

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 1000 FRIENDS OF OREGON,
5 FRIENDS OF YAMHILL COUNTY
6 and COLUMBIA EMPIRE FARMS, INC.,
7 *Petitioners,*

8
9 vs.

10
11 CITY OF DUNDEE,
12 *Respondent,*

13
14 and

15
16 OREGON DEPARTMENT
17 OF TRANSPORTATION,
18 *Intervenor-Respondent.*

19
20 LUBA Nos. 2004-144 and 2004-145

21
22 FINAL OPINION
23 AND ORDER

24
25 Appeal from City of Dundee.

26
27 Christine M. Cook, Portland, filed a petition for review and argued on behalf of 1000
28 Friends of Oregon and Friends of Yamhill County.

29
30 Jeffrey G. Condit, Portland, filed a petition for review and argued on behalf of Columbia
31 Empire Farms. With him on the brief were Kelly S. Hossaini and Miller Nash, LLP.

32
33 Pamela J. Beery, Portland, filed a joint response brief and argued on behalf of respondent.
34 With her on the brief was Beery, Elsner and Hammond, LLP.

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36 Bonnie E. Heitsch, Assistant Attorney General, Salem, filed a joint response brief and
37 argued on behalf of intervenor-respondent. With her on the brief was Kathryn A. Lincoln.

38
39 DAVIES, Board Chair; BASSHAM, Board Member; HOLSTUN, Board Member,
40 participated in the decision.

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42 AFFIRMED

07/21/2005

1 You are entitled to judicial review of this Order. Judicial review is governed by the
2 provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioners challenge a comprehensive plan amendment adding transportation policies supporting the location of the Newberg-Dundee Bypass.¹

¹ The new policies provide, in part:

- “B. Newberg-Dundee Bypass
- “7. The City actively supports the development of the Newberg-Dundee Bypass in the southern location corridor described as Alternative 3J (Modified) in the Location Environmental Impact Statement.
- “8. The City affirms its support for a Bypass location and design that recognizes existing Comprehensive Plan policies, including Recreation and Willamette River Greenway policies, and which includes providing public access to the Willamette River and the City’s waterfront for park and recreational development.
- “9. The City recognizes the designation of the Bypass as a statewide expressway and freight route as defined in the Oregon Highway Plan. The City expects the Bypass and interchanges will be fully access controlled and no direct access will be allowed from private properties on the Bypass or within the Interchange Management Areas as define by the OHP.
- “10. The City will consider adopting additional setback requirements to maintain appropriate area for the approved Bypass alignment.
- “11. The Bypass be planned and developed by ODOT as a two-tiered project in which the corridor will first be approved and then the design of the facility will be approved. Therefore, for purposes of City compliance with the Transportation Planning Rule (OAR 660-012-0060), the City will not consider or rely on the Bypass (including the proposed East Dundee Interchange) for providing additional planned capacity as ‘planned transportation facilities’ until the Oregon Transportation Commission approves a financing plan for the Bypass. Upon adoption of a Bypass financing plan by the Oregon Transportation Commission, those portions of the Bypass identified to be constructed within the 20-year planning horizon by the financial plan can be considered planned improvements pursuant to OAR 660-12-0060.
- “12. The City will coordinate with ODOT, Yamhill County and affected property owners in participating, preparing, and adopting an Interchange Area Management Plan (IAMP) for the East Dundee Interchange. The IAMP will address the following at a minimum: state access management standards, road connections and local street circulation, and compatible land uses. The IAMP will be designed to protect the function and capacity of the East Dundee Interchange for a 20-year planning period.

“* * * * .” Record 13-14.

1 **MOTIONS TO STRIKE AND TO TAKE EVIDENCE NOT IN THE RECORD**

2 Intervenor-respondent Oregon Department of Transportation (ODOT) moves to strike two
3 pages, Excerpt of Record 2, 3, attached to the petition for review of 1000 Friends of Oregon and
4 Friends of Yamhill County (Friends). ODOT alleges that the maps on those pages are part of the
5 record in a companion case, *1000 Friends of Oregon v. Yamhill County*, ___ Or LUBA ___
6 (LUBA Nos. 2004-169 *et seq.*, July 21, 2005), but that they are not part of the record in this
7 appeal. Friends does not respond to this motion, and it appears that ODOT is correct.
8 Accordingly, ODOT’s motion to strike those pages is granted.

