

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 COLUMBIA EMPIRE FARMS, INC.,

4 *Petitioner,*

5 vs.

6 CITY OF DUNDEE,

7 *Respondent,*

8 and

9 OREGON DEPARTMENT OF TRANSPORTATION,

10 *Intervenor-Respondent.*

11 LUBA No. 2006-141

12 FINAL OPINION

13 AND ORDER

14 Appeal from City of Dundee.

15 Jeffrey G. Condit, Portland, filed the petition for review and argued on behalf of  
16 petitioner. With him on the brief were Kelly S. Hossaini and Miller Nash, LLP.

17 Pamela J. Beery, Portland, filed a joint response brief and argued on behalf of  
18 respondent. With her on the brief were Bonnie Heitsch and Beery Elsner & Hammond, LLP.

19 Bonnie E. Heitsch, Assistant Attorney General, Salem, filed a joint response brief and  
20 argued on behalf of intervenor-respondent. With her on the brief were Pamela J. Beery and  
21 Beery Elsner & Hammond, LLP.

22 BASSHAM, Board Chair; HOLSTUN, Board Member; RYAN, Board Member,  
23 participated in the decision.

24 AFFIRMED

25 11/29/2006

26 You are entitled to judicial review of this Order. Judicial review is governed by the  
27 provisions of ORS 197.850.  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40

**NATURE OF THE DECISION**

Petitioner appeals a decision on remand from LUBA and the Court of Appeals that adopts additional findings in support of a comprehensive plan amendment that designates a corridor for the Newberg-Dundee Bypass.

**MOTION TO INTERVENE**

The Oregon Department of Transportation (ODOT) moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

**FACTS**

The challenged decision readopts, with additional findings, amendments to the transportation element of the City of Dundee Comprehensive Plan (DCP) to add new policies supporting the designation of a corridor for the proposed Newberg-Dundee Bypass (Bypass). As proposed, the Bypass corridor will run through southeastern part of the city, displacing approximately 16.52 acres of land within a 170-acre area. The DCP designates the 170-acre area as Residential, but the area is currently zoned and used for agricultural use.

In the city’s initial decision, the city concluded that the city retains sufficient buildable land for purposes of Statewide Planning Goal 10 (Housing), notwithstanding loss of the 16.52 acres of land designated for residential use.<sup>1</sup> That conclusion relied on a 2003 buildable lands inventory (2003 BLI) that the city has not incorporated into the DCP. The 2003 BLI showed a surplus of between 97 and 155 acres of buildable residential land in the city through the year 2020. LUBA affirmed the city’s initial decision to adopt the plan amendments, rejecting petitioner’s arguments that relying on the 2003 BLI violates the

---

<sup>1</sup> Goal 10 is “[t]o provide for the housing needs of citizens of the state.” Goal 10 further provides that:

“Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.”

1 requirement in Statewide Planning Goal 2 (Land Use Planning) that the comprehensive plan  
2 be the basis for land use decisions.<sup>2</sup> *1000 Friends of Oregon v. City of Dundee*, 49 Or  
3 LUBA 601 (2005) (*Dundee I*).

4 The Court of Appeals reversed our decision on that point, stating:

5 “[A] planning decision based on a study contemplated by a comprehensive  
6 plan but not incorporated into the comprehensive plan after the study is  
7 carried out is not a planning decision that is made on the basis of the  
8 comprehensive plan and acknowledged planning documents, as is required by  
9 Goal 2. *D. S. Parklane Development, Inc.[v. Metro]*, 165 Or App 1, 22, 994  
10 P2d 1205 (2000)]. That is not a matter of mere abstract concern. Rather, it  
11 goes to the heart of the practical application of the land use laws: the  
12 comprehensive plan is the fundamental document that governs land use  
13 planning. Citizens must be able to rely on the fact that the acknowledged  
14 comprehensive plan and information integrated in that plan will serve as the  
15 basis for land use decisions, rather than running the risk of being  
16 ‘sandbagged’ by government’s reliance on new data that is inconsistent with  
17 the information on which the comprehensive plan was based. LUBA erred in  
18 concluding otherwise.” *1000 Friends of Oregon v. City of Dundee*, 203 Or  
19 App 207, 216, 124 P3d 1249 (2005) (*Dundee II*).

