

Department of Land Conservation and Development
UGB Rulemaking Work Group

Summary of Workgroup Meeting July 29, 2004

The UGB workgroup met for the second time on July 29th at the Agriculture Building in Salem. The meeting started at 1:00 PM and ended at 4:45 PM. The following workgroup members were in attendance: Marilyn Worrix, LCDC (Workgroup Chair); Damian Syrnyk, City of Bend; Jim Huber, City of Grants Pass; Anita Yap, City of Coburg; Brent Curtis, Washington County; Art Schlack, AOC; Chris Crean, OAPA; Bob Stacey, 1000 Friends of Oregon; Jon Chandler, OHBA; Terry Moore, ECO Northwest; Greg Winterowd, Winterbrook Planning; Glen Bolen, Fregonese Calthorpe Associates; Pat Zimmerman, CIAC.

Workgroup members not in attendance: Harlan Levy, Association of Oregon Realtors; Dick Benner, Metro; Dick Sheehy, CH2M; Don Schellenberg, OFBF; Mark Whitlow/Bob LeFeber, Commercial Realtors; Burton Weast, SDAO.

State Agency Representatives Present: Jim Johnson (ODA), Richard Bjelland (OHCS), Phil Johnson (OECDD), Anna Russo (ODOT).

DLCD Staff: Bob Rindy; Gloria Gardiner; Jim Hinman; Pam Pearson; Steven Santos ; Larry Ksionzyk.

Guests: Lane Shetterly (DLCD Director), Jan Lee (Swalley Irrigation District), Jana Jarvis (Association of Realtors), Linda Ludwig (League of Oregon Cities), Tamara DeRidder (TDR Associates), Danielle Cowan.

Opening Remarks, Materials

The July 8, 2004 meeting summary was approved after a correction on page three, line three, to clarify remarks by Pat Zimmerman, who indicated that she had stated, “UGBs are also intended to protect farm land and forest land.”

Staff handed out the following materials:

- July 8, 2004 meeting summary.
- Draft of proposed amendments to Goal 14, with endnotes indicating issues/questions raised in the July 8 discussion of that document.
- Information regarding the LCDC decision on the adopted North Plains UGB, as requested by members of the workgroup at the July 8th meeting (Bob Rindy indicated additional, more detailed, information on this decision is available, it is lengthy and not in electronic form).
- Copies of the October 2000 draft of rule (This draft was officially issued on that date; the department continued to work on it after that in response to comments, but did not distributed later drafts. The committee is working on a draft that is based on these

previous drafts, but with previous draft rules for “urban development patterns” removed, since that topic is not part of the previous project. It was noted that the department should also remove the draft provisions in section relating to Metro subregional analysis because LCDC adopted a subregional rule in 2002.

Schedule of Future Meetings

(Note: the discussion summarized here took place at both the beginning and the end of the meeting; meeting dates discussed at the beginning of the meeting were later changed; the final dates selected are indicated below.)

The workgroup discussed LCDC’s previously announced schedule to hold the first public hearing on the rule and goal amendments at the commission’s September 30/Oct 1, 2004, meeting. This would require that the group complete a draft rule that would be mailed, along with a request for public comment, by mid-September at the latest. Given the progress on the rule so far, the workgroup concluded that we could not have a draft rule ready for public comment by mid-September. As such, the workgroup agreed that we should revise our schedule so that the initial public hearing on the draft rule will occur at LCDC's November 4-5, 2004, meeting. That would mean the draft rule would need to be ready for mailing by October 15th.

As such, LCDC will not hold a public hearing at its September 30-October 1, 2004, meeting in Astoria. Instead, the department will schedule a commission “work session” at that meeting, to discuss the progress of the workgroup and to provide additional direction to the group if appropriate. Commission work sessions are an opportunity for the commission to receive a staff briefing and discuss the progress of the project; they are not intended as an opportunity for public comment. We will continue to aim for a final hearing and adoption of the rule and amended goal at the commission’s December 9-10, 2004, meeting. As such, the department will need to arrange for eight additional hearings – state law requires at least ten hearings around the state whenever a goal is amended. These additional hearings will probably be scheduled in November; staff will report back to the workgroup on this schedule once it is established.

