with redevelopment, infill and UGB expansion considered), evaluation of those scenarios and application of Goal 14 criteria, narrowing of alternatives and selection of the preferred alternative, and preparation of the proposed UGB map, policies, findings and regulations. Phase 2 has been scoped at a general level – a detailed scope and schedule will be prepared at the conclusion of Phase 1.
3. Phase 3
   i. Phase 3's outcomes include the final documents and supporting findings; and the work sessions, hearings and adoption proceedings required for local adoption of the amendments to the General Plan and implementing regulations. Following adoption, the UGB package will be submitted to the Department of Land Conservation and Development for acknowledgement.

D. The approved contract includes forming a UGB Steering Committee (composed of the full City Council, two Planning Commissioners, and one Deschutes County Commissioner) to provide policy guidance and approve the work of three separate Technical Advisor Committees (composed of citizens, city board members, and agency staff).

E. The UGB Steering Committee will conduct its work in all three phases of the project until it finds the package of materials meets the requirements of the Remand Order and is ready for adoption by the City Council.

F. The Three Temporary Technical Advisory Committees will remain in place until the conclusion of Phase 1. The three Technical Advisory Committees may be continued, disbanded, or reformulated as needed to perform work in Phases 2 and 3 as directed by the Bend City Council.

G. Substitutions to the list of USC and TAC members may be necessary given the length of the project. Substitutions will be made by appointment by the Mayor with the consent of the City Council.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF BEND RESOLVES AS FOLLOWS:

A. The UGB Steering Committee (USC) is established and is composed of the full City Council, two City of Bend Planning Commissioners, and one Deschutes County Commissioner. Current appointees from the Planning Commission are Bill Wagner and Rex Wolf. The USC shall elect a chair and a vice-chair from among its members.

B. The UGB Steering Committee (USC) has the following responsibilities:

1. The USC will make timely decisions on policy direction and technical issues related to the Bend Urban Growth Boundary Remand Order. The USC's work will result in in a proposed Urban Growth Boundary, General Plan, and supporting documents for Bend. The committee will forward its decisions to the City Council and Board of County Commissioners for adoption at the end of the process.
2. The process will move quickly, so it will be essential to make decisions as efficiently as possible to stay on schedule. The USC members commit to review materials prior to meetings and actively participate in the discussion and decision-making process at each meeting.
3. Specifically, the USC will act on input and recommendations from the Technical Advisory Committees (TACs) and project team, and provide direction. The USC can direct additional work by the TACs, accept their recommendations, or make modifications to their recommendations.
4. The USC will use the approved scope and schedule, but may make changes to direct the process and the project schedule as needed. It will determine if additional work needs to be done or if additional meetings will be needed to resolve difficult issues. It will direct staff and the consultant team if additional work or schedule adjustments are necessary. The USC Chair may work with the project team in between USC meetings to provide direction regarding the schedule and work products as necessary. The USC Chair will consult with the Vice Chair as needed.
5. In this manner, the USC has decision-making responsibility for the planning process (analysis, public involvement, etc.) that will be unfolding. USC members will likely need to consult with their constituents and peers between meetings to make sure various interests are included in a process that reflects the values of the community.

C. UGB Steering Committee (USC) guidelines:

1. The USC discussions will be managed by the Chair, or someone designated by the Chair. As used below, the term Chair means the Chair or designee, including the Facilitator.
2. The Steering Committee Facilitator is a neutral party. The Facilitator will not provide advice on substantive matters, and may provide advice on process matters. Project consultants and staff will provide input to the USC on substantive matters.
3. Meetings will begin and end on time. If agenda items cannot be completed on time, the group will decide if the meeting should be extended or if an additional meeting should be scheduled. Additional meetings will likely require adjustments to the project schedule.
4. At the meetings, USC members will:
    i. Provide direct input as required to help reach group consensus
    ii. Share the available speaking time so that all USC members can be heard
    iii. Be respectful of a range of opinions
    iv. Focus on successfully completing the agreed upon agenda
    v. Avoid side discussions when others are speaking
    vi. Voice concerns regarding agenda items as needed at the meeting, rather than voice concerns to consultants and staff after the meeting
    vii. Strive for consensus and acknowledging points of mutual agreement
5. The Chair will gather comments and perspectives from other USC members before a member speaks multiple times on an issue.
6. The Chair will provide opportunities for brief public comment or announcements at the beginning or end of each meeting. Public comment will not exceed 20 minutes of allotted meeting time with a maximum of 2 minutes per individual, unless consent of the USC allows otherwise. Time permitting, the Chair may provide opportunities for public comment at other times of the meeting with the consent of the committee, such as immediately before the USC makes a decision. The agenda may indicate specific items where public comment is invited.
7. When USC members identify issues that are outside the scope of the committee's purpose, the ideas will be documented in an "idea bin" for future use by others, and the group will continue with the agenda.
8. USC members are encouraged to share the committee's progress with their respective constituencies at meetings, by e-mail or through newsletters.
9. Decision making:
    i. The USC will make decisions regarding the direction of the project, project recommendations, and related matters. The USC will make every effort to make decisions by consensus. Consensus is reached when committee members all either support or can live with the proposal, even if it is not each committee member's personal favorite.
    ii. Each member will be asked to convey their degree of support for decisions that are required. The Chair will test consensus by asking the members to show degree of support through a means

acceptable to the USC. The means of showing support should indicate: "I support the proposal"; or "I can live with the proposal"; or "I cannot live with the proposal". Consensus is not reached if one or more USC members indicates they "cannot live with the proposal."

iii. A quorum is required to record a consensus or voted position of the USC. A quorum of the USC shall be at least 6 of 10 members. If consensus cannot be reached, a vote will be taken. A majority of the entire membership is required for a group decision to be made. The opinions of the members, and vote tally, will be recorded and be represented as not reaching consensus when that is the case. Those voting against a recommendation may prepare a minority report to be provided to Council with the recommendation.

iv. Prior decisions made by the USC by consensus or vote can be reconsidered when there is consensus or a majority vote approving a reconsideration. In this case, there will likely be impacts to the budget and schedule due to the need revisit substantive issues.

D. Technical Advisory Committee (TAC):

1. Three topic-specific TACs (Residential, Employment, Boundary and Growth Scenarios) are established. Each TAC shall meet approximately four times, in addition to two joint USC/TAC meetings in Phase 1.
2. Staff and the APG team will facilitate and support the TACs to review and provide guidance on technical issues, methodologies, and recommendations.
3. TAC membership will reflect a degree of technical expertise or background in related subjects, and can also include highly involved and interested persons or even affected parties who may not be technical experts. The TACs will reflect the diverse views in the community on the subject. Ideal TAC members will have credibility and trust with members of their respective interest groups. It is sometimes helpful if TAC members are active in multiple organizations and have ties throughout the community.
4. TACs are in an advisory role and will make recommendations to the USC. The TACs will attempt to reach consensus on their recommendations to the USC. The role of TAC members is to participate with their viewpoints, attempt to reach recommendations that are acceptable to all TAC members, and share information about the UGB process with their peers, members, or larger group they represent.
5. The TACS are one element of public involvement, and a way for the USC to receive consensus (if possible) recommendations on technical and policy matters in the Remand Order from a diverse group of citizens. TACs will work with consultants and staff to review technical documents and provide direction on matters relating to the remand order.
6. The Residential TAC will generally focus on residential land need, the Housing Needs Analysis, residential efficiency measures, the Buildable Lands Inventory, and related topics. The Economic TAC will focus on employment land need, the Employment Opportunities Analysis, and related items. The Boundary TAC will address the Goal 14 boundary

expansion methodology, and how the Envision Tomorrow scenario planning tool will be used. Transportation, per capita vehicle miles traveled and related topics will be addressed by the Boundary and Residential TACs.

7. The TAC Chairs and Vice Chairs may be called upon to advise the USC, participate in other TAC meetings, and work with the USC Chair and Vice Chair as necessary. In this role, the Chairs and Vice Chairs of the TACs may serve as representatives of the TACs, and are expected to reflect the views of the TAC in any coordination or advisory activities.

E. TAC guidelines:

1. The agenda and discussions will be managed by the Chair, or someone designated by the Chair. As used below, the term Chair means the Chair or his designee, including the Facilitator.
2. Meetings will begin and end on time. If agenda items cannot be completed on time, the group will decide if the meeting should be extended or if an additional meeting should be scheduled. Additional meetings will likely require adjustments to the project schedule.
3. At the meetings, members will:
   - v. Provide direct input as required to help reach group consensus
   - vi. Share the available speaking time so that all members can be heard
   - vii. Be respectful of a range of opinions
   - viii. Focus on successfully completing the agreed upon agenda
   - ix. Avoid side discussions when others are speaking
   - x. Voice concerns regarding agenda items as needed at the meeting, rather than voice concerns to consultants and staff after the meeting
   - xi. Strive for consensus and acknowledging points of mutual agreement
   - xii. The Chair will gather comments and perspectives from other members before a member speaks multiple times on an issue.
4. The Chair will provide opportunities for brief public comment or announcements at the beginning or end of each meeting. Public comment will not exceed 20 minutes of allotted meeting time with a maximum of 2 minutes per individual, at the discretion of the Chair – the public is encouraged to provide written comments, and summarize them briefly in the public comment period. Time permitting, the Chair may provide opportunities for public comment at other times of the meeting with the consent of the committee, such as immediately before the group makes a decision. The agenda may indicate specific items where public comment is invited.
5. When members identify issues that are outside the scope of the committee's purpose, the ideas will be documented in an "idea bin" for future use by others, and the group will continue with the agenda.
6. Members are encouraged to share the committee's progress with their respective constituencies at meetings, by e-mail or through newsletters.
7. Decision making:
   - i. The TAC is an advisory group. It will forward advice in the form of

recommendations to the USC.

ii. Ideally, decisions will be made by consensus. Consensus is reached when all of the members present either support or can live with the proposal. The Chair or Facilitator may check-in with the group regarding "do we have consensus on this recommendation" then ask for vote to document the consensus. Absent consensus, consistent with city policies for advisory committees, decisions will be made with a majority vote of a quorum of the TAC members. A minority opinion report on contentious issues may be forwarded to the USC when advised by the TAC.

iii. A quorum is a majority of the voting members of the TAC. The concurrence of a majority of those members present and voting shall be required to decide any matter if consensus is not achieved.

iv. As a general protocol, the TAC will try not to revisit its recommendations. However, prior decisions can be reconsidered when there is consensus or a majority vote approving a reconsideration. In this case, the project team will advise on budget and schedule implications. As needed, the USC may direct the TAC to reconsider issues as directed.

F. The USC and TACs will each appoint a combination of Chairs, Vice Chairs, or Co-Chairs so two members can fulfill the duties described previously. In addition, two substitutes may also be appointed by the USC and each TAC as necessary to act in place of the Chair and Vice Chair when they are unable to attend meetings or functions associated with the project. Changes to the Chair and Vice Chair, Co-Chair, and substitutes may be made by vote of the bodies in the case of vacancies.

G. The initial membership of the Residential Lands TAC is as follows:

1. Kristina Barragan
2. David Ford
3. Stuart Hicks
4. Andy High
5. Allen Johnson
6. Thomas Kemper
7. Katrina Langenderfer
8. Lynne McConnell
9. Michael O'Neil
10. Kurt Petrich
11. Gary Everett
12. Don Senecal
13. Sidney Snyder
14. Kirk Schueler
15. Stacey Stemach
16. Mike Tiller
17. Laura Fritz
18. Ex Officio:
    i. Steve Jorgensen - BMPRD
    ii. Gordon Howard - DLCD

H. The initial membership of the Employment Lands TAC is as follows:

1. Ken Brinich
2. Peter Christoff
3. Ann Marie Colucci
4. Todd Dunkelberg
5. Brian Fratzke
6. David Garcia
7. Christopher Heaps
8. Patrick Kesgard – Substitute
9. William Kuhn
10. Robert Lebre
11. Dustin Locke
12. Wesley Price – Vice Chair
13. Cindy Tisher
14. Jennifer Von Rohr
15. Ron White
16. Joan Vinci – Substitute
17. Wallace Corwin
18. Jade Mayer - Chair
19. Ex Officio:
    iii. Tom Hogue - DLCD
    iv. Damon Runberg – Oregon Employment Department

I. The initial membership of the Boundary and Growth Scenarios TAC is as follows:

1. Toby Bayard
2. Susan Brody
3. Peter Carlson
4. Paul Dewey
5. John Dotson
6. Ellen Grover
7. Steve Hultberg
8. Brian Meece – Substitute
9. Charley Miller
10. Mike Riley – Co-Chair
11. John Russell
12. Ron Ross
13. Sharon Smith – Co-Chair
14. Gary Timm
15. Rod Tomcho
16. Robin Vora
17. Dale Van Valkenburg – Substitute
18. Bruce White
19. Ruth Williamson
20. Rockland Dunn
21. Peter Werner
22. Ex Officio:
    v. Scott Edelman - DLCD

vi. Jim Bryant - ODOT
vii. Nick Lelack – Deschutes County

Adopted by the City Council the 20th day of August, 2014.

YES: Mayor Jim Clinton
Councilor Jodie Barram
Councilor Mark Capell
Councilor Scott Ramsay
Councilor Victor Chudowsky
Councilor Sally Russell

NO: none

Jim Clinton, Mayor

Attest:

Robyn Christie, City Recorder

Approved as to Form:

Mary A. Winters, City Attorney

Memorandum

August 28, 2014

To:	Urban Growth Boundary Steering Committee
Cc:	Project Team
From:	Joe Dills and Brian Rankin
Re:	TAC Recommendations for Steering Committee Consideration on September 4, 2014

INTRODUCTION

The purpose of this memorandum is to summarize key recommendations from the Technical Advisory Committees (TACs) to the Urban Growth Boundary Steering Committee (USC) that have come out of the first two rounds of TAC meetings.

Recommendations for the following topics are included in this memo:

- Housing need and mix
- Market factor for employment lands
- Use of suitability criteria for screening of expansion areas
- Aggregation of lands for alternatives analysis
- Study area map
- Applicability of McMinnville case to Bend's boundary methodology
- Evaluation measures for Goal 14: Factor 1 - efficient accommodation of identified land need (preliminary recommendation)

This memorandum provides a brief summary of background information and the rationale for each recommendation. The materials reviewed by the TACs are included in the supplementary packet for this agenda.

Information on other work underway by each TAC is included at the end of this memorandum.

RESIDENTIAL TAC RECOMMENDATION

Housing Need and Housing Mix

Background

Statewide Planning Goal 10 requires communities to provide needed housing types for households at all income levels. In practical terms, that means the city needs to determine (1) how many new housing units are needed, and (2) the mix and density of new housing. The private sector builds housing in response to demand; what the market builds and what the

community needs may not be the same. The City's obligation under Goal 10 is to designate enough land in appropriate plan designations (e.g., single-family, multifamily, etc.) to accommodate the identified need.

The 2008 UGB proposal was based on an assumption that 65% of the new housing units for the 2008-2028 planning period would be single-family detached housing types and 35% would be multi-family housing and attached single-family types. The remand (in particular Issues 2.3 and 2.4) required Bend to make stronger linkages between forecast growth, the demographic characteristics of current and new residents, the capacity of those residents/households to pay for housing at specific price and rent levels, and housing types that will meet that need. Issue 2.4 of the Remand Order requires the City to "plan lands within its existing UGB and any expansion area so that there are sufficient buildable lands in each plan district to meet the city's anticipated needs for particular needed housing types. To the extent that the City continues to determine that there is a current and projected future shortage of land for affordable housing that translates into a need for more multi-family housing, the City must show how its planning for lands within the existing UGB and any expansion area will provide sufficient buildable lands in plan districts that are designed to meet that need." The remand also required Bend to forecast need based on three housing types, adding single-family attached to the mix.

TAC Recommendation

The first meeting of the Residential TAC resulted in their approval of development types for use in the Envision Tomorrow model, and a description of demographic trends likely to impact housing mix in the planning period (See Residential TAC packet for Meeting 1). The TAC also explored the differences between housing need and housing market demand. The second meeting resulted in connecting the demographic trends to two different housing mixes that could manifest during the planning period. By a **14-2 vote**, the Residential TAC recommended that the USC approve **Trend 2** as the housing mix for the planning period.

Single family detached housing includes single family dwellings on any lot size and in any location, manufactured or mobile homes, and other detached housing types such as cottages or accessory dwelling units. Single-family attached housing is generally one or more dwellings that are attached on one or more walls but on a separate lot, such as townhouses or rowhouses. Multifamily housing is attached housing including other attached dwellings in any location, both for renters and homeowners, including duplexes, triplexes, condominiums, small apartment buildings, or large apartment buildings.

Table 1 shows the recommended Trend 2 mix for new housing units, along with the Revised Housing Needs Assessment (January, 2014, provided for context) and Trend 1 option reviewed by the TAC. The housing mix will provide a key component for projecting residential land needs for 2028.

Table 1. Recommended Housing Mix (Trend 2)

	Revised HNA*		Trend 1		Trend 2	
	Units	Percent of new units	Units	Percent of new units	Units	Percent of new units
Single Family Detached	10,843	65%	10,009	60%	9,175	55%
Single Family Attached	334	2%	1,168	7%	1,668	10%
Multifamily	5,505	33%	5,505	33%	5,838	35%
Total	16,681	100%	16,681	100%	16,681	100%

Table 2 shows the number and percentage of total housing units by type that existed in Bend in 2007, along with the number and percentage of total housing units by type estimated in 2028 for Trend 1 and Trend 2.

Table 2. Estimate of the Mix of Bend's Housing Stock, 2007, Trend 1, and Trend 2

	2007		Trend 1 (in 2028)		Trend 2 (in 2028)	
	Units	Percent of units	Units	Percent of units	Units	Percent of units
Single Family Detached	25,624	75%	35,633	70%	34,799	68%
Single Family Attached	1,151	3%	2,318	5%	2,819	6%
Multifamily	7,385	22%	12,890	25%	13,223	26%
Total	34,160	100%	50,841	100%	50,841	100%

TAC Rationale for the Recommended Housing Mix

The Residential TAC discussed and provided input on demographic and socioeconomic factors affecting housing choice in Bend. Key demographic trends include:

- Aging of the Baby Boomers
- Growth in Echo Boomers
- Growth of Hispanic and Latino population

The following conclusions about how demographic trends may affect Bend's housing market over the next 20 years were discussed, and support the TAC's housing mix recommendation:

- The future housing mix will look different than the recent past, because the demographic and income profile of Bend will change
- The recession may have delayed some effects of demographic shifts
- Demand for large-lot single-family housing is expected to slow in the future relative to past levels
- Demand will increase for a wider range of housing types
    - Retirees will drive demand for a wider range of housing types
    - Housing for families will be in demand
    - Housing affordability will continue to be an issue
- The location of housing in walkable neighborhoods will be increasingly important

At the second meeting on August 25th, the Residential TAC considered additional information focused more specifically on housing affordability in Bend. The data reinforced a conclusion by the TAC that Bend has a deficit of affordable housing, both for renters and homeowners, which needs to be recognized in the housing mix. The TAC considered two trends for future needed housing mix based on differing assumptions about how the demographic trends and affordability issues identified above might play out in Bend over time. The TAC recommended "Trend 2", which places greater emphasis on multi-family and attached housing types based on:

- Recognition of the need to address the "gap" in more affordable housing types in Bend
- Expectation that there will be a greater need for a larger share of single-family attached and multifamily housing as a result of faster and more growth in Echo Boomers, Hispanics and Latinos, and student households

As shown in Table 2 above, single-family detached housing will still make up the majority of needed housing units in the planning period, and a majority of total housing units in 2028.

EMPLOYMENT TAC RECOMMENDATIONS

Market Factor

Background

The EOA included two scenarios for employment land needs. Scenario A was the result of a relatively simple formula of dividing employment projections by employment density to arrive at land need. Scenario B included a "market choice" factor to provide additional employment lands distributed to a variety of locations and sites above the minimum need.

Under Goal 9 and the Remand, the UGB analysis must make connections between the City's economic development vision, economic development potential, and land that is designated for employment uses. The City's economic aspirations must be grounded in reality and a factual base. With respect to land need, the Remand suggested that the methodology used for Scenario A met legal standards. Goal 9 does not specifically allow for the use of a market factor and no city has successfully justified a larger employment land need through use of a market factor (including in the Woodburn UGB case at the Oregon Court of Appeals).

TAC Recommendation and Rationale

By **unanimous vote,** the Employment TAC recommended that the USC proceed with **Scenario A** from the 2008 EOA (to be modified as needed based on TAC input on other requirements of the Remand Order such as infill/redevelopment assumptions), supplemented with approved special site needs that cannot be accommodated within the existing UGB. The recommendation was based on the understanding by the TAC that Scenario A (without a market factor) will be legally defensible.

BOUNDARY TAC RECOMMENDATIONS

Suitability Criteria and Screening

Background

LCDC concluded that the methodology and approach used in 2008 improperly excluded a substantial amount of exception lands from consideration for inclusion in the UGB.

TAC Recommendation and Rationale

In its first meeting**,** the Boundary TAC recommended (all approving and one abstaining) following the guidance in Table 3 of the Director's Report (page 118-122) regarding threshold suitability criteria that are permissible screens for both general land need and specific identified land needs. Table 3 is attached to this memorandum.

Aggregation of Lands for Alternatives Analysis

Background

LCDC emphasized that the City is required to compare lands in the same priority class rather than aggregating its analysis into subareas without regard to the priorities under ORS 197.298.

TAC Recommendation and Rationale

In its first meeting**,** the Boundary TAC recommended by **unanimous vote** taking a tiered approach to the analysis of UGB expansion areas. Under this approach, higher priority lands (i.e. exception lands) will be evaluated first for each identified land need rather than aggregating exception and resource lands for analysis. This approach will make the City's findings more legally defensible.

Study Area

Background

The 2008 UGB analysis used a study area extending 2 miles from the current UGB in all directions. This area includes a substantial amount of Priority 2 exception land (almost 20,000 acres). The project team asked the Boundary TAC to confirm whether this study area is still appropriate.

TAC Recommendation and Rationale

By **unanimous vote,** the Boundary TAC recommended that the USC retain the 2-mile study area used for the 2008 UGB analysis based on the following rationale:

- Consistent with prior approach
- Larger study area = additional analysis
- Assume size of UGB expansion will be smaller; no reason to establish larger study area

The Study Area map is attached to the memorandum.

Applicability of McMinnville Case to Bend's Methodology

Background

At the first meeting, the Boundary TAC asked for a legal analysis of the Oregon Court of Appeals decision on the McMinnville UGB, and how it impacts the direction on the alternatives and boundary location analysis from LCDC in the Bend Remand Order. Based on the desire of the TAC for further research, City Attorney Mary Winters presented a memorandum at the second meeting of the Boundary TAC, supported with a diagram illustrating the steps in the process.

TAC Recommendation and Rationale

The Boundary TAC supported the concept of developing the methodology for the UGB process consistent with the "steps" outlined in the Court of Appeals decision. This will have the UGB expansion methodology follow the guidance of the McMinville decision (which was issued after the Remand Order) rather than the methodology outlined in the Remand Order. However, additional work is needed to flesh out the methodology and levels of detail considered for Step 2 (Initial Suitability Evaluation) and Step 3 (Goal 14 Analysis of Factors). Bend's recognition and local tailoring of this recent case law will make the City's findings more legally defensible.

The City Attorney's memorandum and process diagram from ECONorthwest describe the recommended approach. They are attached to this memorandum.

Evaluation Measures for Goal 14: Factor 1 (Efficient Accommodation of Identified Land Needs)

Background

The Goal 14 administrative rule provides some guidance for "considerations" that must be addressed in the Goal 14 Location Factors for the UGB. In general, the City has flexibility in deciding how to measure and balance the location factors of Goal 14 in the evaluation of UGB alternatives within a given priority category. The remand provided some guidance on how to address specific factors.

The Boundary TAC will be considering and refining the methodology to address the four factors of Goal 14 at separate meetings. Factor 1 (Efficient Accommodation of Identified Land Needs) was discussed at the second TAC meeting.

TAC Recommendation and Rationale

The Boundary TAC recommended **preliminary approval** of the evaluation measures to address Factor 1 of Goal 14 (see memo for Boundary TAC Meeting 2). Understanding that the four factors are interrelated, the TAC was not comfortable recommending approval of the proposed evaluation measures without considering the context of all four factors as an integrated package. After preliminary evaluation measures have been considered for all four Goal 14 factors, the Boundary TAC will revisit and refine the final package at the conclusion of Phase 1.

The preliminary evaluation measures to address Factor 1 of Goal 14 are attached to this memorandum.

OTHER WORK COMPLETED OR UNDERWAY AT THE TACS

Integration of Work across the TACS

In the first two groups of TAC meetings, a theme has emerged: the importance of ensuring integration of TAC work and recommendations. To accomplish this, several actions have been identified:

- TAC members have volunteered to serve as liaisons between TACs. They are attending other TAC meetings and giving short reports to their TACs.
- An informal "drop-in" session is held on Tuesday afternoons following the completion of all three TAC meetings. TAC members have attended these sessions to learn about work in the other TACs, and, talk with each other, staff and community members.
- TAC members have been encouraged to review materials on the web site for all of the TACs.
- Staff is identifying "cross-over" issues on an on-going basis. As an example, information about urban form principles will be shared across all three TACs in upcoming meetings.

Another theme that has emerged is a need to address the inherently iterative process versus a purely linear approach to the project. The TACs are making final recommendations where possible, but holding on final approval of some decisions until they can examine the implications of the guidance they are providing. In addition, since each TAC is not dealing with the "whole" of the project, a process of using preliminary recommendations to guide work will allow each TAC to see how their guidance, plus the guidance from other TACs, will come together. While the project is currently on schedule, it seems clear to many that at least an additional meeting will be required near the end of Phase 1 in order to demonstrate the cumulative results of the TAC's guidance on the project as a whole.

Residential TAC

Residential Building Library

At the first TAC meeting, Fregonese Associates presented an initial overview of the proposed "residential building library" for Bend to include in the Envision Model. TAC members provided input on which housing products are a good fit for Bend, including those that are not represented in Bend today but do make sense for Bend in the future and should be included in the building library.

Initial Screening of Efficiency Measures

At the second meeting, the Residential TAC provided input on an initial list of potential residential "efficiency measures" for Bend. The TAC discussed what measures are in place today and also provided input on other measures that aren't in place today, but which might be appropriate to consider. The team will "test" some of the potential measures and return to the next TAC meeting with information on how and where they might be applied, and what impact

they might have on accommodating additional housing within the existing UGB. It is expected that the range of efficiency measures will be further refined over the next two TAC meetings. Ultimately, the Residential TAC will recommend one or more packages of the most promising efficiency measures, targeted to specific locations, for approval by the Steering Committee at the conclusion of Phase 1 work.

Employment TAC

Employment Building Library

At the first TAC meeting, Fregonese Associates presented an initial overview of the proposed "employment building library" for Bend to include in the Envision Model. TAC members provided input on which building types are a good fit for Bend and which employment building products are not represented in Bend today but might make sense for Bend in the future and should be included in the building library.

Redevelopment Potential

At the second meeting, the Employment TAC focused on a consideration of redevelopment opportunities for employment sub-areas within the existing UGB. Rather than try to justify a flat "redevelopment rate" for employment lands, the TAC and the DLCD staff representative agreed that a more nuanced analysis of redevelopment by subareas was more meaningful. The team will "test" and refine the methodology for considering redevelopment opportunities at the next meeting. Ultimately, the Employment TAC will recommend redevelopment assumptions for approval by the Steering Committee at the conclusion of Phase 1 work.

Boundary TAC

Urban Form

At its second meeting, the Boundary TAC reviewed a presentation on urban form – how Bend's natural features, history and development patterns have shaped the City. Information was discussed regarding how Boulder, Colorado has incorporated urban form into its growth management policies and strategies. The TAC found this information useful and encouraged further work so that urban form principles for Bend (connected to the project goals) can help guide future work and help project participants "see what Bend might look like" when considering various individual decisions regarding the UGB. It is likely that project goals will be combined with principles of urban form to share between TACs and help create consistency in topics pertaining to urban form.

Appendix

Appendix A: Table 3 of DLCD Director's Report

Appendix B: Study Area maps

Appendix C: City Attorney memo and process diagram

Appendix D: Goal 14: Factor 1 – Efficient Accommodation of Identified Land Needs, preliminary evaluation measures

APPENDIX A: TABLE 3 FROM DIRECTORS REPORT

Findings Regarding Boundary Location Threshold Suitability Criteria

Criterion	Analysis
Lot is not entirely within the 100-year floodplain.	This criterion is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), and is a permissible screen for both general land need and specific identified land needs.
Lot is serviceable for city sanitary (does not include private or public systems other than the city).	This criterion is a permissible screen under OAR 660-008-0005(2)(e) (cannot be provided with public facilities), except for the limitation to city facilities. So long as sanitary sewer is available or feasible during the planning period, the property cannot be excluded as unsuitable.
Lot is serviceable for city water.	This criterion is permissible, see analysis immediately above.
Lot is in regional stormwater plan service area.	This criterion is permissible, see analysis immediately above.
The lot scores medium or high for street connectivity.	This criterion is not a permissible suitability screen. As long as street access is feasible during the planning period, the property can be provided with public facilities. This criteria can, however, be used as a Goal 14 factor for determining what exception lands to include in the event there is an excess amount of such lands and the city and the county are deciding which exception lands to include.
The lot scores medium or high for street connectivity.	This criterion is not a permissible suitability screen. As long as street access is feasible during the planning period, the property can be provided with public facilities. This criteria can, however, be used as a Goal 14 factor for determining what exception lands to include in the event there is an excess amount of such lands and the city and the county are deciding which exception lands to include.
Lot is a public or private right-of-way for roads, sidewalks, and/or landscaping.	Publicly owned land generally is not considered buildable (Goal 10 – within the existing UGB) or suitable (OAR 660- 024), and is an appropriate suitability screen. However, private right-of-way and open space land is “generally considered “suitable and available.”
Lot does not contain an active surface mine in the county’s Goal 5 inventory.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.

Criterion	Analysis
Lot is not designated by the county as a Goal 5 resource.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not a cemetery.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not owned by the federal government.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
• Lot is not a state park; • Lot is not owned by the Bend Metro Park and Recreation District (listed twice). • Lot is not owned by Bend-La Pine School District	These criteria, which are based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), are permissible suitability screens for general land need.
Lot is not a public or private open space.	This criterion is a permissible suitability screen for publicly owned open space, but not for private open space. OAR 660-008- 0005(2).
Lot is developed with a school or church and is larger than 5 acres.	(1) Some church and school land may be redeveloped. Such lands may be screened as “unsuitable” only based on findings and an adequate factual base that they are not likely to be redeveloped during the 20- year planning period Larger lots with substantial vacant land generally will be considered to be suitable (at least in part)..
Lot is not a landfill.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment).
Lot is not a destination resort approved by the county.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period.

Criterion	Analysis
Lot has recorded CC&Rs prohibiting further division.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The director finds that the evidence citied in the city's findings, R. at 1171-1174, does not support the city's conclusion that the listed subdivisions cannot be redeveloped. The comments in Table V-6 [R. at 1173] show that additional residential development is not prohibited in almost all of the subdivisions listed. Even for those few subdivisions where additional land divisions are prohibited by CC&Rs, the findings do not address whether there are vacant lots, or whether additional housing not involving a land division, such as an "in-law" apartment or "granny flat" may be feasible.
Lot has improvements with a value of less than $20,000.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The valuation threshold used by the city is very low in relation to the potential value of residential redevelopment, and would appear to effectively define lands that have minimal improvements as being developed rather than vacant.
Lot has 1 dwelling and is larger than three acres.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The acreage threshold used by the city is very high. A lot with an existing home and several acres of land normally could accommodate some additional residential development during a twenty- year planning period. As noted in the section of this report addressing housing need, the city has not analyzed the actual level of redevelopment that has occurred on such lands, making it impossible to reach definitive conclusions about the amount of redevelopment that is likely to occur, as those terms are used in OAR 660-008-0005(2) and 660-024-0010(1) and 0060(1)(e) and (5). The city appears to have excluded a substantial amount of exception lands based on this criterion.

Criterion	Analysis
Lot is zoned EFU-TRB with 23 acres of high value soils when irrigated OR zoned EFU-UAL with 36 acres of high value soils when irrigated.	The capability of soils on commercial farm parcels becomes relevant only if and when (a) all suitable exception parcels have been added, (b) some amount of 20- year land need remains, (c) the city goes to the next highest priority under ORS 197.298(1), which is agriculture or forest land, (d) lower capability agriculture or forest parcels have been given priority over higher capability resource parcels per ORS 197.298(2), (e) lower capability resource parcels are not suitable for the identified need, or there is not enough lower capability resource land to meet that remaining need, and (f) lowest priority high value resource land must be considered.

APPENDIX B: STUDY AREA MAPS

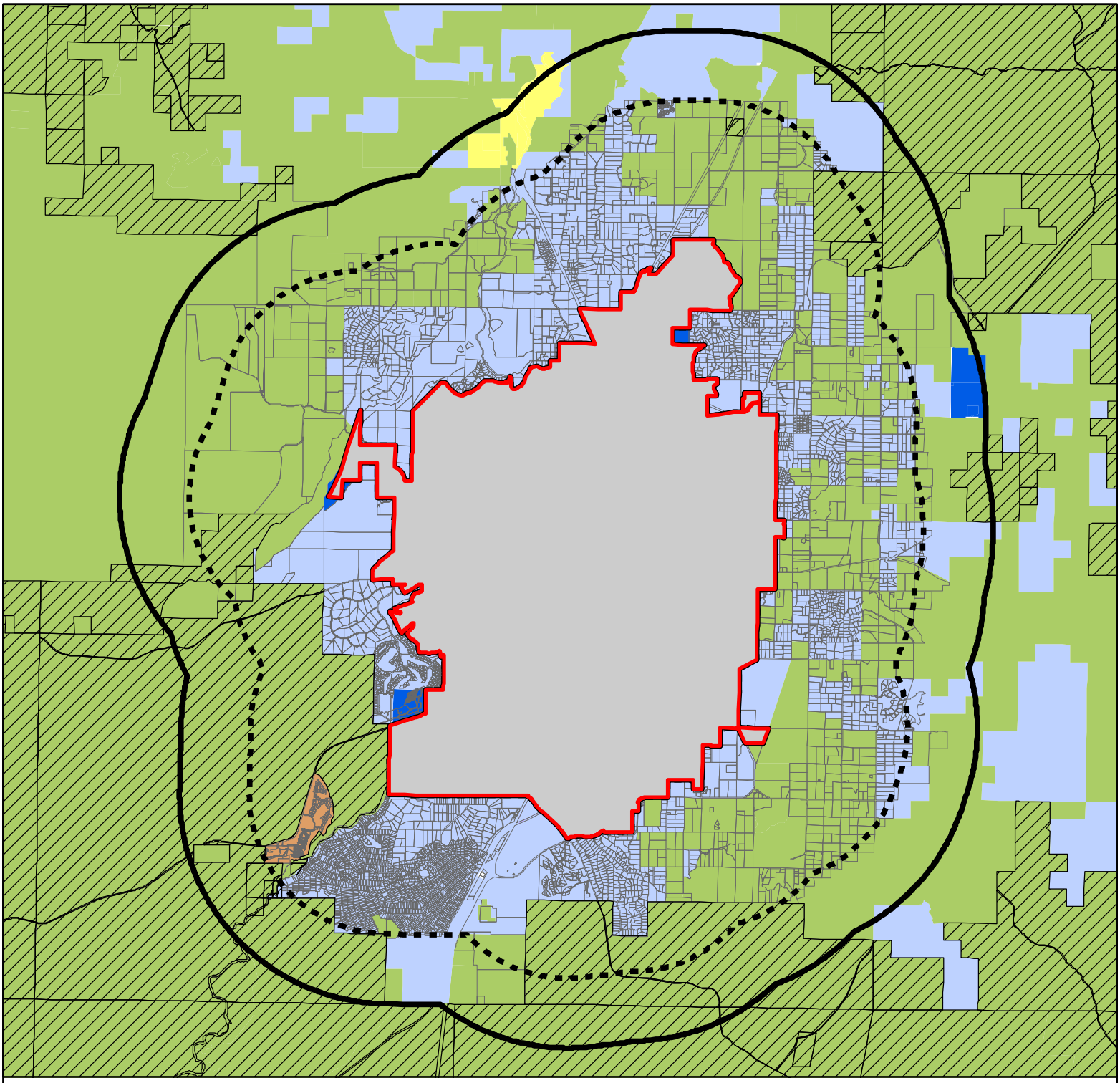
UGB Study Area by Priority Class*

Priority Category
- Limited Residential; Exception Land (Priority 2)
- Resource Land (Priority 4)

Other Plan Designations
- Public Facilities
- Resort
- Rural Community

- Urban Growth Boundary
- USFS and BLM land
- 2 Miles from UGB
- 3 Miles from UGB

* Priority of Land to be added to a UGB is defined in Oregon Revised Statutes (ORS) § 197.298



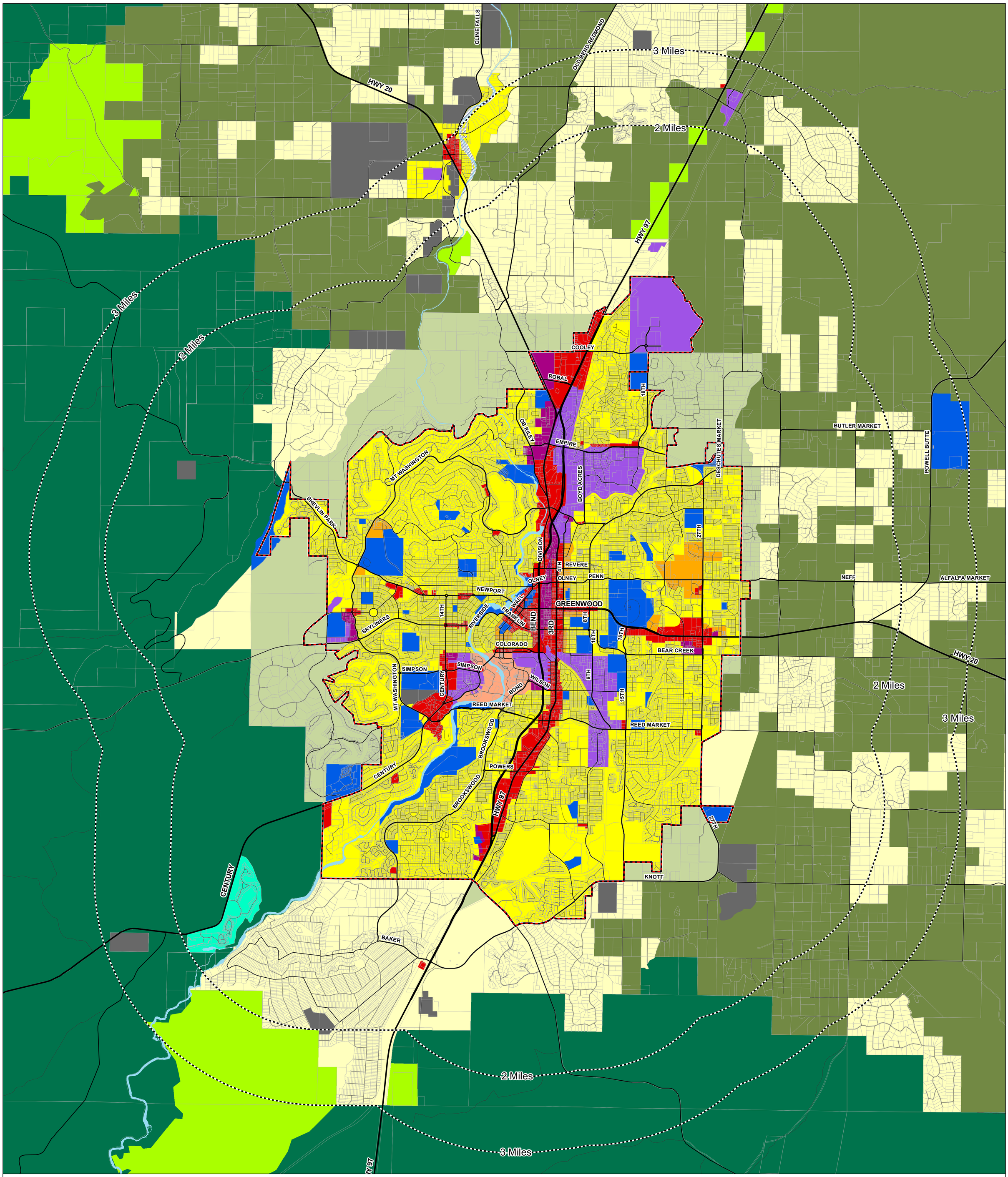
URBAN GROWTH BOUNDARY REMAND

Prepared 8/12/2014

0 1 2 4 Miles

NORTH

UGB Study Area: Comprehensive Plan Designations



URBAN GROWTH BOUNDARY REMAND

Prepared 8/12/2014

Plan Designation (Generalized)
- Agriculture
- Forest
- Public
- Commercial
- Industrial
- Mixed Employment
- Residential
- High Density Residential
- Mixed Use
- Open Space & Parks
- Flood Plain or Riparian Area
- Resort
- Rural Residential Exception Area
- Surface Mining
- Urban Area Reserve

Streets
- Highways
- Arterials
- Collectors
- Forest Highways
- Other

- Urban Growth Boundary
- Rivers
- Taxlot
- USFS and BLM land
- UGB Buffers (2 and 3 mi)

NORTH

0 0.5 1 2 Miles

APPENDIX C: CITY ATTORNEY MEMO AND UGB PROCESS DIAGRAM

CITY ATTORNEY MEMORANDUM

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PO BOX 431
BEND, OR 97709
[541] 693-2100 TEL
[541] 385-6675 FAX
www.ci.bend.or.us

To: UGB Boundary and Growth Scenarios Technical Advisory Committee

From: Mary Alice Winters, City Attorney

Subject: Boundary Analysis and McMinnville Case

Date: August 19, 2014

You asked for a legal analysis of the McMinnville case, *1000 Friends v. Land Conservation and Development Commission and City of McMinnville*, 244 Or App 239 (2011), and how it impacts the direction on the alternatives and boundary location analysis from the Land Conservation and Development Commission (LCDC) in the Remand Order. The decision has been posted on the City's UGB website, along with the Order Denying Reconsideration, the City of McMinnville's Motion for Reconsideration, the City of Bend's Amicus Brief, and the Response by 1000 Friends, for any of you who don't have enough to read already.

To summarize, the relevant issue in the case was how the priority statute, ORS 197.298, works in conjunction with the Goal 14 locational factors. As articulated by the Court, Petitioner 1000 Friends argued that the priority statute works to categorize land as available to meet broadly defined land use needs, and that higher priority land qualifies to meet that need unless urban services cannot be provided to the land because of physical constraints. Then, Goal 14 is applied to the prioritized and available land to determine specific growth areas.

According to Respondents, ORS 197.298 is applied to determine the adequacy of land for more particular land use needs; higher priority land qualifies, unless it is determined to be unsuitable under the Goal 14 locational factors and the Goal 2 exceptions factors. Goal 14 is then applied to corroborate the inclusion of higher priority land and to justify any further selection among land of a lower-priority class. *Id.* at 254.

The Court ultimately concluded that neither party had it quite right. It held that ORS 197.298 does provide "the first cut" in the sort process and Goal 14 is "then applied" to justify the inclusion and any remaining choices about what land to include in the boundary. The court did say that Goal 14 is used to determine the "adequacy" of land available under ORS 197.298(1), but in a more particular way than suggested by the City and LCDC. *Id.*

Goal 14 consists of seven factors that govern whether and where a UGB is expanded. Factors 1 and 2 determine whether a city **needs** to expands its UGB to accommodate growth, housing needs, employment opportunities, and livability.

Factors 3 through 7 apply to **location** of that expansion based on public facilities and services, efficiency of land uses, consequences of development, retention of land for farm use, and compatibility of development with nearby agricultural activities. Essentially, the court set out an analytical 3-step process for integrating Goal 14 and ORS 197.298.

In McMinnville, the court said that step 1 is to determine the land needed under ORS 197.298(1). The descending priorities of the statute are applied to determine whether priority land is "inadequate to accommodate the amount of land needed". That determination is made by the application of Goal 14, which provides that the "establishment and change of boundaries is based on a consideration of the following factors: (1) The demonstrated need to accommodate the long range urban population, consistent with the 20-year population forecast, and (2) Need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space. If these needs cannot be met through the existing UGB through rezoning or infill, then the locality must amend its UGB to include sufficient buildable land to accommodate its housing and economic land needs. *Id*. at 256. Here, this latter determination will be based on the recommendation of the residential TAC, consistent with ORS 197.296 and the Remand Order. This first step is the analysis described by our consultants.
So far, so good.

Then in Step 2, the local government determines the adequacy of candidate lands under ORS 197.298 (1) and (3). The Court reasoned that only Goal 14 Factors 5 (Economic, energy, economic and social consequences, or ESEE) and 7 (compatibility with adjacent agriculture land) are applied to determine whether higher priority land "is inadequate to accommodate the amount of land needed" under ORS 197.298(1). In the court's view, the more restrictive priority exceptions in ORS 197.298(3) would be "meaningless surplusage" if the less restrictive Goal 14 factors 3, 5 and 6 are applied first. The key one in Bend is probably ORS 197.298(3)(b)—permitting an inadequacy conclusion only when public services cannot be extended because of topographic or physical constraints. Goal 14 Factor 3, which considers the relative cost of delivery of public services and facilities, cannot be considered at this step. The Court arguably altered the understanding of local government based on prior cases out of West Linn and the City of Adair in so holding. This was pointed out in the request for reconsideration, but that request was denied. This step is best viewed as a way to determine whether there is sufficient higher priority land to meet the City's needs identified in Step 1 and to disqualify unsuitable land (narrowly defined). It is not a step that qualifies lower priority land. The EESE contemplated at this stage, in our legal and planning view, is high level and general (not a project level EESE as done of for a Goal 3 or 4 exception analysis).

After a local government has prioritized lands under ORS 197.298 (1) and (3) and Goal 14 Factors 5 and 7, a new "Step Three" is added, during which the remaining factors of Goal 14 are applied to land so prioritized to include or exclude lands from the UGB. According to the Court, ORS 197.298 operates to "identify land that *could*

be added to the UGB to accommodate a needed type of land use," which Goal 14 is applied thereafter "to qualify land that, identified already under ORS 197.298, *should* be added to the Boundary." *Id*. at 265. The comparative EESE are also considered on an alternatives and more localized basis, as appropriate.

One point to keep in mind is that the Court was interpreting Goal 14 as it was drafted prior to April 28, 2005, as the rules allowed the City to apply the former version of the rule. 244 Or App at 239. The Goal 14 rule was amended by LCDC to "clarify the relationship between ORS and the locational factors of Goal 14 for urban growth boundary expansions." See Remand, page 125. However, the Goal 14 factors are essentially the same, albeit in a different order.[1] OAR 660-024-0060, adopted 10-5-06, further clarifies the process. However, without getting too nuanced, to the extent the new rule does not exactly track the process set forth in McMinnville, the Court of Appeals specifically interpreted the Goal in light of the Court's view of the statute and prior case law. Despite the City of McMinnville's argument that the application of the statute and Goal 14 was inconsistent with prior case law, the Court declined reconsideration and LCDC did not appeal the decision. Therefore, it is safest to follow the three-step process from the Court of Appeals. The concepts are all consistent with the Remand, the timing has the most room for interpretation.

In outline form, as confirmed by DLCD, the **suggested process to do a locational analysis based on current law/McMinnville decision** (as it applies to Bend) is as follows:

1. START WITH AMOUNT OF NEEDED LANDS
   A. Adopted Population Forecast
   B. Demonstrated need for housing, employment, public and semi-public uses
   C. Determine Study Area of Candidate Lands—Categorize lands under the four priorities of 197.298(1)
      a. EXCEPTION LANDS
      b. RESOURCE LAND – FURTHER SUBCATEGORIZED BY SOIL CLASS

2. FIRST PRIORITY FOR BEND: EXCEPTION LANDS. APPLY THE FOLLOWING FACTORS TO EXCLUDE (OR INCLUDE LOWER PRIORITY) LANDS FROM THE UGB:
   a. Exclude lands that are not buildable
   b. Exclude lands based upon specific land needs (197.298(3)(a))

[1] Statewide Planning Goal 14 (as amended April 28, 2005) requires the following:
"The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:
(1) Efficient accommodation of identified land needs;
(2) Orderly and economic provision of public facilities and services;
(3) Comparative environmental, energy, economic and social consequences; and
(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on far and forest land outside the UGB."

c. Exclude lands based upon inability to reasonably provide urban services due to physical constraints (197.298(3)(b))
d. Exclude lands based upon analysis of comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
e. Exclude lands based upon analysis of compatibility with agricultural & forest activities (Goal 14, Boundary Location, Factor 4)

QUESTION: Where are UGB Goal 14 Locational Factors 1 and 2?
ANSWER: According to "McMinnville" logic, they are redundant and less restrictive than two of the corresponding factors in ORS 197.298, and thus drop out at this stage of analysis.

3. A. IF THE AMOUNT OF LAND REMAINING AFTER EXCLUSIONS IS GREATER THAN THE AMOUNT OF NEEDED LANDS, THEN:

Apply the following factors INTERDEPENDENTLY to pick and choose among the land remaining after exclusions:

a. Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
b. Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
c. Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
d. Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

B. IF THE AMOUNT OF LAND REMAINING AFTER EXCLUSIONS IS LESS THAN THE AMOUNT OF NEEDED LANDS, IN BEND GO TO FOURTH PRIORITY – RESOURCE LANDS

a. Repeat analysis under (2) above

The attached diagram prepared by ECONorthwest illustrates the steps in the UGB Alternatives Analysis Process as implied by the McMinnville decision and described in this memo.

Steps in the UGB Alternatives Analysis Process for Bend as implied by the McMinnville Decision

Step 1: Land Needs

Adopted Population Forecast

Demonstrated need for land
for housing, jobs, public and semi-public uses

Determine Study Area

Categorize land

1. ~~Urban reserve~~
2. Exception and completely surrounded resource land
3. ~~Marginal lands~~
4. Resource lands

Note:
Bend does not have Urban Reserves as defined in OAR 660-021. Only Lane and Washington Counties are marginal lands counties

Step 2: Initial Suitability Evaluation

1st priority for Bend:
Exception Lands

Exclude:
- **2a.** Unbuildable lands
- **2b.** Exclude lands based upon specific land needs (197.298 (3)(a))
- **2c.** Unserviceable lands*
- **2d.** Land based on results of ESEE analysis** (Goal 14, Factor 3)
- **2e.** Uses that are incompatible with agricultural and forest activities (Goal 14, Factor 4)

Is the amount of exception land remaining after exclusions greater than the amount of needed land?

No. More land is needed

Yes

Step 3: Goal 14 Analysis

Step 3A. Goal 14 Factor Analysis

Local balancing of land need based on Goal 14 locational factors:
- **3Aa.** Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
- **3Ab.** Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
- **3Ac.** Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
- **3Ad.** Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

Is the amount of exception land remaining after exclusions greater than the amount of needed land?

Yes

No. More land is needed

Choose among land remaining after exclusions

Repeat Steps 2 and 3 for next priority lands (resource lands)

2nd priority for Bend:
Resource Lands

Step 3B: Prioritize by Land Capability

For agricultural lands: class VIII Soils, then class VII, … finally class I. For forest lands: Cubic foot site class VII, then VI, … finally class I.

Step 3B-I: Initial Suitability Evaluation

Exclude:
- **3B-Ia.** Unbuildable lands
- **3B-Ib.** Exclude lands based upon specific land needs (197.298(3)(a))
- **3B-Ic.** Unserviceable lands*
- **3B-Ic.** Land based on results of ESEE analysis** (Goal 14, Factor 3)
- **3B-Id.** Uses that are incompatible with agricultural and forest activities (Goal 14, Factor 4)

Is the amount of resource land remaining after exclusions greater than the amount of needed land?

No. Expand the study area

Yes

Step 3B-II: Goal 14 Factor Analysis

Local balancing of land need based on Goal 14 locational factors:
- **3B-IIa.** Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
- **3B-IIb.** Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
- **3B-IIb.** Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
- **3B-IIb.** Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

Choose among land remaining after exclusions

Footnotes:
* Unserviceable lands are those that cannot reasonably be provided with urban services due to physical constraints. (197.298(3)(b))
** ESEE: Economic, Social, Environmental, and Energy

ECONorthwest
ECONOMICS • FINANCE • PLANNING

APPENDIX D:

FACTOR 1 OF GOAL 14: EFFICIENT ACCOMMODATION OF IDENTIFIED LAND NEEDS

The Evaluation Measures below received preliminary approval from the Boundary TAC on August 26, 2014. They are subject to update and revision when the TAC completes review of measures for all Goal 14 factors and reviews the Boundary methodology as a whole.

Efficient Accommodation of Residential Land Needs

Proposed Evaluation Criteria & Measures

Potential Evaluation Criteria	Relevance	Potential Measure(s)
Does scenario include sufficient buildable land to accommodate the identified land need for housing?	Required by Goals 10 & 14	Buildable acres designated to meet general housing needs by scenario
How many new housing units are estimated to be built inside the existing UGB vs. outside the UGB?	Higher percentage of units inside the UGB supports more compact and efficient land use pattern	Residential acres/units estimated to be built inside vs. outside of UGB by scenario
What is the estimated average density for housing in 2028?	Higher average densities support more compact and efficient land use pattern and viability of transit service	Average density calculation for designated residential lands inside and outside UGB by scenario Average density calculation within ¼ mile of transit corridors
What is the estimated mix of housing units by type (SFD, SFA, and MF)?	Required by Goals 10 & 14; City obligation to zone to allow the needed mix Mix of housing types/densities has implications for land use form, integration of land use and transportation, housing affordability	Buildable acres allocated by residential plan designation by scenario Calculate allowed mix of housing types (percentages) based on plan designations by scenario **Note:** This criterion/measure is also relevant to Factor 3 – Social Consequences

Potential Evaluation Criteria	Relevance	Potential Measure(s)
Is there an efficient distribution and location of designated residential lands to accommodate needed housing and a variety of housing options?	Consistent with project goals and urban form principles	Distribution/number of complete neighborhoods by scenario Number of new housing units/population within specified distance (buffers of ¼ and ½ mile) of existing/planned amenities/services by scenario • Parks & trails • Schools • Transit corridors • Commercial services (grocery based?) • Employment districts **Note:** This criterion/measure is also relevant to Factor 3 – Social Consequences
Does scenario include sufficient buildable lands to meet "other" land needs?	Consistent with project goals and urban form principles Distribution of schools and parks to serve existing and new residential areas efficiently and equitably	Acres identified for schools and parks by scenario Qualitative evaluation of consistency of each scenario with location criteria/level of service standards in school facility master plan and park master plan Measures used above for number of new housing units/population within specified distance of schools and parks by scenario **Note:** This criterion/measure is also relevant to Factor 3 – Social Consequences

Efficient Accommodation of Employment Land Needs

Proposed Evaluation Criteria & Measures

Potential Evaluation Criteria	Relevance	Potential Measure(s)
Does scenario include sufficient buildable land to accommodate general need for employment lands?	Required by Goals 9 & 14	Buildable acres designated to meet general employment needs by scenario
How many new jobs are estimated to be accommodated inside the existing UGB vs. outside the UGB?	Higher percentage of new jobs inside the UGB supports more compact and efficient land use pattern	Employment acres/jobs estimated to be built inside vs. outside of UGB by scenario Percentage of overall jobs assumed through redevelopment by scenario
What is the estimated average employment density (or FAR) for employment uses in 2028?	Higher average employment densities and FARs support more compact and efficient land use pattern, reduce VMT	Average employment density and/or FAR calculation for designated employment lands inside and outside UGB by scenario
How many employment acres are available and serviceable in the short-term (1-5 years)?	Strategies for short-term inventory required by Goal 9 Supports project goals relating to Strong Diverse Economy and Cost Effective Infrastructure. Land use efficiencies associated with linkage of focused public investment (CIP) and maintaining short-term supply of employment lands	Buildable employment acres that are currently served and/or serviceable by key infrastructure (sewer, water, transportation) in the short-term by scenario Percentage of buildable employment acres that are currently served and/or serviceable by scenario **Note:** This criterion/measure is also relevant to Factor 2 – Orderly & Economic Facilities
Are acknowledged "special site needs" accommodated?	First need to document if any of the special site needs can be accommodated inside the existing UGB	For each scenario, identify if special site needs have been accommodated based on suitability criteria that have already been acknowledged **Note:** This criterion/measure is also relevant to Factor 3 – Economic Consequences

Potential Evaluation Criteria	Relevance	Potential Measure(s)
Are employment lands distributed and located efficiently to accommodate needed jobs and specific site requirements?	Consistent with project goals and urban form principles	Measure of jobs/housing balance by scenario Percentage of land area in each scenario within specified distance of commercial node/corridor/center (1/2 mile buffer) **Note:** This criterion/measure is also relevant to Factor 2 – Orderly & Economic Facilities and Factor 3 – Economic, Social and Energy Consequences

Memorandum

August 28, 2014

To: Urban Growth Boundary Steering Committee
Cc: Project team
From: Joe Dills and Brian Rankin
Re: Project Goals

INTRODUCTION

The purpose of this memorandum is to describe and recommend Project Goals to be used for the Urban Growth Boundary (UGB) Remand project. The attached draft goals are the outcome of the public process discussed initially by the USC in June, and conducted this summer.

The purpose of the goals is to establish overarching outcomes for the UGB. They are intentionally qualitative, aspirational and principle-based. They will be used to guide, and connect, the detailed criteria and evaluation measures to be used in the UGB process, which are necessarily based in rules and legal requirements. At the end of the day, the UGB must comply with the Remand and be legally defensible. But it must also reflect Bend's values and aspirations for the future.

HOW THE GOALS WERE CREATED

The following steps were used to prepare the draft goals:

1. **Interviews** – As part of the stakeholder interviews for the project, interviewees were asked: what defines Bend's livability today; and, to describe Bend looking back from the year 2028 and imagining that the UGB process had been very successfully implemented. Interviews included a total of 28 stakeholders.
2. **Brainstorming with USC** – At the USC's meeting on June 19, the same two questions were brainstormed by the USC.
3. **Review of Bend 2030 Vision and Deschutes County Green Print** – These two documents, which were based on extensive community input and dialogue about Bend's future, were thoroughly reviewed to identify themes and goal statements applicable to the UGB.
4. **Preliminary Goals** – Using the input from steps 1-3 above as source material, the project team drafts initial goal language, and refined it through reviews and discussions with USC Chair, Vice Chair and other members of the USC.
5. **MetroQuest On-line Outreach and Draft Goals** – The resultant preliminary goals – 8 goal statements and paragraph descriptions – were made available for public review and comment using an on-line outreach tool called MetroQuest. Over 1,000 respondents

provided over 1,500 comments about the goals and strategies between July 31 and August 24. The comments were reviewed, leading to the identification of themes and specific edits to the project goals.

INITIAL RESULTS FROM THE METROQUEST ON-LINE OUTREACH

Key Themes Regarding the Goals

This memorandum provides initial results from the MetroQuest outreach, focused on the project goals. Results from the other questions included in the outreach will be provided in a subsequent memorandum.[1] A spreadsheet of the comments received is being prepared and will be posted to the project web site.

Based on just over 300 comments received on the goals, and over 1,200 comments received on the strategies to implement the goals, the following key themes emerged. It should be noted that some of these themes or messages may be contradictory to one another.

Overall Growth Patterns

- Avoid sprawl. Keep Bend compact and maintain small town feel by focusing on infill. If expansion is necessary, expand east.
- Balanced planning and growth for east and west sides of town.

Neighborhoods, Housing & Infill

- Avoid increasing density in existing residential neighborhoods.
- Need to regulate/limit vacation rentals in residential neighborhoods.
- Develop more village-like neighborhoods like NW Crossing.
- Regulate infill so it is compatible with surrounding, older neighborhoods.
- Keep densities low and lot sizes large in existing neighborhoods.
- Neighborhoods need more parks and open space.
- Protect historic neighborhoods.
- Bend needs more options for small affordable houses and apartments.
- Focus on sustainable/energy efficient housing.
- Focus on high quality and varied housing designs.

Downtown

- Provide convenient public parking structures with reasonable rates and good signage.
- Focus on re-activating the 3rd Street area.
- Develop a strategic parking plan for downtown that balances the need for parking with pedestrian amenities.

[1] The MetroQuest on-line outreach was not a scientific survey. Its purpose was to provide a convenience web-based format for the public to learn information about the UGB project, and comment on the preliminary goals and related questions.

- Promote dense residential development in and near downtown.

Economy

- A university will strengthen the economy and bring non-service jobs.
- The economy needs to rely less upon tourism and service jobs.
- Focus on internet-based and eco-friendly businesses instead of manufacturing businesses that are potentially high-polluters.
- Focus on efficient use of existing employment lands before expanding.
- Provide access to higher education.

Environment & Recreation

- Evaluate wildfire and related safety issues that may arise from expansion.
- The only way to protect the natural environment is to limit growth.
- Focus on green belts that protect wildlife habitat and riparian areas; and provide a fire buffer.
- Extend and connect the trail system.
- Enhance parks and trails on the east side.

Transportation

- Improve the bike and pedestrian network including: more paved trails, more bike lanes, emphasis on bike safety, safe routes to schools, better east/west connections and continuous sidewalks.
- Improve public transportation, particularly in the southeast part of Bend. Specifically, buses should have extended routes and schedules, should be easy to access and should be safe and convenient for senior and other users.
- Improve public transit options to employment areas.
- Enhance public transit options, including rail to Mt. Bachelor.
- Prioritize maintaining existing facilities.

Infrastructure

- Focus on green infrastructure options.
- Build where these services already exist. The most cost-effective infrastructure is the infrastructure you already have.
- Ensure that adequate infrastructure planning has occurred before expansion. Fix existing infrastructure deficiencies first.
- Bend should be required to sewer areas that have been annexed for years but are still served by failing septic systems prior to any UGB expansion.

Participant Demographics

The MetroQuest outreach effort gathered input between July 31, 2014 and August 24, 2014. During that time, we received:

- 1,677 total visits
- 1,014 visits with information entered (60% of total)

- 1,522 total comments
- 5,440 total map pins

Participants were asked to provide additional demographic information, including their age, gender, where they reside, and where they. Roughly 630 participants provided demographic information, described in the table below.

Group	Number	Percent
Age		
18 and under	6	1%
19-35	127	20%
26-50	232	37%
51-65	178	28%
65+	89	14%
Gender		
Female	303	49%
Male	320	51%
Residence		
NE Bend	125	20%
NW Bend	221	35%
SE Bend	125	20%
SW Bend	82	13%
Outside Bend	74	12%
Work		
Work In Bend	471	75%
Don't Work In Bend	155	25%

This data shows participation by a broad and relatively representative range of community members in terms of gender, age and location. We have reviewed the data for suspicious activity and have found no evidence of multiple entries from unusual IP addresses or other intentional skewing of data. We also reviewed zip codes provided voluntarily by respondents and the vast majority (over 95%) are from Bend and surrounding communities, with most of the remainder from other Oregon communities. We have every reason to believe that the results of this survey represent the priorities and opinions of people who live, work, or play in Bend, and who care about this community enough to help guide the UGB Remand process.

CONCLUSIONS

Based on the above, the project team concludes:

- The project goals capture an excellent cross-section of community input, both past (Bend 2030) and recent (interviews, USC input, and MetroQuest).
- MetroQuest was successful at significantly extending the outreach for this study in a short period of time.
- Overall, the preliminary text captures the key goals, so no new goals are recommended. Public comment did identify a number of additions and refinements, which have been incorporated into a set of preliminary proposed revisions to the initial draft goals.

The team recommends that the USC discuss, refine as needed, and approve the attached project goals.

USE OF THE GOALS

Project goals can be used in a variety of direct and indirect ways depending on guidance from the USC. Some ideas are provided below for further discussion and guidance:

1. These goal statements can be incorporated into the revised Bend General Plan to serve as a basis for specific policy development related land use, open space, infrastructure, housing, employment areas, transportation, and other topics. The project will require the Bend General Plan to develop new policies and text, and technical documents, consistent with the Statewide Planning Goals and final UGB adoption. Integrating the project goals in the General Plan can provide a clear and concise statement of the overall objectives of the General Plan. Goals can also be a component of each General Plan chapter as appropriate.
2. Goals can be used to direct the Goal 14 boundary analysis evaluation criteria/indicators so potential areas for expansion are evaluated relative to the goals.
3. Goals can be used to inform the analysis of urban form. The goals would serve as narrative targets to achieve through any proposed changes to the current urban form of Bend, and new areas added to the UGB.
4. Goals can be used by the TACs and USC to objectively or subjectively influence the technical work associated with efficiency measures, Goal 14 evaluation, employment and residential land need analysis, park, school, and open space land needs and placement, redevelopment and infill strategies, and analysis of impacts on public infrastructure.
5. To the extent the USC directs the TACs to utilize project goals, the TACs and project team can explore further use as opportunities arise through the project.

HOW SHOULD WE GROW?

The City of Bend has entered the next phase of its Urban Growth Boundary (UGB) expansion to chart a path for Bend's future growth. The UGB is a line drawn on the City's General Plan map that identifies Bend's urban land. This land represents an estimated 20-year supply of land for employment, housing, and other urban uses. As the city continues to grow, we have an opportunity to develop a plan for future growth that reflects the community's goals and meets state planning requirements.

URBAN GROWTH BOUNDARY REMAND
MAKING BEND EVEN BETTER
BEND

The City and the UGB Steering Committee have drafted the following draft goals for this project:

A Quality Natural Environment

As Bend grows, it preserves and enhances natural areas and wildlife habitat. Wildfire prevention is a key consideration. Bend takes a balanced approach to environmental protection and building a great city.

Balanced Transportation System

Bend's balanced transportation system incorporates an improved, well-connected system of facilities for walking, bicycling, and public transit, while also providing a ~~safe and~~ reliable system for drivers. Bend's transportation system emphasizes safety and convenience for users of all types and ages.

Great Neighborhoods

Bend has a variety of great neighborhoods that promote a sense of community and are well-designed, safe, walkable, and include local schools and parks. Small neighborhood centers provide local shops, a mix of housing types, and community gathering places. The character of historic neighborhoods is protected and infill development is compatible.

Strong Active Downtown

Bend's downtown continues to be an active focal point for residents and visitors with strong businesses, urban housing, arts and cultural opportunities, and gathering places. Parking downtown is adequate and strategically located. Planning in other areas continues to support a healthy downtown.

Strong Diverse Economy

Bend has a good supply of serviced land planned for employment growth that supports the City's economic development goals, provides a range of jobs and industries, including non-tourism/service jobs, and supports diversity and innovation. Employment areas, large and small, have excellent transportation access.

Connections to Recreation and Nature

Bend continues to enhance its network of parks, trails, greenbelts, recreational facilities, and scenic views inside and outside the city.

Housing Options

Bend residents have access to a variety of high quality housing options, including housing affordable to people with a range of incomes and housing suitable to seniors, families, people with special needs, and others. Housing design is innovative and energy efficient.

Cost Effective Infrastructure

Bend plans and builds water, wastewater, storm water, transportation, and green infrastructure in a cost-effective way that supports other project goals. Efficient use of existing infrastructure is a top priority.

To learn more about the project goals and to weigh in with your comments and priorities, visit **www.bendoregon.gov/bendugb.**

Supplemental Packet

Urban Growth Boundary Steering Committee

Thursday, September 4, 2014 3-5 PM

The attached documents are background materials for the USC's agenda packet. They were previously page numbered when distributed to the Technical Advisory Committees. New page numbers have not been added to this packet.

The order of materials is:

Residential TAC Meeting 1 Packet

Residential TAC Meeting 2 Packet

Employment TAC Meeting 1 Packet

Employment TAC Meeting 2 Packet

UGB Boundary TAC Meeting 1 Packet

UGB Boundary TAC Meeting 2 Packet

URBAN GROWTH BOUNDARY REMAND

Meeting Agenda

Residential Technical Advisory Committee
Monday, August 4, 2014 10 AM – 12:30 PM
City Council Chambers, Bend City Hall

Meeting Purpose and What is Needed from the TAC

The two central questions for the Residential TAC to address are:

- How much land is needed for housing and related uses to the year 2028?
- What "residential efficiency measures" are best for Bend?

This first meeting will set the foundation for answering the land needs question. Specifically, we will recap the important Remand issues, learn about and discuss demographic/ housing trends, and then review an initial "library" of housing types to be used in preparing growth scenarios. Following the meeting, the team will use the feedback to prepare recommendations for housing mix and density to be discussed in Meeting 2 on August 25th.

The specific discussion questions, i.e. the feedback we would like from the TAC, are listed as the bulleted discussion questions under each agenda item. They are a starting point for the agenda.

1.	**Welcome and Introductions**	**10:00 AM**
	a. Welcome	Brian Rankin
	b. Self-introductions	All
2.	**Election of Chair and Vice Chair**	**10:10 AM**
	a. Nominations b. Vote and confirmation	Facilitator
3.	**Demographic and Housing Trends**	**10:20 AM**
	a. Building on past work	Brian Rankin
	b. Context – How demographic/housing trends and housing types and characteristics relate to Goal 10 – Housing, the	Bob Parker, ECONorthwest

For additional project information, visit the project website at http://bend.or.us or contact Brian Rankin, City of Bend, at brankin@bendoregon.gov or 541-388-5584

Accessible Meeting/Alternate Format Notification
This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the City Recorder no later than 24 hours in advance of the meeting at rchristie@ci.bend.or.us, or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

Remand, Bend's Housing Needs Analysis and the draft project goals.

- What questions/comments does the TAC have on the context and how this information will be used?

c. Demographic and housing trends and implications for Bend's future housing mix — Chris Zahas, Leland Consulting Group

- How does the TAC see these trends playing out in Bend?
- What other trend insights/data do you have on the subject?

4. Housing Types — 11:30 AM

a. Presentation of an initial "residential building library" for Bend – examples of housing types to be included in the Envision Model — Fregonese Associates

- Which of presented housing types are good fits for Bend, given the demographic trends we discussed?
- What housing products are missing that make sense in Bend and should be added to the library?
- Are there specific site suitability/location criteria for certain housing types?

5. Adjourn — 12:30 PM

Memorandum

July 28, 2014

To: Residential Lands Technical Advisory Committee

Cc: Bend Staff

From: APG Consulting Team

Re: SUMMARY OF KEY REMAND ISSUES RELATED TO RESIDENTIAL LANDS

INTRODUCTION

This memorandum provides background information for the first meeting of the Residential Lands Technical Advisory Committee (TAC), specifically, a brief summary of Remand issues related to housing mix and density. As a general approach, issues brought to the TAC for discussion will be major issues where options exist that can be informed by local input. Many of the Residential Lands Remand issues are narrow and technical/legal in nature and are relatively straightforward to address. A list of Remand issues for residential lands is presented in Appendix A.

The charge of the residential lands TAC is:

- Confirm residential land need for 2008-2028 planning period that will feed into the Phase 1 capacity analysis of the existing UGB and Phase 2 analysis of UGB expansion alternatives
- Provide feedback/direction on most promising efficiency measures for residential lands

In short, the Residential Lands TAC will address the following:

- How much land is needed for housing and related uses to 2028?
- What residential efficiency measures are best for Bend?

Building on Past Work

The Remand Order specifies work that has been approved by LCDC and work that was not approved. Since the Remand Order, various task forces and the City Council have approved some of the Remand Order issues that required reworking. The direction from the City Council and UGB Steering Committee is to complete the work as soon as possible, with community input, and assistance from a consulting team. In addition, they have stated that work previously approved by post-remand committees (RTF and USC) NOT be reconsidered at this time. This work was also reviewed by DLCD staff, who approved the approach and findings to these few remand items. This not only saves time, it saves money by not having to reconsider these issues anew. It is fair to say that few issues have been approved prior to this new approach to

the project, and that the major remand issues are still unresolved and require guidance from all the TACs.

Planning Horizons and the Remand

An important consideration is that this a Remand and partial acknowledgement of a decision made in December 2008. Thus, the TAC's work will focus on issues that need resolution from the Remand. Following is guidance from the Bend City Attorney on the issue of planning horizons and new information:

> *The Commission's [i.e. LCDC's] role is not to substitute itself for the city, or make a new decision today, starting from scratch, just as the RTF's [Remand Task Force] and City Council's roles are to carry out the Remand requirements spelled out by the Commission. Rather, LCDC, the RTF, and City Council will review the City's UGB expansion as if it were 2008. This makes sense given that a UGB expansion is based on the amount of land that the city needs for future residential and employment uses, over the 20-year planning period. Seeing the Remand through the lens of 2008 also keeps the data, timeframe, and analysis internally consistent. Here, the planning period is 2008 to 2028, and is based on the coordinated population forecast upheld on appeal to LUBA.*

In summary, the planning horizon is 2008-2028 and the City can choose to reanalyze data already in the record, or add data that could have been available through 2008, to comply with the Remand requirements on residential land needs. The exception to this general rule is when new information must be reconsidered in order to meet the requirements of the Remand Order. For sake of the Residential TAC, new information can and should be considered around infill and redevelopment and efficiency measures.

The City's Obligation under Goal 10

The language of Goal 10 and ORS 197.296 refers to housing *need*: it requires communities to provide needed housing types for households at all income levels. Goal 10's broad definition of need covers all households—from those with no home to those with second homes.

State policy does not make a clear distinction between need and demand. Following is a definition used by ECONorthwest in Goal 10 compliance work for multiple Oregon cities, which we believe to be consistent with definitions in state policy:

- *Housing need* can be defined broadly or narrowly. The broad definition is based on the mandate of Goal 10 that requires communities to plan for housing that meets the needs of households at all income levels. Goal 10, though it addresses housing, emphasizes the impacts on the households that need that housing. Since everyone needs shelter, Goal 10 requires that a jurisdiction address, at some level, how every household will be affected by the housing market over a 20-year period. Public agencies that provide housing assistance (primarily the Department of Housing and Urban Development – HUD, and the Oregon Housing and Community Services Department - HCS) define housing need more narrowly. For them, households in need do not include most of the

households that can purchase or rent housing at an "affordable" price, consistent with the requirements of their household characteristics. Households that cannot find and afford such housing have need: they are either unhoused, in housing of substandard condition, overcrowded, or paying more than their income and federal standards say they can afford.

- *Housing market demand* is what households demonstrate they are willing to purchase in the market place. Growth in population means growth in the number of households and implies an increase in demand for housing units. That demand is met, to the extent it is, primarily by the construction of new housing units by the private sector based on its judgments about the types of housing that will be absorbed by the market. ORS 197.296 includes a market demand component: buildable land needs analyses must consider the density and mix of housing developed over the previous five years or since their most recent periodic review, whichever is greater. In concept, what got built in that five-year period was the *effective demand for new housing*: it is the local equilibrium of demand factors, supply factors, and price.

In short, a housing needs analysis should make a distinction between housing that people might need (a normative, social judgment) and what the market will produce (an observable outcome). Goal 10 states this requirement as follows:

> *"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."*

The City's obligation under Goal 10 is to plan for housing need. In practical terms that means the city needs to determine (1) how many new housing units are needed, and (2) the mix and density of new housing. Note that the private sector builds housing in response to demand; what the market builds and what the community needs may not be the same. **The City's obligation is to designate enough land in appropriate plan designations (e.g., single-family, multifamily, etc.) to accommodate the identified need.**

HOUSING MIX AND THE REMAND

This section describes Remand issues that are related to housing mix and density. In this first meeting, the Residential TAC will focus on an overview of broad demographic trends (based on data that was available in 2008) that will influence the need for housing and housing product types to 2028.

Population Assumptions and Bend's Housing Unit Forecast

Some of the basic assumptions for Bend's housing unit need for the 2008-2028 planning period have already been acknowledged by LCDC and will not be reopened through this process. Key assumptions are reflected in Table 1.

Table 1: Housing Unit Forecast: 2008 to 2028

Population forecast for 2028	115,063
(-) Less Population on 7/1/08	76,551
(=) New population 2008 to 2028	38,512
(-) Less population in group quarters (2.3%)	886
(=) New population in households	37,626
(/) Divided by household size (2.4)	
(=) Equals new occupied housing units	15,678
(+) Plus vacancy factor (6.4%)	1,003
= New housing units 2008 to 2028	**16,681**

Source: Table 1-1 from the Draft 2014 Bend Housing Needs Analysis

The City used "safe harbors" supported by Census data for the assumptions relating to population in group quarters, household size and vacancy factor.

