

Department of Land Conservation and Development
UGB Rulemaking Work Group

Summary of Workgroup Meeting August 19, 2004

The UGB Work Group met for the third time on August 19, 2004, at the Local Government Center in Salem. The meeting started at 1:15 p.m. and ended at 5:00 p.m. The following work group members were in attendance: Marilyn Worrix, LCDC (Work Group Chair); Glen Bolen, Fregonese Calthorpe Associates; Jon Chandler, OHBA; Harlan Levy, Association of Oregon Realtors; Bob Stacey (for Mary Kyle McCurdy), 1000 Friends of Oregon; Damian Szyrnk, City of Bend; Greg Winterowd, Winterbrook Planning; Anita Yap, City of Coburg; Pat Zimmerman, CIAC

Work Group members not in attendance: Dick Benner, Metro; Chris Crean, OAPA; Brent Curtis, Washington County; Jim Huber, City of Grants Pass; Terry Moore, ECONorthwest; Don Schellenberg, OFBF; Art Schlack, AOC; Dick Sheehy, CH2M; Burton Weast, SDAO; Mark Whitlow/Bob LeFeber, Commercial Realtors

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

DLCD Staff: Jim Hinman, Gloria Gardiner, Pam Pearson

Guests: Barton Brierly (Newberg), Peggy Lynch, Linda Ludwig (LOC), Danielle Cowan, Michael Kohlhoff, Les Sasaki (Marion County)

Opening Remarks, Materials, Agenda

Marilyn Worrix thanked those who arrived on time and asked that members make an effort to arrive promptly so that future meetings can start on time. It was noted that Jim Hinman and Gloria Gardiner are assisting Marilyn in leading today's meeting in Bob Rindy's absence. There were no questions about today's agenda.

The July 29, 2004, meeting summary was approved.

Marilyn Worrix indicated that she is aware that there are other LCDC workgroups and committees addressing similar issues. HB 2011 established several of these committees with respect to economic development issues. It is important that we ask for coordination of these efforts. No other committee is looking at UGB expansion specifically but there is overlap to some degree. It was requested that staff request better coordination of efforts through Lane Shetterly and the Governor's Office.

The chair indicated that today's main task would be to complete the review of the draft rule to identify issues for future discussion at the September 2, 2004, meeting. She cautioned against framing today's discussion in terms of the draft rule and goal, as it may not be the best format to

frame the discussion at the next meeting. Becoming too closely wedded to the draft rule may stifle creative thinking. She also asked that the discussion not be wrapped around the details so that we can get to the big issues in a productive manner. Staff will then be asked to list the questions raised, with the big policy issues listed first and the balance of questions organized into clear categories. The categories can be organized in the same layout as the rule or another method if that appears to be a better approach.

Pat Zimmerman asked how we are going to reorganize the rule itself. Marilyn Worrix explained that task would come later.

The following materials were sent to the committee members in advance or distributed at today's meeting:

- 8/4/04 memo from Terry Moore regarding his list of issues to address.
- 8/18/04, memo from Linda Ludwig regarding population forecasts.
- 8/16/04 memo from Greg Winterowd regarding safe harbor options for consideration.
- 8/12/04 email from Bob Cortright regarding UGB issues.

Subcommittee Status Reports

Population and Employment Forecast Committee: Damian Syrnyk (chair) reported. The group met earlier that day and discussed the forecast concepts currently in the rule and those that should be added to the rule. The subcommittee recommended that a separate subcommittee be formed for employment forecasts, because a single subcommittee is not able to work on both population and employment forecasts in the time given. It was recommended that Terry Moore serve on the Employment Forecast Subcommittee and that the Office of Economic Analysis be asked to appoint a representative. Richard Bjelland volunteered to be part of the Employment Forecast Subcommittee and to contact Terry Moore and OEA. It was suggested that the Employment Department should also be represented.

The full committee accepted the recommendation to form the Employment Forecast Subcommittee. Worrix indicated that she too had struggled in combining the mathematical calculations of population forecasting with the aspirational calculations of employment forecasting. Bob Stacey commented that population forecasting is driven by the past. Communities should not be forced to make decisions that must be accurate for 20 years; rather communities should make projections that can be changed periodically. He said that Terry Moore's memo describes an easy way to make these changes.

