

F. Economic Development Land Need

Several objections raise issues related to the assumptions, analysis and conclusions used to determine land need for employment uses. The legal criteria for this portion of the submittal are found in Statewide Planning Goal 9 and OAR 660, division 9.

Subsection 1.a, below, provides a description of what the goal and rules require, and this description is relied upon in subsequent subsections addressing related objections to the UGB amendment. Objections relating to land need for employment uses that not specifically addressed are deemed denied for the reasons set forth in this section.

1. Did the city have an adequate factual basis for including and excluding lands for employment uses?

a. Legal Standard

Statewide Planning Goal 9, “Economic Development,” requires that comprehensive plans provide opportunities for a variety of economic activities, based on inventories of areas suitable for increased economic growth taking into consideration current economic factors. The goal requires that comprehensive plans provide for at least an adequate supply of suitable sites, and limit incompatible uses to protect those sites for their intended function.

OAR 660, division 9 is the administrative rule that implements Goal 9. Its purpose is 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) provides 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 Economic 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 660-009-0020(2) states that plans

for cities and counties within a Metropolitan Planning Organization (MPO) must include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed.

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, division 24, "Urban Growth Boundaries," provides direction regarding the use of data, findings and conclusions developed to address economic development and Goal 9 during a UGB review. OAR 660-024-0040(5) states that the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR 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. 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.

b. Summary of Local Actions

The EOA is included in the record as Appendix E. [R. at 1498] The EOA includes a discussion of the community's objectives, including target industries. [R. at 1516] The Executive Summary highlights the steps of the complete analysis including demographic trends, historic and expected employment trends, inventory of the current land supply, determination of new employment, land need through 2028, which is reported in the summary as a table [R. at 1503-1506].

Section 3 of the EOA contains the review of trends used for estimating future employment land uses, as required by OAR 660-009-0015(1). [R. at 1519-1566] It provides a detailed report and analysis of trends, including population and demographics, coordinated population projection, educational attainment, household income, wages and benefits, labor force and unemployment, changing economic markets, current covered employment, employment shifts and land needs, the economic outlook, local economic trends, expectations of disproportionate employment growth, land supply as a threat to employment growth, education's role in the economy, and a need for a large university campus.

Other sections of the EOA detail characteristics of Bend's employment lands, discuss the employment projection methodology, and the results of the projections. [R. at 1567-1578]. The EOA includes a discussion of the use of employment categories instead of the more common employment sectors. [R. at 1583-1584]

The EOA includes a note that the analysis and conclusions were modified by the city [R. at 1585]. The modifications, based on input from the planning commission, UGB

technical advisory committee, and stakeholders, are discussed in appendices A-H [R. at 1642-1727].

Appendix A presents the modified employment projections per industrial sector classification as a spreadsheet. [R. at 1642]

Appendix B is a memo outlining staff recommendations of modifications to economic variables relative to consultant work completed for the city. [R. at 1649-1651] To account for uncovered workers, the employment projection is increased by 11.5 percent, based on interpolation of national and state census data. No local employment data were gathered for this analysis. The memo includes a comment by the Oregon Employment Department regional economist that no analysis exists to suggest how land needs for uncovered workers should be calculated, and suggested a rule-of-thumb instead. The memo also makes recommendations regarding modifications to the employment forecast for employment on residential and public facilities lands.

The submittal includes findings in support of the UGB expansion for employment lands. [R. at 1103-1165] These findings include: policy direction, incorporation by reference of a 2008 EOA, trend analysis, employment projection, employment land inventory, employment land need, discussion of how to satisfy the requirements of Goal 9, identification of required site types, assessment of economic development potential, meeting the requirement of MPOs for short-term supply, economic development policies, designation of employment lands, and findings related to uses with special siting requirements.

