

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.

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11 CITY OF DUNDEE,
12 *Respondent,*

13
14 and

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

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20 LUBA Nos. 2004-144 and 2004-145

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22 FINAL OPINION
23 AND ORDER

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25 Appeal on remand from Court of Appeals.

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27 Christine M. Cook, Portland, represented petitioners 1000 Friends of Oregon and
28 Friends of Yamhill County.

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30 Jeffrey G. Condit and Kelly S. Hossaini, Portland, represented petitioner Columbia
31 Empire Farms.

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33 Pamela J. Beery, Portland, represented respondent.

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35 Bonnie E. Heitsch, Assistant Attorney General, and Kathryn A. Lincoln, Assistant
36 Attorney General, Salem, represented intervenor-respondent Oregon Department of
37 Transportation.

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

41
42 REMANDED

02/23/2006

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

1 Opinion by Davies.

2 In our decision dated July 21, 2005, we affirmed the city’s decision amending its
3 comprehensive plan transportation policies to support the location of the Newberg-Dundee
4 Bypass. *1000 Friends of Oregon v. City of Dundee*, 49 Or LUBA 601 (2005). Petitioner
5 Columbia Empire Farms (CEF) appealed our decision to the Court of Appeals, which
6 reversed and remanded our decision. 203 Or App 207, ___ P3d ___ (2005).

7 The Court agreed with CEF that the city could not rely on a 2003 buildable lands
8 inventory (BLI) that had not been adopted as part of the city’s comprehensive plan to support
9 its finding that the proposed bypass would not result in a deficit of land available for needed
10 housing.

11 “Ultimately, respondents’ argument fails to address the significance of two
12 critical and incontrovertible facts: (1) the acknowledged plan actually
13 contained an inventory of buildable land, and (2) the city’s decision rested not
14 on that inventory but instead on the significantly different 2003 BLI that was
15 not incorporated into the plan.” *Id.* at 215.

16 Because the city based its decision on the 2003 BLI that was not incorporated into the
17 city’s comprehensive plan, the Court directs that the case be remanded to the city for further
18 proceedings.¹

19 The city’s decision is remanded.

¹ Respondents made the alternative argument at LUBA that the decision should also be affirmed based on the existing comprehensive plan even without consideration of the 2003 BLI. Because the Court did not discuss that alternative basis for affirming the decision and specifically directs that the decision be “remand[ed] to [the] city for further proceedings,” we do not address the issue.