



Oregon

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TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Rob Hallyburton, Rural Policy Analyst

SUBJECT: **Agenda Item 4, January 24-25, 2019, LCDC Meeting**



RULEMAKING REGARDING SEQUENTIAL SUBMITTAL AND REVIEW OF URBAN GROWTH BOUNDARY COMPONENTS

I. AGENDA ITEM SUMMARY

This agenda item is for the Land Conservation and Development Commission (LCDC or commission) to consider adoption of a new rule proposed by the Department of Land Conservation and Development (department) to be added to Oregon Administrative Rules (OAR) chapter 660, division 25, "Periodic Review," and of associated amendments to existing rules in division 25 and OAR chapter 660, division 24, "Urban Growth Boundaries." The proposed rules implement the requirements of Senate Bill 418 (2017), now ORS 197.626(3).

The rules provide the details of a new process created by SB 418 for cities and counties to submit adopted amendments to an urban growth boundary to the department for review and approval. The new process allows phased submittal of findings to justify the need to expand an urban growth boundary (UGB) prior to the final local decision to amend the UGB. Currently, local governments must submit all the various studies, analyses, findings, and conclusions that comprise a UGB amendment at the end of the process. The new process allows for interim review and approval of some of these components. The new process does not affect the simplified UGB amendment process in OAR chapter 660, division 38.

For further information about this report, please contact Rob Hallyburton, Rural Policy Analyst, at 503-934-0018 or at rob.hallyburton@state.or.us.

II. BACKGROUND

A. UGB REVIEW PROCESS

A city has two options regarding the process by which it analyzes and amends its UGB. The “standard” process has existed since the adoption of the statewide planning goals and is subject to a set of statutes and administrative rules that guide local governments’ urban planning and the state review of adopted UGB amendments. A “simplified” process was established through rule by the commission in response to legislation in 2016. The amendments in this rulemaking affect only the procedural requirements pertaining to “standard” UGB amendments for non-Metro cities. The substantive criteria and UGB-specific procedural requirements for a standard UGB amendment are found in OAR chapter 660, division 24 while the remainder of the procedures are contained in OAR chapter 660, division 25.

1. The Local UGB Analysis

Analysis of land need is generally completed by an affected city in coordination with the county or counties within which the city is located. The analysis may be commenced because the city suspects or perceives it has a shortage of land to accommodate its need, because the local plan requires a scheduled review, or because the commission has instructed the city to complete periodic review. The first of these reasons has been the most common in recent years.

A UGB must accommodate the need for a variety of land needs. A city’s UGB analysis typically examines residential or employment land need, or both. Public facility needs (e.g., water and wastewater treatment facilities) are often analyzed in concert with residential and employment land needs but can be the sole focus of a UGB analysis. Once a city has determined the scope of its analysis, it estimates its 20-year land need and whether the existing UGB can accommodate all or a portion of the forecasted demand. It carries out this need analysis according to administrative rules adopted by the commission and, in some cases, statutes. If the city finds that the existing UGB cannot accommodate the forecasted need and a UGB expansion is warranted, then the city analyzes the appropriate location for the amendment. This location analysis is also subject to criteria in administrative rule and statute.

When a city determines that it has a need for residential land to accommodate needed housing for the 20-year planning period, the city must satisfy that need through changes to its land use regulations to allow more efficient use of land inside the existing UGB or through expansion of the UGB, or a combination of the two. The administrative rule that implements Goal 10, “Housing” (OAR chapter 660, division 8 for outside Metro) does not permit a city to amend its comprehensive plan to show a deficit of residential land inside the UGB; that is, if the city’s residential land need analysis shows an insufficient supply inside the current UGB with existing regulations then the city must concurrently amend its UGB or regulations, or both, to accommodate the need. Once the city

established that it has a land need then the city determines the appropriate location for the expansion.

No statute or rule requires that the demonstration of land need for employment or other non-residential lands be accompanied by measures to accommodate the need. That is, a city may adopt an economic opportunities analysis that shows a need for employment land without expanding the UGB to accommodate the need. SB 418 does, however, allow the department and commission to review an employment land need analysis as a component of a sequential UGB review. Review of a locally adopted economic opportunities analysis separate from a UGB amendment would otherwise occur only if it is appealed to the Land Use Board of Appeals.

The local process for completing a UGB amendment can sometimes take several years, and some cities have expressed an interest in having the need component approved prior to completion of the location analysis. This would provide the city an established, approved (and perhaps litigated) basis for its location analysis rather than a situation where the city must defend both the need analysis (which may have been completed a substantial time earlier) and location analysis at the end of the local process. Prior to SB 418, a city could accomplish a “sequential” approval of the residential need and location analyses only through periodic review under ORS 197.628 to 197.644.

2. Review of a Locally Approved UGB Amendment

If a city with an urban-area population over 2,500 expands its UGB by more than 50 acres, the plan amendment(s) approving the expansion must be submitted to the department “in the manner provided for review of a [periodic review] work task.” This means that the city (and county) submits the adopted findings and conclusions, plan and code changes, and the amended UGB to the department for review. The department review analyzes whether the package complies with relevant goals, rules, and statutes. The department director may approve or remand the submittal or refer it to the commission for a decision. This is termed “in the manner of periodic review” because, when a city has an approved periodic review work program, the various parts of the UGB analysis may be submitted to the department as separate tasks for review and approval (and appeal). The department presented a flowchart of the periodic review process to the commission at the hearing on initiation of this rule amendment. That chart is included again with this report as Attachment A.

