

**Most Directly Applicable State Statutes and State Administrative Rules
Employment, Parks and School Ordinance**

OREGON REVISED STATUTES

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 of Metro 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.

(4) When a city includes land within the urban growth boundary of the city pursuant to ORS 197.295 to 197.314, the city shall prioritize lands for inclusion as provided in ORS 197A.320.

OREGON ADMINISTRATIVE RULES

660-009-0000

Intent and Purpose

The intent of the Land Conservation and Development Commission is to provide an adequate land supply for economic development and employment growth in Oregon. The intent of this division is to link planning for an adequate land supply to infrastructure planning, community involvement and coordination among local governments and the state. The purpose of this division is to implement Goal 9, Economy of the State (OAR 660-015-0000(9)), and ORS 197.712(2)(a) to (d). This division responds to legislative direction to assure that comprehensive

plans and land use regulations are updated to provide adequate opportunities for a variety of economic activities throughout the state (ORS 197.712(1)) and to assure that comprehensive plans are based on information about state and national economic trends (ORS 197.717(2)).

660-009-0005

Definitions

For purposes of this division, the definitions in ORS chapter 197 and the statewide planning goals apply, unless the context requires otherwise. In addition, the following definitions apply:

(1) "Developed Land" means non-vacant land that is likely to be redeveloped during the planning period.

(2) "Development Constraints" means factors that temporarily or permanently limit or prevent the use of land for economic development. Development constraints include, but are not limited to, wetlands, environmentally sensitive areas such as habitat, environmental contamination, slope, topography, cultural and archeological resources, infrastructure deficiencies, parcel fragmentation, or natural hazard areas.

(3) "Industrial Use" means employment activities generating income from the production, handling or distribution of goods. Industrial uses include, but are not limited to: manufacturing; assembly; fabrication; processing; storage; logistics; warehousing; importation; distribution and transshipment; and research and development. Industrial uses may have unique land, infrastructure, energy, and transportation requirements. Industrial uses may have external impacts on surrounding uses and may cluster in traditional or new industrial areas where they are segregated from other non-industrial activities.

(4) "Locational Factors" means market factors that affect where a particular type of industrial or other employment use will locate. Locational factors include, but are not limited to, proximity to raw materials, supplies, labor, services, markets, or educational institutions; access to transportation and freight facilities such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes; and workforce factors (e.g., skill level, education, age distribution).

(5) "Metropolitan Planning Organization (MPO)" means an organization designated by the Governor to coordinate transportation planning on urban land of the state including such designations made subsequent to the adoption of this division. The Longview-Kelso-Rainier MPO is not considered an MPO for the purposes of this division. Cities with less than 2,500 population are not considered part of an MPO for purposes of this division.

(6) "Other Employment Use" means all non-industrial employment activities including the widest range of retail, wholesale, service, non-profit, business headquarters, administrative and governmental employment activities that are accommodated in retail, office and flexible building types. Other employment uses also include employment activities of an entity or organization that serves the medical, educational, social service, recreation and security needs of the community typically in large buildings or multi-building campuses.

(7) "Planning Area" means the area within an existing or proposed urban growth boundary. Cities and counties with urban growth management agreements must address the urban land governed by their respective plans as specified in the urban growth management agreement for the affected area.

(8) "Prime Industrial Land" means land suited for traded-sector industries as well as other industrial uses providing support to traded-sector industries. Prime industrial lands possess site characteristics that are difficult or impossible to replicate in the planning area or region. Prime

industrial lands have necessary access to transportation and freight infrastructure, including, but not limited to, rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes. Traded-sector has the meaning provided in ORS 285B.280.

(9) "Serviceable" means the city or county has determined that public facilities and transportation facilities, as defined by OAR chapter 660, division 011 and division 012, currently have adequate capacity for development planned in the service area where the site is located or can be upgraded to have adequate capacity within the 20-year planning period.

(10) "Short-term Supply of Land" means suitable land that is ready for construction within one year of an application for a building permit or request for service extension. Engineering feasibility is sufficient to qualify land for the short-term supply of land. Funding availability is not required. "Competitive Short-term Supply" means the short-term supply of land provides a range of site sizes and locations to accommodate the market needs of a variety of industrial and other employment uses.

(11) "Site Characteristics" means the attributes of a site necessary for a particular industrial or other employment use to operate. Site characteristics include, but are not limited to, a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes.

(12) "Suitable" means serviceable land designated for industrial or other employment use that provides, or can be expected to provide the appropriate site characteristics for the proposed use.

(13) "Total Land Supply" means the supply of land estimated to be adequate to accommodate industrial and other employment uses for a 20-year planning period. Total land supply includes the short-term supply of land as well as the remaining supply of lands considered suitable and serviceable for the industrial or other employment uses identified in a comprehensive plan. Total land supply includes both vacant and developed land.

(14) "Vacant Land" means 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.

660-009-0010

Application

(1) This division applies to comprehensive plans for areas within urban growth boundaries. This division does not require or restrict planning for industrial and other employment uses outside urban growth boundaries. Cities and counties subject to this division must adopt plan and ordinance amendments necessary to comply with this division.

(2) Comprehensive plans and land use regulations must be reviewed and amended as necessary to comply with this division as amended at the time of each periodic review of the plan pursuant to ORS 197.712(3). Jurisdictions that have received a periodic review notice from the Department (pursuant to OAR 660-025-0050) prior to the effective date of amendments to this division must comply with such amendments at their next periodic review unless otherwise directed by the Commission.

(3) Cities and counties may rely on their existing plans to meet the requirements of this division if they conclude:

- (a) There are not significant changes in economic development opportunities (e.g., a need for sites not presently provided for in the plan) based on a review of new information about national, state, regional, county and local trends; and
- (b) That existing inventories, policies, and implementing measures meet the requirements in OAR 660-009-0015 to 660-009-0030.
- (4) For a post-acknowledgement plan amendment under OAR chapter 660, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and:
 - (a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or
 - (b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or
 - (c) Adopt a combination of the above, consistent with the requirements of this division.
- (5) The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.
- (6) The amendments to this division are effective January 1, 2007. A city or county may voluntarily follow adopted amendments to this division prior to the effective date of the adopted amendments.

660-009-0015

Economic Opportunities Analysis

Cities and counties must review and, as necessary, amend their comprehensive plans to provide economic opportunities analyses containing the information described in sections (1) to (4) of this rule. This analysis will compare the demand for land for industrial and other employment uses to the existing supply of such land.

- (1) Review of National, State, Regional, County and Local Trends. The economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends. This review of trends is the principal basis for estimating future industrial and other employment uses as described in section (4) of this rule. A use or category of use could reasonably be expected to expand or locate in the planning area if the area possesses the appropriate locational factors for the use or category of use. Cities and counties are strongly encouraged to analyze trends and establish employment projections in a geographic area larger than the planning area and to determine the percentage of employment growth reasonably expected to be captured for the planning area based on the assessment of community economic development potential pursuant to section (4) of this rule.
- (2) Identification of Required Site Types. The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. Cities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that

may be needed for expansion. Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.

(3) Inventory of Industrial and Other Employment Lands. Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use.

(a) For sites inventoried under this section, plans must provide the following information:

(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;

(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory; and

(C) For cities and counties within a Metropolitan Planning Organization, the inventory must also include the approximate total acreage and percentage of sites within each plan or zoning district that comprise the short-term supply of land.

(b) When comparing current land supply to the projected demand, cities and counties may inventory contiguous lots or parcels together that are within a discrete plan or zoning district.

(c) Cities and counties that adopt objectives or policies providing for prime industrial land pursuant to OAR 660-009-0020(6) and 660-009-0025(8) must identify and inventory any vacant or developed prime industrial land according to section (3)(a) of this rule.

(4) Assessment of Community Economic Development Potential. The economic opportunities analysis must estimate the types and amounts of industrial and other employment uses likely to occur in the planning area. The estimate must be based on information generated in response to sections (1) to (3) of this rule and must consider the planning area's economic advantages and disadvantages. Relevant economic advantages and disadvantages to be considered may include but are not limited to:

(a) Location, size and buying power of markets;

(b) Availability of transportation facilities for access and freight mobility;

(c) Public facilities and public services;

(d) Labor market factors;

(e) Access to suppliers and utilities;

(f) Necessary support services;

(g) Limits on development due to federal and state environmental protection laws; and

(h) Educational and technical training programs.

(5) Cities and counties are strongly encouraged to assess community economic development potential through a visioning or some other public input based process in conjunction with state agencies. Cities and counties are strongly encouraged to use the assessment of community economic development potential to form the community economic development objectives pursuant to OAR 660-009-0020(1)(a).

