



Oregon

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March 12, 2013

To: Land Conservation and Development Commission

From: Jim Rue, Director
Karen Swirsky, Central Oregon Regional Representative

Subject: **Agenda Item 4, March 21, 2013 LCDC Meeting**

CITY OF BEND

REQUEST FOR EXTENSION TO COMPLETE WORK RELATED TO UGB REMAND

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

The City of Bend is under remand to complete certain tasks related to the expansion of the city's urban growth boundary. The commission set a deadline of May 2, 2013 for completion of the remand tasks at the request of the city. The city requests the commission approve an extension of this deadline to June 2017. Additionally, the city requests phased submittal of items adopted in response to the remand.

B. Staff Contact Information

If you have questions about this agenda item, please contact Karen Swirsky, Central Oregon Regional Representative, at 541-325-6927 or karen.swirsky@state.or.us.

II. BACKGROUND

As the materials provided by the city describe (Attachment A), there have been significant changes in circumstances since 2010, which have changed the timeline for completing the UGB expansion. The city requests an official extension of the time limit by the commission to complete the tasks set out in the remand order.

The letter from Paul Dewey, on behalf of Central Oregon LandWatch, in Attachment B requests that the commission require updates to data used in the city's Economic Opportunities Analysis and Housing Needs Analysis as part of any extension of the remand order. LandWatch is also

concerned about the city's proposed phased submission, arguing any approval should wait until all phases are complete.

III. ANALYSIS

Staff has been working closely with the city and believes that the attached timelines are realistic. The city has completed the work related to the Buildable Lands Inventory and several sub-issues on the residential lands remand. The city has been working assiduously on its water and sewer public facilities plans and is making important progress that will result in a strong analysis to support a realistic assessment of the city's expansion needs.

The city is not asking the commission for reconsideration of any of the remand task items. The ongoing work being performed by the city is based on the population forecast adopted by Deschutes County. That forecast has not been updated, so any new analysis would be based on the same population assumption. The planning horizon for the UGB also will not change. The issues raised by LandWatch were heard and resolved by the commission in 2010.

Regarding phased submittal, for residential lands, ORS 197.296 requires that a plan accommodate identified need. That is, the city is not permitted to adopt a residential land needs analysis that shows a need without simultaneously accommodating that need. No parallel provision exists for employment or other non-residential lands.

The department is unaware of any authority the commission or department has to consider anything but the final, adopted UGB amendment. In a similar case, the city adopted its updates in phases but did not send notice of adoption, either as a post-acknowledgment plan amendment or in the manner for review of a periodic review task; it will submit the final package when the UGB amendment is complete.

IV. DEPARTMENT RECOMMENDATION AND PROPOSED MOTION

Staff recommends that the commission approve the request for an extension until June 2017 for completion of the remand tasks included in Remand and Partial Acknowledgement Order 001795. Further, the department recommends that the commission not approve the request to submit for review the city's response to the remand in phases.

Recommended Motion

I move the commission approve the city of Bend's request for an extension until June 2017 for completion of the remand tasks included in Remand and Partial Acknowledgement Order 001795.

Alternative Motion

I move the commission approve the city of Bend's request for an extension until _____ for completion of the remand tasks included in Remand and Partial Acknowledgement Order 001795.

ATTACHMENTS

- A. Bend extension request and background materials, February 20, 2013
- B. Paul Dewey on behalf of Central Oregon LandWatch comment letter, March 11, 2013

DEPT OF
FEB 22 2013
LAND CONSERVATION
AND DEVELOPMENT



February 20, 2013

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Jim Rue, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Re: Request for Additional Time to Complete Work Related to 2010 Remand of Bend Urban Growth Boundary Amendment (10-Remand-Partial Acknow-001795)

JIM CLINTON
Mayor

JODIE BARRAM
Mayor Pro Tem

VICTOR CHUDOWSKY
City Councilor

DOUG KNIGHT
City Councilor

SALLY RUSSELL
City Councilor

MARK CAPELL
City Councilor

SCOTT RAMSAY
City Councilor

ERIC KING
City Manager

Dear Mr. Rue:

We met with you and several Department of Land Conservation and Department staff here in Bend on December 6, 2012. During our meeting, we mentioned that we would be asking you and the Land Conservation and Development Commission (Commission) for more time to complete the UGB remand and allow the approval process to be completed in phases or "bundles." This letter formalizes that request, and includes some additional background material that describes the progress made on this project, along with a description of our timeline for completion of the remand tasks.

