



Oregon

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DATE: March 31, 2011

TO: City of Damascus, Clackamas County, Metro, Damascus Citizen Involvement Committee Chair, and other interested persons who have submitted comments/objections

RE: Director's report for the City of Damascus' Request for Acknowledgement of its Comprehensive Land Use Plan and Map with the Statewide Land Use Planning Goals

The Department of Land Conservation and Development (DLCD) received a submittal from the City of Damascus requesting acknowledgment of the city's Comprehensive Plan and Map with the statewide land use planning goals. The request is submitted to DLCD for review and a report to the Land Conservation and Development Commission (LCDC), which will make the decision whether to acknowledge the city's comprehensive plan and map to comply with the statewide land use planning goals.

The city's submittal comes to the department for review following Damascus' incorporation (on November 2, 2004 by vote of the people). All Oregon cities and counties are required to have a Comprehensive Land Use Plan that complies with Oregon's statewide planning goals.

Under LCDC's rules for Acknowledgment Review (OAR 660-03-0025), this is notice that you have the opportunity to review the Director's report to the commission. **Written exception to the Director's report must be filed by April 11, 2011.** In addition, any person submitting exceptions shall comply with LCDC's rules at OAR 660-003, which include the following requirements:

- The local government, persons who have submitted written comments or objections under OAR 660-003-0020(1) or persons who own property which is the subject of site specific objections received under OAR 660-003-0020(1) shall have ten calendar days from the date of mailing of the department's report to file written exceptions to that report. Except as provided in section (3) of this rule, written exceptions shall not include additional evidence. Persons or local governments submitting exceptions are urged to file a copy with the affected local government and persons who submitted comments or objections. The department shall promptly submit exceptions to the commission.
- Written exceptions to the department's report filed pursuant to section (2) of this rule may include evidence to rebut any additional evidence submitted pursuant to OAR 660-003-0020(1) or developed by the department pursuant to section (1) of this rule. Written exceptions which include rebuttal evidence pursuant to this section, shall clearly identify the additional evidence being rebutted and shall be limited to rebuttal

evidence. Final rebuttal evidence allowed under this section shall not create a right to submit additional evidence to the commission under section (5) of this rule.

If you would like to provide exceptions to the Director's report, submit them in writing or by email **no later than April 11, 2011** to:

Jennifer.donnelly@state.or.us

or by mail:

Oregon Department of Land Conservation and Development (DLCD)
c/o Jennifer Donnelly (Damascus Comprehensive Plan)
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March 31, 2011

TO: Land Conservation and Development Commission

FROM: Jerry Lidz, Acting Director
Jennifer Donnelly, Metro Regional Representative

SUBJECT: **Agenda Item 9 – April 21-22, 2011 LCDC Meeting**

**DEPARTMENT REPORT AND RECOMMENDATION: REQUEST FOR
ACKNOWLEDGMENT OF THE CITY OF DAMASCUS COMPREHENSIVE PLAN**

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

The matter before the Land Conservation and Development Commission (LCDC, commission) is a request from the City of Damascus for the commission's acknowledgment of the city's comprehensive plan and plan map. Acknowledgment review is governed by ORS 197.251 and Oregon Administrative Rules (OAR) Chapter 660, division 003 Procedure for Review and Approval of Compliance Acknowledgment Request.

This report provides a department review of the record submitted by the City of Damascus. The purpose of the commission hearing is for the commission to review the department's analysis and recommendations, to hear testimony from persons who submitted comments or objections to the city's submittal, and to decide what actions to take in response to the request.

The commission may take one of the following actions pursuant to ORS 197.251(1):

- (a) Grant acknowledgment of the comprehensive plan as submitted;
- (b) Deny acknowledgment of the comprehensive plan as submitted; or
- (c) Grant acknowledgement of part of the comprehensive plan and continue acknowledgment of the remainder subject to a compliance schedule approved by the commission or the department.

B. Staff Contact Information

If you have questions about this report or the city's request for acknowledgment compliance, please contact DLCD Metro Regional Representative Jennifer Donnelly at (971) 673-0963 or jennifer.donnelly@state.or.us.

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II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the commission acknowledge the Damascus Comprehensive Plan as being in compliance with the following Statewide Planning Goals:

- Goal 1 – Citizen Involvement – previously acknowledged
- Goal 3 – Agricultural Lands – does not apply in urban comprehensive plans
- Goal 4 – Forest Lands – does not apply in urban comprehensive plans

- Goal 13 – Energy Conservation – recommend acknowledgment

The department recommends that the commission acknowledge the Damascus Comprehensive Plan as being in partial compliance with the following Statewide Planning Goals:

- Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces – recommend partial acknowledgement
- Goal 7 – Areas Subject to Natural Hazards – recommend partial acknowledgement
- Goal 8 – Recreational Needs – recommend partial acknowledgement
- Goal 12 – Transportation – recommend partial acknowledgment

The department recommends that the commission direct the city and the department to continue to work together to establish a reasonable schedule for full compliance with remaining Statewide Planning Goals 2, 5, 6, 7, 8, 9, 10, 11, 12 and 14. The department recognizes the tremendous effort the Damascus community has invested in its first comprehensive plan and recognizes the importance of the plan as a foundation for the city’s future. This report outlines the fundamental work remaining for the City of Damascus to fully comply with the Goals and recommends that the city and the department work together toward the commission’s acknowledgment of a successful comprehensive plan.

III. BACKGROUND

A. Purpose of Acknowledgment

The overall purpose of acknowledgment review is to determine whether an Oregon community’s initial comprehensive plan and land use regulations comply with the Goals and with state laws that implement the goals. (ORS 197.251(1) and OAR 660-003-0005(1)). The Goals provide a framework within which to carefully consider the future of each Oregon community and to coordinate investment and development within each community and each region of the state. The acknowledgment process provides a formal opportunity for review of a community’s initial comprehensive plan among interested parties at the local, regional and state level.

B. Local Actions

OAR 660-014-0010(4) requires that a city submit its comprehensive plan and implementing land use ordinances to the commission for acknowledgment review within four years of the city’s incorporation. Below is a timeline of actions following Damascus’ incorporation:

- The City of Damascus incorporated by a vote of the people on November 2, 2004.
- The department director granted the city a one-year extension in November 2008.
- The commission approved a compliance schedule for completion of the comprehensive plan and implementing ordinances at the commission’s January 20-22, 2010 meeting.
- The city held its first evidentiary hearing of its comprehensive plan on October 26, 2010.
- The city council adopted Damascus’ first comprehensive plan and plan map on December 15, 2010.
- The city submitted its notice of adoption for the plan and the plan map to the State of Oregon on December 16, 2010.

The city plans to submit its comprehensive plan in two phases. This first phase addresses the Damascus comprehensive plan and plan map. The city has not yet submitted a complete set of implementing land

use regulations. A second phase will address the city’s land use regulations and zoning map as well as any remaining goals.

IV. REVIEW CRITERIA, PROCESS AND RECORD

A. Standard of Review

Upon the request of a local government, the commission shall, by order, grant, deny, or continue acknowledgment of compliance of comprehensive plan and land use regulations with the goals. (ORS 197.251(1)). The standard of review for goal compliance is provided in ORS 197.747. A comprehensive plan, or any element thereof, must be acknowledged to be “in compliance with the goals” if the plan meets all of the following criteria:

1. It conforms on the whole to the purposes of the goals;
2. It meets the goal requirements, or, if it fails to comply with the requirements of the goal, that failure is technical or minor in nature; and
3. It conforms to the implementing rules for the goals, if there are any, or, if it fails to comply with the rules, that failure is technical or minor in nature.

B. Decision-Making Criteria

ORS 197.251(2) requires the commission to determine whether the comprehensive plan and land use regulations for which acknowledgment is sought are in compliance with Statewide Planning Goals. The applicable goals for Damascus are Goals 1 through 14. (See Section IV.A, Standard of Review.)

Commission rules in OAR Chapter 660 that implement and interpret the applicable goals:

- Division 3: Procedure for Review and Approval of Compliance Acknowledgment Request
- Division 7: Metropolitan Housing
- Division 8: Interpretation of Goal 10 Housing
- Division 9: Economic Development
- Division 11: Public Facilities Planning
- Division 12: Transportation Planning
- Division 23: Requirements and Application Procedures for Complying with Statewide Goal 5
- Division 24: Urban Growth Boundaries
- Division 34: State and Local Park Planning

(See Section V: Department Analysis.)

In addition to these statutes, goals, and rules, ORS 197.010(1) and (2) provide additional legislative land use policy objectives:

197.010 Policy. The Legislative Assembly declares that:

(1) In order to ensure the highest possible level of livability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

- (a) Must be adopted by the appropriate governing body at the local and state levels;*
- (b) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;*

- (c) Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans;*
- (d) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and*
- (e) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve.*
- (2)(a) The overarching principles guiding the land use program in the State of Oregon are to:*
 - (A) Provide a healthy environment;*
 - (B) Sustain a prosperous economy;*
 - (C) Ensure a desirable quality of life; and*
 - (D) Equitably allocate the benefits and burdens of land use planning.*
- (b) Additionally, the land use program should, but is not required to, help communities achieve sustainable development patterns and manage the effects of climate change.*
- (c) The overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection provide guidance to:*
 - (A) The Legislative Assembly when enacting a law regulating land use.*
 - (B) A public body, as defined in ORS 174.109, when the public body:*
 - (i) Adopts or interprets goals, comprehensive plans and land use regulations implementing the plans, or administrative rules implementing a provision of ORS chapter 195, 196, 197, 215 or 227; or*
 - (ii) Interprets a law governing land use.*
- (d) Use of the overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection is not a legal requirement for the Legislative Assembly or other public body and is not judicially enforceable (sic).*

C. Procedural Requirements and Validity of Objections

ORS 197.175, 197.250, 197.251 and OAR Chapter 660, divisions 003 and 014, establish the process for acknowledgment review. (OAR 660-003-0010 and OAR 660-014-0010(4)). First, a local government must request that the commission grant Acknowledgment of Compliance by sending a request to the director (ORS 197.251(1), OAR 660-003-0010). The local government must also send the request to the appropriate local coordination body as defined in [ORS 195.025](#). For the City of Damascus, the local coordination body is Metro (OAR 660-003-0010 (3)).

Upon receipt of the city's request for acknowledgment, the department performs a completeness review to determine whether the acknowledgment request contains all of the required information. If the request is complete, upon submittal or following notice requesting additional documents or information, the department completes a substantive and procedural review of the plan (OAR 660-003-0025) and provides public notice of opportunity to object to or comment on the submitted plan. (OAR 660-003-0010(4)-(6)).

The mailing of public notice commences a 45-day period during which parties may submit written comments or objections, together with any additional evidence, to the department (OAR 660-003-0020).

Following the deadline for submitting objections, the department completes its review of the request and any objections or comments received, and prepares a report for the commission. The report states whether the department believes the comprehensive plan and land use regulations are in compliance with the goals, and responds to any timely objections. (ORS 197.251(2), OAR 660-003-0025(1)). The department may investigate and resolve issues raised in the comments and objections, or in the department's review of the comprehensive plan and land use regulations. The department may also collect or develop evidence to rebut any supporting documents, comments, objections or evidence. (OAR 660-003-0025(1)).

At least 21 days before the scheduled commission review, the department is required to send copies of its report to the commission, the city, the county, any party who commented or objected in writing, and any other party who requested in writing to receive a copy of the report. (OAR 660-003-0025(1)).

After the report is mailed the city, the county, persons who submitted written comments or objections, and persons who own property that is the subject of site specific objections, have ten (10) days to file written exceptions to the report. Written exceptions to the report must be filed with the department within the 10-day period. (ORS 197.251 (3)) and the content of exceptions must comply with OAR 660-003-0025(2)&(3). The director promptly forwards any timely written exceptions received by the department to the commission. The director may also choose to provide his or her opinion regarding the exceptions. (OAR 660-003-0025(4)).

