

August 11, 2008

FROM: Bob Rindy
TO: UGB "Phase 2" Workgroup
RE: Ideas for Methodology to Identify New UGB Safe Harbors

I suggest the UGB workgroup consider the following outline or "road map" toward reaching a decision on new safe harbors for UGB expansion:

1. Identify the various "steps" or important assumptions basic to the UGB process that are either not subject to a safe harbor or have safe harbors that haven't been used much. (To help with this, I will soon provide a list of steps and assumptions that currently are subject to safe harbors, and try and identify steps or assumptions that are not currently subject to a safe harbor – I hope to have these lists at the meeting tomorrow.) In general, the UGB process includes steps or assumptions involving:
 - forecasts of population, housing and employment,
 - buildable land inventories (including "developability" assumptions for Goal 5 land, floodplains, slope, and infill and redevelopment)
 - long term housing mix and density assumptions,
 - Household size, Vacancy Rate & Group Housing assumptions
 - Employment needs (possibly as ratio of population or housing density?)
 - Streets, parks and schools, and other facilities
 - Locational analysis (steps and key assumptions)
 - Long term Urban Reserve forecasts
 - Other?
2. For each of those steps or assumptions, gather data from past acknowledged UGB amendments to determine the range and types of conclusions and assumptions cities of various sizes have used in their UGB amendment, and especially look for cases where many cities have reached similar conclusions.
3. Based on this research, use the data to suggest preliminary safe harbors for each of the steps or assumptions identified in step 1. The safe harbors could vary for individual communities or for a range of communities, based on factors such as the coordinated 20-year population, the average annual growth rate, or the location of each community.
4. The workgroup should also consider general "policy goals" of the state land use program that should be considered in crafting safe harbors for UGB amendment (e.g., more efficient use of land, affordable housing, etc) and consider ways in which the preliminary safe harbors might be adjusted to try and further these aims. For example, if we find cities of a certain population range typically assumed a long term housing density of 4 units per acre, the group should discuss whether the safe harbor should "encourage" or otherwise provide the opportunity for higher densities in some manner.

The UGB workgroup for phase 1 discussed and (I believe) reached consensus on many of the basics as to “what is a safe harbor” including some sideboards. In the Division 24 UGB rules agreed to by the workgroup:

"Safe harbor" means an optional course of action that a local government may use to satisfy a requirement of Goal 14. Use of a safe harbor prescribed in this division will satisfy the requirement for which it is prescribed. A safe harbor is not the only way or necessarily the preferred way to comply with a requirement and it is not intended to interpret the requirement for any purpose other than applying a safe harbor within this division."

However, there was of course a “long version” of our understanding about safe harbors leading to the definition above, including some workgroup “agreements” (or possibly “working assumptions”) related to safe harbors, as follows (based on my notes):

- A safe harbor is a short cut or “rule of thumb” that allows a local government to answer certain questions or use a certain assumption in the UGB process.
- A safe harbor is never required; it is optional. Completely at its discretion, a local government may instead take “the long way” to reach conclusions in the required steps prior to amending a UGB, i.e., local research and policy debate.
- Alternatively, a local government may obtain “answers” or “assumptions” by means of a safe harbor adopted by LCDC rule. This may avoid costly or time consuming research and free up funding for other local planning.
- If a safe harbor is expressed in a rule, LCDC, LUBA, and the courts are not supposed to use the safe harbor under any circumstances in order to help “interpret” a requirement that is replaced by or related to the safe harbor.
- If a local government properly follows a safe harbor, the “answer” or “assumption” obtained is considered “correct” and cannot be second-guessed by LCDC, LUBA or (we hope) the courts. Thus, safe harbors should reduce litigation, and concern about litigation, regarding the UGB amendment process.
- A safe harbor may be crafted in a manner that will encourage certain broader policy aims of LCDC and the land use program (e.g., efficiency of land use).
- A safe harbor should be “conservative.” The Phase 1 workgroup agreed that “development of a safe harbor should err on the side of resource land conservation and housing affordability, so as not to allow for UGB expansions that could not otherwise be justified.”
- The safe harbor must be useful. If the safe harbor is too “conservative” and therefore few cities use it, it has little value.
- In drafting safe harbors, LCDC (and the workgroup) should research key assumptions obtained “the long way” by a representative sample of local governments that have amended UGBs in past years. If indeed we find that certain assumptions, methods and/or rules of thumb have been used and approved in the past, and if we can discern a pattern or consistency with these, this information should form the foundation of new safe harbors. (In 2006, LCDC commissioned Metro to provide the group with data of this sort. I won’t email Metro’s work due

to its sheer size, but I will try and get it on our website for those who want to see it.

- We should consider ways to obtain data in a manner that allows us to customize safe harbors based on city size (or location, or growth rate?). Last phase, some expressed a concern that the Metro study referenced above may be too “Metro centric”. This may or may not be a fair description, but in either case, we may want to obtain data from a broader range of cities statewide.

Finally, I have had some in-house discussions about the possibility of DLCD contracting to obtain the data described above in a timely manner and I am confident we can do so, but I do not intend to move further on that task until the workgroup weighs in on the proposal above – and assuming we agree to this course of action.