



Oregon

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MEETING MINUTES

June 28-30, 2006

LAND CONSERVATION AND DEVELOPMENT COMMISSION

City Hall

Community Conference Room

500 SW Dorion

Pendleton, Oregon 97801

(track 1)

Chair VanLandingham calls meeting to order at 8:33 a.m., June 29, 2006.

Commission Members present:

John VanLandingham

Ron Henri

Dennis Derby

Hanley Jenkins

Tim Josi

Marilyn Worrix

Commissioner Margaret Kirkpatrick is excused.

Agenda Item 2 – Public Comment

Keith Cubic, Douglas County Planning Director – Testifies and submits written testimony regarding a legislative concept for the 2007 Legislature (**Exhibit A**).

Commission discussion regarding the proposed legislative concept submitted by Mr. Cubic.

(track 2)

Agenda Item 3 – Requests to Appeal

Director Shetterly – There are no requests to appeal at this time.

(track 3)

Agenda Item 11 – Measure 37 Update

Director Shetterly – Provides the Commission with an update of the current number of Measure 37 claims filed and how that is affecting the department and staffing issues. Discusses the number and kinds of claims litigation that has been filed with the state regarding Measure 37.

Commission discussion regarding the cases that are at the trial court level and how quickly those may be appealed.

VanLandingham – Discusses that in Eugene, the city has required a claimant to go back and identify which statutes they are wanting waived and for which properties.

Shetterly – Discusses that at the state level, claimants are being required to at least identify the use that they want on the property.

(track 4)

Agenda Item 12 – Director’s Report

Director Shetterly – Submits the Director’s Report to the Commission on the activities of the department since the Commission last met (**Exhibit B**).

Commission discussion regarding the *Century Properties, LLC v. City of Corvallis* as discussed in Section A of the Director’s Report (**Exhibit B**).

Rob Hallyburton, Community Services Division Manager – Discusses that the McMinnville Periodic Review issue was appealed and will be coming back before the Commission as a request for continuance at the August meeting, to be deferred to the October Commission meeting for a hearing.

Shetterly – Continues with review of the Director’s Report (**Exhibit B**).

(track 5)

Agenda Item 4 – Public Hearing and Possible Adoption of Amendments to Administrative Rules Regarding Applications of the Statewide Goals to Newly Incorporated Cities and Annexations

Bob Rindy, DLCD Staff – Submits staff report and written comments regarding Possible Adoption of Amendments to Administrative Rules Regarding Applications of the Statewide Goals to Newly Incorporated Cities and Annexations (**Exhibit C**).

Commission discussion regarding the timeline for acknowledgement of a comprehensive plan a city has and what happens if the four year schedule is not met.

Keith Cubic, Douglas County Planning Director – Testifies and submits written testimony regarding support of the amendments to the Rules Regarding Applications of the Statewide Goals to Newly Incorporated Cities and Annexations (**Exhibit D**).

Shetterly – States that the department has been meeting with the City of Damascus and is trying to ease any complications by working in tandem with both the City and Metro regarding this new rule.

Josi – How does a city act without a comprehensive plan?

Shetterly – They can use the county’s comprehensive plan as an interim plan.

Motion – Commissioner Henri moves that the Commission adopt the proposed rule amendments under OAR 660, division 14, and repeal the rule under OAR 660, division 1, as per Attachment A to the staff report and with the amendment “or as extended” on line 5, pg. 2 of Division 14.

Commissioner Josi seconds

Vote – 6-0, Commissioner Kirkpatrick is excused.

(track 6)

Agenda Item 5 – Public Hearing Regarding Proposed New Rules (OAR 660, division 024) Regarding the Urban Growth Boundary (UGB) Amendment Process

Bob Rindy, DLCD Staff – Submits staff report regarding Proposed New Rules (OAR 660, division 024) Regarding the Urban Growth Boundary (UGB) Amendment Process (**Exhibits E & F**).

VanLandingham – Clarifies that this issue will not be voted on until the October Commission meeting in Bend.

Rindy – Discusses who has been involved in the workgroup and that there will be another meeting in July.

Motion – Commissioner Worrix moves to allow for Bob LeFeber to join the UGB workgroup.

Commissioner Josi seconds motion.

Vote – 6-0, Commissioner Kirkpatrick is excused.

Rindy – Reviews the proposed rule and discusses the changes as recommended by the workgroup. Discusses Section 0010: Definitions (**Exhibit F**).

VanLandingham – Asks if the definition of “local government” would include Urban Unincorporated Communities (UUC)?

Rindy – We did not intend to include special districts in these rules.

VanLandingham – Suggests clarifying that in the Purpose Statement.

Derby – Asks about line 15 regarding “net buildable acres”, and if that is specific to residential land or if it just refers to developable land. The land needed for public facilities has generally been excluded from “net buildable acres,” should that be done here?

Rindy – States that the workgroup discussed that issue and that they didn’t feel that the land needed for a public facility would fall under this definition. Explains that the “net buildable acre” definition depends on the context of the land that is in question.

VanLandingham – Discusses the safe harbors for the rule and if they have resolved some of the concerns regarding this rule.

Rindy – States that he feels there is agreement on the definitions for safe harbors. Continues with review of the proposed amended rule, Section 0020 UGB: Amendment (**Exhibit F**).

VanLandingham – Asks if the lenience of not making a jurisdiction change the zoning of the land at the time it is brought into a UGB will make them not change it at all.

Rindy – States that they will be looking at that issue before finalizing the rule. Continues with review of the proposed amended rule, Section 0030: Population Forecasts. Cites Attachment D, regarding the survey of County Coordinated population forecasts (**Exhibit F**).

VanLandingham – Asks if there is concern that this rule will take the pressure off the counties to do a coordinated population forecast.

Rindy – That has been discussed, but that it wasn’t enough of an issue to be concerned about.

VanLandingham – Asks about the Marion County and City of Woodburn conflict and if this rule would help resolve that issue.

