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March 31, 2025

Via Oregon Legislature Website

House Committee on Housing and Homelessness  
900 Court St NE  
Salem, OR 97301

RE: HB 3921/ Opposition to Proposed  
Our Client: Sane Orderly Development (SOD)

Dear Chair Marsh, Vice Chairs Anderson and Breese-Iverson and House Committee Members:

On behalf of our client, Sane Orderly Development (SOD), we hereby provide the following comments in opposition to HB 3921.

**A. HB 3921 Violates the Separation of Powers Guaranteed by Article III, Section 1 of the Oregon Constitution.**

The proposed is unconstitutional under Article III, Section 1 of the Oregon Constitution.

The Oregon Constitution guarantees a separation of powers between each of the three branches of government, and bars persons on one branch from exercising the functions of another, to wit:

**“Section 1. Separation of powers.** The powers of the Government shall be divided into three separate branches, the Legislative, the Executive, including the administrative, and the Judicial; no person charged with official duties under one of these branches, shall exercise any of the functions of another, except as this Constitution expressly provided.”

Consistently with this separation of powers, the Oregon Land Conservation and Development Commission (LCDC) is charged with evaluating amendments to local urban growth boundaries (UGBs) for consistency with the Oregon Statewide Planning Goals. *See* ORS 197.626. This review process provides for an initial review by the Oregon Department of Land Conservation and Development (DLCD) applying a system of priorities developed by LCDC under ORS 197A.285, and allows interested parties to appeal that decision to LCDC.

In this case, DLCD evaluated and rejected the City of Roseburg’s proposed UGB amendment in an order dated January 29, 2025. In that order, a copy of which is attached hereto, DLCD determined that the City of Roseburg’s proposed UGB amendment was inconsistent with applicable state law in a number of particulars, not least of which being that the City of Roseburg had:

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1. Improperly exchanged multi-family residential land in its UGB (when it has a 24-acre deficit of such land) for the low-density residential land outside its UGB (where it has a 352-acre surplus of such land);
2. Improperly refused to consider 18,537 acres of land (nearly 60% of its study area) for possible inclusion within the UGB based on factors that don't preclude development;
3. Improperly refused to consider an additional 10,575 acres of land for possible inclusion in the UGB by excluding entire subareas around the City; and
4. Improperly included agricultural land in the UGB contrary to the system of priorities established in 197A.285(2)(c), when there are hundreds of acres of rural residential lands and other nonresource areas around the existing UGB.

On February 19, 2025, the City of Roseburg and other interested parties appealed DLCD's decision and that matter is currently pending before LCDC.

HB 3921 would violate the separation of powers by precluding LCDC, as an executive agency, from carrying out its obligation to see that the laws are faithfully executed under Article V, Section 10.

The proposed legislation purport to acknowledge, and requires the Director of DLCD to acknowledge the UGB amendment as consistent with the Oregon Statewide Planning Goals, when the amendment is not. *See* HB 3921, § 2(1) ("The City of Roseburg Ordinance No. 3604, dated August 26, 2024...are deemed... acknowledged") §2(2)(a) ("Within 30 days of the effective date of this 2025 Act, the Director of the Department of Land Conservation and Development shall issue an order: (a) Acknowledging the amendments to urban growth boundary.")

In addition, HB 3921 not only dictates the outcome of a pending executive matter but requires both the revocation of the January 29, 2025 order and the dismissal of the pending appeal. *Id.* at § 2(2)(c) & §(2)(d). This intrudes far beyond merely legislating in area, and enters into functions that are reserved to the executive branch in enforcing the law.

As the apparent purpose of HB 3921 is to insert the legislature into a non-legislative determination in order to coerce the exercise of executive branch functions it is a violation of the separation of powers, and we respectfully request that the House Committee on Housing and Homelessness table the bill.

**B. The City of Roseburg Doesn't Need to Amend its Urban Growth Boundary to Add Low Density Residential Land.**

Even if the House Committee on Housing and Homelessness were to consider HB 3921, the City of Roseburg does need more low-density residential land, or to convert agricultural land for this use.

The crux of a UGB amendment is the need for additional land for a particular use. Statewide Planning Goal 14 provides for the establishment and amendment of urban growth boundaries based on demonstrated land need. See OAR 660-015-0000(14)<sup>1</sup>.

In the ordinary course, a UGB is established based on “the appropriate 20-year population forecast for the urban area” together with the identified housing needs to serve that population. OAR 660-024-0040(1). A buildable lands inventory evaluates the availability of land within the UGB to meet these needs, and if there is insufficient land to meet an identified housing need, a city will evaluate land for inclusion in the UGB based on the system of priorities in Goal 14. OAR 660-024-0050; OAR 660-024-0065; OAR 660-024-0067.

In this case, however, there is no residential land need identified in the City’s housing needs analysis. As per the City’s findings, of the 229 acres of the Charter Oaks area proposed to be included in the UGB, approximately 211.5 of those acres would be designated for “Low Density Residential” use. However, Roseburg has no need for additional low-density residential land.

In 2019 the Council adopted the Roseburg Housing Needs Analysis prepared by ECONorthwest. Based on the City’s projected population within the urban area, and available vacant and buildable land, the Housing Needs Analysis determined that the City already had a substantial surplus of low-density residential housing:

**“Low-Density Residential:** Roseburg has a surplus of capacity for about 1,020 dwelling units, or 352 gross acres of land to accommodate growth over the 2019-2039 period.”

*Housing Needs Analysis*, p. x. See *Id.* at 80<sup>2</sup> & 81<sup>3</sup>. Accordingly, the City’s Housing Needs Analysis does not identify a housing need for low-density residential housing that would support the addition of the Charter Oaks area to the City’s UGB.

The absence of an identified housing need for low-density residential housing in the Housing Needs Analysis is fatal to the amendment. As the Court of Appeals determined in *DLCD v. City of Klamath Falls & Badger Flats*, 290 Or App 495, 504, 416 P3d 326 (2018), there has to be a “demonstrated need” under Goal 14 that cannot be reasonably accommodated within the UGB before making a change to the UGB.<sup>4</sup> As the Housing

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<sup>1</sup> “Establishment and change of urban growth boundaries shall be based on the following:

- (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments, or for cities applying the simplified process under ORS chapter 197A, a 14-year forecast; and
- (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.”

<sup>2</sup> “Exhibit 72 shows that Roseburg does have sufficient land to accommodate housing development, in each plan designation, but particularly in low density residential areas.”

<sup>3</sup> “Roseburg’s surplus of Low-Density Residential capacity (1,020 dwelling units) means that the City has an approximate surplus of 352 gross acres of Low Density Residential land (at 2.9 dwelling units per gross acre).”

<sup>4</sup> “In contrast with the location factors, which must all be *considered* in determining changes to a UGB, the plain text of the goal requires that, to change a UGB, there must be a demonstrated need for land under both of the land-need subsections. See *Friends of the Columbia Gorge v. Columbia River*, 346 Or 415, 426 P3d 1243 (2009)(in the ordinary

March 31, 2025

Page 4 of 4

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Needs Analysis does not include a “demonstrated need” for additional low-density residential housing and identifies a surplus of such land greater than the property that is proposed to be withdrawn, the proposed expansion of the UGB to encompass the Charter Oaks area would violate Goal 14.

As the purpose of the proposed amendment is to adjust the City’s UGB to include land for which there is no demonstrated need, it violates Goal 14 and we request that HB 3921 also be tabled on this basis. *See DLCD v. City of Klamath Falls*, 80 Or LUBA 180 (2019)(Goal 14 prohibits amending the UGB where there is a surplus of land to meet identified needs within the UGB and LUBA will reverse such an amendment).

### **Conclusion**

For at least the foregoing reasons, we oppose HB 3921 and respectfully request that the House Committee on Housing and Homelessness not support passage of this measure.

Very truly yours,

HUTCHINSON COX



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ZPM/df  
Enclosures

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usage, “shall” creates a mandatory duty); *State v. Clements*, 265 Or App 9, 19, 333 P3d 1177 (2014) (“‘to base’ means ‘to use as a base or basis for’” and a “‘base,’ in turn, may refer to ‘the fundamental part of something’”; “based on” can be understood to mean “must be founded on”). Furthermore, the text of the goal explicitly requires that, prior to expanding a UGB, local governments shall demonstrate that ‘needs,’ which we understand to refer to the needs described in both subsections (1) and (2) cannot be reasonably accommodated on land already inside the UGB. We agree with DLCD that the text of the land need portion of the goal, read in context of the goal as a whole, makes clear that, before making a change to a UGB, there must be a demonstrated need under both subsections (1) and (2) of Goal 14.”

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**DIRECTOR'S DECISION ON CITY OF ROSEBURG**  
**URBAN GROWTH BOUNDARY ADJUSTMENT**

**DLCD Order 001950**

January 29, 2025

**Table of Contents**

I.	DECISION .....	2
II.	REVIEW PROCEDURES AND CRITERIA .....	2
	Procedural Considerations .....	2
	Validity of Objections.....	3
III.	BACKGROUND AND DESCRIPTION OF SUBMITTAL.....	3
IV.	DEPARTMENT REVIEW .....	4
	A. Jurisdiction.....	4
	B. Scope of Review .....	4
	C. Standard of Review.....	4
	D. Applicable Law .....	4
V.	ANALYSIS OF OBJECTIONS.....	10
	A. First Objection .....	10
	B. Second Objection .....	11
	C. Third Objection.....	14
	D. Fourth Objection .....	16
	E. Fifth Objection .....	19
	F. Sixth Objection .....	21
	G. Seventh Objection.....	23
	H. Eighth Objection .....	24
	I. Ninth Objection.....	26
	J. Tenth Objection .....	27
	K. Eleventh Objection.....	27
	L. Twelfth Objection .....	28
VI.	CONCLUSION .....	29

## **I. DECISION**

For the reasons explained in this report, the Department of Land Conservation and Development (DLCD, or department) concludes that the submittal from the City of Roseburg (city) and Douglas County (county), containing an urban growth boundary (UGB) adjustment and supporting comprehensive plan amendments, does not comply with all requirements of the applicable statewide planning goals, statutes, and administrative rules. The non-compliant portions of the UGB analysis are discussed in detail in the Director's Evaluation (section IV) and in response to Objections (section V). Therefore, the director remands the submittal to address the errors identified in Objections 3, 4, 5, 6, and 8 (sections V(C), (D), (E), (F), and (H)), as authorized by OAR 660-025-0150(1)(b).<sup>1</sup>

## **II. REVIEW PROCEDURES AND CRITERIA**

### **A. Procedural Considerations**

Oregon Revised Statutes (ORS) 197.626 to 197.650 and Oregon Administrative Rule (OAR) 660-025-0175 authorize the director's review of work submitted "in the manner provided for periodic review." The director of DLCD has 120 days from the date of submittal to make a decision. ORS 197.633(5)(a); OAR 660-025-0150(3). The director may approve the submittal, remand it, or refer the matter to the Land Conservation and Development Commission (LCDC). ORS 197.633(5)(b); OAR 660-025-0150(1)(b). The director elected to make a decision in this case.

OAR 660-025-0150(5) provides: "If the department received one or more valid objections to the work task or plan amendment, the director must either issue an order \* \* \* or refer the work task or plan amendment to the commission for review." The department received one letter identifying twelve objections. This report addresses the objections.

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<sup>1</sup> OAR 660-025-0150(1) provides:

"In response to a completed work task or other plan amendment submitted to the department for review in accordance with OAR 660-025-0140, the director may:

- "(a) Issue an order approving the completed work task or plan amendment;
- "(b) Issue an order remanding the work task or plan amendment to the local government including, for a work task only, a date for resubmittal;
- "(c) Refer the work task or plan amendment to the commission for review and action; or
- "(d) The director may issue an order approving portions of the completed work task or plan amendment provided these portions are not affected by an order remanding or referring the completed work task."

## **B. Validity of Objections**

The department received one letter identifying twelve objections to the submittal from Sane Orderly Development (SOD) on October 22, 2024. *See Attachment A.* The objections raise a range of issues with the submitted UGB land swap. The department received the SOD letter within the 21-day period for filing objections following the date the city issued the notice of decision, October 1, 2024.

Regarding objections, OAR 660-025-0140 provides in part:

- “(2) Persons who participated orally or in writing in the local process leading to the final decision may object to the local government's submittal. To be valid, objections must:
  - “(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the local government sent the notice;
  - “(b) Clearly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;
  - “(c) Suggest specific revisions that would resolve the objection; and
  - “(d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.
- “(3) Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.”

The department has determined that all of the objections satisfy the requirements of a valid objection in OAR 660-025-0140(2) and may be considered by the director.

## **III. BACKGROUND AND DESCRIPTION OF SUBMITTAL**

Roseburg has a population of 23,876 and is in Douglas County. On August 26, 2024, the Roseburg City Council adopted Ordinance 3604 amending the UGB. The proposed changes include removing and adding land to the UGB, annexation and de-annexation of land, and amendments to the city's Comprehensive Plan and UGB Management Agreement with the county.

On September 11, 2024, the Douglas County Board of Commissioners adopted Ordinance 2024-0901 approving an amendment to the Roseburg UGB including the changes adopted in the city's ordinance.

The decision involves a total of 513.5 acres consisting of the removal of 284.5 acres of land from its UGB and the addition of 229 acres to its UGB.

## **IV. DEPARTMENT REVIEW**

### **A. Jurisdiction**

The director, and if referred by the director or appealed, the commission, has exclusive jurisdiction to review UGB amendments which adds more than 50 acres, pursuant to ORS 197.626(1)(b), OAR 660-024-0080, and OAR 660-025-0175.

The city's submittal involves a total of 513.5 acres including the addition of 229 acres to its UGB.

### **B. Scope of Review**

Where the director reviews a UGB amendment submittal, it is done in the manner provided for periodic review. ORS 197.626(1); OAR 660-025-0175(1). That review is to determine whether the decision approving the submittal complies with the applicable statewide planning goals, their implementing rules, and applicable state statutes. OAR 660-025-0150(9) and 660-025-0160(2). The director confines the review of evidence to the records provided by the city. ORS 197.633(3).

### **C. Standard of Review**

The standard of review for this decision is provided in ORS 197.633(3). That statute provides in part:

“(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government’s decision.

“(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

“(c) For issues concerning compliance with applicable laws, is whether the local government’s decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the \* \* \* and land use regulations. The commission shall defer to a local government’s interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, ‘complies’ has the meaning given the term ‘compliance’ in the phrase ‘compliance with the goals’ in ORS 197.627.”

### **D. Applicable Law**

The principal legal provisions that govern this review and decision are related to Statewide Planning Goals 2 (Land Use Planning), 10 (Housing), and 14 (Urbanization), including relevant statutes and implementing rules. The city submitted the initial notice of proposed amendment on May 6, 2024 (DLCD file No. 002-23).

### **1. Statewide Planning Goal 2**

Statewide Planning Goal 2 is:

“To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.”

Compliance with Goal 2 is guided by interpretation of goal 2 exception process (OAR chapter 660, division 4), rural lands irrevocably committed to urban levels of development (OAR 660-014-0030), establishment of new urban development on undeveloped rural lands (OAR 660-014-0040), post-acknowledgement plan amendments (OAR chapter 660, division 18), periodic review (OAR chapter 660, division 25), and population forecasts (OAR chapter 660, division 32).

### **2. Statewide Planning Goal 10**

Statewide Planning Goal 10 is:

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

Compliance with Goal 10 is guided by administrative rules regarding housing (OAR chapter 660, division 8).

### **3. Statewide Planning Goal 14**

Statewide Planning Goal 14 is:

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

Compliance with Goal 14 is guided by administrative rules regarding public facilities planning (OAR chapter 660, division 11), transportation planning (OAR chapter 660, division 12), newly incorporated cities, annexations, urban development on rural lands (OAR chapter 660, division 14), urban reserves (OAR chapter 660, division 21), unincorporated communities (OAR chapter 660, division 22), urban growth boundaries (OAR chapter 660, division 24), periodic review (OAR chapter 660, division 25), population forecasts (OAR chapter 660, division 32), and simplified urban growth boundary method (OAR chapter 660, division 38).

Of note for the purpose of this decision are the provisions of OAR 660-024-0065 and OAR 660-024-0067. These rule provisions implement both Goal 14 and statutory provisions of ORS

197A.285 and generally govern the location of lands to be added to an urban growth boundary once a city has established a need for land under Goal 14. OAR 660-024-0065 governs the establishment of a study area for analysis – excluding lands that are too far away from the city’s UGB or have significant and unmitigable constraints to urbanization, while OAR 660-024-0067 sets forth what is commonly known as the “priorities” for urbanization (urban reserves first, exception and nonresource lands second, lower quality farm and forest lands third, and higher quality farm and forest lands last), allows for limited exceptions to these priorities, and provides the methodology for applying the four “locational” factors contained within Goal 14.

#### **4. Oregon Revised Statutes 197A.280.**

This statute applies to Roseburg because it is a city that is outside of the Portland Metro area with a population of less than 25,000. The statute requires the city to determine its needed housing under ORS 197A.018,<sup>2</sup> inventory the supply of buildable lands available within the

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<sup>2</sup> ORS 197A.018 provides:

- “(1) As used in ORS chapter 197A, and except as provided in subsection (2) of this section:
  - “(a) ‘Needed housing’ means housing by affordability level, as described in ORS 184.453(4), type, characteristics and location that is necessary to accommodate the city’s allocated housing need over the 20-year planning period in effect when the city’s housing capacity is determined.
  - “(b) ‘Needed housing’ includes the following housing types:
    - “(A) Detached single-family housing, middle housing types as described in ORS 197A.420 and multifamily housing that is owned or rented;
    - “(B) Government assisted housing;
    - “(C) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.493;
    - “(D) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions;
    - “(E) Housing for agricultural workers;
    - “(F) Housing for individuals with a variety of disabilities, related to mobility or communications that require accessibility features;
    - “(G) Housing for older persons, as defined in ORS 659A.421;
    - “(H) Housing for college or university students, if relevant to the region; and
    - “(I) Single room occupancies as defined in ORS 197A.430.
  - “(2) Subsection (1)(b)(A) and (D) of this section does not apply to:
    - “(a) A city with a population of less than 2,500.
    - “(b) A county with a population of less than 15,000.
  - “(3) At the time that a city is required to inventory its buildable lands under ORS 197A.270, 197A.280 or 197A.335(1), the city shall determine its needed housing under this section.
  - “(4) In determining needed housing the city must demonstrate that the projected housing types, characteristics and locations are:

urban growth boundary to accommodate needed housing, and take any necessary actions described in ORS 197A.100(3),<sup>3</sup> whether or not the actions are described within the city's housing production strategy, to accommodate needed housing.

### **5. Urban Growth Boundary (UGB) Adjustments**

Cities are authorized to exchange lands into and out of an UGB without adopting a new need analysis in accordance with the requirements of OAR 660-024-0070. Specifically, section (3) of the rule provides as follows:

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- “(a) Attainable for the allocated housing need by income, including consideration of publicly supported housing;
  - “(b) Appropriately responsive to current and projected market trends; and
  - “(c) Responsive to the factors in ORS 197A.100(2)(b) to (d).”

<sup>3</sup> ORS 197A.100(3) provides:

- “Actions that may be included in a housing production strategy include:
  - “(a) The reduction of financial and regulatory impediments to developing needed housing, including removing or easing approval standards or procedures for needed housing at higher densities or that is affordable;
  - “(b) The creation of financial and regulatory incentives for development of needed housing, including creating incentives for needed housing at higher densities or that is affordable;
  - “(c) The development of a plan to access resources available at local, regional, state and national levels to increase the availability and affordability of needed housing;
  - “(d) Target development on identified development-ready lands;
  - “(e) Actions that affirmatively further fair housing;
  - “(f) Actions that:
    - “(A) Increase housing diversity, efficiency and affordability, including new construction and the preservation of naturally occurring affordable housing;
    - “(B) Allow greater housing choice for households and greater flexibility in location, type and density;
    - “(C) Reduce cost or delay and increase procedural certainty for the production of housing; or
    - “(D) Prepare land for development or redevelopment, including:
      - “(i) Public facilities planning and other investment strategies that increase the readiness of land for development for housing production;
      - “(ii) Site preparation, financial incentives or other incentive-based measures that increase the likelihood of development or redevelopment of land; or
      - “(iii) The redevelopment of underutilized commercial and employment lands for housing or a mix of housing and commercial uses; or
  - “(g) Any other actions identified by rule of the Land Conservation and Development Commission intended to promote housing production, affordability and choice.”

“Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided a basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

“(a) The amount of buildable land added to the UGB to meet:

“(A) A specific type of residential need is substantially equivalent to the amount of buildable residential land removed, or

“(B) The amount of employment land added to the UGB to meet an employment need is substantially equivalent to the amount of employment land removed, and

“(b) The local government must apply comprehensive plan designations and, if applicable, urban zoning to the land added to the UGB, such that the land added is designated:

“(A) For the same residential uses and at the same housing density as the land removed from the UGB, or

“(B) For the same employment uses as allowed on the land removed from the UGB, or

“(C) If the land exchange is intended to provide for a particular industrial use that requires specific site characteristics, only land zoned for commercial or industrial use may be removed, and the land added must be zoned for the particular industrial use and meet other applicable requirements of ORS 197A.320(6).”

Relevant to this submittal, OAR 660-024-0070(1) provides that the requirements of Goal 14, division 24, and ORS 197A.355 “apply when land is added to the UGB, including land added in exchange for land removed.”<sup>4</sup> As a result, a city must apply what is commonly known as the “priority of lands” statutory provisions to any lands it proposes to bring into its UGB as part of a UGB exchange. The city must also apply the four “location factors” found in Goal 14 in making its decision.

## **E. Description of Submittal**

Roseburg adopted its most recent housing needs analysis (HNA) on September 9, 2019 (Ordinance # 3528). The HNA, which covers the planning period from 2019 to 2039, found the current UGB contains a surplus of 352 acres of low-density residential land, a surplus of 11 acres of medium-density residential land, and a deficit of 24 acres of high-density residential land. Using the 2019 HNA as the basis for the decision, the city and county approved an UGB adjustment to remove 284.5 acres of land from the UGB and add 229 acres to the UGB. Although the decision results in an overall 55.5-acre reduction of the UGB area, the director

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<sup>4</sup> Although OAR 660-024-0070(1) cites *former* ORS 197.298, that statute has been amended and renumbered ORS 197A.355.

reviews the submittal “in the manner of periodic review” under OAR 660-024-0080 because the land area added to the UGB as a component of the exchange is larger than 50 acres.