Housing Trends and Densities Documented by the City

Additionally, the City has documented the types of housing units permitted in Bend since the last periodic review as required by statute and Goal 10. Table 2 displays the changes in the mix of housing in Bend between 1998 and 2008. It includes the mix of housing as of 1998, after the adoption of the current General Plan, between 1998 and 2008, and in 2008. The presentation of housing mix describes three types of housing, consistent with the Commission's Order and OAR 660-008-005[1].

Table 2: Presentation of Housing Mix

Type of Housing	Pre-1998		1998-2008		2008	
	Number	Distribution	Number	Distribution	Number	Distribution
SFD	13,439	70%	11,528	73%	24,967	71%
SFA	48	0%	610	4%	658	2%
MFA	5,708	30%	3,596	23%	9,304	27%
Total	19,195	100%	15,734	100%	34,929	100%

Notes:
SFD – Single family detached: includes detached single family dwellings and manufactured homes on individual lots
SFA – Single family attached: includes attached single family housing such as row houses
MFA – Multi-family attached: includes Condominiums, multi-family housing, duplexes, and manufactured homes in parks
Source: City of Bend building and land use permit records; Table 4-2 of Draft 2014 Bend Housing Needs Analysis

Statewide planning rules require that the City analyze the historic density and mix of housing by plan designation (Table 3). The historic densities shown in Table 3 are an indicator of "housing

[1] See OAR 660-008-005, Definitions, online at http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_008.html.

demand" as described above. The City will need to make an additional determination related to "needed density and mix" based on expected demographic and economic characteristics of Bend households.

Table 3. Allowed and Actual Built Residential Densities by Zone as of 2008[2]

	Plan Designation			
	RL	**RS**	**RM**	**RH**
Allowable Density By Zone (Units/Gross Acre)	1.1 - 2.2	2.0 - 7.3	7.3 - 21.7	21.7 - 43.0
Allowable Density By Zone (Units/Net Acre)	1.4 - 2.8	2.5 - 9.1	9.1 - 27.1	23.9 – 47.3
Average Built Density 2008 (Units/Net Acre)	2.1	3.9	9.9	15.5

Source: Table 6-5 from Draft 2014 Bend Housing Needs Analysis

Remand Requirements

The two key factors for estimating residential land need from 2008-2028 relate to the assumed mix of housing types (single family detached, single family attached and multifamily) and the assumed density (units per acre) for each housing type. This is called the "housing needs determination" in the context of the statewide planning system.

The Remand Issues that focus specifically on housing mix and density are highlighted below.

Remand Issues:

- *Goal 10, the Goal 10 implementing rule, and the needed housing statutes require that the City analyze needed housing types at particular price ranges and rent levels commensurate with the financial capabilities of present and future residents of area residents.*
- *…under Goals 10 and 14 the City must consider the future housing needs of area residents during the (twenty-year) planning period. The purpose of the analysis of both past trends and future needs is that -- if there is a difference – the local government must show how it is planning to alter those past trends in order to meet the future needs.*
- *If the future needs require a different density or mix of housing types than has occurred in the past, then ORS 197.296(7) requires the local government to show how new measures demonstrably increase the likelihood that the needed density and/or mix will be achieved.*

[2] The conversion from gross to net density is achieved for the RL, RS, and RM zones by multiplying the gross density ranges by 1.25 to account for 25% of gross site area typically dedicated for streets and utilities. For the RH zone, a 10% dedication factor is used, acknowledging that a typical multi-family housing site in that zone may already have existing street frontage, thus the additional amount needed for dedication is less.

Conclusion

To meet the requirements of the Remand, the housing needs analysis must make stronger linkages between forecast growth, the demographic characteristics of current and new residents, the capacity of those residents/households to pay for housing at specific price and rent levels, and housing types that will meet that need.

The specific steps in the process of relating demographic characteristics to housing need are described in handbook "Planning for Residential Growth," (DLCD 1997) which outlines six steps necessary to complete a housing needs analysis that satisfies state law:

> Step 1 – Project the number of new housing units needed in the next 20 years.
>
> Step 2 – Identify relevant national, state, and local demographic and economic trends and factors that may affect the 20-year project of structure type mix.
>
> Step 3 – Describe the demographic characteristics of the population, and, if possible, household trends that relate to demand for different types of housing.
>
> Step 4 – Determine the types of housing that are likely to be affordable to the projected households based on household income.
>
> Step 5 – Estimate the number of additional needed units by structure type.
>
> Step 6 – Determine the needed density ranges for each plan designation and the average needed net density for all structure types.

To summarize, the City is required to consider its needs for future housing based on type and density over a 20-year planning period. This analysis of housing must examine current and future demographic and economic trends that will influence the types of housing produced and purchased or rented. In addition, this analysis must consider the types of housing needed at various price ranges and rent levels. One of the final steps in this process is an estimate of the number of additional units that will be needed by structure type. Once the City has done this, the City must show that adequate land has been or will be planned and zoned within the existing UGB, and if necessary, any area added through an expansion, to demonstrate that the General Plan satisfies Goal 10.

The additional analysis primarily relates to Steps 2-4, which will be discussed in detail by the Residential Lands TAC.

The draft HNA includes analysis of all of these steps. Much of the analysis in the draft HNA was not a part of the Remand and will not need to be revisited. Additional analysis will be necessary to justify the City's determination of housing need in support of a revised UGB proposal.

APPENDIX A: LIST OF REMAND ISSUES

Appendix A provides a list of all Remand issues related to housing needs and residential land efficiency measures. The numbering of directives in the second column starts with number 15 because this list is an excerpt of the larger Index of all directives to the City on Remand.

Remand Subissue	Directives to City on Remand
	Housing Needs Analysis – Goal 10
2.3 (Analysis) Pages 31-32	15. While the City is free to *separate* the three basic housing types required to be analyzed by statute into subcategories, it may not *combine* categories as this effectively makes it impossible to do the analysis required by statute 16. Goal 10, the Goal 10 implementing rule, and the needed housing statutes also require that the City analyze needed housing types at particular price ranges and rent levels commensurate with the financial capabilities of present and future residents of area residents. 17. …under Goals 10 and 14 the City also must consider the *future* housing needs of area residents during the (twenty-year) planning period. The purpose of the analysis of both past trends and future needs is that -- if there is a difference – the local government must show how it is planning to alter those past trends in order to meet the future needs. 18. if the *future* needs require a different density or mix of housing types than has occurred in the past, then ORS 197.296(7) requires the local government to show how new measures demonstrably increase the likelihood that the needed density and/or mix will be achieved.
2.3 (Conclusion) Pages 32-33	19. remands the city's decision for it to revise its findings and chapter 5 of its comprehensive plan consistent with the preceding analysis
2.3 (Director's Report) Pages 45-46	20. Revise the Housing Needs Analysis to comply with ORS 197.296, OAR 660-008-0020, and ORS 197.303. The Housing Needs Analysis must include an evaluation of the need for at least three housing types at particular price ranges (owner occupancy) and rent levels (renter occupancy), and commensurate with the financial capabilities of current and future residents. Those housing types include: (a) attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot pursuant to OAR 660-008-0005(1)); (b) detached single family housing (a housing unit that is free standing and separate from other housing units pursuant to OAR 660-008-0005(3); and (c) multiple family housing (attached housing where each dwelling unit is not located on a separate lot pursuant to OAR 660-008-0005(5)); 21. Adopt the revised Housing Needs Analysis as an element of the comprehensive plan, along with findings that demonstrate how the revised Housing Needs Analysis complies with the applicable statutory, goal and rule requirements described above; 22. Analyze what the mix of plan designations should be in the UGB expansion area in direct relation to the city's projected housing needs, and consider the

Remand Subissue	Directives to City on Remand
	adoption of new residential plan districts that encourage more multi-family, higher density single family housing, and other needed housing types for a greater proportion of the expansion area, in order to meet the city's and the region's demonstrated housing needs;
2.4 (Analysis) Page 35-	23. The City must (under Goal 10 and the needed housing statutes) plan for an adequate supply of buildable land for affordable housing, including workforce housing (whether that land is inside the prior UGB, on lands in a UGB expansion area, or both). 24. On remand, the City also must explain why it believes particular areas planned to meet the future housing needs of residents are appropriate for the expected housing types.
2.4 (Conclusions) Page 35	25. The City must plan lands within its existing UGB and any expansion area so that there are sufficient buildable lands in each plan district to meet the city's anticipated needs for particular needed housing types. 26. To the extent that the City continues to determine that there is a current and projected future shortage of land for affordable housing that translates into a need for more multi-family housing, the City must show how it's planning for lands within the exiting UGB and lands in any expansion area will provide sufficient buildable lands in plan districts that are designed to meet that need. 27. If the City continues to project a future housing mix of 65% single-family and 35% multi-family, it must explain why that housing mix will provide sufficient buildable lands to meet its projected future housing needs over the planning period, and that projection and explanation must be supported by an adequate factual base.
2.8 (Analysis) Page 47	28. The City agreed to adopt findings clarifying why its decision is consistent, and the Commission concurs that this issue can be resolved by the adoption of findings explaining why the city's decision is consistent with its plan policies.
2.8 (Conclusion) Page 47	29. The Commission denies the city's appeal for the reasons stated above, but also clarifies that its remand is solely for the lack of adequate findings by the City.
HNA and Efficiency Measures	
3.1 (Analysis) Pages 50-53	30. LCDC concluded that the City's densities for housing were, in their view, low 31. Need to determine if raising the minimum densities of the residential zones is necessary to encourage the development of needed housing 32. On remand, the City must address both prior trends (as required by ORS 197.296(5)) and recent existing steps it already has taken to increase density and meet its housing needs. The requirement of Goal 14 to reasonably accommodate future land needs within its UGB does not allow the city to use an unreasonably conservative projection of future development capacity 33. Nevertheless, given the apparent market demand for increasing density

Remand Subissue	Directives to City on Remand
	relative to existing planning and zoning designations, the City must explain why increasing the density allowed, particularly for large blocks of vacant land outside of existing established neighborhoods, is not reasonable during the 20-year planning period. 34. The Director's Decision identifies a number of other efficiency measures that the City should consider (drawn from the city's own Residential Lands Study), but that list is not intended to be exclusive or directive; it is up to the City to determine in the first instance what is reasonable to accommodate its future housing needs within its UGB (See Director's Decision 45-46)
3.1 (Conclusion) Pages 53-54	35. the City must reconsider the projected capacity of lands within its prior UGB for residential development during the planning period in light of its revised BLI, recent development trends, and existing and potential new measures to increase that capacity. 36. The measures the City considers must include, but are not limited to, evaluating the infill capacity (including plan and zone changes) of residential lands with more than five acres that are vacant or partially vacant. 37. The City also should consider the measures as listed in the Director's Decision, at 45-46, that are related to efficiency measures.
3.1 (Director's Report)	38. Consider measures to encourage needed housing types within additional areas of the city, including rezoning of areas along transit corridors and in neighborhood centers; 39. Consider splitting the existing RS zone, which covers most of the residential areas of the city, into two or more zones in order to encourage redevelopment in some areas while protecting development patterns in well-established neighborhoods; 40. In areas where the city is planning significant public investments, consider upzoning as a means to help spread the costs of such investments; 41. Consider strengthening the minimum density provisions in the existing UAR and SR 2½ zones by eliminating PUDs and other clustering tools; and 42. Consider strengthening the minimum density provisions in the existing RS and RM zones to encourage development of needed housing types, rather than relying on low density residential development.
3.2 (Analysis) Pages 55-56	43. Under Goal 10 and ORS 197.296 the City must adopt definitive measures and find, based on an adequate factual base, that those measures 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. 44. The City agreed, on remand, to include provisions in the General Plan requiring adoption and implementation of the Central Area Plan and rezoning of lands along transit corridor as described in its findings.

Remand Subissue	Directives to City on Remand
3.2 (Conclusion) Page 56	45. …directs the City on remand to address the requirements of ORS 197.296(7) and (9) with respect to any new efficiency measures that it relies on. 46. The City may do this by adopting specific timelines for initiation and completion of efficiency measures, including detail about the outcomes that will be achieved as part of the Housing Element of its comprehensive plan. 47. The City also must adopt findings that show why those outcomes are more likely to occur as a result of the measure(s), and how they relate to needed housing types and locations. 48. In addition, in coordination with its Work Plan for Outstanding Metropolitan Transportation Planning Work (issue area 8), if the City continues to rely on these two particular measures, it must: 49. Within two years following acknowledgement, complete and adopt the Central Area Plan. The Plan must include provisions that plan for at least 500 additional medium-density and high-density housing units over the planning period. 50. Within two years following acknowledgement, complete and adopt provisions of its comprehensive plan that authorize at least 600 additional medium-density and high-density housing units on lands abutting or within ¼ mile of existing or planned transit routes.

Memorandum

July 29, 2014

To:	Residential Lands Technical Advisory Committee
Cc:	Bend Staff
From:	APG Consulting Team
Re:	Demographic Characteristics and Trends that will Affect Housing Demand in Bend for the 2008-2028 period

This memorandum provides a summary of demographic characteristics and changes in Bend's population that will affect Bend's housing market over the 2008 to 2028 period. The questions addressed in this memorandum are:

- What are the key demographic changes and trends that may affect Bend's housing market over the 2008-2028 planning period?
- What are the implications of these demographic trends for Bend's housing market, including demand for types of housing, housing tenure, and location of housing in Bend?

The purpose of this analysis is to address issues in the remand related to Bend's proposed mix and density of new housing. These questions will be discussed at the first Residential Lands Technical Advisory Committee (TAC) meeting.

In the 2005 housing needs analysis, Bend proposed that 65% of new housing would be single-family detached housing types and 35% would be multifamily housing types. The remand required Bend to make stronger linkages between forecast growth, the demographic characteristics of current and new residents, the capacity of those residents/households to pay for housing at specific price and rent levels, and housing types that will meet that need.

This memorandum presents information about demographic and other trends to describe the linkages between forecast growth, the demographic and socioeconomic characteristics of Bend's households (current and future), and housing need. The memorandum is organized into the following sections:

- **Demographic and socioeconomic factors affecting housing choice** describes the broad, often national, trends that affect housing choice, presents information about these trends in Bend, and discusses the implications of these trends for housing demand and need in Bend. The information summarized in this section is presented in greater depth in the full Housing Needs Analysis report, which will be available later in the project. The

citations for the analysis in this section are presented as endnotes, at the very end of the memorandum.

- **Appendix A. Research about demographic changes and implication for future housing mix** presents information from the academic literature about demographic and socioeconomic trends that affect housing demand and need and the implications of these trends on future housing demand. Appendix A presents key findings from the literature, organized by key demographic trend, as well as links to key articles or reports available for optional additional reading.

DEMOGRAPHIC AND SOCIOECONOMIC FACTORS AFFECTING HOUSING CHOICE

In the context of housing markets, past and current housing conditions demonstrate *the intersection of the forces of housing supply and demand at a price of housing.* Housing demand is derived from the characteristics of households that create or are correlated with *preferences* for different types of housing, and *the ability to pay* (the ability to exercise those preferences in a housing market by purchasing or renting housing; in other words, income or wealth).

One way to forecast housing demand is with detailed analysis of demographic and socioeconomic variables. If one could measure housing demand for each household, one might find that every household has a unique set of preferences for housing. But no city-wide housing analysis can expect to build from the preferences of individual households. Most housing market analyses that get to this level of detail describe *categories* of households on the assumption that households in each category will share characteristics that will make their preferences similar.

The main demographic and socioeconomic variables that may affect housing choice include: age of householder, household composition (e.g., married couple with children or single-person household), size of household, ethnicity, race, household income, or accumulated wealth (e.g., real estate or stocks).

The research in this memorandum is based on numerous articles and sources of information about housing. Appendix A presents an analysis of our research of the academic literature about the relationship between demographics and housing demand. The literature about housing markets identify the following household characteristics as those most strongly correlated with housing choice: age of the householder, size of the household, and income:

- **Age of householder** is the age of the person identified (in the Census) as the head of household. Households make different housing choices at different stages of life. For example, a person may choose to live in an apartment when they are just out of high school or college but if they have children, they may choose to live in a single-family detached house.
- **Size of household** is the number of people living in the household. Household size is related to household composition, which describes the age and relationships of people living within the household. Younger and older people are more likely to live in single-person households and people in their middle years are more likely to live in multiple person households (often with children).
- **Income** is the income from all people in the household who have income. Income is probably the most important determinant of housing choice. Income is strongly related to the type of housing a household chooses (e.g., single-family detached, duplex, or a building with more than five units) and to household tenure (e.g., rent or own). A review of census data that analyzes housing types by income in most cities will show that as income increases, households are more likely to choose single-family detached housing types. Consistent with the relationship between income and housing type, higher income households are also more likely to own than rent.

Trends affecting housing choice in Bend

The national demographic trends that will affect housing demand across the U.S., as well as Oregon and Bend are:

- **Aging of the baby boomers.** By 2030, the youngest baby boomers will be over 65 years old. By 2030, people 65 years and older are projected to account for about 20% of the U.S. population, up from about 12% of the population in 2000.[1]
- **Growth in Echo Boomers.** Echo Boomers are a large group of people (Generation Y) born from the late-1970's to early 2000's, with the largest concentration born between 1982 and 1995. By 2030, Echo Boomers will all be older than 35 years old, with the oldest Echo Boomers over 50 years old. The Echo Boomers will form households and enter their prime earnings years during the 20-year planning period.[2]
- **Growth of Hispanic and Latino population.** One of the fastest growing groups in the U.S. will be the Hispanic and Latino population. By 2030, Hispanic and Latino population is projected to account for about 20% of the U.S. population, an increase from about 13% of the U.S. population in 2000. Growth in the Hispanic population will be the result of natural increase (more births than deaths) and immigration from other countries.[3]

Tables 1 through 3 describe the changes in these demographic and socioeconomic trends and their potential effect on housing choice in Bend over the 2008-2028 planning period. These tables discuss the characteristics of the householder, which is the person identified (by the household) as the head of household in the Census. Data in these tables is from the U.S. Census' 2007 American Community Survey, except where noted.

Table 1. Baby boomers (Age in 2008: 42 to 61 years old; Age in 2028: 62 to 81 years old)[4]

Demographic trends		Baby boomers are the fastest growing segment of Deschutes County's population. • People over 65 years are forecast to grow from 13% of Deschutes County's population in 2000 to 24% in 2030.[5] • Growth in people over 65 years old in Deschutes County will result in growth of nearly 40,000 people in this age group in Deschutes County or 35% of population growth over the 2000 to 2030 period.[6]
Effect of trends on household choice	**Age of household head**	Bend's older householders are more likely to own their home. • Homeownership peaks for householders 35 to 64. More than 50% of householders 35 to 64 in Bend are homeowners. • Homeownership begins to decrease for households over 65 years old. Twenty percent of householders over 75 in Bend are homeowners. National studies about the housing preferences of older residents show that the majority express an interest in remaining in their home or in their community as long as possible, a trend that increases with age.[7] • Between about 65% and 80% of people over 65 would like to stay in their homes as long as possible.[8] • The Baby Boomers who want to move generally want to live in a typical community setting, with a mixture of people of different ages, and in a setting where recreational amenities are available.[9] • Of people over 65 who expect to move in the next five years, a smaller proportion of these households expect to live in a single-family home and to be homeowners, compared with households of all ages who expect to move in the next 5 years.[10] • Seniors who moved recently were much more likely to have moved into a smaller home, compared to households of all ages who moved recently.[11]
	Household size and composition	Household size decreases with age after age 65 in Bend. • More than 6% of households 65 years and older were single-person households in Bend. • Growth in households 65 years and older will result in growth in single-person households.

	Household income	Bend's household income peaks around age 45.
		• Household income decreases after age 65. About 50% of Bend's households over 65 had income of less than $50,000, compared with 36% of households 45 to 64.
		• Households with householders over 65 years have a lower than average household income, at about 95% of Bend's median household income, compared with ages 45 to 64 years with 117% of Bend's median household income.
		• Lower income does not necessarily result in greater problems with housing affordability or lower homeownership rates for people over 65 years because:
		  • Some householders over 65 have paid off their mortgage. For households who have paid off their mortgage, lower income does not necessarily result in lower disposable income or affect their ability to continue to own their home.
		  • Older households may have more accumulated wealth, which could include assets like the value of their house or investments.

	Potential effect on housing demand	The major impact of the aging of the baby boomers on demand for new housing will be through demand for housing types specific to seniors, such as assisted living facilities. Baby boomers will make a range of housing choices in Bend: • Many will choose to remain in their houses as long as they are able. • Those that do move are more likely to move into smaller homes, attached homes, or apartments and are more likely to rent than other households headed by other generations. • Some may downsize to smaller single-family homes (detached and attached) or multifamily units. These will be a mixture of owner and renter units. Nationally, of the 20% Baby Boomers that expect to move, 11% plan to move to an apartment, 16% to attached housing, 65% to single family housing, and 6% to a mobile home.[12] • As their health fails, some will choose to move to group housing, such as assisted living facilities or nursing homes.

Table 2. Echo Boomers (Age in 2008: 11 to 24 years old; Age in 2030: 31 to 44 years old)[13]

Demographic trends		Echo Boomers are one of the fastest growing segments of Deschutes County's population • By 2030, the State projects that there will be nearly 70,000 people 25 to 49 years in Deschutes County, up from nearly 43,000 people in 2000.[14] • There will be an increase of about 27,000 people between the ages of 25 to 49 years. This group will account for 24% of total population growth over the 2000 to 2030 period.[15]
Effect of trends on household choice	**Age of household head**	Housing preferences shift for householders as they get older. • Under 25 years old: 94% were renters in Bend • 25 to 34 years old: 63% were renters in Bend • 35 to 44 years old: 43% were renters in Bend • 82% of single-family housing detached housing in Deschutes County was owner-occupied and 95% of multifamily dwellings were renter-occupied
	Household size and composition	Household size increases until age 44 in Bend. • Eighty-five percent of households in Bend between ages 15-34 years have two or more persons. • About 15% of Bend's households between 15 to 34 years are single-person households, compared with 26% of households 35 to 64 years. • Seventy-three percent of households with two or more persons younger than age 34 are renters in Bend.
	Household income	Younger households have lower income and homeownership rates on average. • About 40% of households under 25 years had an income of less than $25,000 in Bend. About 40% of households between 25 and 44 had income of less than $50,000. • Younger households generally had less accumulated wealth, such as housing equity. • Households between 25 and 44 years had higher than average income, at about 112% of Bend's median household income. • Higher incomes generally correlate with homeownership. The median income for homeowners in Bend was $72,800 (in 2007), compared with $43,200 for renters.
	Potential effect on housing demand	Growth in Echo Boomers will result in increased demand for all housing types in Bend. Recent research hypothesizes that Echo Boomers may make different housing choices than their parents as a result of the on-going recession and housing crisis. They suggest that Echo Boomers will prefer to rent and will prefer to live in multifamily housing, especially in large cities. Other studies suggest that the majority of Echo Boomers' housing preference is to own a single-family home. Our conclusion based on review of recent research is that it seems unlikely that the majority of Echo Boomers will make fundamentally different housing choices than previous generations as they age and have families, but their housing choices may be constrained by what they can afford due to student loan debt, and prolonged entry into higher paying positions due to the Baby Boomers putting off retirement. • Echo Boomers are more interested in living within a city (including in a downtown area) or a suburb closer to a city than prior generations.[16] • Echo Boomers are more willing than other age groups to choose to live in a community with a wider range of housing and denser housing, where it is easier to talk to work or nearby urban amenities, and where transportation by automobile is less common.[17] • Echo Boomers are likely to choose to rent and are more likely to rent a multifamily unit than older households. This choice may be made from preference but is likely to be necessitated by lower income. • Echo Boomers who prefer single-family units may prefer, or only be able to afford, smaller single-family units.[18] • As they establish their careers, their incomes increase, and they form families, it seems likely that a large share of Echo Boomers in Bend will choose to live in an owner-occupied single family house. Some Echo Boomers may prefer to rent or own a multifamily unit in or near Bend's downtown. • Bend is a suburban market, with urban amenities that may appeal to Echo Boomers who prefer to live in a smaller city but in an area with a wide range of access to outdoor recreational activities. Bend itself does not have distant suburbs but nearby smaller cities have filled the role of distant suburbs for Bend. Echo Boomers may choose to live in Bend's suburban neighborhoods, rather than in nearby smaller cities, if housing in Bend is affordable.

Table 3. Growth of Latino and Hispanic Population[19]

Demographic trends		Bend is becoming more ethnically diverse, with growth in the Hispanic and Latino population (both from immigration and from current residents in Bend). • Bend became more ethnically diverse, with Hispanic and Latino population growing by more than 100% between 2000 and 2007, an addition of 2,459 Hispanic or Latino residents. • Nationally, growth in Hispanics is driving population growth, both from immigration and from natural increase of Hispanics living in the U.S.[20]
Effect of trends on household choice	**Age of household head**	The Hispanic population in Bend has a different age structure than Bend's overall population. • In 2007, median age for Hispanics (29 years) was lower with the median age for the total population (35 years) in Bend. Nationally, growth in Hispanic population between 2005 and 2015 will help off-set decreases in white householders between the ages of 30 and 49.[21]
	Household size and composition	Nationally, Hispanics households with children grew at a faster rate than other minority populations between 1995 and 2005, resulting in increased demand for housing to accommodate families.[22] • In 1999, 51% of Hispanic households had children, compared with 33% of all households.[23] Hispanic households in Bend are more likely to be larger and less likely to be homeowners. • In 2000, the average size of Hispanic households in Bend was 3.4 persons per household, compared with an average of 2.4 persons per household for all households in Bend.[24] • Hispanic households in Bend live in single-family houses (detached and attached) less often than non-Hispanic households. About one-third of Hispanic households live in single-family dwellings, as compared to about 75% of non-Hispanic households. • About one-third of Hispanic households are homeowners, compared with an ownership rate of a little almost 60% for all households in Bend. In 2007, Oregon's Hispanic households were more likely to be younger homeowners. Seventy-two percent of Hispanic homeowners in Oregon were younger than 45 years old, compared with 38% of non-Hispanic householders[25].
	Household income	Hispanic households in Bend have lower than average income. • Hispanic households in Bend have lower than average income, with household income at 96% of Bend's median ($56,053) and family income at 79% of Bend's median ($66,740). Immigrants generally have lower income than U.S.-born workers but income increases for immigrants the longer they have been in the U.S. and through successive generations. • First generation immigrants may take several decades to earn sufficient incomes to become homeowners[26] and to have income comparable to a person born in the U.S., of a similar age and education. This is true of Hispanic immigrants.[27] • Income generally increases for second-generation immigrants, who have higher educational attainment.[28] This is true of recent Hispanic immigrants.[29] • In 2012, the national median household income for first generation Hispanic households was $34,600, compared to $48,400 for second-generation Hispanic households, compared with the U.S. average of $58,200.[30] Hispanic households suffered steeper drops in household wealth than non-Hispanic white households during the recession, which may affect their ability to own homes, although the desire for homeownership remains strong.[31]
	Potential effect on housing demand	Growth in Hispanic and Latino households may result in increased demand for multifamily and single-family housing in Bend. • Affordability is likely to be a more common problem for Hispanic and Latino households, especially recent immigrants, because they have lower income on average. • Homeownership increases the longer immigrants stay in the U.S. Longer-term first generation immigrants and second-generation immigrants may become home owners, depending on their ability to afford owning a home.[32] • Hispanic population with lower income is more likely to choose lower-cost housing, such as multifamily housing because that is what they can afford. • Hispanics are more likely to rent but when they are homeowners, they are more likely to live in a more urban area, compared with white households.[33] • Growth in Hispanics will increase demand for smaller "starter homes" and entry-level apartments.[34]

Conclusions about how demographic trends may affect housing choice

Identifying future housing need based on expected demographic changes requires making qualitative assessments of the future housing market. Demographic changes are likely to affect housing in Bend's housing market in the following ways over the next 20 years. The future housing mix will probably look different than the recent past. Based on the future demographic trends, the most pressing need is to increase the range (both in size and in pricing) of housing products in walkable neighborhoods.

- **Recession may have delayed some effects of demographic shifts.** The impacts of major demographics shifts are being delayed due to the financial effects of the recession, however, substantial housing demand shifts are underway that will change land use patterns. Baby Boomers are working longer and may not be moving because of a loss of home equity. Echo Boomers have taken on college debt, are having a hard time getting a foothold in the workforce, and are therefore delaying household formation. The extended effects of the recession will mean that more households are renting for an extended period of time before being able to make a home purchase, or will only be financially capable of purchasing a smaller less-expensive home. In summary, this delay means more near-term demand for rental housing or smaller less-expensive ownership housing.

- **Slower demand for large-lot single-family housing.** Gen X (the generation born after the Baby Boomers and before the Echo Boomers), is currently in its prime family raising years, and the demographic group most likely to need larger single-family homes. Gen X is much smaller than either the Baby Boomer or Echo Boomer generations. As the Baby Boomers move out of their existing single-family homes, there will be fewer households to take them over. In recent years, Bend has been attracting retirees who are purchasing (and, in some cases, renting) available single-family dwellings.

  In the future, growth of Echo Boomers and shrinking of the Baby Boomer generation, may slow demand for new large-lot single-family housing. The Echo Boomer's preferences are generally for more walkable communities and they are willing to accept smaller homes in closer proximity to amenities. In addition, Echo Boomer's have lower income and higher debt.

  However, much of Bend's growth results from in-migration of people from outside of Central Oregon, many of whom are attracted to Bend's access to outdoor amenities, open space, and rural quality of life that Bend offers. Interviews with Bend's development community noted that demand for single-family housing that offers ample parking and storage for outdoor equipment is strong. They also noted that incoming retirees are pricing out the second-home move-up market for existing families.

  All of these factors contribute to continued demand for large-lot single-family detached housing but suggest that demand for this type of housing is likely to slow between the 2008 to 2028 period.

- **Demand will increase for a wider range of housing types.** Most of the evidence suggests that the bulk of the change will be in the direction of smaller average house and lot sizes for single-family housing. An aging population, increasing housing costs, and other variables are factors that support the conclusion that the future housing supply will include smaller and less expensive units and a broader array of housing choices. A substantial portion of Bend's residents will live in attached housing, such as townhouses, cottage housing, duplexes, garden apartments, or urban apartments. While most households may prefer to own their home, a growing share of households will be renters, either from choice (e.g., Baby Boomers who prefer to rent smaller units) or by economic necessity. Demand for these uses will be particularly high in close-in areas near Bend's commercial and recreational amenities.
    - **Demand for a wider range of housing types by retirees.** Older households tend to move less frequently than younger households, and a large majority would like to age in place—a desire that grows stronger with age. Being near family, friends, and social organizations in walkable neighborhoods also becomes increasingly important with age. Of those that have moved recently, a third of Baby Boomers and half of the generation older than Baby Boomers have moved to smaller housing units. Those Baby Boomers who do move may be more likely to choose homes in locations with more amenities located near friends and family. Interviews with members of Bend's development community indicated that small lot, cluster, or cottage housing might be appropriate housing types to meet this need.
    - **Housing for families will be in demand.** The two largest growing parts of Bend's population are Echo Boomers and Hispanic households. Echo Boomers will be entering the phase of life when they form families and have children. In addition, Hispanic households have larger than average household size because they live in multi-generational households and have a larger number of children on average. Growth in households with families will drive need for housing with sufficient space for a family.
    - **Housing affordability will continue to be an issue.** More than one-third of Bend's households were cost burdened in 2007. A household is considered "cost-burdened" if they pay 30% or more of their gross household income on housing costs. Bend's rate of cost burden shows that a substantial proportion of Bend's households cannot afford housing in Bend. Interviews with members of Bend's development community suggest a shortage of homes priced for first-time homebuyers, many workers in Bend live in nearby communities because affordable housing is in short supply in Bend, and that the demand for small-lot housing with nearby amenities is increasing. The interviewees also indicate that, while there is demand for urban housing products (particularly rental apartments), the wages in Bend's service and tourism economy may not allow workers to afford rents sufficient to pay for development of these types of housing. For two of the fastest growing demographics in Bend, the Echo Boomers and Hispanic and Latino population, affordability is more likely to be a barrier to homeownership or higher-cost rental housing.

- **Location of housing will be increasingly important.** The location of housing is becoming increasingly important, with increased demand for housing in walkable neighborhoods near retail and other amenities. Where they can afford it, the Echo Boomers generally prefer housing in walkable areas with retail and other amenities nearby, rather than housing in more suburban areas or in outlying cities. Some Baby Boomers who are downsizing are also choosing to live in similar walkable areas.

- **Design of housing and neighborhoods is important.** Well-designed multifamily and compact single-family located in a desirable neighborhood can provide opportunities for a wider range of housing options. Consumers are more likely to make the tradeoff of a smaller lot and home size when neighborhood parks, schools, and retail amenities are within walking distance. Therefore, there will be steady demand for multifamily housing in close-in locations proximate to Bend's downtown amenities and jobs.

APPENDIX A: RESEARCH ABOUT DEMOGRAPHIC CHANGES AND IMPLICATIONS FOR FUTURE HOUSING MIX

This section provides greater detail on the research conducted on the demographic trends that are summarized in the tables above. For further reading on a given topic, see the relevant report listed in the "Materials for Further Reading" section below.

Key Findings by Topic

Aging Boomers

Question: Are aging Baby Boomers downsizing or staying put?

- **Some are downsizing.** "Thirty-two percent of Americans have moved in the past five years. More than half of the gen Yers report moving, and 31 percent of gen Xers have moved. Baby boomers and the oldest Americans are the least likely to have moved…Baby boomers and war babies/members of the silent generation are the most likely to have downsized in their most recent move. In fact, 50 percent of the oldest Americans report that their new home is smaller than their old one. One-third of baby boomers report moving into a smaller home, and 44 percent say they have moved into a larger home."[1]

Table 1. Recent Movers Change in Home Size

	Recently moved?		Recent Change in Home Size			Expected Homeownership Status	
	Yes	No	Larger	Smaller	Same	Own	Rent
All Adults	32%	**67%**	**48%**	**27%**	**25%**	**73%**	**25%**
Gen Y	53%	47%	48%	25%	27%	69%	31%
Gen X	31%	69%	59%	20%	20%	81%	16%
Baby Boomers	20%	80%	44%	33%	22%	79%	20%
War babies/silent generation	19%	80%	24%	50%	25%	55%	36%

Source: ULI America in 2013, Leland Consulting Group

- **Preference for staying put increases with age.** The AARP conducted a housing preference survey of people age 45 or older and found that 73 percent of them strongly agreed with the statement, *"what I'd really like to do is stay in my current residence for as long as possible".* This preference increases with age. Seventy-eight percent of the respondents over 65 strongly agreed with the statement, whereas only 72 percent of those 50-64 and 60 percent of those age 45-49 strongly agreed with the statement.[2]

[1] *American in 2013 Focus on Housing and Community, Urban Land Institute*

[2] *"Home and Community Preferences of the 45+ Population" November 2010, AARP, Keenan Teresa A.*

"The aging of the population poses a different policy challenge. Most seniors prefer to age in place. While many of these households are currently well housed, their needs will change over time. Meeting those needs will require modifications to existing homes, the expansion of transportation networks and supportive services, and additions to the housing stock aimed specifically at the senior population. Many older Americans are also heading into their retirement years with little financial cushion and may find it difficult to find suitable housing that fits within their budgets. Expanding the range of housing options available to the country's growing senior population will require concerted efforts from both the public and private sectors."[3]

"Despite their shrinking households and declining labor force participation, Boomers do not appear to be altering their housing consumption by abandoning their detached single-family homes…In fact, contrary to the downsizing perception, the percent of Baby Boomers residing in single-family detached homes was at least as high in 2012 as at any time since the onset of the housing crisis. Even the oldest members of the Boomer generation, who have largely exited the childrearing stage and begun to retire in large numbers, show no major shift away from single-family residency….One likely mobility constraint is the substantial decline in Boomers' home values during the housing bust. Between 2006 and 2012, the average value of an owner-occupied single-family detached home with a Boomer householder declined by 13 percent."[4]

- **Being near friends, family, and social organizations grows increasingly important with age.** An AARP Housing Preference survey of householders 45 years and older, found that "Roughly two-thirds of respondents agreed that they want to stay in their home because *I like what my community has to offer me."* In contrast, roughly one-quarter agreed with the statement that they want to stay in their home because *"I cannot afford to move."…*When asked about seven different community aspects and the level of importance they have for them, two-thirds of respondents said that being near friends/and or family and being near where one wants to go (ie., grocery stores, doctor's offices, the library) is *extremely* or *very important* to them. Roughly half noted that being near church or social organizations or being somewhere where it's easy to walk are *extremely* or *very important* to them, while somewhat fewer said the same thing about being near good schools or being near work. Only about one-fifth of respondents report that being near transit (bus or rail) was *extremely* or *very important* to them."[5]

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[3] *Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing, 2013*

[4] *"Are Aging Baby Boomers Abandoning the Single-Family Nest?" June 12, 2014. Fannie Mae Housing Insights, Volume 4, Issue 3.*

[5] *"Home and Community Preferences of the 45+ Population," Keenan Teresa A. November 2010, AARP*

Table 2. Importance of Community Aspects for Staying in One's Community

Extremely or Very Important	Age		
	45-49	50-64	65+
Being near friends and/or family	60%	64%	71%
Being near where you want to go	68%	62%	70%
Being near church or social organizations	42%	43%	57%
It's easy to walk	46%	43%	51%
Being near good schools	64%	38%	31%
Being near work	43%	36%	21%
Being near transit	16%	22%	21%

Source: AARP

- **Retiring later.** "To put these trends in perspective, incomes among households under age 35 are back to 1990s levels. The recession had an even bigger impact on households between the ages of 35 and 54, whose incomes are now lower than those of similarly aged households in 1971. Now in what are typically the peak earning years, 45–54 year-olds have instead seen their real median incomes fall 6.0 percent from what they made ten years earlier (when they were aged 35–44). Over the next ten years, these households will be approaching typical retirement age, but the loss of income at such a critical point in their careers will make it difficult for many to save enough to stop working."[6]

- **Affordability for seniors.** "Affordability is a serious problem for seniors, especially for renters. According to a U.S. Department of Housing and Urban Development (HUD) report to Congress earlier this year, 1.33 million elderly renters (where the householder or spouse is age 62 or over, with no children under 18 present) had "worst case" housing needs in 2009. This meant that they earned less than half their metropolitan area's median income, received no government housing assistance and either paid more than half their income for rent, lived in severely inadequate housing, or both. Compared to 2007, the number of older renters in this category had increased by 120,000 (10 percent) – a change that the HUD report attributes to fallout from the foreclosure crisis and recession, as shrinking incomes drove increased competition for already scarce affordable housing. Seventy percent of senior renters spend at least 30 percent of their income on housing costs. Senior homeowners are not immune from affordability problems either: about three in 10 senior homeowners spend at least 30 percent of their income on housing and 17 percent pay at least half their income. Even seniors who own their houses free and clear face rising energy costs and, in some locations, rising property taxes."[7]

[6] *Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing, 2013*

[7] *Demographic Challenges and Opportunities for U.S. Housing Markets, March 2012, Bipartisan Policy Center*

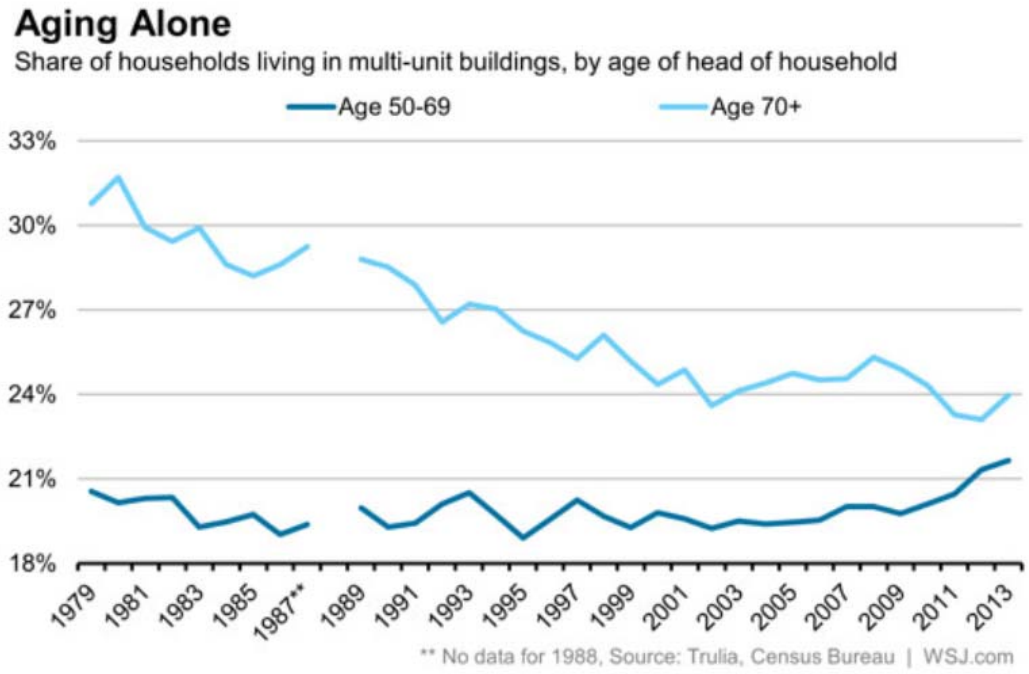
- **Housing released by seniors.** "Some seniors occupy newly constructed housing (so the total release of housing exceeds the net release). In 2009, for example, housing built since 2000 accounted for about seven percent of owner-occupied dwellings occupied by seniors and 10 percent of rentals. Seniors' consumption of new housing may rise in the next two decades as Baby Boomers – whose wealth and income are higher than that of today's retirees and who are entering retirement in vastly larger numbers – seek new options to downsize, accommodate disabilities or live in different types of neighborhoods. Just as demand created by Baby Boomers spurred new apartment construction in the 1970s, the sheer size of the Baby Boom generation could cause a dramatic increase in the construction of senior-accessible housing over the coming decades. Baby Boomers' ability to move into new housing, however, will depend on where, when and for how much they will seek to sell their current residences…..Despite potential increases in new construction, most of the houses that seniors will release in coming years were built when energy was inexpensive, nuclear families were the rule, incomes were increasing for most Americans, and mortgages were generally predictable and easy to obtain. Most observers expect the next 20 to 30 years to depart from this historic picture, with more expensive energy, growing diversity in race, ethnicity and in household structure, and more intense international economic competition. All of these factors will likely reduce demand for large single-family homes on large lots far away from established centers of employment and entertainment."[8]

- **Fewer elderly living alone in multifamily buildings.** The percent of people 70 years or older that head households in multifamily buildings has been in decline since 1979.[9]

[8] *Demographic Challenges and Opportunities for U.S. Housing Markets, March 2012, Bipartisan Policy Center*

[9] *"Baby Boomers Aren't (Yet) Downsizing in Droves", Nick Timiraos, June 27, 2014, The Wall Street Journal*

Table 3. Aging Alone



Source: The Wall Street Journal, Trulia, Census Bureau

Delayed Millennial Household Formation

Are Millennials putting off housing formation as a short-term response to the recession or are there other underlying factors that will impact their housing decisions much farther into the future?

- **Student debt.** "For today's younger households, student loan debt may make the transition to homeownership more difficult. According to the Federal Reserve Bank of New York, the number of young adults under age 30 with student loan debt outstanding increased by 39 percent between the start of 2005 and the end of 2012, with the average amount rising from $13,300 to $21,400. However, concerns over rising student loan debt often overlook the fact that the trend also affects older households. The increase was even larger among adults in their 30s, with the number of borrowers up 76 percent and average debt climbing from $20,000 to $29,400. Moreover, of the $600 billion increase in student loans outstanding in 2005–12, fully 38 percent was among households over age 40. Since many of these older households already own homes, the sharp rise in student loan debt could affect their ability to meet their mortgage obligations."[10]

- **Diversity and household formation.** "To estimate the magnitude of the demand that Echo Boomers may (or may not) bring to housing markets in the next 20 years, we developed three scenarios. We began with the 1990, 2000 and 2010 Census results and the Census Bureau's national population projections assuming a constant net rate of immigration at 975,000 people per year. Using the observed and projected population series, we

[10] *Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing, 2013*

computed national rates of household formation and homeownership for people grouped by age cohort (10-year groups starting at age 15) and by race/ethnicity (white non-Hispanic, black non-Hispanic, other non-Hispanic and Hispanic)…The range of estimates in these scenarios can be attributed to different rates of household formation for Echo Boomers. Under the low scenario, people between 15 and 34 years old in 2010 (a span that includes Echo Boomers plus five years of the Baby Bust generation) would form 15.6 million new households between 2010 and 2020. Other cohorts would account for the formation of an additional 5.4 million households over the same time period. The medium scenario would result in 17.1 million new Echo Boomer households and 6.1 million other households. The high scenario, finally, yields 18.8 million new Echo Boomer households and 6.7 million new households from other generations. Because changes in the number of older households are less sensitive to differences in economic assumptions, the decline in older households is more consistent across the three scenarios, ranging from 10.6 million fewer old households in the high scenario to 11.6 million fewer old households in the low scenario."[11]

- **Education.** "Compared to previous generations at the same age, Echo Boomers are more likely to have completed high school, and more than half (54 percent) have at least some college education, compared to 49 percent of people in the Baby Bust generation and 36 percent of Baby Boomers when they were 18 to 28 years old. In terms of educational achievement, women of the Echo Boom generation have vaulted far above women of previous generations; in fact, among Echo Boomers, more women than men and more women than in any previous generation have attained a college education…The growth in female educational attainment may also portend higher levels of household formation if it results in greater gender equity and gives women more financial independence. Other factors, however, could inhibit household formation and homeownership. Young adults carry high levels of credit card and student loan debt; even young people who already had formed households had higher debt loads in 2009 than people of the same age 10 years earlier.31 Rates of marriage declined in the 2000s from 8.2 per thousand to 6.8 per thousand.32 Finally, while all households lost wealth during the recession, average household wealth fell well below $10,000 for Hispanic and black households. Considering the diversity of the young population, this reduction in wealth among older adults will reduce the purchasing power of a significant fraction of young people who can no longer count on their parents' housing wealth."[12]

- **Household formation.** "At a basic level, changes in the number of adults and the rates at which adults head independent households determine household growth. On the plus side, the number of adults aged 18 and older rose by 18.1 million from 2005 to 2012 and fully 2.4 million in the past year alone. The echo-boom generation (born after 1985) fueled much of this growth, helping to boost the number of adults in their mid-20s—the group most likely to form new households. But while the young adult population has been growing, the rate at which members of this age group head their own households has declined. As a result, household growth has not kept pace with population growth. Going forward, though, even if today's low household formation rates persist, the aging of the large echo-boom cohort into

[11] *Demographic Challenges and Opportunities for U.S. Housing Markets, March 2012, Bipartisan Policy Center*
[12] *Demographic Challenges and Opportunities for U.S. Housing Markets, March 2012, Bipartisan Policy Center*

their 30s will raise household headship rates because of lifecycle effects. Indeed, one out of every two 30–34 year-olds heads an independent household, compared with just one in four 20–24 year-olds. Since household headship rates continue to rise (albeit more slowly) through older adulthood, the rates for the echo boomers will likely increase for years to come."[13]

- **Mobility and homeownership.** "While mobility rates have fallen for nearly all household types, the decline was particularly steep for homeowners that have mortgages. Mobility rates for this group fell from 7.1 percent in 2007 to only 4.9 percent in 2011. The reasons for this short-term drop are numerous and include the lock-in effect of home price declines, falling incomes, fewer new employment opportunities, and tightened credit standards making it more difficult to qualify for a new mortgage Mobility rates are highest among renters and young adults. In 2011, fully 28.8 percent of renter households changed residences, compared with just 4.4 percent of homeowners. Young householders are also more mobile, with rates at 52.7 percent for those under age 25—significantly higher than the 19.7 percent for household heads in the next older age group…The oldest echo boomers are just beginning to swell the ranks of young adult movers. Having more young adults in the population may thus change the composition of housing demand in the coming years, given that younger households are more likely than older households to move into rentals (82 percent vs. 67 percent) and less likely to move into single-family homes (42 percent vs. 50 percent)."[14]

- **Gen Y has more urban community characteristic preferences.** "Gen Y expresses preferences that differ from those of the other generations in interesting ways. Gen Y is the least likely to value neighborhood safety or space between neighbors, but the most likely to want high-quality public schools, a short distance to work or school, walkability, and proximity to amenities like shopping and transit...Among gen Yers, 54 percent—representing nearly 39 million people—would trade a larger home for a shorter commute. Among all generations, gen Y is the most attracted to living in a neighborhood close to a mix of shops, restaurants, and offices. Sixty-two percent of gen Yers (representing more than 44 million people) prefer this type of mixed-use community over one where shops, restaurants, and offices are farther away. Gen Y is also the only age cohort that shows a preference for living in a neighborhood where there is a mix of housing types. Fifty-nine percent of gen Yers—representing more than 42 million people—would like to live in a community where there is a range of housing. Similarly, 52 percent of gen Yers (representing more than 37 million people) would like to live in a community where there is a range of incomes."[15]

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[13] *Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing, 2013*

[14] *Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing, 2013*

[15] *American in 2013 Focus on Housing and Community, Urban Land Institute*

Table 4. Community Characteristics

Importance of Community Characteristics	Homeownership status		By Generation				
Percentage ranking each characteristic 6 or higher in importance on a scale of 1 to 10	Owners	Renters	All Adults	Gen Y	Gen X	Baby boomers	War babies/ silent generation
Neighborhood safety	94%	88%	**92%**	88%	97%	92%	92%
Quality of local public schools	77%	83%	**79%**	87%	82%	74%	68%
Space between neighborhs	75%	68%	**72%**	69%	79%	70%	70%
Short distance to work or school	66%	76%	**71%**	82%	71%	67%	57%
Distance to medical care	68%	65%	**71%**	73%	63%	72%	78%
Walkability	75%	79%	**70%**	76%	67%	67%	69%
Distance to shopping/entertainment	63%	71%	**66%**	71%	58%	67%	69%
Distance to family/friends	59%	70%	**63%**	69%	57%	60%	66%
Distance to parks/recreational areas	63%	64%	**64%**	68%	62%	63%	60%
Convenience of public transportation	44%	67%	**52%**	57%	45%	50%	56%

Source: Urban Land Institute

Housing choices of Hispanic and Latino households

Does the growing Hispanic population have different housing needs/preferences than the average household and how will this impact Bend's housing supply in the future?

- **Growth in home ownership.** "U.S. Census data over the past 12 years shows that despite suffering significant losses during the recent foreclosure crisis, Hispanics have achieved homeownership gains in all but two of those years. During the same 12-year period, the number of Hispanic homeowners grew from 4.24 million in 2000 to 6.69 million in 2012, a remarkable increase of 58 percent at a time when the rest of the U.S. population saw a net increase of only 5 percent. In 2012, home prices increased significantly in most markets across the country for the first time in half a decade. Hispanic household growth and home purchases were arguably the most important drivers of the housing recover."[16]

- **Recession and home value drop.** "Between 1995 and 2004, rates of homeownership among blacks rose by seven percentage points; among Hispanics, homeownership grew even more quickly – from about 40 percent in 1993 to 50 percent in 2005–2006. Between 2004–2006 and 2010, however, homeownership rates dropped sharply, and more so for Hispanic and black households than for white non-Hispanics. The overall homeownership rate of 65.1 percent in April 2010 was 1.1 percentage points lower than 10 years earlier. While the housing crisis has hurt people of all races and ethnicities, it has been devastating for many Hispanic and black families, reducing their median wealth by one half to two-thirds and significantly increasing the number of households with negative net worth."[17]

  "The recession-induced drop in home values has been especially damaging to minority and low-income households. On average, real home values for Hispanic owners plummeted nearly $100,000 (35 percent) between 2007 and 2010, while the decline for black owners was nearly $69,000 (31 percent). By comparison, average values for white homeowners fell just 15 percent over this period…Moreover, white homeowners still had $166,800 in home equity on average in 2010—about twice the amount that blacks and Hispanics held…Over the next decade, minorities will make up an increasing share of young households and represent an important source of demand for both rental housing and starter homes. While their housing aspirations are similar to those of whites, minorities face greater constraints in pursuing those goals because of their lower incomes and wealth."[18]

- **Hispanic population is younger.** "Hispanics are also a much younger demographic averaging a full 10 years younger than the overall population…Every month 50,000 young Hispanics reach the age of 18**…**With a median age of 27, the Hispanic population is 10 years younger than the total U.S. median age of 37 years. In particular, Hispanics are heavily represented in the 26 to 46 age range involved in most home sales."[19]

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[17] *Demographic Challenges and Opportunities for U.S. Housing Markets, March 2012, Bipartisan Policy Center*

[18] *Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing, 2013*

[19] *State of Hispanic Homeownership Report, National Association of Hispanic Real Estate Professionals (NAHREP), 2012*

- **Hispanic households are larger.** Hispanic households are typically larger than the households of non-Hispanic Whites….Sixty-one percent of all Hispanic households consist of a married couple with children younger than 18."[20]

- **Hispanics believe that home ownership is a good investment.** "Despite being hit hard by the housing market downturn, three-in-four (75%) Latinos agree that buying a home is the best long-term investment a person can make in the U.S. This compares with 81% of the general population who say the same….Fully 83% of Latino homeowners say owing a home is the best long-term investment, while 70% of renters say the same. All of these demographic and cultural characteristics make Hispanics ideal homebuyers in the housing market. In fact, Hispanics are expected to comprise half of all new homebuyers by 2020"[21]

- **First-time homebuyers.** "Forward thinking companies are already changing their strategy to reflect this shift. Case in point: D.R. Horton, the nation's largest residential homebuilder, achieved huge profits in 2012 by constructing low-priced homes. Rather than focus on the move-up market, Horton cornered the entry-level market—the market most heavily represented by minority Hispanic and Asian first-time homebuyers…By virtue of their population growth, rate of household formation and purchasing power, Hispanics are expected to drive demand for small starter homes in vibrant, high-density communities."[22]

- **Multigenerational.** "Indeed, as the Hispanic share of the U.S. population continues to grow, a substantial increase in demand is being created for building new homes that meet the structural housing needs of large and multi-generational Hispanic families…Some builders are already creating products that meet the shifting demand and needs of these consumer segments who want home with enough space to accommodate parents, adult children or tenants. These new floor plans feature a second, self-contained unit with its own entrance, bathroom and kitchenette—a development that meets both the short- and long-term needs of many Hispanic households."[23]

- **Demand for smaller units.** "Hispanics, in particular, will stimulate demand for condominiums, smaller starter homes, first trade-up homes and the estimated 11 million housing units that will become available between 2010 and 2020 as baby boomers retire."[24]

- **Preference for walkable neighborhoods.** According to the Pew Research Center, Hispanics prefer to live in neighborhoods where houses are smaller and closer together, but

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[20] *State of Hispanic Homeownership Report, National Association of Hispanic Real Estate Professionals (NAHREP), 2012*

[21] *Pew Research Hispanic Trends Project, "III. Latinos and Homeownership", January 26, 2012.*

[22] *State of Hispanic Homeownership Report, National Association of Hispanic Real Estate Professionals (NAHREP), 2012*

[23] *State of Hispanic Homeownership Report, National Association of Hispanic Real Estate Professionals (NAHREP), 2012*

[24] *State of Hispanic Homeownership Report, National Association of Hispanic Real Estate Professionals (NAHREP), 2012*

schools/stores are within walking distance by 60 percent compared to 44 percent of non-Hispanic Whites.[25]

Opportunities to provide housing development through infill and redevelopment

Are Bend residents really willing to trade single-family homes on larger lots for urban walkable neighborhoods?

- **Shorter commute for a smaller home.** According to the ULI, "among older Americans, many of whom have spent substantial time in the workforce and may continue working beyond the traditional retirement age, the preference for a shorter commute is very strong, even if it means living in a smaller home. Seventy-two percent of baby boomers, or nearly 53 million people, would make that tradeoff. Similarly, 65 percent of war babies and members of the silent generation—nearly 23 million people—would trade a larger home for a shorter commute. Almost 51 percent of these older Americans (representing 18 million people) also show a slight preference for living in areas close to a mix of shops, restaurants, and offices, reinforcing their preference, particularly as they age, for walkable communities near amenities."[26]

Table 5. Community Attribute Preferences

Community Attribute Preferences	Homeownership status		By Generation				
Percentage preferring listed attribute	Owners	Renters	All Adults	Gen Y	Gen X	Baby boomers	War babies/ silent generation
Shorter commute/smaller home	63%	56%	**61%**	54%	54%	72%	65%
Close to mix of shops, restaurants, and offices	49%	60%	**53%**	62%	50%	49%	51%
Mix of incomes	50%	53%	**52%**	52%	53%	53%	47%
Public transportation options	44%	62%	**51%**	55%	45%	52%	48%
Mix of homes	43%	57%	**48%**	59%	47%	42%	44%
Percentage choosing three or more of these compact development attributes	-	-	***54%***	*59%*	*49%*	*57%*	*51%*

Source: Urban Land Institute

- **Likelihood of moving and anticipated new housing.** "Many Americans report that they are likely to change homes during the next five years. *"America in 2013"* found that 42 percent of Americans—representing 98 million people—are likely movers. Making up that

[25] *2014 Political Polarization Survey, Table 3.1 Preferred Community, Pew Research Center for the People and the Press, June 12, 2014*

[26] *American in 2013 Focus on Housing and Community, Urban Land Institute*

42 percent are 25 percent who are very likely to move and 17 percent who are somewhat likely. Gen Yers are the most likely to move: 63 percent say they expect to move during the next five years. America's oldest generations are the least likely to move. Lower-income people are more likely to move than those with higher incomes. Fifty-one percent of the people making less than $25,000 report that they are likely to move in the next five years, compared with 43 percent of those making more than $75,000. Most movers—73 percent—believe they will own the primary residence they move into; one-quarter expect to rent. Gen Yers and the oldest Americans are the most likely to expect to rent their new home, and gen Xers are the least likely to expect to rent. Just 20 percent of the baby boomers expect to rent…Most movers in Generation X—87 percent—expect to live in a single-family home. For the oldest generations, 30 percent of movers expect to move to apartments or compact homes like townhouses or rowhouses."[27]

Table 6. Recently Moved and Change in Home Size

	Recently moved?		Recent Change in Home Size		
	Yes	No	Larger	Smaller	Same
All Adults	32%	**67%**	**48%**	**27%**	**25%**
Gen Y	53%	47%	48%	25%	27%
Gen X	31%	69%	59%	20%	20%
Baby Boomers	20%	80%	44%	33%	22%
War babies/silent generation	19%	80%	24%	50%	25%

Source: Urban Land Institute

[27] *American in 2013 Focus on Housing and Community, Urban Land Institute*

Table 7. Likelihood of Moving and Expected Type of New Home

	Likely to Move		Expected Homeownership Status		Movers' Expected Type of Home			
	Likely to move	Not likely to move	Expect to own	Expect to rent	Single-family	Apartment	Duplex, townhouse, rowhouse	Manufactured/ mobile home
All Adults	42%	**57%**	**73%**	**25%**	**65%**	**15%**	**14%**	**2%**
Gen Y	63%	36%	69%	31%	60%	21%	17%	1%
Gen X	41%	59%	81%	16%	87%	6%	4%	1%
Baby Boomers	31%	68%	79%	20%	65%	11%	16%	6%
War babies/silent generation	22%	76%	55%	36%	58%	17%	13%	0%

Source: Urban Land Institute

- **Community preference.** "Americans prefer walkable communities, but only to a point. In most comparisons tested, a majority prefers the community where it is easier to walk or the commute is shorter. But when comparing a detached single-family house to an apartment or townhouse, the detached home wins out—even with a longer commute and more driving.
    - A majority prefers houses with small yards and easy walks to schools, stores and restaurants over houses with large yards but where you have to drive to get to schools, stores and restaurants (55 percent to 40 percent).
    - An even larger majority prefers houses with smaller yards but a shorter commute to work over houses with larger yards but a longer commute to work (57 percent to 36 percent).
    - A neighborhood with a mix of houses, stores and businesses that are easy to walk to is preferred over a neighborhood with houses only that requires driving to stores and businesses (60 percent to 35 percent).
    - Nevertheless, when given a choice between a detached, single family house that requires driving to shops and a longer commute to work and an apartment or condominium with an easy walk to shops and a shorter commute to work, a strong majority prefers the single family home –even with the longer commute (57 percent to 39 percent)."[28]

Table 8. Current Community Versus Preferred Community

	Where You Live Now	Where you Prefer to Live
City -Near mix of offices, apartments, and shops	16%	15%
City - Mostly residential neighborhood	19%	13%
Suburban neighborhood with a mix of houses, shops, and businesses	27%	30%
Suburban neighborhood with houses only	15%	11%
Small Town	11%	14%
Rural Area	11%	16%

Source: National Association of Realtors, 2013 Survey

[28] *National Association of Realtors, National Community Preference Survey, 2013*

- **Housing demand will shift.** According to the Director of the Metropolitan Research Center at the University of Utah, Arthur Nelson, housing demand is shifting from large lot homes to small lot, townhomes and attached housing and the current supply of housing will not meet future needs.[29]

Table 9. US Housing Demand Shift 2010-2030

House Type	2010 Supply 2030 Demand	2030 Demand	Difference
Attached/Other	26%	34%	8%
Townhome	6%	18%	12%
Small Lot	11%	50%	39%
Large Lot	69%	34%	-35%

Source: Arthur C. Nelson, Presidential Professor & Director, Metropolitan Research Center, University of Utah

- **Political influence on housing preference.** "Given the choice, three-quarters (75%) of consistent conservatives say they would opt to live in a community where "the houses are larger and farther apart, but schools, stores and restaurants are several miles away," and just 22% say they'd choose to live where "the houses are smaller and closer to each other, but schools, stores and restaurants are within walking distance." The preferences of consistent liberals are almost the exact inverse, with 77% preferring the smaller house closer to amenities, and just 21% opting for more square footage farther away."[30]

- **Fewer households with children.** "Currently, only one third of U.S. households have children, and over the next two decades only 12% of new households being formed will have children. Childfree households are prime candidates for locating in denser areas of cities, within walking range of commercial services and entertainment. Households with two working parents are also increasingly seeking to live in urban areas to simplify their lives, taking advantage of child-care services and after-school educational opportunities available in urban areas."[31]

- **Recent movers prefer walkable communities.** "There is a wider divide among those who have moved in the last three years or are planning to move in the next three years. Recent movers prefer the walkable community by 20 points (58 to 38 percent), almost identical to the walkable community preference expressed by those who plan to move in the next three years (+18 points, 57 to 39 percent)."[32]

[29] *"Reshaping America's Built Environment", Arthur C. Nelson*

[30] *Pew Research, Center for the People and the Press, Political Polarization in the American Public, Section 3: Political Polarization and Personal Life. June 12, 2014*

[31] *Business Performance in Walkable Shopping Areas, November 2013, Robert Wood Johnson Foundation.*

[32] *National Association of Realtors, National Community Preference Survey, 2013*

Materials for further reading

The following list provides examples of key articles used in the research for this memorandum, with web links where available, for further reading.

Joint Center for Housing Studies of Harvard University

State of the Nation's Housing
http://www.jchs.harvard.edu/research/state_nations_housing

http://www.jchs.harvard.edu/research/publications/state-nations-housing-2007

American Association of Retired Persons (AARP)

Home and Community Preferences of the 45+ Population
http://www.aarp.org/home-garden/livable-communities/info-11-2010/home-community-services-10.html

Approaching 65: A Survey of Baby Boomers Turning 65 Years Old
assets.aarp.org/rgcenter/general/approaching-65.pdf

Fixing to Stay: A National Survey of Housing and Home Modification Issues
http://www.aarp.org/home-garden/housing/info-2000/aresearch-import-783.html

Beyond 50: A Report to the Nation on Livable Communities: Creating Environments for Successful Aging
http://www.aarp.org/home-garden/livable-communities/info-2005/beyond_50_05_a_report_to_the_nation_on_livable_communities__creating_environments_for_successful_aging.html

Pew Research Center

Second-Generation Americans: A Portrait of the Adult Children of Immigrants
http://www.pewsocialtrends.org/2013/02/07/second-generation-americans/

Latinos and Homeownership
http://www.pewhispanic.org/2012/01/26/iii-latinos-and-homeownership/

The Brookings Institute

Who Lives Downtown
http://www.brookings.edu/research/reports/2005/11/downtownredevelopment-birch

The Implications of Changing U.S. Demographics for Housing Choice and Location in Cities
http://www.brookings.edu/research/reports/2001/03/demographics-riche

Urban Land Institute (ULI)

America in 2013 Focus on Housing and Community
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envision tomorrow™

FREGONESE ASSOCIATES

envision tomorrow™
a suite of urban and regional planning tools

ENVISION TOMORROW OVERVIEW

Envision Tomorrow, an innovative, open source, set of urban and regional planning tools developed by Fregonese Associates, is an intregal piece of our scenario planning process. It can be used to model development feasibility on a site-by-site basis as well as create and evaluate multiple land use scenarios, test and refine transportation plans, produce small-area concept plans, and model complex regional issues. The software also provides a real-time evaluation of relevant indicators such as land use, energy consumption, and financial impacts that measure a scenario's performance. It can also provide baseline carbon emissions analysis of different land use patterns, enabling planners to model the relationship between greenhouse gas emissions and land use and transportation decisions.

Envision Tomorrow consists of two primary tools: the ***Prototype Builder***, an ROI model spreadsheet tool, and the ***Scenario Builder***, an ArcGIS add-on.

WHAT IS ENVISION TOMORROW?

The ***Prototype Builder***, a return on investment (ROI) spreadsheet tool, can be used to model buildings and test the physical and financial feasibility of development. The tool allows the user to examine land use regulations in relation to the current development market and consider the impact of parking, height requirements, construction costs, rents and subsidies. Use this tool to see what is market feasible. Use it to see how preferred forms of development, such as mixed-use retail with housing above, might become more financially feasible within your existing code.

The ***Scenario Builder*** adds scenario-building functionality to ArcGIS. First, design a library of buildings in the Prototype Builder. Next, use the Scenario Builder to create development types and "paint the landscape" by allocating different development types across the study area to create unique land use scenarios. The tool then allows real-time evaluation of each scenario through a set of user-defined benchmarks or indicators. The indicators measure such things as the scenario's impact on land use, housing, sustainability, transportation, and economic conditions. It also allows communities and regions to monitor progress over the short-and long-terms.

WHAT MAKES ENVISION TOMORROW UNIQUE?

Transparent and Versatile

Envision Tomorrow is a versatile and expandable tool that can easily be adapted to accommodate various uses. Unlike most planning software, Envision Tomorrow allows the user to easily and transparently change the assumptions of the prototype buildings, development types, and scenario inputs. By making the tool transparent, you can quickly and easily adjust the assumptions to more accurately reflect the dynamics of your particular neighborhood, city, or region. This transparency allows planners to adjust assumptions in the scenario process if necessary.

Building Level Data

Since the Envision Tomorrow analysis process begins at the building level, anything we know about a building, we can test in a scenario. These are examples of common indicators used for evaluation:

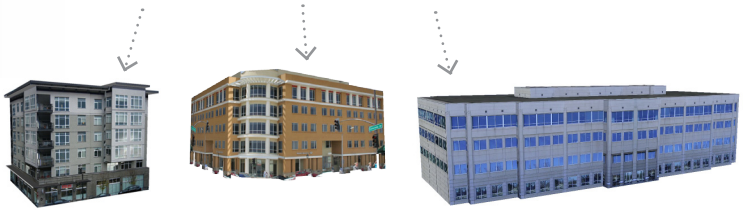
- **Housing and jobs** *(mix and density)*
- **Jobs-housing balance**
- **Land consumption** *(vacant, agricultural, infill)*
- **Impervious surface**
- **Open space**
- **Housing affordability**
- **Resource usage** *(energy and water)*
- **Waste production** *(water, solid, carbon)*
- **Transportation** *(travel mode choice, vehicle miles traveled)*
- **Fiscal impact** *(local revenue and infrastructure costs)*
- **Balanced housing index** *(how a scenario's housing mix matches the expected future demographic profile)*

ENVISION TOMORROW PROCESS

1 Develop Building Prototypes

Create prototype buildings using the return on investment (ROI) model.

Prototype Name	Corridor Mixed-Use	(enter name of building)
Project City/State	Long Beach	(enter name of city/state or proje
Site area	43,560	square feet
	1.00	acres
Site gross-to-net ratio	100%	(enter percentage)
Landscaping or open space	5%	(enter percentage)
Building height (stories)	4	stories
Under-build	70%	(enter percentage)



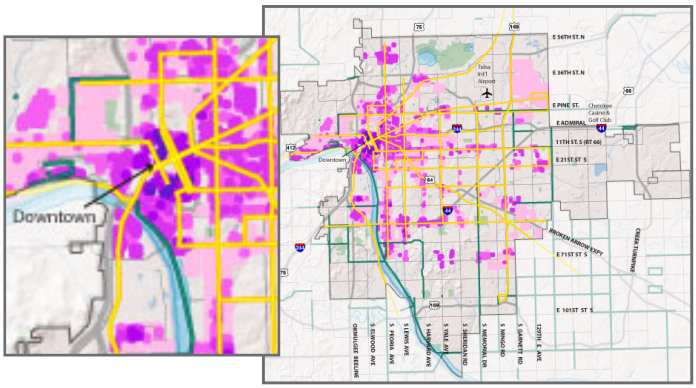
2 Create Scenario Development Types

Development types include all of the elements in a city: a mix of buildings, streets, civic uses and open spaces.

MIXED-USE RETAIL

3 Build Scenarios

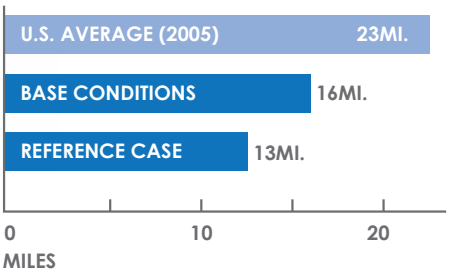
Create scenarios by applying the development types to the landscape using the scenario builder.



4 Evaluate Scenario Performance

Using the ROI model, examine a whole host of benchmarks based on the built scenario.

VEHICLE MILES TRAVELED
Per Person Per Day



Relevent and Cutting-Edge Research

Fregonese Associates has partnered with a number of institutions, organizations and government entities around the country to further the capabilities of Envision Tomorrow. These partnerships provide access to leading thinkers and the latest research and data about urban form and development which are then incorporated into Envision Tomorrow. Most recently, through collaboration with the University of Utah, 18 expanded indicators were developed that allow Envision Tomorrow users the ability to measure, for example, employment growth and resilience, public health, transportation safety, workforce housing and air quality impacts.

HOW IS IT USED AND WHO USES IT?

Municipalities, regional governments, and private organizations around the nation use Envision Tomorrow. The Chicago, Illinois region uses the tool to conduct housing studies; Baton Rouge, Louisiana is analyzing future growth scenarios, while the Southern California Association of Governments in California is examining the potential for greenhouse emissions reduction through different land use policies. In Portland, Oregon, the regional government, Metro, is refining their ability to test land use and transportation policies through scenario planning. Smaller cities like Waco, Texas and Mountlake Terrace, Washington, have found Envision Tomorrow to be a valuable addition to their planning toolbox. Below is a brief list of Envision Tomorrow users:

- Sonoran Institute/Lincoln Land Institute joint venture
- Southern California Association of Governments
- Envision Utah
- Chicago Metropolitan Agency for Planning
- City of Portland
- Portland Metro
- City of Tulsa
- Montana State University
- City of Long Beach

FAQ

What software do you need to run Envision Tomorrow?

Envision Tomorrow requires Windows XP or Vista, Microsoft Office 2000 Professional or greater, and ESRI's ArcGIS desktop software 9.3 or greater. The tool supports all ArcGIS license types (ArcView, ArcEditor, ArcInfo).

What types of indicators can Envision Tomorrow report?

Land Use: density and mix of uses
Transportation: mode choice, VMT—requires local calibration including travel survey results, land use and demographic inputs
Housing: mix and affordability
Fiscal Impact: local revenue and infrastructure—requires local calibration of revenue, rates and costs inputs
Environment: open space and agriculture conversion
Sustainability: energy use, carbon footprint, water usage and wastewater—requires local calibration based on local climate and typical resource use

Visit the Envision Tomorrow wiki page for more information on indicators: **www.frego.com/etwiki**

How long does it take to get up and running?

Start-up time depends on the indicators you use to evaluate the scenarios. Basic land use indicators can be inputted into the tool and calibrated within a few days. More complex transportation and sustainability indicators, including carbon footprint, could take several weeks to collect the input data. To reduce local calibration time, you can use national averages.

Can Envision Tomorrow be used to analyze different levels of geography?

Yes, Envision Tomorrow is designed to model land use decisions at a range of scales starting at the parcel level. By first designing Prototype Buildings that are financially feasible at the local level, the user then combines these prototypes into a series of Development Types, such as Main Street, mixed-use neighborhood, strip commercial, etc. The Development Types are used to create a series of land use scenarios at the district, city, county, and regional scale. The Scenario Builder tool allows the creation and comparison of up to five land use scenarios concurrently. The user can edit, switch between, and compare all five scenarios. A scenario spreadsheet in Excel format is dynamically linked to the tool and maintains the scenario outputs, such as housing mix, in a series of tabs for quick comparison. As you make changes to a scenario, the results automatically report in the spreadsheet for instant monitoring. Users can focus in small areas for detailed design control as well as zoom to a larger scenario with small area changes intact. Detailed scenario results are easily exportable and reportable at any geography.

FAQ

How does Envision Tomorrow evaluate different land uses and policy alternatives?

The tool evaluates scenario differences based on a variety of indicators. Most indicators derive from what particular mix of buildings the user chooses to place on the landscape and where they place them. For example, if the user paints an area with a main street development type as opposed to a strip commercial development type, the underlying buildings that compose those places are different, and that difference will be reflected in the indicators. Main Street development might include some multifamily housing and mixed-use, whereas the strip commercial might include low intensity retail. The choice to put in main street development could result in a lower housing density, but achieve a reduction in per capita water and energy usage and the number of vehicle miles traveled. The implications of different land uses are reflected instantly as the user makes alternative decisions.

Does Envision Tomorrow model carbon footprint?

Envision Tomorrow uses a predictive algorithm combined with local travel and demographic data to estimate the impact of land use changes on key transportation indicators, such as travel mode split, vehicle miles traveled, and greenhouse gas emissions. By using a predictive algorithm approach, the tool does not require a direct link to a transportation model to evaluate the impact of land use changes on travel behavior and carbon emissions.

Can you modify underlying assumptions to align with local conditions?

Yes, all assumptions to the prototype buildings, development types, and scenario inputs are transparent and editable in Excel. From our experience, it is important that planners see all of the assumptions in the scenario process and be able to adjust the assumptions, if necessary. Because the tool is dynamically linked in Excel, changing an assumption results in instant updates to the scenario outputs.

Can the tool display impacts graphically and visually?

Yes, Envision Tomorrow provides visual results in multiple formats, including maps, charts, and graphics. Scenario results can be used to create 2D and 3D visualizations.

How much does Envision Tomorrow cost?

The software license for Envision Tomorrow is free-of-charge. The only fees associated compensate our time to train users in using the tool. Contracts are driven by the client's needs; we typically create a contract for data gathering, training and customization.

URBAN GROWTH BOUNDARY REMAND

Meeting Agenda

Residential Technical Advisory Committee – Meeting 2
Monday, August 25, 2014 10 AM – 12:30 PM
City Council Chambers, Bend City Hall

Meeting Purpose and What is Needed from the TAC

The purposes of this meeting are to:

- Discuss and recommend a housing mix to be utilized for next steps in Phase 1 of the project. This is an action item.
- Introduce the topic of efficiency measures (EMs) and obtain TAC input into an initial broad list of potential EMs.

The housing mix discussion builds on the TAC's review of demographic and housing trends in Meeting 1. The team would like the TAC to focus on not just the percentages of housing mix, but on the rationale and trends underlying those numbers. The attached memorandum provides the rationale for different options. The efficiency measure discussion is the start of a three-part exploration of this topic. Feedback on which measures ought to be considered further will guide subsequent work on performance analysis.

The specific discussion questions, i.e. the feedback we would like from the TAC, are listed as the bulleted discussion questions under each agenda item. They are a starting point for the agenda.

