

January 24, 2025

Filed via USPS and email: DLCD.PR-UGB@dlcd.oregon.gov

Director Brenda Bateman
Attention: Periodic Review Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re: Objections to City of Madras and Jefferson County urban growth boundary amendment decisions (City Application File Nos. PA-24-1, ZC-24-1, AX-24-1; County Application File No. 24-PA-01, 451-24-000010-PLNG)

Dear Director Bateman:

Central Oregon LandWatch (“LandWatch”) hereby objects to recent land use decisions made by the City of Madras and Jefferson County. The decisions approve an expansion of the City of Madras urban growth boundary (“UGB”) onto high-value farmland for the purpose of accommodating a large lot industrial site under the Department’s regional large lot industrial siting program at OAR 660-0024-0045. For the many reasons explained below, LandWatch believes the City and County decisions violate several provisions of applicable law and are not supported by substantial evidence in the whole record. We respectfully request the decisions be remanded to the City and County.

I. Introduction

The subject property approved for UGB expansion is 198 acres in the County’s EFU-1 zone. The property is classified as “prime farmland” by the NRCS and is almost entirely irrigated with water rights from the North Unit Irrigation District. The property has been used in the past to grow mint, wheat, and radishes.¹ High-value farmland is the lowest priority class of lands for UGB expansions. ORS 197A.285. Meanwhile, Jefferson County and the City of

¹ Oral testimony of Steve Rasmussen at November 13, 2024 Jefferson County Board of Commissioners hearing.



Madras have jointly designated over 3,700 acres of land as urban reserves, which along with nonresource and exceptions lands are the first priority for UGB expansions under ORS 197A.285.

LandWatch participated in the City and County proceedings leading up to the respective decisions. We sent an email dated September 18, 2024 to both jurisdictions' staff. We followed up on that email with a formal comment letter dated October 22, 2024 to both jurisdictions' planning commissions. In that letter, we raised several concerns with the application to expand the Madras UGB and identified several approval criteria that we believe the application fails to meet. Those concerns form the basis of this objection letter. We attach our October 22, 2024 letter here as an exhibit to satisfy the OAR 660-025-0140(2)(d) requirement that the objector participated in the local process leading to the final decision. LandWatch sent an email to the City of Madras Community Development Director reiterating our concerns prior to a City Council hearing on November 12, 2024. We also provided in-person oral testimony in opposition to the application at the Jefferson County Board of Commissioners meeting on November 13, 2024.

On January 7, 2025, the City of Madras formalized its approval of the UGB expansion by mailing notice of its decision to hearing participants.² On January 21, 2025, Jefferson County formalized its approval of the UGB expansion application by mailing notice of the decision to hearing participants.³ This objection is timely filed within 21 days of both the City of Madras' and Jefferson County's notices of final decision. OAR 660-025-0140(1), OAR 660-025-0140(2)(a). Because both the City and County decisions concern the same property, and largely contain duplicative findings, we submit our objections to both the City and County decisions.

² MMC 18.80.200. Notice of decision. The final decision of the decision maker shall be in writing, signed, and mailed to all parties; provided, however, only the point of contact provided to the City will be delivered notice for any group, entity, or similar collection of individuals constituting a party.

³ JCZO 906.3 Notice of Planning Commission or Board Decision. Notice of a Planning Commission or Board of Commissioner's decision will be mailed to the applicant and the owners of the subject property, if different; the appellant (if applicable); and to all parties who participated either in person or in writing at the hearing.



II. Objections

LandWatch asserts nine objections to the City and County final decisions approving the UGB expansion. Below, for each objection we identify a deficiency in the comprehensive plan amendment that violates an applicable statute, goal, or rule, and we suggest revisions to resolve the objection, pursuant to OAR 660-025-0140(2)(b)-(c).

1. The Central Oregon Large Lot Industrial Land Need Analysis (2012) is overdue for review and no longer provides a basis for need.

a. Deficiency in decision that violates applicable criteria.

OAR 660-0024-0045(13) requires that an analysis supporting a regional large lot industrial need must be reviewed either when all six sites have been replenished by three additional sites or after ten years, whichever comes first. Here, the Central Oregon Large Lot Industrial Land Need Analysis is dated 2012 and was adopted by Jefferson County in 2013 via Ordinance No. O-060-13. It is over 10 years old and must be updated under OAR 660-0024-0045(13).