Pursuant to ORS 197.633(2)(e) and OAR 660-025-0175, the city submitted the notice of a post-acknowledgement plan amendment to the department and mailed notice to all parties who participated in the city and county decisions on October 1, 2024. On October 22, 2024, SOD submitted twelve objections to the decision. The objections are considered in this director’s decision. The rules for task submittal and review are provided at OAR 660-025-0140 and OAR 660-025-0150. The rules require the director to either refer the submittal to the commission or issue a decision within 120 days of receipt of the submittal. The date of this decision is within 120 days of the receipt of the city’s submittal.

On review, the director considers whether the submittal is consistent with the applicable statutes, statewide planning goals, administrative rules, the city’s comprehensive plan, and is supported by substantial evidence. OAR 660-025-0160(2)(a) and (c). The city processed the UGB submittal as a legislative land use decision.

Local ordinances, state statutes, and LCDC rules specify procedural and substantive requirements for applications, hearings, decisions, and preserving issues for appeal, and case law from LUBA and the appellate courts further define local and state law requirements. For legislative decisions, the record must be adequate to show that the legislative action is within the legal authority of the city. The record must show that the jurisdiction followed applicable procedures. Legislative decisions must be consistent with substantive requirements in state statutes and the statewide planning goals.

LUBA has explained that adequate findings identify the applicable law, the evidence relied upon and explain how the evidence led to the conclusion on compliance with approval standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). Findings must address all applicable statutes, administrative rules, and land use regulations and all of the elements in those individual authorities. If not, then the findings are inadequate to demonstrate compliance with all applicable law. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

Local governments may incorporate documents from the record into their decisions. But such incorporations must clearly specify which documents are incorporated. *Freedman v. City of Grants Pass*, 57 Or LUBA 385 (2008). The adopted and acknowledged 2019 Roseburg Housing Needs Analysis is one such document, which is referenced by both the city and the objector.

Finally, the director also considers the objections. In reviewing objections, the director only need consider those that “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 268 (2011). Because the objections submitted are comprehensive and wide-ranging, the director’s overall analysis of Roseburg’s submittal is contained in the analysis to objections in Section V. below.

## **V. ANALYSIS OF OBJECTIONS**

The objector presented twelve objections to the city's UGB adjustment decision. For valid objections, OAR 660-025-0140(6) requires that the department either sustain or reject each one based on the statewide planning goals, or applicable statutes or administrative rules. Having found the objections to be valid in Section II. B of this order, the department considers each objection below.

### **A. First Objection**

#### **No demonstrated need for additional low density residential land**

The objector argues that the city's decision is in conflict with Goal 14 because it expands the city's UGB to accommodate 229 acres of additional low density residential land while the city has no demonstrated need for additional low density residential land and a surplus of 352 acres of low-density residential land already inside the UGB. Objection at 3. The objector notes that "while OAR 660-024-0070(3) allows a local government to rely on an existing needs analysis for an adjustment, the needs analysis still has to identify a 'demonstrated need' to support the adjustment, and the City's Housing Needs Analysis clearly identifies that there is no need for land designated for additional low density residential housing in the Roseburg UGB." Objection at 4.

#### **Department Response:**

The objector misconstrues the UGB adjustment process. OAR 660-024-0070 provides in part:

"(1) A local government may adjust the UGB at any time to better achieve the purposes of Goal 14 and this division. Such adjustment may occur by adding or removing land from the UGB, or by exchanging land inside the UGB for land outside the UGB. \* \* \*

"(2) A local government may remove land from a UGB following the procedures and requirements of ORS [197A.215]. Alternatively, a local government may remove land from the UGB following the procedures and requirements of 197.610 to 197.650, provided it determines:

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

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

Roseburg adopted the most recent HNA on September 9, 2019 (Ordinance # 3528). That HNA, which covers the planning period from 2019 to 2039, found the current UGB contains a surplus of 352 acres of low-density residential land, a surplus of 11 acres of medium density residential land, and a deficit of 24 acres of high-density residential land. The HNA suggests a number of

measures that the city may use to address the deficit of high-density residential land, including “redesignating land from Low or Medium Density Residential to High Density Residential, increasing the densities allowed and achievable in High Density Residential, providing other opportunities for development of multifamily housing in Commercial or other mixed use zones, or all of these options.” Roseburg HNA at 83.

The HNA also notes that much of Roseburg’s vacant and partially vacant low density residential land base is constrained by steep slopes, including areas with slopes between 12 percent and 24.9 percent, which comprise 568 of the total 885 vacant and partially vacant acres inventoried. The HNA notes that, “Development on land with moderate slopes is also often more expensive because it generally occurs as lower densities (fewer dwelling units per acre) and on land without urban infrastructure where it may be more expensive to serve because of requirements for road construction or requirements for special equipment (such as pump stations).” To address this issue, the HNA notes that “The Housing Strategy (*which was developed concurrently with the HNA*) describes actions that the City can take to overcome these barriers, such as allowing a wider range of single-family housing development (such as cottage clusters), implementing a land swap of sloped land within the UGB for flat land outside of the UGB, increasing allowable densities (or setting minimum densities) and removing other barriers to development.” Roseburg HNA at 84.

Although the objector is correct that the HNA identifies a surplus of 352 acres of low density residential land beyond what will be needed for the 20-year planning period ending in 2039, the director finds that OAR 660-024-0070(2)(b) does not restrict the UGB exchange process to meeting land needs for a 20-year planning period, but also allows for land exchanges that “would provide roughly the same supply of buildable land as prior to the removal, taking into consideration land added to the UGB at the same time.” Consequently, the director finds the city’s submittal complies with OAR 660-024-0070 and rejects this objection.

## **B. Second Objection**

### **The city violates OAR 660-024-0070(3)(a)(A) by exchanging non-buildable land for buildable land.**

The administrative rule for land exchanges into and out of a UGB authorizes a city to rely on its current HNA when it includes lands in a UGB that contain an amount of buildable land that is “substantially equivalent” to the amount of buildable land to be removed from the UGB.<sup>5</sup> The

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<sup>5</sup> OAR 660-024-0070(3)(a)(A) provides:

“Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided a basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

“(a) The amount of buildable land added to the UGB to meet:

land exchange decision removed 290 acres of land from the Roseburg UGB and added 229 acres of land into the UGB.

The UGB exchange removes two properties from the UGB: the 91.5-acre Atkinson property and the 198.5-acre Serafin property. The objector argues that only 10.7 acres of the Atkinson property and 80 acres of the Serafin property are buildable because all other portions of the properties contain slopes in excess of 25 percent. The 25 percent slope threshold is included in the definition of “buildable land” in OAR 660-008-0005(6)(c).<sup>6</sup> Objection at 4.

**Department Response:**

The city’s decision acknowledges the 25 percent slope threshold and notes that areas with slopes of 25 percent or greater were not considered buildable lands in the city’s 2019 buildable land inventory. The city’s UGB exchange submittal states as follows:

“The land still has some potential development capacity, but the actual buildable lands on the site are much lower than the density allowed for the zoning, and are diminished by the steep slopes on the property. The logical way to address this is to transfer that potential development capacity to a less constrained area through this urban growth boundary exchange.”

Roseburg UGB Exchange-Final-04-15-24 at 12.

Typically, the department uses the definition of “buildable land” in OAR 660-008-0005(6) as a point of reference for buildable land inventories conducted by local governments. However, it is relevant to acknowledge that the rule, by its terms, provides some latitude in the phrase “land is generally considered ‘suitable and available’ unless \* \* \*”. This implies that other considerations may be used in determining which lands are buildable. In the case of Roseburg, it is a fact that much of the city’s residential land is located in sloped areas. Given this, the following conclusion from the city’s acknowledged 2019 HNA is relevant:

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“(A) A specific type of residential need is substantially equivalent to the amount of buildable residential land removed[.]”

<sup>6</sup> OAR 660-008-0005(2) provides defines “Buildable Land” as:

“residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered ‘suitable and available’ unless it:

- “(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;
- “(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;
- “(c) Has slopes of 25 percent or greater;
- “(d) Is within the 100-year flood plain; or
- “(e) Cannot be provided with public facilities.”

“Roseburg’s Low Density Residential land base has constraints to development. More than one-quarter of Roseburg’s vacant land in Low Density Residential is partially vacant (247 of 885 acres). In addition, two-thirds of Roseburg’s vacant and partially vacant buildable land in Low Density Residential is on slopes of 12% to 24.9% (568 [of] 885 acres) \* \* \*. Development on land with moderate slopes is also often more expensive because it generally occurs as lower densities (fewer dwelling units per acre) and on land without urban infrastructure where it may be more expensive to serve because of requirements for road construction or requirements for special equipment (such as pump stations). Developing new housing in these areas may be more expensive, providing fewer opportunities for development of market-rate affordable housing affordable to middle-income households. The Housing Strategy describes actions that the City can take to overcome these barriers, such as allowing a wider range of single-family housing development (such as cottage clusters), implementing a land swap of sloped land within the UGB for flat land outside of the UGB, increasing allowable densities (or setting minimum densities) and removing other barriers to development.” Roseburg HNA at 84.

This analysis led directly to the subject UGB exchange decision. However, given the extent of residential lands with slopes over 12 percent within the UGB area that was established roughly 40 years ago, some development has occurred in these areas. To determine the capacity for residential development on those areas, the city conducted an analysis of all residential development on residentially zoned lands within the UGB located on slopes of 12 percent or greater. The “Density Calculation for Final Exchange Area” evaluated average and median lot sizes for developed residential lots in various slope categories, shown on Table 24. Roseburg UGB Exchange-Final-04-15-24 at 130. Based on these results and the varied terrain of the Atkinson and Serafin sites, the city assumed an average development capacity of one dwelling for every 15,000 square feet of land area, then reduced the number of dwelling units by 20 percent to account for necessary road and infrastructure needs. Based on these assumptions, the city arrived at an estimated housing capacity of 673 dwelling units on the areas proposed for removal. We note that the city’s estimation of residential capacity is generally consistent with the direction provided in ORS 197A.270(4)<sup>7</sup>, which requires certain cities to determine housing capacity based on considerations such as the “number, density, and average mix of housing types of urban residential development that have actually been developed,” and “[t]rends in density and average mix of housing types of urban residential development.” However, because the City

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<sup>7</sup> ORS 197A.270(4)(a) provides:

“Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity must be based on data related to land within the urban growth boundary that has been collected since the last review under subsection (2)(b) of this section. The data must include:

- “(A) The number, density and average mix of housing types of urban residential development that have actually been developed;
- “(B) Trends in density and average mix of housing types of urban residential development;
- “(C) Market factors that may substantially impact future urban residential development;
- “(D) The number, density and average mix of housing types that have been developed on buildable lands;
- “(E) Consideration of the effects of the adopted housing production strategy and measures taken and reasonably anticipated to be taken to implement the strategy; and
- “(F) Consideration of factors that influence available housing supply, including short-term rentals, second homes and vacation homes.”

of Roseburg has a 2024 population of 23,876, the city is not subject to ORS 197A.270, but to the more flexible requirements for cities with a population below 25,000, which is provided in ORS 197A.280(3).<sup>8</sup>

The city applied the same analysis to the Charter Oaks area that is proposed for inclusion in the UGB. Although the total area of Charter Oaks is 229 acres, the city found that 183 of those acres were available for additional residential development. Of those acres, 129.5 acres had slopes less than 12 percent, 31 acres had slopes of 12 percent or more, and 17.2 acres were in the floodway. The floodway acres were assigned no development potential and the areas with slopes of 12 percent or more were assumed to have capacity for one dwelling unit per 15,000 square feet, while the remaining 129.5-acre area with slope less than 12 percent was estimated to have a capacity of one dwelling unit per 7,500 square feet, which is the minimum lot size in the low density residential zone. The resultant capacity was estimated to be 842 dwelling units, which was reduced by 20 percent to account for road and other infrastructure needs, to arrive at an estimated capacity for 673 dwelling units, which is the same residential capacity determined for the lands to be removed from the UGB. Roseburg UGB Exchange-Final-04-15-24 at 133.

Based on this analysis, the director finds the city appropriately evaluated development potential on lands proposed for removal from the UGB and lands proposed for inclusion in the UGB and appropriately equated the amount of buildable residential lands exchanged, consistent with OAR 660-024-0070(3)(a)(A). Therefore, the director rejects this objection.

### **C. Third Objection**

#### **The city violates OAR 660-024-0070(3)(a)(A) by exchanging multi-family residential land for low density residential land.**

In this objection the department believes the objector includes an erroneous OAR cite in asserting that the Roseburg decision is in conflict with OAR 660-024-0070(3)(a)(A). We note that compliance with OAR 660-024-0070(3)(a)(A) has been addressed in response to the second objection. However, the issue raised by the objector – the exchange of multi-family residential land for low density residential land, is pertinent to OAR 660-024-0070(3)(b)(A), which requires the city to “apply comprehensive plan designations and, if applicable, urban zoning to the land added to the UGB” so that the added land is designated “for the same residential uses and at the same housing density as the land removed from the UGB[.]” The objector argues that despite the fact that the city finds that the “medium- and high-density land being removed is considered

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<sup>8</sup> ORS 197A.280(3) provides:

- “A city shall, according to rules of the commission:
- “(a) Determine its needed housing under ORS 197A.018;
- “(b) Inventory the supply of buildable lands available within the urban growth boundary to accommodate needed housing; and
- “(c) Take any necessary actions described in ORS 197A.100(3), whether or not the actions are described within the city’s housing production strategy, to accommodate needed housing.”

unbuildable" (because a high proportion of the area zoned for medium- and high-density residential development contains slopes over 25 percent), approximately 0.5 acres of the Atkinson property is not steeply sloped and is designated for multi-family residential development. Roseburg UGB Exchange-Final-04-15-24 at 11, 131. The objector argues that the city's methodology fails to account for capacity of lands with slopes of 25 percent or above in medium- and high-density residential zones but assumes all development in these areas is single-detached units. Consequently, the objector argues that the city's decision is not consistent with the applicable rules because the city has not designated any portion of the lands to be included within the UGB for medium- or high-density residential development. Objection at 5-6.

### **Department Response:**

The objector has established that the submittal does not demonstrate compliance with OAR 660-024-0070(3)(b)(A). The department notes that the total amount of lands zoned and suitable for medium- and high-density residential development is 0.65 acres. Roseburg UGB Exchange-Final-04-15-24 at 131. Although this is a small area, the submittal does not propose a commensurate portion of the Charter Oaks lands for medium- or high-density residential development. This is exacerbated by the fact that the city's acknowledged HNA identifies a 24-acre deficit of high-density residential land within the UGB. Roseburg HNA at 82. Consequently, the director sustains this objection and remands this decision to address compliance with OAR 660-024-0070(3)(b)(A).

This issue would of greater concern under the rule<sup>9</sup> if the city had not taken action to address the deficit of high-density residential land identified in the 2019 HNA by providing opportunities for the development of multifamily housing in commercial or other mixed-use zones, as recommended in the HNA. Roseburg HNA at 84. Particularly, the city's systems development charge buydown program has been effective at incentivizing the development of 406 multifamily dwelling units in mixed-use and other zones within the Diamond Lake corridor in recent years. Roseburg UGB Exchange-Final-04-15-24 at 142. With an estimated land need of nine units per gross acre for group quarters in Roseburg, the 406 constructed dwelling units more than make up for the 24-acre deficit of lands zoned for multifamily residential development (group quarters land needs were included with other forms of multifamily development in the HNA). Roseburg HNA at 81. Consequently, the director is able to find that the UGB exchange addresses all

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<sup>9</sup> OAR 660-024-0070(2) provides, in part:

"A local government may remove land from a UGB following the procedures and requirements of ORS [197A.215]. Alternatively, a local government may remove land from the UGB following the procedures and requirements of 197.610 to 197.650, provided it determines:

\*\*\* \* \* \*

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

identified residential land needs, which if not addressed, would have required more significant action on remand. Since the decision remands the city and county decision for other reasons, the city should be able to address this issue with revised findings.

Based on this analysis, the director remands the city's decision to address compliance with OAR 660-024-0070(3)(b)(A).

#### **D. Fourth Objection**

**The city violates OAR 660-024-0065 by excluding 18,537 acres based on factors that are either not included as a basis for excluding property from the preliminary study area, or are improperly applied.**

OAR 660-024-0065 provides the process for defining a study area to evaluate land for inclusion in an UGB. The first step in this process is to define a preliminary study area based on the criteria described in OAR 660-024-0065(1). This section of rule specifies lands to be included in the preliminary study area based on a fixed distance from the UGB boundary. The objector does not take issue with the way the city identified the preliminary study area.

As the second step, a city may exclude lands from the preliminary study area based on factors identified in OAR 660-024-0065(4) as clarified in sections (7) and (8).<sup>10</sup> A city may exclude

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<sup>10</sup> OAR 660-024-0065(4) provides:

“The city may exclude land from the preliminary study area if it determines that:

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

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

“(A) Landslides: The land consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer. If the owner of a lot or parcel provides the city with a site-specific analysis by a certified engineering geologist demonstrating that development of the property would not be subject to significant landslide risk, the city may not exclude the lot or parcel under this paragraph;

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

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

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

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

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

- “(ii) Core habitat for Greater Sage Grouse; or
  - “(iii) Big game migration corridors or winter range, except where located on lands designated as urban reserves or exception areas;
  - “(B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal agency responsible for the scenic program;
  - “(C) Designated Natural Areas on the Oregon State Register of Natural Heritage Resources;
  - “(D) Wellhead protection areas described under OAR 660-023-0140 and delineated on a local comprehensive plan;
  - “(E) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or Conservation management unit designated in an acknowledged comprehensive plan;
  - “(F) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;
  - “(G) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 18, Implementation Requirement 2;
- “(d) The land is owned by the federal government and managed primarily for rural uses.”

OAR 660-024-0065(7) provides:

- “For purposes of subsection (4)(a), the city may consider it impracticable to provide necessary public facilities or services to the following lands:
  - “(a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of 25 percent or greater, provided that contiguous areas 20 acres or more that are less than 25 percent slope may not be excluded under this subsection. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;
  - “(b) Land that is isolated from existing service networks by physical, topographic, or other impediments to service provision such that it is impracticable to provide necessary facilities or services to the land within the planning period. The city’s determination shall be based on an evaluation of:
    - “(A) The likely amount of development that could occur on the land within the planning period;
    - “(B) The likely cost of facilities and services; and,
    - “(C) Any substantial evidence collected by or presented to the city regarding how similarly situated land in the region has, or has not, developed over time.
  - “(c) As used in this section, “impediments to service provision” may include but are not limited to:
    - “(A) Major rivers or other water bodies that would require new bridge crossings to serve planned urban development;
    - “(B) Topographic features such as canyons or ridges with slopes exceeding 40 percent and vertical relief of greater than 80 feet;
    - “(C) Freeways, rail lines, or other restricted access corridors that would require new grade separated crossings to serve planned urban development;
    - “(D) Significant scenic, natural, cultural or recreational resources on an acknowledged plan inventory and subject to protection measures under the plan or implementing regulations, or on a published state or federal inventory, that would prohibit or substantially impede the placement or construction of necessary public facilities and services.”

OAR 660-024-0065(8) provides:

lands that it finds are impracticable to provide public services to, if the land is subject to certain development hazards, if the land consists of a significant scenic, natural, cultural or recreation resources, or if the land is owned by the federal government. The objection asserts that the city excluded lands from the preliminary study area in a way that is not consistent with the methodology described in the relevant sections of rule.

The objection specifically identifies as concerns the exclusion of lands on the basis that they are zoned for exclusive farm use and forest use, susceptible to landslide, and on existing patterns of rural residential development. Objection at 6-8.

**Department Response:**

The city described its approach to excluding lands from its Preliminary Study Area in its city staff report. Roseburg UGB Exchange – Final – 04-15-24 at 34. The city excluded approximately 18,537 acres from the Preliminary Study Area. *Id.* The narrative in the city staff report indicates that these lands were excluded, in part, because they were zoned for resource use which is of a lower prioritization category in OAR 660-024-0067. Roseburg UGB Exchange – Final - 04-15-24 at 34. Zoning, however, is not one of the factors listed in OAR 660-024-0065(4) for excluding land from the Preliminary Study Area. The director agrees with the objector that it was premature for the city to exclude large swaths of land from further evaluation based on zoning. It is worth noting that the city included other lands zoned for farm and forest use in the Study Area leaving it somewhat unclear what role resource land zoning played in determining the Preliminary Study Area.

The city staff report also states that a primary reason for exclusion of the 18,537 acres is because they are susceptible to landslide. Roseburg UGB Exchange – Final - 04-15-24 at 34. Exhibit 16 of the city staff report contains a map that appears to overlay DOGAMI landslide susceptibility categories and areas of landslide deposits over the area around Roseburg. Roseburg UGB Exchange – Final - 04-15-24 at 36. While much of the area is shown to consist of moderate to high landslide susceptibility, only a very small portion of the excluded area appears to be mapped as landslide deposit, which is the requirement found in OAR 660-024-0065(4)(b)(A). The director agrees with the objector that OAR 660-024-0065(4)(b)(A) only allows land to be excluded that consists of a landslide deposit or scarp flank. To the extent the city did not include lands in the Preliminary Study Area on the basis of landslide that did not meet the criteria for exclusion in OAR 660-024-0065(4)(b)(A), the submittal does not comply that rule.