9 In petitioner Columbia Empire Farms’ (CEF) petition for review, Appendix B was attached
10 to support the assignment of error. Appendix B is a map from the record that was altered to show
11 CEF’s property superimposed on the map. ODOT moved to strike the appendix and to take
12 evidence outside of the record to submit its own map and documentation regarding ownership in the
13 area. At oral argument, ODOT agreed that appendix B correctly displays the location of CEF’s
14 property and withdrew its motion to strike and motion to take evidence outside of the record.
15 Therefore, those motions are now moot.

16 **FACTS**

17 ODOT is proposing a Highway 99 bypass (from southwest to northeast) between the cities
18 of Dayton, Dundee, and Newberg to relieve severe traffic congestion in the area. The cities of
19 Dayton and Newberg, and Yamhill County, also adopted ordinances related to approving the
20 bypass.² The purpose of the bypass is to alleviate congestion on Highway 99, particularly where
21 the highway narrows from four lanes to two in the City of Dundee. The bypass will go through
22 undeveloped vacant land in the city’s urban growth boundary (UGB) south of the existing highway.
23 The bypass also calls for the East Dundee Interchange, which is a connection to existing Highway

² For a more complete discussion of the facts regarding the proposed bypass, see our final opinion and order in a companion case issued this date in *1000 Friends of Oregon v. Yamhill County*, ___ Or LUBA ___ (LUBA Nos. 2004-169 *et al.* July 21, 2005).

1 99 that is primarily outside the city’s UGB, but extends partially into the Dundee UGB. The city
2 held hearings on the amendments and adopted them over petitioners’ objections. This appeal
3 followed.

4 **ASSIGNMENT OF ERROR (COLUMBIA EMPIRE FARMS)**

5 Columbia Empire Farms (CEF) asserts that the city’s conclusion that its inventory of
6 residential lands is adequate to meet the city’s housing needs after consideration of the residential
7 lands anticipated to be displaced by the proposed bypass and corridor violates Statewide Planning
8 Goal 2 (Land Use Planning) and Goal 10 (Housing), related statutes and administrative rules and the
9 Dundee Comprehensive Plan.³

10 Goal 10 and its implementing administrative rules and related statutes require local
11 governments to inventory their buildable lands and ensure that the local government’s supply of
12 buildable residential lands is adequate to meet its anticipated housing needs. Goal 10; ORS
13 197.295-.314; OAR 660-008-0010. A buildable lands inventory was prepared when the city’s
14 comprehensive plan was adopted. The inventory, which is included in the comprehensive plan,
15 shows the total lands available for residential development within the city limits to be about 430
16 acres, 260 in the western portion of the City, and 170 in the eastern portion of the City. The 170
17 acres in the eastern portion of the city are in a holding zone for future residential development. The
18 comprehensive plan includes in its residential lands inventory the land within the holding zone.

19 That inventory was updated in 1988 during periodic review in order to ensure that the city
20 continued to have a sufficient inventory of buildable land to satisfy its anticipated housing need as

³ Goal 2 provides in pertinent part:

“To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

“City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.”

1 required by Goal 10. The updated inventory projected the acres needed through 2005, and
 2 determined that the city would have a surplus of 30.6 acres. Accordingly, the LCDC 1990 periodic
 3 review order concludes that “[b]ased on the land needed to satisfy year 2005 housing demand and
 4 the current inventory of buildable land, the supply of land is adequate to meet future demand in each
 5 residential land category.”⁴

6 In 2003, the city prepared an updated buildable lands inventory (2003 BLI) to determine,
 7 once again, whether the city had an adequate supply of buildable lands. The study reviewed three
 8 different scenarios and concluded that under any of the three, the city continued to retain a surplus
 9 of residential land.⁵

10 In order to establish a continuing adequate inventory following approval of the proposed
 11 bypass, the city estimated the amount of land to be displaced by the proposed bypass corridor. It
 12 estimated that “the Bypass location corridor encompasses 27.54 acres planned residential use in the
 13 Dundee UGB. It is estimated that the roadway would directly displace 16.52 acres of residential
 14 land.” Record 25.

