

City of Bend
DRAFT Summary of Tentative LCDC Actions on
Appeal of Director's Decision (Order 001775)
 March 18-19, 2010 and April 22-23, 2010

Issue/Recommendation	City Position	LCDC Tentative Decision
A. City's findings must identify applicable legal standards, relevant evidence in the record, and explain compliance based on evidence.	While the City continues to take the position that findings are not legally required, the City will adopt additional and more detailed findings on remand.	Commission generally agrees with Director. City needs to identify standard and explain why it is met (i.e., where the evidence is in the record). Need to link analysis to why standard is met. Director is "pragmatic" in approach, extensive findings not required.
B.1. The April 5, 2007 version of the Goal 14 rules apply.	City agrees.	Commission agrees with Director and City.
B.2. DLCD accepts that City has provided BLI maps and appropriately based analysis on comp. plan designations. However, disagrees on designation of vacant and redevelopable. Issues raised relating to categories of vacant land, physical constraints, CC&Rs, capacity, level of infill development.	City accepts that it will review categories and prepare new maps based on appropriate characterizations. City also accepts that it will provide better findings explaining its decision on these issues.	Commission agrees with Director.
B.3. City must address housing need by three types <u>and</u> by tenure.	City accepts need to analyze by three types, but does not accept that it needs to perform detailed analysis by tenure.	Commission agrees with City.
B.4. City has not explained how it will meet housing need. 65/35 split is not adequate to meet needs. City is shifting away from multi-family to single family.	City disagrees that it has not explained how 65/35 split will meet housing need. City also disagrees with statement that City is shifting to more single family, when in fact it is providing for more multi-family.	Commission agrees with City. However, expanded findings will be required to demonstrate and explain that sufficient land for needed housing will be provided through the 65/35 housing split.
B.5. City has adequate factual base for second homes and second homes are not a needed housing type. However, City should coordinate with County as to locations.	City agrees that 500-acre estimate for second homes is justified, but remains concerned about a requirement to coordinate further with County.	Commission agrees with City that 500 acres are justified. Remand will require City to coordinate with County on planning for second homes county-wide. Director states this is a "process requirement."
B.6. City must adopt one of three approaches on "unsuitable" land: (1) Not include the unsuitable lands, (2) Include and take "committed" exception, (3) determine that the lands are suitable in some way for urbanization.	City agrees to take a combination of (1) and (3). The City needs clarify distinction between "suitable as residential lands," "suitable as economic lands," and "suitable for urbanization, even if not contributing to residential or economic land needs."	Commission agrees with Director. New analysis and findings will be needed to estimate housing yield from "unsuitable" lands and revise size of expansion area downward.

EXHIBIT: 2 AGENDA ITEM: 2
 LAND CONSERVATION & DEVELOPMENT
 COMMISSION
 DATE: 5-12-10
 PAGES: 8
 SUBMITTED BY: DUCD for City of Bend

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B.7. City must remove the 500 acre surplus.	City will commit to reducing this number. City may be able to justify at least some acres relating to rational boundaries, etc.	Commission agrees with Director. (Director and several Commissioners indicated less than 500 acres more than 1, but City must justify any limited amount through additional findings.
B.8. Compliance with plan policies.	City agrees to explain better on remand.	Commission agrees with Director.
B.9. Deny LandWatch's appeal re second home units – not needed housing.	City agrees.	Commission agrees with Director and City.
C.1. Explain why additional efficiency measures are not feasible, explain why transit corridors up-zoning cannot be more extensive.	City agrees to provide further explanation, and will consider additional measures.	Director more concerned with how the City plans (the long term policies to encourage growth in the City) than amount of acreage. Commission generally agrees with Director. Commission will look for new analysis and findings re RS parcels greater than 5 acres in size. Goal is more units as needed housing not just additional units. Director notes that the key language is for the City to "consider" potential measures listed in Director's Report. Commission is "sensitive" to not making Bend as dense as the Pearl District and to local conditions.
C.2. Take additional measures to implement the efficiency measures, including complying with timelines.	City does not object, but UGB expansion does not require that everything be in place, just that the City make the commitment.	Commission agrees with Director that any efficiency measures must be initiated within stated timeline. Director agrees that date can be from acknowledgement of UGB.
C.3. Demonstrate number of housing units developable within City. 1. From vacant lands based on recent trends. 2. From specific identified large parcels. 3. Consider long list of possible measures.	City agrees to reconsider potential for new housing units within current UGB, with focus on larger vacant parcels. City will provide more detailed findings on potential efficiency measures that may not be feasible.	Commission agrees with Director. (Same issue as C.1, above.)
D.1. Better findings are needed regarding other lands, especially justification for going from 12.5 to 15 percent.	City agrees to provide better findings to support the estimate of at least 12.8% (not 12.5%) of total acres needed for other lands.	Commission agrees with Director. Director has indicated that 12.8% is acceptable, with stronger findings, and that 15% is acceptable if linkage to stormwater needs is made clearer and more explicit. This is a "findings issue." Note that there is increased need for open space with higher densities. Commission suggests not relying on livability as justification.
D.2. Better findings for school and parks needs and whether these land needs can be reasonably met within	City agrees to provide more findings, but is unwilling to second-guess the analysis and estimates of these two	Commission agrees with Director. Commission agrees with City's land need estimates for schools and parks.

