

**Department of Land Conservation and Development  
Urban Growth Boundary (UGB) Rulemaking Workgroup  
Draft Summary of May 2, 2006, Workgroup Meeting**

The UGB Rulemaking Workgroup met for the fourteenth time on May 2, 2006, at the Agriculture Building (DLCD) in Salem, Oregon from 9:30a.m. to 12:30p.m. Attendance was as follows:

UGB Workgroup members attending:

Marilyn Worrix, Chair (LCDC); Barton Brierly (City of Newberg); Jon Chandler (OHBA); Harlan Levy (Association of Oregon Realtors); Mary Kyle McCurdy (1000 Friends of Oregon); Terry Moore (ECO Northwest); Don Schellenberg (Oregon Farm Bureau Federation); Damian Syrnyk (City of Bend); Greg Winterowd (Winterbrook Planning); Art Schlack (Association of Oregon Counties).

State Agency Representatives attending: Lisa Nell (Department of Transportation); Richard Bjelland (Dept of Housing and Community Services); Paul Grove (OECCD);  
Not attending: Jim Johnson (Dept of Agriculture).

Guests attending: Kelly Ross (Special Districts Assn. of Oregon); Steve Bryant (League of Oregon Cities); Les Sasaki (Marion County)

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

Workgroup members not attending: Dick Benner (Metro); Glen Bolen (Fregonese Calthorpe Associates); Chris Crean (OAPA); Brent Curtis (Washington County); David Glennie (Commercial Realtors); Jim Huber (City of Grants Pass); Burton Weast (SDAO); Pat Zimmerman (CIAC).

**Agenda Item #1: Opening remarks**

Workgroup Chair Marilyn Worrix convened the meeting at 9:40a.m. There were introductions of two proposed new workgroup members:<sup>1</sup>

Steve Bryant: League of Oregon Cities (proposed by the League and the chair), and Kelly Ross: Special Districts Association (replacing Burton Weast, who has retired.)

Also, there were introductions of new state agency representatives: Lisa Nell, Oregon Department of Transportation (replacing Anna Russo, who has retired), and Paul Grove, Economic and Community Development Department (replacing Kim Grigsby, who has changed jobs and is now with the Water Resources Dept).

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<sup>1</sup> NOTE: LCDC approved these new members at its May 4-5 meeting.

## **Agenda Item #2 – Discussion**

Draft summary of April 13 meeting – Chair Worrix reviewed work accomplished at the prior two meetings, for the benefit of workgroup members who did not attend. The draft summary of the April 13<sup>th</sup> meeting was approved, with no corrections to the draft.

Discussion of schedule for the UGB rule adoption – The workgroup discussed the timeline for approving the “phase 1” UGB rule that has been under discussion by the workgroup. Bob Rindy outlined possible public LCDC hearing dates on the draft UGB rule, indicating there should be at least two hearings, and the first opportunity would be the June 29 LCDC meeting in Pendleton. The second public hearing (and possible adoption) could occur at either the August 10-11 LCDC meeting in Florence, or the October 5-6 meeting in Bend. Bob Rindy noted that he would be on vacation during the August 10-11 meeting. Lisa Nell of ODOT stated that since ODOT wanted to work through revisions to the language related to evaluating transportation when analyzing boundary location alternatives, she thought that the schedule was too aggressive for having the draft language ready for public review by the June 29 hearing date.

The group agreed the first public hearing of the draft should occur at the June 29 LCDC meeting, in Pendleton, and if Bob Rindy could not attend the August meeting, we should schedule the October meeting for adoption. Bob Rindy indicated that in order to provide timely notice for the June 29 meeting, public notice would be issued about June 1. That means the workgroup would have only one more meeting to discuss a draft rule before sending it out for public review.

### Discussion: Draft proposed “Phase 1” UGB rule

The main discussion item for this meeting was a new draft of the proposed UGB rule.

The following documents were distributed to the workgroup:

- Proposed Safe Harbor Rule drafted by DLCD, dated April 25, 2006;
- A Supplemental memo about the Rule emailed to the workgroup April 27, 2006;  
and
- E-mail comments received from Richard Benner regarding the April 25 Draft.

Bob Rindy indicated the April 25 draft rule was emailed to the group. Bob had drafted this based on the April 13<sup>th</sup> workgroup discussion of an outline distributed at that meeting. The draft is also based on the workgroup’s October 2004 draft UGB rule, except that, while the October draft rule was eighteen pages, the new draft is about five pages, in keeping with the group’s decision to limit the phase 1 rule to items that have a lower level of controversy or complexity, and that do not require additional research. Bob also noted that he had received comments on the emailed April 25<sup>th</sup> draft from Dick Benner and Terry Moore. He also noted that the supplemental (April 27) memo included some other rule issues for the group to consider, but we should try and get through the rule draft first, there may not be time to discuss the supplement. The group then proceeded to discuss various aspects of the draft rule, as follows:

660-024-0000: Purpose: there were no objections to the proposed “purpose” of the rule, which clarifies that the rule only applies to the “new” Goal 14.