The City of Bend (City) requests an extension of time through the end of June 2017 to complete the work related to the UGB remand. A number of projects and changes in direction have occurred at the City that necessitate this request. Primarily, the City is focusing its limited financial and staff resources on completing new public facility plans (PFPs) for its aging water and sewer facilities, some of which have capacity shortages that could threaten residential and job growth during this difficult period of economic recovery. Updated and acknowledged water and sewer PFPs for the existing UGB are fundamental building blocks upon which the remaining UGB boundary expansion analysis will be based. The PFP projects involve considerable cost, public involvement and time, including the potential for appeals to LUBA. Therefore, the City is requesting additional time to get the water and sewer PFPs acknowledged prior to beginning the UGB location analysis and related work. Enumerated below are our reasons for requesting the extension of time.

1. The City began work on a Goal 11 water PFP in January 2011. This

project has generated considerable community discussion and interest, and is taking additional time to complete due to evolving policy direction and legal challenges. This PFP was adopted by the City Council in May 2012, and after an appeal to LUBA, is now on remand. The City is working to address those issues raised in the remand and adopt an amended water PFP in March of this year. However, that adoption may also result in further appeals requiring additional time to complete.

2. In May 2012, the City Council passed Resolution No. 2875, which created a new direction to develop a new sewer collection system plan (CSMP) for the *existing* UGB. The City Council also created a sewer infrastructure advisory committee (SIAG) to help direct the work to develop a new sewer CSMP for the City. This is a new approach to public involvement, planning, engineering, and modeling for the City. It has the added benefit of intensive community involvement in infrastructure planning to facilitate greater economic development and residential density for areas inside the exiting UGB. As a result, this project will take nearly two years to complete (by mid-2014). The City intends to use this CSMP as a foundation document to develop and adopt a subsequent sewer PFP for the City. The adoption of a sewer PFP may be subject to appeals to LUBA. The City's master plan for the wastewater treatment plant was acknowledged by the Commission in their 2010 order on the UGB.

3. The work on the water PFP and sewer PFP will have the effect of delaying specific work on potential efficiency measures (Tasks 3.1 and 3.2) and any work on the boundary location analysis (Issue Area 9). We do not expect to complete this work until two years after the completion and adoption of the new sewer PFP. The new City Council has expressed an interest in engaging the community in a broader discussion and analysis about growth as part of the boundary location analysis, potentially requiring additional resources and time.

4. Completing the UGB remand has been, and continues to be, a priority for the City. That said, the City has fewer staff working on the remand tasks than we did two years ago. Brian Shetterly has retired, and we have had to also direct planning staff to work on other projects and tasks since 2010. Currently, we have two Full Time Equivalent employees devoted to long-range planning, and their time is programmed to complete not only UGB remand tasks, but other long-range planning tasks that need to be completed such as the water and sewer PFPs. The UGB remand and community discussion regarding growth are still top priorities for the new City Council, as evidenced in their 2013 goal setting.

You will find enclosed an excerpt from the 2012 Annual Report of the Bend Community Development Department. This includes a report on the UGB Remand work completed, but not yet adopted, during 2011-2012.

Extension request to Jim Rue
February 20, 2013
Page 3 of 3

Please find enclosed a proposed schedule and work plan from 2013 through 2018. The City proposes to complete this work in three stages, or in three "bundles." This approach demonstrates the City's commitment to completing the UGB remand by 2017 by actively involving the community, City Council, and LCDC as soon as possible.

We look forward to attending the Commission's March 21-22, 2013 meeting in Salem to answer any questions the Commissioners may have. Thanks very much for your consideration and for support of our work on behalf of Bend.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric King', written over a faint, illegible printed name.