Rindy – Marion County formally amended their forecast. States that this rule would actually sanction what Marion County did by reformulating the forecast for just one city in a county.

Worrrix – Asks if under the new rule, the city has an option to not adopt the county’s population projection.

Rindy – Yes, they can adopt their own projection.

Worrrix – Explains why the workgroup included this option for population projections.

Rindy – States that the option for a city to adopt their own forecast is not available if they are within a county that has an updated population projection.

Jenkins – States that the alternative language should include some incentive for counties to do population projections because the projections don’t mean much to the counties, but they are very important to the cities.

Rindy – Continues with discussion of the proposed amended rule, Section 0040: Land Needs **(Exhibit F)**.

VanLandingham – Asks about the safe harbor in Section 4 (b) of 0040 regarding government-assisted housing.

Gloria Gardiner, DLCD Staff – Explains that because government assisted housing isn't usually classified by the city as "government assisted housing" it can be difficult to identify in their housing needs assessment.

VanLandingham – States that the language "as regulated by funding source" might not be helpful because no one regulates that, so "tracking" may be better language.

Rindy – Continues with discussion of the proposed amended rule, Section 0040: Land Needs. Discusses the proposed amended rule, Section 0050: Land Inventories **(Exhibit F)**.

VanLandingham – Asks how the acreage sizes were developed.

Rindy – Explains that the acreage numbers came from Winterbrook Planning and that those numbers haven't been controversial or discussed much by the workgroup.

VanLandingham – Asks how communities do this if they don't have GIS capabilities?

Rindy – States that this safe harbor will vary community by community depending on how they want to consider infill.

Gardiner – States that cities should do as much infill as they can before they add acreage to the UGB.

Worrix – Explains that the workgroup also had to consider the reality of what would be developed and the likelihood of infill.

Rindy – Discusses that the safe harbor for land inventories can be used in different ways for local jurisdictions to create their infill.

Jenkins – States that this portion of the rule is to project housing needs which will just add buildable land and isn't necessarily an incentive for an infill.

Gardiner – Explains that it is a matter of judgment sometimes for the department to determine whether or not a jurisdiction has done an adequate job of determining their buildable land needs.

Jenkins – The concern is then if the UGB will be expanded too much.

Gardiner – That is the concern, but the inventory will determine how much will be added.

Rindy – Continues with discussion of the proposed amended rule, Section 0060: Boundary Location Alternatives Analysis **(Exhibit F)**.

Gardiner – Discusses the *City of West Linn v. DLCD* case regarding location analysis.

Rindy – Discusses the transportation issues as cited in Section 0060 (6) and (7).

Josi – As long as the transportation analysis is done, there isn't a review process to ensure that it was done in a way appropriate to the rule?

Rindy – States that if there is a dispute as to how the analysis was done, it could eventually be brought before the Commission to resolve.

Worrix – The transportation analysis was an issue that the workgroup struggled with.

VanLandingham – I think the clarifications are important, I'm just concerned that this language makes the analysis too detailed.

Rindy – There will be much more work done on this issue before the rule is complete. The more detail that we put in the rule, the more impact it could have on different portions of the state.

Worrix – It is important to not get too detailed in this rule because the Commission stated that we were going to try to simplify the rule. While it is easy to go into greater detail of clarification, we stated that we weren't going to do that.

Josi – States that he feels this rule is about right and that the Commission is meeting its original intent.

Rindy – Continues discussion regarding the proposed amended rule, Section 0070: UGB Adjustments (**Exhibit F**).

Josi – What made you put this issue in the rule?

Rindy – Explains that it allows for some flexibility for a jurisdiction to remove lands that won't be able to be used, and add lands that can be used to allow for UGB expansion.

Josi – Was there a primary proponent for this issue?

Rindy – States that the League of Oregon Cities were the biggest proponent for this. Explains that Metro is the only jurisdiction that has a process for land swaps.

Gardiner – Further explains Metro's process for land swaps.

VanLandingham – Recesses the meeting at 10:50 a.m.

VanLandingham – Reconvenes the meeting at 11:05 a.m.

Keith Cubic, American Planners Association – Testifies and submits written testimony regarding the proposed amended rule concerning Urban Growth Boundaries (**Exhibit G**). States concern and provides recommendations for amended Sections 3 and 4.

Shetterly – Asks if this recommendation would take a county out of compliance with the statute.

Cubic – The statute does not require you to go with Office of Economic Analysis forecast.

VanLandingham – Your main point is that cities shouldn't be able to proceed without county coordination?

Cubic – Correct.

Worrrix – In your recommendation, if there isn't agreement between the city and the county then there should be no safe harbor. Does this mean no growth?

Cubic – No, it would just mean that they have to work together to coordinate their population forecast.

Worrrix – In your proposal, what happens to a city when the county hasn't done a population forecast?

Cubic – The two safe harbor options would still exist. If there is not an agreement between the city and the county then in our recommendation, there would be no safe harbor.

VanLandingham – What you are suggesting is that a city could continue without having a population forecast completed if the county agrees with their numbers?

Cubic – Correct.

Jenkins – The city can't trump the county's recommendation.

VanLandingham – A city might say that allows a county to trump a city's recommendation.

Cubic – A county has that authority now.

Worrrix – Under the existing proposal, a city can't trump because a county can always do a new projection and the city would have to live with it.

Cubic – However that would create a period of no coordination which would affect other areas in the county.

Harlan Levy, Oregon Association of Realtors – Testifies regarding the proposed amended rule concerning Urban Growth Boundaries and states their support for rule as proposed.

Kelly Ross, Special Districts Association of Oregon – Testifies and submits written testimony regarding their support for the proposed amended rule concerning Urban Growth Boundaries, with an amendment as noted in their testimony (**Exhibit H**).

Linda Ludwig, League of Oregon Cities – Testifies regarding the proposed amended rule concerning Urban Growth Boundaries and states their support for rule as proposed.

