

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 DEPARTMENT OF LAND
5 CONSERVATION AND DEVELOPMENT,
6 *Petitioner,*

7
8 and

9
10 FRIENDS OF YAMHILL COUNTY,
11 COMMUNITY DEVELOPMENT LAW
12 CENTER and 1000 FRIENDS OF OREGON,
13 *Intervenors-Petitioner,*

14
15 vs.

16
17 CITY OF McMinnville,
18 *Respondent.*

19
20 LUBA No. 2001-093

21
22 FINAL OPINION
23 AND ORDER

24
25 Appeal from City of McMinnville.

26
27 Steven E. Shipsey, Assistant Attorney General, Salem, filed a petition for review and
28 argued on behalf of petitioner. With him on the brief were Hardy Myers, Attorney General,
29 and Michael D. Reynolds, Solicitor General.

30
31 Mary Kyle McCurdy, Portland, filed a petition for review and argued on behalf of
32 intervenors-petitioner.

33
34 Jeffrey G. Condit, Portland, filed the response brief and argued on behalf of
35 respondent. With him on the brief was Miller Nash LLP.

36
37 BASSHAM, Board Member; BRIGGS, Board Chair; HOLSTUN, Board Member,
38 participated in the decision.

39
40 REMANDED

12/19/2001

41
42 You are entitled to judicial review of this Order. Judicial review is governed by the
43 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner challenges a city ordinance adopting a residential land needs analysis as an amendment to the city’s comprehensive plan.

MOTION TO INTERVENE

Friends of Yamhill County, Community Development Law Center and 1000 Friends of Oregon (collectively, Friends) move to intervene on the side of petitioner. There is no opposition to the motion, and it is allowed.

FACTS

In 1983, the city adopted chapter 5 of its comprehensive plan, governing housing and residential needs. The Land Conservation and Development Commission (LCDC) acknowledged that chapter the same year. The city’s last periodic review was completed in September 1988. In August 2000, the city commenced a legislative review of its urban growth boundary (UGB) with a formal analysis of its buildable lands inventory and its housing needs, pursuant to ORS 197.296.

The city hired ECONorthwest, a consultant, to draft the housing needs analysis required by ORS 197.296(3). The city circulated a draft analysis dated January 2001 as a proposed amendment to chapter 5 of its comprehensive plan. Petitioner Department of Land Conservation and Development (DLCD) submitted a series of comments, expressing concerns that the planned housing densities and mix of housing types did not comply with Statewide Planning Goal 10 (Housing), and recommending that the city use a different housing needs model developed by DLCD.¹ A final analysis was circulated in early May

¹Goal 10 is to “provide for the housing needs of citizens of the state.” Specifically, Goal 10 requires that:

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

1 2001. As discussed below, the final analysis concludes, in relevant part, that the city’s
2 housing needs over the period ending in 2020 may require expansion of the city’s UGB to
3 include an additional 449 acres for housing and an additional 412 acres for parks, schools
4 and other public services.

5 On May 22, 2001, the city planning commission and city council held a joint public
6 hearing, at which the planning commission voted to recommend adoption of the final report
7 as a post-acknowledgment plan amendment. The city council voted at the same hearing to
8 adopt the final report (hereafter, housing needs analysis or analysis), as an amendment to
9 chapter 5 of the city’s comprehensive plan, and adopted an ordinance to that effect. This
10 appeal followed.

11 **INTRODUCTION**

12 Most of the parties’ arguments turn on whether the city complied with ORS 197.296.
13 We therefore provide the following overview of the statute, and a summary of the challenged
14 housing needs analysis.

15 **A. ORS 197.296**

16 ORS 197.296(2) mandates that “[a]t periodic review or any other legislative review of
17 the urban growth boundary, comprehensive plans or functional plans shall provide sufficient
18 buildable lands within urban growth boundaries established pursuant to statewide planning
19 goals to accommodate estimated housing needs for 20 years.” The remaining provisions of
20 ORS 197.296 set forth the prescribed procedure for complying with that mandate. The first
21 step is described in ORS 197.296(3):

22 “As part of its next periodic review pursuant to ORS 197.628 to 197.650
23 following September 9, 1995, or any other legislative review of the urban
24 growth boundary, a local government shall:

25 “(a) Inventory the supply of buildable lands within the urban growth
26 boundary;

27 “(b) Determine the actual density and the actual average mix of housing
28 types of residential development that have occurred within the urban

1 growth boundary since the last periodic review or five years,
2 whichever is greater; and

3 “(c) Conduct an analysis of housing need by type and density range, in
4 accordance with ORS 197.303 and statewide planning goals and rules
5 relating to housing, to determine the amount of land needed for each
6 needed housing type for the next 20 years.”

