

# Notes UGB-RAC

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**Meeting: August 26, 2015, Salem**

In attendance:

**Rule Advisory Committee (RAC):** Catherine Morrow (LCDC Liaison)\*; Jeff Condit; Erin Doyle; Mary Kyle McCurdy; Peggy Lynch; Pamela Barlow-Lind; Stephan Lashbrook\*; Gil Kelley\*; Jon Chandler\*; Shaun Jillions\*; Nick Lelack\*; Joy Vaughn (ODFW); Jim Johnson (ODA); Jevra Brown (DSL); Jerry Bohard (ODOT)\*

**Audience:** Brandon Reich (Marion Co), Mia Nelson (1000 F)\*

\* Attended remotely, by zoom (notes from the “chat” feature are attached)

**Staff:** Carrie MacLaren; Bob Rindy; Gordon Howard; Robert Mansolillo; Jim Rue; Matt Spangler; Amie Abbott, Steve Shipsey

**Handouts** provided to the RAC in advance:

- Draft Rule (RAC Draft 1: August 20, 2015)
- Meeting Agenda
- Comments on draft rule by Damian Syrnyk (emailed Aug 24)

## Item 1: Introduction

Jim Rue opened the meeting, thanking members for their participation and announcing that, with the completion of this first draft, this effort is moving to a new phase. Jim explained that we have heard there is conversation about delaying the rulemaking; he indicated that the department is not agreeing to extend the rulemaking timeline. The law is clear that the work must be done by January 1 and we cannot change that law. Moreover, the governor’s office and Richard Whitman have stated, unequivocally that this work must be done on time.

Mary Kyle McCurdy (1000 Friends) expressed concern about the timeline, including concern that once a draft is published organizations and members of the RAC would become entrenched in their positions in particular areas of the rule that need further work. Gil Kelley suggested moving the September meeting to October.

Jim Rue explained that, first the department does not agree that a delay is necessary, but furthermore, it is too late to delay the September LCDC meeting and its agenda. Planning for that meeting has been underway for quite some time and due to a host of meeting agenda item needs and staff resource issues the September LCDC meeting will take place as currently planned with this rulemaking on the agenda. BR: Also, the secretary of state has already received formal notice advertising a rule hearing that day.

Staff (CM) indicated that we need to focus on issues rather than simply delay; our intent is to gather comment on the draft but to continue working on the draft all the way until its final scheduled hearing.

## Item 2: Overview of Draft Rule

Bob Rindy gave an overview of the structure of the draft rule, stepping briefly through each section, and responded to clarifying questions. Some RAC members indicated this was helpful.

## Item 3: RAC Q&A

Carrie MacLaren opened a discussion with the RAC and asked for feedback regarding the general structure of the rule and specific regarding rule language. Bob Rindy acknowledged that, to fully understand and critique the details of the draft will probably take several read-throughs. Some members agreed and indicated that they had not achieved that level of review at the time of the meeting, but most had been able to read the rule through once.

General comments expressed by the RAC:

- Broad consensus by RAC members that the overall structure and flow of the rule is good and covers the issues that need to be addressed
- Members value each others thoughts on the rule and look forward to hearing comments and suggestions from each other.
- Staff has indicated previously that we will be delaying rules on replacement periodic review till after January 1; staff believes that, while of concern, this is not necessarily a major problem because it is highly probably that no jurisdiction will get to the point where periodic review applies within the first few months of the new process.
- Staff indicated that additional discussion and rulemaking to “streamline” Goal 5 planning for areas included in the UGB under this process is a topic that really should be discussed as a part of the new process but one which so far has not had enough discussion. However, this topic will probably involve extended discussion and as such staff suggests this also may be an element that we can delay past January 1.

Clarifying questions, and policy questions and concerns. The Members of the RAC were asked to briefly comment on the draft, indicate policy issues.

### Nick Lelack

- Is a city using the new process required to use the PSU forecast? Yes, all cities using the new process must use the PSU forecast. [OAR 660-038-0030(1)(a); page 5, line 17]

### Jim Johnson (ODA)

- With reference to the rules on location priority, what is the definition of “land” and is the intent to protect large areas of good soils? Indicated that applying the predominance test to undefined land or areas chosen by cities could result in large areas of high-value soils being included in a high priority UGB study areas because overall they make up less than 50% of a specified “land” area being studied. We need to pay attention to this because we want to avoid “gerrymandering” of the study areas so as to create areas less than 50%, which has occurred in the past. Staff agreed to identify this as a policy issue for the rule: need a definition of “land”

that protects large/significant areas of high value soils irrespective of whether those soils are predominant within the “land area” being studied. (This issue likely derives from rules currently in 24 that allow cities to study undefined areas of land – this authorization probably should not be repeated in the new process) [OAR 660-038-0710(4); page 12, line 18-23]

Stephan Lashbrook

- Rule flows well; he agrees it has correct content, but he also needs to read it again.

