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Supplemental Memo

Memorandum Date: April 28, 2008
Work Session Date: April 30, 2008

SUPPLEMENTAL MATERIAL

TO: Board of County Commissioners
DEPARTMENT: Public Works, Land Management Division
PRESENTED BY: Matt Laird, LMD Manager
AGENDA ITEM TITLE: Supplemental Report Back to April 8, 2008, DLCD Letter re: Adoption of Coordinated Population Projections

On April 9, 2008, the Board was scheduled to hear a Report Back on Coordinated Population Forecast for Lane County and its urban areas. An April 8th letter was received from DLCD and the Board rescheduled the item to April 30th and asked LMD Staff to respond to the DLCD letter.

The original intent of the April 9th agenda item was to begin a conversation with the Board on possible options, and the resource implications of those options, for moving forward with reviewing and adopting coordinated population forecasts into the County comprehensive plans. This supplemental memo briefly addresses the April 8th DLCD letter and other considerations given staff conversations with DLCD and several of the affected cities.

After receiving the April 8, 2008, letter from DLCD, it seems clear that additional communication was needed between Lane County staff and DLCD staff regarding the population forecast for Lane County. The letter seems to try to clarify previous DLCD correspondence and the current statutory/administrative rule context for coordinated population forecasts. The statutory scheme under which Lane County has operated for many decades without significant discussion or controversy has been recently further described and clarified by amendments to applicable administrative rules. While it is not entirely clear exactly what form county adoption of coordinated population forecast must take, the new rule and DLCD correspondence makes clear the preference seems to be for adoption of figures for the county as a whole and each urban area in one single action by Lane County.

Although we might take issue with some of the assumptions and assertions contained in the April 8th DLCD letter, we do agree with the basic thrust that a land use plan amendment process will ultimately need to occur when new coordinated population

forecast figures are adopted as part of any comprehensive plan. That was part of the original staff report and the options set forth there were designed to address the resource issues raised by the various paths possible for adoption of revised population figures. The options also tried to combine the paths available to cities through the "safe harbor" methods in the event the county would not seek to adopt a more current coordinated population forecast than the 2005 forecast adopted by LCOG before the rule change. The recommended option left open the possibility that the cities could request and fund a single countywide comprehensive plan amendment adoption process for a coordinated 20-year population forecast for the county and each urban area.

Since receipt of the April 8th letter, LMD staff, some of the affected cities and DLCD staff have met three times. We found that the County staff and DLCD have the same goal of adopting a coordinated population forecast for Lane County and the urban areas into appropriate comprehensive plans through post-acknowledgment plan amendment processes that will allow for more citizen involvement and further analysis of any proposed population forecast figures. In addition, both parties are in general agreement on the statutory authority (ORS 195.025 and 195.036), and the methodology in OAR 660-024-0030 for coordinating and adopting population forecasts. DLCD staff has not analyzed in detail the specific coordinated population forecast for each of the urban areas as to the underlying assumptions used in the trend analysis in the LCOG population report 2030-2035. As pointed out in the original cover memo for the April 9th work session, LMD staff has not done extensive analysis of that report, either. It is agreed, however, that +/- 5% of the OEA total population is the correct target for Lane County, and the 471,516 total population number used in the LCOG table Appendix A is within that acceptable margin of error. In any case, a comprehensive plan amendment process could provide the opportunity for the further analysis of the LCOG report and any other sources of information available to the planning commissions and the Board to reach an appropriate allocation of countywide population projections to urban areas within Lane County. DLCD has provided another letter confirming and clarifying the position of the Department, a copy of which is attached.

With regards to process, both parties agree that ultimately a post-acknowledgment plan amendment (PAPA) must be adopted by the County whenever it proposes to adopt coordinated population forecasts for the county and its urban areas by amending any comprehensive plan pursuant to ORS 197.610 -197.650. The questions we all have discussed are more around timing, sequence and scope. It would appear the land use process of a PAPA would be required prior to County adoption of coordinated figures into a comprehensive plan, prior to the cities amending their comprehensive plans to include new population figures, and concurrent with the County co-adoption of the city amendments. While it is unclear whether a coordinated population forecasts must include all urban areas at once, or whether each city can proceed independently of one another under the "safe harbor" options available to the cities there are some differences between the LCOG report figures and what the "safe harbor" might provide.