20 On remand, the city adopted findings that address the buildable lands inventory in its  
21 existing comprehensive plan, which was adopted in 1990. The city concluded that, based on  
22 the 1990 inventory, loss of 16.52 acres of land to the Bypass is not inconsistent with the  
23 city’s Goal 10 obligations.

---

<sup>2</sup> Goal 2 is:

“[t]o 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.”

Goal 2 further provides, in relevant part:

“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.

“All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. \* \* \*”

1 This appeal followed.

2 **FIRST ASSIGNMENT OF ERROR**

3 Petitioner argues that on remand the city repeated the error in its initial decision, by  
4 again relying on the 2003 BLI as a basis to conclude that the Bypass will not impact lands  
5 needed for housing. Because the 2003 BLI is not incorporated into the city’s comprehensive  
6 plan, petitioner argues, the city’s continued reliance on the 2003 BLI is “merely an attempt to  
7 put lipstick on the same pig.” Petition for Review 6.

8 The city and ODOT (respondents) respond that it is petitioner’s argument that is  
9 cosmetically augmented, being a thinly veiled collateral attack on the city’s decision in 2003  
10 not to incorporate the 2003 BLI into the DCP. Respondents argue that that decision cannot  
11 be challenged in the appeal of the present decision.

12 In any case, respondents dispute that the city relied on the 2003 BLI to support its  
13 conclusion that Bypass will not impact lands needed for housing. Respondents argue that the  
14 city’s findings rely solely on the existing acknowledged DCP to reach two critical  
15 conclusions.<sup>3</sup> First, respondents argue, the findings conclude that the 170 agriculturally-

---

<sup>3</sup> The city’s findings on remand state, in relevant part:

“The proposed Bypass will be located on land designated in the [DCP] as an agricultural holding zone. An agricultural holding zone is a zone held in reserve for *future* residential use. The 170 acres in the agricultural holding zone is currently zoned for agricultural use and will be rezoned for residential use when the need for additional residential lands occurs in Dundee. This land is not needed for housing in the current planning period.

“The applicable [DCP] provisions are found in the City’s Final Order concerning periodic review of its [DCP] completed in 1990. A copy of the Final Periodic Review Order is attached to these findings. The City determined, and the DLCD [Department of Land Conservation and Development] acknowledged, that the City maintains an adequate supply of residential land to accommodate its projected population and employment needs *without using* the 170 acres designated as agricultural holding zone. In the Final Order, the City concluded that excluding the 170 acres in the agricultural holding zone, Dundee maintained a surplus of 30.6 acres of residential land through its planning period.

“To date, the 170 acres held in the agricultural holding zone have not been rezoned for residential use. The Bypass will be routed upon lands located entirely within the agricultural holding zone. We find, based upon our current acknowledged comprehensive plan that the bypass will not impact the supply of land zoned for residential use. We find, based upon our

1 zoned acres that include the subject 16.52 acres affected by the Bypass are not part of the  
2 city's Goal 10 inventory of lands designated for needed housing. Therefore, respondents  
3 argue, the challenged plan amendments do not directly implicate Goal 10.

4 Second, respondents argue, the city adopted alternative findings that explicitly rely on  
5 the 1990 buildable lands inventory in the acknowledged DCP to conclude that, even after  
6 loss of the 16.52 acres, the city will maintain an adequate supply of buildable lands to meet  
7 its Goal 10 requirements. Respondents note that the only reference to the 2003 BLI in the  
8 findings adopted on remand is in response to petitioner's argument below that the 2003 BLI  
9 demonstrated that the DCP inventory is out of date. The city found to the contrary that the  
10 2003 BLI confirms that the DCP buildable lands inventory is still valid. Accordingly, the  
11 city rejected petitioner's contention that the DCP cannot be relied upon.

12 We agree with respondents that the city relied on its acknowledged DCP inventory  
13 rather than the 2003 BLI to determine that displacement of the 16.52 acres would not affect  
14 the city's Goal 10 obligations. The findings on remand cite to the 2003 BLI only to reject  
15 petitioner's argument below that the acknowledged DCP building lands inventory is out of

---

current comprehensive plan, that the City of Dundee maintains an adequate supply of residential land meeting the requirements of Goal 10, even with construction of the Bypass.

