

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
DIRECTOR'S DECISION ON CITY OF MADRAS
URBAN GROWTH BOUNDARY AMENDMENT**

DLCD Order 001955

May 6, 2025

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I. DECISION

For the reasons explained in this report, the Department of Land Conservation and Development (DLCD or department) concludes that the submittal from the City of Madras (city) and Jefferson County, containing an urban growth boundary (UGB) amendment, annexation, and zone change complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules. The submittal is approved.

II. REVIEW PROCEDURES AND CRITERIA

A. Procedural Considerations

Oregon Revised Statutes (ORS) 197.626 to 197.650 and Oregon Administrative Rule (OAR) 660-025-0175 authorize the director's review of work submitted "in the manner provided for periodic review." The director of DLCD has 120 days from the date of submittal to make a decision. ORS 197.633(5)(a); OAR 660-025-0150(3). The city's date of submittal was January 28, 2025. The director may approve the submittal, remand it, or refer the matter to the Land Conservation and Development Commission (LCDC). ORS 197.633(5)(b); OAR 660-025-0150(1). The director elected to make a decision in this case.

OAR 660-025-0150(5) provides: "If the department received one or more valid objections to the work task or plan amendment, the director must either issue an order * * * or refer the work task or plan amendment to the commission for review." The department received two objections. This report addresses the objections.

B. Validity of Objections

The department received two objection letters to the submittal. One objection letter, received on January 13, 2025, is from Michelle Varley and the other, received on January 24, 2025, is from Central Oregon LandWatch (LandWatch). The letter from LandWatch identifies nine objections to the submittal. See Attachment A. The objections raise a range of issues with the submitted UGB amendment. The department received both objection letters within the 21-day period for filing objections following the date the city issued the notice of decision, January 28, 2025.

Regarding objections, OAR 660-025-0140 provides in part:

- "(2) Persons who participated orally or in writing in the local process leading to the final decision may object to the local government's submittal. To be valid, objections must:
 - "(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the local government sent the notice;

- “(b) Clearly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;
 - “(c) Suggest specific revisions that would resolve the objection; and
 - “(d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.
- “(3) Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.”

The department has determined that the LandWatch objection satisfies the requirements of a valid objection in OAR 660-025-0140(2) and may be considered by the director.

However, the department has determined that the objection submitted by Michelle Varley, does not satisfy either OAR 660-025-0140(2)(b) or (c). While the Varley objection presents generalized claims about the process leading up to the UGB amendment and the local decision itself, it does not “[c]learly identify an alleged deficiency in the work task sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated” as required by OAR 660-025-0140(2)(b). In reviewing objections, the director need only consider those that “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 268, 259 P3d 1021 (2011). Additionally, the Varley objection does not suggest specific revisions that would resolve the objection as required by OAR 660-025-0140(2)(c). Rather, it implies that the local decision should be reversed based on generalized rationale. Therefore, it is not considered a valid objection and will not be considered by the director.

Although the Varley objection focuses on an appearance of impropriety by presenting the context for the submittals under review, the director notes that the specific concerns regarding traffic and impacts to farm use are similar to those presented in LandWatch’s eighth objection. The director addresses the substance of that objection below.

III. BACKGROUND AND DESCRIPTION OF SUBMITTAL

Madras has a population of 7,982 and is in Jefferson County. On December 11, 2024, the Madras City Council adopted Ordinance 990 including a UGB amendment, annexation, and zone change. The proposed change adds approximately 198 acres of land to the UGB, annexes the land to the city, and rezones the land.

On December 30, 2024, the Jefferson County Board of County Commissioners adopted Ordinance 0-176-24 approving an amendment to the Madras UGB amendment, annexation, and zone change adopted in the city's ordinance.

IV. DEPARTMENT REVIEW

A. Jurisdiction

The director has exclusive jurisdiction to review UGB amendments which add more than 50 acres, pursuant to ORS 197.626(1)(b), OAR 660-024-0080, and OAR 660-025-0175(1)(b). The city's submittal would add a total of approximately 198 acres to its UGB.

B. Scope of Review

Where the director reviews a UGB amendment submittal, it is done in the manner provided for periodic review. ORS 197.626(1); OAR 660-025-0175(1). That review is to determine whether the decision approving the submittal complies with the applicable statewide planning goals, their implementing rules, and applicable state statutes. OAR 660-025-0150(9) and 660-025-0160(2). The director confines the review of evidence to the records provided by the city. ORS 197.633(3).

C. Standard of Review

The standard of review for this decision is provided in ORS 197.633(3). That statute provides in part:

“(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.

“(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

“(c) For issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, * * * and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, ‘complies’ has the meaning given the term ‘compliance’ in the phrase ‘compliance with the goals’ in ORS 197.627.”

D. Applicable Law

The principal legal provisions that govern this review and decision are related to Statewide Planning Goals 2 (Land Use Planning), 9 (Economic Development), and 14

(Urbanization), including relevant statutes and implementing rules. The city submitted the initial notice of proposed amendment on August 13, 2024 (DLCD file No. 002-24).

1. Statewide Planning Goal 2

Statewide Planning Goal 2 is:

“To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.”

Compliance with Goal 2 is guided by interpretation of Goal 2 exception process (OAR chapter 660, division 4), rural lands irrevocably committed to urban levels of development (OAR 660-014-0030), establishment of new urban development on undeveloped rural lands (OAR 660-014 -0040), post-acknowledgement plan amendments (OAR chapter 660, division 18), periodic review (OAR chapter 660, division 25), and population forecasts (OAR chapter 660, division 32).

2. Statewide Planning Goal 9

Statewide Planning Goal 9 is:

“To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.”

Compliance with Goal 9 is guided by administrative rules regarding economic development (OAR chapter 660, division 9).

3. Statewide Planning Goal 14

Statewide Planning Goal 14 is:

“To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”

Compliance with Goal 14 is guided by administrative rules regarding public facilities planning (OAR chapter 660, division 11), transportation planning (OAR chapter 660, division 12), newly incorporated cities, annexations, urban development on rural lands (OAR chapter 660, division 14), urban reserves (OAR chapter 660, division 21), unincorporated communities (OAR chapter 660, division 22), urban growth boundaries (OAR chapter 660, division 24), periodic review (OAR chapter 660, division 25), population forecasts (OAR chapter 660, division 32), and simplified urban growth boundary method (OAR chapter 660, division 38).

Of note for the purpose of this decision are the provisions of OAR 660-024-0065 and OAR 660-024-0067. These rule provisions implement both Goal 14 and statutory provisions of ORS 197A.285 and generally govern the location of lands to be added to an urban growth boundary once a city has established a need for land under Goal 14. OAR 660-024-0065 governs the establishment of a study area for analysis – excluding lands that are too far away from the city’s UGB or have significant and unmitigable constraints to urbanization. OAR 660-024-0067 sets forth what is commonly known as the “priorities” for urbanization (urban reserves first, exception and nonresource lands second, lower quality farm and forest lands third, and higher quality farm and forest lands last), allows for limited exceptions to these priorities, and provides the methodology for applying the four “locational” factors contained within Goal 14.

4. Urban Growth Boundary (UGB) Amendments

OAR 660-024-0045 establishes specific provisions applicable to local governments in Crook, Deschutes, and Jefferson Counties when determining the need for large lot industrial land in the region.