At the conclusion of this discussion, the workgroup confirmed the following schedule for future workgroup meetings, all on Thursdays from 1:00 to 5:00 PM:

August 19th
September 2nd
September 23rd
October 14th

The August 19th and September 2nd meetings will be in room 113 of the Local Government Center (1201 Court Street NE). We have not established a location for the September 23rd and October 14th meetings.

The workgroup then discussed appointing subcommittees in order to give additional attention to some specific issues that need to be addressed by the proposed rules. It was agreed that the subcommittees would discuss issues in more detail and provide a list of suggestions or ideas to be discussed by the full workgroup. Three topics were identified for special attention by subcommittees: (1) coordinated population and employment projections that are used as a basis for UGB amendments, (2) safe harbors regarding a range of issues that have slowed the UGB process, and (3) legal issues, in particular past decisions by LUBA and the courts that need to be considered in drafting a UGB amendment rule. The three subcommittees would hold one or more meetings prior to the September 2nd workgroup meeting. The chairs of the subcommittees will arrange meeting times and locations, but will provide DLCDC staff with this information in advance so that we can post it on the web page and email it to others. The subcommittees and chairs are listed below; however, other workgroup members may volunteer for any subcommittee by simply contacting the chair. Subcommittee membership, so far, is as follows:

1. Population and Employment Projections - Chair: Damian Syrnyk; Members: Richard Bjelland, Jim Huber. DLCDC Staff: Jim Hinman.
2. Legal Issues – Compilation of (and consistency with) previous LUBA and court decisions about the UGB process - Chair: Phil Johnson; Members: Chris Crean, Corinne Sherton. DLCDC staff: Gloria Gardiner.
3. Ideas for Safe Harbors - Chair: Greg Winterowd; Members: Terry Moore, Pat Zimmerman, Anita Yap, Richard Bjelland.

Discussion of Issues

The department referred to the discussion from our last meeting regarding the draft Goal 14 amendments. Staff indicated we would keep track of the discussion and conclusions reached so far, but we would return to the draft Goal amendments when we have concluded our recommendation for a rule draft. This is because the rule must interpret Goal 14, but also must be consistent with Goal 14. Furthermore, the rule should not contain elements that have no connection to Goal 14 (it was later mentioned that the legal issues subcommittee should monitor the consistency issues). To keep track of our discussion on the draft goal, the department handed out a copy of the draft with endnotes indicating the group's comments and concerns expressed at the July 8th meeting.

The discussion then turned to the draft rule; the workgroup began by proceeding line by line through the May 2004 conceptual draft (that draft was based on a draft prepared in October 2000, but with the “urban development patterns” proposed rules removed. The department also distributed the October 2000 draft to the workgroup). The workgroup discussion is summarized below, by rule section.

660-024-0000 Purpose Statement: Staff indicated that this statement generally provides a brief description the rule; it does not usually provide substantive policy. There was discussion regarding the final clause in the proposed purpose statement, regarding “conversion of urbanizable land.” Some members suggested striking the term; however, others suggested it be retained because it is a key part of the goal itself, and has been important with regard to local measures adopted in the past to prevent premature

development of urbanizable land (i.e., development prior to provision of urban services that may preclude efficient urban development once those services become available). By removing the term in the purpose statement, it may appear that the rule refers only to the first part of Goal 14 – Urban Growth Boundaries, but not to additional elements of the goal. Also, refer to previous discussion at the July 8th workgroup meeting, as to whether the term “urbanizable” is still pertinent today. The July 29 workgroup discussion on this implied that the term is still pertinent and should be retained in the goal and rule.

Discussion:

- It was noted that there has been a tendency to put too much emphasis on the boundary itself and not enough on how to plan and manage land inside the UGB, including the transition of vacant or non-serviced land to full urban development.
- It was clarified that the term “urbanizable land” refers only to land that is within the UGB, it does not refer to land outside a UGB. Urbanizable land is discussed further in the rule, primarily with respect to policies that maintain the land for efficient urban development prior to the extension of sewer and water services.
- Land that is added to a UGB needs different attention, in terms of planning than land already within a UGB, i.e., these two categories of land require different treatment in the rules.
- There is a need to clarify what is meant by the “conversion of urbanizable land to urban land”. We are not necessarily intending to establish a new requirement and provisions for conversion of urbanizable land; rather, the draft rules are intended to reflect current and past practice.
- A suggestion was made to use the term “management of land” rather than “conversion of land” with respect to infrastructure requirements. This raised the question as to the extent we intend to go into management of land as a part of draft rules; there was not agreement on changing the term to “management.”
- It was mentioned that the term “urban land” relates to the Curry County Supreme Court decision, and we need to be aware of the impact of any amendment with respect to that term.

