



# Oregon

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To: Land Conservation and Development Commission

From: Brenda Ortigoza Bateman, Ph.D., Director  
Gordon Howard, Community Services Manager  
Leigh McIlvaine, Economic Development Specialist

Subject: **Agenda Item 5, January 25-26, LCDC Meeting**

## Goal 9 Target Industries Approach Rulemaking Initiation

### I. Summary

The Department of Land Conservation and Development (DLCD or department) is asking the Land Conservation and Development Commission (LCDC or commission) to initiate a rulemaking process to amend Oregon Administrative Rules (OAR) Chapter 660, Division 9 (Economic Development) to provide clarity on the “Target Industries Approach.” The commission approved this rulemaking during its November 2023 meeting as a part of the department’s Policy Agenda. As a next step, department staff request that the commission approve a rulemaking charge and the list of proposed interests to be represented on the Rules Advisory Committee or RAC.

The Target Industries Approach is an informal, undefined method that cities are increasingly using to justify inclusion of sites of specific sizes and characteristics in their Economic Opportunities Analyses. While the department is supportive of a high degree of flexibility in how cities plan to accommodate economic development opportunities, staff have concerns that recent applications of the Target Industries Approach fail to connect expected local employment growth to land demand in a meaningful way. This rulemaking will support cities using the Target Industries Approach in long range employment lands planning efforts, so that local planning work results in well-justified employment land demand that is less vulnerable to legal challenge.

**Purpose.** The commission will receive a request from the Department of Land Conservation and Development (DLCD or department) staff to initiate rulemaking to amend OAR 660-009 (Economic Development) to provide clarity on the Target Industries Approach.

**Objective.** The commission will initiate rulemaking through approval of a rulemaking charge and direct the department to appoint a Rules Advisory Committee (RAC).

For further information about this report, please contact Leigh McIlvaine, Economic Development Specialist at 971-701-1041 or [leigh.mcilvaine@dlcd.oregon.gov](mailto:leigh.mcilvaine@dlcd.oregon.gov).

## II. Background

Cities in Oregon are directed to forecast long range employment land demand by Oregon Administrative Rule (OAR) 660-009-0015, which provides the process for an Economic Opportunities Analysis (EOA). EOAs are required to include particular elements of analysis, but OAR 660-009 does not specify how this analysis must be organized, prescribe methodology, or limit the sources that a city might use to justify its findings of fact. OAR Division 660 Chapter 24 (Urban Growth Boundaries) provides “safe harbors”<sup>1</sup> for forecasting population and employment growth as these projections pertain to employment lands planning, but does not describe on the method by which employment or population growth is translated to employment land need.

Recent applications of the Target Industries Approach, an informal method of asserting land demand in an EOA, have exposed cities to preventable legal challenges and represent a departure from the integrated local comprehensive planning intended by statewide land use planning Goal 9, Economic Development. Recent uses of the Target Industries Approach have 1) conflated land use type (industrial development) with industry (economic sectors); 2) failed to specify particular economic sectors as industry targets for which site characteristics might be defined; and 3) failed to make a connection between resulting land need and local employment growth projections.

With the guidance of a RAC, this rulemaking will clarify how and under which circumstances a city may apply the Target Industries Approach. The Department’s rulemaking is not intended to address how cities forecast employment growth, nor is it anticipated to result in amendment to OAR 660-024 (Urban Growth Boundaries).

### a. Economic Opportunities Analysis

A priority in Oregon, Statewide Planning Goal 9 supports local economic development. Goal 9 and its associated administrative rules direct cities to provide an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with comprehensive plan policies. OAR 660-009-0015 (Economic Opportunities Analysis, or EOA) and OAR 660-024-0040 (Land

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<sup>1</sup> A “safe harbor” is a methodology set forth in an LCDC-adopted administrative rule that, if used by a local government, will result in department acknowledgment of the outcome and will provide the local government immunity from legal challenge to the outcome.

Need) provide the process to determine land need and, if necessary, amend the urban growth boundary to correct an employment land deficit. The EOA forms the basis for a city to establish and maintain a 20-year supply of employment land. Cities subject to these rules are allowed a wide degree of flexibility in determining how much job growth is expected and how that job growth translates to land need.

