

**BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON**

IN THE MATTER OF THE ENFORCEMENT)	ORDER FINDING
ORDER FOR THE STAFFORD AREA)	GOOD CAUSE
PURSUANT TO ORS 197.324)	ORDER No. 001915

This matter came before the Land Conservation and Development Commission (Commission) on May 22, 2020, as a petition from David Marks requesting that the Commission consider an enforcement order against the cities of Lake Oswego, Tualatin, and West Linn (cities), Metro, and Clackamas County pursuant to ORS 197.319 to 197.335. Mr. Marks alleges that the five-party inter-governmental agreement entered into by the cities, Metro and Clackamas County (local governments) and the three-party inter-governmental agreement entered into by the cities constitute an engagement in a pattern or practice of decision-making that violates a requirement of the Metro regional framework plan. The Commission conducted a “good cause” hearing to consider the recommendation of the Department of Land Conservation and Development (department); the petition of Mr. Marks; Mr. Marks’ request notice to the local governments; the local governments’ responses to Mr. Marks’ request; related facts known to or ascertained by the Commission; and written and oral presentations from Mr. Marks and the local governments to the Commission in deciding to proceed with a “contested case” hearing.

I. INTRODUCTION

Oregon state law provides a manner for a person to request that the Commission require by order that a local government take action necessary to bring its land use decisions into compliance with its acknowledged land use regulations. Before a person may request adoption of

an enforcement order pursuant to ORS 197.320 and 197.324, ORS 197.319 requires that the person present the reasons for such an order to the affected local government in writing along with the proposed revisions to the local comprehensive plan, land use regulations, or decision making process that are the basis for the order. After complying with ORS 197.319, a person may petition the Commission to consider an enforcement proceeding against the affected local government. ORS 197.324(2)(a). When presented with such a petition, the Commission must determine if there is good cause to proceed to a contested case on the petition.

ORS 197.324(2)(b). If the Commission determines that there is good cause to proceed to a contested case on the petition, the Commission issues a written decision describing the reasons for its decision. OAR 660-045-0090(8).

In this matter, in the terminology of ORS 197.319 to 197.324 and OAR chapter 660, division 45, Mr. Marks is the “requester,” *i.e.*, the “person” who seeks an enforcement order. OAR 660-045-0020(12). The local governments are the “affected local government[s]” against which Mr. Marks seeks an enforcement order. OAR 660-045-0020(1). The “noncompliance” that Mr. Marks requests the Commission order the local governments to address is that inter-governmental agreements entered into by the local governments, one of which is among all five local governments, the other among the three cities, constitute a pattern or practice of decision-making that violates a requirement of the Metro regional framework plan.¹ In particular, Mr.

¹ ORS 197.320 provides, in relevant part:

“The Land Conservation and Development Commission shall issue an order requiring a local government, * * * to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions into compliance with the goals, acknowledged comprehensive plan provisions or land use regulations if the commission has good cause to believe:

(12) A local government within the jurisdiction of a metropolitan service district has failed to make changes to the comprehensive plan or land use regulations to comply with the regional framework plan of the district or has engaged in a pattern or practice of decision-making that violates a requirement of the regional framework plan[.]”

Marks alleges that the three-party inter-governmental agreement entered into by the cities imposes a 10-year moratorium by prohibiting the completion or adoption of a concept plan for the area north of the Tualatin River. Petition at 7. Thus, Mr. Marks contends that the three-party intergovernmental agreement improperly imposes new criteria on the concept plan process found in Metro Code 3.07.1110. Petition at 9. Mr. Marks seeks corrective action as follows: 1) the cities nullify and invalidate the three-party inter-governmental agreement; and 2) the local governments clarify the five-party inter-governmental agreement to ensure that the concept planning process for the Stafford Area will be implemented in a manner consistent with the applicable statutes, administrative rules, and Metro Code. Petition at 11.

II. ULTIMATE FINDINGS

1. After review of the staff report, the submittals of the requester and the local governments, and the material presented at the public hearing on May 22, 2020, the Commission determined that the requester's petition presented sufficient justification to find "good cause" for a contested case to determine whether the two inter-governmental agreements constitute a pattern or practice of decision-making that violates Metro's regional framework plan.

2. The Commission authorized the director to appoint a hearings officer to conduct a contested case hearing and return to the Commission with a recommendation on whether to proceed with enforcement and, if appropriate, a draft enforcement order for the Commission's consideration.

3. The Commission directed that the hearings officer consider each of the following questions to determine whether an enforcement order against the local governments is necessary, and what appropriate terms of such an enforcement order should be:

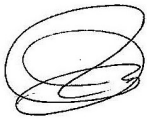
- a. Are the three-party and five-party inter-governmental agreements “decisions” that are subject to an enforcement under ORS 197.320(12)?
- b. Do the two inter-governmental agreements constitute a “series of decisions” that in turn constitute a “pattern or practice” of decision-making?
- c. Are Metro and Clackamas County considered parties to a “series of decisions” that constitute a “pattern or practice” of decision-making pursuant to ORS 197.320(12)?
- d. Does the three-party inter-governmental agreement violate a provision of Metro’s Functional Plan?

The hearings officer may consider any arguments that Mr. Marks and the local governments present that are related to the questions identified by the Commission.

4. The Commission directed that the hearings officer report back to the Commission with a recommendation and, if appropriate, a draft enforcement order at the Commission’s scheduled meeting on July 23-24, 2020.

DATED THIS 27th DAY OF MAY, 2020.

FOR THE COMMISSION:



Jim Rue, Director

Department of Land Conservation and Development