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April 7, 2010

Via: E-mail & Regular US Mail

Department Of Land Conservation
And Development
Attn: Richard Whitman, Director
635 Capitol St., Ne, Suite 150
Salem, Or 97301-2540
richard.whitman@state.or.us

Re: DLCD Order No.: 001775
Report on Bend and Deschutes County's Amendment to Bend Urban Growth
Boundary Dated January 8, 2010

591 S.W. Mill View Way
Mail: P.O. Box 880
Bend, Oregon 97709
Phone: (541) 382-4331
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Dear Mr. Whitman:

This office represents the Bend Metropolitan Parks and Recreation District (the "District"). Please provide a copy of this letter to the Commission. The purpose of this letter is to clarify the District's position with regard to Goal 5. The District originally filed an objection based, in part, on the City's treatment of the Goal 5 analysis. Subsequent to that objection (dated May 5, 2009), the District's representatives have met with the City. The District is satisfied that the requirements will be met with the City's proposed treatment of Goal 5 on remand.

WWW.BLJLAWYERS.COM

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon R. Smith".

Sharon R. Smith
smith@bljlawyers.com

13-1189 106

c: Brian Rankin - via e-mail: brankin@ci.bend.or.us
Brian Shetterly - via e-mail: bshetterly@ci.bend.or.us
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APPEAL OF THE OREGON DLCD DIRECTOR'S REPORT ON THE CITY OF BEND
PROPOSED UGB EXPANSION
MEETING 3/19/2010

TESTIMONY SUBMITTED BY HILARY GARRETT

My name is Hilary Garrett. I am a health care professional, Bend business owner, and concerned citizen. Previous written testimony submitted by me is in the official record, and adequately expresses my views, so I will not take much of your time today.

I want to ask you in person: Are you willing to uphold the Oregon State land use law? That same Oregon land use law that is held in high esteem by the entire Nation, and is Tom McCall's legacy to us? Are you really willing to rule that Resource land should be included before Exception lands in the Bend UGB?

It appears that everyone except the City of Bend agrees that farmland aka Resource land is 4th priority for inclusion in the UGB. Much of the land along Hamby Road is Priority 4 Resource land. Near my house is a working hay farm with EFU tax deferral. On page 7 of the Director's Report is this statement: "*Of the 5,475 acres considered "suitable" and available for development, 4,069 acres are exception lands, which (under state law) are the highest priority lands for UGB expansions. ORS.197.298. The remaining 1,407 acres are resource (farm) lands, which are the lowest priority lands for UGB expansions. [R. at 1058].*"

The City ostensibly included Hamby Road resource land in its UGB expansion amendment because "maximum efficiency of land uses within the proposed UGB requires inclusion of these lower priority resource lands in order to include or provide services to the higher priority exceptions lands" which are nearby. I suspect that the real reason it wants to urbanize the Hamby Rd. area is to (a) expand the Bend Airport and attract business activity to its airport, (b) develop to the east in order to promote large-site industrial development in an area close to Hamby Road and Neff and (c) grow to the northeast so as to more efficiently develop Juniper Ridge. The Director hints at these motives when he states in his report:

"The (UGB) amendment includes resource lands for a future university site on the city-owned property known as Juniper Ridge, and for a large-site general industrial center adjacent to the East State Highway 20/Hamby Road intersection. The city's analysis is that land of lower priority (e.g., exception land), could not reasonably accommodate these uses, justifying an exception to the statutory priorities to add land to a UGB under ORS 197.298(3)(a). [R. at. 166-167, 1181-82]."

If the city must include Priority Four resource land in its expanded UGB, then ORS 197.298 indicates that it must include the DSL's Section 11 land before it includes the Hamby Road resource land. Again, this is because the Hamby Road farm land is irrigated, has a higher soil capability, has EFU farm tax deferrals, and produces commercially viable crops. The Section 11 land is not irrigated, and therefore has lower quality soil. The Section 11 land does not produce a commercially viable crop. It also does not have a Deschutes County farm tax deferral. It has lower quality soil and therefore, ORS 197.298 and related statutes say that it must be included in the city of Bend's expanded UGB before the Hamby Rd. land can be.