660-009-0020

Industrial and Other Employment Development Policies

(1) Comprehensive plans subject to this division must include policies stating the economic development objectives for the planning area. These policies must be based on the community economic opportunities analysis prepared pursuant to OAR 660-009-0015 and must provide the following:

(a) Community Economic Development Objectives. The plan must state the overall objectives for economic development in the planning area and identify categories or particular types of

industrial and other employment uses desired by the community. Policy objectives may identify the level of short-term supply of land the planning area needs. Cities and counties are strongly encouraged to select a competitive short-term supply of land as a policy objective.

(b) Commitment to Provide a Competitive Short-Term Supply. Cities and counties within a Metropolitan Planning Organization must adopt a policy stating that a competitive short-term supply of land as a community economic development objective for the industrial and other employment uses selected through the economic opportunities analysis pursuant to OAR 660-009-0015.

(c) Commitment to Provide Adequate Sites and Facilities. The plan must include policies committing the city or county to designate an adequate number of sites of suitable sizes, types and locations. The plan must also include policies, through public facilities planning and transportation system planning, to provide necessary public facilities and transportation facilities for the planning area.

(2) Plans for cities and counties within a Metropolitan Planning Organization or that adopt policies relating to the short-term supply of land, must include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed. These policies must describe dates, events or both, that trigger local review of the short-term supply of land.

(3) Plans may include policies to maintain existing categories or levels of industrial and other employment uses including maintaining downtowns or central business districts.

(4) Plan policies may emphasize the expansion of and increased productivity from existing industries and firms as a means to facilitate local economic development.

(5) Cities and counties are strongly encouraged to adopt plan policies that include brownfield redevelopment strategies for retaining land in industrial use and for qualifying them as part of the local short-term supply of land.

(6) Cities and counties are strongly encouraged to adopt plan policies pertaining to prime industrial land pursuant to OAR 660-009-0025(8).

(7) Cities and counties are strongly encouraged to adopt plan policies that include additional approaches to implement this division including, but not limited to:

- (a) Tax incentives and disincentives;
- (b) Land use controls and ordinances;
- (c) Preferential tax assessments;
- (d) Capital improvement programming;
- (e) Property acquisition techniques;
- (f) Public/private partnerships; and
- (g) Intergovernmental agreements.

660-009-0025

Designation of Lands for Industrial and Other Employment Uses

Cities and counties must adopt measures adequate to implement policies adopted pursuant to OAR 660-009-0020. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, public facility plans, and transportation system plans.

(1) Identification of Needed Sites. The plan must identify the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies. Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into

broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. Cities and counties may also designate mixed-use zones to meet multiple needs in a given location.

(2) Total Land Supply. Plans must designate serviceable land suitable to meet the site needs identified in section (1) of this rule. Except as provided for in section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.

(3) Short-Term Supply of Land. Plans for cities and counties within a Metropolitan Planning Organization or cities and counties that adopt policies relating to the short-term supply of land must designate suitable land to respond to economic development opportunities as they arise. Cities and counties may maintain the short-term supply of land according to the strategies adopted pursuant to OAR 660-009-0020(2).

(a) Except as provided for in subsections (b) and (c), cities and counties subject to this section must provide at least 25 percent of the total land supply within the urban growth boundary designated for industrial and other employment uses as short-term supply.

(b) Affected cities and counties that are unable to achieve the target in subsection (a) above may set an alternative target based on their economic opportunities analysis.

(c) A planning area with 10 percent or more of the total land supply enrolled in Oregon's industrial site certification program pursuant to ORS 284.565 satisfies the requirements of this section.

(4) If cities and counties are required to prepare a public facility plan or transportation system plan by OAR chapter 660, division 011 or division 012, the city or county must complete subsections (a) to (c) of this section at the time of periodic review. Requirements of this rule apply only to city and county decisions made at the time of periodic review. Subsequent implementation of or amendments to the comprehensive plan or the public facility plan that change the supply of serviceable land are not subject to the requirements of this section. Cities and counties must:

(a) Identify serviceable industrial and other employment sites. The affected city or county in consultation with the local service provider, if applicable, must make decisions about whether a site is serviceable. Cities and counties are encouraged to develop specific criteria for deciding whether or not a site is serviceable. Cities and counties are strongly encouraged to also consider whether or not extension of facilities is reasonably likely to occur considering the size and type of uses likely to occur and the cost or distance of facility extension;

(b) Estimate the amount of serviceable industrial and other employment land likely to be needed during the planning period for the public facilities plan. Appropriate techniques for estimating land needs include but are not limited to the following:

(A) Projections or forecasts based on development trends in the area over previous years; and

(B) Deriving a proportionate share of the anticipated 20-year need specified in the comprehensive plan.

(c) Review and, if necessary, amend the comprehensive plan and the public facilities plan to maintain a short-term supply of land. Amendments to implement this requirement include but are not limited to the following:

(A) Changes to the public facilities plan to add or reschedule projects to make more land serviceable;

(B) Amendments to the comprehensive plan that redesignate additional serviceable land for industrial or other employment use; and

(C) Reconsideration of the planning area's economic development objectives and amendment of plan objectives and policies based on public facility limitations.

(d) If a city or county is unable to meet the requirements of this section, it must identify the specific steps needed to provide expanded public facilities at the earliest possible time.

(5) Institutional Uses. Cities and counties are not required to designate institutional uses on privately owned land when implementing section (2) of this rule. Cities and counties may designate land in an industrial or other employment land category to compensate for any institutional land demand that is not designated under this section.

(6) Compatibility. Cities and counties are strongly encouraged to manage encroachment and intrusion of uses incompatible with industrial and other employment uses. Strategies for managing encroachment and intrusion of incompatible uses include, but are not limited to, transition areas around uses having negative impacts on surrounding areas, design criteria, district designation, and limiting non-essential uses within districts.

(7) Availability. Cities and counties may consider land availability when designating the short-term supply of land. Available land is vacant or developed land likely to be on the market for sale or lease at prices consistent with the local real estate market. Methods for determining lack of availability include, but are not limited to:

(a) Bona fide offers for purchase or purchase options in excess of real market value have been rejected in the last 24 months;

(b) A site is listed for sale at more than 150 percent of real market values;

(c) An owner has not made timely response to inquiries from local or state economic development officials; or

(d) Sites in an industrial or other employment land category lack diversity of ownership within a planning area when a single owner or entity controls more than 51 percent of those sites.

(8) Uses with Special Siting Characteristics. Cities and counties that adopt objectives or policies providing for uses with special site needs must adopt policies and land use regulations providing for those special site needs. Special site needs include, but are not limited to large acreage sites, special site configurations, direct access to transportation facilities, prime industrial lands, sensitivity to adjacent land uses, or coastal shoreland sites designated as suited for water-dependent use under Goal 17. Policies and land use regulations for these uses must:

(a) Identify sites suitable for the proposed use;

(b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities that interfere with development of the site for the intended use; and

(c) Where necessary, protect a site for the intended use by including measures that either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

660-009-0030

Multi-Jurisdiction Coordination

(1) Cities and counties are strongly encouraged to coordinate when implementing OAR 660-009-0015 to 660-009-0025.

(2) Jurisdictions that coordinate under this rule may:

(a) Conduct a single coordinated economic opportunities analysis; and

(b) Designate lands among the coordinating jurisdictions in a mutually agreed proportion.

660-011-0000

Purpose

The purpose of this division is to aid in achieving the requirements of Goal 11, Public Facilities and Services, OAR 660-015-0000(11), interpret Goal 11 requirements regarding public facilities and services on rural lands, and implement ORS 197.712(2)(e), which requires that a city or county shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. The purpose of the plan is to help assure that urban development in such urban growth boundaries is guided and supported by types and levels of urban facilities and services appropriate for the needs and requirements of the urban areas to be serviced, and that those facilities and services are provided in a timely, orderly and efficient arrangement, as required by Goal 11. The division contains definitions relating to a public facility plan, procedures and standards for developing, adopting, and amending such a plan, the date for submittal of the plan to the Commission and standards for Department review of the plan.