Basing the current decision on this 2012 Analysis violates Goal 2's requirement that a plan amendment be supported by an adequate factual base. In a November 12, 2024 email to City staff, LandWatch cited language from the 2012 Analysis that says "The City of Madras has available land within its current UGB for a large lot industrial user." 2012 Analysis at page 61. If this is not true, then clearly the 2012 Analysis is due for review and can no longer be relied upon to provide a Goal 2 adequate factual base to support the "land need" prong of Goal 14 applicable to UGB amendments. Given that the large lot industrial program relies on this Analysis to form an adequate factual basis for the determination of a land need under OAR 660-0024-0045(5), the Analysis' accuracy and adequacy is crucial. If it is not accurate and adequate, as the decisions appear to concede by not identifying land inside the current City of Madras UGB for a large lot industrial user, then the 2012 analysis fails to provide an adequate factual base.

b. Suggested revisions to resolve the deficiency



We suggest the decisions be remanded, and the City and County work with the Department, the Central Oregon Intergovernmental Council, other regional jurisdictions, and the public to review and update the Central Oregon Large Lot Industrial Land Need Analysis before proceeding with any applications to designate a regional large lot industrial site.

2. The decision improperly narrows the site need to properties of at least 100 acres in size.

a. Deficiency in decision that violates applicable criteria.

The decision violates Goal 14, Goal 2, and OAR 660-0024-0045(7)(b) by improperly identifying a need for a site greater than 100 acres when the evidence in the record supports a need for a site of only 5-100 acres. The three industries targeted by the City – high-tech/clean tech-manufacturing, advanced manufacturing & assembly, and data center – all require less than 100 acres according to the Business Oregon data in the local record. Yet the decision limits its site need analysis to only sites greater than 100 acres. Further, the 2012 Analysis does not support siting a 100+ acre industrial site in the City of Madras, and in fact directly contradicts the decision here. For the two 100–200-acre sites described needed to satisfy regional industrial land needs, the 2012 Analysis states that “Recommended jurisdictions include Bend, Prineville and La Pine. The City of Madras has available land within its current UGB for a large lot industrial user.” 2012 Analysis at page 61. Countless other sites less than 100 acres in size, but that could satisfy the identified need of 5-100 acres, were erroneously excluded from the analysis supporting the City and County decisions. As such, the decisions lack the adequate factual base required by Goal 2, and violate Goal 14’s requirement that a UGB amendment be based on a demonstrated need. The decision has not provided an adequate factual base to demonstrate a need for a site greater than 100 acres. We reiterate that if sites between 5-100 acres are considered, the range of alternative sites would be greatly expanded, and designating a 198-acre high-value farmland property for large lot industrial use could likely be avoided.

b. Suggested revisions to resolve the deficiency

Similar to above, LandWatch suggests the decisions be remanded, and the City and County work with the Department, the Central Oregon Intergovernmental Council, other



regional jurisdictions, and the public to first review and update the Central Oregon Large Lot Industrial Land Need Analysis before proceeding with any applications to designate a regional large lot industrial site. Once that is complete, we suggest the City and County initiate a local application process that evaluates sites 5-100 acres in size for siting the targeted industries.

3. The decision improperly narrows the site need to properties with a slope of 5% or less.

a. Deficiency in decision that violates applicable criteria.