1. Welcome, Introductions, Follow-ups — 10:00 AM

a.	Welcome and convene	Tom Kemper
b.	Self-introductions	All
c.	Agenda overview	Joe Dills
d.	Brief follow-ups from last meeting: vacation rentals, mixed use housing	Brian Rankin

2. Housing Mix — 10:15 AM

Information and action

a.	Building on past work	Brian Rankin
b.	Context – Very brief recap of Goal 10 and Remand	Bob Parker

For additional project information, visit the project website at http://bend.or.us or contact Brian Rankin, City of Bend, at brankin@bendoregon.gov or 541-388-5584

Accessible Meeting/Alternate Format Notification
This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the City Recorder no later than 24 hours in advance of the meeting at rchristie@ci.bend.or.us, or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

requirements. *Note: this will be a very brief recap, please see Need Housing Mix memo in this packet (and previous packet) for more detail.*

c. Key trends – presentation of the basis for determining Bend's needed housing mix — Bob
   - What questions/comments does the TAC have on the context and how this information will be used?

d. Housing mix options – presentation of options and rationale
   - TAC discuss and questions regarding the options — Bob
   - **Action** – Which option, or variation, does the TAC support?

3. Efficiency Measures — 11:15 AM

Information and direction

a. Introduction – Statutory and Remand requirements, EM examples, and EMs in use in Bend today — Mary Dorman
   - What questions/comments does the TAC have on this information?

b. Guidance for further work – The TAC will go through the list and address the following questions which will guide work brought to the next meeting.
   - For EMs listed which are in place in Bend today, are there revisions that should be considered to make them more effective and useful?
   - For EMs listed that are not in place in Bend today, which ones should be considered?
   - Are there ideas for additional EMs?

4. Project News — 12:15 PM

a. Announcements and updates — Brian and Joe

b. News from the other TACs — Dills

5. Adjourn — 12:30 PM

City of Bend
Residential Lands Technical Advisory Committee
Meeting Notes
Date: August 4, 2014

The Residential Lands TAC held its regular meeting at 10:00 am on Monday, August 4, 2014 in the City Hall Council Chambers. The meeting was called to order at 10:05 am by Brian Rankin.

Roll Call

- ☐ Kristina Barragan
- ☐ David Ford
- ☐ Kurt Petrich
- ☐ Bill Robie
- ☐ Don Senecal
- ☐ Sidney Snyder
- ☐ Kirk Schueler
- ☐ Stacy Stemach
- ☐ Gordon Howard
- ☐ Michael O'Neil
- ☐ Mike Tiller
- ☐ Laura Fritz
- ☐ Allen Johnson
- ☐ Thomas Kemper
- ☐ Katrina Langenderfer
- ☐ Lynne McConnell

Discussion

Matt Hastie will facilitate this group at future meetings
Joe Dills facilitated discussion of appointing chair and vice chair for the Residential TAC
Al Johnson volunteered to serve as Vice Chair
Brian pointed out that the TAC Chair and Vice Chair would have an additional meeting per month for prep work for next TAC meeting – about two additional hours
Tom Kemper volunteered to serve as Chair
By consensus, the Residential TAC appointed the leadership to this TAC: Tom Kemper, Chair, Al Johnson, Vice Chair, Stacy Stemach and Sid Snyder as remainder of TAC leadership

Action Items/Next Steps

Action	Assigned To
Provides slides to TAC Acronyms list	City of Bend
Vacation rentals National, regional trends data	City of Bend and APG
Trends, demographics, numbers (#'s) on housing mix projection	APG, Consultant team
Changes to housing library, potential code work changes	Fregonese and Associates and consultant team

Meeting adjourned at 12:35pm by Joe Dills.

Memorandum

August 19, 2014

To: Residential Lands Technical Advisory Committee

Cc: Bend Staff

From: APG Consulting Team

Re: Needed Housing Mix in Bend for the 2008-2028 period

This memorandum summarizes the factors that will affect the determination of needed housing mix in Bend for the 2008 to 2028 period. It describes the implications of these factors and presents options for the needed housing mix for Bend. The questions addressed in this memorandum are:

- How will demographic trends, housing affordability issues, and housing market trends affect Bend's housing mix over the 2008-2028 planning period?
- What is Bend's needed housing mix for the 2008-2028 planning period?

The purpose of this analysis is to make a determination of Bend's needed housing mix for new housing. These questions will be discussed at the second Residential Lands Technical Advisory Committee (TAC) meeting.

In the 2005 housing needs analysis, Bend proposed that 65% of new housing would be single-family detached housing types and 35% would be multifamily housing types (including single-family attached housing). The remand requires Bend to make stronger linkages between forecast growth, the demographic characteristics of current and new residents, the capacity of those residents/households to pay for housing at specific price and rent levels, and housing types that will meet that need. The remand also required Bend to forecast need based on three housing types, adding single-family attached to the mix.

The memorandum is organized into the following sections:

- **Requirements that guide the determination of needed housing mix** presents the requirements of Goal 10 for determining needed housing mix.
- **Trends affecting Bend's needed housing mix** summarizes trends about Bend's housing market, housing affordability, and demographic trends that will affect the mix of housing needed in Bend over the 2008 to 2028 period.
- **Determination of needed housing mix** synthesizes the information presented in the memorandum and presents two variations on needed housing mix in Bend.
- **Appendix A: Additional Data** presents key data tables.

REQUIREMENTS THAT GUIDE DETERMINING THE NEEDED HOUSING MIX

The language of Goal 10 and ORS 197.296 refers to housing *need*: it requires communities to provide needed housing types for households at all income levels.[1] Goal 10's broad definition of need covers all households—from those with no home to those with second homes. In the context of Goal 10 and the Goal 10 Administrative Rule (OAR 660-008), housing need is addressed through the local "Housing Needs Projection." OAR 660-008(4) defines the Housing Needs Projection as follows:

(4) "Housing Needs Projection" refers to a local determination, justified in the plan, of the mix of housing types and densities that will be:

(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;

(b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and

(c) Consistent with Goal 14 requirements.

Thus, the determination of housing need must be based on analysis of a range of data. The housing needs analysis report will present the data in detail. Appendix A summarizes key data discussed in this memorandum. State policy does not make a clear distinction between need and demand. Following is our definition, which we believe to be consistent with definitions in state policy:

- *Housing need* can be defined broadly or narrowly. The broad definition is based on the mandate of Goal 10 that requires communities to plan for housing that meets the needs of households at all income levels. Goal 10, though it addresses housing, emphasizes the impacts on the households that need that housing. Since everyone needs shelter, Goal 10 requires that a jurisdiction address, at some level, how every household will be affected by the housing market over a 20-year period. Households that cannot find and afford housing have need: they are either unhoused, in housing of substandard condition, overcrowded, or paying more than their income and federal standards say they can afford.

- *Housing market demand* is what households demonstrate they are willing to purchase in the market place. Growth in population means growth in the number of households and implies an increase in demand for housing units. That demand is met, to the extent it is, primarily by the construction of new housing units by the private sector based on its judgments about the types of housing that will be absorbed by the market.

The direction provided by the Statutes and Administrative Rules imply that the Housing Needs Projection is largely a technical exercise that involves evaluating the relationship between income, demographic characteristics, housing choice, and housing cost. The statute does not provide much direction on how to make the determination. The determination, in our view, is not solely a technical exercise—it also includes a policy component that considers what communities want. The

difference between what communities want and what the data suggest often creates tension in making the local determination of needed housing.

The Remand directs the City to describe Bend's future housing need through consideration of both historical development trends and future trends that will affect Bend's housing needs. The forecast of future housing needs must consider the needs of future residents. This memorandum addresses the requirements of Goal 10, related Statutes and Administrative Rules, and the direction in the Remand.

TRENDS AFFECTING BEND'S NEEDED HOUSING MIX

The Bend Housing Needs Analysis concludes that Bend will grow to 115,063 people,[2] resulting in the need for 16,681 dwelling units over the 2008 to 2028 period. The Remand concluded that the forecast of new housing units over the 2008-2028 period complied with applicable laws. We use the forecast for 16,681 new dwelling units as the basis for new housing need throughout this memorandum.

Cities are required to determine the average density and mix of needed housing over the 20-year planning period. The determination of needed density and mix is required to consider factors such as: trends in housing mix, housing affordability, demographic trends, and other trends.[3] This memorandum presents information necessary to understand current and historical trends in housing mix and factors that have implications for changes to housing mix. Needed density will be determined through the discussion of needed housing mix and through the discussions of land use efficiency strategies with the assistance of the Envision Tomorrow model.

This section summarizes data from a variety of sources, including the memorandum about demographics presented at the first TAC meeting.[4] Unless otherwise noted, data in this section is from the U.S. Census Bureau (American Community Survey or ACS) for 2012. Appendix A presents key data tables and charts that illustrate the information below.

Goal 10 requires cities to assess need for three specific housing types, which we refer to throughout this document:[5]

- **Single-family detached** housing includes single-family dwellings on any lot size and in any location, manufactured or mobile homes, and other detached housing types such as cottages or accessory dwelling units.
- **Single-family attached** housing is generally to one or more dwellings that are attached on one or more walls but on a separate lot, such as townhouses or rowhouses.
- **Multifamily** housing is attached housing including other attached dwellings in any location, both for renters and homeowners. Examples of multifamily housing include duplexes, condominiums, small apartment buildings, or large apartment buildings.

Historical trends in housing mix

The majority of Bend's existing housing stock is single-family detached housing.

- While the mix of housing types in Bend has varied over time, single-family detached housing has historically accounted for the majority of housing in Bend. In 2012, about 77%

of Bend's housing was single-family detached, 5% was single-family attached, and 18% was multifamily.[6] (See Table 6 in Appendix A)

- The majority of newly permitted housing over the 1999 to 2013 period was for single-family housing types.
    - Between 1999 and 2013, 76% of new dwelling units permitted were for single-family detached housing, 3% were for single-family attached, and 21% were for multifamily dwellings.[7] (Table 7).
    - Average densities in residential zones, except for the RL zone, increased by 8% to 22% during the 1998 and 2008 period.[8] This trend shows a decrease in average lot size in Bend.
- Bend's existing mix of housing is a result of a range of historical factors:
    - The City grew rapidly from a small city in 1990 to a city of more than 70,000 people by 2007. The largest source of pressure for housing over this period was the Baby Boomers (especially younger Baby Boomers), who needed housing to accommodate children.
    - The predominant type of housing built in many of Oregon's communities during the 1990's and early 2000's was single-family housing. In particular, single-family housing types dominated residential development during the high growth "boom" period from 2004 to 2007.
    - Between 1990 and 2007, about 85% of Deschutes County's population growth was from in-migration from other parts of Oregon or from outside of Oregon. Interviews with real estate professionals suggest Bend attracts in-migrants who have sufficient capital and income to afford higher-cost housing in Bend.
    - Bend annexed more than 25,000 people between 2000 and 2007, accounting for about half of Bend's growth since 1990. The majority of areas annexed were developed with relatively low-density single-family housing.

Housing affordability

Bend has a deficit of affordable housing, both for renters and homeowners. Some indicators that illustrate Bend's need for affordable housing include:

- Thirty-six percent of Bend's households were cost burdened in 2007.[9] The rate was higher for renters (38%) than for homeowners (34%). By 2012, the proportion of renter households that were cost burdened increased to 51% and remained the same for homeowners. Bend's rate of cost burden and the increase in cost burden for renters is consistent with cost burden in Deschutes County and Oregon.[10]
- The average value of an owner-occupied home in Bend in 2000 cost 3.5 times the median family income. In 2007, at the height of the housing market, the average value of an owner-occupied home was seven times the median family income. By 2012, the average value of an owner-occupied home in Bend was 4.7 times the median family income.[11]
- Bend does not have enough housing that is affordable to households with incomes below $25,000. Table 1 shows a rough estimate of housing affordability in Bend in 2012. The analysis in Table 1 is based on Census data about Bend's existing distribution of households by income, rental housing based on affordable monthly rental costs for Bend's households, and owner-occupied housing based on affordable purchase prices for Bend's households.

  Table 1 shows that Bend has a deficit of more than 5,000 dwelling units affordable to households earning less than $25,000. Households in this income range who cannot find affordable housing generally live in housing that costs more than they can afford, resulting in cost-burdened households. Some of these households may live in housing that is affordable to households earning $25,000 to $50,000.

  Table 1 also shows that a household earning median family income ($66,400) could afford a home valued up to about $200,000 in 2012. About 40% of Bend's owner-occupied dwellings were affordable to a household earning up to median family income.[12]

Table 1. Rough estimate of housing affordability, Bend, 2012

Income Level	Number of HH	Percent	Affordable Monthly Housing Cost	Crude Estimate of Affordable Purchase Owner-Occupied Unit	Est. Number of Owner Units	Est. Number of Renter Units	Surplus (Deficit)	HUD Fair Market Rent (FMR) in 2012
Less than $10,000	2,387	7%	$0 to $250	$0 to $30,000	623	223	(1,541)	
$10,000 to $14,999	1,587	5%	$250 to $375	$30,000 to $45,000	176	208	(1,204)	
$15,000 to $24,999	3,811	12%	$375 to $625	$45,000 to $75,000	135	1,029	(2,647)	Studio: $596
$25,000 to $34,999	3,933	12%	$625 to $875	$75,000 to $105,000	521	4,420	1,008	1 bdrm: $693 2 bdrm: $826 3 bdrm: $1,203
$35,000 to $49,999	4,716	14%	$875 to $1,250	$105,000 to $150,000	2,642	4,562	2,488	4 bdrm: $1,241
$50,000 to $74,999	6,318	19%	$1,250 to $1,875	$150,000 to $225,000	4,813	1,754	249	
Deschutes County 2012 MFI: $66,400			$1,660	$199,200				
$75,000 to $99,999	4,196	13%	$1,875 to $2,450	$225,000 to $300,000	3,342	902	48	
$100,000 to $149,99	3,525	11%	$2,450 to $3,750	$300,000 to $450,000	4,173	158	806	
$150,000 or more	2,160	7%	More than $3,750	More than $450,000	2,734	53	627	
Total	32,633	100%			19,159	13,307		

Source: U.S. Census 2010-2012 American Community Survey
Note: Table 1 is based on information about income and housing costs, in the context of HUD's standards for housing affordability. For example, Bend has 2,387 households with income of less than $10,000. Affordable rental costs for these households is up to $250 per month and affordable ownership costs are a dwelling up to $30,000. Bend has about 623 renter units with rent up to $250 per month and 223 owner-occupied units that cost $30,000 or less. Bend has a

deficit of 1,541 dwelling units affordable to these households (2,387 households minus 623 rental dwellings and minus 223 owner-occupied units).

- Table 2 shows the same estimate of affordability for Bend in 2007, at the height of the housing market. In 2007, Bend had a deficit of about 2,500 dwelling units affordable to households earning between $10,000 and $25,000. In addition, Bend had a deficit of nearly 4,000 dwellings affordable to households with an income of $50,000 to $100,000. The deficit of housing affordable to these households shows that, at the height of the housing market, moderate income were not able to find affordable housing especially for owner-occupied dwellings.

  The differences between Table 1 and Table 2 show the impact of the recession, with an increase in the percentage of lower-income households, and a decrease in housing costs for owner-occupied units.[13]

Table 2. Rough estimate of housing affordability, Bend, 2007

Income Level	Number of HH	Percent	Affordable Monthly Housing Cost	Crude Estimate of Affordable Purchase Owner-Occupied Unit	Est. Number of Owner Units	Est. Number of Renter Units	Surplus (Deficit)	HUD Fair Market Rent (FMR) in 2007
Less than $10,000	477	2%	$0 to $250	$0 to $30,000	361	203	86	
$10,000 to $14,999	863	3%	$250 to $375	$30,000 to $45,000	220	280	(364)	
								Studio: $505
$15,000 to $24,999	4,030	13%	$375 to $625	$45,000 to $75,000	239	1,617	(2,174)	1 bdrm: $587
$25,000 to $34,999	3,064	10%	$625 to $875	$75,000 to $105,000	358	4,433	1,727	2 bdrm: $700
								3 bdrm: $1,020
$35,000 to $49,999	4,383	14%	$875 to $1,250	$105,000 to $150,000	517	3,973	107	4 bdrm: $1,051
$50,000 to $74,999	7,222	24%	$1,250 to $1,875	$150,000 to $225,000	2,802	1,153	(3,267)	
Deschutes County 2007 MFI:		$58,700	$1,468	$176,100				
$75,000 to $99,999	4,208	14%	$1,875 to $2,450	$225,000 to $300,000	3,025	627	(556)	
$100,000 to $149,99	3,919	13%	$2,450 to $3,750	$300,000 to $450,000	5,560	201	1,842	
$150,000 or more	2,451	8%	More than $3,750	More than $450,000	4,982	67	2,598	
Total	30,617	100%			18,064	12,553		

Source: U.S. Census 2005-2007 American Community Survey

- Interviews with real estate stakeholders in Bend indicate that housing costs in the city have increased in 2014, with housing prices increasing as a result of increases in demand for housing.

The implication of this information is that Bend lacks sufficient affordable housing:

- The deficit of housing affordable to households with incomes lower than $25,000 indicates that Bend needs more affordable lower cost housing such as: small apartments, duplexes, small townhomes, accessory dwelling units, manufactured housing, and government subsidized housing.
- The rate of cost burden among homeowners and the fact that about 60% of Bend's housing is not affordable to a household earning median family income suggests that Bend has need for housing for moderate incomes such as: small single-family dwellings, cottages, townhomes, apartments, and small condominiums.

Demographic trends

The memorandum about demographics presented at the first Residential TAC meeting summarized expected demographic changes that will affect Bend's needed housing mix. Those trends and their implications for Bend's mix of needed housing are summarized below.

- **Baby Boomers**[14] are the fastest growing segment of Deschutes County's population. People over 65 years old are projected to grow from 13% of the County's population in 2000 to 24% in 2030. The County will have 40,000 more people over 65 years old in 2030 than in 2000, an increase of 268%.[15] This will result in 5,000 to 6,000 more households in Bend with a head of household who is over 65 years old.

  In 2012, about 40% of householders[16] over 65 years old in Bend had incomes of $25,000 or below. While people over 65 years old may have financial reserves (beyond income) or may own their home outright, the large share of households with incomes below $25,000 suggest that many older households will need access housing costing about $600 per month or less. About 20% of householders over 65 years old had incomes between $25,000 to $50,000 (near or below the median family income), suggesting that this group will need access to housing costing between $600 and $1,200 per month.[17]

  Implications for Housing Product Types. Baby Boomers will make a range of housing choices as they age, from continuing to remain in their homes as long as possible, to downsizing to smaller dwellings, to moving into group housing (e.g., assisted living facilities or nursing homes) as their health fails. The aging of the Baby Boomers will increase need for: small single-family dwellings, cottages, accessory dwelling units, townhomes, apartments, and condominiums. Baby Boomers who move are likely to choose housing in areas with nearby shopping and other services, such as neighborhoods with integrated services or in downtown Bend.

- **Echo Boomers**[18] are the second fastest growing segment of Deschutes County population. People aged 25 to 49 years old are projected grow by nearly 27,500 people between 2000 and 2030, an increase of 64%.[19] This will result in between 2,200 to 2,600 more households in Bend with a head of household who is between 30 and 45 years old.

  In 2012, about 17% of householders 25 to 45 years old in Bend had incomes of $25,000 or below and could afford $600 in housing costs per month. About 20% of householders in this age grouping had incomes between $25,000 to $50,000 (near or below the median family income), and could afford housing costing between $600 and $1,200 per month. About 25% of households in this age group had incomes of $50,000 to $75,000 and could afford monthly housing costs of about $1,200 to $1,900, which is the range when homeownership begins to be financially feasible in Bend.[20] As Echo Boomers age, the amount that they can afford to spend on housing may be lower than people in this age range in 2012 because of increases in debt, as discussed in the memorandum about demographic characteristics and trends affecting housing demand in Bend, which was presented at the first Residential TAC meeting.

  Implications for Housing Product Types. Growth in Echo Boomers will increase need for affordable housing for renters and homeowners such as: small single-family dwellings, cottages, accessory dwelling units, duplexes, townhomes, garden apartments, and apartments. The size of dwelling units will vary depending on household size, from single-person households to households with children. Echo Boomers who move are likely to

choose housing in areas closer to services and activities, such as downtown Bend and nearby neighborhoods, as discussed in the memorandum about demographic characteristics and trends affecting housing demand in Bend, which was presented at the first Residential TAC meeting.

- **Hispanic and Latino** population grew by more than 175% in Bend between 2000 and 2012, growing from about 2,400 people to nearly 6,700 people. The U.S. Census projects that Hispanic and Latino population will grow from about 16% of the nation's population in 2010 to 22% of the population in 2030, with growth fastest in the western U.S., as discussed in the memorandum about demographic characteristics and trends affecting housing demand in Bend, which was presented at the first Residential TAC meeting. This will result in between 2,000 to 3,000 new households in Bend with a Hispanic or Latino head of household.

  In 2012, nearly 30% of Hispanic and Latino households in Bend had incomes of $25,000 or below and could afford rents of $600 or less. About 35% of Hispanic and Latino households had incomes between $25,000 and $50,000, (near or below the median family income), and could afford housing costing between $600 and $1,200 per month. About 17% of Hispanic and Latino households had incomes of $50,000 to $75,000 and could afford monthly housing costs of about $1,200 to $1,900, which is the range when homeownership begins to be financially feasible in Bend.[21]

  Implications for Housing Product Types. Hispanic and Latino households will need affordable housing that can accommodate larger households, including multi-generational households. Growth in Hispanic and Latino households will increase need for affordable housing for renters and homeowners such as: single-family dwellings (both smaller and larger sized dwellings), duplexes, larger townhomes, garden apartments, and apartments. Ownership opportunities for Hispanic and Latino households will focus on moderate-cost ownership opportunities, such as single-family dwellings on a small lot or in a more suburban location, duplexes, and townhomes.

In addition to these large-scale demographic changes affecting Bend, development of the OSU Cascades Campus will impact housing need in Bend. OSU projects that the campus will grow to 5,000 students by 2025. The University does not have firm or approved plans for dormitories to house students. Some students may live on campus in dormitories, may already live in Bend, or may commute to the campus from a nearby community. Some students, however, will move to Bend specifically to attend the University and will need student housing. Demand for off-campus student housing may significantly affect Bend's housing market, depending on how many students need off-campus housing and how soon they need it.[22]

DETERMINATION OF NEEDED HOUSING MIX

Table 3 presents variations to Bend's needed housing mix based on conclusions from the housing trends, current and future need for affordable housing, and demographic trends. The information in Table 3 shows the difference between the needed housing mix presented to the Remand Task Force in the January 2014 version of the Housing Needs Analysis and two potential variations on Bend's needed housing mix. The determination of needed housing mix is a qualitative assessment based on quantitative data about the relationships described in prior sections between income, demographic characteristics, housing choice, and housing costs. Table 3 shows:

- **Revised HNA.** This is the housing mix in the January 2014 HNA, presented to the Remand Task Force. This housing mix is based on the housing mix used in the 2008 HNA, with 65% of new housing in single-family detached housing and 35% in multifamily housing. In the remand, Bend was directed to make stronger linkages between forecast growth, the demographic characteristics of current and new residents, the capacity of those residents/households to pay for housing at specific price and rent levels, and housing types that will meet that need.
- **Trend 1.** In comparison to the Revised HNA mix, Trend 1 shows that Bend will need about 830 fewer single-family detached dwellings and about 830 more single-family attached dwellings.
- **Trend 2.** In comparison to the Revised HNA mix, Trend 2 shows that Bend will need about 1,670 fewer single-family detached dwellings, about 1,330 more single-family attached dwellings, and 330 more multifamily dwellings.

Table 3. Variations in Housing Mix, Bend, 2008-2028

	Revised HNA*		Trend 1		Trend 2	
	Units	Percent of new units	Units	Percent of new units	Units	Percent of new units
Single Family Detached	10,843	65%	10,009	60%	9,175	55%
Single Family Attached	334	2%	1,168	7%	1,668	10%
Multifamily	5,505	33%	5,505	33%	5,838	35%
Total	16,681	100%	16,681	100%	16,681	100%

Source: City of Bend Housing Needs Analysis, ECONorthwest Analysis
**Note: The "Revised HNA" mix is the mix proposed in the January 2014 version of the Housing Needs Analysis that was presented to the Remand Task Force.*

- Single-family detached housing would decrease from 75% of Bend's housing stock in 2007 to around 68% (Trend 2) to 70% (Trend 1).
- Single-family attached housing would increase from 3% of Bend's housing stock in 2007 to around 5% (Trend 1) to 6% (Trend 2).
- Multifamily housing would increase from 22% of Bend's housing stock in 2007 to around 25% (Trend 1) to 26% (Trend 2).

Table 4 combines the mix of Bend's housing stock in 2007 with the variations to Bend's housing mix in Table 3. For example, Bend had 25,624 single-family detached dwellings in 2007. Under

Trend 1, Bend would add 10,009 additional single-family detached dwellings, for a total of 35,633 single-family detached dwellings by 2028.

- Single-family detached housing would decrease from 75% of Bend's housing stock in 2007 to around 68% (Trend 2) to 70% (Trend 1).
- Single-family attached housing would increase from 3% of Bend's housing stock in 2007 to around 5% (Trend 1) to 6% (Trend 2).
- Multifamily housing would increase from 22% of Bend's housing stock in 2007 to around 25% (Trend 1) to 26% (Trend 2).

Table 4 shows that by 2028:

- Single-family detached housing would decrease from 75% of Bend's housing stock in 2007 to around 68% (Trend 2) to 70% (Trend 1).
- Single-family attached housing would increase from 3% of Bend's housing stock in 2007 to around 5% (Trend 1) to 6% (Trend 2).
- Multifamily housing would increase from 22% of Bend's housing stock in 2007 to around 25% (Trend 1) to 26% (Trend 2).

Table 4. Estimate of the Mix of Bend's Housing Stock, 2007, Trend 1, and Trend 2

	2007		Trend 1 (in 2028)		Trend 2 (in 2028)	
	Units	Percent of units	Units	Percent of units	Units	Percent of units
Single Family Detached	25,624	75%	35,633	70%	34,799	68%
Single Family Attached	1,151	3%	2,318	5%	2,819	6%
Multifamily	7,385	22%	12,890	25%	13,223	26%
Total	34,160	100%	50,841	100%	50,841	100%

Source: U.S. Census American Community Survey, 2007 data about Bend's housing stock combined with ECONorthwest Analysis

Rationale for variations of Bend's needed housing mix

The information about housing affordability and demographic changes in Bend (and across the nation) support the conclusions that Bend's future housing need will be different from the housing produced in the city over the last decades. The rationale for Trend 1 and Trend 2 describe potential differences in the future housing need of Bend's residents, as summarized below.

- **Trend 1 Rationale.** This trend reflects a decrease in the share of single-family detached housing, a moderate increase in single-family attached housing, and a substantial increase in multifamily housing. These changes are largely driven by need for affordable housing and changing housing preferences of people moving to Bend and existing residents.
    - Some Baby Boomers who move to Bend choose smaller housing, such as smaller single-family detached housing, cottages, townhomes, and apartments. Some continue to choose larger single-family dwellings. Baby Boomers are more likely to be homeowners, but as they age, a larger share will choose to rent or to move into senior or assisted living.

  - Bend will continue to attract (and will retain) younger households and households with young families, predominantly Echo Boomers. The younger people who Bend attracts and retains will predominantly need affordable multifamily housing, such as apartments or duplexes. As they age, these households can afford small single-family detached housing (both new and existing), cottages, townhomes, and apartments. As a result of financial constraints, Echo Boomers are more likely to be renters, especially in their younger years.
  - Bend's Hispanic and Latino population will continue to grow, consistent with national and state forecasts. More recent immigrants (such as first generation immigrants) will need rental options for larger households, such as large single-family dwellings, large townhouses, or large apartments. This housing is likely to be found in more affordable suburban locations. Hispanic households with higher income, such as second and third generation households, will need both rental and ownership opportunities, such as small single-family detached (both new and existing), cottages, townhomes, and apartments.
  - Growth in OSU's campus will occur at about the rate than the University forecasts. The University provides a substantial amount of dormitory housing, some students live in existing Bend households, and some students commute to campus from nearby communities. About half of students need affordable rental housing in Bend, such as existing lower-cost single-family housing, duplexes, apartments, or housing designed for students. Students will prefer to live closer to the University if affordable housing is available.
- **Trend 2 Rationale.** This trend is a variation of Trend 1. It shows greater need for affordable single-family attached and multifamily housing as a result of faster and more growth in Echo Boomers, Hispanics and Latinos, and student households.
  - Some Baby Boomers who move to Bend increasingly choose smaller housing, such as smaller single-family detached housing, cottages, townhomes, and apartments. Some continue to choose larger single-family dwellings. Baby Boomers are more likely to be homeowners but as they age a larger share will choose to rent or to move into senior or assisted living.
  - Bend attracts younger households and households with young families at a higher rate, predominantly Echo Boomers. Some former students at OSU Cascades may choose to live in Bend after completing college. Higher housing costs and growing student and other debt increases demand for affordable multifamily housing, such as apartments or duplexes, and decreases opportunities for homeownership. As they age, these households can afford small single-family detached housing (both new and existing), cottages, townhomes, and apartments. As a result of financial constraints, Echo Boomers are more likely to be renters.
  - Bend's Hispanic and Latino population grows at faster than historical rates. More recent immigrants (such as first generation immigrants) will need rental options for larger households, such as large single-family dwellings, large townhouses, or large apartments. This housing is likely to be found in more affordable suburban locations. Hispanic households with higher income, such as second and third generation households, will need both rental and ownership opportunities, such as small single-family detached (both new and existing), cottages, townhomes, and apartments.

- Growth in OSU's campus will occur at a rate faster than the University forecasts. The University provides some dormitory housing, some students live in existing Bend households, and some students commute to campus from nearby communities. Substantially more than half of students need affordable rental housing in Bend, such as existing lower-cost single-family housing, duplexes, apartments, or housing designed for students. Students will prefer to live closer to the University if affordable housing is available.

Estimate of future housing affordability

Table 5 combines information about income and housing costs in Bend to present an estimate of housing affordability for the 16,681 new households that Bend is forecast to add over the 2008 to 2028 period. Table 5 uses assumptions about the distribution of households by income and housing affordability from Table 1. Table 1 assumes that household income and housing costs have a similar relationship in 2028 as they did in 2012. Under that assumption, Table 5 shows that Bend will need:

- About 1,200 dwelling units affordable to households with income of less than $25,000. These housing types will primarily be existing smaller housing, such as apartments, small duplexes or townhouses, manufactured dwellings, accessory dwelling units, or government subsidized housing.
- About 6,000 dwelling units affordable to households with income of $25,000 to $50,000. These housing types will include apartments, townhomes, duplexes, manufactured dwellings, or small single-family dwellings (e.g., cottages).
- About 5,500 dwelling units affordable to households with income of $50,000 to $100,000. These housing types will include townhomes, small and moderate-sized single-family dwellings, and apartments.
- About 3,700 dwelling units affordable to households with income of more than $100,000. These housing types will include all sizes of single-family dwellings, townhomes, and apartments or condominiums.

Table 5. Rough Estimate of Housing Affordability for New Households Bend for the 2008-2028 period

Income Level	Number of HH	Percent	Affordable Monthly Housing Cost	Crude Estimate of Affordable Purchase Owner-Occupied Unit	Est. Number of Owner Units	Est. Number of Renter Units	Surplus (Deficit)
Less than $10,000	1,220	7%	$0 to $250	$0 to $30,000	325	112	(783)
$10,000 to $14,999	811	5%	$250 to $375	$30,000 to $45,000	92	104	(615)
$15,000 to $24,999	1,948	12%	$375 to $625	$45,000 to $75,000	71	516	(1,362)
$25,000 to $34,999	2,010	12%	$625 to $875	$75,000 to $105,000	272	2,216	478
$35,000 to $49,999	2,411	14%	$875 to $1,250	$105,000 to $150,000	1,380	2,287	1,257
$50,000 to $74,999	3,230	19%	$1,250 to $1,875	$150,000 to $225,000	2,514	879	164
$75,000 to $99,999	2,145	13%	$1,875 to $2,450	$225,000 to $300,000	1,746	452	53
$100,000 to $149,99	1,802	11%	$2,450 to $3,750	$300,000 to $450,000	2,180	79	457
$150,000 or more	1,104	7%	More than $3,750	More than $450,000	1,428	26	351
Total	16,681	100%			10,009	6,672	

Source: U.S. Census 2010-2012 American Community Survey

CONCLUSION

The housing mix options presented above (Trends 1 and 2) both reflect the income, demographic, and other trend information required by Goal 10 and related regulations. The project team believes they are both “defensible” and comply with the requirements of Goal 10 and the Remand. They reflect different emphasis in how various trends may occur in the coming years.

At the upcoming TAC meeting, the TAC will discuss the rational for the change in housing mix. The team suggests that the Residential TAC makes a recommendation about proceeding with one of the given variations to the needed housing mix.

APPENDIX A. ADDITIONAL DATA

Table 6 presents historical housing mix in Bend in 2000, 2007, and 2012, based on U.S. Census data. Since 2000, about three-quarters of Bend's housing was in single-family detached housing types. Single-family attached housing accounted for about 5% of the city's housing stock. And multifamily housing accounted for about 20% of the city's housing stock.

Table 6. Historical housing mix for all housing stock, Bend, 2000, 2007, and 2012

	2000		2007		2012	
	Units	Percent of new units	Units	Percent of new units	Units	Percent of new units
Single Family Detached	17,301	77%	25,624	75%	26,659	77%
Single Family Attached	792	4%	1,151	3%	1,772	5%
Multifamily	4,405	20%	7,385	22%	6,413	18%
Total	22,498	100%	34,160	100%	34,844	100%

Source: U.S. Census 2000 and 2007 and 2012 American Community Survey

Table 7 shows the mix of new dwelling units permitted in Bend between 1999 and 2013.

Table 7. Mix of new dwelling units permitted, Bend, 1999 and 2013

	Units Permitted 1999 to 2013	
	Units	Percent of new units
Single Family Detached	13,169	76%
Single Family Attached	542	3%
Multifamily	3,637	21%
Total	17,348	100%

Source: City of Bend building statistics

Notes

[1] The information in this section was included in the Residential TAC Meeting 1 agenda packet. It is repeated here because it is very relevant to the housing mix conclusions presented later in this memorandum.
[2] Based on the Deschutes County Coordinated Population Forecast 2000-2025 (2004).
[3] These requirements are described in ORS 197.296(7), as follows:

The number, density and average mix of housing types of urban residential development that have actually occurred;
Trends in density and average mix of housing types of urban residential development;
Demographic and population trends;
Economic trends and cycles; and
The number, density and average mix of housing types that have occurred on the buildable lands.

[4] The memorandum was titled "Demographic Characteristics and Trends that will Affect Housing Demand in Bend for the 2008-2028 period" and dated July 29, 2014.
[5] Goal 10 defines needed housing types as "housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels." ORS 197.303 defines needed housing types to include attached and detached single-family housing, multiple family housing for both owner and renter occupancy, and other housing types such as government assisted housing or manufactured homes in parks.
[6] U.S. Census, American Community Survey, 2007 and 2012 data
[7] City of Bend building statistics
[8] City of Bend building statistics and buildable lands inventory
[9] Cost burden is a widely used standard for determining housing affordability. HUD's guidelines are that households should pay no more than 30% of their gross income on housing costs (including payments, interest, rent, utilities, and insurance). Households paying more than 30% of their income on housing experience "cost burden."
[10] U.S. Census, American Community Survey, 2007 and 2012 data
[11] U.S. Census 2000 and American Community Survey, 2007 and 2012 data
[12] U.S. Census, American Community Survey, 2012 data about income, owner-occupied housing value, and rental costs; HUD standards for housing affordability
[13] U.S. Census, American Community Survey, 2012 data about income, owner-occupied housing value, and rental costs; HUD standards for housing affordability
[14] Baby Boomers are people born from about 1947 to the early 1960's. By 2028, Baby Boomers will range in age from 62 to 81 years old.
[15] Oregon Office of Economic Analysis, *Forecasts of Oregon's County Populations and Components of Change, 2000 – 2040*, [Excel Workbook] (April 2004); available from http://www.oregon.gov/DAS/oea/Pages/demographic.aspx#Long_Term_County_Forecast.
[16] The Census defines "householder" as the head of household. Each respondent to the Census individually identifies the person who is the householder.
[17] U.S. Census, American Community Survey 2012 data; HUD standards for housing affordability
[18] Echo Boomers are people born from the early 1980's to about 2000. By 2028, Echo Boomers will range in age from 31 to 44 years old.
[19] Oregon Office of Economic Analysis, *Forecasts of Oregon's County Populations and Components of Change, 2000 – 2040*, [Excel Workbook] (April 2004); available from http://www.oregon.gov/DAS/oea/Pages/demographic.aspx#Long_Term_County_Forecast.
[20] U.S. Census, American Community Survey 2012 data; HUD standards for housing affordability
[21] U.S. Census, American Community Survey 2012 data; HUD standards for housing affordability
[22] Final Recommendations (2014) OSU Cascades Housing Task Force

Memorandum

August 19, 2014

To: Residential Lands Technical Advisory Committee

Cc: Bend Staff

From: APG Consulting Team

Re: Introduction to Land Use Efficiency Measures

INTRODUCTION: WHY LOOK AT EFFICENCY MEASURES?

Statutory and Administrative Rule Requirements

State statute (ORS 197.296) requires cities to consider land use efficiency measures if the housing needs analysis finds that the City may not meet identified housing needs. Specifically, the statute states:

> *(6) If the housing need... is greater than the housing capacity..., the local government shall take one or more of the following actions to accommodate the additional housing need:*
>
> *(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. ...*
>
> *(b) Amend its comprehensive plan, regional 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 the next 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.*
>
> *(7) ...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..., or if that mix is*

> *different from the actual mix of housing types..., 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.* (emphasis added)

Oregon Administrative Rule (OAR) 660-024-0050, for UGBs, states:

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

Both require cities to consider efficiency measures and allow UGB expansion only if needs cannot reasonably be accommodated within the existing UGB.

Remand Requirements

The Director's Decision from the Remand identifies a number of efficiency measures that the City should consider (drawn from the city's own Residential Lands Study), but that list is not intended to be exclusive or directive; it is up to the City to determine what is reasonable to accommodate its future housing needs within its UGB. The identified measures, which are included in Appendix A, must be considered, but are not required to be implemented if they are not reasonable or appropriate. Specific measures called out in the Remand or Director's Decision are identified in the table that follows.

POTENTIAL EFFICIENCY MEASURES FOR CONSIDERATION

Overview

This memorandum presents a menu of land use efficiency strategies for Bend to consider. This memorandum is not intended to provide an in-depth discussion of policy or code language or describe how to implement and administer specific policies; rather, we discuss strategies in broad terms.

It is common for jurisdictions to adopt combinations of strategies to manage growth and improve the efficiency and holding capacity of residential lands. Such strategy groupings, however, are not necessarily cumulative in their intent or impact. Strategies that address similar issues may not be mutually reinforcing. For example, having strategies in residential zones for maximum lot size and minimum density essentially address the same issue — "underbuild" in residential

zones. Thus, Bend should carefully consider their existing strategies and code provisions and evaluate each strategy both individually and in consideration of other strategies. It is also important to consider market dynamics when evaluating land use efficiency strategies. Strategies such as density bonuses or transfer of development rights (TDRs) may be of limited effectiveness if they encourage building types or densities that have little demand or are not economically viable.

Sources of Potential Efficiency Measures

Measures specifically identified in the Remand or Director's Report are included in Appendix A, numbered by directive (numbers do not start at one because this is a subset of all Remand directives).

DLCD has a workbook titled "Planning for Residential Growth: A Workbook for Oregon's Urban Areas" that provides guidance to local governments on residential land needs analysis and steps in the UGB process, including efficiency measures. Measures listed in that document have been included for consideration as well.

In addition, the consultant team has identified additional strategies based on similar work with other jurisdictions.

Description of Land Use Efficiency Measures

Efficiency Measure	Source	Description	Bend Implementation to Date	Scale of Impact	Potential Application in Bend
Appropriate Plan & Zone Designations					
1. Rezone for higher density along transit corridors and in neighborhood centers	Remand #38	Encouraging higher density housing near transit corridors and near neighborhood services supports future transit service, provides walkable access to services, and enables more people to take advantage of transit service.	City has reviewed and approved 3 to 4 owner-initiated quasi-judicial applications for zone changes to higher density zones and has an adopted Public Transit Plan. In addition, residential development is allowed within commercial zones, including in neighborhood centers.	Scale of impact depends on the amount and location of land rezoned and the densities allowed on the rezoned land.	Several transit routes (Route 2 to the southwest and Route 6 to the east) serve low density neighborhoods in places, and many neighborhoods near transit routes are standard residential densities. This project will evaluate other potential areas near neighborhood centers where rezoning could be considered.
2. Split the RS zone: encourage redevelopment in some areas, preservation in others	Remand # 39	The RS zone covers much of the city and allows a range of densities. Tailoring residential zoning to protect established neighborhoods while encouraging infill or redevelopment in others could allow additional density in appropriate locations.	None.	Scale of impact depends on the amount and location of land rezoned and the densities allowed on the rezoned land.	This measure could distinguish between developed, established neighborhoods, and those with more development or redevelopment potential to provide different zoning standards for each.
3. Upzone where appropriate for market conditions and public investment plans	Remand #40, DLCD Workbook	Examining residential land that is well-served by infrastructure and where there is market demand for more dense housing for potential zone changes to increase allowed density.	None.	Scale of impact depends on the amount and location of land rezoned and the densities allowed on the rezoned land.	The city needs to adopt final sewer and stormwater PFPs to document any upzones will have adequate public facilities.
4. Upzone to maximum allowed under General Plan designation	DLCD Workbook	In some communities, the General Plan designation can translate to several possible zoning designations. However, in Bend, nearly all Plan designations are implemented by a single zoning designation.	None.	Small.	This has limited applicability because General Plan and zoning designations are essentially the same in Bend.
5. Increase density for large blocks of vacant land	Remand #33	Larger blocks of vacant land have more potential to accommodate a variety of housing types and lot sizes while still providing transitions to existing development around the edges.	None.	Scale of impact depends on the amount and location of land rezoned and the densities allowed on the rezoned land.	This is mostly applicable to large, vacant RS zoned parcels.
Increase residential density standards					
6. Establish minimum residential densities in all zones	Consultant team	This policy is typically applied in single-family residential zones and places a lower bound on density. Minimum residential densities in single-family zones are sometimes implemented through maximum lot sizes. In multiple-family zones they are usually expressed as a minimum number of dwelling units per net acre. Such standards are typically implemented through zoning code provisions in applicable residential zones.	Adopted in 2006 Development Code.	**Moderate to large**. The actual impact depends on the observed amount of underbuild and the minimum density standard. (Further analysis needed to quantify impact from 2006 code change.)	All zones have minimum densities. These could be adjusted in some zones (see below).

Efficiency Measure	Source	Description	Bend Implementation to Date	Scale of Impact	Potential Application in Bend
7. Increase minimum density standards in RS and RM zones	Remand #42	Minimum density standards are fairly low in the RS and RM zones, which account for much of the residential land in the city.	None.	**Moderate to large**. The actual impact depends on the observed amount of underbuild and the minimum density standard.	This would apply to future development in all land zoned RS or RM; existing development would not be affected.
8. Provide density bonuses to developers	Consultant team	The local government allows developers to build housing at densities higher than are usually allowed by the underlying zoning. Density bonuses are commonly used as a tool to encourage greater housing density in desired areas, provided certain requirements are met. They are sometimes used to incentivize provision of affordable housing, mixed use, or community amenities. This strategy is generally implemented through provisions of the local zoning code and is allowed in appropriate residential zones. Bonuses can increase densities in urban areas and create an incentive for providing neighborhood amenities.	Bend's Manufactured Home Park Redevelopment Overlay offers density bonuses for existing manufactured home parks that either continue in this use or are redeveloped with an affordable housing component.	**Small to Moderate**. Depending on the type and amount of bonus, this approach can result in densities of 20-30% or more of allowable density.	This may be most appropriately applied in places where there is demand for higher densities than are allowed under the current zoning, and where amenities are currently lacking.
Permitted Uses / Housing Types					
9. Eliminate PUD and clustering tools in the UAR and SR2.5 zones to preserve large lots for urban dev.	Remand #41	The UH-10 and and UH-2 ½ zones limit the number of new homes that can be created to 1 per 10 acres and 1 per 2.5 acres, respectively, but new lots can be no more than ½ acre. This means that larger tracts that are large enough to allow multiple homes to be built based on the minimum densities can create multiple 1/2-acre lots, while leaving the remaining land undivided.	None.	**Small.** This would have little impact on capacity of the existing UGB, but might allow for more efficient urbanization of the urban area reserve.	This would primarily apply within the urban area reserve.
10. Allow ADUs in all single family zones	Consultant team	The term accessory dwelling unit (ADU) refers to an independent dwelling unit that shares, at least, a tax lot in a single-family zone. Some ADUs share parking and entrances. Some may be incorporated into the primary structure; others may be in accessory structures. ADUs can be distinguished from “shared” housing in that the unit has separate kitchen and bathroom facilities. ADUs can be permitted outright or with conditional use approval. Some ordinances only allow ADUs where the primary dwelling is owner-occupied. Densities are increased within existing developed areas with minimal visual and neighborhood disruption.	Conditional use in SR 2 1/2, RL, RS (lots created prior to 1998); Permitted subject to standards in all other R zones on lots created after 11/1998	**Small**. Communities that have adopted ADU ordinances have generally reported that few applications occur each year. Moreover, single-family subdivisions may have CC&Rs that prohibit ADUs.	Conditional use review can be a disincentive for ADUs in SR 2 1/2, RL and RS zones. Consider permitting subject to ADU and design standards.

Efficiency Measure	Source	Description	Bend Implementation to Date	Scale of Impact	Potential Application in Bend
11. Allow clustered residential development	Consultant team	Clustering allows developers to increase density on portions of a site, while preserving other areas of the site. Clustering is a tool most commonly used to preserve natural areas or avoid natural hazards during development. It uses characteristics of the site as a primary consideration in determining building footprints, access, etc. Clustering is typically processed during the site review phase of development review. Clustering may allow more efficient use of land in addition to providing open space.	On-site density transfer and transfer of density to contiguous property is allowed for sites with floodplains, Goal 5 resources, slopes over 25%, wetlands, Areas of Special Interest, and significant tree groves (subject to BDC 3.5.100).	**Moderate**. Clustering can increase density, however, if other areas of the site that could otherwise be developed are not developed, the scale of impact can be reduced.	No further code modifications are recommended on this item.
12. Allow cottage housing development where appropriate	Consultant team	Cottage housing consists of multiple detached, site-built homes on a single lot or on small lots around a shared open space. It can provide a more affordable housing option and can also address changing demographics.	This housing type is not specifically identified in the use table for residential zones in the development code. The Northwest Crossing Overlay zone specifically describes and allows this housing type. If the units are all on a single lot, this would considered multi-family housing and would be allowed in the RM, RM-10, and RH zones.	**Small to moderate**. Impact depends on whether cottage housing is allowed only in areas where townhomes and similar-density housing types are already allowed, or whether it is allowed in single-family zones where attached housing is not allowed.	Could be appropriate as a way to increase densities while maintaining a single-family home appearance and character within existing neighborhoods, or new planned developments.
13. Allow co-housing	Consultant team	Co-housing communities are usually designed as attached or single-family homes along one or more pedestrian streets or clustered around a central courtyard. Communities range in size from 7 to 67 units, the majority of them housing 20 to 40 households. They generally have a common house with shared facilities, such as a large dining room and kitchen, lounge, recreational facilities, children's spaces, a guest room, workshop, and/or laundry room.	One co-housing project has been built in Bend. It was designed as 39 single-family homes on seven acres, with common open space and a common house utilizing an existing barn on the property.	**Small**. Co-housing may or may not be built at a higher density than traditional single family subdivisions.	Modifications to the code to allow Cottage Housing more broadly (see above) would make versions of co-housing that have smaller individual lots possible, allowing for this type of housing to be built at higher densities.
14. Allow duplexes, townhomes and condos	Consultant team	Duplexes, townhomes, and other attached housing products can achieve higher densities than detached single family homes.	These housing types are allowed in the RM-10, RM, and RH zones. In addition, duplexes and triplexes are conditional in the RL and RS zones and townhomes are conditional in the RS zone.	**Small**. Making these housing types more broadly allowed is not generally appropriate, with the exception of allowing duplexes on corner lots, as discussed at right. This would affect a limited number of properties.	Code amendments could be considered to allow duplexes on corner lots in all single family zones with specific standards (orientation of entrances, etc.). This would allow slightly more housing variety in single family residential zones with little impact on neighborhood character.
15. Allow multi-family in commercial zones	Consultant team	Allowing multi-family housing in commercial zones can increase the opportunities to build higher density housing types, especially in locations that have good access to commercial services.	Bend currently has three mixed-use zones that allow both residential and commercial development. In addition, all four of Bend's Commercial Districts allow residential use as part of a mixed use development.	Already done.	No further code modifications are recommended.

Efficiency Measure	Source	Description	Bend Implementation to Date	Scale of Impact	Potential Application in Bend
Appropriate development / design standards					
16. Establish maximum lot size standards	Consultant team	This policy places an upper bound on lot size and a lower bound on density in single-family zones. For example, a residential zone with a 6,000 sq. ft. minimum lot size might have an 8,000 sq. ft. maximum lot size yielding an effective net density range between 5.4 and 7.3 dwelling units per net acre.	Not included in current development code. Minimum density expressed in units per gross acre.	Scale of impact depends on whether maximum lot size reduces effective minimum density and degree of observed underbuild.	May not be consistent with Bend's preferences for larger lots and open space. May be more appropriate to use minimum density and continue to allow flexibility on maximum lot size to allow developers to respond to site conditions while ensuring a certain overall capacity on residential land.
17. Allow small residential lot sizes, small lot allowance, lot size averaging	DLCD Workbook	Small residential lots are generally less than 5,000 sq. ft. This policy allows individual small lots within a subdivision or short plat. Small lots can be allowed outright in the minimum lot size and dimensions of a zone, or they could be implemented through the subdivision or planned unit development ordinances.	The code currently allows lot sizes smaller than 5,000 square feet in the RS, RM-10, RM, and RH zones. Lot size averaging is generally not allowed, except where residential compatibility standards require larger lot sizes on the edges of a development. In this case, smaller lots can sometimes be created on the interior of the subdivision.	**Small.** This would not increase the overall density within a given zone. It might help provide greater flexibility on lot size within a given zone or subdivision, which could expand housing choice slightly and increase housing variety within neighborhoods.	Measures to allow lot size averaging, within certain tolerances and maintaining the same overall maximum density, could be introduced broadly within the residential zones.
18. Increase maximum building heights	DLCD Workbook	Increasing maximum building heights in zones that allow multi-family development can make it possible for more developers to build to the maximum density allowed by the zone. In commercial and mixed use zones, where residential density is not regulated directly, increasing building height can allow more potential for vertical mixed-use development or for more residential development on upper floors within a mixed use project.	Bend did this in the Central Business District (CB) Zone in 2004-2005. In addition, all commercial zones (except in one specific location) allow a 10-foot increase in height if residential uses are provided above the ground floor.	Scale of impact depends on how broadly this is applied and whether there is demand for taller multi-story housing or mixed use development in those locations.	Could be considered in targeted locations, such as along transit routes or in the downtown. However, building heights were considered as part of the 3rd Street Corridor planning project, and there was little public support for any significant increases in heights.
19. Reduce parking requirements	DLCD Workbook	Because surface parking can consume a significant portion of a development site, it can effectively limit achievable densities. Reducing parking requirements can allow developments to reach the maximum density allowed for the zone and lead to more efficient land use.	Development within the Central Business District can pay a fee in lieu of providing off-street parking on the property. In other zones, on-street parking may be counted towards up to 50% of the total parking requirement.	Scale of impact depends on the degree to which parking requirements are constraining achievable densities and whether developers and lenders are comfortable building less parking than is currently required.	May be an important strategy for neighborhood centers, where site sizes are small and have difficulty meeting parking requirements for otherwise desirable projects.

Efficiency Measure	Source	Description	Bend Implementation to Date	Scale of Impact	Potential Application in Bend
20. Reduce street widths and turning radii	DLCD Workbook, TPR	This policy is intended to reduce land used for streets and slow down traffic. Reduced street width standards are most commonly applied on local streets in residential zones.	Current local street standards in residential zones allow narrower streets (as narrow as 24' in paved width) in certain zones if on-street parking is not allowed or is limited to one side of the street. However, right-of-way is a minimum of 60' regardless of paved width.	**Small**. Because Bend calculates maximum residential density based on gross site acres, reducing the amount of land needed for streets will not change the allowable maximum number of units. However, for some projects, the minimum lot size plus street dedication requirements may drive the feasible number of units, in which case a reduced right-of-way width for narrower streets could slightly increase potential density.	Reduced right-of-way requirements for narrower streets could be considered in the residential zones. However, any revisions to local street standards will need to be coordinated closely with Bend Fire Department. The Fire Department has expressed concern in the past about getting fire equipment through narrower residential streets where parking is allowed on both sides.
21. Reduce setback requirements	DLCD Workbook	On small development sites, setback requirements can limit the achievable density to less than that allowed by the zone. Reducing setback requirements can allow building on more of the lot and can provide flexibility for challenging sites.	Current development standards allow "zero lot-line" houses: shifted to one side of the lot, with a 3' minimum setback on one side and a 7' minimum setback on the other (this does not decrease the total side setback area but creates more usable space for narrow lots).	**Small.** Setback standards are unlikely to limit development potential except on very small sites.	Prototypical buildings can be tested as part of this project to determine whether or to what extent setback standards are constraining development potential. This may reveal specific zones or instances in which adjustments would be appropriate.
22. Increase maximum lot coverage standards	DLCD Workbook	Maximum lot coverage standards, in conjunction with height limits, can effectively limit achievable density. Smaller lots and more urban development styles will generally mean a higher percentage of the lot is developed. Allowing for a higher lot coverage standard can allow development of reasonable size homes on smaller lots and for more urban-style attached housing.	Current lot coverage standards range from 35% to 50% depending on the zone and housing type.	**Small to moderate**. In conjunction with other changes, such as reductions to parking requirements and/or allowing lot size averaging, this could allow more sites to build out to their maximum allowed density.	Prototypical buildings can be tested as part of this project to determine whether or to what extent maximum lot coverage standards are constraining development potential. This may reveal specific zones or instances in which adjustments would be appropriate.
23. Revise/adopt design standards for neighborhood compatibility	DLCD Workbook	Design standards for neighborhood compatibility can be used to increase public acceptance of attached housing types within or in proximity to single-family neighborhoods. Clear and objective standards can lead to improved design without adding undue burden to attached housing developers.	Bend has architectural design standards applicable to all attached housing. There is a clear and objective track as well as a discretionary track. (There are also neighborhood compatibility standards that limit density of new development adjacent to existing large lots, but these generally reduce rather than increase density.)	**Small**. This does not have an immediate impact on density; however, over time, it may increase a community's openness to attached housing types within or adjacent to single-family neighborhoods.	No further code revisions are recommended.

Efficiency Measure	Source	Description	Bend Implementation to Date	Scale of Impact	Potential Application in Bend
Review processes					
24. Require master planning to promote desired housing types and densities	DLCD Workbook	Large sites, areas with fragmented ownership, or areas newly added to the UGB can be required to undergo master planning to ensure efficient use of land and/or to integrate multiple housing types within a single development in the most compatible way possible.	The city can require master planning upon annexation to the city for areas that are highly parcelized in order to ensure that the land is developed efficiently rather than piecemeal in a way that limits overall development potential.	**Moderate to large**. This tool can be effective for increasing the development potential of fragmented areas and for encouraging larger development projects to include a variety of housing types.	This may be most applicable for lands that are brought into the UGB. It may also be useful for remaining large undeveloped properties within the current UGB in order to ensure they are used to their full potential.
25. Establish appropriate level of citizen review (Design Review Board)	DLCD Workbook	Where higher density housing projects are subject to discretionary review processes that include public hearings or other requirements for public review and comment, these procedures can become burdensome and reduce the production of the affected housing type or scale of project. However, when review processes are inadequate, neighborhood opposition to density may increase, which may have the effect of reducing density over time.	Bend's existing affordable housing incentives include expedited review and permitting for affordable housing projects, subject to BDC 3.6.200(C). The city already provides a two-track system for design review for attached housing, offering a clear and objective path as well as design review through a Type II process.	**Small**. The public review processes in Bend for attached housing are not excessive.	No further code revisions are recommended on this subject.
Adjust fees, taxes and incentives					
26. Provide multifamily housing tax credit to developers	Consultant team	Local governments can provide tax credits to developers for new or rehabilitated multi-family housing. Tax credits provide an incentive to developers by reducing future tax burden. In some markets, this can make projects financially feasible. This policy is intended to encourage development of multifamily housing, primarily in urban centers. This policy is primarily applicable in larger cities and is typically offered for projects that meet specific criteria.	None.	**Small to moderate**. Successful cities in the Puget Sound Region typically facilitate fewer than 100 dwelling units per year using this policy.	If applied in Bend, this type of policy could be applied to affordable housing projects or to higher density projects in transit corridors.
27. Reduce permitting fees for desired project types	DLCD Workbook	The fees charged to cover the cost of staff time for permitting and development review can be thousands of dollars. Reducing or waiving these for project types that the city is trying to encourage is one way to reduce the cost of developing those projects.	Bend's existing affordable housing incentives include exemptions of up to $10,000 in permitting fees, subject to BDC 3.6.200(C).	**Small**. Depending on the scale of the project, reducing costs by a few thousand dollars may or may not make projects feasible that were not feasible without the fee reduction.	There may be little more that is appropriate for the city to do, unless other measures to streamline the review process (e.g. pre-approved house plans for small lots) can be used to reduce review time for staff. Any additional changes will require a broader policy discussion.

Efficiency Measure	Source	Description	Bend Implementation to Date	Scale of Impact	Potential Application in Bend
28. Reduce SDCs for desired housing types, infill, high densities	DLCD Workbook	System Development Charges (SDCs) can be waived, reduced, or subsidized for certain housing types or in certain circumstances. A waiver or reduction of SDCs may be appropriate where the development is likely to have less impact on infrastructure (e.g. where there is enough surplus capacity in an existing neighborhood to serve additional growth). Subsidizing SDCs may be appropriate for affordable housing projects or other housing that the city wants to promote but that is at a scale that will have impacts on infrastructure.	Bend's existing affordable housing incentives include deferral of SDCs, subject to BDC 3.6.200(C).	**Small to moderate**. Portland saw a substantial increase in ADU construction after waiving SDC fees for this housing type.	This could be applied to ADUs, as was done successfully in Portland, or to small infill projects where infrastructure is already available and adequate to serve the new housing units.
29. Provide financial assistance for certain housing types, density, location	DLCD Workbook	The City has the potential to assist with the financial elements of housing. Public investments can lower development costs, lowering the cost of multifamily housing development. This is important in either the development of low-income housing or making multifamily housing financially feasible.	Bend has an existing affordable housing fee that is used to provide financial assistance for affordable housing projects.	**Moderate:** The City has limited funds and should target specific areas for public investment in multifamily housing.	Direct subsidies for market-rate housing may not be a good use of city resources, especially given that the market seems to be willing to build higher density housing than is currently allowed by the development code.
30. Land assembly and dedication to lower costs for desired types of projects	DLCD Workbook	Parcel assembly involves the city's ability to purchase lands for the purpose of land aggregation or site assembly. It can directly address the issues related to limited multifamily lands being available in appropriate locations (e.g., near arterials and commercial services). Typical goals of parcel assembly programs are: (1) to provide sites for rental apartments in appropriate locations close to services and (2) to reduce the cost of developing multifamily rental units. Parcel assembly is more often associated with development of government-subsidized affordable housing, where the City partners with nonprofit affordable housing developers.	None.	**Small to moderate:** Parcel assembly is most likely to have an effect on a localized area, providing a few opportunities for new multifamily housing development over time**.**	The Bend Affordable Housing fee could be used for land assembly for the purposes of building affordable housing.
31. Focus public investments (CIP) where development is desired	DLCD Workbook	In order to ensure that infrastructure and public facilities can accommodate an increase in density and growth where it is desired, the city can focus infrastructure improvements within targeted growth areas to reduce the burden on developers.	None.	**Moderate**. The impact on density is not immediate and direct, but upgrading infrastructure capacity to accommodate growth can make it feasible in areas where it may not be today. Impact depends on how great the gaps are in locations targeted for growth.	This tool could be appropriate for areas identified for infill and/or redevelopment, particularly in areas with infrastructure gaps.

Efficiency Measure	Source	Description	Bend Implementation to Date	Scale of Impact	Potential Application in Bend
Research, education, up-front services					
32. Provide pre-approved house plans for small lots	Consultant team	Development on small lots can be challenging, and can lead to less-than-desirable designs that may not be compatible with adjacent homes. Providing pre-approved plans for homes on small lots can eliminate the need for an architect for such projects, reducing costs as well as ensuring outcomes that the city is comfortable with.	None.	**Small**. This primarily affects small infill projects that may be able to avoid the need for an architect. Larger subdivision projects would be less likely to use pre-approved plans.	This could help streamline reviews and reduce permitting costs for small infill projects. Neighborhood associations could be brought in to help approve house plans in order to ensure neighborhood support for the designs.
33. Provide map of potential infill sites	Consultant team	Identifying potential infill sites can help guide development towards areas where it is desired by the city.	Mapping done in 2008 and 2011 identifies areas that have the theoretical potential for infill.	**Small**. Helping developers identify good candidate locations for infill can raise awareness but will not make projects feasible that are not already.	The work done as part of this project will identifies areas appropriate and desirable for infill. These areas can be mapped in a way that is accessible for developers.

APPENDIX A: RELEVANT REMAND DIRECTIVES

This Appendix provides a list of Remand issues related to efficiency measures. The numbering of directives in the second column starts with number 30 because this list is an excerpt of the larger Index of all directives to the City on Remand.

Remand Subissue	Directives to City on Remand
3.1 (Analysis) Pages 50-53	30. LCDC concluded that the City's densities for housing were, in their view, low. 31. Need to determine if raising the minimum densities of the residential zones is necessary to encourage the development of needed housing 32. On remand, the City must address both prior trends (as required by ORS 197.296(5)) and recent existing steps it already has taken to increase density and meet its housing needs. The requirement of Goal 14 to reasonably accommodate future land needs within its UGB does not allow the city to use an unreasonably conservative projection of future development capacity 33. Nevertheless, given the apparent market demand for increasing density relative to existing planning and zoning designations, the City must explain why increasing the density allowed, particularly for large blocks of vacant land outside of existing established neighborhoods, is not reasonable during the 20-year planning period. 34. The Director's Decision identifies a number of other efficiency measures that the City should consider (drawn from the city's own Residential Lands Study), but that list is not intended to be exclusive or directive; it is up to the City to determine in the first instance what is reasonable to accommodate its future housing needs within its UGB (See Director's Decision 45-46)
3.1 (Conclusion) Pages 53-54	35. The City must reconsider the projected capacity of lands within its prior UGB for residential development during the planning period in light of its revised BLI, recent development trends, and existing and potential new measures to increase that capacity. 36. The measures the City considers must include, but are not limited to, evaluating the infill capacity (including plan and zone changes) of residential lands with more than five acres that are vacant or partially vacant. 37. The City also should consider the measures as listed in the Director's Decision, at 45-46, that are related to efficiency measures.
3.1 (Director's Report)	38. Consider measures to encourage needed housing types within additional areas of the city, including rezoning of areas along transit corridors and in neighborhood centers; 39. Consider splitting the existing RS zone, which covers most of the residential areas of the city, into two or more zones in order to encourage redevelopment in some areas while protecting development patterns in well-established neighborhoods; 40. In areas where the city is planning significant public investments, consider

Remand Subissue	Directives to City on Remand
	upzoning as a means to help spread the costs of such investments; 41. Consider strengthening the minimum density provisions in the existing UAR and SR 2½ zones by eliminating PUDs and other clustering tools; and 42. Consider strengthening the minimum density provisions in the existing RS and RM zones to encourage development of needed housing types, rather than relying on low density residential development.
3.2 (Analysis) Pages 55-56	43. Under Goal 10 and ORS 197.296 the City must adopt definitive measures and find, based on an adequate factual base, that those measures 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. 44. The City agreed, on remand, to include provisions in the General Plan requiring adoption and implementation of the Central Area Plan and rezoning of lands along transit corridor as described in its findings.
3.2 (Conclusion) Page 56	45. …directs the City on remand to address the requirements of ORS 197.296(7) and (9) with respect to any new efficiency measures that it relies on. 46. The City may do this by adopting specific timelines for initiation and completion of efficiency measures, including detail about the outcomes that will be achieved as part of the Housing Element of its comprehensive plan. 47. The City also must adopt findings that show why those outcomes are more likely to occur as a result of the measure(s), and how they relate to needed housing types and locations. 48. In addition, in coordination with its Work Plan for Outstanding Metropolitan Transportation Planning Work (issue area 8), if the City continues to rely on these two particular measures, it must: 49. Within two years following acknowledgement, complete and adopt the Central Area Plan. The Plan must include provisions that plan for at least 500 additional medium-density and high-density housing units over the planning period. 50. Within two years following acknowledgement, complete and adopt provisions of its comprehensive plan that authorize at least 600 additional medium-density and high-density housing units on lands abutting or within ¼ mile of existing or planned transit routes.

URBAN GROWTH BOUNDARY REMAND

Meeting Agenda

Employment Technical Advisory Committee
Monday, August 4, 2014 2:30 PM – 5:00 PM
City Council Chambers, Bend City Hall

Meeting Purpose and What is Needed from the TAC

The three central questions for the Employment TAC to address are:

- How much land is needed for employment to the year 2028?
- What are the short term and long term land needs by employment type?
- How and where will we invest public dollars to make land ready for the market?
- What are the best locations for needed employment lands?

This first meeting will set the foundation for answering the land needs question. Specifically, we will recap the important Remand issues, learn about and discuss employment trends, and then review an initial "library" of employment building types to be used in preparing growth scenarios. Additionally, the TAC will discuss a specific Remand issue that needs to be resolved: the use of a market factor for projecting needed employment land.

The specific discussion questions, i.e. the feedback we would like from the TAC, are listed as the bulleted discussion questions under each agenda item. They are a starting point for the agenda.

1.	**Welcome and Introductions**	**2:30 PM**
	a. Welcome	Brian Rankin
	b. Self-introductions	All
2.	**Election of Chair and Vice Chair**	**2:40 PM**
	a. Nominations	Facilitator
	b. Vote and confirmation	
3.	**Employment and Market Trends**	**2:50 PM**
	a. Building on past work	Brian Rankin

For additional project information, visit the project website at http://bend.or.us or contact Brian Rankin, City of Bend, at brankin@bendoregon.gov or 541-388-5584

Accessible Meeting/Alternate Format Notification
This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the City Recorder no later than 24 hours in advance of the meeting at rchristie@ci.bend.or.us, or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

b. Context – How employment and market trends and site types relate to Goal 9 – Economy, the Remand, Bend's Economic Opportunities Analysis (EOA) and the draft project goals. — Bob Parker, ECONorthwest
   - What questions/comments does the TAC have on the context and how this information will be used?

c. Employment and market trends and implications for Bend's future mix of employment lands — Chris Zahas, Leland Consulting Group
   - Does the TAC agree with the description of employment and market trends?
   - How does the TAC see these trends playing out in Bend?
   - What other trend insights/data do you have on the subject?

4. Employment Types — 3:40 PM

a. Presentation of an initial "employment building library" for Bend – examples of employment types to be included in the Envision Model — Fregonese Associates
   - What recent development products are good fits for Bend?
   - What commercial/industrial building types are missing that might make sense in Bend

5. Market Factor — 4:20 PM

a. Brief recap of the market factor issue and staff perspectives / recommendation — Bob Parker
   - Does the TAC support using Scenario A as presented in the 2008 EOA to project employment land needs to 2028?

6. Adjourn — 5:00 PM

Memorandum

July 28, 2014

To: Employment Lands Technical Advisory Committee

Cc: Bend Staff

From: APG Consulting Team

Re: SUMMARY OF KEY REMAND ISSUES RELATED TO EMPLOYMENT LANDS

INTRODUCTION

This memorandum provides background information for the first meeting of the Employment Lands Technical Advisory Committee (TAC), specifically, a brief summary of Remand issues related to the land need scenario and use of a "market factor". As a general principle, issues brought to the TAC for discussion will be major issues where options exist that can be informed by local input. Many of the Remand issues are specific and technical/legal in nature and are relatively simple to address. A list of the Remand issues related to employment lands is presented in Appendix A.

The charge of the employment lands TAC is:

- Confirm employment land need for 2008-2028 planning period that will feed into Phase 2 analysis of UGB alternatives
- Develop strategies to provide short-term supply of employment lands

In short, the Employment Lands TAC will address the following:

- How much land is needed for employment to 2028?
- How and where will we invest public dollars to make land ready for the market?
- What are the best locations for needed employment lands?

Building on Past Work

The Remand Order specifies work that has been approved by LCDC and work that was not approved. Since the Remand Order, various task forces and the City Council have approved some of the Remand Order issues that required reworking. The direction from the City Council and UGB Steering Committee is to complete the work as soon as possible, with community input, and assistance from a consulting team. In addition, they have stated that work previously approved by post-remand committees (RTF and USC) NOT be reconsidered at this time. This work was also reviewed by DLCD staff, who approved the approach and findings to these few remand items. This not only saves time, it saves money by not having to reconsider these issues anew. It is fair to say that few issues have been approved prior to this new approach to

the project, and that the major remand issues are still unresolved and require guidance from all the TACs.

Land entitlement is one of many factors influencing economic development, and the Employment TAC will focus on issues like site criteria, infrastructure, land readiness, and a framework to make sufficient, suitable, and buildable lands available to the market place over time. Together, this work is critical to propel and stabilize Bend's economy, and to become a stronger economic force for decades to come.

Planning Horizons and the Remand

An important consideration is that this a Remand and partial acknowledgement of a decision made in December 2008. Thus, the TAC's work will focus on issues that need resolution from the Remand. Following is guidance from the Bend City Attorney on the issue of planning horizons and new information:

> *The Commission's [i.e. LCDC's] role is not to substitute itself for the city, or make a new decision today, starting from scratch, just as the RTF's and City Council's roles are to carry out the Remand requirements spelled out by the Commission. Rather, LCDC, the RTF, and City Council will review the City's UGB expansion as if it were 2008. This makes sense given that a UGB expansion is based on the amount of land that the city needs for future residential and employment uses, over the 20-year planning period. Seeing the Remand through the lens of 2008 also keeps the data, timeframe, and analysis internally consistent. Here, the planning period is 2008 to 2028, and is based on the coordinated population forecast upheld on appeal to LUBA.*

In summary, the planning horizon is 2008-2028 and the City can choose to reanalyze data already in the record, or add data that could have been available through 2008, to comply with the Remand requirements on employment land needs. In addition, the project will allow for some reconciliation and consideration of what has occurred on employment lands since 2008 in order to accurately account for actual development.

The City's Obligation under Goal 9

Planning for Economic Development must comply with Statewide Planning Goal 9 and the administrative rule that implements Goal 9 (OAR 660-009). Specifically, Goal 9 requires cities to:

1. Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends;
2. Contain policies concerning the economic development opportunities in the community;
3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies;

4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses.

The key provision related to the Remand is requirement 3: "provide for at least an adequate supply of sites." The UGB analysis must make connections between the City's economic development vision (requirement 2), economic development potential (requirement 1), and land that is designated for employment uses. The City is allowed to a certain extent to be aspirational in its vision, but must link its aspirations to its vision, targeted industries, the site needs of those industries, and ultimately, the land designated for employment uses. In short, the city's economic aspirations must be grounded in reality and a factual base—including a demonstration that lands designated for employment can be serviced.

EMPLOYMENT LAND NEED AND THE REMAND

In this first meeting, the Employment Lands TAC will focus on the economic vision (e.g., the types of businesses Bend is planning for), key trends that influence economic opportunities, and any types of employment or related development that might be missing in Bend.

Bend's Employment Forecast

DLCD acknowledged Bend's employment forecast. Thus, the 2008-2028 forecast will serve as the basis for determining employment land needs. Bend's economic opportunities analysis shows that total employment in Bend will grow to 60,607 employees by 2028, an increase of 22,891 employees between 2008 and 2028.[1]

Remand Requirements

Appendix A presents the list of Remand issues related to employment lands. At this first meeting, we will provide an overview of the issues related to land need scenarios and use of a "market factor". Remand issues relating to redevelopment and infill opportunities for employment land, short-term supply strategies and special site needs will be addressed at subsequent meetings of the Employment Lands TAC.

Remand Issues related to Land Need Scenario and Market Factor

The 2008 EOA describes two scenarios as the basis for estimating employment land needs.

- **Scenario A** identified a minimum need for 1,380 net acres of employment land to meet anticipated employment by the year 2028, based on the employment forecast described in the prior section. Scenario A was the result of a relatively simple formula of dividing employment projections by employment density.

[1] The employment forecast is shown in Table 26 of Bend's Economic Opportunities Analysis. Bend's employment forecast does not include employees who are considered shift workers because land need estimates should be based on the day shift (typically the largest shift) instead of all employees working at a given business. Bend had approximately 8,000 shift workers in 2008.

- **Scenario B** provided additional employment lands for a variety of locations and sites above the minimum need. Scenario B identified a need for 2,090 gross acres to meet the anticipated needs, provide adequate selection of sites of different sizes, locations, and types, and meet its economic aspirations to attract specific uses.

  Comments: The 2008 EOA includes a market choice factor for Scenario B. In order to justify an increase in the need for certain types of employment land within the UGB over what a trends-based analysis would conclude, there would need to be a factual basis in the EOA to satisfy OAR 660, division 9; and, to satisfy OAR 660, division 24, a finding that the job-growth estimate that supports the land need determination is reasonable and cannot be accommodated within the existing UGB.

Conclusion

With respect to land need, the Remand suggested that land need Scenario A meets legal standards. Including two different scenarios in the 2008 EOA caused some confusion with the DLCD and LCDC review of the prior UGB proposal. Additionally, Goal 9 does not specifically allow for the use of a market factor and no city has successfully justified a larger employment land need through use of a “market factor.” Based on a recent Court of Appeals decision relating to the City of Woodburn’s proposed UGB, the APG team and city planning and city staff believe that it would be very difficult to develop legally defensible findings for a UGB scenario that includes a “market factor” for employment lands.

We recommend that the Employment TAC proceed with Scenario A from the 2008 EOA, supplemented with special site needs supported in the Remand that cannot be accommodated within the existing UGB. Does the TAC support this approach?

APPENDIX A: LIST OF REMAND ISSUES

Appendix A presents the complete list of Remand issues related to employment lands. The numbering of directives in the second column starts with number 61 because this list is an excerpt of the larger Index of all directives to the City on Remand.