The city staff report also briefly notes that a secondary reason for excluding the identified lands is that they cannot be reasonably developed or infilled due to the location of the existing

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<sup>“Land may not be excluded from the preliminary study area based on a finding of impracticability that is primarily a result of existing development patterns. However, a city may forecast development capacity for such land as provided in OAR 660-024-0067(1)(d).”</sup>

infrastructure and that the existing development patterns of rural residential further make the land unsuitable in accordance with OAR 660-024-0067(5)(a)(B). Roseburg UGB Exchange – Final - 04-15-24 at 34. However, the submittal does not establish that there is substantial evidence in the record as a whole to support that determination and provides no discussion to demonstrate why this is the case. The statement is conclusionary. Even if the record included substantial evidence, the objector is correct that OAR 660-024-0065(8) explicitly precludes exclusion of land from the Preliminary Study Area based on a finding of impracticability that is primarily a result of existing rural residential development patterns. OAR 660-024-0065(7) describes the situations and factors under which a city may determine that it is impracticable to provide necessary public facilities or services. There are no findings in the city staff report applying OAR 660-024-0065(7) to this area that was initially excluded from the Preliminary Study Area.

The director finds that the record does not contain adequate findings or substantial evidence to demonstrate that the submittal appropriately applied OAR 660-024-0065(4), as further clarified in rule, to the approximately 18,537 acres that the city initially excluded from the Preliminary Study Area. The director sustains this objection and remands the city's decision to address compliance with OAR 660-024-0065.

#### **E. Fifth Objection**

##### **The city violates OAR 660-024-0065 by improperly excluding property based on its location within a particular subarea.**

OAR 660-024-0065 describes the process for defining a study area to evaluate land for inclusion in the UGB. The first step in this process is to define a preliminary study area based on the criteria described in OAR 660-024-0065(1). This section of rule describes lands to be included in the preliminary study area based on a fixed distance from the UGB boundary. The objector does not take issue with the way the city identified this area.

As the second step, the city may then exclude lands from the preliminary study area based on factors identified in OAR 660-024-0065(4) as clarified in sections (7) and (8). The city may exclude lands that it finds impracticable to provide public services to; lands subject to certain development hazards; lands that are a significant scenic, natural, cultural or recreation resources; or federal government owned land. OAR 660-024-0065(4), (7) and (8) describe in detail what lands may be excluded.

In its analysis, the city identified land within the appropriate distance of the UGB as described in OAR 660-024-0065(1). They then excluded approximately 18,537 acres based on the factors which are discussed above. The city divided the remaining approximately 12,194 acres of land into thirteen “subareas” of various sizes based on topography, practical access and features. Then the city evaluated these subareas for exclusion as whole units based on factors described in OAR 660-024-0065(4). The city excluded ten subareas, consisting of approximately 10,575 acres in total from its Preliminary Study Area.

The objector argues that this method of exclusion is contrary to the process described in rule because whole subareas were excluded when only some of the land within the larger subarea had the characteristics to qualify for exclusion. The objector argues that land which did not qualify for exclusion was improperly excluded under the city's approach. Objection at 8.

**Department Response:**

OAR 660-024-0065 does not provide a process for grouping lands together for evaluation as single units based on the predominance of certain characteristics within that unit. It is possible in conducting a preliminary study area analysis under OAR 660-024-0065 that a local government might identify large land areas as sharing a common impediment, characteristic, or limiting factor. For example, all of the area on the far side of a river or canyon might be excluded because the river or canyon poses a physical impediment to extension of services to that area as a whole.

As described in the city staff report, the city created the subareas based on geography:

"Consideration was given to the existing natural features that divide the areas as well as the location of exception lands within the buffer. The existing natural features that divide the listed subareas include the rivers and ridges present in the natural landscape of the region, including the North Umpqua River, South Umpqua River, Winchester Baldy peak, Mount Nebo, Lookingglass Hill, and other naturally occurring hills and physical barriers." Roseburg UGB Exchange – Final - 04-15-24 at 37-38.

Based on the narrative in the city staff report, it appears that some subareas contain a mixture of lands, some of which are identified as possessing characteristics which would qualify them for exclusion and some of which do not qualify. Neither the maps, nor the narrative in the city staff report include enough details to determine whether all of the land within the excluded subareas would have qualified for exclusion.

While it is expected that larger areas may share common constraints to development qualifying them for exclusion, there are no provisions in rule that allow areas to be evaluated as a whole based on a predominance of characteristics allowing areas to be excluded which would not otherwise qualify for exclusion. The director finds that the record does not contain adequate findings based on substantial evidence to demonstrate that all of the land within the excluded subareas meets the requirements for exclusion. ORS 197.633(3)(a). The director sustains this objection and remands the city's decision to clearly identify how all lands excluded comply with the criteria in OAR 660-024-0065(4) and under which criteria.

## **F. Sixth Objection**

**The city violates OAR 660-024-0065 by improperly excluding property based on factors that either do not apply to the land in question or do not provide a basis for exclusion of the land from the study area.**

As discussed, the city may exclude lands from the Preliminary Study Area based on factors identified in OAR 660-024-0065(4) as clarified in sections (7) and (8). Specifically, the city may exclude lands if the city finds it impracticable to provide public services to them. OAR 660-024-0065(7)(a) allows for the exclusion of contiguous land areas containing 75 percent or more area with slopes of 25 percent or more, so long as the city does *not* exclude contiguous land areas of at least 20 acres with slopes of less than 25 percent under a slopes analysis. That is, a city may not exclude contiguous land areas of 20 acres or more that are of less than 25 percent slope under OAR 660-024-0065(7)(a). The objector states that the application materials identify more than 700 acres of contiguous land with less than 25 percent slopes within the subareas that have been improperly excluded.

The objector also argues that portions of subarea 2 were improperly excluded based on zoning and that there is no factual basis to support findings that it is impracticable to provide necessary public facilities or services to portions of subareas 2, 3 and 9. Objection at 8-10.

### **Department Response:**

The city states that the slope constraints described in OAR 660-024-0065(7)(a) are the primary reason for the removal of subareas 4, 6, 7, 8, 10, 12, and 13. Roseburg UGB Exchange – Final - 04-15-24 at 46. The city goes on to state that these lands are also isolated and impracticable to serve under OAR 660-024-0065(7)(b). Roseburg UGB Exchange – Final - 04-15-24 at 46. It appears that the city may be implying that those flatter lands which would not qualify for exclusion under OAR 660-024-0065(7)(a) should be excluded from consideration under OAR 660-024-0065(7)(b). However, it is not entirely clear from the submittal which lands the city excluded under OAR 660-024-0065(7)(b) rather than OAR 660-024-0065(7)(a). It is also unclear whether the city applied that part of OAR 660-024-0065(7)(a) regarding contiguous land areas of 20 acres or more that are of less than 25 percent slope not being excluded.

The submittal does not address OAR 660-024-0065(7)(b) in any detail for subareas 4, 6, 7, 8, 10, 12, and 13. Roseburg UGB Exchange – Final - 04-15-24 at 42-44. The city states that the areas excluded under OAR 660-024-0065(7)(b) are isolated from existing service networks by physical and topographical impediments, but the city does not provide enough detail in the submittal to ascertain what those impediments are for each area under consideration. The city states that the likely cost of facilities and services needed to support development would be much higher due to topographical and physical constraints, however no detail is provided to support this statement. Roseburg UGB Exchange – Final - 04-15-24 at 42-44. OAR 660-024-0065(7)(b) clarifies that a city may find areas will be impractical to serve, but the finding must be based on an evaluation of:

- “(A) The likely amount of development that could occur on the land within the planning period;
- “(B) The likely cost of facilities and services; and,
- “(C) Any substantial evidence collected or presented to the city regarding how similarly situated land in the region has, or has not, developed over time.”

The director does not construe this requirement to entail a detailed and exacting engineering analysis, but in the absence of substantial evidence in the record regarding development potential in comparison to anticipated service costs for areas removed from the study area, the director is not able to conclude that the submittal demonstrates these areas are impracticable to serve. The director finds that exclusion of the subareas is not supported by the record and therefore sustains this objection. The decision is remanded to the city to further address OAR 660-024-0065(4) for lands in subareas 4, 6, 7, 8, 10, 12, and 13.

The city excluded 190 acres of subarea 2 on the basis that they are zoned for industrial use. Roseburg UGB Exchange – Final - 04-15-24 at 42. The director agrees with the objector that an industrial zoning designation and the presence of industrial uses may not be used as a basis for excluding lands from the Preliminary Study Area. OAR 660-024-0065(8) clarifies that land may not be excluded from the Preliminary Study Area based on a finding of impracticability that is primarily a result of existing development patterns. Later in the process, when the city is conducting the prioritization analysis described in OAR 660-024-0067, there is an opportunity to reduce the forecasted residential development capacity of land which is devoted to other uses. *See OAR 660-024-0067(1)(d)*(authorizing consideration of development capacity forecast). This is the appropriate step in the process to address higher priority lands which are zoned or developed for uses that preclude satisfaction of the identified need. The director sustains this portion of the objection and remands the decision to the city to address the treatment of lands zoned for industrial use consistent with OAR 660-024-0065(8).

The objector also argues that there is no factual basis to support findings that it is impracticable to provide necessary public facilities or services to portions of subareas 2, 3, and 9. While the city provides more detail to substantiate the exclusion of these subareas than the other subareas, the director finds that there is still insufficient information in the record to support the exclusion of these areas. Roseburg UGB Exchange – Final - 04-15-24 at 42-44. Typically, substantial evidence will include more detailed maps and public works or engineering estimates to support the claim of impracticability. Therefore, the director sustains this portion of the objection and remands the decision to the city to address OAR 660-024-0065(7)(b).

## **G. Seventh Objection**

**The city improperly includes the Charter Oaks area within the study area under ORS 197A.285(2)(b)(A), when it is impracticable to provide necessary public facilities and services.<sup>11</sup>**

The objector refers to the city's traffic impact analysis (TIA) which evaluates the sufficiency of the transportation system to support development in the Charter Oaks area. Roseburg UGB Exchange-Final-04-15-24 at 183, Appendix 5 - Troost Traffic Impact Study at 45. The objector states that "a bridge crossing of the South Umpqua River and connection to Harvard Avenue is the only way to provide necessary secondary access and connectivity for the Charter Oaks area," and adds that the additional bridge is not identified for funding in the city's transportation system plan. The objector argues that because of the lack of funding for the bridge improvement, the UGB decision is in conflict with OAR 660-012-0060(4)(b).<sup>12</sup> Objection at 10.

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<sup>11</sup> ORS 197A.285(2)(b)(A) provides:

- "(b) The city shall evaluate all land in the study area for inclusion in the urban growth boundary as provided in subsection (4) of this section, except for land excluded from the study area because:  
"(A) It is impracticable, as provided in subsection (3) of this section, to provide necessary public facilities or services to the land."

<sup>12</sup> OAR 660-012-0060(4)(b) provides:

"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."

### **Department Response:**

In the TIA, the city evaluates the impact of additional vehicle trips on the existing city and state transportation systems from future development in the Charter Oaks area. The TIA concludes that some traffic mitigation measures will be necessary to maintain the city's Level of Service standards for identified local intersections, but traffic impacts will not create a "significant effect" on traffic volumes at the nearest intersections with Interstate 5. It is important to note that the traffic analysis assumed "traffic from the development was distributed to the roadway network following existing travel patterns adjusting for reasonable origins and destinations within the city." Appendix 5 - Troost Traffic Impact Study at 19. This means that the city evaluated traffic impacts without consideration of the additional bridge. Consequently, the addition of an additional bridge is not necessary to maintain the city's identified Level of Service on the local transportation network. Instead, the TIA notes that the additional bridge is identified in the city's Transportation System Plan (TSP) as a desired improvement that would support the city's street alignment and connectivity goals. Appendix 5 - Troost Traffic Impact Study at 45.

For improvements to the local transportation system, including desired future connections to support street alignment and connectivity goals, the city's TIA has appropriately identified potential future potential transportation system improvements to the local system and will establish the rational nexus and rough proportionality of necessary improvements in conjunction with specific development applications. The city may also secure other funding sources to support development of an additional bridge, if warranted in the future. Based on this analysis, the director finds that the city has conducted an appropriate analysis of potential transportation improvements to serve the Charter Oaks area in the future, consistent with OAR chapter 660, division 12, and therefore rejects this objection.

### **H. Eighth Objection**

#### **The city improperly includes lower priority agricultural land within the UGB when the city's need does not require it to expand beyond nonresource land.**

This objection contains three parts. In the first part, the objector argues that the city has failed to establish a "need for land" that requires expansion of the UGB. The director addresses and rejects this argument in the response to the first objection discussed above.

In the second part the objector argues that evaluation of subareas consisting of a mix of priority categories is not consistent with the process described in OAR 660-024-0067(2).

OAR 660-024-0067(2) describes characteristics of four categories of lands that represent priorities for including lands within a UGB. The first and highest priority of lands to include are lands that are designated as urban reserve, exception land, and nonresource land. The second priority of lands to include are designated marginal lands.<sup>13</sup> The third priority of lands to include

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<sup>13</sup> There are no designated marginal lands in Douglas County.

are lands designated as farm or forest land that are not predominantly high-value farmland as that is defined in ORS 195.300. The fourth and lowest priority of lands for inclusion are resource lands that are predominantly high-value farmland as defined in ORS 195.300. Additional findings are required to include land that is also identified as prime or unique farmland by the United States Department of Agriculture Natural Resources Conservation Service.

In the third part, the objector argues that the city's approach to ranking the subareas using a point system is inconsistent with statute and rule. Objection at 10-11.

**Department Response:**

The department first addresses the second part of the objection. OAR 660-024-0067(4) provides a process for establishing subareas for studying as a single unit of land. There are two options - either evaluate subareas not larger than 100 acres or evaluate subareas larger than 100 acres that are in the same priority category or are composed of soils in the same priority category for the lower priority areas. The subareas need to be established in a way that allows a clean comparison of areas within the same category defined in OAR 660-024-0067(2). The Roseburg submittal establishes subareas that are not consistent with the required methods provided in OAR 660-024-0067(4) and the submittal does not appear to address that section of rule in the narrative. The city identified subareas that are greater than 100 acres in size and contain a mix of priorities. OAR 660-024-0067(4) is not addressed in the application and is not cited as a basis for the mixed subarea approach taken by the city. Roseburg UGB Exchange – Final - 04-15-24 at 54-62.

OAR 660-024-0067(3) does allow for small inclusions of higher priority land under two conditions. The first allows the inclusion of a small amount of low priority land if that land must be included in order to connect a nearby and significantly larger area of land that is a priority for inclusion. That is when the high-value farmland must be used as a bridge to link the UGB to the area of priority land for inclusion. The second condition is when there is a small piece of low priority land is completely surrounded by priority land for inclusion. However, the city did not address OAR 660-024-0067(3) in the submittal and is not cited as a basis for its mixed subarea approach.

Rather than identifying land within the priority categories defined in OAR 660-024-0067(2), the submittal identifies subareas containing a mix of priority lands and ranks them based on a method developed by the city that weighs the amount of nonresource and resource lands, the amount of high-value farmland and the amount of higher class soil types present in each subarea. The submittal does not demonstrate how this approach complies with the methodology provided in OAR 660-024-0067(2)-(4). Roseburg UGB Exchange – Final - 04-15-24 at 54-62.

In the third part of this objection, SOD argues that the city's approach to ranking the subareas using a point system is inconsistent with statute and rule. The director agrees. The city has applied a unique system of scoring mixed priority subareas described above that is then

combined with a rubric for scoring under the Goal 14 locational factors. Roseburg UGB Exchange – Final - 04-15-24 at 54-55.

OAR 660-024-0067(7) clearly provides that the prioritization of lands for inclusion within a UGB is first and primarily based on the methodology set out in OAR 660-024-0067(2). Consistent with statute, this methodology prioritizes land that has been designated as nonresource land, exception land and urban reserve. ORS 197A.285(2)(c)(A) & (B). The remaining prioritization is applied to resource lands and is based on three categories of soil classifications. ORS 197A.285(2)(c)(D). Only if there is excess land within a *single* priority category does the city apply the Goal 14 location factors to select the more suitable land within that priority category. The Goal 14 locational factors is not used to compare lands in different priority categories as Roseburg has done.

The Goal 14 locational factors may not be used to select resource lands that have higher capability or cubic foot site class ahead of lands that have lower capability or cubic foot site class. OAR 660-024-0067(7). Prior to application of the Goal 14 locational factors, Roseburg ranked Charter Oaks as the last area for inclusion. Using its points system in combination with the Goal 14 locational factors, Roseburg selected higher capability farmland ahead of lower capability lands which is not consistent with OAR 660-024-0067(7).

The director finds that the approach taken by the city establishing subareas that consist of a mix of different priority categories is not consistent with the prioritization process described in OAR 660-024-0067 and remands the city's submittal to address OAR 660-024-0067.

The director remands the submittal to allow the city to address the prioritization analysis OAR 660-024-0067(2) separately from application of the Goal 14 locational factors and to apply the factors analysis should the prioritization analysis result in an excess of land within the highest prioritization category consistent with OAR 660-024-0067(7).

## **I. Ninth Objection**

Note on objections nine to twelve: Objections nine through twelve all concern application of the Goal 14 locational factors. As noted above, a local government applies the Goal 14 locational factors when there is a sufficient amount of land in a single priority category and the local government is selecting which lands to urbanize. A local government may not use the Goal 14 locational factors to select resource lands that have higher capability or cubic foot site class ahead of lands that have lower capability or cubic foot site class. OAR 660-024-0067(7). The director remands the submittal to address the prioritization analysis under OAR 660-024-0067(2) separately from application of the Goal 14 locational factors, and to then apply the locational factors analysis should the prioritization analysis result in a sufficient amount of land within the same, highest prioritization category consistent with OAR 660-024-0067(7). The director's response to objections nine to twelve are included to provide additional clarity for the city on the

objections assuming that on review the city determines that the locational factors analysis is warranted and applied consistent with OAR 660-024-0067(7).

**The city violates Goal 14, Boundary Location Factor (1) by failing to properly account for the “efficient allocation of identified land needs” in locating the UGB.**

The objector argues that because the city has not demonstrated an additional need to expand the UGB to accommodate low-density residential development (*see* First Objection at Section V. A) there can be no “efficient allocation of identified land needs” as provided in Goal 14, Boundary Location Factor (1).<sup>14</sup> Objection at 11.

**Department Response:**

The director’s decision rejects the first objection because the UGB exchange process provided in OAR 660-024-0070 does not require a new need analysis. Consequently, the director adopts the findings regarding the first objection by reference and rejects this objection as well.

**J. Tenth Objection**

**The city violates Goal 14, Boundary Locational Factor (2) as it does not provide an “Orderly and [economic] provision of public facilities and services.”**

The objector argues that because a new bridge connecting to the Charter Oaks area has been identified as an unfunded project in the city’s TSP, the city may not find that inclusion of the area in the UGB will allow for the “orderly and efficient provision of public facilities and services,” as provided in Goal 14, Boundary Location Factor (2). Objection at 11.

**Department Response:**

The director notes that the location factor actually contemplates the “orderly and economic provision of public facilities and services” not “orderly and efficient” as described by the objector. Regardless, the director’s evaluation of the seventh objection rejects the contention that the city must demonstrate available funding for the additional bridge to approve the UGB decision and rejects the seventh objection. The director adopts the findings regarding the seventh objection by reference as findings in relation to this objection and rejects this objection as well.

**K. Eleventh Objection**

**The city violates Goal 14, Boundary Location Factor (3) by failing to address the comparative environmental, energy, economic, and social consequences of expanding the UGB into different nonresource or exception areas before proceeding to evaluate lower priority areas.**

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<sup>14</sup> Goal 14, Boundary Location Factor (1) requires consideration of “[e]fficient accommodation of identified land needs;” among four factors that must be considered to determine appropriate UGB boundary locations.

The objector argues that the environmental, energy, economic, and social consequences (ESEE) analysis does not consider the relative economic and environmental impact of the loss of high-value agricultural lands, nor does it consider the impact development of a new sewer pump would have to the city's resources. Objection at 11-12.

**Department Response:**

The city addresses the locational factors in detail. Roseburg UGB Exchange – Final - 04-15-24 at 81-115. The city addresses Boundary Location Factor 3 on pages 97-98. As noted above, the director remands the city's decision to apply the locational factors analysis should the prioritization analysis result in a sufficient amount of land within the highest prioritization category consistent with OAR 660-024-0067(7). In that circumstance, the city would address these arguments on review.

**L. Twelfth Objection**

**The city violates Goal 14, Boundary Location Factor (4), which requires consideration of the “[c]ompatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest lands outside of the UGB.”**

The objector argues that expansion of the UGB into the Charter Oaks area would introduce urbanization into the area in a way that would irrevocably commit agricultural lands within the expansion to urban uses and undermine resource uses on surrounding lands due to required road realignments and other conflicting uses. Objection at 12.

**Department Response:**

After selecting the Charter Oaks subarea based on the improperly applied prioritization analysis and Goal 14 location factors, the city then applies their own “refinement process” to further select lands within the Charter Oaks subarea for inclusion. Roseburg UGB Exchange – Final - 04-15-24 at 120-125. EFU lands within the Charter Oaks subarea were originally scored or analyzed as though they were a part of the inclusion area. The EFU lands were removed from the area to be included through a refinement process conducted after the Goal 14 locational factor analysis. The city did not apply the Goal 14 locational factor analysis to the refined Charter Oaks area and the city did not analyze the impact of urbanization to EFU lands that had been within the Charter Oaks subarea prior to the “refinement” process.

The director remands the submittal to address the prioritization analysis of OAR 660-024-0067(2) separately from application of the Goal 14 locational factors and to apply the Goal 14 locational factors analysis for further selection only if the lands identified as the highest priority in the prioritization analysis result in an excess of land that is within a single prioritization category, consistent with OAR 660-024-0067(7). When the city applies the Goal 14 locational analysis, it must consider the impacts of urbanization to lands that are not selected for inclusion.

## **VI. CONCLUSION**

The submittal from the City of Roseburg to remove and add land to the UGB, annexation and de-annexation of land, and amendments to the city's Comprehensive Plan and UGB Management Agreement with the county does not comply with the requirements of the applicable statewide planning goals, statutes, and administrative rules and is not supported by substantial evidence in the record. Therefore, as authorized by OAR 660-025-0150(1)(b), the submittal is remanded to address the errors identified in Objections 3, 4, 5, 6, and 8 (Sections V(C), (D), (E), (F), and (H)).