The decision also violates Goal 14, Goal 2, and OAR 660-0024-0045(7)(b) by improperly identifying a need for a site of a 5% slope or less. Two of the three industries that Madras is targeting are estimated by Business Oregon to prefer a site topography (slope) of 0 to 7%. In UGB amendments, cities must consider sites with a slope of 10% or less as suitable for industrial uses. OAR 660-024-0067(5)(d). The decision erroneously first limited its analysis of potential sites to only sites with 0-5% slope. Shortly before the County's hearing before the Board of Commissioners, the staff consultant provided supplemental analysis indicating that increasing the slope thresholds to 7% would still result in the failure of two alternative sites designated urban reserves to meet the need. It is still not clear whether sites with a slope of less than 10% or 7% existing within the UGB, or in other alternative sites considered for UGB expansion, could meet the need. Further, if sites less than 100 acres were also considered, the analysis may have yielded more candidates with slopes 0-7%. For example, the consultant's supplemental analysis looked at sites designated as urban reserves and found that those large sites' slopes average greater than 7%. If small portions of those urban reserve areas, of 5-100 acres in area, were analyzed for their ability to meet the need, there very well may be urban reserve areas of less than 100 acres that possess adequate slope characteristics for the targeted industries. Absent this analysis, when the factual information from Business Oregon that the decision relies on states that the targeted industries need slopes of 0-7% and OAR 660-024-0067(5)(d) requires cities to consider sites with a slope of 10% or less, the decisions here are not supported by an adequate factual base.

b. Suggested revisions to resolve the deficiency



We suggest the decisions be remanded and the City and County initiate a local application process that evaluates sites with 0-10% slope, in addition to sites of 5-100 acres in size.

4. The decision fails to adequately consider available sites to accommodate the need within the existing UGB.

a. Deficiency in decision that violates applicable criteria.

OAR 660-0024-0045(8)(a) requires a city to “show whether a suitable and available site is located within its existing UGB.” As already stated in our prior objections, the 2012 Analysis, which the decision uses to demonstrate an adequate factual basis, states at page 61 that “The City of Madras has available land within its current UGB for a large lot industrial user.” The decisions erroneously find that sites within the existing UGB are not suitable and available.

First, the decisions’ analysis of lands inside the existing UGB assumes that a site of greater than 100 acres and less than 5% slope is needed, which as described above, is not true based on the Business Oregon information referenced in the decision. The decision fails to identify whether sites between 5-100 acres in size and less than 10% slope within the existing UGB are suitable and available. The decision has not shown that a suitable and available site is not present inside the existing UGB.

Second, the findings in support of the decision state that “four tax lots within the existing UGB with zoning for industrial uses are 100 acres or larger.” These four tax lots, however, were found to be not available for industrial use based on speculative reasoning. The decision states that these tax lots are “planned” for potential future public services and private industry expansion. These speculations are unsupported by substantial evidence and do not provide an adequate factual basis for a determination that these lands are not “available,” as that term is defined at OAR 660-009-0025(7).

b. Suggested revisions to resolve the deficiency.

We suggest the decisions be remanded and City and County initiate a local application process that evaluates more available and suitable sites inside the existing UGB, including sites smaller than 100 acres and with 0-10% slopes. Absent an adequate factual base dictating



otherwise, we also suggest the City and County find that the four sites inside the existing UGB that are larger than 100 acres are available and suitable.

5. The decision fails to adequately consider alternative site locations with higher priority for UGB amendments under ORS 197A.285 and OAR 660-024-0067.
a. Deficiency in decision that violates applicable criteria.

The City of Madras and Jefferson County have jointly designated 3,743 of acres of land as urban reserves. *See* City of Madras and Jefferson County Urban Reserve Area (URA) Report, January 2008. These lands are first priority for UGB amendments under ORS 197A.285 and OAR 660-024-0067. The decision here, however, bypasses all of these 3,743 acres for a UGB amendment, and instead authorizes siting urban industrial development on the lowest priority of land for UGB amendments: agricultural land that is predominantly high-value farmland. The decisions' "site needs" appear tailor-made to bypass the three higher priority categories of land for UGB inclusion under ORS 197A.285 and OAR 660-024-0067 in order to justify selection of the high-value farmland. As described elsewhere in this objection, those site needs are based on erroneous interpretations of law and unsupported findings. The decision fails to adequately consider whether any small portion of the 3,743 acres of urban reserves can satisfy the land need.

b. Suggested revisions to resolve the deficiency.

We suggest the decisions be remanded and the City and County make greater efforts, including possible legislative changes to land use regulations applicable to its urban reserves, to find a way to accommodate the land need within the copious designated urban reserve lands available to accommodate the City's urban growth needs.

6. The decision violates Goal 14 by failing to base its alternative site analysis on Goal 14's "boundary location" factors and instead by pre-selecting its chosen site eighteen months prior to the public hearings process.
a. Deficiency in decision that violates applicable criteria.

