

**Department of Land Conservation and Development**  
**UGB Rulemaking Work Group**  
**Summary of Work Group Meeting September 23, 2004**

The UGB Rulemaking Work Group met for the fifth time on September 23, 2004, at the Agriculture Building in Salem. The meeting started at 1:20 p.m. and ended at 5:00 p.m. The following work group members were in attendance: Marilyn Worrrix (LCDC; work group chair), Dick Benner (Metro), Glen Bolen (Fregonese Calthorpe Associates), Jon Chandler (OHBA), Brent Curtis (Washington County), Jim Huber (City of Grants Pass), Harlan Levy (Association of Oregon Realtors), Mary Kyle McCurdy (1000 Friends), Terry Moore (ECONorthwest), Art Schlack (AOC), Damian Syrnok (City of Bend), Don Schellenberg (OFBF), Greg Winterowd (Winterbrook Planning), Pat Zimmerman (CIAC)

Work Group members not in attendance: Dick Sheehy (CH2M), Burton Weast (SDAO), Mark Whitlow/Bob LeFeber (Commercial Realtors), Anita Yap (City of Coburg)

State Agency Representatives Present: Lynn Beaton (OECDD), Anna Russo (ODOT)

State Agency Representatives Not Present: Richard Bjelland (OHCD), Jim Johnson (ODA)

DLCD Staff: Bob Rindy, Gloria Gardiner, Jim Hinman, Lane Shetterly, Pam Pearson

Guests: Larry Ksionzyk (DLCD), Danielle Cowan (City of Wilsonville), Mike Kohlhoff (City of Wilsonville), Corinne Sherton (Johnson & Sherton), Peggy Lynch, Les Sasaki (Marion County)

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**Opening Remarks, Materials, Agenda**

Marilyn Worrrix reviewed today's agenda, indicated we will first review the Population Subcommittee's work and substantive suggestions to that section of the rule. We will then address the draft goal and rule amendments.

The department had previously emailed a new draft of the Goal and rule, and a draft of the population subcommittee's proposed rules.

The September 2, 2004, meeting summary was approved.

Rindy: Between meetings, email will be used to route drafts of the goal and rule to members. The section on safe harbors still needs work, the language in the recent draft of the rule was crafted using the proposal by Greg Winterowd and the Safe Harbors Subcommittee, and the numbers discussed in that proposal. We will need data to justify these numbers or whichever number we end up proposing, and if we use "graduated" safe harbors (i.e., safe harbors that vary according to jurisdiction size), we need to develop those as well. We need good information for these safe harbors so we have a product that is defensible in the public hearing process and in the even the final rule is appealed. He hoped to use grant funding for a personal service contract to collect the data, but DLCD grant funding for the biennium is exhausted. However, there are some DLCD economic development funds available that we could use to fund personal service

contracts, to have a consultant provide background data for the safe harbors. The department is considering “sole source” contracts rather than an open competitive process in order to speed this work up. DLCD contacted Greg Winterowd or Terry Moore about this work, we are aware there may be other ways or contractors to get the data we need. He asked if members had concerns with this approach.

Though there was agreement that Winterowd and Moore are qualified to do the work, concerns were expressed about ethical issues, since these individuals are committee members. Also, the contract is limited to two \$5,000 contracts, and this may not be enough to get a complete product so we may need to consider other options. Having a stable basis on which to make decisions regarding safe harbors increases our chances to reach consensus. Terry Moore and Greg Winterowd indicated they are also uncomfortable re the ethics of doing this work, and recommended the department contact others, including Metro or LCOG.

DLCD agreed to proceed with this, and indicated DLCD files are a rich source of data but the department does not have available staff to pull the data. There are also other sources for data such as local governments. Because the task would be to pull out raw numbers and not perform an analysis, Rindy is not concerned that the person hired to complete the task will influence the results. Zimmerman: How the data is selected will determine the outcome.

Worrix: Asked Moore and Winterowd if it is possible to collect the data within our limited time frame.

