

Department of Land Conservation and Development
LCDC Rulemaking Workgroup on Metro Urban and Rural Reserves
Summary of workgroup meeting Wednesday, September 5, 2007

The Metro Reserves Rulemaking Work Group met for the first time on September 5, 2007, at the Portland State Office Building – Room 1B, 800 NE Oregon Street, Portland. The meeting started at 3:05 pm and ended at 5:00 pm.

Workgroup Members Present

Marilyn Worrix, LCDC (Workgroup Chair)
Randy Tucker, Metro
Brent Curtis, Washington County
Doug McLain, Clackamas County
Karen Schilling, Multnomah County
Pat Ribellia, City of Hillsboro
Jonathan Harker, City of Gresham
Bob Clay (for Gil Kelley), City of Portland
John Williams, City of Canby
Jim Johnson, Oregon Dept of Agriculture
Lainie Smith, ODOT Region 1
Jeff Hepler, Dept of Forestry
Mary Kyle McCurdy, 1000 Friends of Oregon
Jim McCauley, Metro Homebuilders
Dave Van Asche, Washington County Farm Bureau
Rebecca Woods (for Bev Bookin), CREEC
Jim Labbe, Audubon Society of Portland
Ann Glaze, State CIAC
Jeff Stone, Oregon Association of Nurseries
Mike Salsgiver, OECDD

DLCD staff attending: Bob Rindy, Gary Fish, Ron Eber, Meg Fernekees and Jody Haury

Guests attending: Matilda Deas (City of Canby), Carol Chesarek (Forest Park Neighborhood), Chuck Beasley (Multnomah County), Jonathan Schlueter (Westside Economic Alliance), Al Burns (Portland Bureau of Planning), Patty Snow (Dept. of Fish and Wildlife), Jim Morgan (Metro), Bob Clay (City of Portland), Dick Benner (Metro), Danielle Cowan (City of Wilsonville).

Reference materials distributed to workgroup members

- Agenda
- Senate Bill 1011, including Legislative History summarized by Metro
- Summary of LCDC rulemaking criteria and procedures
- DLCD Staff Report to LCDC regarding the initiation of formal rulemaking
- Suggested discussion draft of rules for rural reserves
- Suggested discussion draft of rules for urban reserves
- Rulemaking Issue List from Metro's previous ad hoc group discussions
- List of attendees to Metro's previous ad hoc group discussions

NOTE: All materials for the workgroup are posted at the Department of Land Conservation and Development's (DLCD) website at:

http://www.lcd.state.or.us/LCD/metro_urban_and_rural_reserves.shtml

Agenda Item #1 – Welcome, Introductions. Documents:

Workgroup Chair Marilyn Worrix convened the meeting at 3:05 p.m. and listed major discussion topics for the meeting. Workgroup members introduced themselves.

Bob Rindy passed out a summary of the Land Conservation and Development Commission's (LCDC's) statutory and rule requirements governing Commission rulemaking (this summary is available online at the DLCD website). Noted that LCDC guidelines for workgroups require that a rulemaking workgroup should agree on their procedures for reaching consensus and providing recommendations to LCDC. Workgroup members discussed possible decision making processes. It was decided the group would not generally hold formal votes on issues, but the chair may from time to time ask for a show of hands to determine support of proposals. In general, the group would attempt to achieve a consensus. On issues where consensus cannot be achieved, the group may present alternative proposals to LCDC.

Bob Rindy announced that all pertinent information for the rulemaking workgroup will be posted on the DLCD website, including agendas, workgroup minutes, and background materials. (http://oregon.gov/LCD/metro_urban_and_rural_reserves.shtml).

Agenda Item #2 – Determination of Schedule for Future Meetings

Bob Rindy stated that SB 1011 requires that rules establishing procedures and criteria for Urban Reserves and Rural Reserves in the Metro area must be adopted by LCDC by January 31, 2008. As such, the rules need to be adopted at LCDC's January meeting (that meeting is currently scheduled for January 24th). Furthermore, LCDC's practice is to hold at least two public hearings on new administrative rules. As such, the first of two LCDC hearings on the draft rules will occur at the LCDC meeting scheduled for November 29th in Corvallis, and the second hearing will be January 24th in . In order to have rules ready at least two weeks in advance of the first hearing, the workgroup's deadline for providing recommended draft rules is mid November.

Workgroup members agreed to the following dates for the next four workgroup meetings (all of these would be in the Metro area):

- Thursday, September 20, from 1:00 to 4:00 PM
- Monday, October 1, from 1:00 to 4:00 PM
- Monday, October 15, from 1:00 to 4:00 PM
- Monday, November 5, from 2:00 to 5:00 PM

The group also agreed that additional meetings may be necessary, including at least one meeting after the first public hearing.

Agenda Item #3 – Procedures and ground rules for conduct of workgroup deliberations

Marilyn Worrix asked workgroup members to be prepared to start on time for all meetings. Workgroup agreed DLCD would prepare meeting minutes in a summary format unless specified otherwise for key points. Workgroup agreed that substitutes/alternates could attend meetings on behalf of the workgroup members, if necessary.

Bob Rindy shared that a contact information form was circulating the room for workgroup members, as well as audience members. He asked the audience members to indicate if they would like to be added to the notification e-mail list.

Bob Rindy indicated that he will periodically e-mail information to the workgroup members and interested parties various but will usually not attach materials since they will be posted on the website. Reminded workgroup members and the audience to continuously check the website.