VanLandingham – States that the Commission can't change the hierarchy of land because it is in the statute which the Commission can't change.

Craig Greenleaf, Oregon Department of Transportation – Testifies and cites written testimony, as submitted, regarding the proposed amended rule concerning Urban Growth Boundaries and states their concerns for rule as proposed (**Exhibit F**).

Worrix – Asks if at the time the land is included in the UGB, ODOT wants something more than the analysis as described in this rule, or if they want the full TPR requirements.

Greenleaf – States that there needs to be appropriate consideration as to whether services can be provided to the new land included in the UGB.

Henri – What would an “appropriate degree of consideration” include?

Greenleaf – States that if a community is anticipating increasing its industrial land supply, and the nature of the transportation analysis suggests that the only way to do that is to build a new interchange, the need for the increase of land may not justify the cost for new interchange. The Department of Transportation will work to provide new rule language to the workgroup that may help with this issue.

Worrix – States appreciation for the work of everyone who has helped on this workgroup.

VanLandingham – Recesses the meeting 11:52 a.m.

(track 7)

VanLandingham – Reconvenes the meeting at 11:56 a.m.

Agenda Item 6 – Work Session and Possible Adoption of Proposed Administrative Rule Amendments (OAR 660-012) Transportation Planning Rule

Bob Cortright, DLCD Staff – Submits staff report regarding Possible Adoption of Proposed Administrative Rule Amendments (OAR 660-012) Transportation Planning Rule (**Exhibits I & J**). Discusses the changes that were made to the rule based on recommendations from the Commission regarding the purpose statement.

VanLandingham – Asks about the italicized language on pg. 3 regarding the purpose statement.

Cortright – Explains that the italicized language is what the Commission looked at in February as well as what was suggested by the City of Portland.

Commission discussion regarding the “principal reliance” language in the purpose statement.

Cortright – Discusses the “skinny streets” issue and that based on the concerns that were raised by the 28 ft. requirement it has been withdrawn from the rule.

VanLandingham – States that while he is in favor of skinny streets, it probably isn't the Commission's place to be recommending this.

Cortright – Discusses that the third issue is additional standards for metropolitan areas.

VanLandingham – States that he and Director Shetterly met with Matt Garrett, Director of Oregon Department of Transportation, and Stuart Foster the Chair of the Oregon Transportation Commission and that the Commission was hoping to move forward with this rule.

Jenkins – States that while he would prefer to have all of the changes made at once, the threshold issue can be adopted at the August LCDC meeting.

Commission discussion regarding whether the language regarding "principle reliance" that is different in the rule and goal could affect any future periodic review expansion.

Cortright – This language is the staff's response to the City of Portland's suggestion.

Jenkins – Cites that the language states that it is "encourage and support" rather than dictating.

Motion – Commissioner Jenkins moves that the proposed amendments to Division 012 (the Transportation Planning Rule) and Division 004 (the Exceptions Rule) as set forth in Attachment A be adopted and that the rulemaking process be continued to consider whether to adopt additional amendments to OAR 660-012-0070 related to the goal exception thresholds issue following further review by the Joint OTC-LCDC subcommittee, as well as including the change on pg. 17 of Attachment A – replacing "metropolitan area" with "local governments" as well as editorial and formatting changes as indicated by Steve Shipsey.

Commissioner Josi seconds motion.

Vote – 6-0, Commissioner Kirkpatrick excused.

VanLandingham – Recesses the meeting at 12:40 p.m.

(track 8)

VanLandingham – Reconvenes the meeting at 1:04 p.m.

Agenda Item 12 – Director's Report

Ron Eber, DLCD Staff – Provides the Commission with an update of the *Wetherall* case and the decision that was made by the Court of Appeals.

Rob Hallyburton, Community Services Division Manager – Provides the Commission with an overview of the request from Lane County to do a rule update on exception lands (**Exhibit K**).

Shetterly – Continues with review of Director's Report (**Exhibit B**).

Linda Ludwig, League of Oregon Cities – Discusses the annexation workgroup that was established after the 2005 Legislative Session.

Shetterly – Continues with review of the Director’s Report and cites the Customer Satisfaction Report that was independently done and the high scores that the department received.

VanLandingham – Recesses the meeting at 1:23 p.m.

(track 9)

VanLandingham – Reconvenes the meeting at 1:33 p.m.

**Agenda Item 7 – Umatilla County Request for Approval of Resource Zone
Minimum Lot Size**

VanLandingham – Explains how the hearing will proceed regarding the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

Jon Jinings, Eastern Oregon Regional Representative – Submits staff report regarding the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibits L & M**).

Steve Shipsey, Assistant Attorney General – Explains how the proceedings on this issue have been established and how the hearing should proceed.

Ron Eber, DLCD Staff – Cites pg. 4 of staff report regarding the Decision-Making Criteria on the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit L**).

Jinings – Discusses that Umatilla County’s proposal is a combination of 20 and 40-acre parcels but that the department’s recommendation is for no smaller than 40-acre parcels (**Exhibit L**). Discusses ORS 215.243 and what the statutory requirements of adopting a minimum lot size under 80 acres consist of. Discusses the department findings and how they created their recommendation.

Eber – Explains how the department came up with their 40-acre recommendation.

VanLandingham – Clarifies that the current state law has a minimum resource zone acre size of 80 acres. Explains that the county could drop the size of their zone down to 80 acres without the department’s approval. Asks what other counties have used the go-below process and what type of zoning those were.

Eber – Discusses that several counties have used the go-below process including Yamhill County for a mix of agriculture uses, Deschutes, Douglas and Wasco County.

Josi – The biggest concern is the viability of the newly created lots and their intended purpose. Did you conduct an analysis of vineyards with minimum lot sizes similar to the 20-acres and what the long-term viability of those has been?