In summary, the EOA says there is need for 1,008 acres of commercial land and between 100 and 250 acres of land for each of the following use categories: industrial and mixed employment, public facilities, economic uses in residential zones, medical, new hospital site, a university site, and two 56-acre industrial sites. The total employment land need shown is 2,090 acres. [R. at 1114] This compares to the “Scenario A” conclusion that there is a 1,380-acre need, which was the result of a relatively simplistic formula of dividing employment projections by employment densities.

c. Objections and DLCD Comments

DLCD commented on Goal 9 issues prior to local adoption of the UGB amendment. A DLCD letter of October 24, 2008 commented that the EOA lacked findings on site suitability criteria and findings supporting a land need for two approximately 50-acre industrial sites. [R. at 4725]

A DLCD letter of November 21, 2008 commented that assumptions and determinations relating to employment land were either missing, were not calculated accurately, or lacked an adequate factual basis. Specifically, DLCD cautioned against: (1) the use of a 15 percent vacancy rate assumption for the 20-year employment land supply; (2) adding “surplus” employment land to the need calculation to account for market efficiency; and (3) adding residential land need via the EOA based on employment in residential zones.

The letter further comments that these errors led to an overestimation of the need for employment land. [R. at 3765]

Three objectors challenged whether the submittal provides an adequate factual basis for the findings and conclusions drawn: Swalley Irrigation District, Brooks Resources, and Central Oregon LandWatch.

Swalley Irrigation District – The employment forecast is not supported by evidence in the record. [Swalley Irrigation District, May 6, 2009, pp. 47-53]

Brooks Resources – The findings do not demonstrate that at least some of the employment land needs cannot be accommodated within the existing UGB. The record lacks evidence that the Westside UGB expansion area is suitable for employment lands. [Brooks Resources April 29, 2009, pages 2–9]

Central Oregon LandWatch – The findings and EOA are outdated, so there is no basis for need demonstrated. [Central Oregon LandWatch May 7, 2009, pages 11–12]

d. Analysis

A local government’s planning effort under Goal 9 is adequate if it uses the best available or readily collectable information to respond to the requirements of the rule. [OAR 660-009-0010(5)] This standard is intended to make the planning effort informative rather than prescriptive. A substantial record of fact gathering and analysis exists in the record.

The methodology for determining employment land need for a legislative UGB amendment includes the following main steps:

- Determine the total 20-year employment land supply need by reviewing trends; [OAR 660-009-0005(13), 0015(1) and 0025(2)]
- Subtract existing sites that are defined as vacant; [OAR 660-009-0005(13)]
- Subtract existing sites that are defined as likely to redevelop; [OAR 660-009-0005(13)]
- Add needed sites not available in the inventory of vacant or likely to redevelop. [OAR 660-009-0025(2)]

Completing these steps yields the amount of employment land required in a UGB expansion to meet the 20-year employment land supply called for in the Goal 9 rule. It may also identify some amount of surplus employment land. This surplus means that there are currently-zoned employment sites unsuitable to meet the requirements of the 20-year supply, although in usual practice this is absorbed by the need for general employment sites without specific characteristics other than some number of acres in unspecified locations.

The analysis for the EOA did not follow these steps, and the record is unclear and confusing regarding how the amount of land needed for employment was determined. An

EOA was prepared in 2008, and it was incorporated by reference in the findings for the UGB expansion, [R. at 1110] but other, conflicting findings and conclusions were also included, without the differences being reconciled. A table showing the 20-year employment land need in gross acres is included in the findings. [R. at 1114, 1141]

A table showing the existing supply of vacant and developed employment land is also included in the findings. [R. at 1109] However, there is no analysis included that distinguishes developed employment land likely to redevelop during the planning period from that not likely to redevelop. As set forth above, this analysis is key to determining the quantity of land needed for employment uses for a UGB expansion, and is a required part of an EOA. [OAR 660-009-0015 and 660-009-0005(1)] The EOA “* * * assumes that 10 percent of new employment will take place on existing lands.” [R. at 1595] However, there is no analysis of trends to support this assumption.

The findings also do not include identification of needed suitable sites (i.e., sites that are not in the inventory of vacant and likely to redevelop sites already in the UGB). The city response to DLCD’s request for record clarification [Bend December 7, 2009] refers to sections of the original EOA as the analysis and basis for findings, but the original EOA analysis was significantly modified later in the process [R. at 1585], and it does not appear that the original EOA is still a basis for the city's decision given the findings.