Eric King, City Manager

cc: Karen Swirsky, Department of Land Conservation and Development
Bend City Council
Bend Planning Commission

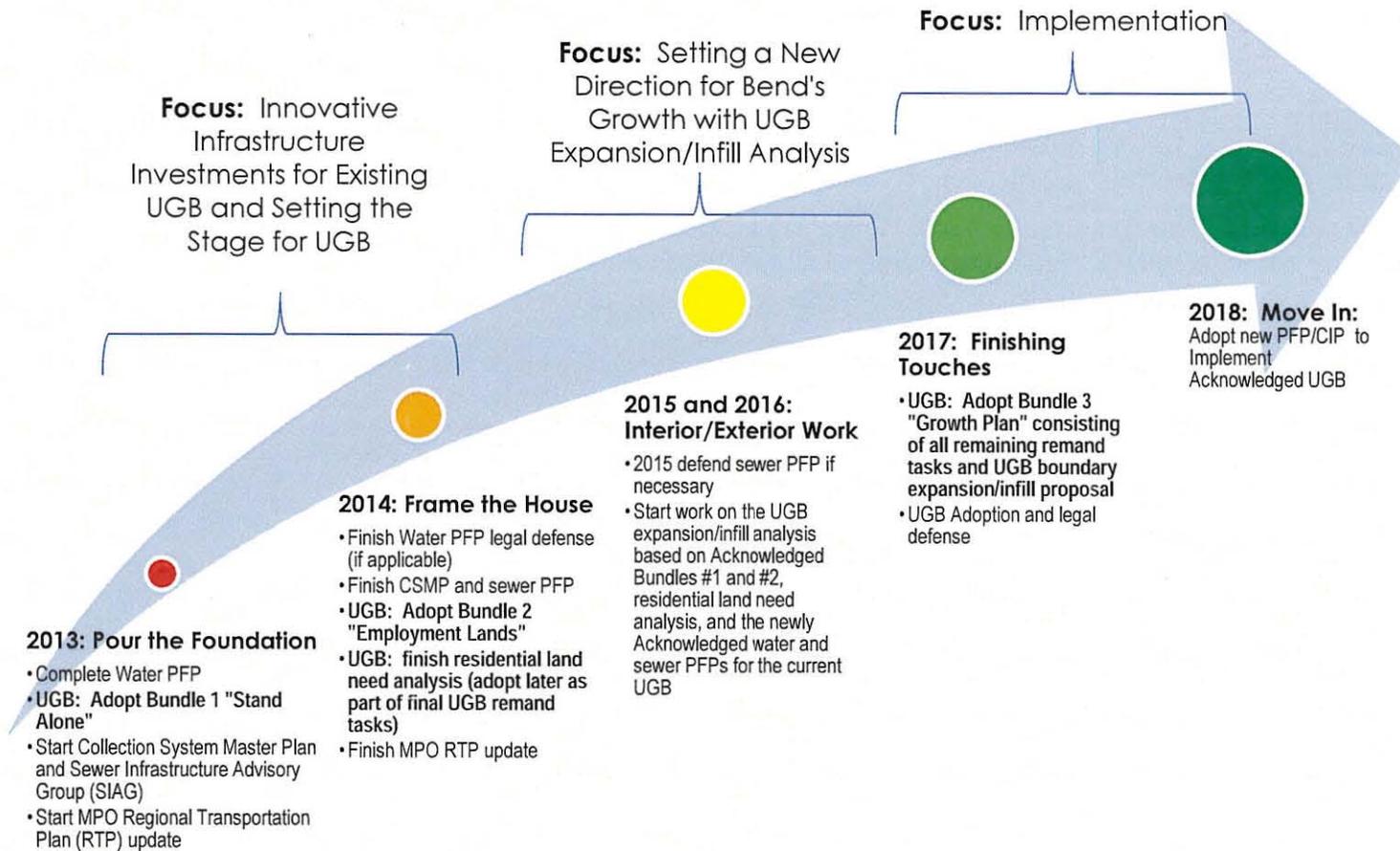
Enclosures (3)

1. Proposed bundles of remand tasks
2. Conceptual work plan for 2013-2018
3. 2012 Annual Report of the Bend Community Development Department, page 6.

