

**Department of Land Conservation and Development  
Urban Growth Boundary (UGB) Rulemaking  
Summary of August 1, 2006 Workgroup Meeting**

The UGB Rulemaking Workgroup met for the 18th time on August 1, 2006, at the Agriculture Building in Salem, Oregon, from 9:30 a.m. to 12:30 p.m. Attendance was as follows:

UGB Workgroup members attending:

Marilyn Worrix, Chair (LCDC); Barton Brierly (City of Newberg); Steve Bryant (League of Oregon Cities); Bob LeFeber (Commercial realtors); Kelly Ross (Special Districts Association of Oregon); and Art Schlack (Association of Oregon Counties).

Workgroup members not attending: Dick Benner (Metro); Glen Bolen (Fregonese Calthorpe Associates); Brent Curtis (Washington County); Jon Chandler (Oregon Home Builders Association); Chris Crean (Oregon Chapter, American Planning Association); Jim Huber (City of Grants Pass); Harlan Levy (Association of Oregon Realtors); Terry Moore (ECONorthwest); Don Schellenberg (Oregon Farm Bureau Federation); Damian Syrnyk (City of Bend); Greg Winterowd (Winterbrook Planning); and Pat Zimmerman (LCDC Citizen Involvement Advisory Committee).

State Agency Representatives attending: Jerri Bohard (Transportation); Dick Reynolds (Transportation); Paul Grove (Economic and Community Development); and Richard Bjelland (Housing and Community Services). Not attending: Jim Johnson (Agriculture).

Guests attending: John Boyd (Douglas County); and Les Sasaki (Marion County).

DLCD Staff attending: Bob Rindy, Gloria Gardiner, Bob Cortright, and Jan DeVito.

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

The following documents were distributed to the workgroup:

- Draft notes of July 17, 2006 UGB Workgroup meeting;
- Draft Proposed New Administrative Rules dated August 1, 2006;
- Proposed Alternative Rule Language submitted by Oregon Dept of Transportation (revisions to 660-024-0020 and 0030);
- Oregon Judicial Dept Appellate Court Opinion A122169, City of West Linn v. LCDC.

Workgroup Chair Marilyn Worrix convened the meeting at 9:40 a.m.

Summary notes of the July 17, 2006, meeting were approved (later in the meeting) with no corrections.

Chair Worrix listed major discussion topics for the day's meeting, and called for any additional issues for discussion.

## **Agenda Item #2 – Discussion of August 1 Draft Rules**

Bob Rindy reviewed the Draft Proposed Rule dated August 1, 2006, which incorporated all previously agreed-upon changes.

The rule sections discussed at this meeting are listed in numerical order, rather than by order of discussion.

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

#### **(1)(d) – Goal 12 and Transportation Planning Rule, OAR 660 division 12 (the TPR)**

Rindy – referring to the handout, gave background of language suggested by ODOT in the draft rule to clarify the level of analysis; also noted suggested language in -0060(7) for relative costs to be considered during analysis; the full TPR analysis is not required unless land is being zoned at urban density at the time of the UGB amendment; public facilities are to be evaluated during the locational analysis; either plan or zone changes trigger the TPR. Boyd – suggested use of the term “zone” instead of “plan.” Rindy – responded that ODOT’s suggested text works with either term, and that more assurance is provided in (2)(a).

Bohard – commented that Dick Reynolds of ODOT collaborated with her on ODOT’s proposed revisions; explained that 1) the changes suggested are based on the number of trips, 2) analysis is based on a full parcel, 3) A traffic impact study (TIS) for a state highway must use the ODOT methodology, and 4) a UGB analysis must include collaboration with transportation providers. Reynolds – the main concern by ODOT during UGB expansion studies by local governments are to minimize impacts early and tie to analysis. Rindy – stated that the 0060(7) language suggested by ODOT clarifies timing of the locational analysis; it is clear that the locational analysis requires review of transportation costs, but it doesn’t mandate a decision based on cost; should cities be forced to take the least expensive option? Bohard – ODOT seeks involvement earlier in the process before cities make final decisions about locations. Rindy – 0060(7) already requires coordination with ODOT.

Chair Worrix – the text proposed by ODOT could be interpreted as more ODOT control and opportunity for potential ODOT veto, not just coordination. Reynolds – the main concern by ODOT for local government UGB expansion studies is how to minimize impacts early and tie into analysis; ODOT’s legal counsel is concerned that “coordination” isn’t adequate. Rindy – suggested adding a timely notice requirement to 0060(7). Reynolds – advance notice is essential. Rindy – advised that DLCDC staff member Bob Cortright believes that ODOT’s proposed changes designated as 0020(2) amend the TPR. Bohard – responded that without that text, ODOT will object to this safe harbor.

LeFeber – suggested not delaying development of an entire site; allow the industrial part to come in because there is current capacity; leave the traffic impact analysis (TIA) until a later date for the residential part of a site; developers can’t predict with certainty when development will occur or what traffic impacts will be expected; ODOT’s proposed language negates the safe harbor concept; TPR protection is available when zoning changes occur, but there is less certainty at time of a UGB amendment.