Eber – We didn’t look at them as a stand alone farm, but as a parcel size that had enough vineyard space to qualify for an agriculture zone. Cites the Department of Agriculture’s memo as

included in the report regarding vineyard sizes in the Umatilla/Walla Walla County region **(Exhibit L)**.

Jinings – Explains that the department tried to look at the region instead of what is happening in other parts of the state to create a standard that is reflective of the environment in Umatilla County.

Henri – Asks if the department looked at the trends of the scale of viticultures at this time.

Jinings – States that the department did try to look at that issue. There isn't a long history of grape production in the Walla Walla Valley. Based on how the rule works, it is supposed to be on the basis of the agriculture zoning of the county.

VanLandingham – The goal provides that the county can go below the standard 80-acre minimum if “the proposed minimum will be appropriate to maintain the existing commercial agriculture enterprise in the area.” What does that mean as it relates to potential water supply and spray for grapes?

Eber – Explains how the area of analysis was identified by Umatilla County and how the department determined if what they were proposing was reflective of what is going on in the area.

VanLandingham – Asks if the “agriculture area” that was looked at was within Umatilla County's proposal, or within the Walla Walla Valley American Viticulture Area (AVA)?

Eber – Explains how they determined their recommendation, and that it was based on the 1600 acres in Umatilla County as well as the current AVA zoning consistent with the surrounding area.

Jinings – In reviewing this process, we concluded that there were successful vineyards on property similar to the 1600-acres that are part of this proposal.

VanLandingham – Is it appropriate to maintain the existing commercial agriculture enterprise, which in this case is grapes, or is there also an analysis of the impact of how grape production may affect another agriculture production such as wheat?

Jinings – States that the department was reluctant to evaluate how one agriculture use may work or affect production of another agriculture product.

VanLandingham – Usually the issue isn't one agriculture use versus another.

Eber – Correct, historically the issue has not been one type of agriculture versus another, it has been agriculture versus development.

Shetterly – Part of the consideration in this proposal is that there is nothing that stops the owner of the property from planting grapes today.

Henri – States that the agriculture versus agriculture issue will continue to be an issue in the future. Asks if this issue has come up before in siting a go-below in an AVA area that straddles both county and state lines.

Eber – Explains that of the other jurisdictions that have done go-below, the analysis is confined to the area of the go-below is being proposed. Discusses how the AVA is determined and what impact that had on the department's recommendation.

Shetterly – States that in the Farm-Stand rule this Commission defined "Oregon Farm" products to include farm products grown in counties in state's adjacent to border counties.

Bill Hansell, Umatilla County Commissioner – Testifies and submits written testimony in support of the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit N**).

Josi – Can you discuss the viability of the 20-acre parcel size?

Hansell – States that 20-acre parcels will provide an economic niche for people to be able to afford a vineyard property such as this, without having to invest in a 40 or 80-acre parcel.

Josi – Discusses that while on a vinery tour in Sacramento they stated it took \$10,000 an acre to start up a vineyard.

Hansell – States that in Oregon, the cost per acre to start a vineyard might be slightly higher.

VanLandingham – Why did Umatilla County do away with the 10-acre minimum lot size and go to 160-acre minimum lot size?

Hansell – States that at the time, they were just looking for uniformity throughout the county.

Tamra Mabbott, Umatilla County Planning Director – Testifies and submits written testimony in support of the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit O**).

John Junkin, Boldt Carlisle – Testifies and submits written testimony on behalf of the applicant regarding the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit P**).

Norm McKibben, Seven Hills Properties – Testifies and submits PowerPoint presentation regarding the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibits Q & R**).

Dr. Eric Fruits, EcoNorthwest – Testifies and submits PowerPoint presentation on behalf of the applicant regarding the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit S**).

Henri – Asks about some of the farm expenses listed and asks if Mr. Fruits helped determined those numbers as well.

Fruits – No, I did not.

McKibben – Explains that the trend is a split trend and that winery owners want their own vineyards. Most of the wineries in the Walla Walla Valley are small type vineyards.

Worrix – Asks how the wineries/vineyards ever turn a profit based on the numbers that were provided to the Commission (**Exhibit L**).

McKibben – Winery investment takes about 12 years to see profit.

Shipsey – Asks the Commission to not consider the June 24, 2006 *Oregonian* article that was presented by Mr. McKibben.

VanLandingham – Asks why the property owners are asking for 20-acre minimums rather than 40-acre minimums?

Junkin – The 20 acres was the proposal from the County. The property owner would be fine with the 40-acre parcels. Discusses that the property owners are not interested in creating dwellings.

McKibben – We don't anticipate 20 new wineries on this property.

VanLandingham – You may not have anticipated that 20 years ago either.

VanLandingham – Recesses the meeting at 3:22 p.m.

VanLandingham – Reconvenes the meeting at 3:35 p.m.

Tammy Dennee, Oregon Wheat Growers Association – Testifies and submits written testimony in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit T**).

Don Schellenberg, Oregon Farm Bureau – Testifies and submits written testimony in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit U**).

VanLandingham – This seems to be an issue where it is one agriculture use versus another. Is wine growing not considered an agriculture use?

Schellenberg – No, the wine facility or winery is not defined as a “farm use.”

VanLandingham – Are you saying that we shouldn't approve this because it would harm a different agriculture use?

Schellenberg – No, the potential harm is having more dwellings and the conflicts that could arise from those.

VanLandingham – The County was stating that if their proposal was accepted and the property was split up into some 20 acre and some 40-acre parcels, that they wouldn't allow dwellings to be built on the 20-acres parcels.

Schellenberg – That is what the County said, but with the *Brentmar* case, they can't do that. The issue is the potential conflict from the smaller lot size which will raise the cost of the land and farmers just won't be able to farm anymore.

Josi – Asks about the *Brentmar* case and what those restrictions are.

Shipsey – Discusses the Supreme Court decisions of *Lane County v. LCDC* and the *Brentmar* decision.

VanLandingham – If the Commission were to approve the 40-acre parcels, that would be a maximum of 42 dwellings and the Farm Bureau's concern is that those may cause harm to existing agriculture?