7 Also relevant to understanding of ORS 197.296(3) is OAR 660-008-0010, which
8 implements Goal 10 and ORS 197.295 to 197.314. OAR 660-008-0010 provides in pertinent
9 part that “[t]he mix and density of needed housing is determined in the housing needs
10 projection. Sufficient buildable land shall be designated on the comprehensive plan map to
11 satisfy housing needs by type and density range as determined in the housing needs
12 projection.” In turn, OAR 660-008-0005(5) defines “housing needs projection” as

13 “a local determination, justified in the plan, of the mix of housing types and
14 densities that will be:

15 “(a) Commensurate with the financial capabilities of present and future
16 area residents of all income levels during the planning period;

17 “(b) Consistent with any adopted regional housing standards, state statutes
18 and [LCDC] administrative rules; and

19 “(c) Consistent with Goal 14 requirements.”

20 If the determinations required by ORS 197.296(3) show that the UGB does not
21 include sufficient buildable lands to accommodate housing needs for the next 20 years,
22 ORS 197.296(4) requires the city to either amend the UGB, amend its legislation to increase
23 densities within the UGB, or some combination of these actions.² Further, ORS 197.296(5)

²ORS 197.296(4) provides:

“If the determination required by [ORS 197.296(3)] indicates that the urban growth boundary does not contain sufficient buildable lands to accommodate housing needs for 20 years at the actual developed density that has occurred since the last periodic review, the local government shall take one of the following actions:

“(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for 20 years at the actual developed density during the period since the last periodic review or within the last five years, whichever is

1 requires the city to use the housing needs analysis developed under ORS 197.296(3)(c) to
2 evaluate whether changes in density or housing type mix are necessary to meet housing
3 needs over the next 20 years.³ ORS 197.296(6) and (7) set forth further requirements
4 applicable to any actions taken under ORS 197.296(4) or (5).⁴

greater. As part of this process, the amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;

“(b) Amend its comprehensive plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or

“(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.”

³ORS 197.296(5) provides:

“Using the analysis conducted under [ORS 197.296(3)(c)], the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under [ORS 197.296(3)(b)], or if that mix is different from the actual mix of housing types determined under [ORS 197.296(3)(b)], the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.”

⁴ORS 197.296(6) and (7) provide:

“(6) A local government that takes any actions under [ORS 197.296(4) or (5)] shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.

“(7) In establishing that actions and measures adopted under [ORS 197.296(4) and (5)] demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under [ORS 197.296(3)] and is zoned at density ranges that are likely to be achieved by the housing market using the analysis in [ORS 197.296(3)]. Actions or measures, or both, may include but are not limited to [eight specified measures.]”

1 In sum, ORS 197.296(3) requires that the city conduct certain analyses, including a
2 housing needs analysis. Depending on the results of those analyses, the city may be required
3 to undertake certain actions specified in ORS 197.296(4) through (7). In the present case, the
4 city’s decision purports to provide only the analyses required by ORS 197.296(3), and does
5 not purport to take any actions under ORS 197.296(4) through (7).⁵ We now turn to the
6 city’s housing needs analysis.

7 **B. Housing needs analysis**

8 To satisfy the requirements of ORS 197.296(3), the city’s analysis follows a
9 methodology suggested in a document entitled “Planning for Residential Growth: A
10 Workbook for Oregon’s Urban Areas” (workbook), produced by the Transportation and
11 Growth Management Program for petitioner DLCDC. The workbook, found at supplemental
12 record 21 through 167, describes the authors’ understanding of ORS 197.296 and sets forth
13 detailed step-by-step explanations for satisfying the statute’s requirements.⁶

14 The city’s analysis is divided into several chapters that address the statutory
15 requirements, as expressed in the workbook. Chapter 3 conducts the buildable lands
16 inventory required by ORS 197.296(3)(a), and concludes that the city’s existing UGB
17 contains 934 gross acres of buildable residential lands, including vacant, partially vacant and
18 redevelopable lands. Chapter 4 conducts an analysis of historical development trends for the
19 period 1988-2000, as required by ORS 197.296(3)(b), and concludes in relevant part that (1)
20 the city has averaged 5.9 dwelling units per net buildable acre; (2) 78 percent of building

⁵The city’s decision states in relevant part:

“This * * * analysis * * * does not, and is not intended to, address the requirements of ORS 197.296(4) and (5), relevant to actions that the City may need to take to avoid or minimize an expansion of the current UGB. These requirements of law will be satisfied by the City subsequent to the completion and adoption of this [housing needs] analysis, and finding that the current UGB contains insufficient land to accommodate the projected residential lands need.” Record 8.