Compliance review for all plan amendments that are not submitted in the manner of a periodic review task according to ORS 197.626 are under the jurisdiction of the Land Use Board of Appeals. This includes UGB amendments for cities smaller than 2,500 population or that include 50 or fewer acres regardless of city size.

SB 418 amended ORS 197.626 in a manner to require the department, at a city’s request, to “parse work tasks” for a city’s UGB amendment in a manner that allows the department to review and approve “sequential phases” of the project for compliance with the statewide planning goals, statutes, and administrative rules. The tasks, or

phases, of the UGB amendment correspond to the need analysis discussed in subsection 1 of this section. Tasks are expected to generally coincide with elements of the need analyses: residential land, employment land, and public facility needs. Examples of products include locally adopted comprehensive plan amendments such as housing and residential land need analyses and economic opportunities analyses. The rule calls for a work program containing the tasks. The work program is developed by the department in coordination with the city and county, so the tasks will reflect the aspirations of the specific project.

The bill does not affect UGB amendments completed under OAR chapter 660, division 38, "Simplified Urban Growth Boundary Method." Amendments utilizing that division do not depend on housing and residential land needs analyses for justifying the UGB expansion.

B. PLANNING PERIOD AND INITIATION

The city representatives on the workgroup were interested in ensuring that the rules adequately define how the UGB planning period gets established and when the UGB amendment process is formally "initiated." Statewide Planning Goal 14, "Urbanization," requires that the UGB contain an adequate supply of land to satisfy a 20-year need for growth. The city needs to establish the 20-year period for planning purposes so that data acquisition and analyses efforts remain coordinated and consistent. A moving target is untenable for the local governments because it would lead to a never-ending process.

Under existing rules, the initiation date of the local UGB amendment process is important because it sets the planning period and ensures that it will not change. Once the planning period is set for the existing amendment process, the city bases all its data, findings, and conclusions on that period. The city is not required to change the planning period even if the amendment process becomes protracted.

This rulemaking should ensure that the new sequential process has similar provisions for defining the planning period and the initiation date. This required amendment to existing rules in OAR chapter 660, division 24 in addition to new rules in OAR 660-025-0185. The rules in Attachment B state that the sequential UGB work program will establish the planning period, and issuance of the work program by the department will constitute initiation of the UGB amendment.

C. RULE AMENDMENTS

The bill does not expressly require the commission to amend its administrative rule, but implementation of the new statute requires definition of procedures that are not currently in place. The proposed rule amendments will include only procedures to implement the bill. This project is included in the 2017-2018 Policy Agenda under "New Policy Projects Required by the 2017 Legislature."

1. Workgroup

The commission initiated the rulemaking at its May 2018 meeting. The commission instructed the director to appoint a workgroup consisting of specific members. The commission's Citizen Involvement Guidelines state that the commission and department shall "consider the complexity of the issues, diversity of interests among interested parties, availability of expertise, potential effects of resolution of the issue on local communities, tribes, citizens and interested parties, and the degree of expressed citizen interest." The Citizen Involvement Guidelines include three options for public and stakeholder involvement: (1) appointment of a rulemaking advisory committee, (2) appointment of "an advisory committee that includes affected parties, technical experts and other knowledgeable individuals," or (3) neither. The guidelines also say, under the second option, "such advisory committees to the Department are referred to as 'workgroups.'"

The issue for this rulemaking regards procedures only; the question of whether the authority for sequential submittal of UGB amendments should be provided was answered by the legislature. The commission found that the procedures at issue were not complex (although they turned out to be more complex than anticipated), had little diversity of interest (primarily cities), and, based on the experience at the legislature, had little expressed citizen interest. The commission therefore opted to appoint a workgroup rather than the more typical rulemaking advisory committee. The primary differences were that the workgroup included a relatively narrow range of interests (local governments and advocacy groups that engage in the various UGB amendment review processes), the department did not provide meeting notices according to public meetings law (although meeting information was provided on the department's website), and the workgroup communicated via email outside meetings.

The workgroup consisted of representatives from the cities of Eugene, McMinnville, and Springfield; Marion County; the League of Oregon Cities; the Association of Oregon Counties; and 1,000 Friends of Oregon. Due to conflicts, the Association of Oregon Counties representative was unable to attend the meetings, but was included in all email exchanges and was provided an opportunity to comment on all draft rule proposals.

The workgroup members agreed to the operating principles. The members understood that the workgroup would be making a recommendation to the department and that the department's recommendation to the commission would be informed by, but not necessarily agree with, the workgroup's advice. The workgroup further agreed to strive for a consensus recommendation where "consensus" was defined as all members being "able to live with" the proposal (as opposed to "supporting" it). The workgroup reached consensus on all but one proposed provision, which is discussed in the following section of this report. The department's recommendation does not deviate from the workgroup's advice where it reached consensus.

The department found that, because of the limited scope and narrow interest in the rule amendment, that the workgroup worked well. While it operated much like a rulemaking advisory committee, the smaller size and more open opportunity for communication facilitated the conclusion.

2. Proposed Rules

Attachment B contains the department's recommendation for new and amended rules. The new rule implements SB 418, and this new rule required amendments to existing rules to ensure clarity and conformity with existing rules. One section of the proposed rule did not receive a consensus recommendation from the workgroup and one section was added after the conclusion of the workgroup's meetings. The final proposal and the characterization of interests contained in this report were shared with the workgroup to ensure they accurately portray the workgroup members' input and recommendations.

III. DISCUSSION

The Oregon Legislature enacted SB 418 during its 2017 session. The bill does not expressly require rule amendments, but the commission has authority to adopt rules that it considers necessary to carry out ORS 197. The department's recommendation is in Attachment B. The recommendation includes a new rule and amendments to three rules in OAR chapter 660, division 25, "Periodic Review" and amendments to two rules in OAR chapter 660, division 24, "Urban Growth Boundaries." Attachment B includes the changes to division 25 first, in rule order, followed by those to division 24. The new rule, OAR 660-025-185, begins on page 6.