Chair Worrix - stated that she thinks the ODOT proposed language is beyond a safe harbor for cities; it is a new and expensive requirement.

LeFeber – asked what local jurisdictions actually do when considering transportation in their locational analysis. Rindy – responded that 0060(7) provides more detail about doing the analysis than is presently required; it clarifies Goal 14 requirements but doesn't go beyond that. Bohard – capacity issues are continuous and arise early. Bjelland – asked if ODOT is recommending a capacity allocation. Rindy – TPR requires planned capacity. Bjelland – the ultimate use of land (*i.e.*, number of trips generated from the intended use) is not known until later.

LeFeber – gave example of a large mixed use parcel that came into a UGB, where an earlier traffic analysis for the entire site was not possible. Reynolds – the issue is risk avoidance, not mitigation. Rindy – the problem posed by ODOT concerning parcel use can't be solved with the current TPR; TPR amendments would be required. Bohard – ODOT will clarify the comparative analysis language in 0060(7).

Cortright – under the current TPR language, the first jurisdiction “in the door” can use all available capacity; ODOT's proposal is a new approach; per LUBA, deferral of an OAR 660-012-0060 application is allowed until such time as a zone change increases the number of trips; a UGB amendment alone is not a decision to allow more intense use; disagreement over TIA methodology is common, the TPR requires using ODOT's methodology for state highways.

LeFeber – stated that another TPR amendment is probably needed. Rindy and Cortright – paraphrasing TPR language is problematic because it might be interpreted as a new provision or requirement. Rindy – LCDC is more likely to change the TPR directly than do it through the UGB safe harbor rules. Bryant – commented that the “Big Look” process may roll back regulations, so the workgroup should avoid creating rules that appear to add requirements; ODOT's proposed language is not politically sustainable in the current environment.

Chair Worrix – agreed that the purpose of revising the rule is to make things simpler, and ODOT's proposed requirements are not consistent with this purpose. Bohard – responded that deferring the problem in pursuit of simplicity is not good policy. Chair Worrix – pointed out that a deferral is not being created. Bryant – objects to requiring jurisdictions to follow ODOT's suggested methodology; it is acceptable to require notice and collaboration.

**Consensus:** there was agreement to add notice and collaboration provisions, but not include specifics of methodology. Chair Worrix advised ODOT that they could again submit revised language for workgroup consideration.

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

Bryant (LOC) – asked if there is a way to facilitate production of statewide population projections on a statewide basis as a safe harbor; projections that might be developed through a contract with Portland State University (PSU) and financed by DLCD grant funds to local jurisdictions through. Rindy – this was previously discussed and included in the draft rule under

660-024-0030 (2) and (3); it is an option for cities to use the OEA forecast, but it is not a safe harbor; some counties are concerned that the state might mandate that cities use the OEA forecast. Brierly – supports the LOC concept suggested by Bryant; OEA forecasts are for revenue purposes, not land use planning, and should be simple and easy to use throughout the state; cited example of City of Newberg, which hired PSU to prepare its population forecast. Boyd – the suggested text would work best for smaller counties; objected to a safe harbor of projections generated by the state, which would have a negative effect on the statutory role of counties; OEA projections are too conservative. Bjelland – supports the proposed rule concept; counties without updated forecasts could use available annual numbers. Rindy – clarified that with Bryant’s suggestion, counties would have the option to voluntarily use PSU forecasts (as they do at the present time); there is no certainty that PSU would agree to do the forecasting, or whether it could be funded.

**Section (3).** Rindy – asked the group whether a county should be bound by a city forecast if the county doesn’t respond within six months; he would agree with the draft language if county co-adopts the boundary at a later time in compliance with statute. Schlack – the suggested language doesn’t comply with statute or encourage coordination. Chair Worrix – this provision does encourage coordination by the county within six months or less. Rindy – with the current text, a county can still say “no” as it has always been able to do. Schlack – if a county takes no action, a city should not act on its own. Chair Worrix – asked what happens if a county never responds. Schlack – didn’t have an answer to this question. Boyd – the proposed language forces a county to act when it doesn’t have staff or funding to do the work. Rindy – Under this safe harbor, a city can use the same ratio that a county used in its most recent coordinated forecast. Chair Worrix – the proposed rule addresses what is actually happening throughout the state. Brierly – agreed that the current system is not working; counties sometimes do not respond. Schlack – suggested that DLCD grants be used to fund county forecasts. Rindy – a grant funding stipulation can’t be put in a rule. Bjelland – supports the current text of (3). Bryant – supports the text of (3) but suggests clarification that a county will ultimately have to adopt the city forecast.

**Action item:** Rindy will contact DOJ regarding whether a LCDC rule can bind a county to comply with ORS 195.025 and 195.036.

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

**Section (2)(b).** Bryant – for the residential safe harbor, suggested deletion of “valued at greater than the land.” Schlack – did not agree with Bryant’s suggestion. Rindy – advised that a safe harbor doesn’t need to be used in this situation.