E. Description of Submittal

Although the rules implementing Goal 9, Economic Development, encourage a regional approach to estimating economic growth, there is no requirement or strong incentive for most local governments to collaborate in their employment lands planning efforts. Unlike other economic regions of the state, central Oregon benefits from a unique land use program that directly encourages intergovernmental cooperation by allowing urban growth boundary expansions for regional economic development opportunities. OAR 660-024-0045, Regional Large Lot Industrial Land, provides a process for regional employment lands planning for large industrial development in the traded sector. This rule is limited to Deschutes, Jefferson, and Crook Counties and the local governments within those counties. Participating local governments may expand their urban growth boundaries to supply large industrial sites as provided by rules.

The implementing rules require that industrial land need in the region be determined through a regional economic opportunities analysis. As required by the rule, the Central Oregon Intergovernmental Council (COIC) manages this program in an administrative and coordinating capacity. Participating local governments, including eligible counties, must adopt the regional economic opportunities analysis, sign an intergovernmental agreement, and apply to COIC to pursue urban growth boundary expansions for large lot industrial sites. The rules limit the number and define the size of sites and also require that participating local governments review the analysis that establishes need after a ten-year period. Urban growth boundary expansions pursued through the program are conducted in accordance with the standard UGB rules, with one minor difference related to the availability of sites considered for inclusion in the UGB.

DLCD funded Deschutes County to conduct a regional economic opportunities analysis to determine the regional large lot land need in central Oregon. In 2012, a consultant produced the Central Oregon Large Lot Industrial Land Need Analysis (2012 Analysis) under the oversight of representatives from central Oregon cities, counties, Economic Development for Central Oregon (EDCO), COIC, 1000 Friends of Oregon, Central Oregon Realtors Association, DLCD, Department of State Lands, and Business Oregon.

The 2012 Analysis identified need for large industrial sites to allow central Oregon communities to compete for a broader range of economic development opportunities by maintaining a supply of large, available, and readily developable sites. In accordance with the limits provided by the rule, the 2012 Analysis identified the need for six sites larger than 50 acres, with the possibility of replenishing up to three sites if the original six are developed.

Since 2012, central Oregon cities have used two of these sites: (1) The City of Redmond brought a 200+ acre site into the Redmond UGB for large lot industrial use, and (2) The City of Madras brought a 100-200 acre site into the Madras UGB for the Daimler Heavy Truck Test Track adjacent to the Madras Municipal Airport. The Daimler facility is being used as expected.

In 2022, COIC requested that the department clarify the requirement in OAR 660-024-0045(13) that participating local governments “review” the analysis after ten years. Concurrently, the city approached the department to indicate its intent to expand its UGB to provide a large lot industrial site under the program. The department advised both COIC and Madras to proceed with efforts to use the program as well as to proceed with updating the Central Oregon Large Lot Industrial Land Need Analysis. Madras adopted its UGB expansion on December 10, 2024. The COIC board approved an updated analysis in April 2025.

Pursuant to ORS 197.633(2)(e) and OAR 660-025-0175, the city submitted the notice of a post-acknowledgement plan amendment to the department and mailed notice to all parties who participated in the city and county decisions on January 7, 2025. The rules for task submittal and review are provided at OAR 660-025-0140 and OAR 660-025-0150. The rules require the director to either refer the submittal to the commission or issue a decision within 120 days of receipt of the submittal. The date of this decision is within 120 days of the receipt of the city’s submittal.

On January 24, 2025, LandWatch submitted nine objections to the decision. The objections are also considered in this director’s decision.

On review, the director considers whether the submittal is consistent with the applicable statutes, statewide planning goals, administrative rules, the city’s comprehensive plan, and is supported by substantial evidence. OAR 660-025-0160(2)(a) and (c). The city processed the UGB submittal as a legislative land use decision.

Local ordinances, state statutes, and LCDC rules specify procedural and substantive requirements for applications, hearings, decisions, and preserving issues for appeal, and case law from LUBA and the appellate courts further define local and state law requirements. For legislative decisions, the record must be adequate to show that the legislative action is within the legal authority of the city. The record must show that the jurisdiction followed applicable procedures. Legislative decisions must be consistent with substantive requirements in state statutes and the statewide planning goals.

LUBA has explained that adequate findings identify the applicable law, the evidence relied upon and explain how the evidence led to the conclusion on compliance with approval standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). Findings must address all applicable statutes, administrative rules, and land use regulations and all of the elements in those individual authorities. If not, then the findings are inadequate to demonstrate compliance with all applicable law. *Kliwer v. City of Bend*, 73 Or LUBA 321, 336-37 (2016).

Local governments may incorporate documents from the record into their decisions. But such incorporations must clearly specify which documents are incorporated. *Freedman v. City of Grants Pass*, 57 Or LUBA 385 (2008).

Finally, the director also considers the objections. In reviewing objections, the director need only consider those that “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 268 (2011). Because the objections submitted are comprehensive and wide-ranging, the director’s overall analysis of Madras’s submittal is contained in the analysis to objections in Section V. below.

V. ANALYSIS OF OBJECTIONS

The objector presented nine objections to the city’s UGB amendment decision. For valid objections, OAR 660-025-0140(6) requires that the department either sustain or reject each one based on the statewide planning goals, or applicable statutes or administrative rules. Having found the LandWatch objections to be valid in Section II. B of this order, the department considers each objection below.

A. First Objection

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

LandWatch objects to the use of the 2012 Analysis to justify expansion of the Madras UGB. LandWatch asserts that Madras’s UGB expansion is a violation of OAR 660-024-0045(13), which provides “participating local governments shall review the analysis after

the regional supply of six sites has either been replenished by three additional sites or after ten years, whichever comes first.” Objection at 3.

LandWatch additionally objects to the use of the 2012 Analysis as a violation of Goal 2. LandWatch states “[b]asing the current decision on this 2012 Analysis violates Goal 2’s requirement that a plan amendment be supported by an adequate factual base.”

Objection at 3. As an example, LandWatch notes that the 2012 Analysis includes a statement that the city has suitable available land for a large lot industrial user.

LandWatch asserts that if this is not true, then the 2012 Analysis “can no longer be relied upon to provide a Goal 2 adequate factual base.” Objection at 3.

LandWatch’s proposed remedy is for the department to remand the decisions to the city and county so that the 2012 Analysis can be reviewed and updated.

Department Response:

Deschutes County conducted the 2012 Analysis on behalf of the three-county region in compliance with OAR 660-024-0045, which provides the process for participating local governments in eligible counties to determine need and provide sites for regional economic development opportunities. This rule allows participating local governments to bring into their urban growth boundaries up to six sites ranging in size from 50 to 200+ acres.¹ OAR 660-024-0045(13) requires that “the participating local governments shall review the analysis after the regional supply of six sites has either been replenished by three additional sites or after ten years, whichever comes first.”

In 2022, COIC reached out to department staff to request clarity on the meaning of the term “review” in the context of this rule. The department advised COIC that a thorough review should consist of evaluation of current economic trends and site characteristics required by targeted traded sector industries, resulting in an update to the 2012 Analysis. Record at 1009. At that time, local governments in the region had “used” two of the six original sites allowed by the rule. COIC followed the direction provided by the department. COIC initiated this update in 2023 and included the support of a steering committee consisting of department staff, representatives of eligible local governments and technical assistance funding from Business Oregon.