The commission has 90 days from the date the department receives the acknowledgment request to grant, deny, or continue acknowledgment, unless the commission finds that, due to extenuating circumstances, a period of time greater than 90 days is required. (ORS 197.251(1)).

The commission's review is limited only to the record of proceedings before the local government, any submitted comments, objections and exceptions, and the department report. The commission may hear oral argument from the city, the department, and persons who filed written comments, objections or exceptions. The commission may not allow additional evidence or testimony that could have been presented to the local government or to the department but was not. The commission may consider only those comments and objections that allege that the local government's plan, ordinances or land use regulations do or do not comply with one or more of the goals. (ORS 197.251(4), OAR 660-003-0020(3), and OAR 660-003-0025(1)).

Following its hearing, the commission must grant, continue, postpone for extenuating circumstances, or deny the acknowledgment request. (ORS 197.251(1), OAR 660-003-0025(1)).

D. Findings

On December 16, 2010, the department received by hand delivery a written request for acknowledgment from the City of Damascus. The contents of the request complied with the procedural requirements in state law. (ORS 197.251(1) and OAR 660-003-0010). The department performed a completeness check of the request and sent a letter of incompleteness to Damascus Community Development Director Anita Yap on December 29, 2010.

On January 19, 2011, the department mailed a Notice of Opportunity to Comment and File Objections consistent with OAR 660-003-0015. The department received twenty-nine objections or comments prior to the March 7, 2011 deadline. The department did not consider comments or objections received after March 7, 2011. After the deadline, the department completed its review of the comprehensive plan and plan map for compliance with the goals and prepared this report for the commission.

On March 31, 2011, the department sent copies of its report to the commission, the City of Damascus, Clackamas County, the Metro Regional Government, and to persons who requested a copy of the report in writing. All recipients were notified of the opportunity to file written exceptions to the report with the department within ten (10) days after the report was mailed. The commission scheduled the hearing for its regularly scheduled meeting April 21-22, 2011.

E. Written Record for this Proceeding

The written record for this proceeding includes the following:

1. The department's staff report
2. Correspondence:
 - a. December 16, 2010 notice of receipt of request for acknowledgment;
 - b. December 29, 2010 letter of incomplete;
 - c. January 19, 2011 letter from the city regarding incomplete letter;

- d. January 19, 2011 notice of Opportunity to Comment and to File Objections sent;
 - e. Master mailing list for January 19, 2011 Notice of Opportunity to Comment and File Objections;
and
3. City of Damascus acknowledgment request submittal materials

V. DEPARTMENT ANALYSIS

A. Goal 1: Citizen Involvement

1. Purpose of Goal 1

The purpose of Goal 1 is: *“To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.”*

2. Goal 1 Compliance Findings

Goal 1 was acknowledged by the commission at their August 2007 meeting.

3. Goal 1 Recommendation

The commission acknowledges that the comprehensive plan complies with Goal 1 – Citizen Involvement.

B. Goal 2: Land Use Planning

1. Purpose of Goal 2

The purpose of Goal 2 is: *“To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.”*

2. Goal 2 Compliance Findings

The city’s comprehensive plan establishes a legal basis for future land use regulations. The plan identifies important local values and states overarching principles to guide planning and investment decisions that will influence the city’s future. The city’s desire to balance local interests and state planning law is described in the introductory portions of the plan and provides valuable context for the entire document.

Goal 2 is directly addressed on pages 12-21 of the compliance report. The report identifies and describes specific goals and policy objectives, guidelines, plan elements, land use designations, maps, implementation measures, area plans, clustering and density bonuses, transfers of development rights, conservation easements, ecosystem services and conservation banking, wildlife habitat conservation, and 26 other policies to be implemented by ordinance.

The community’s commitment to retain a strong local sense of place while pursuing its future as a healthy city shapes the policies in nearly every aspect of the plan. In particular, the plan emphasizes the planning process, creating a vision for the future, the importance of complete neighborhoods, and a complete community concept while emphasizing innovation.

3. Goal 2 Recommendation

The department believes that the basic structure of the plan will comply with Goal 2. The plan was developed with significant opportunity for public input through an open public hearings process at the

local level, applicable statewide goals are identified in the plan, and the plan is supported by adequate factual information and inventories either in its text or incorporated by attachment.

The department believes that once Damascus adopts implementing ordinances the commission can fully acknowledge the following goals: 2, 5, 6, 7, 8, 9, 10, 11, 12 and 14. Once implementing ordinances are adopted for these goals, the plan will comply with Goal 2.

C. Goal 3: Agricultural Lands

1. Purpose of Goal 3

The purpose of Goal 3 is *“To preserve and maintain agricultural lands.”*

Goal 3 does not apply to the commission’s acknowledgment of an urban comprehensive plan or to the establishment of a UGB. (OAR 660-024-0020(1)(b)).

2. Goal 3 Recommendations

Goal 3 – Agricultural Lands does not apply to the City of Damascus.

D. Goal 4: Forest Lands

1. Purpose of Goal 4

The purpose of Goal 4 is *“To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.”*

Goal 4 does not apply to the commission’s acknowledgment of an urban comprehensive plan or to the establishment of a UGB. (OAR 660-024-0020(1)(b)).

2. Goal 4 Recommendations

Goal 4 – Forest Lands does not apply to the City of Damascus.

E. Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

1. Purpose of Goal 5

The purpose of Statewide Planning Goal 5 is: *“To protect natural resources and conserve scenic and historic areas and open spaces.”*

2. Goal 5 Administrative Rules

OAR chapter 660, division 23 requires that inventories of riparian corridors, wetlands, and wildlife habitat be conducted by the jurisdiction requesting acknowledgment. The rule also provides *safe harbors* that may replace the required inventory for riparian areas and wildlife habitat and program protection for riparian corridors, and wetlands. The safe harbor provisions are intended to streamline Goal 5 compliance. For all inventoried significant Goal 5 resources, a local government must develop and implement appropriate protection measures. For other required inventories, local governments may rely on inventories compiled by other agencies or may develop independent resource inventories consistent with state law

3. Goal 5 Compliance Findings

The Damascus acknowledgement submittal includes several documents that describe planning done to comply with Goal 5 and OAR 660, division 23. The submittal also describes the importance of natural and scenic resources within the city and the city's intention to protect these resources. The department reviewed the following documents as part of the city's plan:

- *The Damascus Natural Features Inventory Report*
- *The Damascus Scenic Assessment: Part I*
- *Damascus Compliance Report – Oregon, Statewide Planning Goals and Guidelines*
- *Envision Damascus, Comprehensive Plan*

Natural Features

The city has done an exemplary job conducting inventories and evaluating the significance of the following Goal 5 resources: wetlands, riparian areas, wildlife habitat, groundwater, and Oregon Scenic Water Ways. [Damascus Natural Features Inventory Report]. The city recognizes that it has not yet fully complied with Goal 5 and division 23, because it has not adopted code to protect significant resource sites identified in the inventory [Compliance Report pg. 25].

Riparian Areas and Wildlife Habitat – The city seems to be developing its Natural Features program in response to Metro Title 3 and Title 13 requirements, but the plan does not clearly state that intent. A consideration of the city's compliance with Metro's requirements is important to the acknowledgment review. Title 13 has been acknowledged to comply with Goal 5 for Riparian areas and wildlife habitat. Title 13 was developed using the standard Goal 5 process for conducting inventories and developing a program to protect significant resources, and an ESEE analysis was conducted. It is appropriate for Damascus to go through its own Goal 5 inventory process since new resources for inclusion in the Title 13 program are identified in its inventories. If the city's ESEE analysis supports a protection strategy that complies with Title 13, and the city adopts resource protection measures compliant with Title 13 those measures will also comply with Goal 5 for riparian areas and wildlife habitat.

Wetlands – The Natural Features Inventory includes a local wetland inventory (LWI), which has been certified by the Department of State Lands (DSL). If Damascus adopts implementing measures consistent with Metro Titles 3 and 13, the city's wetland resources will be well-protected. However, the city must still complete the Goal 5 process for its wetlands and make findings that Goal 5 protection standards have been met.

Groundwater Resources - The Natural Features Inventory identifies the Damascus Ground Water Limited Area, which is classified as a ground water limited area by Oregon Water Resources Department (OWRD). In order to comply with Goal 5, the city will need to develop a protection program for groundwater resources in compliance with the Goal 5 and OAR 660-23-0040 through 0050.

Oregon Scenic Waterways – The Natural Features Inventory identifies that portion of the Clackamas River upriver from the Carver Bridge as an Oregon State Scenic Water Way. To comply with Goal 5 the city will need to adopt implementing measures to protect the waterway following Goal 5 and OAR 660-23-0040 through 0050. Alternatively, the city can adopt only those plan and code provisions necessary to carry out the management plan adopted by Oregon Parks and Recreation Department (OPRD) for this stretch of the State Scenic Waterway. (OAR 660-23-0130(5)). The latter option also requires Damascus to provide assurance for OPRD review and comment on any proposed developments within one quarter mile of the river.

Other Goal 5 Resources for Which Inventories are Required

Federal Wild and Scenic Rivers, federally designated wilderness areas, approved Oregon Recreation Trails, natural areas on the Oregon Register of Natural Heritage Resources, and energy sources are other Goal 5 resources for which inventories are required. Complying with division 23 for these resource categories in Damascus may be as simple as adopting findings that the resources do not exist within the UGB.

Scenic Views and Sites

The comprehensive plan includes “scenic views and sites” as a Goal 5 resource category separate from the Oregon Scenic Waterway category and includes portions of the Damascus Scenic Assessment: Part. 1. The Assessment is described “as a survey that provided valuable insight into what citizens’ [sic] value about their surroundings.” (Envision Damascus, Comprehensive Plan pg, 10-7). The Assessment is not considered a “Goal 5 inventory of significant resource sites” because local governments are not required to inventory significant scenic views and sites. If Damascus chooses to identify such sites and place restriction on development in order to protect significant sites, the Goal 5 process described in OAR 660-23-0030 through 0050 must be followed.

Comprehensive Plan

OAR chapter 660, division 23 lays out the process for complying with Goal 5. When following the standard Goal 5 process for developing a program to protect an identified significant resource, a city must complete an analysis of the economic, social, environmental and energy consequences of a decision to allow, limit, or restrict uses that conflict with significant resource sites (ESEE analysis). A protection program must be supported by the ESEE analysis. Division 23 provides “safe harbor” provisions for inventories, significance determination, or the protection program for some resource categories. If a city chooses to adopt safe harbor provisions for resource protection, an ESEE analysis is not required. In all other cases local protection measures may not be adopted without completing the ESEE analysis. Damascus’ Compliance Report includes the following statement regarding the status of an ESEE analysis for Goal 5 resources:

The city has yet to complete and adopt an [ESEE analysis] to address the conflicts between conservation of Goal 5 resources and land uses required to meet the objectives of the other Goals. The ESEE analysis referenced later in this section was performed by the City’s Natural Features Team and has not been adopted by the City, which is currently in the process of completing a separate ESEE analysis. (Compliance report pg 25).

The Damascus Scenic Assessment: Part 1 does not provide a Goal 5 inventory of scenic views and sites and an ESEE analysis cannot be conducted for scenic resources until an inventory is complete. The comprehensive plan, however, includes some policies and action items that prescribe protection strategies that should be supported by ESEE analysis findings. For example:

Policy 2; Action Measure 4 – Establish riparian corridor setbacks that shall range from 100-200 feet, based on the site specific analysis at the time of development. (Envision Damascus, Comprehensive Plan pg 10-9).

Policy 7; Action Measure The City shall place reasonable limits on building height and sitting in viewsheds and view corridors to protect existing scenic resources, especially Mt Hood, the buttes, and the Clackamas River. (Envision Damascus, Comprehensive Plan pg 10-9).

Policy 12; . . . Encroachment into riparian corridors shall require enhancement, mitigation, and or restoration. (Envision Damascus, Comprehensive Plan pg 10-10).