⁶ECONorthwest, the city’s consultant, is one of the authors of the workbook.

1 permits were issued for single-family dwellings, including detached, attached, duplexes and
2 manufactured housing; and (3) 22 percent of building permits were issued for multi-family
3 dwellings.⁷ Chapter 4 also contains a breakdown of actual residential development among
4 the city's four residential zones during the period 1988-2000.⁸

5 Chapter 5 examines housing demand and need, pursuant to ORS 197.296(3)(c).
6 Chapter 5 first considers population growth, and accepts a population projection coordinated
7 with Yamhill County that the city's population in the year 2020 will be 38,720, a net increase
8 of 13,567 over the estimated year 2000 population of 25,153. Record 40-41. The analysis
9 adjusts that population estimate by the number of persons accommodated in group quarters,
10 such as college dormitories or nursing homes.

11 To calculate housing demand based on that population increase, the analysis assumes
12 that household size through the year 2020 will average 2.54 persons per household, the same
13 average shown in the 1990 census. Record 43-46. The analysis also assumes a vacancy rate
14 of 2.5 percent for single-family dwellings and 5.0 percent for multiple-family dwellings.
15 Based on those assumptions, the analysis estimates that 5,384 new dwelling units will be
16 required to accommodate the estimated population increase through the year 2020. Record

⁷The city's zoning ordinance apparently defines "single-family dwelling" to include common wall and zero lot-line dwellings such as townhouses and condominiums, as well as duplexes. Accordingly, the analysis includes building permits for such dwellings in the category of single-family dwellings. Record 30 n 14. If such dwellings were categorized as multiple-family dwellings, then the respective percentages would be 66 percent for single-family dwellings and 34 percent for multiple-family dwellings. Record 50.

⁸The city's analysis describes the four residential zones as follows:

"McMinnville has four residential zoning districts: R-1, R-2, R-3, and R-4. Each of these zones, however, allows a variety of housing types. The R-1 and R-2 zones allow single-family units, and duplexes on corner lots (with a minimum of 9,000 and 8,000 square feet, respectively). Multiple family development may [be approved] in both of these zones through the planned development (PD) process. The R-3 zone allows small-lot single-family units, manufactured dwelling parks, and attached single-family units, as well as multiple family development through the PD process. The R-4 zone allows multiple family housing outright, as well as all of the above housing types." Record 34.

1 52. In addition, the analysis estimates that another 200 group quarter dwelling units will be
2 needed, for a total of 5,584 new units.

3 Chapter 5 then develops two different housing need projections, based on different
4 variables. The first projection, called the baseline forecast, is an extrapolation of the actual
5 housing mix and density patterns between 1988 and 2000 for the period 2000-2020. Based
6 on the historic housing mix (78 percent single-family/22 percent multiple-family) and
7 density patterns, and application of the household size and vacancy variables described
8 above, the baseline forecast estimates that meeting the housing demand of 5,584 new units
9 will require 1,158 gross acres. Record 52. The analysis explains that the baseline forecast
10 represents a preliminary forecast that gives the city a starting point for more refined
11 adjustments. *Id.*

12 The second projection, called the alternative forecast, considers demographic shifts,
13 trends in national, state, and local housing markets, land development costs, household
14 income trends and housing affordability, among other variables.⁹ Based on these variables,
15 the alternative forecast determines that meeting the city's housing needs through the year
16 2020 will require changing the mix of future housing types to 75 percent single-family
17 dwellings and 25 percent multiple-family dwellings, under the city's definition of those
18 dwellings. Record 63.¹⁰ Under that mix of housing types and the average densities

⁹In addressing household income, the analysis concludes that 53 percent of city households in the year 2000 were considered low income, defined as 80 percent (\$42,950) of the median family income (\$53,700). Record 56. Further, the analysis found that 34 percent of households were considered very low income (50 percent of median family income), while 17 percent were considered extremely low income (30 percent). *Id.*

¹⁰If single-family attached dwellings and duplexes were considered multiple-family housing types, the needed mix would be 60 percent single-family and 40 percent multiple-family. Record 63. The city's broad definition of "single-family dwelling" tends to mask the differences between the baseline and alternative forecasts, which are shown by comparing the different housing mix each forecast describes. In general, the alternative forecast increases the number and percentage of single-family housing types that are more affordable, and decreases the number and percentage of less affordable types. For example, the number and percentage of manufactured dwellings are increased from 1,052 (20 percent) to 1,454 (27 percent), while single-family detached dwellings are decreased from 2,453 (46 percent) to 1,884 (35 percent). Record 52, 64, 66. Similarly, the number and percentage of multiple-family units (*i.e.*, apartments) are increased from 1,209 (22 percent) to 1,346 (25 percent). *Id.*

1 associated with those types, the alternative forecast estimates that meeting the housing
2 demand of 5,584 units will require 1,116 gross acres. Record 64.