While some of these questions are certainly open for debate, staff believes that adopting a coordinated population forecast alone by Lane County, for use by the cities, is a land use decision that must follow the PAPA process. Consequently, a land use decision happens during the County PAPA process to adopt the figures into the rural comprehensive plan and will happen again when the cities adopt the figures into their respective comprehensive plans and make any other related changes. If the County adopts population forecasts for the whole county and its urban areas, cities may be able to rely on those figures for any plan amendments shortly thereafter, but as time passes they may have need to utilize the "safe harbor" statute and rule provisions if the county is not interested in developing further updated coordinated population forecasts. At this time, however, the Board could choose to begin processing the LGOC report to consider adopting the proposed or modified coordinated population forecasts as a single PAPA amending the rural comprehensive plan to provide figures for the county and all urban areas, thus initiating a local land use process if they desire. Many of the cities have previously requested Board action to follow this approach and additional conversations with some city staff confirmed continued interest in moving forward with the land use process on a countywide basis. A letter on behalf of Creswell, Veneta, Junction City and Oakridge has been received and is attached.

At this time, Lane County has not begun a land use process to consider adoption of any coordinated countywide population forecast or addressed the full record of the LCOG report in accordance with statutory and administrative rule requirements applicable to a PAPA of that sort. Lane County LMD will address the full record upon direction from the Board to begin a land use process or once a city makes a PAPA application to co-adopt their comprehensive plan amendment. The Board is not required to adopt any population figures prior to entering into the land use process and could proceed with beginning the process with the LCOG figures as a starting point, understanding that these figures may be subject to change as the process unfolds. As pointed out in the original memo for the April 9th meeting, directing staff to develop another source of population figures with contracted experts or through in-house staff could also occur before starting the land use process. That option continues to have cost and delay consequences for all the concerned cities and Lane County.

In the April 9th memo to the Board, LMD recommended the Board acknowledge the LCOG report and invite the cities to file for individual PAPA applications to adopt the figures into the respective city plans with ultimate county co-adoption. While this would have been very consistent with past practice, it appears that the 2007 change by LCDC to the applicable administrative rule could make proceeding with a strategy of individual city plan amendment adoptions more risky and perhaps subject to litigation around interpretation of the rule.

Based on this information, staff has revised the list of options to describe the very basic policy choices as follows:

OPTIONS:

- A. Direct LMD staff to begin the land use process of adopting a PAPA for a coordinated population forecast into the rural comprehensive plan. This option may or may not include the use of a consultant for technical assistance.
- B. Direct LMD staff to begin the land use process of adopting a PAPA using the "Safe Harbor" population figures produced by the Oregon Office of Economic Analysis (OEA) into the rural comprehensive plan.
- C. Take no action. Choosing this option, would abandon the cities coordination efforts with LCOG over the last two years, and likely lead them towards the "Safe Harbor" figures.
- D. Direct the LMD staff to follow some other option as determined by the Board.

RECOMMENDATION:

After three meetings with DLCD staff and affected cities, and in consideration of the April 8th DLCD letter, staff recommends the Board choose option A.

Proceeding with option A would use the LCOG Population Report 2030-2035 as the starting point for beginning a PAPA land use process, understanding that during the process the figures may be modified as needed. This option would be responsive to the cities and their need to move forward with land use planning as well as recognize their efforts over the last two years to develop a coordinated population forecast. This option would also be responsive to citizens by providing a land use process where additional opportunities for public involvement would be provided and new information would be reviewed and analyzed.

PROPOSED MOTION:

I hereby direct the Lane County Land Management Division to follow option A and begin the land use process and develop a coordinated population forecast to adopt as a PAPA of the rural comprehensive plan.

ATTACHMENTS

- April 28, 2008 letter from Carrie Connelly
- April 28, 2008 letter from Rob Hallyburton

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April 28, 2008

via email: matt.laird@co.lane.or.us
Faye Stewart, Chair
Lane County Board of Commissioners
125 East 8th Avenue
Eugene, OR 97401

RE: Coordinated Population Forecast

Dear Commissioners:

This office represents the Cities of Creswell, Veneta, Junction City, and Oakridge. These and other cities requested an updated coordinated population forecast in November of 2006. As you are well aware of intervening developments, I do not provide more factual background.