4. Goal 5 Recommendations

The department recognizes Damascus' thoughtful drafting of the Goal 5 chapter of the comprehensive plan and expects that the final plan will be similar to the one submitted for acknowledgement. Before the comprehensive plan can be adopted, however, the city must complete the Goal 5 process for significant natural resources. The city shall complete an inventory of significant scenic views and sites; and must complete an ESEE analysis for its significant scenic views and sites. Until these steps are complete the city does not have sufficient information to determine if the comprehensive plan complies with Goal 5. The department recommends partial acknowledgment of the Goal 5 inventories and a compliance schedule that outlines the steps to fully comply with Goal 5.

F. Goal 6: Air, Land and Water Resources Quality

1. Purpose of Goal 6

The purpose of Statewide Planning Goal 6 is *“To maintain and improve the quality of air, water and land resources of the state.”*

2. Goal 6 Compliance Findings

The Damascus Comprehensive Plan covers air, water, and land pollution and describes several areas of concern. The plan could provide more information on strategies to address impediments to providing public sewer and wastewater facilities without impacting ground and surface water resources. This is particularly important considering state designations for Ground Water Limited Area and Water Quality Limited Streams within the city's UGB. The department recommends that the city further develop its Goal 6 chapter using data and findings in the city's public facilities master plan, once that element is completed as required by Goal 11 and OAR 660, division 11. [See also the Goal 11 compliance findings in this report.]

The comprehensive plan does not include a full account of the city's strategy for complying with state and federal water quality regulations. Damascus is identified as a Designated Management Agency in the Willamette TMDL for the Clackamas Sub-basin. [DEQ Willamette TMDL – Chapter 6, September 2006]. The city must address pollutants that have been found to enter the Clackamas River and its tributaries in quantities that exceed the carrying capacity for the resource, particularly when urban development and urban activities are known to contribute to the pollutant load. The Willamette Basin TMDL was developed to restore and maintain the beneficial functions provided by surface water resources in the basin. Damascus is required to develop a TMDL Implementation Plan that describes how the city will reduce temperature, mercury and bacteria pollutants to the Clackamas River within its jurisdiction. The targets (i.e. allocations) that its pollutant reduction practices should eventually achieve are:

- Temperature: no more than 0.05 degrees C temperature increase above natural temperature conditions (mainly achieved through restoring/protecting mature vegetation in riparian areas but also water conservation if they withdraw surface water or groundwater with a connection to the Clackamas River or tributaries)
- Bacteria: 78% reduction (mainly achieved through erosion control, stormwater treatment, and education/outreach)
- Mercury: 26% reduction (mainly achieved through erosion control)

3. Goal 6 Recommendations

The department recommends that the commission find that the Damascus comprehensive plan does not comply with Goal 6 and instead, to direct the city to work with department staff to develop a schedule for the city to achieve compliance.

G. Goal 7: Natural Hazards

1. Purpose of Goal 7

The purpose of Goal 7 is: *“To protect people and property from natural hazards.”*

Goal 7 requires that:

- 1. Local governments shall adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards.*
- 2. Natural hazards for purposes of this goal are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires. Local governments may identify and plan for other natural hazards.*

2. Goal 7 Compliance Findings

The Comprehensive Plan identifies a variety of potential natural hazards present within the city limits. Policies for reducing risk do not yet include implementing measures (ordinances). As a result, the department is unable to evaluate the general policies for compliance with Goal 7.

3. Goal 7 Recommendations

The department recommends partial acknowledgment of Goal 7 with a compliance schedule that outlines the steps for complete compliance with Goal 7. The department specifically recommends that the commission direct the city to amend the comprehensive plan to prohibit development on slopes greater than 25 percent except where it can demonstrate through site specific soil surveys, geologic studies, wildfire analysis, or other suitable studies, that development will not create or facilitate a natural hazard condition.

H. Goal 8: Recreational Needs

1. Purpose of Goal 8

The purpose of Goal 8 is: *“To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.”*

2. Goal 8 Compliance Findings

Goal 8 encourages cities and counties to coordinate with other private and public entities to offer outdoor recreation amenities commensurate with the needs and desires of the community. While the City of Damascus does not currently own any developed park space, residents do enjoy some parks and open space within existing subdivisions and in parks owned and operated by other agencies. The city proposes 18 goals and policies ranging from creating a sense of community to providing recreational opportunities and environmental responsibilities and protecting spaces (Compliance report pages 54-56). When the city develops an inventory of its recreational needs the inventory will comply with Goal 8.

3. Goal 8 Recommendation

The department recommends partial acknowledgment of Goal 8 with a compliance schedule that outlines the steps for complete compliance with Goal 8. The department recommends that the commission direct the city to complete an inventory of recreational resources and incorporate proposed goals and policies into implementing ordinances for compliance with Statewide Planning Goal 8 – Recreational Needs.

I. Goal 9: Economic Development

1. Purpose of Goal 9

The purpose of Goal 9 is: “*To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*”

2. Goal 9 Administrative Rules

Applicable legal requirements are found in Goal 9 and Goal 14 and the respective implementing administrative rules, OAR chapter 660, divisions 9 and 24, and ORS 197.712.

Goal 9 requires that comprehensive plans provide for a variety of economic opportunities, based on inventories of areas suitable for increased economic growth, and taking into consideration current economic factors. The goal requires that comprehensive plans provide for at least an adequate supply of suitable sites, plan for adequate public facilities to serve these sites, and limit incompatible uses to protect those sites for their intended function.

OAR chapter 660, division 9 implements Goal 9 and directs local governments to “link planning for an adequate land supply to infrastructure planning, community involvement and coordination among local governments and the state,” and “to assure that comprehensive plans are based on information about state and national economic trends.” (OAR 660-009-0000).

OAR 660-009-0010(5) recognizes that the effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A local government’s planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of the administrative rule.

OAR 660-009-0015 requires that comprehensive plans provide an Employment Opportunities Analysis (EOA) that describes a review of economic trends, required site types for likely future employers in the jurisdiction, an inventory of available lands, and assessment of the community’s economic development potential. OAR 660-009-0015(1) requires that the review of trends be the principal basis for estimating future employment land uses.

OAR 660-009-0020 requires that comprehensive plans include policies to implement the local economic development objectives, provide a competitive short- and long-term supply of sites for employment, ensure those sites are suitable for expected users, and provide necessary public facilities and services.

OAR 660-009-0025 requires that comprehensive plans adopt measures adequate to implement local economic development policies. These include designation of sites for a 20-year supply of employment land and maintenance of a short-term supply of serviceable lands.

OAR 660-009-0030 strongly encourages cities and counties to coordinate when implementing OAR 660-009-0015 to 660-009-0025.

Goal 14 requires that:

Establishment and change of urban growth boundaries shall be based on the following: (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.

OAR chapter 660, division 24 provides direction about how to incorporate analysis and findings addressing Goal 9 during a UGB review. OAR 660-024-0040(1), in addition to reiterating the criteria

from Goal 14 in the previous paragraph, states that the 20-year needs “are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.”

OAR 660-024-0040(5) states that the 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR chapter 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses. Employment land need may be based on an estimate of job growth over the planning period. A local government must provide a reasonable justification for the job growth estimate but Goal 14 does not require that job growth estimates necessarily be proportional to population growth.

ORS 197.712(2) authorizes and obligates the commission to apply, interpret or amend existing goals or rules to ensure that comprehensive plans provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.

Goal 9 and OAR Chapter 660, division 9 guide employment land planning in Oregon. Cities must maintain at least an adequate supply of suitable sites for likely opportunities to meet community objectives. The legislative intent is to attract jobs based on market realities and not merely accommodate them in an unrealistic community plan that sits on a shelf. The total land supply¹ that cities are required to plan for is the result of a series of local policy choices.

The city’s calculation of an adequate employment land supply is not simply a formula or a forecast or allocation. The city’s work is to explore options and assemble the facts needed to inform the policy choices. There must be findings supported by evidence to explain the policy choices. The policy choices (the findings) must have an adequate factual basis and must be reasonable.

The factual basis for a city’s policy choices is provided by an EOA, together with an inventory of buildable land and other supporting analyses. The city uses an EOA to define the community’s objectives, economic opportunities, and an adequate supply of suitable sites for those opportunities.

Although OAR 660-009-0015(1) requires the review of trends to be the principal basis for estimating future employment land uses, the rule does not specify or limit acceptable methods to determine employment land need. It is up to local governments to assemble an adequate factual basis and select methods of analysis appropriate to its circumstances and community objectives. The resulting documentation required will vary in complexity and clarity based on the city’s unique local circumstances. There is no prescribed method; the rules simply provide limits to the required research and analysis.² This flexibility is deliberate and necessary to encourage communities to identify and pursue economic opportunities appropriate for the community.

Cities are encouraged to engage in a variety of regional planning agreements by OAR 660-009-0030. The required employment land coordination is between city and county for UGB amendments unless some other mechanism is provided by law or mutual agreement.

1 OAR 660-009-0005(13) defines “total land supply” as “the supply of land estimated to be adequate to accommodate industrial and other employment uses for a 20-year planning period. Total land supply includes the short-term supply of land as well as the remaining supply of lands considered suitable and serviceable for the industrial or other employment uses identified in a comprehensive plan. Total land supply includes both vacant and developed land.” OAR 660-009-0005(1) defines that “Developed Land” means non-vacant land that is likely to be redeveloped during the planning period.

2 OAR 660-009-0010 (5): “The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction’s planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.”

The submitted Comprehensive Plan contains an EOA that includes an analysis of trends as the principal determinant of the employment land supply, along with an inventory of employment land and a determination of economic development potential.

3. Goal 9 Compliance Findings

The comprehensive plan shall include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends. Damascus has completed a compliant EOA. (Exhibit C)

The comprehensive plan shall contain policies concerning the economic development opportunities in the community. Policies are included in the EOA and the compliance report. (Compliance Report page 62)

The comprehensive plan shall provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies. Damascus has included this determination in the EOA and the compliance report. (Exhibit C, Compliance Report page 61)

The comprehensive plan shall limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses. Damascus has not completed this work, and states this to be the case. (Compliance report page 58)

The city has made a finding that the land supply provides at least an adequate supply of suitable sites to meet the community objectives. (Exhibit C, Compliance Report page 61). Damascus has not made a finding that implementation policies limit incompatible uses to protect sites for their intended uses. Damascus has not yet established implementation policies. (Compliance report page 58, 61)

The city has made a finding that the record contains a review of trends, required sites types with suitability criteria, an inventory of available lands and an assessment of the community's economic development potential. (Exhibit C, Compliance Report page 58, 61)

The city has made a finding that the review of trends is the principal basis for estimating future employment land uses. Local decision makers can choose which evidence to believe, so long as the evidence they rely on is "substantial evidence." Substantial evidence is evidence that a reasonable person could rely on to support a conclusion. Cities must make findings to identify what substantial evidence they relied on to determine the future employment land supply. (Exhibit C, Compliance Report page 61)

The city's findings have identified the site types used for the land supply analysis. The identification of the site types is based on the policy choices made by the city regarding the kinds of employers anticipated to locate there. The city must use the characteristics that define site types consistently throughout the analysis, including the inventory, redevelopment and land supply conclusions. (Exhibit C, Compliance Report page 61. Table 4-7 identifies site types Industrial and Other Employment (EOA page 4-18) and in Table 4-5 site characteristics (EOA 4-14))

The city has made a finding based on substantial evidence to specify suitable site criteria for each site type used in the analysis. The city made a finding that the suitable site criteria for each site type are typical and meaningfully related to the expected uses of the site type. (Exhibit C, Compliance Report page 61. Site Needs section. (EOA page 4-5)

The city had not made adequate findings that the comprehensive plan includes measures adequate to implement local economic development policies. (Not complete. Compliance Report page 58)

Communities within an MPO must adopt policies and findings related to a competitive short-term supply of employment land. The city has not completed this adoption. (Compliance Report page 58)

Together, these findings do not establish the city's need for employment land and its commitment to meet Damascus's economic development objectives. The plan does not provide an adequate factual base for local decision-making and does not satisfy the requirements of Goal 9. During phase two of the city's

acknowledgment, the department is committed to work closely with Damascus to develop implementing codes that substantiate its commitment to provide employment opportunities in the city.

