The Population Forecasting Rules Advisory Committee met on June 2, 2014, in Salem LCDC, Basement Hearing Room, 635 Capitol St, Salem, OR, 1pm – 4pm (but also using Zoom to provide for remote attendance; Zoom attendees or on the phone are indicated below by *

**Attendees:** Marilyn Worrix (Chair), Jim Rue (DLCD Director), Erin Doyle (LOC), Mark Nystrom (AOC), Dennis Yee (Metro), Peggy Lynch (LWV), Damian Syrnyk (City of Bend), * Jason Jurjevich (PSU), Risa Proehl (PSU), Brandon Reich (Marion County), Mia Nelson (1000 Friends of Oregon), * Staff: Bob Rindy, Carrie MacLaren, Gordon Howard, Casaria Taylor.

**Handouts:** Agenda, Draft Operating Principles, Roster of Committee Members, HB 2253 (including DLCD summary of key provisions), Current Population Rules at OAR 660, div 24, draft PSU population forecasting rules.

**Item 1: Introduction.** Marilyn Worrix welcomed the group; members and guests introduced themselves. It was noted that, except for Chair Worrix and Peggy Lynch, this group is the same as PSU’s population rules advisory committee, which has been meeting for several months in order to assist the Population Forecasting Center in drafting its new rules in response to HB 2253. Chair Worrix mentioned that our job is to encourage input from people that may be affected.

**Item 2: Review Agenda.** Chair Worrix reviewed the handouts and gave a brief overview of why the group has come together. Bob Rindy noted that there was a new handout emailed to the group today. The handout is a first stab at the draft rules that would be the main subject of the work by this group. Bob indicated this was very preliminary and he has no doubt there are important pieces missing at this point since there had been no discussion so far.

**Item 3: General Rulemaking Process issues.** Chair Worrix introduced a draft of a set of RAC Operating Principles, emailed to the group previously. There were no comments or concerns expressed regarding the draft.

Schedule: Marilyn indicated that it is our hope to finish this work in about three meetings, and to hopefully provide draft rules to LCDC in the fall. Bob indicated that LCDC has generally scheduled these rules for adoption in the fall, but that is not mandatory and if it takes longer that’s ok since the initial set of city forecasts won’t be issued until next spring and our hope is to have these rules in place by then. Bob said it is not inconceivable that we could reach consensus after only two meetings but we should have a better idea at the end today.

**Item 4: Update on PSU Rulemaking.** Jason Jurjevich updated the group on the PSU proposed rules for forecasting. Jason referred to an email he had sent last week to this group, including a final draft of the rules. He indicated that, currently, all the required rulemaking documents and notices have been filed with the Secretary of State for the PSU rulemaking. He indicated that PSU does not plan to have a public
hearing unless one is specifically requested, which is a little bit of a different process than typically LCDC uses. Materials are available on the PSU website http://www.pdx.edu/prc/opfp-forecastprocess.

There was discussion about how the public would get notice from PSU that there is the opportunity for a hearing, and how individuals might request in advance to receive such notice. Jason suggested that PSU will add a link with information about the ability to request a public hearing to their rulemaking website. Damian asked who would conduct the hearing if requested. Jason indicated he did not currently know. Carrie noted that state law requires simply that PSU appoint a hearings officer. Marilyn indicated the department should make sure that the DLCD web site has a link to the PSU website regarding their rules. Damian suggested that Mark and Erin let their membership know about the rules, and he would let OAPA know. He suggested that due to the long discussion about the rules that most cities and counties already know about the rules and have had some input thru their representatives on the committee.

**Item 5: Overview of HB 2253 requirements for LCDC rules.** Bob Rindy described the requirements of HB 2253, which charges LCDC (in consultation with the State Board of Higher Education) to adopt rules to implement the population forecasting program required by the bill. The bill requires forecasts be issued by PSU ‘for the purpose of land use planning’. We should think about whether that needs more detail. Bob indicated that we should also think about whether it matters that, going forward, we must necessarily have forecasts adopted in each land use plan.