Schellenberg – The harm would be that creating smaller parcels would increase the value of the land so that it would no longer be affordable for farmers to purchase and farm.

VanLandingham – What does the Farm Bureau want us to do?

Schellenberg – Stay with the 80-acre minimum rule.

Derby – Asks about the Farm Bureau's testimony regarding the parcel size cost equation and if that is based on parcel size or cost of opportunity.

Schellenberg – The opportunity is out there because people can afford to buy the land and might not be ready or willing to use them for agricultural purposes.

Derby – But they still have to meet the rules for building a dwelling.

Schellenberg – Yes, but they have enough money to be able to find a way to meet those rules.

Henri – Are we creating a unique environment for grape growers that could be used as a basis around the state that might create a competitive advantage where homes could be established under the 80-acre minimum rule?

Schellenberg – That is the Farm Bureau's concern.

Debbie Lee, Citizen – Testifies and submits written testimony in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit V**).

Robert Klein, Citizen – Testifies and submits written testimony in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit W**).

VanLandingham – Even if this proposal goes away, the current owners still have the right to use that water.

Klein – Yes, but there could potentially be more people using that water then there would be if it wasn't divided.

John Lee, Citizen – Testifies in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

Vickie Piper, Citizen – Testifies in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

Boyd Gatfield, Citizen – Testifies in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

Kathy Lieuallen, Citizen – Testifies in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

George Lieuallen, Citizen – Testifies in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size. Cites Mr. Thompson's (from Helix) testimony that was submitted into the written record (**Exhibit M**).

Brooks Lieuallen, Citizen – Testifies in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

Jim Johnson, Department of Agriculture – A stand alone winery is not considered a farm use. The 160-acre minimum lot size is the county standard and they do have to request to go-below that. States that the rule is established for the commercial agriculture and the Commission shouldn't consider creating smaller zones at the expense of commercial agriculture enterprises.

VanLandingham – Do you think a 40-acre wine grower would hurt agriculture in this area?

Johnson – I'm not sure. I have heard a lot of concerns over the last week or so about the decline of agriculture and their ability to operate. Discusses the \$10,000 standards for farms and how those are run.

Bill Grant, Citizen – Testifies in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

Joe Frasier, Citizen – Testifies in support to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

Robert Buchanan, Citizen – Testifies and submits written testimony in support to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit X**).

Rick Trumbull, Citizen – Testifies in support to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size.

Dorothy Schroeder, Citizen – Testifies and submits written testimony in opposition to the Umatilla County Request for Approval of Resource Zone Minimum Lot Size (**Exhibit Y**).

VanLandingham – States that on the advice from Steve Shipsey, the Commission cannot put conditions on the 20 or 40-acres parcels.

Commission discussion regarding the issues they'd like clarified from staff before making their decision.

VanLandingham – Recesses the meeting at 5:28 p.m.

VanLandingham – Reconvenes the meeting at 5:44 p.m.

Jinings – States that while the issues of the *Brentmar* case have been clarified, staff have not heard anything that would make the department change their recommendation. As to the issues raised by the neighboring farmers are concerned about, the department believes as to: 1) the over-supply of grapes – the department is not in a position to judge which crop should be raised, 2) legal notice issue – the county did meet their requirement as to notice, 3) litigation – we agree that it may happen, but that it may not be a justified reason to not do this, 4) earthquakes – the department doesn't have a recommendation or opinion as to how that would affect an agriculture use, 5) traffic – there isn't a greater likelihood for traffic as a result of this proposal, 6) water – it is an absolute necessity, but the ability to acquire water could be used now and is under jurisdiction of the Water Resources Department.

Josi – The adequacy of water is not an issue for us to consider?

Jinings – Correct. There has been a historic recognition of the difference between water law and land use law in this state.

VanLandingham – Asks Umatilla County if any other state agency has looked at the issue of water in Umatilla County.

Mabbott – States that the applicants have the permits to use the water as certified by the Water Resource Department.

VanLandingham – Water availability is not a criteria that this agency has used in the past for making decisions under our land use system.

Eber – Discusses that while there are concerns about potential conflicts, existing conflicts haven't been seen. Regarding potential dwellings, people will still have to qualify for those dwellings under current law. Explains the current state law regarding a dwelling on high and non-high value farm land.

VanLandingham – States that if the Commission approves to the 40-acre parcel sizes, the parcels don't have to be farmed as grapes.

Henri – If someone purchased two neighboring 40-acre parcels, could they put one dwelling on the 80-acres in order to reach the income test?

Eber – Yes, I believe that our rules would just require consolidation of those properties to ensure that it still meets the income test.

Jenkins – While the discussion here today has been that these parcels would be put into grapes, these parcels wouldn't have to be planted in grapes. This land would still be in EFU zone and could be used for other agricultural uses.

Derby – Asks how this is different that a planned use development (PUD) decision?

VanLandingham – Based on our current advice and the *Brentmar* decision, we cannot impose conditions for the property.

Jinings – The case law is different for what is available inside a UGB and what is applied to EFU zones.

VanLandingham – Why are 40-acre parcels not harmful to the existing land surrounding this area?

Jinings – It has been a challenge to figure out what is best for this area. We looked at the facts and trends and tried to respond in a way that was supportable by the facts that we found. We feel that the 40-acre parcels strikes a balance to still have commercial farm use.

Eber – Explains that there are two ways to get a dwelling in a farm zone.

Jenkins – In order for the Commission to decided if we can accept the 40-acre minimum lot size we need to revisit the criteria in Subsection 4 regarding the nature of the existing commercial agriculture uses in the area. States concern about setting a precedent that might affect the rest of the state. In other instances where the Commission has authorized a go-below we have done so based on what pre-existed around the area. Discusses his concerns regarding the topography of the 1700 acres that are in question.

