

**Department of Land Conservation and Development  
Urban Growth Boundary (UGB) Rulemaking  
Summary of August 29, 2006 Workgroup Meeting**

The UGB Rulemaking Workgroup met for the 19th time on August 29, 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); Steve Bryant (League of Oregon Cities); Bob LeFeber (Commercial realtors); and Greg Winterowd (Winterbrook Planning);

Workgroup members not attending: Dick Benner (Metro); Glen Bolen (Fregonese Calthorpe Associates); Barton Brierly (City of Newberg); 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); Kelly Ross (Special Districts Association of Oregon); Don Schellenberg (Oregon Farm Bureau Federation); Art Schlack (Association of Oregon Counties); Damian Syrnyk (City of Bend); and Pat Zimmerman (LCDC Citizen Involvement Advisory Committee).

State Agency Representatives attending: Jerri Bohard (Transportation); Ann Hanus (OECD); 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); Linda Ludwig (League of Oregon Cities); Tamra Mabbott (by telephone - Umatilla County); Les Sasaki (Marion County).

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

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

The following documents were distributed to the workgroup:

- Draft notes of August 1, 2006 UGB Workgroup meeting;
- Draft Proposed New Administrative Rules dated August 29, 2006;
- Proposed Alternative Rule Language submitted 8/29/06 by Oregon Dept of Transportation (revisions to 660-024-0020 and 0060);
- Proposed Alternative Rule Language submitted 8/28/06 by Terry Moore, Bob Parker and Greg Winterowd (revisions to 660-024-020, 0030, 0040, and 0050).

Workgroup Chair Marilyn Worrix convened the meeting at 9:40 a.m. and listed major discussion topics for the day's meeting. Discussion of 660-024-030 Population Forecasts was deferred to the final meeting of the workgroup scheduled for September 19, 2006. There was consensus to work through the entire proposed rule, line by line, but to limit discussion for various rule sections to one-half hour each.

Summary notes of the August 1, 2006, meeting were approved with no corrections.

### **Agenda Item #2 – Discussion of August 29, 2006 version of Draft Rules**

The discussion did not necessarily follow each rule section chronologically. However, in order to simplify this summary, the rule sections discussed at this meeting are summarized in numerical order, below, rather than by order of discussion.

Rindy - reviewed the Draft Proposed Rule dated August 29, 2006, which incorporated all previously agreed-upon changes.

The workgroup discussed the Proposed Alternative Rule Language submitted 8/29/06 by Oregon Dept. of Transportation (revisions to 660-024-0020 and 0060), section 0020, as follows:

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

Bohard –suggested adding the term “legislative” in section (1)(d) to clarify that the proposed rule does not apply to quasi-judicial amendments. Bryant – questioned using “legislative” or “quasi-judicial.” Rindy – agreed that the terms are difficult to define and rely on extensive case law; an option would be to define them, but another option would be to not include a definition and rely on case law. Winterowd – commented that developers know that transportation is the first issue to be addressed for any quasi-judicial or legislative proposal. He suggested that the rule should not include “legislative” or “quasi-judicial. Bryant – stated that there is no difference between a zone change for land already in an urban growth boundary (UGB) and for land being brought into a UGB – transportation impact studies are required under TPR. The proposal is to defer some of TPR when a boundary is amended if no rezoning occurs. **Consensus:** The term “legislative” will not be added.

Winterowd – suggested that (1)(d) language regarding “zoning designation” be changed to “zoning district.” **Consensus:** This change will be made.

There was discussion of the other Proposed Alternative Rule Language submitted 8/28/06 by Terry Moore, Bob Parker and Greg Winterowd (revisions to 660-024-020, 0030, 0040, and 0050). Except as described below, the suggestions were agreed to.

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

**Action needed:** Chair Worrix announced that this topic would not be discussed at this meeting, but asked that all workgroup members be prepared for discussion of this section at their next meeting, especially its general applicability to all counties.

#### **660-024-0040 – Land Need**

Winterowd – suggested that the language in (2)(a) and (3) be changed to allow cities the option to establish a new date for commencement of the 20-year period, and to update population forecasts for 20 years from that date. He suggested that sometimes periodic review is underway for many years, and it is appropriate to adjust the date some time after that periodic review begins. Rindy – responded that the suggested change would not be consistent with ORS 197.296

for cities with populations of more than 25,000, but the group could agree to this change for other cities not subject to that statute.