The local record shows that the City and County proposed site 9 as their preferred site for a large lot industrial UGB amendment over a year before the conducting a Goal 14 "boundary



locations” analysis and the public hearings process to identify an appropriate site. A letter in the local record from a former County Commissioner explains how Jefferson County bought several parcels of farmland and coordinated with the City of Madras in early 2023 to initiate a regional large lot industrial application process to add that County-owned farmland to the UGB. This was well over 18 months before the first public hearings on the application and the City’s and County’s review of alternative sites pursuant to Goal 14. A letter from the City of Madras Mayor dated May 9, 2023 similarly preselects the County-owned farmland for UGB expansion: “The County, on behalf of the City of Madras, is proposing a second Large Lot Industrial UGB expansion to the Madras urban growth boundary (UGB) to include the county-owned property (site) adjacent to the northwest of the Madras Airport [...] The City of Madras will ensure that Jefferson County designates this site as City Large Lot Industrial zoning and adheres to all responsibilities and restrictions of the Regional Large Lot Industrial Program[.]”

Goal 14 requires that changes to UGBs be determined by evaluating alternative boundary locations, consistent with the priority scheme at ORS 197A.285, based on four “boundary location” factors.⁴ In pre-selecting a site for inclusion in the Madras UGB, which is conveniently land recently acquired by the County and which the City and County worked together to “ensure” it is selected for large lot industrial designation, the decision violates Goal 14. The UGB amendment was not based on the four boundary location factors, but rather on extraneous reasons wherein a site was pre-selected for inclusion in the UGB, and then a pretensive alternatives analysis was later conducted to select to the pre-selected site.

b. Suggested revisions to resolve the deficiency

We suggest the decisions be remanded and the City and County initiate a local application process that begins with the four boundary location factors, consistent with the priority scheme at ORS 197A.285. Only after a Goal 14 analysis and public process should a site be proposed to the Central Oregon Intergovernmental Council (COIC) for designation as a regional large lot industrial site.

⁴ Goal 14 references ORS 197A.320. That statute has since been renumbered 197A.285.



7. The decision erroneously assumes that certain candidate sites are not “available” under OAR 660-025-0045(2)(g)(C) and OAR 660-009-0025(7).
a. Deficiency in decision that violates applicable criteria.

In the large lot industrial UGB alternatives analysis, sites may be excluded from consideration if they not “available” as that term is defined at OAR 660-009-0025(7). OAR 660-025-0045(2)(g)(C). The decision misinterprets and misapplies the definition of “available” at OAR 660-009-0025(7) in finding that alternative sites for the siting of a large lot industrial use are unavailable. OAR 660-009-0025(7) defines “available land” as “vacant or developed land likely to be on the market for sale or lease at prices consistent with the local real estate market.” The rule also lists four methods for determining lack of availability. OAR 660-009-0025(7)(a)-(d).

As discussed under Objection 4, above, the decision fails to correctly apply OAR 660-009-0025(7) to lands inside the UGB. The same is true for lands outside the UGB. The County decision finds that one alternative site, Subarea 4, is “not available because the owner did not want to participate in the Large Lot Industrial Program (and the City finds a lack of willingness to participate in the program or otherwise make land available for industrial development to be a reasonable means of determining availability for purposes of OAR 660-009-0025(7)).” County findings at page 14-15. The method that the city/county used to determine whether some property owners want to “participate” in the large lot industrial program is insufficient to find whether those alternative sites are “available” under OAR 660-009-0025(7). The county sent “property owner interest” forms with little explanation asking a handful of owners of alternative sites whether they are interested in having their property further considered as a candidate site for the large lot industrial program.

First, under OAR 660-009-0025(7)(c), an owner that responds to an inquiry from local economic development officials does not indicate a lack of availability of that owner’s property. Documents in the record state that every owner who received an inquiry from the County responded to that inquiry. The County should follow-up with those owners to further discuss the large lot industrial program opportunity.

Second, the “property owner interest” forms sent by the county are insufficient to show land is not available. The layperson might not understand the significant details of the large lot

industrial program and the opportunities it presents, and the forms and accompanying cover letters are not adequate means for determining whether land is likely to be on the market for sale or lease. This is especially true given the increase in property value that a landowner is likely to experience if their land is designated for large lot industrial use.