Forecasts and data are not required to be updated once the UGB review process has begun. [OAR 660-024-0040(2)]

Regarding the assumption that Bend will experience a 15 percent vacancy rate on employment land during the planning period, the evidence in the record does not support such a conclusion. [R. at 1616 and 1111-1112]. The findings state that the local vacancy rates have been approximately half this amount. The city justifies the higher long-term rate on a desire to drive industrial and commercial land rents down. That cannot be a basis for inflating trend data because, taken to its extreme, it would have no limit in terms of the acreage assumed to be committed as a result of commercial and industrial vacancies. While employment land availability, and the effects of availability on rents and land prices, are legitimate considerations in planning for growth, assigning an across-the-board vacancy rate that is significant above trends [R. at 1562] does not comply with the Goal 9 rule.

e. Conclusion

Except for the objection from Central Oregon LandWatch that the findings and EOA are outdated, the objections based on adequacy of the factual record, findings and analysis are sustained. The record does not include adequate findings, analysis or evidence to justify the city's determination of employment land need. The director remands with instructions to develop an EOA that includes a determination of the employment land supply consistent with the requirements of OAR 660, division 9. This must at least include the following elements based on factual evidence:

1. Determination of the 20-year supply of employment land;
2. An inventory of existing employment land categorized into vacant, developed land likely to redevelop within the planning period, and developed land unlikely to redevelop within the planning period;
3. Identification of required site types that are not in the inventory of either vacant or likely to redevelop sites;
4. Identification of serviceable land; and
5. Reconciliation of need and supply.

2. Does the analysis show too great a need for employment land?

a. Legal Standard

OAR 660-009-0015 requires that an EOA determine the need for employment land. OAR 660-024-0040(5) establishes the determination of employment land in the context of a UGB amendment. A more complete explanation of the Goal 9 requirements is provided in subsection 1.a of this section. These rules make it clear that the standard is for the city to provide a 20-year supply of land for employment.

In order to justify a need for employment land within the UGB to provide for efficient market functions or to respond to unique market conditions, there needs to be in the record a policy directive to provide additional land to meet some public purpose; a factual basis in the EOA to satisfy OAR 660, division 9; and, to satisfy OAR 660, division 24, a finding that the job growth estimate that supports that land need determination is reasonable.

b. Summary of Local Actions

A general summary of the city's actions is provided in subsection 1.b, above. The EOA discusses the provision of additional employment lands for a variety of locations and sites in addition to the 20-year supply, described in the EOA as Scenario B. [R. at 1620] A summary is provided. [R. at 1632] The land need findings discuss the city's rationale for increasing the supply of employment land 20-year need. [R. at 1115-1165]

Scenario A is characterized as "minimal employment land demand" and is from the 2008 EOA. Scenario B makes several adjustments to the employment land need from Scenario A, based on input from a stakeholder group. Scenario B reduces the land need as determined by a review of trends from 1,380 to 898 acres, reduces the resulting amount of vacancy-rate adjustment from 207 to 134 acres, adds 421 acres of redundant supply for market choice, increases the resulting 21 percent right of way adjustment to 235 acres, and adds 15 percent or 168 acres for other land needs. The total estimated employment land need in Scenario B is unclear [R. at 1622].

The city adopted economic development policies in chapter 6 of the Bend Area General Plan. [R. at 1339] The policies accept the 2008 EOA and associated land needs, establish the short-term supply management plan, establish emphasis on large-lot industrial, and established mixed-use and commercial development guidance. The short-term land supply management plan requires staff to report to council and do not include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed as required by OAR 660-009-0020(2).

c. Objections and DLCD Comments

The department commented that the city erred in increasing its estimated long-term (20-year) employment land supply by 50 percent based on analysis perhaps appropriate for the required short-term supply, and by adding residential land need in the EOA based on employment in residential zones. [R. at 3765-3766] Also see the description of DLCD comments in subsection 1.c of this section.

The department received objections from four parties alleging a variety of deficiencies with the submittal related to the amount of employment land the city needs: Swalley Irrigation District, Central Oregon Land Watch, and Brooks Resources Corporation.