City of Bend, OR
Proposed Adoption Bundles of Remand Tasks
(10-Remand-Partial Acknow-001795)

Bundle Number	Description of Remand Tasks in Adoption Bundle
1.	<p>Stand Alones - Remand Tasks that can be adopted as stand-alone products:</p> <ul style="list-style-type: none"> a. Second homes – Remand Task 2.5 b. School and Park land needs - Remand Tasks 4.2, and 4.3, Findings c. Other lands - Remand Task 4.1 d. Wildfire Hazards and Goal 7 – Remand Task 6.2
2.	<p>Employment Lands - Economic Opportunities Analysis, Findings – Remand Tasks 5.1, 5.2, 5.4, and 5.6 (Note, RTF has reviewed products for 5.6)</p>
3.	<p>UGB Boundary/Infill Analysis and Growth Plan – All remaining remand tasks related to capacity and to boundary location analysis:</p> <ul style="list-style-type: none"> a. Remand Tasks 2.2, 2.3, 2.4 – Final BLI, HNA, and estimate of residential land needed over planning period b. New Chapter 5 that incorporates these products, and shows that City will have adequate supply of land for needed housing – Remand Tasks 2.4, 2.8, 3.1, and 3.2. This new chapter recognizes past amendments to the BAGP and BDC as “efficiency measures” under ORS 197.296 and how they improve the capacity for housing in the UGB. c. All remaining remand tasks that will be addressed in boundary location analysis – Remand Tasks 2.6, 4.3, 5.8, 5.9, 6.1, 6.3, 7.3, 8.1, 8.2, 8.6, 9.1, 9.2, 9.3, 9.6, 9.7 d. One of these remaining tasks is 8.6, the VMT analysis required for the Bend MPO under the TPR.

Conceptual Work Plan: Bend UGB Remand Order



UGB Progress Report

The UGB Remand Task Force (RTF) met seven (7) times between March 2011 and April 2012. These meetings provided updates on work in progress, staff presentations on work products. The meetings include opportunities for public review and comment. Below is a list of RTF meeting dates, the topics discussed and tentatively accepted by the RTF.

April 28, 2011

Draft Findings:

- Sub-Issue 4.1 - Other Lands
- Sub-Issue 2.5 - Second Homes

June 2, 2011

Draft Findings: Sub-Issue 4.2 - Park/School Land Needs

Presentation and Discussion:

- Sub-Issue 4.3 - Future Park /School sites
- Sub-Issue 2.2 - BLI

July 28, 2011

Draft Findings:

- Sub-Issue 4.2 - Park/School Land Needs
- Sub-Issue 4.3 - Availability of Future Park/School Sites,
- Sub-Issue 5.6 - Vacancy Factor for Employment Lands
- Sub-Issue 2.3 - Part 1 Housing Needs Analysis,

September 8, 2011

Presentation and Discussion:

- Sub-Issue 2.2 - Draft Buildable Lands Inventory Housing
- Sub-Issue 2.3 - Part 1 Needs Analysis,

November 10, 2011

Presentation and Discussion:

- Sub-Issue 2.3 - Part 2 Housing Needs Analysis,
- Sub-issue 10.2 - Zoning of UGB Expansion Area

April 5, 2012

Presentation:

- Sub- Issue 2.3 - Part 3 Housing Needs Analysis (HNA),

Staff has been busy analyzing the development capacity of the vacant and redevelopable lands for consistency with recent development trends for Bend and consistency with the State definitions for vacant and redevelopable. It is anticipated that the RTF will be reconvened in late Fall of 2012 to review the draft findings.

