

**Department of Land Conservation and Development
Urban Growth Boundary (UGB) Rulemaking Workgroup
Summary of March 9, 2006, Workgroup Meeting**

The UGB Rulemaking Workgroup met for the twelfth time on March 9, 2006 at the Agriculture Building (DLCD) in Salem, Oregon from 1:00-3:10 p.m. Attendance was as follows:

UGB Workgroup members attending:

Marilyn Worrix, Chair (LCDC); Barton Brierly (City of Newberg); Dick Benner (Metro); Richard Bjelland (Dept of Housing and Community Services); Don Schellenberg (Oregon Farm Bureau Federation); Greg Winterowd; (Winterbrook Planning); Art Schlack (Association of Oregon Counties).

Guests attending: John Boyd (Douglas County); Linda Ludwig (League of Oregon Cities); Lester Sasaki (Marion County).

DLCD Staff attending: Bob Rindy, Gloria Gardiner, Jan DeVito

Workgroup members not attending: Glen Bolen (Fregonese Calthorpe Associates); Jon Chandler (OHBA); Chris Crean (OAPA); Brent Curtis (Washington County); David Glennie (Commercial Realtors); Jim Huber (City of Grants Pass); Harlan Levy (Association of Oregon Realtors); Mary Kyle McCurdy (1000 Friends of Oregon); Terry Moore (ECO Northwest); Damian Syrnnyk (City of Bend); Burton Weast (SDAO); Pat Zimmerman (CIAC).

State Agency Representatives not attending: Jerri Bohard, Department of Transportation; Lynn Beaton, OECDD; Jim Johnson, ODA

Agenda Item #1: Opening remarks

Workgroup Chair Worrix convened the meeting. She announced that at its February meeting the Land Conservation and Development Commission (LCDC) expressed strong support for this project. LCDC indicated that they recognize the significant Measure 37 workload at local governments and DLCD. The commission asked the department to consider whether portions of the safe harbor rules might be less complex or controversial than others, and therefore require less staff and local government commitment to complete. If so, these should be separated from the whole and brought forward for LCDC consideration in the near term. Bob Rindy indicated that the commission had left it to the department to determine which elements of the rule might be in this category, and that is the main item of discussion for this meeting. It had been suggested that the population forecast rules may have been closer to consensus than other parts of the overall rule proposal; as such it was suggested that the workgroup start the discussion there. Bob also noted that LCDC had declined to decide which particular parts of the rule might be focused on for early consideration.

In light of the DLCDC staff time constraints this biennium, Chair Worrix also suggested the workgroup consider whether there might be some workgroup management responsibilities that could be handled by other workgroup members, including research into safe harbors, meeting summaries or other tasks. The discussion did not identify any of these items, but the chair asked the workgroup to continue thinking about her suggestion and she may bring it up again at future meetings.

Agenda Item #2 – Discussion

Bob Rindy reported that LCDC's Policy Agenda was finalized by the commission on February 3, 2006. That agenda now lists this UGB safe harbor rulemaking project as a high priority for this biennium. The task this afternoon is for the workgroup to discuss whether the overall project could be divided into two or more separate rulemaking projects, so that some new rules might be presented to LCDC in the near future.

To assist the group in this exercise, copies of the October 11, 2004, draft of the proposed new OAR 660, division 24, administrative rules were distributed in order to discuss various sections. Bob Rindy emphasized that the purpose of this handout was NOT to discuss any rule wording or details; it was simply to remind the group of the various rule elements that had been discussed previously. Linda Ludwig pointed out that the October 11 draft had been superseded by a version dated October 20, and many workgroup members have that version.

Staff also distributed copies of an e-mail from workgroup member Damian Syrnyk, dated 3/8/06. Mr. Syrnyk apologized for not being able to attend the meeting. On behalf of the City of Bend planning staff, he supported expediting the adoption of safe harbors for UGB amendments and rules on coordinated population forecasts. The email indicated safe harbors would be very helpful, not only for Bend, but also for other cities currently working on proposed UGB expansions, such as Redmond and Prineville.

Dick Benner reminded the group that he had previously handed out to the workgroup a summary of UGB amendment "assumptions" (including assumptions such as household size, housing density, vacancy rate, housing mix, percentage of infill, and redevelopment.) He noted that, because Metro and cities over 25,000 population are governed by ORS 197.296, they would probably be prohibited from using many of the proposed safe harbor provisions. However, he supports adopting safe harbor provisions for smaller cities. He recommended that the workgroup select some of the easier, less controversial safe harbors, rather than consider the population rules, which he believed were more problematic. A rule that included only the less-controversial safe harbor assumptions would still be very valuable to smaller cities. He suggested these be adopted as "Phase 1" of the project, leaving the more complex or controversial safe harbors and population rules for "Phase 2."

Art Schlack expressed concern about moving forward with the proposed rule project because of possible time constraints on staff and workgroup members resulting from Measure 37, court cases and the SB82 "Big Look" process. He noted that the Measure 37

workload is also a major constraint for local governments. He agreed, however, to consider a prioritization process by the workgroup to identify whether any parts of the rule can be accomplished within a brief time frame.