15 CEF alleges that the city’s 27.5-acre figure for the land anticipated to be displaced by the
 16 bypass corridor is inaccurate because it does not reflect secondary impacts on adjacent residential

⁴ Table 7 of the periodic review order, Respondents’ Combined Brief Appendix C, page 8, provides:

“Table 7
 “Demand and Supply

“Type	Acres Needed 2005	1988 Final Inventory	Deficit/Surplus
“Single Family R-1	33.3	51.2 (R-1)	+17.9 “Single
Family R-2	10.4	14.6 (R-2)	+4.2 “Multiple Family
R-3	5.9		“Mobile Home R-3
	10.5	24.9 (R-3)	+8.5”

⁵ The base case scenario assumed no residential infill with a continuation of existing housing trends. That scenario resulted in a surplus of 97 acres of residential land. The medium intensity scenario assumed “higher residential densities” (a 39% increase over current housing densities) and resulted in a surplus of 147 acres of residential land. The compact growth scenario assumes even more compact residential growth (an increase to 6.4 dwelling units per acre and two new clustered mixed use centers) and resulted in a surplus of 155 acres. All scenarios began with 320 acres of available residential land.

1 lands. We understand CEF to argue that the city’s estimate of residential land to be displaced by
2 the proposed use must include nearby residential lands that may be impacted, by noise or visual
3 impacts or otherwise, by the proposed bypass. CEF cites no authority supporting that position, and
4 even if secondary effects might be a legitimate consideration, petitioners do not establish any reason
5 to believe that residential lands adjacent to the proposed bypass will be rendered unsuitable for
6 residential use.

7 ORS 197.295(1) defines “buildable land” as “lands in urban and urbanizable areas that are
8 suitable, available and necessary for residential uses.” Land is considered “suitable and available” if
9 it is “residentially designated vacant [or] redevelopable land within an urban growth boundary that is
10 not constrained by natural hazards, or subject to natural resource protection measures, and for
11 which public facilities are planned or to which public facilities can be made available.” OAR 660-
12 008-0005(13). CEF does not allege that the nearby property is “constrained by natural hazards” or
13 “subject to natural resource protection measures.” While the vacant residential land surrounding the
14 proposed corridor may be impacted by the proposed use, the statute and administrative rule do not
15 indicate that such impacts render the land “unavailable” or “unsuitable” for residential development,
16 for purposes of determining the impacts on the buildable lands inventory; *i.e.*, the 2003 BLI.

17 CEF next argues that the challenged decision violates Goal 2 and Goal 10 because it is
18 based on an unadopted, unacknowledged buildable lands inventory. Those findings rely on the
19 2003 BLI.⁶ CEF asserts that the city erred in relying on the 2003 BLI because it (1) was not made

⁶ The decision’s Goal 10 findings state:

“The Bypass location corridor through the Dundee UGB will impact lands in East Dundee that are identified in the Comprehensive Plan for future residential use. However, the larger parcels are currently farmed and included in an ‘Agriculture Holding’ zone until need is shown and a zone change approved. Prior to recommending that the City Council approve the proposed policies on July 21, 2004, the Planning Commission concluded that the adequacy of available lands for housing was established in the recent buildable lands inventory and analysis. (See memorandums from City Planner Walt Wendolowski dated July 26, 2004 and April 9, 2003 that were submitted into the record).

“Within the past few years, the City of Dundee has updated population projections, buildable land inventories, and land need projections for various categories of land use. While these

1 part of the comprehensive plan, (2) does not purport to be a needed housing analysis prepared for
2 compliance with Goal 10, and (3) is based on a flawed population projection.

3 CEF relies on *Craig Realty Group v. City of Woodburn*, 39 Or LUBA 384 (2001), and
4 *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 22, 994 P2d 1205 (2000), in
5 support of its argument that the city cannot rely on the 2003 BLI because it is not part of the city’s
6 acknowledged comprehensive plan. Respondents claim that those cases do not support that
7 position.

8 In *D.S. Parklane*, the petitioners argued that Metro improperly relied on a draft report that
9 was unrelated to and not incorporated into any applicable planning document to determine the
10 amount of land needed in an urban reserve area. The court summarized the relevant Goal 2 issue as
11 “whether the land use action itself, *i.e.*, the determination of the amount of needed land, is consistent
12 with and based upon the applicable plan and ‘related implementation measures.’”⁷ The court further
13 explained:

14
15 “The objective of the goal is to make the planning process and planning documents the
16 ‘basis for all decisions and actions related to the use of land.’ (Emphasis added.) The
17 draft report is not a plan or planning document of the kind that Goal 2 contemplates. It is
18 an informal study that, by its own terms, is not related to the designation of urban reserves,
19 and by its own terms, is not even a ‘final’ document for the purposes at which it is

studies have not yet been incorporated into the Dundee Comprehensive Plan, the City Council has coordinated with Yamhill County and adopted a population projection of 5,744 for the year 2020 and concluded that adequate land is available within the existing UGB to accommodate projected 20-year land needs. Based on GIS information submitted to the record, ODOT estimates the location corridor impacts 27.54 acres of designated residential land within the City’s UGB, while the roadway will directly displace about 16.52 acres. Subtracting this amount from the ‘base case’ scenario (no change in development patterns or densities) – the City will still retain a surplus of 80 acres of residential land to meet projected housing needs to the year 2020.