660-024-0010 Definitions:

Discussion focused on proposed definition (4) “Safe Harbor.” Moore – reiterated his prior objection to the term “safe harbor” i.e., that this word of art seems to refer to “safety from a bad storm.” He believes the term is not generally used or understood state-wide. He suggests that text be clear that safe harbor means alternative methods and/or reasonable short-cuts. In other words, jurisdictions would have choices for the level of analysis required to meet a particular Goal 14 standard.

Rindy – the “safe harbor” term has been used in the Goal 5 rule since 1996. One of the things safe harbors could be used to protect against is the “storm” of litigation. Moore – the term could be interpreted as meaning “safety from our terrible rules.” He suggested we need to clarify that it is a minimum or shortcut, and that jurisdictions are encouraged to do more detailed analyses. McCurdy – the term is a clarification or simplification of requirements, not a means to avoid litigation.

There was consideration of a slightly different safe harbor definition in Richard Benner’s e-mail of 4/27/06. However, the group reached a consensus that it supports the proposed safe harbor definition as drafted.

660-024-0020 Adoption or Amendment of a UGB:

Syrnyk – asked whether prior inventories should be considered in proposed subsection (1)(c) regarding Goal 5 inventories for land added to UGBs. Rindy – they would be part of the consideration. This is not new policy, just a re-statement of current Goal 5 rule requirements. Consensus: No change needed in the language.

Subsection (1)(d) Rindy – this language responds to workgroup discussion April 13<sup>th</sup>, in which it was declared that small cities would have a great difficulty amending their UGB if they need to comply with section 0060 of the TPR at the same time. Rather, many cities prefer to leave the county zoning in place, and if so, they should not have to meet Section 0060 of the TPR until the land is rezoned for urban use. Bob Rindy indicated the proposed language reflecting this point was developed with Bob Cortright.

Bryant – does the language encompass plan amendment as well as zone change? Rindy – yes, but “annexation” alone would not be a trigger. However, possibly adoption of a low density “holding zone” could trigger transportation rule requirements. Lisa Nell – expressed concern that this language does not send a strong enough message to local jurisdictions about the need to consider infrastructure and transportation impacts in the UGB amendment process - suggested revision of the language, or additional language. Schlack – adequacy of infrastructure must be addressed in UGB amendment process to avoid some of the planning problems encountered in the last 30 years. McCurdy – this issue is about timing, the proposal applies only after evaluation and decision to expand has taken place; a detailed addressing of the TPR can’t occur until a zone change takes place and density of development is known, i.e., after the local government has evaluated

alternatives. Cortright – the UGB process requires a comparison of transportation impacts of different boundary locations (location factors). Winterowd – agreed that UGB amendments must consider transportation issues, suggests that we should also include rules under the “locational analysis” part of the draft (i.e., in section --- of the draft) to require a comparative analysis of infrastructure costs for alternate UGB expansion locations. Schlack – more guidance is needed for locational analysis beyond what is proposed in the current text. Chair Worrix – a goal of the workgroup is to simplify planning for small communities, while still requiring a meaningful level of analysis, so perhaps we would achieve that with both these suggestions. Nell – ODOT acknowledges the planning limitations of small cities. Winterowd – suggested an additional safe harbor for towns with population under 2500 indicating that a letter from ODOT indicating no transportation impacts would suffice. Bryant – could a letter from ODOT suffice for cities of all sizes? If so, many small UGB amendments could benefit from this simple safe harbor.

Consensus: Bob Rindy will edit this section to reflect workgroup concerns, to clearly indicate planning requirements under location analysis, and to draft a new safe harbor as described above.

660-024-0030 Population Forecasts:

Bjelland – the draft language omits a provision in the October 2004 draft allowing a city to develop its own forecast. Rindy – this is due to concern that such a provision would conflict with statute under ORS 195.036. We should not encourage counties to avoid this requirement, nor allow local governments to go around this requirement by developing their own forecast. Syrynk – noted the subcommittee had suggested the draft language be expanded, or add a subsection (c), so a city could create its own population forecast consistent with the requirements of draft section (2). The city would have the responsibility to convince the county that their data and methodology is sufficient. Rindy – if we do this, we need to make sure the statute and rule are consistent; will try and conduct further research on that question. Right now the rule proposes an option when the county forecast is out of date, but no option if the forecast is more than ten years out of date, or was never done. Bryant – the two issues raised were 1. coordination of population projections, and 2. the last update of coordinated population projection. Rindy – we have a draft provision for out of date forecasts, but it won’t work if more than ten years out of date. Consensus: Bob Rindy will do more research concerning the number of counties that do not have recent (or any) coordinated forecast, in order to determine the scope of this problem. If there is a problem, and if statutory conflicts can be resolved, previous language allowing cities to develop their own forecasts will be provided.