In April 2025, the COIC board approved by resolution an updated Central Oregon Large Lot Industrial Land Need Analysis. Participating local governments will need to adopt the analysis and enter into new intergovernmental agreement before the analysis can be used to justify future UGB expansions for large lot industrial sites.

¹ If six sites are depleted, the rule allows for a “replenishment” of three additional sites.

Madras was working on the subject UGB amendment concurrently with that update and submitted the amendment to the department prior to the COIC board approval of the revised analysis. Although OAR 660-024-0045(13) requires that the analysis be “reviewed” after ten years, it does not require a “freeze” of UGB economic development activity until the review is completed or prevent participating local governments from supplying the sites justified by the original analysis after that term. As LandWatch recognizes, Jefferson County adopted the 2012 Analysis in 2013 under ordinance No. 0-600-13. The city and county could not rely on the 2025 COIC update until it has similarly been adopted to replace the 2012 Analysis. See *D.S. Parklane Development, Inc. V. Metro*, 165Or App 1, 994 P2d 1205 (2000) (Metro erred in relying on a draft analysis of UGB capacity instead of a study incorporated into Metro’s acknowledged plan); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 124 P3d 1249 (2005) (city errs in relying on a final, unadopted study of housing inventory rather than the inventory in the city’s acknowledged comprehensive plan).

OAR 660-024-0045(2)(f) defines regional large lot industrial land need as “the need for a specific type of 20-year employment land need, as described in OAR 660-024-0040(1) and (5), that is determined based upon the analysis.” The rule is explicit that the analysis should address a 20-year planning horizon; there is no language indicating that the original 20-year need is invalidated after ten years.

The director finds that the city and county’s reliance on the 2012 Analysis to justify a UGB expansion is supported by relevant rules and the participating local governments’ program implementation. Local governments have not provided industrial large lot sites in excess of the limit provided by rules. The rule includes no provisions that prevent participating local governments from supplying needed sites beyond the 10-year review timeline. Additionally, eligible local governments, including Jefferson County and Madras, have contributed via participation in a steering committee to the recently approved update to the 2012 Analysis, as required by the rule.

LandWatch also objects to the use of the 2012 Analysis to justify Madras’s UGB expansion on the grounds that it is out of date, citing the availability of a large industrial parcel in the city’s UGB at the time the analysis was adopted. The director disagrees that this is a violation of Goal 2, adequate factual base. All long-range plans are based on buildable lands inventories. A buildable lands inventory represents a snapshot of a local government’s development capacity at the time the analysis is conducted for the purposes of estimating its ability to accommodate forecasted growth. There is no requirement that a local government update its buildable lands inventory each time a site is developed; the intention of the inventory is to describe the local government’s ability to meet forecasted need at a point in time. Long range plans assume that existing development capacity will be depleted over time, as is the case in Madras. Additionally, the site proposal application submitted to COIC by the city and county

contains a Suitable Lands Inventory that provides updated information about the availability of industrial sites inside Madras's UGB. The department addresses this analysis in detail in its response to Objection 4.

The director concludes that LandWatch has not established that the submittal does not comply with relevant rules and goals, including OAR 660-024-0045(13) and Goal 2, adequate factual base. The director rejects this objection.

B. Second Objection

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

LandWatch objects to Madras's UGB expansion for a large industrial site based on the elimination of smaller potential sites from consideration in the analysis. The objector asserts that the county's approach, which limited consideration of possible sites for UGB expansion to sizes over 100 acres, is a violation of Goal 14, Goal 2, and OAR 660-024-0045(7)(b). LandWatch notes that the 2012 Analysis recommends Bend, Prineville, and La Pine for the 100-200 acre sites allowed by the program because "[t]he City of Madras has available land within its current UGB for a large lot industrial user."

Objection at 4. The objector alleges the decision is a violation of the following goals:

- Goal 2 – requiring adequate factual base
 - The analysis improperly narrows the sites in consideration to those larger than 100 acres; and
 - The 2012 Analysis identifies an available site for a large industrial user inside the Madras UGB.
 - Goal 14 – requiring UGB expansions to be based on demonstrated need.
- Objection at 4.

LandWatch additionally claims that the decision violates OAR 660-024-0045(7)(b). Objection at 4. This rule requires an intergovernmental agreement between participating local governments to describe the process by which the COIC shall coordinate with participating local governments in the allocation of the qualifying sites among the participating cities.

LandWatch's proposed remedy is for the department to remand the UGB decisions and update the 2012 Analysis, after which LandWatch suggests the city and county "initiate a local application process that evaluates sites 5-100 acres in size for siting the targeted industries." Objection at 5.

Department Response:

Madras supports the specific site need for regional economic development opportunities in two analyses that provide justification for the UGB expansion decisions. The 2012 Analysis, conducted in accordance with OAR 660-024-0045(4), establishes demand for two sites sized 100-200 acres that can support significant regional industrial development opportunities. Madras expanded its UGB in 2016 to include the first of the two sites in that size class. The site was subsequently developed for the Daimler Heavy Truck Testing Facility. Record at 2271.

In this UGB expansion effort, the city has prioritized several target industries. OAR 660-024-0045 limits use of this program to “traded sector” industries, defined as businesses that sell their goods or services into markets for which national or international competition exists. ORS 285B.280. The city’s targeted traded sectors are high-tech/clean-tech manufacturing, advanced manufacturing and assembly, and data centers. Record at 2268. Business Oregon documents site requirements for these industries in its Industrial Development Competitiveness Matrix, which is included in the Madras Industrial Large Lot UGB Expansion Justifications and Findings Report (Madras UGB Report) produced by EcoNorthwest for Jefferson County and the City of Madras. Record at 1560.

Business Oregon identifies site size among the types of key site characteristics considered by businesses. Site characteristics typically describe a minimum size that would be considered competitive by developers or businesses. It is uncommon for economic opportunities analyses and related planning analyses to include upper limits on site size requirements. The Madras UGB Report is not unusual in this regard and identifies site size requirements for the city’s target industries in the following amounts, indicating a preference by some manufacturing businesses for site sizes of 100 or more acres. Record at 1560.

- High-Tech / Clean Tech-Manufacturing: 5 - 100+ acres
- Advanced Manufacturing & Assembly: 5 - 25+ acres
- Data Center: 10 - 25+ acres

It is important to note that Madras focused this economic development effort on larger varieties of these traded sector industries, as is authorized by OAR 660-024-0045 for central Oregon. OAR 660-024-0045 sets forth the process for planning for larger traded sector economic development, on sites of 100 acres and greater. As documented in the Madras UGB Report, the city’s evaluation of candidate sites containing at least 100 acres for UGB expansion under the large lot industrial land program are supported by both the site characteristics included in the city’s target industries analysis and the 2012 Analysis. The city’s findings acknowledge a strategy “to utilize the highest acreage and

smallest slopes because the selected site should be able to accommodate any of the targeted industries.” Record at 34. The director determines this is a sufficient adequate factual basis for the decision.

LandWatch asserts in Objection 2 that based on the 2012 Analysis, Madras currently possesses a large site that is available for industrial development. However, this site is not included in the Suitable Lands Inventory as a candidate location for the target industries identified by the city. Record at 1684. As explained in the response to Objection 1, the Suitable Lands Inventory provides updated information about the availability of industrial sites inside Madras’s UGB. LandWatch, while not directly noting this, implies that this is a sign that the existing large lot program adopted in 2012 is out of date. The department addresses and rejects this argument in its response to Objection 1.

