

Urban Growth Boundary Rulemaking Advisory Committee

Meeting 7; November 20, 2014

Attendees:

RAC: Marilyn Worrix (chair); Katherine Morrow (LCDC)*; Erin Doyle (LOC); Stephan Lashbrook (Wilsonville); Jon Chandler (OSHB); Peggy Lynch (LWV); Mary Kyle McCurdy (1000F); Damian Syrnyk (Bend)*; Dick Benner*; Christe White*; Nick Lelack (Deschutes Co)*; Eric Havig (ODOT); Kathy Verble (DSL); Joy Vaughan (DSL).

Audience: Mia Nelson (1000F)*; Jim Hendryx (Woodburn); Brandon Reich (Marion Co).

Invited Guests (U of O): Bob Parker; Rebecca Lewis.

Staff: Bob Rindy; Gordon Howard; Carrie MacLaren; Matt Spangler; Jim Rue; Rob Hallyburton; Amie Abbott.

Welcome and Introductions

Item 1: University of Oregon Research - Rebecca Lewis and Bob Parker

The UO Team presented results of the research they have been conducting at the request of the department. CHAIR WORRIX suggested that the team make a presentation of their findings and the RAC would follow with questions after.

Bob Parker noted his memo handed out in advance, reviewed last meeting requests. There was a question about region and city size, so they looked at this and continued to find no statistical correlation.

Since the multi-family assessors' tax data was limited to 26 cities they looked at about 25 recent buildable lands inventories conducted by cities in Oregon and came up with new and somewhat higher multi-family density numbers.

They also looked again at the impact due to constraints (e.g., floodways, 100-year floodplains, slopes over 25% and wetlands) on residential density by city size, and found similar information to previous analyses of constraints.

They also did more research on employment lands. What is the density of employment overall, and on lands in commercial and industrial uses? There are some trends and some generalizations can be made by city size. It is noted that "covered employment" is not all employment – it does not include sectors

that do not provide employment insurance and thus do not report to the state. These sectors include agricultural labor and at home workers such as real estate agents.

Determination of mixed use development data is impossible using the tax assessor information.

It was determined that the sample size for tax lot data for multifamily properties is too limited to draw conclusions for this project. Most local databases don't have addresses that are accurate. Instead (in accordance with suggestion last time) the data from the collection of about 25 housing studies was found to be more reliable than the tax lot studies. These studies (ten of which were by Bob Parker or ECO Northwest) provide multifamily inventory data done for particular cities in the recent past. Reasonable estimates of 12-15 units per acre were determined, with higher densities in larger cities.

In response to Dick Benner question about density on constrained lands, Bob Parker noted that fully constrained lands were platted and in many cases developed before 1940 so that explains this data, before development in floodplains was limited.

There was not found to be a lot of difference in employment densities by city, except that employment density increased as the size of the city grows.

In response to a question from Mary Kyle McCurdy, Bob Parker indicated that office employment land is found within the "services" category of employment land in the data.

Mia Nelson indicated that multi-family density figure in Eugene were found to be significantly higher, at 22 dwelling units per acre, than the figures for multi-family density statewide. Bob Parker: indicated that his numbers came directly from the ECO Northwest study

Dick Benner suggested that Metro be consulted regarding mixed use data that could be useful in this analysis.

In response to a question from Damian Syrnyk, Bob Parker indicated that recent Economic Opportunities Analyses for employment land do not contain useable information about mixed use areas.

In response to another question, Bob Parker indicated that the 8% of employment located in residential areas were primarily home occupations and businesses, such as construction contractors, who have mobile worksites but use a home "base."

In response to discussion, Bob Parker indicated that the analysis could be expanded to consider uncovered employment by county.

After some discussion that suggested differentiation among cities, Marilyn Worrix reminded the group that we need to develop a fairly unified process instead of having cities do very individualized processes that increase complexity.

At the conclusion of the discussion, it was generally agreed that the data gathering phase of this project was pretty much complete, with perhaps a few clarifications and additional work on employment land

necessary. The next step will be to use this data, in conjunction with other factors, to come up with inputs into the land need and land inventory portions of the new UGB process.

Item 2: Impracticable to serve

Matt Spangler summarized his memo regarding the “impracticable to serve” exclusion factor. To set up the discussion he displayed the “flow chart” indicating the steps in the UGB process. He pointed to step 4 on that memo, which involves the establishment of a study area. In establishing this study area, certain lands can be excluded for four different reasons, one of which is a determination that the land is impracticable to serve. He noted that the legislation requires LCDC to establish standards for that determination. Matt indicated that a work group was convened to help the department generate ideas about how to approach determining impracticability. The group included folks with expertise regarding service provision; participating were DJ Heffernan, Greg Mott from Springfield, Michelle Owen public works director from Baker City, as well as some RAC members: Terry Moore, Stephan Lashbrook and Nick Lelack.