**DATED THIS 29th DAY OF JANUARY 2025**

*Brenda D Bateman*

Brenda Bateman, Director  
Department of Land Conservation and Development

Note: You may be entitled to LCDC review of this order. LCDC review may be obtained as provided in OAR 660-025-0150(6).

**ATTACHMENT A:**      **OBJECTION LETTER FROM SANE ORDERLY DEVELOPMENT**

## **CERTIFICATE OF SERVICE**

I certify that on January 29, 2025, I served the attached **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT REMAND OF CITY OF ROSEBURG UGB AMENDMENT SUBMITTAL (City of Roseburg Ordinance 3604, Douglas County Ordinance 2024-0901)** by mailing in a sealed envelope, with first-class postage prepaid, a copy thereof addressed as follows:

**Larry Rich, Mayor of Roseburg**  
900 SE Douglas Avenue  
Roseburg, OR, 97470  
[lrich@roseburgor.gov](mailto:lrich@roseburgor.gov)

**Nikki Messenger- City Manager**  
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**Stuart Cowie**  
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**Chris Boice- Douglas County Board Chair**  
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October 22, 2024

Via E-mail [DLCD.PR\\_UGB@dlcd.oregon.gov](mailto:DLCD.PR_UGB@dlcd.oregon.gov)

Attention: Periodic Review Specialist  
Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301

RE: Charter Oaks UGB Swap/Objection  
Our Client: Sane Orderly Development

Dear DLCD Representative:

On behalf of our client, Sane Orderly Development (SOD), we submit the following objection to the proposed urban growth boundary (UGB) exchange involving the City of Roseburg and Douglas County.

Please include this objection in the record of these proceedings and provide all future notices associated with this matter to our firm.

**A. Review of the Proposed UGB Exchange is Committed to the Exclusive Jurisdiction of the Oregon Land Use Board of Appeals.**

Review of the proposed exchange cannot be undertaken by the Oregon Department Land Conservation and Development (DLCD) because it is subject to the exclusive review of the Oregon Land Use Board of Appeals (LUBA).

As is set forth in greater detail in the enclosed Memorandum of Jurisdiction from SOD to LUBA, which is hereby incorporated by this reference, ORS 197.825(1) provides LUBA with “exclusive jurisdiction” to review final land use decisions. This includes the proposed UGB amendment which is a final decision of a local government that amends the City of Roseburg’s comprehensive plan and the application of the Oregon Statewide Planning Goals, land use regulations and comprehensive plan provisions. ORS 197.015(10)(a)(A).

SOD duly filed timely notices of intent to appeal with LUBA seeking review of the City’s Comprehensive Plan Amendment, CPA-23-002, and Ordinance No. 3604 in August and September of 2024. Such appeals have been consolidated for review by LUBA and are pending before LUBA at this time.

[eugenelaw.com](http://eugenelaw.com)



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The City of Roseburg mistakenly submitted this application for review by DLCD pursuant to ORS 197.825(2)(c)(A). However, that provision only applies to the UGB amendments that “add more than 50 acres to the area within the urban growth boundary.”

The approved UGB exchange on-the-other-hand, reduces the area within the UGB by more than 50 acres. Reductions in the size of the UGB or exchanges of land that result in a reduction of the UGB are not subject to DLCD’s jurisdiction. Accordingly, this matter is subject to LUBA’s exclusive jurisdiction, and the periodic review process is not applicable.

As DLCD lacks jurisdiction to review the UGB Amendment, we hereby request that DLCD halt further processing of the UGB amendment at this time, and defer to LUBA’s exclusive jurisdiction.

**B. The Proposed UGB Swap Cannot Be Approved Under the Standards Applicable to a UGB Amendment.**

In the alternative, and without the foregoing jurisdictional objection, SOD hereby provides the following objections pursuant to OAR 660-025-0140(2). These objections are supported by the enclosed written submission from July 22, 2024, to the City Council of the City of Roseburg, which is hereby incorporated by this reference.

For ease of reference, the provisions of OAR 660-025-0140(2) are set forth in bold italics followed by a brief response.

***(2) Persons who participated orally or in writing in the local process leading to the final decision may object to the local government submittal. To be valid, objections must:***

As is set forth herein, objector Sane Orderly Development participated in the local process leading to the final decision and may object to the local government submittal.

***(a) Be in writing and filed with the department’s Salem office no later than 21 days from the date the local government sent the notice;***

The objections included in this submission are written objections and are being filed with the department’s Salem office no later than 21 days from the date the local government sent the notice on October 1, 2024.

***(b) Clearly identify any alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;***

1. The proposed land exchange violates Goal 14 because it expands the City's urban growth boundaries to accommodate 229 acres of additional low density residential land outside the UGB where the City of Roseburg has no demonstrated need for additional low density residential land and a surplus of 352 acres of low density residential land already inside the UGB.

Goal 14 requires demonstrated need to change UGB. It states:

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

- (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments, or for cities applying the simplified process under ORS 197A, a 14-year forecast; and
- (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary."

OAR 660-015-0000(14).

The City of Roseburg already has adequate capacity to satisfy its need for low density residential housing over the course of next 20 years. The City's Housing Needs Analysis demonstrates that the City has a surplus of 352 gross acres of land within its existing UGB. *Housing Needs Analysis*, p. x.<sup>1</sup> See *Id.* at 802 & 813. Accordingly, it is categorically prohibited from finding that the UGB amendment is justified. *DLCD v. City of Klamath Falls*, 290 Or App 495, 416 P3d 326 (2018).

As is addressed in pages 2-4 of SOD's July 22, 2024 Letter to City Council, the City does not address the land need requirement in Goal 14. Instead, it attempts to rely on the City's Housing Needs Analysis to justify the expansion. CPA-23-002, Exhibit A,<sup>2</sup> p. 9. However, while OAR 660-024-0070(3) allows a local government to rely on an existing needs analysis for an adjustment, the

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<sup>1</sup> **“Low-Density Residential:** Roseburg has a surplus of capacity for about 1,020 dwelling units, or 352 gross acres of land to accommodate growth over the 2019-2039 period.”

<sup>2</sup> The City's application materials are attached as Exhibit A to its comprehensive plan amendment adopted on August 12, 2024 as CPA-23-002 together with appendices at Exhibit B. Herein, the City's August 12, 2024 comprehensive plan amendment is referred to as CPA-23-002, the application as Appendix A to that document, and the appendices as Exhibit B, thereto with the number of appendix also referenced.

needs analysis still needs to identify a “demonstrate need” to support the adjustment, and the City’s Housing Needs Analysis clearly identifies that there is no need for land designated for additional low density residential housing in the Roseburg UGB.

In its findings in support of the comprehensive plan amendment, the City again attempts to step around this issue by referring to language in the Housing Needs Analysis that references a potential “land swap.” CPA-23-002, p. 7. However, the cited language does not identify any need for additional low density residential land, or a need for a “land swap” but merely indicates that this was one of several options referenced in the City’s separate Housing Strategy to overcome development constraints.<sup>3</sup> This isolated reference does not demonstrate any need for additional low density residential land in the City’s UGB.

The City’s findings also refer to reported concerns from “stakeholders” in the Housing Needs Analysis regarding the development of land on 12% to 24.9% slopes and urges that this demonstrates a “need for low-density residential on flat, unconstrained land that can be more easily developed.” CPA-23-002, p. 9. However, while the needs analysis notes the stakeholders concern (“Stakeholders have expressed concern about the development capacity of Low-Density Residential land on slopes 12% to 24.9%”), it ultimately concludes that its projection of a 352-acre surplus is reasonable. *HNA*, p. 79. Again, the City’s needs analysis simply does not demonstrate any need for the expansion into the Charter Oaks area, and the existence of a surplus of Low Density Residential land within the UGB.

As there is no demonstrated need for the UGB expansion into the Charter Oaks area, SOD objects to proposed expansion in the UGB amendment.

**2.** The City also violates OAR 660-024-0070(3)(a)(A) by exchanging non-buildable land for buildable land.

OAR 660-0240024(3)(a)(A) provides that:

“(3) Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided a basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

(a) The amount of buildable land added to the UGB to meet:

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<sup>3</sup> “The Housing Strategy describes actions that the City can take to overcome these barriers, such as allowing a wider range of single-family housing development (such as cottage clusters), implementing a land swap of sloped land within the UGB for flat land outside of the UGB, increasing allowable densities (or setting minimum densities) and removing other barriers to development.” *HNA*, p. 84.

(A) A specific type of residential need is substantially equivalent to the amount of buildable residential land removed”

Hence, the exchange provisions only allow an exchange of “buildable residential land” to meet a specific type of residential need.

As addressed in the first objection, the City has no “residential need” for Low Density Residential land, and the proposed exchange fails on this basis. Moreover, the City of Roseburg is not exchanging “buildable residential land” inside the UGB for “buildable residential land” outside the UGB as required by the regulation.

As noted in the City’s decision, the majority of the majority of both the 91.5-acre Atkinson, and the 198.5-acre Serafin property are “unbuildable” because they consist of slopes in excess of 25%.<sup>4</sup> CPA-23-002, Exhibit A, p. 11-12, 14, 18, 21, 131-132. In fact, according to the City’s calculations only about 10.7 acres of the Atkinson’s 91.5 acres are buildable, while only about 80 acres of Serafin’s 198.5 acres are buildable. *Id.* at 131-32.

The City of Roseburg ignores this issue, despite the fact that it was plainly identified to the City more than a month before the adoption of its findings.

As City of Roseburg is expanding its UGB to include approximately 229 acres of land to offset the removal of approximately 90.7 acres of buildable land, its proposed exchange is not “substantially equivalent to the amount of buildable residential land removed” and in contrary to the agency rule.

Accordingly, SOD also objects to the proposed land exchange on this basis.

**3.** The City also violates OAR 660-024-0070(3)(a)(A) by exchanging multi-family residential land for low density residential land.

OAR 660-024-0070(3)(a)(A) requires an exchange of buildable land being exchanged is of a “specific type of residential need is substantial equivalent to the amount of buildable residential land removed.” As noted, there is no “residential need” to support the exchange, and the majority of land being removed from the UGB is not buildable residential land that can be exchanged.

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<sup>4</sup> Consistent with OAR 660-008-0005(2), the City of Roseburg’s Housing Needs Analysis defines “Buildable Land” to exclude residentially designated land that has “slopes of 25 percent or greater.” HNA, p. 7 (“The buildable lands inventory identifies the following as constraints that prohibit development: floodways and floodplains, wetlands, riparian corridors, **and steep slopes above 25%**”)(emphasis added).

Moreover, the City is exchanging multi-family property for low-density residential property that is not “substantially equivalent.” The Atkinson property contains approximately 23.4-acres of property designated as Multiple-Family Residential (14.15 acres) or High-Density Multiple-Family Residential (8.9 acres), but is being exchanged for low-density residential development. This is clearly contrary to OAR 660-024-0070(3)(a)(A).

The City attempts to justify its decision on the grounds that the “medium and high density land being removed is considered unbuildable.” CPA-23-002, p. 10. However, OAR 660-024-0070(3)(a)(A) only authorizes the exchange of “buildable land” for the “amount of buildable residential land removed.” Accordingly, to the extent that the medium and high-density residential land on the Atkinson property is “unbuildable,” the City is not entitled to exchange buildable land outside of the UGB for it.

The City also appears to overlook its own calculations which identify approximately .5 acres on the Atkinson property as designated for multiple-family development. CPA-23-002, Exhibit A, p. 131. As the property low density designation is not “substantially equivalent” to these designations, the proposed exchange conflicts with the regulation.

Accordingly, SOD objects on the basis the proposed exchange does not conform to OAR 660-024-0070(3)(a)(A) on this basis as well.

**4.** The City violates OAR 660-024-0065 by excluding 18,537 acres (approximately 60% of the preliminary study area) based on factors that are either not included as a basis for excluding property from the preliminary study area, or are improperly applied.

OAR 660-024-0065 provides that when a local government is considering a UGB amendment it is required to identify a “preliminary study area” that includes all lands within “one and one-half miles” of the UGB as well as urban reserves, and exception areas, if any. OAR 660-024-0065(4) provides four bases for the exclusion of land from this study area including:

- “(a) Based on the standards in section (7) of this rule, it is impracticable to provide necessary public facilities or services to the land;
- “(b) The land is subject to significant development hazards, due to a risk of: \*. \*. \*
- “(c) The land consists of a significant scenic, natural, cultural or recreation resource described in this subsection: \*. \*. \*;
- “(d) The land is owned by the federal government and managed primarily for rural uses.”

*See also* ORS 197A.285(2)(b). The City relied on none of these bases to exclude 60% of the preliminary study area from consideration.

Department of Land Conservation and Development

RE: Charter Oaks UGB Swap/Objection

October 22, 2024

Page 7 of 14

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The initial basis that the City identifies for excluding land from consideration is that the “lands are planned and zoned by Douglas County as either farm or forest lands or a combination thereof”. CPA-23-002, Exhibit A, p. 34 & 35. See also CPA-23-002, p. 12.<sup>5</sup> However, as is set forth above, farm or forest designation is not a basis for excluding lands from the study area. Accordingly, the City’s exclusion of these lands is inconsistent with the rule.

The City also indicated that lands were excluded based on “landslide susceptibility.” CPA-23-002, Exhibit A, p. 34 & 36. However, OAR 660-024-0065(4)(b)(A) only provides for the exclusion of land on the basis of “landslide susceptibility” where the:

**“land consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer.”**

(Emphasis added). The City does not exclude only “landslide deposit[s] or scarp flank[s]” mapped by DOGAMI. Instead, it excluded all lands with moderate to high landslide susceptibility, and surrounding property. These areas were identified on a 1:500,000 generalized “Regional Landslide Susceptibility” study prepared by DOGAMI for the purpose of identifying “areas where more detailed landslide mapping is needed.”<sup>6</sup> Accordingly, the City’s exclusion of lands based on landslide susceptibility also conflicts with OAR 660-024-0065.

Finally, the City relied on the “existing development patterns of rural residential” as justification to exclude the property under OAR 660-024-0067(5)(B). However, as provided in OAR 660-024-0065(8), “existing development patterns” don’t provide a basis for excluding property even

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<sup>5</sup> “The lands that were immediately excluded consisted of large tracts of ownership that were only designated as resource land. Because all of these lands are planned and zoned by Douglas County as either farm or forestlands or a combination thereof, the City finds that consideration of these lands would be inconsistent with state law, as well as, unsupported by the policies and objectives of the Douglas County Comprehensive Plan. This was the primary determinant in removing them from the preliminary study area.”

<sup>6</sup> “This project provides a generalized (1:500,000; ~32 square ft grid) landslide susceptibility overview map of the entire state. The intended use of this overview map is to help identify regions (cities, counties, communities, portions of lifelines, watersheds, etc.) that may be at risk for future landslides. The map is designed to provide information for regional planning and specifically to identify areas where more detailed landslide mapping is needed.” *Landslide Susceptibility Overview Map of Oregon*, 1.0 Report Summary, p. 1.

where such development patterns make the extension of urban facilities or services impracticable. Moreover, OAR 660-024-0067(5)(B) provides no basis for excluding land from the preliminary study area as it is unrelated to the study area analysis.

As the City misapplies OAR 660-024-0065 to exclude, and refuse to consider more than 60% of the preliminary study area, SOD objects to this violation as well.

**5.** The City also violates OAR 660-024-0065 by improperly excluding property based on its location within a particular “subarea.”

The City divided the property remaining after the initial improper exclusion of 18,537 acres is divided into 13 “subareas.” CPA-23-002, Exhibit A, p. 37 & 38. It concluded that 10 of these subareas - accounting for approximately 10,575 acres – because the subareas contained some lands that were subject to exclusion under OAR 660-024-0065(4). This method of exclusion is contrary to the rule, which does not provide for exclusion of thousands of acres from consideration based on characteristics of some of the land contained therein.

OAR 660-024-0065(4) does not provide for the exclusion based on the location within a subarea. Accordingly, SOD also objects to the exchange on this basis.

**6.** The City also violates OAR 660-024-0065 by improperly excluding property from the preliminary study area based factors that either do not apply to the land in question or do not provide a basis for exclusion of the land from the study area.

More than half of the acreage remaining within the study area is excluded solely because it is located within a “subarea” – including “subareas 4, 6, 7, 8, 10, 12 and 13” – that contains steep slopes.<sup>7</sup> CPA-23-002, Exhibit A, p. 42-44. These lands include lands that are already subdivided for residential use and have existing vacant lots<sup>8</sup>, and which would be available for the extension of urban facilities and services<sup>9</sup> but are ruled out because the “subarea” is slope constrained. However, while OAR 660-

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<sup>7</sup> The City also finds that it is impracticable to provide necessary services to these subareas. CPA-23-002, Exhibit A, p. 46. However, its analysis does not evaluate any of the lands within the individual subareas, the likely amount of development of these lands, likely costs of facilities and services, any substantial evidence of similarly situated lands, or evaluate impediments to services as required by OAR 660-024-0065(7). SOD also objects on this basis.

<sup>8</sup> See e.g. #13 - Newton Creek/Winchester East – “Some rural residential development has been approved in this area, such as Winchester Ridge.” CPA-23-002, Exhibit A, p. 44.

<sup>9</sup> See e.g. #12 - Sunshine Road “From the perspective of proximity to city services and existing development patterns, the land within this subarea could be a potentially efficient location for consideration of the UGB amendment”; #10 – Booth/Ramp Roads “This area contains land at the end

Department of Land Conservation and Development

RE: Charter Oaks UGB Swap/Objection

October 22, 2024

Page 9 of 14

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024-0065(7)(a) allows cities to exclude contiguous areas where 75% or more of the land has a slope of 25% or greater, it also requires cities not to exclude areas contiguous areas that are 20 acres in size or larger that have slopes less than 25 percent. As depicted in the City's own materials there are more than 700 acres of contiguous land with less than 25% slopes within these "subareas" that is improperly excluded. See CPA-23-002, Exhibit A, p. 42-45, Subarea 4 (103 acres); Subarea 6 (261 acres); Subarea 8 (134 acres); 10 (96 acres); 12 (25 acres); & 13 (86 acres).

As the City improperly excludes these areas from further consideration in violation of the regulation, SOD objects.

The City also improperly excludes over 2,700 acres of property in its "subareas" 2,3 and 9 based on factors that provide no basis for exclusion under OAR 660-024-0065. In particular:

- a. The 548 acres in the Del Rio "subarea" are excluded because "urban services would have to extend out Del Rio Road" and the 263 acres of land the Southgate/Tipton Road area because of an alleged "topographic bottleneck" between Hwy 99 and the floodway of the Umpqua River.<sup>10</sup> CPA-23-002, Exhibit A, p. 42-43. However, the extension of urban services along transportation corridors is commonplace, and extending utilities along a roadway is not a basis for excluding lands for consideration under OAR 660-024-0065(7). The city also seeks to justify the exclusion of both of these areas based on the existing use or zoning on some of the land in each of the subareas. However, the zoning and use of a portion of the land within a "subarea" is not a basis for excluding other land from the preliminary study area and existing development patterns do not provide a basis for excluding property from the preliminary study area under OAR 660-024-0065(8);
- b. The 1,910-acre Garden Valley/Riversdale subarea contains "a significant amount of developable/redevelopable land zoned for residential use." CPA-23-002, Exhibit A, p. 48. The City purports to exclude this area on the basis of a ridgeline, but does not actually evaluate whether the developed ridgeline is actually an impediment to service under the standards at OAR 660-024-0065(7)(b). Indeed, a reflected in the City's Exhibits 18, 19

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of SE Sharon Avenue and Booth Road, which both act as logical extensions of the adjacent existing neighborhoods inside the city."; #7 -Lookinglass Road "Similar to the Old Melrose Subarea, the land along Lookinglass is in fairly close proximity to urban services."; #6 – "this subarea is the closest subarea to Roseburg's sewage treatment plant". CPA-23-002, Exhibit A, p. 42-44.

<sup>10</sup> Furthermore, a floodway is not an "impediment to service" under OAR 660-024-0065(7)(c) and utilities could be placed in this area as long as the same are appropriately floodproofed and certified by a registered professional civil engineer. See LUDO §§ 3.30.440 & 3.30.620. *See also* RMC 12.040.090(W) & (EE).

and 20, there are service connection locations to this area on Fisher Road to the north of the ridgeline and Garden Valley Road to the south. CPA-23-002, Exhibit A, p. 45, 48 & 50.

As the City excludes land from the preliminary study area based on factors that are not applicable in violation of OAR 660-024-0065, SOD objects to the proposed exchange on this basis as well.

**7.** The City improperly includes the Charter Oaks area within the study area under ORS 197A.285(2)(b)(A) when it is impracticable to provide necessary public facilities and services. ORS 197A.285 provides that:

“a city shall evaluate all land for inclusion within the urban growth boundary as provided in subsection (4), except for land excluded from the study area because:

- (A) It is impractical, as provided in subsection (3) of this section, to provide necessary public facilities or services to land.”

As the City notes, a bridge crossing of the South Umpqua River and connection to Harvard Avenue is the only way to provide necessary secondary access and connectivity for the Charter Oaks area. CPA-23-002, Exhibit A, p. 183 & Exhibit B, Appendix 5, p. 45. However, there is no funding plan in place for the necessary secondary bridge during the planning period for the Transportation System Plan, and the same does not constitute a “planned transportation facility” or improvement under Oregon’s Transportation Planning Rule. CPA-23-002, Exhibit A, p. 183; OAR 660-012-0060(4)(b).

Since the City improperly includes the Charter Oaks area within the preliminary study area contrary to ORS 197A.285(2)(b)(A), SOD objects to the exchange on this basis as well.

**8.** The City improperly includes lower priority agricultural land within the UGB when the City’s “need” does not require it to expand beyond nonresource land.

ORS 197A.285(2)(c) and OAR 660-024-0067 establish a system of priorities whereby a city will only consider including agricultural land within the UGB when there is insufficient urban reserves, exception areas, nonresource lands, and marginal lands to “satisfy the need for land.”

In this case, as is addressed under the first objection, there is no “need for land” that is the City of Roseburg needs to satisfy by expanding its UGB. Accordingly, SOD objects to this violation of the statute.

