

**Department of Land Conservation and Development**  
**UGB Rulemaking Workgroup**  
**Summary of Workgroup Meeting November 23, 2004**

The UGB Rulemaking Workgroup met for the seventh time on November 23, 2004, at the Local Government Center in Salem. The meeting started at 1:15 p.m. and ended at 4:30 p.m. The following workgroup members were in attendance: Marilyn Worrix (LCDC; workgroup chair), Dick Benner (Metro), Glen Bolen (Fregonese Calthorpe Associates), Jon Chandler (OHBA), Chris Crean (OAPA), Jim Huber (City of Grants Pass), Harlan Levy (Association of Oregon Realtors), Mary Kyle McCurdy (1000 Friends), Art Schlack (AOC), Damian Symyk (City of Bend), Don Schellenberg (OFBF), Greg Winterowd (Winterbrook Planning),

Workgroup members not in attendance: Brent Curtis (Washington County), Terry Moore (ECONorthwest), Dick Sheehy (CH2M), Burton Weast (SDAO), Mark Whitlow/Bob LeFeber (Commercial Realtors), Anita Yap (City of Coburg) Pat Zimmerman (CIAC)

State Agency Representatives Present: Anna Russo (ODOT)

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

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

Guests: John Boyd (Douglas County), Mike Kohlhoff (City of Wilsonville), Linda Ludwig (LOC), Peggy Lynch, Les Sasaki (Marion County)

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**Opening Remarks, Materials, Agenda**

Chair Worrix reviewed the agenda and materials. The October 14, 2004 meeting summary was approved. Bob Rindy provided an update on the schedule for goal and rule adoption: The workgroup has another meeting scheduled for 12/16/04. LCDC meets on 12/8/04 and a public hearing will be held that day. Comments are still coming in from the public hearings held by the department around the state on the goal and rule amendments. At the 12/8/04 commission public hearing, the department will seek more direction from LCDC. If we stay on course, the final draft will be completed in early January for adoption in February. Metro is compiling data on safe harbors and will submit the results of their research soon. We agreed to December 6 as the date for a final product, although it looks like it might be a little later than that. We may want to devote the December 16 meeting to reviewing Metro's data. Metro staff will attend that meeting. The basis for their work was sketched out in Greg Winterowd's memo of September 2, 2004. A copy of the contract with Metro will be sent to the workgroup.

**Review of Comments from Public Hearings**

DLCD continues to receive comments from the public hearings. The LCDC staff report for their December 8 meeting will include comments and a response. Staff handed out a summary of comments received so far.

- Worrix: A number of people that testified weren't fully knowledgeable of the details, but were concerned enough to come to the meetings. At the hearings she attended she heard concerns about protecting farmland, feasibility of meeting the timelines, and livability not being well defined.
- Syrnyk: Attended one hearing. One person from 1000 Friends of Oregon testified with concerns about the content.
- Huber: Attended the Roseburg hearing and their comments are well summarized in the handout here. One concern is Measure 37's impact and jurisdictions having to deal with a new rule and Measure 37 simultaneously.
- Rindy: One comment we heard more than once is a general concern that having safe harbors will in some manner make it too easy to expand UGBs, which is why it's important to have the research to back up the safe harbor assumptions. Some will think the numbers in the safe harbors are too easy and others think they will be too hard to achieve.
- Worrix: We need to include the safe harbors in our discussions. We must not conclude our work without having addressed them. They do need to be graduated. Does Metro's work help us meet these graduated safe harbors? Rindy: Yes, we asked them to research for a range of city sizes.
- Worrix: Do the safe harbor numbers make it easier to put more land into a UGB? What is the sense of the workgroup? She's heard some planners say it would.
- Chandler: His main concern has been about including the numbers in the draft at all. The result is that, if anyone argues against the draft numbers, you are perceived as arguing against the status quo. These should have been blanks instead.
- Worrix: Received very little testimony on the numbers. We know we aren't married to the numbers and the public isn't either, based on the lack of testimony. We will look at Metro's data in December to come to a conclusion on these numbers. She spent time with local planners in small groups going through all the proposals for suggestions on the details, beyond the philosophical testimony. This is a tool for cities and we need more input from them so we need to either extend the timeline to allow them to comment or find a way to get that input within our timelines.
- Ludwig: Cities have been unable to comment due to the technical nature of the rule. They have not had time to focus and give meaningful responses. They will continue to be unable to respond as Measure 37 gets implemented over the next few months.
- Worrix: That gives us a reason to extend our timelines, but there are also reasons to proceed including the legislative session starting in January.
- Rindy: We have attempted to meet with the city planning directors association (OCPDA), but have been unable to sync our schedules. We could request they set a special meeting of cities on this topic. They are meeting on December 3, but we expect that time to be devoted to Measure 37.
- Huber: Suggested distributing it to cities for that meeting, so that if time allows on 12/3/04, it is available for their discussion.
- Benner: No one is required to use a safe harbor. If no one uses the ones we set up, we would revisit them.
- Schlack: The 30-year review will look at the entire planning process.
- McCurdy: Citizens didn't testify about safe harbor numbers because they didn't know how real the numbers were. She doesn't have a problem with safe harbors in theory, as long as they are conservative in land consumption.