3 Chapter 5 also estimates land needs for public and semi-public uses, such as parks,
4 schools, and similar uses, as a component of the “total residential land need.” Record 67.
5 The analysis estimates that approximately 412 gross acres are necessary to accommodate
6 these public and semi-public uses, and therefore the “total residential land need” under the
7 alternative forecast is for 1,528 gross acres (1,116 acres plus 412 acres). Record 73.

8 Finally, in chapter 6 the analysis compares the supply of land within the UGB against
9 the demand and need identified in chapter 5. The analysis estimates that the 934 gross acres
10 of buildable residential land within the UGB can accommodate 3,407 of the needed 5,584
11 dwelling units, for a deficit of 2,178 units. The analysis concludes that, at densities observed
12 between 1988 and 2000, the city will need an additional 449 acres of residential land to
13 accommodate the deficit. Record 77. The analysis then adds to the identified 449 acres the
14 412 acres for parks and schools identified in chapter 5, for a total land need of 861 gross
15 acres. Record 78.

16 The analysis concludes by answering several questions posed by the workbook,
17 which apparently relate to inquiries required by ORS 197.296(4) and (5):

18 “Is *needed* density the same as or less than *actual* historic density? Actual
19 density of residential development in McMinnville between 1988 and 2000
20 was 4.7 dwelling units per gross acre or 5.9 dwelling units per net acre. The
21 alternative forecast estimates *needed* density at 5.0 dwelling units per gross
22 acre or 6.3 dwelling units per net acre.

23 “Is *needed* mix the same as *actual* historic mix? Figure 5-1 [Record 66]
24 indicates that needed and actual mix as shown by comparing the baseline and
25 alternative forecasts is different. The alternative forecast (needed mix)
26 indicates that the City will need a slightly higher percentage of multiple-
27 family units and a significantly higher percentage of manufactured homes.

28 “Does the UGB contain enough buildable lands at *actual* historic densities?
29 No. The data presented in chapters 5 and 6 indicate the UGB will not
30 accommodate the number of new dwelling units between 2000 and 2020 at
31 actual historic, or needed, densities.” Record 78 (emphasis in original).

1 With that introduction, we turn to the issues raised in this appeal.

2 **MOTION TO DISMISS**

3 In a previous order, we denied a motion to dismiss that argued, in relevant part, that
4 the city's attempt to satisfy only the requirements of ORS 197.296(3) without also taking
5 actions under ORS 197.296(4) and (5) meant that the city's decision was not a "final" land
6 use decision subject to LUBA's jurisdiction. *DLCD v. City of McMinnville*, 40 Or LUBA
7 591, 596 (2001). We also rejected arguments that the decision effectively amends the city's
8 UGB to include over 50 acres of land and is thus subject to LCDC's exclusive jurisdiction
9 under ORS 197.626. *Id.* at 597-98. Finally, we rejected the argument that LCDC has
10 exclusive jurisdiction over the challenged decision pursuant to ORS 197.628 to 197.650,
11 because the city has been in periodic review since 1994 and the challenged decision will
12 impact the city's remaining periodic review work tasks, involving transportation and
13 commercial lands. *Id.* at 599-600.

14 Intervenor's renew those arguments in their petition for review. In our discussion
15 below of the merits of this appeal, we find it necessary to qualify certain language in our
16 previous order. However, we adhere to the ultimate conclusions in that order, and
17 accordingly deny the renewed motion to dismiss.

18 **DECISION**

19 The two petitions for review contain seven assignments of error that challenge the
20 city's decision adopting the housing needs analysis in a number of ways. Friends' first
21 assignment of error challenges the city's population projection, a necessary ingredient of the
22 housing needs analysis. Friends' second assignment of error, and DLCD's first assignment
23 of error, argue that the city's housing needs analysis is not supported by substantial evidence,
24 and violates ORS 197.296, ORS 197.303, Goal 10, and OAR chapter 660, division 008 (the
25 Goal 10 rule), in various ways. Friends' third assignment of error challenges the city's
26 inventory of buildable lands under ORS 197.296(3)(a). Friends' fourth assignment of error

1 challenges the evidentiary support for the city’s determination of future household size, a key
2 number in the city’s calculations under ORS 197.296(3)(c). Friends’ fifth assignment of
3 error and DLCD’s second assignment of error challenge the city’s projections for future park
4 and school land needs. For the reasons explained below, we conclude that a larger issue
5 raised in the petitions for review, and amplified at oral argument, is dispositive and requires
6 remand of the challenged decision. As a result of that disposition, we decline, for reasons
7 explained below, to resolve DLCD’s and Friends’ specific challenges.