Swalley Irrigation District – The UGB was expanded to include more employment land than was justified. The city used an erroneous definition of “developed land” and “serviceable land.” [Swalley Irrigation District, May 6, 2009, pp. 47-53]

Brooks Resources – The findings do not demonstrate that at least some of the employment land needs cannot be accommodated within the existing UGB. [Brooks Resources April 29, 2009, pages 2–9]

Central Oregon LandWatch – The EOA employed an inappropriate assumption regarding vacancy rates and institutional use, open space, and right of way. The EOA does not demonstrate a need for several specific uses. The EOA impermissibly adds surplus employment land to the inventory. [Central Oregon Land Watch May 7, 2009, pages 11–12]

Barbara I. McAusland – Barriers to locating industry in Bend argue against the need for an oversupply of industrial land. The findings do not demonstrate a need for an oversupply of employment land. [McAusland May 5, 2009, page 3]

d. Analysis

The determination of the employment land supply is based on the review of trends the local government expects to influence the decision. The local government then identifies the sites that are expected to be needed to accommodate anticipated employment growth. There is in the record policy direction, fact-based analysis of an employment projection, and market analysis of the rationale for providing employment land above the minimum 20-year need. No upper limit is established in rule or statute, but OAR 660-009-0015(2) states that the EOA “must identify the number of sites by type *reasonably expected to be*

needed to accommodate the expected employment growth. . .” [emphasis added] and OAR 660-024-0050 and Goal 14 require an analysis showing that the needs cannot reasonably be accommodated on land already inside the UGB.

The EOA includes two estimates of employment land need [R. at 1618, 1622]. Both scenario A and B include policy directives to increase the base land need for a variety of factors including vacancy, redundant supply, and right-of-way. There is policy direction and ample discussion. However, as noted in subsection 1.c of this section, the city’s findings do not explain the land need determination in a fashion that demonstrates it complies with OAR 660, division 9.

In order to justify an increase in the need for certain types of employment land within the UGB over what a trends-based analysis would conclude, there would need to be a policy directive to provide additional land for economic development purposes in the record; a factual basis in the EOA to satisfy OAR 660, division 9; and, to satisfy OAR 660, division 24, a finding that the job-growth estimate that supports the land need determination is reasonable and cannot be accommodated within the existing UGB.

As noted in subsection 1.c above, the findings do not include identification of needed suitable sites. The EOA does not make a distinction between built sites that are likely to redevelop and those that are not, as required by OAR 660-009-0015(3).

e. Conclusion

The objection is sustained. The director remands with the same instructions explained in subsection 1.e, above.

3. Did the city err in designating 114 acres for employment in residential areas?

a. Legal standard

OAR 660, division 9 requires that an EOA determines the need for employment land. [OAR 660-009-0015] OAR 660-024-0040(5) establishes the determination of employment land in the UGB. A more complete explanation is provided in subsection 1.a of this section, above.

OAR 660-009-0005(3) defines industrial use. OAR 660-009-005(6) defines “other employment uses” as:

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

OAR 660-009-0025 requires local governments to “adopt measures adequate to implement [economic development] policies” and “(a)ppropriate implementing measures include amendments to plan and zone map designations...”

Goals 10 and 14 and OAR 660, divisions 8 and 24 establish the requirements for designation of residential land and UGB expansion considerations for residential uses.

b. Summary of Local Actions

The findings regarding employment land need in Table 4-3 include 119 acres for employment uses on residentially zoned land. [R. at 1114] The trends analysis includes the number of employees expected to find employment on 119 acres zoned for residential [R. at 1113].