660-011-0005

Definitions

- (1) "Public Facilities Plan": A public facility plan is a support document or documents to a comprehensive plan. The facility plan describes the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plans within an urban growth boundary containing a population greater than 2,500. Certain elements of the public facility plan also shall be adopted as part of the comprehensive plan, as specified in OAR 660-11-045.
- (2) "Rough Cost Estimates": Rough cost estimates are approximate costs expressed in current-year (year closest to the period of public facility plan development) dollars. It is not intended that project cost estimates be as exact as is required for budgeting purposes.
- (3) "Short Term": The short term is the period from year one through year five of the facility plan.
- (4) "Long Term": The long term is the period from year six through the remainder of the planning period.
- (5) "Public Facility": A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities.
- (6) "Public Facility Project": A public facility project is the construction or reconstruction of a water, sewer, or transportation facility within a public facility system that is funded or utilized by members of the general public.
- (7) "Public Facility Systems": Public facility systems are those facilities of a particular type that combine to provide water, sewer or transportation services.
For purposes of this division, public facility systems are limited to the following:
 - (a) Water:
 - (A) Sources of water;
 - (B) Treatment system;
 - (C) Storage system;
 - (D) Pumping system;
 - (E) Primary distribution system.
 - (b) Sanitary sewer:

- (A) Treatment facilities system;
- (B) Primary collection system.
- (c) Storm sewer:
 - (A) Major drainageways (major trunk lines, streams, ditches, pump stations and retention basins);
 - (B) Outfall locations.
- (d) Transportation:
 - (A) Freeway system, if planned for in the acknowledged comprehensive plan;
 - (B) Arterial system;
 - (C) Significant collector system;
 - (D) Bridge system (those on the Federal Bridge Inventory);
 - (E) Mass transit facilities if planned for in the acknowledged comprehensive plan, including purchase of new buses if total fleet is less than 200 buses, rail lines or transit stations associated with providing transit service to major transportation corridors and park and ride station;
 - (F) Airport facilities as identified in the current airport master plans;
 - (G) Bicycle paths if planned for in the acknowledged comprehensive plan.
- (8) "Land Use Decisions": In accordance with ORS 197.712(2)(e), project timing and financing provisions of public facility plans shall not be considered land use decisions as specified under ORS 197.015(10).
- (9) "Urban Growth Management Agreement": In accordance with OAR 660-003-0010(2)(c), and urban growth management agreement is a written statement, agreement or set of agreements setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be completed and by which the urban growth boundary may be modified (unless the same information is incorporated in other acknowledged documents).
- (10) Other Definitions: For the purposes of this division, the definitions in ORS 197.015 shall apply except as provided for in section (8) of this rule regarding the definition in ORS 197.015(10).

660-011-0010

The Public Facility Plan

- (1) The public facility plan shall contain the following items:
 - (a) An inventory and general assessment of the condition of all the significant public facility systems which support the land uses designated in the acknowledged comprehensive plan;
 - (b) A list of the significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. Public facility project descriptions or specifications of these projects as necessary;
 - (c) Rough cost estimates of each public facility project;
 - (d) A map or written description of each public facility project's general location or service area;
 - (e) Policy statement(s) or urban growth management agreement identifying the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated;
 - (f) An estimate of when each facility project will be needed; and
 - (g) A discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system.

(2) Those public facilities to be addressed in the plan shall include, but need not be limited to those specified in OAR 660-011-0005(5). Facilities included in the public facility plan other than those included in OAR 660-011-0005(5) will not be reviewed for compliance with this rule.

(3) It is not the purpose of this division to cause duplication of or to supplant existing applicable facility plans and programs. Where all or part of an acknowledged comprehensive plan, facility master plan either of the local jurisdiction or appropriate special district, capital improvement program, regional functional plan, similar plan or any combination of such plans meets all or some of the requirements of this division, those plans, or programs may be incorporated by reference into the public facility plan required by this division. Only those referenced portions of such documents shall be considered to be a part of the public facility plan and shall be subject to the administrative procedures of this division and ORS Chapter 197.

660-011-0015

Responsibility for Public Facility Plan Preparation

(1) Responsibility for the preparation, adoption and amendment of the public facility plan shall be specified within the urban growth management agreement. If the urban growth management agreement does not make provision for this responsibility, the agreement shall be amended to do so prior to the preparation of the public facility plan. In the case where an unincorporated area exists within the Portland Metropolitan Urban Growth Boundary which is not contained within the boundary of an approved urban planning area agreement with the County, the County shall be the responsible agency for preparation of the facility plan for that unincorporated area. The urban growth management agreement shall be submitted with the public facility plan as specified in OAR 660-011-0040.

(2) The jurisdiction responsible for the preparation of the public facility plan shall provide for the coordination of such preparation with the city, county, special districts and, as necessary, state and federal agencies and private providers of public facilities. The Metropolitan Service District is responsible for public facility plans coordination within the District consistent with ORS 197.190 and 268.390.

(3) Special districts, including port districts, shall assist in the development of the public facility plan for those facilities they provide. Special districts may object to that portion of the facilities plan adopted as part of the comprehensive plan during review by the Commission only if they have completed a special district agreement as specified under ORS 197.185 and 197.254(3) and (4) and participated in the development of such portion of the public facility plan.

(4) Those state agencies providing funding for or making expenditures on public facility systems shall participate in the development of the public facility plan in accordance with their state agency coordination agreement under ORS 197.180 and 197.712(2)(f).

660-011-0020

Public Facility Inventory and Determination of Future Facility Projects

(1) The public facility plan shall include an inventory of significant public facility systems. Where the acknowledged comprehensive plan, background document or one or more of the plans or programs listed in OAR 660-011-0010(3) contains such an inventory, that inventory may be incorporated by reference. The inventory shall include:

(a) Mapped location of the facility or service area;

(b) Facility capacity or size; and

(c) General assessment of condition of the facility (e.g., very good, good, fair, poor, very poor).

(2) The public facility plan shall identify significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. The public facility plan shall list the title of the project and describe each public facility project in terms of the type of facility, service area, and facility capacity.

(3) Project descriptions within the facility plan may require modifications based on subsequent environmental impact studies, design studies, facility master plans, capital improvement programs, or site availability. The public facility plan should anticipate these changes as specified in OAR 660-011-0045.

660-011-0025

Timing of Required Public Facilities

(1) The public facilities plan shall include a general estimate of the timing for the planned public facility projects. This timing component of the public facilities plan can be met in several ways depending on whether the project is anticipated in the short term or long term. The timing of projects may be related directly to population growth, e.g., the expansion or new construction of water treatment facilities. Other facility projects can be related to a measure of the facility's service level being met or exceeded, e.g., a major arterial or intersection reaching a maximum vehicle-per-day standard. Development of other projects may be more long term and tied neither to specific population levels nor measures of service levels, e.g., sewer projects to correct infiltration and inflow problems. These projects can take place over a long period of time and may be tied to the availability of long-term funding. The timing of projects may also be tied to specific years.

(2) Given the different methods used to estimate the timing of public facilities, the public facility plan shall identify projects as occurring in either the short term or long term, based on those factors which are related to project development. For those projects designated for development in the short term, the public facility plan shall identify an approximate year for development. For those projects designated for development over the long term, the public facility plan shall provide a general estimate as to when the need for project development would exist, e.g., population level, service level standards, etc. Timing provisions for public facility projects shall be consistent with the acknowledged comprehensive plan's projected growth estimates. The public facility plan shall consider the relationships between facilities in providing for development.

(3) Anticipated timing provisions for public facilities are not considered land use decisions as specified in ORS 197.712(2)(e), and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or 197.835(4).

660-011-0030

Location of Public Facility Projects

(1) The public facility plan shall identify the general location of the public facility project in specificity appropriate for the facility. Locations of projects anticipated to be carried out in the short term can be specified more precisely than the locations of projects anticipated for development in the long term.

(2) Anticipated locations for public facilities may require modifications based on subsequent environmental impact studies, design studies, facility master plans, capital improvement programs, or land availability. The public facility plan should anticipate those changes as specified in OAR 660-011-0045.

660-011-0035

Determination of Rough Cost Estimates for Public Facility Projects and Local Review of Funding Mechanisms for Public Facility Systems

(1) The public facility plan shall include rough cost estimates for those sewer, water, and transportation public facility projects identified in the facility plan. The intent of these rough cost estimates is to:

- (a) Provide an estimate of the fiscal requirements to support the land use designations in the acknowledged comprehensive plan; and
- (b) For use by the facility provider in reviewing the provider's existing funding mechanisms (e.g., general funds, general obligation and revenue bonds, local improvement district, system development charges, etc.) and possible alternative funding mechanisms. In addition to including rough cost estimates for each project, the facility plan shall include a discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system. These funding mechanisms may also be described in terms of general guidelines or local policies.

(2) Anticipated financing provisions are not considered land use decisions as specified in ORS 197.712(2)(e) and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or 197.835(4).