“\* \* \* \* \*

“It has been argued that the [DCP] is outdated and is no longer valid. We disagree. First the Court of Appeals has instructed us that ‘the comprehensive plan is the fundamental document that governs land use planning.’ And our findings are based upon that comprehensive plan.

“In addition, in assessing whether the City needs to update its plan, the City examines its land inventory every five years. Most recently, in 2003, the City examined its buildable land inventory to determine if it was advisable to formally update its [DCP]. That study, identified as the April 9, 2003 [BLI], concluded that there were more than 360 gross buildable acres within the current Dundee UGB [urban growth boundary]. It also concluded that the current UGB boundaries can accommodate the planning needs for the City with 97 to 155 acres of surplus residential lands for the planning period and that there are at least 50 acres of surplus land for all land types within the UGB for the planning period to the year 2020. The [2003 BLI] continues to provide the City with an adequate factual basis to conclude that its [DCP] does not need updating and that the City has an adequate basis to continue to rely upon the conclusions found in its [DCP].” Record Vol 3, pp. 3-4 (emphasis original; footnote and citations omitted).

1 date. We address that argument below, under the second assignment of error. For present  
2 purposes, however, we agree with respondents that citation to the 2003 BLI to reject that  
3 argument does not mean that the 2003 BLI is the “basis” for the city’s Goal 10 conclusions,  
4 within the meaning of Goal 2.

5 We understand petitioner to also argue that the city impermissibly relied on the 2003  
6 BLI by “reaffirming” its initial decision and the findings adopted to support that decision,  
7 which include the findings that the Court of Appeals rejected in *Dundee II*. The resolution  
8 adopted on remand recites that the city council “re-affirms its decision embodied in  
9 Ordinance 424-2004, and the findings adopted as Exhibit B in support of that decision,” and  
10 that the city council adopts as supplemental findings the findings quoted above in n 2.  
11 Record Vol 3, p. 1. We disagree with petitioner that the city council’s reaffirmation of its  
12 initial decision and the findings adopted to support that decision were intended to re-adopt  
13 the same findings that the Court of Appeals rejected, as a response to the court’s mandate.  
14 Read together with the supplemental findings, it is clear that the city responded to the court’s  
15 mandate by adopting findings that rely solely on the acknowledged DCP to determine  
16 whether the Bypass is consistent with the city’s Goal 10 obligations.

17 The first assignment of error is denied.

18 **SECOND ASSIGNMENT OF ERROR**

19 Under this assignment of error, petitioner challenges the city’s conclusion that it may  
20 rely on the DCP buildable lands inventory as the basis for its determination that displacing  
21 16.52 acres designated for residential use is consistent with the city’s Goal 10 obligations.  
22 According to petitioner, the 1990 DCP inventory is out-of-date, and cannot provide the basis,  
23 or an “adequate factual base,” for that determination, for purposes of Goal 2. Petitioner  
24 argues that the city must “update and re-analyze its housing needs and buildable lands  
25 inventory in the plan before it can make a decision that the residential land displaced by the  
26 Bypass will not affect land supply for needed housing.” Petition for Review 8. In addition,

1 petitioner repeats arguments that we rejected in *Dundee I* that, due to population growth in  
2 recent years, the city is required to conduct an expanded “needed housing” analysis pursuant  
3 to ORS 197.303 through 197.307, and to adopt that analysis into the DCP.

4 **A. 1990 DCP Buildable Lands Inventory**

5 The existing DCP buildable lands inventory, adopted and acknowledged in 1990,  
6 projects a 30.6-acre surplus in the supply of residential land through the 15-year planning  
7 period ending in 2005. *See* Table 7, Vol. 3, p. 12. That calculation of supply of residential  
8 land apparently did not take into account or depend upon the 170-acre area that is designated  
9 residential but zoned agricultural, which includes the 16.52 acres displaced by the Bypass.