Linda Ludwig reminded the workgroup that there had been previous discussions about rules for land exchanges (i.e., putting land in a UGB in exchange for taking other land out of the UGB). There had even been some rule language previously drafted on that topic. She suggested this issue is still very important to many cities and suggested the workgroup consider UGB land exchange rules as part of a Phase 1 rulemaking. Bob Rindy noted that this had been discussed at length in the past, but it some of the issues surrounding this are technically complex and the department had been unable to achieve consensus on previous attempts. It was agreed this probably should not be a Phase 1 item, but Bob will search for the previous drafted language on this topic (NOTE: The published October 20, 2004 draft included some rules on “UGB Adjustments,” but that rule version did not include all of the land exchange rule proposals that had appeared in previous drafts, especially in drafts from the 2001 workgroup proposals on this topic. Bob Rindy will attempt to locate that for the workgroup).

Les Sasaki of Marion County commented that the UGB expansion safe harbors will be helpful; however, he suggested work on the population rules was much more important for counties and should not be put off. He noted, as an example of current problems, that various cities in a typical county forecast population on an individual basis, and with all cities in the county on different schedules. County forecasts, if they are completed, will nevertheless not account for the various city plan horizons. There is no uniform application of standards for these circumstances, and for other issues arising with interpreting state laws on population forecasts.

Linda Ludwig asked whether UGB safe harbors were a good idea in the first place because a proposed one size doesn't fit all, and because safe harbors are prone to interpretation as mandatory standards. Bob Rindy reminded the group that, by definition, safe harbors are an “option” – they are not mandatory – and the department has tried very hard to assure that they are not interpreted as mandatory. He indicated safe harbors are intended as one of many approaches that can be used to meet certain parts of the UGB process for those cities that do not wish to go through a more detailed analysis. Bob read the proposed safe harbor definition in the October rule draft, which included wording to assure the proper interpretation of safe harbors. Greg Winterowd noted that the Goal 5 safe harbors adopted many years ago have not been interpreted as “mandatory” but have been used effectively by smaller jurisdictions with the benefit of reduced consultant costs. Greg also mentioned that he had received an email from workgroup member Terry Moore supporting continued work with the UGB safe harbors concepts, and noting that further research may be needed on some of the proposals.

Bob Rindy indicated that if we do safe harbor rules on any of the elements of population forecasts perhaps we should also discuss whether to divide the proposed safe harbors according to city size, i.e., small or large cities.

Discussion continued as to whether the emphasis for a Phase 1 rulemaking should be on some of the less controversial safe harbor rules or on the draft population forecast rules. It was noted that elements of the population rules might be considered safe harbors. Chair Worrix called for the workgroup to focus on which rule topics, especially safe harbors, appeared to be less controversial to workgroup members, and thus should be addressed in a near-term rule making project. After discussion, the group agreed to pursue the following list of potential Phase 1 rules, based on straw poll of workgroup members present:

1. Projecting (extrapolating) the last county coordinated forecast to 20 years from current date (possibly only for small cities; other elements of the population rules should be discussed for consideration in Phase 1);
2. Housing vacancy rate safe harbor, based on latest census data;
3. Household size safe harbor, based on latest census data;
4. Combined Public Uses Rights of Way safe harbor, could be separate for parks, schools, streets, roads;
5. Goal 7 Hazard Areas safe harbor (slopes, floodplain percentage of non-buildable lands);
6. Employment forecast safe harbor based on State Office of Employment projection;
7. Employment density safe harbor (i.e., employees per acre)¹;
8. It was noted that some of the previously proposed safe harbors, such as manufactured dwelling assumptions and government assisted housing assumptions, were not technically “safe harbors” but rather were a restatement of current law. Such statements could be in the Phase 1 rules, but not labeled as safe harbors.

The group also suggested the following issues involved greater complexity or controversy and as such should be addressed by the workgroup in a later Phase 2:

1. Housing Density;
2. Housing Mix;
3. Infill and Redevelopment assumptions (the group was split on this one);
4. Goal 5 Natural Resources; and
5. Minimum Urbanizable Lot Sizes

Agenda Item #3 – Consensus on work program to complete UGB Rules

Chair Worrix reported that, following the last UGB workgroup meeting (April 2005), and as agreed by the workgroup, a designated subcommittee of the group met to further develop a work plan for the safe harbor project. There was no follow through regarding

¹ The workgroup briefly discussed employment safe harbors, but did not reach a clear consensus as to which of these should be on the Phase 1 list. It was agreed that staff should ask Steven Santos of DLCD to attend the next workgroup meeting to discuss proposals #6 and 7 and the interplay between Goal 9 and Goal 14.

this work plan due to the suspension of further work on the project. DLCD will provide a summary of the subcommittee discussion at the next meeting.

The next workgroup meeting: tentatively scheduled for Thursday, April 13, 2006, from 1:00-3:00 p.m. Meeting confirmation and details will be announced.

Preparation and work tasks for the next meeting:

- DLCD Staff Steven Santos will attend the next meeting to discuss Goal 14/Goal interface issues;
- Staff will prepare an outline of a Phase 1 draft rule (not including actual rule language, but based on the October 20, 2004 draft);
- Chair Worrix requested that staff be prepared to offer a “menu” or range of percentages for proposed safe harbors that might illustrate differences by size of cities and possibly regions; and
- Bob Rindy will ask workgroup members to further contact him (or bring for discussion at next meeting) regarding suggestions for areas of the proposed population rules that might be considered “non-controversial” and might conceivably be included in Phase 1 rulemaking.

The meeting was adjourned at 3:10 p.m.