“Therefore, in specifically addressing testimony presented at the hearing, the Council concludes that the Bypass policies will not impact the City’s ability to meet its housing land needs.” Record 31-32.

⁷ Goal 2 provides:

“City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.”

1 directed. Under Goal 2, the computation of need must be based upon the functional plan
2 and/or Metro's other applicable planning documents. Metro may, of course, amend those
3 documents in the manner prescribed by law, if it chooses, but it cannot simply subordinate
4 them to an informal study that is concerned with a remotely related matter.
5

6 "It is true that the urban reserve rule would take precedence over other provisions that are
7 inconsistent with it for purposes of the issues in this case. However, there is no
8 inconsistency between Goal 2 and OAR 660-021-0030 in this connection. Subsection
9 (1) of the rule does not purport to describe the sources on which the estimate of the
10 amount of needed land may be based. Hence, the rule does not supplant the relevant
11 Goal 2 requirements relating to the documents that may serve as the basis for land use
12 actions and that, for the reasons discussed, do not allow the draft report to be the basis
13 for the estimate of need." 165 Or App at 22-23 (footnote omitted).

14 In *Craig Realty*, we cited *D.S. Parklane* in affirming a city's reliance on the population
15 projections and the supply of buildable land in its acknowledged comprehensive plan to conclude
16 that a decision that rezoned land resulting in a decrease in the amount of residential land did not
17 violate Goal 10. In so holding, we rejected the petitioners' argument that the city could not rely on
18 the inventory in the comprehensive plan because it was outdated.

19 CEF reads the Court of Appeals' holding in *D.S. Parklane* strictly to require reliance on
20 the comprehensive plan when determining adequacy of the inventory. It reads the case to reject any
21 possibility that a local government may rely on any evidence that is not included in a formally
22 adopted planning document. Respondents, on the other hand, would limit the holding to the facts.
23 They assert that the study in *D.S. Parklane* was a draft study that was not related to the designation
24 of urban reserves and, therefore, could not form the basis of a determination of land needed to be
25 included in the urban reserves. They argue that that is not the case here. Here, they argue, the BLI
26 is a final document that was developed for the sole purpose of determining whether there was an
27 adequate supply of residential buildable lands in Dundee. Respondents cite the language quoted
28 above that Goal 2's objective is to make the planning process and planning documents the basis for
29 "all decisions and actions related to the use of land." They assert:

30
31 "the BLI is consistent with and based upon Urbanization Policy 1 in the Comprehensive
32 Plan, which requires periodic re-examination of developable land every five years. It is a
33 measure to implement its Comprehensive Plan and is consistent with the planning

1 framework in Dundee. Reliance upon the BLI is consistent with the Court of Appeals
2 directive in *Parklane*.” Combined Response Brief 23.

3 The question presented here is whether *D.S. Parklane* precludes the city’s reliance on the
4 2003 BLI, which all parties appear to agree was not incorporated into the comprehensive plan. We
5 conclude that it does not. Although the language from *D.S. Parklane* quoted above can be read
6 broadly, as suggested by CEF, such a broad reading is not required under Goal 2.

7 In *D.S. Parklane*, Metro relied upon a draft document prepared in 1996 instead of on the
8 acknowledged plan that had been updated in 1995. The Court of Appeals held that, in that
9 circumstance, Metro could not “subordinate” applicable acknowledged planning documents to “an
10 informal study.” In other words, it could not choose to rely on an unacknowledged draft study over
11 an inventory completed a year earlier that was part of the acknowledged comprehensive plan,
12 where the results of those two studies were clearly contradictory. Metro’s determination was not
13 consistent with the acknowledged plan in that case, in violation of Goal 2.