10 As noted, the city found that the 170-acre area “is not needed for housing in the  
11 current planning period.” Record Vol 3, p. 3; quoted at n 3. In a footnote, the findings quote  
12 a statement in the DCP discussing the potential for future industrial and commercial uses in  
13 the 170-acre area. The statement explains further that:

14 “\* \* \* The city does not wish at this time to designate further areas for  
15 commercial, industrial and other uses because it wishes to avoid the common  
16 error of overzoning and because the demand for these uses is unclear at this  
17 time. The city prefers to create a ‘reserve’ for these uses within the  
18 ‘residential’ land use category and then to make plan changes at the  
19 appropriate time. \* \* \*” Record Vol. 3, p. 3 n1 (quoting DCP 9).

20 The city argues that based on the DCP the 170-acre area is not part of the city’s Goal 10  
21 residential land inventory at all, and thus displacement of the subject 16.52 acres for the  
22 Bypass does not implicate Goal 10 in any way. According to the city, if anything the reserve  
23 lands are intended ultimately for “commercial, industrial and other uses,” and the  
24 “residential” plan designation carries no implication that those lands are planned for  
25 residential development. In addition, the city argues that as relevant here Goal 10 is  
26 concerned only with the “availability of adequate numbers of needed housing units,” and that  
27 the city determined, in the 1990 DCP inventory, that the 170 acres were not needed for  
28 residential (or any other) purposes during the planning period. Because the subject area is

1 not part of the DCP Goal 10 inventory of lands required for “needed housing,” the city  
2 argues, its displacement by the Bypass does not implicate Goal 10.

3 Petitioner does not specifically challenge the city’s findings that the 170-acre area is  
4 not “reserved” for residential use and is not needed for housing in the planning period used  
5 by the DCP.<sup>4</sup> We agree with the city that those findings sufficiently establish that the 170-  
6 acre area is not part of the city’s Goal 10 inventory, notwithstanding the fact that the 170  
7 acres are designated “residential.” As the city found, the “residential” designation is simply  
8 a mechanism intended to reserve those lands for unspecified future uses beyond the current  
9 planning period, including contemplated commercial and industrial uses, and that designation  
10 carries no particular implication that the lands are needed for residential uses. It would seem  
11 to follow without more that displacement of 16.52 acres of that area for a non-residential  
12 transportation use does not implicate and is not inconsistent with the city’s Goal 10  
13 obligations.

14 Petitioner does argue, however, that the city can no longer rely on the acknowledged  
15 DCP inventory, because that inventory uses a planning period that ended in 2005. According  
16 to petitioner, the DCP inventory does not provide an adequate factual base, in the year 2006,  
17 for determining whether the 16.52 acre area displaced by the Bypass will impact lands  
18 needed for housing. Although petitioner does not phrase it this way, we understand  
19 petitioner to contend that after 2005 the city can no longer be confident, based solely on the  
20 1990 DCP inventory, that at least some portion of the 170-acre area will not be needed for  
21 residential use. We understand petitioner to argue that the city must either adopt the 2003

---

<sup>4</sup> The city also adopted a finding that the DCP buildable lands inventory contemplates that 60 acres of land within the 170-acre agricultural holding zone will be used for future roadway development. The findings conclude that using 16.52 acres for the Bypass is therefore consistent with the acknowledged DCP. Petitioner does not challenge this finding, which could be read as an alternative basis for concluding that the challenged amendments are consistent with Goal 10. However, because we affirm the city’s findings on other grounds we do not consider this finding or petitioner’s failure to challenge it.



1 BLI into the DCP or otherwise update its DCP Goal 10 inventory to determine whether the  
2 challenged amendment impacts the adequacy of the city's Goal 10 inventory.

3 The city's initial decision was made in early 2005, within the DCP planning period.  
4 In making that decision, had the city simply relied on its acknowledged DCP inventory  
5 instead of the 2003 BLI, as *Dundee II* seems to require, it is likely that the city would have  
6 prevailed before the Court of Appeals on that issue. It is not clear to us that on remand from  
7 the Court of Appeals the city is precluded from relying on the acknowledged DCP inventory,  
8 simply because due to the delay caused by multiple appeals its decision on remand was  
9 issued in 2006, shortly after the end of the DCP planning period.

