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OREGON LAND USE LAW

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April 20, 2006

George Kloeppe, Executive Director
Lane Council of Governments
99 East Broadway, Suite 400
Eugene, OR 97401

Mr. Bill Grile, Director
Springfield Development Services
225 Fifth Street
Springfield, OR 97477

Ms. Susan Muir, Director
Eugene Planning and Development
Atrium Building
99 West 10th Ave.
Eugene, OR 97401

Mr. Jeff Towery, Director
Lane County Land Management
Lane County Courthouse/PSB
125 E. 8th Ave
Eugene, OR 97401

Re: Renewed Public Records Request by Home Builders Association of Lane County

Dear Mr. Kloeppe, et al:

I have reviewed your March 28 response to my public records request of March 9. (Your letter is attached as Exhibit A; my request is attached as Exhibit B.) Your letter is not responsive to my request. I also made my request to each of the three jurisdictions at the same time. I have not heard back from any of them.

With this letter I wish to explain in what way I believe your letter was an insufficient response. I will also restate my request, I hope in more detail, so that it can be more easily understood. If there is any aspect of my request that is not clear, please let me know, so that I can clarify it further.

As further background, my public records request is necessitated by LCOG's refusal to provide a map of two layers in RLID – a map of plan designations and tax lots, specifically the data layers used in the 2004 Metro Plan Diagram. I have sought this map from LCOG for more than a year. Other citizens are requesting it of LCOG, too. I understand that the cities of Eugene and Springfield have told LCOG that it may not provide the map (with whatever published caveat would be appropriate); and, because these cities are major clients of LCOG, your agency is deferring to them. Since LCOG won't print the requested map, my client HBA is requesting the raw RLID data, so that it can print the map itself.

My March 9 request related to the data base for the Eugene Springfield Metropolitan General Plan Diagram, which is Exhibit C to the three ordinances adopting the Metro Plan "Housekeeping Amendments." These are: Lane County Ordinance PA 1197 (June 2, 2004); Springfield Ordinance 6087 (May 17, 2004); and Eugene Ordinance 20319 (April 27, 2004).

My request was:

“As a public record, I want a copy, in machine readable or electronic form, of the RLID tax lot polygon data layer and plan designation data layer, for which the data are reflected on the map that is Exhibit C to the Ordinances above. I request that the copy to be certified, in the meaning of ORS 192.440(1), in order to be assured that I am getting a copy of the archive data base for the Exhibit C map.”

Your response was to offer me a machine readable file of the Plan Diagram Map. I believe this is not responsive to my request. I am not requesting a copy of the map. I am looking for a copy of some of the data used to print the map – the plan designation polygon layer in RLID. I understand that LCOG views and manipulates its RLID data using Arcview software. My client is obtaining Arcview software that will allow it to view and display the data. What I am looking for is a copy of the plan designation polygon data layer that was used to generate the plan map. I am seeking a copy of some of the archive data that was used for the map that was adopted as the plan diagram. If the archive version of the data layer that was used for that map no longer exists, then I am also requesting: (a) a copy of the current plan designation polygon layer; and (b) a hardcopy of any documentation showing what changes have been made to the plan designation polygon layer since the date reflected in the adopted plan diagram map, whether those changes were made at the direction of city or county staff, to correct perceived errors, or otherwise. If the archive copy of the plan designation data set that went into the 2004 Metro Plan Diagram has been destroyed or changed, then having the documentation of the change orders will allow it to be reconstructed.

Your response also declined to provide the RLID tax lot polygon data layer for the plan diagram map because “no such data layer exists as a public record.” You explain that the published plan diagram map did not include a tax lot layer, so it cannot be provided. It is unclear whether you are saying: (1) there is no tax lot polygon data layer that underlies the map; (2) there is a tax lot polygon data layer that underlies the map, but it is not a public record; or (3) there is a tax lot polygon data layer that underlies the map, but that data layer is not displayed on the map, so you do not consider it a part of my request. I will be more clear about my request, so that you can be more clear about your response. What I am looking for is a copy of the tax lot polygon data layer that was used in generating the subject plan diagram. I understand that the tax lot polygon lines are not shown on the plan diagram, or “turned on” for the official map, but I understand that the RLID data are stored, manipulated and printed by tax lot polygons. Thus, it is possible for LCOG to print an unofficial map showing the plan designation data for tax lots, that is for tax lot polygons. This is the map that LCOG has previously sold to members of the public upon request, but which it now refuses, at the direction of the cities, to provide to my client or other members of the general public. My client is requesting the data so that it can print the map that LCOG, at the direction of the cities, will no longer provide to the public. If there is no archive copy of the tax lot polygon layer for the published plan diagram, then I request a copy of the current tax lot polygon data layer. If this request is still unclear, I will provide you with an example of one of these maps for a portion of the Metro area, which LCOG printed before the

cities directed LCOG to not print the map.