He noted that one of the main assignments for DLCD rules is to regulate the transition from the previous forecasting program to the new program. HB 2253 amended ORS 195.036 and the repealed ORS 195.034 regarding population forecasts. As such, LCDC’s current population rules at OAR 660-023-0030 must be adjusted accordingly since those rules are based on and refer to those repealed statutes. However, the “old rules” still apply to Metro, since the bill leaves Metro’s process unchanged. Bob noted that many portions of the existing rules must be repealed since they are no longer valid under new forecasting laws enacted by HB 2253. Bob noted that because the bill takes effect immediately the department believes that local governments can no longer adopt a new forecast in the manner that was allowed or required by the former (now repealed) provisions authorizing this. Finally, again noted that the new statute indicates that the PSU forecast must be used “for land use planning” – the group should think about whether that broad clause needs definition in the new rules.

Bob walked through the highlights of the various elements of HB 2253 that direct the rulemaking and that the committee should consider as the basis for this rulemaking. He provided a handout with a simplified version of the law for this discussion.

**Item 6: Outline of Proposed Rules.** Bob Rindy handed out of a “very preliminary first cut” at draft amended population rules, for discussion purposes. He indicated that this draft is based on the current DLCD population rules, which implement many statutes that are repealed by HB 2253 and therefore must be scrapped or revised considerably.

First, since the current rules are codified in division 24, which are intended as Goal 14 rules for UGBs, Bob suggests that, as a sort of housekeeping, we broaden the applicability of those rules so that it is clear that rules on population apply in other land use planning contexts rather than only in UGB planning. The department believes a broader applicability is implied in the current rules, but should be stated more overtly. For example, if a city is doing public facility planning, he does not believe the intent
is that the current population rules don’t apply in determining the long term population basis for such a plan, even though the intro to div. 24 states that these rules concern Goal 14.

Jason asked about public facility planning, and whether we are suggesting the new rules would be clearly intended to make sure public facilities planning is guided by PSU’s forecasts. Bob indicated that is probably already the case, since public facility planning is nested within UGB planning requirements. Jason asked whether that may mean for example that Tillamook may approach PSU next year asking that PSU provide them (i.e., they pay for it) a school district enrolment forecast now rather than wait 3 years as per the pop forecast schedule. He indicated many jurisdictions had done just that, paid for a special school enrollment forecast. PSU has already done 18 enrollment forecasts this year. Bob indicated he doesn’t think there’s a prohibition on that, not clear we need to express it in rule.

Discussion continued about how school districts plan and whether districts should plan for school facilities even when there is not yet a coordinated forecast from PSU under the new law. Should the rule allow for this, especially prior to the issuance of the new forecasts? Should the law encourage districts to cooperate in a regional forecast of school facilities needs? Are there other ramifications of HB 2253 re school forecasting? Bob indicated that he would have to review school facility planning laws before attempting to answer this question. He noted that by law school districts are required to coordinate with planning departments and local UGB planning when conducting school facility planning. However, there is not necessarily a prohibition that indicates a district cannot plan if there is not a current forecast. Jason indicated that there seems to be a difference between requiring districts to plan in a UGB format and, for example, when Coos Bay comes to PSU and indicates that it must have a forecast immediately because it needs to plan for a new terminal and it can’t wait for a new forecast.

Jason indicated Coos Bay asked whether the city can use a special forecast for school facilities in doing their UGB planning. Should a city have a need for forecasting prior to the scheduled PSU population forecast; we would want to make sure that is allowed and certainly not prohibited by the rules. Second, when a city or district buys that product from PSU, they will get a higher level of information in the forecast from PSU for school forecasting purposes; we should make sure the district is allowed to use that higher level of information. Carrie summarized that it is her understanding that we don’t want to unravel coordination that is occurring on this issue. We would not want to put something in this rule to hamstring special school district planning. Second, if a district gets higher level information as a result of this, the rule should not prohibit use of this information in planning. We don’t want to unravel coordination, we want to enhance it.

