



Oregon

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April 14, 2005

EXHIBIT B

Bend UGB

January 8, 2010

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TO: Land Conservation and Development Commission (LCDC)

FROM: Bob Rindy and Jim Hinman, DLCD

SUBJECT: Agenda Item 6; April 28, 2005, LCDC meeting

WORK SESSION AND POSSIBLE ADOPTION OF PROPOSED AMENDMENTS TO GOAL 14 AND RELATED ADMINISTRATIVE RULES CONCERNING URBAN GROWTH BOUNDARIES

AGENDA ITEM SUMMARY

This item is a work session intended for Land Conservation and Development Commission (LCDC) to discuss and potentially adopt proposed amendments to Goal 14 and two related administrative rules – OAR 660, Divisions 004 and 026. The proposed amendments (Attachments A through C to this report) are intended to clarify and streamline the state's urban growth boundary (UGB) requirements and procedures. LCDC held a final public hearing on these proposals February 3, 2005, and extended the time for written comments until February 28, 2005. The Commission held a work session on March 17, 2005, to discuss the proposals and the comments regarding the proposals. At that time, the Commission indicated its intent to consider adoption of the goal and rule amendments at its April 28, 2005, meeting.

For more information about this agenda item, contact Bob Rindy, at (503) 373-0050, Ext. 229, or email at bob.rindy@state.or.us.

SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission adopt the proposed Goal 14 amendments and related rule amendments, OAR 660, Divisions 004 and 026.

BACKGROUND AND HISTORY

The Commission initiated this policy project on June 11, 2004. The intent is to clarify and streamline the UGB amendment process by amending Goal 14 and by adopting new administrative rules outlining procedures and requirements for UGB amendments. An addition new rule (not presented with this report) would include "safe-harbors" that will specify optional methods for local governments to use in order to save time and expense in the UGB amendment process.

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LCDC appointed an advisory workgroup to guide the department and Commission with this project, consisting of twenty four members from a variety of backgrounds representing local governments, state agencies, citizens and interest groups concerned about the UGB amendment process. The workgroup began meeting in July 2004 and has met twelve times.

The workgroup discussion of amendments to Goal 14 resulted in proposed changes to the existing text that would more clearly express longstanding UGB policy and other requirements, and improve wording that is currently ambiguous or unclear. The workgroup has also recommended the elimination of a major step in the UGB process – the “exceptions process” – and replacing it with more clearly expressed requirements intended to accomplish the same purposes. The workgroup discussion resulted in proposed amendments to Goal 14 and two related rules (Divisions 004 and 026), published October 20, 2004, that were the subject of ten public hearings statewide conducted by the department in November 2004 through January 2005, and also the subject of two LCDC public hearings and one work session.

In addition to consideration of Goal 14 itself, the workgroup’s primary purpose has been to draft a new set of rules (under a proposed new Division 024 under OAR 660) in order to clearly set forth the procedures and requirements for UGB amendment, and to provide a higher level of detail than the goal itself concerning these procedures and requirements. Most important, the draft rules would establish new “safe harbor” provisions intended to reduce local government time and cost in amending a UGB. An initial draft of these new rules was published on October 20, 2004, and was also a subject of the department’s ten public hearings in November 2004 through January 2005. Based on comments received in the initial ten public hearings, the workgroup determined that there had not been enough time for study and discussion of the new rules, especially the proposed safe harbors. In response, at its December 8, 2004, meeting, LCDC directed the department and the workgroup to extend the time period for study and consideration of the proposed new UGB rules under Division 024. The workgroup will meet at least through the Fall of 2005 in order to refine the proposed new rules for LCDC’s consideration later in 2005.

In its February and March 2005, meetings, LCDC indicated its intent to consider adoption of the proposed amendments to Goal 14 (and the two related rules). The workgroup met December 18, 2004, and January 6, 2005, in order to respond to the Commission’s direction with regard to the proposed Goal 14 amendments. Based on this discussion, the department issued a new draft of the goal amendments (and two related rules at OAR 660, Divisions 004 and 026) on January 7, 2005.

On February 3, 2005, the Commission held a final public hearing on the proposed amendments to Goal 14 and related rules. After the close of that hearing, LCDC directed the department to extend the period for written comments. The comment period was extended to February 28, 2005, based on a revised draft of the Goal amendments dated February 9, 2005, and a written proposal for the applicability dates of the new goal and rule amendments should they be adopted by the Commission (See Attachment D).

NOTE: This report does not include detailed descriptions of the intended goal amendments. The department's November 29, 2004, and January 19, 2005 staff reports provided detailed descriptions as to the intent of the various changes in the proposed Goal 14 and related rule amendments, and these descriptions were also summarized and attached to the department's March 3, 2005, staff report to LCDC.

SUMMARY OF MARCH 17, 2005, LCDC WORKSESSION

At its March 17, 2005, meeting, the Commission held a work session on the proposed amendments. At that time the Commission discussed the various issues that had been raised in testimony regarding the proposal. The Commission's discussion is summarized below.

1. Timeline for Goal Adoption

The Commission discussed postponing action to amend Goal 14 until the broad "30-year review" of the land use program contemplated in the department's legislative proposal, Senate Bill 82. The Commission decided the proposed amendments to Goal 14 should not be put off to that longer-term review of the program.