Shetterly – There was an effort to apply some creativity in how to get to a go-below. In looking at the federal AVA properties in Washington, there seemed to be enough information to support the recommendation of a 40-acre go-below as a commercially viable property.

VanLandingham – The Commission has spent a lot of time protecting farm land, but the issue here is one agriculture use versus another. Why is the criteria based on “economic viability” and not on “harm to surrounding farmland?”

Eber – One standard in Goal 3 is “what is appropriate for the continuation of existing commercial agriculture enterprise in the area.” That is what the department based its decision on.

VanLandingham – What agriculture enterprise are we supposed to be protecting, the current wheat enterprise or future grape production?

Eber – Both.

Shetterly – Commercial agriculture enterprise is the business of agriculture and is not product specific.

Henri – States that it is more complex of an issue than one agriculture use versus another. Farm sites, if they are small enough, will have different issues. Even neighboring farmers will use different farm practices that may not be suitable for neighboring lands. Bringing in vineyards is a creative business plan, but this isn't about the grapes, it is about the continued use of agriculture land. It is hard to determine if the wine industry will be sustainable.

Eber – With respect to a compatibility issue from any dwellings that might be developed, the county is required by ORS 215.293 to have for a signed document from the land owners in the deed record binding any landowner from pursuing a claim of relief alleging injury from farm or forest practices on the property - the Oregon Right to Farm Law.

Worrrix – I'm not sure that protects farmer from suing farmer for agriculture practices.

Henri – The Right to Farm Law does not shelter the farmer from being in a defensive position about their practices which takes them away from their living, which is farming.

Jinings – The department has tried very hard to find a creative way to help resolve the issue and feel that our recommendation is based on that.

Shetterly – The conflict of the Right to Farm Act is predicated on the expected scenario of non-farm dwellings in a farm zone, which doesn't apply here.

Eber – Under that law, one cannot sue for nuisance or trespass which indicates that it might be protective regardless if it is a farmer or just a neighbor.

Jenkins – States concern about wanting to make sure that the finding is based on a criteria of existing farm and ranches in the area and that it is specific enough to not have an impact on the rest of the state. I'd like the Commission to discuss if there is justification for this type of farm based on the other agriculture uses in the surrounding area.

Henri – Discusses that based on the criteria for consideration, there are too many issues that are a downside to existing agriculture properties in the area. States that if he had to pick a position right now, he'd pick the 80-acre minimum lot size.

Worrrix – States several concerns about creating 40-acre parcels and the ramifications that it could have on the existing neighboring farms and communities and that she would prefer to stay with the 80-acre minimum standard.

Josi – States supports of the process that the county has used so far, as well as support of the department's recommendation.

Derby – States that based on all of the issues presented, he would agree with the department's recommendation.

VanLandingham – States that based on the criteria and what the department has recommended he would agree with department's recommendation.

Jenkins – States concern with the County not taking advantage of reducing their minimum size to 80-acres. Based on the characteristics of the property, it seems that it would yield great wine. If you divide the property into 40-acre parcels, the result will create a price of that property dictating only vineyard use. Even though the statute authorizes multiple uses, it is very likely that an area that has the characteristics for wine production, would be used only for vineyards. States frustration that the county created seven criteria for regulating the division of the property that is now not part of what the department can base its decision on.

Shetterly – Regarding the issue of this becoming a precedent, the department will not be encouraging go-below around the state.

Worrrix – States that once the standard of 40 acres is applied for this property, that will mean that it will more than likely have to be used for vineyards. Discusses that there are farming practice options that can be applied if the property were to remain in 80-acre minimum lot sizes.

VanLandingham – Economic viability is an issue because we are trying to protect this land as EFU land. States that he is uncomfortable saying that one agriculture use will hurt another use.

Worrrix – I'm saying that one use isn't better than another, so why would you give one use an advantage by allowing the smaller acreage?

VanLandingham – One reason for allowing smaller acreages is that wheat doesn't need smaller parcels and wine may?

Henri – This whole proposal is based on a parcelization of the land. If someone really wants to come in and be a part of this county's wine industry, they will find a way. It won't be the "little guy" coming in to get into the industry. Discusses the issue of farm worker housing and that that issue hasn't been discussed.

VanLandingham – Discusses that the risks of having 40-acre parcels include: more dwelling units, loss of use of farming, and impact on other farmers.

Derby – The issue is about grapes and wineries and that this might be a unique enough opportunity to warrant the 40-acre parcels.

Eber – In looking at the rule, it is a judgment call as to what could be considered a harm to other commercial agriculture uses in the area. The department's analysis is that 40-acre parcels would not cause harm to other commercial agriculture uses.

Jenkins – States that if the 1700 acres had included orchards or vineyards, then there would have been the justification to do this. It would be an easy determination if this property was already in an orchard zone, but the county didn't rezone it that way.

VanLandingham – If the county went back and redid their recommendation based on land with a certain topography, you would be more comfortable?

Jenkins – Or at least include the lands that are existing that have the characteristics that would qualify.

Henri – That would help promote the development of vineyards in the area.

Motion – Commissioner Josi moves that the Commission issue a written decision stating that it has approved a minimum parcel size of no smaller than 40 acres in an Exclusive Farm Use Zone for the area identified in the Umatilla County go-below proposal, with a delayed signing by the director. In that decision, the Commission will state the reasons for its decision, based on the findings and conclusions in the department’s report. The director is authorized to approve the county’s request upon submittal to the department of an adopted ordinance replacing Ordinance 2006-08 that approves a minimum parcel size of no smaller than 40 acres and only permits farm related dwellings in compliance with OAR 660-033-0135, consistent with the findings and conclusions in the department’s report.

Commissioner Derby seconds motion.

Jenkins – Clarifies that if this vote is a 3 to 3 tie, the motion fails and the decision has been made.

VanLandingham – Correct.

Vote – 4-2, Commissioners Henri and Worrix vote no, Commissioner Kirkpatrick is excused.

VanLandingham – Recesses the meeting at 7:16 p.m., June 29, 2006.