Remand Subissue	Directives to City on Remand
5.1 (Conclusion) Page 67	61. The submittal is remanded for the City to clarify in adequate findings that it is utilizing its 2008 EOA, scenario B, as the basis for estimating employment land needs
5.2 (Conclusion) Page 70	62. Commission remands the UGB decision to the City to provide an adequate factual base to support use of a 10 percent redevelopment factor, including an analysis of the amount of redevelopment that has occurred in the past and a reasoned extension of that analysis over the planning period 63. Alternatively, the City may satisfy Goal 9 and division 9 by other means, for example through a site-by-site redevelopment analysis. However, a site-by-site analysis is not required; the Commission determines that using a factor is acceptable where findings explain evidentiary basis and address the Goal 14 requirement to reasonably accommodate development within the existing UGB.
5.4 (Analysis) Page 76	64. As a result, in this case (See 1000 Friends of Oregon v. LCDC, __ Or App __, __P3d __ (A135375)) to the extent that the city continues to base some portion of its employment land need on market choice, it must explain how doing so in the factual context provided by the record for the Bend UGB expansion is consistent with the requirements of Goal 9, OAR 660-009-0025, and the "need" factors of Goal 14
5.4 (Conclusion) Pages 76-77	65. On remand, the City must make findings addressing applicable law, including addressing consistency with Goals 9 and 14 as required in *1000 Friends of Oregon v. LCDC,* __ Or App __, __P3d __ (A135375) (September 8, 2010)
5.5 (Analysis) Page 77	66. Under OAR 660-009-0015(3)(a)(C), the EOA Inventory of Industrial and Other Employment Lands for cities and counties within a Metropolitan Planning Organization, must include the approximate total acreage and percentage of sites within each plan or zoning district that comprise the short-term supply of land. 67. This short-term supply analysis required for jurisdictions within MPOs is in addition to the EOA inventory requirements applicable to all comprehensive plans for areas within urban growth boundaries. OAR 660-009-0015(3)(a) 68. Furthermore, division 9 requires that comprehensive plans for cities such as Bend "include detailed strategies for preparing the total land supply for

	development and for replacing the short-term supply of land as it is developed." OAR 660-009-0020(2).
5.5 (Conclusion) Page 78	69. The Commission concludes that the Goal 9 rule requires the City to include policies for maintaining a short-term supply. 70. The City must plan for required infrastructure and have identified the funding mechanisms.
5.6 (Analysis) Page 80	71. (t)he City must establish a basis in reason connecting the inference that the planning period will present higher vacancy rates for industrial and office than historic and current conditions to the trend data from which it is derived. 72. the City may pursue a mechanism to make industrial and commercial rents affordable under the competitive short-term supply, but not by inflating the long-term need beyond what may be supported by substantial evidence in trend data or reasoned inferences there from.
5.6 (Conclusion) Page 80	73. The Commission concluded that under division 9, the long-term vacancy factor should be based on past and projected future trends over the planning period.
5.8 (Analysis) Page 84	74. The City agreed that on remand it would move the analysis and calculation to the residential/other lands analysis and calculation.
5.8 (Conclusion) Page 84	75. The Commission remands the submittal to incorporate analysis of land needs for employment uses within residential zones in the City's housing needs analysis.
5.9 (Analysis) Page 85	76. The City designated a substantial amount of land as Commercial General along Highway 20 in the expansion area. The City concedes that it did not make findings related to the General Plan policies cited by appellant, but agrees to develop findings addressing the policies on remand.
5.9 (Conclusion) Page 85	77. The Commission remands the submittal to the City to allow it to address Commercial Development Policy 27 and 28 contained in Chapter 6 of the Bend Area Plan

Memorandum

July 28, 2014

To: Employment Lands Technical Advisory Committee

Cc: Bend Staff

From: APG Consulting Team

Re: Employment and Real Estate Trends that Will Affect Commercial Land Use in Bend

This memorandum presents information about location-specific employment trends that build upon trends addressed in the 2008 Employment Opportunities Analysis that will affect Bend's retail, commercial, and industrial market over the 2008 to 2028 period. Bend has experienced tremendous growth in the recent past and is expected to continue to grow over the next two decades. Bend will need to accommodate new employment as it grows, according to changing trends in employment. The questions addressed in this memorandum are:

- What are the key employment, retail, and commercial trends that may affect the location of Bend's employment land use mix over the 2008-2028 planning period to accommodate 20-year land need estimates, and influence redevelopment/infill strategies within the current UGB and arrangement of economic lands in expansion area?
- What are the implications of these employment trends for Bend's commercial and industrial market, including demand for types and location of businesses in Bend?

The purpose of this analysis is to address issues in the remand related to Bend's proposed allocation and location of employment land inside the current UGB and expansion area. This analysis does not apply to trends related to determining land need since these have mostly been approved by LCDC. These questions will be discussed at the first Commercial Lands Technical Advisory Committee (TAC) meeting.

COMMERCIAL, RETAIL, AND INDUSTRIAL TRENDS AFFECTING EMPLOYMENT LOCATION

Employment locations are largely determined by employee and employer needs and their ability to pay for locations that fit those needs. For many businesses, those needs have changed over time as many economies, including Bend's, have transitioned away from a natural resource-based economy to a knowledge-based economy. In the past, many businesses chose to locate near the source of raw materials. More recently, businesses' locational choices are influenced more by access to a skilled and educated workforce.

Workers are increasingly drawn to places with a high quality of life, drawing employers to them or creating their own businesses in order to live a certain lifestyle. Bend is attractive to businesses (who need workers) and residents in large part because of its high quality of life, which includes access to a variety of outdoor recreational opportunities, a moderate climate, and quality shopping and entertainment venues.

There are certain fundamentals of real estate that affect the viability of different business types and impact their location decisions. The main variables affecting business location include:

- **Transportation access.** Businesses will make locational decisions based on transportation access for their employees, clients, and their shipping or delivery needs.
- **Land price and availability.** Land prices, and thus rents, affect location decisions. Some business types are more sensitive to price than others. Industrial lands typically demand the least land value, whereas centrally located office locations can command the highest rents. Retailers' ability to pay depends on their clientele and turnover of product, so they are often willing to pay more to be in a prime location because they will easily make up the difference in higher sales.
- **Workforce, suppliers, and support services.** Many businesses need to be in proximity to other similar businesses, suppliers, and support services in order to be successful and therefore tend to cluster together. Other businesses need space and want less liability from having other users or the public nearby, or want assurance that they can expand in the future, and therefore tend to locate in more remote or fringe locations. All businesses need a reliable trained workforce and businesses in the same industry often cluster together in the same region in order to share those resources. In many professional and high tech business sectors, the presence and preferences of employees drive location decisions, as discussed below.

Trends affecting employment location in Bend

There are national and regional demographic and employment trends that will affect business location decisions across the U.S., as well as Oregon and Bend. This section provides a summary of trends that will be particularly important to Bend including[1]:

- **Employee needs are changing.** Employees in many industry sectors, especially high tech and professional sectors, are becoming increasingly educated with valuable sought-after skills. They want more than "just a paycheck" from employers and are increasingly seeking opportunities to live in a place with a high quality of life first and then finding employment to fit their lifestyle. Many employees want to be in walkable locations with easy access to amenities such as parks, restaurants, services, with a range of housing options and shorter commutes. Employers, especially in industries with a need for highly

[1] *The research in this memorandum is based on interviews with Bend's development community as well as numerous articles and sources of information about the changing nature of employment. Appendix A presents key citations and an analysis of our research of the academic literature about the evolving relationship between employees, employers, retail preferences and siting of different employment types.*

educated workers, are moving to where the employees want to live in order to attract and retain a qualified workforce.[2]

- **Employer needs are changing.** There is a growing demand for flexible employment spaces that can change over time and respond to the needs of different users. Apart from heavy industrial users, most businesses can fit within mixed-use districts and near residential areas without disturbing residents, and they benefit from being near other businesses and amenities. As mentioned above, employees are driving the location decision for many employers, as they are increasingly choosing to locate in downtowns and near commercial centers over remote standalone locations, even if they have to pay higher rents to be there. There is also more overlap between retail, commercial, and industrial uses as consumer's habits and residential preferences shift over time[3].

  Different employment types have different requirements for success that will be expressed through the company's decision to locate in a specific place. Heavy industries need truck access. Retail and commercial businesses need visibility, easy access, and proximity to supporting households. Offices need to be in a location where employees can collaborate with other firms and access business services, while employees want to be near amenities such as restaurants and cafes. Heavy industrial users need to work without raising complaints about noise, odor, and particulate matter related to production, as well as needing access to regional transportation networks to ship and receive goods.

- **Evolving commercial and retail landscape.** New residential neighborhoods create demand for local and regional commercial centers. As new residential neighborhoods are built there will be demand for neighborhood serving commercial centers. Those needs are typically for services such as hair salons, dental and medical offices, and food related purchases such as grocery stores and restaurants.[4] Other types of retail such as clothing and department stores, home and garden supplies, and boutique specialty shops will tend to locate in regional centers and corridors with good transportation access where they can draw from a larger market with a greater number of households. Consumers are increasingly interested in locally-produced goods which are driving a need for craft industrial spaces that can offer retail showrooms alongside manufacturing space. Breweries, craft foods, and metal or woodworking shops are good examples of this. Online shopping has changed retail in dramatic ways that are permeating through the built environment. Quality design and walkable locations are key factors to the success of future commercial centers by providing an ambience and experience that cannot be bought online and shipped direct to the consumer.

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[2] Katz, Bruce, and Julie Wagner. "The Rise of Innovation Districts: A New Geography of Innovation in America." Metropolitan Policy Program: At Brookings: May 2014.
[3] Supported by the current mix of uses in the EOA. City of Bend Economic Opportunities Analysis, April 2007.
[4] 2013 Economic Impact of Shopping Centers, International Council of Shopping Centers (ICSC); Business Performance in Walkable Shopping Areas, November 2013, Robert Wood Johnson Foundation

Table 1 through Table 3 describe the changes in these trends and their potential affect on employment location choice in Bend over the 2008-2028 planning period. This information is intended to inform the redevelopment and infill discussion as required by the remand, it is not intended to inform the employment land need which has already been established.

Table 1. Employee needs are changing

Trends affecting infill/ redevelopment		• **Quality of life drives location decisions.** Bend's quality of life attracts employees with a variety of skill sets. It has become a magnet for experienced entrepreneurs to start new companies. It also attracts workers in the tourism and recreation industry serving visitors and residents.
Effect of trends on employment location	Transportation	• **Bend is remote, yet accessible.** The Redmond Airport makes travel accessible between Bend and Seattle and Silicon Valley for tech start-ups that need to collaborate with other companies. The lack of interstate highway access and the distance to other metropolitan areas makes it seem isolated. • **Accessibility.** Employees and residents increasingly want to be in walkable locations with access to transportation options including cars, bikes, walking, and transit. Having a good trail system with connections to parks and other key locations is increasingly important.
	Land Price and availability	• **Employee's residential options are limited.** Housing affordability is a challenge for many of Bend's employees, especially workers in the service sector making lower wages. Many employees live in other communities and commute to Bend due to a lack of housing options. • Demand for commercial office and other employment uses is increasing in the downtown area due to the availability of amenities close-by for workers.
	Workforce, suppliers, and support services	• **Career growth is limited.** Employees sometimes cite a lack of career opportunities because Bend has a limited range of employers. • **Start-ups and self-employment.** Bend has a strong entrepreneurial spirit and has attracted many experienced residents that create their own opportunities for employment. • **Educational opportunities are limited.** Bend does not yet have a four-year university, although planning for OSU Cascades is underway. However, it will take several years to get the college established. The lack of a four-year university constrains the supply of trained workers in several industries.
	Potential effect on infill/ redevelopment	• A greater variety of housing options will support employees at varying income levels. • Walkable and accessible business districts with a mix of office, shops, and restaurants are very attractive to technology and professional office workers. Many businesses will locate in such areas in order to attract and retain their workforce. • Support for entrepreneurs, including the provision of flexible spaces in a range of sizes, will allow Bend to continue to attract entrepreneurs who see opportunities to start their own businesses.

Table 2. Employer needs are changing

Trends affecting infill/ redevelopment		• **Flex space.** Employment is increasingly able to fit into similar spaces. Office, light manufacturing, retail, and research and development can easily fit within the same building shell, although the tenant improvements may be very different. • **Office space per employee is decreasing.** The typical space per employee has been in decline over the past decade, and is projected to stabilize around 200 to 150 square feet, or potentially less, per person, in the near future. Alternative workplace strategies, digital storage, and other technological advances have decreased the need for space in most office industries. • **Employees attract employers.** Employers are increasingly moving to locations that are attractive for employees. Bend has many attractive qualities, fueling substantial growth.
Effect of trends on employment location	Transportation	• **Bend is remote, yet accessible.** The Redmond Airport makes travel accessible between Bend and Seattle and Silicon Valley for tech start-ups that need to collaborate with other companies. The lack of interstate highway access and the distance to other metropolitan areas makes it difficult to get goods to consumers.
	Land Price and availability	• **Need for smaller parcels/buildings.** Bend is not meeting the needs of many smaller manufacturers/businesses. Interviews revealed a lack of smaller parcels to meet the need of smaller start-up businesses. • **Lack of short-term supply.** Juniper Ridge is planned for larger industrial users, but is largely not available for development due to lack of infrastructure. The market also does not perceive it as viable for smaller users. Industrial land is in short supply, as evidenced by a 4-5% vacancy rate (excluding large buildings over 15,000 square feet). • **Office locating in industrial space.** Many office users are locating in flex spaces in industrial business parks which may be driving up the cost of industrial space for other users. • **Manufacturing locating elsewhere.** Many manufacturing businesses are locating in Prineville, Redmond, or other locations to find available land at a price point they can afford. • **Need smaller flex buildings.** There is a need for flex space between 1,500 and 3,500 square feet.
	Workforce, suppliers, and support services	• **Educational opportunities are limited.** Bend does not yet have a four-year university, although planning for OSU Cascades is underway, and will eventually help to provide an educated workforce. However, it will be several years before the first crop of graduates are ready for employment. • **Bend has not yet reached a critical mass.** Employers in Bend sometimes have a hard time attracting highly educated workers who cite a lack of career opportunities, because there are not enough businesses in their industry to choose from should they need/want to change jobs in the future. Additionally, some employees cite a lack of employment opportunities for their spouses, who may be in other industries.
	Potential effect on infill/ redevelopment	• Future employment growth will probably come from growth of existing companies and continued entrepreneurship. • Having sites available of varying sizes will be important to meet the needs of new and growing companies. • Bend will probably remain limited in its ability to attract large employers, but may be able to grow and attract medium sized business with continued support for start-ups and the completion of OSU Cascades to grow the local workforce. • Policy may need to be put into place to protect industrial space from non-industrial users that raise land values and make it inaccessible to price-sensitive manufacturers. • Office and other non-heavy industrial uses could be encouraged to locate in more mixed-use districts that provide more amenities for workers. • Quality design matters. Employees and consumers increasingly want to be in walkable, amenity rich locations with something more to offer than just employment.

Table 3. Evolving commercial and retail landscape

Trends affecting infill/ redevelopment		• **Residential growth will create commercial demand**. Every new household in Bend will create demand for around 50 to 70 square feet of retail space, around 15 square feet of which can be located in small neighborhood centers, most of which will be convenience or food-related purchases and personal services. • **Neighborhood vs. regional centers.** A critical mass of 2,000 to 3,000 households can support one block of "Main Street" or one neighborhood retail center ranging from 38,000 to 45,000 square feet on 3 to 5 acres of space. The remainder of the demand will locate in regional centers with a larger market area, where it can be supported by a greater number of households. Those centers will be larger, in the 6 to 10 acre range and will want to be near major roads and intersections. A large community center of 100,000 to 400,000 square feet supported by 20,000 or more households and anchored by one or more department stores would need 25 to 35 acres of land. • **Infill in malls and regional centers.** Nationally there is a trend toward malls and larger regional retail centers offering more commercial services. People have less time to shop and want to overlap errands and shopping in a single trip. Medical and dental offices, libraries, and post offices have also begun to locate alongside retail and absorb vacant spaces. Some of the new demand for commercial spaces will be absorbed into existing commercial areas. • **Flex space.** A new kind of "craft industrial" flex space is growing and evolving that incorporates light manufacturing with a retail or restaurant component. Bend's breweries offer a good example of this. Consumers want to purchase locally-produced goods and have an experience that comes with seeing them being produced. Other examples include specialty foods, and wood or metal working. • **Health care.** In response to healthcare legislation and demographic trends, regional healthcare systems are expected to grow by adding smaller neighborhood clinics and offices. Most have sufficient space in hospitals and specialty care centers to meet demand. Medical offices are increasingly locating in retail centers to provide easy access to consumers. Demand will continue to grow with the aging of the Baby Boomers, as people over 65 visit the doctor three times as much as the younger population.
Effect of trends on employment location	Transportation	• **Standards limit infill.** Parking and vehicle access standards limit the development of smaller commercial parcels and inhibit the kind of walkable places that are increasingly attractive to residents and employees. • **Travel options.** Consumers are attracted to high quality walkable and accessible destinations. Connections to regional trails and other commercial centers are important as people want more travel options than just cars.
	Land Price and availability	• **Quality design matters.** Retailers have to compete with cheaper online options, so they have to offer atmosphere, entertainment, and something more to attract customers. • **Walkability.** Walkable places can command higher office and retail rents, in the range of $6 to $8 per square foot more than other locations, supported by retail sales that can be up to 80% higher in high quality walkable places.
	Workforce, suppliers, and support services	• **The workforce may be limited by limited housing opportunities.** Retail workers have lower earnings than employees in other sectors and much of the workforce may have to live in other communities and commute to Bend to find affordable housing.
	Potential effect on infill/ redevelopment	• Bend will need a variety of commercial spaces to accommodate future growth. • Some infill in existing commercial centers should be expected if not precluded by existing design standards. • New neighborhoods on the fringe will need to reserve key locations for commercial centers to develop over time, as housing develops to support it. • Commercial spaces need to be flexible in allowing uses to change over time. Many office, commercial, and light industrial uses can coexist in the same areas and benefit from being in proximity to each other.

Conclusions

Given the information presented above, Bend will need to plan for a variety of retail and commercial uses in multiple locations to meet future needs. Based on changing demographic trends and consumer preferences, retail and employment will likely become more mixed-use in nature, even in large shopping centers, if permitted to do so. The exception to this is heavy industrial which may need greater protection from non-industrial users. Flexibility for light industrial uses, “craft industrial,” and research and development types of employment will allow those uses to expand in Bend.

Bend will need to plan for more employment in mixed-use walkable neighborhoods and a greater flexibility for non-industrial employment types to co-locate within the same areas. Industrial areas may need greater protection from encroaching non-industrial users that drive up rents and chase price-sensitive industrial users to other locations. The new OSU Cascades Campus will be important to employment in the future and current planning efforts may want to consider creating opportunities for co-location of incubator space or other partnerships to foster innovation and capture the creative synergies between education and business start-ups given the entrepreneurial nature of Bend’s community and the need to provide a trained workforce.

- **Neighborhood retail per capita/household.** Every new household in Bend will create demand for around 50 to 70 square feet of retail space, depending on the size and purchasing power of the inhabitants. As new neighborhoods are created on the urban fringe, some neighborhood retail will be necessary to accommodate new residents, while the rest of the commercial/retail demand will likely locate in regional centers. It is likely that around 15 square feet of neighborhood, convenience-type retail could be supported per new resident located nearby in a fringe neighborhood shopping center. However, neighborhood retail would need a critical mass of housing units to be completed and inhabited before it becomes viable. Therefore, planning efforts should allow for or reserve land for some commercial and retail development to support new households, keeping in mind that actual development and occupancy will come after a critical mass of households has been established. It should be noted that this commercial/retail development will likely want to locate at key intersections with higher traffic counts and good visibility.
    - Approximately 2,500 to 3,000 households could support 38,000 to 45,000 square feet of retail, which is about the right size for a small convenience center, perhaps with a drug store, specialty food or small grocery store, and small café, fast food restaurant, or other small tenant. At an FAR of about .25 this is about four to five acres.
    - A larger core population of 6,000 to 8,000 households would be needed to support a full-size grocery store with a variety of in-line tenants in a new neighborhood center of 60,000 to 90,000 square feet, or approximately six to 10 acres.

- **Absorption of demand for new regional retail.** New residents will create additional demand for other types of retail that will likely be absorbed by existing commercial areas and will initially be expressed as higher sales per square foot in existing stores, followed by an increase in rents and higher quality tenants. As demand increases, existing regional centers could also start to fill in existing underutilized areas and parking lots. Commercial centers are becoming increasingly varied as people want to accomplish multiple goals in one trip, so retail centers may also add other non-retail uses such as healthcare facilities and libraries.
    - A larger community center of 100,000 to 400,000 square feet anchored by one or more department stores would need 25 to 35 acres of land and the support of 20,000 or more households.
- **Excess retail space.** Some trends point toward a reduction in retail space per capita in the future. As more consumers buy products online, and the sharing and renting economy grows, there may be a need for less retail space per person. Brick-and-mortar locations for some products and services will remain strong particularly those that offer an experience or have entertainment value that cannot be purchased online. Grocery stores and restaurants provide a sensory experience appealing to people across generations, particularly as a nearby neighborhood amenity. Other retailers may face challenges in the future, presenting a potential opportunity for adaptive reuse of empty commercial space or redevelopment of existing retail spaces. This may also present an opportunity for transitional uses such as community meeting spaces, neighborhood supportive services such as a pocket library, or other uses. The addition of housing near existing commercial centers will help strengthen the consumer base making them more viable over time.
- **Design matters.** As noted above, online shopping has created competition for many companies and products, but consumers still desire an experience and the entertainment value that comes from engaging places. Commercial centers are increasingly serving an additional role as a community gathering space or “living rooms” where families and friends meet and socialize. Interviews with Bend’s development community strongly reflected a view that quality design matters, serving as a real drawing card for people. In particular, developers noted the amenity value that neighborhood commercial areas provide for adjacent residential neighborhoods, especially when they are within walking distance. Implications for efficiency measures could include providing an opportunity through code provisions or incentives that would enable or facilitate this de facto mixed-use opportunity. Locational factors need to be considered for the success of commercial areas such as proximity to a range of transportation options, and accessibility to existing and developing neighborhoods.
- **Walkable communities and demand for mixed-use.** Shifting demographic and household dynamics are fueling demand for walkable neighborhoods and people are increasingly willing to occupy smaller homes in order to be closer to more amenities, which includes stores and restaurants. The top walking destinations for people living in

walkable neighborhoods are restaurants, grocery stores, and banks. If existing neighborhoods are allowed to infill with new residents, opportunities for mixed-use housing and commercial developments will increase. Interviews with Bend's development community noted that small community/commercial centers (and particularly a smaller grocery store) within walking distance or a very short drive are necessary components for a desirable neighborhood.

Employment has shifted away from natural resources to knowledge resources. Highly educated workers, especially in the high tech industry, are drawing employers to the places where they want to live or are creating their own jobs rather than moving to find employment. Walkable Urban Spaces and Innovation Districts attract an educated workforce, can command higher rents, and boost the overall economy. Therefore Bend needs to allow for and foster employment in mixed-use and commercial districts where amenities, such as restaurants and shops, are within a short distance of employment, and where other firms are nearby, providing for easy collaborative interaction. Interviews with Bend's development community noted that parking and access requirements made commercial and employment development on small lots infeasible, precluding some of the walkable neighborhoods that employees desire.

- **Allow for flexibility.** Employment is becoming increasingly diverse, with the lines between industrial, office space, retail, and other uses being blurred. Technological advances are accelerating the obsolescence of spaces built around very specific equipment and highly customized spaces. Space per employee continues to shrink and as firms work toward reducing their overall footprint, they implement innovative strategies throughout the workplace to find a balance between personal space and common amenities. Healthcare and medical offices are growing in non-traditional places and are frequently locating in retail centers in order to provide convenient access to clients. "Craft industrial" uses, like breweries, value-added food producers, and bike manufacturers, are creating demand for a blend of retail and manufacturing space that allows customers not only to purchase locally made goods, but to also experience their creation. They are usually less capital-intensive than heavy industry, and more consumer oriented than business oriented. This retail and industrial overlap can be a good neighbor for housing—or can serve as a buffer use between housing and more intense types of employment, and offers an opportunity for infill and redevelopment for certain types of light industrial and craft uses, maybe even live-work or home occupations.

  "Nuisance zoning" is increasingly unnecessary for many types of employment, as fewer employers are producing noxious fumes and odors that are incompatible with other uses. Therefore, zoning that allows for a range of uses in most employment areas will allow Bend to better accommodate future employment growth. The exception to this trend relates to price-sensitive heavy-industrial users that need to be protected and have land set aside that is affordable and meets their needs.

- **OSU Cascades and innovative employment clusters.** Across the US, tech startups play an especially important role in smaller local economies. Because of Bend's location, entrepreneurial characters, quality of life, and relative proximity to Silicon Valley and Seattle, many successful business, tech, and professional transplants have moved into the area, bringing companies with them or starting new businesses upon their arrival. The development of OSU Cascades campus will give employers in Bend greater access to qualified employees. Given the trend toward co-location of start-ups and educational institutions, a growing employee desire to be near amenities and a diverse range of employment, and the regional economic benefits associated with Innovation Districts, there may be an opportunity to plan for employment or incubator spaces (as well as housing) in proximity to the OSU campus. As Bend becomes a regional technology hub and gains a four-year university, it may wish to foster coordination of future office, flex-space, and industrial land uses within a high-density hub to serve employees with a desirable live-work node.

- **Lack of affordable housing creates a burden on service workers.** Central Oregon has the largest concentration of destination resorts in the Pacific Northwest including Sunriver Resort, Black Butte Ranch, Eagle Crest, and others. According to the Oregon Employment Department the average annual wage for workers in Oregon's destination resorts is approximately $26,500 - working an average of 32 hours per week during peak season, with an average pay rate of $12 per hour. Destination resorts pay slightly more than other industries within leisure and hospitality, and more than the accommodation and food services industry which pays an average of approximately $16,800 in Central Oregon. Interviews revealed that workers in the service industry within Bend's economy can't afford to live in Bend, which creates longer commutes and puts a greater burden on these workers. Bend needs to look for ways to reduce housing and transportation costs for this segment of the workforce. Mixed-use districts will be an important way to keep overall living costs lower for these employees. Transportation options, including bike networks and trails will also help support lower-wage workers by reducing transportation costs.[5]

- **Short-term supply.** Juniper Ridge was planned for industrial users requiring large parcels, but it does not yet have the infrastructure in place, and is therefore unavailable in the short-term. Additionally, it is perceived as being "off the map" for most industrial users and isn't competitive/available for smaller-lot industrial users due to large-lot requirements and cost.

[5] *Oregon Employment Department.*

APPENDIX A: FURTHER READING AND CITATIONS

This section provides greater detail on the research conducted on the employment trends that are summarized in the tables above, and is organized around broader themes framed by probing questions guiding the research. For further reading on a given topic, see the relevant report listed in the Sources section below.

Changing nature of Employment

Employee Needs

Question: How are employee needs changing?

- **Workers want more than just a paycheck.** The Nineteenth and Twentieth Century economies were resource based, and workers congregated to businesses. During the 20th century economy, Industrial Districts—areas with high concentrations of manufacturing enterprises were commonly engaged in similar or complimentary work—where the nature of work was manufacturing activity. Now, businesses go to where the workers want to be, and workers are there for the lifestyle.[6] (p.5) "Around the world, employees' psychological needs are changing with regard to work. Increasingly, they want more from their job than a paycheck; they desire more interaction, more mobility, and more options—in short, they want a work life that's a better match with their values and social life, in a work environment that's more natural, both literally and figuratively."[7]

- **Industrial/manufacturing employment.** According to the BLS, manufacturing employment is expected to decrease an annual rate of decline of 0.1 percent. Real output in the manufacturing sector is expected to grow from around $4.4 trillion in 2010 to $5.7 trillion in 2020. Although manufacturing output is growing, its percentage of total output continues to fall, from 19.2 percent in 2010 to 17.6 percent in 2020.[8]

- **Business formation and growth.** New and young businesses—as opposed to small businesses generally—play an outsized role in net job creation in the United States. But not all new businesses are the same—the substantial majority of nascent entrepreneurs do not intend to grow their businesses significantly or innovate, and many more never do. Differentiating growth-oriented "startups" from the rest of young businesses is an important distinction that has been underrepresented in research on business dynamics and in small business policy. Kauffman research contrasted business and job creation dynamics in the United States private sector with the innovative high-tech sector—defined here as the group of industries with very high shares of employees in the Science, Technology, Engineering, and Mathematics (STEM) fields. Findings showed that high-tech sector and the information and communications technology are important

[6] *Katz, Bruce, and Julie Wagner. "The Rise of Innovation Districts: A New Geography of Innovation in America." Metropolitan Policy Program: At Brookings: May 2014.*
[7] *Plantronics. "Smart Working—the New Competitive Advantage" (White Paper). Plantronics, Inc. March 2012.*
[8] *Henderson, Richard. "Employment Outlook: 2010-2020, Industry Employment and Output Projections to 2020." Bureau of Labor Statistics Monthly Review, Jan. 2012.*

contributors to entrepreneurship in the U.S. economy. Of new and young firms, high-tech companies play an outsized role in job creation. High-tech businesses start lean but grow rapidly in the early years, and their job creation is so robust that it offsets job losses from early-stage business failures. This is a key distinction from young firms across the entire private sector, where net job losses resulting from the high rate of early-stage failures are substantial. [9]

Flex Space

Question: Is there an increasing demand for flexible employment spaces?

- **Office space per employee is shrinking.** Firms are responding to recessionary pressures, and in an effort to reduce overhead costs, many are reducing their real estate for greater cost savings, both in terms of surplus properties and individual space. According to the CoreNet Global Corporate Real Estate 2020 survey of 500 corporate real estate executives, the average space per employee has changed from 225 square feet in 2010 to 176 square feet in 2012, and is projected to decline to 151 square feet in 2017, with 40 percent of survey respondents indicating they would use less than 100 square feet per employee. The speed of technology, entrance of younger generations into the work force, the need to cut costs and shrink portfolios, and the continued push toward globalization has created a, "perfect storm" converging on the workplace and CRE's position in provisioning and managing it."[10] Workspaces around the world are undergoing major redesign and reconfiguration, many of these changes include more open space, communal areas, and remote workers—and less individual office and cubicle space, where collaboration and creativity often get stifled. Flexibility and variety in floor plans are replacing conventional layouts; employees now have other options besides conference rooms for holding one-on-one meetings and mentoring sessions.[11]

  Over the past decade the US General Services Administration (GSA) has moved away from assigning office space based on hierarchical space use standards and "now follows the Code of Federal Regulation's (CFR) recommendations for space planning based on organizational needs". The Federal benchmark is set at 218 rentable square feet per person; however the new GSA Headquarter office in Washington DC will average 92 rentable square feet per person of workspace, because of the introduction of shared work spaces and telecommuting. The GSA's research into the subject produced the following findings, "[n]o significant differences between government and private workspace use trends were found. Private sector survey respondents reported an average space per person of 200 USF (230 RSF)[12], with a median of 193 USF (222 RSF) as compared to the Federal benchmark of 190 USF (218 RSF). The greater space per person average in the private sector was due to the nature of work performed by

[9] *Hathaway, Ian. "Tech Starts: High Technology Business Formation and Job Creation in the United States." Ewing Marion Kauffman Foundation: August 2013.*
[10] *Todd, Sarah, "Corporate Real Estate 2020: Workplace Final Report." CoreNet Global Inc., May 2012.*
[11] *Plantronics. "Smart Working—the New Competitive Advantage" (White Paper). Plantronics, Inc. March 2012.*
[12] *USF means Usable Square Feet or the space within an individual tenant's space without including common areas like lobbies and staircases, while RSF stands for Rentable Square Feet and includes common areas.*

participating private sector organizations. In cases where a private sector organization used less space than a Federal organization, telework and other flexible work arrangements were responsible for reducing the organization's overall workspace needs."[13]

- **Industrial buildings offer lower prices and more flexibility.** Industrial buildings offering flex space provide adaptability that businesses may need for nonindustrial uses. Mark Emerick, senior vice president at real estate firm CBRE Group Inc. said flex space occurs where commercial use meets industrial use. Besides flexibility, Emerick notes that many businesses choose industrial space because rents can be almost half the cost of leasing Class A office space. This is usually because a company will have to pay for elevators, stairs, lobbies and restrooms—known as the core or load factor—in office buildings. "You have to pay for all that, whereas in creative flex office spaces [it's] your own space."

- **Portfolio repurposing and designing for adaptability.** Instead of allowing outdated or surplus properties to remain vacant, firms are looking for innovative ways to repurpose them and improve utilization and efficiency. CoreNet Global estimates that the total volume of vacant commercial space in the urban environment including corporate facilities is close to 30 percent.[14] The Industrial Asset Management Council and the Society of Industrial and Office Realtors commissioned a survey of more than 60 corporate users of industrial space to gain more insight about flexibility and adaptive re-use of industrial buildings. The survey explored strategies to boost the adaptability potential of their facilities and barriers to re-use. The top three industrial property types which lend themselves to new uses, and found to have the greatest successes for adaptability and re-use include—warehouse/distribution centers, light manufacturing plants, and research facilities.

- **Building to meet current needs might reduce future flexibility.** Product life cycles are shorter, near-constant technology innovations keep disrupting the status quo, and business strategies continue to change. While one company may require a certain size facility now, going forward it may not need as much space. Or, it may need more space but lack the acreage to expand. Specialty requirements and infrastructure also make it more difficult to repurpose the facility in the future. One executive said, "Try to resist the pressure from your user groups to build in a high level of customization, because it's the permanence of specialized uses that can reduce the adaptive potential of the facility." He adds that customization can come with the equipment that gets installed. "Specialty uses can be added in or changed out with relative ease as needs change. The manufacturing lines themselves can be changed out as your product lines change…Among the most effective ways to retain flexibility, keep the building itself constant and look for ways to minimize permanent specialty use requirements by shifting the specialty requirements to replaceable equipment…Today, when we build a new building, we go into it assuming

[13] *US General Services Administration, Workspace Utilization and Allocation Benchmark, July 2011*
[14] *Mattson-Teig, Beth. "Adaptive Re-Use of Corporate Real Estate," Area Development Online, 2012.*

that something will change…So, if you take the position going in that the uses in all likelihood will change over time, then your design and construction approach is going to be different from the old way, when the assumption was that nothing was going to change."[15]

Locational Needs

Question: What are the locational needs of different employment types?

- **Highly amenitized areas can become a powerful driver of the economy.** Walkable Urban Places, or 'WalkUPs' focus on regional area developments characterized by high density, diverse real estate mix types connected to surrounding areas accessible by multiple transportation modes including bus, rail, bike, and motor vehicles. In a study identifying the country's top 30 metropolitan WalkUPs, Leinberger and Lynch predicted that a wealth-creating development in many metropolitan areas has initiated a permanent shift away from drivable suburban to walkable urban areas."Walkable urban office space in the 30 largest metros commands a 74 percent rent-per-square-foot premium over rents in drivable suburban areas. And, these price premiums continue to grow."[16]

- **Innovation districts.** Innovation Districts grow out of a powerful set of economic, cultural, and demographic forces that are reshaping both how and where people live and work. Innovation Districts are geographical areas where leading-edge anchor institutions and companies cluster and connect with start-ups, business incubators and accelerators. They are also physically compact, transit accessible, technically-wired and offer mixed-use housing, office, and retail. Entrepreneurs are starting their companies in collaborative spaces, rather than independently. This collaboration allows them to mingle with other entrepreneurs and improve access to everything from legal advice to equipment. A growing share of workers are choosing to work and live in places that are walkable, bikeable, and connected to transit and technology. Innovation Districts are emerging in dozens of cities and metropolitan areas across the United States. Many are taking shape where underutilized areas (particularly older industrial areas) are being re-imagined and remade, while others are developing in traditional exurban areas—which are scrambling to meet demand for more urbanized, vibrant work and living environments. Unlike traditional customary urban revitalization efforts emphasizing the commercial aspects of development, innovation districts help aid cities and metropolis move up the value chain of global competitiveness by growing the firms, networks and traded sectors that drive broad-based prosperity.[17]

- **Quality of life, education, and entrepreneurship.** Bend is the 16th largest metro area in the country for high-tech startup density. A study by Kauffman provided a number of

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[15] Moline, Ann. "Designing Flexibility into the Industrial Workplace." BOMA International (2013).
[16] Leinberger, Christopher; Lynch, Patrick. "Foot Traffic Ahead: Ranking Walkable Urbanism in America's Largest Metro's." The George Washington University School of Business. 2014.
17 Katz, Bruce, and Julie Wagner. "The Rise of Innovation Districts: A New Geography of Innovation in America." Metropolitan Policy Program: At Brookings: May 2014.

insights on 384 metropolitan areas. Each of the high-density metros had one of three characteristics, and some had a combination: they are well-known tech hubs or regions with highly skilled workforces; they have a strong defense or aerospace presence; they are smaller university cities. High-tech startups were especially prominent in the local economies of Boulder, Fort Collins-Loveland, Colorado Springs, and Grand Junction in Colorado; Corvallis and Bend in Oregon; Cheyenne, Wyoming; Huntsville, Alabama; Missoula, Montana; Sioux Falls, South Dakota; and Ames, Iowa. Many of these areas offer more than just a job, but a lifestyle with recreational opportunities, and greater small town amenities that many find desirable. Because of their small size, these regions represented just 2 percent of high-tech startups nationally, but their high densities compared to other employment, illustrate the relative importance of high-tech startups to the local economies. The research showed that startups are being founded throughout the US, and forming 'tech hubs' in communities tied to technology-focused industries in large and small cities.[18]

- **Industrial and retail overlap.** Industrial space is being designed and located where it can meet the needs of online retailers with ever faster delivery times.[19] Retailers are looking for urban formats that will be able to serve city dwellers more efficiently. "Our approach to our industrial real estate is different today, because overall business assumptions are fundamentally different than they were 20 years ago." [20] Online shopping and changes in retail have implications for industrial space. Big box retailers are starting to function like mini-distribution centers as retailers figure out how to respond to expectations for on-demand delivery as consumers become increasing sophisticated about merging online and in-store shopping. "The concurrent optimization of multiple channels will require a flexible network of smaller urban locations that fill parcel orders delivered direct to customer homes within a day and large distribution centers that replenish both stores and in-market distribution centers. Multiple in-market distribution centers will be smaller and run fleets of trucks into neighborhoods, perhaps twice a day, for same-day and next-day delivery to households."[21]

- **Heavy industry.** Over the past century, the shift in industrial land use and its effect on urban form has resulted in several studies across the country recognizing the vital interaction between industrial and other uses in a healthy urban economy. The studies found that many industrial land uses provide critical support services for both commercial and residential uses, and that close proximity was critical to timely and cost effective delivery of those services. Many of the studies recommend the creation of buffer zones between industrial uses and residential or mixed uses, and emphasized the

[18] *Hathaway, Ian. "Tech Starts: High Technology Business Formation and Job Creation in the United States." Ewing Marion Kauffman Foundation: August 2013.*
[19] *Blank, Stephen; Kramer, Anita; Warren, Andrew. "Emerging Trends in Real Estate 2014." Urban Land Institute & PWC (2014).*
[20] *Moline, Ann. "Designing Flexibility into the Industrial Workplace." BOMA International (2013).*
[21] *The Changing World of Trade, Cushman and Wakefield, 2013*

preservation and protection of prime industrial land from residential and mixed-use development, presenting several common requirements for industrial users:

- Industrial uses are highly sensitive to rent levels, and therefore vulnerable to displacement if not protected.
- Close proximity to customers, suppliers, workers and road networks are primary concerns. Access to ports, rail, and transit were secondary and highly dependent on location and industry.
- Clustering of similar industries and their supplier networks is a common occurrence in industrial districts. Industrial users generally preferred exclusive industrial districts—as opposed to integrated uses. [22]

- **Co-location and integration of uses**. "The factors affecting the demand for industrial land are largely related to industrial restructuring. This restructuring encompasses changes in the structure, function and location of Production, Distribution and Repair (PDR) industries, as well as the growth of office-based service industries and various types of Research and Development industries. Production-based industrial restructuring dates back to the 1950's and included waves of industrial suburbanization, intra-national regional shifts, and globalization. Accompanying these geographic shifts have been dramatic changes in firm structure such that the various functions that were once co-located in a single facility are now dispersed globally based primarily on workforce and market considerations. Management, administration, and support services associated with many production firms now tend to cluster in central cities along with office-based service firms." [23]

Neighborhood and Regional Retail Locations

Question: Particularly for new neighborhoods on the fringe, how much of the demand from new households will locate in the nearby neighborhood as opposed to established regional retail and commercial areas?

- **Retail per capita.** The ICSC estimates that 44 percent or 24 of the total 54 square feet of estimated shopping space per resident is located in a shopping center including: power centers, theme/festival centers, outlet centers, neighborhood centers, community centers, community centers, lifestyle centers, strip retail centers, regional malls, and airport shopping centers combined. The remaining 30 square feet is located outside of shopping centers in other types of commercial buildings such as stand-alone stores and "Main Street" mixed-use areas.[24]

- **Average retail square footage per household.** "By one estimate, an average household can support 72 sq ft of retail development. Of this, approximately 40 sq ft are

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[23] *Lester, William T.; Kaza, Nikhil; Kirk, Sarah. "Making Room for Manufacturing: Understanding Threats to Industrial Land Conversion in Cities." University of North Carolina, Chapel Hill, Dept. of City and Regional Planning. January 30, 2014.*

[24] *2013 Economic Impact of Shopping Centers, International Council of Shopping Centers (ICSC)*

in categories typically present in neighborhood retail areas, such as grocers, drug stores, cleaners, florists, video/entertainment, and eating/drinking establishments. Of course, not all of a household's purchases in these categories will be made in the nearest neighborhood retail area, and an estimate of 15 to 20 sq ft per household is probably a safe estimate of what can be supported locally. Thus, if a neighborhood shopping area has 50,000 sq ft (of which 30,000 is a supermarket), it will require approximately 2,500 to 3,300 households or a population of 5,000 to 6,500 to support such a center."[25]

Table 4. Supportable Retail Space per Household

Store Type	Supportable Sq. Ft. Per Household	% Neighborhood	Neighborhood Sq. Ft. Per Household
Food/Grocery	11.6	45.0%	5.2
Eating Places	12.4	45.0%	5.6
Drinking Places	1.5	45.0%	0.7
Drug	3.1	45.0%	1.4
Apparel	4.5	17.5%	0.8
Shoe	1.3	17.5%	0.2
Book	1	17.5%	0.2
Hobby/Toy	1	17.5%	0.2
Gift	1	17.5%	0.2
Flower	0.5	17.5%	0.1
Hardware	0.5	5.0%	0
Auto supply	2.6	5.0%	0.1
Furniture	3.5	5.0%	0.2
Home furnishings	1.6	5.0%	0.1
Appliance	0.5	5.0%	0
Radio/TV/Computer/Music	2.3	5.0%	0.1
Sporting Goods	1.4	5.0%	0.1
Building Material	2.6	0.0%	---
Department/Variety	13.4	0.0%	---
Gas Stations	5.5	0.0%	---
Total	**71.8**		**15.1**

Source: Business Performance in Walkable Shopping Areas, November 2013, Robert Wood Johnson Foundation; Center for Economic Development, University of Wisconsin Extension

Table 5. Local Retail Center Type

Retail Center Type	Gross Retail Area	Dwellings Necessary To Support	Average Trade Area	Anchor Tenants
Corner Store	1,500 - 3,000	1,000	Neighborhood	Corner store
Convenience Center	10,000 - 30,000	2,000	1 mile radius	Specialty food or pharmacy
Neighborhood Center	60,000 - 90,000	6 - 8,000	2 mile radius	Supermarket and pharmacy
Community Center	100,000 - 400,000	20,000+	5 mile radius	Junior department store

Source: Shopping Center Development Handbook, ULI

[25] *Business Performance in Walkable Shopping Areas, November 2013, Robert Wood Johnson Foundation*

- **Density, diversity and design.** "Density has been shown as explaining much of the variation in performance of retail areas, although other factors also make a difference. A study of transportation choices found that "three D's" – density, diversity and design – generally result in fewer driving trips and encourage non-auto travel. A survey of walking behavior, conducted among a sample of residents in six US cities, found that residential densities and the presence of significant retail opportunities were positively correlated with the probability of residents walking. We know from neighborhood studies that residents of areas with net densities of 21.7 units per acre or more are more likely to walk to destinations in their neighborhood. This correlates with residential areas that have a mix of apartments, townhouses and small-lot single family houses."[26]

- **Retail destinations that people walk to. "**For home-based trips, nearby grocery stores, eating places (not fast food), retail stores and banks are strongly correlated with pedestrian activity. This means having such opportunities within one-third of a mile of residential units, or having effective transit links that support home to shop travel in 20 minutes or less."[27]

Accommodating Demand from Infill and Redevelopment

Question: As infill and redevelopment occurs, how will additional retail demand be accommodated?

- **Changing retail format.** "Businesses are realizing the potential of locating in dense urban areas and are changing their formats to fit urban sites. Led by Whole Foods, supermarkets were among the first to adapt to the increased preferences for urban living, creating smaller stores, offering fresh produce and more prepared foods, reducing the parking they expect, and in some cases occupying multiple levels and offering home delivery service. The success of urban pioneers has spawned a host of new entrants into the urban grocery field, and forced longstanding chains to adapt their retailing approach. Other businesses are also discovering the potential for sales in walkable locations. Formerly big-box retailers including Target and Staples have created scaled-down and multi-story stores in community retail locations, and chains such as Tesco and Safeway have been experimenting with urban prototypes."[28]

- **Very big or very small retail formats.** "Nielsen is seeing similar trends in store-level footprints—they're either going very big or very small. Take Wal-Mart's approach to supersize its already large store footprints in some areas, creating one-stop, one basket shopping destinations. Alternatively, smaller stores like convenience stores have grown as a destination for quick trips. Convenience stores tend to locate in smaller shopping centers, potentially drawing consumers away from larger shopping centers. This trend, to super-size, is observed at the shopping center-level as well. Power centers, which include big box retailers as anchors and few smaller tenants, have experienced growth in both size and number in the past five years…Bigger isn't always better. Since the start

[26] *Business Performance in Walkable Shopping Areas, November 2013, Robert Wood Johnson Foundation.*
[27] *Business Performance in Walkable Shopping Areas, November 2013, Robert Wood Johnson Foundation*
[28] *Business Performance in Walkable Shopping Areas, November 2013, Robert Wood Johnson Foundation*

of the Great Recession at the end of 2007, small formats like dollar stores, convenience stores and drug stores have driven retail chain expansion. Of the nearly 17,000 new stores that opened between 2007 and 2013, 36 percent were dollar stores, 32 percent were convenience stores and 21 percent were drug stores. Larger retailers like Wal-Mart and Target are thinking small as well. Wal-Mart is betting on its smaller Neighborhood Markets and Wal-Mart Express concepts for future growth, putting them in a position to blend in with their host communities and help them compete more directly with the smaller store concepts. Target launched its smaller, urban City Target concept in 2012 and has since opened eight locations in major metros across the country. "[29]

- **Moving toward mixed-use projects.** "Many of the new walkable urban shopping areas are being built as mixed-use projects with housing or offices above ground-floor retail outlets. In the past it was difficult to finance mixed-use projects because of lender restrictions such as the Federal National Mortgage Association's (Fannie Mae) limit of no more than 5% retail space in residential projects it financed. However, today there is a growing receptivity in the investment community to support such projects. Lenders believe that these projects generally cost about 10% more to develop, but this is not a deterrent to attracting financing. Developers see mixed-use projects as providing marketing advantages and diversification of the products they are offering."[30]

- **Remaking malls.** "In response to competitive as well as community changes, the action in the shopping center world has shifted from the construction of new malls to the rehabilitation, repositioning, and intensification of uses at existing mall sites around the country. Exciting and innovative new shopping environments are being created from the bones of older malls, and the emerging phoenix bears little resemblance to what preceded. The old rules of mall development are breaking down rapidly as developers rethink what the mall could be. Their emphatic conclusion is that the age of the cookie-cutter mall is over: developers are remaking malls as quickly as they need to in order to remain competitive. New design concepts, retail formats, public environments, amenities, tenant mixes, use mixes, anchors, parking configurations, neighborhood links, price points, and customer experiences are being tailored to fit the needs of the community and the mall site, as well as the competitive demands of the market."[31]

- **Excessive amount of retail.** "America's chronically excessive inventory of retail space is worsening. Smaller formats are more suitable for time-conscious shoppers, many of whom may just be "showrooming"—looking at goods they will ultimately buy online. Also, the…regional malls in a market are unlikely to be able to offer the "excitement factor" that Gen Y demands. It is time for redevelopment, possibly with multiple, denser uses."[32]

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[29] *The State of the Shopping Center, 2014, Nielsen*
[30] *Business Performance in Walkable Shopping Areas, November 2013, Robert Wood Johnson Foundation*
[31] *Ten Principles for Rethinking the Mall, Urban Land Institute*
[32] *Generation Y: Shopping and Entertainment in the Digital Age, M. Leanne Lachman and Deborah L. Brett, Urban Land Institute*

Changing Retail Trends

Question: How are changing trends in retail likely to change commercial land use needs for Bend?

- **Malls are adding service-oriented tenants.** "Signs of improvement have been surfacing and a new era of the shopping center industry is starting to occur. Instead of building new centers, owners are redeveloping the centers they already have, making them more appealing and driving consumers back into malls… Many shopping centers are also focused on added service-oriented tenants, which offer today's busy consumer an opportunity to complete weekly errands or to engage in a variety of other activities. Among the many services found in today's malls are churches, schools, postal branches, municipal offices, libraries, and museums."[33]

- **Integration of online and brick-and-mortar stores.** "Retail today is undergoing seismic change, as it becomes more global, urban and specialized due to the rapid rise of online shopping, mobile technology and changes in consumer spending patterns…As more consumers shop through multiple channels, retailers are taking action in greater numbers to integrate their online and physical store presence. Consumers are comparing products and prices online at home or price shopping and comparing variants in a physical store. While in the store, they're using their mobile phone or tablets to compare selected goods with other store availabilities…In some retail sectors, experts believe that up to three-quarters of all transactions will be completed via multiple channels before the end of the decade…The concurrent optimization of multiple channels will require a flexible network of smaller urban locations that fill parcel orders delivered direct to customer homes within a day and large distribution centers that replenish both stores and in-market distribution centers. Multiple in-market distribution centers will be smaller and run fleets of trucks into neighborhoods, perhaps twice a day, for same-day and next-day delivery to households."[34]
  "The growth in e-commerce compared to brick-and-mortar retailers cannot be ignored in the retail space. E-commerce and brick-and-mortar are truly "frenemies"–there is certainly rivalry, however, a friendship needs to be established to be successful in the retail space of the future."[35]

- **Walkable locations perform better economically.** "A place with good walkability, on average, commands $8.88/sq. ft. per year more in office rents and $6.92/sq. ft. per year higher retail rents, and generates 80 percent more in retail sales as compared to the place with fair walkability, holding household income levels constant."[36]

- **Shoppers want entertainment and an experience.** "The composition of the large shopping center landscape has also remained relatively stable over the past year.

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[33] *2013 Economic Impact of Shopping Centers, International Council of Shopping Centers (ICSC)*
[34] *The Changing World of Trade, Cushman and Wakefield, 2013*
[35] *The State of the Shopping Center, 2014, Nielsen*
[36] *"Walk This Way, The Economic Promise of Walkable, Places in Metropolitan Washington, D.C., ,Christopher B. Leinberger and Mariela Alfonzo, Brookings, May 2012*

Community centers, which feature neighborhood-serving amenities like grocery stores and dry cleaners, are still the most common type of shopping center in 2014, comprising 46 percent of centers. In 2013, Nielsen reported the rise of lifestyle centers and the decline of traditional malls like regional and super-regional centers. This trend is holding true in 2014 as consumers continue to be drawn to the shopping experience offered by lifestyle centers with their mix of retail, restaurants and entertainment options…No matter what the concept, consumers want a one-stop shop for retail and entertainment they can't get through online shopping–from specialty cafes and wine bars, to concerts and yoga classes."[37]

- **Healthcare is undergoing major changes.** During the recession many regional healthcare systems invested in vacant big box and other non-traditional locations to meet the growing need for convenient access to medical services. Over the short-term, medical office and healthcare facilities are undergoing major changes as they respond to mandates in the Affordable Care Act, which has brought 32 million previously uninsured into the healthcare system, and requires providers to put extensive electronic records systems in place. Healthcare providers are consolidating in order to streamline costs, as fewer sole practitioners can afford to stand on their own. Demographic trends, primarily the aging of the Baby Boomers will continue to drive healthcare demand in the long-term. "The annual number of physician office visits per 100 people in the 65–74 year-old cohort is nearly 70% higher than in the 45–64 year-old cohort."[38]

- **Hispanic shopping preference.** "In order to capture Hispanic shoppers, developers and retailers must appeal to their distinct shopping needs and preferences. Hispanic families shop as a unit with Grandma, Mom, Dad and the kids all along for the ride. Because of this, Hispanic consumers are looking for one stop that has something for everyone from grocery and medical services to clothes, entertainment and banking. It's not just the tenant mix that's important in making a shopping center appealing to Hispanic consumers–these consumers want a place to sit down and relax, a place for kids to play and a place to attend cultural events. The Legaspi Company, named one of Fast Company's most innovative companies of 2014, has built a reputation by doing just that. It has successfully revitalized 10 failing shopping centers across the country by turning them into Hispanic cultural centers, which subsequently increased foot traffic and income by 30 percent. One such shopping center is Plaza Fiesta located in Atlanta. The Legaspi Company filled nearly 240,000 square feet of empty retail space in the center by addressing the distinct needs of Hispanic consumers. Boots, quinceañera shops and country-western retailers are popular tenants in the center. And given the strong religious ties of the Hispanic community, Easter, Christmas and the Day of the Virgin of Guadalupe celebrations are held for the community and Sunday sales events don't start until 3 pm to avoid conflicting with Mass. Paying attention to these cultural cues makes

[37] *The State of the Shopping Center, 2014, Nielsen*
[38] Colliers International, Medical Office Trends and 2014 Outlook

Hispanic consumers feel a connection to the shopping center as an important place within their community, like the town plazas in their ancestral communities."[39]

- **Renting and sharing economy.** **"**[T]echnology has reduced transaction costs, making sharing assets cheaper and easier than ever—and therefore possible on a much larger scale. The big change is the availability of more data about people and things, which allows physical assets to be disaggregated and consumed as services. Before the internet, renting a surfboard, a power tool or a parking space from someone else was feasible, but was usually more trouble than it was worth. Now websites such as Airbnb, RelayRides and SnapGoods match up owners and renters; smartphones with GPS let people see where the nearest rentable car is parked; social networks provide a way to check up on people and build trust; and online payment systems handle the billing."[40]

- **Retail will become leaner.** "Because of increased levels of e-commerce, retail is expected to become leaner in the future." Technology is enabling merchants to get by with much less inventory, [which] means they need less space," a real estate service provider points out. "At the other end of the supply chain, the buyer's journey [has] changed a lot." As a result, "Retailers continue to rethink size requirements," says the CEO of an investment firm. Less square footage per site and the gradual decline of big-box stores is where many interviewees predict retail is headed in the near future. One investor believes, "The need for big department stores is declining, and the end of their world may occur in five years." On the other hand, a shopping center developer notes that while "retailers are running out of opportunities in suburbs, urban environments [retail alone or with residential on top] will continue to be attractive." Multiple firms are "seeing [the] millennial generation focusing on urbanism, plus a combination of private developers and government programs [is] pursuing the redevelopment of infill locations," according to the president of a retail REIT. Prospects for mixed-use urban developments are high, tied as they are to these changing demographics. One shopping center owner further observes, "The path of growth for retail is no longer out toward the suburbs. Everyone is looking to move back into the city and to find an adaptable business model that can tap this underserved segment." In fact, urban mixed-use properties were a clear favorite among survey respondents, who rated this sector the highest of all sectors for expected development prospects in 2014. Prospects for investment in urban mixed-use properties were expected to be almost as strong."[41] (p.58)

Sources

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http://sia.planning.unc.edu/uploads/publications/Industrial_Lands-JAPA_rev4.pdf

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Urban Land Institute, *Ten Principles for Rethinking the Mall*

envision tomorrow™

FREGONESE ASSOCIATES

envision tomorrow™
a suite of urban and regional planning tools

ENVISION TOMORROW OVERVIEW

Envision Tomorrow, an innovative, open source, set of urban and regional planning tools developed by Fregonese Associates, is an intregal piece of our scenario planning process. It can be used to model development feasibility on a site-by-site basis as well as create and evaluate multiple land use scenarios, test and refine transportation plans, produce small-area concept plans, and model complex regional issues. The software also provides a real-time evaluation of relevant indicators such as land use, energy consumption, and financial impacts that measure a scenario's performance. It can also provide baseline carbon emissions analysis of different land use patterns, enabling planners to model the relationship between greenhouse gas emissions and land use and transportation decisions.

Envision Tomorrow consists of two primary tools: the ***Prototype Builder***, an ROI model spreadsheet tool, and the ***Scenario Builder***, an ArcGIS add-on.

WHAT IS ENVISION TOMORROW?

The ***Prototype Builder***, a return on investment (ROI) spreadsheet tool, can be used to model buildings and test the physical and financial feasibility of development. The tool allows the user to examine land use regulations in relation to the current development market and consider the impact of parking, height requirements, construction costs, rents and subsidies. Use this tool to see what is market feasible. Use it to see how preferred forms of development, such as mixed-use retail with housing above, might become more financially feasible within your existing code.

The ***Scenario Builder*** adds scenario-building functionality to ArcGIS. First, design a library of buildings in the Prototype Builder. Next, use the Scenario Builder to create development types and "paint the landscape" by allocating different development types across the study area to create unique land use scenarios. The tool then allows real-time evaluation of each scenario through a set of user-defined benchmarks or indicators. The indicators measure such things as the scenario's impact on land use, housing, sustainability, transportation, and economic conditions. It also allows communities and regions to monitor progress over the short-and long-terms.

WHAT MAKES ENVISION TOMORROW UNIQUE?

Transparent and Versatile

Envision Tomorrow is a versatile and expandable tool that can easily be adapted to accommodate various uses. Unlike most planning software, Envision Tomorrow allows the user to easily and transparently change the assumptions of the prototype buildings, development types, and scenario inputs. By making the tool transparent, you can quickly and easily adjust the assumptions to more accurately reflect the dynamics of your particular neighborhood, city, or region. This transparency allows planners to adjust assumptions in the scenario process if necessary.

Building Level Data

Since the Envision Tomorrow analysis process begins at the building level, anything we know about a building, we can test in a scenario. These are examples of common indicators used for evaluation:

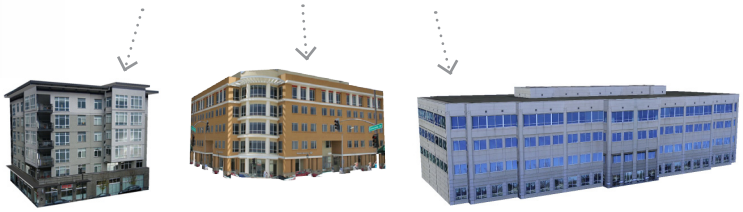
- **Housing and jobs** *(mix and density)*
- **Jobs-housing balance**
- **Land consumption** *(vacant, agricultural, infill)*
- **Impervious surface**
- **Open space**
- **Housing affordability**
- **Resource usage** *(energy and water)*
- **Waste production** *(water, solid, carbon)*
- **Transportation** *(travel mode choice, vehicle miles traveled)*
- **Fiscal impact** *(local revenue and infrastructure costs)*
- **Balanced housing index** *(how a scenario's housing mix matches the expected future demographic profile)*

ENVISION TOMORROW PROCESS

1 Develop Building Prototypes

Create prototype buildings using the return on investment (ROI) model.

Prototype Name	Corridor Mixed-Use	(enter name of building)
Project City/State	Long Beach	(enter name of city/state or proje
Site area	43,560	square feet
	1.00	acres
Site gross-to-net ratio	100%	(enter percentage)
Landscaping or open space	5%	(enter percentage)
Building height (stories)	4	stories
Under-build	70%	(enter percentage)



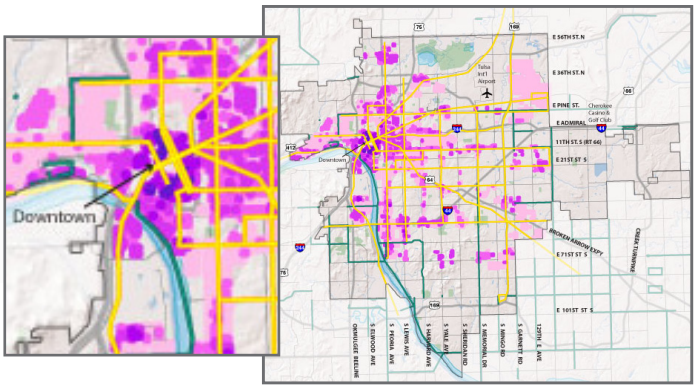
2 Create Scenario Development Types

Development types include all of the elements in a city: a mix of buildings, streets, civic uses and open spaces.

MIXED-USE RETAIL

3 Build Scenarios

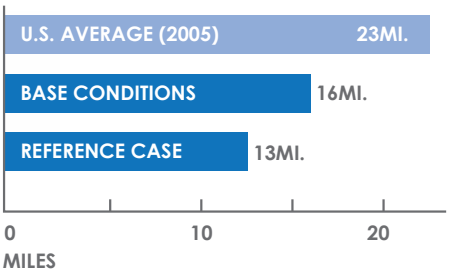
Create scenarios by applying the development types to the landscape using the scenario builder.



4 Evaluate Scenario Performance

Using the ROI model, examine a whole host of benchmarks based on the built scenario.

VEHICLE MILES TRAVELED
Per Person Per Day



Relevent and Cutting-Edge Research

Fregonese Associates has partnered with a number of institutions, organizations and government entities around the country to further the capabilities of Envision Tomorrow. These partnerships provide access to leading thinkers and the latest research and data about urban form and development which are then incorporated into Envision Tomorrow. Most recently, through collaboration with the University of Utah, 18 expanded indicators were developed that allow Envision Tomorrow users the ability to measure, for example, employment growth and resilience, public health, transportation safety, workforce housing and air quality impacts.

HOW IS IT USED AND WHO USES IT?

Municipalities, regional governments, and private organizations around the nation use Envision Tomorrow. The Chicago, Illinois region uses the tool to conduct housing studies; Baton Rouge, Louisiana is analyzing future growth scenarios, while the Southern California Association of Governments in California is examining the potential for greenhouse emissions reduction through different land use policies. In Portland, Oregon, the regional government, Metro, is refining their ability to test land use and transportation policies through scenario planning. Smaller cities like Waco, Texas and Mountlake Terrace, Washington, have found Envision Tomorrow to be a valuable addition to their planning toolbox. Below is a brief list of Envision Tomorrow users:

- Sonoran Institute/Lincoln Land Institute joint venture
- Southern California Association of Governments
- Envision Utah
- Chicago Metropolitan Agency for Planning
- City of Portland
- Portland Metro
- City of Tulsa
- Montana State University
- City of Long Beach

FAQ

What software do you need to run Envision Tomorrow?

Envision Tomorrow requires Windows XP or Vista, Microsoft Office 2000 Professional or greater, and ESRI's ArcGIS desktop software 9.3 or greater. The tool supports all ArcGIS license types (ArcView, ArcEditor, ArcInfo).

What types of indicators can Envision Tomorrow report?

Land Use: density and mix of uses
Transportation: mode choice, VMT—requires local calibration including travel survey results, land use and demographic inputs
Housing: mix and affordability
Fiscal Impact: local revenue and infrastructure—requires local calibration of revenue, rates and costs inputs
Environment: open space and agriculture conversion
Sustainability: energy use, carbon footprint, water usage and wastewater—requires local calibration based on local climate and typical resource use

Visit the Envision Tomorrow wiki page for more information on indicators: **www.frego.com/etwiki**

How long does it take to get up and running?

Start-up time depends on the indicators you use to evaluate the scenarios. Basic land use indicators can be inputted into the tool and calibrated within a few days. More complex transportation and sustainability indicators, including carbon footprint, could take several weeks to collect the input data. To reduce local calibration time, you can use national averages.

Can Envision Tomorrow be used to analyze different levels of geography?

Yes, Envision Tomorrow is designed to model land use decisions at a range of scales starting at the parcel level. By first designing Prototype Buildings that are financially feasible at the local level, the user then combines these prototypes into a series of Development Types, such as Main Street, mixed-use neighborhood, strip commercial, etc. The Development Types are used to create a series of land use scenarios at the district, city, county, and regional scale. The Scenario Builder tool allows the creation and comparison of up to five land use scenarios concurrently. The user can edit, switch between, and compare all five scenarios. A scenario spreadsheet in Excel format is dynamically linked to the tool and maintains the scenario outputs, such as housing mix, in a series of tabs for quick comparison. As you make changes to a scenario, the results automatically report in the spreadsheet for instant monitoring. Users can focus in small areas for detailed design control as well as zoom to a larger scenario with small area changes intact. Detailed scenario results are easily exportable and reportable at any geography.

FAQ

How does Envision Tomorrow evaluate different land uses and policy alternatives?

The tool evaluates scenario differences based on a variety of indicators. Most indicators derive from what particular mix of buildings the user chooses to place on the landscape and where they place them. For example, if the user paints an area with a main street development type as opposed to a strip commercial development type, the underlying buildings that compose those places are different, and that difference will be reflected in the indicators. Main Street development might include some multifamily housing and mixed-use, whereas the strip commercial might include low intensity retail. The choice to put in main street development could result in a lower housing density, but achieve a reduction in per capita water and energy usage and the number of vehicle miles traveled. The implications of different land uses are reflected instantly as the user makes alternative decisions.

Does Envision Tomorrow model carbon footprint?

Envision Tomorrow uses a predictive algorithm combined with local travel and demographic data to estimate the impact of land use changes on key transportation indicators, such as travel mode split, vehicle miles traveled, and greenhouse gas emissions. By using a predictive algorithm approach, the tool does not require a direct link to a transportation model to evaluate the impact of land use changes on travel behavior and carbon emissions.

Can you modify underlying assumptions to align with local conditions?

Yes, all assumptions to the prototype buildings, development types, and scenario inputs are transparent and editable in Excel. From our experience, it is important that planners see all of the assumptions in the scenario process and be able to adjust the assumptions, if necessary. Because the tool is dynamically linked in Excel, changing an assumption results in instant updates to the scenario outputs.

Can the tool display impacts graphically and visually?

Yes, Envision Tomorrow provides visual results in multiple formats, including maps, charts, and graphics. Scenario results can be used to create 2D and 3D visualizations.

How much does Envision Tomorrow cost?

The software license for Envision Tomorrow is free-of-charge. The only fees associated compensate our time to train users in using the tool. Contracts are driven by the client's needs; we typically create a contract for data gathering, training and customization.

URBAN GROWTH BOUNDARY REMAND

Meeting Agenda

Employment Technical Advisory Committee
Monday, August 26, 2014 2:30 PM – 5:00 PM
City Council Chambers, Bend City Hall

Meeting Purpose and What is Needed from the TAC

The purposes of this meeting are to:

- Identify employment lands the TAC expects will redevelop within the next 15 years
- Obtain input on the most appropriate "short term industrial supply", i.e. location of those lands which are serviced and/or serviceable in the next 1-2 years

The two issues listed above address specific Remand requirements. When the City defined its UGB proposal in 2008, it used a "redevelopment rate" of 10% to estimate needed employment lands. The Remand states that this approach required additional justification. This time, the staff and the consultant team recommend that the redevelopment rate be justified, in part, by identifying opportunity areas for commercial, industrial, and mixed use lands. The feedback from this meeting will be used to analyze targeted opportunity areas in greater detail to support a proposed redevelopment rate and/or rates for employment land within the existing UGB.

The specific discussion questions, i.e. the feedback we would like from the TAC, are listed as the bulleted discussion questions under each agenda item. They are a starting point for the agenda.

1.	**Welcome and Introductions**	**2:30 PM**
a.	Welcome and convene	Jade Mayer
b.	Self-introductions	All
c.	Agenda overview	Joe Dills
d.	Approval of meeting summary from last meeting	Joe
2.	**Redevelopment of Employment Lands**	**2:45 PM**
a.	Building from past work and Remand requirements	Brian Rankin
b.	The ingredients of redevelopment – presentation	Chris Zahas
c.	Review of mapped redevelopment indicators	Alex Joyce

For additional project information, visit the project website at http://bend.or.us or contact Brian Rankin, City of Bend, at brankin@bendoregon.gov or 541-388-5584

Accessible Meeting/Alternate Format Notification
This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the City Recorder no later than 24 hours in advance of the meeting at rchristie@ci.bend.or.us, or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

d. Discussion and map notes of opportunity areas for:
   - Retail – where are the opportunity areas for retail redevelopment over the next 15 years?
   - Industrial – where are the opportunity areas for industrial redevelopment over the next 15 years?
   - Mixed use – where are the opportunity areas for mixed use (including small neighborhood centers) over the next 15 years?

3. Short Term Supply of Industrial Lands — 3:45 PM

a. Building from past work and Remand requirements — Brian Rankin
b. Discussion and map notes of short term industrial lands — Bob Parker
   - Which industrial areas qualify as the City's supply of industrial land that is ready for development within the next 1-2 years?

4. Project News — 4:40 PM

a. Announcements and updates — Brian and Joe
b. News from the other TACs

5. Adjourn — 5:00 PM

City of Bend
Employment Lands Technical Advisory Committee
Meeting Notes
Date: August 4, 2014

The Employment Lands TAC held its regular meeting at 2:30 pm on Monday, August 4, 2014 in the City Hall Council Chambers. The meeting was called to order at 2:30 pm by Brian Rankin.

Roll Call

- ☐ Ken Brinich
- ☐ Ann Marie Colucci
- ☐ Peter Christoff
- ☐ Todd Dunkelberg
- ☐ Brian Fratzke
- ☐ David Garcia
- ☐ Christopher Heaps
- ☐ Patrick Kesgard
- ☐ William Kuhn
- ☐ Robert Lebre
- ☐ Dustin Locke
- ☐ Wesley Price
- ☐ Damon Runberg
- ☐ Cindy Tisher
- ☐ Ron White
- ☐ Joan Vinci
- ☐ Wallace Corwin
- ☐ Jade Meyer
- ☐ Tom Hogue
- ☐ Jennifer Von Rohr

Discussion

Frank Angelo facilitated the discussion of appointing the chair and vice chair for the Employment TAC. Brian Rankin pointed out that the TAC Chair and Vice Chair would spend about 2 additional hours per month for prep work associated with the next 3 TAC meetings.
By consensus, the Employment TAC appointed the following leadership to this TAC: Jade Mayer, Chair, Wes Price, Vice Chair, with Patrick Kesgard and Joan Vinci agreeing to provide back up support as needed.

Brian Rankin provided a brief overview of past UGB work.
Bob Parker with ECONorthwest presented an overview of Remand requirements relating to employment lands.
Chris Zahas with Leland Consulting Group presented information on emerging national and local trends that are relevant to the work of the Employment TAC.
Alex Joyce with Fregonese Associates provided an overview of the Envision Tomorrow model and introduced an initial "employment building library" for Bend.

Decision Item

By unanimous vote, the TAC recommended proceeding with Scenario A from the 2008 Employment Opportunities Analysis (EOA) and dropping the "market factor." This decision was supported by the July 28, 2014 memo summarizing Remand Issues Relating to Employment Lands and a recommendation from city staff and the consultant team.

Action Items/Next Steps

Action	Assigned To
Supplement "building type library" to address medical space, specialty manufacturing and recreational/specialty buildings (such as climbing gyms, etc.)	APG team (Fregonese Associates)
Provide opportunity for follow-up meeting for TAC members interested in digging into Envision Tomorrow model assumptions and spreadsheets	City of Bend and APG team (Fregonese Associates)

Meeting adjourned at 5:00 by Frank Angelo.

Memorandum

August 19, 2014

To: Employment Lands Technical Advisory Committee

Cc: Bend Staff

From: APG Consulting Team

Re: Introduction to Redevelopment Analysis

INTRODUCTION

This memorandum provides background information for the second meeting of the Employment Lands Technical Advisory Committee (TAC); specifically, an introduction to the topic of redevelopment.

An inventory of land inside a UGB, which must include suitable vacant and developed land designated for industrial or other employment use, is a prescribed step in amending a UGB. The inventory facilitates the analysis of whether the development capacity of employment land inside the UGB is able to accommodate the estimated 20-yer land need, including by increasing the capacity of such land through redevelopment The city must demonstrate that estimated needs cannot reasonably be accommodated on land already inside the UGB prior to expanding the UGB.

REMAND REQUIREMENTS: WHY LOOK AT REDEVELOPMENT?

One of the issues that the Remand identified was the need to further justify and explain the assumptions that the city made about how much redevelopment would take place on employment land within the current Urban Growth Boundary (UGB). The 2008 EOA does not include a site-by-site redevelopment analysis. That may be acceptable, but is not required by Goal 9 and use of a factor or rate is acceptable where findings explain the evidentiary base. The 2008 EOA includes use of a 10% redevelopment factor; however the Remand found that the factual base to support the 10% redevelopment assumption has not been addressed.[1] The

[1] Remand Subissue 5.2 (Conclusion, page 70): *Commission remands the UGB decision to the City to provide an adequate factual base to support use of a 10 percent redevelopment factor, including an analysis of the amount of redevelopment that has occurred in the past and a reasoned extension of that analysis over the planning period. Alternatively, the City may satisfy Goal 9 and division 9 by other means, for example through a site-by-site redevelopment analysis. However, a site-by-site analysis is not required; the Commission determines that using a factor is acceptable where findings explain evidentiary basis and address the Goal 14 requirement to reasonably accommodate development within the existing UGB.*

Remand indicated that it may be appropriate for the City to examine how redevelopment rates vary for different areas or between industrial and non-industrial uses.

BACKGROUND: VACANT AND DEVELOPED LAND

State statute defines "vacant" and "developed" land for the purposes of evaluating employment land need as follows:[2]

- Vacant: "a lot or parcel: (a) equal to or larger than one half-acre not currently containing permanent buildings or improvements; or (b) equal to or larger than five acres where less than one half-acre is occupied by permanent buildings or improvements."
- Developed (but to be included in an inventory of available land): "non-vacant land that is likely to be redeveloped during the planning period."

The city created a Buildable Lands Inventory (BLI) as part of the 2008 EOA that assigned a "development status" to each tax lot or parcel in the Bend UGB. This EOA focuses on the lands with an economic land use designation made by the General Plan. For the purposes of the BLI, all developed land -- lots less than 0.5 acres; b) lots between 0.5 acres and 5 acres that have permanent structures or improvements (having improvement values in the Deschutes County GIS); c) lots 5 acres or larger with 0.5 acres or more of development, structures, and use as determined by measuring development areas with aerial photographs – was identified as "developed", not just those properties that are "likely to be redeveloped during the planning period." The redevelopment rate was then applied to the total amount of land identified as developed.[3]

Maps showing the development status of employment land by broad plan designation categories (Commercial/Office, Industrial/Mixed Employment, and Public Facilities/Medical District Overlay Zone) were prepared for the 2008 EOA. Since the BLI data has not been fully updated at this time, the original 2008 maps are included as a reference with this memorandum. These maps will be updated as the formal development status is updated to 2014 conditions; however, relatively little commercial development has taken place during the last 6 years.

APPROACHES TO PROJECTING REDEVELOPMENT

What is Redevelopment?

Redevelopment is a term for changing the usage of a piece of land, typically to increase its real estate value. For a piece of commercial land, that can mean adaptive re-use (warehouses into electronics fabrication incubators; silos into climbing gyms, etc.), right-sizing (scaling size and intensity up or down), or outright razing and rebuilding to meet the demands of the market environment. Depending on the existing conditions of the property in question, redevelopment can also involve *brownfields* (usually contaminated).

[2] OAR 660-009-0005(14)

[3] City of Bend 2008 Economic Opportunities Analysis, p. 88-89.

What are the Ingredients for Redevelopment?

Think of redevelopment from the twin viewpoints of the land owner and the prospective tenant: From a land owner's point of view, every property is said to have a *highest and best use,* a way of improving the land that will allow that property to command the highest possible rent, given its location, zoning, etc. A would-be tenant, on the other hand, knows that, somewhere out there, the right property exists for making money in that firm's chosen pursuit – some favorable combination of an adaptable building shell, feasible rent levels and reasonable proximity to customers, suppliers and amenities. When those two optimal worlds can come together profitably on new, typically outlying suburban or exurban lands, you get "greenfield" development. When the intersection of landlord and tenant needs can happen in the context of existing buildings and infrastructure, the result is redevelopment.

A tenant considering several locations will consider the pros and cons of several factors specific to their business, beyond just weighing the difference in rents, including:

- Amenities: shopping, dining, nearby housing, etc.
- Road/transit connectivity
- Availability of parking
- Ease/difficulty of land assembly
- Proximity to suppliers, collaborators, and competing firms
- Personal safety
- New construction vs rehabilitation costs

A downtown landlord—for example, the owner of a 2-acre surface parking lot—has a somewhat simpler equation to consider. Does the rent flow from some new and better rent stream, less all the transaction costs of redevelopment (including risk) equal or surpass the rent stream from business as usual or the existing use on the property. If it does then the owner will likely look for an opportunity to redevelop the property. Thus, low existing rent flows and occupancy levels will generally favor redevelopment, while reliable, low-risk rent flows and high occupancy may discourage it.

Part of the appeal of greenfield development is the feeling that everything is more of a blank slate. Design, construction and infrastructure provision can appear more straightforward and manageable. However, many amenities associated with redevelopment can be hidden or taken for granted, relative to those in the greenfields (which are often more promised than real).

Because of this, downtown landowners and other pro-downtown entities can face an uphill sales battle, even in cases when the economic equation is arguably in favor of redevelopment.