Moore: Is skeptical we can get to actual numbers in the given schedule. He recommends a larger study and a six-month process. In four weeks we could come to a general description of models and variables. Concerned about pursuing a fast process that will give a result we can't use.

Winterowd: Similar opinion as Moore. He suggests collecting general data and a range of assumptions, leaving it to staff to determine if those would become a safe harbor. He suggested looking at acknowledgements to see what has been approved by LCDC in the past. We may then find a correlation between a snapshot look at data and the acknowledgement list.

Worrix: This committee began with an ambitious project, which we narrowed by eliminating some of the more controversial issues, but we still have a large list of issues to discuss. If we are at a point to narrow the project further so we can have quality to our work, we need to recognize that right now. However, safe harbors are what people are looking for us to put forth. Where do we want to go?

Moore: We will struggle to come to agreement on specific safe harbors. We should be able to agree with the concept of safe harbors and provide some examples. We would not be able to come to one set of definitions for all cities of all sizes.

Schlack: Asked if we can expand the timeframe and/or cut out some tasks, complete a small list well and recognize that it will take additional time to complete the rest. Committee members need time to vet these things with colleagues before the LCDC presentation.

McCurdy: Moore is suggesting we develop a potential safe harbor model but not a rule. Schlack is suggesting that while we can't do everything, we can pull out some things and that would include a rule.

Moore: Concerned we can't complete a full analysis within our timeframe.

Levy: Is not qualified to judge the numbers and ratios in a safe harbor, but is in favor of pursuing their development. Offered Association of Realtors help to find additional funding for the collection of data. Developing the safe harbors will resolve some of the process problems. Understands why Moore and Winterowd may not be appropriate choices for the task, but suggested going to them for suggestions. Feels there is time to vet with colleagues to see if proposals would work in different environments.

Rindy: In order to meet our timeframes, a draft rule must be distributed by October 15 or 16. Ten public hearings across the state would be held, with the final hearing during the December 9-10 LCDC meeting. Failing that, we have to look at future LCDC meetings in January and February. If we are unable to adopt a rule at that time, we will need to wait until Fall 2005 because, historically, LCDC has not been able to adopt a rule during a legislative session. We would send a draft in mid-October for public review, but throughout the public hearing process the draft rule would likely be altered and improved. The process anticipates this, so the initial draft rule may have blank space and footnotes to indicate we are waiting for data regarding the actual safe harbor "numbers." There would be full disclosure of the draft nature of the rule when it is distributed.

Syrnyk: Recommends we proceed as planned and request a special LCDC meeting in January if that need arises, or consider final adoption at the regularly scheduled meeting in early February.

Winterowd: Agrees. There are many data sources and the numbers in the draft will be based on past experience.

Worrix: One charge of the committee was to pull together practice as it occurs now without a rule in place.

Bolen: A safe harbor should be more stringent than other choices. Suggested developing a template and running some cases through it, asking a jurisdiction to serve as test site. We could then define each safe harbor one at a time.

Rindy: The TPR is a precedent for the Commission to adopt a requirement, in the rule, that they review the rule yearly. We could write into this draft rule such that the Commission be required to review it periodically or after a certain time has elapsed.

Worrix: Summarized what we have agreed on:

- Some safe harbors will not be included in the draft rule but could be added during the hearing process;
- Some will show in the draft rule as a suggested number or a blank space and footnote;

- We are sending this draft out to the public for help in clarifying safe harbors;
- We will mold it for a final recommendation during the hearing process; and
- In the meantime we will explore hiring consultants or Metro to collect data.

Curtis: Understands why this interest exists in safe harbors, but is concerned that larger issues will be lost. We need to be committed to look at larger issues in the goal and assure we include giving local governments the ability to do the planning to meet the intent of the goal.

Worrrix: Reminder that our cover letter for notice will list those issues that we deem important but were unable to address in our timeframe.

Consensus:

- Rindy will do what he can to collect data for safe harbors.
- Zimmerman's concern that a non-committee member completes the data collection is noted.

Schlack: Does not support the idea of a draft rule with blank space/footnotes. Wants greater certainty when it is distributed.

