

January 26, 2010

Mr. Larry French
Periodic Review Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301

Subject: Oregon DLCD Director's Report on Bend and Deschutes County's UGB Amendment Appeal

Dear Mr. French:

I, Michel Bayard, am president of the Hunnell United Neighbors (the HUNS), a neighborhood association that acts to protect the Hunnell Road, Bowery Lane, Rogers Road, Harris Way, Crosswinds Road, Tanglewood Road, Mountain View Drive, Scenic Way, Pohaku Road, Lowe Lane, Fort Thompson Road, Suzanne Lane and contiguous areas of unincorporated northwest Bend from inappropriate development that will or might negatively impact the quality of life in this area and the value of our properties.

The HUNS board has voted to file an appeal of the Oregon Department of Land Conservation and Development's (DLCD) Report on Bend and Deschutes County's UGB expansion amendment. The specific focus on this appeal is on the City of Bend's (hereafter referred to as the City) Public Facilities Plans and Transportation System Plans and the related processes that led to the amendment of these Plans.

HUNS' INTEREST IN THIS MATTER

The HUNS' concern is with the City's Northern Sewer Interceptor and its Collection System Master Plan (CSMP), both of which are part of the Sewer Public Facility Plan (SPFP) that the City adopted through Ordinance NS-2111 and also with all roadways, river crossings and related interchanges and related transportation accoutrements that are proposed for the northwest and northeast lands which the City has proposed to bring into its UGB. Urbanization of the northwest areas near our southern boundary is of particular interest, as is the continued expansion of the City's Juniper Ridge master planned development.

The HUNS remain concerned about how actions taken by the City might continue to impact us. Our area lies directly to the west of Juniper Ridge, essentially along the path of the Northern sewer interceptor. This area has long been the target of the City's various land use and transportation proposals. It is for this reason that we have voted to carry forward our appeal of the DLCD Director's Report to the Oregon Land Conservation and Development Commission (LCDC).

HUNS' STANDING

The HUNS have achieved standing by filing an objection to the City's Ordinance NS-2111, which adopted Bend UGB expansion amendment related Public Facilities Plans.

DEPT OF

JAN 28 2010

**LAND CONSERVATION
AND DEVELOPMENT**

SCOPE OF THE HUNS' APPEAL

The HUNS appeal is based on Oregon's statewide program for land use planning, the foundation of which is a set of Statewide Planning Goals that are achieved through local comprehensive planning. The City's UGB expansion proposal seeks to amend its local comprehensive plan and the zoning and land-division ordinances required to put it into effect in a manner consistent with Oregon's Statewide Planning Goals.

The HUNS assert that the City's comprehensive plan (as adopted in Ordinance NS-2112, which amends the text and map of the Bend Area General Plan and the text and map of the Transportation System Plan to expand the UGB) is not consistent with a number of Oregon's Statewide Planning Goals. Likewise, we assert that the City's Ordinance NS-2111, which adopts the water public facilities plan and the sewer public facilities plan as amendments to the public facilities element of the Bend Area General Plan; and which also adopts a severability clause, is not consistent with some of these Statewide Planning Goals.

While the Director's Report identified a number of areas where the City's ordinances were inconsistent with Oregon Revised Statutes, Administrative Rules and Statewide Planning goals, the HUNS have focused this appeal on five specific areas:

- Goal 2—Land Use Planning
- Goal 11—Public Facilities and Services
- Goal 12—Transportation Planning
- Goal 13—Energy Conservation
- Goal 14—Urbanization

REMEDY SOUGHT BY THE HUNS' APPEAL

In our appeal, the HUNS' request the Oregon LCDC not officially approve or 'acknowledge' the city's comprehensive plan and related ordinances until said plans and ordinances are consistent with Statewide Planning Goals, and also land use planning-related Oregon Revised Statutes and Administrative Rules.

SPECIFICS OF THE HUNS APPEAL

THE CITY'S PFPS VIOLATED GOAL 2, GOAL 11 and OAR 660, DIVISIONS 11 AND 24

The city is required to develop a PFP that contains items such as (1) an inventory and general assessment of the condition of ALL the significant public facility systems that support the land uses designated in the acknowledged comprehensive plan. The city's PFP does not contain an adequate inventory and general condition assessment that meets this requirement.

The city's Goal 11 findings state that it based its proposed UGB expansion in part "on the development of three (3) new sewer interceptors that are located beyond the city's current UGB." The record does not support this finding. Its collection system master plan or 'CSMP' included an analysis of planned new sewer interceptors, but the location of those interceptors was (for the most part) not identified as being on agricultural lands (the interceptors are located almost entirely on UAR lands or within the existing UGB).

The analysis of lands would in the future be served by the CSMP is not correlated with the lands in the UGB expansion area. The expansion area includes substantial lands that are evaluated in the master plans, creating an internal conflict in the city's General Plan contrary to Goal 2 as well as Goals 11 and 14.

