

Department of Land Conservation and Development
UGB Rulemaking Workgroup
Summary of Workgroup Meeting December 16, 2004

The UGB Rulemaking Workgroup met for the eighth time on December 16, 2004, at the Department of Transportation in Salem. The meeting started at 1:15 p.m. and ended at 5:00 P.M. The following workgroup members were in attendance: Marilyn Worrix (LCDC; workgroup chair), Dick Benner (Metro), Glen Bolen (Fregonese Calthorpe Associates), Chris Crean (OAPA), Jim Huber (City of Grants Pass), Harlan Levy (Association of Oregon Realtors), Mary Kyle McCurdy (1000 Friends of Oregon), Don Schellenberg (OFBF).

Workgroup members not in attendance: Brent Curtis (Washington County), Jon Chandler (OHBA), Terry Moore (ECONorthwest), Art Schlack (AOC), Damian Syrnyk (City of Bend), Dick Sheehy (CH2M), Burton Weast (SDAO), Mark Whitlow/Bob LeFeber (Commercial Realtors), Greg Winterowd (Winterbrook Planning), Anita Yap (City of Coburg), Pat Zimmerman (CIAC).

State Agency Representatives Present: Anna Russo (ODOT), Richard Bjelland (OHCD).

State Agency Representatives Not Present: Lynn Beaton (OECDD), Jim Johnson (ODA).

DLCD Staff: Bob Rindy, Gloria Gardiner, Jim Hinman, Lorinda De Haan.

Guests: Linda Ludwig (LOC), Al Burns (City of Portland), Peggy Lynch, Jim Just.

Opening Remarks, Materials, Agenda

Chair Worrix reviewed the agenda and materials. The November 23, 2004 meeting summary was approved (Exhibit A). Bob Rindy noted that at least two workgroup members have indicated to staff that they can no longer attend workgroup meetings: Anita Yap from the City of Coburg, and Mark Whitlow representing commercial realtors. The department will consider asking LCDC on February 3 to appoint workgroup replacements prior to our next phase of work with the new UGB rules.

Bob Rindy provided an update on LCDC's hearing December 8th. He indicated that the commission had agreed with the workgroup recommendation to: (1) continue with the current schedule for the February 3, 2005 adoption of amendments to Goal 14 and the amendments to two related administrative rules – OAR 660 Divisions 004 and 026; and (2) The commission agreed to postpone adoption of the proposed new administrative rules (under OAR 660, Division 024) to allow more time for the workgroup to study and test these, and for more comment from interests, especially with regard to the safe harbor provisions included in those rules. As such, the department also asked Metro to postpone its presentation that had been scheduled for today's workgroup, regarding the research it completed regarding the safe harbors. (see Exhibit B)

The commission instructed the department and the workgroup to consider a list of issues raised in public comment concerning the draft goal, and to consider amendments to the draft to respond

to these issues. The department posted these issues on a notepad at the meeting (see list below) to guide the discussion. LCDC also asked Dick Benner to provide draft amendments to the goal with respect to some specific issues raised in his testimony to the commission. Dick responded with a draft mailed prior to the meeting, and that draft was handed out for discussion by the workgroup. (Exhibit C)

Bob Rindy indicated that LCDC also instructed the department to publicize a second draft of the Goal amendments, and any new drafts of the related rules (OAR 660 Divisions 004 and 026), no later than January 7, 2005, so that the public could respond to these prior to or at the February 3rd LCDC hearing. As such, the workgroup agreed to schedule its next meeting for 1:00 pm on January 6, 2005. At that time, the department will present the workgroup with a proposed new draft of the goal and any changes to the rules so that the workgroup may discuss these prior to DLCD's posting them for a new round of public comment.

Discussion of Issues Raised at LCDC Hearing

The department listed eleven issues that LCDC has asked the workgroup to discuss:

1. Does the word "incorporated" need to precede "cities" on line 8, page 1 of the amended goal, Chair Van Landingham indicated this seems redundant?
2. Are local governments required to consider all three of the proposed "need" factors?
3. Several parties are concerned about removing "livability" from the need factors. Should this be a locational factor instead?
4. Should we try and define the term "livability"?
5. Do we need more definition for the term "reasonably accommodate" on pg 1, line 30?
6. In considering "alternative boundary locations" (Page 2, line 4), is there a limit to the distance from the UGB that is sufficient?
7. Do we need to cite ORS 197.298 in the goal itself?
8. Respond to concerns regarding the word "ensure" on Page 3, Line 1, with respect to public facilities and urbanizable land.
9. Recommend an applicability date for the new goal.
10. Do we need the word "rural" before "communities" in the definition of rural land?
11. Are there any issues raised by going forward with goal amendments now but waiting till later to adopt new UGB rules?