Jason agreed, and noted that in order to encourage Metro area districts to work together, they have worked out a cost saving coordinated process for this data. They would provide one product for all districts, and there would then be cost sharing across the district. Jason believes that current laws don’t necessarily encourage that sort of cooperation. Brandon suggested the current provisions in law are to make sure that districts can plan but make sure lack of schools are not a reason to prohibit housing. Bob Rindy indicated he is not sure how the new law might affect school enrollment forecasting since he hasn’t looked at it with that in mind. Also he is not up to speed on statutes regarding school forecasting, not typically a DLCD issue. However, he believes current law requires coordination between cities and districts in planning for school facilities.

Further discussion regarding the HB 2253 wording on “for land use planning purposes,” Bob noted that there are examples of some other things that are not necessarily ‘land use’ decisions, such as capital
improvement programs (CIPs), and such as DEQ funding of sewer infrastructure, where we should consider whether PSU forecasts should be used for such purposes rather than some other forecasts. Discussion also concerned transportation system planning and the ramifications of using different population forecasts over a period of years. TSPs are usually driven by household forecasts. Should we specifically note these other things in these rules (or leave it to other rules on those topics)?

Discussion as to whether cities should be required to update their comp plan to indicate the PSU forecast issued for the city once every three or four years. Currently the population rules in div 24 require that a city and county “adopt and maintain a population forecast.” Discussion took place as to whether there would be any good reason for cities to amend their plan - or not - to insert new forecasts as they are issued. The department indicated that the statute seems to require that the most recent forecast be used “for plan amendments” whether or not it is currently adopted or even mentioned in a particular comprehensive plan. Peggy suggests cities should put a reference to the PSU forecast in the plan – where else would the public find the forecast?

Discussion ensued about whether it is helpful and necessary to require all (240 cities +36 counties) local jurisdictions to propose plan amendments just for that purpose. Damian notes that Goal 2 also requires internal consistency of the comp plan regarding forecasting. Discussion mentioned that under current procedures, cities might have several plan elements completed at different times, and each might reference a forecast from that time, but the fact that these are different does not necessarily constitute a problem. Carrie asked should there be a cleanup of older forecasts in a plan?

It was noted that if a city amends its UGB or a “population based” plan such as a transportation or public facilities plan, it is required (by HB 2253) to use the most recent PSU forecast, and in that case the forecast would in some manner be included or mentioned in the amended plan. But if there are no such amendments and therefore the forecast is not indicated in the plan, perhaps subsequent land use decisions would be different? No particular example could be cited to suggest this is a problem. If the city uses a new forecast for plan amendments, that is certainly reasonable. But if there are no amendments to the plan, even though a new forecast has been issued, would the city nevertheless be required to cite that forecasts as it is making day to day land use decisions? Bob noted that, as an example, there are some pending rule amendments on TSPs before LCDC requiring that in the future if a transportation plan is amended it should rely on the most current PSU forecast, if there is one.

Additional discussion indicated some agreement that a forecast should be the basis of a plan amendment, but it’s not necessarily the case that it must be used for a permit based on the current plan (which may have been based on a previous forecast). It would seem to create more problems if the rule indicated it was instantly applicable to day to day actions that are not plan amendments. The only exception might be CIPs, which are not a “plan”, but should be based on the most recent forecast. As such, concluded that yellow shaded lines 12 and 13 on page 2 of draft 1 should not be proposed. We would create problems if we suggest permits be based on the PSU forecast.

Dennis asked whether the convening authority of a transportation plan can use the most recent forecast rather than the “acknowledged” plan forecast. Bob suggested they would be required, especially under the most recent housekeeping amendments to TSP rules. Further discussion about other data such as households that are not provided in PSU forecast and Metro TSP – much higher level of detail needed and used for Metro TSP planning. Marilyn asked, since the forecast is not a land use decision, do we need to be concerned that in using the forecast for things that are clearly LU decisions, what is the
effect of that. Jason clarified that it was a specific forecast made that PSU would not provide higher level of detail unless jurisdictions purchase.

Question, should state agencies be required to use the PSU forecast when they are engaged in land use planning? Mia indicated that she thinks airport master plans done by ODA should be required to use the most recent forecast.