Absent a more evidence to support the decisions' findings that the alternative sites are not available to accommodate the use, the decisions are unsupported by an adequate factual base and violate Goal 2. A determination of "availability" must also be made for the many potential sites between 5-100 acres in size and >10% slope as well.

b. Suggested revisions to resolve the deficiency

We suggest the decisions be remanded and the City and County educate the owners of alternative large lot industrial sites on the program, including sites between 5-100 acres in size and >10% slope. The City and County should also educate landowners on the likely changes to property values that would occur if property is designated for large lot industrial use, prior to determining whether land is "available."

8. The decision fails to comply with JCZO 803.2(C)-(D), which imposes the statutory farm impacts test on decisions rezoning farmland in Jefferson County.

a. Deficiency in decision that violates applicable criteria.

The Jefferson County Zoning Ordinance includes criteria applicable to amendments to the county zoning map. The decision here fails to comply with two of those criteria at JCZO 803.2(C)-(D), which require that

"C. The amendment will cause no significant adverse impact to other properties in the vicinity due to factors such as water quality, drainage, air quality or noise;

D. The amendment will not force a significant change in or significantly increase the cost of farming or forest practices on surrounding resource land[.]"

It does not appear that the decisions make findings in response to these criteria. Further, the record does not include information necessary to support a finding that these criteria have been met. In particular, JCZO 803.2(D) imposes the ORS 215.296 "farm impacts test" on zoning map

amendment applications in Jefferson County. The record includes little to no information about farming practices on surrounding resource land on which to base any finding about whether the decision will force a significant change in or significant increase the cost of farming on those lands.

Even if information were available upon which to make findings, the decision likely fails both criteria. The decision states that the city and county intend to attract large lot industrial users within the high-tech/clean tech-manufacturing, advanced manufacturing and assembly, and data center industry sectors. Most industrial uses within these industries are likely to require significant amounts of water and create water quality and drainage impacts, air quality impacts, and noise impacts, failing to meet the criteria at JCZO 803.2(C). Data centers and their cooling systems specifically are notorious for noise impacts, but the decision fails to make any findings concerning those likely impacts.

As for the farm impacts test at JCZO 803.2(D), the selected site is surrounded on three sides by highly productive irrigated farmland. Industrial high-tech/clean tech-manufacturing, advanced manufacturing and assembly, and data center industry sectors are likely to pose significant impacts including traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding. Construction activities for the industrial uses are also likely to pose these and other impacts.

b. Suggested revisions to resolve the deficiency

We suggest the decisions be remanded and the City and County gather adequate information and conduct a property analysis to determine whether the criteria at JCZO 803.2(C)-(D) are met.

9. The decision fails to comply with JCCP Part 5.

a. Deficiency in decision that violates applicable criteria.

The Jefferson County Comprehensive Plan (JCCP) imposes additional criteria on post-acknowledgment plan amendment applications, allowing amendments to the comprehensive plan only when necessary and when some change in conditions requires the amendment:

“In order to be approved, the proposed amendment must

[...]

3. Be necessary due to a change in physical, economic or social conditions, population growth or development patterns which require an adjustment in the land use designations in the area in which the amendment is proposed.” (JCCP at 94)

LUBA in 2021 interpreted this JCCP language and held that, to satisfy JCCP Part 5, it must be shown that the plan amendment is “necessary, indispensable, or essential[.]” *Central Oregon LandWatch v. Jefferson County* (“*City of Metolius*”), slip op at 10 (Order, LUBA No. 2021-054, Oct 6, 2021). That case also concerned a UGB amendment proposed to accommodate a single use, so is directly applicable to the current decision.

