

**Department of Land Conservation and Development
Urban Growth Boundary (UGB) Rulemaking
Summary of April 13, 2006, Workgroup Meeting**

The UGB Rulemaking Workgroup met for the thirteenth time on April 13, 2006 at the Agriculture Building (DLCD) in Salem, Oregon from 1:00-3:15 p.m. Attendance was as follows:

UGB Workgroup members attending:

Marilyn Worrix, Chair (LCDC); Glen Bolen (Fregonese Calthorpe Associates); Barton Brierly (City of Newberg); Jon Chandler (OHBA); Harlan Levy (Association of Oregon Realtors); Don Schellenberg (Oregon Farm Bureau Federation); Greg Winterowd; (Winterbrook Planning); Art Schlack (Association of Oregon Counties).

State Agency Representatives attending: Jerri Bohard, (Department of Transportation); Richard Bjelland (Dept of Housing and Community Services); Paul Grove (OECCD);
Not attending: Jim Johnson, ODA.

Guests attending: John Boyd (Douglas County); Linda Ludwig (League of Oregon Cities); Peggy Lynch.

DLCD Staff attending: Bob Rindy, Gloria Gardiner, Larry Ksionzyk, Steven Santos, Jan DeVito.

Workgroup members not attending: Dick Benner (Metro); Chris Crean (OAPA); Brent Curtis (Washington County); David Glennie (Commercial Realtors); Jim Huber (City of Grants Pass); Mary Kyle McCurdy (1000 Friends of Oregon); Terry Moore (ECO Northwest); Damian Syrnyk (City of Bend); Burton Weast (SDAO); Pat Zimmerman (CIAC).

Agenda Item #1: Opening remarks

Workgroup Chair Marilyn Worrix convened the meeting at 1:10 p.m.

Agenda Item #2 – Discussion

Draft summary of March 9 meeting – Approved; there were no corrections to the draft.

Workgroup membership – Chair Worrix reminded the group of a previous discussion in response to Linda Ludwig's proposal to add an additional city representative to the workgroup. The Chair indicated the she and Linda had additional discussion and agreed to propose that LCDC appoint Steve Bryant, acting director of the League of Oregon Cities. The group was asked to comment on this proposal. Peggy Lynch reminded the group that the workgroup was initially established with consideration of a balance of multiple interests. She asked that LCDC should be reminded of this when they consider additional appointments. Linda Ludwig described the qualifications of Steve Bryant. Bob

Rindy stated that he would prepare a report asking LCDC to consider appointment of Steve Bryant at their next meeting on May 5, 2006.

Harlan Levy indicated there is currently no representation from the retail task force since Mark Whitlow has not been attending. Bob Rindy reminded the group that LCDC had appointed David Glennie to replace Mark Whitlow and to represent commercial real estate interests. Bob stated he had recently met with Mr. Glennie who had indicated he would be unable to attend this meeting but would try to get up to speed on the group's work and attend later meetings. Art Schlack suggested that recent workgroup attendance records be reviewed and staff should consider whether there is a need to designate alternate members.

Note: Bob Rindy reviewed records and noted that he had received phone or email messages in the last two months from all workgroup members regarding attendance at the scheduled meetings, except for Burton Weast (the designated representative for the Special Districts Association of Oregon (SDAO)) who has not attended recently. Bob called Burton, and he indicated he has retired from SDAO and has been replaced by Kelly Ross. In a phone conversation April 20, Kelly agreed to serve on the workgroup, if appointed by LCDC. The DLCD Director's Report for the May 5 LCDC meeting suggests the commission consider this appointment, as well as the appointment of Steve Bryant. .

Proposed safe harbors for "Phase I" rulemaking

Three documents were distributed to the workgroup:

- Description of Proposed Rules for UBG Safe Harbors;
- OAR 660, Division 024, Urban Growth Boundaries – proposed administrative rules dated October 20, 2004; and
- Ideas for UBG Land Exchange Rules Draft, dated October 12, 2000.

Bob Rindy explained the Proposed Rules outline. He noted that the outline included the safe harbors discussed at the March 9 meeting, but some additional "structure" so that those safe harbors could be made a part of the UGB process. Bob also noted that the outline included some UGB process topics that might need to be included in the rule as part of that structure, but which had not been discussed in the previous meeting, including boundary location and urbanizable land. Chair Worrix expressed her positive view of the workgroup's progress at the prior meeting, and encouraged everyone to provide enough direction today so that Bob Rindy could write a draft rule for their consideration at the next meeting.