8 We formulate the dispositive issue as follows: did the city commit legal error in
9 adopting a final comprehensive plan amendment addressing the requirements of
10 ORS 197.296(3), that concludes that action will be required under ORS 197.296(4) and (5),
11 but that fails to complete the process set forth in the statute by taking such action (*i.e.*,
12 amending the UGB and/or adopting other measures) as required by ORS 197.296(4) and (5)?
13 In other words, is it reversible error for the city to fail to complete, in this final
14 comprehensive plan amendment, the process it commenced under ORS 197.296(2) and (3)?

15 Although the parties do not approach the question as we have formulated it, we
16 understand DLCD and Friends to urge that the answer to that question is yes. Specifically,
17 DLCD argues that the housing needs analysis adopted under ORS 197.296(3)(c) must be
18 consistent with the requirements of Statewide Planning Goal 14 (Urbanization).¹¹ OAR 660-

¹¹Goal 14 is “[t]o provide for an orderly and efficient transition from rural to urban land use.” Goal 14 goes on to provide:

“Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of the following factors:

- “(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- “(2) Need for housing, employment opportunities, and livability;
- “(3) Orderly and economic provision for public facilities and services;

1 008-0005(5). DLCD argues further that, as an amendment to the city’s comprehensive plan,
2 the city’s decision must be consistent with all applicable statewide planning goals, including
3 Goal 14. According to DLCD, an amendment to the plan cannot be affirmed if it only
4 *partially* complies with an applicable goal; therefore, the city’s decision cannot be affirmed if
5 it only partially complies with Goal 14. *See Dept. of Transportation v. Douglas County*, 157
6 Or App 18, 23-24, 967 P2d 901 (1998) (LUBA may review county’s adoption of
7 transportation system plan implementing the requirements of the transportation planning rule
8 for failure to completely implement the rule). In other words, DLCD argues, the city cannot
9 amend its comprehensive plan to conclude that the current UGB (1) includes insufficient
10 land to satisfy the identified housing need and (2) may need to be expanded to include an
11 additional 861 acres, unless the city demonstrates that the city’s comprehensive plan, as
12 amended by the decision, complies with the requirements of Goal 14. The only way to do so,
13 we understand DLCD to argue, is to complete the statutory process and take action under
14 ORS 197.296(4) or (5) to redress the identified deficit. At the very least, DLCD argues, the
15 city must evaluate whether its housing needs analysis is consistent with Goal 14, factors 1
16 and 2, the so-called “need” factors, and with Goal 14, factor 4, which requires that the city
17 consider the maximum efficiency of land uses within and on the fringes of the existing urban
18 area.

19 The city’s position, we understand, is that the determinations and analysis required by
20 ORS 197.296(3) are the necessary foundation for the policy choices required by
21 ORS 197.296(4) and (5), and that the city did not err in providing *only* that foundation and

“(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;

“(5) Environmental, energy, economic and social consequences;

“(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,

“(7) Compatibility of the proposed urban uses with nearby agricultural activities.”

1 no more. We understand the city to argue that the challenged decision does not make any of
2 the policy choices described by ORS 197.296(4) and (5), or foreclose the city from later
3 adopting some or all of the options described in ORS 197.296(4) through (7).¹² The city
4 contends that it is entirely consistent with the statute and other applicable law to amend its
5 comprehensive plan to include the results of its analysis under ORS 197.296(3), while
6 reserving to subsequent decisions its choice as to what actions it will take to satisfy the
7 housing needs that are identified in that analysis. With respect to Goal 14, the city argues
8 that Goal 14 is not applicable to the city's adoption of the housing needs analysis, and the
9 Goal 14 factors are not applicable as decisional criteria unless and until the city amends its
10 UGB.

