



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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April 17, 2008

TO: Land Conservation and Development Commission

FROM: Jenny Hill, Executive Assistant

SUBJECT: **Agenda Item 3b, May 1-2, 2008 LCDC Commission Meeting**

Klamath Co. Task 22

This item is for consideration of Klamath County's progress toward satisfaction of a Commission remand of the county's completed task regarding rural commercial and industrial development. For additional information, please contact Jon Jinings at 541-318-2890, or by email jon.jinings@state.or.us.

Attachments:
March 19-21 Staff Report



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March 7, 2008

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Doug White, Community Services Specialist
Jon Jinings, Central/Eastern Oregon Regional Representative

SUBJECT: **Agenda Item 5.b., March 19-21, 2008, LCDC Meeting**

EXHIBIT: K
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 3-20-08
PAGES: 11
SUBMITTED BY: DLCD staff

**KLAMATH COUNTY PERIODIC REVIEW WORK TASK 22,
STATUS OF COUNTY'S RESPONSE TO LCDC'S
DECEMBER 2, 2005 REMAND ORDER**

I. RECOMMENDATION

The director recommends, based on the information contained in this report, that the Commission revise Remand Order 06-WKTASK-001688 to identify June 6, 2008 as the new final date for Klamath County to resubmit Work Task 22. Furthermore, if Klamath County fails or declines to resubmit Work Task 22 by June 6, 2008 the department also recommends that the Commission direct the department to schedule a hearing to consider sanctions during the Commission's regular August meeting currently scheduled for August 6-8, 2008 in Baker City, Oregon.

II. AGENDA ITEM SUMMARY

Klamath County Periodic Review Work Task 22 focuses on commercial uses in exception areas located outside of urban growth boundaries and unincorporated communities. This item came before the commission during the regular November, 2007 meeting held in Corvallis, Oregon. During the November meeting the commission directed staff to meet with Klamath County officials to further discuss and explain Goal 14 and the county's obligations under Task 22.

On January 15, 2008 department staff members Jon Jinings and Doug White met with the Klamath County Board of Commissioners in Klamath Falls. The county planning director, Les Wilson and acting county counsel, Rod Davis were also present. Additional language was offered to county staff on February 13, 2008 (Please see attached).

During this time the department has also been working with Klamath County, the city of Klamath Falls and the developer to try and reach a settlement regarding the department's appeal of the Shasta View Shopping Center Case, which was approved by the commission during the regular October meeting in Enterprise, Oregon. The commission may recall that the Shasta View case involves the proposed use of industrial land for large format retail commercial activities. On January 22, 2008 the director provided Klamath County with a letter outline several items the department would like to see included in any settlement agreement. Because of the department's concerns about inappropriate commercial development on rural lands completion of Task 22 was included along with seven (7) other items (Please see attached). The department continues to work with the affected parties to resolve this case.

III. COMMISSION OPTIONS

The Commission may:

1. Find that Work Task 22 for commercial zoned properties is overdue and schedule a sanctions hearing for April 30-May2, 2008; or
2. Revise remand order 06-WKTASK-001688 to identify June 6, 2008 as the new final date for Klamath County to resubmit Work Task 22 for commercial zoned properties located outside urban growth boundaries and unincorporated communities and January 1, 2009, as the new submittal date for industrial zoned properties subject to Goal 14; or
3. Issue a new order removing Work Task 22 from the Klamath County Periodic Review Work Program.

IV. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends that the Commission support the Director's recommendation and revise remand order 06-WKTASK-001688 to identify June 6, 2008, as the new final date for Klamath County to resubmit Work Task 22 (option 2. listed above).

Proposed Motion: I move that the Commission revise Remand Order 06-WKTASK-001688 to identify June 6, 2008, as the new final date for Klamath County to resubmit Work Task 22 for commercial zoned properties and January 1, 2009, as the new submittal date for industrial zoned properties because additional time was necessary to allow Klamath County to better understand the history and legal basis under Goal 14. However, if the county does not resubmit Work Task 22 relating to commercial zoned properties on or by June, 2008, the department shall schedule a sanction hearing for the Commission's regular March meeting currently scheduled for August 6-8, 2008, in Baker City, Oregon.

Alternative Motion (1): I move that the Commission find that Work Task 22 for commercial zoned properties is overdue and schedule a sanctions hearing for April 30-May2, 2008; or

Alternative Motion (2): I move that the Commission issue a new order removing Work Task 22 from the Klamath County Periodic Review Work Program.