Erin Doyle

- The residential portions seem to fit pretty well with our previous discussions; structurally the pieces are there.
- While she doesn’t disagree that the rule regarding periodic review replacement work could be delayed until after the January deadline, some concern that cities will not want to use the new process until they know what the periodic review replacement requirements and process look like.

Jon Chandler

- He also has not finished studying the draft. It appears to be headed in right direction; rule structure is sound.

Shaun Jillions

- No specific comments/concerns at this time.

Jevra Brown (DSL)

- Wants clarity on the Goal 5 process for lands added to the UGB especially wetlands. Appreciates that clarity has finally been provided in this draft indicating that Goal 5 continues to apply in the same way as with the old process, but wonders how would that work and should it be changed. Bob Rindy indicated he also would suggest there be some things included to streamline and clarify the Goal 5 process in the context of this new process, but that policy issue is probably too lengthy a discussion to be tackled between now and December. [OAR 660-038 0020(11)(c); page 4, line 22-23]

Peggy Lynch

- Troubled with the timeline, would like to see a delay.

Mary Kyle McCurdy

- Indicated she has a number of concerns. Big concerns on the employment path and with the Location Priorities evaluation of land in the study area (e.g., exhausting one category of land first). Also has concerns with the U of O study determinations of density and with the proposal regarding accessory dwelling units in the housing path.
- Referenced list of issues that Mia Nelson just spelled out in the zoom “chat” function; some were read aloud by Carrie MacLaren for the RAC [see Attachment A for “chat” notes]

### Gil Kelley

- He has had time for a solid read-through. The rule is well-organized and structured.
- He concurs with recommendation for setting aside Goal 5 and periodic review replacement policy issues discussion/rulemaking until after Jan 1.
- Regarding the affordable housing table [table 8], he thinks the values are good and merit debate by RAC as to whether the ratio of 3 low impact measures to 1 high impact measure makes sense. Also has a related question that if a city adopts one item off the table the first time around, can it select that same option the second or third time. [GH: Answer = no, needs to be new measure; we will clarify in the rule].
- Accessory Dwelling Units (ADUs) should be counted as low density housing
- The “Push factor” for residential development proposed in the draft seems too low; it may only cause a blip in density changes over time.
- Does the draft contain the right language on small and partially vacant?
- Policy on redesignation of lands needs more work.
- Serviceability proposal is new in this draft; he needs to review more before giving comments
- He read through Damian’s comments; mostly agree.

### Christie White

- Indicated she needs more time to review; will have comments in on the 3<sup>rd</sup>.

### Joy Vaughn (ODFW)

- Appreciates clarity on the timing and application of Goal 5 to areas added to UGB (i.e., clarity that old process still applies). Still interested in study area and exclusion discussions with respect to Goal 5 resources; also wonders about the process of coordination among agencies.

### Commission Liaison Catherine Morrow

- Appreciates RAC discussion. Will provide notes to department. Wants to make sure there are sufficient incentives for redevelopment; some agreement with concerns expressed about allowing local governments to assume development won’t occur for RR parcels less than 2 acres.

### Steve Faust

- Participating from citizen involvement perspective. Would encourage ways to get people engaged/submitted comments between LCDC meetings.

## Item 4: Brief Presentation and Discussion of Particular Issues

### a. Affordable Housing Measures (OAR 660-038-0190(5))

Gordon Howard reviewed the affordable housing language in the RAC draft rule and Table 8.

The draft proposal includes two alternative methods based upon the statutory requirement of ORS 197A.312 (3) applying to cities with population greater than 10,000. The first alternative requires cities to choose from a list of 29 measures promoting housing supply and affordability, either one high-impact measure or three low-impact measures. The measures include both regulatory or code changes and also non-code changes such as systems development charge reductions or property tax exemptions. Alternatively, a city could satisfy the statutory requirement by; 1) already having seven of the 29 measures from the first alternative adopted into its development code, and 2) showing that it had exceeded the median rate of redevelopment and infill for either cities within the Willamette Valley or cities in the rest of the state.