The city administrators for these cities and I met with representatives from the City of Lowell, The Lane Council of Governments (LCOG), Lane County, and the Department of Land Conservation and Development (DLCD) at 10:00 a.m. on Friday, April 25, 2008. The City Attorney for the City of Lowell, John Beckfield; Lane County Counsel Steven Voorhees and Andrew Clark; and DLCD Representatives Rob Hallyburton and Ed Moore were all present. The purpose of the meeting was to agree upon the most defensible approach for each represented entity to obtain its respective goals. The primary goals, in no particular order, are for the County to respond to the cities' November 2, 2006 request for an updated coordinated population forecast in the most expedited, fiscally conservative, and legally defensible way possible.

All parties present agreed on the applicable legal framework, as previously laid out for you in numerous staff memorandum. The primary guidance stems from ORS 195.036,

which requires the county to “*establish and maintain a population forecast for county and its cities.*”

“195.036 Area population forecast; coordination. The coordinating body under ORS 195.025(1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary.”

Modified as of April 2007, DLCDC rule 660-024-0030(1) requires:

“660-024-0030 Population Forecasts (1) Counties must adopt and maintain a coordinated 20-year population forecast for the county and for each urban area within the county consistent with statutory requirements for such forecasts under ORS 195.025 and 195.036. Cities must adopt a 20-year population forecast for the urban area consistent with the coordinated county forecast... In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 [post-acknowledgment plan amendments] and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan.”

The cities I represent require an updated coordinated population forecast as soon as possible, which can be used in urgent city planning. Each of the municipalities are growing at an unprecedented rate and require infrastructure planning and associated financing immediately. Applications for hundreds of new residences and other developments continue to be received and processed in each city. Junction City faces additional growth associated with the state hospital and prison, and as a result is currently in periodic review.

Safe harbor provisions available under ORS 660-024-0030(3) and (4) are completely inadequate for the rate of growth experienced in each city I represent. Neither prior growth trends reflected in the County’s comprehensive plan, nor the cities’ current share of county population as based on the Oregon Office of Economic Analysis’ (OEA’s) population forecast is remotely adequate. Rather, the independent review of each cities’ circumstances in conjunction with OEA numbers, as advocated by DLCDC and as conducted by LCOG, most accurately project future population in these urban areas.

The cities strongly urge you, the Lane County Commissioners, to utilize the Lane Council of Governments (LCOG) numbers as a starting point for commencing a post acknowledgment comprehensive plan amendment. The cities request the

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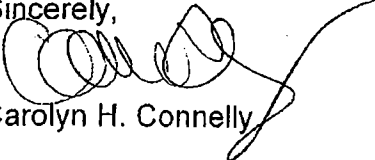
Commissioners to direct County staff to begin this land use process, in accordance with 197.610 to 197.650. This process will entail at least one quasi judicial hearing in front of the Planning Commission, and possibly another before the County Commissioners prior to ultimate adoption into the comprehensive plan. Each hearings body will have an opportunity to: (1) hear public opposition to these numbers; (2) allow staff to address issues, and, if appropriate;(3) modify LCOG's numbers and findings. Ultimately, the process should result in the County's comprehensive plan reflecting a coordinated population forecast which is workable for each affected entity. The essential element for the cities, however, is for this process to begin now. The process to date has taken a year and a half, with no final action in sight.

A strong coordination effort and public process underlies the LCOG numbers, as they currently exist. The additional land use planning process at the County level will only strengthen both of these elements. LCOG has developed clear findings supporting LCOG's tendered numbers. Those findings can only be developed further through the County land-use process.

DLCD supports the above approach and LCOG's coordinated forecast, as evidenced by Rob Hallyburton's letter to the Commissioners dated April 28, 2008. Members of the public should be satisfied that a proper plan amendment process will be undertaken, and with the additional opportunity to submit comments. Adoption into the County's comprehensive plan provides the cities with the ability to move forward in their individual planning efforts and incorporate those numbers into their own comprehensive plans.