Matt indicated the group had two meetings, and those meetings generated the basic ideas or characteristics for how to determine impracticability that are summarized in the memo. The group attempted to identify attributes that could be applied on a site specific basis and that could be readily measured and easily applied. Given that the factors are “simple”, they only provide a high level screen to identify the most obviously unsuitable areas.

Matt reviewed first attribute, distance from existing service networks. The work group reached agreement that distance is an important consideration and can render some lands impracticable to serve, but that it usually works in combination with other factors, making it difficult to establish a single numeric standard. The group suggested that the concept of service limitations based on distance will be captured in the process of establishing the study area.

Mary Kyle McCurdy asked whether the group discussed the concept of “bumping out” the study area beyond the otherwise prescribed distance, based on service provision or other factors.

Matt Spangler responded that this work group didn’t go into a detailed discussion of how the study area would be defined.

The second attribute identified is slope. The group agreed that this is an important factor, as steeper lands are typically more difficult to serve. Currently we have in rule the 25% slope standard for excluding lands from the definition of buildable lands. This is not specifically a service delivery related standard, but does provide an initial point of reference. In considering slope strictly from the standpoint of practicability of delivering services, there was discussion among group as to whether a lower number than 25% should be considered.

The third attribute the group discussed was maximum water service elevation. In cities with substantial topographic relief, water service providers may identify a maximum elevation limit of service. In cases where this would be used as a screening attribute, the service limit would be expressed as a formal policy in a city public facilities plan or similar document.

Peggy Lynch expressed concern over using this attribute given that it would be something that is strictly up to the city, or a city policy, to establish. Often the public does not get involved in a water plan.

Mia Nelson indicated that it might be common for cities to have an upper service elevation, but it seems odd that this would be a reason to exclude land from study, since there is no real engineering reason. New development often requires a new reservoir anyway for capacity reasons, so it could simply be placed at a higher elevation to serve higher land. And the same is true for sewer; cities often construct lift stations if they are crossing basin boundaries with sewer service. She expressed general concern with the validity of this attribute as a screening factor.

Mary Kyle McCurdy indicated that these standards are for identifying lands that will not be further studied, so we should err on the side of not over excluding. She also noted that some factors may not be appropriate for certain land needs; for example for some uses like parks, slope doesn't matter and these could be on steeper slopes or in floodplains. Given that complexity, we should be conservative about how we exclude lands from further study.

Erin Doyle suggested that cities might choose to not exclude certain lands based on the attributes identified, depending on the type of land identified as needed.

Matt Spangler responded that Erin's comment raises the issue as to whether the study area exclusions would be mandatory or not, which will be addressed further along in our discussion.

Matt reviewed the fourth attribute identified by the group, which is accessibility. This attribute is meant to capture the concept that some lands are separated from existing service networks by natural or man-made barriers that present an impediment to practicable delivery of services. It is a challenging concept to express in objective terms, so the work group suggested that this might need to be incorporated into the rule in a more qualitative fashion.

Matt discussed the final attribute discussed by the work group, which is service delivery limitations that result primarily from existing development patterns. These lands cannot be excluded from the study area, but are to be "discounted" by some factor when assuming their development capacity. The group suggested that these areas might be best identified by considering parcel density or average parcel size, as the feeling was that smaller parcels are less likely to be developed at full urban density.

Peggy Lynch expressed concerns about discounting based on existing development; gave the example of the Garden Home area outside of Portland which was originally developed at rural acreage densities, and is now serviced and urbanizing. She expressed her opinion that these types of lands will eventually urbanize as ownership succession and other factors come into play.

Gordon Howard stated that this is an area where some gathering of data based on some example areas from around the state could inform the discussion.

Mary Kyle McCurdy suggested that some examples from areas other than Metro be considered as the land values in the metro Portland would be quite different than in some other parts of the state.

Matt concluded his presentation by discussing the question of whether the study area exclusions provided for in the statute would be mandatory or discretionary. The public facilities work group identified this early in their discussions as an important consideration. The department believes the language of the statute is not definitive one way or the other on this question.

Chair Worrix opened the floor for questions and discussion.

Stephan Lashbrook provided comments:

He advocated for a flexible approach to establishing the study area. For distance, he suggested an area no greater than the diameter of the city, so it would be scaled to the size of the city.

Mary Kyle McCurdy suggested that this is the kind of concept that would be useful to evaluate through some test cases.