As with the other subcommittees, the Employment Forecast Subcommittee will focus on coordination with local governments in the UGB process, not the "nuts and bolts" of employment forecasting.

Syrnyk: The Population Forecast Subcommittee will meet in person or by conference call prior to the next full committee meeting (NOTE: all subcommittee meetings must be set up in advance so that they can be advertised through DLCD website and email lists, and conducted in a manner that allows interested members of the public to attend or hear the proceedings). The subcommittee will submit a written report that may include draft changes to proposed OAR 660-

024-0030 regarding Population and Employment Forecasts. It will be distributed to the full committee in advance of the next meeting.

Safe Harbor Subcommittee: Anita Yap reported that the subcommittee has not met. She referenced a recent memo from Greg Winterowd (subcommittee chair), provided to the workgroup, that includes suggestions for the subcommittee to consider when they do meet.

Legal Issues Subcommittee: Phil Johnson (chair) indicated this group had met once and is in the process of reviewing all UGB case law with respect to salient points for this project. The group will present their work at a later committee meeting, and they will need to review the final text of the draft rule to assure nothing was omitted. They will be meeting again within the next two weeks. Corrine Sheraton provided the subcommittee with a framework and pertinent cases, and asked to be included in the subcommittee process. The full committee asked to receive a copy of the Sheraton memo.

Gloria Gardiner noted that the ongoing task of DLCD and the subcommittee is to consider previous legal precedents in order to 1) keep the workgroup informed of precedents that pertain to its work, and 2) recommend whether specific legal precedents need to be included in the rule.

Workgroup members were offered another opportunity to join the subcommittees:

- Harlan Levy was added to the Legal Issues Subcommittee
- Jim Hinman was added as staff to the Employment Forecast Subcommittee
- Jon Chandler previously indicated, via email, his willingness to join the Population Forecast Subcommittee.
- NOTE: Subsequent to this meeting, Phil Johnson, chair of the Legal Issues Subcommittee, indicated he will be leaving OECDD and will no longer participate in the UGB workgroup. A new OECDD workgroup representative will be appointed, but at this time we don't know whether that representative will wish to participate in this subcommittee. Chris Crean has been asked to serve as chair of this subcommittee.

Review of Draft Rule

The workgroup proceeded to review the 2000 draft rule, starting where we left off at the July 29th meeting.

660-024-0050 Need Projections

- (1)(a) It was recommended that where Divisions 007 and 008 are referenced, that the titles and the prefix "OAR 660" be added. It was asked if the workgroup's charge allows making recommendations for changes to referenced OARs and ORS. Worrix: If we are not able to examine the referenced rules and laws, it may hinder our ability to simplify the process. Winterowd: This might be resolved by proposing safe harbors for certain issues, in lieu of amending a different "referenced" rule. (NOTE: LCDC cannot change any ORS through the rulemaking process, only the legislature may amend statutes. With respect to other OAR's, LCDC has not so far advertised this rulemaking as pertaining to other rules, although a parallel process to consider changes to the Goal 9 rule is underway

so any recommended changes to OAR 660, Division 009, would be pertinent. Also, Greg Winterowd's suggestion re safe harbors would be a valid course depending on whether the proposed safe harbor clearly pertains to the subject matter that DLCDC advertises with respect to this rulemaking. For example, the commission could not change a Goal 10 Housing requirement through a rulemaking advertised as pertaining to UGBs unless the amended requirement clearly concerns housing land supply inside UGBs, or some related UGB issue.)

(1)(b) Worrrix: Is the use of the term "employment need" consistent with Goal 9? Hinman: Schools/institutional employment is not included in this term. In some cities, and especially in rural communities, these are frequently the largest employer. There was discussion about the pros and cons of adding to the list of what "employment need" refers to in this section, the danger being the omission of something. Phil Johnson: Suggested "including...but is not limited to." Stacey: (2)(a) lists public facilities, which can include schools. He agreed with Phil's suggested language. Winterowd: Suggested referring to the language in the definition in the rule for Goal 9 instead of creating another definition here. Hinman: We need to be consistent. This section refers to the rule for housing but not the rule for employment. Zimmerman: Recommended we refer this to the Employment Forecast Subcommittee for further discussion.