This issue is much more than a neighborhood discussion. My husband and I have long been dedicated to preservation of natural areas and land conservation, so we feel strongly that this issue affects our community and region.

Thank you for considering my earnest testimony.

UGB LOCATION; SUB-ISSUE 1

HOW MAY SUITABILITY BE CONSIDERED IN DETERMINING THE LOCATION OF THE CITY'S UGB EXPANSION? ARE CITY-DEFINED SUITABILITY CRITERIAL ON AN "EQUAL FOOTING" WITH THE STATUTORY PRIORITIES FOR THE ORDER IN WHICH DIFFERENT TYPES OF LANDS MAY BE CONSIDERED FOR INCLUSION IN AN UGB?

- The legal standards that apply here are OAR 660-024-0060, ORS 197.298 and Goal 14.
- Goal 14 (as amended April 28, 2005) requires a Boundary Location analysis that evaluates alternative boundary locations consistent with ORS 197.298 and that considers these factors:
 - Efficient accommodation of identified land needs;
 - Orderly and economic provision of public facilities and services;
 - Comparative economic, social, environmental and energy (ESEE) consequences; and
 - Compatibility of proposed urban uses w/ nearly agricultural ... activities outside the UGB
- Adopted findings for Bend's UGB must describe or map all of the alternative areas evaluated in the Boundary Location Alternatives analysis. If the analysis involves more than one parcel or areas within a particular priority category under ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.
- City used its own "Threshold Suitability Criteria" to exclude Priority 2 buildable land from its Locational Analyses far too early in the process. This strategy resulted in at least one very large tract of land in the S.W. Study Area being excluded from the expanded UGB.
- City persisted in defending its Threshold Suitability Criteria strategy despite the DLCD's provision multiple, detailed explanations of how to complete an analysis of UGB locational alternatives (see DLCD's letters in the Record dated May 27, 2008, October 24, 2008 and November 21, 2008 (Rec. at 3,758, 4,356, 4,722 and 7,268).
- Deschutes County's legal counsel **also** provided clearly worded advice as to how to apply ORS 197.298, OAR 660, Division 24 and Goal 14 on September 17, 2007 (Rec. 8,870)
- City ignored DLCD and the County and improperly excluded over 640 acres of Priority 2 exception lands in the SW Study Area – as well as other lands. Some Priority 2 lands that were excluded (Buck Canyon is one example) have a lower per-acre cost-to-serve with sewer, water and transportation infrastructure than other Priority 4 lands that were included (e.g., Juniper Ridge and lands in the NE).
- Other Priority 2 lands were included (e.g., UAR lands west of the Deschutes River) despite the fact that they include Goal 5 riparian areas, wetlands and wildlife habitat (a fact explicitly noted in the City's Findings and addressed earlier in my Goal 5 objections). These included Priority 2 lands are also questionably "serviceable", as they require a bridge over a topographic barrier (the Deschutes River) in order to provide them with transportation and sewer infrastructure.
- If the City's used its Threshold Suitability Criteria within its existing UGB, it would have the effect of excluding large areas of the "built" city; i.e., it would deem these areas "unbuildable" when in fact these lands have buildings on them.

Single Copy
of Vista del Sol
CC & R'S.