One set of concerns expressed about the draft, primarily from the standpoint of the League of Oregon Cities, were

- cities would have to do research under the alternative method to determine the appropriate median rate of redevelopment and infill, because research conducted by the University of Oregon was unable to come up with numerical guidance on that issue (the research findings were that cities did not, for the most part collect such data so that it could be aggregated and analyzed), and
- that cities would have difficulty satisfying one of the measures. However, regarding the latter point it was the general consensus that the large list of 29 measures provided cities with ample opportunities and choices to make a decision to improve housing choice and affordability, since cities only had to pick one or three of the measures.

Regarding the former point, department staff will look into options that would provide some numerical guidance for cities to aim for regarding median infill and redevelopment rates to present back to the rules advisory committee.

Another issue is whether the number of measures required of cities, one high-impact or three low-impact measures, was appropriate. However there was not any expressed disagreement with the department draft on this subject.

### b. Serviceability (OAR 660 0380210)

Matt Spangler reviewed the serviceability language in the draft rule.

Mary Kyle McCurdy indicated she hopes that the serviceability requirements prompt a local discussion at the beginning of a UGB analysis about how and where to grow, e.g., she wants cities to compare growing inside the boundary versus growing out. Erin Doyle observed that, though not an explicit step, that is a decision that is usually imbedded in any city's UGB decision-making process.

Stephan Lashbrook asked about jurisdictions that have had failed bond measures for services; could they still identify such measures as a possible funding source? Or, instances where cities know and have analyzed the cost of sewer infrastructure, but decide to set their system development charges at half that amount? Jeff Condit's perspective was that the serviceability discussion will be an improvement over the current system, and make cities and residents more aware of costs.

Pamela Barlow-Lind recommended adding tribal plans to the list of plans under eligible financing (Subsection (5)(b) on page 27, line 27).

Gil Kelley asked if the work group on this topic had addressed how to ensure that the identified committed financing methods would be implemented. Matt Spangler responded that the group had not directly addressed this question. It was suggested that DLCDC staff explore developing additional language to address this issue. In general, there seemed positive agreement by RAC regarding the structure and content of the draft serviceability rules. Carrie summarized we should consider this issue as "green" with recommendation to DLCDC staff to see if the current language on the subsection (2)(b)(C) was sufficient or could/should be tightened further.

### **c. Residential Needs Path (OAR 660 038 0030-OAR 660-038-0090)**

Gordon Howard reviewed the residential needs path language in the draft rule. The draft proposal includes a set of rules relating to the residential needs path that has been agreed to in terms of format and methodology, but several policy issues remain. These policy issues would not require major redrafting of the rule itself, but would require omission of language or changing of numerical formulas or percentage ranges to reflect different policy outcomes.

The remaining policy issues are:

- 660-038-0030(3) - provide a "group quarters" definition.
- 660-038-0030(6) - range of mixed use/redevelopment rates and accessory dwelling unit rates.
- 660-038-0040 - Table 1 - whether residential mix should be skewed toward higher medium and high density housing percentages.
- 660-038-0070(3) - whether to allow consideration of private deed restrictions as constraints on residential buildable lands, and under what conditions
- 660-038-0080(2), (3), and (4) - to what level cities should be required or permitted to apply land surpluses in one category of development to meet deficits in another category of development before adding land to an urban growth boundary (categories of land are low, medium, and high density residential development, and commercial and industrial employment development).

## **Item 5: Study Area and Location of UGB Amendments**

Bob Rindy reviewed the draft rule regarding establishment of the study area and location priorities, indicating that a work group will reconvene to further work this issue (scheduled for September 8<sup>th</sup>). Bob indicated that with regard to the study area there are still a couple of very important “blanks”, such as the distance from the UGB. For the priorities rule, much of the language is directly from the statute.

RAC members gave feedback on current draft. Jim Johnson (ODA) expressed concern about the proposal for exclusion areas, particularly allowing the exclusion of special flood hazard areas. [NOTE: this exclusion is allowance is directly from ORS 197A.xxx] . Jim also expressed serious concern about simply using the statute language with regard to high value farm areas, in part because we don’t say what we (the law) means by “land”. He indicated this analysis needs to start from a landscape level. Otherwise cities may gerrymander study areas so that high value is only a certain % and thus is brought in.