4. Goal 9 Recommendation

The department recommends that the commission find that Damascus’s comprehensive plan is not in substantial compliance with Goal 9 and recommends that the commission outline steps to comply with Goal 9 in a compliance schedule that includes the city’s submittal of suitable land development code and implementing regulations to support and facilitate economic development in Damascus.

The department recommends that the commission include in the compliance schedule instructions to the city to reconsider the availability of sites for heavy industrial activity in response to an objection filed by Lowell Patton.

J. Goal 10: Housing

1. Purpose of Goal 10

The purpose of Goal 10 is: *“To provide for the housing needs of citizens of the state.”*

OAR 660-007-0000 states the purpose of the Goal 10 implementing rules for the cities and counties within the Metropolitan Service District UGB: *“The purpose of this rule is to assure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the Metropolitan Portland (Metro) urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs. OAR 660-007-0030 through 660-007-0037 are intended to establish by rule regional residential density and mix standards to measure Goal 10 Housing compliance for cities and counties within the Metro urban growth boundary, and to ensure the efficient use of residential land within the regional UGB consistent with Goal 14 Urbanization.”*

2. Compliance Findings for the Residential Buildable Land Inventory (BLI)

Goal 10 requires that: *“Buildable lands for residential use shall be inventoried . . .”*

OAR 660-007-0045(1) Computation of Buildable Lands states: *“The local buildable lands inventory must document the amount of buildable land in each residential plan designation.”*³ The plan does not currently include a BLI. In two documents, the record states that the city has not done a BLI (February 2008 Damascus Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45 at pp. i, 1-2, and 1-3; and comprehensive plan, Appendix C-1 to Ordinance No. 2010-045, table of contents). At another location, however, the plan states that the city “has completed a Buildable Lands Inventory based on the areas identified on the Comprehensive Plan Map as most suitable for residential use” (Comprehensive plan, Chapter 6.0 Goal 10: Housing at p. 6-13). A BLI was not submitted for acknowledgment with the city’s comprehensive plan. The department and commission are unable to determine whether the city correctly uses the definition of buildable land, until the city submits a BLI for acknowledgment.

Damascus has not established residential plan designations (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45 at p. 5-18). Therefore, the city is unable to document the amount of buildable land in each residential plan designation consistent with OAR 660-007-0045.

³ The rest of the provisions in OAR 660-007-0045 apply only at the time of periodic review.

Recommendations for Buildable Land Inventory:

The department recommends that the commission find that the buildable land inventory is not sufficient to comply with the Goal 10 and OAR chapter 660, division 7. The department also recommends that the commission outline these steps to comply with Goal 10 in a compliance schedule :

- A. Prepare a BLI that complies with the requirements of Goal 10 and OAR chapter 660, division 7; and
- B. Adopt the compliant BLI into the housing element of the city's comprehensive plan.

3. Compliance Findings for the Housing Needs Analysis (HNA)

The city acknowledges that it does not have a coordinated population forecast (*see, e.g.*, February 2008 Damascus Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at pp. i, vii, 5-1, 5-2, and 5-18; Chapter 6.0 Goal 10: Housing of the comprehensive plan, Appendix C-1 of the ordinance at p. 6-4). The city further acknowledges that “a forecast is a necessary prerequisite to estimate housing needs” (Appendix C-16 to Ordinance 2010-45 at pp. 5-1 and 5-18). Damascus therefore is unable to estimate its housing needs until Metro adopts a coordinated population forecast for the area within the incorporated city limits of Damascus that is within the Metro urban growth boundary.

The city finds that its demographics and development pattern⁴ differ significantly from Clackamas County as a whole,⁵ yet its housing needs analysis and residential land needs analysis rely on data and assumptions for greater Clackamas County without providing an explanation for the finding that “the city can expect a shift toward a demographic profile that more closely mirrors Clackamas County” (*see* Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at pp. iii-vii, 1-1, 4-1 through 4-20, 5-5, 5-9, and 5-10 through 5-14).

The record lacks support for the statement that the City of Damascus has the capacity to capture between 30 and 50 percent of the “overall pool of new home sales” in East Clackamas County (*see* Residential Land and Housing Needs Analysis at p. iii). Further, that Damascus has a particular housing capacity does not on its own guarantee the city will achieve that capacity. The city must demonstrate the capacity it expects to achieve, and how that capacity will be achieved.

The city prepared its housing needs analysis in 2008. At that time, the most recent U.S. Census data available was from the year 2000. The 2000 Census showed that the Damascus area had an average household size of 3.0 persons. Instead of using that number, the city used an average household size of 2.63 for the next 20 years. The justification given is: “As the city develops new housing at urban densities and produces greater numbers of multi-family units, the household size will decrease. Households in multi-family dwellings tend to have smaller household sizes than households in single-family dwellings” (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at pp. 5-4 and 5-5). The department finds that the city has not adequately explained how it calculated its average household size.

The 2000 Census shows that Damascus had a residential vacancy rate of 2.1 percent. However, Damascus assumed much higher future vacancy rates of four percent for single-family and six percent for multi-family for the next 20 years because those rates are similar to the Clackamas County rates in the year 2000. The reasoning is: “As Damascus adds urban density housing types and more multiple family dwellings, vacancy rates will *probably* be higher” (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at p. 5-5) (emphasis added). This choice is not adequately supported. (*see* Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at p. i).

⁴ “Low-density, rural development with few retail services.”

⁵ See the “Demographic Trends” described in the Key Findings and Conclusions of the Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45, at pp. 6-1 through 6-5.

Damascus is not required to plan for all of the housing types specified in Goal 10 for cities with populations greater than 2,500 that have had at least one periodic review,⁶ but only those housing types that Damascus determines are needed during its 20-year planning period (*see* the findings for OAR 660-024-0040(4) and ORS 197.303(1) in this Goal 10 compliance section of the report). The city’s analysis includes all housing types required for larger cities after acknowledgment (*see, e.g.,* Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45, Table 5-14, p. 5-17), but the record does not indicate whether those are the housing types that the city has determined it actually needs for the planning period.

Until the city identifies its needed housing types for the planning period, the department and commission are unable to determine whether the city’s housing types are consistent with Goal 14 efficiency requirements.

OAR 660-007-0030(1) requires that Metro jurisdictions “other than small developed cities must either designate sufficient buildable land to provide the opportunity for at least 50% of new residential units to be attached single family housing or multiple family housing.” Although OAR 660-007-0030 doesn’t define “small developed cities,” OAR 660-007-0035 includes a definition and lists the cities that met the definition when the rule was adopted in 1977 (OAR 660-0035(4))⁷. It is reasonable to find that the term has the same meaning in both rules within division 7. The City of Damascus does not meet the definition for exempt cities under OAR 660-007-0035 (*see* findings below), and so it must comply with the standards in OAR 660-007-0030 and provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing.

Damascus used two different housing mixes in its housing needs analysis; the “Metro Assumptions” of 50 percent single-family and 50 percent multiple family, and the “County Mix Assumptions” of 67 percent single-family and 33 percent multiple family (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45, Table 5-5 at p. 5-6). Neither of the mixes is required by law (OAR 660-007-0030). The very large range of 20-year needed housing units that Damascus derives from the two mixes, 4,000 to 9,000,⁸ is not consistent with Goal 10. (*See* Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45 at p. 5-10.)

Compliance with the new construction mix standard in OAR 660-007-0030 demonstrates compliance with the Goal 10 requirement that “plans shall encourage the availability of adequate numbers of needed housing units⁹ at price ranges and rent levels which are commensurate with the financial capabilities of

⁶ “Attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters.”

⁷ King City, Rivergrove, Maywood Park, Johnson City, and Wood Village.

⁸ The housing needs analysis states on p. 5-10 that there is a Table 5-5 that shows the city’s estimate of needed housing units, but this table is not in the analysis.

⁹ Goal 10:

Needed Housing Units – means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing units” also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, “needed housing units” also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters.

Government-Assisted Housing -- means housing that is financed in whole or part by either a federal or state housing agency or a local housing authority as defined in ORS 456.005 to 456.720, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

Oregon households” as it applies to needed housing types. When Damascus demonstrates how it will achieve the required mix during the planning period, the city will comply with Goal 10 in this respect.

OAR 660-007-0035 established overall residential density standards for cities and the urban areas of counties within the Metro UGB. There is an exemption for compliance with the standards in this rule for “small developed cities which had less than 50 acres of buildable land in 1977.” The rule names King City, Rivergrove, Maywood Park, Johnson City, and Wood Village as cities that met the exemption definition in 1981 (*see* OAR 660-007-0035(4)). Damascus was neither an incorporated city nor within the Metro UGB in 1977 and also has more than 50 acres of buildable land, so it may not use the exemption.¹⁰ A city may use an alternate average residential density standard if it meets the criteria in OAR 660-007-0037. Damascus does not meet these criteria (*see* the findings for OAR 660-007-0037). Damascus is subject to the residential density standards in OAR 660-007-0035.

Because OAR 660-007-0035 was adopted 23 years before Damascus incorporated, the rule does not state a minimum residential density standard for the city. Therefore, the commission must determine which overall residential density standard applies to Damascus. When the commission adopted OAR 660-007-0035, it assigned an overall residential density of eight or more dwelling units per net buildable acre for Forest Grove, Gladstone, Milwaukie, Oregon City, Troutdale, Tualatin, West Linn, Wilsonville and Clackamas County, based on their populations at the time (OAR 660-007-0035(2)), and it assigned an overall residential density of 10 or more dwelling units per net buildable acre for Portland, Gresham, Beaverton, Hillsboro, Lake Oswego, and Tigard, based on populations at the time (OAR 660-007-0035(3)). The city’s Housing Needs Analysis assumes densities that the city believes can achieve 10 units per net acre. At one place in the record, the city appears to state that 10 units per net acre is the appropriate standard (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45 at pp. v, vii, 5-18, and 5-19; Comprehensive Plan, Chapter 6.0 Goal 10: Housing, Appendix C-1 to Ordinance No. 2010-45 at p. 6-8). However, to be consistent with the intent of the rule, the amount of expected future population growth must be a factor in determining the city’s appropriate overall density. Until Damascus has a coordinated population forecast that the commission will acknowledge, the commission cannot determine which overall residential density standard applies to Damascus. (OAR 660-007-0035). The department recommends that the commission assign a density of eight units per acre.

The plan assumes future densities for four housing types: single-family detached, single-family attached, manufactured homes in parks, and multifamily (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45, Table 5-14, p. 5-17). There is no indication whether these are minimum or average densities. The reason for choosing these particular numbers is not in the analysis. The record does not demonstrate how the range of housing unit numbers and the chosen housing type densities in the

Manufactured Homes – means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 USC 5401 et seq.), as amended on August 22, 1981.

OAR 660-008-0005:

(1): “Attached Single Family Housing” means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

(2) “Multiple Family Housing: means attached housing where each dwelling unit is not located on a separate lot.”

¹⁰ Also note that when Metro expanded its UGB in 2002 to take in the area that later became the City of Damascus, it assumed a 20-year forecast for the City of Damascus of approximately 62,990 persons. (See findings for Goal 14 compliance, specifically, the 20-year population forecast, later in this report.) This would be more people than are currently in all but the largest Metro cities: Cornelius (11,020), Durham (1,405), Fairview (9,745), Forest Grove (21,770), Gladstone (12,215), Happy Valley (11,865), Johnson City (680), King City (2,800), Lake Oswego (36,845), Milwaukie (20,930), Oregon City (30, 995), Rivergrove (350), Sherwood (16,705), Tigard (47,595), Troutdale (15,595), Tualatin (26,160), West Linn (24,455), and Wood Village (3,120) (PSU July 2010 population estimates.)

city's housing needs analysis will achieve 8 dwellings per net acre – nor any other average density standard.¹¹

Compliance with the average new construction mix standard in OAR 660-007-0035 will demonstrate compliance with the Goal 10 requirement that “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” as it applies to needed densities.