660-024-0010 Definitions:

Staff noted that there might be other terms within the draft rule that have not yet been defined; this is a list of definitions suggested in the 1999-2000 group. However, as mentioned above, the department removed several definitions from the October 2000 draft because they referred to urban patterns rules that are no longer included in this draft.

Discussion:

- “Regional government” – The group discussed whether this term implies Metro only (it does). It was stated that there are other “regional” UGB arrangements, i.e., situations where more than one city share the same UGB (Salem/Keizer, and Eugene/Springfield). There are currently no state rules applying to those situations – these jurisdictions previously agreed to “share” a single UGB that includes a land supply for all the jurisdictions. The UGBs for these areas were acknowledged based on a shared analysis of land need and supply (a major consideration if the workgroup

proposes to change the current arrangement, since that may entail a new UGB justification for these jurisdictions). We also noted that a representative from the City of Keizer previously raised this question at the July 8th workgroup meeting. At that time, it was implied that Keizer perhaps no longer supports the current UGB arrangement with Salem, Marion, and Polk Counties, to the extent that this hinders expansion of the UGB in the Keizer area. However, so far the workgroup has not discussed the implications of changing that arrangement through a state rule. NOTE: if we intend to discuss this and provide draft rules, staff suggests we first notify all the jurisdictions affected and obtain their input.

- “Urban lands” – It was pointed out that this proposed definition is different than the definition currently in the statewide goals, especially in that the link to “incorporated cities” is no longer referenced in the definition. There was some support for this removal, but also some concern, because only in this definition are the characteristics of urban land addressed. Brent Curtis urged that we add back the following from the current goal definition: “concentration of persons who generally reside and work in the area” and that urban lands “have supporting public facilities and services.” Also recommended that we insert “transportation” to list of services. It was agreed that the legal issues subcommittee may need to study this with respect to Curry county case and others, and possibly provide additional advice re this definition.
- “Urbanizable land” – As drafted, urbanizable land is said to be lacking all of the listed services. It was suggested that we consider changing the language so that land is urbanizable (rather than “urban”) if it lacks any key urban service.
- “Safe harbor” – definition needs to be stronger in terms of it being one way to proceed, but not necessarily the only “recommended” way to proceed. In other words, as written some would interpret it to encourage the use of safe harbors rather than neutral regarding their use. Bob Rindy indicated that the current wording reflects year 2000 discussion about having the definition be neutral as to whether or not it is a preferred solution. Jon Chandler summarized the two separate policy issues previously discussed: what a safe harbor is or is not and whether or not it’s the “default” policy in the rule. Chris Crean proposed that as we move through the draft we may decide a clearer definition is necessary. The safe harbor subcommittee will discuss whether there is need for a more clear definition for their use. Brent Curtis indicated he favors Metro’s language for a safe harbor used in expanding a UGB and asked if that should be a safe harbor we should consider - he will get this language from Dick Benner. Richard Bjelland commented that the term might mean something different for large and small communities, in that smaller communities may not be able to afford to follow the more complex process so may be forced to use the safe harbors.

660-024-0020 Coordination and Adoption of UGBs

Discussion:

Section (1)

- The definition of “coordinated” contained within this section is based on ORS 197.010(5), where “coordination” is defined such that citizens and all levels of

governments are considered and accommodated as much as possible. Jon Chandler noted that one of the previous versions of this rule had different language (the language in the October 12, 2000 version is the same except that it indicates accommodation “as much as possible”, while the working draft says “as much as practicable”; possibly Jon is referring to a different draft than the Oct 12 draft?). There was discussion about the three-mile perimeter requirement for notification and how that was established and if it was the right distance.

- “Accommodate as much as practical” discussed, it is not clear how to meet this standard. Also raised: what is an “affected” city, county, state and federal agency, i.e., how would local governments determine who might be affected and who should be notified?
- Where did the three-mile limit come from? Does it modify only special districts or all the other entities mentioned?
- Suggested alternative: pull state and federal agencies out of the three-mile limit because it is so difficult to determine which ones.