The 2008 EOA recommends an increase to the employment projection for jobs that are typically based in residential zones, such as certain public facilities, schools, churches and home occupations, and that may not be captured by traditional forecast methods, and recommends that additional residential land be designated to accommodate the forecast. [R. at 1651]

c. Objections and DLCD Comments

The department received objections regarding designation of residential areas for employment from Swalley Irrigation District and Central Oregon LandWatch. DLCD had also commented on this issue. The department’s letter asserts that the EOA allocates a significant amount of employment to the high-density residential districts based on a methodology that does not protect lands for needed multi-family housing from commercial development. [R. at 3767]

Subsequent review has revised this analysis. The city’s 2008 EOA [R. at 1651] recommends an increase to the employment projection for jobs typically based in residential zones, such as certain public facilities, schools, churches and home occupations that may not be captured by traditional forecast methods, and recommends that additional residential land be designated to accommodate the forecast.

d. Analysis

It is appropriate to define the portion of projected employment that is expected to take place on residential land in order to gain an accurate approximation of how much will locate in employment zones. However, OAR 660, division 9 does not permit designation of residential land for employment use. Residential land is designated according to the standards of OAR 660, division 8, which permits adjustments to the residential buildable lands inventory to account for non-residential uses.

e. Conclusion

The objection is sustained. The 119 acres of residential land is not justified, and must be removed from the employment land need.

4. Did the city err in including land for a hospital, university campus, and two 50-acre industrial sites?

a. Legal standard

OAR 660-009 requires that an EOA determines the need for employment land. [OAR 660-009-0015] OAR 660-024-0040(5) establishes the determination of employment land in the UGB. OAR 660-009-0025(8) provides requirements for designating employment uses with special siting characteristics.²⁸ A more complete explanation of OAR 660, division 9 requirements is provided in subsection 1.a of this section, above.

In order to justify an increase in the need for certain types of employment land within the UGB there must be a factual basis in the EOA to satisfy OAR 660, division 9, a policy directive to provide the sites for economic development purposes, and measures to protect the sites for the intended uses.

b. Summary of Local Actions

The EOA discusses the provision of additional employment lands for specific uses including a new hospital, a university campus and two 50-acre industrial sites [R. at 1506, 1517, 1628, 1724]. Policies are included as an appendix to the EOA [R. at 1674]. Findings are included [R. at 1103-1165], with specific use references [R. at 1107, 1114, 1115, 1116, 1120, 1122, 1123, 1124, 1126, 1128, 1140].

c. Objections and DLCD Comments

The department received objections alleging the city lacked justification to add to its estimated need land for a hospital, a university campus and two 50-acre industrial sites. [Central Oregon LandWatch May 7, 2009, p. 11] The department had commented that the city lacked substantial findings to support the addition of large sites for a new hospital, an auto mall, a university campus and two 50-acre industrial sites [R. at 3770, 3771, 3776].

d. Analysis

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 per OAR 660-009-0010(5). There is in the record policy direction, fact-based analysis of an employment

²⁸ OAR 660-009-0025(8): * * * Cities and counties that adopt objectives or policies providing for uses with special site needs must adopt policies and land use regulations providing for those special site needs. Special site needs include, but are not limited to large acreage sites, special site configurations, direct access to transportation facilities, prime industrial lands, sensitivity to adjacent land uses, or coastal shoreland sites designated as suited for water-dependent use under Goal 17. Policies and land use regulations for these uses must:

- (a) Identify sites suitable for the proposed use;
- (b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities that interfere with development of the site for the intended use; and
- (c) Where necessary, protect a site for the intended use by including measures that either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

projection and market analysis of the rationale for providing employment land for a hospital, a university campus, and two 50-acre industrial sites.

The justification for these specific uses is undermined, however, by other deficiencies in the EOA. The EOA does not adequately identify land already in the UGB that could be developed for some or all these uses. There city does not appear to have adopted policies or other mechanisms to ensure the land included in the UGB is protected for the intended use and from conflicting uses.

e. Conclusion

While the analysis of the need for the specific employment uses is present, the EOA must also analyze whether these uses can reasonably be accommodated within the existing UGB. Additionally, the city has not adopted policies that provide adequate protections to ensure the sites remain available for the intended uses.

The objection is sustained. The director remands with instructions to analyze whether the identified uses can reasonably be accommodated within the existing UGB, and for the adoption of measures so that employment land with special siting characteristics complies with OAR 660-009-0025(8) regarding protection of the site for the intended use and from conflicting uses.