The provisions of OAR 660-007-0037, Alternate Minimum,¹² are not available to Damascus because the rule does not apply to the initial acknowledgment of a comprehensive plan (*see* OAR 660-007-0037(1) and (2)). Therefore, Damascus must use the residential density standards for new construction in OAR 660-007-0035. (*See* the findings for compliance with OAR 660-007-0035.)

The part of OAR 660-007-0045, Computation of Buildable Lands, applicable to acknowledgment of Damascus' comprehensive plan provides that the mix and density standards of OAR 660-007-0030, 660-007-0035 and 660-007-0037 apply to land in a buildable land inventory required by OAR 660-007-0010. Damascus has not submitted a BLI for acknowledgment. When the city prepares and submits a compliant BLI, the city will comply with this rule.

There is not an adopted coordinated 20-year population forecast for Damascus (*see* the findings for compliance with Goal 14 in this report). Instead, Damascus created its own forecast, or, rather, two different 20-year population forecasts, a “low growth” projection and a “high growth” projection, for use in preparing its housing needs analysis (*see* Chapter 6.0 Goal 10: Housing, Appendix C-1 to Ordinance 2010-045 at p. 6-4; February 2008 Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at pp. ii and 5-1). The two forecasts were used to create four different housing density scenarios and four different housing mix scenarios (*see* Chapter 6.0 Goal 10:Housing, Appendix C-1 to Ordinance 2010-045 at p. 6-5; Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at p. 5-2). Under state law, only one adopted coordinated 20-year population forecast is used to determine the types and numbers of housing units from which to prepare one projected housing mix and one set of projected needed housing densities. The numbers and densities of each needed housing type are then translated into residential land need. Damascus cannot comply with OAR 660-024-0040(4) until it has one coordinated 20-year population forecast that complies with Goal 14 that may be acknowledged (*see* Goal 14 compliance findings in this report).

ORS 197.295 through ORS 197.314 are codified in ORS Chapter 197 under the heading of “Needed Housing in Urban Growth Areas.” Not all of these statutes apply to acknowledgment of Damascus' comprehensive plan. Those that do apply define “needed housing,” (ORS 197.303) prohibit mandatory inclusionary zoning (ORS 297.309), and prohibit exclusion of certain housing types (ORS 197.312). Findings regarding compliance with these three statutes follow. Other statutes in this section of ORS Chapter 197 will apply to Phase 2 of acknowledgment, which will be a review of the city's zoning map and development code.

The definition of “needed housing” in ORS 197.303(1) is the same as the definition of “needed housing” in Goal 10. Both the goal and statute define “needed housing” for all urban areas at the time of acknowledgment as “housing types determined to meet the need shown for housing within an urban

¹¹ The appendix to the Residential Land and Housing Needs Analysis that lists possible residential regulatory efficiency measures the city could take to address holding capacity (Appendix C-16 to Ordinance No. 2010-45 at PP. A-1 through A-7), but there is no evidence that Damascus has considered or adopted these measures. While holding capacity is not a final determinant of residential land need; the city must estimate how much of the capacity is likely to develop or redevelop within the planning period.

¹² The rule establishes average, densities, not minimum densities. The department does not know why the title of the rule uses “minimum” instead of “average.”

growth boundary at particular price ranges and rent levels.” After acknowledgment, certain listed housing types are deemed to be “needed housing” for cities with more than 2,500 residents, and must be provided for regardless of actual local need¹³ (see ORS 197.303(1)). Because Damascus is in the process of acknowledgment, it must provide for “needed housing” in the broad definition; *i.e.*, those housing types that analysis of data and findings demonstrates are needed in the City of Damascus over the 20-year planning period. Damascus must provide land for attached and detached single-family housing and multiple family housing for both owner and renter occupancy, government assisted housing, mobile home or manufactured dwelling parks, and manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions, but only if there is an actual local need for them.

ORS 197.475 through ORS 197.490 are a group of statutes that govern planning for mobile home and manufactured dwelling parks. Most of these statutes do not apply at this time. They will apply when the department and commission review the city’s development code for acknowledgment. At this time, only the state policy behind these statutes may apply to the city’s housing needs analysis:

Compliance with Goal 14 requirements regarding housing need is addressed in the Goal 14 section below.

4. Recommendations for Housing Needs Analysis

The department recommends that the commission find that Damascus’ housing needs analysis does not comply with Goal 10 and that the commission direct the city to amend its comprehensive in order to:

- A. Reconsider the findings and conclusions of the housing needs analysis in light of the one 20-year coordinated population forecast that the city will prepare and adopt consistently with Goal 14, ORS 195.025, ORS 195.036, and OAR 660-024-0030;
- B. Reconsider the findings and conclusions of the housing needs analysis in light of the BLI that the city will prepare and adopt consistently with Goal 10, OAR 660, division 7, and the applicable statutes in ORS Chapter 197;
- C. Remove from the plan text all references to housing choice, desire and preference, as opposed to need;
- D. Provide findings supported by an adequate factual base to support the conclusion that Damascus can expect a shift toward a demographic profile that more closely mirrors Clackamas County, or, in the alternative, use a different demographic profile that is supported by an adequate factual base;
- E. Determine how much of the city’s residential land capacity will be developed during the planning period, and demonstrate how that capacity will be achieved;
- F. Justify a persons per household assumption with findings supported by an adequate factual base;
- G. Justify a vacancy rate assumption with findings supported by an adequate factual base;
- H. Demonstrate with findings supported by an adequate factual base which housing types are needed in Damascus during the 20-year planning period;
- I. Utilize the OAR 660-007-0030(1) housing mix standard, and use only that one mix; *i.e.*, designate sufficient buildable land to provide the opportunity for at least 50% of new residential units to be attached single-family housing or multiple-family housing;
- J. Demonstrate how the city will achieve the housing mix standard in OAR 660-007-0030(1);
- K. Use only one estimate of needed dwellings by housing type;

¹³ Attached and detached single-family housing and multiple family housing for both owner and renter occupancy, government assisted housing, mobile home or manufactured dwelling parks, and manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.

- L. Utilize the OAR 660-007-0035 overall residential density allocation standard for new construction that the commission determines is applicable to the City of Damascus;
- M. Demonstrate how the city will achieve the overall residential density for new construction standard that the commission assigns to the city; and
- N. Indicate whether the residential densities in Table 5-14 of Appendix C-16 to Ordinance No. 2010-45 are minimum or average densities.

5. Compliance Findings for Residential Land Needs Analysis (RLNA)

The Residential Land Needs Analysis is calculated from the conclusions of the housing needs analysis, the projected residential densities of the various needed housing types, the identified future need for non-residential uses permitted in residential zones, and the amount of land needed for those non-residential uses. The department recommends that the commission determine that the city's Residential Land Needs Analysis does not comply with Goal 10 and its implementing rules for the following reasons:

- The city acknowledges that “[l]and needed for residential development in Damascus will depend on population growth and housing mix assumptions” (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45 at pp. vii and 3-19). However, the city does not have a coordinated 20-year population forecast, nor does it have a BLI, nor does it have a compliant housing needs analysis (*see* findings earlier in this Goal 10 compliance section of the report). This means that Damascus is unable to determine its 20-year residential land need.
- Table 5-12 on p. 5-15 of the Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45, is the city's residential land needs analysis. This table translates numbers of each needed housing type by density into acres of land. Damascus may have only one 20-year population forecast and one 20-year residential land needs analysis. Table 5-15, however, provides two different analyses: one arbitrarily based on an additional 10,000 people during the planning period, and the other arbitrarily based on an additional 25,000 people during the planning period.
- It is not clear whether Damascus has designated sufficient buildable land under OAR 660-007-0030 New Construction Mix until the city prepares a coordinated population forecast and a BLI and reconsiders its housing needs and residential land needs in light of the population forecast and BLI (*see* findings regarding the BLI and OAR 660-007-0018).

6. Recommendations for Residential Land Needs Analysis

Direct the city to amend the comprehensive plan in order to:

- A. Reconsider the residential land needs analysis in light of a coordinated population forecast, BLI, and revised housing needs analysis; and
- B. Adopt a coordinated population forecast, BLI, HNA, and RLNA in compliance with Goals 10 and 14, and OAR 660, divisions 7 and 24.

7. Compliance Findings for Regional Coordination

OAR 660-007-0050 Regional Coordination states: *“(1) At each periodic review of the Metro UGB, Metro shall review the findings for the UGB. They shall determine whether the buildable land within the UGB satisfies housing needs by type and density for the region’s long-range population and housing projections,” and “(2) Metro shall ensure needed housing is provided for on a regional basis through coordinated comprehensive plans.”*

This rule does not apply in this proceeding because it does not concern Metro's periodic review. The department notes that Metro is engaged in a regional residential UGB evaluation pursuant to ORS 197.299 as a separate process. The findings, conclusions, and recommendations of that process must take

into consideration and must be consistent with the most recent coordinated population forecasts, BLIs, HNAs, and RLNAs of Damascus and the other jurisdictions within the Metro UGB.

8. Compliance Findings for Goal 10 Plan Policies and Map

The department recommends that the commission find that the comprehensive plan policies for housing are not sufficient to comply with Goal 10 and the division 7 rule:

- The BLI and needed housing policies must be in the comprehensive plan when it is adopted and acknowledged, not later. However, Action Measure AM-3 for Policy P-1 indicates that Damascus has not yet complied: “The City will inventory existing housing and provide policies for allowing needed housing types, including government assisted, attached single-family, multifamily and manufactured homes” (Appendix C-1 at p. 6-13).
- The BLI, overall residential density target, and residential plan designation densities must be in the comprehensive plan when it is adopted and acknowledged, not later. However, Policy P-8 indicates that Damascus has not yet complied: “The city *shall provide for a residential density* appropriate for its population projection . . . ,” and Action Measure AM-1 for this policy states that “[t]he City’s Buildable Lands Inventory shall determine residential densities.”
- The Residential Land and Housing Needs Analysis states that Damascus has not assigned residential plan designations because of “a number of uncertainties concerning public facilities,” and then briefly discusses the option of deferring residential plan designations under OAR 660-007-0018(2) because deferral would give the city “some flexibility to refine public facilities plans in areas that are distant from existing services, that are in independent watersheds, or that present financing difficulties” (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45, pp. 2-4, 5-18 and Table 5-15). However, neither the comprehensive plan nor its supporting documents state whether the city has made a decision to defer residential plan designations. On the other hand, the acknowledgment package submitted to the department does include a comprehensive plan map that appears to have been adopted with Ordinance No. 2010-45 on December 14, 2010. It appears that the referenced text in the Residential Land and Housing Needs Analysis is out of date, and that the city has adopted a comprehensive plan map with residential designations.
- The submittal does not provide sufficient information to determine whether the areas and the acreages designated to allow residential uses are adequate to meet the numbers and types of housing units projected to be needed by Damascus residents during the planning period. The plan does not demonstrate a connection between the housing needs analysis and the comprehensive plan map.

9. Recommendations for Goal 10 Plan Policies and Map

The department recommends that the commission direct the city to amend the comprehensive plan to:

- A. Clarify in the plan text and policies that the city’s residential plan designations have been established and are on the comprehensive plan map adopted with Ordinance No. 2010-45;
- B. Revise or delete Housing Policy P-1, AM-3, once the city has prepared its BLI in compliance with Goal 10 and OAR 660, division 7;
- C. Demonstrate that the areas and acreages designated for residential use are adequate to meet the numbers and types of housing units projected to be needed by Damascus residents during the planning period.
- D. Demonstrate a connection between the housing needs analysis and the comprehensive plan map.

K. Goal 11: Public Facilities and Services

1. Purpose of Goal 11

The purpose of Goal 11 (OAR 660-015-0000(11)) is to “*plan and develop a timely, orderly and efficient arrangement of public facilities and services¹⁴ to serve as a framework for urban and rural development.*”

2. Goal 11 Compliance Findings

Goal 11 requires the following: “Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons.”¹⁵ OAR 660-011-0010 through 660-011-0045 contain the required contents of a public facilities plan (PFP).