BUILDING AND USE RESTRICTIONS
LOS SERRANOS
DESCHUTES COUNTY, OREGON

Submitted
by Hilary
Garrett

The undersigned, being the record owners and contract purchasers and parties in interest of all the following described real property located in the county of Deschutes, state of Oregon:

The Southeast Quarter of the Southwest Quarter, and the Northeast Quarter of the Southwest Quarter, and the West Half of the Southwest Quarter, and the Northwest Quarter of the Southeast Quarter of Section Twenty-four (24), Township Seventeen (17) South, Range Twelve (12)

do hereby make the following Building and Use Restrictions covering the above described property, specifying that this Declaration shall constitute covenants to run with all of the land and shall be binding on all persons claiming under them and that these Building and Use Restrictions shall be for the benefit of and limitations upon all future owners of said real property:

1. No building, or other structure of any kind whatsoever shall be constructed on said property for use for any other purpose than a residence together with such other incidental buildings as may be and are ordinarily used in connection with a residence. A private stable or barn may be maintained to keep horses or cattle for personal use.
2. No swine, poultry, or goats shall be kept or maintained on the premises. Only one farm animal allowed per acre.
3. No building shall be erected on any lot, any portion of which shall be nearer than fifty (50) feet from any county right of way or any property line. For the purpose of these restrictions, eaves, steps, and porches shall be considered as part of a building.
4. No noxious or offensive trade or activity shall be carried on upon any parcel, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
5. No trailer, tent, shack, or other building shall be constructed or placed upon any portion of any parcel to be used as a temporary or permanent residence. However, a small structure for use by a builder as his construction shack may be built or moved on for the duration of the construction period.

6. No residence shall be constructed with less than 1200 square feet of living area.
7. No parcel shall be used or maintained as a dumping ground for rubbish, trash, or garbage and other waste shall not be kept except in sanitary containers at all times. All incinerators or other equipment for the storage or disposal of such material shall be kept in clean and sanitary condition.
8. All dwellings shall have an individual sewage disposal system installed in compliance with the requirements of the laws of the state of Oregon governing domestic sewage and other household liquid waste disposal.
9. No commercial sign may be displayed to the public view from any parcel other than a "FOR SALE," "FOR RENT," or one used by a builder to advertise that property during the construction and sales period. No sign shall be larger than five (5) square feet.
10. No parcel shall be divided into smaller parcels for a period of ten (10) years from original purchase and at no time shall any parcel be less than one-half of the original size of the parcel as on the recorded plat, except parcel #1 in block 3, which may be divided in not more than five (5) parcels.
11. These restrictions shall be deemed to be for the protection and benefit of each of the owners or occupants of any portion of the above described subdivision, and it is intended hereby that any such person shall have the right to prosecute such proceeding at law or in equity as may be appropriate to enforce the restrictions herein set forth.
12. There shall be reserved to Seller and the future owners of all parcels of LOS SERRANOS, existing easements of record, and an easement along existing roads for waterlines and other utilities for the benefit of all parcels of LOS SERRANOS.
13. There shall be no destroying of the trees that exist at time of purchase except those that stand in the way at a building site or driveway.
14. There shall be only one (1) residence per parcel, being the single family dwelling.
15. All utility lines will be installed underground and no utility poles for the delivery of electricity, telephone, television or otherwise shall be permitted within the subdivision.

- 16. These restrictions shall run with the land and shall be binding on the owner or tenant of any or all of said land and all persons claiming by, through, or under them until 1997 at which time said covenants shall be automatically extended for successive periods of ten years unless by vote of a majority of the then owners of the parcels it is agreeable to change said covenants in whole or part.
- 17. Invalidation of any one of these foregoing covenants, restrictions, or conditions or any portion thereof by court order, judgment, or decree shall in no way affect any of the other remaining provisions hereof which shall, in such case, continue to remain in full force and effect.
- 18. The foregoing conditions and restrictions shall bind and inure to the benefit of, and be enforceable by suit for injunction or for damages by the owner or owners of any of the above described lands, their, and each of their, legal representatives, heirs, successors, or assigns; and a failure, either by the owners above named or their legal representatives, heirs, successors, or assigns, to enforce any of such conditions or restrictions shall in no event be deemed a waiver of the right to do so thereafter.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands, this 20th day of April, 1972.

s/ Maurice E. Pruitt

s/ Helen P. Pruitt

s/ LeRoy H. Fassett

s/ Donna Lee Fassett

Properly notarized and sealed

TRANSPORTATION PLANNING – SUB-ISSUE 7

WHAT MUST BEND DO TO COMPLY WITH THE TPR REQUIREMENTS FOR MPO AREAS IN CONJUNCTION ITS UGB AMENDMENT?