Here, the County’s decision findings find that the JCCP Part 5 criterion is met:

“The County finds there is substantial evidence in the record, including but not limited to, the ECONorthwest report, the LLI Analysis, testimony and evidence by EDCO provided at public hearings, and the need for industrial development which lead to passage of rules to enable the Large Lot Industrial Program (OAR 660-24-0045), to support a finding the amendment is necessary due to changes in economic conditions and development patterns. The County finds the economic needs of the traded sector markets targeted by this proposal for large, flat and developable large lots is a significant change requiring the amendment. The proposal responds to evidence of regional need for large industrial development sites as identified in the LLI Land Needs Analysis, which was adopted subsequent to the subject property obtaining its present zoning and designation representing a change in the neighborhood and/or community. Furthermore, the subject property was recommended by COIC to be the location of a large lot industrial site, which also represents a significant change.” (County decision at 27)

These findings do not justify the plan amendment as “necessary, indispensable, or essential.” *City of Metolius*, slip op at 10. We note that because LUBA has provided an interpretation of this comprehensive plan policy, the deference normally provided to a local government’s interpretation of its own land use regulations under ORS 197.829 cannot conflict with the interpretation provided in LUBA’s caselaw in the *City of Metolius* case.

The County’s findings describe a local desire to attract industrial development. That desire does not make the potential industrial development “indispensable” to Jefferson County, and instead the decision reduces the state’s supply of high-value farmland, contrary to the policy of the state at ORS 215.243. This is especially true when the record shows that at least one of the industrial uses the City and County hope to attract cannot even be serviced by electric power providers. The Central Electric Cooperative (CEC), whose service territory includes the subject

property, submitted a letter to the County stating that “Neither CEC or the Bonneville Power Administration, the supplier of nearly all of CEC’s wholesale electricity on whose transmission CEC relies to import the electricity and distribute it to CEC’s substations, currently have the load capacity to serve a large data center, typically ranging from 100MW to 200 MWs.” Amending the plan designation for the subject property to accommodate uncertain future industrial development can in no way be said to be “necessary, indispensable, or essential.” The decision points to no valid “change[s] in physical, economic or social conditions, population growth or development patterns which require” a plan amendment, especially when other sites that are not high-value farmland, either in the City or elsewhere in the region, can accommodate the need for large lot industrial land.

b. Suggested revisions to resolve the deficiency

We suggest the decisions be remanded and the City and county should work with COIC to coordinate with all jurisdictions in the region to identify alternative potential sites to accommodate additional large lot industrial uses.

III. Conclusion

LandWatch respectfully requests the Director issue an order remanding the City and County decisions to address the nine deficiencies in the decisions described herein.

Regards,



Rory Isbell
Staff Attorney & Rural Lands Program Director
Central Oregon LandWatch
2843 NW Lolo Drive, Suite 200
Bend, Oregon, 97703
(541) 647-2930 x804
rory@colw.org





2843 NW Lolo Drive., Ste. 200 | Bend, OR 97703

Phone (541) 647-2930

www.colw.org

Attachment:

October 22, 2024 comment letter from Central Oregon LandWatch to the City of Madras and Jefferson County Planning Commissions



October 23, 2024

filed via email: snead@ci.madras.or.us, phil.stenbeck@jeffersoncountyor.gov

Jefferson County Planning Commission
c/o Phil Stenbeck, Interim Director
Jefferson County Community Development Department
85 SE "D" Street
Madras, Oregon 97741

City of Madras Planning Commission
c/o Nick Snead, Community Development Director
City of Madras Community Development Department
125 SW "E" Street
Madras, OR 97741

Re: City Application File Nos. PA-24-1, ZC-24-1, AX-24-1; County Application File No. 24-PA-01

Thank you for hearing additional public comment on City File Nos. PA-24-1, ZC-24-1, AX-24-1, TA-24-1 and County File No. 24-PA-01. Central Oregon LandWatch submits this comment in addition to the comments we submitted via email on September 18, 2024. We continue to be concerned with this application to expand the City of Madras urban growth boundary to accommodate a large lot industrial site.

I. Application is quasi-judicial

This application requests a plan amendment, zone change, and UGB amendment for one single property to benefit one single property owner. There are preestablished approval criteria. The application is bound to result in a decision either approving or denying the application. All three factors of the quasi-judicial versus legislative application test indicate that the application should be processed quasi-judicially, with the procedural rights afforded by ORS 197.797.

Strawberry Hill 4 -Wheeler v. Board of Commissioners of Benton County, 287 Or 591, 601 P2d 769 (1977).