Discussion of most of the proposed changes is included in Attachment B following the related rule provision. Two proposals require relatively detailed explanation, so those rule sections are discussed below.

A. SUBMITTAL OF PREVIOUSLY APPROVED TASKS

The department proposes an amendment to OAR 660-025-0130(3) that it did not present at a workgroup meeting because the issue arose after the group adjourned. The department circulated a proposed draft to workgroup members for comment. The department received no comments from workgroup members on the proposed change beyond general support for the concept.

The issue relates to which parts of the record from an approved task are relevant during the final UGB review. That is, if a city received approval of residential land needs analysis task, for example, the rule could state what the city must submit along with the final UGB amendment to demonstrate that it has a need for more residential land. The department believes that only the substantive portions of the previous task – the approved plan amendment(s) along with the findings and conclusions supporting the amendment(s) – are relevant. All the other parts of the local record (e.g., hearing

notices and minutes, testimony, staff reports) would have been relevant at the time of the task review, but became immaterial when the task received approval.

The department has concerns that parties may try to raise objections that had been rejected during the earlier task-approval proceedings during the final step. The proposed rule amendment will make it clear that the record of the final UGB submittal will not contain unnecessary materials relevant only to issues that have already been decided.

The proposed amendment, on pages 2 and 3 of Attachment B, requires submittal of the ordinance(s) that adopted the approved task(s), the exhibits attached to the ordinance(s), and the approval order. The proposed rule amendment also limits the record of the final UGB amendment concerning approved tasks to these items.

B. PROCESS DURATION

The department proposed a rule provision to the workgroup that was not simple implementation of the legislation. The proposed rule would limit the validity period of a department or commission approval of a task on a sequential UGB work program. The intent of the provision is to promote a punctual local UGB analysis and amendment process. Members of the committee that heard SB 418 in 2017 expressed concern that this new process could stretch an already-lengthy UGB process, and the department has received testimony during some UGB reviews that a city relied on obsolete data and should update it. Requiring data updates and re-analysis would make the UGB analysis unworkable for local governments.

In addition, this new sequential-approval process will result in partially approved local UGB analyses, as only a portion of the overall analysis will be complete for up to several years awaiting the remainder of the work to be completed. The department believes that these approvals should not be open-ended.

In order to address this issue, the department proposed a rule provision that limits the validity of a department or commission task approval to five years. This would mean that a city would need to submit the final UGB amendment within five years of the initial task approval in order to rely on that task approval. If the city did not submit the final UGB amendment during that period, the final UGB submittal would be subject to objections to the portion of the submittal that had formerly received approval. Alternatively, the city could update what it had formerly submitted or seek a new work program from the department and resubmit the task.

Expiration of a task approval would not require that the city update the land-need analysis, although the city could decide to do so. Once a city has initiated its UGB amendment, the city may to rely on data available at the time of initiation.¹

The work group discussed the department's proposal and agreed that a provision encouraging a prompt local UGB decision should be included in the rule. The workgroup, however, did not reach consensus on the appropriate mechanism to achieve that objective. The workgroup discussed putting individual task deadlines on the work program, a deadline for submittal of the final UGB amendment and not individual tasks (which received no support), and state-local negotiation of the approval-validity period. Workgroup members also expressed an interest in the process incorporating some flexibility, such as the opportunity for an extension.

The cities are interested in a process that is predictable and achievable. The department shares those objectives but is also interested in the efficiency of the process (*i.e.*, workload) from its perspective. A city will only be doing one UGB amendment at a time while the department may be involved in several. The proposed rule draft provides that a task approval will be valid for four years with the opportunity for the department to extend the period for one year upon request and demonstration that there is good cause for the extension.

1. Task Deadlines

Two workgroup members, both representing cities, preferred this option. The stated reason for this support was that a deadline provides a target for the local government to gauge progress and to provide incentive to complete the work. The department expressed disinterest in being in the position of needing to respond to a request for enforcement of the work program in the event that a city missed a deadline for a voluntary task. A deadline without enforcement is not really a deadline.

The department does not recommend this option because it would add complexity to the process at the work program development and implementation stages, and because a majority of the workgroup did not support it. The proposed approval-validity period will provide the same incentive to complete the UGB amendment as would a task deadline.

¹ OAR 660-032-0020(5), regarding population forecasts, provides: "If a local government outside the Metro boundary initiates a periodic review or any other legislative review of its comprehensive plan that concerns an urban growth boundary or other matter authorized by OAR 660-032-0040(2) after the Portland State University Population Research Center (PRC) issues a final population forecast for the local government, but prior to the issuance of a final forecast by PRC in the subsequent forecasting cycle described in OAR 577-050-0040(7), the local government may continue its review using the forecast issued in PRC's previous forecasting cycle."

2. Negotiation of Approval-validity Period

This option would result in the city, county, and the department coordinating, and the department deciding, what the approval-validity period would be on a case-by-case basis. The period would presumably be based on when the local governments thought their UGB analysis process would be complete.

The department does not recommend this option because it adds complexity to work program development and the department does not wish to encourage local processes that take longer than four or five years.

3. Approval-validity Period Established in Rule

The proposed option should provide the same incentive to the local governments as would a task deadline. It would be self-enacting so the department would not need to take any action for it to go into effect, unlike enforcement of a missed deadline. The department proposes an opportunity for an extension in order to provide some flexibility in the process.