OAR 660-024-0020

As a MPO area, the City must comply with TPR requirements. OAR 660-024-0020 requires that it address all of the Statewide Planning goals in its decision to amend its UGB. Goal 12 and the TPR require that the City adopt a plan and measures to significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile.

The UGB expansion proposed by the City adds a significant quantity of land and residential employment capacity to its urban area as opposed to focusing on redevelopment and infill. This major land expansion will affect transportation systems and have long-term effects on the extent to which area residents must rely on automobiles. The City's strategies for reducing its reliance on cars and trucks by providing for alternative modes of transportation, and reducing VMT are key to the success of this community and the well-being of Bend's citizens. For Bend to ignore its MPO-area responsibilities not only violates the TPR, but is also short-sighted—even reckless.

Bend must follow TPR rules for MPO areas and produce a TSP that demonstrates it will likely achieve a 5% reduction in VMT and reduced reliance on the automobile. Compliance with TPR provisions is not optional for Bend. It must act now as the work needed to meet the requirements set forth under OAR 660-012-0035 will take time, funding and local government commitment.

OAR 660-012-0035

- Bend must calculate its local and regional transportation needs based upon a requirement in OAR 660-012-0035(4) that it reduce reliance on the automobile
- OAR 660-012-0035(5)(a) requires the Bend MPO to have commission-approved standards or benchmarks for achieving reduced reliance on the automobile. While the City has adopted several benchmarks for adding bike lanes, transit facilities, pedestrian walkways, etc., it has not formally proposed or adopted a performance measure as required by provisions of AOR 660-012-0035, and has not obtained (or even sought) commission approval of such a standard as required by OAR 660-012-0035(5)(a).
- OAR 660-012-0035(5)(c) includes requirements regarding planning for transportation choices, and reduced reliance on the automobile. The rule includes a specific target for reduction in vehicle miles traveled (VMT) and provides timeframes for completion and review procedures. Bend must comply with these requirements.

The City's position

The City says that whatever obligation it has under the TPR related to MPO areas is unrelated to what it must do to justify its UGB expansion. The City says it has obligations as a member of the MPO, and the City's local TSP must ultimately be amended to become compliant with Federal MPO requirements, but these obligations are independent of its UGB expansion. It goes on to say that the MPO is not a party to this appeal and that its obligations as a member of an MPO are established by federal law and outside the scope of review of a UGB expansion.

Hunnell United Neighbors; Appellants – LCDC Hearing of Bend UGB – DLCD Order 001775

Why the City is wrong

The City must have Commission approved standards and benchmarks; it does not. Nothing in the City's adopted findings provide evidence showing that it is likely to achieve a 5 percent reduction in vehicle miles traveled (VMT).

The City entirely ignores OAR 660-012-0035 which requires that, "In MPO areas, regional and local TSPs shall be designed to achieve adopted standards for increasing transportation choices and reducing reliance on the automobile. Adopted standards are intended as means of measuring progress of metropolitan areas towards developing and implementing transportation systems and land use plans that increase transportation choices and reduce reliance on the automobile. It is anticipated that metropolitan areas will accomplish reduced reliance by changing land use patterns and transportation systems so that walking, cycling, and use of transit are highly convenient and so that, on balance, people need to and are likely to drive less than they do today.

As provided under OAR 660-012-0035(5), the City must develop and adopt specific targets for accomplishing reduced reliance on the automobile. While the City asserts it can demonstrate that its TSP is likely to achieve a five (5) percent reduction in VMT, nothing in its adopted TSP or adopted findings that accompany the TSP provide any evidence to support this assertion.