OAR 660-011-0060 (3), (4), and (8) provide that components of a sewer system that serve lands inside a UGB may be placed on lands outside the UGB in order to mitigate a public health hazard or to connect to an existing sewer line within a rural residential area under certain conditions.

OAR 660-011-0050 provides the department’s standards for review of a public facilities plan. The department is required to evaluate the following:

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

Because the population of Damascus is more than 2,500¹⁶, the city is required to adopt a public facility plan that demonstrates that the city has adequately planned for urban public facilities and services for the next 20 years.

The department recommends that the commission find that the Damascus PFP complies with Goal 11 in the following ways:

- The Damascus PFP addresses water, waste water, storm water, ecosystem services, transportation, parks and open space, and schools and libraries. Parks, open spaces, ecosystem services, transportation facilities, and libraries are not “significant” public facility systems and therefore do not need to meet the Goal 11 PFP criteria.
- The Damascus comprehensive plan does not allow the establishment or extension of sewer systems outside the Metro UGB or allow extensions of sewer lines from within the Metro UGB to serve land outside the UGB; and
- The Damascus comprehensive plan does not propose to place sewer system components on lands outside the Metro UGB or provide sewer service to land outside the Metro UGB in order to mitigate a public health hazard, or allow a rural residential use outside the UGB to connect to the city’s sewer system.

The department recommends that the commission find that the Damascus PFP does not comply with Goal 11 in the following ways:

- The city acknowledges that it is unable to provide the types and levels of urban public facilities and services appropriate for its 20-year needs and requirements (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at p. i);

¹⁵ The procedure and criteria for a public facilities plan are set out in OAR Chapter 660, division 011.

¹⁶ As of July 1, 2010, Portland State University estimated the city’s population at 9,990.

- The Damascus PFP does not include the following required data and findings regarding water, waste water, and storm water facilities and services:
 - An inventory and general assessment of the condition of all the water, waste water, and storm water systems which support the land uses designated in the acknowledged comprehensive plan (OAR 660-011-0010(1)(a));
 - A list of the water, waste water, and storm water facility projects which are to support the land uses designated in the acknowledged comprehensive plan; public facility project descriptions or specifications of these projects as necessary (OAR 660-011-0010(1)(b));
 - Rough cost estimates of each water, waste water, and storm water facility project (OAR 660-011-0010(1)(c));
 - A map or written description of each water, waste water, and storm water facility project's general location or service area (OAR 660-011-0010(1)(d));
 - Policy statement(s) or urban growth management agreement identifying the provider of each water, waste water, and storm water facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated (OAR 660-011-0010(1)(e));
 - An estimate of when each facility project will be needed (OAR 660-011-0010(1) (f)); and
 - A discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system (OAR 660-011-0010(1)(g)).
- The PFP does not include a copy of the urban growth management agreement required by OAR 660-011-0010 and 660-011-0015 (OAR 660-011-0050(2)); and
- The PFP is not consistent with the comprehensive plan because the city is unable to provide the types and levels of urban public facilities and services appropriate for its 20-year needs and requirements (OAR 660-011-0050(3)).

3. Recommendations for Goal 11

The department recommends that the commission direct the city to amend the comprehensive plan to:

- A. Demonstrate that the city will be able to provide urban public facilities and services for full build-out within the 20-year planning period, **or** modify and adopt the city's 20-year coordinated population forecast to fit the urban public facilities and services the city is able to provide during the planning period, and revise the public facilities plan, housing needs analysis, residential land needs analysis, and employment opportunities analysis accordingly; and
- B. Revise and supplement the public facilities plan so that it complies with Goal 11.

L. Goal 12: Transportation

1. Purpose of Goal 12

The purpose of Goal 12 is: *"To provide and encourage a safe, convenient and economic transportation system."* The goal includes criteria under which to judge the compliance of a jurisdiction's planning efforts with Goal 12. These are:

- (1) *consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian;*
- (2) *be based upon an inventory of local, regional and state transportation needs;*

- (3) *consider the differences in social consequences that would result from utilizing differing combinations of transportation modes;*
- (4) *avoid principal reliance upon any one mode of transportation;*
- (5) *minimize adverse social, economic and environmental impacts and costs;*
- (6) *conserve energy;*
- (7) *meet the needs of the transportation disadvantaged by improving transportation services;*
- (8) *facilitate the flow of goods and services so as to strengthen the local and regional economy; and*
- (9) *conform with local and regional comprehensive land use plans.*

Each plan shall include a provision for transportation as a key facility”

2. Goal 12 Administrative Rules

OAR 660, division 12, implements Statewide Planning Goal 12 to provide and encourage a safe, convenient and economic transportation system. The division also implements provisions of other goals related to transportation planning in order to plan and develop transportation facilities and services in close coordination with urban and rural development.

3. Goal 12 Compliance Findings

The proposed comprehensive plan includes a transportation element that treats the transportation needs of the city as a key facility for which it is obligated to plan; therefore, this requirement of Goal 12 is met.¹⁷

OAR Chapter 660, division 12 does not apply at this time because only the Goal 12 comprehensive plan element has been completed and submitted for acknowledgment. The city has not yet prepared or submitted a transportation system plan (TSP). The current Transportation Element and findings indicate the city will prepare a TSP in 2011. At that time the requirements of the Transportation Planning Rule (TPR) will apply. The Transportation Element of the comprehensive plan will also be re-examined and revised as necessary based on the outcomes dictated during completion of the TSP. OAR 660, division 12 will apply to the review of Damascus’s TSP and land use regulations at a later date, during Phase 2 of acknowledgment review.

The comprehensive plan map indicates areas of proposed urban levels of development on land that was added to the Metro UGB in 2002; however, at this time the zoning that existed prior to the UGB expansion and incorporation of the city will stay in place. Therefore, OAR 660-012-0060 does not apply to the current proposal.

ORS 197.712, which addresses public facilities plans, applies to Damascus’s Comprehensive Plan because the city’s population is greater than 2,500. A transportation system plan in compliance with the TPR and thus, meeting the transportation planning requirements contained in ORS 197.712, has not been completed by the city. Therefore, the comprehensive plan as submitted does not comply with this statutory requirement.

4. Goal 12 Recommendations

The basic Goal 12 plan element of the comprehensive plan, as submitted, is consistent with the requirements of Goal 12 and can be acknowledged; however, the submittal is not complete. Therefore, the

¹⁷ Key facilities are defined for the goals as basic facilities that are primarily planned for by local government, but which also may be provided by private enterprise and are essential to the support of more intensive development, including public schools, transportation, water supply, sewage and solid waste disposal.

department does not recommend that the commission fully acknowledge Goal 12 at this time. The city will need to prepare a TSP to meet OAR 660-12-0015(3) and (4).

The department recommends that the commission direct the city to work with the department to develop a compliance schedule that will enable Damascus to provide findings for compliance with OAR 660-012.

M. Goal 13: Energy Conservation

1. Purpose of Goal 13

The purpose of Statewide planning Goal 13 is: *“To conserve energy.”* There are no administrative rules to guide compliance with the goal. The methods prescribed by the goal are to conserve energy resources through land use planning measures.

2. Goal 13 Compliance Findings

The City of Damascus addresses Goal 13 on pages 91-95 of its compliance report. The plan’s Energy Conservation section includes 4 goals and 7 policies. The section also includes action measures and provides a comprehensive discussion of energy conservation relevant to current and long range planning for the city. In particular their Goal 13 focuses on the relationship between energy use, development patterns, transportation needs and construction practices. Policy and program statements direct the city to, increase the density of development to make walking, biking and public transit more practical; develop and maintain efficient transportation systems; implement an Ecosystem services approach to public facilities; and promote more energy efficient construction practices.

The city recognizes that its robust Goal 13 proposal will be implemented with the city’s adoption of implementing ordinances.

3. Goal 13 Recommendations

The department recommends that the commission acknowledge Goal 13 of the comprehensive plan.

N. Goal 14: Urbanization

1. Purpose of Goal 14

The purpose of 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 findings for each applicable requirement of Goal 14 and its implementing rules in OAR 660, division 24 are as follows.

2. Goal 14 Findings on 20-Year Coordinated Population Forecast

OAR 660-024-0030 Population Forecasts states:

“(1) . . . Cities must adopt a 20-year population forecast for the urban area consistent with the coordinated county forecast, except that a metropolitan service district must adopt and maintain a 20-year population forecast for the area within its jurisdiction. In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan.

“(2) The forecast must be developed using commonly accepted practices and standards for population forecasting used by professional practitioners in the field of demography or economics, and must be based on current, reliable and objective sources and verifiable factual

information, such as the most recent long-range forecast for the county published by the Oregon Office of Economic Analysis (OEA). The forecast must take into account documented long-term demographic trends as well as recent events that have a reasonable likelihood of changing historical trends. The population forecast is an estimate which, although based on the best available information and methodology, should not be held to an unreasonably high level of precision.

The general rule under OAR 660-024-0030(1) is that counties must adopt and maintain a coordinated 20-year population forecast for the county and for each urban area within the county, consistent with statutory requirements for such forecasts under ORS 195.025ⁱ and 195.036ⁱⁱ. Each city must adopt a 20-year population forecast “consistent with the coordinated county forecast.” (OAR 660-024-0030(1)). For jurisdictions within the boundaries of a Metropolitan Service District (Metro), Metro is the “coordinating body” responsible to allocate and adopt a population forecast for each jurisdiction. (ORS 195.025 and 195.036). Metro is required to adopt and maintain a coordinated 20-year population forecast for the entire region and for each city and county within its jurisdiction. For purposes of acknowledgment of the Damascus comprehensive plan, this rule applies to three entities: Metro, Clackamas County, and the City of Damascus.

The city acknowledges that it does not have a Metro-coordinated population forecast and has not adopted one (*see, e.g.*, February 2008 Damascus Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at pp. i, vii, 5-1 and 5-2; Chapter 6.0 Goal 10: Housing of the comprehensive plan, Appendix C-1 of the ordinance at p. 6-4). And the city knows that a coordinated population forecast “is a necessary prerequisite to estimate housing needs” (Appendix C-16 to Ordinance 2010-45 at p. 5-1).

The area now incorporated within the City of Damascus was previously part of Clackamas County’s unincorporated area and its estimated future population was part of the county’s estimate for the total amount of unincorporated area within its boundaries.

Metro is required to adopt and maintain a 20-year population forecast for the entire area within its jurisdiction, and for the individual cities and counties within its jurisdiction. When Metro expanded its UGB in 2002 to take in the area that later became the City of Damascus, Metro assumed a 20-year forecast for Damascus of approximately 62,990 persons.¹⁸ Metro needed this number to determine the amount of land to add to its UGB on the east side. Thus, acknowledgment of Metro’s 2002 UGB expansion was based, in part, on Metro’s 20-year population projection for Damascus.

The city has not used the 2002 Metro forecast in developing its comprehensive plan. Instead, Damascus created two new forecasts of its own. The first is a “low” forecast derived by arbitrarily adding 10,000 people to the 2006 city population of 9,670 and assigning an average annual growth rate of 3.5%. The second is a “high” forecast derived by arbitrarily adding 25,000 people to the 2006 city population and assigning an average annual growth rate of 6.5%¹⁹ (Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance No. 2010-45 at p. 5-3). The rationale for these numbers was that they are “what the City deems a reasonable 20-year growth range for the purpose of the housing needs assessment” (Chapter 6.0 Goal 10: Housing, Appendix C-1 to Ordinance 2010-045 at p. 5-4 and 6-4;

¹⁸ Department staff added the PSU population estimate of 9,990 for 2010, to the Metro 20-year forecast of 53,000 new persons for Damascus cited on p. 5-3 of Appendix C-16 to Ordinance 2010-45.

¹⁹ Both of the chosen average annual growth rates are lower than three previous population forecasts for Damascus, including the Metro forecast for its 2002 UGB amendment, which are cited in Table 5-1 on p.5-3 of Appendix C-16 to Ordinance No. 2010-45.

Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at pp. i and 5-17). This conclusion is not justified by findings that are supported by an adequate factual base.