In addition, SOD objects to the City of Roseburg’s use of mixed “subareas” in violation of the system of priorities established under the statute. As is reflected in the City’s materials, these subareas lump together exception areas and nonresource lands with resource lands that should not be considered

unless and until all exception and nonresource lands are first exhausted. See CPA-23-002, Exhibit A, p. 35 & 39. In fact, the City's materials identify more than 869 acres of nonresource land in its three remaining subareas, with the Dixonville "subarea" alone accounting for 482 acres of rural residential and other nonresource areas. *Id.* at 58.

As the combination of resource and nonresource land is contrary to system of priorities established by ORS 197A.285, SOD objects to the proposed exchange on this basis as well.

Moreover, the City's proposed ranking of land by its location in one of the three remaining "subareas" by a point system is fundamentally inconsistent with ORS 197A.285(2)(b) and OAR 660-024-0067(1), which both require that "all land" within the preliminary study area be evaluated for inclusion in the UGB using the system of priorities, and barring UGB expansions onto lower priority land if higher priority land will satisfy the identified need. ORS 197A.285(2)(c); OAR 660-024-0067(1)(b).

As the City's subarea system provides for the inclusion of lower priority agricultural land before nonresource and exception area lands are exhausted in violation of the statute and rule, SOD objects to the exchange on this basis as well.

**9.** The City also violates Goal 14 locational factor (1) by failing to properly account for the "efficient allocation of identified land needs" in locating the UGB.

As set forth in objection 1, there is no demonstrated need to expand the UGB to accommodate additional low-density land as there is already a surplus of 352 acres low density residential land within the existing UGB. As there is no "need" that impels the city to include additional land in the Charter Oaks area, the City's expansion of the UGB into this area violates Goal 14 locational factor (1) and SOD objects on this basis as well.

**10.** The City also violates Goal 14 locational factor (2) of Goal 14 as it does not provide an "orderly and efficient provision of public facilities and services." As noted in objection 7, the proposed expansion of the UGB in the Charter Oaks area will require a new bridge over the South Umpqua River. This bridge is not a "planned transportation facility" as there is no funding source for its projected \$29 million expense. *See TSP*, p. 1 & 67. As the necessary transportation connectivity for the UGB expansion area is dependent upon a bridge that is not likely to be constructed before the end of the planning period, it is not consistent with the orderly and efficient provision of public facilities and services. Accordingly, SOD objects to the exchange based on its violation of Goal 14 locational factor (2).

**11.** The City also violates Goal 14 location factor (3) by failing to address the comparative environmental, energy, economic, and social consequences of expanding the UGB into different nonresource or exception areas before proceeding to evaluate lower priority areas.

The City's proposed expansion of the UGB would intrude into an area with the highest concentration of high-value farmland of any of the "subareas" under consideration. CPA-23-002, Exhibit A, p. 124. This would result in the irrevocable loss of these agricultural lands corresponding adverse impacts to the environment, to agricultural employment (a basic employment sector), and the further weakening of an agricultural sector that is already struggling. *See Roseburg Urban Area Comprehensive Plan, Economic Element, Basic Employment Sectors, Agriculture.*

It would also result in significant adverse economic impacts to the City as it would require the acquisition of land and development of a new sewer pump station to serve the area, the replacement of existing water infrastructure within the area, the development of 1.6 linear miles of additional streets, and a \$29 million bridge, all to include a farming area within the City. CPA-23-002, Exhibit A, p. 92 & Exhibit B, Appendix 5, p. 45. *TSP*, p. 70.

As the City's locational analysis violates Goal 14, SOD objects to the exchange on this basis as well.

**12.** The City also violates Goal 14 locational factor (4) which requires consideration of the "Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest lands outside of the UGB."

The proposed expansion into the Charter Oaks area would introduce urban levels of residential development into the heart of an area devoted to agriculture uses and Century Farms. Not only would this irrevocably commit agricultural lands within the expansion area itself to urban uses, it would also undermine resource uses on surrounding lands, which are proposed for new road alignments outside the expansion area (CPA-23-002, Exhibit B, Appendix 5, Figure 21), and which would be impacted by the increasing amounts of area residents, traffic, and conflicts.

As the City violates Goal 14 locational factor (4), SOD objects to the exchange on this basis as well.

***(c) Suggest specific revisions that would resolve the objection; and***

1. In view of the 352-acre surplus of low-density residential land identified in the Housing Needs Analysis, and the lack of any demonstrated need for additional low-density housing, require the removal of the proposed UGB expansion.
2. In view of the fact that most of the property proposed for withdrawal from the UGB is not inventoried buildable land within the Housing Needs Analysis, do not allow the City to exchange of buildable land outside of the UGB for this non-buildable land.

Department of Land Conservation and Development

RE: Charter Oaks UGB Swap/Objection

October 22, 2024

Page 13 of 14

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3. In view of the fact that a portion of land proposed for the exchange is multi-family residential, do not allow an exchange of this land for property that will be designated as low-density residential.

4. Require evaluation of the 18,537 acres improperly excluded from the preliminary study area under OAR 660-024-0065 for inclusion in the UGB.

5. Require evaluation of the portions of the 10,575 acres within “subareas” for inclusion within the UGB that are improperly excluded from the study area under OAR 660-024-0065.

6. Require evaluate of property within the “subareas” that were improperly excluded based on its on factors that either did not occur on that land (such as steep slopes) or which were not a basis for exclusion under OAR 660-024-0065.

7. Require that Charter Oaks be excluded from the preliminary study area because it is impracticable to provide the bridge over the South Umpqua River that is necessary to provide connectivity and secondary access.

8. Do not allow the City to expand its UGB onto agricultural lands where inclusion of lower priority agricultural land is not required to “satisfy the need for land” under the state system of priorities.

9. Do not allow the City to expand into the Charter Oaks area where the City has a 352-acre surplus of low density residential land within the existing UGB and there are no “identified land needs” that require the expansion of the UGB into this area.

10. Do not allow the City to expand its UGB into the Charter Oaks area where the bridge required to provide necessary connectivity to the property is not a planned transportation facility within the planning horizon.

11. Require the City to compare the environmental, energy, economic and social consequences of higher priority lands before considering lower priority agricultural lands and high-value agricultural, and require the City to take into the account the economic and social impacts on area agriculture as well as the economic impacts of funding the \$29 million bridge and other public infrastructure.

12. Require the City to evaluate the impacts of the UGB expansion into the Charter Oaks area, including the expansion of the transportation system, on the compatibility with the surrounding farm

Department of Land Conservation and Development

RE: Charter Oaks UGB Swap/Objection

October 22, 2024

Page 14 of 14

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uses both in terms of the loss of non-renewable resource land and on the external impacts of development.

***(d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.***

As reflected in the City of Roseburg's record in this matter, objector Sane Orderly Development participated both orally and in writing in the local proceedings leading to the final decision. Attached hereto, is the objector's written submission from July 22, 2024, which was provided to the Roseburg City Council during the local hearing process.

As SOD has conformed to the requirements for filing an objection, we hereby request that the same be accepted and considered by DLCD in evaluating the proposed exchange, that the objections be sustained, and that appropriate steps are taken to address the City's violations of state law.

Very truly yours,

HUTCHINSON COX



Zack P. Mittge

ZPM/df

Enclosures: Petitioner's Memorandum of Jurisdiction

July 22, 2024 Letter from Sane Orderly Development to Roseburg City Council

cc: Roseburg Community Development – [cdd@roseburgor.gov](mailto:cdd@roseburgor.gov)

Douglas County Planning – [planning@douglascountyor.gov](mailto:planning@douglascountyor.gov)

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 SANE ORDERLY DEVELOPMENT,

4 *Petitioner,*

5 VS.

6 CITY OF ROSEBURG,

7 *Respondent.*

8 LUBA 2024-055

9 **PETITIONERS' MEMORANDUM OF JURISDICTION**

10 In accordance with Board's order dated September 18, 2024, in this matter,

11 Petitioner Sane Orderly Development hereby provides the following memorandum  
12 addressing the issue of jurisdiction.

13 ORS 197.825(1) provides LUBA with "exclusive jurisdiction to review any land  
14 use decision of limited land use decision of a local government" subject only to the  
15 exceptions in ORS 197.825(2).

16 As LUBA notes, ORS 197.825(2)(c)(A) provides in relevant part that:

17 " "(2) The jurisdiction of the board:

18 \* \*.\* \*

19 (c) Does not include a local government decision that is:

20 (A) Submitted to the Department of Land Conservation and Development  
21 for acknowledgment under...[ORS] 197.626...."

22 ORS 197.626(1)(b) provides that:

1           “(1) A local government shall submit for review and the Land Conservation  
2           and Development Commission shall review the following final land use  
3           decisions in the manner provided for review of a work task under ORS  
4           197.633 and subject to subsection (3) of this section:

5           \* \*.\* \*

6           (b) An amendment of an urban growth boundary by a city with a population  
7           of 2,500 or more within its urban growth boundary that adds more than 50  
8           acres to the area within the urban growth boundary;”

9           In accordance with these provisions, LUBA has exclusive jurisdiction in this  
10          matter. The City of Roseburg’s land use recent UGB adjustment is a “land use decision”  
11          that involved the amendment of the comprehensive plan and the application of the goals,  
12          land use regulations and comprehensive plan provisions.

13           Moreover, the UGB adjustment is not subject to the exception set forth at ORS  
14          197.825(2)(c)(A) as the UGB adjustment does not add more than 50 acres to the area  
15          within the urban growth boundary.

16           The City of Roseburg’s Urban Growth Boundary Adjustment Reduces the Area  
17           Within the Urban Growth Boundary.

19           The City of Roseburg’s UGB amendment is not subject to DLCD’s jurisdiction  
20          because it decreases the area within Roseburg’s urban growth boundary by more than  
21          50 acres.

22           OAR 660-024-0070(1) provides local governments with ability to adjust their  
23          UGB boundaries “by exchanging land inside the UGB for land outside the UGB.” The

1 City of Roseburg utilizes this process to “exchange...approximately 513.5 $\pm$  acres”  
2 removing two properties totaling approximately 284.5 $\pm$  acres in exchange for  
3 approximately 229 acres in the Charter Oaks area. *CITY OF ROSEBURG Urban*  
4 *Growth Boundary Exchange Proposal: Staff Report and Findings, April 15, 2024, p. 2.*<sup>1</sup>

5 This UGB amendment is not subject to DLCD’s jurisdiction because it does not  
6 add “more than 50 acres to the area within the urban growth boundary” as provided for  
7 in ORS 197.626(1)(b). Instead, the amendment reduces the “area within the urban  
8 growth boundary” by more than 50 acres. A reduction in the area within the UGB is  
9 not subject to the exception to LUBA’s jurisdiction under ORS 197.626(1)(b).  
10 Accordingly, the exception at ORS 197.825(2)(c)(A) is not applicable and the City of  
11 Roseburg’s land use decision is subject to LUBA’s exclusive jurisdiction.

12 Petitioner reasonably anticipates that the City may urge that the exclusion is  
13 nevertheless applicable to the UGB adjustment because in exchanging land within the  
14 UGB for land outside the UGB, the City expanded into the Charter Oaks area. However,  
15 since the City elected to remove more land within the UGB than it obtained by

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<sup>1</sup> “Urban Growth Boundary amendment involving the exchange of approximately 513.5 $\pm$  acres. The area to be removed from the UGB are two privately owned properties, 91.5 $\pm$  acres on the hillside east of NW Daysha Dr and 193 $\pm$  acres on the hillside north of NE Barager Ave. The area proposed to be added to the UGB is 229 $\pm$  acres located on the west side of the existing boundary, generally bounded by the South Umpqua River and Troost St, a portion of an area commonly known as Charter Oaks.”

1 expanding into the Charter Oaks area, it does not result in an addition of land under  
2 ORS 197.626(1)(b).

3 The text of ORS 197.626(1)(b) provides for review by LCDC where “[a]n  
4 amendment of an urban growth boundary...adds more than 50 acres to the area within  
5 the urban growth boundary.” Hence, under the text of the statute, a UGB “amendment”  
6 is only subject to the exclusion where it “adds” land to “area within the UGB.”

7 Although, the term “adds” is not defined in the statute, its recognized plain  
8 meaning is **“to join, annex or unite** (as one thing to another) **so as to bring about an**  
9 **increase** (as in number, size or importance) \* \* \*.” *Webster’s Third New Int’l*  
10 *Dictionary*, 24 (unabridged ed. 2002)(emphasis added). Hence, to be subject to ORS  
11 197.626(1)(b), an amendment would need to increase the area within the UGB by more  
12 than 50 acres. *See Swalley Irrigation District v. City of Bend*, 59 Or LUBA 52  
13 (2009)(amendment to UGB to add approximately 5,900 acres to City of Bend subject  
14 to DLCD jurisdiction).

15 Land exchanges on the other hand, trade land within the UGB for land that is  
16 outside of the UGB. The Oregon legislature authorized land exchanges in 2013 as part  
17 of a package of legislation that was intended to streamline the UGB process by  
18 providing alternatives to periodic review. House Bill (HB) 2254 (2013). Now codified  
19 as ORS 197A.285(7), the legislation allowed LCDC to:

1       “adopt rules that specify circumstances under which a city **may exchange land**  
2       **within the urban growth boundary of the city for land that is outside of the**  
3       **urban growth boundary** and that is designed to avoid adverse effects on an  
4       exchange of agricultural or forest operations in the surrounding area.”

5       (Emphasis added). The legislation did not incorporate an additional exclusion to  
6       LUBA’s jurisdiction for land exchanges generally or based on the size of the properties  
7       involved in the exchange.<sup>2</sup>

8           Consistent with this legislation, LCDC adopted OAR 660-024-0070(1),<sup>3</sup> which  
9       identifies land exchanges as a form of UGB adjustment distinct from the addition or  
10      removal of land from the UGB. Again, the regulation does not exclude land exchanges  
11      from LUBA’s review generally or based on the size of the property conveyed.

12          In this case, the City’s “amendment” – CPA 23-002 – is clearly an exchange of  
13      land. It does not “add” land to the area within the UGB. Instead, it subtracts more than  
14      50 acres of land from the area within the UGB, by trading 284.5± acres within the UGB

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<sup>2</sup> Nor would such a requirement have been consistent with the intent of the legislation, which was to provide expedited review of local UGB amendments. As Richard Whitman, then the Governor’s Natural Resource Advisor, explained to the House Committee on Land Use the legislation expedited review of UGB amendments by providing for review by LUBA rather than LCDC, and for expedited review of the LUBA decision by the Court of Appeals. Audio Recording, House Committee on Land Use, HB 2254, March 7, 2013 at 1:26:40 to 1:27:35 (comments of Richard Whitman), <https://olis.oregonlegislature.gov> (accessed October 1, 2024).

<sup>3</sup> “(1) A local government may adjust the UGB at any time to better achieve the purposes of Goal 14 and this division. Such adjustment may occur by **adding or removing land from the UGB, or by exchanging land inside the UGB for land outside the UGB.**” (Emphasis added)

1 for the smaller Charter Oaks area outside the UGB. This UGB amendment is not an  
2 increase in the area within the UGB of more than 50 acres, and it is not subject to ORS  
3 197.626(1)(b).

4 As the County's exchange of land reduces the area within the Roseburg UGB, it  
5 is not subject to the exclusion in ORS 197.825(2)(c)(A) and is subject to LUBA's  
6 exclusive jurisdiction under ORS 197.825(1). Accordingly, Petitioner respectfully  
7 requests that the Board proceed with the appeal 2024-055.

8 Dated: October 2, 2024.

9 HUTCHINSON COX

10  
11   
12 Zack P. Mittge, OSB #043643  
13 Of Attorneys for Petitioner  
14

15

## **CERTIFICATE OF FILING**

3 I hereby certify that on October 2, 2024, I filed the original of this  
4 **PETITIONERS' MEMORANDUM OF JURISDICTION** together with one true and  
5 correct copy, with the Land Use Board of Appeals, 775 Summer Street NE. Suite 330,  
6 Salem, OR 97301-1283 by first-class mail.

Zack P. Mittge, OSB #043643  
Of Attorneys for Petitioner

## **CERTIFICATE OF SERVICE**

16 I hereby certify that on October 2, 2024, I served a true and correct copy of this  
17 **PETITIONERS' MEMORANDUM OF JURISDICTION** on the attorney or persons  
18 listed below by first class mail.

Jim Forrester  
Dole Coalwell Attorneys  
810 SE Douglas Ave  
PO Box 1205  
Roseburg, OR 97470

Zack P. Mittge, OSB #043643  
Of Attorneys for Petitioner



## CITY OF ROSEBURG

# Urban Growth Boundary Exchange Proposal: Staff Report and Findings

April 15, 2024\*

\* April 15, 2024 Revision: Correct typos from earlier February 9, 2024 version, clarifying that R7.5 zoning (not R10 as stated previously) is proposed for future city zoning inside Charter Oaks. This is consistent with the density exchange analysis that was previously updated for the February 9, 2024 version as submitted by the city to the Douglas County Planning Department. Corrections to future zoning are found on pages 27, 207 and 208. The density exchange analysis previously updated for the county submittal packet on February 9, 2024 is found on pp. 126-146. Please disregard prior copies of the application in favor of this revised version.

<b>File Number</b>	CPA-23-002
<b>Applicant</b>	<p>City of Roseburg          Prepared By:          Stuart Cowie, Community Development Director          Ricky Hoffman, Associate Planner          Liam Bean, Associate Planner          Kate Bentz, RARE AmeriCorps Member          Nik Ramstad, RARE AmeriCorps Member</p>
<b>Project Type</b>	Urban Growth Boundary Amendment
<b>Procedure Type</b>	UGB Amendment: Type IV Comprehensive Plan Map (Major Amendment): This proposal contains an amendment of the UGB by a city with a population of 2,500 or more that adds more than 50 acres. Plan amendments are submitted to the Roseburg City Council, Douglas County Board of Commissioners, and LCDC for review for compliance with applicable local & statewide planning goals, statutes, and rules.
<b>Request</b>	Urban Growth Boundary amendment involving the exchange of approximately $513.5\pm$ acres. The areas to be removed from the UGB are two privately owned properties, $91.5\pm$ acres on the hillside east of NW Daysha Dr and $193\pm$ acres on the hillside north of NE Barager Ave. The area proposed to be added to the UGB is $229\pm$ acres and located on the west side of the existing boundary, generally bounded by the South Umpqua River and Troost St, a portion of an area commonly known as Charter Oaks.

**Enrolled**  
**House Bill 2254**

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Land Conservation and Development)

CHAPTER .....

AN ACT

Relating to the urban growth boundary; creating new provisions; amending ORS 197.015 and 197.298; appropriating money; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. As used in sections 1 to 8 of this 2013 Act:**

- (1) "Buildable lands" means land in urban or urbanizable areas that are suitable for urban uses.
- (2) "Serviceable" means, with respect to land, that:
  - (a) Adequate sewer, water and transportation capacity for planned urban development is available or can be either provided or made subject to committed financing; or
  - (b) Committed financing can be in place to provide adequate sewer, water and transportation capacity for planned urban development.

**SECTION 2. The purpose of sections 1 to 8 of this 2013 Act is to direct the Land Conservation and Development Commission to develop and adopt simplified methods for a city that is outside Metro to evaluate or amend the urban growth boundary of the city. The commission should design the methods to:**

- (1) Become, as a result of reduced costs, complexity and time, the methods that are used by most cities with growing populations to manage the urban growth boundaries of the cities;
- (2) Encourage, to the extent practicable given market conditions, the development of urban areas in which individuals desire to live and work and that are increasingly efficient in terms of land uses and in terms of public facilities and services;
- (3) Encourage the conservation of important farm and forest lands, particularly lands that are needed to sustain agricultural and forest products industries;
- (4) Encourage cities to increase the development capacity within the urban growth boundaries of the cities;
- (5) Encourage the provision of an adequate supply of serviceable land that is planned for needed urban residential and industrial development; and
- (6) Assist residents in understanding the major local government decisions that are likely to determine the form of a city's growth.

**SECTION 3. (1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the statewide land use planning goals, the Land Conservation and Development Commission shall adopt by rule methods by which a city that is outside Metro may evaluate or amend the urban growth boundary of the city.**

**(2) A city outside Metro may use the methods adopted pursuant to:**

- (a) Section 4 of this 2013 Act if the city has a population of less than 10,000.
- (b) Section 5 of this 2013 Act if the city has a population of 10,000 or more.
- (3) A city that elects to include land within the urban growth boundary of the city under a method established pursuant to section 4 or 5 of this 2013 Act:
  - (a) May use the method again when:
    - (A) The population of the city has grown by at least 50 percent of the amount of growth forecast to occur in conjunction with the previous use of the method by the city; or
    - (B) At least one-half of the lands identified as buildable lands during the previous use of the method by the city have been developed.
  - (b) Shall evaluate whether the city needs to include within the urban growth boundary additional land for residential or employment uses before the population of the city has grown by 100 percent of the population growth forecast to occur in conjunction with the previous use of the method by the city.
  - (4) A city that elects to use a method established pursuant to section 4 or 5 of this 2013 Act shall notify the Department of Land Conservation and Development of the election in the manner required by ORS 197.610 for notice of a post-acknowledgment plan amendment. The city may revoke the election until the city makes a final decision whether to amend the urban growth boundary of the city. A city that has initiated, but not completed, an amendment of its urban growth boundary before January 1, 2014, may withdraw the proposed amendment and use a method established pursuant to section 4 or 5 of this 2013 Act by filing notice of the election with the department in the manner required by ORS 197.610 and 197.615 for notice of a post-acknowledgment plan amendment.

- (5) Beginning on or before January 1, 2023, the commission shall:
  - (a) Evaluate, every five years, the impact of the implementation of sections 4 (2) and 5 (2) of this 2013 Act on the population per square mile, livability in the area, the provision and cost of urban facilities and services, the rate of conversion of agriculture and forest lands and other considerations;
  - (b) Consider changes to the statewide land use planning goals or rules to address adverse outcomes; and
  - (c) Make recommendations to the Legislative Assembly, as necessary, for statutory changes.

**SECTION 4.** (1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the statewide land use planning goals, the Land Conservation and Development Commission shall adopt a method by which a city outside Metro that has a population of less than 10,000 may evaluate or amend its urban growth boundary.

