

**Department of Land Conservation and Development  
Urban Growth Boundary (UGB) Rulemaking  
Summary of May 31, 2006, Workgroup Meeting**

The UGB Rulemaking Workgroup met for the sixteenth time on May 31, 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); Dick Benner (Metro); Barton Brierly (City of Newberg); Harlan Levy (Association of Oregon Realtors); Mary Kyle McCurdy (1000 Friends of Oregon); Don Schellenberg (Oregon Farm Bureau Federation); and Greg Winterowd (Winterbrook Planning).

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

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

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

Workgroup members not attending: Glen Bolen (Fregonese Calthorpe Associates); Steve Bryant (League of Oregon Cities); Brent Curtis (Washington County); Jon Chandler (OHBA); Chris Crean (OAPA); David Glennie (Commercial Realtors); Jim Huber (City of Grants Pass); Terry Moore (ECO Northwest); Kelly Ross (Special Districts Assn. of Oregon); Art Schlack (Association of Oregon Counties); Damian Syrnyk (City of Bend); and Pat Zimmerman (CIAC).

**Agenda Item #1 – Opening Remarks, Previous Meeting Summary**

The following documents were distributed to the workgroup:

- UGB Workgroup draft meeting notes of May 22, 2006;
- Preliminary Draft 3 of the proposed new UGB rules, dated 5/26/06;
- Copies of e-mail comments and suggestions from workgroup members regarding the previous proposed draft, primarily addressing the proposed population forecast rules
  - Damian Syrnyk (5/30/06)
  - Mary Kyle McCurdy (5/24/06)
  - Terry Moore (5/24/06)
  - Steve Bryant (5/25/06).

Workgroup Chair Marilyn Worrix convened the meeting at 9:40a.m. She announced that this would be the last meeting of the workgroup prior to the June 29<sup>th</sup> rule hearing by the Land Conservation and Development Commission (LCDC) in Pendleton. After LCDC's public hearing, the workgroup will have additional opportunities to meet and further refine the rule

draft. Also, it was noted that as yet there is no schedule for the next phase of work on the UGB rule regarding additional – more complex or controversial – safe harbors.

Chair Worrix announced that David Glennie, representing commercial realtors, notified the department that he will be unable to continue with the workgroup. The workgroup discussed whether to replace a workgroup member representing the viewpoints of commercial realtors, even though it is late in the rulemaking process. It was agreed a new workgroup member should be added to represent commercial realtors; Harlan Levy will e-mail names of interested parties to the workgroup for consideration and Bob Rindy will request LCDC to appoint a replacement at the June 28-30 meeting.

The summary of the May 22, 2006, meeting was approved with no corrections.

### **Agenda Item #2 – Discussion of draft Safe Harbor Rule of May 26, 2006**

The workgroup agreed to work through the proposed rule draft, but not necessarily in the order that appears in the draft. (The summary below is organized according to the numbering of the rule; but in fact, the workgroup's discussion was not linear, and tended to jump around to various areas of the proposed rule.)

#### **660-024-0010 – Definitions**

Bob Rindy explained that he had inserted the goal definition of “urbanizable land” because the term appears in the draft rule, and readers of the rule should be able to get ready access the definition without looking it up in the state goals. The workgroup also discussed the definition of “net-acre” (p. 1, line 18), primarily as it related to the safe harbor under 0050(5) and (6) on page 4 of the draft (see summary under that section, below).

#### **660-024-0020 – Adoption or Amendment of a UGB**

The proposed rule (d) (page 2, line 3) regarding TPR exemption was discussed, specifically, whether referencing “urbanizable land” rather than a more lengthy description paraphrasing that definition, is an improvement to this section.

#### **660-024-0030 - Population Forecasts**

Much of the workgroup meeting concentrated on discussion of the proposed population rules (emails sent by various participants prior to the meeting).

Bob Rindy pointed out changes to the draft made in response to e-mail comments received the previous week. The group discussed whether the rule should allow cities to rely on their own forecast when a county forecast is not adopted or is out of date. Mary Kyle McCurdy read aloud ORS 195.025 and 195.036 requiring counties to adopt a coordinated population forecast, and reiterated the concerns expressed in her prior e-mail that the proposed safe harbor violates the statute, is not “conservative,” and is not good policy for the state if the goal is coordination.