The City is also required to list the significant public facility projects that are to support the land uses designated in the acknowledged comprehensive plan including public facility project descriptions and/or specifications of these projects, as necessary. Because there are internal inconsistencies between the city's public facilities plans (its CSMP and water system master plan or 'WSMP') and the UGB expansion amendment, its PFPs do not comply. For instance, the CSMP include areas that were not ultimately included in the Alternative 4A UGB expansion map that the city adopted as part of Ordinance NS-2112. Also, the UGB expansion map adopted by Ordinance NS-2112 includes areas not analyzed in the city's CSMP. The same holds true for the WSMP. These internal inconsistencies are then incorporated into the Bend Area General Plan (BAGP), Chapter 8, Public Facilities and Services. The result is that the city's BAGP does not provide an adequate public facilities plan as required by Goal 2 or Goal 11, the Goal 11 rules and the UGB amendment rules (OAR 660, divisions 11 and 24).

If the city's PFPs are internally inconsistent, then they cannot and do not provide a timely, orderly and efficient arrangement of public facilities because they do not coordinate the type, locations and delivery of public facilities and services in a manner that best supports the existing and proposed land uses.

Nor do the city's master plans contain an analysis of the relative costs, advantages and disadvantages of alternative UGB expansion areas as required by OAR 660-024-0060(8). Instead, they simply analyze the feasibility of serving the existing UGB and UAR lands.

With respect to costs, the city's PFPs are required to contain rough cost estimates for each public facility project. The city's CSMP does not comply as it entirely omits the cost of crossing the Deschutes River in the Northern Sewer Interceptor's cost estimate, yet also states in the CSMP that the Deschutes River is a "barrier") that must be crossed by the Northern Sewer Interceptor.

The city's PFP should contain a map or written description that shows each PFP's general location or service area. The city's PFPs contained some of this information, but not all of it. Further, some of the information that was provided was placed into the public record after it became closed to public inspection and comment.

The city's PFPs should have contained an estimate of when each facility project would be needed. It did not contain this information across all the projects, or even most of them.

The city's PFP should have discussed the existing funding mechanisms and ability of these and possible new funding mechanisms to fund the development of each public facility project or system. The HUNS were not able to secure any real information about the cost of the Northern Sewer Interceptor or other key PFPs and that information that was made available did not fully correlate with the UGB expansion area.

LOCATIONAL ANALYSIS VIOLATED ORS 197.298, GOAL 14 AND OAR 660, DIVISION 24

When evaluating a proposed UGB amendment, OAR 660-024-0060(8) instructs that a Goal 14 boundary location determination be conducted to evaluate and compare the relative costs, advantages and disadvantages of alternative expansion location areas with respect to the provision of public facilities and services needed to urbanize those alternative locations. The evaluation and comparison must be conducted in coordination with service providers, including ODOT with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by these service providers. The evaluation and comparison must include:

- (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;
- (b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

- (c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

The local governments' locational analysis of where to expand the city's UGB did not comply with ORS 197.298, Goal 14 or pertinent provisions of OAR 660, division 24 as summarized above. The approach and methodology used was not transparent and lacked clear explanations that linked its analysis to data in the record. The analysis of the need for new transportation facilities (highways, other roadways, interchanges, arterials and collectors, etc.) was incomplete and flawed in terms of methodology.

The city's evaluation of the transportation-cost-to-serve for the various expansion areas in the larger Study Area is improper and incomplete. By bundling combinations of different areas into UGB expansion alternatives, the city has not properly conducted the evaluation of "alternative areas" called for in OAR 660 - 012 - 0060(8). This is because the analysis does not disclose unique costs associated with serving individual areas.

This is especially relevant to state highway and related improvements in the north US 97/20 area which are the single largest transportation cost (\$125 to \$185 million) for the entire UGB expansion area. The costs to improve the north US 97/20 area represent approximately 80 percent of the total transportation improvements required to serve the proposed UGB expansion areas as a whole.

The HUNS are particularly concerned with transportation issues in this area and the state highway and related improvement costs that are omitted from the city's TSP greatly concern us. A thorough and complete transportation-cost-to-serve analysis could definitively show that expansion to the north and northwest is not timely, orderly or efficient.

In making this argument, the HUNS incorporate by reference the Bend UGB Amendment appeal of Toby Bayard, Transportation Planning Objection 7, pages 9 through 12. In her appeal, Ms. Bayard asserts, and the HUNS agree, that the Oregon Transportation Planning Rule (TPR) requires that (1) the traffic impacts on the committed and capacity portion of an expansion area must be studied independently, not as part of an overall "UGB Expansion Scenario, (2) that the individual costs of each potential development or area must be compared with all other potential developments serving the same purpose and (3) that an estimation of the increased cost for an entire alternative is not relevant, particularly when that particular scenario was not identical (or even similar) to the final alternative adopted by the City of Bend.

BEND METROPOLITAN AREA LACKS STANDARDS AND BENCHMARKS FOR ACHIEVING REDUCED RELIANCE ON THE AUTOMOBILE VIOLATION OF OAR 660-012-0035(6)

The Bend metropolitan area does not have commission-approved standards or benchmarks for achieving reduced reliance on the automobile as required by OAR 660-012-0035. While the city has adopted several benchmarks for adding bike and pedestrian facilities and transit service, it has not formally proposed or adopted a performance measure as required by provisions of OAR 660-012-0035, and has not obtained or sought commission approval of such a standard as required by OAR 660-012-0035(5)(a).

