



**Department of Land  
Conservation and Development  
UGB Phase 2 Work Group**

**MINUTES**

Meeting 3

September 9, 2008

1:00 PM – 4:00 PM

Agriculture Building (DLCD)

635 Capitol St NE, Salem

Basement Hearing Room

**Work Group Members Present**

Marilyn Worrix, LCDC (Work Group Chair)  
Barton Brierley, City of Newberg  
Jon Chandler, Oregon Building Industry Association (by telephone)  
Darrin Fleener, Oregon Economic and Community Development  
John Fletcher, Oregon Housing and Community Services  
Nick Lelack, City of Redmond (by telephone)  
Robert Maestre, Oregon Department of Transportation  
Mary Kyle McCurdy, 1000 Friends of Oregon  
Corinne Sherton, Johnson & Sherton PC  
Sandi Young, City of Wilsonville  
Christine Valentine, Economic Revitalization Team

**DLCD Staff Present**

Gloria Gardiner, Urban Planning Specialist  
Bryan González, Rules, Records and Policy Coordinator  
Rob Hallyburton, Planning Services Division Manager  
Angela Lazarean, Urban Planner  
Michael Morrissey, Policy Analyst  
Bob Rindy, Senior Policy Analyst/Legislative Coordinator  
Becky Steckler, Research Consultant

**Interested Persons Present**

Chris Crean

**Meeting Materials**

[Agenda](#)

[Issues Related to Recent Case Law](#)

[UGB Analyst Study Methodology](#)

## **Agenda Item 1 – Introductions, Opening Remarks from the Chair**

Chair Worrix convened the meeting at 1:10 p.m. and welcomed the work group.

## **Agenda Item 2 – Minutes from Previous Meeting**

The work group reviewed the minutes from the previous meeting and had no corrections or additions.

## **Agenda Item 3 – Review Work Group Meeting Schedule**

Chair Worrix reminded the work group of the following upcoming meetings:

Tuesday, September 30	1:00 – 4:00 p.m.
Tuesday, October 21	1:00 – 4:00 p.m.

## **Agenda Item 4 – Discussion of Issues**

### Safe Harbor Research Discussion

Bob Rindy recapped the previous discussion about possible research and introduced Becky Steckler, the research consultant hired by the department.

Becky Steckler introduced and reviewed her UGB Analyst Study Methodology handout. She explained that she began designing the analysis based on Bob Rindy's memorandum regarding Ideas for Methodology to Identify New UGB Safe Harbors, discussed at the August 12 meeting. She then identified and reviewed eight potential categories for data collection, which would yield a total of approximately 60 records. She further explained that she had reviewed two DLCD databases and had been gathering approved documentation directly from cities. She stated that she was not including amendments that had not been acknowledged, that were on appeal, that were a periodic review work task, or that were less than 25 acres in size. Finally, she clarified that she would organize the data based on the population at the time of the amendment.

Robert Maestre questioned if the data would indicate whether cities considered infrastructure needs, which could be useful in understanding the percentage increase in urban area. Mary Kyle McCurdy responded that cities are required to make such consideration under Goal 14 (Urbanization).

Bob Rindy explained that there have been instances where cities accommodated needs within existing urban area and suggested that Becky Steckler consider including such instances in her analysis. He also stated that Greg Winterowd thought amendments on appeal should be included. Mary Kyle McCurdy agreed

with including amendments on appeal and explained that the current appeal regarding Woodburn is not based on the underlying data.

Bob Rindy suggested that it could be useful to examine Metro's UGB data, especially because Metro compiled statewide data for some points. Becky Steckler responded that she would review and compare Metro's UGB report to her final analysis.

Robert Maestre questioned whether data could be compiled regarding projected job growth and employment lands needs (jobs per acre, "employment density", etc.). Bob Rindy reminded the work group that Terry Moore previously discussed that a relation between jobs and households or jobs and employment lands would be apparent in reviewing data and could be a potential safe harbor. However, he cautioned that DLCDC would not want such a safe harbor to discourage cities from completing economic opportunity analyses. Mary Kyle McCurdy responded, and Becky Steckler concurred, that non-residential UGB amendments would not be a good source for employment-related data.