660-011-0040

Date of Submittal of Public Facility Plans

The public facility plan shall be completed, adopted, and submitted by the time of the responsible jurisdiction's periodic review. The public facility plan shall be reviewed under OAR Chapter 660, Division 25, "Periodic Review" with the jurisdiction's comprehensive plan and land use regulations. Portions of public facility plans adopted as part of comprehensive plans prior to the responsible jurisdiction's periodic review will be reviewed pursuant to OAR Chapter 660, Division 18, "Post Acknowledgment Procedures".

660-011-0045

Adoption and Amendment Procedures for Public Facility Plans

(1) The governing body of the city or county responsible for development of the public facility plan shall adopt the plan as a supporting document to the jurisdiction's comprehensive plan and shall also adopt as part of the comprehensive plan:

- (a) The list of public facility project titles, excluding (if the jurisdiction so chooses) the descriptions or specifications of those projects;
- (b) A map or written description of the public facility projects' locations or service areas as specified in sections (2) and (3) of this rule; and
- (c) The policy(ies) or urban growth management agreement designating the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated.

(2) Certain public facility project descriptions, location or service area designations will necessarily change as a result of subsequent design studies, capital improvement programs, environmental impact studies, and changes in potential sources of funding. It is not the intent of this division to:

- (a) Either prohibit projects not included in the public facility plans for which unanticipated funding has been obtained;
 - (b) Preclude project specification and location decisions made according to the National Environmental Policy Act; or
 - (c) Subject administrative and technical changes to the facility plan to ORS 197.610(1) and (2) or 197.835(4).
- (3) The public facility plan may allow for the following modifications to projects without amendment to the public facility plan:
- (a) Administrative changes are those modifications to a public facility project which are minor in nature and do not significantly impact the project's general description, location, sizing, capacity, or other general characteristic of the project;
 - (b) Technical and environmental changes are those modifications to a public facility project which are made pursuant to "final engineering" on a project or those that result from the findings of an Environmental Assessment or Environmental Impact Statement conducted under regulations implementing the procedural provisions of the National Environmental Policy Act of 1969 (**40 CFR Parts 1500-1508**) or any federal or State of Oregon agency project development regulations consistent with that Act and its regulations.
 - (c) Public facility project changes made pursuant to subsection (3)(b) of this rule are subject to the administrative procedures and review and appeal provisions of the regulations controlling the study (**40 CFR Parts 1500-1508** or similar regulations) and are not subject to the administrative procedures or review or appeal provisions of ORS Chapter 197, or OAR Chapter 660 Division 18.
- (4) Land use amendments are those modifications or amendments to the list, location or provider of, public facility projects, which significantly impact a public facility project identified in the comprehensive plan and which do not qualify under subsection (3)(a) or (b) of this rule. Amendments made pursuant to this subsection are subject to the administrative procedures and review and appeal provisions accorded "land use decisions" in ORS Chapter 197 and those set forth in OAR Chapter 660 Division 18.

660-011-0050

Standards for Review by the Department

The Department of Land Conservation and Development shall evaluate the following, as further defined in this division, when reviewing public facility plans submitted under this division:

- (1) Those items as specified in OAR 660-011-0010(1);
- (2) Whether the plan contains a copy of all agreements required under OAR 660-011-0010 and 660-011-0015; and
- (3) Whether the public facility plan is consistent with the acknowledged comprehensive plan.

660-011-0060

Sewer Service to Rural Lands

- (1) As used in this rule, unless the context requires otherwise:
 - (a) "Establishment of a sewer system" means the creation of a new sewage system, including systems provided by public or private entities;
 - (b) "Extension of a Sewer System" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer system in order to provide service to a

use, regardless of whether the use is inside the service boundaries of the public or private service provider. The sewer service authorized in section (8) of this rule is not an extension of a sewer;

(c) "No practicable alternative to a sewer system" means a determination by the Department of Environmental Quality (DEQ) or the Oregon Health Division, pursuant to criteria in OAR chapter 340, division 71, and other applicable rules and laws, that an existing public health hazard cannot be adequately abated by the repair or maintenance of existing sewer systems or on-site systems or by the installation of new on-site systems as defined in OAR 340-071-0100;

(d) "Public health hazard" means a condition whereby it is probable that the public is exposed to disease-caused physical suffering or illness due to the presence of inadequately treated sewage;

(e) "Sewage" means the water-carried human, animal, vegetable, or industrial waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present;

(f) "Sewer system" means a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal. The following are not considered a "sewer system" for purposes of this rule:

(A) A system provided solely for the collection, transfer and/or disposal of storm water runoff;

(B) A system provided solely for the collection, transfer and/or disposal of animal waste from a farm use as defined in ORS 215.303.

(2) Except as provided in sections (3), (4), (8), and (9) of this rule, and consistent with Goal 11, a local government shall not allow:

(a) The establishment of new sewer systems outside urban growth boundaries or unincorporated community boundaries;

(b) The extension of sewer lines from within urban growth boundaries or unincorporated community boundaries in order to serve uses on land outside those boundaries;

(c) The extension of sewer systems that currently serve land outside urban growth boundaries and unincorporated community boundaries in order to serve uses that are outside such boundaries and are not served by the system on July 28, 1998.

(3) Components of a sewer system that serve lands inside an urban growth boundary (UGB) may be placed on lands outside the boundary provided that the conditions in subsections (a) and (b) of this section are met, as follows:

(a) Such placement is necessary to:

(A) Serve lands inside the UGB more efficiently by traversing lands outside the boundary;

(B) Serve lands inside a nearby UGB or unincorporated community;

(C) Connect to components of the sewer system lawfully located on rural lands, such as outfall or treatment facilities; or

(D) Transport leachate from a landfill on rural land to a sewer system inside a UGB;

(b) The local government:

(A) Adopts land use regulations to ensure the sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries, except as authorized under section (4) of this rule; and

(B) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.

- (4) A local government may allow the establishment of a new sewer system, or the extension of an existing sewer system, to serve land outside urban growth boundaries and unincorporated community boundaries in order to mitigate a public health hazard, provided that the conditions in subsections (a) and (b) of this section are met, as follows:
- (a) The DEQ or the Oregon Health Division initially:
 - (A) Determines that a public health hazard exists in the area;
 - (B) Determines that the health hazard is caused by sewage from development that existed in the area on July 28, 1998;
 - (C) Describes the physical location of the identified sources of the sewage contributing to the health hazard; and
 - (D) Determines that there is no practicable alternative to a sewer system in order to abate the public health hazard; and
 - (b) The local government, in response to the determination in subsection (a) of this section, and based on recommendations by DEQ and the Oregon Health Division where appropriate:
 - (A) Determines the type of sewer system and service to be provided, pursuant to section (5) of this rule;
 - (B) Determines the boundaries of the sewer system service area, pursuant to section (6) of this rule;
 - (C) Adopts land use regulations that ensure the sewer system is designed and constructed so that its capacity does not exceed the minimum necessary to serve the area within the boundaries described under paragraph (B) of this subsection, except for urban reserve areas as provided under OAR 660-021-0040(6);
 - (D) Adopts land use regulations to prohibit the sewer system from serving any uses other than those existing or allowed in the identified service area on the date the sewer system is approved;
 - (E) Adopts plan and zone amendments to ensure that only rural land uses are allowed on rural lands in the area to be served by the sewer system, consistent with Goal 14 and OAR 660-004-0018, unless a Goal 14 exception has been acknowledged;
 - (F) Ensures that land use regulations do not authorize a higher density of residential development than would be authorized without the presence of the sewer system; and
 - (G) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.
- (5) Where the DEQ determines that there is no practicable alternative to a sewer system, the local government, based on recommendations from DEQ, shall determine the most practicable sewer system to abate the health hazard considering the following:
- (a) The system must be sufficient to abate the public health hazard pursuant to DEQ requirements applicable to such systems; and
 - (b) New or expanded sewer systems serving only the health hazard area shall be generally preferred over the extension of a sewer system from an urban growth boundary. However, if the health hazard area is within the service area of a sanitary authority or district, the sewer system operated by the authority or district, if available and sufficient, shall be preferred over other sewer system options.
- (6) The local government, based on recommendations from DEQ and, where appropriate, the Oregon Health Division, shall determine the area to be served by a sewer system necessary to abate a health hazard. The area shall include only the following:

- (a) Lots and parcels that contain the identified sources of the sewage contributing to the health hazard;
- (b) Lots and parcels that are surrounded by or abut the parcels described in subsection (a) of this section, provided the local government demonstrates that, due to soils, insufficient lot size, or other conditions, there is a reasonably clear probability that onsite systems installed to serve uses on such lots or parcels will fail and further contribute to the health hazard.
- (7) The local government or agency responsible for the determinations pursuant to sections (4) through (6) of this rule shall provide notice to all affected local governments and special districts regarding opportunities to participate in such determinations.
- (8) A local government may allow a residential use to connect to an existing sewer line provided the conditions in subsections (a) through (h) of this section are met:
 - (a) The sewer service is to a residential use located on a parcel as defined by ORS 215.010(1), or a lot created by subdivision of land as defined in ORS 92.010;
 - (b) The parcel or lot is within a special district or sanitary authority sewer service boundary that existed on January 1, 2005, or the parcel is partially within such boundary and the sewer service provider is willing or obligated to provide service to the portion of the parcel or lot located outside that service boundary;
 - (c) The sewer service is to connect to a residential use located within a rural residential area, as described in OAR 660-004-0040, which existed on January 1, 2005;
 - (d) The nearest connection point from the residential parcel or lot to be served is within 300 feet of a sewer line that existed at that location on January 1, 2005;
 - (e) It is determined by the local government to be practical to connect the sewer service to the residential use considering geographic features or other natural or man-made constraints;
 - (f) The sewer service authorized by this section shall be available to only those parcels and lots specified in this section, unless service to other parcels or lots is authorized under sections (4) or (9) of this rule;
 - (g) The existing sewer line, from where the nearest connection point is determined under subsection (8)(d) of this rule, is not located within an urban growth boundary or unincorporated community boundary; and
 - (h) The connection of the sewer service shall not be relied upon to authorize a higher density of residential development than would be authorized without the presence of the sewer service, and shall not be used as a basis for an exception to Goal 14 as required by OAR 660-004-0040(6).
- (9) A local government may allow the establishment of new sewer systems or the extension of sewer lines not otherwise provided for in section (4) of this rule, or allow a use to connect to an existing sewer line not otherwise provided for in section (8) of this rule, provided the standards for an exception to Goal 11 have been met, and provided the local government adopts land use regulations that prohibit the sewer system from serving any uses or areas other than those justified in the exception. Appropriate reasons and facts for an exception to Goal 11 include but are not limited to the following:
 - (a) The new system, or extension of an existing system, is necessary to avoid an imminent and significant public health hazard that would otherwise result if the sewer service is not provided; and, there is no practicable alternative to the sewer system in order to avoid the imminent public health hazard, or
 - (b) The extension of an existing sewer system will serve land that, by operation of federal law, is not subject to statewide planning Goal 11 and, if necessary, Goal 14.

660-011-0065

Water Service to Rural Lands

(1) As used in this rule, unless the context requires otherwise:

(a) "Establishment" means the creation of a new water system and all associated physical components, including systems provided by public or private entities;

(b) "Extension of a water system" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing water system in order to provide service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider.

(c) "Water system" shall have the same meaning as provided in Goal 11, and includes all pipe, conduit, pipeline, mains, or other physical components of such a system.

(2) Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:

(a) Allow an increase in a base density in a residential zone due to the availability of service from a water system;

(b) Allow a higher density for residential development served by a water system than would be authorized without such service; or

(c) Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.

(3) Applicable provisions of this rule, rather than conflicting provisions of local acknowledged zoning ordinances, shall immediately apply to local land use decisions filed subsequent to the effective date of this rule.

660-012-0060

Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.

(e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if:

(A) The provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards;

(B) The providers of facilities being improved at other locations provide written statements of approval; and

(C) The local jurisdictions where facilities are being improved provide written statements of approval.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the

time of the development through one or a combination of transportation improvements or measures;

(c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.

(4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)–(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-quarter mile of the ramp terminal intersection of an existing or planned interchange on an Interstate Highway; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)–(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

(5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.

(6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in sections (1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in subsections (a)–(d) below;

(a) Absent adopted local standards or detailed information about the vehicle trip reduction benefits of mixed-use, pedestrian-friendly development, local governments shall assume that uses located within a mixed-use, pedestrian-friendly center, or neighborhood, will generate 10% fewer daily and peak hour trips than are specified in available published estimates, such as those provided by the Institute of Transportation Engineers (ITE) Trip Generation Manual that do not specifically account for the effects of mixed-use, pedestrian-friendly development. The 10% reduction allowed for by this section shall be available only if uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

(b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in subsection (a) above;

(c) Where a local government assumes or estimates lower vehicle trip generation as provided in subsection (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian

connectivity and access to transit as provided for in OAR 660-012-0045(3) and (4). The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with 660-012-0045(3) and (4) or through conditions of approval or findings adopted with the plan amendment that assure compliance with these rule requirements at the time of development approval; and (d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will vary from case to case and may be somewhat higher or lower than presumed pursuant to subsection (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

(7) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in subsections (a)–(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in OAR 660-012-0020(2)(b) and 660-012-0045(3):

(a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;

(b) The local government has not adopted a TSP or local street plan which complies with OAR 660-012-0020(2)(b) or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as contained in Title 6, Section 3 of the Urban Growth Management Functional Plan; and

(c) The proposed amendment would significantly affect a transportation facility as provided in section (1).

(8) A "mixed-use, pedestrian-friendly center or neighborhood" for the purposes of this rule, means:

(a) Any one of the following:

(A) An existing central business district or downtown;

(B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;

(C) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or

(D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.

(b) An area other than those listed in subsection (a) above which includes or is planned to include the following characteristics:

(A) A concentration of a variety of land uses in a well-defined area, including the following:

(i) Medium to high density residential development (12 or more units per acre);

(ii) Offices or office buildings;

- (iii) Retail stores and services;
 - (iv) Restaurants; and
 - (v) Public open space or private open space which is available for public use, such as a park or plaza.
 - (B) Generally include civic or cultural uses;
 - (C) A core commercial area where multi-story buildings are permitted;
 - (D) Buildings and building entrances oriented to streets;
 - (E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;
 - (F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;
 - (G) One or more transit stops (in urban areas with fixed route transit service); and
 - (H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.
- (9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.
- (a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;
 - (b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and
 - (c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.
- (10) Notwithstanding sections (1) and (2) of this rule, a local government may amend a functional plan, a comprehensive plan or a land use regulation without applying performance standards related to motor vehicle traffic congestion (e.g. volume to capacity ratio or V/C), delay or travel time if the amendment meets the requirements of subsection (a) of this section. This section does not exempt a proposed amendment from other transportation performance standards or policies that may apply including, but not limited to, safety for all modes, network connectivity for all modes (e.g. sidewalks, bicycle lanes) and accessibility for freight vehicles of a size and frequency required by the development.
- (a) A proposed amendment qualifies for this section if it:
 - (A) Is a map or text amendment affecting only land entirely within a multimodal mixed-use area (MMA); and
 - (B) Is consistent with the definition of an MMA and consistent with the function of the MMA as described in the findings designating the MMA.
 - (b) For the purpose of this rule, “multimodal mixed-use area” or “MMA” means an area:
 - (A) With a boundary adopted by a local government as provided in subsection (d) or (e) of this section and that has been acknowledged;
 - (B) Entirely within an urban growth boundary;

