

Department of Land Conservation and Development
LCDC Rulemaking Workgroup on Metro Urban and Rural Reserves
Summary of workgroup meeting Monday, November 5, 2007

The Metro Reserves Rulemaking Work Group met for the fifth time on November 5, 2007, at the Portland State Office Building – Room 1B, 800 NE Oregon Street, Portland. The meeting started at 2:02 pm and ended at 5:07 pm.

Workgroup Members Present

Marilyn Worrix, LCDC (Workgroup Chair)
Randy Tucker, Metro
Brent Curtis, Washington County
Doug McClain, Clackamas County
Chuck Beasley (for Karen Schilling), Multnomah County
Pat Ribellia, City of Hillsboro
Jonathan Harker, City of Gresham
Gil Kelley, City of Portland
Lainie Smith, ODOT
Jeff Hepler, Dept of Forestry
Jim Johnson, Oregon Dept. of Agriculture
Mary Kyle McCurdy, 1000 Friends of Oregon
Jim McCauley, Metro Homebuilders
Bev Bookin, CREEC
Jim Labbe, Audubon Society of Portland
Ann Glaze, State CIAC
Dave Van Asche, Washington County Farm Bureau
Jeff Stone, Oregon Association of Nurseries
Mike Salsgiver, OECDD

DLCD staff attending: Bob Rindy, Gary Fish, Meg Fernekees, Gloria Gardiner and Jody Haury

Guests attending: Steve Shipsey (Dept. of Justice), Carol Chesarek (Forest Park Neighborhood), Dick Benner (Metro), Danielle Cowan (City of Wilsonville), Eric Perkins (Dept. of Forestry), Kelly Ross (Oregon Chapter of the National Association of Industrial Office Properties), Patty Snow (Oregon Dept. of Fish & Wildlife), Hal Bergsma (City of Beaverton), Matilda Deas (City of Canby), Al Burns (Portland Bureau of Planning), Bob Clay (City of Portland), John O'Neil (Metropolitan Land Group), Craig Brown (Citizen), Linda Ludwig (League of Oregon Cities), Mark Greenfield ((Attorney/citizen), Don Schellenberg, Oregon Farm Bureau.

Reference materials distributed to workgroup members

- Agenda
- Draft Summary of October 15, 2007 workgroup meeting
- Proposed draft of rural and urban reserves rules (draft dated Oct 31)
- Alternative wording options suggested for Rule 0060

NOTE: All materials for the workgroup are posted at the Department of Land Conservation and Development's (DLCD) website at:

http://www.lcd.state.or.us/LCD/metro_urban_and_rural_reserves.shtml

Agenda Item #1 – Welcome, Overview of Documents and Agenda:

Workgroup Chair Marilyn Worrix convened the meeting at 2:02 p.m. and listed major discussion topics for the meeting.

Workgroup members agreed to meet in the Metro area on Monday, January 7, 2008, from 2:00 to 5:00 p.m. (meeting location was set after the meeting for the Metro Council Office, Metro Council Chambers).

The workgroup approved the October 15, 2007, workgroup meeting summary.

Agenda Item #2 – Discussion of Combined Draft Rules & Topics Not Covered at the October 15th Meeting:

660-027-0005 Purpose:

Section (2)

Dick Benner discussed his proposed language, which is included in bold in the draft, including: the three objectives that the Land Conservation and Development Commission (LCDC) would use in reviewing local land use actions; 660-027-0040 (10) would need to show how the action achieves the objectives. This included new wording and a related definition of “livable communities.”

Gil Kelley suggested that he would like a higher standard of judgment than provided in Section 10 and the proposed new wording. He suggested that Section (10) should require a finding that the word “best” be inserted in (10) to indicate that “The findings and statement of reasons shall explain why the local governments selected the areas adopted as urban and rural reserves and how the adopted reserves **BEST** achieve the objectives set forth in OAR 660-027-0005.”

Workgroup discussed the use of the word “best” including: where the word would be used (Metro suggested that the word be instead placed in the intro, replacing the word “help” in line 21 of 660-027-0005 (2), while others suggested the word should be insert between “reserves” and “achieve” in line 41 of 660-027-0040 (10)); it was discussed how the word would affect the process; whether the word would require a comparison of study areas, individual parcels, or the final product “as a whole”; whether the only way to determine the designation is the “best” is by creating a system to rate all possible areas; the possibility of citizens objecting a Metro decision due to a comparison not including *all* possible areas that *could have* been considered.

The workgroup, based on a show of hands, agreed that the word “best” should be included, but also by a show of hands could not reach a consensus on WHERE to place the word. It was concluded that the department staff report to LCDC would reflect the discussion, report that there was consensus to include the word, but not a

consensus as to the location of the word. (The tally was as follows: two individuals opposed to including the word anywhere, six individuals would like the word included in 660-027-0005 (2) and nine individuals would like the word included in 660-027-0040 (10). Since nine is not a majority of the group, it was concluded there is not a majority consensus on where to place the word, but there is an overall consensus – 15 members support including the word somewhere in the draft). Marilyn Worrix recommended that the workgroup members share their preferences regarding use of this word and the location of the word at the LCDC hearing on November 29.

Workgroup decided to remove the word “increasing” from line 21.