Bob walked through proposed changes to Metro requirements (lines 15 – 35). Mia asked whether OEA is still going to be doing forecasts, since that is still in the safe harbor rule. Or should we instead say such as a Population Forecast Center forecast rather than an OEA forecast? Jason noted that there had been discussion about OEA forecasts during the run up to the bill, since having two forecasts would create confusion. Not sure whether there was or was not a final decision. Mia suggests that something needs to be retained here as an example of a credible forecast, and if OEA is not used than should be another credible forecast. Question as to whether PSU is going to do a Metro forecast in the future. Answer yes, for Metro counties. Dennis noted that Metro makes a distinction between population forecasts and “forecast distribution” for cities within Metro. Jason noted that in the discussion prior to the legislation it came up that household and other information was a reasonable deliverable that is not mentioned in the legislation. He noted that the discussion had simply stopped and there with no resolution.

The group discussed draft rule page 3 crossing out “safe harbor” rules. Bob noted that cities can rely on their current forecast if they start on a plan amendment prior to the PSU forecast under express language in HB 2253. Do we want to say that in the transition period, cities can rely on a forecast acknowledged prior to the PSU forecast? In the transition period, do we want to allow cities to come up with a forecast using these safe harbor rules where their forecast is currently nonexistent or does not extend all the way out to the end of the planning period? Erin suggests yes, for example for counties that have no forecast. Discussion, Mia asked whether we are prohibited from using these portions since the statute was repealed. Gordon and Kerry noted that the law seems to give LCDC additional authority to come up with rules for transition and that seems to be broad. Brandon indicated that there are at least three Marion Co cities in progress using the acknowledged forecast. Mia agreed there should be some option for a city in the interim that otherwise has no option, but provided they use the safe harbor. They should be able to extrapolate using the number applicable when they start, so long as not the number when they are done.

In further discussion Brandon suggested that the removed safe harbors in the draft be replaced at the end of (draft) section (5) regarding a plan amendment that is begun in the interim. As an alternative Bob suggested that the rule could refer to the provisions that had been eliminated, as indeed is phrased in the draft section (5). Carrie suggested that if we want to retain the safe harbor provisions for this circumstance, we should do so with a sunset provision. Damian suggested that regardless, we should not authorize the development of a new forecast in the transition period through a process that is not provided in the (current) safe harbors.

Brandon asked whether the phrasing of draft section (5) included extraneous provisions in the first two lines. Bob noted that it was phrased exactly in the same manner as the statute. We could rephrase as long as consistent with the statute, especially to make it more clear.

Bob brought up the wording on Page 1, lines 24 and 25 requiring that a local government apply the entire division rather than individual pieces. He indicated that was intended for UGB purposes, not
necessarily for population purposes. Regardless, it may be confusing if we simply leave it alone as is, and as such we should possibly consider whether to clarify how it applies in the population forecasting context.

Bob mentioned that he went through division 24 rules and found several other places where population is mentioned, and in those cases he proposes some minor cleanup to reference the new statute. No questions were raised about this.

There was discussion about whether there should be an ultimate time limit on how long a city may continue to use a prior forecast if they give notice prior to a forecast from PSU. It was mentioned that some cities have taken more than 10 years to complete a periodic review. There did not seem to be concern that it might make any difference – may not provide any unfair advantage – if a city takes a very long time to finish once they have given the notice. As such, not time limit would be necessary.

Bob asked if the group had any additional issues. Mia mentioned the UGB must be “based on” the 20 year population forecast. She indicated this is very unclear right now and there are at least three different interpretations. Some cities think they should use the actual population as the start period. Others think it should be the population generated in the forecast say by PSU. And some cities have a still different interpretation (Coburg). The rule should be clear as to what we mean. Mia strongly suggests the rule indicate that the base year is the base year in the PSU forecast, in part because there is no estimate of UGB population (only city limits). Risa agreed and noted that the extrapolation template would help do this. There seemed to be agreement that the rule should make this clarification in the next draft.

Conclusion: Staff will create a second draft, including the points from today's meeting.

7. Next Meeting Next meeting will be decided by Doodle poll.

8. Adjourn The meeting adjourned at 4:00