Stephan Lashbrook stated that slope and distance do matter together, water and sewer the opposite. He stated that ideally all water systems would have storage at high elevations, but that is not often the case, and that to expect that to happen is also not usually the case. Likewise, requiring service providers to assume that sewer delivery constraints will be overcome with lift stations imposes a big burden on service providers, and it is a solution that is often not sustainable. It is a big factor in practicability of sewer service.

Stephan clarified that in using slope as an exclusion attribute, a sound method of applying the value to be used is needed.

Stephan stated that he agrees that the accessibility/barrier attribute is hard to quantify. He stated his opinion that cities should have the ability to exclude areas from further study if they are isolated by barriers such as a freeway, major river, BPA transmission line or similar feature.

Stephan suggested that for identifying areas impacted by existing development patterns, the value of improvements relative to value of the land should be considered. Tracts with very high value improvements are less likely to be redeveloped.

Chair Worrix asked for additional questions or comments from those on the phone.

Damian Syrnk suggested that distance and slope would benefit from research on existing standards, or the range of standards currently in practice. He stated that accessibility is a good attribute to apply in screening lands, but recognizes that it is difficult to quantify. He provided an example of the Deschutes

River in Bend, where there has been input from the community that the city should not consider expanding the UGB across the river because of the bridges and utility extensions that would be required. Damian asked if there was a consensus among the work group on a numerical standard for slope.

Matt Spangler replied that there wasn't consensus on a specific number, but in general there was agreement that we ought to at least consider a lower number than the default 25%. In particular, road grades become a significant factor in practicability of service on steeper terrain.

John Chandler asked if this process considers the density of these service constrained lands at this point, or is this just identifying what to study, with potential density considered later.

Matt Spangler confirmed that this portion of the process is only about screening certain areas out from further study; density yield of lands remaining in the study area is addressed in a subsequent step of the process.

John Chandler asked if the work group had input from the fire service providers on road grades.

Matt Spangler replied that the public works director member of the group provided good input and examples on the upper limits of slope for emergency vehicle access.

Mia Nelson stated that areas should not be categorically excluded due to a maximum water service elevation requirement; likewise, areas should not be excluded just because they require a lift station for sewer. For services, there is the ideal, and there is what is necessary. Mia stated that she feels that the 25% slope exclusion for buildable lands is already too low, and gave example of Eugene where the city has chosen to use a higher standard. She stated that she disagrees with the indication in the memo that road grade maximum is 10%; she indicated that many cities use 15%, with short pitches of up to 20% allowed. She stated her opinion that for service considerations, no areas less than 25% should be excluded, and that 25% is a reasonable standard for slope.

Mia indicated that she is uncomfortable with the accessibility attribute. Perhaps a major river might pose a barrier, but not a freeway, for example. She stated her opinion that practicability depends on the use; some uses may justify the cost of extending beyond some of the identified an accessibility barriers.

Mia concluded by stating that areas should not be excluded based on patterns of small parcels. She stated that in Eugene a high percentage of new urban development has been occurring on parcels of less than five acres.

Carrie MacLaren clarified that under the statute, areas with service impediments based on existing development patterns would not be excluded from the study area, but would be assumed to have a lower development yield than unconstrained areas.

Bob Rindy noted that a central premise of the simplified UGB process is to establish factors in the rule that are as clear and measurable as possible. This ideal has proved challenging to achieve for determining impracticability of services. It may be that the eventual rule will need to incorporate more discretionary types of thresholds for this exclusion factor.

Mary Kyle McCurdy emphasized her opinion that because this process is just for eliminating some lands from further study, we should be very conservative in doing this. The accessibility attribute is complicated to evaluate and so is probably too discretionary to be used in a simple screening process. A major concern is that over-excluding lands from the study area could drive UGB expansions on to farm and/or forest lands, and 1000 Friends would take a hard line on this. This would require a very high level of justification. We should keep in mind that it will always be more expensive to extend services to new areas outside of the UGB than to serve development within the UGB.

Erin Doyle asked if the group used any case study examples to help in developing the concepts.

Matt Spangler replied that the group represented a lot of collective experience in the area of municipal services, and the members brought those perspectives to the work. But there were no specific example case studies used.

Carrie MacLaren confirmed that the work of the group was to get the discussion started on concepts, but it did not involve any individual case study examples.

Erin Doyle suggested that the basic list of attributes produced by the committee would be a good basis for further research as to how these are considered in specific cities.

Erin Doyle went on to express her opinion that the exclusions from the study area should be discretionary. In general, cities will be able to judge how to best apply the attributes to their individual circumstances.

Peggy Lynch responded that she feels that the exclusion of certain hazard areas, like tsunami zones, should be mandatory.

Mia Nelson stated that her understanding of this initial study area screen is that it should be for only the most obviously unsuitable areas. Factors such as water service elevation, sewer lift stations, and especially slope, don't rise to that level. She said that she could provide many examples of cities that have development in steep, hillside areas, and that these issues are not deal breakers for urban development.