- (C) With adopted plans and development regulations that allow the uses listed in paragraphs (8)(b)(A) through (C) of this rule and that require new development to be consistent with the characteristics listed in paragraphs (8)(b)(D) through (H) of this rule;
- (D) With land use regulations that do not require the provision of off-street parking, or regulations that require lower levels of off-street parking than required in other areas and allow flexibility to meet the parking requirements (e.g. count on-street parking, allow long-term leases, allow shared parking); and
- (E) Located in one or more of the categories below:
- (i) At least one-quarter mile from any ramp terminal intersection of existing or planned interchanges;
 - (ii) Within the area of an adopted Interchange Area Management Plan (IAMP) and consistent with the IAMP; or
 - (iii) Within one-quarter mile of a ramp terminal intersection of an existing or planned interchange if the mainline facility provider has provided written concurrence with the MMA designation as provided in subsection (c) of this section.
- (c) When a mainline facility provider reviews an MMA designation as provided in subparagraph (b)(E)(iii) of this section, the provider must consider the factors listed in paragraph (A) of this subsection.
- (A) The potential for operational or safety effects to the interchange area and the mainline highway, specifically considering:
- (i) Whether the interchange area has a crash rate that is higher than the statewide crash rate for similar facilities;
 - (ii) Whether the interchange area is in the top ten percent of locations identified by the safety priority index system (SPIS) developed by ODOT; and
 - (iii) Whether existing or potential future traffic queues on the interchange exit ramps extend onto the mainline highway or the portion of the ramp needed to safely accommodate deceleration.
- (B) If there are operational or safety effects as described in paragraph (A) of this subsection, the effects may be addressed by an agreement between the local government and the facility provider regarding traffic management plans favoring traffic movements away from the interchange, particularly those facilitating clearing traffic queues on the interchange exit ramps.
- (d) A local government may designate an MMA by adopting an amendment to the comprehensive plan or land use regulations to delineate the boundary following an existing zone, multiple existing zones, an urban renewal area, other existing boundary, or establishing a new boundary. The designation must be accompanied by findings showing how the area meets the definition of an MMA. Designation of an MMA is not subject to the requirements in sections (1) and (2) of this rule.
- (e) A local government may designate an MMA on an area where comprehensive plan map designations or land use regulations do not meet the definition, if all of the other elements meet the definition, by concurrently adopting comprehensive plan or land use regulation amendments necessary to meet the definition. Such amendments are not subject to performance standards related to motor vehicle traffic congestion, delay or travel time.
- (11) A local government may approve an amendment with partial mitigation as provided in section (2) of this rule if the amendment complies with subsection (a) of this section, the amendment meets the balancing test in subsection (b) of this section, and the local government coordinates as provided in subsection (c) of this section.

- (a) The amendment must meet paragraphs (A) and (B) of this subsection or meet paragraph (D) of this subsection.
- (A) Create direct benefits in terms of industrial or traded-sector jobs created or retained by limiting uses to industrial or traded-sector industries.
- (B) Not allow retail uses, except limited retail incidental to industrial or traded sector development, not to exceed five percent of the net developable area.
- (C) For the purpose of this section:
- (i) “Industrial” means employment activities generating income from the production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development.
- (ii) “Traded-sector” means industries in which member firms sell their goods or services into markets for which national or international competition exists.
- (D) Notwithstanding paragraphs (A) and (B) of this subsection, an amendment complies with subsection (a) if all of the following conditions are met:
- (i) The amendment is within a city with a population less than 10,000 and outside of a Metropolitan Planning Organization.
- (ii) The amendment would provide land for “Other Employment Use” or “Prime Industrial Land” as those terms are defined in OAR 660-009-0005.
- (iii) The amendment is located outside of the Willamette Valley as defined in ORS 215.010.
- (E) The provisions of paragraph (D) of this subsection are repealed on January 1, 2017.
- (b) A local government may accept partial mitigation only if the local government determines that the benefits outweigh the negative effects on local transportation facilities and the local government receives from the provider of any transportation facility that would be significantly affected written concurrence that the benefits outweigh the negative effects on their transportation facilities. If the amendment significantly affects a state highway, then ODOT must coordinate with the Oregon Business Development Department regarding the economic and job creation benefits of the proposed amendment as defined in subsection (a) of this section. The requirement to obtain concurrence from a provider is satisfied if the local government provides notice as required by subsection (c) of this section and the provider does not respond in writing (either concurring or non-concurring) within forty-five days.
- (c) A local government that proposes to use this section must coordinate with Oregon Business Development Department, Department of Land Conservation and Development, area commission on transportation, metropolitan planning organization, and transportation providers and local governments directly impacted by the proposal to allow opportunities for comments on whether the proposed amendment meets the definition of economic development, how it would affect transportation facilities and the adequacy of proposed mitigation. Informal consultation is encouraged throughout the process starting with pre-application meetings. Coordination has the meaning given in ORS 197.015 and Goal 2 and must include notice at least 45 days before the first evidentiary hearing. Notice must include the following:
- (A) Proposed amendment.
- (B) Proposed mitigating actions from section (2) of this rule.
- (C) Analysis and projections of the extent to which the proposed amendment in combination with proposed mitigating actions would fall short of being consistent with the function, capacity, and performance standards of transportation facilities.

(D) Findings showing how the proposed amendment meets the requirements of subsection (a) of this section.

(E) Findings showing that the benefits of the proposed amendment outweigh the negative effects on transportation facilities.

660-023-0000

Purpose and Intent

This division establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. This division explains how local governments apply Goal 5 when conducting periodic review and when amending acknowledged comprehensive plans and land use regulations.

660-023-0010

Definitions

As used in this division, unless the context requires otherwise:

(1) "Conflicting use" is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses.

(2) "ESEE consequences" are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

(3) "Impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.

(4) "Inventory" is a survey, map, or description of one or more resource sites that is prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features associated with such sites. As a verb, "inventory" means to collect, prepare, compile, or refine information about one or more resource sites. (See resource list.)

(5) "PAPA" is a "post-acknowledgment plan amendment." The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

(6) "Program" or "program to achieve the goal" is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as part of the comprehensive plan and land use regulations (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).

(7) "Protect," when applied to an individual resource site, means to limit or prohibit uses that conflict with a significant resource site (except as provided in OAR 660-023-0140, 660-023-0180, and 660-023-0190). When applied to a resource category, "protect" means to develop a program consistent with this division.

(8) "Resource category" is any one of the cultural or natural resource groups listed in Goal 5.

(9) "Resource list" includes the description, maps, and other information about significant Goal 5 resource sites within a jurisdiction, adopted by a local government as a part of the comprehensive

plan or as a land use regulation. A "plan inventory" adopted under OAR 660-016-0000(5)(c) shall be considered to be a resource list.

(10) "Resource site" or "site" is a particular area where resources are located. A site may consist of a parcel or lot or portion thereof or may include an area consisting of two or more contiguous lots or parcels.

(11) "Safe harbor" has the meaning given to it in OAR 660-023-0020(2).

660-023-0020

Standard and Specific Rules and Safe Harbors

(1) The standard Goal 5 process, OAR 660-023-0030 through 660-023-0050, consists of procedures and requirements to guide local planning for all Goal 5 resource categories. This division also provides specific rules for each of the fifteen Goal 5 resource categories (see OAR 660-023-0090 through 660-023-0230). In some cases this division indicates that both the standard and the specific rules apply to Goal 5 decisions. In other cases, this division indicates that the specific rules supersede parts or all of the standard process rules (i.e., local governments must follow the specific rules rather than the standard Goal 5 process). In case of conflict, the resource-specific rules set forth in OAR 660-023-0090 through 660-023-0230 shall supersede the standard provisions in OAR 660-023-0030 through 660-023-0050.

(2) A "safe harbor" consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process. For example, a jurisdiction may choose to identify "significant" riparian corridors using the safe harbor criteria under OAR 660-023-0090(5) rather than follow the general requirements for determining "significance" in the standard Goal 5 process under OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.

660-023-0030

Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal 5 resource sites;
- (b) Determine the adequacy of the information;
- (c) Determine the significance of resource sites; and
- (d) Adopt a list of significant resource sites.

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

(a) Notify state and federal resource management agencies and request current resource information; and

(b) Consider other information submitted in the local process.

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.

(b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.

(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

(a) The quality, quantity, and location information;

(b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and

(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

660-023-0040

ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

(a) Identify conflicting uses;

(b) Determine the impact area;

(c) Analyze the ESEE consequences; and

(d) Develop a program to achieve Goal 5.

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the

geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

660-023-0050

Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

- (b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or
 - (c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).
- (3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:
- (a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and
 - (b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

660-023-0060

Notice and Land Owner Involvement

Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances.

660-023-0070

Buildable Lands Affected by Goal 5 Measures

- (1) If measures to protect significant resource sites inside urban growth boundaries affect the inventory of buildable lands in acknowledged plans required by Goals 9, 10 and 14, a local government outside of the Metro UGB, and Metro inside the Metro UGB, prior to or at the next periodic review, shall:
- (a) Amend its urban growth boundary to provide additional buildable lands sufficient to compensate for the loss of buildable lands caused by the application of Goal 5;
 - (b) Redesignate other land to replace identified land needs under Goals 9, 10, and 14 provided such action does not take the plan out of compliance with other statewide goals; or
 - (c) Adopt a combination of the actions described in subsections (a) and (b) of this section.
- (2) If a local government redesignates land for higher density under subsections (1)(b) or (c) of this rule in order to meet identified housing needs, the local government shall ensure that the redesignated land is in locations appropriate for the housing types, and is zoned at density ranges that are likely to be achieved by the housing market.
- (3) Where applicable, the requirements of ORS 197.296 shall supersede the requirements of sections (1) and (2) of this rule.

660-023-0090

Riparian Corridors

(1) For the purposes of this rule, the following definitions apply:

(a) "Fish habitat" means those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.

