

Land Use Board of Appeals

	2017-19 Actual	2019-21 Legislatively Adopted	2019-21 Legislatively Approved *	2021-23 Current Service Level	2021-23 Governor's Budget
General Fund	1,997,590	2,061,858	2,203,477	2,237,153	2,364,439
Other Funds	16,789	34,981	79,905	36,486	34,981
Total Funds	2,014,379	2,096,839	2,283,382	2,273,639	2,399,420
Positions	6	6	6	6	7
FTE	6.00	6.00	6.00	6.00	7.00
* Includes Emergency Board and administrative actions through January 2021.					

Program Description

In 1979, the Oregon Legislature created the Land Use Board of Appeals (LUBA) as an agency with exclusive jurisdiction to review appeals of land use decisions made by cities, counties, districts, and state agencies. Prior to LUBA's creation, appeals of land use decisions were heard in 36 different county circuit courts, and sometimes before the Land Conservation and Development Commission. In creating LUBA, the Legislature intended to provide a simpler and faster process for resolving land use disputes as well as to promote a consistent interpretation of state and local land use laws. LUBA's decisions are reviewable by appeal to the Court of Appeals. LUBA is required by statutes to publish its orders and opinions and make them public for citizens, decision-makers, and participants in land use processes to use as guidance for future land use decision-making. Final opinions are posted online the morning after they are issued and collected in published volumes of the LUBA Reports.

The three-member Board, appointed by the Governor to serve four-year terms, must be attorneys who are members of the Oregon State Bar in good standing. Board members are salaried employees who resolve appeals, issue orders, prepare for, and conduct oral arguments, provide peer review, contribute to the publication of LUBA's headnote digest, and participate in continuing legal education and land use seminars. The Board is supported by two administrative support staff and a staff attorney.

General Fund supports over 98% of LUBA's core operations. The remaining two percent of Other Funds is derived from filing fees, publications sales, and other miscellaneous fees. The filing fees collected from land use appellants and interveners are transferred to the state's General Fund. LUBA estimates the agency will transfer \$138,100 to the General Fund from these fees during the 2021-23 biennium. The Other Funds revenue generated from the publication and sale of LUBA Reports enables the Board to meet its statutory obligation to publish its final opinions and make them available to the public. LUBA's budget is based on an estimated \$35,000 in sales income during the 2021-23 biennium. The estimate is consistent with past sales trends and assumes that LUBA will issue four volumes during the biennium, selling approximately 50 of each volume at a charge of \$175 each. LUBA will issue four volumes during the 2021-23 biennium. These funds

are used for Continuing Legal Education expenses for Board Members, a statutory requirement of the position. The LUBA Reports continue to be self-sustaining and have recently seen an increase in subscribers.

The primary drivers of LUBA's workload are the number of land use appeals, staff capacity, and case complexity. The number of case filings in any given year is influenced by economic activity, population growth, and changes in land use policy. The Board has a 20-year average of 177 appeals a year, with a peak of 262 filings in 2007, immediately preceding the Great Recession. The number of filings has not returned to pre-Recession highs, although case numbers have recently increased, with the Board seeing a 25 percent rise in appeals filed since 2015. While the number of case filings is the primary determinant of LUBA's workload, staff capacity in conjunction with the complexity of individual cases remain important factors. In resolving land use disputes, LUBA must comply with a 77-day statutory deadline for the issuance of final orders (ORS 197.830(14)). Land use disputes centering on urban growth boundaries (UGBs) and rural resource use are particularly complex and time intensive. LUBA has jurisdiction over UGB amendments of less than 50 acres with two to four UGB amendment decisions made each year. These decisions are complicated and frequently appealed to the Oregon Court of Appeals. In 2016, Oregon's Land Conservation and Development Commission (LCDC) adopted new rules for local governments to make simple UGB amendments. While LUBA has yet to hear a case resulting from this rule change, there could be more UGB case filings as local governments adopt the revised rules. LUBA has also reviewed a number of complex marijuana related land use issues, a trend likely to continue as local governments and other stakeholders come to terms with cannabis legalization.

In a seven-month period between June 2018 and January 2019, two Board members who had served on LUBA for 28 and 20 years, respectively, retired. The Governor appointed new members to the Board, resulting in a 66 percent turnover of the Board in approximately seven months. In addition, in 2019, LUBA experienced a full turnover of support staff. The retirements of two Board Members and the ensuing transition as new Board Members on-boarded has contributed to a delay in issuing final opinions. LUBA is experiencing delays in meeting its performance measure target to resolve appeals within one week of the 77-day deadline, in addition to delays in resolving record objections within 60 days of filing. LUBA is also experiencing a backlog of opinions to publish in the LUBA Reporter, which is also attributed to staff turnover.

CSL Summary and Issues

The 2021-23 current service level (CSL) budget for the Board is \$2,237,639 Total Funds, 6 positions, and 6.00 FTE. The current service level General Fund budget is \$33,676, or 1.5%, more than the 2019-21 legislatively approved budget. The CSL budget includes adjustments for payroll expenses and standard inflation.

Policy Issues

In addition to savings realized through vacancy savings, the elimination of standard inflation on certain Services and Supplies accounts including State Government Service Charges and statewide consolidation of Microsoft 365 costs, the Governor's budget includes:

- An increase of \$78,239 General Fund to allow the agency to migrate contracted administrative support functions (accounting/payroll, human resources, and IT) from its current service provider, the Department of State Lands, to the shared client services program at the Department of Administrative Services (DAS) starting June 2020. This increase was approved by the Legislature in SB 5723 (2020 SS2).
- Policy Option Package 101 Compliance Specialist 3: Increase General Fund by \$201,818. 1 position, and 1.00 FTE to establish a second staff attorney position to draft orders and opinions for review, research case law, and prepare the appellate court record for transmittal to the Court of Appeals.

Other Significant Issues and Background

LUBA submitted a legislative concept to increase the fee for filing an appeal with LUBA from \$200 to \$300. If approved, the fee increase is estimated raise \$35,000 for the General Fund. This fee was last increased in 2009 from \$175 to \$200.

Key Performance Measures

A copy of the LUBA Annual Performance Progress Report can be found on the LFO website

https://www.oregonlegislature.gov/lfo/APPR/APPR_LUBA_2020-09-22.pdf