- Rindy: All the numbers are shaded and footnoted to indicate that they are placeholders and not the actual proposed numbers.
- McCurdy: We can't say if the numbers are good/bad until we see the Metro data.
- Rindy: People would have been more concerned with blanks instead of shaded numbers, not knowing which direction it might be going. Need a primer to show how they would be used.
- Winterowd: The data won't necessarily tell you the right number. These placeholders were based on his past experience. Cautioned against waiting too long to adopt the rule with the potential of Measure 37. If we wait too long to provide a reasonable process for expanding the UGB, more people outside the UGB will file claims and ultimately we won't have land to expand into. The perimeters of the UGBs are crucial to protect.
- Lynch: She has heard similar comments as Linda Ludwig; that implementing Measure 37 prevents being able to make substantive comments.
- Ludwig: With Measure 37 we will see more development along the boundary, but cities won't be quick to expand because of the potential impact that would have with M37.
- Winterowd: Bringing land into a UGB doesn't give cities liability. Disagrees that planners don't have time to review the rule – you find the time for the things you value. Don't assume extending the time for city comment will make a difference.
- Syrnyk: He may be able to collect comments through personal contact to his colleagues in the cities near Bend.
- Crean: A draft rule can always use more comment. Do we lose something if we continue to wait?
- Chandler: It's more than just waiting for more comments. It's Measure 37 and the legislative session. Doesn't want to lose the progress we've made, but also doesn't want to risk making the wrong decision. Is not ready to sign off on the draft and won't be within 30 days.
- Worrrix: Would it help if we made personal contacts with cities and held a city planners meeting to garner comments in addition to Metro's report?
- Chandler: Recommends completing this round of hearings, then put the draft rule on hold until after session. Concerned about how the 30-year review will change the UGB process more so than Measure 37.
- Rindy: The 30-year review is a four-year process followed by a recommendation to the legislature for possible rulemaking. That equals a 5-year delay.
- Crean: Agrees it's a delay, but not five years. If we deliver a product soon, there would be a value to local jurisdictions.
- Benner: Recommends adopting the goal amendment only. Once Measure 37's impact is clearer, we will be better able to work on the safe harbors.
- Worrrix: Asked for comments on Dick's proposal to amend only the goal. If we postpone the rule and adopt the goal, what will happen? How long do we postpone the rule?
- Chandler: Agrees.
- Levy: Make sure existing administrative rules would not be inconsistent with an amended goal.
- Winterowd: What we have now is broken and needs a short term fix. Urban design needs to come later. If we sit too long, we risk having to start from scratch again.
- Schlack: Agrees to working on only the goal. Postpone the rule to after session.
- Boyd: Agrees. Short delay won't hurt and may give a better product.