It was suggested the Safe Harbor subcommittee might answer these questions, i.e., propose a clear statement as to how local governments would determine who is affected and therefore needs to be notified.

Section (2)

- Discussion on consequences if a city and county do not agree to a UGB amendment. Staff indicated that past LCDC practice (which was successful in establishing UGBs for all cities and counties in the initial acknowledgement phase of the program) was to simply require city and county concurrence. It was suggested that an alternative would be to let LCDC decide cases where a city or county did not agree. What criteria would be used, there is no precedent putting LCDC in that role? It was suggested this authority would increase the pressure for the city and county to agree. There was no consensus on this idea. It was suggested that there had been a proposal in the 2000 workgroup to specify a six-month time period for agreement. There seemed to be support for the notion that both city and county must at least make a decision on a proposed amendment (even if it is to deny), within a six-month time frame.
- The question was raised about what happens when a city and county are in periodic review but on different schedules? Jim Hinman indicated there was some commission precedent on this; he will provide the committee with more detail.

Section (3)

- It was noted that during a recent ODOT mapping project it was determined that there are discrepancies between the UGB location on certain city and county zone maps.
- Pointed out that maps are not limited to a specific media, as not all jurisdictions use the same technology.

Section (5)

- Reflects ORS 197.626. Legal subcommittee will check if the paraphrasing is accurate, especially with respect to Metro.

- There was discussion as to why this and the statute include a 50-acre qualifier.
- There was a suggestion that we should clarify that this does not apply to small cities that are part of a regional UGB.

Section (6)

- Most jurisdictions have Urban Growth Management Agreements, i.e., this section reflects agreements already in place, rather than a new requirement.
- Concern that this is worded such that cities and counties would likely need to add this to periodic review. If so, workload issues. It was suggested that periodic review was specified here for enforcement purposes because, at the time the rule was written, it was the only time when the plans and reviewers intersected.
- Discussion about whether the wording implies that UGB amendment could not occur unless there is agreement between city and county.
- State law requires agreements between special districts and local governments. It was determined that we should postpone discussion of this section until a later meeting because Burton Weast, the special districts representative, was not in attendance.

660-024-0030 Population and Employment Forecasts

Discussion:

It was noted that the topic addressed by this section is one of the more controversial and complex with regard to this rule. The current draft language was the result of much discussion in the summer of 2000, and some of the issues had been put to rest at that time. Nevertheless, it likely remains controversial. A subcommittee of the workgroup has been established to study and provide additional input to the workgroup regarding this section.

Section (2)

- There was discussion regarding forecast methods if a local government decides to use a forecast other than the one provided by the Office of Economic Analysis (OEA). Staff indicated that the draft is written such that use of the OEA forecast is a safe harbor: counties could use options (2)(b) or (2)(c) if the safe harbor under (2)(a) in the draft rule is not agreeable.
- It was suggested that the reference to the use of the OEA forecast was not in the October 2000 version (actually, that draft had the same provisions, perhaps there were drafts previous to the Oct 2000 version which did not specify OEA?).
- Staff indicated that one of the concerns leading to the proposal under (2)(c) was that local governments with shrinking populations should not be required to reduce UGBs.

Section (5)

- Previous sections refer to population forecast. Section (5) refers to a “coordinated 20-year population AND employment forecast.” Population forecast and employment forecast are separate here, so we need clarification as to what is required: The subcommittee will clarify.
- Use of 20-year forecast: Terry Moore indicated he has information to share with the subcommittee regarding the implication in using a 20-year forecast. Concern was

expressed about limiting the forecast to 20 years. There was an extended discussion as to whether an expanded UGB would be an incentive for better planning. It was noted that requirements for managing urban development within UGBs may go beyond the charge of this work group. Terry Moore will submit written remarks on this issue. (NOTE: Bob Stacey's response summarized under Section 0040(5) below was partially in response to this discussion).