2. Potential for Litigation regarding Changes to Goal 14

The Commission agreed that, although changes to the goal should be made very carefully because they are likely to be the subject of litigation in the future, the potential for unintended consequences as a result of such litigation should not deter action to clarify and streamline Goal 14.

3. Livability

The Commission favored leaving the term "livability" in the Land Need section of the goal, but also leaving the clarifying language on page 1, lines 30 through 32 of Attachment A, that had been crafted in order to replace "livability". In its discussion the Commission indicated that, although the term livability, as interpreted in the past, does not provide a different standard than the new clarifying language, there is a public perception that omitting the term could in some manner affect a change in the goal. The Commission asked the department to omit Option 1 in the proposed goal amendments, and prepare a version for Commission consideration in April that carries forward Option 2 retaining the word "livability" (See Attachment A).

4. The "and" Between Need Factors 1 and 2

The Commission discussed the two need factors, and agreed that local governments need to address both of these factors (1) and (2), and may not choose either one or the other. This was in response to a suggestion that prior policy allowed local governments to consider both factors, but then address only one or the other. The department pointed out that the seven factors were always connected by an "and," i.e., there had not been

previous policy suggesting only one of the need factors could be addressed. Thus, to change the "and" to "or" would be a change in policy.

The discussion also highlighted the fact that authorizing only one of the need factors to be addressed could imply that a local government may ignore Factor 1 and approve a UGB amendment without support of a 20-year population forecast. The amended goal states that the determination of a land need is a two-step process: First, calculate the 20-year population forecast, and then calculate the amount of land needed for one or more need categories. As part of this discussion, the Commission also directed that the department's staff report clarify that a new 20-year population forecast is not necessarily required in order to amend a UGB. Rather the local government must show that the proposed UGB amendment "is consistent with" the 20-year forecast, either a new forecast or the current forecast. Thus, a "quasi-judicial UGB amendment" proposed by a property owner could still be considered based on the current population forecast.

5. The "or" in the list of uses under Factor 2

Proposed amendments to Need Factor 2 link the list of land need categories with the term "or", rather than "and" as in the current list ("Demonstrated need for land suitable to accommodate housing, employment opportunities, livability "or" uses such as public facilities, streets and roads, schools, parks or open space"). The department explained that this was done in order to clarify that a local government could pursue a UGB amendment in order to accommodate only one of the categories of needs on the list while not addressing the other, for example, to accommodate the need for housing land while not simultaneously examining the need for employment land. In the discussion, it was brought out that the term "and/or" may have been more appropriate, but that term is discouraged by legal counsel and protocols for rule drafting. The Commission directed the department to propose wording that accomplishes the same thing without using "and/or," and that more clearly indicates the intent to authorize a UGB amendment for one or more need categories. The department has proposed the following:

"(2) Demonstrated need for land suitable to accommodate housing, employment opportunities, and livability *or any combination of the foregoing*, and uses such as public facilities, streets and roads, schools, parks or open space."

6. Special Characteristics for Need

The Commission discussed the new proposed wording indicating that local government may specify characteristics of needed land, and the alternative wording proposed by Jeff Bachrach, which provides more specificity than the department's proposed wording. The Commission discussed whether the language should remain fairly broad, as in the current draft proposal, or provide a higher order of specificity, as in Mr. Bachrach's proposal. It was concluded that the general direction in the workgroup's proposal provides a greater degree of discretion for local governments.

7. The Reference to ORS 197.298

The Commission discussed whether to include this reference in the goal, and whether or not there is need for more detailed guidance on the manner in which cities address this statute and the locational factors. The Commission decided to include the reference, and to consider the question of additional guidance in the new UGB rules under consideration by the workgroup. Proposed legislation affecting this statute was also discussed and the Commission agreed that we would not likely know whether this bill would pass by April 28, and we should not delay action due to that uncertainty.

It was also noted that this statute is the only place in the goal that provides for consideration of the preservation of farm and forest land in UGB amendments. If at any point in the future that statute is deleted or modified, the Commission indicated it would need to revise the locational factors to return Factor (6) or something equivalent.

8. If "livability" is retained as a need, should it be remove it as a location factor?

The Commission asked whether the decision to retain "livability" as a need factor would mean that it is no longer appropriate to add it as a locational factor (the term is included as a new Location Factor 2, see Page 2, Line 12 of Attachment A). The department notes that Location Factor 2 also includes the term "efficient urban form", which is not currently a location factor.

By retaining the word "livability" in both the sections, the Commission may be implying – and a Court could well conclude - that "livability" is something different in each section, and that is not necessarily what the UGB workgroup intended. The department indicated that there might conceivably be some aspects of "livability" that are purely locational, and therefore this term could logically remain under the Boundary Location section of the goal. On the other hand, the goal does not currently require local governments to address "livability" as a locational factor. As such, this would arguably be a *modification* of the goal, *not a clarification*. If the rationale for retaining "livability" in the land needs section is to *not* change the Goal, then the Commission might also consider *not* adding the term to the locational factors.

If the commission decides to *not* add "livability" as a new location factor, the department would recommend that the commission also consider whether the remaining piece of that factor, regarding "efficient urban form," should stand alone as a new Location Factor 2, or should be combined with the proposed modified Location Factor 1, which also addresses efficiency.

9. Urbanizable land available "over time"

The discussion brought out concerns regarding the phrase "over time" and whether this might be misinterpreted to mean there would be some sort of sequence for making UGB land available. This discussion also raised the fact that the proposed goal should do more