

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

DEPARTMENT OF LAND CONSERVATION  
AND DEVELOPMENT,  
*Petitioner,*

vs.

CITY OF KLAMATH FALLS,  
*Respondent,*

and

BADGER FLATS, LLP,  
*Intervenor-Respondent.*

LUBA No. 2017-047

FINAL OPINION  
AND ORDER

Appeal on remand from the Court of Appeals.

Steven E. Shipsey, Portland, represented petitioner.

Joanna Lyons-Antley, Klamath Falls, represented respondent.

Gregory S. Hathaway, Portland, represented intervenor-respondent.

RYAN, Board Chair; RUDD, Board Member; ZAMUDIO Board Member,  
participated in the decision.

REVERSED

08/06/2019

You are entitled to judicial review of this Order. Judicial review is  
governed by the provisions of ORS 197.850.

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**NATURE OF THE DECISION**

Petitioner appeals a city decision that approves an urban growth boundary (UGB) amendment that adds 22.7 acres of land to the urban area that is included within the city’s UGB.

**FACTS**

Intervenor-respondent (intervenor) owns approximately 130 acres zoned Forest Range and presently in agricultural use located adjacent to, but outside, the city’s UGB. Intervenor applied for a UGB amendment to add 22.7 acres to the UGB in order to eventually construct a commercial development on its property.

The Klamath Falls UGB includes approximately 24,000 acres, and contains 1,241 of vacant employment land.<sup>1</sup> It is undisputed that the urban area within the city’s UGB has adequate capacity to satisfy the city’s urban land needs for the next 20 years. Several years prior to intervenor’s application, respondent amended its comprehensive plan to include an “Economic Opportunities Analysis and Long-Term Urban Land Need Assessment” (EOA). The EOA included a “subregional analysis” that identified four subregions and identified a deficit of land in the Klamath West Subregion needed to satisfy a short-term (five-year) commercial demand. Intervenor’s property is located in the Klamath

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<sup>1</sup> Within the city limits there are 4,322 developed acres and 10,250 undeveloped acres.

1 West Subregion. Relying on the identified deficit of land in the Klamath West  
2 Subregion, the city approved the UGB amendment.

3 Petitioner appealed the city’s decision to LUBA. *DLCD v. City of Klamath*  
4 *Falls*, 76 Or LUBA 130 (2017). In our decision, we sustained several of  
5 petitioner’s assignments of error that challenged the city’s approval of the UGB  
6 amendment. However, we denied a portion of petitioner’s first assignment of  
7 error that argued that Statewide Planning Goal 14 (Urbanization) prohibited the  
8 city from approving the UGB amendment because the undisputed evidence in the  
9 record was that the city’s UGB has adequate capacity to satisfy the city’s urban  
10 land needs for the next 20 years. We concluded that the language of Goal 14 did  
11 not support such an interpretation. We remanded the city’s decision on the other  
12 bases on which we sustained petitioner’s assignments of error. *See* OAR 661-  
13 010-0071(2)(d) (OAR 661-010-0071(2)(d) provides that LUBA shall remand a  
14 land use decision when “[t]he decision improperly construes the applicable law,  
15 but is not prohibited as a matter of law”).

16 The city and intervenor appealed our decision, and petitioner filed a cross-  
17 appeal. In petitioner’s cross-appeal, it argued that LUBA erred in concluding that  
18 the text of Goal 14 did not support a conclusion that a UGB amendment is  
19 possible only where the city has demonstrated the lack of a 20-year land supply  
20 under the first Goal 14 need factor. The court reversed and remanded our  
21 decision. *DLCD v. City of Klamath Falls*, 290 Or App 495, 505, 416 P3d 326

1 (2018).<sup>2</sup> The Court of Appeals agreed with petitioner that the express language  
2 of Goal 14 “requires that, to change a UGB, there must be a demonstrated need  
3 for land under both of the land-need subsections [of Goal 14].” 290 Or App at  
4 504.

5 **DISPOSITION**

6 Goal 14 provides in relevant part:

7 “Land Need

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

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

13 “(2) Demonstrated need for land suitable to accommodate  
14 housing, employment opportunities, livability or uses such as  
15 public facilities, streets and roads, schools, parks or open  
16 space, or any combination of the need categories in this  
17 subsection (2).

18 “In determining need, local government[s] may specify  
19 characteristics, such as parcel size, topography or proximity,  
20 necessary for land to be suitable for an identified need.

21 “Prior to expanding an urban growth boundary, local governments  
22 shall demonstrate that needs cannot reasonably be accommodated  
23 on land already inside the urban growth boundary.”

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<sup>2</sup> The court issued the appellate judgment on May 1, 2018, but for reasons that are unknown, LUBA did not receive the appellate judgment from the court until over one year later, on July 10, 2019.

1 As we explain above, the Court of Appeals held that in order to add land to an  
2 urban growth boundary, there must be a demonstrated need for land under the  
3 first Goal 14 factor. OAR 661-010-0071(1)(c) provides that LUBA will reverse  
4 a decision when the decision is “prohibited as a matter of law.” Goal 14 prohibits  
5 the city from amending its UGB if the city has adequate capacity to satisfy the  
6 city’s 20-year land needs. It is undisputed that the city’s UGB has adequate  
7 capacity to satisfy the city’s urban land needs for the next 20 years. Accordingly,  
8 the appropriate disposition of this appeal is reversal.

9 The city’s decision is reversed.