- McCurdy: Make sure we are not losing something in going forward with only the goal, particularly the Goal 2 exceptions parts.
- Benner: Make sure we haven't relied on the rule to explain something in the goal that we lose without having the rule.
- Winterowd: How many UGB expansions are expected in the near future? Every issue in the rule will be coming to the Commission and will be addressed by case law and possibly litigation.
- Worrix: There is more than one way to make it simpler for cities to get through the UGB process: with a rule on how the commission addresses them. There needs to be a commitment on part of LCDC to make the process simpler but with the same requirements for justification.
- Worrix: Asked if there was consensus to separate the goal from the rule and use the next meeting to look at the goal. Agreed, except Damian Syrnyk and Glen Bolen.
- Peggy Lynch still recommends personal contact with colleagues.
- Worrix: Could we have a product in a year if we postpone until after session? Rindy: If during hiatus we do more research on safe harbors we don't necessarily lose all that time. One reason to postpone is we need more research since we don't know if Metro's research will be enough.
- Huber: Suggested a shorter delay (6 months) to allow time to adjust to Measure 37 and input from planners and avoid losing the urgency.
- Worrix: When would be the soonest we could start again?
- Benner: The effort wouldn't shut down in interim. A subcommittee could be working with the department on the safe harbors. Rindy: We could also have more dialogue with cities and counties. Syrnyk: We could also test with a jurisdiction.
- Ludwig: There are both process and policy issues. Planners don't answer policy issues so we need to include city managers in the dialogue.
- Boyd: Is it possible to have a draft that incorporates the comments from the public hearings before session?
- Worrix: We will have Metro's reports in addition to the public hearing comments. Rindy: At the 12/8/04 LDCD meeting, we will be proposing another draft to incorporate the comments.
- Worrix: If we wait until after session, do we reconvene in August? An interim subcommittee would keep the work moving. We would then have four months to have a draft rule before end of the year.

Decision: Proceed with goal only. The rest of today's meeting and December 16 will be spent reviewing the goal before it goes to LCDC. December 16 will include time for the Metro data discussion.

Decision: Reconvene the full workgroup in August or as soon as is reasonable after session. A subcommittee will work on the rule in the meantime. Our aim is to have a product by December 2005.

- Lynch: Suggested members report to Bob Rindy on their personal contacts and other individual work. Rindy: Will send updates as interim work proceeds.

- Schlack: Concerns that the full workgroup will not accept subcommittee work because they won't have been involved or even able to keep current with progress updates due to workloads during session.
- Rindy: Interim work will be presented in a report to the workgroup and there will be no draft rewrites of the rule during that time.
- Bolen: It is not likely this group will agree on safe harbor numbers. We need to think about how we want to submit any numbers or ranges to LCDC.
- Rindy: It is current practice to submit numbers with options to LCDC.
- Worrrix: What will we have for when we talk to people about safe harbor numbers in the interim? We will have Metro's data, the current draft rule, and comments from the public hearings. Will we have another draft rule incorporating the public hearing comments?
- Chandler: Recommends taking out the safe harbor numbers on the next draft rule.
- Rindy: We will consider that once we see Metro's data. Concern that the public has a problem understanding the concept of a safe harbor when there are blanks.
- Chandler: The numbers cause the conversation to focus on them and not other issues. Would invite the public to give us the numbers.
- Bolen: Prefers having numbers in the draft rule.
- Worrrix: Among her contacts with the public, an arbitrary number means nothing. There needs to be a factual concept behind the numbers, a background report.
- Rindy: We can leave them blank with supplemental information showing how the safe harbors would work with the Metro research numbers.
- Worrrix: Agrees to that method.
- Lynch: Suggested members have a prepared set of questions when meeting with colleagues.
- Bolen: During interim, suggests that DLCD staff work with two or more cities to go through the rule so see what its application would look like. Include small, medium and large cities consider geographic location when selecting the test cities.
- Worrrix: DLCD also needs to meet with cities and counties as Linda Ludwig suggested. However, Rindy said it is difficult to get detailed comments in that forum.

#### **Review Goal 9 Draft (October 20, 2004 version distributed at public hearings)**

- Worrrix: We are trying to determine if it stands on its own and is true to the policy we want to enunciate. This process will continue at the December 16 meeting. Are there particular areas of concern?
- Hinman: The exceptions and locational pieces – are they captured in the goal since they are deleted from the exceptions rule?

