



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

### Director's Office

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



## Tentative LCDC Decisions: City of Bend UGB Appeal (4/16/10)

The following is a summary of the department's understanding of the commission's tentative decisions on the Bend UGB expansion. The department notes that these decisions are *tentative*, and that the commission will need to discuss the issues and deliberate to a final decision at the Lincoln City meeting. The City of Bend also has provided a summary of its understanding of the commission's tentative actions, which is enclosed with this summary. For the most part, the two summaries appear to be in agreement. Issues where there appears to be some difference between the department and the city's understandings are marked with an asterisk.

### Issue Area 1 – Findings

The city's findings must:

- clearly articulate the applicable standard that the city is showing it met;
- explain why the city's decision complies with the standard; and
- identify substantial evidence in the record to support its explanation.

The commission also agreed that: findings that fail to identify the evidence in the record that support them will be upheld *if* the city on appeal identifies that evidence, *and* the evidence clearly supports the finding. Note that this is the same as the approach used by LUBA. The "clearly supports" requirement is intended to create an incentive for the city to identify the evidence in its original findings, rather than wait until there is an appeal/review.

The commission wanted to consider this issue in context of specific findings issues, but it then consistently followed the approach outlined above (0.5 acre and redevelopable lands, subdivision CC&Rs, planning for need housing types (mix), parks and school district findings re ability to accommodate w/i UGB)

### Issue Area 2 Residential Land Need

#### Subissue 1: Which version of the LCDC rules apply?

The 2007 division 24 (UGB) rules apply to the city's decision. Note that for other rules, current versions apply.

**Subissue 2: BLI, what lands are counted as "vacant" and what lands are counted as "redevelopable"?**

The findings must identify how the city defined/determined whether lands were "vacant" (including partially vacant), "redevelopable," or developed. This is likely a findings issue.

However, the commission also agreed that there were three specific findings where there may be substantive issues:

- The city's definition of vacant parcels as being greater than 0.5 acres *and* with land values exceeding improvement values. If city excluded parcels smaller than 0.5 acres with no improvements, that likely conflicts with the definition of "buildable." The city also needs to explain/define why parcels larger than 0.5 acres with improvements are not "partially vacant" (e.g. some portion of the parcel is defined as buildable)
- Exclusion of lands w. CCRs. The city's summary of CC&Rs does not explain why further development is not possible in many of the subdivisions.
- Exclusion of constrained lands. City has agreed to reexamine whether these lands are "buildable."

**\*Subissue 3: Does the city's housing needs analysis and comprehensive plan properly identify needed housing under Goal 10 and the needed housing statutes? Is the city required to analyze housing need by tenure, given that it does not regulate tenure (OAR 660-008-0040), or does ORS 197.296 still require an analysis of housing needs for owner-occupied and rental housing?**

- The the city must analyze housing need by three types: single family detached, single family attached, and multifamily.
- \*The commission also agreed that on remand, Goal 10 requires analysis of future housing need; while ORS 197.296 requires an analysis of past market trends; the city may not base its planning on how far it believes it can push the market. The purpose of the analysis of past trends is to show the difference between the market and needed housing, as context for what measures the city must take to plan for needed housing.
- The city is not required to analyze housing need by tenure (rental and owner-occupied).

**\*Subissue 4: Has Bend planned for needed housing types?**

- The city must do more to explain in its findings why planning for a 65/35 (detached/attached mix) will provide needed housing over the planning period.
- \*The commission did not reach a clear decision on whether the city is required to push the proportion of multifamily housing higher (that will depend on the outcome of a revised housing needs analysis (see above)).

**Subissue 5: Are second homes a needed housing type, and is coordination required between the city and the county?**

- Second homes are not a needed housing type under the city's housing needs analysis and comprehensive plan.
- The commission agreed that the county must *consider* the city's planning for second homes if it amends its destination resort ordinance.

**Subissue 6: Inclusion of 3,000 acres of unsuitable lands**

- The commission agreed that these lands are suitable, and should be included within the city's UGB, even if they will not yield a significant quantity of additional housing units during the planning period. The city, however, must analyze capacity for infill and redevelopment of these lands on remand.