- (2) The commission shall design the method so that:
  - (a) A city using the method:
    - (A) Will have within its boundaries sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, to meet the growth in population and employment forecast to occur over a 14-year period.
    - (B) Will not become less efficient in its use of land as a result of a change to the urban growth boundary.
    - (b) The urban population per square mile will continue, subject to market conditions, to increase over time on a statewide basis and in major regions of the state, including that portion of the Willamette Valley outside of Metro.
    - (c) The rate of conversion of agricultural and forest lands to urban uses does not increase over time in any major region of the state.
  - (3) Under the method adopted by the commission:
    - (a) A city's determination of the amount of buildable lands needed for housing, employment and other urban uses must be based on the population and employment growth forecast to occur over a 14-year period.

- (b) A city's determination of the supply and development capacity of lands within its urban growth boundary must be based on:
- (A) A simple inventory of vacant and partially vacant buildable lands within the urban growth boundary;
  - (B) The comprehensive plan designation and the zoning of the portion of the buildable lands that is urban; and
  - (C) Simple factors established by the commission for forecasting:
    - (i) The development and redevelopment capacity of urbanizable lands within the urban growth boundary; and
    - (ii) The redevelopment capacity of developed urban lands within the urban growth boundary.
  - (c) A city's determination of the supply and development capacity of lands the city proposes to include within the urban growth boundary must be based on:
    - (A) A simple inventory of vacant and partially vacant lands; and
    - (B) Simple factors established by the commission for forecasting the development and redevelopment capacity of the lands.
  - (d) A city shall demonstrate that lands included within the urban growth boundary:
    - (A) Include sufficient serviceable land for at least a seven-year period.
    - (B) Can all be serviceable over a 14-year period.
  - (e) Lands included within the urban growth boundary:
    - (A) Must be planned and zoned for categories of land uses in amounts that are roughly proportional to the land need determined for each category of use;
    - (B) Must be planned and zoned for an intensity of use that is generally consistent with the estimates that were used to determine the amount of land needed;
    - (C) Must be planned and zoned to meet the requirements for needed housing, and those requirements must be specified by rule of the commission in a manner that is as objective as practicable; and
    - (D) May be either:
      - (i) Planned and zoned, or otherwise conditioned, to avoid significantly affecting a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan; or
      - (ii) Allowed to significantly affect a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan subject to mitigation, consistent with rules of the commission, if the lands are planned and zoned for compact urban development or industrial uses.
  - (4) For purposes of subsection (3)(a) of this section, population growth must be forecast as provided in ORS 195.034 or 195.036. Employment growth must be forecast based on the population growth forecast for the city or the employment growth forecast issued by the Employment Department for the county or region. The commission shall establish factors, by rule, for converting the forecasted population and employment growth into forecasts of land need for housing, employment and other categories of uses. The factors must:
    - (a) Be based on an empirical evaluation of the relation between population and employment growth and the rate and trends of land utilization in the recent past in the applicable major region of the state;
    - (b) Reflect consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;
    - (c) Be designed to encourage an increase in the land use efficiency of a city, subject to market conditions; and
    - (d) Provide a range of policy choices for a city about the form of its future growth.
  - (5) For purposes of subsection (3)(b) of this section, the commission shall establish factors for supply and development capacity that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(6) For purposes of subsection (3)(c) of this section, the commission shall establish factors that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in each major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(7) For lands that are included within an urban growth boundary pursuant to this section and not made serviceable within 20 years after the date of their inclusion, the commission may provide by rule that:

(a) The lands must be removed from within the urban growth boundary the next time the city evaluates the urban growth boundary; or

(b) The planned development capacity of the lands must be reduced if there are significant increases in the cost of making the lands serviceable.

(8) When lands included within the urban growth boundary pursuant to this section are planned and zoned for industrial or residential uses, the lands must remain planned and zoned for the use unless a rule of the commission allows a change in planning and zoning based on a significant change in circumstance.

**SECTION 5.** (1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the statewide land use planning goals, the Land Conservation and Development Commission shall adopt a method by which a city outside Metro that has a population of 10,000 or more may evaluate or amend its urban growth boundary.

(2) The commission shall design the method so that:

(a) A city using the method:

(A) Will have within its boundaries sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, to meet the growth in population and employment forecast to occur over a 14-year period.

(B) Will not become less efficient in its use of land as a result of a change to the urban growth boundary.

(b) The urban population per square mile will continue to increase over time on a statewide basis and in major regions of the state, including that portion of the Willamette Valley outside of Metro.

(c) The rate of conversion of agricultural and forest lands to urban uses does not increase over time in any major region of the state.

(3) Under the method adopted by the commission:

(a) A city's determination of the amount of buildable lands needed for housing, employment and other urban uses must be based on the population and employment growth forecast to occur over a 14-year period.

(b) A city's determination of the supply and development capacity of lands within its urban growth boundary must be based on:

- (A) An inventory of vacant and partially vacant buildable lands within the urban growth boundary;
- (B) The comprehensive plan designation and the zoning of the portion of the buildable lands that is urban; and
- (C) Factors established by the commission for forecasting:
  - (i) The development and redevelopment capacity of urbanizable lands within the urban growth boundary; and
  - (ii) The redevelopment capacity of developed urban lands within the urban growth boundary.
- (c) A city shall consider a range or combination of measures identified by rule of the commission to accommodate future need for land within the urban growth boundary and implement at least one measure or satisfy an alternate performance standard established by the commission. The commission shall design the alternate performance standard so that the standard is satisfied when the city:
  - (A) Has a development code that contains specified provisions designed to encourage the development of needed housing; and
  - (B) Demonstrates that, during the preceding planning period, the city:
    - (i) If located in the Willamette Valley, exceeded the median rate of redevelopment and infill for cities with a population of 10,000 or more in the Willamette Valley that are outside of the boundaries of Metro by an amount set by commission rule; and
    - (ii) If located outside of the Willamette Valley, exceeded the median rate of redevelopment and infill for cities with a population of 10,000 or more that are outside the Willamette Valley by an amount set by commission rule.
  - (d) A city shall demonstrate that lands included within the urban growth boundary:
    - (A) Include sufficient serviceable land for at least a seven-year period.
    - (B) Can all be serviceable over a 14-year period.
    - (e) Lands included within the urban growth boundary:
      - (A) Must be planned and zoned for categories of land uses in amounts that are roughly proportional to the land need determined for each category of use;
      - (B) Must be planned and zoned for an intensity of use that is generally consistent with the estimates that were used to determine the amount of land needed;
      - (C) Must be planned and zoned to meet the requirements for needed housing, and those requirements must be specified by rule of the commission in a manner that is as objective as practicable; and
    - (D) May be either:
      - (i) Planned and zoned, or otherwise conditioned, to avoid significantly affecting a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan; or
      - (ii) Allowed to significantly affect a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan subject to mitigation, consistent with rules of the commission, if the lands are planned and zoned for compact urban development or industrial uses.
  - (4) For purposes of subsection (3)(a) of this section, population growth must be forecast as provided in ORS 195.034 or 195.036. Employment growth must be forecast based on the population growth forecast for the city or the employment growth forecast issued by the Employment Department for the county or region. The commission shall establish factors, by rule, for converting the forecasted population and employment growth into forecasts of land need for housing, employment and other categories of uses. The factors must:
    - (a) Be based on an empirical evaluation of the relation between population and employment growth and the rate and trends of land utilization in the recent past in the applicable major region of the state;

- (b) Reflect consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;
  - (c) Be designed to encourage an increase in the land use efficiency of a city, subject to market conditions; and
  - (d) Provide a range of policy choices for a city about the form of its future growth.
- (5) For purposes of subsection (3)(b) of this section, the commission shall establish factors for supply and development capacity that are:
- (a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;
  - (b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;
  - (c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and
  - (d) Designed to provide a range of policy choices for a city about the form of its future growth.
- (6) For purposes of subsection (3)(c) of this section, the commission shall establish factors that are:
- (a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;
  - (b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in each major region of the state;
  - (c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and
  - (d) Designed to provide a range of policy choices for a city about the form of its future growth.
- (7) For lands that are included within an urban growth boundary pursuant to this section and not made serviceable within 20 years after the date of their inclusion, the commission may provide by rule that:
- (a) The lands must be removed from within the urban growth boundary the next time the city evaluates the urban growth boundary; or
  - (b) The planned development capacity of the lands must be reduced if there are significant increases in the cost of making the lands serviceable.
- (8) When lands included within the urban growth boundary pursuant to this section are planned and zoned for industrial or residential uses, the lands must remain planned and zoned for the use unless a rule of the commission allows a change in planning and zoning based on a significant change in circumstance.

**SECTION 6.** (1) As used in this section, "district" means:

- (a) A domestic water supply district organized under ORS chapter 264.
  - (b) A parks and recreation district organized under ORS chapter 266.
  - (c) A sanitary district organized under ORS 450.005 to 450.245.
  - (d) A rural fire protection district organized under ORS chapter 478.
- (2) When a city evaluates or amends the urban growth boundary of the city under section 5 of this 2013 Act, the city shall notify:
- (a) Each district that has territory within the study area established under section 7 of this 2013 Act.
  - (b) Each county that has land use jurisdiction over any portion of the study area.
- (3) The notification must:
- (a) Include a map showing the study area; and
  - (b) State that, in order to execute or amend an urban services agreement concerning the study area, the district shall respond to the notice within 60 days of the date the notice is mailed if the district enters into or amends an urban services agreement concerning the study area.

(4) An urban services agreement executed under this section must satisfy the requirements of ORS 195.065 (1)(a) to (f). When a city and a district execute an urban services agreement pursuant to this section, the city and the district are not required to participate in the negotiation of an urban service agreement under ORS 195.065 to 195.085.

(5) Before executing the urban service agreement, the city and the district shall consult with community planning organizations that are recognized by the governing body of the city and whose boundaries include territory in the study area that may be affected by the urban service agreement.

(6) If the special district chooses not to negotiate an urban service agreement or does not respond to the notice within 60 days, the city may withdraw from the service territory of the district any portion of the study area that is included within the urban growth boundary of the city and annexed to the city.

(7) If the district responds in writing to the notice within 60 days and requests to execute an urban service agreement for the study area with the city, the city and the district shall meet to develop the agreement within 60 days after the district responds.

(8) If the city and district are unable to develop the agreement within 180 days after the date of the first meeting, the city or the district may require mediation. If mediation is required, the city and the district shall each designate an individual to work with the city and the district to develop an agreement. The city and the district are each responsible for the costs of the mediator it selects.

(9) If the city and the district are unable to develop the agreement after an additional 180 days, the city or the district may require arbitration. The mediators selected under subsection (8) of this section shall jointly select a third individual, and the three individuals shall constitute an arbitration panel to develop the urban services agreement. If the mediators are unable to agree on the third individual, the Director of the Department of Land Conservation and Development shall select an individual from a list of qualified arbitrators provided by the Land Conservation and Development Commission. The city and the district shall bear the cost of the third individual equally. The arbitration panel:

(a) Shall consider the provisions of ORS 222.460, 222.465, 222.510 to 222.570, 222.575 and 222.580; and

(b) May not:

(A) Require the city or the district to pay the other party as part of the urban services agreement unless:

(i) The urban services agreement requires a transfer of physical assets, in which case the agreement may require the payment of fair market value for the assets; or

(ii) A party has offered a payment as part of prior negotiations and the arbitrators incorporate all or a portion of the negotiated payment in the agreement;

(B) Prevent a city from including land within the urban growth boundary of the city; or

(C) Prohibit a city from annexing territory that is within the urban growth boundary of the city.

(10) A city may not withdraw territory from the service territory of a district:

(a) Unless the district does not respond to the notice required by subsection (2) of this section; or

(b) Until the city and the district develop an urban services agreement under this section.

(11) Decisions related to the execution of an urban service agreement under this section are not land use decisions subject to the jurisdiction of the Land Use Board of Appeals.

**SECTION 7.** (1) Notwithstanding the priority in ORS 197.298 for inclusion of land within an urban growth boundary, a city outside of Metro shall comply with this section when determining which lands to include within the urban growth boundary of the city pursuant to ORS 197.295 to 197.314 or section 4 or 5 of this 2013 Act.

(2) The Land Conservation and Development Commission shall provide, by rule, that:

(a) When evaluating lands for inclusion within the urban growth boundary, the city shall establish a study area that includes all land that is contiguous to the urban growth boundary and within a distance specified by commission.

(b) The city shall evaluate all land in the study area for inclusion in the urban growth boundary as provided in subsection (4) of this section, except for land excluded from the study area because:

(A) It is impracticable, as provided in subsection (3) of this section, to provide necessary public facilities or services to the land.

(B) The land is subject to significant development hazards, including a risk of land slides, a risk of flooding because the land is within the 100-year floodplain or is subject to inundation during storm surges or tsunamis, and other risks determined by the commission.

(C) The long-term preservation of significant scenic, natural, cultural or recreational resources requires limiting or prohibiting urban development of the land that contains the resources.

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

(c) When evaluating the priority of land for inclusion under paragraph (b) of this subsection:

(A) The city shall evaluate the land within the study area that is designated as an urban reserve under ORS 195.145 in an acknowledged comprehensive plan, land that is subject to an acknowledged exception under ORS 197.732 or land that is nonresource land and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.

(B) If the amount of land appropriate for selection under subparagraph (A) of this paragraph is not sufficient to satisfy the need for land, the city shall evaluate the land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.

(C) If the amount of land appropriate for selection under subparagraphs (A) and (B) of this paragraph is not sufficient to satisfy the amount of land needed, the city shall evaluate land within the study area that is designated for agriculture or forest uses in the acknowledged comprehensive plan that is not predominantly high-value farmland, as defined in ORS 195.300, or does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service, and select as much of that land as necessary to satisfy the need for land:

(i) Using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations; and

(ii) Using the predominant capability classification system or the predominant cubic site class, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic site class lands first.

(D) If amount of land appropriate for selection under subparagraphs (A) to (C) of this paragraph is not sufficient to satisfy the need for land, the city shall evaluate land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high value farmland and select as much of that land as necessary to satisfy the need for land. A local government may not select land that is predominantly made up of prime or unique farm soils, as defined by the United States Department of Agriculture Natural Resources Conservation Service, unless there is an insufficient amount of other land to satisfy its land need.

(3) For purposes of subsection (2)(b)(A) of this section, the commission shall determine impracticability by rule, considering the likely amount of development that could occur on the lands within the planning period, the likely cost of facilities and services, physical,

topographical or other impediments to service provision and whether urban development has occurred on similarly situated lands such that it is likely that the lands will be developed at an urban level during the planning period. When impracticability is primarily a result of existing development patterns, the rules of the commission shall require that the lands be included within the study area, but may allow the development capacity forecast for the lands to be specified at a lower level over the planning period. The rules of the commission must be based on an evaluation of how similarly situated lands have, or have not, developed over time.

(4) For purposes of subsection (2)(b)(C) of this section, the commission by rule shall determine the circumstances in which and the resources to which this exclusion will apply.

(5) Notwithstanding subsection (2)(c)(D) of this section, the rules must allow land that would otherwise be excluded from an urban growth boundary to be included if:

(a) The land contains a small amount of resource land that is not important to the commercial agricultural enterprise in the area and the land must be included to connect a nearby and significantly larger area of land of higher priority for inclusion within the urban growth boundary; or

(b) The land contains a small amount of resource land that is not predominantly high-value farmland or predominantly made up of prime or unique farm soils and the land is completely surrounded by land of higher priority for inclusion into the urban growth boundary.

(6) When the primary purpose for expansion of the urban growth boundary is to accommodate a particular industry use that requires specific site characteristics, or to accommodate a public facility that requires specific site characteristics and the site characteristics may be found in only a small number of locations, the city may limit the study area to land that has, or could be improved to provide, the required site characteristics. Lands included within an urban growth boundary for a particular industrial use, or a particular public facility, must remain planned and zoned for the intended use:

(a) Except as allowed by rule of the commission that is based on a significant change in circumstance or the passage of time; or

(b) Unless the city removes the land from within the urban growth boundary.

(7) Notwithstanding any other provision of this section, the commission may adopt rules that specify circumstances under which a city may exchange land within the urban growth boundary of the city for land that is outside of the urban growth boundary and that is designed to avoid adverse effects of an exchange on agricultural or forest operations in the surrounding area.

**SECTION 8.** (1) Notwithstanding ORS 197.626, when a city evaluates or amends the urban growth boundary of the city pursuant to section 4 or 5 of this 2013 Act, the Land Use Board of Appeals has jurisdiction for review of a final decision of the city.

(2) The board shall review the final decision of the city under sections 1 to 8 of this 2013 Act as provided in ORS 197.805 to 197.855, except that:

(a) In circumstances in which the Land Conservation and Development Commission has specified by rule a number or a range of numbers that the city may use:

(A) The city is not required to adopt findings to support the use of the number or a number within the range of numbers; and

(B) The board's review of the number may determine only that the city has used a number that is allowed by the rule.

(b) The board shall affirm an interpretation by a local government of its comprehensive plan or land use regulations unless that interpretation is clearly erroneous.

(3) Notwithstanding ORS 197.628 and 197.629, when a city evaluates or amends the urban growth boundary of the city pursuant to section 4 or 5 of this 2013 Act, the city is not required to commence or complete periodic review. The commission shall, by rule, specify alternate means to ensure that the comprehensive plan and land use regulations of the city

**comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs.**

**SECTION 9.** If House Bill 2253 becomes law, section 4 of this 2013 Act is amended to read:

**Sec. 4.** (1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the statewide land use planning goals, the Land Conservation and Development Commission shall adopt a method by which a city outside Metro that has a population of less than 10,000 may evaluate or amend its urban growth boundary.

(2) The commission shall design the method so that:

(a) A city using the method:

(A) Will have within its boundaries sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, to meet the growth in population and employment forecast to occur over a 14-year period.

(B) Will not become less efficient in its use of land as a result of a change to the urban growth boundary.

(b) The urban population per square mile will continue, subject to market conditions, to increase over time on a statewide basis and in major regions of the state, including that portion of the Willamette Valley outside of Metro.

(c) The rate of conversion of agricultural and forest lands to urban uses does not increase over time in any major region of the state.

(3) Under the method adopted by the commission:

(a) A city's determination of the amount of buildable lands needed for housing, employment and other urban uses must be based on the population and employment growth forecast to occur over a 14-year period.

(b) A city's determination of the supply and development capacity of lands within its urban growth boundary must be based on:

(A) A simple inventory of vacant and partially vacant buildable lands within the urban growth boundary;

(B) The comprehensive plan designation and the zoning of the portion of the buildable lands that is urban; and

(C) Simple factors established by the commission for forecasting:

(i) The development and redevelopment capacity of urbanizable lands within the urban growth boundary; and

(ii) The redevelopment capacity of developed urban lands within the urban growth boundary.

(c) A city's determination of the supply and development capacity of lands the city proposes to include within the urban growth boundary must be based on:

(A) A simple inventory of vacant and partially vacant lands; and

(B) Simple factors established by the commission for forecasting the development and redevelopment capacity of the lands.

(d) A city shall demonstrate that lands included within the urban growth boundary:

(A) Include sufficient serviceable land for at least a seven-year period.

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

(e) Lands included within the urban growth boundary:

(A) Must be planned and zoned for categories of land uses in amounts that are roughly proportional to the land need determined for each category of use;

(B) Must be planned and zoned for an intensity of use that is generally consistent with the estimates that were used to determine the amount of land needed;

(C) Must be planned and zoned to meet the requirements for needed housing, and those requirements must be specified by rule of the commission in a manner that is as objective as practicable; and

(D) May be either:

(i) Planned and zoned, or otherwise conditioned, to avoid significantly affecting a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan; or

(ii) Allowed to significantly affect a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan subject to mitigation, consistent with rules of the commission, if the lands are planned and zoned for compact urban development or industrial uses.

(4) For purposes of subsection (3)(a) of this section, population growth must be forecast as provided in [ORS 195.034 or 195.036] **section 2, chapter \_\_\_\_\_, Oregon Laws 2013 (Enrolled House Bill 2253)**. Employment growth must be forecast based on the population growth forecast for the city or the employment growth forecast issued by the Employment Department for the county or region. The commission shall establish factors, by rule, for converting the forecasted population and employment growth into forecasts of land need for housing, employment and other categories of uses. The factors must:

(a) Be based on an empirical evaluation of the relation between population and employment growth and the rate and trends of land utilization in the recent past in the applicable major region of the state;

(b) Reflect consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Be designed to encourage an increase in the land use efficiency of a city, subject to market conditions; and

(d) Provide a range of policy choices for a city about the form of its future growth.

(5) For purposes of subsection (3)(b) of this section, the commission shall establish factors for supply and development capacity that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(6) For purposes of subsection (3)(c) of this section, the commission shall establish factors that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in each major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(7) For lands that are included within an urban growth boundary pursuant to this section and not made serviceable within 20 years after the date of their inclusion, the commission may provide by rule that:

(a) The lands must be removed from within the urban growth boundary the next time the city evaluates the urban growth boundary; or

(b) The planned development capacity of the lands must be reduced if there are significant increases in the cost of making the lands serviceable.

(8) When lands included within the urban growth boundary pursuant to this section are planned and zoned for industrial or residential uses, the lands must remain planned and zoned for the use unless a rule of the commission allows a change in planning and zoning based on a significant change in circumstance.

**SECTION 10.** If House Bill 2253 becomes law, section 5 of this 2013 Act is amended to read:

**Sec. 5.** (1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the statewide land use planning goals, the Land Conservation and Development Commission shall adopt a method by which a city outside Metro that has a population of 10,000 or more may evaluate or amend its urban growth boundary.

(2) The commission shall design the method so that:

(a) A city using the method:

(A) Will have within its boundaries sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, to meet the growth in population and employment forecast to occur over a 14-year period.

(B) Will not become less efficient in its use of land as a result of a change to the urban growth boundary.

(b) The urban population per square mile will continue to increase over time on a statewide basis and in major regions of the state, including that portion of the Willamette Valley outside of Metro.

(c) The rate of conversion of agricultural and forest lands to urban uses does not increase over time in any major region of the state.