Robert Maestre advised that expansions for some public facilities, such as wastewater facilities, may not reflect overall land use patterns rather than particular heavy users or changes in environmental regulations. Darrin Fleener questioned whether the analysis could include the reason or justification for the amendment, which could explain the need for particular public facilities. Becky Steckler responded that the amendment records should indicate the need or justification.

Though Becky Steckler explained that she would focus on residential amendments, Christine Valentine questioned whether basic information could be compiled for non-residential amendments. Becky Steckler responded that the analysis would include jobs by type and jobs per acre.

Sandy Young raised the issue of new schools being located on fringes of cities. Bob Rindy stated that he would be surprised if a certain ratio of expansion would relate to a certain ratio of new schools. He advised the work group that a newer statute requires large school districts to coordinate growth with cities and that he is hopeful that a certain ratio is assumed for new schools. Nick Lelack responded that Redmond made such an assumption, and Bob Brierley responded that Newberg completed an actual analysis in conjunction with the school district.

Mary Kyle McCurdy questioned why the data should indicate how far outside of the existing UGB a city considered when expanding. Bob Rindy responded that it is unclear how large of an area cities are to review under the alternatives analysis and that there could be a potential safe harbor for how far to look.

Darrin Fleener advised the work group that everything is impacted by expansion for a single use, if only by reducing capacity (additional housing reduces available capacity of waste water system). Bob Rindy agreed that philosophically UGB

amendments are holistic and require examining impact on all uses/facilities, but stated that reality has been different.

Becky Steckler stated that while many smaller UGB amendments are driven by particular geographical concerns/interests, both she and Bob Rindy advised against compiling regionalized data.

Marilyn Worrix raised the issue of minimum lot sizes in urban areas. Bob Rindy responded that the work group could consider establishing a safe harbor for an assumed density *and* require a higher zoned density and minimum density.

#### McMinnville and Madras LUBA and Court of Appeals Decisions

Gloria Gardiner reviewed her memorandum regarding recent case law. She recounted the issue of piecemeal acknowledgement as addressed in the *McMinnville* case and advised the work group that while Goal 10 and OAR chapter 660, Division 8, requires satisfaction of the requirements of Goal 14, cities have continued to complete piecemeal acknowledgments. She further recounted the *Madras* case in which the Land Use Board of Appeals (LUBA) held that *McMinnville* did not apply because Madras had a population less than 25,000 (the threshold in ORS 197.296) and found that Madras could complete preliminary analyses before completion of the entire process.

Gloria Gardiner advised the work group that DLCD considers the entire process iterative and requiring all analyses before determining the need for expansion. She then identified three potential rulemaking solutions: (1) utilizing ORS 197.626, which sends appeals to the Oregon Court of Appeals instead of LUBA, to capture adoption of preliminary analyses for department review; (2) allowing cities to receive preliminary approval of individual components before completing the entire process; and (3) allowing *de novo* review of previously adopted individual components at the conclusion of the process.

Corinne Sherton questioned whether DLCD does not want to allow piecemeal acknowledgment as happened in *McMinnville*. Bob Rindy responded that the work group should discuss allowing LCDC to acknowledge individual components. John Fletcher questioned whether allowing individual components would cause more work for both DLCD and LCDC. Bob Rindy responded that it could.

Chris Crean stated that he is not sure there is a problem allowing acknowledgment of individual components. He stated that it appears DLCD is primarily concerned about exerting control. He reminded the work group that DLCD is aware of individual components and could comment/appeal each component as it is completed. He provided the example of Eugene, which decided not to expand its UGB after completing the entire process regardless of what individual components had indicated. Based on that example, Chris Crean questioned how

DLCD can assume that individual components justify a UGB expansion if the entire process needs to be completed before deciding whether to expand.