John Boyd stated that he had previously sent e-mail to Bob Rindy expressing concerns about the timeliness and accuracy of OEA population forecasts with regard to the proposal that cities may rely on the OEA forecast. He indicated Douglas County could soon face the issue of updating its

forecast. Chair Worrix indicated there have been previous concerns expressed about forecasts that are older than 10 years and the inability of cities to move forward if counties do not maintain the forecast. McCurdy expressed concern about cumulative effects of individual city forecasts; ultimately these combined forecasts could exceed the county's forecast. Rindy noted that language in (1) clarifies the process for counties and assures notice to all interests. Proposed rules (3) and (4) also clarify that county forecasts are plan amendments.

Benner – 195.036 requires the county to coordinate with all of its cities, even in considering a forecast presented by a one specific city for county adoption. Question, can a city rely on its forecast if the county doesn't comply with 195.036? McCurdy suggested that the preferred time period for a forecast to be out of date (in (3)) should be five years instead of ten. After discussion, there was a show of hands regarding the suggestion: Result, some support for this proposal but not full consensus. Winterowd suggested edits to (3) to indicate that a city and county can jointly adopt, and that a county has a duty to regularly update its forecast. Boyd – updates are major work load issue regarding county staff and cost; Douglas County doesn't have adequate staff or funding to update every five years. Winterowd – it is unusual for counties to have forecasts less than ten years old; Noted that a city cannot unilaterally develop and use a forecast, even a “straight-line” - the county must participate in making that forecast.

McCurdy – suggested deleting the last sentence in (3) because cities should not be allowed to rely on a forecast that the county does not adopt. Ludwig – the language as written gives incentives to counties and should remain as proposed – noted that the county has to adopt the UGB anyway in order for it to be valid. Benner – ORS 195.036 is clear about obligations; is a safe harbor actually needed if cities and counties are already working together? Rindy – We might try and find out whether there are past instances when a county has not agreed to respond within six months to a city's request to update the forecast. Hallyburton gave example of City of McMinnville, where population projection data was argued over for more than ten years before city and county adopted, and the city's UGB expansion was ultimately approved by LCDC.

Chair Worrix clarified several options for the language under (3):

- eliminate the last sentence;
- change 5 years to 10 years;
- insert Winterowd language to indicate that both the city and county must adopt the revised forecast;
- add another sentence for time frame of coordination indicating city and county can coordinate by extending the adopted county forecast; and
- add that county must notify all other cities of its proposed forecast.

Ludwig – expressed concern about Winterowd's suggestion to add requirement for county adoption in all cases.

Winterowd – gave example of what is allowed under existing law; proposed we leave (4) as is but add a new rule (5) indicating that the city may simply use the OEA forecast. Winterowd believes the current practice is different from that proposed in these rules. McCurdy – commented that the language still has potential for litigation. Bjelland – perhaps the current practice could be challenged as violating statutes.

The group did not reach consensus on the proposal.

**660-024-0040 – Land Need**

Rindy – Noted that the proposed safe harbor rule clarifying when the 20 year period starts was unintentionally omitted from the draft and will be added back in. Noted that (4) was not intended to include Metro, so he will edit the language accordingly. Brierly – this section of the rule will need more work in Phase 2; suggested developing a formula so cities don't need to look at trends to convert job growth to land. Santos – that is probably not a good idea since job densities vary by industry and jurisdiction; cities can't simply convert employment forecasts to land forecasts in just one step. Brierly – proposed we could link retail and service jobs for small towns, create a safe harbor for "x" number of employees per acre, i.e., a safe harbor population/employment density ratio for small towns; suggests maximum 5,000 population. After discussion it was agreed we should provide a commercial retail safe harbor for cities under 10,000, but not include "traded sectors" jobs.