All parties present at the joint meeting on Friday, April 25, 2008 agreed that a post acknowledgment plan amendment is the most defensible, yet expedient solution, to the coordinated population forecast issue. The cities urge the Commissioners to commence this amendment process post haste. I will be present at the County Commissioners', Wednesday, April 30, 2008 meeting to present the cities' united position and to answer any questions you may have with regard to this approach.

Sincerely,


Carolyn H. Connelly

CHC / ned

cc via email:

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April 28, 2008



Faye Stewart, Chair
Lane County Board of Commissioners
125 East 8th Avenue
Eugene, Oregon 97401

SENT VIA E-MAIL

RE: Coordinated population forecasts

This department has provided several letters of comment to Lane County and the Lane Council of Governments (LCOG) regarding population forecasts for the county. The intent of our involvement has been and continues to be to provide technical assistance to help complete the project, and to try to point out areas and issues where we're concerned the process or content may be vulnerable. We have, however, not been forthcoming enough with what we believe has been done well or with describing suitable options. We hope to remedy that, at least some, with this letter.

Overall Responsibility

Statute and administrative rule make the county responsible for preparing population forecasts for the county as a whole and for each urban area within the county. An administrative rule that became effective in 2007 makes it clear that the forecasts must be included in the comprehensive plan or in a document referenced by the plan, and adopted using the procedures for amending the comprehensive plan (OAR 660-024-0030).

Furthermore, the forecasts must be "coordinated." This means that "the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible" (ORS 197.015(5)).

Population Forecast Coordination in Lane County

It is our understanding that the population forecast coordination function has been carried out by LCOG for many years. This coordinative function is expressly allowed in ORS 195.025; that statute has not been amended recently, and the administrative rule on forecasts does not change that in any way. The practice of LCOG board *adoption* of the coordinated forecasts is no longer adequate, however, so consideration and adoption by the board of commissioners is appropriate and necessary.

It is also our understanding that forecasts have recently been coordinated by LCOG with all the cities in the county. Those forecasts are the subject of our earlier comments. Please note we have not, in any of our comments, suggested that LCOG's coordination of the forecasts has been inadequate. We believe the coordination that LCOG performed, in

sometimes difficult circumstances, and resulting in a product agreed upon by each city, has been excellent. We do not contend coordination needs to be done again.

Forecasts

An administrative rule provides some guidance on how to complete a forecast (OAR 660-024-0030(2)). The forecast must be “developed using commonly accepted practices and standards for population forecasting used by professional practitioners in the field of demography or economics.” Furthermore, it must be “based on current, reliable and objective sources and verifiable factual information, such as the most recent long-range forecast for the county published by the Oregon Office of Economic Analysis (OEA).” Finally, the forecast “should not be held to an unreasonably high level of precision.”

Our November 20, 2007, letter to LCOG states: “We believe the county has the option of forecasting the county population and allocating it to the cities...” We reiterate that comment here, except that our reference to “cities” should instead be to “urban areas” (*i.e.*, the areas within urban growth boundaries).

We believe that the statute and rule allow a county to prepare *one* forecast that is “developed using commonly accepted practices and standards,” for the county as a whole, and then coordinate with affected local governments to determine where that population should go. The LCOG “high” forecast for the entire county does not precisely equal the OEA forecast, but we believe that it is within a reasonable level of precision, so it would satisfy the rule. This method has not been tested in the Land Use Board of Appeals or a higher court, but other counties have used it and gained acknowledgment.

Conclusions

Several cities in Lane County have pressing planning needs that await a county decision on population forecasts. We urge the county to proceed with consideration and adoption of an amendment to the comprehensive plan to include coordinated population forecasts for the entire county and for each urban area in the county, as outlined in this letter. We don't believe you need to change any of the forecasts as currently proposed, but we suggest the explanation and findings be worded to reflect the basis for the forecasts as described above, assuming the county chooses to adopt these forecasts into its comprehensive plan.

Yours truly,

Rob Hallyburton

Rob Hallyburton
Acting Deputy Director

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cc: Lane County (Laird, Howe, Vorhes) LCOG (Kent, Swank)
Cities (Connelly, Spies, Muir, Grile) DLCD (Moore, Nichols, Gardiner, file)