**\*Subissue 7: Inclusion of 500 acres of surplus lands**

The city may not plan for a "surplus" amount of land. A *small* surplus or deficit is allowed if necessary to avoid splitting parcels or to create a logical boundary.

**Subissue 8: Consistency w. General Plan**

The city has agreed to supplement its findings on remand to address consistency with its General Plan.

**Subissue 9: Consideration of amount of land needed for second homes in light of existing destination resorts.**

The city is not required to consider existing destination resort housing in determining needed housing within its UGB.

**Issue Area 3 Efficiency Measures**

**Subissue 1: Do the city's findings adequately explain how it has met the requirement in Goal 14 to determine the extent to which it can "reasonably accommodate" its projected need for residential lands within the existing UGB, prior to expanding onto new lands?**

The city needs to consider additional efficiency measures. This should include, but is not limited to, evaluating residential lands with more than 5 acres that are vacant or partially vacant for infill. Other measures listed in the department/director's reports also should be considered.

**Subissue 2: Are the city's two proposed efficiency measures sufficiently likely to occur? Do they "demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years?" OAR 197.296(7).**

The city must adopt more specific timelines for initiation and completion of efficiency measures.

**Subissue 3: Has the city met the requirement of Goal 14 and OAR 660-24-0050(4) to demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB? Must the city evaluate and adopt additional efficiency measures?**

Same as subissue 1, above.

#### **Issue Area 4 Other Land Needs**

**Subissue 1: Did the city adequately justify its addition of a 15 percent factor for all "other lands"?**

The city needs stronger findings to explain why it increased its percentage for this land need category from 12.8 to 15 percent. Its land need analysis should not be based only on past trends, but should include consideration of *future* conditions and needs (explain why the trend will continue or change).

**Subissue 2: Do the city's findings support its decision concerning the amount of land added to its UGB for parks and schools?**

The commission tentatively agreed with the amount of land need determined by the city for parks and schools, but improved findings are needed to address the types of projected school needs, siting criteria, and whether the needs may be accommodated within the existing UGB. *The findings also should address 195.110 requirements. (Note: this was not fully addressed at the first hearing)*

**Subissue 3: Does the city need to adopt or improve its findings concerning whether its need for land for parks and schools may be accommodated within its prior UGB or (for parks) on lands outside of the UGB?**

The city's findings must address the extent to which the need for future parks and schools can be accommodated within the prior UGB. The city's findings also must address how it accounts for lands already owned by the districts outside the prior UGB (appears that the city determined these lands are not "suitable" – did that result in double counting?).

#### **Issue Area 5: Employment Land Needs**

**Subissue 1: Did the City Follow the Steps Required by OAR 660-009-0015 and OAR 660-024-0040 and 0050 in Estimating the Required 20-Year Employment Land Need for Bend?**

The city followed the main steps required under the Goal 9 rule for estimating land need for employment. City must clarify that it is utilizing 2008 EOA scenario B.

**Subissue 2: Are there adequate factual and policy bases, and adequate findings, justifying the city's use of a 10% factor to estimate the amount of employment need that will be met through redevelopment of "developed" lands?**

The city must provide more evidence to support its use of the factor, such as analysis of actual amount of redevelopment that has occurred, and a reasoned extension of that analysis over the planning period. Use of a factor is acceptable, but findings must explain evidentiary basis and address the Goal 14 requirement to reasonably accommodate development within the existing UGB.

**Subissue 3: Must the city update its EOA to reflect more recent trends resulting from the current recession?**

The city is not required to update its EOA.

**\*Subissue 4: Are there adequate factual and policy bases for the city's decision to increase its estimate of employment land need for commercial, medical, residential and public facility plan districts by fifty percent (except its CG plan (commercial general) district, which it increased by 25%)? May the city include additional employment lands beyond what it shows are needed to allow for "market choice?"**

No. The city may not include *more* land than is estimated as needed over the 20-year planning period. The city's determination should be based on a description of past and project future trends, long-term employment needs, and other policy bases articulated in its findings.