Damascus must adopt a single 20-year population forecast (Goal 14, OAR 660-024-0030, ORS 195.025 and ORS 195.036). Instead, the city relies on three forecasts and uses two new 20-year population forecasts, to create four scenarios for its housing needs and residential land needs analyses (Chapter 6.0 Goal 10: Housing, Appendix C-1 to Ordinance 2010-045 at p. 6-4; Residential Land and Housing Needs Analysis, Appendix C-16 to Ordinance 2010-45 at pp. i-ii, vii, 5-2, and 5-3). In addition, Damascus has not *adopted a 20-year population forecast* (Comprehensive Plan, Chapter 6.0 Goal 10: Housing at p. 6-4).

Damascus must either (1) use the 20-year population forecast prepared by Metro and used to determine the size and location of the 2002 residential UGB amendment previously acknowledged by the commission, or (2) adequately justify one alternate 20-year forecast consistent with Goal 14 and OAR 660-024-0030. If the alternate forecast is significantly less than the 2002 Metro estimate, then it must be acknowledged by the commission in this proceeding and must also be addressed and adopted by Metro in Metro's current ORS 197.299 UGB evaluation proceeding.ⁱⁱⁱ

3. Goal 14 Recommendations Regarding 20-Year Coordinated Population Forecast

The department recommends that the commission direct the city to work with Metro to adopt a coordinated 20-year population forecast and to amend the comprehensive plan to:

- A. Use and adopt the 20-year coordinated population forecast developed and used by Metro to determine the size and location of the 2002 Metro residential UGB amendment that was acknowledged by the commission, or, in the alternative,
- B. Adequately justify and adopt a single 20-year population forecast consistent with Goal 14 and OAR 660-024-0030.

4. Goal 14 Compliance Findings Regarding Public Facilities and School Facilities Land Needs²⁰

Goal 11 provides: "*Urban . . . development shall be guided and supported by types and levels of urban . . . public facilities and services appropriate for, but limited to, the needs and requirements of the urban [and] urbanizable . . . areas to be served.*" OAR Chapter 660, division 011 sets out the requirements for a public facilities plan. The department recommends that the commission find that the city's plan is not consistent with Goal 14 and ORS 195.110.

5. Goal 14 Recommendations Regarding Public Facilities and School Facilities Needs

Direct the city to revise the comprehensive in order to:

- A. Prepare and adopt a school facility plan consistent with ORS 195.110; and
- B. Ensure that the city's 20-year land needs are consistent with the ORS 195.110-compliant school facility plan.

6. Goal 14 Compliance Findings Regarding Comprehensive Plan Policies, Comprehensive Plan Map, and Management of Urbanizable Land

Goal 2 requires: "*All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and*

²⁰ Findings regarding residential, employment, and transportation needs are in the sections on Goals 9, 10 and 12.

environmental needs. The required information shall be contained in the plan document or in supporting documents.”

The purpose of 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.”

Goal 14, in its “Urbanizable Land” section²¹, requires that “[l]and within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services²². Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.”

The department recommends that the commission find that the city’s plan map and policies do not comply with Goal 14.

7. Recommendations Regarding Goal 14 Comprehensive Plan Map and Management of Urbanizable Land

The department recommends that the commission direct the city to work with the department to develop a compliance schedule that will permit Damascus to amend its comprehensive plan to:

- A. Include policies for the efficient use of land, and the management of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned;
- B. Demonstrate how the city’s plan policies and plan map ensure the efficient use of urban land consistent with Goal 14 and its rule;
- C. Delete the section of policies in the urbanization element with the heading “Farms and Nurseries Transition and Urbanization Policies”;
- D. Indicate for each plan designation on the plan map whether it is rural or urban, and indicate that the areas with available or planned public facilities have urban plan designations, and that other areas have designations that will manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

O. Goal 15: Willamette River Greenway

This goal is not applicable because no land in Damascus is within the Willamette River Greenway Boundary. (OAR 660-024-0020(1)(e)).

P. Goal 16: Estuarine Resources

Goal 16 is not applicable because no land in Damascus is within a coastal shorelands boundary. (OAR 660-024-0020(1)(f)).

²¹ From the definitions for the Statewide Planning Goals and Guidelines:

URBANIZABLE LAND. Urban land that, due to the present unavailability of urban facilities and services, or for other reasons, either:

- (a) Retains the zone designations assigned prior to inclusion in the boundary, or
- (b) Is subject to interim zone designations intended to maintain the land’s potential for planned urban development until appropriate public facilities and services are available or planned.

²² For Goal 14 purposes, “urban facilities and services” and “public facilities and services” are water, sanitary sewer, storm water management, and transportation facilities. OAR 660-024-0060(7).

Q. Goal 17: Coastal Shorelands

Goal 17 is not applicable because no land in Damascus is within a coastal shorelands boundary. (OAR 660-024-0020(1)(f)).

R. Goal 18: Beaches and Dunes

Goal 18 is not applicable because no land in Damascus is within a coastal shorelands boundary. (OAR 660-024-0020(1)(f)).

S. Goal 19: Ocean Resources

Goal 19 is not applicable because no land in Damascus abuts the coast of the Pacific Ocean.

VI. OBJECTIONS

A. Valid Comments and Objections

The department mailed notice of its receipt of the acknowledgment request and opportunity to submit comments and objections on January 19, 2011. The 45-day deadline (following the department’s notice) for parties to submit objections was March 7, 2011. The department received twenty-nine objections within the 45-day period. Those timely objections are considered valid for department consideration in this report. (ORS 197.251(2), OAR 660-003-0005(3), OAR 660-003-0020(1)).

B. Response to Comments and Objections

The commission must consider all valid comments and objections and decide whether to grant or deny each one. The department may investigate the comments objections, and resolve any issues raised, in its report to the commission. (ORS 197.251(2)(b) & (4), OAR 660-003-0020 (3) & (4)).

The department received twenty nine timely objections;

#	NAME	REPRESENTED BY	ISSUE
	North Clackamas School District		
1	District	Boutin & Associates, PC	Goal 5 200 ft buffer opposition on specific property
2	Hager Family Trust	Western Planning	Goal 5 200 ft buffer opposition on specific property
3	Gary and Sue Stephens		designation change to city center
4	Dan & Debra Phegley		Goal 1,
5	John Ferguson		Goal 5, 7/support
6	John Price		Goal 5, 7
	General Distributors	Black Helterline LLP/Caroline	
7	Inc/GDI New Horizons	MacLaren	Goal 9 support for proposed plan designation
8	Jan Losli		object to the overlay
9	David Morgan		oppose to the plan/too restrictive
10	Les Poole		Goal 5 riparian setback issues
11	John and Angela Bryant		Support
12	Katherine Ruthruff		support letter
13	Kathryn Russell		support letter
14	Keith Marshall		support letter
15	Dean Apostol		support of plan
16	Tony Passannante		Support of plan/clarifications
17	Gloria & Frank Boyer		designation change to higher density

18	Lowell Patton	William Cox	Goal 2, 7, 9,10, 11, 14
19	Greta Hein		clarification of the process
20	Warren & Eva Sanders		designation change to city center/density buffer issues
21	Tim Presley		designation change to higher density
22	Steve Spinnett	Mayor of Damascus	Goal 1, 2 and 5 200 ft buffers, Metro IGA CET grant
23	Diana Bradshaw		Goal 5, 7
24	George Samaan		Questions about petition/Ballot measure in May
25	Virginia Bleeg		oppose the plan
26	Gail Richards		oppose the plan
			response to mayor Spinnett's letter regarding process and
27	Diana Helm	Damascus Council President	Goal 1
28	Don Arbuckle		support letter
29	Bill Fujii	Oregon Water Resources Dept	Informational Goal 6 water protection and water rights

Support

OAR 660-003-0020(3) provides “The commission shall consider only those comments and objections to an acknowledgment request that allege that the local government's plan, ordinances or land use regulations do or do not comply with one or more of the goals.” The comments from Dean Apostol, Don Arbuckle, Angela and John Bryant, John Ferguson, General Distributors, Inc., Diana Helm, Keith Marshall, Tony Passannante, Kathryn Russell, and Katherine Ruthruff each submitted comments generally expressing that the city’s plan complies with the goals and should be acknowledged by the commission.²³

Goal 2

Objectors Mike and Janice Losli state that they attended a Damascus City Council meeting, but were not called to provide testimony. The department understands this to be an objection under Goal 2. That goal provides in part, “Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementing ordinances.” As described in this report, the department concludes that the city provided opportunities for review and comment by citizens during preparation of its comprehensive plan. The department recommends that the commission reject this objection.

The Losli’s also object in general to an overlay zone applied to a three-acre property located at 9905 SE 222nd Drive and they express specific concern over “just compensation.” The Fifth Amendment to the U.S. Constitution and Article I, section 18 of the Oregon Constitution both provide that no private property shall be taken for public use without “just compensation.” Such constitutional concerns are outside the scope of review of the commission in reviewing an acknowledgment request. Under ORS 197.251(2), OAR 660-003-0020(3) and OAR 660-003-0025(1), the commission reviews the acknowledgement request for compliance with the Statewide Planning Goals. The department recommends that the commission not consider the constitutional concerns raised in this objection.

Goal 5

The department received several objections and comments regarding the Damascus comprehensive plan maps showing “riparian buffers” of 100 and 200 feet. The department understands that these riparian buffers are identified on the city’s Natural Features Inventory maps as areas that provide important

²³ In addition to general comments supporting acknowledgement of the comprehensive plan, several comments made specific comments regarding goal compliance with specific aspects of the plan. Those comments are addressed in the department’s discussion of compliance with the relevant goal.

natural functions, including maintaining water quality and providing aquatic and upland habitat. Since the city did not submit a protection program for the identified Goal 5 significant resources the submittal cannot be evaluated for compliance with Goal 5, however the city's inventory is consistent with Goal 5. Also, with only the inventory and plan policies included in the record it is difficult to address the specifics of the objections that extend into considerations for protection strategies.

One objector is concerned that the significant riparian areas identified by the city are larger than that required by the state [Price, Page 1] OAR 660-23-0090 provides options for compliance. One option is a safe harbor inventory of 50' from top of bank for streams having flows less than 1000cfs and 75 feet from top of bank for streams with flows of 1000cfs and greater, however it is not a state requirement that the safe harbor inventory be used. The rule supports the identification of significant riparian areas based on available science and a more thorough consideration of the landscape.

Two objectors recommend that the Clackamas County Riparian protection measures be adopted by the city. [North Clackamas School District, Page 3; and Hager Family Trust, Page 6*] Although this would meet one option for Goal 5 compliance for riparian areas, it would likely not achieve the natural resource objectives described in the city's comprehensive plan. The safe harbor inventory for riparian areas does not fully incorporate Goal 5 requirements for wetlands and wildlife habitat, and does not address Goal 6 and Goal 7 objectives. The Damascus inventory recognizes the interrelationship between all natural functions provides by lands adjacent to rivers and streams. It also recognizes that small tributaries, even if intermittent, influence the hydrology of the whole system and are a source of cold clean water for the larger streams. Clackamas County uses the safe harbor inventory, which was not established to protect the full suite of riparian functions.

Objectors raised concerns about a significant resource overlay being placed on land that was no longer in a natural condition. [North Clackamas School District and Hager Family Trust] Unless a stream bank is armored and the riparian area paved, riparian areas provides functions that support the health of the overall stream system and the aquatic habitat it provides. The identification of a riparian area that has been altered by prior uses is not inconsistent with Goal 5 or the OAR 660-23.

Objectors stated that the wide areas along streams were arbitrary or not based on good science, and did not consider the value of the owners intended use for their property. [North Clackamas School District, Hager Family Trust, Pool] Others submitted comments that highlight the process used to identify natural features and consider protection strategies. [Ferguson, Bradshaw] The department recognizes that current biology and hydrologic science did inform the inventory, and that decisions were not made arbitrarily. The issue of how identification of these areas as significant resource sites will impact the future options for development of the sites is not one that can be considered in this review, because the city has not submitted information on proposed protection strategies.