Moore: Would be more useful as a critic than a creator and suggested an intergovernmental agreement, e.g., with Metro, or using local governments to collect the data, would be quicker than using an RFP process.

### **Population Forecast Subcommittee Report**

Damian Syrnyk referred to several documents he distributed by email.

He indicated the proposed changes to this section of the rule address coordination and aspirational forecasts. The subcommittee did not address employment forecasting, but recommends it be forwarded to another committee.

#### Subsection (1)

Allocation of population can occur either top down (Marion County model) or bottom up (Deschutes County Model).

Syrnyk outlined proposed changes to the draft rule section 660-024-0030. Unresolved issues in (1)(b):

- Is there an acceptable deviation from the OEA forecast? Is there some way to recognize deviation in the rule?
- What happens if one city's forecast exceeds the county total or the OEA forecast?

Huber: The subcommittee talked about aspirational planning, but did not consider this section of the rule to be the right place to address it.

Hinman: Regarding when a city's forecast exceeds what the county projects for that city, the standard is that the forecast be based on an "adequate factual base."

Syrnyk: The point we are trying to make is that regardless of what method is used, the forecast must be supported by an adequate factual base. If the county doesn't adopt the city's forecast, the city tries again.

Sherton: (1)(a) and (1)(b) are options for how the city and county coordinate. It is ultimately the county responsibility to make the final decisions. She suggested deleting the last sentence in (1)(b) as it implies a burden not in (1)(a). Don't add something as a requirement that doesn't need to be there. See her 9/21/04 email to Damian Syrnyk regarding the subcommittee's recommendations (handout). Also, (1)(c) should be added to allow a combination of (1)(a) and (1)(b).

Chandler: There needs to be a loop back or cross reference back to employment forecasting.

Rindy: Section (8) addresses aspirational planning to attract economic development.

Schlack: Counties often try to accommodate cities as much as possible. The forecast must be based on a factual base and findings. The county needs to be able to defend its forecast and the city needs to be able to define what they are asking the county to adopt.

Sherton: The draft rule needs to be clear that section (1) is (a), (b) "OR" a combination. A decision could be remanded for that issue.

Bolen: Counties are put in a difficult position by cities wanting to grow but not having a factual base. If a city is going to differ from the county projection, it needs a solid base for its action.

Rindy: Do we have that in (1)(b)? His concern is the use of the term 'finding' which is not the same as having a factual or evidentiary base. Discussion: Findings are summaries of the adequate factual base. The county makes the findings, but the city has to provide sufficient evidence on which the findings are based. The purpose of (b) is to allow a city to do its own work.

#### Section (6):

There was concern about the choice of "five years." Syrnyk is also concerned about how the OEA forecast is applied over a 20-year period. There may or may not be the same growth rate currently as there was when a county allocation was made five years ago. A safe harbor should extrapolate the county rate to the city. Winterowd: Language for this safe harbor would include "the acknowledged annual growth rate extended to 20 years."

Moore: It is important to work with growth rate because if a city grows faster than expected, an assumption can be that growth will slow down as the allowance is used up even when empirical evidence shows it will continue to grow.

Winterowd: Is (6)(b) needed? Rindy: It was something that was proposed two years ago when we first drafted these rules. There are some cities that are in a decline and this was added to help them. It is an extreme case allowance. Worrix: A city can rely on a previous forecast, not the

rate. By using a previous forecast, a city with declining population would not be required to remove land from the UGB.

Section (6) is for cities when they embark on a UGB amendment, so (b) is not needed in this section. It can be moved to another section to say that jurisdictions are not required to reduce their UGBs because of declining population and that population projections can be maintained. It needs to be in another section so that it does not imply a jurisdiction can do a UGB amendment.

Agreed (6)(b) will be moved to section (1) or (2) and “city” will be deleted because the OEA forecast is county, not city.

#### Section (4):

Worrrix asked members with a county perspective if the language is clear.

Curtis: They are already required to coordinate with state agencies. Not all federal agencies are knowledgeable about local planning. Even though it only requires notification to federal agencies, he does not want even that requirement.