10 In any case, the DCP Goal 10 planning period is used to estimate the city's supply  
11 and demand for lands required for needed housing. As explained above, the city found that  
12 the subject 16.52 acres is part of a larger area that functions essentially as a long-term reserve  
13 for unspecified urban land uses, although the DCP apparently contemplates that the area will  
14 ultimately be developed with industrial or commercial uses. The subject area is not part of  
15 the city's Goal 10 inventory and is not even particularly "reserved" for future residential  
16 uses, notwithstanding the fact that it is designated "residential." As far as Goal 10 is  
17 concerned, the subject 16.52 acres is in the same position as any other undeveloped lands  
18 within the city that are not part of the Goal 10 inventory or otherwise reserved for residential  
19 uses. The fact that the city chose to designate the area "residential" as part of a planning  
20 effort to preserve the area as a long-term holding zone does not mean that those lands are  
21 part of the city's acknowledged Goal 10 inventory. Accordingly, redesignating or rezoning  
22 such lands to allow non-residential uses simply does not implicate Goal 10, and the city did  
23 not err in so concluding. Given that conclusion, the fact that the DCP Goal 10 planning  
24 period extends only to the end of 2005 has no discernible bearing on the issues before us.

1           **B.       Population Growth**

2           Petitioner also contends under this assignment of error that the 1990 DCP inventory  
3 is invalid and cannot be relied upon, regardless of when the planning period ended, because  
4 events subsequent to 1990 demonstrate that the assumptions used to calculate the supply and  
5 demand for housing through 2005 were inaccurate. According to petitioner, the city  
6 population actually grew at a faster pace than predicted by the 1990 DCP inventory, and thus  
7 the DCP inventory cannot be relied upon.

8           Respondents argue that under petitioner’s view, every comprehensive plan in Oregon  
9 would be invalid and cannot be the basis for any land use decision, because no plan can  
10 precisely predict future growth patterns over 15 or 20 years. According to respondents, Goal  
11 2 requires the city to rely on its acknowledged comprehensive plan inventory, even if that  
12 inventory is out-of-date. *See Craig Realty Group v. City of Woodburn*, 39 Or LUBA 384,  
13 395 (2001) (in redesignating eight acres of residential land to commercial, the city is entitled  
14 to rely on the buildable lands inventory in its acknowledged comprehensive plan, even  
15 though that inventory is outdated). Further, respondents argue that even if the accuracy of  
16 the 1990 DCP inventory is at issue, the city found based on the 2003 BLI that the relevant  
17 conclusion from the 1990 inventory (that the city has a 2005 surplus of residential land) is  
18 still reliable.

19           Petitioner’s argument is, in essence, a collateral attack on the acknowledged DCP  
20 inventory, or the assumptions that inventory is based on. To the extent the validity or  
21 reliability of that inventory can be challenged in the present case, we agree with respondents  
22 that petitioner has not demonstrated that the acknowledged DCP Goal 10 inventory is invalid  
23 or unreliable. As the findings note, the DCP inventory’s prediction of a surplus of residential  
24 land in 2005 is supported by the more recent 2003 BLI.

1           **C.     Induced Residential Growth**

2           Finally, petitioner cites to evidence that the Bypass if constructed will reduce  
3 commute times between the city and the Portland metropolitan region.<sup>5</sup> According to  
4 petitioner, the reduced commute time will induce residential development in the city at  
5 higher rates than anticipated in the 1990 DCP. Specifically, petitioner argues:

6           “\* \* \* ODOT found that the bypass will enable a driver to travel from Dayton  
7 (which is further west of Dundee) to Portland within 45 minutes, which  
8 ODOT determined was a reasonable commute time. This impact affects the  
9 amount of land that will be needed for housing, as well as possibly other land  
10 uses, and should have been taken into account as part of the 2006 Decision.  
11 The findings do not address the effect that this decrease in commute time will  
12 have on the City’s housing needs and thus on the City’s buildable land supply.  
13 Given this evidence that the bypass will significantly influence growth, a  
14 reasonable person would not rely on a 1990 analysis to conclude that it retains  
15 sufficient buildable land. Therefore, the findings do not constitute an  
16 adequate factual basis upon which to support the 2006 Decision, as required  
17 by Goal 2.” Petition for Review 9-10 (footnotes omitted).