The department does not intend for this provision to be a disincentive for a city to use the sequential-approval process, but it may prove to have such an effect. If the department finds that cities are choosing to avoid use of this rule due to concerns over approval expiration, the rule can be reevaluated and possibly amended to remove the barrier.

IV. RECOMMENDED ACTION/CONCLUSION

The department recommends that the commission approve the new rule and amendments to existing rules as proposed.

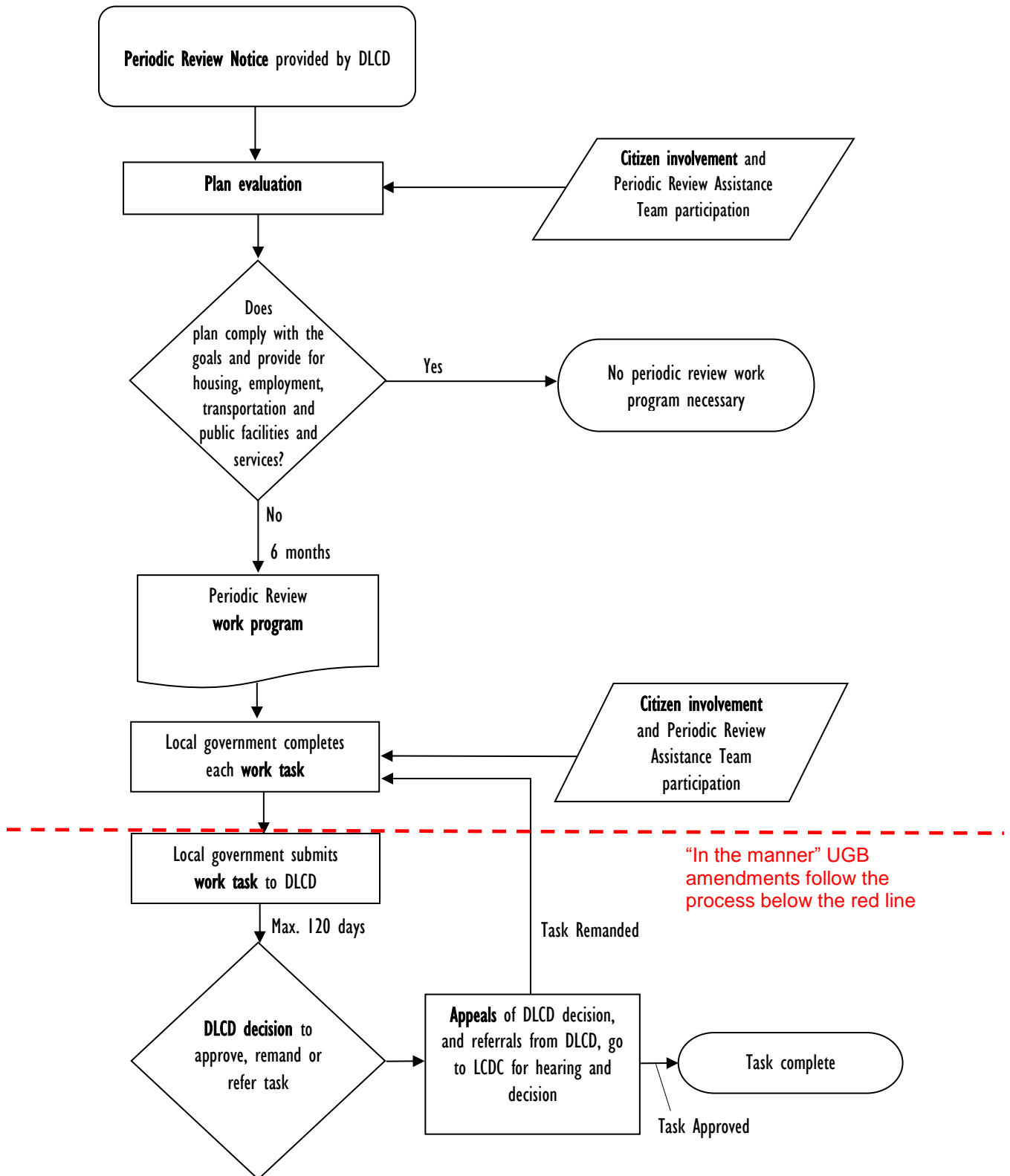
Recommended motion: I move the commission adopt OAR 660-025-0185 and amendments to existing rules in OAR chapter 660, divisions 24 and 25 as recommended by the department.

Optional approval motion: I move the commission adopt OAR 660-025-0185 and amendments to existing rules in OAR chapter 660, divisions 24 and 25 as recommended by the department with the following changes: [*changes*].

V. ATTACHMENTS

- A. PERIODIC REVIEW PROCESS FLOWCHART
- B. RECOMMENDED RULE CHANGES WITH EXPLANATIONS

PERIODIC REVIEW PROCESS



Land Conservation and Development Department
Chapter 660
Division 25
PERIODIC REVIEW

1 **660-025-0040**

2 **Exclusive Jurisdiction of LCDC**

3

4 (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction for review of
5 completed periodic review work tasks for compliance with the statewide planning goals and
6 applicable statutes and administrative rules, as provided in ORS 197.633(3). The director also
7 has authority to review the periodic review evaluation, work program and completed work tasks,
8 as provided in ORS 197.633 and 197.644.