14 In this case, the 1988 inventory was 15 years old when the challenged decision was made.
15 Approximately two years before the issuance of the challenged decision, the city completed an
16 updated housing inventory prepared specifically to ascertain the projected housing need and the
17 available residential lands. We do not see that the fact that the more recent inventory has not yet
18 been adopted as part of the comprehensive plan makes the city’s decision, which relied upon it,
19 somehow inconsistent with the comprehensive plan. In fact, it seems arguable that, if a city has a
20 housing inventory that updates a 15-year old acknowledged inventory, the city must rely on such
21 updated information in order to base its decision on “an adequate factual base.” *See* Goal 2; n 3;
22 *see also DLCD v. City of Warrenton*, 37 Or LUBA 933 (2000) (suggesting, by negative
23 implication, that a local government might be able to rely on an unacknowledged updated housing
24 study if the findings establish a relationship between that study and its Goal 10 inventory).⁸ As the

⁸ Our opinion in *Craig Realty* also supports that negative implication in *Warrenton*. In *Craig Realty*, after affirming the city’s reliance on a dated inventory, we concurred with the respondents that recent amendments

1 city asserts, the BLI complies with a policy in the comprehensive plan that provides for periodic re-
2 examination of its residential land supply to determine if there is a need to adjust the UGB. The
3 2003 BLI implements that policy and is therefore consistent with the plan. Accordingly, the city's
4 findings demonstrating that it has a sufficient supply of residential land to meet future needs are
5 consistent with the comprehensive plan and implementing measures.⁹

6 Finally, CEF argues that the housing needs analysis in the 1990 periodic review order and
7 the 2003 BLI are insufficient to support the city's conclusion that Goal 10 is satisfied because the
8 studies did not address the needed housing types listed in ORS 197.303(1)(a) required for cities
9 with populations exceeding 2,500 people.

10 ORS 197.303(2)(a) exempts cities with populations less than 2,500 from the responsibility
11 to consider certain types of needed housing.¹⁰ For those smaller cities, for instance, 'needed

provided evidence that the multi-family land supply had not decreased "so as to implicate the city's compliance with Goal 10." *Craig Realty*, 39 Or LUBA at 396.

⁹ CEF also argues that the BLI is premised on a population projection that is too low and that its conclusions regarding the anticipated need for residential land are not accurate, and that the challenged decision is therefore not supported by an adequate factual base. The city counters that the population projection was adopted by ordinance in 2001 and that any challenge to that population projection is a collateral attack of the 2001 ordinance in which the projection was adopted. We agree with the city.

¹⁰ ORS 197.303 provides:

- “(1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, 'needed housing' means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, 'needed housing' also means:
 - “(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
 - “(b) Government assisted housing;
 - “(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
 - “(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.

1 housing” does not include attached and detached single-family housing and multiple family housing
2 for owner and renter occupancy or “manufactured homes on individual lots planned and zoned for
3 single-family residential use that are in addition to lots within designated manufactured dwelling
4 subdivisions.” CEF argues that the city’s population now exceeds 2,500, and the city must consider
5 the impact of the proposed action on the full range of “needed housing.” It argues that “[b]y its
6 terms, ORS 197.303 became applicable to any analysis of housing need conducted by the City in
7 2000 or earlier when the City’s population reached 2,500.” CEF Petition for Review 9. We
8 understand CEF to argue that because the city’s population surpassed 2,500 at some point before
9 2003, ORS 197.303 became applicable, and the city cannot rely upon the inventory in the 1990
10 periodic review order or the 2003 BLI, neither of which addresses these other housing types. CEF
11 argues that the city must first “adopt a housing needs analysis consistent with Goal 10 and ORS
12 197.303 and incorporate such analysis into its Comprehensive Plan in order to determine what its
13 housing needs are.” CEF Petition for Review 10.

14 The question presented here is whether, when a city exceeds 2,500 people, it must adopt a
15 new buildable lands inventory that addresses the needed housing types that it was not required to
16 address as a city smaller than 2,500 people. CEF contends that ORS 197.303(1) imposes the
17 requirement to address needed housing “on or after the beginning of the first periodic review” of its
18 acknowledged comprehensive plan. Respondents argue that the requirement to inventory available
19 lands for needed housing stems from ORS 197.296, which only applies to cities with a population
20 of 25,000 or more.¹¹ Respondents also argue that the requirement only applies at periodic review or

“(2) Subsection (1)(a) and (d) of this section shall not apply to:

“(a) A city with a population of less than 2,500.

“(b) A county with a population of less than 15,000.

“* * * * *”

¹¹ ORS 197.296 provides, in pertinent part:

1 upon legislative review of a comprehensive plan concerning a UGB. ORS 197.296(2); *see* n 11.
2 Because the challenged decision is neither a periodic review decision nor an examination of the
3 city’s UGB, respondents contend, the city was not required to address the additional needed
4 housing types.