Discussion of 660-024-0070 UGB Adjustments:

Winterowd – asked how land will be classified when it is removed from a UGB as part of a land exchange. Rindy – referred to language in (2)(c) of draft (rezoning consistent with the goals). He noted that each county handles potential “exception lands” differently. Also noted that the frequency of land exchange proposals should diminish as a result of Measure 37, since down-zoning of land taken out of a UGB could cause a claim.

Winterrowd – we can't anticipate how counties will designate agricultural land throughout the state if it is removed from a UGB. Sasaki – discussed example of St. Paul simultaneous land exchange process with the county. McCurdy – discussed example of Milton-Freewater removal of farm land from UGB. Ross – need to address infrastructure planning and expenditures of service providers for the area to be removed. If this land is no longer planned for urbanization, that could be a hardship for districts who previously expected urbanization of the land. Bryant: The ORS 197.298 evaluation of alternative sites cannot occur until the county has rezoned the land removed. This might be a problem with the current language; probably the draft has to make sure the land is prior or simultaneously rezoned by the county. Consensus: Bob Rindy will review the language and possibly clarify by inserting "prior to" or "simultaneously."

#### Discussion of 660-024-0060 Boundary Location Alternatives Analysis:

Rindy – noted that courts are unclear about the definition of public facilities and services mentioned in location factors, according to a Corinne Sherton UGB legal analysis paper (previously handed out to the workgroup). There was a consensus that the rule should specify such services are limited to sewer, storm drainage, water and transportation. McCurdy – noted that Metro uses a tiered definition for such services.

Brierly – commented that language in proposed section (2) defining land adjacent to the UGB as not limited to lots or parcels that abut the UGB might make things harder for planners. Rindy – case law leads to inclusion of this language; a city could not demonstrate that alternatives analysis only need to look at land directly abutting the UGB. We considered setting a safe harbor distance, but abandoned that. Chandler - There is no quantitative standard for distance from a UGB that needs to be considered because of the variables from locality to locality, suggests we not try to establish a one-size standard.

Gardiner – regarding section (3), the language in this part of the rule should be as specific as possible to clarify what is needed by smaller communities when they prepare an alternatives analysis. Discussion of whether cities should first consider "areas" or "parcels" before deciding on UGB expansion. Brierly – cities should be able to choose more general areas going "to the north" or "to the south." Suggests first sentence change "lots and parcels" to "areas." Chandler – the category (as per 197.298) of land should be differentiated from lots and parcels.

Consensus: Leave (2) as is; modify (3) to insert "areas" in place of "lots and parcels."

#### 660-024-0040 Land Need:

The group discussion of this proposal included Steven Santos from DLCD. He indicated that there is a need to clarify that reliance on an employment department job forecast would also satisfy Goal 14 need factor 1 regarding the population forecast. An increase in population is not necessarily needed to demonstrate that a UGB amendment is needed in order to provide additional employment land. Rindy – agreed, noting that methodologies used in employment forecasts are based on employment forecasts. The proposed language in section (5) would clarify that employment forecasts are sufficient for Goal 14 Factor 1, and a city does not necessarily need to gain residents to gain jobs. Santos -

Population and employment projections do not need to be the same, but must be proportional. The group discussion indicated question as to whether there was really any problem with addressing Factor 1 when there job growth but no population growth. Other issues discussed included: jobs-housing balance; whether Employment Department projections need to be coordinated with OEA projections; ratio of population and employment projections and whether we might consider placing a cap on the ratio as a “filter”; employment assumptions by cities using county data; not forcing small cities to do an EOA if an inexpensive alternative is available. Santos – urged that small cities need a basic safe harbor that allows employment land determination, and that clarifies expansion possibilities when there is no population increase. Consensus: Terry Moore and Greg Winterowd will work together to address language concerns raised and e-mail their suggestions to the workgroup for consideration.

**Agenda Item #3 - The next workgroup meeting:**

The workgroup agreed to schedule the next meeting for Monday, May 22, 2006, from 9:30a.m. to 12:30 p.m. at the Agriculture Building (DLCD) in Salem, in the Basement Hearing Room.

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

- The first public hearing on the UGB draft rule will be held during the LCDC meeting of June 28-30, 2006 in Pendleton. Bob Rindy will file timely notice with the Secretary of State and mail notice June 1 to all intersted parties.
- As directed by workgroup consensus, Bob Rindy will do additional research on county population forecasts and draft revised rule language for the group to consider at the next meeting.
- Terry Moore and Greg Winterowd will work together to address issues regarding employment forecasts in the 0040 Land Need section, and will e-mail suggested change to the workgroup for their consideration.

The meeting was adjourned at 12:22p.m.