

10/21/08

To: UGB workgroup  
From: Tom Hogue, DLCD  
Re: Regional EOA safe harbor  
General employment land safe harbors

At the last workgroup meeting, discussion turned to the concept of regional economic opportunity analyses [EOAs]. There was some talk of interstate highway corridor EOAs and other specific examples that are best described generically as regional EOAs. This memo intends to create a simple framework for the policy discussion by proposing some complete safe harbor language, and dissecting the implications a bit.

You'll recall that discussion at the last meeting described the purpose of the safe harbor as encouraging something that is already permitted, by "shining a light", rather than creating new policy. The safe harbor should clear the way for a local government to implement a regional employment land needs analysis.

I think there will have to be three elements of a safe harbor to encourage beneficial regional EOAs: the enabling part, the controlling part, and any needed comfort or clarification part. The enabling part does not have to do anything new, but needs to make very clear that the safe harbor will work as intended if it is to encourage local governments to do a regional project.

The controlling part is where a little philosophy of government comes in. Shall we have rigid definitions, a few key points, or something else?

My view is that since they can do all this anyway, let's construct a safe harbor that gets the State at the table at the beginning, and gives us some quality control at the end. By forcing at least \$1 of state money to be involved, there has to be a contract where we can negotiate terms and conditions, including a requirement for a regional planning agreement among the partners and partner agencies.

The enabling part

024-0040(8)(c)

A local government may amend the UGB to accommodate a need for employment land as determined by a regional Economic Opportunities Analysis (EOA) that complies with the applicable requirements OAR 660, division 9...

The controlling part

..., provided that the regional EOA is funded in whole, or in part, by the Department of Land Conservation and Development or the Economic and

Community Development Department; and provided that the plan amendment is consistent with the terms and conditions of any applicable State of Oregon contract funding the regional EOA; and provided that the plan amendment is consistent with the terms and conditions of any applicable regional planning agreement adopted by resolution by the participating local governments.

The controlling part could be eliminated completely with no policy impact; they can do all this anyway. The requirement for funding from DLCDD or OECDD could be eliminated. I do think it is important to include a requirement that any plan amendment be consistent with any applicable regional planning agreement. The questions to discuss are what is the State's mandatory role, how best to implement the requirement, and how best to encourage a non-trivial planning agreement.

I would be concerned with an attempt to tightly define a regional planning agreement in the rule, or with just requiring a nominal agreement. It must be kept in mind that regional planning is predominately a political exercise. It typically seeks to allocate the benefits and burdens of development enabled by state and federal funding and regulations, whether that is highway, water or other investments of money and statutory authority. It is the front end negotiations that enable success; and regional planning efforts generally fail when technical planning gets ahead of politics and policy. Experience indicates it is best to agree on how to manage the candy before the trick-or-treating begins.

I've started to work on a generic scope of work for state funded regional EOAs. It will frame the local negotiations on how to draw the planning region, make decisions and resolve disputes. I intend to include things like maintaining the integrity of work-sheds, transit districts, watersheds, interchange management plans as well as service districts and political boundaries, to the extent practical and possible.

#### General employment land safe harbors

We also discussed whether a safe harbor could be devised to help smaller local governments do some of the tasks of the basic EOA. I promised to contact the Department of Employment to see if a forecast could easily be done by work shed, and whether there might be a way to allocate employment by land use type.

I did speak with both the manager of their research division, and the manager of their GIS team. There are free tools that can produce employment information for a self-defined geographic area. This information can be looked at by different years, and although not technically a time-series, people often use it that way. Whether or not one could access the state's forecast by self-defined region was a little problematical, or at least, they wanted to chew on the question a bit.

As a research project, geo-coded employment data could be matched with a land use GIS layer. As far as we know, no one has done such a thing at a scale to generate the kind of results we could easily use. I also contacted Metro for their work; they said they would send me some information, but it has not arrived as yet.

From this I conclude that the time is not quite ripe for safe harbors on these topics. It is probably worth noting that I am working the ERT coordinators to devise a simplified EOA process small local governments can use when they have the regional ERT team providing technical assistance. No safe harbor is needed for that to work.