Rindy: Coordination is defined by statute. We need to make sure deleting notification to federal agencies does not make us inconsistent with that statute.

Winterowd: Suggested state agencies act as a clearinghouse to determine which federal agencies should be notified.

Worrrix: Include OECD in list of agencies to notice (at the state level, not local economic development agencies).

Rindy: The Legal Subcommittee will be asked to make sure we are consistent with the statute or if we need to use a different definition of coordination for the purposes of this rule.

Worrrix? Are we in consensus that we can eliminate the requirement to notice federal agencies or take this notice provision out entirely? Syrnyk: Agrees with removing the notice to federal agencies. Worrrix: If we delete ‘federal’ do we cause confusion for state agencies that are resource oriented? It seems to be clear that the intent is to provide notice to those agencies that have a defined relationship in the state planning process. It was noted that coastal counties have a relationship with federal agencies different than the rest of the state. Rindy proposed developing a way for local jurisdictions to determine who should receive notice. The key is agencies that are “affected.”

Summary of discussion:

- Discussed deleting “findings” from first section to make it clear the city must have a factual base for its decision.
- Move (6)(b) to section (1) or (2) so cities are not required to decrease their UGBs due to declining population.

- Clarify the notification provision by removing “federal” and adding OECDD or by referencing the statute that defines coordination.
- Delete the last sentence in (1)(b).
- In (2)(b) a forecast can be developed by the county, city or combination.

### **Revised Draft of Goal 14 Amendments**

See September 2004 proposed amendments.

It was noted that we need to consider what to do with regards to employment forecasts.

#### Introduction:

Change wording to: “.... to accommodate urban population and urban employment ~~growth~~....”

#### Part 1: Urban Growth Boundaries

There is a difference between “regional government” (defined) and “regional boundary” (not defined). Line 20 is changed to: “....except for a regional boundary established by a regional government.” Regional government is defined as Metro.

#### Land Need

There was discussion about whether or not livability is a land need and should be included in this section. If it is included, how would a safe harbor for livability be created? Is it a planning or locational issue instead? Worrix noted that this same discussion was held at a previous meeting. Livability needs to be included in the rule, but whether as a land need or as a planning or locational requirement is unclear.

“Efficient” and “livable” can be seen as opposing terms. Efficient is seen as dense, smaller, and negating livable. Another view is to see efficiency as a description of the method to get to livability. It is unclear how to project livability.

“Employment” is shaded in the goal as a new term because the goal does not currently address it. There has not been discussion by the committee. A coordinated population forecast is required, but there is currently no similar requirement for employment. If “employment” is included in the introductory paragraph, it needs to be addressed in the goal.

Moore: Some cities do employment projections but do not connect them with population projections. Benner: Suggested making a safe harbor by taking the population forecast and making it into an employment forecast.

Employment Forecasting: McCurdy: We need to consider Goal 9 and Goal 2 impacts and possible legal challenges. Don’t simply mimic population forecasting. Schellenburg: An employment forecast safe harbor based on population does not always work, such as for population growth in a retirement community. Worrix: Whether or not an employment forecast is aspirational or not, what we decide impacts the rest. Moore: We need to look at employment need from the supply side to justify what kind of employment can be accommodated. McCurdy: The guidebook for Goal 9 allows for aspirational growth and provides a basis.

Rindy: If employment is kept in the land need section, we need to address employment and aspirational forecasting in the rule. Is there enough in Goal 9 rules to explain how to make a forecast of employment needs so we can reference that in the rule?

Winterowd: You have to do an economic opportunity analysis before you can do a UGB amendment.

Ksionzyk: The Industrial Conversion Study Committee has discussed inventory issues and how a competitive market occurs when you have more than one site available.

Sherton: Goal 9 doesn't require an employment forecast and not every UGB expansion is for employment reasons. Some are amended for open space. To require an employment forecast for all UGB amendments is not realistic.

Zimmerman: Using a percentage of population as an employment forecast doesn't work in all situations.

Rindy: There needs to be some connection or reference to Goal 9. Hinman: Make the employment needs consistent with the population forecast.