(3) Under the method adopted by the commission:

(a) A city's determination of the amount of buildable lands needed for housing, employment and other urban uses must be based on the population and employment growth forecast to occur over a 14-year period.

(b) A city's determination of the supply and development capacity of lands within its urban growth boundary must be based on:

(A) An inventory of vacant and partially vacant buildable lands within the urban growth boundary;

(B) The comprehensive plan designation and the zoning of the portion of the buildable lands that is urban; and

(C) Factors established by the commission for forecasting:

(i) The development and redevelopment capacity of urbanizable lands within the urban growth boundary; and

(ii) The redevelopment capacity of developed urban lands within the urban growth boundary.

(c) A city shall consider a range or combination of measures identified by rule of the commission to accommodate future need for land within the urban growth boundary and implement at least one measure or satisfy an alternate performance standard established by the commission. The commission shall design the alternate performance standard so that the standard is satisfied when the city:

(A) Has a development code that contains specified provisions designed to encourage the development of needed housing; and

(B) Demonstrates that, during the preceding planning period, the city:

(i) If located in the Willamette Valley, exceeded the median rate of redevelopment and infill for cities with a population of 10,000 or more in the Willamette Valley that are outside of the boundaries of Metro by an amount set by commission rule; and

(ii) If located outside of the Willamette Valley, exceeded the median rate of redevelopment and infill for cities with a population of 10,000 or more that are outside the Willamette Valley by an amount set by commission rule.

(d) A city shall demonstrate that lands included within the urban growth boundary:

(A) Include sufficient serviceable land for at least a seven-year period.

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

(e) Lands included within the urban growth boundary:

(A) Must be planned and zoned for categories of land uses in amounts that are roughly proportional to the land need determined for each category of use;

(B) Must be planned and zoned for an intensity of use that is generally consistent with the estimates that were used to determine the amount of land needed;

(C) Must be planned and zoned to meet the requirements for needed housing, and those requirements must be specified by rule of the commission in a manner that is as objective as practicable; and

(D) May be either:

(i) Planned and zoned, or otherwise conditioned, to avoid significantly affecting a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan; or

(ii) Allowed to significantly affect a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan subject to mitigation, consistent with rules of the commission, if the lands are planned and zoned for compact urban development or industrial uses.

(4) For purposes of subsection (3)(a) of this section, population growth must be forecast as provided in [ORS 195.034 or 195.036] **section 2, chapter \_\_\_\_\_, Oregon Laws 2013 (Enrolled House Bill 2253)**. Employment growth must be forecast based on the population growth forecast for the city or the employment growth forecast issued by the Employment Department for the county or region. The commission shall establish factors, by rule, for converting the forecasted population and employment growth into forecasts of land need for housing, employment and other categories of uses. The factors must:

(a) Be based on an empirical evaluation of the relation between population and employment growth and the rate and trends of land utilization in the recent past in the applicable major region of the state;

(b) Reflect consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Be designed to encourage an increase in the land use efficiency of a city, subject to market conditions; and

(d) Provide a range of policy choices for a city about the form of its future growth.

(5) For purposes of subsection (3)(b) of this section, the commission shall establish factors for supply and development capacity that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(6) For purposes of subsection (3)(c) of this section, the commission shall establish factors that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in each major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(7) For lands that are included within an urban growth boundary pursuant to this section and not made serviceable within 20 years after the date of their inclusion, the commission may provide by rule that:

(a) The lands must be removed from within the urban growth boundary the next time the city evaluates the urban growth boundary; or

(b) The planned development capacity of the lands must be reduced if there are significant increases in the cost of making the lands serviceable.

(8) When lands included within the urban growth boundary pursuant to this section are planned and zoned for industrial or residential uses, the lands must remain planned and zoned for the use unless a rule of the commission allows a change in planning and zoning based on a significant change in circumstance.

**SECTION 11.** ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196 and 197 **and sections 1 to 8 of this 2013 Act**, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) "Commission" means the Land Conservation and Development Commission.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide land use planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360;

(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;

(G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or

(H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:

(i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;

(ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or

(iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

(c) Does not include a decision by a school district to close a school;

(d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or

(C) A state agency action subject to ORS 197.180 (1), if:

(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or

(ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12) "Limited land use decision":

(a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(b) Does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

(13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

(19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

(21) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(22) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**SECTION 12.** ORS 197.298 is amended to read:

197.298. (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 section 7 of this 2013 Act.**

**SECTION 13. (1) Sections 1 to 8 of this 2013 Act and the amendments to ORS 197.015 and 197.298 by sections 11 and 12 of this 2013 Act become operative January 1, 2016.**

**(2) Notwithstanding subsection (1) of this section, the Land Development and Conservation Commission shall adopt rules before the operative date specified in subsection (1) of this section that are necessary to implement this 2013 Act.**

**SECTION 14. If House Bill 2253 becomes law, section 13 of this 2013 Act is amended to read:**

**Sec. 13. (1) Sections 1 to 8 of this 2013 Act and the amendments to ORS 197.015 and 197.298 and sections 4 and 5 of this 2013 Act by sections 9, 10, 11 and 12 of this 2013 Act become operative January 1, 2016.**

**(2) Notwithstanding subsection (1) of this section, the Land Development and Conservation Commission shall adopt rules before the operative date specified in subsection (1) of this section that are necessary to implement this 2013 Act.**

**SECTION 15. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2013, out of the General Fund, the amount of \$250,000 for the purpose of carrying out the provisions of sections 1 to 8 of this 2013 Act.**

**SECTION 16. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

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**Passed by House June 12, 2013**

**Received by Governor:**

.....M.,....., 2013

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Ramona J. Line, Chief Clerk of House

**Approved:**

.....M.,....., 2013

.....  
Tina Kotek, Speaker of House

.....

John Kitzhaber, Governor

**Passed by Senate June 20, 2013**

**Filed in Office of Secretary of State:**

.....  
Peter Courtney, President of Senate

.....M.,....., 2013

.....

Kate Brown, Secretary of State

# Hutchinson Cox

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July 22, 2024

Roseburg City Council  
900 SE Douglas Ave  
Roseburg, OR 97470

RE.           City of Roseburg Land Swap/Charter Oaks  
Our Client: Sane Orderly Development (SOD)  
City File No.: CPA-23-002  
Our File No. 04403/7983

Dear Roseburg City Council:

On behalf of our client, Sane Orderly Development (SOD), we hereby provide the following comments in opposition to the proposed swap of 290 acres of largely undevelopable land within the City's Urban Growth Boundary (UGB) for 220 acres of farm and rural residential property within the Charter Oaks area.

Please include this letter in the record of these proceedings and provide copies of all future notices associated with this project to our firm.

The City of Roseburg should reject the proposed UGB swap as the same does not conform to the requirements in state law for the adjustment of an Urban Growth Boundary.

In particular, as will be addressed in greater detail below, the City already has a surplus of land designated for low-density residential development, and has no need to alter or expand its UGB to include additional farm or rural residential land to develop with single-family homes.

Moreover, contrary to law, the proposed exchange is not exchanging "substantially equivalent" property within the UGB for the land outside the UGB, as the proposed exchange is an exchange of multi-family property for low-density residential property and unbuildable land in its UGB for buildable land outside the UGB.

Finally, as will be addressed in greater detail below, the proposed land swap improperly applies the statutory system to exclude lands from the preliminary study area, incorrectly prioritizes lands, and misapplies the Goal 14 locational factors to zero-in on resource and nonresource land in the Charter Oaks area.

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As the City has no need for the proposed land swap, the Charter Oaks property to be included is not substantially equivalent to the land being removed, and including the Charter Oaks property is contrary to the state's system of priorities for the inclusion of the property within the UGB, we respectfully request that the City Council deny this unlawful land swap.

**A. Roseburg Has No Demonstrated Need for Additional Low-Density Residential Land.**

Initially, we ask that the Council reject the proposed land swap because there is no demonstrated need for low-density residential land that would support adding Charter Oaks to Roseburg's UGB.

Statewide Planning Goal 14 provides for the establishment and amendment of urban growth boundaries based on demonstrated land need. *See OAR 660-015-0000(14)*<sup>1</sup>.

In the ordinary course, a UGB is established based on “the appropriate 20-year population forecast for the urban area” together with the identified housing needs to serve that population. OAR 660-024-0040(1). A buildable lands inventory evaluates the availability of land within the UGB to meet these needs, and, if there is insufficient land to meet an identified housing need, a city will evaluate land for inclusion in the UGB based on the system of priorities in Goal 14. OAR 660-024-0050; OAR 660-024-0065; OAR 660-024-0067.

The application states that the City need not address the “land need criteria per OAR 660-024-0040(1-2)...in this proposal” because it involves a land exchange. *Application*, p. 9. However, this misstates the applicable standard.

While a city does not need to necessarily adopt a new housing needs analysis for an exchange under OAR 660-024-0070, it still needs to address land need in the context of an existing housing needs analysis. As the rule states:

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<sup>1</sup> “Establishment and change of urban growth boundaries shall be based on the following:

- (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments, or for cities applying the simplified process under ORS chapter 197A, a 14-year forecast; and
- (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.”

“(3) Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided the basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

(a) The amount of buildable land added to the UGB to meet:

(A) A specific type of residential need is substantially equivalent to the amount of buildable residential land removed.”

Hence, the rule does not allow a city to disregard land need. It just doesn’t require a new analysis where need is shown in an existing housing needs analysis.

In this case, however, there is no residential land need identified in the City’s housing needs analysis to support the proposed exchange. As per the application materials, of the 229 acres of the Charter Oaks area proposed to be included in the UGB, approximately 211.5 of those acres would be designated for “Low Density Residential” use. *Application*, p. 25. However, Roseburg has no need for additional low density residential land.

In 2019 the Council adopted the Roseburg Housing Needs Analysis prepared by ECONorthwest. Based on the City’s projected population within the urban area, and available vacant and buildable land, the Housing Needs Analysis determined that the City already had a substantial surplus of low-density residential housing:

**“Low-Density Residential:** Roseburg has a surplus of capacity for about 1,020 dwelling units, or 352 gross acres of land to accommodate growth over the 2019-2039 period.”

*Housing Needs Analysis*, p. x. *See Id.* at 80<sup>2</sup> & 81<sup>3</sup>. Accordingly, the City’s Housing Needs Analysis does not identify a housing need for low-density residential housing that would support the addition of the Charter Oaks area to the City’s UGB.

The absence of an identified housing need for low-density residential housing in the Housing Needs Analysis is fatal to the application. As the Court of Appeals determined in *DLCD v. City of Klamath Falls & Badger Flats*, 290 Or App 495, 504, 416 P3d 326 (2018), there has to be a “demonstrated need” under Goal 14 that cannot be reasonably accommodated within the UGB before making a change to the UGB.<sup>4</sup> As the Housing Needs Analysis does not include a “demonstrated need” for

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<sup>2</sup> “Exhibit 72 shows that Roseburg does have sufficient land to accommodate housing development, in each plan designation, but particularly in low density residential areas.”

<sup>3</sup> “Roseburg’s surplus of Low-Density Residential capacity (1,020 dwelling units) means that the City has an approximate surplus of 352 gross acres of Low Density Residential land (at 2.9 dwelling units per gross acre).”

<sup>4</sup> “In contrast with the location factors, which must all be *considered* in determining changes to a UGB, the plain text of the goal requires that, to change a UGB, there must be a demonstrated need for land under both of the land-need subsections. *See Friends of the Columbia Gorge v. Columbia River*, 346 Or 415, 426 P3d 1243 (2009)(in the ordinary

additional low-density residential housing and identifies a surplus of such land greater than the property that is proposed to be withdrawn, the proposed expansion of the UGB to encompass the Charter Oaks area would violate Goal 14 and should not be approved.

The application does not address the 352 gross acres of surplus low-density land inside the UGB that is identified in the City's Housing Needs Analysis. Instead, it repeatedly urges proposed "swap" is "directly supported by the findings of the HNA." *Application*, p. 159, 6, 25, 195. However, the Housing Needs Analysis identifies a surplus of low-density residential land and not a need that would support alteration of the UGB.

While page 84 of the Housing Needs Analysis notes that the Housing Strategy refers to actions described in the separate Housing Strategy for addressing development constraints - including clustering development, land swaps and removing other barriers to development – the Housing Needs Analysis does not identify the need for any land swap or for additional low-density residential lands.

Moreover, while flatter land may be more desirable for some developers of residential property, this preference for flatter land is insufficient to demonstrate a need to expand the UGB. *See Friends of Linn Co. v. Linn Co.*, 41 Or LUBA 342 (2002)(City's desire to reconfigure the UGB boundary and include additional residential land does not demonstrate a need warranting a UGB expansion where there is a 98-acre surplus of residential land within the UGB). *See also DLCD v. Douglas County*, 38 Or LUBA 542 (2000)(Severe soil limitations on property within the UGB that are projected to increase development costs an average of 39 percent are not a basis for concluding that the sites cannot meet an identified need; "[r]elevant statutory and administrative rules do not require that the land that is chosen for development be easy or cheap to develop").

As the City is proposing to adjust its UGB to include land for which there is no demonstrated need, the proposal violates Goal 14 and we request that the City Council deny the same. *See DLCD v. City of Klamath Falls*, 80 Or LUBA 180 (2019)(Goal 14 prohibits amending the UGB where there is a surplus of land to meet identified needs within the UGB and LUBA will reverse such an amendment).

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usage, "shall" creates a mandatory duty); *State v. Clements*, 265 Or App 9, 19, 333 P3d 1177 (2014) ("to base" means "to use as a base or basis for" and a "'base,' in turn, may refer to 'the fundamental part of something'"; "based on" can be understood to mean "must be founded on"). Furthermore, the text of the goal explicitly requires that, prior to expanding a UGB, local governments shall demonstrate that 'needs,' which we understand to refer to the needs described in both subsections (1) and (2) cannot be reasonably accommodated on land already inside the UGB. We agree with DLCD that the text of the land need portion of the goal, read in context of the goal as a whole, makes clear that, before making a change to a UGB, there must be a demonstrated need under both subsections (1) and (2) of Goal 14."

**B. State Law Does Not Allow a “Swap” of Multifamily Residential Land for Low-Density Residential Land or Unbuildable Land for Buildable Land.**

The proposed land exchange should be denied because it proposes to exchange lands at different densities and unbuildable residential land within the UGB for buildable low-density residential land, contrary to law.

As noted, the exception in OAR 660-024-0070(3)(a) only allows a local government to rely on an existing housing needs analysis for a residential exchange where “a specific type of residential need is substantially equivalent to the amount of buildable residential land removed.”

As addressed in the last section there is no “residential need” for additional low density residential land identified in the Housing Needs Analysis that would support a UGB exchange and the same fails on this basis. Moreover, as is evident from the application materials themselves, the land that is proposed for exchange is not “substantially equivalent” to the land that is being removed.

1. Multi-family property is not equivalent to low-density residential property.

Part of the difference is that, as noted in the application, the City is proposing to exchange property that is designated for Multi-Family Residential Development on the Atkinson property for low-density residential property in the Charter Oaks area. In fact, as noted in the application, more than 23 acres of the 91.5-acre Atkinson property is zoned by the City as Multiple-Family Residential (14.15 acres) which allows 29 dwelling units per acre, or High-Density Multiple-Family Residential (8.9 acres) which allows up to 40 units per acre. *Application*, p. 11. The low-density residential property proposed in the Charter Oaks area is not substantially equivalent to this medium and high density land in terms of either density or in allowable building types.

Indeed, as noted in the Housing Needs Analysis one of the primary deficits in the City’s housing needs is group quarters. *See* Housing Needs Analysis, p. 81 (noting 27-acre need for group quarters). These types of multi-family facilities are not permitted in the City’s low-density zone, nor would the estimates 9 dwelling units per acre for these units be consistent with the proposed low-density designation. *See* Housing Needs Analysis, p. 81. Accordingly, the proposed exchange would not only increase low-density property, of which the City already has a substantial surplus, but at the expense of needed multi-family residential property.

Moreover, as the proposed exchange would not be of “substantially equivalent” land, the City cannot rely on OAR 660-024-0070(3)(a) to justify the proposed adjustment and must provide a new housing needs analysis to support the proposed adjustment. As the application is not supported by the new analysis, denial of the application is also warranted on this basis.

2. Unbuildable property cannot be exchanged for buildable land outside the UGB.

The application does not address the fact that the proposed property in the Charter Oaks area is not “substantially equivalent” to the Atkinson multi-family property except to note that the increase in the deficit of multi-family property won’t be that bad because the Atkinson property is largely “non-buildable.” *Application*, p. 11-12. However, the City cannot rely on non-buildable land to justify an exchange for buildable land outside of the UGB either.

Even setting aside the fact that the proposed exchange would remove buildable multi-family property (of which the City has a deficit) and replace it with low-density land (of which it has a surplus)<sup>5</sup>, the proposed adjustment could not be approved as an exchange because the majority of the property is not buildable land.

The land exchange provisions of OAR 660-024-0024(3)(a)(A) anticipate an exchange of “buildable land” added to the UGB that is “substantially equivalent” to the “buildable land” that is being removed. As the application notes, however, the vast majority of both the Atkinson and Serafin properties are not “buildable land.”

Consistent with OAR 660-008-005(2)<sup>6</sup>, the City’s Housing Needs Analysis identified steep slopes above 25% as a constraint that prohibits development on a property. *Housing Needs Analysis*, p. 7. These non-buildable properties are identified on Exhibit 78 in page 92 of the Housing Needs Analysis, which identifies “Residential development constraints.” As depicted thereon, and on the “Atkinson Property Slope” map at page 14 of the application, almost the entire Atkinson property is comprised of slopes in excess of 25%. In fact, only a narrow strip of land towards the center of the Atkinson property, and a few other discrete areas have less than 25% slopes – at total of 11.35 acres. *See Exhibit 3, Atkinson Site Slope Map*, p. 14 & 131. The other 80.2 acres of the Atkinson property have slopes in excess of 25%, with the majority of the property sloping to over 35%. *Id.* These steeply-sloping portions of the property are unbuildable, and cannot be exchanged for buildable property outside of the UGB under OAR 660-024-0070.

Likewise, approximately 60% of the Serafin property - 118.5 of the 198.5 acres – are on slopes excess of 25%. *Application*, p. 18, 132. *See also Serafin Property Slope*, p. 21. Again, this 118.5-acre area

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<sup>5</sup> The application estimates a .65-acre increase in the deficit of multi-family residential land in the City. *Application*, p. 140.

<sup>6</sup> “‘Buildable Land’ means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered ‘suitable and available’ unless it:

\* \* \* \*

(c) Has slopes of 25 percent or greater.”

is unbuildable and cannot be exchanged for buildable land outside of the UGB under OAR 660-024-0070.

As the proposal includes the exchange of multi-family residential land for low-density residential land outside of the UGB that is not substantially equivalent, and includes the exchange of unbuildable land for buildable land which cannot be approved as an exchange, we request that the City Council deny the application on this basis as well.

Finally, the application improperly applies the system of priorities set out at ORS 197A.285 and OAR 660-024-0067 to include the Charter Oaks area in the UGB.

ORS 197A.285 establishes a system of priorities for adding property to an urban growth boundary and OAR 660-024-0067 establishes the mechanism for applying those priorities in the evaluation of lands in study area. The application's proposed analysis fails to comply with both the statutory system of priorities as well as the DLCD regulations governing the application of the priority system.

**C. The Application Improperly Establishes a Preliminary Study Area By Excluding Property Based on Factors That Are Not Part of the Criteria and By Establishing and Improperly Removing Subareas from the Study Area.**

1. The Application Improperly Excludes 60% from the Preliminary Study Area Based on Factors That Are Not Part of the Criteria.

Even if there were a need to be offset, and there is not, the application misapplies the system of established priorities in order to zero-in on the Charter Oaks area. The analysis begins by improperly excluding 60% of the study area – 18,537 acres – from evaluation under the priority system. *Application*, p. 34. This exclusion of over half of the study area violates OAR 660-024-0065 and OAR 660-024-0067.

There are only a limited number of reasons for excluding land for a preliminary study area under OAR 660-024-0065(4). The reasons given for excluding areas from the preliminary study area in the application are not consistent with these requirements. The rationale given for excluding property from the study area is that they are “zoned with Farming or Forest Zoning designations” and have an increased “landslide susceptibility.” *Application*, p. 34. Neither zoning designation nor landslide susceptibility are a basis for excluding property from the preliminary study area.

The resource zoning designation of a property as either farm or forest or the relative priority of these areas in the next phase of the analysis at OAR 660-024-0067 is not a basis for excluding property from the study area under OAR 660-024-0065(4). Accordingly, these areas are improperly excluded from the study area under OAR 660-024-0065.

Likewise, the application improperly excludes areas based on “landslide susceptibility.” While land that consists of a “landslide deposit or scarp” may be excluded from a study area pursuant to OAR 660-024-0065(4)(b)(A), these areas consist of inventoried deposits or scarps that are both “described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Database published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer.”

By contrast, the application excludes property from the preliminary study area based on mapping of generalized “landslide susceptibility.” The mapping included in the application as Exhibit 16 on page 36 is not the inventory of existing landslide deposits and scarp flanks required by the DLCD regulations, nor is it at the proper 1:40,000 scale. Instead, it is a generalized “Regional Landslide Susceptibility” study prepared by DOGAMI for the purpose of identifying “areas where more detailed landslide mapping is needed.”<sup>7</sup> As it covers the entire state, it is at a regional scale of 1:500,000, as is indicated at the bottom of the figure. While the regional designation of landslide susceptibility identifies areas for future study, it does not identify land that is subject to significant development hazards, and provides no basis for excluding land from the preliminary study area under OAR 660-024-0065(4). As the application improperly excludes land on this basis, this provides an additional grounds for the City Council to deny the same.