Winterowd – also pointed out that (3) is already allowed by law, but the proposed language needlessly requires endless debate about when an amendment for one use will “significantly affect” another use. **Consensus:** After discussion, the group agreed to both points; Rindy will re-draft language of (2)(a) to include “except as stated in ORS 197.296,” and will delete the last clause of (3) regarding “significantly affect.”

There was brief discussion of (5)(a) and (5)(b), as to the statement indicating that Goal 14 does not require employment forecasts to necessarily track with population changes. The concern is with the placement of that statement, it appears to be a safe harbor when actually it should stand alone as a declaration of broad policy. **Consensus:** Agreed to change this wording accordingly.

Discussion of (5) continued later in the meeting. Santos – expressed concern about the exemption for Metro from Goal 9 because it is not clear whether it also exempts the cities in Metro; the language might be needlessly broad. Rindy – We should defer this discussion until Dick Benner is present to make sure we have Metro’s input as to Goal 9 requirements for cities in Metro area. **Consensus:** Section (5) will be reviewed again by the workgroup at their next meeting.

Winterowd – suggested that the safe harbor described in (6) be applicable only to transportation, schools and parks, not other facilities. **Consensus:** The suggested change will be made.

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

Winterowd - suggested that of the two options for wording the safe harbor described in (2)(b), the first should be deleted, rather than the second, because it is a lesser standard. Rindy – asked whether “MPO” needed definition (it is already defined in the TPR). Winterowd suggested that the exemption apply only to Metro cities, not cities in other MPOs. Bryant – asked whether as worded, the City of Philomath could use the ½ acre safe harbor. Gardiner – suggested inclusion of cities in MPOs and gave example of a recent City of Jacksonville issue where this safe harbor might be problematic. Other points of discussion included: redevelopment potential on ½ acre lots in smaller jurisdictions; workgroup goal to provide ease and simplicity for local governments; and statewide impact of removing the MPO language. **Consensus:** the first option for wording of (b) should be deleted, and the wording limiting the safe harbor to cities in MPO’s should be removed. However, in anticipation of further discussion at the next meeting, the next draft should clearly indicate that this language is removed, so that workgroup members not present at this meeting will be aware this has been removed.

There was discussion of alternative wording for (3)(b) in response to Terry Moore’s suggestion. Santos – commented that the text tracks word-for-word with an identical provision in the Goal 9 rule. **Consensus:** the language will stay as previously written, since otherwise it might conflict with the Goal 9 rule.

There was discussion of the text in (4). Santos suggested that “not available” be replaced by “not suitable.” **Consensus:** The suggested change will be made.

Winterowd – suggested that the format of the rule be reviewed to be sure that it is consistent in distinguishing safe harbors from policy; an example was cited in 0040 (5)(a) which should be re-numbered because it is a policy issue rather than a safe harbor; the term “must” should be removed from safe harbors since they are voluntary. **Action needed:** Rindy will review and adjust the rule format; he noted that “must” may appear in a safe harbor because the local government must do certain things if they choose to follow a safe harbor.

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

Bohard – suggested that text be added to (8) regarding methodology used for the transportation evaluation. She indicated that there has been debate in the past where local governments proposed to evaluate with methodology other than that recommended by TPR or ODOT. Rindy – asked if this would require following specific ODOT guidelines, or rather the methodology of the entity with jurisdiction over the roads, which could be a county. Winterowd – under the terms of this particular part of the rule, a developer should need to compare only relative costs, i.e., not go down to the engineering level of detail; if the ODOT methodology must be applied for a rezoning when the actual land use is not yet known, this would be unnecessarily expensive and perhaps could not be done at all. He suggests that use of the service provider methodology is needed and appropriate at the next stage of the development process, when the use is known.

Bohard – stated that ODOT has frequent conflicts with local jurisdictions about methodology, but not concerning outcome; up-front communication is the goal of ODOT. Reynolds – the issue seems to be more about methodology rather than the amount of analysis. Ludwig – asked whether the language should be in the TPR rule rather than this section. Rindy – incorporating another agency’s rule creates risks; ODOT “guidelines” should not be made “mandatory” through an LCDC rule when they are not mandatory in ODOT rules. Winterowd – the proposal would create a problem because no service provider has criteria for UGB evaluations. Mabbott – agreed with Rindy; in practicality, cities and counties in eastern Oregon already work well with ODOT and other service providers; adding rigid methodology to the rule will encourage litigation; gave the example of the Milton-Freewater UGB expansion which was accomplished with a simple and practical agreement at such time as the property developed, rather than a zone change. Bohard – in that instance, ODOT required a city code audit before agreeing to the deferral.