Guest John Boyd stated that he opposed workgroup action on a population forecast rule. Bob Rindy responded that in 2004, the population subcommittee of the workgroup had considered these rules extensively and had drafted a proposed rule that seemed to have workgroup support. He also noted that the workgroup had agreed to at least one population safe harbor in the March 9 rule discussion. As such, the next rule draft would include population safe harbors and a minimum of rule "structure" for that topic, but would probably not include all of the 2004 proposals.

The workgroup continued discussion and, in some cases arrived at consensus, regarding topics and content of the proposed rules for UGB Safe Harbors as follows:

1. Purpose and Applicability: Rindy – the suggested wording in the outline indicates that this rule should apply only to Goal 14 as recently amended by LCDC. Lynch asked what the consequences would be for current Bend/Redmond/Prineville possible UGB expansions. Rindy indicated he is pretty sure Bend is intending to use the recent version of Goal 14. He also noted it would be much more complicated to write a Goal 14 rule that applies to both the “old” and “new” goal. Bob suggested that, for Phase I of this rulemaking, the rule should apply only to the new goal. Worrix agreed noting that we are trying to make this first phase as simple as possible. Suggested wording in the outline was approved.

2. Definitions: Worrix – The suggested definition of “safe harbor” seems to respond to prior concerns. Schlack – “numeric” and “specific numbers” mentioned in the suggested language make him nervous, but he is ok with the wording stating that safe harbors are a “direction” or an “optional course of action.” Gardiner –that would be too vague. Rindy cited an example of a numeric standard under consideration; this is not a “direction” or “course of action”, it is actually a number. Worrix – are we saying the numbers are “minimum standards”? Rindy – No, they are simply a standard that is deemed acceptable. Greg Winterowd also proposed some clarifying language. Rindy – will suggest options based on the discussion.

The group discussed a definition of “20-year planning period” (note, this discussion was based on wording in the October 2004 draft, not the outline). Chandler suggests “approximate” should not modify “20 years” – the concern we are addressing is the imprecision of estimating versus “what is the time frame”. Suggested that the middle part of this definition should be provided in the context of a specific rule later in the draft, rather than as a general definition. Schlack - concern about when the 20-year period begins, often the planning takes a couple years and then it is no longer a 20-year UGB. Rindy – ORS 197.296 provides one way to do this, for cities under that statute. The group discussed ways to clarify when the 20-year period starts. Worrix – consensus of what she heard is (1) we should try and craft a rule that determines when the 20 yr. time period starts, and (2) deals with 20-year “estimate” standard as part of text in the rule rather than as a general definition.

Lynch – Should we assume we are setting aside the October 2004 draft? Worrix – not necessarily – some of that proposal could be discussed for this phase and would be used as the basis for our next draft. Are there any other definitions in that draft that should be suggested by the workgroup for this phase. Rindy – The proposed definitions of “coordinated”, “employment,” and “housing needs” are problematic, these terms are very difficult to define. Lynch – suggested that definitions of “local government” and “regional government” be retained.

3. General Requirements for amendment of UGB: Glen Bolen asked that the rule allow future digital maps (with regard to the proposal that local governments show UGB location on a map). It may be that the proposed language covers this, but Bolen agreed to check on language for digital option.

Chandler – Concern about proposed rule to allow separate city and county UGB adoption, and whether this would allow a UGB that is not based on agreement. Rindy indicated this language was to reflect an LCDC decision regarding the North Plains and Brookings UGB decisions. Winterowd – this might be a Phase II topic, since we do not want to affect small cities during periodic review.

There were no concerns about bullets for suggested applicability requirements except for the TPR requirements topic. A lengthy discussion ensued as to whether local governments, especially small cities, could manage to adopt a UGB amendment and simultaneously address the TPR. Chandler – TPR compliance shouldn't be required at this point in the process. Winterowd – however, some trigger is needed when the land develops or a local government would not need to address transportation needs for land added. Schlack – UGB expansion without some level of transportation and capital facilities planning doesn't work. Winterowd – Goals 11 and 14 already require this. Schlack – if requirement to meet TPR is removed, something must be in its place. Bohard – there should not be simply an assumption that state can provide capital facilities. Chandler – it is smart to consider capital facilities with UGB expansion, but not to extent of TPR.

Bob Rindy asked whether we should “punt” this discussion to TPR rulemaking, or Phase II consideration. Chandler suggested this could be addressed in a later document, as to the level of planning for capital improvements necessary with UGB expansion. The discussion continued as to how TPR is triggered and whether this workgroup can make that decision. Worrix – clarifying discussion – it seems we agree some facility planning link is needed, but a UGB expansion should not always trigger the full TPR. Can we resolve this in the rule text, and also agree that expansion itself doesn't necessarily trigger TPR? Bohard – it may not work to require some level of capital planning at UGB expansion, we need a way to trigger TPR for certain situations. Bolen – would this be okay with a specific exclusion for Metro?