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March 11, 2013

Land Conservation and Development Commission
c/o DLCDC
635 Capitol St., NE, Ste. 150
Salem, OR 97301

**Re: City of Bend Request for an Extension on the Remand Proceedings Regarding
Expansion of the Bend Urban Growth Boundary**

Dear Commissioners:

I'm writing on behalf of Central Oregon LandWatch (a party to the original appeal proceedings) to oppose the City of Bend's request for an extension of time from May 2013 to June 2017 for the submittal of a revised determination under ORS 197.296 concerning its proposed urban growth boundary expansion. LCDC in its November 3, 2010, remand order already allowed the City two and a half years to do the remand work. This further extension would have the effect of delaying an expansion decision by over seven years.

While we would understand LCDC normally being open to such an extension request by a city, there are important reasons why any extension here needs to be carefully considered and must have significant conditions if allowed.

LandWatch's primary concern about the extension request is the outdated information that will end up being used by the City. Back in 2010, LandWatch argued to LCDC that the City's data was outdated. For example, we pointed out that the trend analysis used in Bend's 2008 Economic Opportunities Analysis (EOA) was based on outdated data associated with a market bubble that had begun to pop two years before the City adopted the EOA and the UGB expansion. However, since the EOA was dated as of 2008, LCDC in 2010 did not require the use of updated data. (LCDC, p. 71) By 2017, that report will be nine years old and the data it relied upon will be over 10 years old. The difference in the data will be significant given that we have gone through the most significant economic "correction" since the Great Depression. The EOA's analysis of the 20-year supply of employment land to 2028 will obviously not apply to the 20-year standard for a 2017 decision.

Other examples of outdated data include the single-family/multi-family mix from 1998 to 2001 (LCDC, p. 30); the 2005 City of Bend Housing Needs Analysis (LCDC, p. 30); the 2007 Residential Lands Study (LCDC, p. 31); the 2005 Parks and Recreation and Green Space Comprehensive Plan (LCDC, p. 60); the 1999 and 2002 Metro data on a 10% infill/refill factor

(LCDC, p. 69); and the 1993-2005 vacancy rate data for office and industrial land (LCDC, p. 79).

On top of all of that, the City used a bubble-era population forecast for the City showing population increases of several percent per year. In reality, the City's population has actually gone down by a couple of thousand people.

The City's justifications for the four-plus-year extension are also not well-founded.

1. Even if the City has not completed its sewer and water plans, it could have accomplished other elements of the LCDC 2010 remand involving the Buildable Lands Inventory and other issues. Yet in the extension request letter, the City offers nothing except a list of when a Remand Task Force has met seven times in the past several years.
2. It is correct that the City's Water PFP was appealed to LUBA and that LUBA remanded the PFP on several issues, but the consequences of a city's inadequate planning should not necessarily be a basis for justifying extensions. That is particularly the case here where it took two years for the City to do the water PFP following LCDC's remand and where one of the LUBA remand issues was on providing water service outside the UGB, which was one of the LCDC remand issues back in 2010.
3. Regarding sewer, it is commendable that the City finally agreed to a more open public process. Goal 1 complaints were key issues in several appellants' appeals of the UGB expansion. An incomplete sewer plan, however, is not basis to delay all of the remand.
4. Decreased staffing for long-range planning is a concern, but it should be noted that the City has made extensive use of outside consultants to do the bulk of the work underlying the water and sewer plans.
5. LandWatch is also concerned with the proposed segmentation of the remand process where remand tasks are being "bundled" for separate acknowledgment. Such separate acknowledgement was not part of the original remand order. Though this segmented acknowledgment is not mentioned in the City's letter, it is referenced in the City's attached graphic of "Conceptual Work Plan: Bend UGB Remand Order." Our concern is that a number of these tasks are inter-related and that only by considering them together can one understand the full implications associated with any particular task subject. Early submittals to DLCD of task determinations as they are done would be good, but no acknowledgment should be made until the complete package is done. This would also help avoid more outdated data problems if further extension requests are made for certain remand tasks.

March 11, 2013

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In conclusion, this extension request should not be approved unless there is a requirement that all data used be updated. Out of fairness to all the appellants in the prior proceedings, some notice and opportunity for them to comment should also have been provided here.

Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Paul Dewey". The signature is fluid and cursive, with a large initial "P" and "D".

PAUL DEWEY

PD:ao

cc: Board