LandWatch additionally claims that the decision violates OAR 660-024-0045(7)(b). Objection at 4. This rule requires an intergovernmental agreement between participating local governments to describe the process by which COIC shall coordinate with participating local governments in the “allocation of the qualifying sites among the participating cities in accordance with section (4) of this rule.”² The participating local governments approved the Large Lot Industrial Lands Program Intergovernmental Agreement in 2013. Record at 780. The coordinating responsibilities of COIC and participating local governments are described in the agreement, satisfying OAR 660-024-0045(7)(b). Record at 783.

Based on this analysis, the director concludes that the LandWatch has not established that the submittal does not comply with Goals 2 and 14, and OAR 660-024-0045(7). Clear demonstration of site requirements provides an adequate factual base for the UGB expansion in compliance with Goal 2. The local government’s decision is based on demonstrated need in compliance with Goal 14. The process of coordination between COIC and participating local governments is defined in the intergovernmental agreement, in accordance with Goal 2 coordination and OAR 660-024-0045(7)(b). The director rejects this objection.

² OAR 660-024-0045(4) provides in part:

“The analysis may demonstrate a need for six vacant, suitable and available sites in the region, and up to three additional sites that may be designated in order to replace one of the original six sites that is developed or committed to development as provided in section (12) of this rule. The original six sites must include two sites of at least 100 acres and not more than 200 acres, and one site more than 200 acres.”

C. Third Objection

The decision improperly narrows the site need to properties with a slope of five percent or less.

LandWatch objects that the UGB decision violates Goal 14, Goal 2, and OAR 660-0024-0045(7)(b) by improperly identifying a need for a site with a five percent or less slope. The objector asserts that “cities must consider sites with a slope of 10% or less as suitable for industrial uses. OAR 660-024-0067(5)(d).” Objection at 5. LandWatch notes that limiting the sites considered for expansion to a size of 100 acres or more and requiring that sites have a slope of five percent or less eliminates a wide range of options that may be suitable for industrial development. The objector’s proposed remedy is a remand of the decision and for the city and county to initiate a local application process considering sites up to 100 acres in size and with slopes of up to 10 percent.

Department Response:

The city’s decision to pursue at least one target industry that may require a site size of 100 acres or more and justification of demonstrated need is addressed by the department in Objection 2. Regarding slope, the Industrial Competitiveness Matrix produced by Business Oregon and included in the Madras UGB Report identifies required site characteristics for the high tech/clean tech manufacturing industry. A slope of zero to five percent is recommended for sites to be considered competitive for development by this industry. Record at 1560.

LandWatch construes OAR 660-024-0067(5)(d) to require cities to consider sites with a slope of up to 10 percent as suitable for industrial development. While this rule provides guidance to cities on how land must be considered for inclusion in a UGB expansion, the rule allows the specific site characteristics required by particular industrial uses to inform the prioritization of lands. OAR 660-024-0067(5) provides in part:

“With respect to section (1), 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:

“* * * * *

“(d) 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.

“(e) With respect to a particular industrial use or particular public facility use described in OAR 660-024-0065(3), the land does not have, and cannot be improved to provide, one or more of the required specific site characteristics.”

OAR 660-024-0065(3) provides additional context and explicitly allows cities the ability to limit the UGB expansion study area to specific locations:

“When the primary purpose for expansion of the UGB is to accommodate a particular industrial use that requires specific site characteristics, or to accommodate a public facility that requires specific site characteristics, and the site characteristics may be found in only a small number of locations, the preliminary study area may be limited to those locations within the distance described in section (1) or (2), whichever is appropriate, that have or could be improved to provide the required site characteristics. For purposes of this section:

“(a) The definition of “site characteristics” in OAR 660-009-0005(11) applies for purposes of identifying a particular industrial use.”

OAR 660-009-0005(11) includes “topography” as one of several examples of types of site characteristics that may be considered by local governments.

Another way of considering these two provisions – the 10 percent slope exclusion applies when a city is considering general need for industrial uses, while a city looking to a more specific industrial land need, as Madras is doing, is authorized to consider more customized site characteristics. Madras has determined that a maximum slope of five percent is appropriate as a site need in its UGB report. The Madras UGB Report identifies particular industrial uses and includes clear analysis describing requirements related to site size and topography. Record at 1560. This is consonant with Goal 14, which authorizes local governments, in determining need, to “specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.”

Local government compliance with OAR 660-0024-0045(7)(b) is addressed in the department response to Objection 2.

The director finds that the analysis included in the Madras UGB Report constitutes an adequate factual base for prioritizing sites with slope of five percent or less. The submittal is compliant with Goal 2, Goal 14, and OAR 660-024-0067(5). The director rejects this objection.

D. Fourth Objection

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

In its fourth objection, LandWatch asserts that the decision violates a rule requirement that a city expanding its UGB through this program must demonstrate no suitable sites are available inside the city's UGB. OAR 660-0024-0045(8)(a) requires a city to "show whether a suitable and available site is located within its existing UGB." Objection at 6. LandWatch makes three points in this objection:

1. The 2012 Analysis states that Madras has a suitable site available.
2. The Madras UGB Report errs in its analysis because it excludes sites smaller than 100 acres and with slopes of up to 10 percent.
3. Suitable industrial sites of more than 100 acres are available inside the Madras UGB.

Related to the third point, LandWatch notes that "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.'" Objection at 6. LandWatch claims that the sites inside the UGB were "found not to be available based on speculative reasoning." *Id.* LandWatch objects to the exclusion of these sites, asserting that evidence in the record "does 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)." *Id.*

The proposed remedy to this objection is for the department to remand the UGB decisions to the city and county, so that they may "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." *Id.* LandWatch also proposes that the four sites inside the existing UGB that are larger than 100 acres be considered available and suitable, unless there is an adequate factual base dictating otherwise. Objection at 6-7.

Department Response:

The department response to Objection 1 rejects LandWatch's argument that the 2012 Analysis's buildable lands inventory must be kept current to reflect the development status of all large lot industrial sites identified at that time. In determining need, Goal 14 authorizes local governments to specify characteristics, including parcel size and topography, necessary for land to be suitable for an identified need. LandWatch's second point asserts that sites inside the UGB that do not provide the required site characteristics should be considered as potentially suitable and available. Although that

objection aligns with the Goal 14 requirement to “demonstrate that needs cannot reasonably be accommodated on land already inside” the UGB, because Goal 14 authorizes the specification of site characteristics, a local government does not err by not considering sites within the UGB that do not meet the identified need. The department addresses justification for these site characteristics in its responses to Objections 2 and 3. The city clearly articulated the site characteristics required by the target industries identified in the Madras UGB Report. Record at 1560-1563.

This response will focus on the third point included in this objection, whether the city and county erred in concluding that sites larger than 100 acres inside the UGB are not suitable and available. OAR 660-024-0045(8)(a) requires that before amending its UGB under this program:

“A participating city must show whether a suitable and available site is located within its existing UGB. If a participating city determines that a suitable site already exists within the city’s urban growth boundary, that site must be designated to meet the regional industrial land need. Cities shall not be required to evaluate lands within their UGB designated to meet local industrial land needs.”