Although the city asserts that it can demonstrate that its TSP is likely to achieve a five percent reduction in VMT (thus meeting relevant requirements of the TPR) nothing in the city's TSP or adopted findings provide evidence to support this assertion, or provides a basis for a commission order approving this finding as provided under OAR 660-012-0035(6).

This is especially relevant to the addition of 225 acres of land within Juniper Ridge for a university campus. Although the city might be able to justify the need for a university campus, its location at the northern most part of the proposed UGB expansion area must be compared with suitable lands within the existing city limits. Such suitable lands could be more easily accessed by walking or bicycling from

residential areas and certainly require shorter automobile trips thus having the potential to fulfill the five percent reduction in VMT required by OAR 660-012-0035(6).

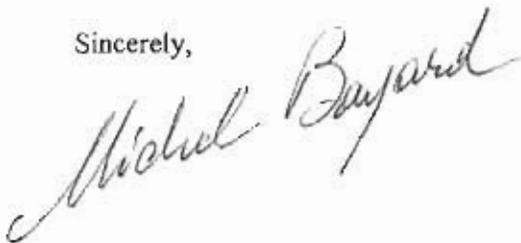
CONCLUSION OF HUNS' APPEAL

In conclusion, the HUNS appeal the city's and county's UGB expansion amendment and related ordinances for the following reasons:

- ⊕ The city violated Statewide Land Use Planning Goal 2 because there are inconsistencies between the public facilities master plans and the UGB decision such that the decisions do not comply with the Goal 2 requirement for consistency with the comprehensive plan.
- ⊕ The city's public facilities plans and comprehensive plan amendments prepared in conjunction with the UGB amendment do not comply with the requirements of Goal 11 or OAR 660, division 11. As a result, the decisions do not comply with Goal 11.
- ⊕ The decision did not properly evaluate transportation impacts or clearly make or defer decisions about proposed transportation improvements. The city, as a member of a metropolitan planning organization, needs to address requirements for increasing the availability and convenience of alternative modes of transportation and reducing reliance on the automobile and it has not done so. As a result, the director concludes that the decisions do not comply with Goal 12.
- ⊕ The city's boundary location analysis did not comply with Goal 14 or support the decision that the city made.

Thank you for giving the HUNS an opportunity to appeal the city's and county's UGB expansion amendment and related ordinances. We look forward to participating in the process in the future.

Sincerely,

A handwritten signature in cursive script that reads "Michael Bayard". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".



Español | Customer Support | FedEx Locations | Search

Go

[Package/Envelope](#) [Freight](#) [Expedited](#) [Office/Print Services*](#)
[Ship >](#) [Track >](#) [Manage >](#) [Business Solutions >](#)

Tracking no.: 9612019045807510240024

Select time format: [12H](#) | [24H](#)[E-mail notifications](#)**Delivered**

Delivered
Signed for by: APAULAS

Shipment Dates

Ship date Jan 27, 2010

Delivery date Jan 28, 2010 11:17 AM

Destination

Salem, OR

[Signature Proof of Delivery](#)

Shipment Facts

[Help](#)

Service type FedEx Ground-U.S.
Weight 0.5 lbs./2 kg

Shipment Travel History

[Help](#)Select time zone: [Local Scan Time](#)

All shipment travel activity is displayed in local time for the location

Date/Time	Activity	Location	Details
Jan 28, 2010 11:17 AM	Delivered	Salem, OR	
Jan 28, 2010 6:42 AM	On FedEx vehicle for delivery	SALEM, OR	
Jan 28, 2010 5:27 AM	At local FedEx facility	SALEM, OR	
Jan 28, 2010 4:21 AM	Departed FedEx location	PORTLAND, OR	
Jan 27, 2010 11:22 PM	Arrived at FedEx location	PORTLAND, OR	
Jan 27, 2010 7:30 PM	Left FedEx origin facility	BEND, OR	
Jan 27, 2010 6:08 PM	Arrived at FedEx location	BEND, OR	
Jan 27, 2010 5:01 PM	Picked up	BEND, OR	
Jan 27, 2010 9:47 AM	In FedEx possession	BEND, OR	Tendered at FedEx location
Jan 27, 2010 9:47 AM	Shipment information sent to FedEx		

Sender's Name Michel BAYARD Phone 541 617 1486
Company _____
Address 20555 BOWERY LANE
A-Address _____
City BEND State OR ZIP 97701

To Recipient's Name Larry FRENCH Phone _____
Company Oregon Department of Land Conservation & Development
Address 635 CAPITOL STREET, SUITE 150
Address SUITE 150
City SALEM State OR ZIP 97301

From:

Ship Date: 27 JAN 10
Act Wgt: 0.5 LB
CAD: 9512/POS1048
Account: 5 *****

to dled
attn larry french
635 CAPITOL ST NE
SUITE 150
SALEM, OR 97301

(503) 373-0050

FedEx
Ground



(US)

Ref:
INV:
PO:

Dest:



1
of
1



(9612019) 0458075 10240024

GND
Prepaid