Bohard – asked whether a new population threshold makes a difference. Rindy – responded that earlier workgroup viewpoint was that the safe harbor is better for small cities; asked whether the city size be specified; McCurdy of 1,000 Friends of Oregon had commented at a prior meeting that the numbers should be different for larger cities because of greater infill and higher densities. Brierly – stated that larger cities should also be able to use this safe harbor. Bjelland – gave opinion that city size should not be specified. Bryant – suggested using a threshold of 50,000 people or fewer outside of Metro. Rindy – the number used in ORS 197.296 is 25,000. Schlack – supports the use of 25,000. Bohard – the TPR also uses 25,000.

**Consensus:** This provision should apply to cities with a population of 25,000 or fewer that are outside Metro and other Metropolitan Planning Organizations (MPOs).

Discussion continued regarding Bryant's suggestion to remove text from (2)(b). Bryant – building value is not relevant or helpful; it is not worth the effort to determine the value. Schlack – this provision, as drafted, should be applicable only to larger cities. Rindy – asked whether removal of the language adds controversy to this safe harbor. Chair Worrix – commented that 1000 Friends of Oregon will likely object to both proposed changes to this provision in the rule. Bjelland – in response to a question by LeFebre, stated that there is big demand for infill on ½-acre lots in some cities smaller than 25,000.

**Consensus:** Rindy will include two language options in the next draft for consideration by the workgroup at its next meeting.

**Action Item:** Rindy will provide a list of MPO cities for the workgroup at the next meeting.

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

Chair Worrix – commented that upon reading the case of City of West Linn v. LCDC, she did not think that it supports the concerns raised at the prior workgroup meeting by Jeff Bachrach. Brierly – asked how Section (1) makes the process easier for cities; it may contradict the 197.298(3) exceptions. Rindy – plans to add a reference to ORS 197.298(3); 0060(1) is not a safe harbor, but a summary of the process without having to refer users to lengthy case law; the City of West Linn case doesn't support Bachrach's interpretation that a city can select land from lower priority when suitable higher priority land is available. Brierly – “entire identified land need” in the last sentence of 0060(1) needs clarification. Rindy – responded that in the case of a quasi-judicial proposal, the amount of land added to the UGB can be less than the full identified need.

**Consensus:** Per a suggestion by Gardiner, there was consensus for staff to draft language to make a distinction between legislative and quasi-judicial amendments (*e.g.*, legislative must bring in all needed land, but quasi-judicial can be less than all needed land if a developer can justify through the UGB amendment criteria).

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

#### **Section (4).**

Rindy – explained new Section (4), which clarifies when no need analysis is required for a land exchange. Bohard – agreed on the need for clarification, because there could be an impact on ODOT services. Brierly – suggested addition of the word “roughly” to “equivalent.” Gardiner, Bjelland and Schlack – pointed out that “equivalent” allows flexibility; counties will need to agree with what cities want to do.

**Consensus:** leave (4) as previously written.

#### **Section (2)(b).**

Ross – reviewed his latest proposed changes to Section (2)(b) to prevent removal of land already serviced for urbanization. Chair Worrix – asked whether the definition of “service providers” includes schools. Rindy – stated that the definitions differ between statutes and Goal 11. Bryant

– suggested that the term “public facilities” be used instead. Worrix and Ross – agreed with Bryant’s suggestion. Bryant – asked what happens if a local government decides that land is no longer needed, even though services have been provided. Ross – clarified that the intent is for non-public-owned property. Bryant – expressed concern about unintentional consequences and the need for an option of agreement between the city and service provider.

Gardiner – asked whether the group wants to recommend a policy that no land can be removed if there has been significant investment in it. Bryant – responded that land likely to be removed is rural residential lands whose owners don’t want to urbanize and annex; in this situation, supports a rule prohibiting removal. Chair Worrix – commented that the effect of Measure 37 won’t just discourage removals, but it may enhance them; text should be added to address what happens if significant investment has been made; the language as proposed is close to that of a veto. Ross – agreed with Chair Worrix. Rindy – stated that the existing draft doesn’t allow agreement between the city and service provider. Ross – agreed that text should be added to allow for agreement. Rindy – agreed that the proposed language is a *de facto* veto, and described an example of a land swap in Newport. Brierly - described an example of a land swap in Forest Grove. Bryant – asked whether there were examples of when a city and service provider wouldn’t agree to removal. Ross - responded that this could be the case with no-growth city councils. Schlack – allowing cities to remove land from a UGB would be an incentive to ORS 195.122 agreements. Otherwise, specific districts can make investments without city agreement. Bryant – suggested adding a requirement that a city can still proceed with removal if the service provider agrees; this would require an amendment to their ORS 195.122 agreement. Brierly – regarding (2)(b), suggested that silence from a service provider would equal consent. .

**Consensus:** Rindy – will revise that language to clarify that a city can proceed to add land with significant investment if it gets agreement from the service provider.

**Agenda Item #3 – Next Meeting(s):**

Tuesday, August 29, 9:30 a.m.-12:30 p.m., Agriculture Building basement Conference Room D.  
Tuesday, September 19, 9:30 a.m.-12:30 p.m., Agriculture Building basement Hearing Room  
(**Tentative**).

The workgroup adjourned at 12:30 p.m.