The local jurisdiction is another key stakeholder in this economic landscape. Costs, benefits and other qualitative consequences of the greenfields versus redevelopment decision affect city finances and constituents in ways that can be difficult to predict. Planning and zoning are the principal tools in place to shepherd development in desired directions. Incentives and creative financial arrangements are other available “carrots” for influencing tenant-landlord dynamics.

In short, the ingredients for redevelopment are in place when the owners’ *highest-and-best-uses* meets tenants’ *best-available-places*, under rent conditions acceptable to both. Without planning, zoning and incentives (often along with education) tailored to allow for market supported property re-invention, however, greenfields will often hold more appeal than redevelopment for both owners and tenants looking to grow.

What are Indicators of Redevelopment Potential?

Not all downtown (or central, or inner-ring) land has equal potential for redevelopment. In a perfect world, a city possessing unlimited resources and wanting to plan proactively for redevelopment would start by visiting each and every property-- with zoning map, leases and tax records in hand – to see which parcels are living up to their economic potential and which are under-achieving. The staff would then interview each and every land owner, existing tenant and prospective tenant to better understand the real and perceived trade-offs currently at play in their land use decisions. Fortunately for real world planners, there are a few readily-available indicators to help sift through the real estate landscape to at least roughly sort out what properties are ripe or nearly-ripe for redevelopment. These are noted briefly in the discussion below.

Improvement-to-Land Value

A somewhat crude but quite effective first cut can be using Assessor’s property tax data to compare improvement (building) values for each taxlot to that parcel’s land value. Vacant or nearly-vacant parcels will score near zero on this measure. Improved parcels where building values are no greater than the value of the land (improvement to land value ratios or “I-L ratios” up to 1.0) are generally also considered good potential candidates for redevelopment. Lots in prime locations and with very favorable (typically higher density) zoning can potentially be considered “underutilized” even with improvement to land ratios approaching 2.0 (for instance a $2,000,000 building on a $1,000,000 piece of land). There are no magic threshold values; rather, the cut-offs used in this analysis are best set so as to err on the side of flagging *too many* potential redevelopment sites – which can then be narrowed further through a more qualitative inspection.

This approach can be made more or less sophisticated through consideration of individual zoning districts, city-wide ratio comparisons and other data massaging or analysis techniques. While simple and relatively quick to analyze, assessors’ property data are often incomplete and imperfect, making this indicator a useful but imperfect tool.

Maps showing improvement to land value ratios for employment lands will be presented at the TAC meeting as one way to identify redevelopment potential; however additional information and input will be combined with these maps to create a more grounded and complete picture of the likelihood of redevelopment on employment lands.

Real Estate Market Conditions

Growth in Fundamentals

If the planning horizon is relatively short-term or even mid-term (say, 5 to 15 years), an understanding of market-wide supply and demand trends can be as important as identification of underutilization when considering where to plan for redevelopment. However, projections of employment growth at a district scale are not generally available. This project will rely on qualitative knowledge from local real estate professionals and others, including TAC members, to provide an indication of where employment growth may be headed in the near-term.

Occupancy

Low current vacancy rates (typically under 5-7% for retail and industrial; under 10-15% for office) can be seen as evidence of pent-up demand, while the converse can suggest a temporary surplus of space. Windshield and walking surveys can suffice for providing this information for smaller areas, but subscription or broker sources like Costar help greatly with area comparisons and data completeness. Leland is obtaining data on the Bend market from Costar to support a more focused analysis of redevelopment opportunities.

Rents

Absolute rent levels (say, $20 per square foot) can be very meaningful to individual developers, landlords and tenants who are intimately familiar with their own specific *pro forma* equations. For planners and decision-makers, it's often more telling to look at *relative* rent levels: today versus last year, downtown versus suburban, office versus apartments, etc. to understand which way the market is moving. Unfortunately, even with paid subscription-based data (such as Costar) individual property rents are often the weak link in the data – due to under-reporting, reliance on "asking" rather than actual rents, etc. Even incomplete or broadly-aggregated rent information is better than none, but is limited in usefulness for comparing redevelopment potential of individual properties. Leland is obtaining data on the Bend market from Costar to support a more focused analysis of redevelopment opportunities.

Construction Activity

Trends in new construction or absorption (growth in occupied square footage), especially when shown on a map, are a direct indicator of hot spots for development and redevelopment. Caution is warranted in reacting to such data, however, especially given its inherently lagged nature. Understanding planned and proposed development activity is critical, but data quality here can be quite variable, often depending upon how communicative developers may be regarding their future plans. In general, patterns of growth should be clear and consistent to justify dramatic shifts in forecasting or policy, to avoid a "tail-chasing" phenomenon. The city can provide this data by assembling permit information, if desired by the TAC.

Physical Assets

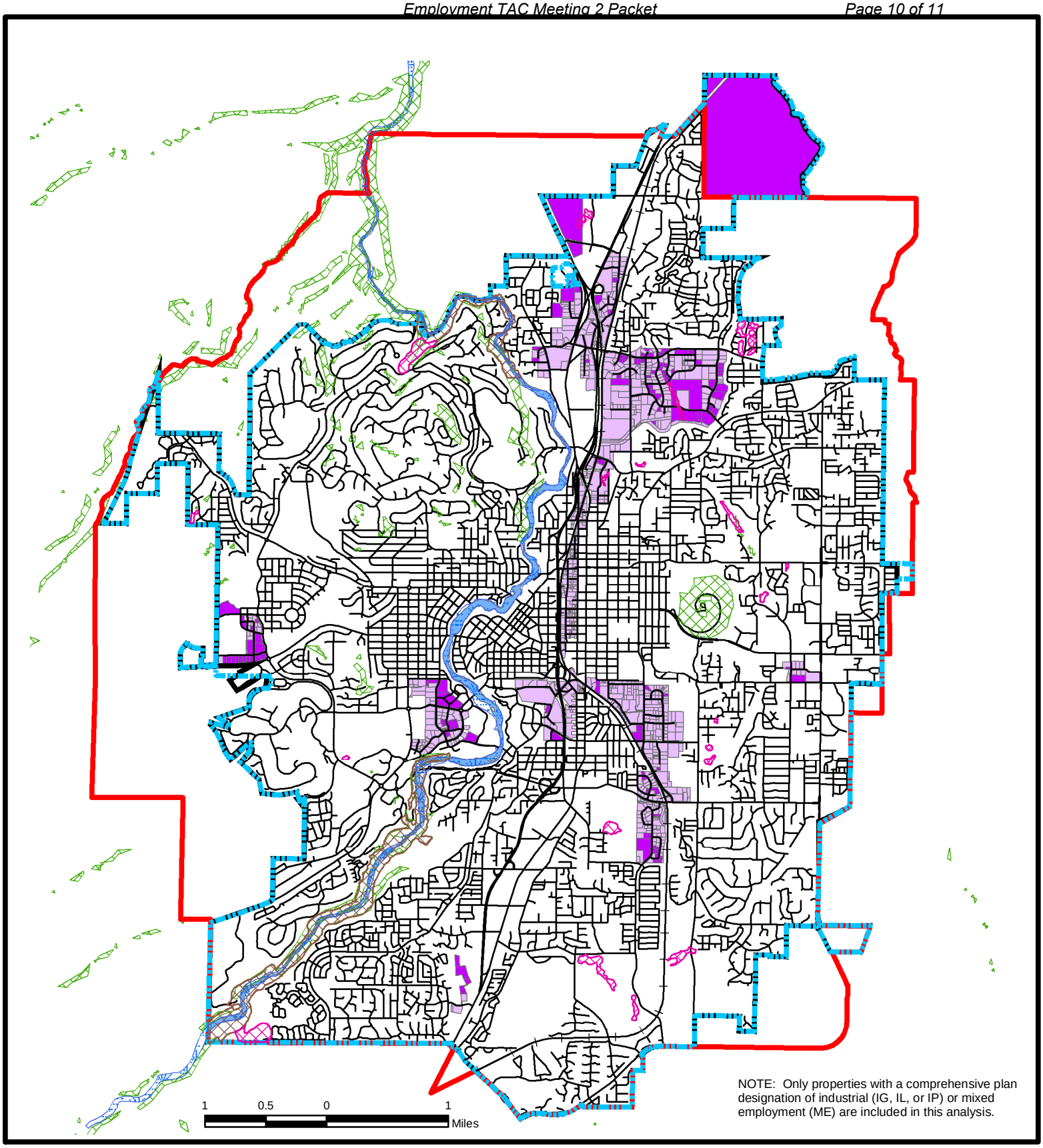
The existing physical characteristics of a place can be another critical factor determining redevelopment potential. An area with “good bones”—existing building stock, historical or cultural amenities, parks, streetscapes, nearby housing, etc.—will be in a stronger position than an area that is not well-connected or integrated with the surrounding community.

Qualitative Market Demand

Understanding of locational and spatial attributes needed by growing industries is a more qualitative, but equally critical facet of the market. Some industries thrive by being near amenities and co-locating with suppliers and competitors. Tech industries in particular seek out locations near a hive of activity, in order to attract quality employees. For some businesses finding an area that fits the personality of the business or being in an area with a “cool factor” will outweigh the rent differential (within reason). Other industries may be very price sensitive or may need to be removed from high activity levels. Heavy manufacturing uses for example, may seek more remote locations where they can maneuver large trucks and worry less about complaints from neighbors about noise or particulates. This project will rely on qualitative knowledge from local real estate professionals and others, including TAC members, to provide insights into the factors that are attractive to different types of businesses.

REDEVELOPMENT PROJECTIONS FOR THE BEND UGB

The project team proposes to use quantitative indicators, such as improvement to land value ratio, along with qualitative indicators, such as insights from local commercial real estate professionals, to project redevelopment rates by employment district within the city. The TAC is asked to help supply the qualitative insights and/or quantitative data on redevelopment potential by employment district that will help the team estimate a reasonable rate of redevelopment for each area, with sufficient data and analysis to provide a factual base for the assumptions.



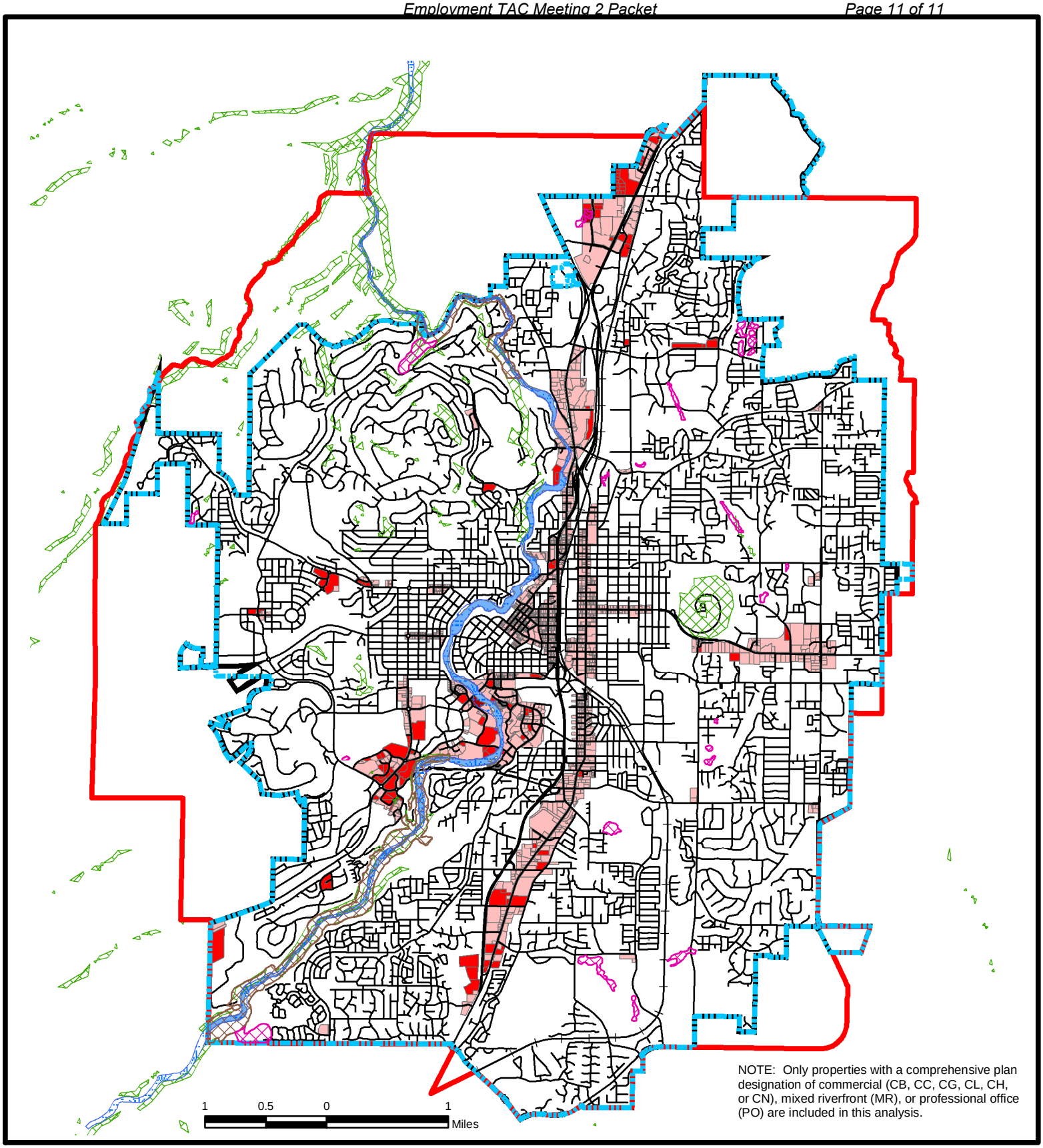
Employment Opportunity Analysis - Industrial/Mixed Employment

- City Limits
- Urban Area Reserve
- Urban Growth Boundary
- Railroads
- Upland Areas of Special Interest
- River Corridor Areas of Special Interest
- Slope > 25%
- Floodplain

Development Status

- DEVELOPED (Includes properties NOT meeting the OAR 660-009 definition of vacant, including unbuildable lands.)
- VACANT (Includes properties that meet the OAR 660-009 definition of vacant, including those with pending land use actions.)
- VACANT W/ PHYSICAL CONSTRAINTS (Includes properties where 50% or more of the lot is covered by steep slopes, areas of special interest, or floodplains.)

Map prepared by City of Bend, Community Development Department, September 7, 2008.
Development status data updated February 22, 2008.
EOA_inventory_2008_IND.mxd



NOTE: Only properties with a comprehensive plan designation of commercial (CB, CC, CG, CL, CH, or CN), mixed riverfront (MR), or professional office (PO) are included in this analysis.

Employment Opportunity Analysis - Commercial/Office Use

- City Limits
- Urban Area Reserve
- Urban Growth Boundary
- Railroads
- Upland Areas of Special Interest
- River Corridor Areas of Special Interest
- Slope > 25%
- Floodplain

Development Status

- DEVELOPED (Includes properties NOT meeting the OAR 660-009 definition of vacant, including unbuildable lands.)
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Map prepared by City of Bend, Community Development Department, September 7, 2008.
Development status data updated February 22, 2008.
EOA_inventory_2008_COMM.mxd

Meeting Agenda

UGB Boundary and Growth Scenarios Technical Advisory Committee
Tuesday, August 5, 2014 10:00 AM – 12:30 PM
City Council Chambers, Bend City Hall

Meeting Purpose and What is Needed from the TAC

The UGB Boundary TAC will prepare a methodology to evaluate UGB alternatives in Phase 2 of the project. In Phase 1, the central questions are:

- Consistent with the requirements of the Remand, how do we frame the study area(s) for the analysis and packaging of UGB alternatives?
- How do we measure, evaluate and balance the location factors of Goal 14?
- Should some factors be weighted more heavily than others?

This first meeting will address several issues related to the first question above regarding framing of study areas and alternatives. Specifically, we will recap the important Remand issues and UGB analysis steps, review an approach to "suitability criteria and screening", and discuss a "tiered approach" to the analysis of expansion areas and packaging of UGB Scenarios. Lastly, we'll introduce the Envision Tomorrow scenario modeling tool.

The specific discussion questions, i.e. the feedback we would like from the TAC, are listed as the bulleted discussion questions under each agenda item. They are a starting point for the agenda.

1. Welcome and Introductions — 10:00 AM

a. Welcome — Brian Rankin
b. Self-introductions — All

2. Election of Chair and Vice Chair — 10:10 AM

a. Nominations — Facilitator
b. Vote and confirmation

For additional project information, visit the project website at http://bend.or.us or contact Brian Rankin, City of Bend, at brankin@bendoregon.gov or 541-388-5584

Accessible Meeting/Alternate Format Notification
This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the City Recorder no later than 24 hours in advance of the meeting at rchristie@ci.bend.or.us, or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

3. Legal and Planning Context — 10:20 AM

a. Building on past work
b. Context – Overview of Goal 14, ORS 197.298, Remand requirements, and typical steps in a UGB expansion analysis.

- What questions/comments does the TAC have on the context and how this information will be used?
- Does the TAC support the general approach regarding suitability criteria and screening?
- Does the TAC support the tiered approach to analysis of expansion areas?
- What initial input does the TAC have on local issues that are important to include in the consideration of the Goal 14 factors?

Brian Rankin
Bob Parker, ECONorthwest

Mary Dorman, Angelo Planning Group

4. Envision Tomorrow Scenario Tool — 11:40 AM

a. Overview of the Envision Tomorrow scenario modelling tool and how it will be applied in Bend.

- Questions and discussion about Envision

Fregonese Associates

5. Adjourn — 12:30 PM

Memorandum

July 28, 2014

To:	Boundary and Growth Scenarios Technical Advisory Committee
Cc:	Bend Staff
From:	APG Consulting Team
Re:	SUMMARY OF KEY REMAND ISSUES RELATED TO BOUNDARY AND GROWTH SCENARIOS

INTRODUCTION

This memorandum provides background information for the first meeting of the Boundary and Growth Scenarios Technical Advisory Committee (Boundary TAC). The work of Bend's three Technical Advisory Committees (TACs) will run in parallel in Phase 1 and be integrated in two joint TAC/Steering Committee work sessions at the end of Phase 1. The key questions to be addressed by each TAC in Phase 1 are listed below.

Residential Lands TAC (Land Needs)

- How much land is needed for housing and related uses through 2028?
- What residential "efficiency measures" to accommodate more residential growth within the existing UGB are best for Bend?

Employment Lands TAC (Land Needs)

- How much land is needed for employment and special site needs through 2028?
- How and where will we invest public dollars to make land ready for the market?

Boundary TAC (UGB Alternatives Analysis – Location)

- Consistent with the requirements of the Remand, how do we frame the study area(s) for the analysis and packaging of the boundary and growth scenarios?
- How do we measure, evaluate and balance the location factors of Goal 14?
- Should some factors be weighted more heavily than others?

The Boundary Methodology developed in Phase 1 will be used to evaluate boundary and growth scenarios in Phase 2 with Envision scenario tools. Fregonese Associates will present an overview of Envision at the first meeting of the Boundary TAC.

Building on Past Work

The prior UGB expansion proposal's approach resulted in the Remand Order requirements specified in the Appendix A attached to this memorandum. The requirements are lengthy and specific, so a non-technical and high-level description of the evaluation process provided here will provide some context for the more detailed discussion.

The approach the City took in the original proposal will be dramatically improved by virtue of the guidance provided in the Remand Order, the use of a TAC to specifically address the boundary methodology, using the Envision Tomorrow scenario planning model, and use of more detailed models (optimization for water and sewer systems, and use of the MPO Travel Demand Model) to be employed in Phase 2 of the project. In addition, this process will be assisted by highly experienced and knowledgeable consultants who have performed this work in Oregon, and other large cities in the U.S.

First, a diverse group of community members will focus exclusively on boundary methodology prior to forming boundaries. Ideally, this will establish more credibility for the process and embed local values to the extent they are allowed by law and the Remand Order. A critical element for the success of this project is balancing work that is legally defensible and reflects the values of the community. The Envision Tomorrow tool will allow the community and decision makers to run preliminary alternative boundary and infill scenarios faster and with estimates of impacts prior to using more detailed, time consuming, and expensive models later in Phase 2. Consider the Envision Tomorrow as an iterative tool to allow testing of ideas, concepts, and land use scenarios to narrow down the universe of boundary and infill scenarios into four competing infill and expansion scenarios that are all legal and meet the requirements of the Remand Order, yet have different impacts, advantages, disadvantages, costs, and benefits.

These four scenarios will then receive an additional level of analysis through modeling with the city's recently completed optimization models for water and sewer. While not considered originally in the scope of work, the stormwater system will also likely need to be considered as well. Impacts on the transportation network will then be analyzed with the MPO Travel Demand Model which is currently being developed and finalized. Together, these models will enable the community and decision makers to explore the more detailed public-facility related implications of the four boundary scenarios. This will then allow for a comparison and eventual selection of a preferred alternative. Along the way, input from the USC and public will help guide and refine this process.

This illustrates the importance of the work of the Boundary TAC; it will be deciding what factors are important to the community, apply these factors to meet the requirements of state law and the Remand Order, and apply these considerations to the rigorous analysis in Phase 2.

Planning Horizons and the Remand

An important consideration is that this a Remand and partial acknowledgement of a decision made in December 2008. Thus, the TAC's work will focus on issues that need resolution from

the Remand. Following is guidance from the Bend City Attorney on the issue of planning horizons and new information:

> *The Commission's [i.e. LCDC's] role is not to substitute itself for the city, or make a new decision today, starting from scratch, just as the RTF's [Remand Task Force] and City Council's roles are to carry out the Remand requirements spelled out by the Commission. Rather, LCDC, the RTF, and City Council will review the City's UGB expansion as if it were 2008. This makes sense given that a UGB expansion is based on the amount of land that the city needs for future residential and employment uses, over the 20-year planning period. Seeing the Remand through the lens of 2008 also keeps the data, timeframe, and analysis internally consistent. Here, the planning period is 2008 to 2028, and is based on the coordinated population forecast upheld on appeal to LUBA.*

In summary, the planning horizon is 2008-2028 and the City can choose to reanalyze data already in the record, or add data that could have been available through 2008, to comply with the Remand requirements on residential and employment land needs. The exception to this general rule is when new information must be reconsidered in order to meet the requirements of the Remand Order. For the Residential and Employment TACs, new information can and should be considered around infill and redevelopment and efficiency measures. The work of the Boundary TAC will be based on updated 2014 GIS data and other new information.

OVERVIEW OF GOAL 14 & ORS 197.298

The UGB is a key component of Oregon's land use planning program. Guidance and rules related to management of a UGB are provided in Statewide Planning Goal 14 and in Oregon Revised Statutes (ORS) 197.298. The relevant guidance from each is summarized below. A diagram of the major steps in the process to establish or amend a UGB is shown on the following page.

Goal 14: Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Land Need *(see UGB diagram – blue boxes)*

Establishment and change of urban growth boundaries shall be based on the following:

(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

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

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

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.

Boundary Location *(see UGB diagram – tan, grey and green boxes)*

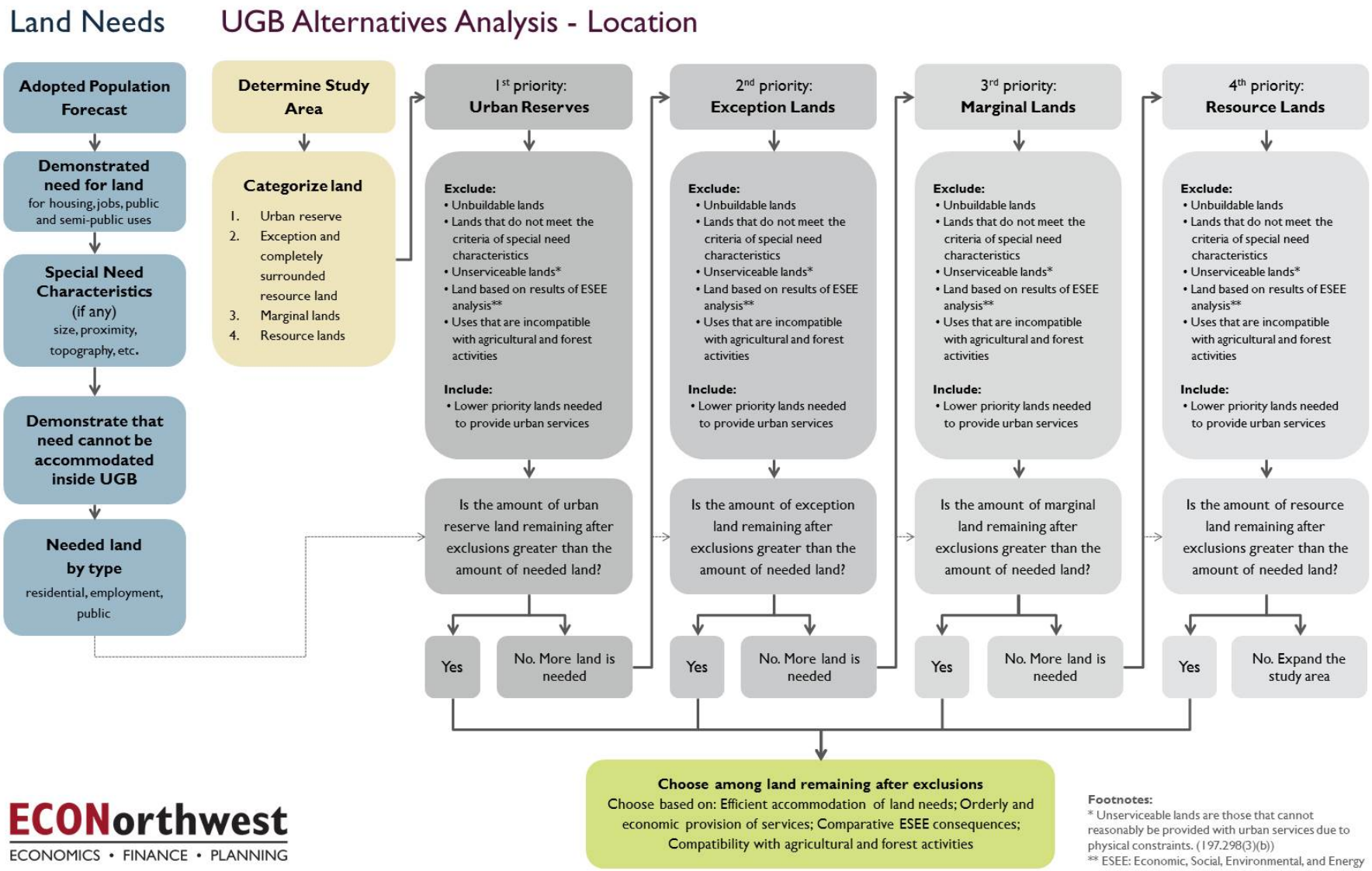
The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

(1) Efficient accommodation of identified land needs;

(2) Orderly and economic provision of public facilities and services;

(3) Comparative environmental, energy, economic and social consequences; and

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.


Land Needs
UGB Alternatives Analysis - Location
Adopted Population Forecast
Demonstrated need for land
for housing, jobs, public and semi-public uses
Special Need Characteristics
(if any)
size, proximity, topography, etc.
Demonstrate that need cannot be accommodated inside UGB
Needed land by type
residential, employment, public
Determine Study Area
Categorize land
1. Urban reserve
2. Exception and completely surrounded resource land
3. Marginal lands
4. Resource lands
1st priority: Urban Reserves
Exclude:
• Unbuildable lands
• Lands that do not meet the criteria of special need characteristics
• Unserviceable lands*
• Land based on results of ESEE analysis**
• Uses that are incompatible with agricultural and forest activities
Include:
• Lower priority lands needed to provide urban services
Is the amount of urban reserve land remaining after exclusions greater than the amount of needed land?
Yes
No. More land is needed
2nd priority: Exception Lands
Exclude:
• Unbuildable lands
• Lands that do not meet the criteria of special need characteristics
• Unserviceable lands*
• Land based on results of ESEE analysis**
• Uses that are incompatible with agricultural and forest activities
Include:
• Lower priority lands needed to provide urban services
Is the amount of exception land remaining after exclusions greater than the amount of needed land?
Yes
No. More land is needed
3rd priority: Marginal Lands
Exclude:
• Unbuildable lands
• Lands that do not meet the criteria of special need characteristics
• Unserviceable lands*
• Land based on results of ESEE analysis**
• Uses that are incompatible with agricultural and forest activities
Include:
• Lower priority lands needed to provide urban services
Is the amount of marginal land remaining after exclusions greater than the amount of needed land?
Yes
No. More land is needed
4th priority: Resource Lands
Exclude:
• Unbuildable lands
• Lands that do not meet the criteria of special need characteristics
• Unserviceable lands*
• Land based on results of ESEE analysis**
• Uses that are incompatible with agricultural and forest activities
Include:
• Lower priority lands needed to provide urban services
Is the amount of resource land remaining after exclusions greater than the amount of needed land?
Yes
No. Expand the study area
Choose among land remaining after exclusions
Choose based on: Efficient accommodation of land needs; Orderly and economic provision of services; Comparative ESEE consequences; Compatibility with agricultural and forest activities
Footnotes:
* Unserviceable lands are those that cannot reasonably be provided with urban services due to physical constraints. (197.298(3)(b))
** ESEE: Economic, Social, Environmental, and Energy
ECONorthwest
ECONOMICS • FINANCE • PLANNING

Land Priority Provisions

State law (ORS 197.298) establishes that land may not be included within an urban growth boundary except under the following categories:

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

Comments: Bend does not have designated urban reserve land so this priority category is not applicable.

(2) Second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or non-resource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

Comments: OAR 660-024-0060 clarifies that "land adjacent to the UGB" is not limited to 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. If the amount of suitable land in this category exceeds the amount needed, the City then uses the Goal 14 location factors to identify which priority lands to include in its UGB. For general housing needs, land is considered suitable unless it: is severely constrained by natural hazards (Goal 7), is protected by Goal 5, has slopes over 25 percent, is within the 100-year floodplain or can't be provided with public facilities.[1] Lands for general employment needs are not "suitable" unless they are "serviceable" and are either "vacant" (a lot greater than ½ acre not containing permanent improvements or greater than 5 acres where less than ½ acre is occupied by improvements), or developed but likely to be redeveloped during the planning period.[2]The Goal 14 factors are not criteria; they are considerations that are applied to each alternative parcel or group of parcels. The parcel or parcels that, on balance, best satisfy the factors are selected. In other words, no single one of the four location factors may be the sole basis for selecting a particular parcel(s) to add to the UGB.

The Envision Tomorrow model results, GIS analysis, and optimization/TDM results will create a common set of evaluation criteria for the Goal 14 location factors, thus representing the balancing.

(3) If land in the second priority category is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247.

Comments: Marginal lands have not been designated so this priority category is not applicable.

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[1] OAR 660-024-0060(1)(e) and OAR 660-024-0010(1)

[2] OAR 660-009-0005(1), (9) and (14)

(4) If higher priority land is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

ORS 197.298(3) provides that land of lower priority may be included in a UGB if land of higher priority is found to be inadequate to accommodate the amount of land estimated for one or more of the following reasons:

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

Comments: The City has documented specific needs for a University (225 acres at Juniper Ridge), a new Hospital site (112 acres south of Bend) and two large industrial sites (total of 112 acres). However, the City will need to provide findings documenting that the specific needs cannot be accommodated within the existing UGB.

The OSU-Cascade development within the City removes the need for a University site at Juniper Ridge. However, it will displace land within the UGB that was assumed to be available for general employment uses from 2008-2028.

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

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

Comments: There is a high threshold to exclude higher priority land, such as exception land, and instead add lower priority lands, such as farmlands. For example, the Director's Report stated the fact that it may cost more to provide public services to one area than others does not satisfy ORS 197.298(3). Likewise, the fact that one parcel will yield fewer new homes or less development than others does not allow a local government to exclude that land from a UGB expansion area in favor of other, lower priority lands. LUBA and the courts have construed the ORS 197.298(3) exceptions narrowly to allow inclusion of lower priority lands at the exclusion of higher priority lands only in cases with compelling facts.

The Director's Report and the LCDC Remand noted that the City may be able to include specific lower priority resource lands in order to provide services to higher priority exception lands if supported by an adequate factual base.

REMAND REQUIREMENTS

Key Remand Issues that relate specifically to the Goal 14 methodology (Boundary Location) are summarized below from the list of Remand Issues presented in Appendix A. Selected Remand

Issues relating to Goal 5 (Natural Resources), Goal 7 (Natural Hazards), Goal 11 (Public Facilities and Services) and Goal 12 (Transportation) are also highlighted because of their linkage to the Goal 14 location factors.

The Remand includes numerous issues and directives relating to land needs and land efficiency measures. As described at the beginning of this memo, the Residential and Employment TACs will have the lead role in providing the inputs on land needs and specific characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. The UGB TAC will focus on the methodology that will be used to evaluate alternative UGB scenarios, based on guidance from the Remand, state law and relevant case law.

Issues related to Suitability Criteria and "Screening"

See Appendix A List of Remand Issues – Sub Issue 9.1, 9.2 and 9.3

- Directives 105-107 highlight the role and importance of establishing suitability criteria for general housing, employment, and related land needs.
- Directive 108 outlines the steps for applying the suitability criteria to exception lands within the study area and notes that lands that do not meet the suitability criteria appropriate lands may be "screened out" from further analysis.

  Comments: The Director's Report stated that the methodology and approach used in 2008 improperly excluded a substantial amount of land planned and zoned as exception lands from consideration for inclusion in the UGB. This resulted from the city's use of suitability criteria, some of which did not correspond to future housing and employment needs identified by the city, and some of which did not comply with state law. The Director's Report concluded that the analysis created an artificial shortage of first priority exception lands, and then used that shortage to justify including lower priority resource land, effectively undermining the statutory priorities in ORS 197.298.

Issues related to Aggregation of Lands for Alternatives Analysis

See Appendix A List of Remand Issues – Sub Issue 9.1, 9.2 and 9.3

- Directives 109-114 outline the steps the city must follow to comply with the land priority provisions in ORS 197.298.

  Comments: A general problem with the locational analysis is that large areas grouped for evaluation do not have similar circumstances as required by OAR 660-024-0060(6).

- Directives 22-24 relating to Goal 12 (Transportation) also emphasized that the City is required to compare lands in the same priority classes.

  Comments: The City may aggregate its underlying data, by TAZs and priority category, and address the results in revised findings. On remand, the city must analyze the

relative costs of lands in the same priority category, rather than aggregating its analysis into subareas without regard to the priorities under ORS 197.298.

We are considering use of a grid system to remedy the issue of different parcel sizes and different analysis boundaries (TAZ, sewer basins, water pressure zones, etc.).

Issues related to Goal 14 Location Factors

The Goal 14 administrative rule provides some guidance for "considerations" that must be addressed in the Goal 14 Location Factors for the UGB. The most specific guidance is provided for Factor 2 – orderly and economic provision of public facilities and services. In general, the city has a great deal of flexibility in deciding how to measure and balance the location factors of Goal 14 in the evaluation of UGB alternatives within a given priority category. In other words, state law and the rules do not prescribe how and whether to weight specific factors (such as orderly and economic provision of public facilities and services); or what should be included in the consideration of comparative environmental, energy, economic and social consequences. The city has an opportunity to balance and consider the factors based on community goals and priorities. The Envision Tomorrow scenario planning model will provide a helpful and engaging tool to quickly evaluate alternative UGB scenarios based on UGB location factors that are important to the community.

- Goal 5 (Natural Resources) – Directives 80-84 reflect an approach to comply with Goal 5 issues. This approach can be referenced and implemented in the consideration of Goal 14 Factor 3 (comparative environmental, energy, economic and social consequences) should a revised UGB expansion area include any areas along the Deschutes River, Tumalo Creek or both.

- Goal 7 (Natural Hazards) – Directive 86 acknowledges that the City is not required to consider relative risk of wildfire in alternative UGB expansion candidate areas under Goal 7 (Natural Hazards) or Goal 2 (Land Use Planning/Coordination). However, it is entirely appropriate and permissible for the City to consider relative risk of wildlife in considering the environmental consequences of the alternatives under Location factor 3 of Goal 14.

- Goal 11 (Public Facilities & Services) – Directives 87-90 outline the steps the City must address in revised facility plans under Goal 11 and location factor 2 of Goal 14. To the extent the city is relying on the relative costs of public facilities and services to justify inclusion of particular lands within the UGB expansion area, it must include the comparative analysis required by OAR 660-024-0060(8).

- Goal 12 (Transportation) – Directives 91-101 provide specific guidance regarding the considerations that should be included in the analysis and balancing of transportation in the evaluation of alternative UGB expansion areas. The Remand states that "no specific method or outcome is required."

- Goal 12 – Directives 102-104 confirm that the City is required to comply with OAR 660-012-0035 before it may complete its UGB expansion. OAR 660-012-0035 includes requirements regarding planning for transportation choices and reduced reliance on the auto. The rule includes a specific target for reduction in vehicles miles traveled (VMT) and provides timeframes for completion and review procedures. Using Envision Tomorrow and other transportation models, the city will calculate and prepare analyses of its baseline VMT per capita in 2003, along with projected VMT per capita over the planning period with proposed "packages" of land use and transportation measures to reduce VMT per capita. This task, and an Integrated Land Use and Transportation Plan, will be one of the major topics of the Joint TAC/Steering Committee work sessions at the end of Phase 1.

Conclusion and Recommendations

Suitability Criteria & Screening

Table 3 of the Director's Report (page 118-122) provides very specific guidance regarding UGB Location Threshold Suitability Criteria that are permissible screens for both general land need and specific identified land needs. The APG Team proposes that we follow the guidance in Table 3 (included in Appendix B). Does the TAC support this approach?

Tiered Approach to Analysis of Expansion Areas and Packaging of UGB Scenarios

ORS 197.298 and the Remand are very clear regarding the steps that must be followed relative to priority categories, i.e. to look at exception lands before resource lands. Therefore, we suggest that Bend's approach be to categorize and analyze land within the study area based on the priority categories and follow a tiered method where higher priority lands are evaluated first for each identified land need rather than aggregating exception and resource lands for analysis. At this point, we are not making assumptions about whether certain lands (e.g., exception and resource land) can ultimately be justified for inclusion in a revised UGB proposal. Rather, we are suggesting the sequence of analysis. What comments does the TAC have on this? Does the TAC support this approach?

We propose to address ORS 197.283(3) exceptions for resource lands as part of the packaging of UGB scenarios. All scenarios will follow the tiered analysis approach and all will have scored relatively high on Goal 14 factors. The scenarios will reflect different choices in balancing the Goal 14 factors in different ways and the inclusion of resource lands may be justified under certain scenarios (e.g., to provide future urban services to higher priority lands). Does the TAC generally support this approach?

Goal 14 Location Factors

Meetings 2-4 of the UGB Methodology TAC will be focused on how we measure, evaluate and balance the location factors of Goal 14. Does the TAC have any initial input to the APG team on local issues that are important to include in the consideration of the Goal 14 factors?

Factor 1 – Efficient accommodation of identified land needs;

Factor 2 – Orderly and economic provision of public facilities and services;

Factor 3 – Comparative environmental, energy, economic and social consequences; and

Factor 4 – Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside of the UGB.

APPENDIX A: LIST OF REMAND ISSUES

This Appendix provides a list of Remand issues related to UGB methodology and Boundary Location. The numbering of directives in the second column starts with number 105 because this list is an excerpt of the larger Index of all directives to the City on Remand.

Subissue	Directives to City on Remand
UGB Methodology & Boundary Analysis (Goal 14)	
9.1 (Conclusion) Pages 129-130	In evaluating which lands to include within its UGB expansion on remand, the City must follow the following steps: 105. Establish suitability criteria for general housing, employment, and related land needs. These criteria must be consistent with (in the sense of implementing, or being in harmony with) the definitions in OAR 660-008-0005(2) (for lands planned for future general residential uses), and 660-009-0005(9) and (12) and 660-009-0025(1) and (2) (for lands planned for future general employment uses) as well as other provisions of law applicable in determining whether the land will meet the city's general land needs. 106. Document the criteria used to locate lands required to meet any "specific identified needs" as allowed by ORS 197.298(3)(a). The identified land needs include a future university site, a medical center, and two large-lot industrial uses. 107. Document (through existing or supplemental findings) that the sites identified by the City for a university, a medical center, and two large-lot industrial uses. The Commission agrees with the City that these identified future uses are justified under 197.298(3)(a). The City must demonstrate, however, through additional findings, that these future uses cannot reasonably be accommodated within the prior UGB. 108. Apply the suitability criteria (from step 1, above) for general housing, employment and related land needs to exception lands within the expansion study area. In this step, the City must identify exception lands (including lands designated by the City as urban area reserve) that will not accommodate any of its general land needs during the planning period. These lands may be "screened out" from further analysis. 109. For its remaining (general) future land needs over the planning period, the City must compare the remaining (after the screening described above for suitability) exception lands using the Goal 14 locational factors to determine which of those lands are best to include in its UGB expansion area. In this step, the City may rely on ORS 197.298(3)(c) (maximum efficiency of land uses *** requires inclusion of [resource lands] *** to include or to provide services to [the exception lands]") to include resource lands, particularly resource lands interspersed with exception lands, within its UGB expansion area. Resource lands included under ORS 197.298(3)(c) need not be evaluated for soil capability, as called for under ORS 197.298(2). 110. If the City is unable to accommodate its need for additional lands during the planning period after undertaking the preceding steps, it may then evaluate lands in the next priority category under ORS 197.298(1) (e.g., resource lands) for its general land needs. If the City does so, it must consider resource lands with lower soil capability first, as specified in ORS 197.298(2). To the extent that resource lands are needed to meet remaining (general) future land needs over the planning period, the City must apply the general suitability

	criteria used in Step 1 (above) and then compare suitable resource lands using the Goal 14 location factors to determine which of those lands are the best to include in its UGB expansion area.
9.2 (Analysis) Page 131	111. The remaining work for the City on remand is simply to show, using those criteria, that the uses "cannot reasonably be accommodated" within the prior UGB.
9.2 (Conclusion) Pages 131-132	112. The City must, however, analyze whether these needs could reasonably be accommodated within the prior UGB using its site suitability criteria and buildable lands inventory, and adopt findings explaining its reasoning.
9.3 (Analysis) Page 132	113. The City will need to work through the particular application of ORS 197.298(3)(c) to the facts on remand, and that application may depend, in part, on what the City does with its public facilities plans.
9.3 (Conclusion) Page 133	114. ORS 197.298(3)(c) may be used, as described above under issue 9.1., where resource lands are interspersed with exception lands, and in order to urbanize (provide public services to) exception lands that couldn't otherwise be served.
Natural Resources – Goal 5	
6.1 (Conclusion) Page 91	80. State scenic waterway – Should a revised UGB expansion area include any areas within the Middle Deschutes River Scenic Waterway as described in OAR 736-040-0072, the city must adopt local requirements to implement the state plan for protecting the Middle Deschutes Scenic Waterway, including a setback from the canyon rim for structures. 81. Riparian protection – Should a revised UGB expansion area include areas along the Deschutes River, Tumalo Creek, or both, the city must prepare and adopt an inventory of the significant riparian area that either: 1) finds that the topography along the river does not restrict the use of the safe harbor inventory under OAR 660-023-0090(5)(d) and apply the 75 feet upland from top of each bank safe harbor width provided in OAR 660-023-0090(5)(a); or 2) apply the standard inventory methodology, used within the current UGB, to the expansion area. In either case, the significant riparian area will fall within the canyon walls. For a protection program the city will adopt the county measures that serve to protect the scenic waterway and add restrictions for vegetation removal within the significant riparian area. The City must develop the protection program to meet the safe harbor protection measure standards. 82. Wildlife habitat – Should a revised UGB expansion area include areas along the Deschutes River, Tumalo Creek, or both, the city must apply OAR 660-023-0110, the Goal 5 wildlife habitat rule, by conducting a safe harbor inventory under OAR 660-023-0110(4). The rule allows the city to limit consideration of significant habitat to the five habitat categories specified in subsections (a)-(e). The Commission understands that the City anticipates that ODFW will provide the City a letter stating that the agency does not have

		information that any of the five habitat categories are documented, identified or mapped within the portion of the Deschutes River or Tumalo Creek corridors that pass through the expansion area.
	83.	Tumalo Creek – Should a revised UGB expansion area include Tumalo Creek in the final expansion area, the city must apply the Goal 5 safe harbor inventory and protection measures for riparian areas along the creek.
	84.	..the Commission concludes that the City may not exclude identified ASIs from its BLI (if they are already inside the prior UGB), or excluded ASIs from inclusion in the expansion area.
6.3 (Conclusion) Page 95	85.	On remand, if the City includes the property in the revised UGB expansion area, the City should only plan for surface mining that portion of the property within the DOGAMI permit 09-0018 area, as the site is not on the county's acknowledged surface mining inventory.
Wildlife Risk – Goal 7		
6.2 (Conclusion) Page 93	86.	It is entirely appropriate and permissible for the City to consider relative risk of wildfire in alternate UGB expansion candidate areas in considering the environmental, energy, economic and social consequences of the alternatives under locational factor 3 of Goal 14.
Public Facilities – Goal 11		
7.1 (Conclusion) Page 101	87.	The City may adopt public facilities plans as needed for acknowledged land uses within its prior, acknowledged UGB on remand.
	88.	The city may then, subsequently, adopt revisions to its public facilities plans for any revised UGB expansion proposal and any other related amendments to its acknowledged comprehensive plan.
7.7 (Conclusion) Page 110	89.	On remand, the City must address the entire expansion area under Goal 11 and Goal 14, locational factor 2. The City is not required to do so through amendments to its public facilities plan, although it may do so.
	90.	If the City elects to carry out the analysis(es) of the feasibility of serving the expansion area independently of its public facilities plan, it should nevertheless formally adopt the analysis and incorporate it into the city's comprehensive plan (and the analysis must not conflict with existing provisions of the public facilities plan).
Transportation – Goal 12		
8.1 (Analysis) Pages 114-115	91.	The city is required to compare lands in the same priority classes under ORS 197.298, Goal 14 and OAR 660-024-0060 (except when lower priority lands are included as necessary to serve higher priority lands under ORS 197.298(3)(b)).
	92.	The city may aggregate its underlying data, by TAZs and priority category, and address the results in revised findings
8.1 (Conclusion)	93.	On remand, the city must analyze the relative costs of lands in the same priority category, rather than aggregating its analysis into subareas without regard to the priorities under ORS 197.298.

Page 115	
8.1 (Director's Report) Page 89	94. Identify and assign costs of individual UGB expansion areas, rather than combinations of different areas; 95. Provide additional information regarding the costs of providing transportation facilities to serve individual areas, including any extraordinary costs related to overcoming topographic barriers or rights of way; 96. Provide more detailed analysis of the extent to which the costs of improvements for major roadway improvements in north area (including proposed improvements to Highways 20 and 97) are a result of and should be assigned to development in the north area rather than the city as a whole. (That is, the city's analysis and evaluation should assess whether the extent of improvements in north area might be avoided or reduced in scale or cost if the UGB was not expanded in this area, or if the extent of the UGB expansion was reduced.); and 97. Provide comparable estimates for providing needed roadway capacity for areas that, because of topographic constraints, may need to be served by different types of road networks. For example, growth on the east side can apparently be served by a fairly complete grid of streets, while topographic barriers limit potential for a full street grid in this area.
8.2 (Conclusion) Page 116	98. On remand, the city must revise its findings to address this issue. If the city chooses to rely on existing analysis that there is no cost differential between alternate lands in the same priority category, that decision must be supported by substantial evidence in the record as a whole. 99. While no specific method or outcome is required, the city must explain its basis(es) for assigning the costs of extraordinary improvements to expansion areas in the same priority category, and consider whether changes in the extent or location of the UGB expansion would reduce the need for major improvements in this area.
8.3 (Conclusion) Pages 117-118	100. On remand, the city must revise its findings to address this issue including not only the relative cost of required transportation improvements, but the relative advantages and disadvantages as well. OAR 660-024-0060(8) (which may include the relative amount of development capacity the city can support for a particular unit of cost). 101. On appeal, at oral argument, the city agreed to strengthen its findings in this area to the extent that lands on the west of the city are included in the UGB expansion area on remand.
8.6 (Conclusion) Pages 120-121	102. The City is required to comply with OAR 660-012-0035 before it may complete its UGB expansion. 103. The City has agreed to prepare analyses of its baseline VMT per capita in 2003 (with VMT as defined in OAR 660-012-0005), along with an analysis of projected VMT per capita over the planning period with proposed "packages" of land use and transportation measures to reduce VMT per capita. 104. If the City demonstrates that its revised UGB expansion, along with proposed land use and transportation measures, results in an estimated change in VMT per capita: a. of a decline of 5% or more per capita, then the City is in compliance with this aspect of the TPR under 0035(6); b. of a decline of between 0% and 4.99 percent per capita, then the City may proceed by preparing for DLCD/LCDC review and approval

		concurrently with the revised UGB, a work program/plan to achieve a reduction of 5% or more over the planning period; or
	c.	of an increase in VMT per capita, then the city must prepare, submit and obtain DLCD/LCDC approval of an integrated land use and transportation plan as provided in OAR 660-012-0035(5) prior to approval of a revised UGB.

APPENDIX B: TABLE 3 FROM DIRECTORS REPORT

Findings Regarding Boundary Location Threshold Suitability Criteria

Criterion	Analysis
Lot is not entirely within the 100-year floodplain.	This criterion is based on OAR 660-008-0005(2) (for housing)65 and OAR 660-009-0005(2) (for employment),66 and is a permissible screen for both general land need and specific identified land needs.
Lot is serviceable for city sanitary (does not include private or public systems other than the city).	This criterion is a permissible screen under OIAR 660-008-0005(2)(e) (cannot be provided with public facilities), except for the limitation to city facilities. So long as sanitary sewer is available or feasible during the planning period, the property cannot be excluded as unsuitable.
Lot is serviceable for city water.	This criterion is permissible, see analysis immediately above.
Lot is in regional stormwater plan service area.	This criterion is permissible, see analysis immediately above.
The lot scores medium or high for street connectivity.	This criterion is not a permissible suitability screen. As long as street access is feasible during the planning period, the property can be provided with public facilities. This criteria can, however, be used as a Goal 14 factor for determining what exception lands to include in the event there is an excess amount of such lands and the city and the county are deciding which exception lands to include.
The lot scores medium or high for street connectivity.	This criterion is not a permissible suitability screen. As long as street access is feasible during the planning period, the property can be provided with public facilities. This criteria can, however, be used as a Goal 14 factor for determining what exception lands to include in the event there is an excess amount of such lands and the city and the county are deciding which exception lands to include.
Lot is a public or private right-of-way for roads, sidewalks, and/or landscaping.	Publicly owned land generally is not considered buildable (Goal 10 – within the existing UGB) or suitable (OAR 660- 024), and is an appropriate suitability screen. However, private right-of-way and open space land is “generally considered “suitable and available.”
Lot does not contain an active surface mine in the county’s Goal 5 inventory.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.

Criterion	Analysis
Lot is not designated by the county as a Goal 5 resource.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not a cemetery.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not owned by the federal government.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
• Lot is not a state park; • Lot is not owned by the Bend Metro Park and Recreation District (listed twice). • Lot is not owned by Bend-La Pine School District	These criteria, which are based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), are permissible suitability screens for general land need.
Lot is not a public or private open space.	This criterion is a permissible suitability screen for publicly owned open space, but not for private open space. OAR 660-008- 0005(2).
Lot is developed with a school or church and is larger than 5 acres.	(1) Some church and school land may be redeveloped. Such lands may be screened as “unsuitable” only based on findings and an adequate factual base that they are not likely to be redeveloped during the 20- year planning period Larger lots with substantial vacant land generally will be considered to be suitable (at least in part)..
Lot is not a landfill.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment).
Lot is not a destination resort approved by the county.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period.

Criterion	Analysis
Lot has recorded CC&Rs prohibiting further division.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The director finds that the evidence citied in the city's findings, R. at 1171-1174, does not support the city's conclusion that the listed subdivisions cannot be redeveloped. The comments in Table V-6 [R. at 1173] show that additional residential development is not prohibited in almost all of the subdivisions listed. Even for those few subdivisions where additional land divisions are prohibited by CC&Rs, the findings do not address whether there are vacant lots, or whether additional housing not involving a land division, such as an "in-law" apartment or "granny flat" may be feasible.
Lot has improvements with a value of less than $20,000.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The valuation threshold used by the city is very low in relation to the potential value of residential redevelopment, and would appear to effectively define lands that have minimal improvements as being developed rather than vacant.
Lot has 1 dwelling and is larger than three acres.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The acreage threshold used by the city is very high. A lot with an existing home and several acres of land normally could accommodate some additional residential development during a twenty- year planning period. As noted in the section of this report addressing housing need, the city has not analyzed the actual level of redevelopment that has occurred on such lands, making it impossible to reach definitive conclusions about the amount of redevelopment that is likely to occur, as those terms are used in OAR 660-008-0005(2) and 660-024-0010(1) and 0060(1)(e) and (5). The city appears to have excluded a substantial amount of exception lands based on this criterion.

Criterion	Analysis
Lot is zoned EFU-TRB with 23 acres of high value soils when irrigated OR zoned EFU-UAL with 36 acres of high value soils when irrigated.	The capability of soils on commercial farm parcels becomes relevant only if and when (a) all suitable exception parcels have been added, (b) some amount of 20- year land need remains, (c) the city goes to the next highest priority under ORS 197.298(1), which is agriculture or forest land, (d) lower capability agriculture or forest parcels have been given priority over higher capability resource parcels per ORS 197.298(2), (e) lower capability resource parcels are not suitable for the identified need, or there is not enough lower capability resource land to meet that remaining need, and (f) lowest priority high value resource land must be considered.

UGB Study Area by Priority Class

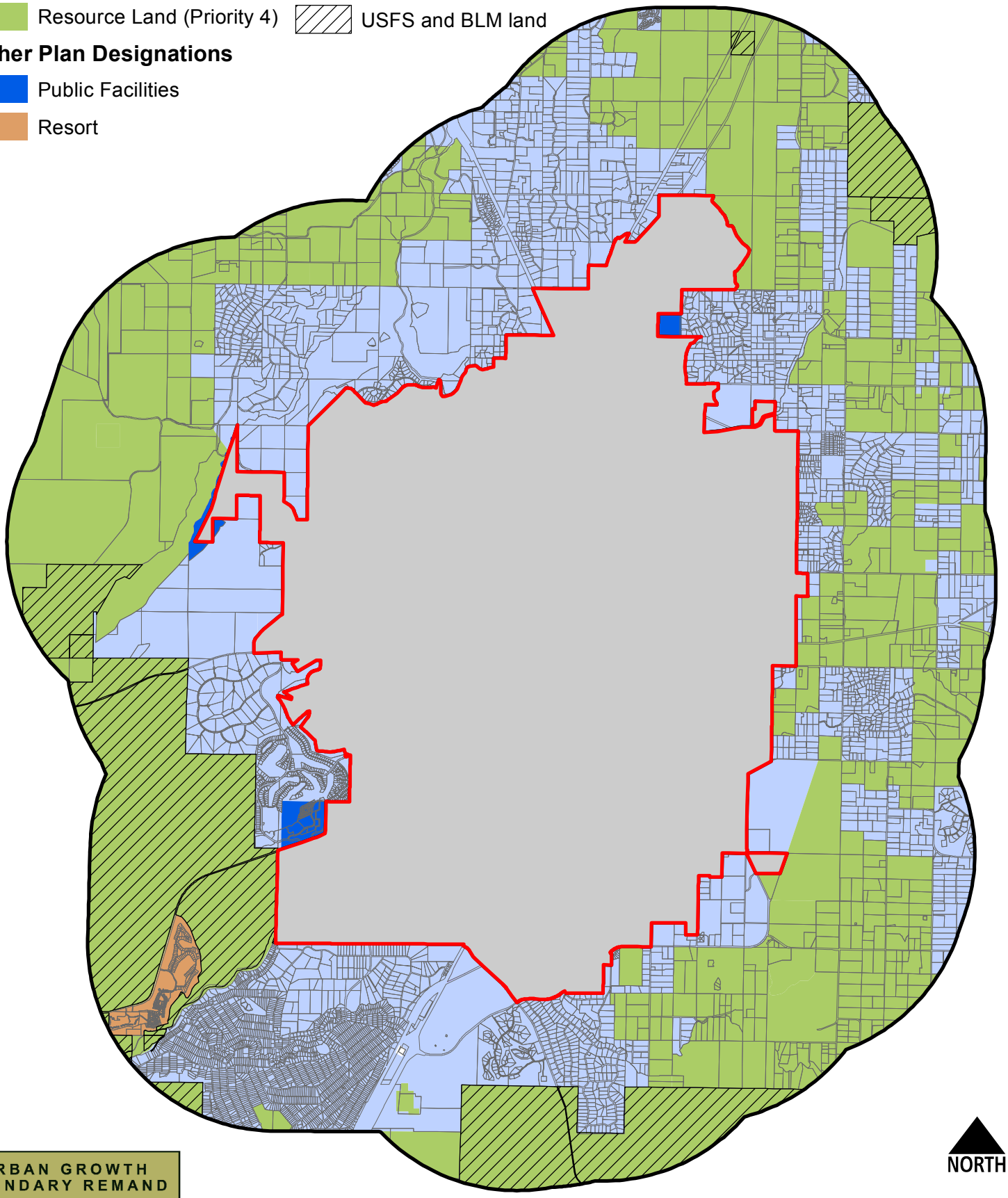
Priority Category

- Exception Land (Priority 2)
- Resource Land (Priority 4)

Other Plan Designations

- Public Facilities
- Resort

- Urban Growth Boundary
- Proposed 2 mile study area
- USFS and BLM land



NORTH

0 0.5 1 2 Miles

URBAN GROWTH BOUNDARY REMAND

Prepared 7/29/2014

envision tomorrow™

FREGONESE ASSOCIATES

envision tomorrow™
a suite of urban and regional planning tools

ENVISION TOMORROW OVERVIEW

Envision Tomorrow, an innovative, open source, set of urban and regional planning tools developed by Fregonese Associates, is an intregal piece of our scenario planning process. It can be used to model development feasibility on a site-by-site basis as well as create and evaluate multiple land use scenarios, test and refine transportation plans, produce small-area concept plans, and model complex regional issues. The software also provides a real-time evaluation of relevant indicators such as land use, energy consumption, and financial impacts that measure a scenario's performance. It can also provide baseline carbon emissions analysis of different land use patterns, enabling planners to model the relationship between greenhouse gas emissions and land use and transportation decisions.

Envision Tomorrow consists of two primary tools: the ***Prototype Builder***, an ROI model spreadsheet tool, and the ***Scenario Builder***, an ArcGIS add-on.

WHAT IS ENVISION TOMORROW?

The ***Prototype Builder***, a return on investment (ROI) spreadsheet tool, can be used to model buildings and test the physical and financial feasibility of development. The tool allows the user to examine land use regulations in relation to the current development market and consider the impact of parking, height requirements, construction costs, rents and subsidies. Use this tool to see what is market feasible. Use it to see how preferred forms of development, such as mixed-use retail with housing above, might become more financially feasible within your existing code.

The ***Scenario Builder*** adds scenario-building functionality to ArcGIS. First, design a library of buildings in the Prototype Builder. Next, use the Scenario Builder to create development types and "paint the landscape" by allocating different development types across the study area to create unique land use scenarios. The tool then allows real-time evaluation of each scenario through a set of user-defined benchmarks or indicators. The indicators measure such things as the scenario's impact on land use, housing, sustainability, transportation, and economic conditions. It also allows communities and regions to monitor progress over the short-and long-terms.

WHAT MAKES ENVISION TOMORROW UNIQUE?

Transparent and Versatile

Envision Tomorrow is a versatile and expandable tool that can easily be adapted to accommodate various uses. Unlike most planning software, Envision Tomorrow allows the user to easily and transparently change the assumptions of the prototype buildings, development types, and scenario inputs. By making the tool transparent, you can quickly and easily adjust the assumptions to more accurately reflect the dynamics of your particular neighborhood, city, or region. This transparency allows planners to adjust assumptions in the scenario process if necessary.

Building Level Data

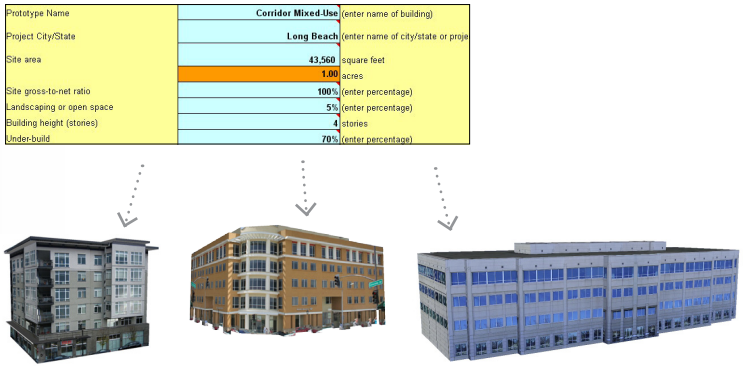
Since the Envision Tomorrow analysis process begins at the building level, anything we know about a building, we can test in a scenario. These are examples of common indicators used for evaluation:

- **Housing and jobs** *(mix and density)*
- **Jobs-housing balance**
- **Land consumption** *(vacant, agricultural, infill)*
- **Impervious surface**
- **Open space**
- **Housing affordability**
- **Resource usage** *(energy and water)*
- **Waste production** *(water, solid, carbon)*
- **Transportation** *(travel mode choice, vehicle miles traveled)*
- **Fiscal impact** *(local revenue and infrastructure costs)*
- **Balanced housing index** *(how a scenario's housing mix matches the expected future demographic profile)*

ENVISION TOMORROW PROCESS

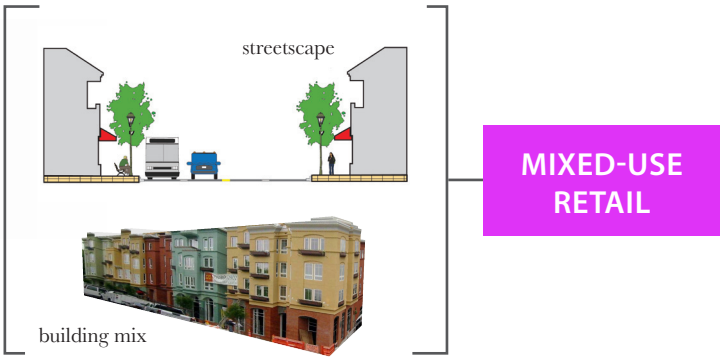
1 Develop Building Prototypes

Create prototype buildings using the return on investment (ROI) model.



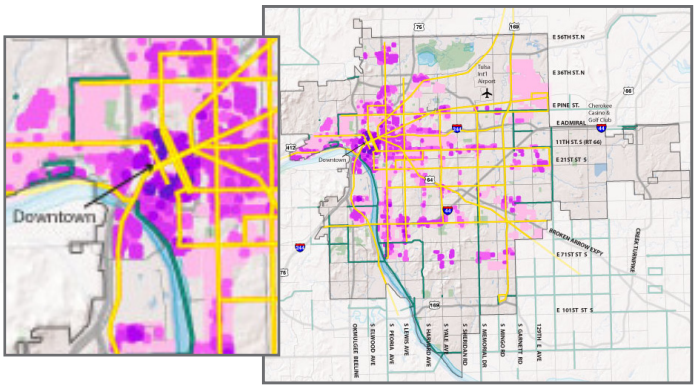
2 Create Scenario Development Types

Development types include all of the elements in a city: a mix of buildings, streets, civic uses and open spaces.



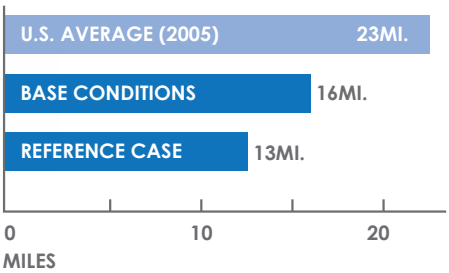
3 Build Scenarios

Create scenarios by applying the development types to the landscape using the scenario builder.



4 Evaluate Scenario Performance

Using the ROI model, examine a whole host of benchmarks based on the built scenario.



Relevent and Cutting-Edge Research

Fregonese Associates has partnered with a number of institutions, organizations and government entities around the country to further the capabilities of Envision Tomorrow. These partnerships provide access to leading thinkers and the latest research and data about urban form and development which are then incorporated into Envision Tomorrow. Most recently, through collaboration with the University of Utah, 18 expanded indicators were developed that allow Envision Tomorrow users the ability to measure, for example, employment growth and resilience, public health, transportation safety, workforce housing and air quality impacts.

HOW IS IT USED AND WHO USES IT?

Municipalities, regional governments, and private organizations around the nation use Envision Tomorrow. The Chicago, Illinois region uses the tool to conduct housing studies; Baton Rouge, Louisiana is analyzing future growth scenarios, while the Southern California Association of Governments in California is examining the potential for greenhouse emissions reduction through different land use policies. In Portland, Oregon, the regional government, Metro, is refining their ability to test land use and transportation policies through scenario planning. Smaller cities like Waco, Texas and Mountlake Terrace, Washington, have found Envision Tomorrow to be a valuable addition to their planning toolbox. Below is a brief list of Envision Tomorrow users:

- Sonoran Institute/Lincoln Land Institute joint venture
- Southern California Association of Governments
- Envision Utah
- Chicago Metropolitan Agency for Planning
- City of Portland
- Portland Metro
- City of Tulsa
- Montana State University
- City of Long Beach

FAQ

What software do you need to run Envision Tomorrow?

Envision Tomorrow requires Windows XP or Vista, Microsoft Office 2000 Professional or greater, and ESRI's ArcGIS desktop software 9.3 or greater. The tool supports all ArcGIS license types (ArcView, ArcEditor, ArcInfo).

What types of indicators can Envision Tomorrow report?

Land Use: density and mix of uses
Transportation: mode choice, VMT—requires local calibration including travel survey results, land use and demographic inputs
Housing: mix and affordability
Fiscal Impact: local revenue and infrastructure—requires local calibration of revenue, rates and costs inputs
Environment: open space and agriculture conversion
Sustainability: energy use, carbon footprint, water usage and wastewater—requires local calibration based on local climate and typical resource use

Visit the Envision Tomorrow wiki page for more information on indicators: **www.frego.com/etwiki**

How long does it take to get up and running?

Start-up time depends on the indicators you use to evaluate the scenarios. Basic land use indicators can be inputted into the tool and calibrated within a few days. More complex transportation and sustainability indicators, including carbon footprint, could take several weeks to collect the input data. To reduce local calibration time, you can use national averages.

Can Envision Tomorrow be used to analyze different levels of geography?

Yes, Envision Tomorrow is designed to model land use decisions at a range of scales starting at the parcel level. By first designing Prototype Buildings that are financially feasible at the local level, the user then combines these prototypes into a series of Development Types, such as Main Street, mixed-use neighborhood, strip commercial, etc. The Development Types are used to create a series of land use scenarios at the district, city, county, and regional scale. The Scenario Builder tool allows the creation and comparison of up to five land use scenarios concurrently. The user can edit, switch between, and compare all five scenarios. A scenario spreadsheet in Excel format is dynamically linked to the tool and maintains the scenario outputs, such as housing mix, in a series of tabs for quick comparison. As you make changes to a scenario, the results automatically report in the spreadsheet for instant monitoring. Users can focus in small areas for detailed design control as well as zoom to a larger scenario with small area changes intact. Detailed scenario results are easily exportable and reportable at any geography.

FAQ

How does Envision Tomorrow evaluate different land uses and policy alternatives?

The tool evaluates scenario differences based on a variety of indicators. Most indicators derive from what particular mix of buildings the user chooses to place on the landscape and where they place them. For example, if the user paints an area with a main street development type as opposed to a strip commercial development type, the underlying buildings that compose those places are different, and that difference will be reflected in the indicators. Main Street development might include some multifamily housing and mixed-use, whereas the strip commercial might include low intensity retail. The choice to put in main street development could result in a lower housing density, but achieve a reduction in per capita water and energy usage and the number of vehicle miles traveled. The implications of different land uses are reflected instantly as the user makes alternative decisions.

Does Envision Tomorrow model carbon footprint?

Envision Tomorrow uses a predictive algorithm combined with local travel and demographic data to estimate the impact of land use changes on key transportation indicators, such as travel mode split, vehicle miles traveled, and greenhouse gas emissions. By using a predictive algorithm approach, the tool does not require a direct link to a transportation model to evaluate the impact of land use changes on travel behavior and carbon emissions.

Can you modify underlying assumptions to align with local conditions?

Yes, all assumptions to the prototype buildings, development types, and scenario inputs are transparent and editable in Excel. From our experience, it is important that planners see all of the assumptions in the scenario process and be able to adjust the assumptions, if necessary. Because the tool is dynamically linked in Excel, changing an assumption results in instant updates to the scenario outputs.

Can the tool display impacts graphically and visually?

Yes, Envision Tomorrow provides visual results in multiple formats, including maps, charts, and graphics. Scenario results can be used to create 2D and 3D visualizations.

How much does Envision Tomorrow cost?

The software license for Envision Tomorrow is free-of-charge. The only fees associated compensate our time to train users in using the tool. Contracts are driven by the client's needs; we typically create a contract for data gathering, training and customization.

URBAN GROWTH BOUNDARY REMAND

Meeting Agenda

UGB Boundary and Growth Scenarios Technical Advisory Committee
Tuesday, August 26, 2014 10:00 AM – 12:30 PM
City Council Chambers, Bend City Hall

Meeting Purpose and What is Needed from the TAC

The purposes of this meeting are to:

- Discuss the McMinnville UGB case and how it may apply to Bend's UGB methodology
- Adopt a study area boundary
- Review information about Bend's urban form – a prelude to discussing criteria for efficient use of land
- Review, discuss and adopt criteria for Goal 14 Factor 1 (Efficiency) and Factor 4 (Compatibility)

The McMinnville case memorandum from Mary Winters follows up on information requested at the last meeting. Based on a review of this case, staff will be suggesting some refinements to the steps and methodology for Bend's UGB. The study area boundary agenda item is also a follow-up from meeting 1 – the map now shows a 3-mile context. The urban form discussion is informational – offered in order to provide a physical and principle-based context to the TAC's more detailed discussions about criteria and methods. Finally, the Factor 1 and 4 evaluation criteria are the first in a three-meeting series on this important Goal 14 criteria. To stay on the track of continued progress, staff would like the TAC to discuss the draft criteria and identify revisions (direction, not necessarily exact wording). After this meeting, the recommendations from the Boundary TAC from Meetings 1 and 2 will be packaged and forwarded as recommendations to the UGB Steering Committee.

The specific discussion questions, i.e. the feedback we would like from the TAC, are listed as the bulleted discussion questions under each agenda item. They are a starting point for the agenda.

For additional project information, visit the project website at http://bend.or.us or contact Brian Rankin, City of Bend, at brankin@bendoregon.gov or 541-388-5584

Accessible Meeting/Alternate Format Notification
This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the City Recorder no later than 24 hours in advance of the meeting at rchristie@ci.bend.or.us, or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

1. Welcome and Introductions — 10:00 AM

a. Welcome and convene — Sharon Smith
b. Self-introductions — All
c. Agenda overview — Joe Dills
d. Approval of meeting summary from last meeting

2. Follow-up: McMinnville UGB Case — 10:10 AM

Information and discussion

a. Briefing from City Attorney — Mary Winters
b. Applicability to Bend's UGB methodology — Bob Parker
c. Discussion

3. Study Area Boundary — 10:40 AM

Information and action

Mary Dorman

a. Review maps with 3-mile context
b. Discussion of specific areas: Forest land, irrigated Agricultural land with higher capability soils at the outer edges.
c. Questions, comments, discussion

Action:

- Approval of proposed Study Area Map (with any revisions directed by the TAC)

4. Urban Form — 11:00 AM

Information and discussion

a. Building on past work, why look at urban form, and how this topic relates to Goal 14 and the Remand — Brian Rankin
b. Bend's existing urban form – an initial study — Jay Renken, MIG

Note: Urban form maps, diagrams and images will be presented at the meeting.

- What comments and questions does the TAC have on this initial study?
- What urban form elements need to be added?
- What urban form issues are particularly important to our development of UGB methodology?

5. Draft Evaluation Criteria – Factor 1 (Efficiency) and Factor 4 (Compatibility) 11:30 AM

Information and action

Mary Dorman

a. Presentation and overview
b. Factor 1
- Discussion and questions
- What refinements does the TAC propose?

c. Factor 4
- Discussion and questions
- What refinements does the TAC propose?

Action:

- Approval of Factor 1 and 4 evaluation criteria (with any revisions directed by the TAC

6. Adjourn 12:30 PM

City of Bend
Boundary & Growth Scenarios Technical Advisory Committee
Meeting Notes
Date: August 5, 2014

The Boundary & Growth Scenarios TAC held its regular meeting at 10:00 am on Tuesday, August 5, 2014 in the City Hall Council Chambers. The meeting was called to order at 10:05 am by Brian Rankin.

Roll Call

- ☐ Toby Bayard
- ☐ Susan Brody
- ☐ Peter Carlson
- ☐ Paul Dewey
- ☐ Dale Van Valkenburg
- ☐ Bruce White
- ☐ Ellen Grover
- ☐ Steve Hultberg
- ☐ Brian Meece
- ☐ Charlie Miller
- ☐ Mike Riley
- ☐ Ruth Williamson
- ☐ Rockland Dunn
- ☐ John Russell
- ☐ Ron Ross
- ☐ Sharon Smith
- ☐ Gary Timm
- ☐ Rod Tomcho
- ☐ Scott Edelman
- ☐ Nick Lelack

Discussion

Brian opened the meeting by introducing himself and making some remarks.
Committee members introduced themselves.
Committee agreed by consensus to defer election of chair and vice chair to later in the meeting.
Brian provided introduction and background on past work.
Bob Parker gave a power point presentation on Goal 14 and its requirements for UGB expansion
Mary Dorman followed with a presentation on the remand issues related to boundary.
Alex Joyce followed with a presentation on the Envision Tomorrow scenario planning tool
At the end of the meeting, the TAC came to consensus on Mike Riley and Sharon Smith serving as co-chairs for the Boundary TAC with Dale Van Valkenburg serving as liaison to the Residential TAC and Brian Meece agreeing to serve as liaison to the Employment TAC.

Action Items/Next Steps

Action	Assigned To
Send out open house flyers	City of Bend
Mike Riley – context map	City of Bend, APG
Gary Timm –tour of UGB areas	City can provide map, possibly arrange tour later
Requests for McMinnville Court of Appeals decision on UGB, Staff interpretation of this decision	City of Bend (city will also post Court's opinion on website)

Meeting adjourned at 12:30 pm by Joe Dills, APG.

CITY ATTORNEY MEMORANDUM

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To: UGB Boundary and Growth Scenarios Technical Advisory Committee

From: Mary Alice Winters, City Attorney

Subject: Boundary Analysis and McMinnville Case

Date: August 19, 2014

You asked for a legal analysis of the McMinnville case, *1000 Friends v. Land Conservation and Development Commission and City of McMinnville*, 244 Or App 239 (2011), and how it impacts the direction on the alternatives and boundary location analysis from the Land Conservation and Development Commission (LCDC) in the Remand Order. The decision has been posted on the City's UGB website, along with the Order Denying Reconsideration, the City of McMinnville's Motion for Reconsideration, the City of Bend's Amicus Brief, and the Response by 1000 Friends, for any of you who don't have enough to read already.

To summarize, the relevant issue in the case was how the priority statute, ORS 197.298, works in conjunction with the Goal 14 locational factors. As articulated by the Court, Petitioner 1000 Friends argued that the priority statute works to categorize land as available to meet broadly defined land use needs, and that higher priority land qualifies to meet that need unless urban services cannot be provided to the land because of physical constraints. Then, Goal 14 is applied to the prioritized and available land to determine specific growth areas.

According to Respondents, ORS 197.298 is applied to determine the adequacy of land for more particular land use needs; higher priority land qualifies, unless it is determined to be unsuitable under the Goal 14 locational factors and the Goal 2 exceptions factors. Goal 14 is then applied to corroborate the inclusion of higher priority land and to justify any further selection among land of a lower-priority class. *Id.* at 254.