OAR 660-009-0015 provides the process through which cities conduct an analysis of economic opportunities, which consists of several required components related to forecasting land need. An EOA must include a review of national, state, regional, county, and local trends, but 660-009-0015 does not prescribe specific sources of population or employment trend data to review or project local economic growth. The EOA additionally “must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses” (OAR 660-009-0015(2)). A city may use various methods to determine the number of sites required to accommodate growth, and commonly include measures of employees per acre (also known as employment density), ratios demonstrating developed land to population or total employment, or other methods of estimation.

#### **b. Target Industries Approach**

One method of forecasting land need is referred to as the “Target Industries Approach.” This method was advanced by Woodburn in its adopted EOA, which was subsequently challenged in the Court of Appeals in 2014.<sup>2</sup> The Target Industries Approach, as summarized in that decision, is defined below:

*“[T]he target-industries approach considers a local government’s employment-growth projections and goals for employment and establishes a framework for attracting the kind of employers that could reasonably be expected to support the kind and amount of employment growth to which the local government aspires. Given the site needs of those particular employers, the local government identifies potentially available land both within and outside its UGB and selects a group of sites and an amount of land that it believes will accommodate the employers that it seeks to attract. The target-industries approach differs from an ‘employees-per-acre approach under which a local government simply projects employment growth and divides that growth by a statistically accepted number of employees per acre of land in order to arrive at the number of acres needed to support employment growth.’”<sup>3</sup>*

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<sup>2</sup> The 2014 Woodburn EOA that applied the Target Industries Approach was reversed and remanded, but not on the grounds of the city’s use of the Target Industries Approach.

<sup>3</sup> *1000 Friends of Oregon v. Land Conservation and Development Commission*. 260 Or. App. 444, 317 P.3d 927, 929 (2014)

Many cities use the Target Industries Approach to identify desirable industries and develop a site inventory and comprehensive plan policies that support attraction or retention of targeted industries. Site characteristics identified through the Target Industries Approach are often focused on site size, especially in the case of more land consumptive industries that don't neatly fit into employment density calculations. Site characteristics can also denote workforce needs, infrastructure and service levels, or other industry-specific needs. A city applying the Target Industries Approach in its EOA typically concludes that the target industry has unmet land need. For this reason, the Target Industries Approach is best understood as a method of justification for an urban growth boundary expansion.

The department's interpretation of this approach, when applied thoughtfully, is that it is fully within the scope of the administrative rules implementing Goal 9 in OAR 660-009. As applied in the majority of EOAs, a city's ability to assert a need for a specific type of site is both practical and necessary to support specific economic development outcomes. While this approach to justifying land need is well established and supported by case law, it has not been defined or codified in administrative rule.

### **c. Department Concerns Regarding Controversial Applications**

The department has concerns that recent uses of the Target Industries Approach have distorted its reasonable application as a tool to plan for and support growth of specific industries. Although it is not the only example, the city of North Plains' 2022 EOA is exemplary of the types of applications the department seeks to clarify through this rulemaking. The department is also concerned that cities may attempt to replicate North Plains' approach to asserting land demand. Staff have identified three primary issues that the department intends to address through this rulemaking, which the department anticipates will result in amendments limited to OAR 660-009 (Economic Development).

#### **1. Conflation of Development Pattern with Industry Type**

Several cities have identified an industrial business park as a target industry and used the Target Industries Approach to justify resulting land demand. Application of the Target Industries Approach in this case has resulted in debate between department staff, cities, land use advocates, and past commissions over the difference between land *use type* and *economic sector*, namely the productive output of a business or industry. The draft rulemaking charge (Attachment A) would direct the RAC to address and recommend resolution of this issue.

#### **2. Industry Specificity**

The Target Industries Approach is a methodology used to anticipate and provide specific sites that meet the needs of targeted industries. Although OAR 660-009-0015(2) provides that "industrial or other employment uses with compatible site characteristics may be grouped together into common site categories," the rule does not

address how industry is defined. For example, the North Plains' 2022 EOA asserted that all (non-commercial) industrial uses can be combined into a single target industry for purposes of applying the Target Industries Approach. Sectors of the economy are classified and defined through the North American Industry Classification System (NAICS). As drafted, the rulemaking charge directs the RAC to provide definition around the term "industry" as it relates to application of the Target Industries Approach.