9

10 (2) Pursuant to ORS 197.626, the commission has exclusive jurisdiction for review of the
11 following final decisions for compliance with the statewide planning goals:

12

13 (a) An amendment of an urban growth boundary by a metropolitan service district that adds more
14 than 100 acres to the area within its urban growth boundary;

15

16 (b) An amendment of an urban growth boundary by a city with a population of 2,500 or more
17 within its urban growth boundary that adds more than 50 acres to the area within the urban
18 growth boundary **including a sequential component as provided in ORS 197.626(3) and**
19 **OAR 660-025-0185**, except as provided by ORS 197A.325 and OAR 660-038-0020(10);

This rule needs to include recognition of a sequential phase approval in order to include the full range of amendments under the commission's jurisdiction.

20 (c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a
21 metropolitan service district or by a city with a population of 2,500 or more within its urban
22 growth boundary;

23

24 (d) An amendment of the boundary of an urban reserve by a metropolitan service district;

25

26 (e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban
27 reserve by a city with a population of 2,500 or more within its urban growth boundary; and

28

29 (f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to
30 195.145 by a county, in coordination with a metropolitan service district, including an
31 amendment of the boundary of a rural reserve.

32

33 (3) A final order of the commission pursuant to sections (1) or (2) of this rule may be subject to
34 judicial review in the manner provided in applicable provisions of ORS 197.650 and 197.651.

35

1 (4) The director may transfer one or more matters arising from review of a work task, urban
2 growth boundary amendment or designation or amendment of an urban reserve area to the Land
3 Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-025-0250.

4
5 **660-025-0130**

6 **Submission of Completed Work Task**

7 (1) A local government must submit completed work tasks as provided in the approved work
8 program or a submittal pursuant to OAR 660-025-0175 to the department along with the notice
9 required in OAR 660-025-0140 and any form required by the department. A local government
10 must submit to the department a list of persons who participated orally or in writing in the local
11 proceedings leading to the adoption of the work task or who requested notice of the local
12 government's final decision on a work task.

13
14 (2) After receipt of a work task or a submittal pursuant to OAR 660-025-0175, the department
15 must determine whether the submittal is complete.

16
17 (3) For a periodic review task to be complete, a submittal must be a final decision containing all
18 required elements identified for that task in the work program. The department may accept a
19 portion of a task or subtask as a complete submittal if the work program identified that portion of
20 the task or subtask as a separate item for adoption by the local government. All submittals
21 required by section (1) of this rule are subject to the following requirements:

22
23 (a) If the local record does not exceed 2,000 pages, a submittal must include the entire
24 local record, including but not limited to adopted ordinances and orders, studies,
25 inventories, findings, staff reports, correspondence, hearings minutes, written testimony
26 and evidence, and any other items specifically listed in the work program;

27
28 (b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances,
29 resolutions, and orders; any amended comprehensive or regional framework plan
30 provisions or land use regulations; findings; hearings minutes; materials from the record
31 that the local government deems necessary to explain the submittal or cites in its findings;
32 and a detailed index listing all items in the local record and indicating whether or not the
33 item is included in the submittal. All items in the local record must be made available for
34 public review during the period for submitting objections under OAR 660-025-0140. The
35 director or commission may require a local government to submit any materials from the
36 local record not included in the initial submittal;

37
38 (c) A submittal of over 500 pages must include an index of all submitted materials. Each
39 document must be separately indexed, in chronological order, with the last document on
40 the top. Pages must be consecutively numbered at the bottom of the page[-];

41
42 **(d) If the submittal is a final decision on an urban growth boundary amendment**
43 **under OAR 660-025-0175(1)(b), and the local governments submitting the**
44 **amendment received one or more task approvals pursuant to OAR 660-025-0185 for**
45 **components of the amendment, the submittal must include, and the record for the**
46 **approved components of the urban growth boundary amendment is limited to:**

1 **(A) The approved local ordinance or ordinances that received task approval**
2 **including exhibits attached thereto (e.g., residential land need analysis,**
3 **economic opportunities analysis, response to deficiency); and**
4

5 **(B) The final order of the director or commission approving the task.**

The department proposes adding a provision to the rule that spells out task-submittal requirements to identify – and limit – the information that a city and county must submit in order to demonstrate that a previously approved component of the UGB amendment complied with relevant requirements. See Section III.A of the January 10, 2019 staff report for a more complete explanation of this proposed amendment.

6 (4) A submittal includes only the materials provided to the department pursuant to section (3) of
7 this rule. Following submission of objections pursuant to OAR 660-025-0140, the local
8 government may:

9
10 (a) Provide written correspondence that is not part of the local record which identifies
11 material in the record relevant to filed objections. The correspondence may not include or
12 refer to materials not in the record submitted or listed pursuant to section (3) of this rule.
13 The local government must provide the correspondence to each objector at the same time
14 it is sent to the department.

15
16 (b) Submit materials in the record that were not part of the submittal under section (3) if
17 the materials are relevant to one or more filed objections. The local government may not
18 include or refer to materials not in the local record. The local government must provide
19 the materials to each objector at the same time it is sent to the department.

20
21 (5) If the department determines that a submittal is incomplete, it must notify the local
22 government. If the department determines that the submittal should be reviewed despite missing
23 information, the department may commence a formal review of the submittal. Missing material
24 may be identified as a deficiency in the review process and be a basis to require further work by
25 the local government.

26
27 (6) A local government may request an extension of time for submitting a work task. The
28 director may grant the request if the local government shows good cause for the extension. A
29 local government may be permitted only one extension, which shall be for no more than one
30 year.

31
32 (7) If a local government fails to submit a complete work task by the deadline set by the director,
33 or the commission, including any extension, the director must schedule a hearing before the
34 commission. The hearing must be conducted according to the procedures in OAR 660-025-
35 0170(3).