(2) Worrrix: Is there too much verbiage here? Levy: Suggested adding "other similar uses" as a catchall phrase for public uses, quasi-public in (2)(b). There was discussion regarding golf courses being considered semi-public. Zimmerman: Including golf courses in (2)(b) opens the door for special projects and interests. She doesn't see a limit on what can be added to this section, except private residences. Phil Johnson: The uses listed in (2)(b) are ones that arguably can be used by the public or not. Zimmerman: Wants this section removed. Worrrix: Jurisdictions need to plan for these uses so if this section is removed, where should they be incorporated into their planning? Syrnyk: Understands there is a need to account for the consumption of residential land by considering these and other public uses when planning for land needs. Zimmerman: Where is retail included as a land need? Nothing in (2)(b) excludes retail from being added here. Stacey: Does not agree that retail can be added. Syrnyk: Local government should be considering these uses in their land needs. Do we need to add an additional category? Stacey: These uses are usually provided for by a conditional use in a residential zone and jurisdictions need to put an estimated need into their projections. Hinman: There have been UGB expansions proposed for golf courses or churches. Winterowd: They usually become a subset of residential. These discussions frequently occur at the local level, and local governments typically specify a certain percentage of land for "semi public uses".

Peggy Lynch asked if "child and adult care facilities" referred to day use facilities only. That will need to be determined. Worrrix: We need to make sure we are not duplicating a land need determined elsewhere.

(5) Worrrix: The net to growth safe harbor in (5) does not include a percentage for open space. Open space varies greatly from one community to another and can overlap in

wetlands or parks. The items listed as open space in (2)(c) are all clearly definable. Winterowd: If you don't have any restrictions on floodplains in a local plan, it becomes buildable land. If these areas are mapped and protection measures for them are in place, it becomes difficult to place public facilities and semi public uses on them. Stacey: A definition of buildable land is on page 10 and captures what Greg Winterowd is saying. Not including open space in the safe harbor under subsection (5) acknowledges the uniqueness of each community's open space.

Bolen: Prefers that we diminish the need for semi public uses as a justification for UGB expansion. If a business is for-profit, it can be treated as any other business. Determining how much land to provide for these uses will be taken care of without a separate category. Chandler disagreed. He gave the example of the Grotto in Portland and how it was included in the public land inventory initially. Land need for semi-public uses may or may not take care of itself, but to pretend it isn't happening is not good. Stacey: These are lands that are part of a larger general growth and are large pieces so separate mapping for them is reasonable.

Worrrix: Jim Hinman pointed out that the language for section (2) is "When projecting land need...". Our question is whether or not we need to spell these categories out individually. Are there any policy issues within the discussion we've had? Zimmerman: It's not being treated as housing or employment, so it's unclear what category it fits in. Winterowd: It's an important issue raised by Pat in conserving land and not expanding the UGB. As (5)(a) is currently written, you could decide that the 25% could all be commercial; a loophole we should close.

- (2)(b) Bolen: Recommends deleting (2)(b). The need to expand is determined as the inventory decreases. If the inventory shows a loss of land, the community will need to plan in their next periodic review to make up for what was used. One downside to this approach is that one golf course in a small community could wipe out their residential inventory and cause a need for a post acknowledgement amendment to their UGB.

Bjelland feels there is a need to plan for uses in (2)(b). Zimmerman: Example of Scappoose wanting NASCAR. They are in periodic review and this language would allow them to increase their UGB from 1,300 acres to 1,900 acres. She prefers an absolute percentage as found in (5)(a) and (5)(b). Winterowd: Forecasts are never completely accurate and is concerned with establishing a rate based on history. Lynch: Is aware of situations where land owned by fraternal organizations has changed to other uses. The inventory concept makes sense to her.

No consensus: this issue needs further discussion.