5 We agree with respondents that ORS 197.296 applies only to cities with populations of
6 25,000 or more and that it, therefore, does not apply directly to the City of Dundee.¹² We also
7 agree with CEF that when the city surpassed a population of 2,500, the definition of “needed

“(1)(a) The provisions of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

“(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

“(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

“(3) In performing the duties under subsection (2) of this section, a local government shall:

“(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

“(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.”

¹² ORS 197.296(1)(b) provides that the Land Conservation and Development Commission (LCDC) may impose the requirement on additional cities, but CEF does not argue that LCDC has done so, and we do not see that it has. However, we do not agree with respondents that ORS 197.296 is the only source for the requirement to plan for needed housing. *See* Goal 10; OAR 660-008-0010; and 660-008-0005(5).

1 housing” that applies to the city includes the housing types identified in ORS 197.303(1)(a) and (d).
2 However, we do not agree with CEF that when a city exceeds 2,500 people, it is required to
3 amend the housing inventory in its comprehensive plan before it can adopt any land use decision that
4 may effect housing in some way.

5 For cities with a population of 25,000 or more, a city need only conduct an analysis of
6 housing need by type and density at periodic review or upon a legislative review of its
7 comprehensive plan that concerns the UGB. ORS 197.296(2). As noted above, ORS
8 197.296(2) does not apply directly to the city. However, it would make little sense to require
9 amendment of the city’s acknowledged inventory here, while such action would not be required in
10 the same circumstance for a city larger than 25,000 people.

11 CEF does not explain why the city’s needed housing analysis must be amended at any time
12 other than periodic review or legislative review of the UGB. *See Volny v. City of Bend*, 37 Or
13 LUBA 493, 517, *aff’d* 168 Or App 516, 4 P3d 768 (2000)(Goal 9 and the Goal 9 rule do not
14 require a local government that adopts a comprehensive plan amendment that identifies a future
15 shortfall of commercial lands to correct that shortfall outside of the context of periodic review,
16 where the Goal 9 rule requires comprehensive plans be amended to comply with the rule only at the
17 time of periodic review). Neither does it allege that the challenged decision negatively impacts the
18 city’s supply of needed housing. Accordingly, the city in this case did not err in relying on the 1988
19 inventory or unacknowledged BLI.

20 The 1988 inventory and 2003 BLI provide an adequate factual base supporting the city’s
21 conclusion that there will be an adequate supply of residential land after the bypass is constructed.

22 Accordingly, CEF’s assignment of error is denied.

23 **FIRST ASSIGNMENT OF ERROR (FRIENDS)**

24 Friends argue that Dundee’s adopted Transportation System Plan (TSP) previously
25 described three alternatives for the bypass. The challenged decision identifies a specific location for
26 the corridor and therefore effectively amends the TSP. According to Friends, the city therefore

1 must evaluate transportation system alternatives pursuant to OAR 660-012-0035, and must give the
2 required consideration of the listed components of system alternatives.¹³ Friends assert that it
3 proposed alternatives that the city failed to consider, concluding that they were not relevant to the
4 decision.

5 Respondents argue that the city in fact did consider numerous alternatives when it first
6 adopted its TSP in October, 2003. The alternatives that were considered and rejected during that
7 initial TSP process were not reconsidered during the proceedings leading to the challenged decision,
8 which merely “locks in” the alignment for the bypass corridor. We agree with respondents that the
9 city was not required to reconsider all alternatives considered and rejected during the city’s
10 adoption of its TSP in 2003. To the extent Friends argue that the city erred in failing to reconsider
11 any of the alternatives that were previously rejected, their assignment is a collateral attack on the
12 2003 TSP.

13 Respondents also reject Friends’ suggestion that the alternatives that it proposed were not
14 adequately addressed. Respondents counter that the city adopted findings addressing the
15 alternatives and rejecting them for reasons that are spelled out in the findings. Specifically, Friends
16 argue that they proposed moving the East Dundee Interchange into the city, but that the city failed to

¹³ OAR 660-012-0035(1) provides:

“The TSP shall be based upon evaluation of potential impacts of system alternatives that can reasonably be expected to meet the identified transportation needs in a safe manner and at a reasonable cost with available technology. The following shall be evaluated as components of system alternatives:

- “(a) Improvements to existing facilities or services;
- “(b) New facilities and services, including different modes or combinations of modes that could reasonably meet identified transportation needs;
- “(c) Transportation system management measures;
- “(d) Demand management measures; and
- “(e) A no-build system alternative required by the National Environmental Policy Act of 1969 or other laws.”