II. Site need

a. Central Oregon Large Lot Industrial Land Need Analysis (2012) is overdue for review and no longer provides a basis for need

The Central Oregon Large Lot Industrial Land Need Analysis (2012) was adopted by Jefferson County in 2013 via Ordinance No. 0-060-13. OAR 660-0024-0045(5) allows local governments in Central Oregon to deem the Analysis as providing an adequate factual base for the determination of a regional large lot industrial land need. However, both Ordinance No. 0-060-13 and OAR 660-0024-0045(13) require the Analysis to be reviewed either when all six sites have been replenished by three additional sites or after ten years, whichever comes first. It has been ten years since Ordinance No. 0-060-13 was adopted, the Analysis has not been reviewed, and the Analysis can no longer be deemed to provide an adequate factual base for the determination of a regional large lot industrial land need.

b. Site size

It is unclear why the City of Madras needs an industrial site of at least 100 acres in size. The three industries targeted by the City – high-tech/clean tech-manufacturing, advanced manufacturing & assembly, and data center – all require less than 100 acres according to the Business Oregon data provided in the draft findings. EcoNW Madras Large Lot UGB Expansion Findings at page 9. Both advanced manufacturing & assembling and data center only require 5 – 25 acres. *Id.*

The Central Oregon Large Lot Industrial Land Need Analysis (2012) reported a need for only three sites in the region of greater than 100 acres. Central Oregon Large Lot Industrial Land Need Analysis (2012) at page 60. Two of those sites have already been developed, one in Redmond (200+ acres) and one in Madras (100-200 acres). For the two 100-200 acres sites, the Central Oregon Large Lot Industrial Land Need Analysis (2012) goes on to explain that “Recommended jurisdictions include Bend, Prineville and La Pine. The City of Madras has available land within its current UGB for a large lot industrial user.” Central Oregon Large Lot Industrial Land Need Analysis (2012) at page 61. The application here to site another 100+ acres site in Madras is unsupported by a factual base when the Central Oregon Large Lot Industrial

Land Need Analysis (2012) states that Madras is not recommended for these sites and that Madras already has available land for a large lot industrial user.

c. Site topography

Two of the three industries that Madras is targeting are estimated by Business Oregon to prefer a site topography (slope) of 0 to 7%. EcoNW Madras Large Lot UGB Expansion Findings at page 9. However, the findings go on to say a “site must have a slope of 5% or less.” *Id.* at page 10. Several of the site alternatives, including two sites in the city/county acknowledged urban reserve area, were removed from consideration, at least in part, because of purported slope constraints of greater than 5%. Sites with slopes of 0 to 7% should not be excluded from consideration.

III. OAR 660-024-0045(8)(a); available sites within the existing UGB

In a May 22, 2023 memo, EcoNW reports that the City of Madras has four existing tax lots greater than 100 acres in size and zoned for industrial use:

“All four of the tax lots larger than 100 acres are zoned as Airport Development for a total area of 546 acres. One of these tax lots has been identified by City staff as an area with a planned expansion of a nearby wastewater treatment plant. Another lot is designated for current or future airport use and the third lot is developed land not designated for airport use or wastewater treatment. There are no vacant tax lots with an area over 100 acres.”

This report finds that sites must be vacant to be eligible for large lot industrial development. According to OAR 660-024-0045(2)(g)(C) and OAR 660-009-0025(7), developed land is also eligible. The application fails to comply with OAR 660-024-0045(8)(a) by excluding developed sites, and sites apparently “designated for current or future airport use” from consideration to meet the large lot industrial land need that are within the existing City of Madras UGB. Under OAR 660-024-0045(2)(g)(C) and OAR 660-009-0025(7), those sites should not be excluded from consideration. As discussed above, sites smaller than 100 acres are suitable to accommodate the type of industry the City seeks to attract according to Business Oregon. EcoNW Madras Large Lot UGB Expansion Findings at page 9.