11 As indicated in our order denying the motion to dismiss, the city's decision is, on its
12 face, a final comprehensive plan amendment that is subject to our jurisdiction. However, if
13 the city's decision only partially complies with a set of legal requirements that do not allow
14 partial compliance, it may be remanded on that basis. *Dept. of Transportation*, 157 Or App
15 at 25. In determining whether remand is required in this appeal for that reason, there are
16 three relevant questions. First, what are the governing standards? Second, how far do those
17 standards require the city to go in making a decision under ORS 197.296? Third, does the
18 city's decision go far enough? *Id.* at 24-25; *see also Volny v. City of Bend*, 168 Or App 516,
19 522, 4 P3d 768 (2000) (rejecting argument that the transportation planning rule prohibits a
20 city from amending the transportation element of its comprehensive plan until it adopts the
21 transportation system plan required by the transportation planning rule); *Volny v. City of*
22 *Bend*, 37 Or LUBA 493, 516-17, *aff'd* 168 Or App 516 (2000) (rejecting argument that the

¹²The city's position on whether the challenged decision forecloses certain actions is actually more complex. The city's response brief argues that the essential conclusions of the challenged housing needs analysis is that future development at historic densities and mix of housing types will not produce the *needed* density or mix, and that the UGB does not contain sufficient buildable land to accommodate needed housing at needed or historic densities. If those conclusions are valid, the city argues, the possibility of taking *no action*, as implied by the first sentence of ORS 197.296(4), is foreclosed by the challenged decision.

1 Goal 9 rule prohibits the city from adopting an industrial lands inventory showing a 20-year
2 deficit of industrial lands, without also taking action to remedy that deficit).¹³

3 As far as ORS 197.296 is concerned, it is not clear whether anything in the statute
4 would prohibit completing the statutory process by adopting a series of final decisions
5 addressing discrete parts of the statute. The statute itself appears to contemplate that its
6 various provisions *may* be addressed in different contexts and in separate decisions. For
7 example, ORS 197.296(6) requires that any “actions” taken under ORS 197.296(4) and (5)
8 must also demonstrate that the local government’s comprehensive plan and land use
9 regulations comply with applicable goals, rules and statutory requirements. *See* n 4.
10 ORS 197.296(6) does not state a similar obligation for the local government’s adoption of
11 the determinations and analyses under ORS 197.296(3). The statute thus appears to
12 distinguish between conduct of the analysis providing the basis for necessary “actions,” and
13 the decisions that actually take those actions. That view of the statute supports the city’s
14 position.

15 However, DLCD’s arguments under Goal 14 and the Goal 10 rule lead us to conclude
16 that comprehensive plan amendments to comply with ORS 197.296 are not divisible in the
17 manner the city attempts here. The city adopted its housing needs analysis as a post-
18 acknowledgment plan amendment, and that amendment is therefore subject to review for
19 compliance with all applicable statewide planning goals. ORS 197.175(2)(a); 197.835(6).
20 OAR 660-008-0005(5) specifically requires that the housing needs projection required by
21 Goal 10 and specified statutes, including ORS 197.296, be “consistent with Goal 14
22 requirements.” We assume, and there seems no reasonable dispute, that the housing needs
23 projection described by OAR 660-008-0005(5) is the same housing needs analysis described

¹³Following the cited holding in LUBA’s *Volny* decision, LCDC promulgated amendments to the Goal 9 rule to provide that changes in the local government’s industrial lands inventory may trigger obligations to evaluate the adequacy of the inventory outside the context of periodic review. OAR 660-009-0010(4).

1 in ORS 197.296(3). For whatever reason, LCDC has chosen to implement Goal 10 and
2 ORS 197.296 by providing that the housing needs analysis required by ORS 197.296(3) must
3 be “consistent with Goal 14 requirements.” LCDC is entitled to adopt rules that it considers
4 necessary to carry out ORS chapter 197. ORS 197.040(1)(c); *Lane County v. LCDC*, 325 Or
5 569, 942 P2d 278 (1997).

6 The question then becomes: what does it mean that the city’s housing needs analysis
7 must be “consistent with Goal 14 requirements”? As the city points out, the Goal 14 *factors*
8 must be considered only when a local government establishes or changes a UGB. *See* n 11.
9 Nonetheless, Goal 14 itself is not limited to circumstances where a local government
10 establishes or changes a UGB. *See 1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or
11 447, 724 P2d 268 (1986) (decision converting rural lands to urban uses outside a UGB must
12 be consistent with Goal 14). Further, LCDC may adopt a rule, and apparently has done so in
13 OAR 660-008-0010 and 660-008-0005(5), that requires an evaluation of Goal 14
14 requirements, even where it is not clear whether and when the Goal 14 factors will be applied
15 under their own terms to amend the UGB.