Peggy Lynch asked whether the rule would make sure there was a certain overall amount of land that needed to be studied, particularly after areas were excluded. Carrie indicated that indeed that had been a recommendation of our workgroup and the draft should have contained a requirement that the study area include 3-4 times, or some amount times, the “need” identified for residential, employment, and other uses; this will be added and discussed further by the small group on location.

There was some RAC discussion about Goal 5 resources, particularly significant natural resources such as habitat (e.g., winter range) where the law allows exclusion of these areas. Jeff Condit noted that the lead in language in subsection 4(c) of OAR 660-038-0150 for such exclusions states that it is allowed only when the long-term preservation of the resource “requires limiting or prohibiting urban development.” He indicated this implies a high bar.

## **Item 6: Employment Path**

Bob Rindy reviewed the work of the employment work group, which has expanded to address some of the issues raised by RAC members

He noted that there is an upcoming “small group” meeting to discuss the employment path next Thursday so this discussion may advance at that time. There was one last week and that is continuing.

He noted that so far there does seem to be a lot of agreement re the ideas for forecasting long term jobs using the population method. However, staff has not seen support for the ideas so far on the forecasting long term jobs using the Employment Department Forecast method. DLCD believes that the statute DOES require that this option be available, and legal counsel concurs. He has taken another stab at this and drafted the employment forecast path so that it is a “light” version of using that forecast, simply adjusting the ratio they get out of the employment path plan. Basically, under either path cities must determine jobs to population ratio for employment needs. If the city would like to change that ratio substantially it is assumed they should use the traditional method. Mary Kyle McCurdy noted concerns with using the Employment Department Forecast, and clarified that 1000 Friends’ comments on the population-derived forecast are in the nature of clarifications and minor corrections. Peggy Lynch

asked how often the lookup tables will be updated, and Bob Rindy confirmed that the intent is to update annually.

Cities will need some way to translate the forecasted jobs to land need – the main policy issue we have been debating concerns how we do that. In the end what density should a city presume. DLCD has suggested that the UofO study should be relied on for this, others don't agree. If not, how do we find better numbers for density – we don't see a quick way to replace the numbers we have with different alternative given our timeline.

## Item 7: UO Exceptions Study Report

Carrie MacLaren requested the RAC accept the UO Exceptions Study Report. The RAC concurred and agreed to accept the report.

## Closing

The RAC agreed to provide written comments by **5:00 p.m. September 3, 2015** to [Bob Rindy](#). The department agreed to compile comments and distribute to the RAC September 8, 2015.

Carrie MacLaren proposed a draft meeting schedule, subject to further review and input from the RAC.

Tentative dates for future RAC Meetings and other significant deadlines [note all dates are approximate; the department will be sending doodle polls for a couple of options]:

- September 17<sup>th</sup> (RAC): possible issues include resolution of housing policy issues; location (study area/priorities); also, discussion of framing and staff report for the commission's hearing on the 24<sup>th</sup> of September.
- September 24<sup>th</sup> (LCDC Hearing)
- October 1<sup>st</sup> and/or 15<sup>th</sup> (RAC): possible issues include employment and serviceability, location (study area/priorities)
- October 29<sup>th</sup>: target date for new draft, consider whether to circulate for public comment. Hope is that after the 29<sup>th</sup> we would be making changes to the new draft.
- November 19<sup>th</sup>: revised rule and staff report to LCDC

Also working on schedules for workgroup meetings, including location and employment (see next page).

## **RAC Timeline**

9/3 Written comments on August 20 Draft Rule to DLCD (Bob Rindy)

9/8 All compiled comments received distributed to RAC

9/17 RAC meeting (tentative date, needs doodle)

- Housing policy issues
- Study area, especially re Industrial and Pub Fac

10/1 RAC meeting (tentative date, needs doodle)

- Employment
- Housing
- Serviceability

10/15 (circled)

- Priorities/location

10/29 NEW DRAFT

11/12 NEW DRAFT CONTINUED

(mail draft to LCDC 11/19)

11/19 Rule discussion on new draft continued (but draft is already mailed)

## **LCDC Schedule**

**9/10 approx, Staff report and rule sent to LCDC**

**9/24 LCDC Meeting in Astoria**

**11/19 Staff report and revised rule to LCDC**

**12/3-4 LCDC Meeting Salem**

## **RAC Subcommittee meetings**

(tentative dates, need doodle)