Attachments: A. Draft Language Provide to Klamath County by department staff
B. January 22, 2008 letter from Richard Whitman to Klamath County.

- A. Minimum Lot Size – 5,000 square feet
- B. Lot Size and Shape – See Article 61
- C. Building Heights and Setbacks – See Article 62
- D. Fences, Walls and Screening – See Article 64
- E. Landscaping – See Article 65
- F. Signs – See Article 66
- G. Parking – See Article 68
- H. Access – See Article 71

I. Building size limitations for commercial uses on unincorporated commercial lands in Klamath County:

1. New Commercial Uses.

- a. **Urban Growth Boundaries – No building size limitations.**
- b. **Goal 14 Exception Areas – No building size limitations unless specified by the exception.**
- c. **Urban Unincorporated Communities Designated Pursuant to OAR Chapter 660, Division 22– Building size shall not exceed 8,000 square feet of floor space per building.**
- d. **Unincorporated Communities Designated Pursuant to OAR Chapter 660, Division 22– Building size shall not exceed 4,000 square feet of floor space per building.**
- e. **Rural Lands Not Included in a-d Above- Building size shall not exceed 3,500 square feet of floor space per building.**
- f. **Remote Rural Lands- Rural lands not included in a-d above that are located at least 20-miles from an urban growth boundary and are not directly adjacent to State Highway 97 and/or State Highway 140 are not subject to any building size limitation.**

2. Existing Commercial Uses.

- a. **Urban Growth Boundaries – No building size limitations.**

- b. **Goal 14 Exception Areas – No building size limitations unless specified by the exception.**
 - c. **Urban Unincorporated Communities Designated Pursuant to OAR Chapter 660, Division 22– Klamath County has no designated Urban Unincorporated Communities as of the effective date of this Ordinance.**
 - d. **Unincorporated Communities Designated Pursuant to OAR Chapter 660, Division 22– A lawfully established commercial use that existed prior to December 13, 2005 may expand to occupy a maximum of 5,000 square feet of floor space per building, or an additional 50% of the floor space currently occupied, whichever is greater.**
 - e. **Rural Lands Not Included in a-d Above- A lawfully established commercial use that existed prior to December 13, 2005 may expand to occupy a maximum of 4,000 square feet of floor space per building, or an additional 50% of the floor space currently occupied, whichever is greater.**
 - f. **Remote Rural Lands- Rural lands not included in a-d above that are located at least 20-miles from an urban growth boundary and are not directly adjacent to State Highway 97 and/or State Highway 140 are not subject to any building size limitation.**
3. **Commercial Uses Primarily Designed to Serve Resource Industries (e.g. Farming, Ranching, Forestry or Mineral Extraction).**
- a. **Urban Growth Boundaries – No building size limitations.**
 - b. **Goal 14 Exception Areas – No building size limitations unless specified by the exception.**
 - c. **Urban Unincorporated Communities Designated Pursuant to OAR Chapter 660, Division 22– Notwithstanding paragraphs 1 and 2 of this subsection commercial uses primarily designed to serve resource industries are not subject to any building size limitation when permitted through a Type II Administrative Review. Such uses may be permitted through a Type I Administrative Review when building size does not exceed 8,000 square feet.**
 - d. **Unincorporated Communities Designated Pursuant to OAR Chapter 660, Division 22– Notwithstanding paragraphs 1 and 2 of this subsection commercial uses primarily designed to serve resource industries are not subject to any building size limitation when permitted through a Type II Administrative Review. Such uses may**

be permitted through a Type I Administrative Review when building size does not exceed 4,000 square feet.