18           Respondents dispute that the Bypass, if constructed, will induce significant residential  
19 development in the city. According to respondents, the ODOT study petitioner cites to  
20 merely compares travel times in the year 2025 between the various “build” options and the  
21 “no-build” option. The study states that, by the year 2025, each of the “build” alternatives  
22 would enable a driver to travel between Dayton and the Portland area within a 45-minute  
23 period, while under the “no-build” option commute times will reach 70 minutes. Vol. 1, p.  
24 209.

25           Even if it is assumed that reduced commute times would induce growth within the  
26 city, respondents argue, to have that effect the bypass would need to be constructed and in  
27 operation. Respondents note that the project is currently conceptual, with incomplete

---

<sup>5</sup> Petitioner raised a similar issue in its petition for review in *Dundee I*, arguing briefly that the city erred in relying on the 2003 BLI in part because it failed to address the residential growth induced by the bypass. Our decision in *Dundee I* did not specifically address that single-sentence argument. Respondents do not contend that petitioner is precluded by the law of the case or any other judicial doctrine from raising the inducement issue with respect to the 2006 decision.

1 environmental studies, no federal approval, and no state, local or federal funding identified to  
2 construct the \$187 million to \$233 million project. According to respondents, if the city  
3 must speculate on the long-term impacts of the Bypass on commute times and induced  
4 residential growth, it should also take into account the impacts of the presumably *longer*  
5 commute times that will occur until the Bypass is constructed, if that ever occurs, which  
6 under petitioner’s logic would *suppress* residential growth in the city.

7 As noted above, amending the DCP transportation element to allow for the Bypass  
8 does not displace lands in the city’s Goal 10 inventory, and so does not directly implicate  
9 Goal 10. It is not clear to us that Goal 10 requires the city to evaluate the possibility of  
10 *indirect* impacts on the city’s Goal 10 inventory of the kind alleged here, *i.e.*, the possibility  
11 that transportation improvements may reduce commute times to regional work centers, which  
12 may increase residential growth in outlying bedroom communities or convert distant towns  
13 into bedroom communities. Petitioner cites no authority for that proposition. *But see 1000*  
14 *Friends of Oregon v. Jackson Co.*, 79 Or App 93, 97-98, 718 P2d 753 (1986) (rezoning 1000  
15 acres from one Goal 4 zone to another Goal 4 zone may have secondary effects that implicate  
16 Goal 4). For purposes of this opinion, we assume that the indirect impacts of an amendment  
17 to the city’s comprehensive plan transportation element on the city’s Goal 10 inventory could  
18 be such that the city is required to address those impacts at the time the plan amendment is  
19 adopted and potentially add land to the city’s Goal 10 inventory if necessary to offset such  
20 indirect impacts. However, for the reasons that follow we agree with respondents that  
21 petitioner has not demonstrated that the city erred in failing to conduct that evaluation in the  
22 present case.

23 As respondents note, the page of the ODOT study cited by petitioner states in  
24 relevant part only that each of the “build” alternatives would enable a driver to travel from  
25 the Portland area to Dayton within a 45-minute period, while the “no build” alternative  
26 would result in a travel time of more than 70 minutes. The study states that “[a] faster

1 commute could result in development pressure in areas that are currently considered too far  
2 from urban job centers” and that a “45-minute travel time was picked as a reasonable  
3 commute for the year 2025.” Record Vol. 1, p 209. Petitioner apparently infers from those  
4 statements that the Bypass, if constructed, will reduce commute times between Dundee and  
5 Portland below the 45-minute threshold by the year 2025 and thus encourage increased  
6 residential growth in the city that is unanticipated by city planning. However, the study does  
7 not state or even imply that. The study says nothing about current or projected commute  
8 times between Dundee and Portland, or what is anticipated in the DCP. For all we can tell  
9 from anything petitioner cites to us, Dundee has long been and is currently within a 45-  
10 minute commute time from the Portland metropolitan region, and the DCP already assumes  
11 that the city functions and will continue to function as a bedroom community for the Portland  
12 area. Petitioner does not cite to any focused evidence indicating that the Bypass if  
13 constructed will induce unanticipated residential growth in the city or that any such  
14 unanticipated growth is likely to impact the city’s inventory of buildable lands.