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Existing UGB.	independent districts.	but also supports remand for City to explain how it is using Park District and School District analysis to support finding of need, and to explain whether or not some of need can be met inside prior UGB.
D.3. Essentially same as D.2, but in response to objections from districts.	Same as for D.2.	Commission agrees with Director. (Same as sub-issue D.2, above.)
E.1. City did follow main steps of employment analysis. But City needs to clarify that decision is based on 2008 EOA Scenario B.	City will provide enhanced findings, to clarify that Scenario B is basis for land needs estimate.	Commission agrees with Director.
E.2. City needs to provide better analysis of 10% factor for employment needs met through redevelopment of existing developed lands. Need to have more site specific analysis or analysis of trends for amount of redevelopment expected on developed lands.	City will provide enhanced findings, but a new approach is not needed.	Commission agrees with Director on need, but not on overall approach. Commission seems to accept the 10% re-fill factor, and will be satisfied with revised findings. Commission does not require site-by-site analysis and a factor can be applied. Need some justification and explanation in findings why the factor was used.
E.3. DLCD rejects LandWatch argument that City needs to update EOA to reflect more recent trends.	City agrees with Director.	Commission agrees with Director and City. Some on Commission were interested in factoring in the current recession, but majority were OK with analysis as is.
E.4. City cannot include more than 20-year supply. City must eliminate the market choice factors for long-term, but can use for short term, City needs to review medical office use, and document whether special needs sites can be accommodated within prior UGB.	City sees market choice factor as an integral part of 20-year land supply. It is not an unwarranted add-on. City can agree to better findings regarding the special needs sites, and their unavailability in the prior UGB. The EOA presents market choice as land need for the 20-yr. supply.	Commission agrees that the City may be able to show the need it has proposed but not on the City's overall approach, which was viewed by Commissioners as a 50% mark-up. Majority of Commission will accept City's overall estimate of 20-yr. need, but must be stated as land need, not as a separate market choice factor. Commission indicated that it would likely support rationale that increases choice and supply for industrial land, but it is less supportive of a generous supply for commercial. New approach must be explained in findings to achieve needed 20-yr. supply. Determination of 20-year supply should be based on a description of trends, long-term employment needs, factors unique to Bend, and other policy bases articulated in findings to justify proposed land amount.

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E.5. Need detailed policies for short term land supply.	Goal 9 rule is not clear on this.	Commission agrees with City. Policy need to be clarified concerning how City will make use of funding options to maintain short-term supply, but does not have to have "money in the bank." Focus is on city developing or pointing to adopted policies, strategies, and programs, not on guaranteed funding stream or guaranteed land supply targets. Commission agrees that this requirement is different from TPR analysis, and that the various strategies include SDC policies, provisions for developer payments for infrastructure, adoption of annexation policies etc.
E.6. Need to adopted long-term vacancy rate consistent with available trend data?	City has estimated vacancy rate based on available trend data, and has an adequate factual base, but agrees to re-examine on remand.	Unclear. Individual Commissioners signaled that 15% is too high; something near 10% would likely be more acceptable to the Commission, and supported by the record.
E.7. City not required to consider impact on displaced agriculture.	Agrees.	Commission agrees with Director and City.
E.8. Employment uses on residential lands. Recommend that this be switched to residential lands analysis.	City can agree to this switch on remand.	Commission agrees with Director and City. The 119-acre need must be explained in the residential land needs analysis.
E.9. City must address Comp. Plan Chapter Policies 17 and 18 regarding commercial development.	City can agree to address these policies; they may not be a factor, depending on outcome of adjusted UGB.	Commission agrees with Director.
F.1. Apply Goal 5 to identified riparian corridors, associated wildlife habitat, and scenic waterway along rivers. Need Goal 5 program. Need to either do full Goal 5 for ASI, or remove ASI consideration from decision.	City can agree to add scenic waterway as a designated Goal 5 resource. City does not agree that more Goal 5 inventory work is required prior to UGB.	<u>Lincoln City Commission agrees with Director and City that City will add the Oregon Scenic Waterway to City's Goal 5 inventory (if included in amended UGB). Commission agrees with Director that 299-acre adjustment for future ASI's must be dropped. City agrees to apply Goal 5 to riparian corridor and wildlife habitat to Tumalo Creek corridor, to the extent it is included in remanded UGB. City staff will continue discussions with DLCD staff concerning process for treating OSW as Goal 5 resource.</u>
F.2. City not required to address wildfire risk, but should consider info re Wildfire Protection Plan.	Agree, except disagree that the plan is relevant to any issues on remand.	<u>Lincoln City Commission agrees with Director and City, Goal 7 cannot be applied. City agrees to reference Community Wildfire Protection Plan in</u>