The application also states that none of the 18,537 acres can be “reasonably developed or infilled due to the location of existing infrastructure.” *Application*, p. 34. However, “location of existing infrastructure” is not basis for excluding property from the preliminary study area.<sup>8</sup>

Likewise, the application also refers to “existing development patterns of rural residential” land as providing a basis for excluding property from the preliminary study area.<sup>9</sup> However, as set forth in DLCD’s regulations, land cannot be excluded from the preliminary study area based on “existing

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<sup>7</sup> “This project provides a generalized (1:500,000; ~32 square ft grid) landslide susceptibility overview map of the entire state. The intended use of this overview map is to help identify regions (cities, counties, communities, portions of lifelines, watersheds, etc.) that may be at risk for future landslides. The map is designed to provide information for regional planning and specifically to identify areas where more detailed landslide mapping is needed.” *Landslide Susceptibility Overview Map of Oregon*, 1.0 Report Summary, p. 1.

<sup>8</sup> To the extent that the application intends to rely on the impracticability of providing necessary public facilities or services to these areas, it does not address OAR 660-024-0065(7) or demonstrate that it is impracticable to provide public utilities to 60% of the study area due to physical impediments or that there are no contiguous areas that are 20 acres or more in size with less 25% percent slopes in the 18,537 acres excluded.

<sup>9</sup> The application suggests that it is proper to exclude these areas pursuant to OAR 660-024-0067(5)(B). However, that regulation deals with the inclusion of land within the UGB from the study area, and not the inclusion of land within the preliminary study area.

development patterns,” even where such patterns have made the extension of urban facilities or services impracticable. OAR 660-024-0065(8).

As the application excludes 60% of the preliminary study area based on factors that area not recognized under the applicable criteria at OAR 660-024-0065, it improperly limits the land that is under consideration and the application should also be denied on this basis.

2. The Application Further Improperly Excludes Land from the Study Area Based on Its Subareas.

Compounding its improper exclusion of 60% of the preliminary study area, the application seeks to further reduce the study area by establishing, and then largely eliminating from consideration, 13 subareas within the study area.

As noted, OAR 660-024-0065(4) allows land to be removed from a “preliminary study area” based on specified factors. However, the application appears to be based on the false assumption that entire “subareas” of hundreds of acres can be excluded from consideration based on characteristics of some of the land contained therein. This is a false assumption.

While certain characteristics of land within the study area may make that land unsuitable for development, it would not render all adjacent land unsuitable for development unless it shared the same characteristic.

For example, more than half of the acreage remaining within the study area is excluded solely because it is located within a “subarea” – including “subareas 4, 6, 7, 8, 10, 12 and 13” – that contains steep slopes.<sup>10</sup> *Application*, p. 42-44. These lands include lands that are already subdivided for residential use and have existing vacant lots<sup>11</sup>, and which would be available for the extension of urban facilities and services<sup>12</sup> but are ruled out because the “subarea” is slope constrained. However, while OAR 660-024-0065(7)(a) allows cities to exclude contiguous areas where 75% or more of the land is 25%

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<sup>10</sup> The application also includes findings indicating that it is impracticable to provide necessary services to these subareas. *Application*, p. 46. However, its analysis consists of generalized findings that do not evaluate any of the lands within the individual subareas, the likely amount of development of these lands, likely costs of facilities and services, any substantial evidence of similarly situated lands, or evaluate impediments to services as required by OAR 660-024-0065(7).

<sup>11</sup> See e.g. #13 - Newton Creek/Winchester East – “Some rural residential development has been approved in this area, such as Winchester Ridge.” *Application*, p. 44.

<sup>12</sup> See e.g. #12 - Sunshine Road “From the perspective of proximity to city services and existing development patterns, the land within this subarea could be a potentially efficient location for consideration of the UGB amendment”; #10 – Booth/Ramp Roads “This area contains land at the end of SE Sharon Avenue and Booth Road, which both act as logical extensions of the adjacent existing neighborhoods inside the city.”; #7 -Lookinglass Road “Similar to the Old Melrose Subarea, the land along Lookinglass is in fairly close proximity to urban services.”; #6 – “this subarea is the closest subarea to Roseburg’s sewage treatment plant”. *Application*, p. 42-44.

slopes or greater, it also specifies that contiguous areas that are 20 acres or more cannot be excluded if there slopes less than 25 percent. While the application purports to address steep slopes, within the subareas, it does not actually account for whether the slopes are contiguous, or size of the contiguous areas that do not have slopes greater than 25%.

For example, subarea 4 along Moorea Drive is indicated as having 103 acres of buildable land, much of which is mapped as being in a couple of large contiguous units. *Application*, p. 42 & 45. The same is true with regard to several of the other subareas which contain steep slopes, but which contain hundreds of acres of contiguous buildable land. See e.g. Subarea 6 (261 acres), 8 (134 acres), 10 (96 acres), 12 (25 acres) and 13 (86 acres), *Application*, p. 42-45. Accordingly, it was error for the application to exclude these buildable lands from the preliminary study area.

The application excludes other “subareas” – 2, 3 and 9 – on the basis of factors that would not impede the development of the lands.

“Subarea #2 – Del Rio” is excluded from consideration because “[a]ny extension of urban services would have to extend out Del Rio road to serve all areas.” *Application*, p. 42. However, the extension of urban services along transportation corridors is common place and provides no basis for excluding these lands from the study area. The application also urges that the swap could not occur since industrial and public lands “mak[e] up about 190 acres...creating a deficiency in the amount of residential buildable land.” *Application*, p. 47. However, the developed and committed industrial lands account for less than half of the 548 acres of land within this area. Moreover, there could be no “deficiency in the amount of residential buildable land” both because the properties that are proposed for exchange are comprised primarily of nonbuildable land, and because Rosburg already has a surplus of low-density residential land within its UGB. In any case, the application provides no basis for excluding the lands in this area.

“Subarea #3 – Garden Valley/Riversdale” is noted as containing “a significant amount of developable/redevelopable land zoned for residential use.” *Application*, p. 48. Indeed, the “subarea” is identified as being nearly 2,000 acres in size. *Id.* at 42. The application purports to exclude this exception area on the basis of a “ridgeline running north and south the entire length of the subarea.” *Application*, p. 48. However, as is reflected in the Exhibits 19 and 20 includes locations for service connections along Fisher Road to the north and Garden Valley Road to the south which are not constrained by the “ridgeline.” *Application*, p. 48 & 50. Nor does the application evaluate whether the developed ridgeline area is actually an impediment to service. Again, the application provides no basis to exclude lands within this subarea from the study area.

Finally, the application excludes the 263 acres of land in the “#9 – Southgate/Tipton Road” based on the “topographic bottleneck” between the a steep hillside on one side of Hwy 99 and the floodway of the Umpqua River on the other. However, again, it is common to locate utility facilities within the

right-of-way of transportation infrastructure, including highways, and the application does not demonstrate that it is infeasible to locate public facilities in the right-of-way of the highway.<sup>13</sup> Moreover, while the application characterizes the subarea as “predominantly committed to industrial/commercial development,” the zoning of land within the subarea for other uses does not provide a basis for excluding land from the study area.

As the application improperly excludes several thousand acres of land from the study area, we respectfully request that the Council deny this application.

#### **D. Charter Oaks Is Not A Priority Area for Inclusion in the UGB.**

Following the improper exclusion of most of the study area, the application goes on to improperly focus on subareas around the UGB rather than to apply the system of priorities as required by state law.

ORS 197A.285(2)(c) provides as system of priorities to satisfy the identified needs within the UGB, starting with urban reserve areas and continuing to exception lands and nonresource lands, marginal lands, non-high value farmland, and finally to high-value farmland<sup>14</sup>. This system of priorities is

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<sup>13</sup> Furthermore, a floodway is not an “impediment to service” under OAR 660-024-0065(7)(c) and utilities could be placed in this area as long as the same are appropriately floodproofed and certified by a registered professional civil engineer. See LUDO §§ 3.30.440 & 3.30.620. *See also* RMC 12.040.090(W) & (EE).

<sup>14</sup> “When evaluating the priority of land for inclusion under paragraph (b) of this subsection:

- (A) The city shall evaluate all land in the study area that is designated as an urban reserve under ORS 197A.245 in an acknowledged comprehensive plan.
- (B) If the amount of land appropriate for selection under subparagraph (A) of this paragraph is not sufficient to satisfy the need for the land, the city shall evaluate the land that is subject to an acknowledged exception under ORS 197.732 or land that is nonresource land and select as much land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.
- (C) If the amount of land appropriate for selection under subparagraphs (A) and (B) of this paragraph is not sufficient to satisfy the need for land, the city shall evaluate the land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.
- (D) If the amount of land appropriate for selection under subparagraphs (A) to (C) of this paragraph is not sufficient to satisfy the amount of land needed the city shall evaluate land within the study area that is designated for agriculture or forest uses in the acknowledged comprehensive plan that is not predominantly high-value farmland, as defined in ORS 195.300, or does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service, and select as much of that land as necessary to satisfy the need for land:
  - (i) Using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations; and

hierarchical such that lower priority land is only evaluated if higher priority land cannot fulfill an identified “need deficiency.” See OAR 660-024-0067(1)(b)<sup>15</sup>.

1. There is No Need to Add More Low-Density Residential Land to the UGB.

The application stumbles at the very threshold of the priority analysis because there is no need for an expansion of the UGB to encompass additional low-density residential lands. As set out in OAR 660-024-0067(1)(a)<sup>16</sup>, the purpose of the priority system is to “determine which land in that priority category is suitable to satisfy the need deficiency determined under OAR 660-024-0050 and select for inclusion in the UGB as much of land as necessary to satisfy the need.”

Goal 14 requires a local government to demonstrate “that needs cannot reasonably be accommodated on land already inside the urban growth boundary.” Where there is no need for land outside an existing UGB, there is no need to change or expand the same. In *DLCD v. City of Klamath Falls & Badger Flats*, the City of Klamath Falls sought to expand its UGB to include a 22.7-acre parcel of land for commercial development, based on an ostensible need within the Klamath West Subregion. In overturning that UGB expansion, the Court of Appeals determined that the existence of 1,241 acres of vacant employment land<sup>17</sup> was dispositive. Pointing to Goal 14, the Court confirmed that “the text of the goal expressly requires that, prior to expanding a UGB, local governments shall demonstrate that needs...cannot be reasonably accommodated on land already inside the UGB.” (internal quotation marks omitted).

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(ii) Using predominant capability classification system or predominant cubic site class, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic site class lands first.

(E) If the amount of land appropriate for selection under subparagraphs (A) to (D) of this subparagraph is not sufficient to satisfy the need for land, the city shall evaluate land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high value farmland and select as much of that land as necessary to satisfy the need for land. A local government may not select land that is predominantly made up of prime or unique farm soils, as defined by the United States Department of Agriculture Natural Resources Conservation Service, unless there is an insufficient amount of other land to satisfy its land need.”

<sup>15</sup>“If the amount of suitable land in the first priority category is not sufficient to satisfy all the identified need deficiency, the city must apply section (5) to determine which land in the next priority is suitable and select for inclusion in the UGB as much of the suitable land in that priority as necessary to satisfy the need. The city must proceed in this manner until all the land need is satisfied, except as provided in OAR 660-024-0065(9).”

<sup>16</sup> (1) A city considering a UGB amendment must decide which land to add to the UGB by evaluating all land in the study area determined under OAR 660-024-0065, as follows

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

<sup>17</sup> 250 acres of that land was already zoned for commercial use.

The same is true in this case. As a prerequisite to applying the system of priorities established in state law, the application must demonstrate that there is a “need” for additional low-density residential land that cannot be reasonably accommodated in the City of Roseburg’s UGB. The problem with the analysis provided in the application is that it fails to address the fact that there is no “need deficiency” identified in the Housing Needs Analysis that needs to be fulfilled with any of the priority lands outside of the existing UGB.

The application proposes to add 229 acres of land to the UGB of which 211.5 $\pm$  would be for low-density residential development.<sup>18</sup> *Application*, p. 25, Table 6. However, the City already has a surplus of 352 gross acres of low density residential land. *See Housing Needs Analysis*, p. 81. Even if the City were to exclude both the Atkinson and Serafin properties from the UGB, the loss of the comparatively modest amounts of buildable low-density land<sup>19</sup> on these properties would be completely offset by the 352-acre surplus of low-density residential lands already within the UGB. As the City already has a surplus of low-density residential property there is no need to expand the UGB to include more than 200 acres of low-density residential land.

As the application does not demonstrate a need for additional low-density residential land that cannot be met in the UGB, there is no basis to expand the UGB to encompass Charter Oaks or any other area. Accordingly, we respectfully request that the City Council deny the application.

2. The Application Improperly Focuses on Subareas Rather Than on the System of Priorities Established by State Law.

The review of lands within the study area in the application incorporates two fundamental problems: (1) it fails to distinguish between exception areas and non-high value/high value farmland; and (2) it improperly evaluates lands in different priorities together using its “subarea” scheme.

Returning to the first point, as set out in ORS 197A.285(2)(c), the system of priorities distinguishes between nonresource and resource land, and assigns to nonresource lands a higher priority for inclusion in a UGB. It states, in relevant part:

“When evaluating the priority of land for inclusion under paragraph (b) of this subsection:  
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<sup>18</sup> Moreover, the application proposes to include far more buildable land than the exchange would actually exclude from the UGB. As is addressed above, the buildable low-density land being removed from the UGB is actually only about 80 acres.

<sup>19</sup> According to the calculations in the application, only about 10.7 acres of the Atkinson property is buildable land that is zoned for low-density development. *Application*, p. 131. Likewise, the Serafin property only contains about 80 acres of buildable land that is designated for low density development. *Id.* at 132.

(B) If the amount of land appropriate for selection under subparagraph (A) of this paragraph [urban reserve] is not sufficient to satisfy the need for the land, the city shall evaluate the land that is subject to an acknowledged exception under ORS 197.732 or land that is nonresource land and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged plan and land use regulations.”

*See also OAR 660-024-0067(2).* However, the application does not select sufficient exception or nonresource land within the study area to meet the identified need for land outside of the UGB, but instead proposes to include higher priority land over nonresource land. Accordingly, it is contrary to state law and should be denied on this basis.

Even setting aside the fact that there is no “need for the land” for low-density residential development at all, the application violates the statutory system of priorities by proposing to include both non-high value and high-value farmland in the UGB over nonresource and exception lands. The proposed expansion area consists of both high-value and non-high value resource land within the Charter Oaks area that should not have been included unless there was no other nonresource in the study area. *Application*, p. 124. This resource land is not included because it is necessary to include it to connect a larger area of nonresource land to the UGB or because it is surrounded by nonresource land. Instead, it is merely included because it is within the application’s Charter Oaks “subarea” which lumps together resource and nonresource land.

As noted in the application, each of the remaining “subareas” not excluded from the study area contain “nonresource” and “exception” lands.<sup>20</sup> *Application*, p. 58. In fact, Table 11 identifies 869 acres of nonresource lands in three subareas, with the Dixonville subarea alone accounting for 482 acres of rural residential and other nonresource areas.

Even assuming that it were necessary to add land to the UGB to offset the 80 acres of buildable land proposed for removal (and it is not), the remaining rural residential acreage in the study area would be more than adequate to offset that buildable residential land without including any resource land – high-value or non-high value. *See Application*, p. 63-68. As the application seeks to incorporate lower priority land in the Charter Oaks area into the UGB when there is higher priority nonresource land in the study area, it violates state law, and the application should also be denied on this basis.

Moreover, the rating method whereby the application selects the Charter Oaks “subarea” as the preferred expansion area is fundamentally flawed. The application employs a ranking system for the three subareas – “1) Wilbur; 5) Charter Oaks; 11) Roseburg East/Dixonville” – comparing and evaluating all of the resource and nonresource without accounting for the priority system established

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<sup>20</sup> Moreover, as is addressed in the last section, there are hundreds of acres of additional exception lands that were improperly excluded from the study area in the application, but are at a higher priority for inclusion in the UGB than the resource lands in the Charter Oaks area.

in state law. This is contrary to ORS 197A.285(2)(b) and OAR 660-024-0067(1) which requires the City to evaluate “all land” within a study area by priority. The application’s “subarea” classification improperly limits consideration of available nonresource land by focusing on available land within a subarea rather than focusing on all available nonresource land in the study area. It also improperly considers lower priority lands where there are available higher priority lands in other subareas. As the application’s subarea evaluation is contrary to law, we respectfully request that the Council deny the application on this basis as well.

#### **E. Expansion of the UGB Into Chater Oaks Does Not Meet the Locational Factors in Goal 14.**

The application improperly expands the UGB into Charter Oaks where the same does not meet the Goal 14 locational factors.

If there is more than adequate land in a particular priority to satisfy a need deficiency, cities use locational factors in Goal 14 to determine which land to include in the UGB. OAR 660-024-0067(1)(d). Each of these factors cut against including Charter Oaks in the Roseburg UGB.

The Goal 14 factors are:

- “(1) Efficient accommodation of identified land needs;
- (2) Orderly and economic provision of public facilities and services;
- (3) Comparative environmental, energy, economic and social consequences; and
- (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.”

None of these factors support the inclusion of the Charter Oaks area in the Roseburg UGB.

1. There is no identified land need for additional low density residential property in the Charter Oaks area.

As addressed in detail in the first section, the City of Roseburg already has a surplus of 352 gross acres of land within its current UGB designated for low-density residential development. The removal of an estimated 80 acres of buildable land from the City’s UGB does not create a need for additional low-density residential outside of the UGB. As there is no need for additional low-density residential land, and the City can efficiently accommodate its residential needs within the existing UGB, this factor would not support the expansion of the UGB into the Charter Oaks area.

2. Development of additional housing within the Charter Oaks would not provide for an orderly and economic provision of public facilities and services.

The City of Roseburg has a surplus of land within its UGB that is designated for low density residential development and would continue to have a surplus of this land following the exclusion of the two parcels at issue. It is most consistent with the orderly and economic provision of public facilities and services to rely on the existing low-density residential land within the UGB which is already served by City infrastructure than to expand the UGB to encompass additional unneeded resource and nonresource land in the Charter Oaks area and extend services outside the current UGB.

Furthermore, as noted in the transportation analysis prepared by Sandow Engineering, the proposed land exchange would require a significant expansion of the City's transportation system in order to provide secondary access to the subject property. While the Sandow study, identifies alignments for possible road extensions on high-value EFU land, and outside of the UGB, it concedes that "the only route option within the UGB is a bridge and connection to Harvard Avenue." *Sandow Transportation Analysis*, p. 45. This connection is identified as a "needed by unfunded" Tier 2 project in the Roseburg Transportation System Plan. *See TSP*, p. 70. This means that this \$29 million project is merely "aspirational" and is not likely to be funded during before the 20-year planning horizon. *Id.* at 1 & 67. As the proposed development of the Charter Oaks area is dependent on a \$29 million bridge project that has no identified funding, it would not provide for an orderly and economic provision of public facilities and services.

3. Comparative environmental, energy, economic and social consequences support accommodating the City's low density residential development on existing low density residential lands.

The comparative environmental, energy, economic and social consequences support accommodating the City's low density residential development within its existing UGB rather than on the resource and nonresource lands in the Charter Oaks area.

In particular, the lands currently located within the existing UGB are already "urbanizable land" and, under Goal 14, are considered to be available for urban development. Providing for the development of low density residential development within the UGB would provide for positive environmental, energy, economic, and social consequences, by encouraging a compact urban form which will encourage more efficient travel and distribution of urban facilities and services, diminish the amount of lands, and to separate urban uses from natural resource areas and rural lands.

By contrast, the proposed expansion of the urban growth boundary would encourage sprawl and intrude into an area of land that is devoted to resource use. Approximately half of the proposed Charter Oaks expansion area consists of land that is zoned and is appropriate for resource use, with the largest concentration of high-value farmland in any of the "subareas" under consideration. *See Application*, p. 124. significant amounts of resource land, including the most high-value soils in any of the subareas evaluated in the study. The loss of these resource lands would not be offset by the

exchange lands, as both are comprised of soils with severe limitations for agriculture.<sup>21</sup> Accordingly, the proposed exchange would result in an irrevocable loss of high-value agricultural land and corresponding adverse impacts to the environment, to agricultural employment (a basic employment sector), and the further weakening of an agricultural sector that is already struggling. *See Roseburg Urban Area Comprehensive Plan, Economic Element, Basic Employment Sectors, Agriculture.*

In addition to the waste of the non-renewable resource of high-value agricultural land, the proposed expansion for low-density residential housing that the City does not need, would also result in unnecessary extension of public facilities and services including the acquisition of land and development of a new sewer pump station to serve the area, the replacement of existing water infrastructure within the area, the development of 1.6 linear miles of additional streets, and a \$29 million bridge, all to include a farming area within the City. *Application*, p. 92. *Sandow Transportation Analysis*, p. 45. *TSP*, p. 70. This is a waste of resources for a UGB expansion for the City does not need, and the ESEE consequences of the proposal do not support the expansion of the UGB into the Charter Oaks area.

4. Proposed urban levels of development with the Charter Oaks area are incompatible with the surrounding agricultural and forest activities within the area.

The proposed expansion of the Roseburg UGB into the Charter Oaks area would be incompatible with the surrounding agricultural and forest activities within the area. It would convert existing resource land, including high-value agricultural lands, into property that is reserved for urban development contrary to the system of priorities in Goal 14. In addition to this conversion, the introduction of urban levels of development in the heart of this agricultural area would undermine resource uses on surrounding properties, which are proposed for new road alignments, or which would be impacted by conflicts with an increasing number of residents, vehicles and complaints. This factor does not support expansion of the UGB into this agricultural area.

As none of the locational factors support an expansion of the City's UGB to provide for low density residential development into the Charter Oaks area, we respectfully request that the Council deny this application.

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<sup>21</sup> According to the NRCS Soil Survey for Douglas Co., Oregon the Serafin property is predominantly comprised of soils in the Philomath-Edenbower complex at either 12 to 30 percent slopes (190E) or 30 to 60 percent slopes (190F). The soils in these complexes have severe limitations on agricultural capability and include soils rated between capability class Vie and VIIIs. The Atkinson property is predominantly comprised on Speaker-Non-Pareil, complex soils at either 3 to 30 percent slopes (230E) or 30 to 60 percent slopes (230F). These soils also have severe limitations on agricultural capability and include soils that are rated between capability class IIIe and Vie.

**F. Conclusion**

As the City of Roseburg does not need to include an additional 229 acres in the Charter Oaks area, we respectfully request that the Council deny the proposed “swap.”

Very truly yours,

HUTCHINSON COX



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ZPM/df