1 consider those alternatives, finding the alternatives were not relevant to the decision. We agree with
2 respondents that any issues Friends have with the location of the East Dundee Interchange, which is
3 proposed to be located outside Dundee’s jurisdiction, are irrelevant to this appeal.

4 While Friends may disagree with the city’s policy choices regarding the alternatives that
5 were presented to it, we see no basis for reversal or remand in the city’s findings evaluating
6 transportation system alternatives.

7 Friends’ first assignment of error is denied.

8 **SECOND ASSIGNMENT OF ERROR (FRIENDS)**

9 Friends argue that the challenged decision effectively amends the city’s TSP. They allege
10 that the city failed to amend its transportation financing program when it amended its TSP, in
11 violation of OAR 660-012-0040.¹⁴

12 As we explained in the Newberg companion case decided this date, OAR 660-012-0040
13 does not require an amendment to the transportation financing program whenever the TSP is
14 amended, even assuming the challenged decision implicitly amended the TSP. *1000 Friends of*
15 *Oregon v. City of Newberg*, ___ Or LUBA ___ (LUBA Nos. 2004-168, 2004-174, July 21,

¹⁴ OAR 660-012-0040 provides, in relevant part:

- “(1) For areas within an urban growth boundary containing a population greater than 2,500 persons, the TSP shall include a transportation financing program.
- “(2) A transportation financing program shall include the items listed in (a)-(d):
 - “(a) A list of planned transportation facilities and major improvements;
 - “(b) A general estimate of the timing for planned transportation facilities and major improvements;
 - “(c) A determination of rough cost estimates for the transportation facilities and major improvements identified in the TSP; and
 - “(d) In metropolitan areas, policies to guide selection of transportation facility and improvement projects for funding in the short-term * * *. Such policies shall consider, and shall include among the priorities, facilities and improvements that support mixed-use, pedestrian friendly development and increased use of alternative modes.”

1 2005). Dundee’s TSP specifically provides for a bypass corridor alignment, and includes a
2 “Transportation Funding Plan.”¹⁵ The challenged decision adjusts slightly the location of the
3 corridor that was adopted in 2003. The city’s findings in support of the challenged decision contain
4 general estimates for both the timing and financing of the bypass project.¹⁶ As in the Newberg
5 case, Friends fail to demonstrate why an amendment to the financing program was required or why
6 the findings are insufficient.

7 Friends’ second assignment of error is denied.

8 **THIRD ASSIGNMENT OF ERROR (FRIENDS)**

9 Friends argue that the city “erred by making a decision that assumed the outcomes of
10 decision-making by other jurisdictions and agencies.” Friends’ Petition for Review 13.

¹⁵ The transportation funding plan in the 2003 TSP provides, in pertinent part:

“In addition, those improvements on the state highway system (i.e., Ore 99W) are attributed to regional/statewide travel volumes and are assumed to be funded by ODOT. The City will not fund those improvements that have been attributed to other jurisdictions or sources; however, the City should facilitate to the extent possible each of these other jurisdictions or sources to fund their respective projects.” Dundee TSP 36.

¹⁶ The challenged findings provide, in pertinent part:

“The preliminary cost estimate for the Bypass is approximately \$311 million as referenced in the goal exception application to Yamhill County. Funding for the Bypass will come from a variety of sources, including federal, state, and local governments. Innovative financing methods, including but not limited to tolling and various forms of public/private partnerships, are also being explored. This project currently shares with the proposed Woodburn Interchange the number one priority ranking for funding as determined by the Mid-Willamette Valley Area Commission on Transportation.

“A formal financing plan is currently being prepared and will be finalized prior to seeking a Record of Decision (ROD) on the Design-level EIS that will be prepared after the Location-level EIS is completed.

“To date, ODOT has identified approximately \$9.8 million for project development and right-of-way acquisition. Given the priority of this project and the on-going efforts to secure funding, ODOT is hopeful that full funding can be secured upon completion of final design in the 2008-2010 timeframe and construction likely completed within the 15-20 year time horizon.” Record 33.

1 Respondents cite to the State Agency Coordination Program Rule, OAR 731-015-
2 0075(3), which provides:

3 “Except as otherwise set forth in section (4) of this rule, the Department shall rely on
4 affected cities and counties to make all plan amendments and zone changes
5 necessary to achieve compliance with the statewide planning goals and compatibility
6 with local comprehensive plans after completion of the Draft Environmental Impact
7 Statement [DEIS] or Environmental Assessment [EA] and before completion of the
8 Final Environmental Impact Statement or Revised Environmental Assessment.
9 These shall include the adoption of general and specific plan provisions necessary to
10 address applicable statewide planning goals.”