- (3) Lynch: School districts do not have planners on staff and so are unable to help local jurisdictions with this forecast. She recommends DLCD staff help school districts convey their land needs to local jurisdictions. Winterowd: It is difficult for small communities to project for schools. Small communities tend to base their projections on their populations, using existing ratios to determine how much land is needed for schools.

He suggested tying land need for new public school facilities to population growth as a possible safe harbor. Yap: It happens though that a jurisdiction reserves land for a school, but by the time it's needed the land is too expensive for the school district to afford so it buys another site. Chandler: Or the population growth occurs in a different part of the community than where the land was saved for the school. Have to have land for schools but the challenge lies in knowing where. Bolen: Put the burden on the local planners to coordinate with the school district. It's time to bring schools into the forecasting process. This points to the need for well-planned urban reserves.

J. Johnson: The last sentence in (3) was added because farmland is less expensive. This is to prevent school districts from purchasing farmland and then having it added to the UGB.

Worrrix: Do we have enough rules about where a community can go to expand its UGB? Does a school district come to the local jurisdiction to expand the UGB at that specific location? Stacey: School districts have to prove it's the right place to go. Chandler: This language penalizes school districts that plan ahead. Lynch: School districts aren't buying the land to make the community bigger. Stacy: A school is a land need and needs to be appropriately planned for. Winterowd: This language gives planners some backbone, many schools districts buy land speculatively.

(4) Worrrix: Is it clear what "funding mechanisms" means?

Chandler: The definition of open space doesn't include park facilities. Need to define park facilities to include open space to avoid overlap. It was agreed to change "park facilities" to "public parks" as in (2)(a).

Chandler: Requiring identification of a funding mechanism for new public parks is punitive. Winterowd: Another potential safe harbor. If a community does not use a safe harbor, then a funding mechanism would have to be identified. Stacey: The safe harbor would assume that some park space would be added when a UGB is expanded and if a community goes beyond that specified amount, (4) would apply.

(5)(b) Stacey: Asked about how this affects a large heritage use that will not be duplicated in the future. The language is "consumed over previous 20 years" so heritage sites are not affected.

Gardiner: Concerned about including religious organizations in the safe harbor and possible legal action that may result. Some case law indicates preferential treatment for religious organizations when zoning. In (5)(b), historical need for religious organizations doesn't apply. If they have a need for the future, then that creates a land need.

Winterowd: This will be addressed as we develop the safe harbor.

(5)(a) Keep the percentage at a conservative number (25%) since it is a safe harbor.

Winterowd: Avoid rewarding communities that are wasting land. What does "consumed" mean? Further discussion needed.

- (5) Stacey: Graduating safe harbors by size of communities is important for this rule. Also we need to recognize that jurisdictions in the mid-valley have a tug and pull between each other unlike others parts of the state.

Worrix: Safe Harbor Subcommittee is asked to incorporate the idea of a graduated safe harbor.

- (6) Chandler: This was a gallant effort to explain what “specific need” in the referenced statute means (ORS 197.298). It’s here so we can know if there is a very specific land need. Hinman: Examples include access to rail spur, fiber optic line, etc. The courts have interpreted this statute very narrowly. Winterowd: This may be biggest issue LCDC will face in the near future. As a community targets specific uses, the total of the specific uses may be greater than the total for general need. Stacey: Suggested having a planned number of acres plus an aspirational amount that is greater. Chandler: This ORS language was designed as a locational issue not a need issue. Jurisdictions can expand on the good farmland if it can justify the need, even though it doesn’t say that here.

Further discussion is needed on the interrelation with Goal 9, especially with respect ways to protect lands designated for specific employment needs.

- (7) No changes suggested at this time. The discussion of regional government provisions was deferred until a Metro representative is present at the meeting.