<b>Employment</b>	<b>Location</b>
<b>9/3</b>	<b>9/8</b>
<b>9/10</b>	<b>9/29</b>
<b>9/15</b>	<b>10/6</b>

## Transcript of “Zoom Chat” – UGB Rulemaking Advisory Committee

Meeting: August 26, 2015, Salem

- 13:03:15 From Cmaclaren\_iPad: I have turned on my iPad to use the chat function. Please feel free to chat to ask a question, or to make a comment if you aren't successful just speaking up
- 13:04:14 From Chandler: howdy. Chandler here.
- 13:05:14 From Mia Nelson: doesn't periodic review do a whole lot more than just determine land need?
- 13:07:56 From Cmaclaren iPad: Yes, the statute requires that we come up with a "replacement" for periodic review. Because that will not be used for some time, we are recommending that this item be deferred until we finish the other portions of the rule.
- 13:25:50 From Mia Nelson: we have the same concern as Jim
- 13:35:14 From Mia Nelson: Rather than taking up meeting time, here is a list of some of 1kF's concerns:
- 13:36:00 From Mia Nelson: Definitions of “roughly proportional” and “serviceable” Question of whether a city that uses the new method can go back and use the old Question: do Goals 9 and 10 directly apply? Draft seems to say yes. Residential re-development assumption – new this meeting, upper limit is too low ADU upper limit is too low 1% housing mix push factor too low Strong disagreement with the (lack of) re-designation requirements Method of applying OED forecast to create employment forecast Employment density Method of inventorying employment land and assessing redevelopment capacity Study area determination ODFW habitat area exclusion Exclusion of land over current water reservoir service line Definition of “water bodies” Exclusion of land for “ravines” with no controls on size or cost to cross Exclusion of land separated by rail or roads, w/o consideration of size of expansion Zero capacity assumed for lots under 2 acres Lack of clarity in priority scheme “Predominantly” issue already raised by Jim Johnson
- 13:36:08 From Mia Nelson: Multiple concerns with the planning for added lands section Multiple concerns with “serviceability” section
- 13:42:57 From shaunjillions: Sorry, have to run to another meeting. I'll submit any substantive comments on the rule via email.
- 13:43:10 From Cmaclaren\_iPad: Thank you

13:55:27 From Cmaclaren\_iPad: Will be circulated. But feel free to cut and paste

13:57:27 From Mia Nelson: Carrie, we will get a more detailed explanation of these issues in the next couple days. In case you prefer to wait for that before sending out. I just dashed this off and some of them are fairly nebulous.

14:12:16 From Catherine Morrow: Mia, it is a helpful list. Corresponded to some of my notes. Might be helpful if you could somehow rank them in order of importance so the RAC could work together on the major ones first to maybe get consensus before the next draft goes to commission.

14:15:08 From Mia Nelson: Yes, Catherine, we will do that. Many of these are easily addressed with language tweaks - we would have suggested solutions earlier, but there is so much new material here, we didn't have the time.

14:15:57 From Catherine Morrow: Mia, as you know specific language proposals are always easiest to solve simple issues

14:20:21 From Mia Nelson: question: how will it be determined (and how often) what the "median rate of development" is? In my experience, even cities the size of Eugene do not have the data collection in place to measure this.

14:20:39 From Mia Nelson: sorry, meant to say "median rate of REdevelopment"

14:29:23 From GilKelley : This is meant as menu and should not be construed individually as requirements.

14:30:20 From Mia Nelson: Erin is right. It's impossible for cities to do this.

14:46:43 From Cmaclaren\_iPad : [In response to question from Chandler about when written comments are due] Let's say September 3rd, one week from today. We will then compile and circulate to the entire RAC the following Tuesday

14:57:16 From Chandler: Need to head to another meeting - have fun, play nice and don't forget that the state fair starts this Friday!

15:17:30 From GilKelley: Back on housing land need, p.6, how did we arrive at these vacancy rates? Is 5% a statewide rate set by empirical evidence?

15:41:09 From Catherine Morrow: Can't hear Jeff very well

15:41:33 From Catherine Morrow: better

16:15:12 From GilKelley : One important feature of this section is separating "industrial" from "commercial". Some argued for operating out "retail", but that is problematic.

16:18:48 From GilKelley: I agree with Bob, that the employment per acre #s are not real. We should seek to get some empirical evidence for better numbers.

16:27:38 From Cmaclaren\_iPad: Amie.abbott@state.or.us

16:35:11 From GilKelley: i need to sign off now for another meeting.