Site suitability is specific to targeted industries. In its application for UGB expansion, Jefferson County submitted a “Suitable Lands Inventory” that evaluates existing industrial sites within the city’s UGB that meet target industry needs. This inventory evaluates sites over 100 acres in size by development status within the city’s Airport Development (AD), Industrial (I), and Large Lot Industrial (LLI) zoning. Record at 1683. The Suitable Lands Inventory determined that there are a total of four sites over 100 acres inside the Madras UGB. All are in the vicinity of the Madras Municipal Airport, which is subject to additional federal land use regulations. The airport and surrounding lands were brought into the Madras UGB in 2019.³ Each of the four 100+ acre sites are zoned for Airport Development (AD). Record at 1683. The analysis then concludes that there are no vacant lots that could be used for industrial large lot development in this size class. Record at 1684.

The department concurs with the city’s application of OAR 660-024-0045(8)(a), which requires local governments to determine whether a site exists inside the UGB that is both suitable *and* available for industrial large lot development before pursuing UGB expansion. Record at 30. To determine availability of 100+ acre sites, the analysis references planned and existing uses. One site (Daimler) is classified as developed;

³ A subsequent UGB expansion under the Central Oregon Large Lot Industrial Land program provided the site for the Daimler Heavy Truck Test Track, which was zoned Large Lot Industrial (LLI) as required by the intergovernmental agreement that governs the program.

the analysis states the remaining sites have planned uses including a wastewater treatment plant and a “current or future airport use.” Record at 228.

The record does not however provide sufficient evidence demonstrating that the remaining sites are not available. Thus, to satisfy OAR 660-024-0045(8)(a) the decision must demonstrate that the sites are not suitable.

The purpose of the city’s AD zone is to provide land adjacent to airport facilities for future commercial and industrial uses which may be dependent on air transportation. The city’s findings state that “these sites were excluded from consideration...as they are zoned Airport Development, which does not allow the full breadth of industrial uses and is inspired by FAA requirements, and/or otherwise committed to other uses.”⁴ Record at 30. Although the AD zone does allow light manufacturing, sites in this zone are considered unsuitable based on federal requirements that land surrounding the airport cannot be sold for private development. Jefferson County’s findings conclude: “The land currently within the UGB are all restricted by regulations of the Federal Aviation Administration available only for lease, not sale. Staff finds businesses in the traded sector market targeted by the regional large lot program require fee ownership of the real property before commencing with development and will not develop on leased land.” Record at 2524, Volume 9.

The 2007 Madras Urban Reserve Area Report, included in the record to demonstrate that the city’s urban reserves did not address the 50-year need for industrial land, corroborates the ownership restrictions on land subject to federal aviation regulations. At the time the city conducted that analysis, the airport and surrounding lands were zoned under the county’s Airport Management zone. The report states that “Federal Aviation Administration (FAA) regulations prohibit the City from selling parcels in the Airport Management (AM) zone, even if for compatible industrial uses. Leasing might work for small scale projects, like the ones in the business park, but not for large projects.” Record at 916. When Madras expanded its UGB and annexed the airport and surrounding lands, it applied city Airport Development zoning to the same parcels formerly zoned County Airport Management. The city’s most recent local Economic Opportunities Analysis (EOA), adopted by the city and acknowledged by the department in 2016, confirms that sites around the airport are lease-only. Exhibit A of the EOA describes site needs of businesses that considered locating at or near the Madras airport industrial park and identifies the leasing restriction as an impediment to business recruitment for some business types.⁵

⁴ Federal Aviation Administration (FAA) requirements are described in the Madras Municipal Airport Master Plan (2022), which is referenced in the city’s Comprehensive Plan (p. 125).

⁵ <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:6b0b06b8-a0dc-4e8b-8cbf-0fcf17713571?viewer!megaVerb=group-discover>, (p. 61).

The city's comprehensive plan and evidence in the record support the finding that FAA land use regulations preventing the sale of AD-zoned parcels make this land unsuitable for the city's identified need for large lot industrial development. Although the analysis did not adequately address the availability of these sites, it did demonstrate that they are not suitable. Based on this analysis, the director finds that the decisions are compliant with OAR 660-024-0045(8)(a). The director rejects this objection.

E. Fifth Objection

The decision fails to adequately consider alternative site locations with higher priority for UGB amendments under ORS 197A.285 and OAR 660-024-0067.

LandWatch objects to the decision to expand the Madras UGB into high value farmland, citing the city's 2008 designation of 3,743 acres of urban reserves. The objector asserts that the decision is not in compliance with ORS 197A.285 and OAR 660-024-0067, which require that urban reserves are considered as first priority for expansion of UGBs. LandWatch states that the "decisions' 'site needs' appear tailor made to bypass the three higher priority categories of land for UGB inclusion." Objection at 7.

LandWatch's proposed remedy is that the director remand the decisions and the city consider possible legislative changes to land use regulations applicable to its urban reserves to find a way to accommodate the land need within the designated urban reserve lands.

Department Response:

The required order of prioritization for land in the UGB expansion study area is provided in OAR 660-024-0067(2).⁶. The first priority for inclusion in a UGB is for urban reserve lands designated in an acknowledged comprehensive plan.

⁶ OAR 660-024-0067(2) provides:

"Priority of Land for inclusion in a UGB:

"(a) First Priority is urban reserve, exception land, and nonresource land. Lands in the study area that meet the description in paragraphs (A) through (C) of this subsection are of equal (first) priority:

"(A) Land designated as an urban reserve under OAR chapter 660, division 21, in an acknowledged comprehensive plan;

"(B) Land that is subject to an acknowledged exception under ORS 197.732; and

"(C) Land that is nonresource land.

The city and Jefferson County established an Urban Reserve Area (URA) in 2008. The 2008 Madras URA Report included in the record makes clear that the city's long range heavy industrial needs were not addressed by the Project Advisory Committee (PAC) or provided in the resulting URA. The report states that "...the PAC decided they did not have enough information at hand to make a recommendation on how to meet the 50-year industrial land need so they decided to leave the issue unresolved, with the understanding that there is enough land inside the current UGB to meet projected needs for the next 20 years." Record at 917. The resulting URA was established to designate a 50-year supply of residential and commercial land to meet local demand. The Madras URA Report recommends that designation of urban reserve land for industrial use be completed through a separate planning and advisory process. Record at 903.

Exhibit 12 of the UGB expansion report shows the location of the city's urban reserve area, along with other types of land prioritized for inclusion in UGB. Record at 120. Madras's urban reserves are located on sloped topography. The city's findings of fact state that "there are no first priority, second priority, or third priority sites that meet the need." Record at 36. Madras's target industry site requirements eliminate many possible candidate sites for UGB expansion. The decision to expand Madras's UGB is compliant with OAR 660-024-0067(2) because the analysis first evaluates these higher priority expansion areas to find a suitable site. Although urban reserves and other higher priority lands should be considered first, OAR 660-024-0065(3) provides cities with a process to apply specific industrial site characteristics to the UGB expansion alternatives analysis. Thus, the city need only study sites that have the specified characteristics of the identified need. The purpose of including consideration of specific

"(b) Second Priority is marginal land: land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

"(c) Third Priority is forest or farm land that is not predominantly high-value farm land: land within the study area that is designated for forest or agriculture uses in the acknowledged comprehensive plan and that is not predominantly high-value farmland as defined in ORS 195.300, or that does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS). In selecting which lands to include to satisfy the need, the city must use the agricultural land capability classification system or the cubic foot site class system, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic foot site class lands first.