The RLID records I request are public records because the Metro Plan is now officially based on these RLID records. These records are a part of the Metro Plan database. In my March 9 letter to you I quoted from the new language of the Metro Plan: The amended text of the plan, at page II-G-3 to the Ordinances above, states: "The use of the Regional Land Information Database (RLID) data for long range planning studies led to the decision to base the *Metro Plan Diagram* on RLID data, as described below." This shift to the RLID database is described in detail in LCOG's January 8, 2004, Staff Report to the three governing bodies considering the Metro Plan Housekeeping Amendments. Under Statewide Planning Goal 2, the comprehensive plan must "include identification of issues and problems, inventories, and other factual information for each applicable statewide planning goal * * * *". The RLID data underlying the adopted plan is such inventory and/or factual information. Goal 2 also requires that the plan and supporting documents be "easily accessible to the public." This public record request seeks a small part of the RLID data on which the Metro Plan Diagram is based. My client understands that the plan designation coded into the RLID database for any given tax lot polygon is not necessarily definitive as to the plan designation for the tax lot. That caveat is explicit in the language of the Metro Plan that says the plan diagram is not parcel specific for all parcels. However, the RLID data is relevant, among other variables, to determine plan designations. Hence, this request.

To summarize my client's request, I am seeking:

1. A copy the plan designation polygon layer that was used to generate the 2004 Plan Diagram. I am seeking the archive copy. I request it in its original electronic format, which I understand is viewable with Arcview software.
2. If the archive copy of the above no longer exists, then (a) I request confirmation of that fact, and (b) I request a copy of the current plan designation polygon layer, together with (c) a hard copy of all change orders to that layer that have been processed by LCOG back to the date of the published plan diagram. My intent here is to get the information needed to understand what database was actually adopted by the governing bodies in their 2004 ordinances.
3. A copy of the tax lot polygon data layer that was used to generate the 2004 Plan Diagram. I am seeking the archive copy. I want it in its original electronic format, which I understand is viewable with Arcview software. If the archive copy no longer exists, then I am requesting (a) confirmation of that fact, and (b) a copy of the current tax lot polygon data layer.
4. If you decline to provide any of the data above, please explain the basis for your refusal. If your refusal is based on a contractual relationship with the cities, then I request a copy of the contract provision that is the basis for LCOG's refusal. If your refusal is otherwise based upon written direction from one or more of the Metro jurisdictions, then I request a

copy of those documents as public records.

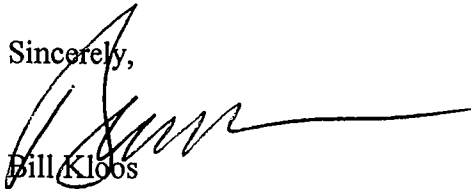
With a copy of this letter to each of the three Metro jurisdictions, I am making the same requests of each of them. It is my assumption that LCOG is the only entity that has the data I am requesting, but that LCOG may consider the requested data to be the property of the respective jurisdictions, not a public record. I am not privy to the current contractual relationship between LCOG and the three jurisdictions. My hope is that, to the extent that the three jurisdictions assert control over what LCOG does with the requested data, they will direct LCOG to provide the data to me as a public record.

With this letter I am also asking each jurisdiction to: (1) provide the requested data to me, if they have it; (2) authorize LCOG to provide the data to me if LCOG has it, but it is under the control of the separate jurisdictions; and (3) explain the basis for their refusal, if they decline to provide or authorize the release of the data.

I have tried to be clear in the scope of my request and make it as narrow as possible. I may have not have stated my request in the precise technical nomenclature of the LCOG RLID system. It is a bit of a challenge for a lay person to request discrete items among many items that are inside a black box. Please feel free to ask for clarification, if necessary. My client's object here is to secure the raw data from RLID, as the official database for the Metro Plan, to produce the custom maps that were formerly produced by LCOG for citizens, until the attorneys for Eugene and Springfield directed LCOG to stop. These are the unofficial maps, with appropriate disclaimers, that show the plan designation data and the tax lot data for the Metro area. There are still a few of these circulating in the community, printed by LCOG before the cities closed LCOG's door. There is a keen demand for more of them, because they contain data that are relevant (albeit not definitive) in determining the plan designations for individual properties.