1 **660-025-0175**

2 **Review of UGB Amendments and Urban Reserve Area Designations**

3
4 (1) A local government must submit the following land use decisions to the department for
5 review for compliance with the applicable statewide planning goals, statutes and rules in the
6 manner provided for review of a work task under ORS 197.633:

7
8 (a) An amendment of an urban growth boundary by a metropolitan service district that
9 adds more than 100 acres to the area within its urban growth boundary;

10
11 (b) An amendment of an urban growth boundary by a city with a population of 2,500 or
12 more within its urban growth boundary that adds more than 50 acres to the area within
13 the urban growth boundary, except as provided by ORS 197A.325 and OAR 660-038-
14 0020(10);

15
16 (c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a
17 metropolitan service district or by a city with a population of 2,500 or more within its
18 urban growth boundary;

19
20 (d) An amendment of the boundary of an urban reserve by a metropolitan service district;

21
22 (e) An amendment of the boundary of an urban reserve to add more than 50 acres to the
23 urban reserve by a city with a population of 2,500 or more within its urban growth
24 boundary; and

25
26 (f) A designation or an amendment to the designation of a rural reserve under ORS
27 195.137 to 195.145 by a county, in coordination with a metropolitan service district,
28 including an amendment of the boundary of a rural reserve.

29
30 **(2) A local government may submit a comprehensive plan amendment or land use**
31 **regulation amendment to the department for review for compliance with the applicable**
32 **statewide planning goals, statutes and rules in the manner provided for review of a work**
33 **task under ORS 197.633 when it is a task on a work program for sequential submittal of an**
34 **urban growth boundary as provided in ORS 197.626(3) and OAR 660-025-0185.**
35

This rule currently lists those comprehensive plan amendments that must be submitted to the department “in the manner” of periodic review. Subsection (1)(b) covers review of the urban growth boundary amendment itself, but the sequential components submitted prior to the final boundary amendment need to be included in this section to recognize that they are also reviewed in the manner of periodic review.

Since the new process is permissive, the department recommends adding this new item in a new section (2) rather than the list in section (1). That is, section (1) says that a local government *must* submit those plan amendments to the department for review, while section (2) provides that the local government *may* submit sequential UGB components.

- 1 [~~(2)~~] **(3)** The standards and procedures in this rule govern the local government process and
2 submittal, and department and commission review.
3
- 4 [~~(3)~~] **(4)** The local government must provide notice of the proposed amendment according to the
5 procedures and requirements for post-acknowledgement plan amendments in ORS 197.610 and
6 OAR 660-018-0020.
7
- 8 [~~(4)~~] **(5)** The local government must submit its final decision amending its **comprehensive plan**
9 **or** urban growth boundary, or designating urban reserve areas, to the department according to all
10 the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

This section of the rule needs to be supplemented to recognize the new type of submittal allowed by the legislation.

- 11 [~~(5)~~] **(6)** Department and commission review and decision on the submittal from the local
12 government must follow the procedures and requirements for review and decision of a work task
13 submittal in OAR 660-025-0085, and 660-025-0140 to 660-025-0160 **and 660-025-0185.**

One of the deadlines for department action in OAR 660-025-00185 is different from what is required in 660-025-0150, so this new reference is needed.

1 **660-025-0185**

2 **Review of Urban Growth Boundary Amendment Components**

3
4 **(1) A city with a population over 2,500 within its urban growth boundary, in coordination**
5 **with the county or counties containing the urban growth boundary, may elect to submit a**
6 **land need analysis pursuant to OAR 660-024-0040, a land inventory pursuant to OAR 660-**
7 **024-0050, or a response to deficiency pursuant to OAR 660-024-0050, or a combination**
8 **thereof, to the department, separately as provided in this rule.**

Section (1) establishes that the sequential UGB process is discretionary for the city and county and provides a list of the components of the UGB amendment that may be submitted prior to the final UGB amendment. Application of the UGB-location priorities in ORS 197A.320, establishment of the study area in OAR 660-024-0065, and evaluation of the study area in OAR 660-024-0067 are not included because they would be part of the final submittal, not one of the “sequential phases.”

The recommended rule maintains a distinction between the “sequential phases” – tasks leading to the final UGB decision – from the final decision itself. First, the legislation only provides for inclusion of the need analyses and response to deficiencies in the work program (ORS 197.626(3)(a)). Second, DLCD must render a decision on a sequential phase (i.e., a task) within 90 days (ORS 197.626(3)(b)(A)), whereas the deadline for DLCD decision on the final UGB submittal is 120 days (ORS 197.633(5)(a)).

The workgroup discussed deleting the first instance of the word “land” on line 6 as a member felt that a local government may elect to submit a housing need analysis prior to the land need determination. Since OAR 660-024-0040 (part of the same reference on line 6) is titled “Land Need,” the department proposed to retain the word in order to be consistent and clear. The workgroup members all felt that they could live with the draft as proposed by the department.

9 **(2) A city and a county or counties may elect to submit a component of an urban growth**
10 **boundary amendment under section (1) when the city and county determine that the final**
11 **urban growth boundary amendment is likely to exceed 50 acres. The local governments**
12 **must submit written notice of election to use the sequential review process contained in this**
13 **rule to the department prior to submittal of a component for review. The notice of election**
14 **shall propose the planning period for the amendment and include a draft work program.**

Section (2) provides how a city and county make it known they elect to use the sequential UGB process.

The workgroup had a robust discussion regarding whether the sequential UGB process should include a work program. The legislation does not require a work program *per se*, but does require the department to “parse work tasks in a manner that allows the Department of Land Conservation and Development to issue final orders.” The legislation also refers to “completion of the work tasks,” and another statute (ORS 197.633(1)) and the definition of “work task” in

division 25 frame a work task as an element of work program. Ultimately, the workgroup reached consensus that a work program is acceptable.