"(d) Fourth Priority is agricultural land that is predominantly high-value farmland: land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high-value farmland as defined in ORS 195.300. A city may not select land that is predominantly made up of prime or unique farm soils, as defined by the USDA NRCS, unless there is an insufficient amount of other land to satisfy its land need. In selecting which lands to include to satisfy the need, the city must use the agricultural land capability classification system to select lower capability lands first."

site characteristics in OAR 660-024-0065 is to implement Goal 14 and to allow the rational evaluation of alternative sites to meet identified needs for economic development purposes.

Based on this analysis, the director concludes that the decisions are compliant with ORS 197A.285 and OAR 660-024-0067 and rejects this objection.

F. Sixth Objection

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.

LandWatch argues that "the City and County proposed site 9 as their preferred site for a large lot industrial UGB amendment over a year before [] conducting a Goal 14 'boundary locations' analysis and the public hearings process to identify an appropriate site." Objection at 7. LandWatch also argues that the UGB amendment was not based on the evaluation of the four Goal 14 boundary location factors, but instead considered "extraneous reasons wherein a site was pre-selected for inclusion in the UGB." Objection at 8. LandWatch proposes that the decision be remanded so the city and county may complete an analysis consistent with the priority scheme in ORS 197A.285.

Department Response:

ORS 197A.285(2)(c)⁷ identifies the priority of lands that are to be considered for inclusion within an urban growth boundary. That prioritization is as follows, from highest to lowest priority for inclusion:

⁷ ORS 197A.285(2)(c) provides:

"When evaluating the priority of land for inclusion under paragraph (b) of this subsection:

"(A) The city shall evaluate the land within the study area that is designated as an urban reserve under ORS 197A.245 in an acknowledged comprehensive plan.

"(B) If the amount of land appropriate for selection under subparagraph (A) of this paragraph is not sufficient to satisfy the need for the land, the city shall evaluate the land that is subject to an acknowledged exception under ORS 197.732 or land that is nonresource land and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.

"(C) If the amount of land appropriate for selection under subparagraphs (A) and (B) of this paragraph is not sufficient to satisfy the need for land, the city shall evaluate the land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.

"(D) If the amount of land appropriate for selection under subparagraphs (A) to (C) of this paragraph is not sufficient to satisfy the amount of land needed, the city shall evaluate land within

1. Lands within an urban reserve
2. Exception lands or nonresource lands
3. Marginal lands
4. Non-high value farm or forest lands
5. High value farmlands

The city addresses compliance with ORS 197A.285 and the determination of the final UGB study area in the record at 621 through 631. The analysis of Goal 14 boundary location factors is found in the record at 640 through 657. The city and county coordinated to address a regional large lot industrial land need.

OAR 660-024-0045 governs the regional large lot industrial land UGB expansion process. The rules provide a process for cities in Crook, Deschutes, and Jefferson Counties to coordinate in the identification and selection of large industrial sites for UGB expansion that meet unmet regional needs. Unlike other processes used for UGB expansions, the regional large lot rules allow cities to restrict consideration of potential UGB expansion areas to lands that are determined to be “available,” as that term is defined in OAR 660-009-0025(7).⁸ The Madras UGB Report steps through the site

the study area that is designated for agriculture or forest uses in the acknowledged comprehensive plan that is not predominantly high-value farmland, as defined in ORS 195.300, or does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service, and select as much of that land as necessary to satisfy the need for land:

“(i) Using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations; and

“(ii) Using the predominant capability classification system or the predominant cubic site class, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic site class lands first.

“(E) If the amount of land appropriate for selection under subparagraphs (A) to (D) of this paragraph is not sufficient to satisfy the need for land, the city shall evaluate land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high value farmland and select as much of that land as necessary to satisfy the need for land. 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.”

⁸ OAR 660-009-0025(7) provides:

“Availability. Cities and counties may consider land availability when designating the short-term supply of land. Available land is vacant or developed land likely to be on the market for sale or lease at prices consistent with the local real estate market. Methods for determining lack of availability include, but are not limited to:

“(a) Bona fide offers for purchase or purchase options in excess of real market value have been rejected in the last 24 months;

“(b) A site is listed for sale at more than 150 percent of real market values;

selection process beginning with a summary of site needs, which includes "site availability for sale or development." Record at 615. The analysis then proceeds to identify potential large lot industrial sites in the context of the land prioritization hierarchy in ORS 197A.285. As required in OAR 660-024-0065, the analysis first identifies a preliminary study area with 15 potential large lot industrial sites, then winnows down the list based on the analysis of desired site characteristics, including whether the landowner is interested in including the site in the Madras UGB and making it available for large lot industrial development. Record at 628. The result of that winnowing is that sites 1, 2, 7, 8, 9, 10, 13, and 15 remain within the final study area, all of which are located on lands with high value, prime, or unique soils.

Because the remaining eight candidate sites in the final study area are within the same prioritization category (high value farmlands), OAR 660-024-0067(7) requires decision-makers to determine the most appropriate area or areas for UGB expansion based on balancing the boundary location factors of Goal 14, then applying applicable criteria in the acknowledged comprehensive plan and land use regulations to make a final determination regarding the UGB expansion area or areas.⁹ The director has reviewed the evaluation of the Goal 14 boundary location factors in the record and finds the evaluation has been completed consistent with OAR 660-024-0067(7). Record at 640.

In summary, LandWatch has not established that the process for evaluation of potential UGB expansion areas was inappropriately biased towards a predetermined outcome. The department's review of the UGB decision finds that the submittal establishes the city appropriately considered and balanced the Goal 14 boundary location factors. As noted previously, the rules for UGB expansions for regional large lot industrial lands in

"(c) An owner has not made timely response to inquiries from local or state economic development officials; or

"(d) Sites in an industrial or other employment land category lack diversity of ownership within a planning area when a single owner or entity controls more than 51 percent of those sites."

⁹ OAR 660-024-0067(7) provides:

"Pursuant to subsection (1)(c), if the amount of suitable land in a particular priority category under section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by first applying the boundary location factors of Goal 14 and then applying applicable criteria in the acknowledged comprehensive plan and land use regulations acknowledged prior to initiation of the UGB evaluation or amendment. The city may not apply local comprehensive plan criteria that contradict the requirements of the boundary location factors of Goal 14. The boundary location factors are not independent criteria; when the factors are applied to compare alternative boundary locations and to determine the UGB location the city must show that it considered and balanced all the factors. The criteria in this section may not be used to select lands designated for agriculture or forest use that have higher land capability or cubic foot site class, as applicable, ahead of lands that have lower capability or cubic foot site class."

OAR 660-024-0045 allow consideration of land availability, which proved largely determinative in this decision. Of the eight sites considered in the final study area, only two (sites 8 and 9) had property owners willing to make their sites available for industrial development.

Based on this analysis, the director rejects this objection.

G. Seventh Objection

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).