Workgroup members discussed communication by e-mail. Decided that a suggestion for word-smithing, or other issues or suggestions, could be circulated via e-mail if brought to the next meeting for discussion, but in general, discussions or decisions should NOT take place e-mail. Mike Salsgiver suggested exploring a Wickia site to edit documents instead of e-mailing draft rules for comments. Bob Rindy indicated it is unlikely DLCD has the software or other necessary expertise, but will check to see whether if it is possible to use the Wickia site, as well as any legality issues associated with public meeting laws.

Marilyn Worrix announced that in the past she has invited audience members to the table to participate in the workgroup discussions, but given the size of this group we would not be doing that. However, she will try and find time each meeting to hear from audience, and encourages written comments from the public to be discussed at the next meeting.

Bob Rindy discussed DLCD's general citizen involvement process in rulemaking, including public participation, how the public should affect rulemaking, encouraging public involvement.

Agenda Item #4 – Overview and Background re SB 1011 (Presentation by Metro)

Randy Tucker provided a general background about the history and intent of the urban and reserves leading up to the passage of SB 1011. He described Metro's intent for urban and rural reserves, including predicted timelines for getting the reserves in place. This discussion included information from Bob Rindy regarding urban reserves authorized under current DLCD rules, and other basic information about the context of reserves in Oregon land use law, including the Metro urban and rural reserves specified by SB 1011.

Agenda Item #5 – Discussion of preliminary rule drafts and "issues list"

Workgroup decided to begin discussing substance by going through the suggested draft rules line by line. The group decided to begin review of the draft urban reserves rules first.

The discussion then turned to the draft rule and the workgroup proceeded line by line through the first few paragraphs of the rule before time ran out. The workgroup discussion is summarized below, by rule section.

Dick Benner clarified that the language in the draft urban reserve rules was provided to Metro's ad hoc group last summer and changed somewhat as a part of those meetings. He indicated that the language is primarily out of the statute but at points expands upon the statutory language.

660-000-0005 Purpose Statement:

Issue 1: Workgroup discussed whether the proposed language infers that an agreement is sufficient to establish reserves or whether there is also need to formally amend the applicable land use plans. It was pointed out that the proposed draft already indicates in a later section that Metro must amend its framework plan to show the reserves. Bob Rindy agreed to suggest amendments to the purpose statement to make it clear that reserves are established by formal plan adoption (by Metro and applicable local governments) after agreements are signed.

Issue 2: The group discussed whether agreements specified by the statute and rules would include maps. Metro indicated the intent was for the agreements to also include a map of the proposed reserves. The group then discussed the effect of agreements regarding maps on later formal adoption by Metro and local governments, i.e., would the later adoption simply "rubber stamp" previous map decisions, could the maps be changed during adoption and would that necessitate revising the agreements, is it likely parties and property owners would not find out about the maps until the later formal adoption process (when notice is required), and shouldn't we therefore frontload the citizen involvement and notice requirements to the agreement process? Workgroup members indicated that this issue had not come up earlier because Metro and local governments are used to providing ample notice and citizen involvement in such matters and it has been understood all along there would be citizen involvement in the agreement process. However, it was agreed the rule should be clear about notice and involvement requirements in the "agreement phase" of the process. It was also noted that these agreements are not a land use decision, and therefore are not necessarily appealable to LUBA. Dick Benner indicated that even still, potential appeals are always a possibility. It was suggested we should add public involvement requirements to this section, i.e., requirements for public involvement and notice that are currently required for plan amendments. Dick Benner indicated he would suggest language regarding this.

660-000-0010 Definitions:

Bob Rindy noted that several terms in the suggested rules are already defined in various statutes. These include definitions under ORS 195.060; ORS 215.010; ORS 227.010, .095, 160, and .215; ORS 268.020. UGB is defined under ORS 195.060 (2). The workgroup may want to look at these definitions and decide whether to reference them or import them, or whether in some cases different definitions are needed for purposes of the rule, since definitions in other statutes do not necessarily prevent creation of different definitions for purposes of this rule. (Bob agreed to e-mail the workgroup members citations to definitions already in statute).

660-000-0020 Authority to Designate Urban Reserves:

Dick Benner stated that SB 1011 authorized an alternative urban reserve process, rather than the process already described in LCDC's urban reserve rules at OAR 660, division 21. It was noted that the proposed wording of this section again implies that the intergovernmental agreements are sufficient alone to establish the reserves without formal land use plan adoptions. DLCD will suggest wording to clarify this.

660-000-0030 Urban Reserve Intergovernmental Agreements:

The group discussed whether LCDC has the authority to adopt the proposed rule declaring these agreements are not land use decisions. Dick Benner indicated that state law already asserts such agreements are not land use decisions; he believes the Commission can limit any appeal of an intergovernmental agreement but he agreed that additional work on the wording of this section is needed.

Because time ran out at this point, the workgroup did not conclude discussion of this or other sections.

Agenda Item #6 – Next steps and agenda for next meeting

- Continue to review the urban reserves draft rules.
- The meeting agenda and location for the September 20, 2007, workgroup meeting will be sent out prior to the meeting.

Agenda Item #7 – Wrap up 5:00 PM

Marilyn Worrax adjourned the meeting at 5:05 p.m.

Reminder of Future meeting

The workgroup will meet 1:00 - 4:00 p.m. on September 20, 2007, in the Public Meeting Room of the Oregon Department of Transportation Building, 123 NW Flanders, Portland OR 97209.