660-027-0010 Definitions:

Section (2)

Workgroup briefly discussed the new language for livable community but did not appear to reach consensus to change the wording. DLCDC will report to LCDC that this wording is still under consideration by the group.

Section (4)

Workgroup discussed whether listing “plant, fish, and wildlife habitat” in line 4 may be too broad; the use of the word “resources” vs. “features;” using the word “thereby” instead of the word “or” in line 1. Conclusion: the workgroup decided to leave the proposed new wording as is, but to replace the word “help” with “or helps” and the words “ , or” with “and that thereby” in line 1.

660-027-0040 Designation of Urban and Rural Reserves:

Section (8)

The workgroup agreed on using Randy Tucker’s alternative language, as follows:

Designation of urban reserves and rural reserves under this division shall be coordinated with the cities in any county *where such reserves are considered*, and shall be coordinated with local governments, state agencies, special districts and school districts that may provide services to the urban reserves when they are added to the UGB.

Section (10)

See the discussion noted under 660-027-0005 (2).

660-027-0060 Identification, Selection and Designation of Lands for Rural Reserves:

Jim Johnson shared the Oregon Department of Agriculture’s (ODA) concept and sample rule language, which was emailed to the group the previous Friday. Jim stated that he hasn’t discussed his proposal with others in the agricultural community. He discussed the need to set a high bar in keeping non-soil-dependant uses off of agricultural land since agricultural lands are dependant on soil, i.e., the need for land mapped as “foundation” and “important” agricultural land should not be placed in urban reserve when other lands are available. The

discussion also pointed out that the factors used to create the maps of “foundation” and “important” agricultural land in the report were placed in the statute (and the draft rule) as factors for rural reserves.

Possible Section (4)

Jim Johnson recommends incorporating the January 2007 ODA report to Metro entitled “*Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands*” in the rules. There was discussion about the report, including whether the report was submitted to Metro but not formally adopted by Metro or a board or commission. Steve Shipsey indicated that LCDC has previously referenced reports or other documents in rules even though there was no formal adoption of the report.

Workgroup discussed referencing the report in the rules, including: using the report only as a baseline; some workgroup member raised objections as to whether the proposal would “pre-determine” what is designated as reserves, and that the intent of SB1011 was to balance the three objectives (farmland, urban land, and natural features) by comparisons and analyses, but not elevate one component (agriculture) over the other; There was also concern expressed regarding the broad range of the map since it covers factors other than soil types. In response, it was noted that consideration of these other factors, such as large blocks and water availability, are in fact a much better indicator of land that is important to agriculture.

The workgroup discussed the first of the three proposals from Jim Johnson, to “deem” “foundation” and “important” agricultural land as meeting the rural reserve factors. There was consensus to include the wording (conceptually, may be redrafted) but replacing the word “are” with “may be” (...an urban growth boundary *may be* deemed to satisfy...). The group also discussed whether to use two miles instead of three miles in this safe harbor, since that limit is already used in reference to the urban growth boundary. It was noted that there were different reasons for its previous use, but the group did not appear to decide whether to change the proposal from 2 to 3 miles.

The workgroup then discussed whether to propose a similar safe harbor based on the map for natural landscape features that was also submitted to Metro. The group decided not to do so, at this point, because the map is much broader, has not undergone a peer review, lacks predictability for businesses, and (unlike the agricultural maps) is not based on a conflicting use analysis.

Possible Section (5) and (6)

With respect to the additional “criteria” proposed by Jim Johnson, the workgroup members discussed: what “appreciably better” means; why some factors were omitted; if the proposed language is allowed under the statute (Steve Shipsey will review the language to determine if it goes beyond the statute); difficulties in predicting future land uses as required by the proposal; concerns of singling out one type of land (agricultural). It was suggested, as an alternative to the language in (5), that the standard include an “alternatives analysis” to use foundation lands for urban reserves – i.e., such lands could not be included in urban reserves unless other alternatives were first examined and rejected, as per the current exception process.

In summary, the workgroup did not reach a consensus on the proposed wording, or on the concept of requiring an examination of other, non “foundation lands” prior to designating these as rural reserves. The Chair suggested that this item should be the subject of further discussion, including testimony to LCDC, but for the time being the public draft of the rule would not include the suggestions (5) and (6).

Agenda Item #3 – Next steps, including distribution of rule draft for November 29 LCDC hearing:

- It was suggested that the group discuss the word “needed” housing.
- All are invited to testify at LCDC rule hearing for the draft rules on November 29.
- The department will propose a meeting agenda and location for the December 10, 2007, workgroup meeting, which will be sent out prior to the meeting.

Agenda Item #4 – Wrap up 5:00 PM:

Marilyn Worrux adjourned the meeting at 5:07 p.m.

Reminder of Future meetings

The workgroup will meet 1:00 - 4:00 p.m. on December 10, 2007, in Room 1A of the Portland State Office Building, 800 NE Oregon Street, Portland.

LCDC will hold the first of two public hearings to consider the draft rules on November 29th in the next LCDC meeting in Corvallis: at the Suislaw National Forest Center, 4077 SW Research Way (the time of the hearing is not certain – the LCDC meeting begins at 8:30 but the rulemaking hearing is item 5 on the agenda).