LandWatch objects that the decision is flawed as a result of misinterpretation of the term “available” as defined in OAR chapter 660, division 9. As the objector notes, the rule allows that “sites may be excluded from consideration if they (sic) not ‘available’ as that term is defined at OAR 660-009-0025(7).” Objection at 9. LandWatch asserts that the method used to determine whether a property is “available” for the purposes of site alternatives analysis required for a UGB expansion is insufficient. The objector argues that an expression of “interest” included in the county’s outreach to property owners is not indicative of property availability as defined in OAR 660-009-025(7). They additionally assert that a “layperson might not understand the significant details of the large lot industrial program and the opportunities it presents.” Objection at 9-10. LandWatch argues that the decision has violated Goal 2, adequate factual base, and OAR 660-009-0025(7)

LandWatch’s proposed remedy is to remand the decisions and that the city and county “educate the owners of alternative large lot industrial sites on the program[.]” Objection at 10.

Department Response:

The rules implementing the Regional Large Lot Industrial Land program differ from a standard UGB expansion process in that they allow consideration of site “availability” in the required alternatives analysis. Jefferson County conducted outreach to property owners of potential regional large lot industrial sites in 2024 in order to provide information about the program and inquire about the property owners’ willingness to participate. Owners of all eligible sites received a letter describing the program details and requirements. Record at 2420. This letter noted that designation as a regional large lot site would require that property owners apply and receive approval to bring their property into the Madras UGB and sell their property at a price consistent with the real estate market. Record at 2422-2423. With the exception of Subareas 8 and 9,

both owned by the county, owners of each of the properties replied using a form letter stating they were “not interested in having this property further considered as a candidate site for this program.” Record at 2424-2431. Although it is not required by the program’s implementing rules, the director notes that outreach to property owners of candidate sites provided crucial information about the requirements and potential benefits of participation in the program.

LandWatch argues that the outreach and response letters collected from owners of alternative sites are not adequate to demonstrate the “availability” of a site. A large lot industrial site is defined in OAR 660-024-0045(2)(g):

“Site” means land in the region that:

“(A) Provides the site characteristics necessary for traded sector uses as set forth in the analysis;

“(B) Is 50 acres or larger as provided in section (3) of this rule; and

“(C) Is determined to be “available,” as that term is defined in OAR 660-009-0025(7), for regional large-lot industrial users and for purposes identified by the analysis.”

OAR 660-009-0025(7) provides:

“Availability. Cities and counties may consider land availability when designating the short-term supply of land. Available land is vacant or developed land likely to be on the market for sale or lease at prices consistent with the local real estate market. Methods for determining lack of availability include, but are not limited to:

“(a) Bona fide offers for purchase or purchase options in excess of real market value have been rejected in the last 24 months;

“(b) A site is listed for sale at more than 150 percent of real market values;

“(c) An owner has not made timely response to inquiries from local or state economic development officials; or

“(d) Sites in an industrial or other employment land category lack diversity of ownership within a planning area when a single owner or entity controls more than 51 percent of those sites.”

OAR 660-009-0025(7) provides four *examples* of methods that might be used to determine if a site is not available. Importantly, the rule uses “including, but not limited

to” language that does not confine a local government to these particular methods. The intent of this section is to identify land that is “likely to be on the market for sale or lease at prices consistent with the local real estate market.” Inquiring directly with property owners about their interest in selling their land is a transparent and direct method of determining availability as intended by this rule. The letters submitted by all property owners of candidate sites and included in the findings constitute an adequate factual basis for concluding the alternative sites are not “available.” Record at 2425-2431.

Based on this analysis and justification provided in the record, the director finds that the decision is compliant with relevant rules and goals, including OAR 660-024-0045(7) and Goal 2. The director rejects this objection.

H. Eighth Objection

The city fails to comply with JCZO 803(C)-(D), which imposes the statutory farm impacts test on decisions rezoning farmland in Jefferson County.

LandWatch objects that the city failed to apply portions of the Jefferson County Zoning Ordinance (“JCZO”) that define criteria for amendments to the zoning ordinance. LandWatch, in particular, cites requirements found in Chapter 8, Section 803.2 of the JCZO¹⁰ as follows:

“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[.]”

LandWatch notes that the subject property is surrounded on three sides by irrigated farm operations and speculates that even if information were provided to address the criteria in JCZO 803.2(C) and (D), it is likely that they could not be satisfied due to the nature of the industrial uses intended to be located at the site. LandWatch identifies potential conflicts including traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding, and construction activities.

LandWatch’s proposed remedy is to remand the decisions and that the city and county to determine whether the criteria at JCZO 803.2(C)-(D) are met. Objection at 11.

¹⁰ <https://www.jeffco.net/media/24901>

Department Response:

The Findings of Compliance included in the record appear to address requirements contained in statute and rule and in the City of Madras Development Code, but not the Jefferson County Zoning Ordinance. However, the November 13, 2024 Jefferson County Board of Commissioners Staff Report does address these criteria in Finding 54. Record at 2525. This finding references Findings 9 and 10 in previous county staff reports. The September 18, 2024 Planning Commission Staff Report addresses the criteria in JCZO 803.2(C)-(D) on page 5. Record at 2060.

Regarding JCZO Regarding JCZO 803.2(C) September 18, 2024 Staff Report concludes:

“[s]taff finds the zone change and 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. Staff finds water quality in the area won’t be affected due to the water source for industrial development being piped in via Deschutes Valley Water System and the sewerage being handled via the City of Madras Wastewater Systems. Staff finds development requirements require detention of drainage water on site and the typical Large Lot Zoning use being quieter than the typical farm operations equipment use.” Record at 2060.

In addressing the first criterion, the Staff Report concludes that water quality in the area will not be impacted because new industrial development will be served by the Deschutes Valley Water System and the City of Madras Wastewater Systems, and that drainage water will be detained on site. The Staff Report finds that the potential industrial uses are typically quieter than farm equipment. Potential air quality impacts do not appear to be addressed.

Finding 10 from the September 18, 2024 Staff Report is more narrowly focused and concludes:

“Staff finds the proposed UGB expansion is on the west side of the City of Madras with the nearest Forest zoned land being about 12 miles away as ‘the crow fly’s’ and has no direct road access to the Forest zoned area, thus having no impact on forest practices. Staff finds that the site is bordered on two sides by roads (NW Clackamas Drive and NW Dogwood Lane) and the other two sides are adjacent to the Daimler Truck Facility and the Madras Airport. Staff finds the adequate road system and the airport will not force a significant change in or significantly increase the cost of farming practices. Staff finds that additional development at this location will provide an improvement to highway 26 via improvements to NW Dogwood Lane and water rights from the site will be transferred to NUID for farm use at other locations and all irrigation canals and

facilities will be protected as has been the case across and thru the adjacent airport property and development of the Daimler Facility.” Record at 2060.

In addressing the second criterion, the Staff Report notes that no forest activities are being conducted in the surrounding area and so focuses on potential impacts to agricultural activities. The Staff Report seems to imply that the existing roads will act as barriers to reduce impacts to agricultural areas to the north and west of the site and also concludes that the road infrastructure is sufficient to accommodate existing traffic and potential new industrial uses. The Staff Report notes that the irrigation water rights currently in use on the subject property will be transferred to the North Unit Irrigation District to support farming in the surrounding area and commits to continued protection of irrigation infrastructure. The nature of that protection is addressed elsewhere in the record and in subsequent findings which are discussed below.