- e. **Rural Lands not included in a-d Above- Notwithstanding paragraphs 1 and 2 of this subsection commercial uses primarily designed to serve resource industries are not subject to any building size limitation when permitted through a Type II Administrative Review. Such uses may be permitted through a Type I Administrative Review when building size does not exceed 3,500 square feet.**
 - f. **Remote Rural Lands- Rural lands not included in a-d above that are located at least 20-miles from an urban growth boundary and are not directly adjacent to State Highway 97 and/or State Highway 140 are not subject to any building size limitation.**
4. **New or Expanded Commercial Uses Intended to Serve the Rural Area or the Needs of the Traveling Public.**
- a. **Urban Growth Boundaries – No building size limitations.**
 - b. **Goal 14 Exception Areas – No building size limitations unless specified by the exception.**
 - c. **Urban Unincorporated Communities Designated Pursuant to OAR Chapter 660, Division 22– Notwithstanding paragraphs 1 and 2 of this subsection commercial uses primarily designed to serve resource industries are not subject to any building size limitation when permitted through a Type II Administrative Review. Such uses may be permitted through a Type I Administrative Review when building size does not exceed 8,000 square feet.**
 - d. **Unincorporated Communities Designated Pursuant to OAR Chapter 660, Division 22– Notwithstanding paragraphs 1 and 2 of this subsection commercial uses primarily designed to serve resource industries are not subject to any building size limitation when permitted through a Type II Administrative Review. Such uses may be permitted through a Type I Administrative Review when building size does not exceed 4,000 square feet.**
 - e. **Rural Lands not included in a-d Above- Notwithstanding paragraphs 1 and 2 of this subsection commercial uses primarily designed to serve resource industries are not subject to any building size limitation when permitted through a Type II Administrative Review. Such uses may be permitted through a Type I Administrative Review when building size does not exceed 3,500 square feet.**

ATTACHMENT A

- f. Remote Rural Lands- Rural lands not included in a-d above that are located at least 20-miles from an urban growth boundary and are not directly adjacent to State Highway 97 and/or State Highway 140 are not subject to any building size limitation.**
- J. Any proposed development which fails to satisfy the standards of subsection I. above shall require an exception to Goal 14.**
- K. All non-commercial uses that lawfully existed prior to the adoption of this Ordinance shall be considered lawfully established non-conforming uses, which may be restored to their prior lawfully approved size if destroyed or substantially damaged.**



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January 22, 2008



Hon. Al Switzer, Chair
Klamath County Board of Commissioners
305 Main Street
Klamath Falls, Oregon 97601

RE: Proposed Settlement Items for ODOT & DLCD v. Klamath County (LUBA 2007-198 & 2007-199).

Chair Switzer:

As you know, the LUBA cases cited above involve a Klamath County land use decision to authorize intensive commercial and residential development on lands planned and zoned for industrial purposes. The subject project has come to be commonly called the Shasta View Shopping Center. Although the county's decision is under appeal, the department would prefer to avoid litigation and work with the county to achieve a mutually agreeable solution. From the department's perspective, the following matters should be resolved in any settlement of this appeal.

1. Removal of the residential component of the original Planned Unit Development approval.

Rational: The department does not believe that stand-alone residential development is appropriate in either an industrial or commercial zoning district. Residential development that is not ancillary to the primary function of creating employment opportunities can act as an impediment to successful industrial or commercial development. It is our understanding that the developer is not committed to a residential development strategy and is amenable to limiting the proposal to commercial and light industrial activities.

2. Limit initial commercial development under the original Planned Unit Development approval to 24-acres of the subject property.

Rational: Agreeing to allow commercial development to proceed in advance of the necessary planning work required by statewide planning goal 9 (Economic Development) and OAR Chapter 660, Division 9 is an important concession on the part of the department. The department is willing to do this only if the amount of commercial development authorized is a relatively small portion of the site. The proposed amount, 24-acres, is equivalent to about 20% of the subject property. The department has observed that large commercial developments are usually phased

over several years. In some cases it will take many years for a commercial development to become fully built out. The department has also observed that large-format retail commercial facilities, also known as big boxes, are consistently successful on sites of eight to 13-acres. The department believes that 24-acres is an ample amount of property to host an introductory phase of development and is large enough to accommodate as many as two big box facility and a variety of satellite commercial establishments.

3. Completion by the county in coordination with the city of Klamath Falls of an assessment of the employment needs of the greater Klamath Falls Urban Area pursuant to Statewide Planning Goal 9 (*Economic Development*) and OAR Chapter 660, Division 9, including an Economic Opportunities Analysis (EOA), Buildable Lands Inventory (BLI), complementary comprehensive plan and zoning ordinance components and necessary adoptions. Consultant and scope of work will be reviewed and approved by DLCD. Furthermore, DLCD will provide up to 50% of the project budget. The project will be finished on or before June 30, 2009.

Rational: The planning work described above is important for the future of the subject property, and it also is important for the rest of the Klamath Falls urban growth boundary. Klamath Falls is the second largest urban area in eastern Oregon and may become Oregon's next Metropolitan Planning Area (MPA). Understanding the community's economic opportunities and positioning the city and county to recruit job-creating industry will be critical to the city's employment needs over the 20-year planning horizon. The department will consider a Technical Assistance grant to provide financial assistance to support this work by the county and city, subject to the department's normal review and approval of the consultant and scope of work.