16 Arguably, a housing needs analysis that determines that the city’s UGB includes
17 sufficient buildable lands to accommodate the identified 20-year housing need under actual
18 developed densities pursuant to ORS 197.296(4) would, without more, be sufficient to
19 establish that the analysis is “consistent with Goal 14 requirements.” Even then, however, a
20 proponent of UGB expansion might be able to appeal a final decision adopting such an
21 analysis, and argue that the analysis incorrectly calculated the need or buildable lands
22 inventory and is therefore not consistent with Goal 14, factors 1 and 2. Where, as here, the
23 housing needs analysis determines that the UGB does not include sufficient buildable land to
24 accommodate needed housing, thereby triggering a requirement for the city to take action
25 under ORS 197.296(4) and perhaps (5), determining what must be done to be “consistent
26 with Goal 14 requirements” is even more problematic.

1 The housing needs analysis required by ORS 197.296(3) identifies whether and to a
2 limited, preliminary extent what actions the city must take under ORS 197.296(4) and (5).
3 Where, as here, the city’s housing needs analysis identifies a significant deficit in the supply
4 of buildable land, the city must take one or more actions under ORS 197.296(4)–(7). It is
5 highly probable under the present circumstances that whatever actions the city takes under
6 ORS 197.296(4)–(7) will implicate Goal 14. In our view, LCDC’s choice to require that the
7 housing needs analysis required by ORS 197.296(3) be “consistent with Goal 14
8 requirements” is essentially a choice to require that, in circumstances such as the present one,
9 the city must complete the statutory process and adopt one or more of the actions described
10 in ORS 197.296(4)–(7) to take the necessary actions to plan for the identified housing need
11 and the identified deficit in the supply of buildable lands.

12 Stated differently, until the city takes action under ORS 197.296(4)–(7), it is not
13 possible to determine whether the city’s housing needs analysis is “consistent with Goal 14
14 requirements.” That conclusion is supported by the DLCD workbook that the city used to
15 guide its decision. The workbook generally suggests that the analysis required by
16 ORS 197.296(3), the actions and measures described in ORS 197.296(4)–(7), and the
17 requirements of Goal 14 are part of a highly integrated single process. *See* Supplemental
18 Record 33 (overview of ORS 197.296). More importantly, the workbook cautions that the
19 process under the statute is “an iterative process,” and that “[n]ew information resulting from
20 a certain task may create the need to repeat one or more of the tasks.” *Id.* at 35. If the statute
21 prescribes an iterative process that may require revisiting tasks completed earlier, then the
22 city’s attempt to achieve finality with respect to partial completion of that process is at odds
23 with the statutory scheme.

24 In sum, because LCDC’s rules implementing the statute require that the city’s
25 housing needs analysis *must* be consistent with Goal 14 requirements, the consequence in the
26 present case is that the city committed reversible error in adopting a *final* comprehensive

1 plan amendment that concludes that action will be required under ORS 197.296(4)–(7), but
2 fails to complete the process set forth in the statute by taking action under those provisions.
3 Like the county’s partial compliance with the rule in *Dept. of Transportation v. Douglas*
4 *County*, the city’s decision partially fulfills a task that under applicable legal requirements
5 must be fully completed before a final decision is adopted. Partial completion of a task that
6 under applicable legal requirements must be fully completed requires remand for that reason
7 alone.

8 The foregoing conclusion is, at least at first blush, inconsistent with language in our
9 previous order on the motion to dismiss in this case. As noted above, the motion to dismiss
10 argued in relevant part that LUBA lacked jurisdiction over the city’s decision, because a
11 decision adopting the analysis required by ORS 197.296(3) is not a *final* decision until the
12 city takes action under ORS 197.296(4) and (5). That argument was based on language in an
13 unpublished LUBA opinion, *Partnership for Sensible Growth v. Metro*, ___ Or LUBA ___
14 (LUBA No. 99-184, January 25, 2000), discussed below. The motion to dismiss also argued
15 that, because the analysis indicated that the city will likely have to amend its UGB to include
16 more than 50 acres, jurisdiction over the city’s adoption of the analysis lay with LCDC,
17 pursuant to ORS 197.626.¹⁴ In rejecting the latter argument, we stated:

18 “We see no reason under [ORS 197.626 and its implementing rule] why the
19 city may not proceed under ORS 197.296(3) to obtain finality regarding its
20 needs analysis before proceeding under ORS 197.296(4) and (5) to select the
21 measures it chooses to meet the identified need.” 40 Or LUBA at 598.

22 The quoted language must be significantly qualified in light of our above conclusion
23 that the city erred in adopting the housing needs analysis without taking action required

¹⁴ORS 197.626 provides:

“A city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve areas under ORS 195.145 shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.644.”