(b) "Riparian area" is the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

(c) "Riparian corridor" is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.

(d) "Riparian corridor boundary" is an imaginary line that is a certain distance upland from the top bank, for example, as specified in section (5) of this rule.

(e) "Stream" is a channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

(f) "Structure" is a building or other major improvement that is built, constructed, or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components, that are not customarily regulated through zoning ordinances.

(g) "Top of bank" shall have the same meaning as "bankfull stage" defined in OAR 141-085-0010(12).

(h) "Water area" is the area between the banks of a lake, pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

(2) Local governments shall amend acknowledged plans in order to inventory riparian corridors and provide programs to achieve Goal 5 prior to or at the first periodic review following the effective date of this rule, except as provided in OAR 660-023-0250(5).

(3) Local governments shall inventory and determine significant riparian corridors by following either the safe harbor methodology described in section (5) of this rule or the standard inventory process described in OAR 660-023-0030 as modified by the requirements in section (4) of this rule. The local government may divide the riparian corridor into a series of stream sections (or reaches) and regard these as individual resource sites.

(4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Local governments may postpone determination of the precise location of the riparian area on lands designated for farm or forest use until receipt of applications for local permits for uses that would conflict with these resources. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:

(a) Oregon Department of Forestry stream classification maps;

(b) United States Geological Service (USGS) 7.5-minute quadrangle maps;

(c) National Wetlands Inventory maps;

(d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;

(e) Federal Emergency Management Agency (FEMA) flood maps; and

(f) Aerial photographs.

(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction

using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

(a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.

(b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.

(c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

(d) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, local governments shall apply OAR 660-023-0030 rather than apply the safe harbor provisions of this section.

(6) Local governments shall develop a program to achieve Goal 5 using either the safe harbor described in section (8) of this rule or the standard Goal 5 ESEE process in OAR 660-023-0040 and 660-023-0050 as modified by section (7) of this rule.

(7) When following the standard ESEE process in OAR 660-023-0040 and 660-023-0050, a local government shall comply with Goal 5 if it identifies at least the following activities as conflicting uses in riparian corridors:

(a) The permanent alteration of the riparian corridor by placement of structures or impervious surfaces, except for:

(A) Water-dependent or water-related uses; and

(B) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area; and

(b) Removal of vegetation in the riparian area, except:

(A) As necessary for restoration activities, such as replacement of vegetation with native riparian species;

(B) As necessary for the development of water-related or water-dependent uses; and

(C) On lands designated for agricultural or forest use outside UGBs.

(8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:

(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

(A) Streets, roads, and paths;

(B) Drainage facilities, utilities, and irrigation pumps;

(C) Water-related and water-dependent uses; and

(D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:

(A) Removal of non-native vegetation and replacement with native plant species; and

(B) Removal of vegetation necessary for the development of water-related or water-dependent uses;

(c) Notwithstanding subsection (b) of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4;

(d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance; and

(e) The ordinance may authorize the permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (5)(a) of this rule upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

660-023-0100

Wetlands

(1) For purposes of this rule, a "wetland" is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Local governments shall amend acknowledged plans and land use regulations prior to or at periodic review to address the requirements of this division, as set out in OAR 660-023-0250(5) through (7). The standard inventory process requirements in OAR 660-023-0030 do not apply to wetlands. Instead, local governments shall follow the requirements of section (3) of this rule in order to inventory and determine significant wetlands.

(3) For areas inside urban growth boundaries (UGBs) and urban unincorporated communities (UUCs), local governments shall:

(a) Conduct a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 through 141-086-0240 and adopt the LWI as part of the comprehensive plan or as a land use regulation; and

(b) Determine which wetlands on the LWI are "significant wetlands" using the criteria adopted by the Division of State Lands (DSL) pursuant to ORS 197.279(3)(b) and adopt the list of significant wetlands as part of the comprehensive plan or as a land use regulation.

(4) For significant wetlands inside UGBs and UUCs, a local government shall:

(a) Complete the Goal 5 process and adopt a program to achieve the goal following the requirements of OAR 660-023-0040 and 660-023-0050; or

(b) Adopt a safe harbor ordinance to protect significant wetlands consistent with this subsection, as follows:

(A) The protection ordinance shall place restrictions on grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and

(B) The ordinance shall include a variance procedure to consider hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions under paragraph (A) of this subsection for any lands demonstrated to have been rendered not buildable by application of the ordinance.

(5) For areas outside UGBs and UUCs, local governments shall either adopt the statewide wetland inventory (SWI; see ORS 196.674) as part of the local comprehensive plan or as a land use regulation, or shall use a current version for the purpose of section (7) of this rule.

(6) For areas outside UGBs and UUCs, local governments are not required to amend acknowledged plans and land use regulations in order to determine significant wetlands and complete the Goal 5 process. Local governments that choose to amend acknowledged plans for areas outside UGBs and UUCs in order to inventory and protect significant wetlands shall follow the requirements of sections (3) and (4) of this rule.

(7) All local governments shall adopt land use regulations that require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory, as per ORS 227.350 and 215.418, or on the SWI as provided in section (5) of this rule.

(8) All jurisdictions may inventory and protect wetlands under the procedures and requirements for wetland conservation plans adopted pursuant to ORS 196.668 et seq. A wetlands conservation plan approved by the director of DSL shall be deemed to comply with Goal 5 (ORS 197.279(1)).

660-023-0110

Wildlife Habitat

(1) For purposes of this rule, the following definitions apply:

(a) "Documented" means that an area is shown on a map published or issued by a state or federal agency or by a professional with demonstrated expertise in habitat identification.

(b) "Wildlife habitat" is an area upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites.

(2) Local governments shall conduct the inventory process and determine significant wildlife habitat as set forth in OAR 660-023-0250(5) by following either the safe harbor methodology described in section (4) of this rule or the standard inventory process described in OAR 660-023-0030.

(3) When gathering information regarding wildlife habitat under the standard inventory process in OAR 660-023-0030(2), local governments shall obtain current habitat inventory information from the Oregon Department of Fish and Wildlife (ODFW), and other state and federal agencies. These inventories shall include at least the following:

(a) Threatened, endangered, and sensitive wildlife species habitat information;

(b) Sensitive bird site inventories; and

(c) Wildlife species of concern and/or habitats of concern identified and mapped by ODFW (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs).

(4) Local governments may determine wildlife habitat significance under OAR 660-023-0040 or apply the safe harbor criteria in this section. Under the safe harbor, local governments may determine that "wildlife" does not include fish, and that significant wildlife habitat is only those sites where one or more of the following conditions exist:

(a) The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;

(b) The habitat has documented occurrences of more than incidental use by a species described in subsection (a) of this section;

- (c) The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to [ORS 527.710](#) (Oregon Forest Practices Act) and OAR 629-024-0700 (Forest Practices Rules);
 - (d) The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or
 - (e) The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, or pigeon springs).
- (5) For certain threatened or endangered species sites, publication of location information may increase the threat of habitat or species loss. Pursuant to [ORS 192.501\(13\)](#), local governments may limit publication, display, and availability of location information for such sites. Local governments may adopt inventory maps of these areas, with procedures to allow limited availability to property owners or other specified parties.
- (6) As set out in OAR 660-023-0250(5), local governments shall develop programs to protect wildlife habitat following the standard procedures and requirements of OAR 660-023-0040 and 660-023-0050. Local governments shall coordinate with appropriate state and federal agencies when adopting programs intended to protect threatened, endangered, or sensitive species habitat areas.

660-023-0250

Applicability

- (1) This division replaces OAR 660, Division 16, except with regard to cultural resources, and certain PAPAs and periodic review work tasks described in sections (2) and (4) of this rule. Local governments shall follow the procedures and requirements of this division or OAR 660, Division 16, whichever is applicable, in the adoption or amendment of all plan or land use regulations pertaining to Goal 5 resources. The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.
- (2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, Division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section "initiated" means that the local government has deemed the PAPA application to be complete.
- (3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:
- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;
 - (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or
 - (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.
- (4) Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that

are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, Division 16.

(5) Local governments are required to amend acknowledged plan or land use regulations at periodic review to address Goal 5 and the requirements of this division only if one or more of the following conditions apply, unless exempted by the director under section (7) of this rule:

(a) The plan was acknowledged to comply with Goal 5 prior to the applicability of OAR 660, Division 16, and has not subsequently been amended in order to comply with that division;

(b) The jurisdiction includes riparian corridors, wetlands, or wildlife habitat as provided under OAR 660-023-0090 through 660-023-0110, or aggregate resources as provided under OAR 660-023-0180; or

(c) New information is submitted at the time of periodic review concerning resource sites not addressed by the plan at the time of acknowledgement or in previous periodic reviews, except for historic, open space, or scenic resources.

