

March 8, 2010

Via Facsimile - (503) 378-5518

Land Conservation and Development Commission
c/o Department of Land & Conservation Development
635 Capital Street, NE, Suite 150
Salem, OR 97301-2540

**Re: Exceptions to the Department's Report of February 25, 2010
City of Bend Urban Growth Boundary**

Dear Commissioners:

On behalf of Central Oregon LandWatch I am writing to submit Exceptions to the Department's Report of February 5, 2010. We will not reargue all issues we and others have already raised, though we continue to assert them. Instead, our Exceptions address just a few issues, organized below according to the Agenda Items.

Issue Area 1: ("A. Required Findings and Standard of Review") (Pages 1-3)

We concur with the Department's review of what is required under the law, but believe that the most appropriate supporting authority is the Supreme Court's decision in *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 21, 569 P2d 1063 (1977), where the Court determined that for a county's findings to be adequate they must identify the relevant approval standards, set out the facts relied upon and explain how the facts lead to the conclusion that the request satisfies the approval standards. The problem with the City's Findings is that they do not show any analysis or explanation of the facts. They are primarily conclusory and the City's appeal which attempts to find factual justifications for the conclusions cannot substitute for Findings which explain how the facts lead to the conclusions.

Issue Area 2: ("B. Residential Land Need")

SUBISSUE 5: Are second homes a "needed housing type" for the City of Bend....Did the city adequately justify its projected density for second home development...? (Pages 10-11)

Issue Area 4: ("D. Other (Non-employment) Land Need") (Pages 22-24)

Regarding Second Homes

The City of Bend has identified a "need" of 500 acres for second homes over the next 20-year period for 3,002 homes. (Rec. 1087) LandWatch has contended that there has not been a showing of such "need" for second homes, particularly considering that any need can be met by

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already approved destination resorts in the area, including the Tetherow Destination Resort which directly abuts the UGB on the west.

The Department has rejected LandWatch's appeal on the basis that the City is claiming that the second homes are not a residential land need but will qualify as an "other land need" and thus need not meet the requirements of Goal 10 or the housing statutes. The Department also concludes that coordination with Deschutes County was not required. (Dept. Report, pp. 10-11, 15-16) Note, however, that the City in its Findings at Rec. 1086 states:

"At the beginning, the city takes the position that the purpose for accounting for land that will be consumed by second homes is a legitimate Goal 10 issue."
(Emphasis added.)

Housing is housing. Whether or not a housing unit is originally purchased as a "second home" is irrelevant where the ultimate analysis will be whether it provides needed housing within the next 20 years. There is no evidence or analysis that justifies the use of earlier demand (from 2001 to 2004) for second homes as what will occur over the 20-year period. The assumption that nearly one in five of all new homes to be built in Bend will be sitting essentially vacant over the next 20 years requires an explanation and the Findings do not provide it.

There is no basis or explanation for the adopted 18% rate assumed by the City. (Rec. 1087-1088) Where the estimates of need for second homes were apparently based on data for second homes in the county (Rec. 7693) (including all the destination resorts in the county), the City should have had to assess the need for second homes in the UGB in that context as well.

It is not logical to consider second homes as "other land need," a category which includes such uses as public parks, trails, schools, storm water facilities and rights-of-way. Housing should be considered under housing need, not "other land need." But even if it is considered under the latter category, findings require an adequate factual base and analysis which explain their conclusions. The City has not provided that and the Department does not address the issue under "Other Land Need." See the following discussion under Issue Area No. 5 showing that reliance on 2001-2004 data for second home "need" is obviously outdated where 2006 and 2007 data show a dramatic decline in home construction.

Issue Area No. 5: ("E. Employment Land Need – Goal 9")

"SUBISSUE 3. Must the city update its EOA to reflect more recent trends resulting from the current recession?" (Pages 28-29)

The Department's report at page 29 asserts that "LandWatch has not identified specific trend data in the record that undermines the city's analysis to the point where the city's decision is not based on substantial evidence." The test for substantial evidence under Goal 2 does not rely upon someone presenting alternative evidence. It is incumbent upon the City to have an adequate factual base for its decision. Opponents of a decision need not provide specific trend data that is contrary to a city's analysis where the city's analysis is on its face clearly outdated. Once again LandWatch would like to point out that it identified the current recession and the impact it would have on economic growth at least eight months before the City adopted its UGB

proposal. The recession was an objective fact (not the opinion of LandWatch) which existed well prior to the UGB expansion decision.

The Department's Report is also incorrect at page 29 in stating that the City completed its 2008 EOA prior to the beginning of the recession. In fact, the Report was completed several months after LandWatch's expert had already documented the existence of the recession based on nationwide reports as well as local impacts of the recession. The recession was well under way before the 2008 EOA was completed. Goal 9 requires current data to support an employment land need assessment, or "the best available or readily collectible information." OAR 660-009-0010(5).

Specifically, LandWatch in March of 2008 pointed out the decline in the home construction industry that had occurred in Bend in 2006 and 2007. (Rec. 8208-8209) Housing units permitted in Bend declined from 2,547 in 2005 to 1,566 in 2006 and to 820 in 2007.¹ The collapse in this industry began a full two years before the December 2008 Economic Opportunities Analysis was concluded by the City. In fact, the EOA acknowledges a decline in the housing industry (Rec. 1543-1547) but neither it nor the Findings factor this recession into their projections. The City's economic needs analysis is based on a bubble that popped two years before the City adopted the EOA and UGB expansion.

Issue Area 8: ("H. Transportation Planning")

"SUBISSUE 6. Are city's findings sufficient to show that its transportation analysis for Goal 14 is consistent with city policies which restrict widening of Newport and Galveston Streets beyond three lanes?" (Pages 55-56)

The Department Report originally upheld objections from LandWatch challenging UGB expansions in the northwest area as triggering a need for expanding lanes on Newport and Galveston beyond three lanes in violation of city plan policies to the contrary. On appeal by the City, the Department has now reversed its position on the basis that a traffic study by DKS & Associates allegedly concludes that neither street would need to be widened, citing the record at 2624-2626.

LandWatch's objections should be sustained where the record and analysis for the City's Goal 12 findings have been found not to be adequate by the Department. (See pp. 49-55, 56-58) The DKS study did not even acknowledge the lack of a full grid on the west side which the Department challenges at page 54 and for which the Department calls for additional findings. See the attached letter from ODOT also questioning the DKS work. (Rec. 3858-3859) Given all of these inadequacies, there is no basis to conclude that Newport and Galveston widening has been adequately addressed. Such potential need for widening and inconsistency with Plan policies should be assessed as part of the new Goal 12 work.

¹ To the extent the Department believes there needs to be "trend data" in the Record that is contrary to the City's analysis, these dramatic numbers from 2005, 2006 and 2007 provide it.