1 under the statute. As explained, the administrative rules implementing ORS 197.296 require
2 that the city’s analysis be consistent with Goal 14, which under the present circumstances the
3 city cannot demonstrate until it takes action under the statute. The practical effect of our
4 holding is that, at least where the analysis indicates that the UGB includes insufficient
5 buildable lands, the city *cannot* “obtain finality regarding its needs analysis before
6 proceeding under ORS 197.296(4) and (5),” as our order broadly suggests.¹⁵

7 As this case demonstrates, the question of whether a decision is a *final* decision
8 subject to LUBA’s jurisdiction is easily confused with the separate question of whether it is a
9 decision that is or is not subject to remand for failure to complete a required process. At the
10 risk of adding further to that confusion, we offer the following observations.

11 As our order stated, the city’s decision in this case is a *final* land use decision subject
12 to our jurisdiction because it amends the city’s comprehensive plan. We have difficulty
13 conceiving of a *provisional* or *nonfinal* comprehensive plan amendment. That jurisdictional
14 conclusion is bolstered by the fact that the city’s decision purports on its face to constitute a
15 final appealable decision. These circumstances distinguish the present case from *Partnership*
16 *for Sensible Growth*, where Metro adopted by resolution a draft revision of its housing needs
17 analysis under ORS 197.296(3), without adopting that draft into its acknowledged land use
18 legislation. Metro adopted the draft revision solely for purposes of obtaining an extension of
19 time from LCDC for complying with certain statutory mandates that are not applicable here.

¹⁵As discussed above, a different result might obtain where the analysis concludes that the UGB includes sufficient buildable lands to accommodate the projected housing need. Presumably the city’s final decision adopting such an analysis into its comprehensive plan could be appealed to LUBA and evaluated under applicable standards, including Goal 14, factors 1 and 2. Assuming the city’s decision was affirmed at all appellate levels, the city would obtain finality (that is, immunity from further challenge) with respect to its needs analysis.

1 We concluded that Metro’s decision was not a final decision and therefore not a land use
2 decision.¹⁶

3 Summarizing, our resolutions of the jurisdictional questions in *Partnership for*
4 *Sensible Growth* and in this case are different. In *Partnership for Sensible Growth* we were
5 presented with a preliminary, nonfinal and therefore unreviewable decision. In this appeal
6 we are presented with a final, reviewable comprehensive plan amendment. The relevant
7 question that is presented in this appeal, and might have been presented in *Partnership for*
8 *Sensible Growth* if Metro had adopted a final and reviewable decision to amend its land use
9 legislation, is whether a final decision to amend a comprehensive plan to include a housing
10 needs analysis under ORS 197.296(3) is subject to remand because LCDC’s Goal 10 rule and
11 the remaining parts of the statute dictate that the city complete the additional statutory steps
12 beyond adoption of the housing needs analysis. For the reasons we have already explained,
13 the answer is yes.¹⁷

14 The remaining question is whether this Board should resolve some or all of the
15 specific challenges DLCD and Friends make to the city’s buildable lands inventory and
16 housing needs analysis. We conclude that it would not be appropriate to do so. The subject
17 of most of those challenges will necessarily be revisited in the course of demonstrating that
18 the housing needs analysis is consistent with Goal 14 requirements such as Goal 14, factors 1

¹⁶As *Partnership for Sensible Growth* suggests, the city in the present case probably could have avoided both review and remand in this case by adopting a facially interlocutory (*i.e.*, nonfinal) decision to accept the housing needs analysis without adopting it as part of the city’s comprehensive plan, pending further action. Nothing that we are aware of would prevent the city from taking that approach following this remand.

¹⁷We also note an issue that is not addressed in the briefs, but which may arise on remand as a result of our decision. ORS 197.296(5) requires that the city adopt certain measures “as part of its periodic review.” That language, combined with our holding in this case that the city erred in adopting a decision that only partially completes the process prescribed in ORS 197.296, makes the city’s procedural options on remand somewhat uncertain. Although ORS 197.296(2) and (3) both require that ORS 197.296 be addressed at periodic review, those statutes also expressly grant *additional authority* for local governments to perform the urban growth boundary review that is required by ORS 197.296 through “legislative review of the urban growth boundary,” *i.e.*, outside periodic review. Although we need not and do not attempt to define the city’s options on remand, we clarify here that we do not understand anything in the statute or this opinion to prohibit the city from adopting outside periodic review any measures that the city determines to be required by ORS 197.296.

1 and 2. Others may be revisited in the course of demonstrating that whatever action the city
2 takes is consistent with other Goal 14 requirements and ORS 197.296(4)–(7). Because we
3 cannot identify with reasonable certainty any specific challenges that will not be revisited
4 under the terms of our remand, resolution of the specific challenges in the petitions for
5 review would be advisory and premature.

6 For the foregoing reasons, the city’s decision is remanded.