A Letter dated September 9, 2024 from the North Unit Irrigation District states that they operate and maintain irrigation facilities on and adjacent to the subject property including access roads, canals, pipelines, check structures, weirs, delivery gates, and signs. Record at 2223. The letter includes a request that the City and County ensure that the proposed UGB expansion does not interfere with NUID’s and the U.S. Bureau of Reclamation’s (Reclamation) irrigation facilities on and around the Property by 1) requiring consultation with NUID prior to any development or partition of the property, 2) providing a survey of irrigation facilities and easements prior to any development or partition of the property and 3) protecting irrigation facilities and easements from encroachment, modification or relocation. The letter goes on to state that JCZO 803.2(D) cannot be satisfied without committing to these measures. Record at 2225.

While the finding in the Staff Report quoted above implies a commitment to these measures, Finding 28 from the November 13, 2024 Jefferson County Board of Commissioners Staff Report addresses the letter from the North Unit Irrigation District directly and states “..the City and the County ensure that the proposed UGB expansion does not interfere with NUID’s and the U.S. Bureau of Reclamations irrigation facilities on and around the property as requested by NUID and staff finds the City and the County acknowledge the facilities are vital to delivery of irrigation water to surrounding agricultural lands.”. Record at 2518, Volume 9. The commitment to the North Unit Irrigation District is further addressed in Finding 46, “Staff also finds in response to ORS 215.296, it appears to staff that the transfer of water rights to NUID to be used on farmland that does not have irrigation rights provides a net gain of zero and also no loss of farm activity from the water rights.” Record at 2523, Volume 9.

The record also includes a report by EcoNorthwest dated September 2025 and titled “Madras Industrial Large Lot UGB Expansion Findings”. Regarding JCZO 803.2(D) this report concludes:

“The area proposed to be brought into the UGB (subarea 9) is adjacent to the city’s UGB on two sides. Prior UGB amendments have not resulted in any significant changes in or significant increases to the cost of farming or forest practices on lands adjacent to the UGB as those lands have remained in farm use. The proposed development on subarea 9 is compatible with surrounding agricultural uses and will not force a significant change in or significantly increase costs of farming on surrounding land. This criterion is met.” Record at 1901.

EcoNorthwest report also addresses farm uses in the area around the proposed site in its analysis of Goal 14 Locational Factor 4. The subject site is described as follows:

“Subarea 9 is being used for a mix of winter wheat and alfalfa agricultural uses, as well as containing some fallow land. The areas adjacent to Subarea 9’s north, grass seed and spring wheat are being grown, with winter wheat and non-alfalfa hay grown to the subarea’s west. Because of its configuration relative to the existing UGB, Subarea 9 creates the least amount of new UGB/agricultural land interface (i.e. it results in the least amount of additional UGB perimeter). The proposed large lot industrial site UGB expansion would generally be compatible with the adjacent agricultural uses around the subarea.” Record at 1894.

The proposed finding addressing JCZO 803.2(D) quoted above relies on the fact that winter wheat and alfalfa are being grown on the subject property which abuts the current UGB on two sides and is adjacent to industrial uses - the Daimler Facility and airport - to conclude that the agricultural activities being conducted to the north and west will also continue following expansion of the UGB and conversion of the subject property to industrial use. The findings assume that no significant change in farming or significant increase in the cost of farming on the subject property resulted from the development of the adjacent industrial uses since farming continues to occur on the subject property. The findings posit that this will also be the case when the subject property is converted to industrial use, that the roads will act as an additional barrier between future industrial development and farm use, and that the UGB expansion will result in positive impacts to the surrounding agricultural area due to anticipated road improvements and assignment of irrigation water rights to the North Unit Irrigation District.

Based on the above findings and other information provided in the record, the director finds that the decision has addressed Jefferson County Zoning Ordinance sections 803.2(C) and (D). Therefore, the director rejects this objection.

I. Ninth Objection:

The decision fails to comply with JCCP Part 5.

The ninth objection from Landwatch asserts that Jefferson County failed to adequately address the county's third criteria for a quasi-judicial post-acknowledgement plan amendment decision, as provided in Part 5 of the county's comprehensive plan. The third criterion states as follows:

"In order to be approved, the proposed amendment must:

"* * * * *

"3. Be necessary due to changes in physical, economic, or social conditions, population growth, or development patterns which require an adjustment in the land use designations in the area where the amendment is proposed."

LandWatch cites a Land Use Board of Appeals (LUBA) case regarding the county's interpretation of the same criterion, *Central Oregon LandWatch v. Jefferson County*, ___ Or LUBA ___ (LUBA No. 2021-054, October 6, 2021). In that case, LUBA remanded a Jefferson County UGB expansion decision for the City of Metolius based, in part, on the county's failure to adequately address the third criterion listed above. LUBA held that Jefferson County failed to sufficiently explain why the Metolius UGB expansion was "necessary" or "required" per the third criterion. LUBA cites Webster's Third New International Dictionary definition of "necessary" to include "essential" and "indispensable." Based on this interpretation, LandWatch argues that Jefferson County failed to demonstrate how potential industrial development made possible by the UGB expansion would be "indispensable" to Jefferson County.

Landwatch further argues that the proposed expansion area cannot be considered indispensable for industrial uses when the Central Electric Cooperative (CEC) has stated that they do not currently have the load capacity to serve a large data center, which is one of the three potential industrial uses identified for the site.

Department Response:

Jefferson County's findings in relation to the third criterion are contained in the findings adopted with the UGB expansion decision. The findings note substantial evidence in the record, including "the ECONorthwest report, the LLI Analysis, and testimony and evidence provided by Economic Development for Central Oregon (EDCO)." Record at 2474, Volume 9. Findings note that "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." Record at 2474, Volume 9.

The department has reviewed the evidence in the record showing a need for large lot industrial development and finds that the analysis has been completed correctly, in compliance with applicable statutes and rules. Additionally, we note that although CEC

has stated they do not currently have the power capacity for a large data center, a data center is only one of three possible uses for the site, and there is no reason to think that additional capacity cannot be provided with additional resources that may come in association with a large lot industrial business in the future. Based on this analysis, the director rejects this objection and finds that Jefferson County adequately addressed the county's third criterion for a post-acknowledgement comprehensive plan amendment.

VI. CONCLUSION

The submittal from the City of Madras (Ordinance 990) and Jefferson County (Ordinance 0-176-24) containing an UGB amendment, annexation, and zone change complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules. The submittal is approved.

DATED THIS 6TH DAY OF MAY 2025



Brenda Bateman, Ph.D., Director
Department of Land Conservation and Development

Note: You may be entitled to LCDC review of this order. LCDC review may be obtained as provided in OAR 660-025-0150(6).

ATTACHMENT A: OBJECTION LETTER FROM CENTRAL OREGON
LANDWATCH

ATTACHMENT B: OBJECTION LETTER FROM MICHELLE VARLEY

CERTIFICATE OF SERVICE

I certify that on May 6, 2025, I served the attached **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT APPROVAL OF CITY OF MADRAS UGB AMENDMENT SUBMITTAL (City of Madras Ordinance 9904, Jefferson County Ordinance 0-176-24)** by mailing in a sealed envelope, with first-class postage prepaid, a copy thereof addressed as follows:

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Will Ibershof, Madras City Manager

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Mark Wunsch, Jefferson County Board

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Jeff Rasmussen, Jefferson County Administrator

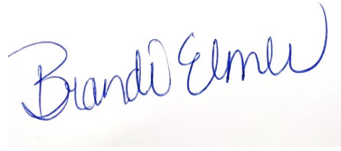
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Executive Assistant to the Director