The Court ultimately concluded that neither party had it quite right. It held that ORS 197.298 does provide "the first cut" in the sort process and Goal 14 is "then applied" to justify the inclusion and any remaining choices about what land to include in the boundary. The court did say that Goal 14 is used to determine the "adequacy" of land available under ORS 197.298(1), but in a more particular way than suggested by the City and LCDC. *Id.*

Goal 14 consists of seven factors that govern whether and where a UGB is expanded. Factors 1 and 2 determine whether a city **needs** to expands its UGB to accommodate growth, housing needs, employment opportunities, and livability.

Factors 3 through 7 apply to **location** of that expansion based on public facilities and services, efficiency of land uses, consequences of development, retention of land for farm use, and compatibility of development with nearby agricultural activities. Essentially, the court set out an analytical 3-step process for integrating Goal 14 and ORS 197.298.

In McMinnville, the court said that step 1 is to determine the land needed under ORS 197.298(1). The descending priorities of the statute are applied to determine whether priority land is "inadequate to accommodate the amount of land needed". That determination is made by the application of Goal 14, which provides that the "establishment and change of boundaries is based on a consideration of the following factors: (1) The demonstrated need to accommodate the long range urban population, consistent with the 20-year population forecast, and (2) Need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space. If these needs cannot be met through the existing UGB through rezoning or infill, then the locality must amend its UGB to include sufficient buildable land to accommodate its housing and economic land needs. *Id*. at 256. Here, this latter determination will be based on the recommendation of the residential TAC, consistent with ORS 197.296 and the Remand Order. This first step is the analysis described by our consultants.
So far, so good.

Then in Step 2, the local government determines the adequacy of candidate lands under ORS 197.298 (1) and (3). The Court reasoned that only Goal 14 Factors 5 (Economic, energy, economic and social consequences, or ESEE) and 7 (compatibility with adjacent agriculture land) are applied to determine whether higher priority land "is inadequate to accommodate the amount of land needed" under ORS 197.298(1). In the court's view, the more restrictive priority exceptions in ORS 197.298(3) would be "meaningless surplusage" if the less restrictive Goal 14 factors 3, 5 and 6 are applied first. The key one in Bend is probably ORS 197.298(3)(b)—permitting an inadequacy conclusion only when public services cannot be extended because of topographic or physical constraints. Goal 14 Factor 3, which considers the relative cost of delivery of public services and facilities, cannot be considered at this step. The Court arguably altered the understanding of local government based on prior cases out of West Linn and the City of Adair in so holding. This was pointed out in the request for reconsideration, but that request was denied. This step is best viewed as a way to determine whether there is sufficient higher priority land to meet the City's needs identified in Step 1 and to disqualify unsuitable land (narrowly defined). It is not a step that qualifies lower priority land. The EESE contemplated at this stage, in our legal and planning view, is high level and general (not a project level EESE as done of for a Goal 3 or 4 exception analysis).

After a local government has prioritized lands under ORS 197.298 (1) and (3) and Goal 14 Factors 5 and 7, a new "Step Three" is added, during which the remaining factors of Goal 14 are applied to land so prioritized to include or exclude lands from the UGB. According to the Court, ORS 197.298 operates to "identify land that *could*

be added to the UGB to accommodate a needed type of land use," which Goal 14 is applied thereafter "to qualify land that, identified already under ORS 197.298, *should* be added to the Boundary." *Id*. at 265. The comparative EESE are also considered on an alternatives and more localized basis, as appropriate.

One point to keep in mind is that the Court was interpreting Goal 14 as it was drafted prior to April 28, 2005, as the rules allowed the City to apply the former version of the rule. 244 Or App at 239. The Goal 14 rule was amended by LCDC to "clarify the relationship between ORS and the locational factors of Goal 14 for urban growth boundary expansions." See Remand, page 125. However, the Goal 14 factors are essentially the same, albeit in a different order.[1] OAR 660-024-0060, adopted 10-5-06, further clarifies the process. However, without getting too nuanced, to the extent the new rule does not exactly track the process set forth in McMinnville, the Court of Appeals specifically interpreted the Goal in light of the Court's view of the statute and prior case law. Despite the City of McMinnville's argument that the application of the statute and Goal 14 was inconsistent with prior case law, the Court declined reconsideration and LCDC did not appeal the decision. Therefore, it is safest to follow the three-step process from the Court of Appeals. The concepts are all consistent with the Remand, the timing has the most room for interpretation.

In outline form, as confirmed by DLCD, the **suggested process to do a locational analysis based on current law/McMinnville decision** (as it applies to Bend) is as follows:

1. START WITH AMOUNT OF NEEDED LANDS
   A. Adopted Population Forecast
   B. Demonstrated need for housing, employment, public and semi-public uses
   C. Determine Study Area of Candidate Lands—Categorize lands under the four priorities of 197.298(1)
      a. EXCEPTION LANDS
      b. RESOURCE LAND – FURTHER SUBCATEGORIZED BY SOIL CLASS

2. FIRST PRIORITY FOR BEND: EXCEPTION LANDS. APPLY THE FOLLOWING FACTORS TO EXCLUDE (OR INCLUDE LOWER PRIORITY) LANDS FROM THE UGB:
   a. Exclude lands that are not buildable
   b. Exclude lands based upon specific land needs (197.298(3)(a))

[1] Statewide Planning Goal 14 (as amended April 28, 2005) requires the following:
"The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:
(1) Efficient accommodation of identified land needs;
(2) Orderly and economic provision of public facilities and services;
(3) Comparative environmental, energy, economic and social consequences; and
(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on far and forest land outside the UGB."

c. Exclude lands based upon inability to reasonably provide urban services due to physical constraints (197.298(3)(b))
d. Exclude lands based upon analysis of comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
e. Exclude lands based upon analysis of compatibility with agricultural & forest activities (Goal 14, Boundary Location, Factor 4)

QUESTION: Where are UGB Goal 14 Locational Factors 1 and 2?
ANSWER: According to "McMinnville" logic, they are redundant and less restrictive than two of the corresponding factors in ORS 197.298, and thus drop out at this stage of analysis.

3. A. IF THE AMOUNT OF LAND REMAINING AFTER EXCLUSIONS IS GREATER THAN THE AMOUNT OF NEEDED LANDS, THEN:

Apply the following factors INTERDEPENDENTLY to pick and choose among the land remaining after exclusions:

a. Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
b. Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
c. Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
d. Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

B. IF THE AMOUNT OF LAND REMAINING AFTER EXCLUSIONS IS LESS THAN THE AMOUNT OF NEEDED LANDS, IN BEND GO TO FOURTH PRIORITY – RESOURCE LANDS

a. Repeat analysis under (2) above

The attached diagram prepared by ECONorthwest illustrates the steps in the UGB Alternatives Analysis Process as implied by the McMinnville decision and described in this memo.

Steps in the UGB Alternatives Analysis Process for Bend as implied by the McMinnville Decision

Step 1: Land Needs

Adopted Population Forecast

Determine Study Area

Demonstrated need for land
for housing, jobs, public and semi-public uses

Categorize land
1. ~~Urban reserve~~
2. Exception and completely surrounded resource land
3. ~~Marginal lands~~
4. Resource lands

Note:
Bend does not have Urban Reserves as defined in OAR 660-021. Only Lane and Washington Counties are marginal lands counties

Step 2: Initial Suitability Evaluation

1st priority for Bend:
Exception Lands

Exclude:
- **2a.** Unbuildable lands
- **2b.** Exclude lands based upon specific land needs (197.298 (3)(a))
- **2c.** Unserviceable lands*
- **2d.** Land based on results of ESEE analysis** (Goal 14, Factor 3)
- **2e.** Uses that are incompatible with agricultural and forest activities (Goal 14, Factor 4)

Is the amount of exception land remaining after exclusions greater than the amount of needed land?

No. More land is needed

Yes

Step 3: Goal 14 Analysis

Step 3A. Goal 14 Factor Analysis

Local balancing of land need based on Goal 14 locational factors:
- **3Aa.** Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
- **3Ab.** Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
- **3Ac.** Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
- **3Ad.** Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

Is the amount of exception land remaining after exclusions greater than the amount of needed land?

Yes

No. More land is needed

Choose among land remaining after exclusions

Repeat Steps 2 and 3 for next priority lands (resource lands)

2nd priority for Bend:
Resource Lands

Step 3B: Prioritize by Land Capability

For agricultural lands: class VIII Soils, then class VII, … finally class I. For forest lands: Cubic foot site class VII, then VI, … finally class I.

Step 3B-I: Initial Suitability Evaluation

Exclude:
- **3B-Ia.** Unbuildable lands
- **3B-Ib.** Exclude lands based upon specific land needs (197.298(3)(a))
- **3B-Ic.** Unserviceable lands*
- **3B-Ic.** Land based on results of ESEE analysis** (Goal 14, Factor 3)
- **3B-Id.** Uses that are incompatible with agricultural and forest activities (Goal 14, Factor 4)

Is the amount of resource land remaining after exclusions greater than the amount of needed land?

No. Expand the study area

Yes

Step 3B-II: Goal 14 Factor Analysis

Local balancing of land need based on Goal 14 locational factors:
- **3B-IIa.** Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
- **3B-IIb.** Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
- **3B-IIb.** Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
- **3B-IIb.** Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

Choose among land remaining after exclusions

Footnotes:
* Unserviceable lands are those that cannot reasonably be provided with urban services due to physical constraints. (197.298(3)(b))
** ESEE: Economic, Social, Environmental, and Energy

ECONorthwest
ECONOMICS • FINANCE • PLANNING

Memorandum

August 19, 2014

To: Boundary and Growth Scenarios Technical Advisory Committee

Cc: Bend Staff

From: APG Consulting Team

Re: URBAN FORM PRINCIPLES
DRAFT EVALUATION CRITERIA FOR EFFICIENCY AND COMPATIBILITY
GOAL 14 FACTORS 1 & 4

INTRODUCTION

Over the next three meetings of the Boundary TAC, we will build the foundation for the methodology and evaluation criteria to address the individual locational factors identified in Goal 14.[1] At the second meeting of the Boundary TAC, we will focus on Goal 14 location factors 1 ("Efficient accommodation of identified land needs") and 4 ("Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB"). The four location factors of Goal 14 are interrelated and we understand the Boundary TAC will want to develop a methodology that integrates and balances the four factors. At the close of Phase 1, the Boundary TAC will have an opportunity to refine the overall, integrated methodology prior to the start of the Phase 2 evaluation of boundary and growth scenarios.

This memorandum introduces urban form principles to inform the evaluation of efficient land use and draft evaluation criteria for factors 1 and 4. An urban form diagram will be available at the August 26th meeting to provide context for the evaluation criteria.

Overview of Identified Land Needs

The Residential TAC and the Employment TAC are responsible for confirming the identified land needs for the 2008-2028 planning period. As summarized at the TAC orientation meeting on July 29, 2014, some of the basic assumptions for Bend's land needs for the planning period have already been acknowledged by LCDC and will not be reopened through this process. Key assumptions and land needs that have been acknowledged and/or resolved by the Remand Task Force and those that will be addressed by the Residential or Employment TAC are summarized below.

[1] See Summary of Key Remand Issues Related to Boundary and Growth Scenarios memo, dated July 28, 2014 for an overview of Goal 14 and its role in guiding Urban Growth Boundary expansions.

Acknowledged Assumptions/Factors for Residential Land Needs

- Population Forecast for 2008-2028: 115,063
- New Housing Units 2008-2028: 16,681
- "Other" Land Needs Factor: 12.8 percent (of residential land need)[2]
- Right-of-Way Factor: 21 percent (of total land need)[3]

Acknowledged Needs for Residential Land

- Land Need for Second Homes: 500 acres[4]
- Park Land Need Estimate: 362 acres[5]
- School Land Need Estimate: 192 acres

The Residential TAC is revisiting the needed mix of housing by type and density and will also evaluate the most promising efficiency measures to accommodate a larger share of new housing units within Bend's existing UGB. For context, the 2008 UGB proposal estimated 20-year land needs for housing & related uses at about 3,000 gross acres (including park and school land need). However, that land need was not acknowledged by LCDC, and it is reasonable for the Boundary TAC to assume that the identified land need for housing is likely to go down based on the direction from the Remand.

Acknowledged Assumptions/Factors for Employment Land

- Total Employment Forecast for 2028: 60,607
- Increase in Employees Between 2008 and 2028: 22,891[6]
- Right-of-Way Factor: 21 percent

Acknowledged Needs for Employment Land

LCDC found that the City had documented the following special site needs for employment land:

- University at Juniper Ridge: 225 acres
- New Hospital Site South of Bend: 112 acres
- Two Large-Lot Industrial Sites East of Bend: 112 acres

On remand, the City must complete the analysis and findings to document whether the special site needs can be accommodated inside the existing UGB.

The Employment TAC will confirm how much land is needed for employment to the year 2028, will address strategies to maintain a short-term supply of industrial land and will identify the best

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[2] RTF Memorandum, Task 4.1 Other Land Needs, April 22, 2011.

[3] Memorandum to City Council – Rights-of-Way for Roadways Variable, December 4, 2008.

[4] RTF Memorandum – Task 2.5 Second Home Land Needs, April 22, 2011.

[5] RTF Memorandum, Task 4.2 Park and School Land Needs, July 22, 2011.

[6] The employment forecast is shown in Table 25 of Bend's Economic Opportunities Analysis. Bend's employment forecast does not include employees who are considered shift workers because land need estimates should be based on the day shift (typically the largest shift) instead of all employees working at a given business. Bend had approximately 8,000 shift workers in 2008.

locations for needed employment lands. For context, the 2008 UGB proposal estimated 20-year land needs for employment uses that ranged from about 1,380 acres (Scenario A) to about 2,090 acres (Scenario B). Based on a recommendation from the consultant team and city staff, the Employment TAC agreed not to proceed with Scenario B because it would be very difficult to develop legally defensible findings that included a "market factor" for employment lands. In summary, the employment land need was not acknowledged by LCDC, and it is reasonable for the Boundary TAC to assume that identified needs for employment land is likely to go down based on direction from the Remand relating to use of the market factor and redevelopment rates.

URBAN FORM PRINCIPLES

City of Bend Vision and Goals

Prior Bend 2030 visioning work and the Bend UGB Remand Project Goals both articulate desired outcomes related to the future urban form of the city.

Project Goals – City of Bend

The City and the UGB Steering Committee have drafted goals for the Urban Growth Boundary Project. The public is currently weighing in on the draft goals and strategies using the web based MetroQuest survey. Several of the goals are directly related to the city's urban form, including:

- *Quality Natural Environment* - As Bend grows, it preserves and enhances natural areas. Bend takes a balanced approach to environmental protection and building a great city.
- *Connections to Recreation and Nature* - Bend continues to enhance its network of parks, trails, greenbelts, recreational facilities, and scenic views inside and outside the city.
- *Great Neighborhoods* - Bend has a variety of great neighborhoods that are well-designed, safe, walkable, and include local schools and parks. Small neighborhood centers provide local shops, a mix of housing types, and community gathering places.
- *Strong Active Downtown* - Bend's downtown continues to be an active focal point for residents and visitors with a strong businesses, arts and cultural opportunities, and gathering places.
- *Balanced Transportation System* - Bend's balanced transportation system incorporates an improved, well-connected system of facilities for walking, bicycling, and public transit, while also providing a safe and reliable system for drivers.

Bend 2030 – Community Vision Statement and Executive Summary[7]

The Bend 2030 Community Vision Statement also articulated several objectives and goals for the city's future urban form:

- "We are proud of our… appropriate mixed-use development, public gathering places where people meet and connect, well-designed neighborhoods with affordable housing and safe, pedestrian-friendly centers, and our trail system that connects us to surrounding wildlands."
- "Our growth management practices and incentives have retained Bend's small-town character while supporting… the provision of more diverse and affordable housing, and the formation of complete communities – including mixed-use development and accessible neighborhood centers."
- *Bicycle and Walking Routes* – "A comprehensive, integrated system of bicycle and walking routes provide safe, healthy access to major hubs of the city, including employment areas, neighborhood centers, parks and open spaces, schools and retail areas."
- *Vibrant Downtown* – "Bend has strengthened and enhanced its downtown district, carefully expanding opportunities for businesses, shops, restaurants, and housing. New construction is planned in the context of preserving downtown's unique character."
- *Small Neighborhood Centers* – "Bend has developed a number of small neighborhood centers in the community, where local residents can walk or bike to cafes, shops, gathering places, pocket parks, recreational facilities, and other services."
- *Mixed-Use Development* – "Bend has established mixed-use development along key corridors and in designated centers. Development codes address building design, heights, densities and levels of affordability where residential, employment and retail uses mix."
- *Conservation Greenbelts* – "Bend has helped maintain the community's distinct identity by locating strategically integrated, permanent conservation 'greenbelt' areas to provide connectivity and open space."

Nationally Recognized Best Practices and Principles

Organizations including the Congress for the New Urbanism (CNU), the Urban Land Institute (ULI), the Environmental Protection Agency (EPA), and Smart Growth America have all articulated principles for smart growth and efficient urban form. Many of these principles share common themes, as summarized below.

[7] http://bend2030.org/wordpress/wp-content/uploads/2013/12/Bend-2030-Final-Community-Vision.pdf

Appropriate Mix of Land Uses

- Neighborhoods should be compact, pedestrian friendly, and mixed-use. Many activities of daily living should occur within walking distance, allowing independence to those who do not drive, especially the elderly and the young.[8]

- Concentrations of civic, institutional, and commercial activity should be embedded in neighborhoods and districts, not isolated in remote, single-use complexes. Schools should be sized and located to enable children to walk or bicycle to them. A range of parks, from tot-lots and village greens to ballfields and community gardens, should be distributed within neighborhoods.[9]

- Build centers of concentrated mixed uses.[10] Many small businesses – including restaurants, bars and retail stores – rely heavily on foot traffic. Communities with homes, shops and jobs close by provide the steady stream of potential customers to make these businesses viable.[11]

- Integrate land uses to allow people to work and recreate in close proximity to their homes and reduce dependence on automobiles.[12] Building stores, schools, and workplaces near residential neighborhoods means shorter trips between each, and shorter distances driven mean cleaner air in our neighborhoods and lower greenhouse gas emissions on our planet.[13]

Compact and Transit-Supportive Development

- Appropriate building densities and land uses should be within walking distance of transit stops, permitting public transit to become a viable alternative to the automobile. [14]

- Encourage the adoption of compact building patterns to use land and fiscal resources more efficiently.[15]

- The National Association of Realtors and Smart Growth America revealed that Americans favor communities with shorter commute times and more places to walk more than sprawling communities. [16]

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[8] http://www.lgc.org/wordpress/docs/ahwahnee/ahwahnee_principles.pdf

[9] http://www.lgc.org/wordpress/docs/ahwahnee/ahwahnee_principles.pdf

[10] ULI's Ten Principles for Smart Growth on the Suburban Fringe: http://www.uli.org/wp-content/uploads/2012/07/TP_SuburbanFringe.ashx_.pdf

[11] Smart Growth America's Smart Growth Principles

[12] EPA Smart Growth Principles.

[13] Smart Growth America's Smart Growth Principles

[14] http://www.lgc.org/wordpress/docs/ahwahnee/ahwahnee_principles.pdf

[15] EPA Smart Growth Principles.

[16] Smart Growth America's Smart Growth Principles

Urban Form Organized around Frameworks and Focal Points

- The neighborhood, the district, and the corridor are the essential elements of development and redevelopment in the metropolis. They form identifiable areas that encourage citizens to take responsibility for their maintenance and evolution.[17]

- The physical organization of the region should be supported by a framework of transportation alternatives.[18]

- Conservation areas and open lands should be used to define and connect different neighborhoods and districts. [19]

- Civic buildings and public gathering places require important sites to reinforce community identity and the culture of democracy. [20]

Mix of Housing Types and Income Levels

- Affordable housing should be distributed throughout the region to match job opportunities and to avoid concentrations of poverty. Within neighborhoods, a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community. [21]

- Provide a variety of housing types and sizes within zones so that residents, young and old alike, can find housing that suits their life-stage needs as these needs change without having to leave the neighborhood they have grown up in or accustomed to.[22]

- Provide diverse housing types and opportunities.[23] Creating a range of housing choices—whether it is a garden apartment, a row house, or a traditional suburban home— allows all households to find their niche in a smart growth community and accommodates growth at the same time.[24]

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[17] http://www.lgc.org/wordpress/docs/ahwahnee/ahwahnee_principles.pdf

[18] http://www.lgc.org/wordpress/docs/ahwahnee/ahwahnee_principles.pdf

[19] http://www.lgc.org/wordpress/docs/ahwahnee/ahwahnee_principles.pdf

[20] http://www.lgc.org/wordpress/docs/ahwahnee/ahwahnee_principles.pdf

[21] http://www.lgc.org/wordpress/docs/ahwahnee/ahwahnee_principles.pdf

[22] EPA Smart Growth Principles

[23] ULI's Ten Principles for Smart Growth on the Suburban Fringe: http://www.uli.org/wp-content/uploads/2012/07/TP_SuburbanFringe.ashx_.pdf

[24] Smart Growth America's Smart Growth Principles

FACTOR 1 OF GOAL 14: EFFICIENT ACCOMMODATION OF IDENTIFIED LAND NEEDS

What does it mean to accommodate land needs "efficiently" and what are the appropriate criteria to evaluate and measure efficiency? We have identified potential evaluation criteria below for discussion at the August 26th Boundary TAC meeting. Ultimately, the evaluation criteria approved by the Boundary TAC will be used to compare alternative growth scenarios that look at growth both inside and outside the existing UGB in Phase 2 using the Envision Tomorrow model.

Efficient Accommodation of Residential Land Needs

Proposed Evaluation Criteria & Measures

Potential Evaluation Criteria	Relevance	Potential Measure(s)
Does scenario include sufficient buildable land to accommodate the identified land need for housing?	Required by Goals 10 & 14	Buildable acres designated to meet general housing needs by scenario
How many new housing units are estimated to be built inside the existing UGB vs. outside the UGB?	Higher percentage of units inside the UGB supports more compact and efficient land use pattern	Residential acres/units estimated to be built inside vs. outside of UGB by scenario
What is the estimated average density for housing in 2028?	Higher average densities support more compact and efficient land use pattern and viability of transit service	Average density calculation for designated residential lands inside and outside UGB by scenario Average density calculation within ¼ mile of transit corridors
What is the estimated mix of housing units by type (SFD, SFA, and MF)?	Required by Goals 10 & 14; City obligation to zone to allow the needed mix Mix of housing types/densities has implications for land use form, integration of land use and transportation, housing affordability	Buildable acres allocated by residential plan designation by scenario Calculate allowed mix of housing types (percentages) based on plan designations by scenario **Note:** This criterion/measure is also relevant to Factor 3 – Social Consequences

Potential Evaluation Criteria	Relevance	Potential Measure(s)
Is there an efficient distribution and location of designated residential lands to accommodate needed housing and a variety of housing options?	Consistent with project goals and urban form principles	Distribution/number of complete neighborhoods by scenario Number of new housing units/population within specified distance (buffers of ¼ and ½ mile) of existing/planned amenities/services by scenario • Parks & trails • Schools • Transit corridors • Commercial services (grocery based?) **Note:** This criterion/measure is also relevant to Factor 3 – Social Consequences
Does scenario include sufficient buildable lands to meet "other" land needs?	Consistent with project goals and urban form principles Distribution of schools and parks to serve existing and new residential areas efficiently and equitably	Acres identified for schools and parks by scenario Qualitative evaluation of consistency of each scenario with location criteria/level of service standards in school facility master plan and park master plan Measures used above for number of new housing units/population within specified distance of schools and parks by scenario **Note:** This criterion/measure is also relevant to Factor 3 – Social Consequences

Questions for the Boundary TAC:

1. Are the potential evaluation criteria listed above reasonable and appropriate to address the "efficient accommodation of identified land needs" for housing and related uses?

2. Are there other criteria that you think should be added to address Factor 1 for residential lands? If yes, are there things we can measure to evaluate if the criteria are met?

Efficient Accommodation of Employment Land Needs

Proposed Evaluation Criteria & Measures

Potential Evaluation Criteria	Relevance	Potential Measure(s)
Does scenario include sufficient buildable land to accommodate general need for employment lands?	Required by Goals 9 & 14	Buildable acres designated to meet general employment needs by scenario
How many new jobs are estimated to be accommodated inside the existing UGB vs. outside the UGB?	Higher percentage of new jobs inside the UGB supports more compact and efficient land use pattern	Employment acres/jobs estimated to be built inside vs. outside of UGB by scenario Percentage of overall jobs assumed through redevelopment by scenario
What is the estimated average employment density (or FAR) for employment uses in 2028?	Higher average employment densities and FARs support more compact and efficient land use pattern, reduce VMT	Average employment density and/or FAR calculation for designated employment lands inside and outside UGB by scenario
How many employment acres are available and serviceable in the short-term (1-5 years)?	Strategies for short-term inventory required by Goal 9 Supports project goals relating to Strong Diverse Economy and Cost Effective Infrastructure. Land use efficiencies associated with linkage of focused public investment (CIP) and maintaining short-term supply of employment lands	Buildable employment acres that are currently served and/or serviceable by key infrastructure (sewer, water, transportation) in the short-term by scenario Percentage of buildable employment acres that are currently served and/or serviceable by scenario **Note:** This criterion/measure is also relevant to Factor 2 – Orderly & Economic Facilities
Are acknowledged "special site needs" accommodated?	First need to document if any of the special site needs can be accommodated inside the existing UGB	For each scenario, identify if special site needs have been accommodated based on suitability criteria that have already been acknowledged **Note:** This criterion/measure is also relevant to Factor 3 – Economic Consequences

Potential Evaluation Criteria	Relevance	Potential Measure(s)
Are employment lands distributed and located efficiently to accommodate needed jobs and specific site requirements?	Consistent with project goals and urban form principles	Measure of jobs/housing balance by scenario Percentage of land area in each scenario within specified distance of commercial node/corridor/center (1/2 mile buffer?) **Note:** This criterion/measure is also relevant to Factor 2 – Orderly & Economic Facilities and Factor 3 – Economic, Social and Energy Consequences

Questions for the Boundary TAC:

1. Are the potential evaluation criteria listed above reasonable and appropriate to address the "efficient accommodation of identified land needs" for employment?

2. Are there other criteria that you think should be added to address Factor 1 for employment lands? If yes, are there things we can measure (using GIS or Envision) to evaluate if the criteria are met?

FACTOR 4 OF GOAL 14: COMPATIBILITY OF URBAN AND RESOURCE USES

As summarized in the City Attorney Memorandum included in the packet of materials for this meeting, the McMinnville case set out an analytical 3-step process for integrating Goal 14 and ORS 197.298. The diagram attached to the City Attorney Memorandum illustrates the 3-step process. Based on the McMinnville decision, consideration of compatibility of proposed urban uses with resource uses occurs at two distinct steps in the process:

- High level, initial consideration of compatibility in Step 2 (Initial Suitability Evaluation); and
- More focused evaluation of compatibility in Step 3 (Goal 14 Factor Analysis)

The proposed evaluation criteria that follow are intended to be applied to the more focused evaluation of compatibility in Step 3 when the City is considering alternative growth and UGB expansion alternatives.

The wording of Factor 4 of Goal 14 is very specific:

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

First, proposed urban uses must be near agricultural and forest activities. Second, any agricultural and forest activities must be occurring on designated farm and forest land (e.g., not on exception land).

Two maps are attached to this memo. The first map shows City of Bend plan designations for lands inside the existing UGB and Deschutes County plan designations for lands within a 2-mile and 3-mile radius of the UGB. The map clearly shows that large blocks of contiguous forest land (public and private) are located to the west and south of the UGB. Designated farm lands are located to the north and east of the UGB and are more heavily parcelized and interspersed with exception lands relative to the forest land. The second map shows the same area, with lands grouped by Priority Category as defined by ORS 197.298.

Potential evaluation criteria and measures to address Factor 4 are presented below for consideration by the Boundary TAC.

Compatibility of Urban and Resource Uses

Proposed Evaluation Criteria & Measures

Potential Evaluation Criteria	Potential Measure(s)
Does the scenario include any designated resource lands?	Gross acres of designated Forest land (categorized by site class) included in proposed UGB, by scenario Gross acres of designated Agricultural land (categorized by capability class) included in proposed UGB, by scenario
Does the scenario expand the perimeter of proposed urban uses in closer proximity to designated resource lands?	Map the perimeter of the following: • For the existing UGB, how much of the UGB abuts designated Forest or Agricultural land (by site/capability class) • For existing plan designations, how much of the existing exception areas abut designated Forest or Agricultural land (by site/capability class) • For each scenario, how much of the perimeter of the proposed UGB abuts designated Forest of Agricultural land (by site/capability class)
For each scenario, focus on the areas where the perimeter of the proposed UGB is in closer proximity to designated resource lands to assess compatibility in greater detail	Gather GIS or other available data to describe current farm and forest activities for subareas that share similar characteristics: • For the Forest zone, what range of forest activities occur in proximity (1/2 mile) of proposed urban uses? For example, timber harvest, fuel reduction programs, public access/recreation, habitat protection/enhancement, etc? • Identify and evaluate potential compatibility issues associated with closer interface of urban and forest uses. For example, trespass, vandalism, increased fire risk, wildlife disturbance, etc. • For Agricultural zones, what range of agricultural activities occurs in proximity (1/2 mile) of proposed urban uses? For example, hay/grain production, specialty crops, cattle/calves, horse pastures, etc. • Identify and evaluate potential compatibility issues associated with closer interface of urban and agricultural uses. For example, trespass, vandalism, higher traffic volumes, displacement of irrigated lands, etc. **Note:** This evaluation criterion/measure is also relevant to Factor 3, Environmental, Social, Economic and Energy Consequences

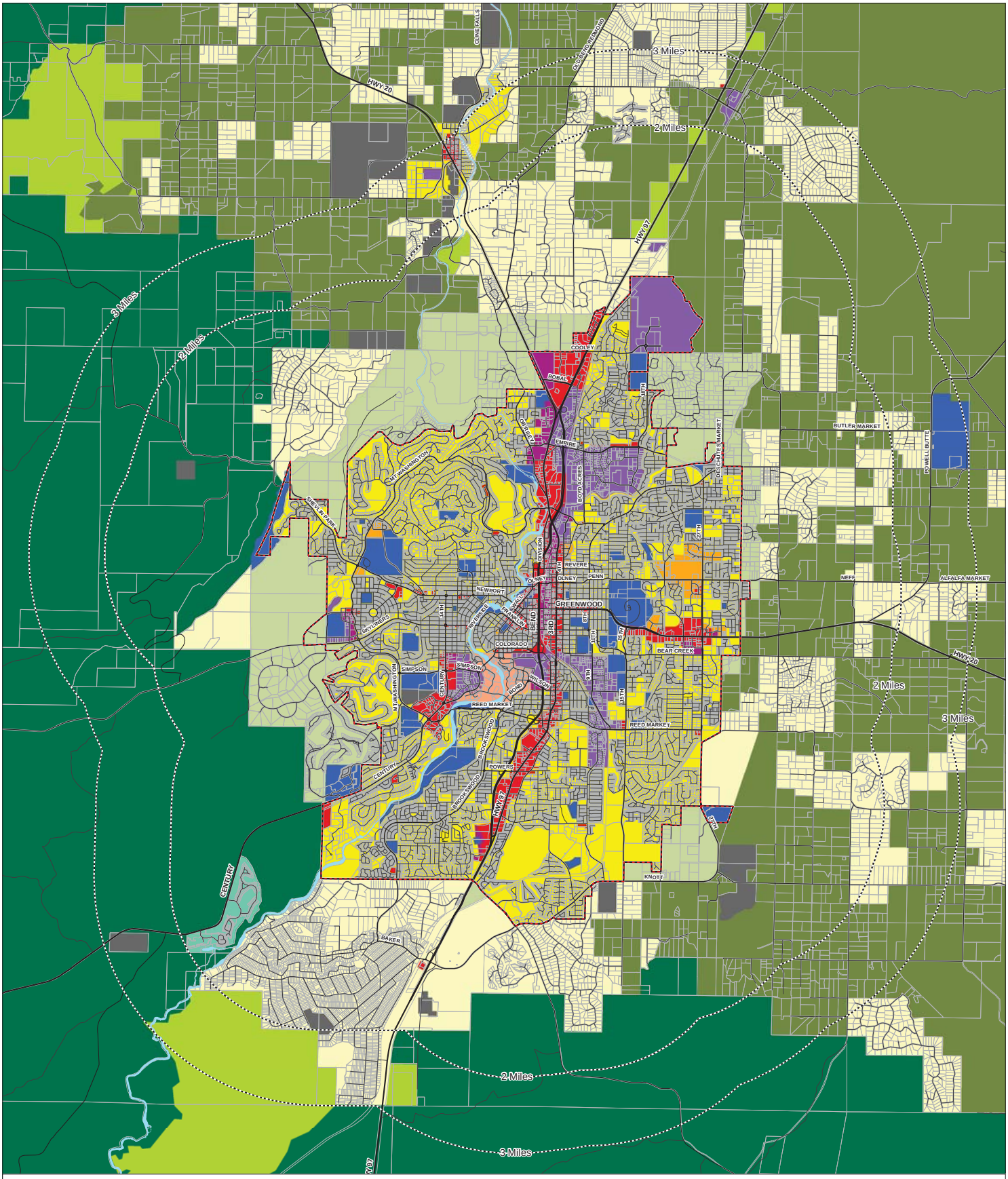
Potential Evaluation Criteria	Potential Measure(s)
Are tools available to minimize compatibility issues at the interface between urban and resource lands?	Qualitative evaluation – not something that can be measured. • For example, require buffers/defensible space and implement "Firewise" standards to reduce wildfire risk (condition of annexation) • Other urban form tools (greenbelts/designated open space corridors) to minimize compatibility issues and address other community goals? **Note:** This evaluation is also relevant to Factor 3 – ESEE consequences.

Questions for the Boundary TAC:

1. Are the potential evaluation criteria listed above reasonable and appropriate to address the issue of compatibility between urban and nearby farm and forest uses occurring on designated agricultural and forest lands?

2. Are there other criteria that you think should be added to address Factor 4? If yes, are there things we can measure (using GIS or Envision) to evaluate if the criteria are met?

UGB Study Area: Comprehensive Plan Designations



URBAN GROWTH BOUNDARY REMAND

Plan Designation (Generalized)
- Agriculture
- Forest
- Public
- Commercial
- Industrial
- Mixed Employment
- Residential
- High Density Residential
- Mixed Use
- Open Space & Parks
- Flood Plain or Riparian Area
- Resort
- Rural Residential Exception Area
- Surface Mining
- Urban Area Reserve

Streets
- Highways
- Arterials
- Collectors
- Forest Highways
- Other

- Urban Growth Boundary
- Rivers
- Taxlot
- USFS and BLM land
- UGB Buffers (2 and 3 mi)

Prepared 8/12/2014

NORTH

0 0.5 1 2 Miles

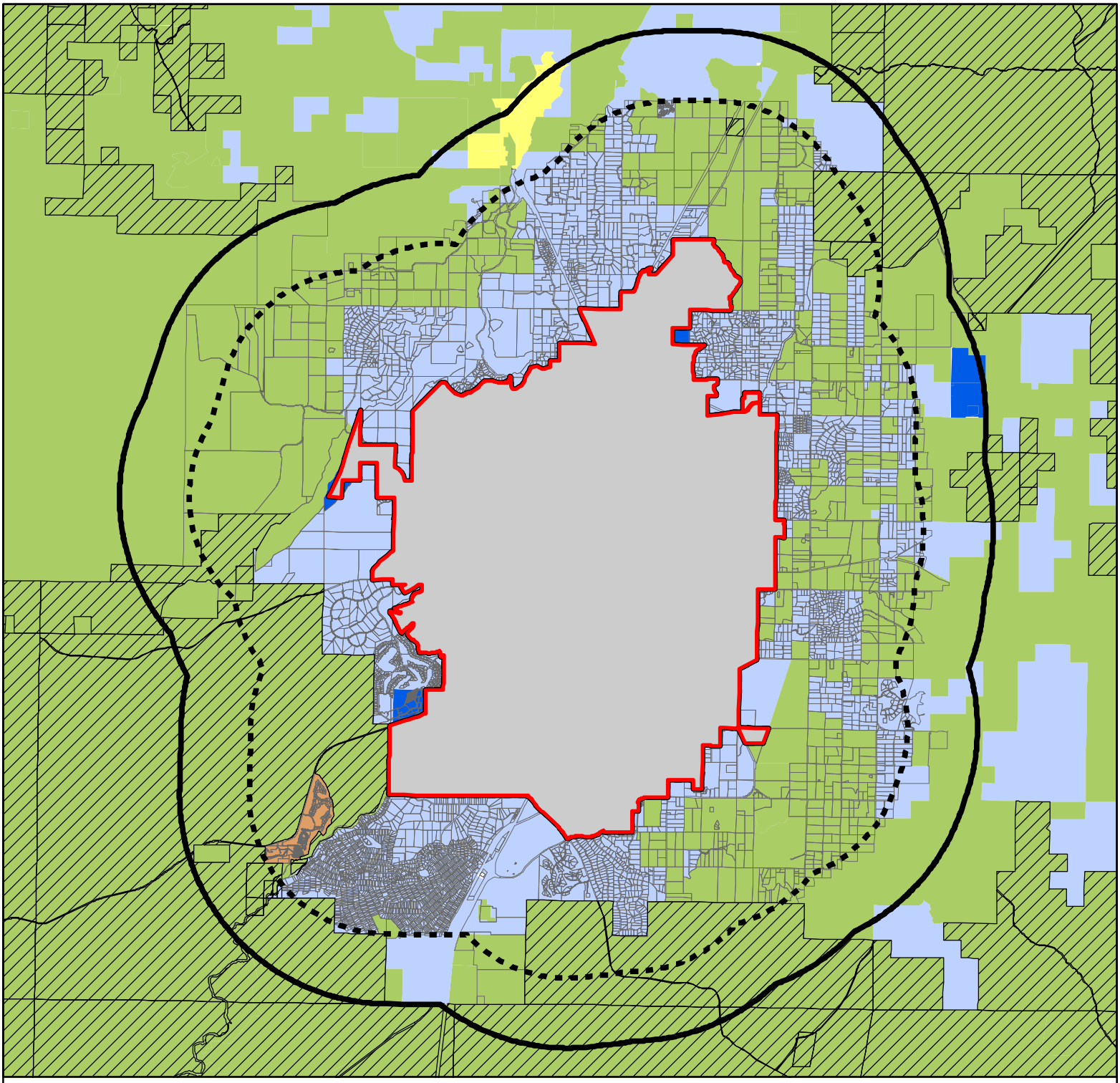
UGB Study Area by Priority Class*

Priority Category
- Limited Residential; Exception Land (Priority 2)
- Resource Land (Priority 4)

Other Plan Designations
- Public Facilities
- Resort
- Rural Community

- Urban Growth Boundary
- USFS and BLM land
- 2 Miles from UGB
- 3 Miles from UGB

* Priority of Land to be added to a UGB is defined in Oregon Revised Statutes (ORS) § 197.298



URBAN GROWTH BOUNDARY REMAND

Prepared 8/12/2014

0 1 2 4 Miles

NORTH

Brian Rankin

From: Annie Muske-Dukes <muskedua@gmail.com>
Sent: Thursday, September 04, 2014 4:04 PM
To: Brian Rankin
Subject: Comments for USC Sept 4, 2014 mtg

I am unable to attend the meeting today but want to make a comment on Bend's UGB. I believe we should continue to infill the areas of Bend we already have and look into expanding housing types. I oppose expanding the UGB.

Thanks for your time,
Annie

Brian Rankin

From: Pam Hardy <pamhardy.law@gmail.com>
Sent: Thursday, September 04, 2014 3:42 PM
To: Brian Rankin
Cc: Moey Newbold
Subject: Comments for USC Sept 4, 2014 mtg

Hi Brian,

I won't be able to make the meeting tonight, but I have a few comments that I'd like submitted for the record.

Core Neighborhoods:
****
I recommend that we work on building interesting core neighborhoods with localized higher density housing throughout the city. While our downtown will always be the heart of the city, Bend is getting big enough to begin supporting vibrant satellite neighborhoods. Portland has some great examples of neighborhoods that have their own sweet character.

I am not sure who knows how to write the zoning code so that such neighborhoods grow organically, but this should be researched, and implemented. The Bend Sustainable Neighborhood Initiative (ML, Stacey Stemach, Mike Riley, Steven Ames) has some great ideas. Get them involved.

The standard commercial zoning is failing us. Galveston is struggling to become an independent satellite neighborhood, but is hampered, in part, by zoning. Standard shopping centers and strip malls simple don't have the juice to create community, and that's what our existing code largely calls for.

Commercial Areas around Parks
****
The city and Parks & Rec should get together to create commercial/park space. A great model would be the zocolos in Mexico. There it's typically it's a medium size square in the center of town that filled with open space, trees, places for kids to play, and surrounded by cafes, restaurants, event centers and shops that like walk-by traffic. It would be a beautiful way to create a heartland in another part of the city that is not focused on cars. Minimal parking can be by the park, but most of it should be outside the center.

Expand East, not West
****
The fire danger on the westside is extreme, and the further into the hills we push the more likely we are to have a tragedy one day. Further, the westside roads like Galveston & Newport can't handle any more traffic. Focus on really making the eastside a sweet place to be.

Use in-fill. Don't put all the RH on the edge of town
****
Create incentives for ADUs and other organic ways of drawing people into town. Be careful not to ring the town with new high density zones. High density living just feels like warehousing if it's not near culture. If you must create high density at the edge of town, make sure it's right around a new cultural hub.

Pay attention to affordability
****

CENTRAL OREGON
LANDWATCH
"WHAT WE DO IS WHERE YOU LIVE"

Gail Snyder
Program Director
gail@centraloregonlandwatch.org

541.647.2930
50 SW Bond St. Suite 4
Bend, OR 97702

www.centraloregonlandwatch.org

September 4, 2014

To the Urban Growth Boundary Steering Committee:

As a business owner in the Makers District, I urge the USC to foster entrepreneurial and small business opportunities such as the Makers District represents, minimize sprawl, and promote multi-use and multi-modal development. A positive step in that direction will be to accept the recommendations of the Technical Advisory Committees, as described in the August 28, 2014 memorandum to the USC.

Residential TAC Recommendations:
I support the Residential TAC's recommendation that the USC adopt the Housing Mix Trend 2, with a ratio of 55% Single Family Detached, 10% Single Family Attached, and 35% Multifamily. As indicated in the TAC report, this housing mix will more accurately meet the needs of Bend's changing demographics. We need to plan for this future.

Employment TAC Recommendations:
I support the Employment TAC's recommendation of scenario A from the 2008 EOA, including the provision allowing for modification as more is learned, and allowing for special site needs. It is a sensible approach that is supported by real data.

Boundary TAC Recommendations:
I support the Boundary TAC's recommendation to develop a methodology for selecting lands to be brought into the UGB that is consistent with current law (McMinnville decision).

I support the TAC's recommendation to retain the 2-mile study. There should be more than enough land available in that area to satisfy housing and employment needs through 2028.

Sara Bella Upcycled 1234 NE 1st ST. 97701
Business Name and Address

Sara Wiemo
Signature

Central Oregon Locavore 1216 NE 1st St 97701
Business Name and Address

Pat B
Signature

NaturalEdge Furniture 135 NE Norton Ave Bend, OR 97701
Business Name and Address

(on behalf of M. Ross)
Signature

Central Sport & Spine 1289 NE 2nd St #3 97701
Business Name and Address

Signature

September 4, 2014

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Residential TAC Recommendations:
I support the Residential TAC's recommendation that the USC adopt the Housing Mix Trend 2, with a ratio of 55% Single Family Detached, 10% Single Family Attached, and 35% Multifamily. As indicated in the TAC report, this housing mix will more accurately meet the needs of Bend's changing demographics. We need to plan for this future.

Employment TAC Recommendations:
I support the Employment TAC's recommendation of scenario A from the 2008 EOA, including the provision allowing for modification as more is learned, and allowing for special site needs. It is a sensible approach that is supported by real data.

Boundary TAC Recommendations:
I support the Boundary TAC's recommendation to develop a methodology for selecting lands to be brought into the UGB that is consistent with current law (McMinnville decision).

I support the TAC's recommendation to retain the 2-mile study. There should be more than enough land available in that area to satisfy housing and employment needs through 2028.

Bowen Sports Performance 225 NE Lafayette.
Business Name and Address

Signature

Humm Kombucha 1125 NE 2nd Street 97701
Business Name and Address

Signature

Gateway Cycles LLC 1205 NE 2nd St 97701
Business Name and Address

Signature

Business Name and Address

Totally Polished 1289 NE 2nd St #1 97701
Signature

September 4, 2014

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Residential TAC Recommendations:
I support the Residential TAC's recommendation that the USC adopt the Housing Mix Trend 2, with a ratio of 55% Single Family Detached, 10% Single Family Attached, and 35% Multifamily. As indicated in the TAC report, this housing mix will more accurately meet the needs of Bend's changing demographics. We need to plan for this future.

Employment TAC Recommendations:
I support the Employment TAC's recommendation of scenario A from the 2008 EOA, including the provision allowing for modification as more is learned, and allowing for special site needs. It is a sensible approach that is supported by real data.

Boundary TAC Recommendations:
I support the Boundary TAC's recommendation to develop a methodology for selecting lands to be brought into the UGB that is consistent with current law (McMinnville decision).

I support the TAC's recommendation to retain the 2-mile study. There should be more than enough land available in that area to satisfy housing and employment needs through 2028.

For Afield Order, 1201 NE 2nd st #180, Bend OR 97701
Business Name and Address

Signature

BEND VELO LLC
Business Name and Address

ERIC POWER
Signature

Business Name and Address

Signature

Business Name and Address

Signature

September 4, 2014

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Residential TAC Recommendations:
I support the Residential TAC's recommendation that the USC adopt the Housing Mix Trend 2, with a ratio of 55% Single Family Detached, 10% Single Family Attached, and 35% Multifamily. As indicated in the TAC report, this housing mix will more accurately meet the needs of Bend's changing demographics. We need to plan for this future.

Employment TAC Recommendations:
I support the Employment TAC's recommendation of scenario A from the 2008 EOA, including the provision allowing for modification as more is learned, and allowing for special site needs. It is a sensible approach that is supported by real data.

Boundary TAC Recommendations:
I support the Boundary TAC's recommendation to develop a methodology for selecting lands to be brought into the UGB that is consistent with current law (McMinnville decision).

I support the TAC's recommendation to retain the 2-mile study. There should be more than enough land available in that area to satisfy housing and employment needs through 2028.

Agricultural Connections, 1470 NE 1st St. Suite 150
Business Name and Address

Signature

In Motion Training Studio 1279 NE 2nd St. Bend OR 97701
Business Name and Address

Signature

Business Name and Address

Signature

Business Name and Address

Signature

September 4, 2014

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Residential TAC Recommendations:
I support the Residential TAC's recommendation that the USC adopt the Housing Mix Trend 2, with a ratio of 55% Single Family Detached, 10% Single Family Attached, and 35% Multifamily. As indicated in the TAC report, this housing mix will more accurately meet the needs of Bend's changing demographics. We need to plan for this future.

Employment TAC Recommendations:
I support the Employment TAC's recommendation of scenario A from the 2008 EOA, including the provision allowing for modification as more is learned, and allowing for special site needs. It is a sensible approach that is supported by real data.

Boundary TAC Recommendations:
I support the Boundary TAC's recommendation to develop a methodology for selecting lands to be brought into the UGB that is consistent with current law (McMinnville decision).

I support the TAC's recommendation to retain the 2-mile study. There should be more than enough land available in that area to satisfy housing and employment needs through 2028.

For Afield Order, 1201 NE 2nd st. #180, Bend OR 97701
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Signature

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Business Name and Address

ERIC POWER
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Business Name and Address

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Residential TAC Recommendations:
I support the Residential TAC's recommendation that the USC adopt the Housing Mix Trend 2, with a ratio of 55% Single Family Detached, 10% Single Family Attached, and 35% Multifamily. As indicated in the TAC report, this housing mix will more accurately meet the needs of Bend's changing demographics. We need to plan for this future.

Employment TAC Recommendations:
I support the Employment TAC's recommendation of scenario A from the 2008 EOA, including the provision allowing for modification as more is learned, and allowing for special site needs. It is a sensible approach that is supported by real data.

Boundary TAC Recommendations:
I support the Boundary TAC's recommendation to develop a methodology for selecting lands to be brought into the UGB that is consistent with current law (McMinnville decision).

I support the TAC's recommendation to retain the 2-mile study. There should be more than enough land available in that area to satisfy housing and employment needs through 2028.

Sara Bella Upcycled 1234 NE 1st St. 97701
Business Name and Address

Sara Wiens
Signature

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Business Name and Address

Pat B
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Business Name and Address

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Employment TAC Recommendations:
I support the Employment TAC's recommendation of scenario A from the 2008 EOA, including the provision allowing for modification as more is learned, and allowing for special site needs. It is a sensible approach that is supported by real data.

Boundary TAC Recommendations:
I support the Boundary TAC's recommendation to develop a methodology for selecting lands to be brought into the UGB that is consistent with current law (McMinnville decision).

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Signature

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Business Name and Address

Signature

Business Name and Address

Totally Polished 1289 NE 2nd St #1 97701
Signature

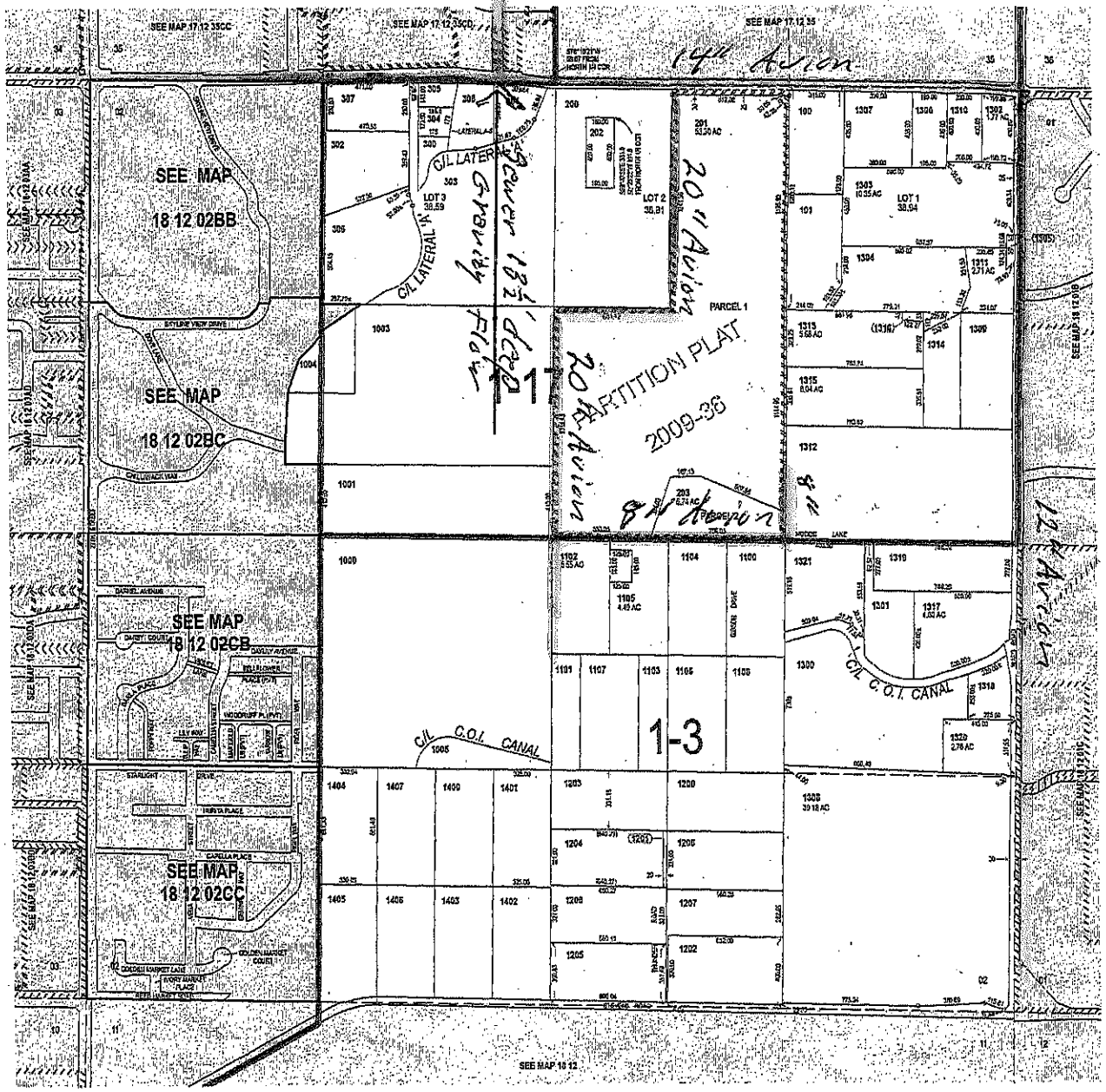
Harold Marken 541 382 2003

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

7/25/2014

SECTION 2 T.18S. R.12E. W.M.
DESCHUTES COUNTY
1" = 400'

18 12 02
& INDEX



Cancelled Nos.
400 thru 402
500 thru 503
600
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900 thru 911
1002

18 12 02
& INDEX

02121

Harold Marken
21495 Bear Creek Rd

Advantages to be included in urban growth

surrounded by main roads
close to shoping
no Forest Fire dangers
close to schools
utilities available
flat ground
gravity flow sewer

Harold Marken 541 382 2003

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

7/25/2014

SECTION 2 T.18S. R.12E. W.M.
DESCHUTES COUNTY
1" = 400'

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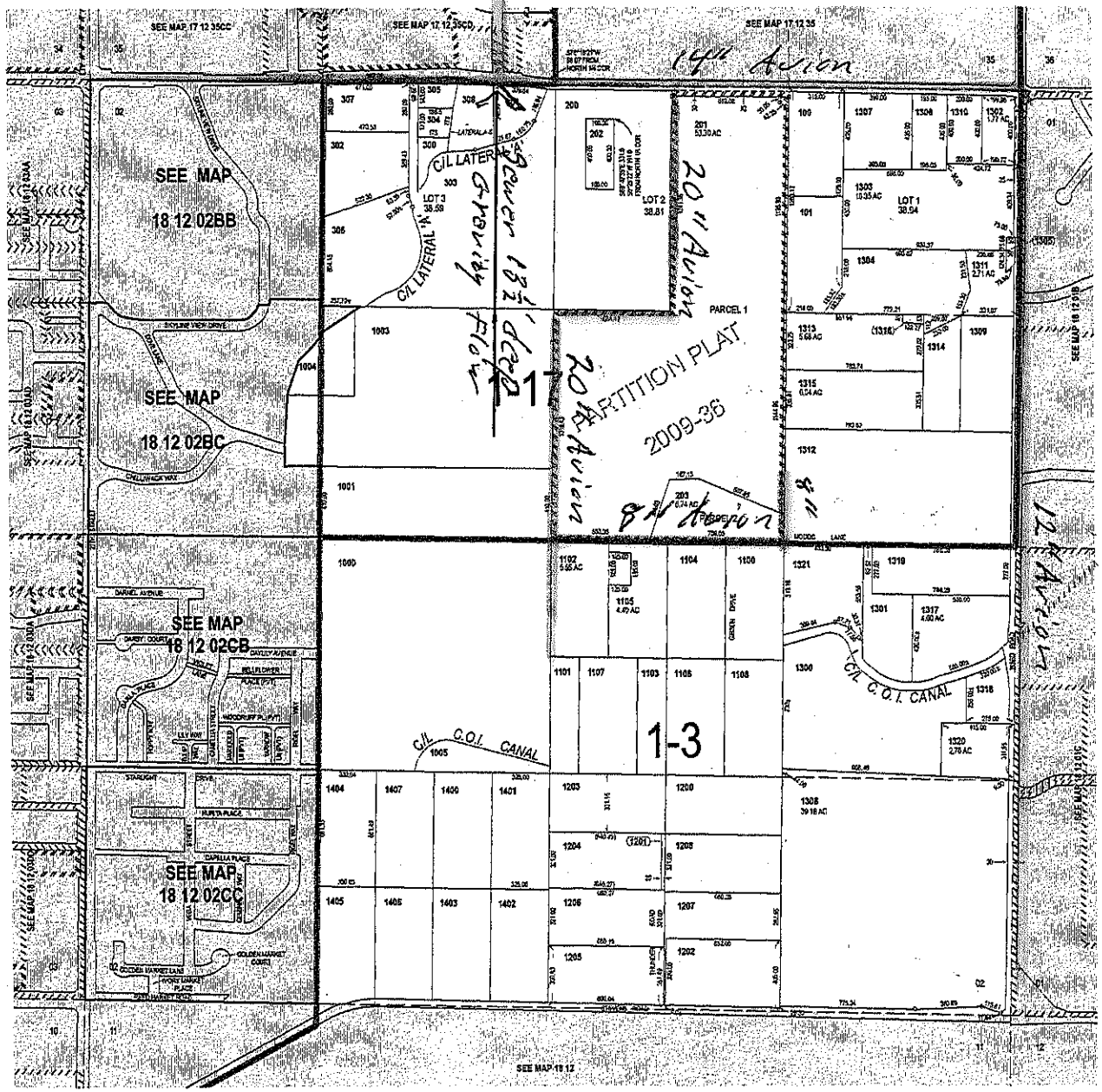

Cancelled Nos.
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CITY ATTORNEY MEMORANDUM

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To: UGB Boundary and Growth Scenarios Technical Advisory Committee

From: Mary Alice Winters, City Attorney

Subject: Boundary Analysis and McMinnville Case

Date: Revised September 5, 2014

You asked for a legal analysis of the McMinnville case, *1000 Friends v. Land Conservation and Development Commission and City of McMinnville*, 244 Or App 239 (2011), and how it impacts the direction on the alternatives and boundary location analysis from the Land Conservation and Development Commission (LCDC) in the Remand Order. The decision has been posted on the City's UGB website, along with the Order Denying Reconsideration, the City of McMinnville's Motion for Reconsideration, the City of Bend's Amicus Brief, and the Response by 1000 Friends, for any of you who don't have enough to read already.

To summarize, the relevant issue in the case was how the priority statute, ORS 197.298, works in conjunction with the Goal 14 locational factors. As articulated by the Court, Petitioner 1000 Friends argued that the priority statute works to categorize land as available to meet broadly defined land use needs, and that higher priority land qualifies to meet that need unless urban services cannot be provided to the land because of physical constraints. Then, Goal 14 is applied to the prioritized and available land to determine specific growth areas.

According to Respondents, ORS 197.298 is applied to determine the adequacy of land for more particular land use needs; higher priority land qualifies, unless it is determined to be unsuitable under the Goal 14 locational factors and the Goal 2 exceptions factors. Goal 14 is then applied to corroborate the inclusion of higher priority land and to justify any further selection among land of a lower-priority class. *Id.* at 254.

The Court ultimately concluded that neither party had it quite right. It held that ORS 197.298 does provide "the first cut" in the sort process and Goal 14 is "then applied" to justify the inclusion and any remaining choices about what land to include in the boundary. The court did say that Goal 14 is used to determine the "adequacy" of land available under ORS 197.298(1), but in a more particular way than suggested by the City and LCDC. *Id.*

Goal 14 consists of seven factors that govern whether and where a UGB is expanded. Factors 1 and 2 determine whether a city **needs** to expands its UGB to accommodate growth, housing needs, employment opportunities, and livability.

Factors 3 through 7 apply to **location** of that expansion based on public facilities and services, efficiency of land uses, consequences of development, retention of land for farm use, and compatibility of development with nearby agricultural activities. Essentially, the court set out an analytical 3-step process for integrating Goal 14 and ORS 197.298.

In McMinnville, the court said that step 1 is to determine the land needed under ORS 197.298(1). The descending priorities of the statute are applied to determine whether priority land is "inadequate to accommodate the amount of land needed." That determination is made by the application of Goal 14, which provides that the "establishment and change of boundaries is based on a consideration of the following factors: (1) The demonstrated need to accommodate the long range urban population, consistent with the 20-year population forecast, and (2) Need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space. If these needs cannot be met through the existing UGB through rezoning or infill, then the locality must amend its UGB to include sufficient buildable land to accommodate its housing and economic land needs. *Id*. at 256. Here, this latter determination will be based on the recommendation of the residential TAC, consistent with ORS 197.296 and the Remand Order. This first step is the analysis described by our consultants.
So far, so good.

Then in Step 2, the local government determines the adequacy of candidate lands under ORS 197.298 (1) and (3). The Court reasoned that only Goal 14 Factors 5 (economic, energy, economic and social consequences, or EESE) and 7 (compatibility with adjacent agriculture land) are applied to determine whether higher priority land "is inadequate to accommodate the amount of land needed" under ORS 197.298(1). In the court's view, the more restrictive priority exceptions in ORS 197.298(3) would be "meaningless surplusage" if the less restrictive Goal 14 factors 3, 5 and 6 are applied first. The key one in Bend is probably ORS 197.298(3)(b)—permitting an inadequacy conclusion only when public services cannot be extended because of topographic or physical constraints. Goal 14 Factor 3, which considers the relative cost of delivery of public services and facilities, cannot be considered at this step. The Court arguably altered the understanding of local government based on prior cases out of West Linn and the City of Adair in so holding. This was pointed out in the request for reconsideration, but that request was denied. This step is best viewed as a way to determine whether there is sufficient higher priority land to meet the City's needs identified in Step 1 and to disqualify unsuitable land (narrowly defined). It is not a step that qualifies lower priority land. The EESE contemplated at this stage, in our legal and planning view, is high level and general (not a project level EESE as done of for a Goal 3 or 4 exception analysis).

After a local government has prioritized lands under ORS 197.298 (1) and (3) and Goal 14 Factors 5 and 7, a new "Step Three" is added, during which the remaining factors of Goal 14 are applied to land so prioritized to include or exclude lands from the UGB. According to the Court, ORS 197.298 operates to "identify land that *could*

be added to the UGB to accommodate a needed type of land use," which Goal 14 is applied thereafter "to qualify land that, identified already under ORS 197.298, *should* be added to the Boundary." *Id*. at 265. The comparative EESE are also considered on an alternatives and more localized basis, as appropriate.

One point to keep in mind is that the Court was interpreting Goal 14 as it was drafted prior to April 28, 2005, as the rules allowed the City to apply the former version of the rule. 244 Or App at 239. The Goal 14 rule was amended by LCDC to "clarify the relationship between ORS and the locational factors of Goal 14 for urban growth boundary expansions." See Remand, page 125. However, the Goal 14 factors are essentially the same, albeit in a different order.[1] OAR 660-024-0060, adopted 10-5-06, further clarifies the process. However, without getting too nuanced, to the extent the new rule does not exactly track the process set forth in McMinnville, the Court of Appeals specifically interpreted the Goal in light of the Court's view of the statute and prior case law. Despite the City of McMinnville's argument that the application of the statute and Goal 14 was inconsistent with prior case law, the Court declined reconsideration and LCDC did not appeal the decision. Therefore, it is safest to follow the three-step process from the Court of Appeals. The concepts are all consistent with the Remand, the timing has the most room for interpretation.

In outline form, as confirmed by DLCD, the **suggested process to do a locational analysis based on current law/McMinnville decision** (as it applies to Bend) is as follows:

1. START WITH AMOUNT OF NEEDED LANDS
    A. Adopted Population Forecast
    B. Demonstrated need for housing, employment, public and semi-public uses

---

[1] Statewide Planning Goal 14 (as amended April 28, 2006) requires the following:
"The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:
(1) Efficient accommodation of identified land needs;
(2) Orderly and economic provision of public facilities and services;
(3) Comparative environmental, energy, economic and social consequences; and
(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB."
The prior Statewide Planning Goal 14 interpreted by the court in McMinnville stated:
"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 provision for public facilities 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."

C. Determine Study Area of Candidate Lands—Categorize lands under the four priorities of 197.298(1)

a. EXCEPTION LANDS

b. RESOURCE LAND – FURTHER SUBCATEGORIZED BY SOIL CLASS

2. FIRST PRIORITY FOR BEND: EXCEPTION LANDS. APPLY THE FOLLOWING FACTORS TO EXCLUDE (OR INCLUDE LOWER PRIORITY) LANDS FROM THE UGB:
   a. Exclude lands that are not buildable
   b. Exclude lands based upon specific land needs (197.298(3)(a))
   c. Exclude lands based upon inability to reasonably provide urban services due to physical constraints (197.298(3)(b))
   d. Exclude lands based upon analysis of comparative EESE consequences (Goal 14, Boundary Location, Factor 3)
   e. Exclude lands based upon analysis of compatibility with agricultural & forest activities (Goal 14, Boundary Location, Factor 4)

   QUESTION: Where are UGB Goal 14 Locational Factors 1 and 2 (these were Factors 3 and 4 of the prior rule)?
   ANSWER: According to "McMinnville" logic, they are redundant and less restrictive than two of the corresponding factors in ORS 197.298, and thus drop out at this stage of analysis.

3. A. IF THE AMOUNT OF LAND REMAINING AFTER EXCLUSIONS IS GREATER THAN THE AMOUNT OF NEEDED LANDS, THEN:

   Apply the following factors INTERDEPENDENTLY to pick and choose among the land remaining after exclusions:
   a. Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
   b. Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
   c. Comparative EESE consequences (Goal 14, Boundary Location, Factor 3)
   d. Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

   B. IF THE AMOUNT OF LAND REMAINING AFTER EXCLUSIONS IS LESS THAN THE AMOUNT OF NEEDED LANDS, IN BEND GO TO FOURTH PRIORITY – RESOURCE LANDS

   a. Repeat analysis under (2) above

The attached diagram prepared by ECONorthwest illustrates the steps in the UGB Alternatives Analysis Process as implied by the McMinnville decision and described in this memo.

IN THE COURT OF APPEALS OF THE STATE OF OREGON
1000 FRIENDS OF OREGON, FRIENDS OF YAMHILL COUNTY and ILSA PERSE,
Petitioners,

v.

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

Land Conservation and Development Commission
06WKTASK001709, 08WKTASK001760

A134379

AMICUS CURIAE BRIEF OF THE CITY OF BEND

Date of Opinion: July 13, 2011
Author of Opinion: Sercombe, J.
Concurring Judges: Ortega, P.J., Landau, J. pro tempore

Judicial Review of a Land Conservation and Development Commission Final Order

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August, 2011

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Pursuant to ORAP 8.15 the City of Bend appears as *amicus curiae* in this case to protect a private interest of its own. The City of Bend requests that the Court reconsider its July 13, 2011 opinion. Specifically, the City of Bend requests that the court reconsider the portion of its opinion construing the relationship between Statewide Land Use Planning Goal 14 and ORS 197.298.

BACKGROUND

Several cities in Oregon are in various stages of expanding their Urban Growth Boundary (UGB). The City of Bend's UGB decision was reviewed and remanded by the Land Conservation and Development Commission with a lengthy remand order that contains very specific directions as to how to apply ORS 197.298 and Goal 14. After LCDC's remand to Bend, the Court of Appeals issued its opinion in this case, which contains an analysis of the relationship between ORS 197.298 and Goal 14. The City of Bend cannot both comply with the remand order and be consistent with the analysis and direction provided by the Court of Appeals opinion in this case.

ARGUMENT

In the City of Bend's appeal to LCDC, a critical issue was the method of interpreting the relationship between the locational factors of Goal 14 and the land priorities in ORS 197.298 as they apply to the location of an expanded municipal

urban growth boundary. The appellants had varying views of this relationship and lengthy debate, but in the end, LCDC carefully and painstakingly considered the relationship and provided much need clarity and a path forward for Bend regarding the steps and timing of the locational analysis. (Remand and Partial Acknowledgement Order on Remand, Subissue 9.1, pages 1-2, 123-137, with relevant pages attached as Appendix A)[1]. Unfortunately, the opinion in this case creates a tension between compliance with the remand order and compliance with this Court's opinion.

The City acknowledges that the McMinnville case is governed by Goal 14 as it existed prior to the 2006 amendments, and the City's UGB expansion was governed by the amendments to Goal 14 and implementing regulations. However, the City believes that this is even more reason to ensure clarity between the Court's interpretation of the process and that of LCDC. As noted by LCDC in the Bend Remand, the Commission's amendments to Division 24 rules, and specifically OAR 660-024- 0060, were intended (in part) to clarify the relation between ORS 197.298 and the locational factors of Goal 14 for an urban growth boundary expansion. (LCDC Order, Pages 123- 125.) Thus, the Commission did not intend

[1] A copy of the entire order can be found at: http://www.ci.bend.or.us/depts/community_development/docs/Bend_UGB_LCDC_OrderFinal_10PartAck_001795_11_02_10.pdf. The City of Bend requests Judicial Notice pursuant to ORS 40.090 Rule 202.

to create a new standard, but to clarify the existing relationship based on its view of case law and the intent of Goal 14. The four locational factors are essentially the same under both versions, but were renumbered. The City respectfully posits that adding yet another interpretation simply muddies the waters further, and a local government will need to decipher how the process and order of analysis is supposed to work with the 4 factors of the new regulations. The risk of getting it wrong, and being subject to lengthy appeals, is a continually daunting prospect for communities involved in a UGB expansion process.

A. The City of McMinnville's Alternative Interpretation Makes Sense and Properly Construes the Legal Scheme of ORS 197.298 and Goal 14

In two prior cases, this Court affirmed LCDC's interpretation of the relationship between Goal 14 and ORS 197.298 that a local government is required to prioritize lands considered for inclusion in the UGB pursuant to ORS 197.298(1) and (2), consider such lands in their priority order, and then apply the Goal 14 factors to include or reject higher-priority lands before consideration of lower-priority lands, concluding when it has identified sufficient lands to meet its needs. *See City of West Linn v. LCDC*, 201 OR 419, 439-440 (2005) *and Hildenbrand v. the City of West Linn,* 217 Or.App. 623, 634-35 (2008). As the City of McMinnville points out, articulating a new a new interpretation of the relationship between the locational factors of Goal 14 and ORS 197.298 adds more procedure

to an already procedure-rich process and does not help local governments make decisions consistent with the applicable legal standards as they expand their UGBs. Instead, the Court's opinion creates a more complicated and difficult methodology, when local governments need simple and clear standards to follow. This opinion also places Bend in the difficult position of determining to what extent it must comply with the remand order from LCDC, which is an unchallenged final order, and to what extent the remand order could be considered inconsistent with the Court's opinion in this case.

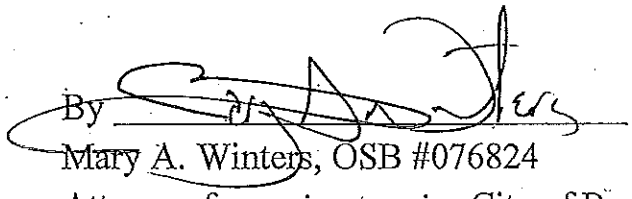
The City of Bend is sensitive to the dilemma of courts in this statutory and administrative scheme for UGB expansions, which are not a model of clarity themselves. The City is also concerned about not overly dramatizing its specific difficulties to this Court. However, as is evident from the 149 page decision on appeal from LCDC, the boundary location question is just one of many issues that local governments have to grapple with in order to expand their UGB. The City of Bend has not expanded its UGB for housing since the UGB was established in 1981, and has now been involved in this process since 2005 at a cost of approximately $1,000,000/year. The process is long, expensive and arduous. Local governments and the cities they serve are in desperate need of greater clarity from the DLCD/LCDC and the courts, not less, especially in a time of shrinking resources and staff. The suggested approach by the City of McMinnville adds

clarity and is more consistent with LCDC's remand in the City of Bend's case than this latest approach as articulated by the Court.

CONCLUSION

The City of Bend requests the Court to reconsider its opinion and adopt the City of McMinnville's interpretation of the relationship between the locational factors of Goal 14 and the land priorities in ORS 197.298 as they apply to the location of a municipal UGB expansion.

Respectfully submitted on August 31st, 2011.



By _____
Mary A. Winters, OSB #076824
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BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF THE REVIEW OF THE URBAN GROWTH BOUNDARY EXPANSION FOR THE CITY OF BEND; & RELATED ACTIONS OF THE CITY AND DESCHUTES COUNTY	))))))	REMAND AND PARTIAL ACKNOWLEDGEMENT ORDER 10-REMAND-PARTIAL ACKNOW-001795

This matter concerns certain ordinances adopted by the City of Bend and Deschutes County relating to a legislative amendment of the city's urban growth boundary (UGB). This matter came before the Land Conservation and Development Commission (Commission or LCDC) on March 18 and 19, April 22 and 23, and May 12, 2010, as an appeal of a decision of the Director of the Department of Land Conservation and Development (Director) Order 001775 dated January 8, 2010, pursuant to ORS 197.626, ORS 197.633, ORS 197.644(2) and OAR chapter 660, division 25. The Commission fully considered the City of Bend's submittals; Deschutes County's submittals, the objections to the submittals, Order 001775; the appeals of that order; the Department's Report on the Appeals, exceptions to the Department's Report, and the oral argument of the parties to the appeal.

To the extent that there is any conflict between the analysis in this order and the conclusions set forth in the order, the conclusions will control. In addition, any objection to the submittals not expressly addressed herein is deemed denied for the reasons set forth in Order 001775. Similarly, and basis for appeal of Order 001775 not expressly addressed herein is deemed denied for the reasons set forth in the Department's Report on the Appeals.

The organization of this order is shown in the following table of contents:

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9. Location of the UGB Expansion Area

9.1. Whether the City's Use of Suitability Criteria to Determine What Lands to Include Within Its UGB Expansion Area Complied with State Statutes, Goal 14 and the Commission's Goal 14 Implementing Rules

a. Summary of Issue and Appellants/Objectors

The City applied certain criteria as a screen to exclude lands from further evaluation for inclusion in its UGB expansion area. See generally, R. at 1059-1065, 1166-1207, and 7772-7775. Tony Aceti, Terry Anderson, COLW, Hilary Garrett, Miller Tree Farm, Paul Shonka, Tony and Cyllene King (McGraw and Associates, LLC), the Oregon Department of State Lands, Rose and Associates, LLC, Barbara McAusland, Swalley Irrigation District, Newland Communities, Harold Sampson, and Brooks Resources Corporation filed objections to the city's locational analysis for its UGB expansion. Director's Decision, at 113-115 (summarizing the objections on this issue). The City, Swalley Irrigation District, COLW, Garrett, Bayard, and Anderson appealed the Director's Decision on this issue. Department Report on Appeals, at A-59 to A-68.

b. Legal Standard

ORS 197.298,[35] Goal 14[36] and OAR 660-024-0060 (2007)[37] contain the applicable state requirements that establish *where* a city may expand its urban growth boundary (UGB). The

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[35] ORS 197.298 Priority of land to be included within urban growth boundary:

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

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

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

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

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

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

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

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

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

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

[36] Statewide Planning Goal 14 (as amended April 28, 2005) requires the following:

"The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

(1) Efficient accommodation of identified land needs;

(2) Orderly and economic provision of public facilities and services;

(3) Comparative environmental, energy, economic and social consequences; and

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB."

[37] OAR 660-024-0060 (adopted 10-5-06) provides in pertinent part that:

"(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.

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

(d) Notwithstanding subsection (a) through (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).

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

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

(4) 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.

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

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

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

(8) The Goal 14 boundary location determination requires evaluation and comparison of the 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. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

Commission's division 24 rules were adopted in 2006, following the Commission's action in 2005 to amend Goal 14. The Commission's division 24 rules, and specifically section 0060, were intended (in part) to clarify the relation between ORS 197.298 and the locational factors of Goal 14 for urban growth boundary expansions.

c. Summary of Local Action, Director's Decision and Appeal(s)

In January 2006, the city established a study area of approximately 27,000 acres for both a proposed UGB expansion and a proposed urban reserve area designation. R. at 45, 1060. In June 2007, the first UGB expansion scenario was prepared and sent to the Department with a 45-day notice prior to the city's first scheduled public hearing. On August 7, 2007, the City and Deschutes County withdrew the urban reserve amendment until the UGB expansion was resolved. DLCD Form 3 Notice of Denial/Withdrawal, Supplemental Record at 1423. In the fall of 2007, the city enlarged the study area to over 44,000 acres (R. at 1061) and to respond to direction from the city council to consider the need for land for employment uses as well as housing. R at 1060.

