

Land Use Board of Appeals

	2019-21 Actual	2021-23 Legislatively Adopted	2021-23 Legislatively Approved *	2023-25 Current Service Level	2023-25 Governor's Budget
General Fund	2,095,169	2,590,340	2,686,644	2,706,702	2,741,598
Other Funds	35,842	36,486	36,486	38,019	38,019
Total Funds	2,131,011	2,626,826	2,723,130	2,744,721	2,779,617
Positions	6	7	7	7	7
FTE	6.00	7.00	7.00	7.00	7.00

* Includes Emergency Board and administrative actions through December 2022.

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.

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 two staff attorneys.

General Fund supports over 98% of LUBA's core operations. The remaining 2% of Other Funds is derived from filing fees, publications sales, and other miscellaneous fees. In addition, the filing fees collected from land use appellants and interveners are transferred to the state's General Fund. LUBA estimates the agency will transfer \$97,500 to the General Fund from these fees during the 2023-25 biennium. This estimate is based on an estimated total of 260 appeals for the biennium and an appeal fee of \$300, and an estimated 195 intervenors for the biennium and an intervenor's fee of \$100. Both the appeal fee and intervenor fee are set by statute. 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. The estimated amount collected for 2023-25 is approximately \$40,000 Other Funds.

CSL Summary

The 2023-25 current service level (CSL) budget for the Board is \$2,744,721 Total Funds and seven positions (7.00 FTE). The CSL General Fund budget of \$2,706,702 is \$20,058, or 0.7%, more than the 2021-23 legislatively approved budget of \$2,686,644. The CSL budget includes

adjustments for payroll expenses and standard inflation as well as the phase out of \$50,000 General Fund budgeted for LUBA to work with the Department of Administrative Services Enterprise Information Services to begin the foundational work on an electronic filing and case management system.

Policy Issues

LUBA faced workload and staffing challenges during the last two biennia but is on track to recover. In a seven-month period between June 2018 and January 2019, two Board members who had served on LUBA for 28 and 20 years retired, resulting in two-thirds turnover of the Board. These retirements and the ensuing transition as new Board Members on-boarded contributed to a delay in issuing final opinions.

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 200 appeals per year. Beyond the number of cases and staff capacity, is the level of case complexity. 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 recent years, LUBA has experienced an increase in appeals of more complex development proposals. For example, in late 2019 and early 2020, ten separate appeals of local land use decisions related to the proposed Jordan Cove Energy Project on the Oregon Coast were filed. LUBA resolved all of those appeals in 2021. In recent years, LUBA has also heard appeals relating to historic preservation review, destination resort proposals in central Oregon, commercial uses on resource land, solar facilities on resource land, short-term rentals, and housing development proposals throughout the state, which often involve implementation and application of recently enacted laws and regulations regarding housing adopted in response to housing shortages.

Due to workload and personnel constraints, LUBA did not have the staffing capacity to pursue an electronic filing project planned for the 2021-23 biennium. LUBA received a one-time \$50,000 General Fund appropriation from the Legislature to work with the State Office of the Chief Information Officer to develop a business case for this electronic filing project. Although the agency hopes to pursue this project in the future, LUBA has decided that it needs to build internal agency capacity before embarking on this project. The agency plans to continue to work with the State Office of the Chief Information Officer in initial planning for this project and may return in the 2025-27 budget cycle to request resources for the electronic filing project.

Governor's Budget Summary

The Governor's budget for the Board is \$2,779,617 total funds and seven positions (7.00 FTE). The General Fund budget of \$2,741,598 is \$34,896, 1.3%, more than the 2021-23 CSL. The Governor's budget includes the following policy option packages:

- **Legal Staff Reclassification** adding \$47,191 General Fund to reclassify two existing staff attorneys from Compliance Specialist 3 positions to Legal Staff to reflect position requirements and duties. The current employees in these positions are working out-of-class and DAS has approved the reclassifications.

- **Cellular Phone Plans** adding \$10,339 General Fund to continue providing cellular phones for LUBA employees to permit remote work including multifactor authentication (MFA).

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_2022-08-25.pdf