Santos – what does Goal 14 requirement "consistent with 20 year population forecast" mean with respect to employment needs? There are a variety of methods to do an EOA that don't rely on a population forecast. The proposal in (4) allows cities to base land need exclusively on job trends irrespective of employment growth, for both commercial and industrial need. Rindy – are there are enough checks and balances on job forecasts? Bohard – this may be a Phase 2 safe harbor issue; is concerned about bringing forward a new concept. Rindy – the last sentence of 0030(1) should change "based on" should be changed to "consistent with" in order to be consistent with Goal 14 language. Santos – precision doesn't exist; the question is whether there can be a range of factors that together can be used to determine these needs. Smaller cities should have more flexibility about whether to do an employment forecast, and cities say they're unable to satisfy economic development needs if the determination is always tied to population forecasts.

Winterowd – need to clarify to cities that an EOA is not required. Bjelland – what Santos proposes is not appropriate as a safe harbor because it is aggressive rather than conservative, will need to be coordinated regionally, and cities can't do it on their own. Santos – suggested that language be inserted in the draft in order to obtain public comment on it during Phase 1. Rindy – there are no checks and balances on job forecasts like there are for population forecasts (e.g., required county coordination). Santos – add sentence in 0040 (4) that "for the purpose of showing need under Factor 1, a city can convert jobs to land need." Bjelland – it is not a safe harbor because a city can do it at any time. Winterowd – no linkage has been established between employment forecast and land need; suggested "cities that choose to do an EOA can use this method as a safe harbor." Rindy and Winterowd – don't see a problem in text of Goal 14. Santos – 1000 Friends of Oregon disagrees. Gardiner – agreed with Santos that there is more than one interpretation of need factors. Winterowd – suggested adding "no proportionality requirement between population and employment." Rindy – will add this as a separate safe harbor.

Discussion regarding the e-mail from Terry Moore regarding (5) and (6): he suggested that to be conservative, delete (6) because adding land for public and semi-public uses is not valid for "smaller" subdivisions. Winterowd – "20% of total needed buildable residential acres" is not a safe harbor for employment land; suggested "needed acres x 1.25."

**660-024-0050 – Land Inventory and Response to Land Deficiency**

Bjelland – (2)(a) and (b) appear to be inconsistent; posed situation where lots are between 1/2 acre and one acre in size. Rindy – clarified that (a) and (b) refer to two different situations. Winterowd – suggested changing word “buildable” to “vacant” in (a). Bjelland – suggested changing “one acre or more” to “1/2 acre or more” in (a). Boyd – asked whether 1/2 acre in (a) is workable for small cities. Chair Worrix – hopes for input from small communities on this issue.

Winterowd – (2)(c) contradicts (a) and (b), is applicable to commercial industrial land and should be moved to (3). Santos – moving (2)(c) to (3) should not be done unless the term “redevelopable” is changed to “developed” (to be consistent with Goal 9 language). Boyd – (2)(a) will create more work for smaller cities if parcel size is reduced to 1/2 acre. Chair Worrix – old 1/2 acre subdivisions will not develop with infill. Winterowd – it is common practice and should be a conservative safe harbor.

**Consensus:** (a) change to 1/2 acre; delete (2)(c); and clarify wording to be consistent with statute (“developed” instead of “redevelopable.”)

**660-024-0060 - Boundary Location Alternatives Analysis**

Winterowd – regarding (6), in order to comply with case law, suggested adding “must show they can serve areas already inside the UGB as well as new areas.” Ludwig – add a *de minimis* exemption that “levels of detail of analysis in (a) and (b) shall be proportional to size and complexity of areas being considered.” Rindy – language suggested by Ludwig may be too vague and subjective; Winterowd and Bryant indicated they would submit revised draft language of the *de minimis* standard.

**Consensus:** If revised draft language for rule is made available, include in it draft rule for public comment.

**660-024-0070 - UGB Adjustments**

Winterowd – suggested that the buildable land definitions in (1) and (3) reflect “net buildable acres.”

**Consensus:** no other change in draft language.

**Agenda Item #3 – Next Meeting:**

The workgroup agreed to schedule the next meeting for Monday, July 17, 2006, from 9:30a.m. to 12:30 p.m. at the Agriculture Building (DLCD) in Salem, in the Basement Hearing Room. The workgroup adjourned at 12:30 p.m.