**Subissue 5: Has the City adopted adequate plan policies to manage the short-term supply of employment land?**

The city must include policies for maintaining a short-term supply. It does not have to have money "in the bank" to fund required infrastructure, but must plan for required infrastructure and have identified the funding mechanisms.

**Subissue 6: Does the record support the conclusion that Bend will experience a 15 percent vacancy rate in its employment lands over the 20-year planning period?**

The 15 percent vacancy factor is too high. Long-term vacancy factor should be based on past and projected future trends over the planning period.

**Subissue 7: Must an urban expansion consider the impact on displaced non-urban industries, such as agriculture and agriculture irrigation?**

No.

**Subissue 8: Is inclusion of 119 acres of residential land for employment uses justified?**

Yes, should be included in the residential land need analysis.

**Subissue 9: Is the city's decision on employment lands, including its Framework Plan designations, consistent with Policy 17 and Policy 18 of Chapter 6 of the Bend General Plan?**

No. City must address these policies on remand.

### **Issue Area 6: Goals 5 and 7 - Natural Resources and Hazards**

**Subissue 1: To what extent must the city comply with the requirements of Goal 5 and OAR 660, division 23 prior to or contemporaneously with its UGB expansion?**

To be determined.

**Subissue 2: Must the city address wildfire risk in evaluating alternate UGB expansion areas? Does Goal 7 require the city and county to include wildland fire safety planning as a consideration in planning for its UGB expansion? Are there other state laws that would implicate an action through Goal 7?**

To be determined.

**Subissue 3: Does the record contain adequate evidence to provide a factual basis for the decision to designate certain property Surface Mining on the plan map?**

To be determined.

### **Issue Area 7: Public Facilities Planning – Goal 11**

**Subissue 1: Are the PFPs submitted by the city in compliance with Goal 11 and the Goal 11 rules as to lands within the city's prior UGB? Should the commission acknowledge the PFPs as to lands within the prior UGB, even if the PFPs must be remanded as to the UGB expansion?**

The city may adopt a PFP(s) for its prior UGB on remand. If the city does so, however, the PFPs must address build-out assumptions, including potential UGB expansion(s).

**Subissue 2: May a city's sewer plans include facilities and capacity intended to serve lands outside the UGB, even if the plan says no service will be permitted or provided until such lands are located inside the UGB and urbanized (rezoned to urban designations)? City Appeal, at 61. May specific individual components of the city's PFP be acknowledged individually, or must they be reviewed and acknowledged as a whole? City Appeal at 62?**

Yes. In fact the PFPs should address expected future development, including projected development in UGB expansion areas. PFPs must be clear that such areas will not be served until ready to be urbanized and that no connections outside of the UGB are planned.

**Subissue 3: Were the cities public facilities plans improperly used to determine the location of the UGB expansion?**

To be determined.

**Subissue 4: To what extent must a PFP be consistent with proposed land uses, including any measures intended to meet needed housing?**

The city may adopt a PFP for its prior UGB, but that PFP must consider potential future land uses over the planning period.

**Subissue 5: Under OAR 660-011-0010(2), what are the city's obligations, if any, to have service agreements with private water districts?**

To be determined (Department now agrees with city).

**Subissue 6: What was the city's obligation to provide notice to DLCD of PFP revisions as part of its October 8, 2008 supplemental notice of a revised UGB amendment?**

To be determined. City will renote on remand.

**Subissue 7: Must the city's sewer PFP cover all areas in the UGB expansion area?**

PFPs must address entire expansion area.

**Subissue 8: Does Goal 2 and its coordination requirement apply to private water utilities when those utilities will provide an urban service to areas within the UGB?**

To be determined.

**Subissue 9: Does the water system plan provide sufficient information about private utility water purveyors who provide an urban service?**

To be determined.