15 In addition, we generally agree with respondents that the uncertainty regarding  
16 whether and when the Bypass will be approved, funded and constructed would make it  
17 exceedingly difficult to determine the indirect impacts of that transportation improvement on  
18 housing demand, in the context of the present decision. A transportation improvement of this  
19 size and expense, with no identified funding, may never be built, or it may be constructed  
20 and become operational only after the passage of a number of years. Even if there were  
21 evidence to support petitioner’s contention that the Bypass will induce significant and  
22 unanticipated residential growth in the city, that induced growth could occur only when and  
23 if the Bypass is fully constructed, which may not occur for decades. In the intervening  
24 period, as respondents point out, the absence of a bypass may actually suppress residential  
25 growth in the city. Given those uncertain variables, it would make little sense to require the  
26 city to evaluate the indirect impacts of the Bypass on the city’s residential lands inventory in

1 the context of the present decision, which simply adopts transportation policies that designate  
2 a potential corridor for the Bypass alignment.

3 **D. Needed Housing Statutes**

4 Petitioner contends that the city erred in failing to conduct a needed housing analysis  
5 consistent with the requirements of ORS 197.303, which defines “needed housing” for  
6 purposes of ORS 197.307.<sup>6</sup> According to petitioner, ORS 197.303(2)(a) provides an  
7 expanded definition of needed housing that includes two additional housing types, and makes  
8 that expanded definition applicable to any city with a population greater than 2,500.  
9 ORS 197.303(2)(a). Petitioner cites to evidence that sometime between the years 2000 and  
10 2003 the city population exceeded 2,500 for the first time. Therefore, petitioner argues, the

---

<sup>6</sup> 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.
- “(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.
- “(3) A local government may take an exception to subsection (1) of this section in the same manner that an exception may be taken under the goals.”

1 city is required by ORS 197.307(3)(a) to conduct an analysis of needed housing.<sup>7</sup> Petitioner  
2 contends that the existing DCP includes no analysis under the expanded definition of needed  
3 housing, and that because the decision challenged in this appeal implicates Goal 10, the city  
4 must conduct and adopt such an analysis prior to adopting the challenged plan amendments.

5 Petitioner acknowledges that we rejected an identical argument in *Dundee I*.<sup>8</sup>  
6 However, petitioner argues that LUBA erred in rejecting that argument, for reasons set out in  
7 the petition for review, and that the issue remains unresolved, because the Court of Appeals  
8 did not reach that issue in *Dundee II*. Petitioner urges LUBA to reconsider its holding  
9 regarding ORS 197.303.

10 We are not persuaded by any argument in the petition for review that we erred in  
11 rejecting petitioner’s arguments under ORS 197.303, and we adhere to our holding in  
12 *Dundee I*. We note only that petitioner’s argument that ORS 197.303 and related statutes  
13 require the city to conduct and adopt a needed housing analysis is premised on petitioner’s  
14 contention that the challenged decision redesignates land that is part of the city’s Goal 10  
15 needed housing inventory. As explained above, the city found that that premise is incorrect,  
16 and we have affirmed that finding. For that additional reason alone, petitioner’s arguments  
17 under ORS 197.303 must fail.

18 The second assignment of error is denied.

---

<sup>7</sup> ORS 197.307(3)(a) provides:

“When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.”

<sup>8</sup> In brief, we disagreed with petitioner that “when a city exceeds 2,500 people, it is required to amend the housing inventory in its comprehensive plan before it can adopt any land use decision that may effect housing in some way.” *Dundee I*, 49 Or LUBA at 614. We noted that ORS 197.296(2) requires that a city with a population exceeding 25,000 must conduct a needed housing analysis under ORS 197.303 only at periodic review or upon a legislative review of its comprehensive plan that concerns the UGB. We concluded that “it would make little sense to require amendment of the city’s acknowledged inventory here, while such action would not be required in the same circumstance for a city larger than 25,000 people.” *Id.* at 614-15.

1           The city's decision is affirmed.