### **3. Relationship between employment growth and land need**

Disconnecting employment growth expectations from land need expectations presents two problems for local comprehensive plans. First, this approach prevents a community from being able to ascertain land demand as it pertains to expected growth. Secondly, it hampers the ability of the local comprehensive plan to account for impacts of unanticipated job growth by severing Goal 9 from housing, transportation, public facilities, and other closely related planning goals. OAR 660-009-0015(2) provides little guidance about whether or how an EOA might demonstrate that expected employment growth is reasonably accommodated. The draft rulemaking charge directs the RAC to consider this issue.

### **III. Draft Rulemaking Charge**

The purpose of a rulemaking charge is to allow the commission to offer direction on project management, as well as express its expectations regarding the treatment of subject matter and content. The charge will be the instrument relied on by staff and the RAC for guidance resolving any questions on project direction. The draft charge has been reviewed by DLCD's Urban Team, Policy Team, Citizen Involvement Advisory Committee (CIAC), and the Local Officials Advisory Committee (LOAC).

Staff have included the draft charge as Attachment A.

### **IV. Interests to be represented on the Rules Advisory Committee (RAC)**

This rulemaking is intended to be narrow and technical in scope. The department's proposed RAC composition will provide the perspectives and represent the interests of subject matter experts and jurisdictions subject to OAR 660-009 (Economic Development) or those that could benefit from the rule.

- Economist
- Business Interest
- Real Estate/Consulting Firms Experienced with Economic Opportunities Analysis
- Geographically diverse cities in Oregon
- Metro Regional Government
- Economic Development District(s)
- Port Authority
- Land Use Advocacy

- Property Rights Advocacy
- Chambers of Commerce
- Workforce Equity/ Economic Justice
- Low-Income Advocacy
- Climate Advocacy
- Business Oregon (Ex-Officio)

## **V. Recommended Action**

The department recommends that the commission initiate rulemaking to amend OAR 660-009 (Economic Development) to clarify the Target Industries Approach, approve the draft charge included as Attachment A, and direct the department to appoint the RAC in the manner described in this staff report.

***Proposed Motion:*** I move that the commission initiate rulemaking on the Target Industries Approach, approve the draft charge included as Attachment A, and direct the department to appoint the RAC in the manner described in this staff report.

***Alternative Motion:*** I move that the commission initiate rulemaking on the Target Industries Approach, approve the draft charge included as Attachment A, and direct the department to appoint the RAC in the manner described in this staff report, with the following revisions [specify revisions].

## **VI. Attachments**

### **A. Draft Rulemaking Charge**

## **Attachment A**

### **Goal 9 Target Industries Approach – Draft Rulemaking Charge**

Members of the Goal 9 Target Industries Rules Advisory Committee (RAC) will provide assistance to agency staff to analyze, draft, and recommend amendments to Oregon Administrative Rules (OAR) 660-009, Economic Development, that provide guidance and clarity around the use of the Target Industries Approach in Economic Opportunities Analyses and related provisions in OAR 660-009.

The Land Conservation and Development Commission will consider amendments to administrative rules that:

- Define the term “Target Industries Approach” and related terms to support its application in Economic Opportunities Analyses through clear requirements and integration with related provisions in OAR chapter 660 division 9.
- Are informed by a Rules Advisory Committee (RAC) composed of subject matter experts, local officials, and stakeholders subject to the rule.
- Identify instances in which a city subject to OAR 660-009 would apply the “Target Industries Approach” rather than established processes for projecting land need through employment growth forecasts.
- Do not impact the flexibility of employment growth forecasting as currently exercised by cities subject to OAR 660-009.
- Establish guidance in OAR chapter 660, division 9 requiring that job growth projections are connected to land and site needs identified through the Target Industries Approach in Economic Opportunities Analyses.
- Are informed by existing case law addressing the use of the Target Industries Approach, and rely on the use of existing resources to provide rationale for analyses.
- Establish a voluntary “safe harbor” option in OAR chapter 660, division 9 allowing cities to rely on designated sources to justify land need identified through the Target Industries Approach in an Economic Opportunities Analysis.
- Include provisions that protect or preserve specific sites identified through the “Target Industries Approach” for use by targeted industries.

If approved, this charge would lead the document of operating principles for the RAC as they begin their work.