(track 10)

VanLandingham – Reconvenes the meeting at 9:06 a.m., June 30, 2006.

Agenda Item 8 – Citizen Involvement Advisory Committee (CIAC) Update

Peter Frothingham, CIAC member – Provides Commission with update of the CIAC’s progress including highlights of the committee’s meeting on June 8, as well as last night’s Citizen Involvement – Education and Outreach.

Worrix – Asks about the “How to Put the People in Planning” document and what people’s reactions have been.

Frothingham – As we have revised and asked for people’s input on the revision of this document, people have stated that it is a helpful and useful tool especially since it will be available and searchable on the web.

Shetterly – Explains that the department isn’t planning on printing these, but letting people know that it is available on the web through several department publications.

Frothingham – States that the bibliography was also updated.

VanLandingham – Are people making the meetings and participating?

Frothingham – Yes.

VanLandingham – How is the liaison with the Mike Snyder of the County Planning Director's going?

Frothingham – It is very helpful and we are hopeful that he will continue to attend.

(track 11)

Agenda Item 13 – Commission Business and Reports

Shetterly – Provides the Commission with the department's Budget and Management report (**Exhibit Z**).

Motion – Commissioner Derby moves approval of the policy packages and budget reductions.

Commissioner Henri seconds.

Vote – 6-0, Commissioner Kirkpatrick is excused.

Shetterly – Discusses the E-board request that was approved last week.

Derby – States that the agency is performing within budget except for instate travel but that it can be compensated for within the department.

Agenda Item 15 – Review of Future Agenda

VanLandingham – Discusses the 2007 potential LCDC meeting schedule and confirms that there will be four members in attendance for the Aug. 2006 Florence meeting.

VanLandingham – Recesses the meeting at 9:32 a.m.

(track 12)

VanLandingham – Reconvenes the meeting at 9:45 a.m.

Agenda Item 9 – Roundtable Discussion with Local Governments, Confederated Tribes of the Umatilla Indian Reservation and the Burns-Paiute Tribe, and other invited guests

Those in attendance include: Commissioner Hanley Jenkins, LCDC; Commissioner Marilyn Worrix, LCDC; Delphine Palmer, City Manager for Milton-Freewater; Gina Hartzheim, City of Milton-Freewater; Cora Park, Deputy Director of DLCD; Don Baxter, Mayor of City of Irrigon; Bill Tovey, Umatilla Indian Reservation and the Burns-Paiute Tribe; Leanne Rea, Morrow County Planning Commissioner; Carla McLane, Morrow County Planning Director; Barry Beyeler, City of Boardman; Larry Givens, Umatilla Planning Commissioner Chair; Commissioner Tim Josi, LCDC; Director Lane Shetterly; Commissioner Ron Henri, LCDC;

Commissioner Dennis Derby, LCDC; Commissioner John VanLandingham, LCDC Chair; JR Cook, Umatilla County Planning Department; Keith Cubic, Douglas County Planning Department; Jon Beal, Malheur County; Patty Perry, Umatilla County Planning; Mike Thorne, Chair of the Task Force on Land Use Planning; Jon Jinings, DLCD Staff; Rob Hallyburton, Community Services Division Manager; Becky Steckler, DLCD Staff; Cliff Voliva, DLCD staff; Sarah Watson, DLCD; Steve Shipsey, Assistant Attorney General.

Those issues discussed include: Development of tribal lands for economic opportunities; development of middle-income housing for people that live on the reservation; possibility of Measure 37 claim near or within tribal land; the boom of development of Milton-Freewater due to people being priced out of Walla Walla; the shovel ready sites that Milton-Freewater has available; the new development and new projects in the City of Irrigon; the need of more access and development along the river in the City of Irrigon; that in 1992 enough citizens of the City of Irrigon voted themselves out of the UGB through a land use process which allowed them city services without having to pay taxes; retaining of young residents in Morrow County; the small amount of commercial property in Morrow County outside of UGB's; that interchange management plans are needed but hard to work through in Morrow County; concern about a rural versus urban designation for commercial property; concern that there is no definition of "rural"; concern about commercial property in Boardman being owned by someone who will not sell it and whether they need to change their comprehensive plan to bring in other properties; that smaller lots are being requested in some small towns; approval of a bio-refinery in Malheur County and the market that is creating; the commercial development that is happening in Ontario because of the spill over from people in Idaho; the rural industrial uses that are happening in Malheur County; Measure 37 claims in process in Malheur county are mostly small farms that want to portion off a house for their family and sell the farm; water resource issues in rural communities; the disconnect between water and land use planning issues.

VanLandingham – Recesses the meeting at 11:17 a.m.

(track 13)

VanLandingham – Reconvenes the meeting at 11:27 a.m.

Agenda Item 10 – Senate Bill 82 Land Use Task Force

Mike Thorne, Chair of the Oregon Task Force on Land Use Planning – Submits report and the work plan of the Task Force on Land Use Planning to the Commission (**Exhibit AA**). Discusses how the Task Force is hoping to proceed in gathering and compiling information to be able to report to the 2007 and the 2009 Legislature.

VanLandingham – Thanks Chair Thorne for taking on the effort of the Task Force. Is there anything that the Commission can do to help the Task Force?

Thorne – There are two things; help the Task Force make sure we haven't left any major issues off of our list, and secondly to keep us apprised of the decisions that you are making that could have potential ramifications of what is needed for the future.

Josi – What has the Task Force heard so far as some key issues?

Thorne – States that the Task Force is still in the “getting acquainted” phase and that they are just starting to put together a list of major issues and will be hearing from Oregonians by conducting surveys.

Steckler – Explains the Task Force’s two surveys that staff recently distributed, to hear from organizations as well as individual citizens, to hear their thoughts on Oregon’s Land Use System.

Thorne – States that by creating a list of issues for people to discuss, the Task Force is hoping to have Oregonians have a more refined discussion.