660-024-0060 Land Supply

- (1) The term “available” can be defined in various ways. Jim Johnson can provide some alternate terms as used by Dept. of Agriculture. Possibly we need a safe harbor for rate of infill and redevelopment. We are looking for a balance between what land will become available and what won’t. We may need to rearrange pieces within 660-024-0060.
- (2) Need to know if this language comes directly from statute (ORS 296). If so we cannot revise it.
- (3) Discussion deferred until Metro representative is present.
- (4)(a) Stacey will provide some editorial changes in writing by next meeting.
- (4) Winterowd: Jurisdictions currently prepare two buildable land inventories: what we have and what we need. Further work is needed on the first sentence. There should be a cross reference to the efficiency measures in (2)(a) termed “capacity land analysis.”
- (4)(c) Definition of “suitable and available” is not consistent with earlier discussion. Needs further work.

- (4)(b) Is the provision proposed in lines 14-15 an adequate safe harbor (if so it is a primitive measure of redevelopment)? Will it yield accurate estimates? Safe Harbor Subcommittee will study.
- (5) A different safe harbor is needed for jurisdictions such as Metro. Safe Harbor Subcommittee will study.

660-024-0070 Alternative Lands Analysis

Most of the language is taken directly from statute (through (1)(d)). The legal issues subcommittee will need to make sure paraphrasing is consistent with ORS.

- (1) It was asked whether language from statutes needs to be repeated in the rule. Even if the statute is repeated only for clarification purposes, some jurisdictions have asked to have the ORS language incorporated. However that means when the statute changes, the language in the rule also needs to be changed. It was recommended that the rule not duplicate ORS language unnecessarily.
- (2) The 30-mile requirement was discussed at an earlier meeting. There is an LCDC rule on “subregional.” The Legal Subcommittee needs to make sure this language is consistent with the subregional rule. Phil Johnson indicated the Legal Issues Subcommittee should also review references elsewhere in the rule.
- (3) “Land adjacent to the UGB” is not the same language as found in (2). Legal Subcommittee will review this section.

Safe Harbor Subcommittee will also review this section as a possible safe harbor graduated by size of community.

- (4) Winterowd: Recent case law requires that all Goal 14 factors be applied to the analysis. Legal Subcommittee needs to make sure this paragraph is consistent with current case law.
- (5) “Reasonably be provided” in Line 38 and again in and (7) needs to be clarified and may not be consistent with (7). As written, one can argue that it being less costly to extend water/sewer to farmland as justification to expanding there. (5) is to prevent using farmland unless other factors are determined.
- (6) Is not the appropriate place for a definition. Rearrange to earlier in the section.
- (7) Does (7) add anything? Give some thought to clarifying and including a mathematical approach.

660-024-0080 Consideration of Goals When Amending a UGB

- (1) Language in line 18 is “establish and amend”, but line 19 it is “amended.” Change “amend” to “establish” in the text and title. Insert “land use” after “statewide” in line 20.
- (2)(c) It was asked why cultural resources are excluded from addressing Goal 5 when amending a UGB and if they are addressed in another way. Winterowd: Believes the exclusion is in statute. They include archeological sites. Tribal issues were part of the reason this exclusion was made. The exclusion enhances protection for them. He summarized how Goal 5 impacts UGB expansions. Wetlands are not mentioned in 0080. The ORS for wetlands needs to be cross-referenced.
- (2)(a) This language corrects a contradiction in Goal 14 to address legal standards for exceptions. It folds the alternative analysis into the UGB process. Maybe we can state it clearer. Currently Goal 14 says jurisdictions have to follow the exceptions process but they don’t have to take an exception, i.e., the exceptions criteria apply, but not the exceptions process. It was noted that the proposed amendments to Goal 14 discussed at the first workgroup meeting recommend deleting references to the exceptions criteria in UGB amendments (substantive exceptions requirements applicable to UGBs would be retained in the goal and/or rule, but would not be linked to the exceptions process).
- (2)(c) What is required for cultural resources? This needs better wording.
- (3) Chandler: This needs to be reviewed to make sure it reflects Metro’s process.

660-024-0090 UGB Location Adjustments

Described as a “wordy” section describing process for taking land out a UGB, in order to add or exchange land in a UGB. It was agreed that language addressing exchange issues is needed.