I would like to pick up the requested information at your office at 10 am on Monday, April 28, 2006. Thank you for your consideration.

Sincerely,



Bill Kloos

C: Client
Eugene City Recorder
Springfield City Recorder
Lane County Administrator

Encl: Ex. A: Ltrr from G. Kloeppe to B. Kloos (March 28, 2006)
Ex. B: Ltrr from B. Kloos to G. Kloeppe (March 9, 2006)

LCOG Lane Council of Governments
99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

March 28, 2006

Mr. Bill Kloos
576 Olive Street, Suite 300
Eugene, Oregon 97401

Re: March 9, 2006 Public Records Request by Home Builders Association of Lane County

Dear Mr. Kloos:

This letter responds to your March 9, 2006, Public Records Request on behalf of the four entities that were addressed in your letter.

With regard to your request for "a copy, in machine readable or electronic form, of the RLID . . . plan designation data layer, for which the data are reflected on the map that is Exhibit C to the Ordinances," LCOG can provide you a certified, machine readable file of the Plan Diagram map that is Exhibit C and carries a date of April 8, 2004. The file can be delivered as a CD or made available at an FTP site. The cost would be \$35 to be paid in advance.

With regard to your request for "a copy, in machine readable or electronic form, of the RLID tax lot polygon data layer . . . for which the data are reflected on the map that is Exhibit C to the Ordinances," no such data layer exists as a public record. The Exhibit C map did not include a tax lot layer so a tax lot polygon data layer "for which data [is] reflected on the map" cannot be provided.

Please contact me if additional information is needed.

Sincerely,


George Kloeppe
Executive Director

cc: Susan Muir, City of Eugene
Bill Grile, City of Springfield
Jeff Towery, Lane County

EXHIBIT A

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

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March 9, 2006

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Mr. Bill Grile, Director
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Lane County Courthouse/PSB
125 E. 8th Ave
Eugene, OR 97401

Re: Public Records Request by Home Builders Association of Lane County

Dear Mr. Kloeppe, et al:

On behalf of the Home Builders Association of Lane County (HBA) and the Home Builders Construction Company, I am making a public records request of LCOG under the provisions of ORS Chapter 192. As noted below, this is also a public records request of the three governments, in the event that LCOG determines the requested records are not public.

LCOG generated the Eugene Springfield Metropolitan General Plan Diagram, which is Exhibit C to three ordinances adopting the Metro Plan "Housekeeping Amendments." These are: Lane County Ordinance PA 1197 (June 2, 2004); Springfield Ordinance 6087 (May 17, 2004); and Eugene Ordinance 20319 (April 27, 2004).

The Plan Diagram map that is Exhibit C carries a date of April 8, 2004. The note on the map says that the map was "derived from digital databases on Lane Council of Governments' regional geographic information system."

The text amendments made to the Metro Plan made in the ordinances above confirm that the RLID database is the data base for the Plan Diagram. The amended text of the plan, at page II-G-3 to the Ordinances above, states: "The use of the Regional Land Information Database (RLID) data for long range planning studies led to the decision to base the *Metro Plan* Diagram on RLID data, as described below."

As a public record, I want a copy, in machine readable or electronic form, of the RLID tax lot polygon data layer and plan designation data layer, for which the data are reflected on the map that is Exhibit C to the Ordinances above. I request that the copy to be certified, in the meaning

EXHIBIT B

Mr. George Kloeppe, et al.

March 9, 2006

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of ORS 192.440(1), in order to be assured that I am getting a copy of the archive data base for the Exhibit C map.

I anticipate that LCOG may take the position that the records I am requesting are not public records, but rather they are the private records of LCOG's clients, the cities of Eugene, Springfield and Lane County. As a precaution, therefore, I am making the same public records request of the three local jurisdictions. I trust that between the four entities you can confirm which entity or entities is holding the records that are public.

I would like to pick up a digital copy of the record on Wednesday, March 15, at 10 am at your office, unless we decide that a different time would be acceptable.

Thank you for your consideration.

Sincerely,



Bill Kloos

Cc: Roxie Cuellar