Conclusion:

Bend's position on transit is not congruent with the expressed needs and desires of its citizens. There is ample evidence in the Record to support this assertion but the City has chosen to ignore it. Bend is a magnet for retirees. Someday, this segment of the population will stop driving and require alternative modes of transportation. It is a magnet for the "sportive"; many of whom want to abandon cars and travel everywhere by bicycle, skateboard, foot or public transit—but it persists in expanding into far-flung areas not conducive to alternative modes of transportation.

The City's amended TSP does not satisfy TPR requirements for MPO areas and MPO planning. It not only fails to conform to the Commissions Transportation Planning Rule, but it also exhibits an astounding lack of common sense or congruence.

Consider the fact that Bend wants to sequester its university in the northeastern-most corner of its UGB. Do students, many of whom travel by bike and skateboard, really want to be isolated from the rest of the City with no bike lanes, paths, transit facilities, etc.? How will they get to Les Schwab amphitheatre, to the library, to the "cheap eats", to Drake Park or Farewell Bend Park, etc.? And, without a bridge over the Deschutes River, how are the thousands of residents of the UAR lands on the river's west side going to traverse the City? Will all that traffic pour onto Hwy. 20 or onto Newport or Galveston?

I ask that the Commission require the city to develop clear, realistic standards and benchmarks (with teeth), that show how its TSP (which is being used as a partial justification for its UGB expansion) will significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. The City must also obtain the Commission's approval of those measures before its UGB expansion can be acknowledged by the DLCD.

Lisa Howard
DLCO

April 11, 2010

I, Anthony King, am an Objector to the Urban Growth Boundary that the City of Bend, Oregon has recently proposed. I was hoping to get to talk at the previous Bend hearing, or at the upcoming Lincoln City hearing, but I have conflicting schedules.

My property at 19760 Buck Canyon Rd, Bend Oregon was eliminated from inclusion on the very last map the City submitted to DLCD. Up until that last map, my property had been included on all of the prior 4 maps. When you hear talk of improperly excluded property in the SW, it includes my property and several others off of Rocking Horse Rd and Buck Canyon Rd. The following factors outline why I disagree with leaving my property out of the UGB expansion:

1. The Buck Canyon area is zoned RR-10. With the UAR acreage apparently not designated correctly, RR-10 exception land should be the very first area to be included into the UGB expansion.
2. Using the City of Bend's own cost of development studies, which I downloaded from their website last year, the Buck Canyon area is one of the lowest cost areas being considered. It has Hwy 97 to the east and Brookwood to the west. The land is mostly 5-10 acre parcels with very little lava rock and virtually no obstacles such as canyons or rivers found in other areas of the proposed expansion. Also, there is virtually no EFU land in the area. The areas infrastructure is only lacking sewer, which the city is currently working on down Murphy Rd. Everything else is already there and ready to go.
3. This area is already an island, with development on three sides and a river on the fourth side. The proposed UGB expansion will make it even more of an island. As an example of how much this area is an island, when the DLCD bus tour visited the UGB expansion last month both buses actually went around the entire Buck Canyon area.
4. This proposal puts high density property and commercial property between 5 acre parcels to the south and one-half acre residential housing lots off Ponderosa St. to the north. The City of Bend has giving no explanation why the rezoning didn't at least go up to the existing road (Rocking Horse Rd) or why they would put high density housing on the edge of town.
5. Most of the properties off Buck Canyon and off Rocking horse were purchased years ago, and at that time the buyers assumed they were good investments because the area would be brought into the UGB during the next expansion. After all, the entire Rocking Horse Rd is less than 200 yards from the existing city limits that were established in the early 1970s.

Please consider the points I have addressed above and remand the City of Bend's Urban Growth Boundary proposal back to them for revisions, which should include the Buck Canyon Rd area into the expansion. I am confident that using state land use laws you will agree that the Buck Canyon Rd area should be included in the City of Bend's UGB expansion.

Thank you

Anthony King
Objector, on record, to the City of Bend UGB expansion
19760 Buck Canyon Rd
Bend, OR 97702
(541) 389-6052