The periodic review and the sequential UGB processes have different requirements for who develops the work program. In periodic review, the city develops the work program through a public process and the DLCD director approves it. In the sequential UGB process, the statute requires DLCD to “parse work tasks” and the rule therefore gives the department the task of preparing the work program. The proposed rule includes a requirement that the city submit a proposed work program at this stage because it would set the scope of the proposed amendment and provide the city’s preferred schedule as the starting point. The proposed rule does not include any procedural requirements that the city and county must employ to develop the work program, providing maximum flexibility for the local governments.

1 **(3) Upon joint written notice pursuant to section (2), the department will prepare a work**
2 **program consisting of tasks to complete one or more of: land need analyses, land**
3 **inventories, and responses to deficiency. For the purposes of this rule, a “work program”**
4 **does not include the date that each work task must be submitted to the department for**
5 **review.**

The proposed section (3), including the subsections below, provide requirements for the department’s preparation of a work program.

The definition of “work program” in OAR 660-025-0020(7) provides that a work program includes task submittal dates. Since the department’s recommended rules for the sequential UGB work program do not include task deadlines, the second sentence of the proposed section (3) is needed to amend the definition for sequential UGB work programs.

6 **(a) The work program is not subject to the requirements of OAR 660-025-0090**
7 **through 660-025-0110.**

The rules cited in subsection (a) govern plan evaluation and work program development in the standard periodic review process and do not apply to the sequential UGB process:

[OAR 660-025-0090](#) is “Evaluation, Work Program or Decision that No Work Is Necessary.”

[OAR 660-025-0100](#) is “Notice and Filing of Objections (Work Program Phase)”

[OAR 660-025-0110](#) is “Director and Commission Action (Work Program Phase)”

1 **(b) The work program will specify the planning period for the affected urban**
2 **growth boundary amendment. The beginning of this planning period is the date**
3 **initially scheduled for completion of the legislative review for the purposes of**
4 **compliance with ORS 197.296.**

See the January 10, 2019 staff report for discussion of setting the planning period. ORS 197.296 applies to cities larger than 25,000 population, and includes a provision relating to establishing the planning period for UGB amendments. The proposed rule includes a provision to ensure clear application of ORS 197.296 to a sequentially submitted UGB amendment.

5 **(c) In developing the work program, the department will:**

6
7 **(A) Coordinate with the city and county or counties, and the needs of the**
8 **local governments will be accommodated as much as possible; and**

The legislation requires that the department coordinate with the local governments when parsing the work tasks.

9 **(B) Consider the tasks necessary to complete the urban growth boundary**
10 **amendment based on the scope of the proposal under OAR 660-024-0040(3).**

Paragraph (B) is intended to recognize UGB amendments that address only a part of the 20-year need. OAR 660-024-0040(3) provides: "A local government may review and amend the UGB in consideration of one category of land need (for example, housing need) without a simultaneous review and amendment in consideration of other categories of land need (for example, employment need)."

11 **(4) The director will issue the work program within 120 days after receipt of the joint**
12 **written notification under section (2). The director's decision on the work program is final**
13 **and may not be appealed.**

SB 418 does not include a deadline for DLCD action on a request for a sequential UGB work program. The proposed rule includes a timeframe that is the same as that required for a periodic review task or standard UGB submittal. A periodic review work program approval cannot be appealed. The proposed rule includes the same provision for sequential UGB work programs.

14

1 **(5) The product of each task on the work program shall be a change to a comprehensive**
2 **plan or land use regulation or a new land use regulation adopted by the city and adopted**
3 **by the county or counties if required. The local governments must submit the task and**
4 **notice of the task adoption to the department in the manner provided for a periodic review**
5 **task in OAR 660-025-0130 and 660-025-0140.**

OAR 660-025-0020(8) (definitions) provides: “‘Work Task’ or ‘task’ means an activity that is included on an approved work program and that generally results in an adopted amendment to a comprehensive plan or land use regulation.” In the context of a sequential UGB, there should never be a submittal that is *not* a plan amendment, so “generally” can be omitted.

The proposed rule uses the same submittal requirements as employed for a periodic review task or a standard UGB amendment in the manner of periodic review:

[OAR 660-025-0130](#) is “Submission of Completed Work Task”

[OAR 660-025-0140](#) is “Notice and Filing of Objections (Work Task Phase)”

6 **(6) A director’s decision on a submitted task and appeals of a director’s task decision are**
7 **subject to OAR 660-025-0150 and 660-025-0160 except:**

The rules cited in section (6) govern DLCD’s review of and decision on a submittal, appeals of DLCD decisions, and LCDC hearing standards and requirements.

[OAR 660-025-0150](#) is “Director Action and Appeal of Director Action (Work Task Phase)”

[OAR 660-025-0160](#) is “Commission Review of Referrals and Appeals (Work Task Phase)”

8 **(a) Notwithstanding OAR 660-025-0150(3), the director must take an action, and the**
9 **order or referral must be sent, within 90 days after the local government submits**
10 **the task for review unless the local government waives the 90-day deadline or the**
11 **commission grants the director an extension.**

12
13 **(b) Notwithstanding OAR 660-025-0150(4), if the director does not issue an order or**
14 **refer the task within the time limit set by subsection (6)(a), and the department did**
15 **not receive any valid objections to the task, the task shall be deemed approved. In**
16 **such cases, the department will provide a letter to the local government certifying**
17 **that the task is approved.**

18
19 **(c) Notwithstanding OAR 660-025-0150(5), if the department received one or more**
20 **valid objections to the task, the director must either issue an order within the time**
21 **limits set by subsection (6)(a) of this rule or refer the task to the commission for**
22 **review.**

OAR 660-025-0150(3) provides a 120-day deadline for DLCD director action on periodic review task and standard UGB amendment submittals. SB 418, however, requires a decision on a sequential UGB task within 90 days. Subsections (a)–(c) replace the provisions in the existing rule, changing only the 120-day deadline to 90 days.