**Subissue 10: Is Swalley Irrigation District a "rural irrigation system" or is it a "service provider" under OAR 660-024-0060(8) such that there is an additional coordination obligation (in addition to Goal 2) to evaluate the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to Swalley Irrigation District? Swalley and Hunnell United Neighbors also seek clarification that the city is required to compare the costs, advantages and disadvantages of alternative UGB expansion areas with respect to public facilities and services regardless of whether it is including particular UGB expansion areas on the basis of such costs. Swalley Appeal, at 8.**

City is not required to coordinate with Swalley as a service provider. However, the city has agreed to coordinate further with Swalley generally. City is required to compare alternate expansion areas in terms of service costs.

**Subissue 11: Does the city's analysis of public facilities and services underestimate the cost of providing such facilities and services to the UGB expansion area and, if so, must the city revise both its Goal 11 analysis and its Housing Needs Analysis to evaluate whether it is planning for needed housing in locations appropriate for the needed housing types.**

To be determined.

### **Issue Area 8: Transportation Planning**

**Subissue 1: Do the city's findings adequately explain the relative costs of providing transportation improvements to serve individual UGB expansion areas?**

To be determined.

**Subissue 2: Must the city provide additional information and findings regarding the costs of providing any extraordinary costs related to overcoming topographic barriers or rights of way?**

To be determined.

**Subissue 3: Must the city provide more detailed analysis or findings of the extent to which the costs of improvements for major roadway improvements in the north area (including proposed improvements to Highways 20 and 97) are a result of and should be assigned to development in the north area rather than the city as a whole? That is, should the city's analysis and evaluation assess whether the extent of improvements in the north area might be avoided or reduced in scale or cost if the UGB was not expanded in this area or if the extent of the UGB expansion was reduced?**

To be determined.

**Subissue 4: Must the city provide comparable estimates for providing needed roadway capacity for areas that because of topographic constraints, may need to be served by different types of roadway networks? For example, growth on the east side can apparently be served by a fairly complete grid of streets, while topographic barriers limit potential for a full street grid in this area.**

To be determined.

**Subissue 5: What is the Planning Status of the Deschutes River Bridge? Is removal of the proposed Deschutes River Bridge from the city's TSP sufficient to resolve the planning status of this facility, consistent with OAR 660-012-0025(3)?**

To be determined.

**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?**

To be determined.

**Subissue 7: What must the City of Bend do to comply with the Transportation Planning Rule requirements for Metropolitan Planning Organization areas in conjunction with its UGB amendment?**

To be determined.

**Subissue 8: May the City of Bend rely on its partially acknowledged transportation systems plan (TSP)?**

To be determined.

#### **Issue Area 9: UGB Location**

**Subissue 1: How may suitability be considered in determining the location of the city's UGB expansion. Are city-defined suitability criteria on an "equal footing" with the statutory priorities for the order in which different types of lands may be considered for inclusion in an urban growth boundary? How do the Court of Appeals decisions in *West Linn* and *Adair Village* affect this issue?**

To be determined.

**Subissue 2: How does the exception to the normal statutory priority of lands for "specific identified land needs" under ORS 197.298(3)(a) apply in this case?**

To be determined.

**Subissue 3: How does the exception to the normal statutory priority of lands, where lower priority lands are required in order to include or provide services to higher priority lands under ORS 197.298(3)(c) apply in this case?**

To be determined.

**Subissue 4: Are the county's Urban Area Reserve lands exception lands or resource lands under ORS 197.298(2)? Has the director correctly applied ORS 197.298(2)?**

To be determined.

**Subissue 5: May a city exclude land from its UGB because the cost of developing it would be a barrier to affordable housing? If yes, on what legal basis?**

To be determined.

**Subissue 6. May the city exclude lands from its UGB expansion area if they are a lot or parcel of less than three acres that contains a house?**

To be determined.

**Subissue 7: Do the other suitability criteria used by the city have an adequate factual base (if they may be used as threshold criteria to exclude exception lands)?**

To be determined.

**Subissue 8: Must the city and county apply Deschutes County Code section 23.48.030 as standards for this UGB expansion decision?**

To be determined.

**Subissue 9: Should the commission specifically remand the city and county decisions with respect to inclusion of the exception areas in the northwest?**

To be determined.

**Subissue 10: Was exclusion of the Buck Canyon exception area from the City of Bend's UGB consistent with the ORS 197.298 priorities for adding land to a UGB?**

To be determined.