IV. Site location

We continue to have concerns about the proposed site and whether it complies with Goal 14 and related statutes and administrative rules governing the prioritization of land for UGB amendments. As we stated in our previous comments, Madras and Jefferson County have jointly designated a large amount of urban reserves lands, which are first priority for any UGB expansion. ORS 197A.285, OAR 660-024-0067. This application bypasses those urban reserves and instead proposes to expand the UGB onto high-value farmland, which is the lowest priority for UGB amendments. Oregon statute is clear that agricultural land with prime soils is the last priority for a UGB expansion, only to be considered if there is an insufficient amount of other land to satisfy a land need: “A local government may not select land that is predominantly made up of prime or unique farm soils, as defined by the United States Department of Agriculture Natural Resources Conservation Service, unless there is an insufficient amount of other land to satisfy its land need.” ORS 197A.285(2)(c)(E).

It remains unclear from the application materials and draft findings why the candidate urban reserve sites (Sites 4, 5, and 6) are insufficient to meet the need. The priority scheme for UGB amendments at ORS 197A.285 and OAR 660-024-0067 is not optional, but instead “a city must assume that vacant or partially vacant land in a particular priority category is ‘suitable’ to satisfy a need deficiency identified in OAR 660-024-0050(4) unless it demonstrates that the land cannot satisfy the specified need based on one or more of the conditions described in subsections (a) through (g) of this section[.]” OAR 660-024-0067(5). In subsection OAR 660-024-0067(5)(d), the rules specify that a city may not find land is not suitable for an industrial land need if slope is less than 10%: “With respect to needed industrial uses only, the land is over 10 percent slope, or is an existing lot or parcel that is smaller than 5 acres in size, or both. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals.” The draft findings err in assuming that any site with >5% slope may be eliminated from consideration. Under ORS 197A.285, OAR 660-024-0067(1), and OAR 660-024-0067(5), the city must consider these three sites as first priority unless the land is over 10 percent slope.

Finally, we are concerned that Site 9 seems to have been preordained as the preferred site. Documents in the staff report dating back well over one year, including the required letter



of interest to COIC, assume that Site 9 is the preferred site. As we outline in these comments, selection of that site appears inconsistent with the many statutes, administrative rules, and local ordinances that govern UGB amendments. We have serious Goal 1 and Goal 2 concerns about this process which seems to have pre-selected a site. It is now, during the public hearing process, that decisionmakers should consider all candidate sites and all public input and determine which one may be best suited under the applicable law.

V. Availability; OAR 660-025-0045(g)(C)

This application also wrongfully assumes certain candidate sites are unavailable. Administrative rules establish the means by which a city/county may assume a site is unavailable for inclusion in the UGB. OAR 660-025-0045(g)(C) identifies that a "site" is land in the region that is determined to be available, and "availability" is defined at OAR 660-009-0025(7). It does not appear that any of the four methods for determining a lack of availability listed at OAR 660-009-0025(7)(a)-(d) have been satisfied, including for the urban reserves sites 4, 5, and 6. Further, we note that the letter sent to some landowners is not the same as a "bona fide offer for purchase," OAR 660-009-0025(7)(a), and responses from some landowners remove OAR 660-009-0025(7)(c) as a method for determining lack of availability.

VI. JCZO 803.2; Farm impacts test

The Jefferson County Zoning Ordinance imposes what is known as the "farm impacts test" at ORS 215.296 on amendments to its zoning map, which includes the proposed UGB amendment. The code requires that "The amendment will not force a significant change in or significantly increase the cost of farming or forest practices on surrounding resource land[.]" JCZO 803.2(D). The application is deficient in showing whether this criterion can be met.

Relatedly, JCZO 803.2(C) requires that "[t]he amendment will cause no significant adverse impact to other properties in the vicinity due to factors such as water quality, drainage, air quality or noise[.]" The application has also not shown that this criteria can be met.

VII. Conclusion



We reiterate our recommendation that the City and County take a harder look at the three candidate urban reserve sites for this large lot industrial land need. Otherwise, both the rationale for designating urban reserves to accommodate future UGB expansions, and the Oregon law guiding prioritization of land for UGB expansions, are frustrated by this application.

Thank you for your consideration of these comments. Please alert us of any decisions or future opportunities to comment on this matter. Our address is 2843 NW Lolo Drive Ste 200, Bend, Oregon 97703.

Regards,



Rory Isbell
Staff Attorney & Rural Lands Program Director
Central Oregon LandWatch
2843 NW Lolo Drive, Ste 200
Bend, Oregon 97703