The city established and applied "threshold suitability criteria" to lands within the enlarged study area. R. at 1062. The suitability criteria were intended to be consistent with the Goal 14 location factors. R. at 1062. The parcels that met all of these criteria were considered suitable to meet Bend's needs for housing and employment (and other land needs). R. at 1168-1170. The suitability criteria included whether the parcel in question:

- Could be served [with sewer] by an existing or proposed city facility detailed in the 2008 Collection System Master Plan [e.g., the amended Public Facilities Plan];
- Is serviceable according to the 2007 City Water Master Plan, as amended, or a private water district service area;
- Scores medium or high for street connectivity;
- Is not an active surface mine, not a state of local park, not a landfill, and is not a destination resort;
- Is vacant or improved with improvement value below $20,000;
- If the parcel is improved with a dwelling, it is a parcel greater than 3 acres;
- If improved with a school or church, it is a parcel greater than 5 acres;
- Is not recreational land;

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

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

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

- Is not owned by the Bend/La Pine School District;
- Is not in a commercial farm classification with 23 acres of irrigation water rights;
- Is not subject to restrictive CC&Rs; and
- Is not in private open space. R. at 1169

Lands that did not meet *all* of the criteria were excluded from further study. Director's Decision, at 112. The City then took the remaining properties, and divided them according to the statutory priorities in ORS 197.298. Finally, the City then developed five scenarios of potential new UGB expansion areas, and applied the Goal 14 locational factors to compare the areas and select a preferred scenario. Director's Decision, at 112.

The Director found that the screening criteria used by the City were not sufficiently linked to specific identified future urban land needs to be used to exclude lands under ORS 197.298(3)(a), that the criteria extended beyond what is allowed under OAR 660-024-0060, and that the City lacked an adequate factual base to use its criteria as *per se* screens. The Director also found that the City failed to separate its suitable lands by the statutory priority categories, and then apply the Goal 14 locational factors. See generally, Director's Decision, at 115-123.

d. Analysis

The City argues that under *Hildenbrand v. City of Adair Village*, 217 Or App 623 (2008) and *City of West Linn v. LCDC*, 201 Or App 419, 440 (2005), it was authorized to exclude lands on the basis of locally-developed suitability criteria. In *City of West Linn*, the court determined that, under the former Goal 14, the locational factors of Goal 14 may be used (along with the criteria in ORS 197.298(3) to determine whether there is "inadequate land to serve a need." *Id.*

The Commission notes that the *Hildenbrand* and *West Linn* opinions involve local decisions made *before* the Commission's amendments to Goal 14 and adoption of Goal 14 implementing rules for urban growth boundary amendments took effect. OAR 660-024-0060 (Boundary Location Alternatives Analysis) was adopted to provide guidance to local governments concerning how to evaluate lands for inclusion into a UGB, harmonizing ORS 197.298 and the Goal 14 location factors.

The Court's basic point in *Hildenbrand* was that the "exceptions" of ORS 197.298(3) and the Goal 14 location factors, together with the "priorities" of ORS 197.298(1), have roles to play in determining whether there is adequate land to serve an identified need for urbanizable land. That remains the case after the Commission's amendments to Goal 14 and its adoption of OAR 660-024-0060, but the roles and relationship between these statutory and rule provisions

has been clarified in OAR 660-024-0060.

Under OAR 660-024-0060, when evaluating lands for possible inclusion in its urban growth boundary for *general* residential and employment needs, the first step for the City is to determine whether land in the highest priority category under ORS 197.298(1) (here, exception lands) is "suitable to accommodate" those general land needs. OAR 660-024-0060(1)(a). This legal standard is intended to be exacting. The fact that it may cost more to provide services to some lands than others does not, by itself, mean that the land will not accommodate a general land need. Similarly, the fact that certain lands will yield few new homes or little development relative to other lands does not mean that they will not accommodate a general need for residential or employment uses during the planning period.

If the City can show that lands would not provide any residential or employment uses over the planning period, it may exclude them at this stage. For example, lands that are not "buildable lands" as that term is defined in the Commission's rules interpreting Goal 10 (Housing) (OAR 660-008-0005(2)) would not be included in the city's buildable lands inventory if they were included in the UGB and, as a result, should not be included in the UGB expansion area (unless needed for some other purpose).[38] Similarly, lands that are not "serviceable" and "suitable" as those terms are defined and used in the Commission's rules interpreting Goal 9 (Employment) (OAR 660-009-0005(9) and (12) and 660-009-0025(1) and (2)) would not meet the city's need for employment lands during the planning period if they were included in the UGB and, as a result, should not be included in the UGB expansion area (unless needed for some other purpose).

[38] Under OAR 660-008-0005(2)(e), land is not buildable if it "cannot be provided with public facilities." This test is intended to reflect both physical and practical limitations, including financial limitations. E.g., if it is clearly financially infeasible to provide public facilities to lands during the planning period, they should not be included within the buildable lands inventory or included within a UGB expansion area,

The City may use other suitability criteria based on the Goal 14 locational factors,[39] but in order to exclude lands for generalized housing or employment land needs the City must show, with an adequate factual base, that the lands will not accommodate any of its general land needs during the planning period.[40] Such a showing also may be based on ORS 197.298(3)(b) – e.g., that "[f]uture urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints." Again, the showing will depend of the City having an adequate factual base and supporting findings showing that lands excluded under this provision meet the statutory standard.

As noted above, the Commission intended in adopting OAR 660-024-0060 that this, initial, step in the locational analysis for general land needs of excluding lands *before* any comparative analysis is done between alternatives be a "high bar," in line with how the Land Use Board of Appeals (LUBA) had applied the exceptions test to local decisions excluding exceptions lands from urban growth boundary expansions. See, e.g., ***DLCD v. Douglas County***, 36 Or LUBA 26 (1999) ("Factors that may have the effect of eliminating alternative sites because they are somewhat more expensive to develop are inadequate to demonstrate the eliminated alternative site cannot reasonably accommodate the identified need.); ***1000 Friends of Oregon, et al v. Metro***, 38 Or LUBA 565 (2000)("Metro must determine whether exception lands can reasonably accommodate the proposed use. As we stated in ***Parklane I*** and ***Residents of Rosemont***, exception criterion (ii) is not satisfied by findings that alternative sites to resource lands cannot accommodate the proposed use 'as well as' those resource lands … a finding that the resource land has relatively fewer developmental constraints or a higher percentage of buildable lands than an alternative site is not sufficient to satisfy the 'reasonably accommodate'

[39] OAR 660-024-0060(1)(e) provides that:

> "(e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, *as well as other provisions of law applicable in determining whether land is buildable or suitable.*" (Emphasis added (the terms "buildable" and "suitable" are addressed above)).

And, OAR 660-024-0060(5) provides that:

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

[40] The reference in OAR 660-024-0060(5) to "specified characteristics" * * * "for land to be suitable for an indentified need," is to ORS 197.298(3)(a) "specific types of identified land needs," not to general land needs for future residential and employment uses.

standard").[41]

For specific types of identified land needs (ORS 197.298(3)(a)), where the City has made a determination supported by an adequate factual base that a particular use with particular locational requirements is needed during the planning period and must be located in a particular location within the expansion area (as a result of its locational requirements), the City may use those requirements to exclude other lands as unsuitable (for that use) at this first stage (before a comparison between alternative sites is done). OAR 660-024-0060(5). This issue is addressed in more detail, in connection with issue 9.2, below.

e. Conclusion

The Commission remands the city's decision for it to conduct a locational analysis for its UGB expansion consistent with the procedures described below. To the extent that any objection or appeal is inconsistent with the analysis above, the Commission denies the objection and denies the appeal, for the reasons stated above.

In evaluating which lands to include within its UGB expansion on remand, the City must follow the following steps:

1. Establish suitability criteria for general housing, employment, and related land needs. These criteria must be consistent with (in the sense of implementing, or being in harmony with) the definitions in OAR 660-008-0005(2) (for lands planned for future general residential uses), and 660-009-0005(9) and (12) and 660-009-0025(1) and (2) (for lands planned for future general employment uses) as well as other provisions of law applicable in determining whether the land will meet the city's general land needs.

2. Document the criteria used to locate lands required to meet any "specific identified needs" as allowed by ORS 197.298(3)(a). The identified land needs include a future university site, a medical center, and two large-lot industrial uses.

3. Document (through existing or supplemental findings) that the sites identified by the City for a university, a medical center, and two large-lot industrial uses. The Commission agrees with the City that these identified future uses are justified under 197.298(3)(a). The City must demonstrate, however, through additional findings, that these future uses cannot reasonably be accommodated within the prior UGB.

[41] See also, *Residents of Rosemont v. Metro*, 38 Or LUBA 199 (2000) and *1000 Friends of Oregon v Metro*, 38 Or LUBA 565 (2000).

4. Apply the suitability criteria (from step 1, above) for general housing, employment and related land needs to exception lands within the expansion study area. In this step, the City must identify exception lands (including lands designated by the City as urban area reserve) that will not accommodate any of its general land needs during the planning period. These lands may be "screened out" from further analysis.

5. For its remaining (general) future land needs over the planning period, the City must compare the remaining (after the screening described above for suitability) exception lands using the Goal 14 locational factors to determine which of those lands are best to include in its UGB expansion area.[42] In this step, the City may rely on ORS 197.298(3)(c) (maximum efficiency of land uses *** requires inclusion of [resource lands] *** to include or to provide services to [the exception lands]") to *include* resource lands, particularly resource lands interspersed with exception lands, within its UGB expansion area. Resource lands included under ORS 197.298(3)(c) need not be evaluated for soil capability, as called for under ORS 197.298(2).

6. If the City is unable to accommodate its need for additional lands during the planning period after undertaking the preceding steps, it may then evaluate lands in the next priority category under ORS 197.298(1) (e.g., resource lands) for its general land needs. If theh City does so, it must consider resource lands with lower soil capability first, as specified in ORS 197.298(2). To the extent that resource lands are needed to meet remaining (general) future land needs over the planning period, the City must apply the general suitability criteria used in Step 1 (above) and then compare suitable resource lands using the Goal 14 location factors to determine which of those lands are the best to include in its UGB expansion area.

9.2. Whether the City Applied the Exception (to the Statutory Priorities of What Lands to Include in a UGB Expansion Area) for "Specific Types of Identified Land Needs" (ORS 197.298(3)(a)) in a Manner that Complies with Applicable Statutes, Goal 14, and the Commission's Rules

a. Summary of Issue, Objector and Appellants

The City included three types of employment uses within its UGB expansion area (on resource lands) on the basis that it had a specific need for those particular uses, and that those

[42] "The goal of consideration under [the Goal 14 boundary location factors] is to determine the 'best' land to include within the UGB, based on appropriate consideration and balancing of each factor." The Goal 14 location factors "must be considered together and balanced, but individual factors are not independent approval criteria." *Alliance for Responsible Land Use v. Deschutes Cty*, 40 Or LUBA 304, 318-319 (2001), *aff'd* 179 Or App 348 (2002). *Also see* OAR 660-024-0060(1)(b).

uses had particular locational requirements under the commission's Goal 9 implementing rule (for site suitability). R. at 1181-1182. The issue is whether the city's decision was supported by an adequate factual base and adequate analysis and findings to include land for these uses within the UGB expansion area, and at the particular locations specified. The Director found that the City had adequately justified its need for these three uses, but that the City had not explained why the uses needed to be located in particular locations in the UGB expansion area rather than within the existing UGB. Director's Decision, at 134. The City appealed this aspect of the Director's Decision, arguing that it's findings were adequate. City Appeal, at 86-90.

b. Legal Standard

ORS 197.298(3)(a) provides:

> "(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:
>
> (a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands * * *."

c. Summary of Local Action, Director's Decision, and Appeals

As described above, the City included land in its UGB expansion for a future university site, a medical center, and two large-lot industrial uses. The Director agreed with the City that it had shown a specific need under ORS 197.298(3)(a), but remanded the decision for adoption of adequate findings explaining why the need could not be accommodated within the prior UGB. The City appealed, arguing that its finding that there were no lands in the current supply for these uses was adequate. City Appeal, at 90.

d. Analysis

The has established site suitability criteria for these three uses The Director found that those criteria complied with the applicable Commission rules under Goal 9, and the Commission concurs. The remaining work for the City on remand is simply to show, using those criteria, that the uses "cannot reasonably be accommodated" within the prior UGB. The Commission concurs with the Director that the city's present findings are conclusory and lack the required reasoning tying the criteria to the facts found.

e. Conclusion

The Commission concludes that the City has made an adequate showing under ORS

197.298(3)(a) that there is a specific identified land need for a future university campus, a site for a future medical center, and for two 50-acre large lot industrial sites. The City must, however, analyze whether these needs could reasonably be accommodated within the prior UGB using its site suitability criteria and buildable lands inventory, and adopt findings explaining its reasoning. The Commission affirms the Director's Decision on this issue, including the Director's disposition of objections for the reasons stated in the Director's Decision, and denies the city's appeal.

9.3. Whether the City Properly Applied ORS 197.298(3)(c), in Determining that the Maximum Efficiency of Land Uses within the Urban Growth Boundary Requires Inclusion of Lower Priority Lands in Order to Include or to Provide Services to Higher Priority Lands

a. Summary of Issue, Objectors and Appellants

The City included some agricultural lands on the east side of the city in its UGB expansion area, and argued that inclusion of these lands was justified under ORS 197.298(3)(c). The Director generally agreed, but remanded the city's decision because it was based on the city's public facilities plan, which the Director had determined did not comply with state requirements. Department Report on Appeals, at A-62. The City and Swalley appealed.

b. Legal Standard

ORS 197.298(3)(c) authorizes a local government to *include* lands that would otherwise be a lower priority for inclusion in an urban growth boundary (typically, resource lands), when those lands are required in order to include higher priority lands or in order to provide services to higher priority lands.

c. Analysis

This issue is addressed, for the most part, under issue 9.1 above. The Commission has previously approved local decisions under this authority that have been upheld by the Oregon Court of Appeals. Examples include the City of Brookings, where agricultural lands were included in order to extend services to exception lands in the hills above the city, and the Bethany area in Washington County, where agricultural lands were included in order to allow a looped sewer system to serve more distant exception lands. The City will need to work through the particular application of ORS 197.298(3)(c) to the facts on remand, and that application may depend, in part, on what the City does with its public facilities plans.

d. Conclusion

The Commission affirms the Director's Decision on this issue, and denies the appeals. ORS 197.298(3)(c) may be used, as described above under issue 9.1., where resource lands are interspersed with exception lands, and in order to urbanize (provide public services to) exception lands that couldn't otherwise be served.

9.4. Whether the County's Urban Area Reserve Lands are Exception Lands or Resource Lands Under ORS 197.298(2)

a. Summary of Issue, Objectors and Appellants

Swalley argued in its objections, and continued to argue on appeal, that lands designated as Urban Area Reserve (UAR) are resource lands because no valid exception was taken to Goal 3 when the lands were planned and zoned UAR. Swalley and COLW also argue that the Director erred in interpreting ORS 197.298(2), because this statute (requiring consideration of lowest quality agricultural soils first for a UGB expansion) applies to all of the priorities in ORS 197.298(1), not just to resource lands. COLW Appeal at 5.

b. Legal Standard

ORS 197.298(1) makes exceptions lands a higher priority for inclusion within a UGB than resource lands. In this context, lands are exceptions lands if they were planned for a rural use other than agriculture or forestry on the basis of existing development or commitment to other uses, or on the basis of a reasons exception.

c. Summary of Local Action, Director's Decision and Appeals

In the applying the statutory priority of lands to be included within an UGB under ORS 197.298, the City considered parcels designated UAR as exception lands. R. at 162, 1177. In addition, the Bend Area General Plan (the city's comprehensive Plan) states that "Lands in this Urban Reserve area [land zoned UAR] are considered first for any expansion of the Urban Growth Boundary." Because of this plan provision, the City ranked UAR-zoned land higher than other exception land and included it in the UGB expansion before considering the other exception parcels zoned Suburban Residential 2.5-acre minimum, MUA 10-acre minimum, and Rural Residential 10-acre minimum. R. at 175, 1190.

d. Analysis

The Director's Decision determined:

> "On June 25, 1981, LCDC acknowledged the City of Bend comprehensive plan, which included city and county exceptions to Goals 3 and 4 for approximately 6,858 acres of land outside the 1981 UGB. These lands were designated UAR, 10-acre minimum parcel size (UAR-10), Suburban Residential, 2.5-acre minimum parcel size (SR 2½), and Surface Mining (SM). Parcels zoned UAR are therefore exception lands. UAR parcels in Deschutes County have not been designated as urban reserves under ORS 195.145. UAR lands in Deschutes County are exception lands." Director's Decision, at 131 (citations and footnote omitted).

On appeal (Swalley Appeal, at 12-15), Swalley confused the issue by ignoring what the Director's Decision said (which is quoted above). The Director determined that LCDC acknowledged the city's comprehensive plan in 1981. The city's proposed UGB included the UAR lands, and the City and County co-adopted the ordinances as referenced in Exhibit A to the Department's Report on the Appeals. The commission's acknowledgement order states that: "Based on these considerations, the City and County are taking an exception to Goal 3 and 4 as they relate to the land between the IUGB and UGB." Exhibit A to Bend UGB, Director's Decision, at 6. The Commission takes official notice of the 1981 Acknowledgement Order of the city's UAR land designations.

In sum, the city's acknowledged plan included Goal 3 and 4 exceptions for the UAR lands, which were placed in several zoning districts including UAR-10 and SR 2 ½, and these lands are exceptions areas for purposes of ORS 197.298.

e. Conclusion

The Commission concludes that the county UAR lands are exceptions lands under ORS 197.298, denies the appeals and related objections for the reasons stated above and in the Director's Decision and in the Department's Report on Appeals, and affirms the Director's Decision on this issue.

9.5 Whether the City Was Required to Exclude Lands from its UGB Expansion Area Because they Would be So Expensive to Develop that They Would Not Meet the City's Need for Affordable Housing

a. Summary of Issue, Objectors and Appellants

Central Oregon LandWatch (COLW) argued on appeal that the city should have excluded exception land west of the Bend UGB from its UGB expansion area because the land will be so expensive to develop that it will not meet the city's need for affordable housing.

COLW Appeal, at 5.

b. Legal Standard

Under ORS 197.298(3)(a), land of lower priority may be included in a UGB if land of higher priority "is inadequate to accommodate the amount of needed land" or because "specific types of identified land needs cannot be reasonably accommodated on higher priority land."

c. Analysis

ORS 197.298(3)(a) provides authority for a local government to *include* particular lands needed for a particular type of use. The statute does not provide a basis for *excluding* lands from a UGB expansion area, particularly to exclude a general type of land need such as land for the housing types a city has determined are needed under Goal 10. Further, the cost of land is not the type of locational requirement for a specific use that is contemplated by ORS 197.298(3)(a), Goal 14, and the Commission's implementing rules.

d. Conclusion

The Commission denies the appeal and affirms the Director's Decision, for the reasons set forth above, and in the Director's Decision.

9.6. Whether the City May Exclude (as Unsuitable) all Lots and Parcels of Less than Three Acres that Contain a House

This issue is a specific application of the general issue addressed above, as issue 9.1. The Commission concludes that due to the scope of the remand, it is premature to determine whether particular suitability criteria may be used as a screen by the City to eliminate lands from further consideration for inclusion in the expansion area. On remand, the City must reexamine its criteria and determine whether and how to apply them, using the steps described above under issue 9.1.

9.7. Whether the Threshold Suitability Criteria Used by the City Have an Adequate Factual Base

This issue is a specific application of the general issue addressed above, as issue 9.1. The Commission concludes that due to the scope of the remand, it is premature to determine whether particular suitability criteria may be used as a screen by the City to eliminate lands from further

consideration for inclusion in the expansion area. On remand, the City must reexamine its criteria and determine whether and how to apply them, using the steps described above under issue 9.1.

9.8. Whether the City and County Must apply Deschutes County Code Section 23.48.030 as a Standard for this UGB Expansion Decision

a. Summary of Issue, Objectors and Appellants

Deschutes County lists the *former* Goal 14 factors in the urbanization element of its comprehensive plan. Swalley Irrigation District argues that these are more restrictive local approval criteria that the County and City must comply with in making a UGB decision.

b. Analysis

Appellant Swalley withdrew its appeal at oral argument. In addition, the Commission does not agree that the cited county comprehensive plan provisions are more restrictive local requirements. Rather, the county's codification of the *former* Goal 14 need and location factors conflicts with the amended Goal 14 and Goal 14 rules (OAR 660-024). In this circumstance, ORS 197.646(4) applies and the local plan provisions are preempted by the revisions to Goal 14 and the Goal 14 rules. Under Swalley's argument, the commission's amendments to Goal 14 and the Goal 14 rules would never become effective until a local government had amended its comprehensive plan to adopt corresponding local plan and code provisions. ORS 197.646(4) was enacted to prevent this result.

c. Conclusion

The Commission denies the appeal, and affirms the Director's Decision on this issue, for the reasons stated above and in the Director's Decision.

9.9. Whether the Commission Should Remand the Submittal Specifically for Reconsideration of the Exception Areas to the Northwest of the Prior UGB

This issue is a specific application of the general issue addressed above, as issue 9.1. The Commission concludes that due to the scope of the remand, it is premature to determine whether these lands should or should not be included in the UGB expansion area. On remand, the City must reexamine these lands and determine whether to include them or not, using the steps described above under issue 9.1.

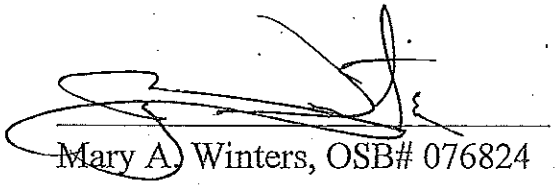
9.10. Whether the City Established that Excluding the Buck Canyon Area is Consistent with the Statutory Priorities of ORS 197.298

This issue is a specific application of the general issue addressed above, as issue 9.1. The Commission concludes that due to the scope of the remand, it is premature to determine whether ORS 197.298 applies in such a manner as to require the City to meet some of its identified need in the Buck Canyon area. On remand, the City must reexamine these lands and determine whether to include them or not, using the steps described above under issue 9.1.

CERTIFICATE OF MAILING

I hereby certify that on August 31st, 2011, I caused to be filed the original and thirteen (13) copies of *AMICUS CURIAE* BRIEF OF THE CITY OF BEND with the Court of Appeals, Appellate Court Administrator, Appellate Court Records Section at 1163 State Street, Salem, Oregon 97301-2563, by United States Postal Service, certified mail, return receipt requested.

Dated this 31st day of August, 2011.



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CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 1,677 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

Dated this 31st day of August, 2011.

Mary A. Winters, OSB# 076824

CERTIFICATE OF SERVICE

I hereby certify that on August 31st, 2011, I served two true and correct copies of this *AMICUS CURIAE* BRIEF OF THE CITY OF BEND on all persons listed below by United States Postal Service, regular first-class mail.

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FILED: July 13, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

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

v.

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

Land Conservation and Development Commission
06WKTASK001709, 08WKTASK001760

A134379

Argued and submitted on September 28, 2010.

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

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

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

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

SERCOMBE, J.

Reversed and remanded.

SERCOMBE, J.

This case concerns whether the Land Conservation and Development Commission (LCDC or commission) erred in approving a large expansion of the urban growth boundary (UGB) of the City of McMinnville (city). A UGB is the part of the land use map in a city's comprehensive plan that demarcates the area around a city that is available for expansion and future urban uses. Here, the city proposed to expand its UGB in various directions by several hundred acres and to redesignate the included territory for different types of urban uses, including neighborhoods of integrated commercial and higher-density residential land. Most of the included acreage is high-quality agricultural land that was previously zoned for exclusive farm uses. The primary issue in this case is whether ORS 197.298, a statute that prioritizes the types of land that can be added to a UGB, requires that other territory--land not designated for agricultural use or lower-quality farmland--be added to the UGB instead of some of the high-quality agricultural land. We conclude that LCDC erred in its application of ORS 197.298 and that a correct application of the law could compel a different result. We therefore reverse the order under review and remand the case to LCDC for further action under a correct interpretation of the governing standards.

I. BACKGROUND

The parties to this case differ as to the meaning of the standards that apply to UGB changes that result from periodic review of the city's comprehensive plan. In order to better frame the contentions of the parties and the history of the proceedings, we

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

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

> "Some of those goals require plans to restrict the use or development of different types of resource lands, *e.g.*, Goal 3 (Agricultural Lands), OAR 660-015-0000(3), and Goal 4 (Forest Lands), OAR 660-015-0000(4). When a city or county wishes to adopt a property-specific plan provision that is inconsistent with a goal requirement, it approves an exception to that goal requirement as part of the comprehensive plan. * * *
>
> "ORS 197.732(2) [and Goal 2, Part II] * * * describe[ ] three types of exceptions: for physically developed land that is not available for the goal use; for land that is 'irrevocably committed' to a nongoal use; and for land needed for a use not allowed by a goal policy. The latter type of exception, a 'reasons' or 'need' exception is allowed by ORS 197.732(2)(c) [and Goal 2]:
>
> "'A local government may adopt an exception to a goal if:
>
> "'* * * * *
>
> "'(c) The following standards are met:

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

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

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

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

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

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

"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;

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

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"(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and
>
> "(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years."

If the housing need determined under ORS 197.296(3)(b) exceeds the housing capacity inventoried under ORS 197.296(3)(a), then ORS 197.296(6) requires that the local government (a) "[a]mend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years"; (b) amend its plan and implementing regulations to "include 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"; or (c) adopt a combination of actions under (a) and (b).

II. HISTORY OF THE PROCEEDINGS

The city followed the dictates of ORS 197.296 in the periodic review process. In 2003, after three years of study and hearings, it adopted text and map amendments to the McMinnville Growth Management and Urbanization Plan (MGMUP), along with supporting findings, documentation of its future population and employment needs, a buildable land analysis, and an assessment of alternative lands for expanding the UGB. The city was rapidly growing, having doubled in population between 1980 and 2002 to 28,200 persons. The city estimated it would grow to a population of 44,055 by 2023. Based on that expected growth, the city assessed its residential, industrial, and other land needs for the next 20 years.

The MGMUP set out a growth management strategy to minimize the extent, and guide the direction, of changes in the city's UGB to accommodate those future land needs. The plan directed zoning changes to facilitate more dense uses in the

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

The plan described NACs as follows:

> "Under this concept, neighborhoods are each centered or organized around an activity center that would provide a range of land uses within walking distance of neighborhoods--preferably within a one-quarter mile area--including neighborhood-scaled [commercial and civic uses]. Surrounding the activity center (or **focus area**) are **support areas**, which include the highest-density housing within the neighborhood, with housing densities progressively decreasing outward.
>
> "These activity centers would be selected due to their location, distribution, proximity to vacant buildable lands, ability to accommodate higher intensity and density development, and their context and ability to foster the development of a traditional, or complete, neighborhood. The selected Neighborhood Activity Centers should be equally spaced around the edge of the McMinnville urban area, with the downtown area serving as the geographic center or hub."

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

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

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

With those assumptions, the city determined that it needed to expand the UGB by 1,188 gross acres, including 890 buildable acres. The city concluded that this was necessary to accommodate a need for 537 acres for residential use (341 acres for low-density residential development and 106 acres for medium-density and high-density residential use), 193 acres for office and commercial uses, and 314 acres for parks in order to serve an estimated population of 44,055 by 2023.[2] The plan and its findings quantified needs for additional land supply, both inside and outside of the existing urban growth boundary, by land use type (*e.g.*, single-family detached housing, manufactured dwellings, row/townhouses, and apartments) and zoning designation.

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

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

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

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

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

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

The city presented the MGMUP amendments and supporting

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

1 documentation to the Department of Land Conservation and Development (DLCD or
2 department) for approval as a completed work task.[4] Petitioners 1000 Friends of Oregon
3 and Friends of Yamhill County objected to the city's submissions and appealed the
4 director's decisions on those objections to LCDC. After a hearing, the commission
5 approved inclusion of three exception areas in the UGB (Riverside South, Fox Ridge
6 Road, and Redmond Hill), and remanded the proceeding to the city for an evaluation of
7 adding lower-quality agricultural land, as well as, among other things, consideration of
8 parkland needs and the exclusion of floodplain areas from the proposed UGB. On
9 remand, the city adopted ordinances to remove floodplains from three expansion
10 subareas, adjust slightly the calculations of needed lands, change the boundaries of the
11 added areas, correct implementing zoning, justify its parklands assumptions, and
12 otherwise respond to the remanding directives. In particular, the city added some lower-
13 quality agricultural land (Fox Ridge North and West Hills South), and adopted new
14 findings to justify its exclusion of other lower-quality agricultural lands.
15 Ultimately, the city determined that it needed to add 663 gross acres to the
16 UGB for residential land needs to be developed at a higher density (6.3 dwellings/acre)

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

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

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

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

UGB change. Among the many specific assertions, petitioners argued that the NAC designations over-allocated needed amounts of commercial land and parkland, the boundary expansion excluded over 225 buildable acres of exception lands, and the relevant legal standard was "whether exception areas can accommodate the use at all, not whether they can do so as efficiently or beneficially as farmland." Specifically, petitioners alleged that "the city's identified land needs are not limited to pedestrian- and transit-oriented development in neighborhood activity centers" and added that,

> "[u]nder ORS 197.298, resource land cannot be included in a UGB instead of exception land if the exception land can reasonably accommodate some portion of identified needs. It cannot be excluded simply because it cannot meet one type of identified land need."

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

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

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

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

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

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

III. CONTENTIONS OF THE PARTIES

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

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

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

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

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

land as available to meet broadly defined land use needs (in this case, for residential land of any kind). Higher-priority land qualifies to meet that need unless urban services cannot be provided to the land because of physical constraints. Goal 14 is then applied to the prioritized and available land to determine the specific urban growth areas.

According to respondents, however, ORS 197.298 is applied--especially during the periodic review process--to determine the adequacy of land for more particular land use needs (in this case, for higher-density residential uses). Higher-priority land qualifies to meet that need unless it is determined to be unsuitable under the Goal 14 locational factors and the Goal 2 exceptions criteria. Goal 14 is then applied to corroborate the inclusion of higher-priority land and to justify any further selection among land of a lower-priority class.

We ultimately conclude that neither party has it quite right. For the reasons stated below, we agree that ORS 197.298 does provide the first cut in the sorting process and that Goal 14 is then applied to justify the inclusion or exclusion of the sorted lands and any remaining choices about what land to include in the boundary. Goal 14 also plays a role in identifying the types of land that are subjected to the priorities statute. Goal 14 is used in evaluating the adequacy of available land under ORS 197.298(1), but in a more particular way than suggested by respondents. We reach those initial conclusions based on an analysis of the text and context of ORS 197.298.

IV. STATUTORY CONSTRUCTION ANALYSIS

Our determination of the legislature's intent in enacting ORS 197.298 is

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

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

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

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

is necessarily made by the application of Goal 14, which provides that "[e]stablishment 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 * * *." In *Residents of Rosemont v. Metro*, 173 Or App 321, 328, 21 P3d 1108 (2001), we explained that

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

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

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

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

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

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

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

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

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

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

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

> "(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).
>
> "In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. *Integration of Goal 14 and ORS 197.298*

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

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

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

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

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

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

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

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

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

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

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

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

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

> "(3) The long term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
>
> "(4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

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

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

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

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

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

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

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op at 40).

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

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

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

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

contentions.

V. JUSTIFICATION FOR THE PROPOSED CHANGES

A. *Standards of review*

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

> "(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:
>
> "(A) Set aside or modify the order; or
>
> "(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.
>
> "(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:
>
> "(A) Outside the range of discretion delegated to the agency by law;
>
> "(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or
>
> "(C) Otherwise in violation of a constitutional or statutory provision.
>
> "(c) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding."

ORS 183.482(8).

We recently explained that the requirements that an agency correctly

interpret the law, explain inconsistencies, and have evidentiary support for the decision implies that LCDC must "'demonstrate in [its] opinion[ ] the *reasoning* that leads the agency from the *facts* that it has found to the *conclusions* that it draws from those facts.'" *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 225, 239 P3d 272 (2010) (*Woodburn*) (quoting *Drew v. PSRB*, 322 Or 491, 500, 909 P2d 1211 (1996)) (emphasis in *Drew*). *See also City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271, 639 P2d 90 (1981) (stating the test as "whether there is a basis in reason connecting the inference [of compliance with the decisional standard] to the facts from which it is derived"). In connection with substantial evidence review, we do not review the city's decision for evidentiary support. Rather, "[o]ur role is to determine whether [LCDC] applied the correct legal test in deciding whether [the city's] decision is supported by substantial evidence." *Citizens Against Irresponsible Growth*, 179 Or App at 21.[11]

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

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

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

13 B. *The commission's defense*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. *Application of ORS 197.298*

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

1. *Old Sheridan Road exception area*

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

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

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

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

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

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

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

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

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

2. *Riverside North exception area*

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

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

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

3. *Booth Bend Road exception area*

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

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

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

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

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

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

4. *West Hills resource land area*

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

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

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

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

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

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

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

5. *Area north of Fox Ridge Road*

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

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

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

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

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

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

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

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

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

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

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

6. *Other resource land areas*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. *Application of Goal 14 locational factors*

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

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

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

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

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

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

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

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

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

VI. CONCLUSIONS

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

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

Reversed and remanded.

IN THE COURT OF APPEALS OF THE STATE OF OREGON

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

v.

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

Land Conservation and Development Commission
06WKTASK001709, 08WKTASK001760

CA No. A134379

RESPONDENT CITY OF McMINNVILLE'S JOINT PETITION FOR RECONSIDERATION

Date of Opinion: July 13, 2011
Author of Opinion: Sercombe, J.
Concurring Judges: Ortega, P.J., Landau, J. pro tempore

Judicial Review of a Land Conservation and
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COURT OF APPEALS OPINION FILED JULY 13, 2011

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Pursuant to ORAP 6.25, Respondent City of McMinnville (the "City") hereby petitions for reconsideration of the Court's final opinion dated July 13, 2011. Specifically, the City requests that the Court reconsider that portion of its decision construing the relationship between Statewide Land Use Planning Goal 14 and ORS 197.298, and then apply the reconsidered construction to the decision of the Land Conservation and Development Commission ("LCDC") under review in this case.

ARGUMENT

In its decision in this case, the Court articulated a new interpretation of the relationship between the locational factors of Goal 14 and the land priorities in ORS 197.298 as they apply to the location of a municipal urban growth boundary ("UGB") expansion. This interpretation was not argued, and consequently was not addressed, by any of the parties. The City requests reconsideration to enable it to address the Court's interpretation. The City argues that there is a superior construction of the relationship that supports the LCDC's and the City's—and, heretofore, this Court's—interpretation of that relationship.

A. The Court's New Interpretation.

The Court begins its analysis by describing its prior case law with regard to Goal 14, ORS 197.298, and the relationship between the two schemes. Goal 14 consists of seven factors that govern whether and where a UGB is expanded.[1] Factors 1 and 2

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[1] As noted in LCDC's Revised Order, Statewide Land Use Planning Goal 14 was amended April 28, 2006. The City's submittal is governed by the Goal as it existed prior to these amendments. Prior to the 2006 amendments, Goal 14 required that a UGB amendment be based on the consideration of the following seven 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

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apply to the determination of whether a city needs to expand its UGB to accommodate growth, housing needs, employment opportunities, and livability. Factors 3 through 7 apply to location of that expansion based on public facilities and services, efficiency of land uses, consequences of development, retention of land for farm use, and compatibility of development with nearby agricultural activities. See 1000 Friends of Oregon v. LCDC, ___ Or ___, ___ P3d ____ (2011) (CA A134379 7/13/2011) ("Decision") at 22. As the Court notes, it has construed the locational factors as factors to be considered and balanced, but not as stand-alone criteria or necessary thresholds that must be met. Decision, slip op at 22-23, citing to Citizens Against Irresponsible Growth v. Metro, 179 Or 12, 17, 38 P3d 956 (2002), and 1000 Friends of Oregon v. Metro, 174 Or 406, 409-10, 26 P3d 151 (2001).

In contrast, ORS 197.298(1) requires land to be included in a UGB according to certain priorities, beginning with urban reserve lands, followed by exception lands and resource lands completely surrounded by exception lands, followed by marginal land, and lastly by resource lands.[2] ORS 197.298(2) further prioritizes resource

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retention and Class VI the lowest priority; and
(7) Compatibility of the proposed urban uses with nearby agricultural activities."

[2] ORS 197.298 provides:

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

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

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

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

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lands by soil or site classification, assigning higher priority to lands of lower capability. The only methods under the statute for including lands outside of these priorities is (1) by independently applying "any requirements established by rule addressing urbanization," (2) if higher priority lands are "inadequate to accommodate the amount of land needed," or (3) one of the exceptions to the priorities in ORS 197.298(3) applies.

Based on the preamble in ORS 197.298(1) that the statute applies in addition to "any requirements established by rule addressing urbanization," this Court's prior case law held that Goal 14 is an independent and separate requirement, and that the subsequently enacted ORS 197.298 does not supersede or otherwise trump the considerations in Goal 14. Decision at 22-23, citing Residents of Rosemont v. Metro, 173 Or 321, 332-33, 21 P3d 1108 (2001), and 1000 Friends of Oregon, 174 Or at 412-414.

As the Court notes, it first considered the integration of Goal 14 and ORS 197.298 in City of West Linn v. LCDC, 201 Or 419, 119 P3d 285 (2005). Decision at 24-25. In West Linn, the Court agreed with LCDC that the Goal 14 locational factors are relevant in determining whether land of a particular priority in ORS 197.298(1) is

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

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

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

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

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

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

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"inadequate to accommodate the amount of land needed." Decision at 25. The Court quotes its following holding from West Linn:

> "The operative term is 'inadequate.' Whether there is adequate land to serve a need may depend on a variety of factors. In particular, the adequacy of land may be affected by locational considerations that must be taken into account under Goal 14. As LCDC correctly noted, ORS 197.298(1) expressly provides that the priorities that it describes apply '[i]n addition to any requirements established by rule addressing urbanization,' such as the locational factors described in Goal 14. As a result, the fact that other, higher priority land may exist *somewhere* adjacent to the UGB does not necessarily mean that that land will be '[]adequate to accommodate the amount of land needed,' if using it for an identified need would violate the locational considerations required by Goal 14. In other words, the statutory reference to 'inadequate' land addresses suitability, not just quantity, of higher priority land." West Linn, 201 Or at 439-440.

As the Court notes, it reaffirmed this interpretation of the relationship between Goal 14 and the priority statute in Hildenbrand v. the City of West Linn, 217 Or at 623, 634, 177 P3d 40 (2008) (the locational criteria of Goal 14 apply to the determination of whether there is inadequate land to serve a need within the meaning of the priorities statute, not just upon the constraints in ORS 197.298(3)). Decision at 25.

Following West Linn and Hildenbrand, it appeared to be clear that a local government is required to prioritize lands considered for inclusion in the UGB pursuant to ORS 197.298(1) and (2), consider such lands in their priority order, and then apply the Goal 14 factors to include or reject higher-priority lands before consideration of lower-priority lands, concluding when it has identified sufficient lands to meet its needs. This is how the City applied Goal 14 and ORS 197.298 and how the City argued in its brief that it should be applied. Respondent City of McMinnville's Answering Brief at 11-13.

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Given this precedent, the Court appropriately rejected Petitioners' argument that the Goal 14 analysis only applies to lands within a specific priority classification. Decision at 27. At this point, however, the Court struck out on its own.

The Court was troubled by the concededly unclear relationship between Goal 14 Factors 3, 4, and 6 and the similar but arguably more restrictive priority exceptions in ORS 197.298(3). Decision at 28. The Court reasoned that construing the scheme to allow elimination of higher-priority lands based on Factors 3, 4, and 6 would render ORS 197.298(3) exceptions without effect. Applying the maxim of statutory construction that the legislature did not intend any portion of its enactments to be "meaningless surplusage," the Court concluded that this could not have been the legislature's intent. Decision at 29, citing State v. Stampher, 197 Or 413, 417, 106 P3d 172, rev den, 339 Or 230 (2005).

In order to resolve this apparent conflict, the Court announced a new analytical procedure for integrating Goal 14 and ORS 197.298: according to the Court, only Goal 14 Factors 5 (ESEE consequences) and 7 (compatibility with adjacent agricultural lands) are applied to determine whether priority land "is inadequate to accommodate the amount of land needed" under ORS 197.298(1). Decision at 31. After a local government has prioritized lands under Goal 14 Factors 5 and 7 and ORS 197.298(3), a new "Step Three" is added, during which the remaining factors of Goal 14 are applied to land so prioritized to include or exclude lands from the UGB. Decision at 31-32. According to the Court, ORS 197.298 operates to "identify land that *could* be added to the UGB to accommodate a needed type of land use," while Goal 14 is applied thereafter "to qualify land that, identified already under ORS 197.298, should be added to the Boundary." Decision at 31. The Court concluded that the City and LCDC

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did not comply with this method of analysis and so reversed and remanded the decision. Decision at 31, 35-60.

B. Why the Court Should Reconsider its Interpretation.

The City respectfully requests that the Court reconsider this interpretation for the following reasons.

1. The Court's New Step Three Creates a Distinction without a Difference.

At the threshold, the Court's new "Step Three" creates an additional procedural hoop that doesn't appear to create a meaningful difference in the final analysis. At Step Three, a local government can apply Goal 14 Factors 3, 4, and 6 to exclude higher-priority lands identified under Step Two. Applying the Court's primary justification for its new interpretation, doesn't this new step simply render ORS 197.298(3) meaningless at a later stage in the analysis? Applying its newly minted procedure, the Court concludes that many of the City's decisions to exclude higher-priority lands violated ORS 197.298(1) because they were based on findings regarding efficiency of land use or the higher costs of providing a particular public facility or service to a higher-priority area. Decision at 31. If the City can ultimately exclude these same lands based on this same analysis at Step Three by applying Goal 14 Factors 3 and/or 4, the only apparent effect of the extra step is to add more procedure to an already procedure-rich process.

The other potential problem with waiting until Step Three to apply Factors 3, 4, and 6 is that there may not be enough suitable land after Step Two to meet the City's identified land needs. That certainly would have been the situation in this case. ORS 197.296 requires that a city expand its UGB with sufficient lands to meet its needs. A city would have no choice at Step Three but to return to Step Two and add lower-

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priority lands back into the consideration. Again, this raises the question: what is the point of the extra step?

The Court should either revisit its conclusion that the legal scheme requires an extra step, or further explain the qualitative difference in the analysis that justifies the extra step. The City submits that the Court should return to its analysis in West Linn and Hildenbrand that all of the Goal 14 locational factors apply to the determination about whether land in a particular priority class "is adequate to accommodate the amount of land needed" under ORS 197.298(1).

2. The Court's Interpretation is Not Consistent With the Text of the Statute.

The City submits that the Court's addition of Step Three is not consistent with the text of ORS 197.298. See, e.g., State v. Gaines, 346 Or 160, 206 P3d 1042 (2009). As noted above, the preamble in ORS 197.298(1) states that the statute applies "in addition to" Goal 14, not "prior to," "instead of," or "except where it subsumes the requirements of" the Goal. As noted above, this direction in the preamble of ORS 197.298 formed the basis of the Court's conclusion in Residents of Rosemont that ORS 197.298 and Goal 14 are applied independently, and that the statute was not intended to supersede the Goal. It also was the basis for the Court's conclusion in West Linn and Hildenbrand that the Goal had to be considered in conjunction with the statutory priorities analysis.

In the case at hand, the Court creates a new procedure for applying parts of Goal 14 after the statutory analysis has been completed. The Court concluded that ORS 197.298 operates to "identify land that *could* be added to the UGB to accommodate a needed type of land use," while Goal 14 is applied thereafter "to qualify land that, identified already under ORS 197.298, should be added to the Boundary." This conclusion conflicts with the text in the preamble to ORS 197.298(1) that "land may not

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be included within an urban growth boundary except under the following priorities: . . . " A construction that certain factors of Goal 14 can apply *after* the priority has been determined under ORS 197.298 to exclude lands determined to be higher priority under the statute cannot be reconciled with the text of the preamble. The only construction of ORS 197.298 that gives full effect to the direction that the statute applies "in addition to the requirements established" by Goal 14 *and* the mandate that "land may not be included within an urban growth boundary except under the following priorities" is the construction that Goal 14 also applies to determining whether lands can accommodate the need under ORS 197.298(1) and (2). This was the Court's holding in West Linn and Hildenbrand. Those holdings reflect a better reading of the text of the statute. The Court's new interpretation inserts a new procedure not found in the statute contrary to ORS 174.040 (in construing a statute, the courts may not insert what has been omitted).

3. The Court's Interpretation is Not Consistent With Its Precedent.

As the Court notes, any textual analysis by the Court must be assisted by its prior construction of the statutory terms. Decision at 18, citing Waite v. Dempsey, 203 Or 136, 141, 125 P3d 788 (2005). The City has previously discussed the Court's departure from its prior holdings in West Linn and Hildenbrand. The Court treats its interpretation in the case at hand as an extension of its holding in West Linn. See e.g., Decision at 30. In fact, it effectively reverses the Court's holding in West Linn, quoted above and restated in Hildenbrand, that all five locational factors apply during the priority determination notwithstanding ORS 197.298(3). The Court should reconsider its interpretation in this case or, at the very least, expressly overrule the prior cases to avoid confusion for practitioners.

The Court's decision is also contrary to its holdings in Citizens Against Irresponsible Growth v. Metro and 1000 Friends of Oregon v. Metro. As noted above,

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the Court held in these cases that the Goal 14 locational factors had to be considered together and balanced against one another. The Court also concluded in those cases that the factors were not individual criteria or thresholds. By bifurcating the Goal 14 locational analysis and applying parts of it at different stages in the review process, the Court eliminates a city's ability to balance the factors against one another and essentially divides the factors into (at least) two independent criteria that are applied at separate times. Again, the Court should reconsider its interpretation in this case, or expressly overrule or distinguish these prior cases.

C. The City's Alternative Interpretation.

The City submits that there is a construction of the legal scheme that addresses the apparent conflict between Goal 14 Factors 3, 4, and 6 and ORS 197.298(3) in a manner more consistent with the text of the statute and the Court's prior case law. The City agrees with the Court that the legislature would not have enacted ORS 197.298(3) unless it intended it to have some practical effect independent of Goal 14. The City believes that the Court's error lies in its conclusion that ORS 197.298(3) affects the way Goal 14 is applied rather than the way the priorities are determined under the statute.

The better reading of the statute is that the exceptions in ORS 197.298(3) are intended to apply to determine land priority at the inception of the ORS 197.298 analysis prior to conducting the suitability analysis set forth in ORS 197.298(1)(a)-(d) and (2). The exceptions in subsection (3) are intended to be used to move lands up or down the priority ladder based on specific characteristics that indicate that such lands either must be considered first, can be excluded without further consideration, or are considered only when other lands are exhausted.

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ORS 197.298(3)(a) allows consideration of lower-priority land if "specific types of identified land needs cannot be reasonably accommodated on higher priority lands." Certain industrial needs, for example, require vacant land of a particular size located in proximity to existing or planned transportation facilities. Under the City's interpretation, a city could use exception (3)(a) to exclude from consideration those lands that don't meet the identified land needs, prioritize the subset of lands that do meet the land need pursuant to ORS 197.298(1), review them in priority order under ORS 197.298(1), and apply the Goal 14 locational factors to include or exclude such lands consistent with West Linn.

ORS 197.298(3)(b) allows exclusion of lower-priority lands if "future urban services could not reasonably be provided to the higher priority lands due to topographical or physical constraints." There is no point in conducting a detailed analysis of otherwise available lands if they can't be reasonably served with urban services at the threshold. Under the City's interpretation, a city could exclude such lands from consideration under subsection (3)(b), prioritize the subset of remaining lands that are not so constrained, review them in priority order, and apply the Goal 14 locational factors to include or exclude such lands from the UGB consistent with West Linn.

ORS 197.298(3)(c) allows the inclusion of lower-priority lands if the "maximum efficiency of land uses within a proposed UGB requires inclusion of lower priority lands in order to include or to provide services to higher priority lands." There may be situations where urbanizable high-priority lands are separated from an existing UGB by lower-priority lands, and the only way to efficiently urbanize the higher-priority lands is to include the lower-priority lands as well. Under the City's interpretation, a city could use subsection (3)(c) to consider such lands in conjunction with the higher-priority

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lands at the priority of the latter under ORS 197.298(1), and apply the Goal 14 locational factors to include or exclude such lands from the UGB consistent with West Linn.

The City's interpretation also makes sense when you consider that ORS 197.298 not only applies to large-scale legislative UGB amendments such as the City's amendment at issue, but also to small quasi-judicial amendments to meet a specific need. If a city needs a new high school to serve the northwest part of town that cannot be accommodated within the existing UGB, it makes no sense to require the City to analyze all potential urbanizable lands surrounding its existing UGB when it can utilize ORS 197.298(3)(a) to limit its analysis to the subset of lands that can meet the need.

The City's interpretation gives independent effect to the exceptions in ORS 197.298(3), and has the added benefit of allowing a city to eliminate unnecessary steps in the analysis, rather than adding an additional step. If a city demonstrates that one of the priority exceptions in subsection (3) applies, the city can cut to the chase.

Under the City's interpretation—and relevant to the City's decision in the instant case—a decision *not* to apply the exceptions in ORS 197.298(3), but instead consider *all* available lands in priority order in ORS 197.298(1) and (2) and include or exclude lands based on Goal 14 factors, does not violate the statute or Goal 14. It may mean that a city analyzes more lands, or certain lands in more detail, than it would have otherwise been required to do had it fenced such lands in or out under ORS 197.298(3), but it doesn't mean that its final analysis to exclude or include such lands based on a consideration of the Goal 14 locational factors is in error.

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D. Application of the Interpretations to the Lands at Issue in the City's UGB Amendment.

1. The Neighborhood Activity Centers.

As the Court notes, the City incorporated a new planning concept called a "neighborhood activity center" ("NAC") in order to increase density in the expansion area. Decision at 8. A NAC is a mixed-use, comprehensively developed community that depends for its success on certain locational and site characteristics. Id. Based on the development of the NACs, the City was able to reduce its buildable lands need by 225 acres, and was thereby able to reduce its UGB expansion by more than 20 percent. Id. The City incorporated this concept, including the locational and site needs, into its Comprehensive Plan as required by ORS 197.296(6)(b) (if a city is going to rely on increased density to meet housing needs, it must amend its Comprehensive Plan to "include 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"). The Petitioners did not contest the NAC concept or the adopted NAC locational requirements before the Court or LCDC.

As the Court notes, the City reviewed and rejected all higher-priority lands that did not meet the required criteria for a successful NAC. Decision at 37-38. This resulted in the location of the four[3] NACs on lower-priority resource lands. According to the Court, the City should have determined the *quantity* of land needed for a NAC, and therefore, by relying on a qualitative analysis, the City "proved the wrong point." Id.

This is inconsistent with the Court's holdings in West Linn and Hildenbrand. In West Linn, the Court expressly held that the statutory reference to

[3] The Petitioners only contested the location of three of the four NACs.

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"inadequate" land in ORS 197.298(1) "addresses suitability, not just quantity, of higher priority land." West Linn, 201 Or at 440. (Emphasis added.) This Court went further in Hildenbrand, expressly rejecting the argument that plan policies about community form and growth management are irrelevant to the location of an urban growth expansion under ORS 197.298(1). Hildenbrand v. City of Adair Village, 217 Or 623, 635-636, 177 P3d 40 (2008). According to this Court in Hildenbrand, these kinds of policies are relevant under Goal 14 Factors 3 (efficient provision of public facilities and services) and 5 (ESEE consequences) *notwithstanding* ORS 197.298(3). Id., 217 Or at 636. Even under the Court's new interpretation, Factor 5 continues to apply at "Step Two." Either the Court needs to reverse or modify these holdings, or explain in more detail why it thinks the City "proved the wrong point."

In addition, the adopted locational requirements for NACs *include* a breakdown of the amount of land needed for a viable NAC. McMinnville Urban Growth Management Plan, App. 1 – 5; Site Area Chart at App -5. This was not pointed out to the Court because the Petitioners did not raise this as an issue in their appeal. LCDC's finding regarding "the amount of land needed" is therefore supported by the record.

Under the City's interpretation proffered above, the City could have potentially utilized the NAC locational criteria to determine that it had a "special land need" for lands with certain characteristics, and thereby eliminated consideration of the higher-priority lands at the threshold under ORS 197.298(3)(a). The City did not do so. But that does not mean the analysis the City conducted misapplied the law. The City considered *all* higher-priority lands under ORS 197.298(1) and (2) and eliminated those that were not suitable for NAC development based on the adopted locational and site characteristics (among other considerations). According to the Court in Hildenbrand,

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such adopted locational requirements are valid considerations under Goal 14 Factors 3 and 5 (and, the City would argue, Factor 4 (efficient accommodation of land needs)).

Finally, under the Court's interpretation, Factors 3 and 4 become valid considerations at Step Three and could then be used to eliminate lands identified for inclusion at Step Two. No discernable planning purpose is accomplished by requiring a Step Three.

The Court should affirm the City's inclusion of the designated NAC areas in the UGB.

2. Old Sheridan Road Exception Area.

As the Court notes, the City decided not to include the Old Sheridan Road Exception Area in part because lack of access to Highway 18 required prohibitively expensive road improvements and created congestion and safety hazards at other access points to the highway.[4] The Court concluded that this was not a valid consideration at Step Two because roads are not an "urban service" under ORS 197.298(3)(b), and so sustained Petitioners' assignment of error. Decision at 42 to 45.

Roads, however, are clearly a "public facility" within the meaning of Goal 14 Factor 3 ("orderly and economic provision for public facilities and services"). If the City can ultimately exclude Old Sheridan Road at Step Three under Goal 14 Factor 3 based on the same findings and conclusions as contained in its current decision before the Court, the City must again ask: what planning purpose is served by sending the City back to conduct an extra step only to reach the same result?

Under the City's interpretation, Goal 14 Factor 3 is relevant during the ORS 197.298(1) and (2) analysis of all available suitable lands. The fact that the City did not

[4] The Oregon Department of Transportation recommended against inclusion of Old Sheridan Road for this reason. See City's Response Brief at 22-22

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exclude Old Sheridan Road at the inception of the process under ORS 197.298(3)(b) or (c) does not require reversal or remand of the City's Factors 3 and 4 analysis. The Court should affirm the City's exclusion of the Old Sheridan Road Exception Area from the UGB.

3. Booth Bend Exception and West Hills Resource Land Areas.

The Court sustained Petitioners' objection to the City's Booth Bend Road and West Hills Resource Land Areas because it concluded that the City's findings regarding the cost-effectiveness of providing public facilities and services to these areas, relied on by LCDC, were not appropriate considerations at Step Two under ORS 197.298(1).

As noted above with regard to Old Sheridan Road, these are legitimate considerations under Goal 14 Factors 3 and 4.[5] No planning purpose is served by sending the City back to conduct a Step Three analysis only to reach the same result. More years of process will not make these areas any easier to serve.

Under the City's interpretation, Goal 14 Factors 3 and 4 are relevant during the ORS 197.298(1) and (2) analysis of all available suitable lands. The fact that the City did not exclude Booth Bend Road or the West Hills Resource Areas at the inception of the process under ORS 197.298(3)(b) or (c) does not require reversal or remand of the City's Factor 3 analysis. The Court should affirm the City's exclusion of Booth Bend Road and West Hills Resource Areas from the UGB.

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[5] The City also points out that comprehensive plan policies regarding urban form are valid considerations under Factor 5 (ESEE consequences) according to this Court's opinion in Hildenbrand as referenced above. The City rejected Booth Bend Road in part based on lack of compliance with its plan policies requiring the UGB to follow natural features and that the City should not expand its UGB south of Highway 18 west of the Yamhill River. Respondent's Brief at 24-25. The Court does not address why these policies are not valid considerations at Step Two under Factor 5.

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CONCLUSION

To face a remand after a more than eight-year UGB amendment process based on a new interpretation by this Court that the City didn't jump through the procedural hoops in the correct order—even though the City's Goal 14 analysis is ultimately sound—is intensely frustrating. Given the appeal history of this UGB amendment, it is likely to take three to five additional years (not to mention thousands of taxpayer dollars) to jump back through these new hoops, resulting in final acknowledgement of the City's UGB amendment sometime in years 12 to 15 of its identified 20-year land supply.[6] This leaves the City in the unenviable position on remand of deciding whether to invest its funds in further pursuit of a UGB amendment that may be of limited utility once it is finally acknowledged, or to abandon that effort, start over with a new analysis, and hope the courts or LCDC haven't changed the rules again by the time the City gets the rock rolled back up the hill.[7]

These kinds of impacts are the reason why the Court should think long and hard about so significantly changing its precedent regarding the relationship between ORS 197.298 and Goal 14. The Court's holding not only pulls the rug out from under the City of McMinnville, it potentially affects every municipality in Oregon that is currently in the process of amending its UGB. Although Goal 14 has been amended since the City's submittal, new Goal 14 Boundary Location Factors 1 and 2 are the equivalents of

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[6] The City's 20-year land supply analysis starts with the year 2003.

[7] The City realizes that the Court's conclusions regarding the adequacy of some of LCDC's findings will likely result in a remand regardless of whether the Court reconsiders its interpretation and agrees with the City. The difference is that the defects the Court found in LCDC's findings with regard to the area north of Fox Ridge Road and the 35-acre property north of the Airport are easily reparable at LCDC based on the City's existing UGB amendment and record. The Court's interpretation that the City fundamentally misapplied the required statutory and Goal 14 analysis, however, will require a remand to the City, a reanalysis and rewrite of its Comprehensive Plan amendment, a new round of hearings before the City and County planning commissions and governing bodies, adoption of a new amendment, and resubmittal to LCDC for a third time (and, probably, appeal back to this Court).

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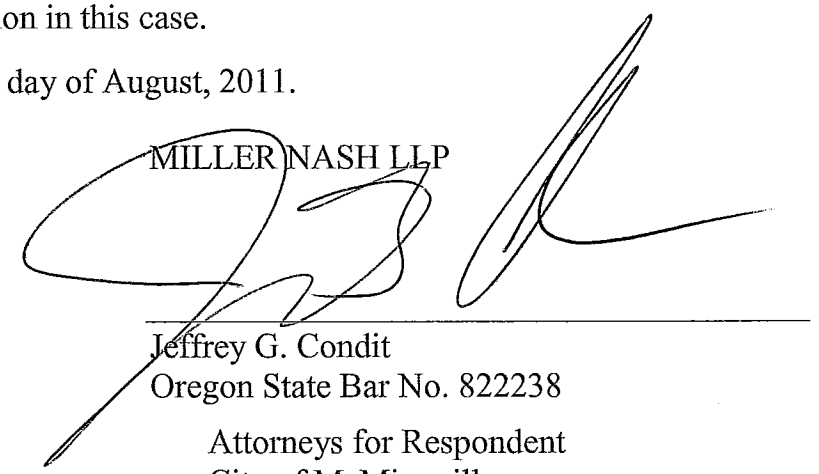
old Goal 14 Factors 3 and 4[8] and would, under the Court's interpretation, have to be applied at Step Three in the analysis.

This Court got it right in West Linn and Hildenbrand. The City's proffered alternative interpretation of the relationship between Goal 14 and ORS 197.298 gives independent effect to the priority exceptions in ORS 197.298(3), and does far less violence to this precedent. For these reasons, the City respectfully requests that the Court reconsider and modify its decision in this case.

DATED this 10th day of August, 2011.

MILLER NASH LLP



Jeffrey G. Condit
Oregon State Bar No. 822238

Attorneys for Respondent
City of McMinnville

[8] New Goal 14 divides the factors into "Land Need" factors and "Boundary Location" factors. Boundary Location Factor 1 is "efficient accommodation of identified land needs." Boundary Location Factor 2 is "orderly and economic provision of public facilities and services."

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and compensating for smaller lot sizes. All traditional neighborhoods have an identifiable edge and center.

In the McMinnville model, traditional neighborhoods have what is effectively a neighborhood activity center at the heart of the neighborhood, where day-to-day grocery and convenience shopping, an elementary school, places of worship, a public plaza, and the higher-density housing are located. This center provides neighborhood identity and opportunities for social interaction and gives structure to the surrounding land use pattern.

Neighborhood Activity Centers

Neighborhood Activity Centers are the most critical elements of the City's future growth management and land use plan. Here, neighborhoods are each centered or organized around these areas, which contain the shopping, services, recreation, and office and institutional facilities needed to support the neighborhood or urban area. Surrounding the activity center are **support areas**, which include the highest-density housing within the neighborhood, with housing densities progressively decreasing outward.

This plan proposes the creation of four Neighborhood Activity Centers --- Grandhaven; Three Mile Lane; Southwest; and, Northwest McMinnville (Figure 7). These centers were selected due to their location, distribution, and proximity to other vacant buildable lands, ability to accommodate higher intensity development, and their context and ability to foster the development of a traditional, or complete, neighborhood. The selected Neighborhood Activity Centers are equally spaced around the edge of the McMinnville urban area, with the downtown area serving as the geographic center or hub. These centers are all located at major street intersections, but their service areas are that of a group of neighborhoods and generally provide services for a consumer market that may range from one (1) to three (3) mile radius. The geographic area of these centers typically comprises twenty (20) acres and extends a linear distance of approximately one-eighth of a mile (660 feet). Maximum commercial acreage within these centers may range from five (5) to fifteen (15) acres.

These Activity Centers include both the focus area (the commercial, institutional, and office core) *and* the surrounding support area (with high and medium-density residential). The support area is critical because it provides the concentrated population necessary to support both the focus area and possible future transit stops, and it serves as a buffer between the more intense uses of the focus area and the lower-density residential uses of the surrounding neighborhood. Furthermore, support areas provide context and community for higher density housing.

The purpose and function of the Neighborhood Activity Center is summarized below.

Focus Area

The focus area portion of a neighborhood activity center contains facilities vital to the day-to-day activity of the neighborhood. Thus, the central focus area might contain a grocery store, drug store, service station, church or synagogue, daycare, limited office space, and small park. These diverse facilities are ideally located in close

proximity to one another in the focus area, so that all the essential facilities for the neighborhood are located in one convenient location, accessible in a single stop.

Support Area

The support area part of the neighborhood activity center, which surrounds the activity center's focus area, contains the neighborhood's highest-density housing. This design enables the highest concentration of population within the neighborhood to access the focus area via a short walk, thus reducing the number of automotive trips for daily shopping needs. This arrangement also provides a concentration of population sufficient to support future transit services, with a single transit stop serving the shops and services in the focus area and adjacent higher-density housing in the support area.

Ideally, neighborhood activity centers are located at the center of a neighborhood. However, in many cases it is difficult to achieve this central placement. In such cases, the neighborhood model takes on a slightly different arrangement, with the activity center moved to the periphery of, but still within, the neighborhood. This arrangement has a disadvantage, since half of the residents within the neighborhood must make longer trips to reach the activity center. However, moving the activity center to the periphery also provides advantages, as pass-by activity center traffic (visitors/customers to the activity center that do not live in the neighborhood) does not have to enter the neighborhood and merchants may be placed closer to arterial traffic.

The following characteristics are common to activity centers.

- Activity center focus areas should include a mix of land uses: commercial, office, institutional, mixed-use residential, and possibly high-density residential. The presence of a single usage type in an entire focus area (e.g., commercial), does not meet the criteria for an activity center.
- Each activity center should incorporate some amount of formal outdoor space for public use, such as a formal park or plaza, as focal points for public interaction.
- Different land uses or activities may be placed adjacent to one another, or on different floors of the same building. Such mixing of land uses encourages a compact and pedestrian-oriented center.
- An activity center has a support area consisting of medium and higher density housing.
- The activity center's physical layout should include a location for a future transit stop.
- The focus area of an activity centers should provide a range of land uses within walking distance of neighborhoods—preferably within a one-quarter mile area—including neighborhood-scaled retail, office, recreation, civic, school, day care, places of assembly, public parks and open spaces, and medical offices. Surrounding the activity center focus area should be the highest-density housing within the neighborhood, with housing densities progressively decreasing outward.

- Activity centers should be selected due to their location, distribution, proximity to vacant buildable lands, ability to accommodate higher intensity and density development, and their context and ability to foster the development of a traditional, or complete, neighborhood. Activity centers should be equally spaced around the edge of the McMinnville urban area, with the downtown area serving as the geographic center or hub.
- Activity centers need to be located at major street intersections, but their service areas are that of a group of neighborhoods and generally provide services for a consumer market that may range from a one (1) to three (3) mile radius. Maximum commercial acreage within these centers may range from five (5) to fifteen (15) acres.

General Criteria for Activity Centers

Type and Mix of Land Uses

The focus area should include a mix of commercial, office, institutional, and possibly residential uses. The commercial and institutional uses support the common day-to-day demands of the surrounding neighborhood for goods, services, and facilities. A grocery store is an essential element of the focus area, and should generally be the principal establishment. The activity center may also supply limited professional office space for neighborhood businesses. Some high-density residential uses may also be present in the focus area, as well as mixed-use residential uses, such as dwellings over shops. Examples of focus area land uses include:

Commercial:

- Grocery store
- Pharmacy
- Video rental
- Bakery
- Neighborhood restaurant

Office:

- Small-scale medical/dental practice
- Insurance agency
- Law firm

Residential:

- High-density housing
- Second-floor housing (over commercial business)

Public/Institutional:

- Elementary school
- Church
- Post office
- Neighborhood park or plaza

Uses that should be avoided in a neighborhood activity center include:

- Uses considered noxious when located next to a residential neighborhood
- Large retailers, discount stores
- Warehousing, manufacturing, and other industrial uses
- Establishments that do not [primarily] serve the surrounding neighborhood

Locational Criteria

Neighborhood activity centers are located and arranged according to the following guidelines:

- Neighborhood Activity Centers should be separated from each other by 0.75 to 1 mile distance;
- From downtown McMinnville, these centers should be a distance of 1 to 1.5 miles;
- Non-residential uses may radiate outward a distance of 600 – 700 feet (about 1/8 mile);
- High density housing (as part of the support area) should be located no more than 1/8 mile from the edge of the "focus" area; and
- Medium density housing (as part of the support area) should be located no more than 1/4 mile from the edge of the "focus" area.

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

Site Area and Development Size and Intensity

The size of a Neighborhood Activity Center, and the allocation of land area and building space between different uses in the activity center, should fall around these ranges:

	AVERAGE AREA
Combined focus and support areas	28 to 70 acres
Support area	20 to 40 acres
Focus area, acreage	
Focus area total acreage	8 to 30 acres
Focus area, commercial portion	5 to 10 acres
Focus area, office portion	2.5 to 10 acres
Focus area, institutional portion	1 to 10 acres
Focus area, public space (park, plaza)	0.10 to 0.25 acre
Focus area, floor space	
Total retail floor space, acceptable range	50,000 to 100,000 sq. ft.
Total office floor space, acceptable range	25,000 to 100,000 sq. ft.
Total institutional floor space, acceptable range	2,500 to 25,000 sq. ft.
Max. Size of largest non-grocery retailer	10,000 to 30,000 sq. ft.
Max. Size of grocery/supermarket	40,000 to 50,000 sq. ft.

Residential densities in the focus area or portions of the support area adjacent to it should be between 8 to 16 dwelling units per net acre. These density ranges are generally appropriate for attached single-family housing or apartments. Densities in the support area should transition to between 4 - 8 dwelling units per net acre at the outer edge of the support area -- appropriate for commonwall homes, duplexes, and small lot single-family detached homes.

Traditional Neighborhood Descriptions and Development Concepts

Northwest McMinnville Neighborhood and Activity Center –

General Description:

As its name implies this planned neighborhood is situated in northwest McMinnville near the intersection of Hill Road and Baker Creek Road. For the most part, this area is absent urban development with the notable exception of the Shadden Claim

FILED: July 13, 2011

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

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

v.

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

Land Conservation and Development Commission
06WKTASK001709, 08WKTASK001760

A134379

Argued and submitted on September 28, 2010.

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

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

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

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

SERCOMBE, J.

Reversed and remanded.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Petitioners

[X] No costs allowed.
[ ] Costs allowed, payable by
[ ] Costs allowed, to abide the outcome on remand, payable by

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1 SERCOMBE, J.

2 This case concerns whether the Land Conservation and Development
3 Commission (LCDC or commission) erred in approving a large expansion of the urban
4 growth boundary (UGB) of the City of McMinnville (city). A UGB is the part of the land
5 use map in a city's comprehensive plan that demarcates the area around a city that is
6 available for expansion and future urban uses. Here, the city proposed to expand its UGB
7 in various directions by several hundred acres and to redesignate the included territory for
8 different types of urban uses, including neighborhoods of integrated commercial and
9 higher-density residential land. Most of the included acreage is high-quality agricultural
10 land that was previously zoned for exclusive farm uses. The primary issue in this case is
11 whether ORS 197.298, a statute that prioritizes the types of land that can be added to a
12 UGB, requires that other territory--land not designated for agricultural use or lower-
13 quality farmland--be added to the UGB instead of some of the high-quality agricultural
14 land. We conclude that LCDC erred in its application of ORS 197.298 and that a correct
15 application of the law could compel a different result. We therefore reverse the order
16 under review and remand the case to LCDC for further action under a correct
17 interpretation of the governing standards.

18 I. BACKGROUND

19 The parties to this case differ as to the meaning of the standards that apply
20 to UGB changes that result from periodic review of the city's comprehensive plan. In
21 order to better frame the contentions of the parties and the history of the proceedings, we

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

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

> "Some of those goals require plans to restrict the use or development of different types of resource lands, *e.g.*, Goal 3 (Agricultural Lands), OAR 660-015-0000(3), and Goal 4 (Forest Lands), OAR 660-015-0000(4). When a city or county wishes to adopt a property-specific plan provision that is inconsistent with a goal requirement, it approves an exception to that goal requirement as part of the comprehensive plan. * * *
>
> "ORS 197.732(2) [and Goal 2, Part II] * * * describe[ ] three types of exceptions: for physically developed land that is not available for the goal use; for land that is 'irrevocably committed' to a nongoal use; and for land needed for a use not allowed by a goal policy. The latter type of exception, a 'reasons' or 'need' exception is allowed by ORS 197.732(2)(c) [and Goal 2]:
>
> "'A local government may adopt an exception to a goal if:
>
> "'* * * * *
>
> "'(c) The following standards are met:

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

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

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

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

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

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

"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;

---

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

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"(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and
>
> "(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years."

1 If the housing need determined under ORS 197.296(3)(b) exceeds the
2 housing capacity inventoried under ORS 197.296(3)(a), then ORS 197.296(6) requires
3 that the local government (a) "[a]mend its urban growth boundary to include sufficient
4 buildable lands to accommodate housing needs for the next 20 years"; (b) amend its plan
5 and implementing regulations to "include new measures that demonstrably increase the
6 likelihood that residential development will occur at densities sufficient to accommodate
7 housing needs for the next 20 years without expansion of the urban growth boundary"; or
8 (c) adopt a combination of actions under (a) and (b).

9 II. HISTORY OF THE PROCEEDINGS

10 The city followed the dictates of ORS 197.296 in the periodic review
11 process. In 2003, after three years of study and hearings, it adopted text and map
12 amendments to the McMinnville Growth Management and Urbanization Plan (MGMUP),
13 along with supporting findings, documentation of its future population and employment
14 needs, a buildable land analysis, and an assessment of alternative lands for expanding the
15 UGB. The city was rapidly growing, having doubled in population between 1980 and
16 2002 to 28,200 persons. The city estimated it would grow to a population of 44,055 by
17 2023. Based on that expected growth, the city assessed its residential, industrial, and
18 other land needs for the next 20 years.

19 The MGMUP set out a growth management strategy to minimize the
20 extent, and guide the direction, of changes in the city's UGB to accommodate those future
21 land needs. The plan directed zoning changes to facilitate more dense uses in the

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

The plan described NACs as follows:

> "Under this concept, neighborhoods are each centered or organized around an activity center that would provide a range of land uses within walking distance of neighborhoods--preferably within a one-quarter mile area--including neighborhood-scaled [commercial and civic uses]. Surrounding the activity center (or **focus area**) are **support areas**, which include the highest-density housing within the neighborhood, with housing densities progressively decreasing outward.
>
> "These activity centers would be selected due to their location, distribution, proximity to vacant buildable lands, ability to accommodate higher intensity and density development, and their context and ability to foster the development of a traditional, or complete, neighborhood. The selected Neighborhood Activity Centers should be equally spaced around the edge of the McMinnville urban area, with the downtown area serving as the geographic center or hub."

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

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

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

1 With those assumptions, the city determined that it needed to expand the
2 UGB by 1,188 gross acres, including 890 buildable acres. The city concluded that this
3 was necessary to accommodate a need for 537 acres for residential use (341 acres for
4 low-density residential development and 106 acres for medium-density and high-density
5 residential use), 193 acres for office and commercial uses, and 314 acres for parks in
6 order to serve an estimated population of 44,055 by 2023.[2] The plan and its findings
7 quantified needs for additional land supply, both inside and outside of the existing urban
8 growth boundary, by land use type (*e.g.*, single-family detached housing, manufactured
9 dwellings, row/townhouses, and apartments) and zoning designation.
10 The adopted UGB changes designated four parts of the added land for
11 neighborhood activity centers (Three Mile Lane, Southwest, Northwest, and Grandhaven
12 NACs). For the most part, those boundary changes captured prime agricultural land.
13 Another area of agricultural land was added, a good part of which had already been
14 developed as a city park (Norton Lane). The city also proposed to add four exception
15 areas to the boundary to meet residential needs (Fox Ridge Road, Redmond Hill Road,
16 Riverside South, and Lawson Lane). The city decided, however, not to add five
17 exception areas (Westside Road, Bunn's Village, Old Sheridan Road, Riverside North,
18 and Booth Bend Road) for various reasons.
19 The findings adopted to justify those actions evaluated a number of
20 considerations in applying ORS 197.298(1) to nine alternative exception areas, including

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

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

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

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

The city presented the MGMUP amendments and supporting

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

1 documentation to the Department of Land Conservation and Development (DLCD or
2 department) for approval as a completed work task.[4] Petitioners 1000 Friends of Oregon
3 and Friends of Yamhill County objected to the city's submissions and appealed the
4 director's decisions on those objections to LCDC. After a hearing, the commission
5 approved inclusion of three exception areas in the UGB (Riverside South, Fox Ridge
6 Road, and Redmond Hill), and remanded the proceeding to the city for an evaluation of
7 adding lower-quality agricultural land, as well as, among other things, consideration of
8 parkland needs and the exclusion of floodplain areas from the proposed UGB. On
9 remand, the city adopted ordinances to remove floodplains from three expansion
10 subareas, adjust slightly the calculations of needed lands, change the boundaries of the
11 added areas, correct implementing zoning, justify its parklands assumptions, and
12 otherwise respond to the remanding directives. In particular, the city added some lower-
13 quality agricultural land (Fox Ridge North and West Hills South), and adopted new
14 findings to justify its exclusion of other lower-quality agricultural lands.
15 Ultimately, the city determined that it needed to add 663 gross acres to the
16 UGB for residential land needs to be developed at a higher density (6.3 dwellings/acre)

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

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

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

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

1 UGB change. Among the many specific assertions, petitioners argued that the NAC
2 designations over-allocated needed amounts of commercial land and parkland, the
3 boundary expansion excluded over 225 buildable acres of exception lands, and the
4 relevant legal standard was "whether exception areas can accommodate the use at all, not
5 whether they can do so as efficiently or beneficially as farmland." Specifically,
6 petitioners alleged that "the city's identified land needs are not limited to pedestrian- and
7 transit-oriented development in neighborhood activity centers" and added that,

8 "[u]nder ORS 197.298, resource land cannot be included in a UGB instead
9 of exception land if the exception land can reasonably accommodate some
10 portion of identified needs. It cannot be excluded simply because it cannot
11 meet one type of identified land need."