Goal 5 compliance for Damascus has the added layer of Metro's Title 13. Title 13 has been acknowledged for compliance with Goal 5 for riparian areas and wildlife habitat. Although application of the safe harbor inventory requirements for these two Goal 5 resource categories would result in less area being identified as significant resource sites, the inventory would not meet the requirements Title 13. The same situation will be at play as the city identifies a protection strategy for riparian and wildlife resources. If the program developed by Damascus complies with Metro's Title 13 it will comply with Goal 5 for riparian and wildlife resources. If all or part of the Goal 5 program adopted by the city is inconsistent with or outside the scope of Title 13, review and approval will fall directly under the auspices of state land use Goal 5 and must comply with the terms of the goal and OAR 660-23. Title 13 does not address Goal 5 requirements for the inventory of locally significant wetlands. Protection measures for wetlands will need to be consistent with both Goal 5 and Metro's Title 3.

General Opposition

David Morgan, Gail Richards and Virginia Bleeg submitted general opposition letters.

Designation Change requests

Gary and Sue Stephens, Warren and Eva Sanders, Gloria and Frank Boyer and Tim Presley submitted letters asking the commission to change the comprehensive plan designation for their property. Staff recommends that this be a local decision, based on the record there have been many public hearings and opportunities to comment on the proposed plan. Once the implementing ordinances are in place there will be an opportunity for property owners to apply for zone changes and comprehensive plan map changes.

VII. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

The department recommends that the commission accept its recommendation as it is proposed in this report. The department further recommends that the commission adopt the motion proposed in Alternative 1 below.

Alternative 1:

“I move that the Land Conservation and Development Commission accept the recommendations of the department, and direct the department to develop an order acknowledging the City of Damascus comprehensive plan for compliance with Goal 13 as well as partial acknowledgement of Goals 5, 7, 8 and 12; and directing the department to work directly with the city to develop a compliance schedule that will bring the Damascus comprehensive plan into compliance with the remaining goals.”

OR

Alternative 2:

“I move that the Land Conservation and Development Commission direct the city and the department to develop an order acknowledging the City of Damascus comprehensive plan for compliance with Goal ____, and Goal ____, and Goal ____, and . . . ; and direct the department to work with the city to develop a compliance schedule that will bring the Damascus plan into compliance with the remaining goals.”

VIII. ACRONYMS, ABBREVIATIONS, AND TERMS

BLI	Buildable Lands Inventory
CIC	Citizen Involvement Committee
CAC	Citizen Advisory Committee
(The) city	The City of Damascus
(The) commission or LCDC: Comp Plan at p. 3	The Oregon Land Conservation and Development Commission Example of a citation to a page number in a particular document in the record
(The) county	Clackamas County
DEQ	Department of Environmental Quality
The department:	The Oregon Department of Land Conservation and Development
EOA	Economic Opportunity Analysis
The goal(s)	One or more of the 19 Statewide Planning Goals
LPRD	Damascus Park and Recreation District
LWI	Local Wetland Inventory
MPR	Master Plan Residential
MFH	Multi-Family Housing
NWI	National Wetland Inventory
OAR:	Oregon Administrative Rules
ORS:	Oregon Revised Statutes
SFR	Single Family Residential
TPR	Transportation Planning Rule
TSP	Transportation System Plan

IX. ATTACHMENTS

1. Correspondence:
 - a. 16 December 2010 notice of receipt of request for acknowledgment;
 - b. 29 December 2010 letter of incomplete;
 - c. 19 January 2011 letter from the city regarding incomplete letter;
 - d. 19 January 2011 notice of Opportunity to Comment and to File Objections sent;
2. Damascus acknowledgment request submittals from City of Damascus²⁴
 - a. Comprehensive Plan and background documents;
 - b. Comprehensive Plan Map;
 - c. Comp Plan Findings; and
 - d. Comp Plan Contact List.

²⁴ Due to the length this was not attached to the Director's report, see <http://ci.damascus.or.us/References/Misc/Ordinance%202010-45.pdf> for the City's submittal

Exhibits

Oregon Revised Statutes (ORS)

ORS 195.025 Regional coordination of planning activities; alternatives. (1) In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. In addition to being subject to the provisions of ORS chapters 195, 196 and 197 with respect to city or special district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan Service District shall be considered the county review, advisory and coordinative body for Multnomah, Clackamas and Washington Counties for the areas within that district.

(2) For the purposes of carrying out ORS chapters 195, 196 and 197, counties may voluntarily join together with adjacent counties as authorized in ORS 190.003 to 190.620.

(3) Whenever counties and cities representing 51 percent of the population in their area petition the Land Conservation and Development Commission for an election in their area to form a regional planning agency to exercise the authority of the counties under subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election in the area on a date specified in ORS 203.085, to form a regional planning agency. The election shall be conducted in the manner provided in ORS chapter 255. The county clerk shall be considered the elections officer and the commission shall be considered the district elections authority. The agency shall be considered established if the majority of votes favor the establishment.

(4) If a voluntary association of local governments adopts a resolution ratified by each participating county and a majority of the participating cities therein which authorizes the association to perform the review, advisory and coordination functions assigned to the counties under subsection (1) of this section, the association may perform such duties. [Formerly 197.190]

ORS 195.036 Area population forecast; coordination. The coordinating body under ORS 195.025 (1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary. [1995 c.547 §7 (enacted in lieu of 195.035)]

ORS 197.251 Compliance acknowledgment; commission review; rules; limited acknowledgment; compliance schedule. (1) Upon the request of a local government, the Land Conservation and Development Commission shall by order grant, deny or continue acknowledgment of compliance of comprehensive plan and land use regulations with the goals. A commission order granting, denying or continuing acknowledgment shall be entered within 90 days of the date of the request by the local government unless the commission finds that due to extenuating circumstances a period of time greater than 90 days is required.

(2) In accordance with rules of the commission, the Director of the Department of Land Conservation and Development shall prepare a report for the commission stating whether the comprehensive plan and land use regulations for which acknowledgment is sought are in compliance with the goals. The rules of the commission shall:

(a) Provide a reasonable opportunity for persons to prepare and to submit to the director written comments and objections to the acknowledgment request; and

(b) Authorize the director to investigate and in the report to resolve issues raised in the comments and objections or by the director's own review of the comprehensive plan and land use regulations.

(3) Upon completion of the report and before the commission meeting at which the director's report is to be considered, the director shall afford the local government and persons who submitted written comments or objections a reasonable opportunity to file written exceptions to the report.

(4) The commission's review of the acknowledgment request shall be confined to the record of proceedings before the local government, any comments, objections and exceptions filed under subsections (2) and (3) of this section and the report of the director. Upon its consideration of an acknowledgment request, the commission may entertain oral argument from the director and from persons who filed written comments, objections or exceptions. However, the commission shall not allow additional evidence or testimony that could have been presented to the local government or to the director but was not.

(5) A commission order granting, denying or continuing acknowledgment shall include a clear statement of findings which sets forth the basis for the approval, denial or continuance of acknowledgment. The findings shall:

(a) Identify the goals applicable to the comprehensive plan and land use regulations; and

(b) Include a clear statement of findings in support of the determinations of compliance and noncompliance.

(6) A commission order granting acknowledgment shall be limited to an identifiable geographic area described in the order if:

(a) Only the identified geographic area is the subject of the acknowledgment request; or

(b) Specific geographic areas do not comply with the applicable goals, and the goal requirements are not technical or minor in nature.

(7) The commission may issue a limited acknowledgment order when a previously issued acknowledgment order is reversed or remanded by the Court of Appeals or the Oregon Supreme Court. Such a limited acknowledgment order may deny or continue acknowledgment of that part of the comprehensive plan or land use regulations that the court found not in compliance or not consistent with the goals and grant acknowledgment of all other parts of the comprehensive plan and land use regulations.

(8) A limited acknowledgment order shall be considered an acknowledgment for all purposes and shall be a final order for purposes of judicial review with respect to the acknowledged geographic area. A limited order may be adopted in conjunction with a continuance or denial order.

(9) The director shall notify the Real Estate Agency, the local government and all persons who filed comments or objections with the director of any grant, denial or continuance of acknowledgment.

(10) The commission may grant a planning extension, which shall be a grant of additional time for a local government to comply with the goals in accordance with a compliance schedule. A compliance schedule shall be a listing of the tasks which the local government must complete in order to bring its comprehensive plan, land use regulations, land use decisions and limited land use decisions into initial compliance with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or land use regulations which comply with the goals are estimated to be adopted. In developing a compliance schedule, the commission shall consider the population, geographic area, resources and capabilities of the city or county.

(11) As used in this section:

(a) "Continuance" means a commission order that:

(A) Certifies that all or part of a comprehensive plan, land use regulations or both a comprehensive plan and land use regulations do not comply with one or more goals;

(B) Specifies amendments or other action that must be completed within a specified time period for acknowledgment to occur; and

(C) Is a final order for purposes of judicial review of the comprehensive plan, land use regulations or both the comprehensive plan and land use regulations as to the parts found consistent or in compliance with the goals.

(b) "Denial" means a commission order that:

(A) Certifies that a comprehensive plan, land use regulations or both a comprehensive plan and land use regulations do not comply with one or more goals;

(B) Specifies amendments or other action that must be completed for acknowledgment to occur; and

(C) Is used when the amendments or other changes required in the comprehensive plan, land use regulations or both the comprehensive plan and land use regulations affect many goals and are likely to

take a substantial period of time to complete. [1977 c.766 §18; 1979 c.242 §3; 1981 c.748 §7; 1983 c.827 §5; 1985 c.811 §13; 1991 c.817 §23; 1993 c.438 §2]

¹ **ORS 197.303 “Needed housing” defined.** (1) As used in ORS 197.307, until the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” also means:

(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and

(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.

(2) Subsection (1)(a) and (d) of this section shall 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) A local government may take an exception to subsection (1) of this section in the same manner that an exception may be taken under the goals.

¹ **ORS 197.309 Local ordinances or approval conditions may not effectively establish housing sale price or designate class of purchasers; exception.** (1) Except as provided in subsection (2) of this section, a city, county or metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178, a requirement that has the effect of establishing the sales price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale to any particular class or group of purchasers.

(2) This section does not limit the authority of a city, county or metropolitan service district to:

(a) Adopt or enforce a land use regulation, functional plan provision or condition of approval creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or condition designed to increase the supply of moderate or lower cost housing units; or

(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.

¹ **ORS 197.312 Limitation on city and county authority to prohibit certain kinds of housing, including farmworker housing; real estate sales office.** (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

ⁱ **ORS 195.025 Regional coordination of planning activities; alternatives.**

(1) In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. In addition to being subject to the provisions of ORS chapters 195, 196 and 197 with respect to city or special district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan Service District shall be considered the county review, advisory and coordinative body for Multnomah, Clackamas and Washington Counties for the areas within that district.

(2) For the purposes of carrying out ORS chapters 195, 196 and 197, counties may voluntarily join together with adjacent counties as authorized in ORS 190.003 to 190.620.

(3) Whenever counties and cities representing 51 percent of the population in their area petition the Land Conservation and Development Commission for an election in their area to form a regional planning agency to exercise the authority of the counties under subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election

in the area on a date specified in ORS 203.085, to form a regional planning agency. The election shall be conducted in the manner provided in ORS chapter 255. The county clerk shall be considered the elections officer and the commission shall be considered the district elections authority. The agency shall be considered established if the majority of votes favor the establishment.

(4) If a voluntary association of local governments adopts a resolution ratified by each participating county and a majority of the participating cities therein which authorizes the association to perform the review, advisory and coordination functions assigned to the counties under subsection (1) of this section, the association may perform such duties. [Formerly 197.190]

ii **ORS 195.036 Area population forecast; coordination.** The coordinating body under ORS 195.025 (1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary.

iii Goal 14 states:

“Land Need. Establishment and change of urban growth boundaries shall be based on the following:

(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).”

OAR 660-024-0040 Land Need states:

“(1) The UGB must be based on the adopted 20-year population forecast for the urban area described in OAR 660-024-0030, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.”