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		<u>remanded findings.</u>
F.3. If surface mine area still within the expansion area on remand, must limit it to areas within DOGAMI permit and must show compliance with applicable surface mining resource regulations.	City does not disagree.	<u>Lincoln City Commission agrees with Director and City that surface mine area must be accurately represented on map and treated as Goal 5 resource, if included in remanded UGB.</u>
G.1. City can do a serial adoption of PFPs on remand if it wishes, first for existing UGB, second for expanded UGB.	City will do that on remand.	Commission agrees with Director and City. City needs to be careful to create master plans for prior UGB that are based on <u>existing Plan designations and build-out assumptions.</u> <u>NOTE: In Lincoln City, DLCD and Commission modified this position to state that master plans for the prior UGB must not anticipate service to specific, future expansion areas, but must also not preclude service to future expansion areas.</u>
G.2. City needs to be clear about sewer components outside the City that may be necessary to serve lands inside UGB more efficiently, and demonstrate that connections outside UGB will not be allowed.	City accepts this standard.	Commission agrees with Director and City. Careful adoption of this as part of UGB package should enable City to rely mostly on analysis that has already been done for the expansion area. For CSMP, City will need to emphasize policy direction from Council to pursue gravity system with existing WWTP. <u>NOTE: In Lincoln City, DLCD and Commission modified this position to state that master plans for the prior UGB must not anticipate service to specific, future expansion areas, but must also not preclude service to future expansion areas.</u>
G.3. Must coordinate PFPs more closely to boundary actually adopted.	Will do on remand.	<u>Commission agrees with Director. Serial adoption of PFP should take care of this. Analysis of service to potential expansion areas will support relative cost and impact evaluations, as required by Goal 14. Adoption of second PFP for the amended UGB will indicate service to areas selected for inclusion.</u>
G.4. City does not need to address needed housing, etc. if on remand it adopts an existing-boundary PFP.	Agreed.	Commission agrees with Director and City.
3.5. City is required to enter into	ORS 195.065 applies only to local	No counter-argument from Department

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urban service agreements with private water companies.	governments and special districts. The private utilities are not special districts.	at hearing. Deferred. Director wants more time to consider City's position. <u>Commission agrees with City.</u>
G.6. Notice issue. Regardless of the notice issue, the City will provide new notice on remand that will cure the issue.	New notice on remand will cure this issue.	<u>Lincoln City Commission agrees with Director and City. New notices will be provided as part of serial adoption of PFP on remand.</u>
G.7. Scope of PFPs. PFPs must cover entire expansion area.	City does not disagree.	<u>Lincoln City Commission agrees with Director. Serial adoption of PFPs should take care of this (see G.3, above).</u>
G.8. ORS 197.015(5) requires comp. plans be coordinated with private service providers.	ORS 197.015(5) and Goal 2 require coordination with private utilities, and City has adequately done so. An urban service provider agreement under ORS 195 is not required for private utilities.	<u>Deferred, in connection with G.5. Commission agrees with City (see G.5, above).</u>
G.9. City must provide complete PFP including areas served by private water companies.	City agrees to provide more information, but only to the extent of providing existing plans of the private water companies.	<u>Lincoln City Commission agrees with City.</u>
G.10. City is not required to coordinate with Swalley as a service provider. City must consider relative costs of serving various areas.	City agrees to position re further coordination with Swalley.	Commission agrees with Director and City.
G.11. Deny Swalley's appeal re linking needed housing types to analysis of cost of public facilities and services.	City agrees.	<u>Lincoln City Commission agrees with Director and City.</u>
H.1. Accepts City's approach to aggregating areas for transportation analysis except to the extent that we mixed Priority 2 and 4 lands in the same TAZ.	City can agree to revisit analysis to aggregate properties by priority status.	<u>Lincoln City Commission agrees with Director.</u>
H.2. City needs better findings and analysis regarding topographic barriers.	City disagrees, but can agree to enhanced findings if required by Commission.	<u>Lincoln City Commission agrees with Director. City will strengthen findings.</u>
H.3. City improperly allocated costs of north area transportation improvements and its analytical model is flawed, requiring a new analysis.	City disagrees.	<u>Lincoln City Commission agrees with Director. Additional analysis will be required, but "outcome does not have to be pre-determined." City can choose how to account for "extraordinary cost" items.</u>