- (1) No changes recommended.
- (2) Need to reword to state all five subsections (a)-(e) are met. One suggestion was to add “and” after each subsection (a) – (d).
- (2)(b) It is not recommended to have “and/or” in rules. Change to “or”. “Livability” was discussed at a previous meeting and it was suggested that the results of that discussion should be inserted here. Bolen: Concerned about removing land for “UGB efficiency.” Phil Johnson: This would be done to correct prior bad planning. It was asked how “increase land use” and “UGB efficiency” are defined. Phil gave the example of the UGB being in the area where it won’t develop and trading it for land in another area.
- (2) Recommended that language for exchanging land be revised to assure an exchange does not decrease the 20-year supply of a type of land. The resource value of the land must be considered in the exchange. One suggestion was an expanded version of (1).

It was questioned whether section (2) addresses removing land, not exchanging. (2)(a) limits the removal to resource or marginal land only. Section (4) addresses exchange of land and is referenced in section (2)(c).

- (4) It was suggested that “regional governments” be added unless the term “local governments” include them.

Stacey: Glenn Klein, Eugene City Attorney, is interested in the exchange process and needs to be contacted for his input. Staff will ask him to review 0090.

660-024-0100 Planning Required at the Time of Urban Growth Boundary Adjustments

- (2) Make sure there is a definition for “mixed use”.
- (3) Levy: Concerned that this section includes elements of the “urban development patterns” issue that LCDC indicated would not be part of this rulemaking. Why is high-value agricultural land distinguished from other urbanizable land? All communities should be planning efficiently on all lands. The rule is using density as a club and not as an incentive. Further study needed.

Phil Johnson disagreed with Harlan Levy and does not want the language removed. He sees that these issues are already addressed when going through the UGB expansion process. Stacey: An efficiency target is needed when going through expansion to prove existing land is being used efficiently. Currently we only have Goal 10, except in Metro where they have additional processes to make some safe harbors for establishing these efficiencies. Add an efficiency target for outside the Portland Metro areas as a safe harbor, generated by sized and location of the community. Lynch: There is a public interest in assuring high value farmland is well used. Worrix: Is it fair to all communities? Some have no alternative than farmland to expand into. Winterowd: A graduated safe harbor standard can help with that.

Levy: All of (3) is a problem area. Predicts we will receive much controversy with this section as written. It is the state telling local jurisdictions how to zone. It gets away from the charge of the committee.

Chandler: What it isn't saying is that the community needs to work to increase density inside before reaching outward. But what is the number the density needs to be? Putting a number here though is not going to help. This provision is punitive for communities surrounded by high-value farm land.

Bolen: This may be covered in other parts of laws and rules. This is making it easier to go after exception land. If preserving farmland is a top priority, we don't want to see it squandered.

Stacey: Suggested adding similar density standards for land within the UGB.

It was recommended that we change this section to create incentives and not be punitive.

660-024-0110 Planning for Conversion of Urbanizable Land to Urban Land

Need to make sure “urbanizable” is defined as land inside a UGB. It was asked if this division is just for land recently brought into the UGB. Lynch: The challenge of this section relates to the challenge of cities and counties working together. It won’t work unless they do. More often than not they don’t. Chandler: Thought this was removed in an earlier draft. Worrix: Be cautious about adding anything that requires additional work to what they do now. Chandler: This makes it more complicated and requires additional work. Lynch: Cities will like this language; counties will not. A third piece is the annexation piece, which wasn’t addressed in 2000 draft.

Worrix: Make it clear at the front of our report what things we did not discuss and why, including that it wasn’t that the issues weren’t important.

Winterowd: Because we have to go to exception lands first, there has to be a process to urbanize them to stop piecemeal development. Stacey: This is related to how we manage urban reserves.

Levy: Supports 0110, but is not sure how you implement the policy.

Worrix: More discussion needed to change or limit this to newly added land.

Wrap Up

Staff will reduce today’s discussion to a series of policy questions, sorted into categories and phrasing them in the form of a question. The September 2 meeting’s discussion will target these policy questions.

Members are invited to send additional comments by email.

Subcommittees are asked to submit their work in writing.

Meeting adjourned at 5:00 p.m.