Rindy asked that someone submit suggested language that would address this issue, or possibly the TPR rule itself needs to be reviewed. Winterowd – perhaps local governments don't need to comply with TPR if they obtain an ODOT letter confirming that facilities planned are “reasonably likely.” Worrix – the three options for the group are (1) continue discussion (2) if it's too complex for Phase I, move this issue to Phase II (3) workgroup members volunteer to clarify this further, possibly with a proposal that could be part of the TPR. The group suggested this might better be considered in Phase II rule discussions. Bob Rindy agreed to discuss this further with Bob Cortright and report back to the group.

Regarding proposals for things that are “not exactly safe harbors” but may streamline the process, the first paragraph of the proposed rule outline was accepted as written, but there was some concern about the second paragraph. Bob Rindy will do additional research and revise the second paragraph for workgroup reconsideration.

4. Population – See discussion above.

5. Land Need: The workgroup discussed problems with using the employment forecasts from the OEA. Steve Santos explained that the Dept. of Employment provides the forecasts by region each biennium, as a ten-year forecast. Region size varies, and could include from one to five counties. Cities would need to do some calculations, based on local data, job capture rate and percentage of region population, in order to turn the forecast into something specific to their UGB. Bolen – is “capture rate” too hot to use as a safe harbor – too open to argument? Winterowd – suggested this is perhaps “too hot” only in Marion County in terms of land use planning, but could work for smaller cities, especially if they all use a certain formula. Santos – the Dept. of Employment can be asked to extrapolate their forecast for a certain county, and the EOA can be done without a population trend to calculate land need. Winterowd – use population ratio of city to county to calculate city employment forecast. Bjelland – use ratio of population to jobs as safe harbor. It was agreed that Steven Santos and Greg Winterowd will work together to prepare some simplified language for further workgroup consideration.

There was discussion about the proposed safe harbor on land needed for facilities. Worrrix: should the breakdown be 20% and 5%, or 25% all-inclusive? There was a discussion about separating various needs out of this, especially schools. Gardiner suggested keeping them in the “inclusive” safe harbor of 25%, but not including a separate safe harbor that was in the outline just for schools. Boyd agreed that the intensity of this debate indicates schools are not a Phase I issue. Chandler – suggested that if school or other infrastructure needs are allowed to be based on a district plan, we should require it be based on funded projects only. Lynch – school district plans tend to serve their own interests and not necessarily Goal 14. The workgroup concluded the rule should not propose that school needs may be estimated 1) by continuing current ratio of developed school land to population, or 2) by land estimates in the school district’s 20-year plan if such a plan exists.

The workgroup discussed the proposal that household size could be based on the prior two censuses. Richard Bjelland suggested it just be the last census, which provides a reasonable prediction of future trends. He suggested that the “American Community Data” could replace data in the census long form – he will send language to Bob Rindy. Bolen cited an example of a huge change in household size in Los Angeles during the last few years. Levy – the older the census, the less reliable. The workgroup agreed that household size should be the average of the actual household size determined in only one prior U.S. Census, rather than in the last two, perhaps the “most current published data from U.S. Census Bureau for household size.”

At this point the allotted discussion time was up, and there was no time to discuss additional proposed rules regarding land need. It was agreed that these and other proposals that are not safe harbors should also be considered at the next workgroup meeting. The workgroup suggested the next meeting consider actual rule draft language rather than an outline or description of language.

Agenda Item #3 - The next workgroup meeting: The workgroup agreed to schedule the next meeting for Tuesday, May 2, 2006, from 9:30a.m. to 12:30 p.m. at the Agriculture Building (DLCD) in Salem, Oregon, Basement Hearing Room.

Bob Rindy noted that all agendas and meeting notes of workgroup back to 2004 are on the DLCD web site, for those interested in reviewing the workgroup history.

Agenda Item #4 - Preparation and work tasks for the next meeting:

- Steven Santos and Greg Winterowd will work together to prepare options for rule language regarding Employment Land Need, as per workgroup discussion of this safe harbor (see discussion, above).
- Bob Rindy will prepare draft rule language to reflect the discussion of the Draft Phase 1 Rule Description, including items in the description not discussed.
- Bob Rindy will discuss with Bob Cortright local government compliance with TPR in UGB amendments, and may make further suggestions regarding this topic to the workgroup.

The meeting was adjourned at 3:15 p.m.