- Linda Ludwig (audience) commented that flexibility for cities is lacking, has alternate language that she will send to Terry Moore.
- How to add employment forecasts into periodic review needs further discussion by the Subcommittee.
- Brent Curtis comments that by including both population forecasting and employment forecasting, this meets the needs of counties outside the Metro area. However, because Metro has its own forecasting for both areas, the rule needs to better recognize how Metro functions and how it differs from other parts of Oregon. Brent Curtis will discuss this with Dick Benner and Bob Stacey. He will submit draft language.
- It was noted that the language in this draft allows a city to continue to use a population forecast from the past, regardless of recent events.
- Concern that this also requires counties to allocate population among cities but doesn't require the same for employment. It was discussed whether population allocations need to be based on actual population likely to come to the area, but an employment forecast could be more aspirational.
- There needs to be stronger protection to maintain land designated industrial. Greg Winterowd noted there are several examples where land was originally designated as industrial but later changed to commercial or residential.

Section (6)

- This section pertains to situations where a county has not completed allocation prior to UGB amendment proposal. However, options provided will lock in previous forecasts.
- Do allocations by counties for city growth take into account public facilities or transportation infrastructure?
- This provides two choices – is another choice needed? There needs to be a way for a city that has new data to force the county to make a new decision that reflects that. Suggested that the population/employment subcommittee needs to consider other options.

Section (8)

- Appears to give cities and counties room to be aspirational re forecasting.
- Discussion regarding urban reserves as a potential way to plan beyond the 20-year time frame.
- A definition for “economic development” is needed.
- When looking at population projections, how do we consider employment growth in adjacent counties?
- Comment that Goal 9 invites communities to do economic development planning without looking backward.

- Basic employment is more closely tied to population projections than other types of employment (e.g., commercial retail). Therefore, we should discuss whether industrial land could be over-allocated without the same significant impact on the residential base. Discussion as to whether a community should be allowed to be “aspirational” in planning for new industry provided they are not permitted to go beyond forecast for housing.
- The challenge is for the language in sections 1-8 to be crafted in a way that prevents a jurisdiction from “aspiring” to unlimited expansion, but also not to put a jurisdiction in a “box they can’t get out of.”
- Terry Moore commented that urban reserves need to play a larger role in this whole area. He will be submitting written comments.

660-024-0040 UGB Planning Period

The 20-year supply was discussed in detail at the last meeting. Today’s discussion focused on other elements. Noted that a legislative concept is being drafted to provide for a broad review of the land use planning system, so discussion of expanding or contracting this should be part of that rather than this rule. In other words, we are doing a rule to codify current practice, as much as possible. Drastic changes might be considered under the 30-year review, but we cannot accomplish this task if we try and make major changes.

Section (4)

- It was asked if this section is exclusive to housing and employment. The October 2000 version does not reference employment land need. Clarification needed.

Section (5)

- Does not appear to allow communities to slow down expansion. Are cities forced to expand their UGBs if they grow faster than the 20-year forecast? What if a city doesn’t want to expand? Jim Hinman indicates that in such circumstances a county could to allocate population growth to other cities within the county. Phil Johnson noted that when OECDD recruits for businesses, developers wouldn’t invest in a community that doesn’t want to make room for it and the accompanying residential growth.
- In response to remarks that appeals of UGBs are often arguments about unimportant minutia, Bob Stacey indicated that 1000 Friends has been forced into that game due to the lack of other ways to advocate for good local land use planning, livable communities and other issues, i.e., they are forced to spend time trying to prevent bad development instead of encouraging good development. In response, it was asked whether the UGB process could be crafted to provide an incentive for good development inside the boundary. Incentives, minimum densities and an array of strategies are needed. Infill works in well-designed communities. Currently, we only have the UGB and safe harbors as tools. Subcommittee to look at safe harbors as incentives.

- Greg Winterowd: If the time spent justifying the UGB could go toward planning and managing the land, resources would be better spent. Also mentioned safe harbors that address conversion issues.
- Topics to consider: positive incentives, preventing negative consequences, urban reserves, safe harbors.
- Terry Moore: At front end of report, add a statement of those larger issues this work group is unable to address within the timeframe given. Chris Crean: Be explicit as to what the work group is not addressing, what principles we agree on, and that the product of a rule and goal amendments are interim. Continue to identify tasks for the 30-year review committee if the proposed legislative concept is passed.

Section (6)

- Definition needed for “other legislative review.”

Wrap up and agenda for next time:

The next meeting will be on August 19, 2004, 1:00-5:00. The work group will continue its line-by-line review of the rule. Subcommittees will then have time to meet and prepare a report for the September 2 meeting.