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

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

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

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

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

17 III. CONTENTIONS OF THE PARTIES

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

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1 Petitioners raise three assignments of error. We reject the second and third
2 assignments of error without further discussion. The remaining assignment of error
3 raises a number of general concerns about whether the city properly applied Goal 14 and
4 ORS 197.298 to sort through potentially eligible property for inclusion in the UGB.
5 Those concerns are that the city initially erred in amending the UGB and LCDC erred in
6 upholding the UGB decisions because (1) the city did not apply the Goal 14 standards
7 completely or consistently when it assessed exception areas by, on the one hand, using a
8 particular factor to rule out some land with a disqualifying characteristic, but, on the other
9 hand, including land in the boundary with that same quality; and (2) the city ruled out
10 some land for consideration by defining its land needs too particularly at the front end of
11 the ORS 197.298 prioritization--*i.e.*, land needed for use as an NAC or for particularized
12 residential land needs--so that less exception land was available for the city's particular
13 needs and more agricultural land was included in the boundary than otherwise would
14 have been included had the city's needs been defined more generically.
15 As to the latter contention, respondents argue that ORS 197.296(3)(b)
16 requires the city to determine "housing need by type and density range, in accordance
17 with ORS 197.303 and statewide planning goals and rules relating to housing." To the
18 extent that need cannot be met by zoning changes inside the UGB, then land can be
19 added to the UGB under ORS 197.298 to address those particular housing needs.
20 Respondents claim that that is what the city did.
21 LCDC defends its decision more specifically. The commission contends

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

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

18 Many of the general differences between the parties stem from their
19 different understandings about how ORS 197.298 works to sort land available for
20 inclusion within a UGB. In petitioners' view, the priorities statute works to categorize
21 land as available to meet broadly defined land use needs (in this case, for residential land

1 of any kind). Higher-priority land qualifies to meet that need unless urban services
2 cannot be provided to the land because of physical constraints. Goal 14 is then applied to
3 the prioritized and available land to determine the specific urban growth areas.
4 According to respondents, however, ORS 197.298 is applied--especially
5 during the periodic review process--to determine the adequacy of land for more particular
6 land use needs (in this case, for higher-density residential uses). Higher-priority land
7 qualifies to meet that need unless it is determined to be unsuitable under the Goal 14
8 locational factors and the Goal 2 exceptions criteria. Goal 14 is then applied to
9 corroborate the inclusion of higher-priority land and to justify any further selection
10 among land of a lower-priority class.
11 We ultimately conclude that neither party has it quite right. For the reasons
12 stated below, we agree that ORS 197.298 does provide the first cut in the sorting process
13 and that Goal 14 is then applied to justify the inclusion or exclusion of the sorted lands
14 and any remaining choices about what land to include in the boundary. Goal 14 also
15 plays a role in identifying the types of land that are subjected to the priorities statute.
16 Goal 14 is used in evaluating the adequacy of available land under ORS 197.298(1), but
17 in a more particular way than suggested by respondents. We reach those initial
18 conclusions based on an analysis of the text and context of ORS 197.298.
19 IV. STATUTORY CONSTRUCTION ANALYSIS
20 Our determination of the legislature's intent in enacting ORS 197.298 is
21 guided primarily by the text and context of the statute, in light of any pertinent legislative

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

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

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

18 Again, the descending priorities in ORS 197.298(1) are applied to
19 determine whether the priority land is "inadequate to accommodate the amount of land
20 needed." The first step is to determine the "amount of land needed." That determination
21 is necessarily made by the application of Goal 14, which provides that "[e]stablishment

1 and change of the boundaries shall be based upon considerations of the following factors:
2 (1) Demonstrated need to accommodate long-range urban population growth
3 requirements consistent with LCDC goals; (2) Need for housing, employment
4 opportunities, and livability * * *." In *Residents of Rosemont v. Metro*, 173 Or App 321,
5 328, 21 P3d 1108 (2001), we explained that

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

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

23 That application of ORS 197.298 is more directly required by ORS 197.296

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

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

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

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

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

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

The next step is somewhat more complicated--the application of ORS 197.298(1) and (3), together with Goal 14, to locate and justify the inclusion of land to fill that quantified need. ORS 197.298(1) provides that its prioritization scheme, which allows for bringing prime resource land into the UGB as a last resort, is "[i]n addition to any requirements established by rule addressing urbanization"--a plain reference to Goal

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

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

> "(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).
>
> "In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need."

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

10 In prior decisions concerning the application of Goal 14 to UGB changes,
11 we have required that all five locational factors be considered together and balanced in
12 assessing the alternative locations for a UGB change. In *Citizens Against Irresponsible*
13 *Growth v. Metro*, 179 Or App 12, 17, 38 P3d 956 (2002), we concluded that the
14 locational factors in Goal 14 "do not stand alone but represent * * * several factors to be
15 considered and balanced when amending a UGB. * * * No single factor is of such
16 importance as to be determinative in a[ ] UGB amendment proceeding, nor are the
17 individual factors necessarily thresholds that must be met." Similarly, in *1000 Friends of*

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

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1 *Oregon v. Metro*, 174 Or App 406, 409-10, 26 P3d 151 (2001), we noted that

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

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

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

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

21 We have previously determined that Goal 14 interacts with ORS 197.298 in
22 two ways. First, the two operate *independently* to justify a UGB expansion. Compliance
23 with ORS 197.298 does not absolve the independent and separate requirement to apply
24 the Goal 14 factors to a proposed UGB change. In *Residents of Rosemont*, two cities
25 challenged Metro's decision to expand the Portland-area UGB in order to address a need

for housing in a particular part of the metropolitan area. An issue on review was whether a subregional need for housing could qualify under the Goal 14 need factors as a basis for expanding the UGB without considering that need in the context of the overall regional need for housing. We held that it could not, at least in the context presented. We also concluded that compliance with the criteria in ORS 197.298 did not excuse the separate application of Goal 14 to the UGB amendment:

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

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

Subsequently, though, we have held that ORS 197.298 is to be applied in an *integrated* way with Goal 14. In *City of West Linn v. LCDC*, 201 Or App 419, 422, 119 P3d 285 (2005), we reviewed an LCDC approval of another amendment to the Portland-area UGB by Metro. In that case, the petitioner argued that the particular UGB

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

> 6 "[t]he operative term is 'inadequate.' Whether there is adequate land to
> 7 serve a need may depend upon a variety of factors. In particular, the
> 8 adequacy of land may be affected by locational characteristics that must be
> 9 taken into account under Goal 14. As LCDC correctly noted, ORS
> 10 197.298(1) expressly provides that the priorities that it describes apply '[i]n
> 11 addition to any requirements established by rule addressing urbanization,'
> 12 such as the locational factors described in Goal 14. As a result, the fact that
> 13 other, higher priority land may exist *somewhere* adjacent to the UGB does
> 14 not necessarily mean that that land will be '[ ]adequate to accommodate the
> 15 amount of land needed,' if using it for an identified need would violate the
> 16 locational considerations required by Goal 14. In other words, the statutory
> 17 reference to 'inadequate' land addresses suitability, not just quantity, of
> 18 higher priority land."

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

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

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

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

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

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

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

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

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

20 Rather, the question becomes whether all of the Goal 14 locational factors
21 are used to disqualify higher-priority land under ORS 197.298(1), or whether a more

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

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

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

1 permitting an inadequacy conclusion only when public services cannot be extended
2 because of topographic or physical constraints--has no independent force. Because ORS
3 197.298(3) relates "only to the inclusion of land that comes within the priority concerns
4 described in [ORS 197.298(1)]," *Residents of Rosemont*, 173 Or App at 332, it follows
5 that ORS 197.298(1) must use different kinds of limitations to determine inadequacy than
6 those set out in ORS 197.298(3). Otherwise, ORS 197.298(3) is redundant or incapable
7 of application. We are constrained to construe ORS 197.298 in a way that gives effect to
8 all of its terms. "As a general rule, we assume that the legislature did not intend any
9 portions of its enactments to be meaningless surplusage." *State v. Stamper*, 197 Or App
10 413, 417, 106 P3d 172, *rev den*, 339 Or 230 (2005); *see also* ORS 174.010 ("In the
11 construction of a statute, * * * where there are several provisions or particulars such
12 construction is, if possible, to be adopted as will give effect to all.").
13 It follows, then, that the more specific limitations in ORS 197.298(3)
14 displace the application of their more generic and flexible Goal 14 counterparts in the
15 application of ORS 197.298(1). That displacement gives meaning to ORS 197.298(3),
16 which reads that it--as opposed to other factors--is applied to determine "if land of higher
17 priority is * * * inadequate to accommodate the amount of land estimated in subsection
18 (1)." That explicit requirement precludes the application of any analogous, but less
19 restrictive, suitability criteria under ORS 197.298(1) to make that same determination,
20 *i.e.*, whether higher-priority land "is inadequate to accommodate the amount of land
21 needed." That limited use of Goal 14 in applying ORS 197.298(1) avoids the complete

1 conflation of Goal 14 and ORS 197.298 and allows for the sequential application of ORS
2 197.298(3).

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

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

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

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

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[10] The remaining exception criteria are less relevant in determining where a UGB should be expanded. The first criterion goes to the reasons for expanding the UGB and is satisfied through the general application of Goal 14, particularly Factors 1 and 2. OAR 660-004-0010(1)(d)(B)(i) (reasons factor for UGB change under former Goal 14 "satisfied by compliance with the seven factors of Goal 14"). The second criterion requires consideration of "[a]reas which do not require a new exception." In the case of a Goal 14 exception, that area is the land already in the UGB. *See* ___ Or App at ___ (slip op at 40).

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

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

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

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

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

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

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

V. JUSTIFICATION FOR THE PROPOSED CHANGES

A. *Standards of review*

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

> "(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:
>
> "(A) Set aside or modify the order; or
>
> "(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.
>
> "(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:
>
> "(A) Outside the range of discretion delegated to the agency by law;
>
> "(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or
>
> "(C) Otherwise in violation of a constitutional or statutory provision.
>
> "(c) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding."

ORS 183.482(8).

We recently explained that the requirements that an agency correctly interpret the law, explain inconsistencies, and have evidentiary support for the decision

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1 implies that LCDC must "'demonstrate in [its] opinion[ ] the *reasoning* that leads the
2 agency from the *facts* that it has found to the *conclusions* that it draws from those facts.'"
3 *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 225, 239 P3d 272 (2010)
4 (*Woodburn*) (quoting *Drew v. PSRB*, 322 Or 491, 500, 909 P2d 1211 (1996)) (emphasis
5 in *Drew*). *See also City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271, 639
6 P2d 90 (1981) (stating the test as "whether there is a basis in reason connecting the
7 inference [of compliance with the decisional standard] to the facts from which it is
8 derived"). In connection with substantial evidence review, we do not review the city's
9 decision for evidentiary support. Rather, "[o]ur role is to determine whether [LCDC]
10 applied the correct legal test in deciding whether [the city's] decision is supported by
11 substantial evidence." *Citizens Against Irresponsible Growth*, 179 Or App at 21.[11]
12 Finally, the focus of our review is on the issues presented on appeal that
13 have been preserved before LCDC. As we said in *Marion County v. Federation For*
14 *Sound Planning*, 64 Or App 226, 237, 668 P2d 406 (1983), "[a] petitioner seeking

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

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

12 B. *The commission's defense*

13 We turn--at long last--to petitioners' contentions about the deficiencies in
14 LCDC's order and findings in light of the specific objections and exceptions they filed

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

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

19 In its brief, LCDC offers a broad justification for its order and joins the
20 city's more specific defenses. LCDC explains that the city identified neighborhood
21 activity centers as a form of land need to which the prioritization scheme of ORS

1 197.298(1) was then applied, and that the commission was correct in approving the
2 exclusion of exception areas and higher-priority resource lands that could not
3 accommodate NACs. LCDC further argues that, under the Goal 2 exceptions criteria, a
4 broad test should be employed under ORS 197.298 to determine whether candidate lands
5 are "inadequate to accommodate the amount of land needed." LCDC reasons that (1)
6 ORS 197.298 is administered "[i]n addition to" Goal 14; (2) Goal 14 includes the
7 "reasons" exception criteria in Goal 2; (3) ORS 197.298(1) incorporates the exceptions
8 criterion in Goal 2 that "[a]reas that do not require a new exception cannot reasonably
9 accommodate the use"; and, therefore, (4) the statute allows a broad assessment of
10 whether land is "inadequate to [reasonably] accommodate" an identified land need.
11 LCDC's first defense--that the city appropriately identified a quantity of
12 needed NAC land and applied ORS 197.298(1) to that quantified need--fails because that
13 is not what the city did. The city did determine that the NAC mixed-use category of land
14 use would use less land than the traditional low-density residential development for
15 housing needs. But the city did not quantify the amount of any needed mixed-use
16 category of commercial and residential land uses and then apply the ORS 197.298(1)
17 priorities to that quantified mixed-use need. To recall, ORS 197.298(1) is applied to
18 determine if land of a particular priority "is found to be inadequate to accommodate the
19 *amount of land*" determined to be needed. (Emphasis added.) Here, the city quantified
20 the need for categories of residential, commercial, industrial, parkland, and other land
21 uses and then applied the priorities to those quantitative needs. However, the city used

1 the defined qualities of an NAC (*e.g.*, size, location to downtown, and urban form) as a
2 basis to rule out higher-priority land under ORS 197.298(1), and, in doing so, proved the
3 wrong point.

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

1 of each of those land needs must be quantified, and the land supply examined to see if it
2 is "inadequate to accommodate [each] amount of land needed."
3 Second, the order, in fact, approves the inclusion of some of the lower-
4 priority agricultural land (Norton Lane, West Hills South, and part of Fox Ridge North)
5 ahead of some exception areas even though those agricultural areas were not designated
6 as NACs. Thus, the adopted justification for the UGB amendments as well as the actual
7 inclusion of agricultural land for general residential use suggests that lower-priority land
8 was not added solely to meet the need for an identified quantity of land for mixed-use
9 development. The adopted order fails to explain why the failure of an exception area to
10 accommodate the need for an NAC justifies its exclusion from the expansion area when
11 lower-priority land is being added to accommodate a less specific need for residential
12 land. As we held in *Woodburn*, 237 Or App at 224-26, when an LCDC order fails to
13 explain its reasoning for finding consistency with the standards for a UGB expansion, the
14 order lacks substantial reason and becomes inadequate for judicial review. The failure of
15 LCDC to consistently identify the needed categories and quantities of land uses--the
16 fundamental premises of its justification of the UGB change under ORS 197.298--
17 requires the same conclusion here.
18 LCDC's second point--that the "[a]reas that do not require a new exception
19 cannot reasonably accommodate the use" criterion in the Goal 2 exception standards can
20 be used to rule out higher-priority land under ORS 197.298(1), presumably no matter
21 how the need for residential land is described--also does not withstand scrutiny. As noted

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

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

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

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

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

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

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

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

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

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

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

4 C. *Application of ORS 197.298*

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

19 1. *Old Sheridan Road exception area*

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

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

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

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

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

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

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

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

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

16 2. *Riverside North exception area*

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

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

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

20 3. *Booth Bend Road exception area*

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

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

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

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

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

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

11 4. *West Hills resource land area*

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

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

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

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

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

1 effects of inclusion of the territory on nearby agricultural land is inappropriate under
2 ORS 197.298(1), and that water services can be extended to the lower portions of the
3 resource area. Respondents claim that the city findings and LCDC restatement of those
4 findings applied to the entire resource area and were sufficient under ORS 197.298(1).
5 We agree with petitioners in part. The city findings identified a need for
6 higher-density housing. We concluded earlier that ORS 197.298(1) could be applied to
7 prioritize land to satisfy that particular need. The city considered some relevant factors
8 under ORS 197.298(1), including compatibility with adjacent agricultural land, in
9 evaluating the resource area. However, LCDC relied upon the city's findings that applied
10 Goal 14, Factor 3 ("[o]rderly and economic provision for public facilities and services"),
11 in determining suitability under ORS 197.298(1). Because that factor is applied under
12 Goal 14 to evaluate, but not determine, candidate lands (Step Three in the analysis),
13 LCDC erred in its application of ORS 197.298 to the city's findings. Petitioners have not
14 otherwise shown that LCDC incorrectly applied ORS 197.298 or misunderstood the
15 substantial evidence test in approving the city's findings on this issue.
16 5. *Area north of Fox Ridge Road*
17 A portion of the area north of Fox Ridge Road (Tax Lot 700) was added to
18 the UGB. Petitioners argue that an additional corridor of land in this area should have
19 been included (Tax Lots 100, 200, 300, and 400). The city determined that Tax Lot 100
20 and portions of Tax Lot 200, although within the boundaries of the Northwest NAC,
21 should be excluded from the UGB because of limited connectivity with the existing road

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

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

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

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

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

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

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

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

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

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

7 6. *Other resource land areas*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 D. *Application of Goal 14 locational factors*

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

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

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

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

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

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

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

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

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

VI. CONCLUSIONS

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

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

1 Reversed and remanded.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 10, 2011, I served Respondent City of McMinnville's joint petition for reconsideration on:

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I further certify that on August 10, 2011, I filed the original and four copies of this joint petition for reconsideration by mailing to:

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

1000 FRIENDS OF OREGON; FRIENDS OF YAMHILL COUNTY; and ILSA PERSE,	)	Court of Appeals No. A134379
Petitioners,	)	Review of Order on Reconsideration No. 08-WKTASK-001760 of the Land Conservation and Development Commission
v.	)	
LAND CONSERVATION AND DEVELOPMENT COMMISSION and CITY OF MCMINNVILLE,	)	(Original Order No. 06-WKTASK-001709)
Respondent	)	

PETITIONERS' RESPONSE TO CITY OF MCMINNVILLE'S JOINT PETITION OF RECONSIDERATION

Date of Opinion: July 13, 2011
Author of Opinion: Sercombe, J.
Concurring Judges: Ortega, P. J., Landau, J. pro tempore

Judicial Review of Land Conservation and Development Commission Final Order

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INTRODUCTION

The respondent City of McMinnville filed a petition for reconsideration of this court's July 13, 2011 opinion in *1000 Friends of Oregon v. LCDC*, ___ Or App ___, ___P3d ___(2011) (CA 134371). While the petition does not specify under which section of Oregon Rule of Appellate Procedure (ORAP) 6.25 the respondent seeks reconsideration, the petitioners assume it is ORAP 6.25(1)(e):

> "(1) A petition for reconsideration shall be based on one or more of these contentions:
>
> * * *
>
> "(e) A claim that the Court of Appeals erred in construing or applying the law. Claims addressing legal issues already argued in the parties' briefs and addressed by the Court of Appeals are disfavored."

ARGUMENT

The court should deny the petition for reconsideration. The issues raised in the petition were presented to the court and decided in the court's opinion. The city argues:

> "In its decision in this case, the Court articulated a new interpretation of the relationship between the locational factors of Goal 14 and the land priorities in ORS 197.298 as they apply to the location of a municipal urban growth boundary ('UGB') expansion. This interpretation was not argued, and consequently was not addressed, by any of the parties. The City requests reconsideration to enable it to address the Court's interpretation. The City requests reconsideration to enable it to address the Court's interpretation. The City argues that there is a superior construction of the relationship that supports the LCDC's and the City's – and heretofore, this Court's – interpretation of that relationship."[1]

[1] City's Petition, p. 1.

The city is in error; the issue of the relationship among Goal 14, ORS 197.298, and the Goal 2 exceptions process was extensively briefed and argued, as it had to be for the court to decide the case. As the court noted, "The parties to this case differ as to the meaning of the standards that apply to UGB changes that result from periodic review of the city's comprehensive plan." *1000 Friends v. LCDC*, slip op at 1. The petitioners raised the issue of how to apply Goal 14 and ORS 197.298, noting that these standards "mesh better is some respects that others," and described their view of how to integrate these laws.[2] The title of the petitioners' First Assignment of Error demonstrates the issue was briefed:

> "The Commission erroneously interpreted provisions of law (ORS 197.298, Goal 14, ORS 197.732(1)(c)(B), and Goal 2, Part II(c), and OAR 660-004-0020)...in approving the City of McMinnville's proposal to expand the UGB onto certain lands planned and zoned for exclusive farm use, rather than onto other lands."[3]

The respondent Land Conservation and Development Commission (LCDC) provided its view of how to integrate Goal 14, ORS 197.298, and the Goal 2 exceptions process, devoting most of its answering brief to this subject.[4] The respondent city also addressed the relationship among these laws in its answering brief, devoting a subsection to that subject.[5]

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[2] Petitioners' Supplemental Opening Brief, p. 5.
[3] Petitioners' Supplemental Opening Brief, p. 11.
[4] LCDC Answering Brief, pp. 9-19
[5] City Answering Brief, pp. 11-13, see section titled "Petitioners' Interpretation of ORS 197.298 and its relationship to Goal 14 is Inconsistent with *West Linn* and *Hildenbrand*."

The issue was particularly joined in the petitioners' reply brief, in which petitioners explained:

> "Integration of the statutes, land use Goals, and administrative rules governing the evaluation and expansion of an urban growth boundary (UGB) requires an analytical sequencing of the parts of those laws. In the first assignment of error and the answer, the petitioners and respondents each describe an analysis that is consistent in many, but not all, respects. And that difference is key."[6]

The petitioners argued precisely the issue addressed by this court: how to integrate Goal 14, the exceptions process, and ORS 197.298 in a way that gives meaning to ORS 197.298(3).[7] The respondents answered. The petitioners noted that even the two respondents seemed to have differing views of how to integrate these laws.[8]

In its opinion, the court thoroughly described the law and the previous judicial opinions addressing Goal 14, ORS 197.298, the exceptions process, and related laws governing UGB evaluations, concluding, as was necessary to decide this matter, with a comprehensive explanation of how to tie together and apply

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[6] Petitioners' Reply Brief, p. 1. See also Petitioners' Supplemental Opening Brief, pp. 9-10, 32-34.

[7] The petitioners argued in the reply brief (p. 7):

> "It appears that the Commission approved the city's disqualification of lands from consideration prior to the hierarchy, based on a vague notion of Goal 2's term 'reasonably accommodate,' the practical effect of which was to wipe out any legal meaning or meaningful application of both the standards in *West Linn* for how to move through the hierarchy (an application of the Goal 14 factors) and ORS 197.298(3) (the section describing the narrow circumstances under which low priority agricultural and forest lands can be brought into a UGB ahead of higher priority lands)."

[8] Petitioners' Answering Brief, p. 1, n. 1.

these in the case before it. The court has interpreted the law; which is its role. There are no grounds for the court to reconsider its decision.

The city provides several subsidiary arguments, which we briefly address.

First, the city states that "ORS 197.298 does not supersede or otherwise trump the considerations in Goal 14."[9] Not only is that *not* what the court decided, but the city's argument is the inverse of this: the city is really arguing that the Goal 14 considerations should trump subsection (3) of ORS 197.298. That the city does not agree with the court's contrary conclusion is not a ground for reconsideration.

The preamble to ORS 197.298 states: "In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities." The statute goes on to list those priorities. Subsection (3) provides three specific exceptions to the priorities. However, the city argues that this introductory statement means that Goal 14 can be used to "includ[e] lands outside of these priorities."[10] There is nothing in the language or history of the statute that compels or even allows this reading of it and, as the court has already decided, such a reading would negate the exceptions in subsection (3). Moreover, the city already had the opportunity to and in fact did make this argument.

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[9] Petition, p. 3.
[10] Petition p. 3.

Second, the city argues that application of the statute and Goal 14 as it advocates would not, as a practical matter, result in a different outcome on the ground in terms of which areas would be included and excluded from the UGB than three step analysis articulated by the court.[11] However, the court already found that as a matter of law and fact, this is incorrect. The court concluded:

> "To recall, ORS 197.298(1) is applied to determine if land of a particular priority 'is found to be inadequate to accommodate the *amount of land*' determined to be needed. (Emphasis added.) Here, the city quantified the need for categories of residential, commercial, industrial, parkland, and other land uses and then applied the priorities to those quantitative needs. However, the city used the defined qualities of an NAC (*e.g.*, size, location to downtown, and urban form) as a basis to rule out higher-priority land under ORS 197.298(1), and, in doing so, proved the wrong point."[12]

As the court noted, some of the city's described needs could apparently be met on higher priority land; LCDC failed to explain why higher priority lands were excluded that could meet a "less specific need."[13]

Finally, the city argues that the "exceptions in ORS 197.298(3) are intended to apply to determine land priority at the inception of the ORS 197.298 analysis prior to conducting the suitability analysis set forth in ORS 197.298(1)(a)-(d) and (2)."[14] Again, the court set out a three-step process for integrating Goal 14 and ORS 197.298. The parties briefed this issue and the city simply disagrees with the

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[11] Petition, p. 6.
[12] *1000 Friends v. LCDC*, slip op at 37-38.
[13] *Id.*, p. 39.
[14] Petition, p. 9. The city makes essentially the same argument in much of the rest of its petition.

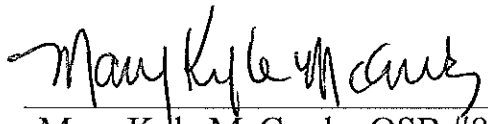
court's conclusion. In addition, the city's argument makes no sense. First, the priority statute itself clearly proceeds in three steps; subsection (3) does not come before subsection (1) by the statute's plain wording. Second, the subsection (3) exceptions are each for specially-described circumstances. A city might have several different types of specific land needs – for example, for a park, or a rail-dependent industrial use, or a school, all of which have different land needs and would result in qualifying or disqualifying different lands from UGB consideration for that particular use. ORS 197.298(3)(a). The future urban use contemplated might make urban services reasonable to provide in some areas but not in others; different urban sites require different services, and the return value of providing services can vary depending on the use. ORS 197.298(3)(b). Subsection (3) is not a generic method of *disqualifying* broad areas of land, as the court found the city did. Rather, it describes three narrow ways in which lower priority lands can be *qualified* for inclusion. It is at this point that the court found application of Goal 14 factors 3 and 4 come into play.[15] However, the city's interpretation here leads to the same end the court found flawed: premature elimination of higher priority lands without considering them for all a city's land needs.

[15] *1000 Friends of Oregon v. LCDC*, slip op at 32.

CONCLUSION

The city has not raised any issue that was not raised in the briefs and considered by the court; the city has not identified an error in construing or applying the law. The court should deny the petition for reconsideration.

Respectfully submitted,



Mary Kyle McCurdy, OSB #88353
Attorney for Peitioner
1000 Friends of Oregon

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on September 12th 2011, I filed the original of this **Petitioners' Response to City of McMinnville's Joint Petition for Reconsideration** along with four (4) copies with the State Court Administrator at the address given below, by Certified Mail deposited in the United States Post Office in Portland, Oregon, postage pre-paid to:

Kingsley W. Click
State Court Administrator
Supreme Court Building, Records Section
1163 State Street
Salem, OR 97301-0260

I also certify that on September 12th 2011, I served two (2) true copies of this **Petitioners' Response to City of McMinnville's Joint Petition for Reconsideration** upon each of the following persons at the addresses given below, by Certified Mail deposited in the United States Post Office in Portland, Oregon, postage pre-paid to:

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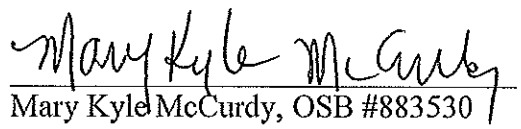
DATED: September 12th 2011



Mary Kyle McCurdy, OSB #883530
Attorneys for Petitioners

Oregon's Statewide Planning Goals & Guidelines

GOAL 14: URBANIZATION

OAR 660-015-0000(14)
(Amendments Effective December 13, 2005)

*Note: Goal 14 and related definitions were substantially amended on April 28, 2005. Those amendments are not shown in this document but are available from the Department of Land Conservation and Development, and are not effective until April 28, 2006, unless a local government chooses to apply the amended goal to local land use actions in accordance with the "Applicability Provisions" provided on pages 3and 4 of this document. However, the amendments underlined and in **bold** on page 2 of this document took affect December 13, 2005, and are effective regardless of which version of the goal a local government follows under the Applicability Provisions.*

To provide for an orderly and efficient transition from rural to urban land use.

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.

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

Any urban growth boundary established prior to January 1, 1975, which includes rural lands that have not been built upon shall be reviewed by the governing body, utilizing the same factors applicable to the establishment or change of urban growth boundaries.

Establishment and change of the boundaries shall be a cooperative process between a city and the county or counties that surround it.

Land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

(1) Orderly, economic provision for public facilities and services;
(2) Availability of sufficient land for the various uses to insure choices in the market place;
(3) LCDC goals or the acknowledged comprehensive plan; and,

(4) Encouragement of development within urban areas before conversion of urbanizable areas.

In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14, either by exception to those goals, or as provided by Commission rules which ensure such uses do not:

(1) Adversely affect agricultural and forest operations, and

(2) Interfere with the efficient functioning of urban growth boundaries.

Notwithstanding the other provisions of this goal, the commission may by rule provide that this goal does not prohibit the development and use of one single family dwelling on a lot or parcel that:

(a) Was lawfully created;

(b) Lies outside any acknowledged urban growth boundary or unincorporated community boundary;

(c) Is within an area for which an exception to Statewide Planning Goal 3 or 4 has been acknowledged; and

(d) Is planned and zoned primarily for residential use.

Notwithstanding other provisions of this goal restricting urban uses on rural land, a county may authorize industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, on certain lands outside urban growth boundaries specified in ORS 197.713 and 197.714, consistent with the requirements of those statutes and any applicable administrative rules adopted by the Commission.

GUIDELINES

A. PLANNING

1. Plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion, taking into account (1) the growth policy of the area, (2) the needs of the forecast population, (3) the carrying capacity of the planning area, and (4) open space and recreational needs.

2. The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.

3. Plans providing for the transition from rural to urban land use should take into consideration as to a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. The type, location and phasing of public facilities and services are factors which should be utilized to direct urban expansion.

2. The type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.

3. Financial incentives should be provided to assist in maintaining the use and character of lands adjacent to urbanizable areas.

4. Local land use controls and ordinances should be mutually supporting, adopted and enforced to integrate the type, timing and location of public facilities and services in a manner to accommodate increased public demands as urbanizable lands become more urbanized.

5. Additional methods and devices for guiding urban land use should include but not be limited to the following: (1) tax incentives and disincentives; (2) multiple use and joint development practices; (3) fee and less-than-fee acquisition techniques; and (4) capital improvement programming.

6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

APPLICABILITY PROVISIONS

Applicability of Goal 14 Amendments and Related Goal Definitions Adopted April 28, 2005*

(1) Goal 14 and related Statewide Goal Definitions, as amended on April 28, 2005, (*these amendments are not shown in this document, but are available from the Department of Land Conservation and Development*) are applicable to the adoption or amendment of a comprehensive plan or land use regulation, or a land use decision made under a non-acknowledged comprehensive plan or land use regulation, on and after April 28, 2006, except as follows:

(a) Local governments are authorized, at their option, to apply the goal and related definitions as amended on April 28, 2005, to amendments to a comprehensive plan or land use regulation, or a land use decision made under a non-acknowledged comprehensive plan or land use regulation, on or after June 28, 2005.

(b) Local governments that initiated an evaluation of the Urban Growth Boundary (UGB) land supply prior to April 28, 2005, and consider an amendment of the UGB based on that evaluation, are authorized, at their option, to apply Goal 14 and related definitions as they existed prior to April 28, 2005, to the adoption of such UGB amendment regardless of the adoption date of such amendment.

(2) For purposes of section (1)(b), above, “initiated” means that prior to April 28, 2005, the local government either:

02325

(a) Issued a public notice of a proposed plan amendment for the purpose of evaluation of the UGB land supply and, if necessary based on that evaluation, amendment of the UGB, or

(b) Received Land Conservation and Development Commission approval of a periodic review work task for the purpose of evaluation of the UGB land supply and, if necessary, amendment of the UGB.

NOTE: Goal 14 was substantially amended on April 28, 2005. Those amendments, which are not shown in this document, are available from the Department of Land Conservation and Development and are not effective until April 28, 2006, unless a local government chooses to apply the amended goal to local land use actions in accordance with the "Applicability Provisions" above, which were also adopted by LCDC on April 28, 2005. However, Goal 14 was amended by LCDC again on December 1, 2005, in response to recent legislation (HB 2458). These amendments are shown <u>underlined and in bold</u> in the text of the goal, above, and apply on or after December 13, 2005, regardless of which version of Goal 14 that a local government chooses to follow under the applicability provisions.

02326

Oregon's Statewide Planning Goals & Guidelines

GOAL 14: URBANIZATION

OAR 660-015-0000(14)

(Effective April 28, 2006)

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Urban Growth Boundaries

Urban growth boundaries shall be established and maintained by cities, counties and regional governments to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land. Establishment and change of urban growth boundaries shall be a cooperative process among cities, counties and, where applicable, regional governments. An urban growth boundary and amendments to the boundary shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located, consistent with intergovernmental agreements, except for the Metro regional urban growth boundary established pursuant to ORS chapter 268, which shall be adopted or amended by the Metropolitan Service District.

Land Need

Establishment and change of urban growth boundaries shall be based on the following:

(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

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

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

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.

Boundary Location

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

(1) Efficient accommodation of identified land needs;

(2) Orderly and economic provision of public facilities and services;

(3) Comparative environmental, energy, economic and social consequences; and

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

02327

Urbanizable Land

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

Unincorporated Communities

In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14, either by exception to those goals, or as provided by commission rules which ensure such uses do not adversely affect agricultural and forest operations and interfere with the efficient functioning of urban growth boundaries.

Single-Family Dwellings in Exception Areas

Notwithstanding the other provisions of this goal, the commission may by rule provide that this goal does not prohibit the development and use of one single-family dwelling on a lot or parcel that:

(a) Was lawfully created;

(b) Lies outside any acknowledged urban growth boundary or unincorporated community boundary;

(c) Is within an area for which an exception to Statewide Planning Goal 3 or 4 has been acknowledged; and

(d) Is planned and zoned primarily for residential use.

Rural Industrial Development

Notwithstanding other provisions of this goal restricting urban uses on rural land, a county may authorize industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, on certain lands outside urban growth boundaries specified in ORS 197.713 and 197.714, consistent with the requirements of those statutes and any applicable administrative rules adopted by the Commission.

GUIDELINES

A. PLANNING

1. Plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion, taking into account (1) the growth policy of the area; (2) the needs of the forecast population; (3) the carrying capacity of the planning area; and (4) open space and recreational needs.

2. The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.

3. Plans providing for the transition from rural to urban land use should take into consideration as to a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

4. Comprehensive plans and implementing measures for land inside urban growth boundaries should encourage the efficient use of land and the development of livable communities.

B. IMPLEMENTATION

1. The type, location and phasing of public facilities and services are factors

which should be utilized to direct urban expansion.

2. The type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.

3. Financial incentives should be provided to assist in maintaining the use and character of lands adjacent to urbanizable areas.

4. Local land use controls and ordinances should be mutually supporting, adopted and enforced to integrate the type, timing and location of public facilities and services in a manner to accommodate increased public demands as urbanizable lands become more urbanized.

5. Additional methods and devices for guiding urban land use should include but not be limited to the following: (1) tax incentives and disincentives; (2) multiple use and joint development practices; (3) fee and less-than-fee acquisition techniques; and (4) capital improvement programming.

6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

URBAN GROWTH BOUNDARY REMAND

Meeting Agenda

Technical Advisory Committees – All TAC Meeting
Thursday, October 9, 2014 3-5 PM
Brooks Room – Downtown Bend Library
601 N.W. Wall Street, Bend

1. Welcome — 3:00 PM

a. Welcome and opening comments (Victor Chudowsky, Brian Rankin)

Note: TAC discussion will occur throughout the agenda

2. Phase 1 Work Plan Refinement — 3:10 PM

a. Objectives for refining the work plan (Brian and Joe Dills)
b. Phase 1 updated work plan – milestones
c. Phase 2 work plan - draft milestones
d. Phase 1 detailed work plan – meetings and topics

3. Urban Form — 4:10 PM

a. What and why (Brian and Joe)
b. Presentation – work in progress on urban form as a part of UGB planning (APG Team)

4. Adjourn — 5:00 PM

For additional project information, visit the project website at http://bend.or.us or contact Brian Rankin, City of Bend, at brankin@bendoregon.gov or 541-388-5584

Accessible Meeting/Alternate Format Notification
This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the City Recorder no later than 24 hours in advance of the meeting at rchristie@ci.bend.or.us, or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

Memorandum

October 3, 2014

To: Technical Advisory Committees
Cc: Interested Parties
From: Joe Dills and Brian Rankin
Re: Phase 1 Work Plan Update

WORK PLAN UPDATE OBJECTIVES

When the Phase 1 work plan was initially scoped, it was assumed that the Technical Advisory Committees (TACs) would complete four meetings to develop key recommendations regarding land needs, efficiency measures, boundary expansion methodology, and related issues. The TACs made excellent progress in their first two meetings in August, resulting in a package of preliminary recommendations approved by the UGB Steering Committee (USC) on September 4, 2014.

Following the USC's September meeting, the project team revisited the schedule and agendas for the remaining TAC meetings. This was done in consultation with the USC Chair and leadership of the TACs. Based on this evaluation, the team has prepared an update to the Phase 1 work plan. The objectives of the update are to:

- Facilitate a greater integration of work across all three TACs
- Place a greater emphasis on consideration of Bend's urban form inside and outside of the UGB. This is intended to help project participants visualize growth choices and better evaluate the implications of individual Remand-related recommendations.
- Provide a little more time for work between the TAC meetings
- Convert two previously planned joint TAC/USC workshops to one workshop (Residential TAC, Employment TAC and USC) and one joint Residential-Employment TAC meeting (January).
- Introduce a workshop for the Residential/Employment TACs (working with the USC) to review and refine alternative scenarios for the existing UGB and test different redevelopment and efficiency measures using the Envision modelling tool.
- Retain the goal of finishing Phase 1 in February, 2015.

WORK PLAN CHARTS AND HIGHLIGHTS

Attached are three charts illustrating the updated work plan. Highlights from each chart are described below.

Overall Project Schedule and Phase 1 Milestones Chart

This chart includes the following highlights:

- October and November – continued work by each individual TAC, with shared work products on urban form and cross-TAC reporting.
- December – The Residential TAC, Employment TAC and USC will meet in a workshop setting to review and refine working scenarios for the current UGB.
- Following the workshop, the team will use the Envision tool to analyze those scenarios.
- January – Analysis results will be brought back to the Residential and Employment TACs (meeting together) to review and narrow the choices, resulting in the recommended "bookends" for the current UGB for approval by the USC.
- Through January – The Boundary TAC will continue to meet, with a "roll-up" of integrated criteria and boundary methodology in January.
- February – The USC will review, revise as needed, and approve the Phase 1 recommendations.

In addition to achieving the objectives listed at the beginning of this memo, the updated Phase 1 process is different from the original work plan in two ways. First, Phase 1 is now intended to provide two "bookends" or options for the current UGB, as opposed to a single scenario and growth capacity estimate. This approach reduces the pressure to get to a single "answer" in Phase 1 and will make for more creative work in Phase 2. Second, adoptable updates of City's Housing Needs Analysis and Economic Opportunities Analysis are no longer goals for completion by the end of Phase 1. These documents can be completed in Phase 2 (or even Phase 3) without impacts on other milestones.

The updated Phase 1 work plan and schedule is still ambitious. The critical path is a successful workshop in December, and, a willingness by the TACs in January to forward Phase 1 recommendations.

Phase 1 Detailed Work Plan – Meetings and Topics Chart

This chart lists the anticipated meeting topics for each TAC and USC meeting in Phase 1. It is fundamentally the same as before, except for the on-going inclusion of urban form discussions at each meeting. Another difference is the Boundary TAC's meeting topics now follow the sequence of UGB locational analysis steps outlined by the project team in response to the McMinnville decision. For a description of those steps, please see the memorandum by City Attorney Mary Winters dated August 19, 2014 in the packet for the Boundary TAC Meeting 2.

Phase 2 Draft Milestones Chart

The original work plan called for the completion of Phase 1, then scoping of Phase 2. This is still the case, but the team has prepared an initial chart of Phase 2 milestones to help inform Phase 1, and, help everyone understand where their work is headed. <u>This chart is in initial draft.</u> It will be discussed at a high level on October 9th, and in more detail by the Boundary TAC on October 14th. The Phase 2 milestones have been prepared in alignment with the

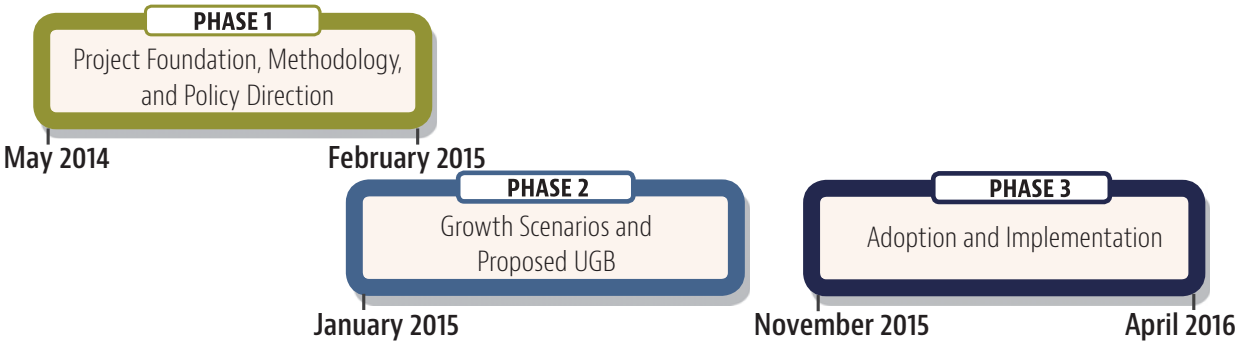
above-cited UGB locational analysis steps. Once the Phase 2 milestones have been defined, the committee process and community outreach strategies will be prepared as part of the Phase 2 scope.

Goal 9 and 10 Chart

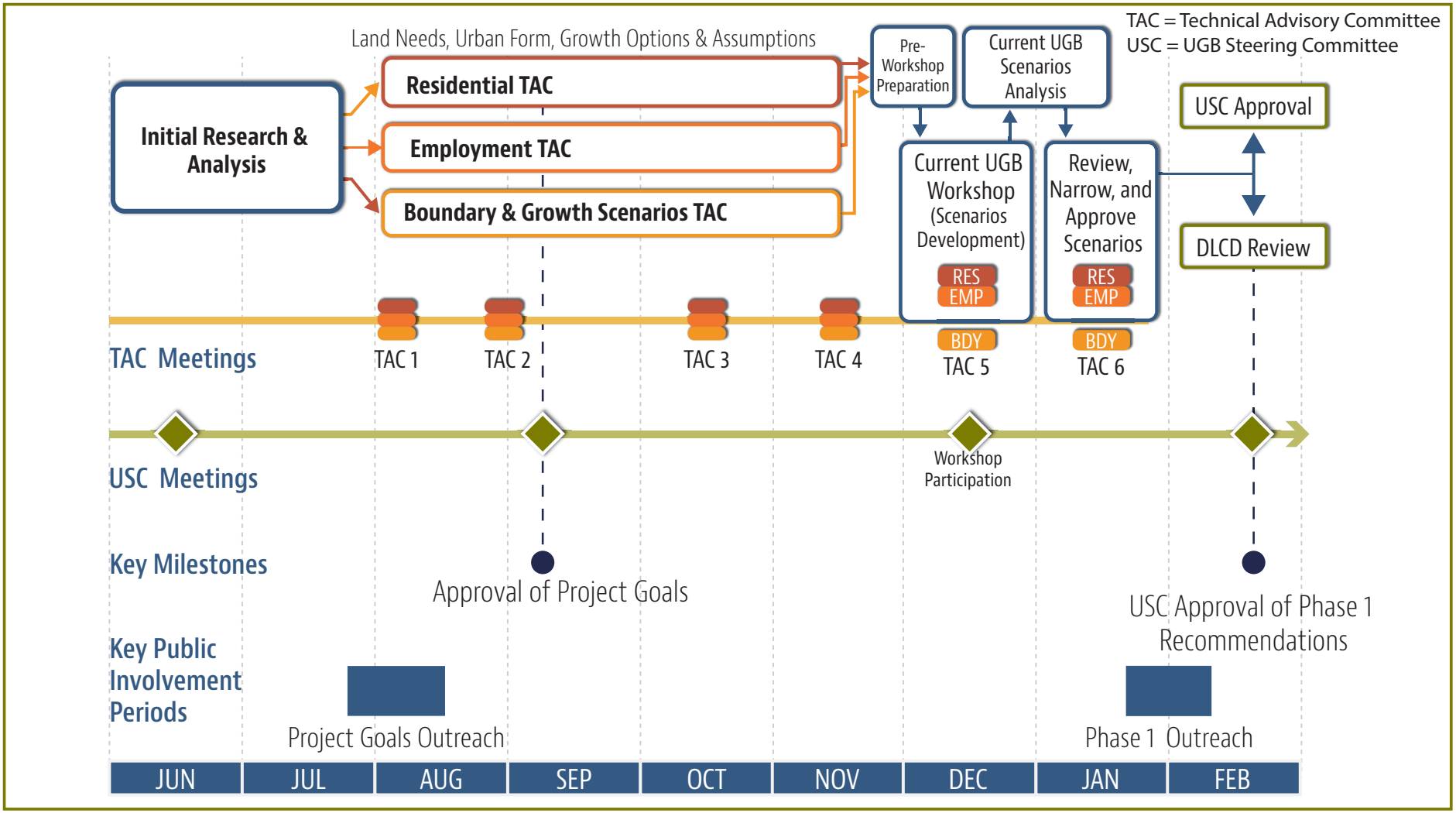
ECONorthwest has provided a chart of the steps and legal requirements for compliance with statewide planning goals 9 (Economic Development) and 10 (Housing). The chart has been annotated to illustrate which steps are part of Phase 1 and Phase 2 of Bend's UGB process. This is provided as additional background information for how the project work plan is implementing legal requirements.

URBAN GROWTH BOUNDARY REMAND
MAKING BEND EVEN BETTER

Overall Project Schedule



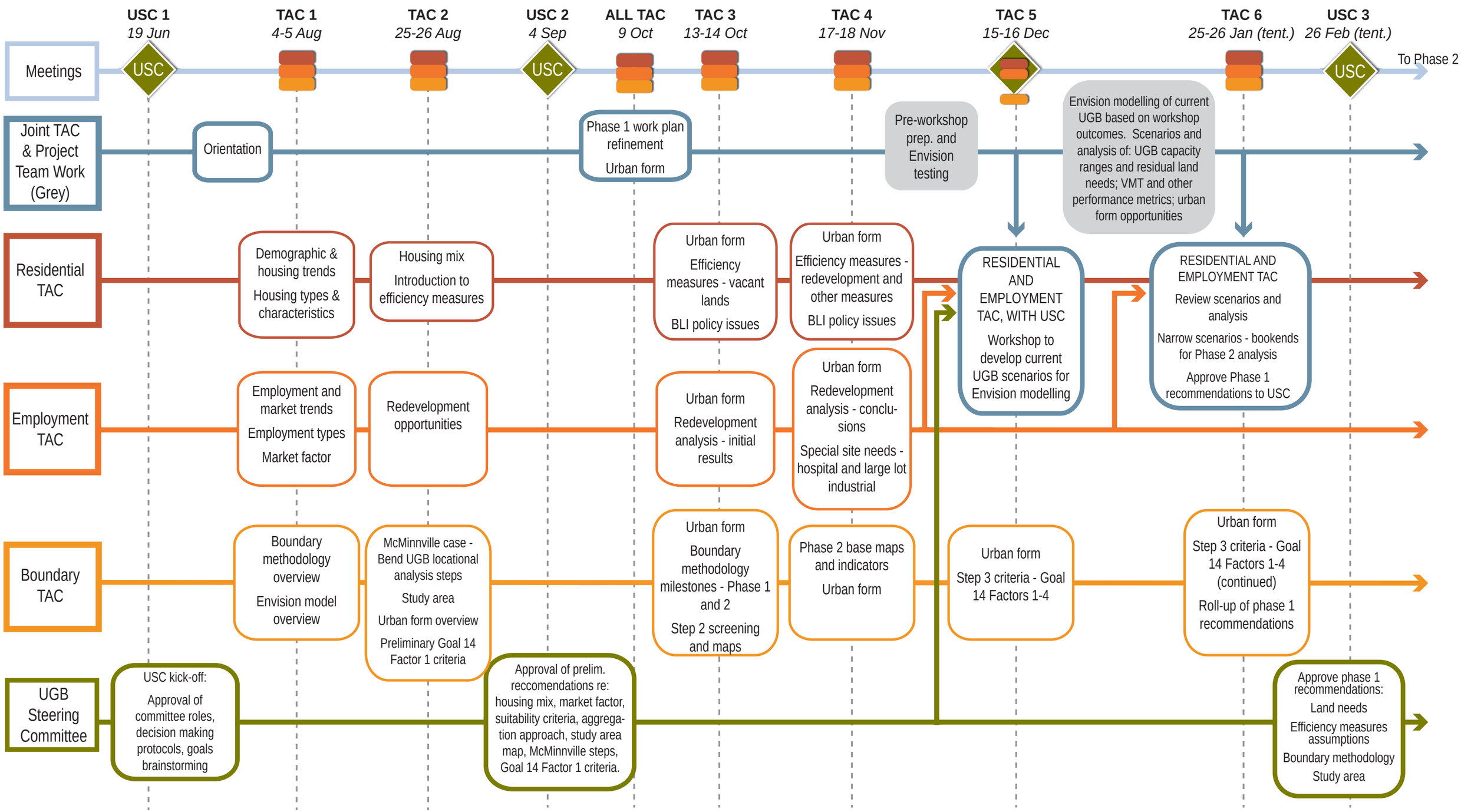
Phase 1 Work Plan - Milestones



The project schedule is subject to change. See www.bendoregon.gov/bendugb for latest schedule.

Rev. 10/3/14

Phase 1 Detailed Work Plan - Committee Meetings and Topics



Key: TAC = Technical Advisory Committee; USC = Urban Growth Boundary Steering Committee; UGB = Urban Growth Boundary

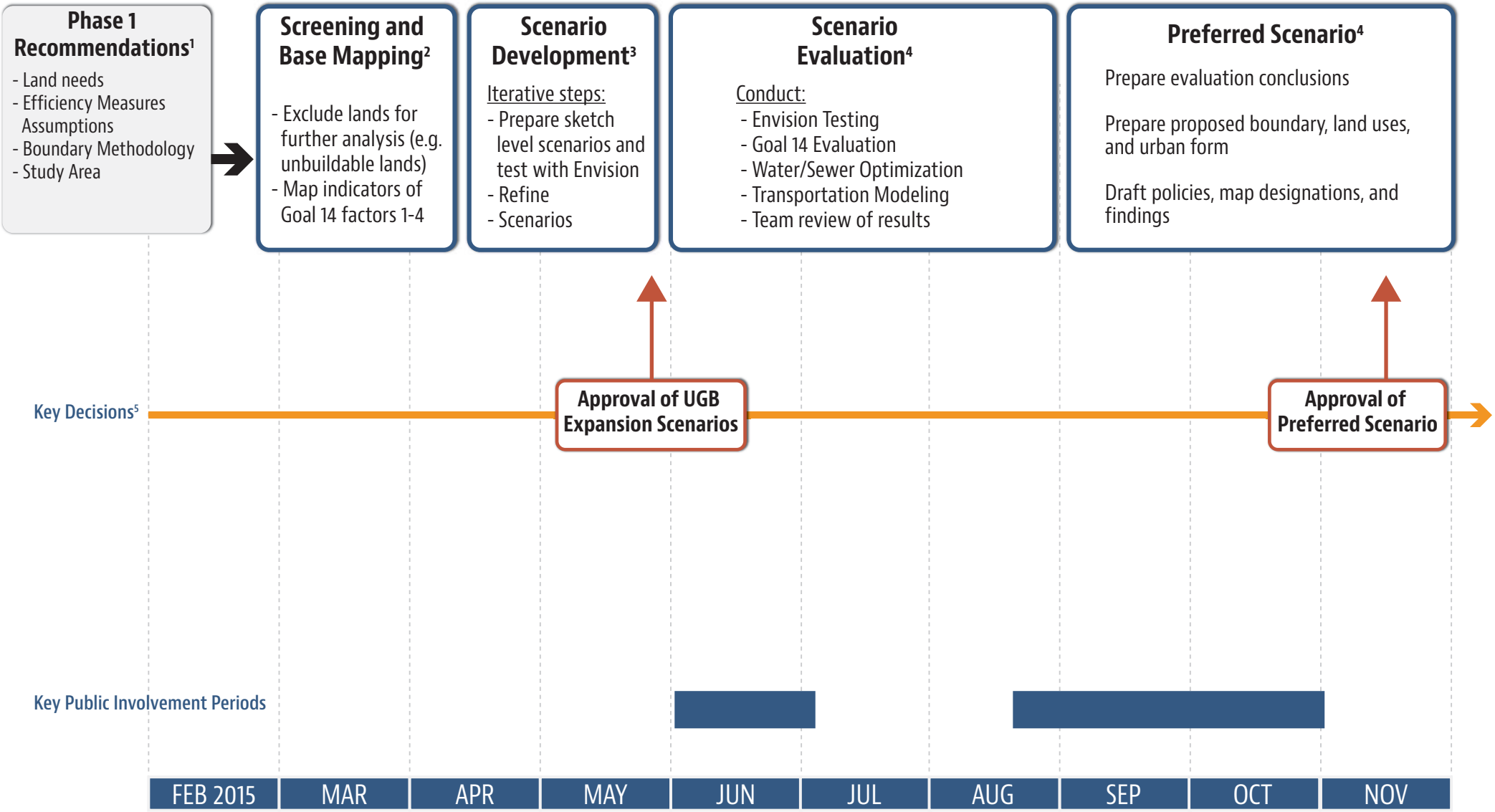
Rev. 10/03/14

Phase 2 Milestones

Draft October 3, 2014

Preliminary and Subject to Change

URBAN GROWTH BOUNDARY REMAND
MAKING BEND EVEN BETTER



Notes:

1-4: Steps per City Attorney Memorandum, Aug 19 2014: 1 = Step 1; 2 = Step 2; 3 = Step 3A Preparation; 4 = Step 3A (3B if necessary)

5: Meeting schedule TBD, including TAC participation in meetings and workshops

Steps in the UGB Alternatives Analysis Process for Bend as implied by the McMinnville Decision

Step 1: Land Needs

Adopted Population Forecast

Demonstrated need for land
for housing, jobs, public and semi-public uses

Determine Study Area

Categorize land

1. ~~Urban reserve~~
2. Exception and completely surrounded resource land
3. ~~Marginal lands~~
4. Resource lands

Note:
Bend does not have Urban Reserves as defined in OAR 660-021. Only Lane and Washington Counties are marginal lands counties

Step 2: Initial Suitability Evaluation

1st priority for Bend:
Exception Lands

Exclude:
- **2a.** Unbuildable lands
- **2b.** Exclude lands based upon specific land needs (197.298 (3)(a))
- **2c.** Unserviceable lands*
- **2d.** Land based on results of ESEE analysis** (Goal 14, Factor 3)
- **2e.** Uses that are incompatible with agricultural and forest activities (Goal 14, Factor 4)

Is the amount of exception land remaining after exclusions greater than the amount of needed land?

No. More land is needed

Yes

Step 3: Goal 14 Analysis

Step 3A. Goal 14 Factor Analysis

Local balancing of land need based on Goal 14 locational factors:
- **3Aa.** Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
- **3Ab.** Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
- **3Ac.** Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
- **3Ad.** Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

Is the amount of exception land remaining after exclusions greater than the amount of needed land?

Yes

No. More land is needed

Choose among land remaining after exclusions

Repeat Steps 2 and 3 for next priority lands (resource lands)

2nd priority for Bend:
Resource Lands

Step 3B: Prioritize by Land Capability

For agricultural lands: class VIII Soils, then class VII, … finally class I.
For forest lands: Cubic foot site class VII, then VI, … finally class I.

Step 3B-I: Initial Suitability Evaluation

Exclude:
- **3B-Ia.** Unbuildable lands
- **3B-Ib.** Exclude lands based upon specific land needs (197.298(3)(a))
- **3B-Ic.** Unserviceable lands*
- **3B-Ic.** Land based on results of ESEE analysis** (Goal 14, Factor 3)
- **3B-Id.** Uses that are incompatible with agricultural and forest activities (Goal 14, Factor 4)

Is the amount of resource land remaining after exclusions greater than the amount of needed land?

No. Expand the study area

Yes

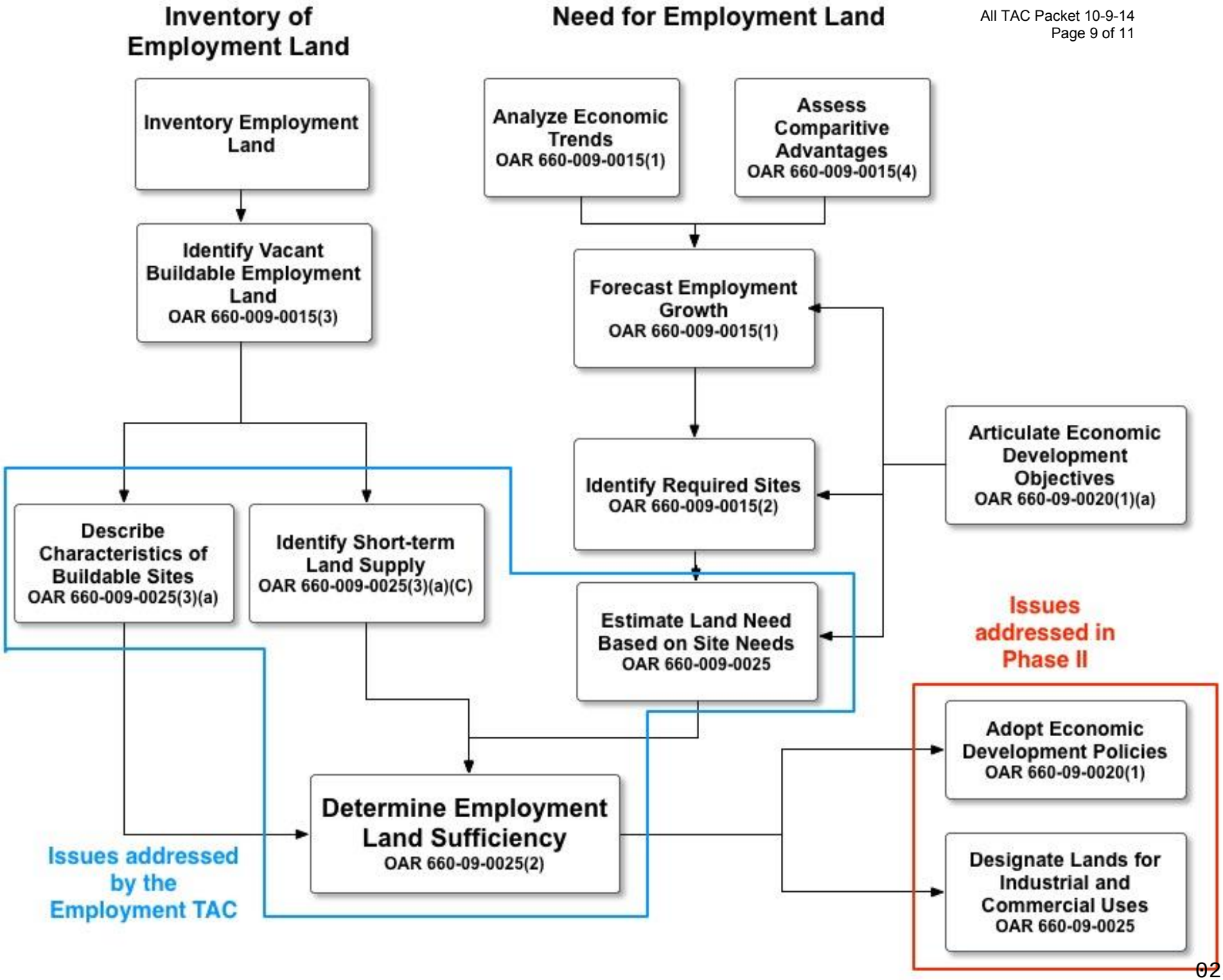
Step 3B-II: Goal 14 Factor Analysis

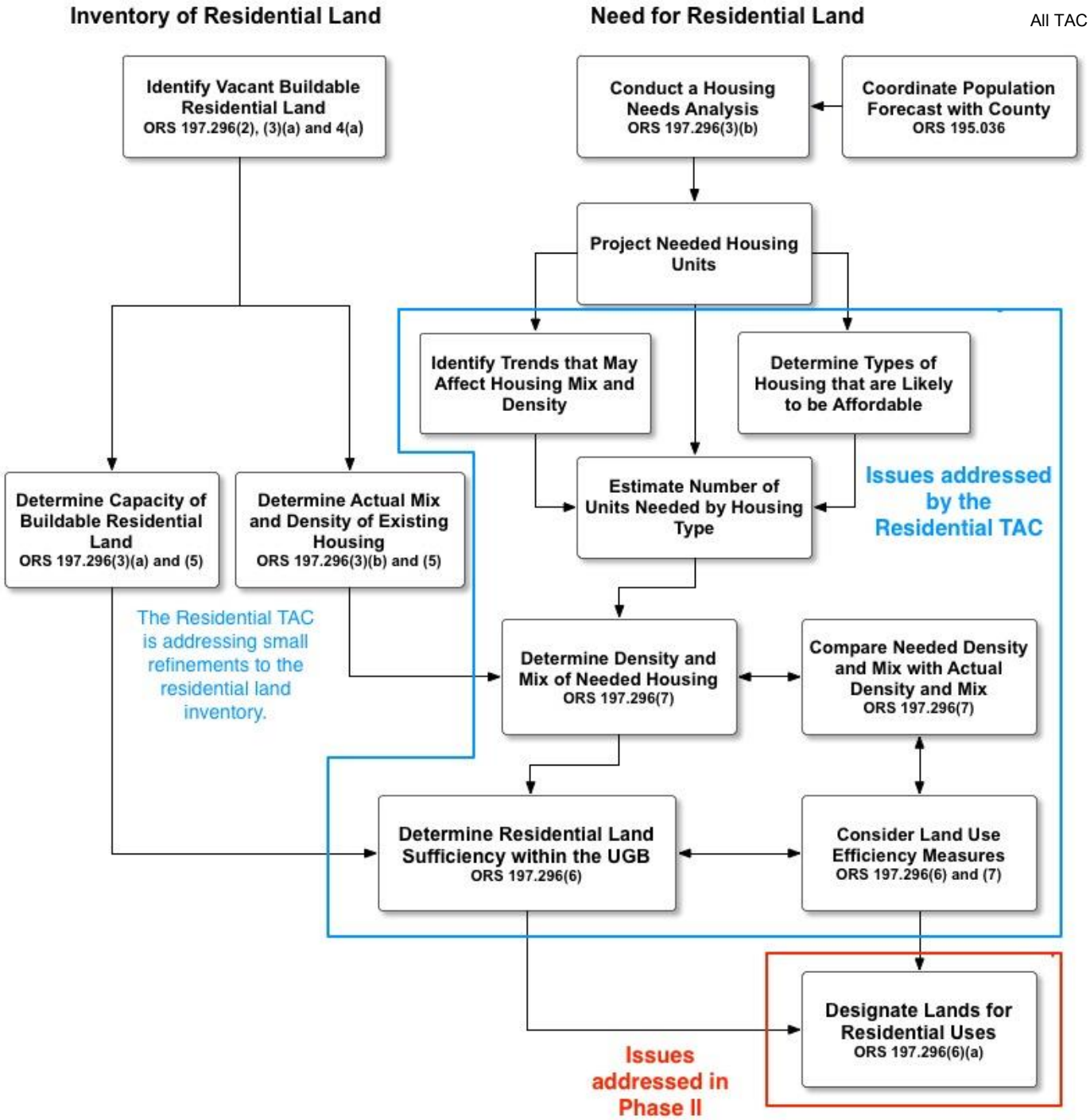
Local balancing of land need based on Goal 14 locational factors:
- **3B-IIa.** Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
- **3B-IIb.** Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
- **3B-IIb.** Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
- **3B-IIb.** Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

Choose among land remaining after exclusions

Footnotes:
* Unserviceable lands are those that cannot reasonably be provided with urban services due to physical constraints. (197.298(3)(b))
** ESEE: Economic, Social, Environmental, and Energy

ECONorthwest
ECONOMICS • FINANCE • PLANNING


Inventory of Employment Land
Need for Employment Land
Inventory Employment Land
Identify Vacant Buildable Employment Land
OAR 660-009-0015(3)
Analyze Economic Trends
OAR 660-009-0015(1)
Assess Comparitive Advantages
OAR 660-009-0015(4)
Forecast Employment Growth
OAR 660-009-0015(1)
Articulate Economic Development Objectives
OAR 660-09-0020(1)(a)
Identify Required Sites
OAR 660-009-0015(2)
Describe Characteristics of Buildable Sites
OAR 660-009-0025(3)(a)
Identify Short-term Land Supply
OAR 660-009-0025(3)(a)(C)
Estimate Land Need Based on Site Needs
OAR 660-009-0025
Issues addressed in Phase II
Adopt Economic Development Policies
OAR 660-09-0020(1)
Determine Employment Land Sufficiency
OAR 660-09-0025(2)
Designate Lands for Industrial and Commercial Uses
OAR 660-09-0025
Issues addressed by the Employment TAC


Inventory of Residential Land
Need for Residential Land
Identify Vacant Buildable Residential Land
ORS 197.296(2), (3)(a) and 4(a)
Conduct a Housing Needs Analysis
ORS 197.296(3)(b)
Coordinate Population Forecast with County
ORS 195.036
Project Needed Housing Units
Identify Trends that May Affect Housing Mix and Density
Determine Types of Housing that are Likely to be Affordable
Estimate Number of Units Needed by Housing Type
Issues addressed by the Residential TAC
Determine Capacity of Buildable Residential Land
ORS 197.296(3)(a) and (5)
Determine Actual Mix and Density of Existing Housing
ORS 197.296(3)(b) and (5)
The Residential TAC is addressing small refinements to the residential land inventory.
Determine Density and Mix of Needed Housing
ORS 197.296(7)
Compare Needed Density and Mix with Actual Density and Mix
ORS 197.296(7)
Determine Residential Land Sufficiency within the UGB
ORS 197.296(6)
Consider Land Use Efficiency Measures
ORS 197.296(6) and (7)
Designate Lands for Residential Uses
ORS 197.296(6)(a)
Issues addressed in Phase II

PROJECT GOALS

The City of Bend has entered the next phase of its Urban Growth Boundary (UGB) expansion to chart a path for Bend's future growth. The UGB is a line drawn on the City's General Plan map that identifies Bend's urban land. This land represents an estimated 20-year supply of land for employment, housing, and other urban uses. As the city continues to grow, we have an opportunity to develop a plan for future growth that reflects the community's goals and meets state planning requirements.

URBAN GROWTH BOUNDARY REMAND
MAKING BEND EVEN BETTER

The UGB Steering Committee approved the following Project Goals on September 4, 2014.

A Quality Natural Environment

As Bend grows, it preserves and enhances natural areas and wildlife habitat. Wildfire risk management is a key consideration. Bend takes a balanced approach to environmental protection and building a great city.

Balanced Transportation System

Bend's balanced transportation system incorporates an improved, well-connected system of facilities for walking, bicycling, and public transit, while also providing a reliable system for drivers. Bend's transportation system emphasizes safety and convenience for users of all types and ages.

Great Neighborhoods

Bend has a variety of great neighborhoods that promote a sense of community and are well-designed, safe, walkable, and include local schools and parks. Small neighborhood centers provide local shops, a mix of housing types, and community gathering places. The character of historic neighborhoods is protected and infill development is compatible.

Strong Active Downtown

Bend's downtown continues to be an active focal point for residents and visitors with strong businesses, urban housing, civic services, arts and cultural opportunities, and gathering places. Parking downtown is adequate and strategically located. Planning in other areas continues to support a healthy downtown.

Strong Diverse Economy

Bend has a good supply of serviced land planned for employment growth that supports the City's economic development goals, provides a range of diverse jobs and industries, and supports innovation. Employment areas, large and small, have excellent transportation access.

Connections to Recreation and Nature

Bend continues to enhance its network of parks, trails, greenbelts, recreational facilities, and scenic views inside and outside the city.

Housing Options and Affordability

Bend residents have access to a variety of high quality housing options, including housing affordable to people with a range of incomes and housing suitable to seniors, families, people with special needs, and others. Housing design is innovative and energy efficient.

Cost Effective Infrastructure

Bend plans and builds water, wastewater, storm water, transportation, and green infrastructure in a cost-effective way that supports other project goals. Efficient use of existing infrastructure is a top priority.

September 4, 2014
www.bendoregon.gov/bendugb

BEND UGB TAC MEETINGS IN OCTOBER, NOVEMBER, and DECEMBER 2014

October 9, 2014
- All TACs meeting - 3:00 to 5:00 pm
Brooks Room of the Downtown Bend Public Library, 601 NW Wall St, Bend, OR 97701

October 13, 2014
- Residential TAC meeting - 10:00 am to 12:30 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

- Employment TAC meeting - 2:30 pm to 5:00 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

October 14, 2014
- Boundary and Growth Scenarios TAC - 10:00 am to 12:30 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

- Drop In Meeting for the UGB Remand Project - 2:00 pm to 4:00 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

November 17, 2014
- Residential TAC meeting – 10:00 am to 12:30 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

- Employment TAC meeting – 2:30 pm to 5:00 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

November 18, 2014
- Boundary and Growth Scenarios TAC – 10:00 to 12:30 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

- Drop In Meeting for the UGB Remand Project - 2:00 pm to 4:00 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

December 15, 2014
- Joint Residential and Employment TACs with UGB Steering Committee– 2:00 pm to 5:00 pm, Barnes/Sawyer Room of the Deschutes Services Building – 1300 NW Wall Street, Bend, OR 97701

December 16, 2014
- Boundary and Growth Scenarios TAC 10:00 am to 12:30 pm, Barnes/Sawyer Room of the Deschutes Services Building – 1300 NW Wall Street, Bend, OR 97701

- Drop In Meeting for the UGB Remand Project - 2:00 pm to 4:00 pm, Bend City Hall Council Chambers, 710 NW Wall Street, Bend, OR 97701

For more information:
Brian Rankin, Principal Planner – (541) 388-5584 or brankin@bendoregon.gov
Damian Syrnyk, Senior Planner – (541) 312-4919 or dsyrnyk@bendoregon.gov
Karen Swirsky, Senior Planner – (541) 323-8513 or kswirsk7@bendoregon.gov
Project website: www.bendoregon.gov/bendugb

710 NW Wall Street
PO Box 431
Bend, Or 97701
[541] 388-5505 tel
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bendoregon.gov

Jim Clinton
Mayor

Jodie Barram
Mayor Pro Tem

Victor Chudowsky
City Councilor

Doug Knight
City Councilor

Sally Russell
City Councilor

Mark Capell
City Councilor

Scott Ramsay
City Councilor

Eric King
City Manager

City of Bend
Bend UGB Remand All Technical Advisory Committee
Meeting #2
Meeting Notes
Date: October 09, 2014

The Bend UGB Remand All TAC held its regular meeting at 3:00 p.m. on Thursday, October 9, 2014 in the Bend City Hall Council Chambers. The meeting was called to order at 3:08 p.m. by Victor Chudowsky, Facilitator.

Roll Call

- ✓Joe Dill
- ✓Jay Renkens
- ✓Brian Rankin
- ✓Victor Chudowsky

Discussion

Welcome and Agenda Review. After the meeting was called to order, Joe Dill, Brian Rankin and Victor Chudowsky did a brief overview of adjustments in scheduling, the need for better coordination between the TAC's and the fact that there is not much time in between these meetings to work on completion of Phase 1. From this meeting forward it would be an area to improve on.

Phase 1-3 Work Plan Refinement. Joe Dill clarified that the TAC's are still on target for April 2016 for following the methodology outlined in the McMinnville graphic. At this time the target date for recommending to the USC will be January 2015. Boundary TAC has four meetings left to roll up the integration on Goal 14 methodology before January 2015 (See pg. 5-7 of meeting packet).

Everything that the TAC's agree on will be implemented into Phase 1 and those that the teams are still on the fence about will be moved to Phase 2. Options at this point can be to form other committees for Phase 2 or can workshops can be arranged between the TAC teams? If this were to work we can implement them into Phase 2? More technical work will need to be done working with water and sewer modeling including working with TPAU on transportation modeling.

Urban Form. Jay Renkens gave a PowerPoint presentation to educate the TAC's on Urban Form and to have all the teams' model their thinking on how we can have Bend be "complete" set of places. The presentation outlined a considerable amount of factors: land use, employment type and density, residential density, amenities, commercial draw/local community, schools, recreation and open space, including barriers. These factors were all applied to Bend and how they tied into making each area "complete" with local servicing centers and corridors, recreation amenities, and schools. Preliminary neighborhood typologies showed 1-3 levels, of which Bend could work on amenities in the SW, NE and SE sides of town in order to make Bend more "complete".

From the open discussion it was determined that more detailed analysis from Bend Park and Recreation as well as the school board will need to be used with the current typologies to find out if their plans may fulfil some of the amenities lacking in the SW, NE and SE areas. Another suggestion is to bring in the green map with the natural areas, parks, tree canopy – green fabric of Bend. The request to do an Urban Form Plan as implemented in Portland and Sandy can work for the city's goal. All future plans must integrate "livability and sustainability" which can be seen in the 100 year old area of Bend's downtown.

Urban Form: An ongoing conversation.

Action Items/Next Steps

Action	Notes	Decision made/ Assigned To

Meeting adjourned at 4:28 pm by Brian Rankin.

URBAN GROWTH BOUNDARY REMAND

BEND

Sign in Sheet

Meeting: TAC - All TAC Meeting

Date: 10/9/14

Location: Brooks Room

Name	Organization	Email Address
Lynne McConnell	Neighbor Impact	lynnem@neighborimpact.org
Ellen Grover		ehg@karnopp.com
Mike Tiller	BCPSD	MIKETILLER@BOND.K12.OR.US
Sid Snyder		seppo sid@gmail.com
Rod Tomcito	Tennant Developments	
Susan Brody		
Al Johnson		
Brian Meece		
Kurt Petrich	KAFP Properties	Kapetrick@gmail.com
Kirk Schueler		Kirkeschueler@gmail.com
Jade Mayer		Jade@brooksiesources.com
Sharon Smith		Smith@bjlawyers.com
JOHN DOTSON		
Mike Reilly		
Paul Dewey		
Bill Kuhn	BOC	
Andy High		

TAC - ALL TAC MTG

GENERAL PUBLIC MEETING SIGN-IN SHEET

Meeting:	UGB Committees	**Meeting Date:**	October 9, 2014
Facilitator:		**Place/Room:**	Library/ Brooks Rm

Name	Address	Phone	E-Mail
Gary Timm	2333 NW Frazer Ln	541-213-2326	garytimm7@gmail.com
Ann Marie Colucci	2938 NW Cecanti Ln Bend	541 749 8447	ANNMARIE@BENDPATRICK.COM
Dale VanValkenburg			
[illegible]		541-480 2576	
GARY EVERETT	PO BOX 8238 BEND 08	541 480 6130	GARY@GARYEVERETT.COM
John Russell			
Wally Irwin		541-410-8147	
Ronda		541-406-0666	ron.boozell@gmail.com
Kristina Barragan		818-288-2814	kmbarragan@gmail.com
Charley Miller			
Katrina Langenderfer	HHPR		KatL@hhpr.com
Mike Wace	County		
Gary Vodder		415-810-0902	vandal.vui@gmail.com
Colin Stephens			
ROCKLAND DUNN	61160 SYDNEY HARBOR DR. 97702	(541) 948-0959	RDUNN@BENDOR.COM
Mac McLean			mmclean@bendsolliken.com
Stacey Stemach			
MEL OBERST	CITY CDD	541-330-4017	MOBERST@BENDOREGON.GOV

02345

RES TAC #3
MEETING
10/13/2014

HURLEY | RE
ATTORNEYS AT LAW | P.C.

747 SW Mill View Way, Bend, OR 97702
541-317-5505 • Fax: 541-317-5507 • info@hurley-re.com

October 10, 2014

Brian Rankin
Principal Planner
Community Development Department
City of Bend

via email only to brankin@ci.bend.or.us

RE: UGB Expansion In-Fill Analysis
Central Oregon Irrigation District Acreage on Brookswood Avenue – Deschutes River

Dear Brian:

Our offices serve as general counsel for Central Oregon Irrigation District ("COID" or "District"). We understand that the City is attempting to improve planning of existing vacant or underutilized lands within its UGB. To that end, you have requested information about COID's plans for the property it owns between Brookswood Blvd. and the Deschutes River in SW Bend.

The District has no immediate plans to develop the acreage, but has received inquiries from residential developers regarding encumbrances or limitations on the site that would modify general development plans. COID anticipates that it will sell the acreage to a responsible developer for single family residential development within the next decade, in harmony with the surrounding uses. Approximately five acres of the property will be set aside for the existing Siphon Power Plant owned and operated by the District.

We hope this information is helpful to you in your efforts, and wish you every success with the project.

Sincerely,

Elizabeth A. Dickson
EAD/hoh
Cc: client

I:\data\liz\client files\c\coid\siphon power plant - future development\ltr to city re ugb expansion 10.10.14.docx