Rindy: So we can delete "employment" from the introductory paragraph and section on Land Need. If a community is doing an employment opportunity analysis, it ought to be doing an employment projection, so we don't need to say population and employment forecasts must be coordinated.

Curtis: You can't do a population forecast without understanding the employment. We want to allow aspirational employment forecasting but not aspirational population forecasting. A good planning tool is urban reserves. Make a planning tool that is flexible and realistic so that communities will use it.

Rindy: Suggested language for lines 25 and following: "Establishment and change of urban growth boundaries shall be based on a coordinated population forecast and employment opportunity analysis. A coordinated long range forecast of population shall be based on demonstrated need for land to accommodate...."

- Delete first sentence on line 33.
- Keep the language that the UGB change must be based on land need not being accommodated on land already inside the UGB (line 36).
- Set (3) off as a separate paragraph.
- For expansions not related to population growth, the rule addresses a specific exception so the exception does not need to be in the goal.

Chandler: If you take employment out, the population is the driver even though in reality employment is the driver.

McCurdy: Historically in Goal 2 plans had to be coordinated and consistent with each other within a region. Allocating employment by the county would be an added burden. The

coordination needs to occur when multiple cities are making requests for the same growth. Should each city get a shot at the employment growth? The answer needs to be realistic.

Moore: We've talked a lot about aspirational employment forecasting. Now we are coming back to why communities do that. Local jurisdictions are asking for land to accommodate a base forecast plus a little bit more in case the forecast is not quite accurate.

Chandler: Aspirational forecasting needs to be based on historical practice but also done in a way that allows a community to be competitive.

Bob Rindy will send out a redraft of the Land Need section that will delete "and employment" and delete the numbered paragraphing as printed above. Land need will be based on a coordination of a population forecast and economic opportunity analysis. Also, "urban" in line 30 will be deleted.

Moore: The other factors are about a type of use whereas employment is about people. He suggested using "industrial and commercial built space."

Curtis: Asked that we take time to talk about what is meant by "reasonably" and "reasonably efficient." We need a record of what is intended by these terms. Benner: We can review case law that addresses these terms. Rindy: We do need to note that case law. Whether or not we can complete such a discussion will be determined by time constraints. Worrix: We will use wording that keeps us covered now with the understanding that there is case law we need to look at.

#### Boundary Location:

Sherton: We need to include some parts of the deleted language in Page 2, lines 16-20. Though the requirements of this section are not required in a comprehensive plan, the findings do need to be considered.

Curtis: The location of urban lands is not included, only agriculture lands. This is our opportunity to change the overemphasis on agriculture land and balance all factors equally. This would have to be a topic of future discussion. In some cases the need for urban land could surmount the need for preservation of agriculture land. Rindy: ORS 197.298 requires that farm and forestland be given priority. Curtis: However, LCDC has made decisions trumping an ORS in the past.

Winterowd: Suggested that environment issues are addressed in lines 12-13 of Page 2 and that line 14 can be deleted. Rindy: Previously, line 14 on Page 2 was deleted, but later restored. Winterowd: Economic consequences are already addressed elsewhere and energy consequences are dealt with in efficiency. Sherton: We can add livability to the list of factors, but we can't trump statutes. Rindy: Agrees. This is a different issue than requiring communities to consider consequences. Zimmerman: Don't delete line 14 because these consequences are understood by communities.

#### Part 3: Unincorporated Communities:

Zimmerman: What is meant by “commission rules” on Page 3, line 24? Rindy: It is a decision on the part of the commission to give flexibility to craft rules and not have it all in the Goal.

Moore: Reiterated the need for a cover memo that lists the issues we were not able to cover in our work.

**Wrap Up: Agenda for Next Meeting**

Changes to the Goal will be completed first and work group members will be asked to respond to those changes.

Members are asked to review drafts of the goal and rule when they are sent by email, keeping in mind that additional work is still to come.

The next meeting is scheduled for: Thursday, October 14, 1:00-5:00 p.m., Basement Hearing Room, Agriculture Building, 635 Capitol Street NE, Salem.

Meeting adjourned.