Boyd – requiring local governments to “evaluate” other locations implies a separate study; suggested use of the term “consider.” Winterowd – suggested that using Goal 2 language is adequate for coordination, and use of the phrase “consider and accommodate to the extent possible”. The proposed text is new, but the workgroup’s mission is to retain existing policy and add safe harbors; service costs are always evaluated, but this doesn’t mean that the methodology needs to be evaluated. Rindy – the intent is for local governments to actually prepare an evaluation, they must then “consider” that because the word “consider” is already in the goal with respect to location factors.

The group discussed the question of approving less than a 20-year supply when it is a quasi-judicial rather than legislative amendment. Rindy – will consult with Dept. of Justice regarding consistency of (1) with ORS 197.298, because as worded, this might mean a local government

must always add a complete 20-year supply; the past practice has been to allow local jurisdictions to approve less than a twenty year land supply in quasi-judicial cases where a land owner might, for example, propose the addition of a single parcel of land, i.e., less than a 20-year supply. Gardiner – DLCD’s Urban Team recently discussed the issue of whether less than a twenty year land supply can be added in a legislative amendment. Rindy – this should be clarified in 0060 language, currently they cannot. LeFeber – suggested a change in (1) “...analyzing parcels by priority under ORS 197.298 ‘may’ continue until the identified land need is satisfied.” Rindy – responded that this would not be clear, and the rule should be drafted to avoid litigation, so he will check with the DLCD attprmeu a DPK regarding this issue. Winterowd – the language cannot rewrite the statute under ORS 197.296, so this would not apply to larger cities.

**Consensus:** Rindy will edit and combine the language in 0060 (1) and (2) and re-number and re-draft the final section to reflect that the evaluation will “consider” the transportation provider’s methodology. The revised language will be reviewed at the next UGB workgroup meeting of September 19, 2006.

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

Rindy – stated that the text of (2)(b) in the most recent version of the draft rule does not accurately reflect the concern of Kelly Ross and the workgroup consensus from the meeting of August 1, 2006. Specifically, the agreement was to be based on the so-called “122 agreements.” There was general discussion of issues including: standard where there is no 122 agreement; local government determination that provider should not have a veto of the land swap; rare instances of removal of territory from a UGB; need for flexibility if an agreement under ORS 195.020 is outdated or needs modification; and whether a city can remove territory if it makes findings that no significant investment has been made. Bryant – suggested language that a city and provider can agree that previous significant investment is no longer relevant if they have a 122 agreement, which would allow the city to remove territory from a UGB (e.g., a park district no longer plans to use a parcel). Rindy – even if the provider agrees, if a 122 agreement has been entered into and it is clear that a certain area is to be urbanized, it must be changed to reflect such agreement. **Consensus:** revised language will reflect Bryant’s suggestion and clarify that where a “122 agreement” exists, land with a significant investment can only be removed if the provider agrees to change the agreement.

Rindy – proposed clarification to (4)(a), and modification of the term “equivalent” in (4)(b). We are struggling to find language that might reflect “roughly equal” – that term is too vague. Noted that we are addressing this because Lane Shetterly had suggested the rule should clarify that a new need analysis isn’t needed for a roughly equivalent swap (the locational analysis cannot be exempted due to statute). This section might be especially important for communities that might arguably already have more than a 20-year supply of land, but who want to make an equivalent swap. If they must show 20-year supply, they could never do such a swap. Winterowd – suggested that “equivalent” be changed to “less than or equal to buildable land,” as used by Metro. Rindy –proposed that in (4)(b) the term “plan-designation” replace “zoned.” **Consensus:** revised language will reflect Rindy’s suggestion.

### **Agenda Item #3 – Future Meetings**

- The final meeting of the UGB workgroup will be Tuesday, September 19, 2006, 9:30 a.m.- 12:30 p.m., in the Agriculture Building basement Hearing Room.
- The Land Conservation and Development Commission will consider the rule recommendations of the Workgroup during their meeting of October 5, 2006, in Bend, Oregon.

### **Agenda Item #4 – Wrap up**

Chair Worrix thanked the workgroup members for the “remarkable progress” made on this day’s meeting. She noted that the next meeting is the last chance for discussion of the draft rule.

The workgroup adjourned at 12:30 p.m.