(6) If a local government undertakes a Goal 5 periodic review task that concerns specific resource sites or specific Goal 5 plan or implementing measures, this action shall not by itself require a local government to conduct a new inventory of the affected Goal 5 resource category, or revise acknowledged plans or implementing measures for resource categories or sites that are not affected by the work task.

(7) The director may exempt a local government from a work task for a resource category required under section (5) of this rule. The director shall consider the following factors in this decision:

(a) Whether the plan and implementing ordinances for the resource category substantially comply with the requirements of this division; and

(b) The resources of the local government or state agencies available for periodic review, as set forth in ORS 197.633(3)(g).

(8) Local governments shall apply the requirements of this division to work tasks in periodic review work programs approved or amended under ORS 197.633(3)(g) after September 1, 1996. Local governments shall apply OAR 660, Division 16, to work tasks in periodic review work programs approved before September 1, 1996, unless the local government chooses to apply this division to one or more resource categories, and provided:

(a) The same division is applied to all work tasks concerning any particular resource category;

(b) All the participating local governments agree to apply this division for work tasks under the jurisdiction of more than one local government; and

(c) The local government provides written notice to the department. If application of this division will extend the time necessary to complete a work task, the director or the commission may consider extending the time for completing the work task as provided in OAR 660-025-0170.

660-024-0000

Purpose and Applicability

(1) The rules in this division clarify procedures and requirements of Goal 14 regarding a local government adoption or amendment of an urban growth boundary (UGB).

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

(3) The rules in this division adopted on October 5, 2006, are effective April 5, 2007. The rules in this division amended on March 20, 2008, are effective April 18, 2008. The rules in this

division adopted March 13, 2009, and amendments to rules in this division adopted on that date, are effective April 16, 2009, except as follows:

- (a) A local government may choose to not apply this division to a plan amendment concerning the evaluation or amendment of a UGB, regardless of the date of that amendment, if the local government initiated the evaluation or amendment of the UGB prior to April 5, 2007;
- (b) For purposes of this rule, "initiated" means that the local government either:
 - (A) Issued the public notice specified in OAR 660-018-0020 for the proposed plan amendment concerning the evaluation or amendment of the UGB; or
 - (B) Received LCDC approval of a periodic review work program that includes a work task to evaluate the UGB land supply or amend the UGB;
- (c) A local government choice whether to apply this division must include the entire division and may not differ with respect to individual rules in the division.

660-024-0010

Definitions

In this division, the definitions in the statewide goals and the following definitions apply:

- (1) "Buildable Land" is a term applying to residential land only, and has the same meaning as provided in OAR 660-008-0005(2).
- (2) "EOA" means an economic opportunities analysis carried out under OAR 660-009-0015.
- (3) "Housing need" or "housing need analysis" refers to a local determination as to the needed amount, types and densities of housing that will be:
 - (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the 20-year planning period;
 - (b) Consistent with any adopted regional housing standards, state statutes regarding housing need and with Goal 10 and rules interpreting that goal; and
 - (c) Consistent with Goal 14 requirements.
- (4) "Local government" means a city or county, or a metropolitan service district described in ORS 197.015(13).
- (5) "Metro boundary" means the boundary of a metropolitan service district defined in ORS 197.015(13).
- (6) "Net Buildable Acre" consists of 43,560 square feet of residentially designated buildable land after excluding future rights-of-way for streets and roads.
- (7) "Safe harbor" means an optional course of action that a local government may use to satisfy a requirement of Goal 14. Use of a safe harbor prescribed in this division will satisfy the requirement for which it is prescribed. A safe harbor is not the only way or necessarily the preferred way to comply with a requirement and it is not intended to interpret the requirement for any purpose other than applying a safe harbor within this division.
- (8) "Suitable vacant and developed land" describes land for employment opportunities, and has the same meaning as provided in OAR 660-009-0005 section (1) for "developed land," section (12) for "suitable," and section (14) for "vacant land."
- (9) "UGB" means "urban growth boundary."
- (10) "Urban area" means the land within a UGB.

660-024-0020

Adoption or Amendment of a UGB

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

(a) The exceptions process in Goal 2 and OAR chapter 660, division 4, is not applicable unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1);

(b) Goals 3 and 4 are not applicable;

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

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

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

(f) Goals 16 to 18 are not applicable to land added to the UGB unless the land is within a coastal shorelands boundary;

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

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

660-024-0040

Land Need

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

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

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

(b) If more recent than the date determined in subsection (a), at the beginning of the 20-year period specified in the appropriate coordinated population forecast for the urban area as

determined under Rules in OAR 660, div 32, unless ORS 197.296 requires a different date for local governments subject to that statute.

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

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

(5) Except for a metropolitan service district described in ORS 197.015(13), the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR chapter 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses consistent with 660-009-0025. Employment land need may be based on an estimate of job growth over the planning period; local government must provide a reasonable justification for the job growth estimate but Goal 14 does not require that job growth estimates necessarily be proportional to population growth. Local governments in Crook, Deschutes or Jefferson Counties may determine the need for Regional Large-Lot Industrial Land by following the provisions of 660-024-0045 for areas subject to that rule.

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

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

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

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

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

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

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

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

(f) A local government outside of the Metro boundary may determine housing needs for purposes of a UGB amendment using the combined Housing Density and Housing Mix safe harbors described in this subsection and in Table 1, or in combination with the Alternative Density safe harbor described under subsection (g) of this section and in Table 2. To meet the Housing Density safe harbor in this subsection, the local government may Assume For UGB Analysis that all buildable land in the urban area, including land added to the UGB, will develop at the applicable average overall density specified in column B of Table 1. Buildable land in the UGB, including land added to the UGB, must also be Zoned to Allow at least the average overall maximum density specified as Zone To Allow in column B of Table 1. Finally, the local government must adopt zoning that ensures buildable land in the urban area, including land added to the UGB, cannot develop at an average overall density less than the applicable Required Overall Minimum density specified in column B of Table 1. To meet the Housing Mix safe harbor in this subsection, the local government must Zone to Allow the applicable percentages of low, medium and high density residential specified in column C of Table 1.

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

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

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

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

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

(A) Determine the existing percentages of low density, medium density, and high density housing on developed land (not “buildable land”) in the urban area at the time the local government initiated the evaluation or amendment of the UGB;

(B) Increase the percentage of medium density housing estimated in paragraph (A) of this subsection by 10 percent, increase the percentage of high density housing estimated in paragraph (A) of this subsection by five percent, as illustrated in Table 3, and decrease the percentage of low density single family housing by a proportionate amount so that the overall mix total is 100 percent, and

(C) Zone to Allow the resultant housing mix determined under subparagraphs (A) and (B) of this subsection.

(j) Tables 1, 2 and 3 are adopted as part of this rule, and the following definitions apply to terms used in the tables:

(A) “Assume For UGB Analysis” means the local government may assume that the UGB will develop over the 20-year planning period at the applicable overall density specified in Column B of Tables 1 and 2.

(B) “Attached housing” means housing where each unit shares a common wall, ceiling or floor with at least one other unit. “Attached housing” includes, but is not limited to, apartments, condominiums, and common-wall dwellings or row houses where each dwelling unit occupies a separate lot.

(C) “Average Overall Density” means the average density of all buildable land in the UGB, including buildable land already inside the UGB and buildable land added to the UGB, including land zoned for residential use that is presumed to be needed for schools, parks and other institutional uses.

(D) “Coordinated 20-year Population Forecast” and “20-year Population Forecast” under Column A of the Tables refers to the appropriate population forecast for the urban area determined under rules in OAR 660, div 32.

(E) “Density” means the number of dwelling units per net buildable acre.

(F) “High Value Farm Land” has the same meaning as the term defined in ORS 195.300(10).

(G) “Required Overall Minimum” means a minimum allowed overall average density, or a “density floor,” that must be ensured in the applicable residential zones with respect to the overall supply of buildable land for that zone in the urban area for the 20-year planning period.

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

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

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

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

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

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

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

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

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

660-024-0050

Land Inventory and Response to Deficiency

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

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

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

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

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

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

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

(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.

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

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

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

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

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

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

(B) Compliance with Goal 14 Boundary Location factors.

660-024-0060

Boundary Location Alternatives Analysis

(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 OAR 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) to (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.

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

- (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:
- (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.