VanLandingham – States that the original thought of the Task Force was for them to go out and hear from the people from Oregon. Does the Task Force feel like they will have to help educate Oregonians as well?

Thorne – Yes. States that once the Task Force has all of the issues “refined,” that then they will have to spend the money hiring consultants to help facilitate the public comment aspect of gathering information.

Josi – States that he is encouraged by the work that the Task Force has already done and is looking ahead to do.

Thorne – States that if the Task Force can identify the major forces that form Oregon’s land use system, then it will be easier to identify ways to help the future of the system.

Worrix – Discusses the Task Force’s work plan phase 3 for public input and asks how they intend to get people to the table to hear their thoughts.

Thorne – The interface for receiving information from Oregonians will be a discussion of the trade-offs that happen within land use planning.

Jenkins – Commends the Task Force on their approach to hearing from Oregonians on their ideas of land use planning.

Josi – States that he hopes the Task Force will look at the “one size fits all” issue and when will it be appropriate for local land use planning to not have the state involved.

Thorne – That “one size fits all” issue is already a major issue that the Task Force is looking at. States that another issue will be to look at the economic pressures that influence Oregon’s land use system.

VanLandingham – Discusses that two major issues of the current land use system are: 1) urban growth boundaries, and 2) the state has the power to make local government do or not do certain things. States that by having each Task Force member be liaisons to their community and interest groups will help further the discussion.

Jenkins – States that he feels that by using the surveys, he’s confident that a broad scope of issues will be presented to the Task Force.

Derby – One issue for the Task Force to consider is the disconnect between economic forces and realities on Oregon’s land use system.

VanLandingham – Is that a change that needs to happen in the goals and rules, or in the way the Commission handles issues?

Derby – There isn’t a simple answer.

Worrix – States that the complexity of the land use system is also an issue that the Task Force should consider. Possibly even a look at how the statutes are put together.

Steckler – Explains that the request to hear the top 5 land use issues was sent out to roughly 50 agencies or groups to help identify those issues.

VanLandingham – Are there things that the Commission can do to help you?

Steckler – Just having the Commission and Task Force coordination is going to be helpful. We will come back to you in the future if we need anything.

VanLandingham – Adjourns the meeting at 12:11 p.m. on June 30, 2006.

Submitted By:

Sarah Watson,
Department of Land Conservation and Development

Exhibit Summary:

- A. Agenda Item 2, Public Comment, Written Testimony – Keith Cubic, 4 pgs.**
- B. Agenda Item 12, Director’s Report – DLCD Staff, 13 pgs.**
- C. Agenda Item 4, Staff Report on Goals to Newly Incorporated Cities and Annexations – DLCD Staff, 14 pgs.**
- D. Agenda Item 4, Written Testimony – Keith Cubic, 1 pg.**
- E. Agenda Item 5, Staff Report on Rules Concerning Urban Growth Boundaries – DLCD Staff, 33 pgs.**
- F. Agenda Item 5, Written Comments regarding Rules Concerning Urban Growth Boundaries – DLCD Staff, 14 pgs.**
- G. Agenda Item 5, Written Testimony – Keith Cubic, 3 pgs.**
- H. Agenda Item 5, Written Testimony – Kelly Ross, 5 pgs.**
- I. Agenda Item 6, Staff Report on Transportation Planning Rule – DLCD Staff, 162 pgs.**
- J. Agenda Item 6, Language Correction to Staff Report on Transportation Planning Rule – DLCD Staff, 2 pgs.**
- K. Agenda Item 12, Addendum to Director’s Report – DLCD Staff, 1 pg.**

- L. Agenda Item 7, Staff Report on Umatilla County Request to Go-Below the 80-Acre Minimum Lot Size – DLCD Staff, 79 pgs.**
- M. Agenda Item 7, Written Comments on Umatilla County Request to Go-Below the 80-Acre Minimum Lot Size – DLCD Staff, 45 pgs.**
- N. Agenda Item 7, Written Testimony – Bill Hansell, 3 pgs.**
- O. Agenda Item 7, Written Testimony – Tamra Mabbott, Umatilla County, 4 pgs.**
- P. Agenda Item 7, Written Testimony – John Junkin, 102 pgs.**
- Q. Agenda Item 7, Written Testimony – Norm McKibben, 1 pg.**
- R. Agenda Item 7, PowerPoint Presentation – Norm McKibben, 5 pgs.**
- S. Agenda Item 7, PowerPoint Presentation – Dr. Eric Fruits, 7 pg.**
- T. Agenda Item 7, Written Testimony – Tammy Dennee, Oregon Wheat Growers, 3 pgs.**
- U. Agenda Item 7, Written Testimony – Don Schellenberg, Oregon Farm Bureau, 2 pgs.**
- V. Agenda Item 7, Written Testimony – Debbie Lee, 4 pgs.**
- W. Agenda Item 7, Written Testimony – Robert Klein, 1 pg.**
- X. Agenda Item 7, Written Testimony – Robert Buchanan, 3 pgs.**
- Y. Agenda Item 7, Written Testimony – Dorothy Schroeder, 1 pg.**
- Z. Agenda Item 13, Budget and Management Subcommittee Report – DLCD Staff, 61 pg.**
- AA. Agenda Item 10, Task Force on Land Use Planning Update – DLCD Staff, 7 pgs.**
- BB. Agenda Item 7, Written Testimony – Larry Bishop, 1 pg.**
- CC. Agenda Item 7, Written Testimony – Ken Thompson, 2 pgs.**
- DD. Agenda Item 7, Written Testimony – Marie Kocher Hall, 3 pgs.**
- EE. Agenda Item 10, Written Testimony regarding the Task Force on Land Use Planning – Tamra Mabbott, Umatilla County, 10 pgs.**
- FF. Agenda Item 1 – Tour Packet of Umatilla County – folder**
- GG. Agenda Item 9 – Roundtable Sign-up Sheet, 1 pg.**