11 Respondents contend that “this is precisely the time in the project development process,
12 between the draft and the final environmental impact statements, when cities and counties must
13 make necessary plan amendments to achieve compliance with statewide planning goals and local
14 comprehensive plans.” Combined Response Brief 19.

15 Friends also assert that “it is not appropriate” for the city to foreclose other alternatives
16 before the Oregon Transportation Commission has made a final decision. Respondents explain:

17 “The Newberg Dundee Bypass Plan will go before the Oregon Transportation
18 Commission for adoption as a facility plan after the Federal Highway Administration
19 has issued a Record of Decision. This sequence of event is determined by federal,
20 state and internal ODOT requirements. Petitioners have offered no reasons why
21 this sequence is improper.” *Id.*

22 We agree with respondents. Friends do not explain why the city’s process provides a basis for
23 reversal or remand, and we do not see that it does.

24 Friends’ third assignment of error is denied.

25 **FOURTH ASSIGNMENT OF ERROR (FRIENDS)**

26 Friends argue that the challenged decision fails to demonstrate compliance with Statewide
27 Planning Goal 8 Recreational Needs). After citing the requirements of the goal, the entirety of the
28 assignment of error provides:

29
30 “Dundee’s findings state that riverfront access, compliance with *recreation* and
31 greenway policies and protection of creeks and drainage channels will be addressed
32 during the design phase. Rec. 18. Dundee cannot amend its plan now and find that

1 it will address compliance with an applicable legal standard later. Because Dundee
2 has made a decision that neither complies with governing law, nor sets forth
3 standards for later compliance during the design phase, its decision should be
4 remanded.” Friends’ Petition for Review 13 (emphasis in original).

5 Goal 8 requires local governments to provide for recreation needs. Friends’ fourth
6 assignment of error apparently is based on their belief that the challenged findings have deferred
7 compliance with Goal 8 to the design phase.¹⁷ However, the findings they cite to are taken out of
8 context. When quoted in their entirety, it is clear that the city did not defer the findings of
9 compliance with Goal 8. Rather, the city concluded that it is feasible to comply with Goal 8.¹⁸
10 *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992) (if a local government can adopt findings
11 that demonstrate it is feasible to comply with an approval criterion, it is appropriate to impose
12 conditions of approval to assure compliance with that criterion).

13 Further, the city adopted Bypass Policy No. 8, which provides:

14 “The city affirms its support for a Bypass location and design that recognizes
15 existing Comprehensive Plan policies, including Recreation and Willamette River

¹⁷ Friends reference Record 18. The findings that it refers to are located at Record 27-28:

“* * * Access to the riverfront, compliance with recreation and greenway policies and protection of creeks and natural drainage channels for storm drainage will all be addressed during the Design phase of the Bypass project as required by the City’s Comprehensive Plan policies.”

¹⁸ The findings state:

“The recommended Bypass corridor is located outside of the Greenway boundary. As noted earlier in these findings, public access across the Bypass to the Willamette River is recognized as an important priority for the City. Policy #8 affirms the City’s support for a Bypass location and design that recognizes existing Comprehensive Plan policies, including Recreation and Willamette River Greenway policies, and which includes providing public access to the Willamette River and the City’s Waterfront for park and recreational development. Access to the riverfront, compliance with recreation and greenway policies and protection of creeks and natural drainage channels for storm drainage will all be addressed during the Design phase of the Bypass project as required by the City’s Comprehensive Plan policies.

“Dundee’s adopted and acknowledged TSP (Figure 6-3) shows the City preferred alternative for the Bypass and also identifies three conceptual locations for local street connections across (over or under) the Bypass to link with a new riverfront drive. *Therefore, the City clearly anticipated that a Bypass could be developed in a southerly location corridor in a manner that supports recreation and greenway policies.*” Record 27-28 (emphasis added).

1 Greenway policies, and which includes providing public access to the Willamette
2 River and the City's waterfront for park and recreational development." Record
3 13.

4 Accordingly, the city did not defer findings of compliance with Goal 8, as alleged by Friends, and
5 this assignment of error provides no basis for reversal or remand.

6 This assignment of error is denied.

7 The city's decision is affirmed.