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H.4. City needs better finding explaining sparser road network on west side.	City can agree to enhanced findings, given that it anticipates changes in boundary.	<u>Lincoln City Commission agrees with Director. City will strengthen findings, to the extent Westside properties are included in amended UGB.</u>
H.5. City needs to clarify status of Deschutes River Crossing.	The status is clear. It is not anticipated or planned for the 20 year planning period. However City can clarify further on remand.	<u>Lincoln City Commission agrees with Director. On remand, City will eliminate any and all references in TSP or General Plan as to the bridge. Findings will state that bridge is not needed during the planning period.</u>
H.6. City's decision does not violate policies regarding width of Newport and Galveston.	City agrees.	<u>Lincoln City Commission agrees with Director and City.</u>
H.7. City needs to comply with MPO standards.	City agrees that some MPO-related transportation planning work needs to be done. City does not agree that full compliance with all MPO-related or VMT provisions of TPR is required for UGB acknowledgement.	<u>Lincoln City Commission agrees with Director's modified position. City will need to analyze "packages" of land use and non-land use measures to reduce VMT per capita with the amended UGB. If / when VMT estimate reaches 0 or less (compared with 2003 base year), City can prepare a work plan to work toward a 5% reduction in VMT per capita for LCDC approval. Amended UGB will be acknowledged at that time.</u>
H.8. Deny Swalley appeal re status of TSP.	City agrees.	<u>Lincoln City Commission agrees with Director and City.</u>
I.1. City needs to redo suitability analysis.	City will revise approach to suitability on remand. However, City may disagree as to what the correct approach to analysis is. City will be able to consider Goal 14 factors, etc.	<u>Lincoln City Bend – May 12</u>
I.2. City needs better findings that land not available within existing UGB for specified employment land needs.	City's findings were adequate, but can be enhanced on remand, if necessary.	<u>Lincoln City Bend – May 12</u>
I.3. City can probably justify ORS 197.298(3) exception, but needs to use correct total land supply and appropriate sewer PFP.	City agrees that exceptions under ORS 197.298(3) are justified, and can enhance findings on remand, if necessary.	<u>Lincoln City Bend – May 12</u>
I.4. Deny appeals of Swalley, etc. that City cannot treat reserve land as non-resource.	City agrees.	<u>Lincoln City Bend – May 12</u>
I.5. Deny LandWatch appeal re cost of land and link to affordable housing.	City agrees.	<u>Lincoln City Bend – May 12</u>

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I.6. City must have better findings justifying that parcels 3 acres and smaller are not suitable.	City will revisit redevelopment potential for developed parcels smaller than 3 acres on remand.	Lincoln City Bend – May 12 (mostly resolved with B.6.)
I.7. City needs to either delete suitability criteria re destination resort, CC&Rs and improvements or provide better justification.	Regarding the first two, the City has sufficiently justified. On remand, city will better justify its position re land with developments. If needed, City will provide better justification for first two on remand.	Lincoln City Bend – May 12
I.8. Deny Swalley appeal re application of Deschutes County Code 23.48.030.	City agrees.	Lincoln City Bend – May 12
I.9. Deny Swalley appeal re factual basis re northwest area.	City agrees.	Lincoln City Bend – May 12
I.10. City needs to do better analysis regarding all areas, including Buck Canyon	City will provide more/better findings on remand.	Lincoln City Bend – May 12
J.1. Validity of objections is not relevant.	Yes it is, but not that big a deal.	Lincoln City Bend – May 12
J.2. County and City need to clarify plan designation and zoning.	City will revise polices on remand to ensure zoning will not allow more trips than at present. City does not agree that cluster development provisions are in conflict with state law.	Lincoln City Bend – May 12
J.3. City needs to fix notice on remand.	City disagrees. Notice was adequate. Nevertheless, this is a non-issue, given that City will provide notice on remand.	Lincoln City Bend – May 12
J.4. Deny appeal of LandWatch that information was added after record closed.	City agrees.	Lincoln City Bend – May 12
J.5 More clarity needed on remand.	City does not object to more clarity on remand.	Lincoln City Bend – May 12