Mary Kyle McCurdy suggested that the work group focus on the policy reasons/implications behind *McMinnville*. She advised that neither the second or third proposed solutions are efficient means of solving the issue. She further stated that she was concerned with “preliminary acknowledgments” not being appealable.

Bob Rindy recalled that the phase 1 work group looked at allowing piecemeal acknowledgment of individual components. Chris Crean advised that such a process is more budget friendly to local governments.

Corinne Sherton agreed with Mary Kyle McCurdy that neither the second or third proposed solutions are good approaches. She stated that she also did not like the first proposed solution because the size of an expansion may not be known at the beginning of the process and ORS 197.626 only applies to expansions larger than 50 acres. She suggested that the work group focus on the requirements of Goal 8 instead.

Chris Crean questioned what is the intent of Goal 10’s reference to Goal 14. He suggested that the reference may be limited to Goal 14’s efficiency measures.

Marilyn Worrix agreed with Bob Rindy that the phase 1 work group wanted to bring certainty to the preliminary steps of a UGB amendment (the various analyses) and questioned whether this work group was also interested. Mary Kyle McCurdy agreed that she could see allowing a preliminary review of non-land-related analyses but was not sure how to allow piecemeal review of land-related analyses.

Corinne Sherton stated that land needs analyses do more than gather data—they makes assumptions about needs and offer preliminary amounts of lands needed for various purposes and the inventory of available lands. Mary Kyle McCurdy advised that because land needs analyses often contain some policy calls, they be separated from the other analyses.

Nick Leland recounted that Redmond established density assumptions in its land needs analysis and was comforted by the level of participation and input of DLCD field representatives. He stated that Redmond made the process as transparent as possible in an effort to make all parties comfortable. Bob Rindy responded that Redmond may not have been interested in preliminary approvals.

Sandi Young stated that she does not support waiting until the end of the entire process before notifying jurisdictions that an error was made at the beginning of the process. She suggested that the work group focus on how to make the process work for small cities that strive to do what is right while ensuring other jurisdictions do not abuse the process.

Mary Kyle McCurdy offered the example of Metro's Urban Growth Report as a report that captures data without making policy decisions (land needs determinations).

Marilyn Worrrix suggested that the work group work to end piecemeal review of individual components and instead identify bundled steps in the process. Bob Rindy responded that Redmond's approach created bundles but without final appealable decisions. He stated that he is unsure whether creating bundles will actually streamline the process. Corinne Sherton replied that creating final appealable decisions would prevent LCDC from further reviewing those decisions. Mary Kyle McCurdy also replied that Bob Rindy's concern was a reason to identify fewer bundles. She suggested two bundles: population projections (not sure where employment forecast goes) up to/including ultimate land needs (including efficiency measures); actual amendment (alternatives analysis). Corinne Sherton responded that population projections are a discrete step required by separate statute.

Gloria Gardiner suggested that DLCD could probably support a 3-step process. Mary Kyle McCurdy questioned whether there is anything in an alternatives analysis that would make either DLCD or LCDC you want to revisit an earlier step. Bob Rindy agreed that a 3-step process could be an optional alternative to the 1-step (*McMinnville*) process, though he questioned whether the adoption at step 2 would go to LCDC since it would not be a true UGB amendment or if it would follow the Post-Acknowledgment Plan Amendment (PAPA) process instead. Sandi Young responded that analyses in the PAPA process should follow the PAPA review, and analyses in the periodic review process should follow that review process.

Mary Kyle McCurdy questioned whether LCDC wants to review the need for an expansion or just the location of an expansion. Bob Rindy responded that LCDC would probably want to be able to review needs determinations. Chris Crean suggested that any proposed process provide an opportunity for LCDC review rather than require such review, which would slow down the process.

### **Agenda Item 5 – Next Meeting Agenda, Wrap Up and Adjourn**

The work group agreed to continue discussion of issues raised by the *McMinnville* and *Madras* cases at its next meeting, including further discussion of the "3-step" process. Chair Worrrix adjourned the meeting at 3:50 p.m.

### **Public Comment**

None

**Member Tasks** (not necessarily due at next meeting)

None