#### **Issue Area 10: Other Issues**

**Subissue 1: Is the validity of objections to the city's decision relevant to the commission's decision on appeals of the Director's Decision?**

To be determined.

**Subissue 2: Did the city and county apply appropriate comprehensive plan and zoning designations to the UGB expansion area?**

To be determined.

**Subissue 3: Did the city fail to comply with ORS 197.610 by failing to provide adequate notice of the proposed amendments to its General Plan? Did the city meet its Goal 2 coordination obligations with regard to Swalley Irrigation District? Did the city violate Goal 1 in how it considered and provided for public participation regarding its public facility plans?**

To be determined.

**Subissue 4: Did the city place information in the record after the public hearing was closed and, if so, does this require remand?**

To be determined.

**Subissue 5: Should the commission more clearly define the scope of the remand?**

To be determined.

**City of Bend**  
**DRAFT Summary of Tentative LCDC Actions on**  
**Appeal of Director’s Decision (Order 001775)**

March 18-19, 2010

<b>Issue/Recommendation</b>	<b>City Position</b>	<b>LCDC Tentative Decision</b>
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.

<b>Issue/Recommendation</b>	<b>City Position</b>	<b>LCDC Tentative Decision</b>
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.

<b>Issue/Recommendation</b>	<b>City Position</b>	<b>LCDC Tentative Decision</b>
E.5. Need detailed policies for short term land supply.	Goal 9 rule is not clear on this.	Commission agrees with City. Policies 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.	Lincoln City
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.	Lincoln City
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.	Lincoln City
G.1. City can do a serial adoption of PFPs on remand if it wishes, first for existing UGB, second for expanded	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

Issue/Recommendation	City Position	LCDC Tentative Decision
UGB.		are based on <u>existing</u> Plan designations and build-out assumptions.
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.
G.3. Must coordinate PFPs more closely to boundary actually adopted.	Will do on remand.	?
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.
G.5. City is required to enter into urban service agreements with private water companies.	ORS 195.065 applies only to local governments and special districts. The private utilities are not special districts.	No counter-argument from Department at hearing. Deferred. Director wants more time to consider City's position.
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.	Lincoln City
G.7. Scope of PFPs. PFPs must cover entire expansion area.	City does not disagree.	Lincoln City
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.	Deferred, in connection with G.5.
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.	Lincoln City
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.	Lincoln City

Issue/Recommendation	City Position	LCDC Tentative Decision
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.	Lincoln City
H.2. City needs better findings and analysis regarding topographic barriers.	City disagrees, but can agree to enhanced findings if required by Commission.	Lincoln City
H.3. City improperly allocated costs of north area transportation improvements and its analytical model is flawed, requiring a new analysis.	City disagrees.	Lincoln City
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.	Lincoln City
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.	Lincoln City
H.6. City's decision does not violate policies regarding width of Newport and Galveston.	City agrees.	Lincoln City
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.	Lincoln City
H.8. Deny Swalley appeal re status of TSP.	City agrees.	Lincoln City
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.	Lincoln City
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.	Lincoln City
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.	Lincoln City
I.4. Deny appeals of Swalley, etc. that	City agrees.	Lincoln City

Issue/Recommendation	City Position	LCDC Tentative Decision
City cannot treat reserve land as non-resource.		
I.5. Deny LandWatch appeal re cost of land and link to affordable housing.	City agrees.	Lincoln City
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 (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
I.8. Deny Swalley appeal re application of Deschutes County Code 23.48.030.	City agrees.	Lincoln City
I.9. Deny Swalley appeal re factual basis re northwest area.	City agrees.	Lincoln City
I.10. City needs to do better analysis regarding all areas, including Buck Canyon	City will provide more/better findings on remand.	Lincoln City
J.1. Validity of objections is not relevant.	Yes it is, but not that big a deal.	Lincoln City
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
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
J.4. Deny appeal of LandWatch that information was added after record closed.	City agrees.	Lincoln City
J.5 More clarity needed on remand.	City does not object to more clarity on remand.	Lincoln City