Chair Worrix asked Mia Nelson if she is comfortable with a 25% slope threshold.

Mia Nelson replied that she thinks it should be higher, but recognizes that is a standard for excluding buildable lands.

Chair Worrix asked if that would be different based on whether the standard is mandatory or discretionary.

Mia Nelson replied that some cities would not want to have a mandatory exclusion of 25%; she gave the example of Eugene that uses 30%.

Chair Worrix observed that she had yet to hear an argument in favor of making the exclusions mandatory.

Carrie MacLaren stated that this consideration could be seen differently when applied to other exclusions such as hazard areas, although the base language of the statute describes all of the exclusions in the same manner.

Chair Worrix observed that establishing the size of the study area might need to take into account nearby cities, so as to not overlap.

Bob Rindy indicated that the concept of a study area size scaled to the size of the city has been discussed. However, it may not be possible to come up with a numerical formula that has an empirical basis; we may just have to pick a number.

Carrie MacLaren stated that the guiding principal for the study area is to ensure that it provides an appropriate amount of land area to meet identified need, but not so large that it results in having to over study lands that are not otherwise suitable.

Erin Doyle expressed her concern about hazard areas being mandatory exclusions. She gave the example of land in a tsunami hazard area, where it may be the only option for some cities for future growth. If it was required to be excluded from the study area the city could not accommodate additional growth. She emphasized her view that the exclusions should be permissive and not mandatory.

Erin Doyle suggested that the formula for establishing the size of the study area should take into account the amount of land identified as needed for inclusion in the UGB. The more land needed, the greater the size of the study area.

Peggy Lynch stated her opinion that cities should be required to exclude tsunami hazard areas from the study area, based on public safety and public costs.

Joy Vaughn observed that wildlife habitat areas might also be excluded from the study area based on public safety due to collision hazards and nuisance issues. Joy expressed her concern about whether and how habitats would be protected if they are included in a UGB expansion.

Bob Rindy noted that the statute provides for some high value habitat areas to be excluded from the study area, so there will be a need to establish a process for identifying these areas.

Chair Worrix asked if there is a point in the process where a city can ask for an exception to these requirements, instead of reverting back to the old process.

Gordon Howard reminded the group that the study area establishment and ensuing locational analysis portion of the rules will apply to both the "new" as well as the "old" UGB processes.

Carrie MacLaren stated that a central principle of the changes being made to the UGB process is to provide greater certainty; this creates a natural tension with the need to accommodate individual circumstances. This effort starts with an emphasis on certainty, but also recognizing the need for rational outcomes. For the exclusion factors, perhaps the best way to address this balance is to have the exclusions be permissive rather than mandatory.

Chair Worrix agreed, stating her opinion that the exclusions should be discretionary.

Peggy Lynch reminded the group that development in hazard areas imposes costs on the public.

Catherine Morrow observed that the “new” process is intended to be for most, but not all cities; perhaps some cities would need to use the old process if the exclusion factors are too restrictive for their needs.

Bob Rindy stated that the locational analysis and study area establishment process will be the same for both the “new” and “old” UGB processes.

Carrie MacLaren confirmed that this portion of the statute and rules will apply to all UGB expansions.

Next meeting discussion: December 18

if we are on schedule.

PL: worried about the session

Cmac: is there staff time to get the work done before the next meeting. Can pull more applications from UofO to housing and employment lands. Not time to bring back case studies on inpracticibilities.

SL: Include DOGAMI LIDAR maps in the discussion

Multifamily

Bob P and Rebecca summarized data for six counties representing 26 cities pertaining to multifamily. Bob P reminded that the study excluded cities under 5,000 population with growth rates of less than 1%. The research team focused on Tier 3 cities (cities where they could conduct analysis at the tax lot level). Due to data limitations, the sample represents 26 cities from counties for which U of O could obtain tax lot data with necessary fields. Most assessors do not include counts of multifamily dwellings in their assessment data bases. Multifamily development in the 26 cities averaged about 12 dwelling units per net acre. Density was highest in cities over 10,000. Table 2 shows data for four regions. Density was highest in the Willamette Valley. Several regions have very small samples, making it difficult to generalize about trends in densities.

Carrie asked if the U of O could look at 40 or so studies they have and come back and give an assessment if that is better data than they are able to provide here. Mia thinks it is a good idea. Erin agrees that this should be done. She wouldn't be comfortable making policy decisions with the current data. Jon Chandler said if there is an obvious outlier we should see why it is there (e.g., is there a problem with the assessor's work or the city's work?). He wants to be sure they are not simply looking for the number we want rather than accept the number the data shows.