#### Boundary Locations:

- McCurdy: Page 2, line 4 – 'evaluating.' Line 7 – 'factors.' Goal 14 has balancing factors, Goal 2 rule are standards.
- Benner: Case law says if the factors in Goal 14 are considered, it satisfies the requirements of the law.
- McCurdy: This is different and more flexible than the priority statute.
- Benner: The statute is still there. There is stronger protection in statute. He needs to look at this in more detail.

- Rindy: The factors are balanced, but the language above the factors are not intended to be balanced, this is a reference to statute.
- Worrrix: Can we clarify by picking up 'evaluating' again?
- Rindy: The efficiency factor is split into two factors here – an amount question and alternative locations. Doesn't think we affect case law by splitting these. Forced to look at alternative sites that don't need an exception by a combination of these two statements. On Page 1 – land need is not intended to be balanced. Line 28 on page 1 and following – For exceptions lands outside boundary, state law comes into play on page 2. Alternatives are taken care of in this version.
- McCurdy: Doesn't necessarily agree the alternatives are taken care of.
- Benner: Discussion on page 2, line 7 – 'based on consideration.' Some goals have normative qualifiers and others don't. It doesn't say here if these are qualifiers for factors. If can't say anything normative, why say anything about them at all?
- Rindy: The public understands consequences. Had removed environmental consequences in an earlier draft, but they were added back in again.
- Chandler: Agrees with Benner. It doesn't say what we are to do with the factors. Not clear what difference is in (3) and 'environmental consequence' in (4).
- Rindy: Local jurisdictions have said the like the language as is and having enabling legislation to consider these when deciding where to put boundary. Conservation of natural resources are included because wetlands must be considered when deciding where to put the boundary. This allows keeping wetlands out based on the fact that they are a natural resource.
- Benner: Suggested including natural resources in (5) and have (4) be urban form.
- Rindy: We need to require that wetlands be considered, but we don't want to tell jurisdictions what decision to make.
- Worrrix: Even if it cuts both ways, it is no reason to remove the conservation element.
- McCurdy: Conservation element can also cut both ways. Not sure how this is different than the ESEE. Some cities bring in natural resources because they feel then can protect them better.
- Rindy: We are trying to be clear on what to look at when expanding a boundary so cities don't have to look at case law or another goal. Cities will have to be able to consider all these factors.
- Benner: Is it worth trying to turn (4) into an urban form factor? He will work on a revision for that.
- Worrrix: Is there a time when landscape features and natural resources play into something other than urban form? Rindy: Yes, in how land is used.
- Huber: Sometimes you want to bring in open space and want to pull in wetland, so make sure cities are not excluded from bring them in.
- Worrrix: All of these items have verbs except for (3). Suggested: 'creating urban form,' 'consideration of,' and 'effects of.'
- Rindy: Line 20+ language was deleted with the expectation of picking it up again in the rule. However, this is also required by statute or case law, so it could remain deleted.
- Rindy: The new rule would be retroactive only if a city chose it to be. Some cities have done significant work based on the previous law and may not want to adopt the new goal to this prior work.

- Benner: Suggested having it apply for those expansions started on or after a specific date and can be applied optionally for those started prior to that date. However, we would need to define 'started.'
- Worrix: Maybe provide a window of time to apply to DLCD for the ability to use language of the old rule?
- Rindy: Statute has language that already provides a choice for one year for new or amended goals. Rules have their own effective dates, we can choose.
- Worrix: We need to list terms used in the goal that were defined in the rule.
- McCurdy: Urban area is one such term. It either needs to be defined in the goal or replaced with UGB.
- Huber: The rule has 14 specific definitions. Suggested copying from there.
- Rindy: The only term in the rule that applies to language in the goal is "urban area" and we can replace that with UGB as McCurdy suggested.
- Boyd: Page 4, line 31 – why is 'rural' included? Rindy: There are some unincorporated communities within a UGB.
- Rindy: Brent Curtis is concerned about page 4, lines 4-8 being deleted and losing the ability to argue for a job/housing balance. Our view is that that provision does not address job/housing balance, but at any rate this issue is adequately addressed in Division 26.

Members are asked to continue this review the drafts between now and next meeting. They are encouraged to attend the LCDC meeting on December 8.

Meeting adjourned at 4:30 PM.