Issue 1:

The workgroup agreed that we should remove the word "incorporated", since all cities are, by definition incorporated, the term is redundant if used with the word "cities."

Issue 2:

The department indicated that currently cities are required to consider both of the "need" factors when amending a UGB. The draft proposed adding an additional need factor (but Dick Benner's draft proposes dropping that as a new need factor). The intent is clearly that a city must consider all the need factors. As part of that consideration, a city may determine that a portion of Factor 2, e.g., housing need, is currently met and requires no additional UGB changes, but the city may continue with a UGB amendment to address other deficiencies, such as for industrial land. The

rule would have made this more clear, but for now the group recommends changing the word “and” to “or” on the list of needs under factor 2, so as to capture this nuance.

The department also indicated that some of the testimony leading to this issue concerned the proposal to eliminate the term “consider” with respect to the need factors. The department has proposed eliminating this term because some people interpret it to simply mean that the need factors are not mandatory, which is not the meaning intended. While the “location” factors are “balanced” after considering each of them (and the term “considered” is retained in the proposed rewrite with respect to location factors), a “balancing” is not the intent for the need factors. The workgroup discussed this issue and agreed that the term was not intended to mean that the need factors are advisory, and thus elimination of the term will prevent this misinterpretation.

The group discussed Dick Benner’s proposal to make the proposed third need factor an outright requirement, i.e., not include it as a numbered “factor”. The workgroup agreed with his proposal. As such, there would be only two need factors in the next draft.

Issues 3 and 4:

Testimony at the December commission hearing, both written and oral, dealt with the proposal to remove the word “livability” from the need factors. Bob Rindy explained to the workgroup that the city of North Plains is concerned with the removal of the word, especially since livability had been important in LCDC’s decision approving the recent North Plains boundary expansion. The workgroup discussed pros and cons with removing the word from the need factors. After discussion, the group agreed to propose that the word “livability” be changed to a locational factor, as in Dick Benner’s suggested version of the goal. The workgroup concluded that we should not try and define the term, since it may mean different things to different people. We may indicate in the next draft that LCDC could, as an “option”, put the term back where it currently resides. However, the workgroup does not recommend that option at this point. We also indicated that we should anticipate further discussion of this decision at our next meeting.

Issue 5:

After a short discussion, the workgroup agreed that they were comfortable with leaving the wording “reasonably be accommodate” as is. This term is taken directly from the exception process and has been used in that context since the beginning of the program, and has been the subject of case law.

Issue 6:

The League of Oregon Cities asked how cities could reasonably determine whether they have adequately examined alternative boundary locations, i.e., how far from the UGB does an examination of alternative boundary locations extend – should we indicate a set measurement? The discussion indicated some discomfort with setting a limit, because different cities and different locations would likely agree that a set distance for one city was not reasonable for another. It was agreed that this issue should be addressed in a rulemaking capacity, possibly as a safe harbor, but not in Goal 14 itself, i.e., this is a level of detail that belongs in the proposed new UGB rules under OAR 660, Division 024.

Issue 7:

After a short discussion, the workgroup felt it was necessary to cite ORS 197.298 in order to be clear that that statute is the primary authority for locational analysis; the goal cannot change that and the public needs to be informed about it. The workgroup agreed to leave the cite in the proposed goal, but to remove some proposed language preceding it that paraphrased the statute. In other words, the goal should refer readers to the statute, but should not paraphrase the intent of that statute.

Issue 8:

Comments and discussion from the December commission meeting indicated major concern with regard to the word “ensure” in the portion of the goal regarding the conversion of urbanizable land to urban land: “Ensure the timely and economic provision of public facilities to urbanizable land . . .” After discussion, the workgroup agreed to the proposal by Dick Benner amending that language to remove the word “ensure.” Staff agreed to make the suggested changes to Goal 14 and submit it back to the workgroup at their January meeting.

Issue 9:

The department indicated that there will be an applicability date proposed for the new goal, possibly one year from date of adoption, but also with the option for local government to use the new goal prior to that.

Issue 10:

Meeting ended without reaching this issue, the issue will be taken up again by the workgroup on January 6, 2005.

Issue 11:

The workgroup did not identify any issues that would arise from adopting the goal without the rule. But agreed that the issue should be taken up again by the workgroup on January 6.

Meeting adjourned at 5:00.

Exhibits:

- A – Goal 14 UGB Workgroup Agenda for December 16, 2004, meeting
- B – Metro research regarding Safe Harbor Recommendations (DRAFT), December 7, 2004
- C – Goal 14 proposed rewrite, Richard Benner response to LCDC’s December 8th request.