4. A commitment made by the county to not expand commercial opportunities in other portions of the subject property until and unless the project described in item 3. above supports rezoning that portion of the subject property to a commercial designation.

Rational: As described in conjunction with items 2. and 3. above the department is willing to allow a small amount of commercial development to proceed so long as the city and county commit to undertaking the necessary planning work under Goal 9. The department will make a substantial financial investment in the local planning program. Until the planning work is completed, any additional commercial development of the subject property would violate Goal 9.

5. A commitment made by the county not to approve any additional proposals to convert industrial lands to a different land use category until the project described in item 3 above has been completed and is supportive of such conversions.

Rational: The department's reasoning here is essentially the same as our reasoning presented under item 4. above. Engaging in additional industrial to commercial conversion activities prior to the work conducted pursuant to statewide planning goal 9 and OAR Chapter 660, Division 9 would be unlawful.

6. Revisions made by the county to Article 83 of the Klamath County Land Development Code (PUD) to either remove the planned unit development opportunity from the IL, Light Industrial zoning district; or add language clarifying that uses approved as part of a planned unit development must be consistent with the subject property's plan and zone designation, that uses not otherwise allowed by the applicable plan and zoning designation must be subordinate to other uses proposed by the developer and that uses not otherwise allowed by the applicable plan and zoning designation may occupy no more that 5% of the land area dedicated to a particular project.

Rational: The language included in Article 83 is at the center of this disagreement. Oregon land use law establishes that the comprehensive plan is the governing document of a local land use program. Longstanding case law has established that a conflict between the comprehensive plan and an implementing ordinance must be reconciled in favor of the comprehensive plan. Authorizing large scale retail commercial development that could not otherwise be permitted in an industrial plan designation is exactly this type of conflict. The language in Article 83 must be revised to ensure consistency with the county's comprehensive plan and to avoid additional confusion that could act to the detriment of future applicants.

7. Adoption by the county of a countywide Transportation Systems Plan (TSP). This item can be satisfied by adopting the draft countywide TSP funded by ODOT.

Rational: Transportation issues will continue to be at the forefront of development proposals in Klamath County. Not having an adopted TSP complicates a determination of compliance with OAR Chapter 660, Division 12, also known as the Transportation Planning Rule (TPR). Having an adopted TSP should make the county a stronger candidate for funding to assist with transportation improvement projects. It is the department's understanding that a county TSP was prepared with funding provided by the Oregon Department of Transportation (ODOT).

8. Adoption by the county of the necessary language to complete the rural commercial aspects of Periodic Review Task 22. This item can be satisfied by adopting the language recommended by the Klamath County Planning Commission on July 3, 2007 or other language adequate to demonstrate compliance with statewide planning goal 14 (Urbanization).

Rational: The department believes there is an important nexus between completing the rural commercial lands aspect of Periodic Review Task 22 and advancing commercial development in the Klamath Falls urban growth boundary. Development in rural areas outside of cities or unincorporated communities should not weaken the potential for urban development on urban lands. The Board of County Commissioners has been presented with a recommendation from the Klamath County Planning Commission that would satisfy the Task 22 requirements. Adopting the planning commission recommendation would complete the county's obligations on this portion of the county's Periodic Review and would satisfy the department that urban commercial development will not be approved at inappropriate locations outside of urban growth boundaries.

Thank you for your willingness to work with the department to resolve this matter. If you have any questions concerning the elements described above, or want to sit down and discuss them, please do not hesitate to call me. The department is looking forward to a positive resolution of this case.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Whitman', written over the typed name below.

Richard Whitman

cc: State Senator Doug Whitsett, District 28
State Representative Bill Garrard, District 56
State Representative George Gilman, District 55
William D. Bunch, Klamath County Counsel
Jeff Ball, City of Klamath Falls
Michael P. Rudd, Brandsness Brandsness & Rudd P.C.
John VanLandingham, Land Conservation and Development Commission
Ray Naff, Governors Office
Bob Repine, Oregon Economic and Community Development
Matt Garrett, Oregon Department of Transportation
Janet Brown, Regional Coordinator
Steven Shipsey, Justice Department
Bonnie Heitsch, Justice Department

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