1 **(7) For the purposes of demonstrating compliance with OAR 660-024-0040 and 660-024-**
2 **0050 for an urban growth boundary amendment, a task approval is valid for four years.**
3 **This period may be extended for up to one year by the director if the local governments**
4 **show good cause for the extension. The four-year period begins on the later date of:**

5
6 **(a) Director approval order;**

7
8 **(b) Commission final approval order; or**

9
10 **(c) Completion of judicial review of the final approval order.**

The validity provision in section (7) is not in SB 418 or the existing rules for periodic review or urban growth boundary amendment review. The provision would mean that a task approval by the department (or commission in the case of a referral or appeal) would expire for the purposes of a UGB amendment. See the January 10, 2019 staff report for a more complete discussion of limiting the duration of a local sequential UGB process.

11 **(8) A task approval will not demonstrate compliance with OAR 660-024-0040 or 660-024-**
12 **0050 for an urban growth boundary amendment that adds 50 or fewer acres to the area**
13 **within the urban growth boundary.**

OAR 660-024-0040 or 660-024-0050 contain the existing rules for establishing the 20-year need for urban land and for how a city responds to a deficiency. SB 418 does not give the department or commission jurisdiction for review of UGB amendments of 50 acres or less. The proposed section (8) will not *establish* that a task approval is invalid for a smaller UGB amendment, but rather provide *notification* of the situation.

Land Conservation and Development Department
Chapter 660
Division 24
URBAN GROWTH BOUNDARIES

1 **660-024-0000**

2 **Purpose and Applicability**

3
4 (1) The rules in this division clarify procedures and requirements of Goal 14 regarding a local
5 government adoption or amendment of an urban growth boundary (UGB). The rules in this
6 division do not apply to the simplified UGB process under OAR chapter 660, division 38.

7
8 (2) The rules in this division interpret Goal 14 as amended by the Land Conservation and
9 Development Commission (LCDC or commission) on or after April 28, 2005, and are not
10 applicable to plan amendments or land use decisions governed by previous versions of Goal 14
11 still in effect.

12
13 (3) The rules in this division adopted on October 5, 2006, are effective April 5, 2007. The rules
14 in this division amended on March 20, 2008, are effective April 18, 2008. The rules in this
15 division adopted March 13, 2009, and amendments to rules in this division adopted on that date,
16 are effective April 16, 2009, except as follows:

17
18 (a) A local government may choose to not apply this division to a plan amendment
19 concerning the evaluation or amendment of a UGB, regardless of the date of that
20 amendment, if the local government initiated the evaluation or amendment of the UGB
21 prior to April 5, 2007;

22
23 (b) For purposes of this rule, "initiated" means that the local government either:

24
25 (A) Issued the public notice specified in OAR 660-018-0020 for the proposed
26 plan amendment concerning the evaluation or amendment of the UGB; ~~[or]~~

27
28 (B) Received LCDC approval of a periodic review work program that includes a
29 work task to evaluate the UGB land supply or amend the UGB; **or**

30
31 **(C) Received a UGB work program from the department pursuant to**
32 **OAR 660-025-0185(3) and (4).**

The needs to define when a UGB amendment is initiated for the sequential process. The department proposes this language in division 24, combined with language in OAR 660-025-0185(3)(b), to address this issue. See the January 10, 2019 staff report for a more complete discussion of initiation and the planning period.

33 (c) A local government choice whether to apply this division must include the entire
34 division and may not differ with respect to individual rules in the division.

1 (4) The rules in this division adopted on December 4, 2015, are effective January 1, 2016, except
2 that a local government may choose to not apply the amendments to rules in this division
3 adopted December 4, 2015 to a plan amendment concerning the amendment of a UGB,
4 regardless of the date of that amendment, if the local government initiated the amendment of the
5 UGB prior to January 1, 2016.

6
7 660-024-0040

8 **Land Need**

9
10 * * *

11
12 (2) If the UGB analysis or amendment is conducted as part of a periodic review work program,
13 the 20-year planning period must commence on the date initially scheduled for completion of the
14 appropriate work task. **If the UGB analysis or amendment is conducted as part of a**
15 **sequential UGB approval, the 20-year planning period will be established in the work**
16 **program issued pursuant to OAR 660-025-0185.** If the UGB analysis or amendment is
17 conducted as a post-acknowledgement plan amendment under ORS 197.610 to 197.625, the 20-
18 year planning period must commence either:

19
20 (a) On the date initially scheduled for final adoption of the amendment specified by the
21 local government in the initial notice of the amendment required by OAR 660-018-0020;
22 or

23
24 (b) If more recent than the date determined in subsection (a), at the beginning of the 20-
25 year period specified in the appropriate coordinated population forecast for the urban area
26 as determined under Rules in OAR 660, div 32, unless ORS 197.296 requires a different
27 date for local governments subject to that statute.

28
29 * * *

The rule should provide how the planning period for the subject UGB amendment would be established for the sequential process. The department recommends this amendment to OAR 660-024-0040(2) to address the issue. The proposed language assumes that the work program will not include task submittal dates. See *also* the proposed amendment to OAR 660-025-0185(3)(b). See the January 10, 2019 staff report for a more complete discussion of initiation and the planning period.