



## MEMORANDUM

To: Goal 14 Committee  
From: Greg Winterowd  
Date: January 12, 2009  
Re: **Explanation of Alternative (Differentiated) Density Safe Harbor**

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### **Purpose**

At the December Goal 14 Work Group meeting, Goal 14 Committee Chair Worrix asked me to prepare explain a density safe harbor *option* that differentiates between small-parcel exceptions areas (defined as a parcel of 5 acres or less with a house) and high value farmland (defined in OAR 600, Division 033).

The current draft density / mix safe harbor is shown on **Table 1**.

### **The purpose of the differentiated density safe harbor alternative is to:**

- 1. Encourage cities to include and plan for small-parcel exception areas within a UGB, and**
- 2. Assure more efficient use of high-value farm land when such land can be justified for inclusion within a UGB.**

Under this proposal, a local government would have the choice of which density safe harbor option to use: either the standard density safe harbor found in Section 660-024-0040(8)(e) of the draft rule, or a more nuanced safe harbor that projects (a) lower densities in small-parcel developed rural exception areas in exchange for (b) higher densities on high value farm land. The standard density safe harbor would continue to apply to all other buildable land within existing or proposed UGBs that does not meet the definition of "small-parcel exception area" or "high value farm land". (See **Table 2**.)

### **Reasons why cities don't want to include high priority, small-parcel exception areas with UGBs**

There are a number of practical and planning reasons why property owners, cities and counties often prefer to include high value farm land within UGBs rather than small-parcel exception areas:

1. Most “exception areas” UGBs are, by definition, “built and committed” to non-resource uses. To be acknowledged by LCDC, counties had to prove that each exception area was committed to non-resource use *because* it had been parcelized and developed (usually with a house) to the point where it was impractical to use for farm or forest use.<sup>1</sup> Unfortunately, in most cases, such built and committed areas are also difficult to serve and re-develop to urban densities.
2. Owners of small, developed residential properties within exception areas typically oppose inclusion within an expanding UGB and eventual annexation to a City *because* they:
  - a. Already have a house with access to the cultural, retail, employment and service benefits that cities provide;
  - b. Already have on-site sewer and water service with roads that were in most cases built and by counties;
  - c. Don’t pay city taxes now and don’t want to in the future;
  - d. Prefer a “rural” unfettered lifestyle;
  - e. Don’t trust city government; and
  - f. Oppose annexation and development near them because of traffic, higher taxes, and related impacts.
3. For political, economic and planning reasons, cities and counties typically prefer to have larger parcels within their UGBs because they:
  - a. Are less expensive to serve;
  - b. Are more conducive to master land use planning;
  - c. Offer fewer political problems related to public support for inclusion with the UGB, annexation and bonding for public facilities;
  - d. Are more likely to develop efficiently (without the use of flag lots, cherry stem annexations, or similar relatively inefficient infill and development policies); and
  - e. Provide greater certainty in terms of public facilities planning and returns on capital investments in public facilities.
4. Local governments would just as soon not go through the UGB amendment process any more than they have to because:
  - a. The process is time-consuming, costly, and contentious – and often take limited staff time away from other planning projects.
  - b. Small-parcel exception areas are unlikely to redevelop at densities comparable to larger, undeveloped parcels, if they redevelop at all.

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<sup>1</sup> There are clearly “exceptions” to this rule. There are, for example, large tracts in some counties that were included in acknowledged “built and committed” exception areas.

- c. Therefore, many local governments conclude that small-parcel exception areas cannot be relied upon to meet short- or long-term urban growth needs.
5. These realities create significant disincentive for cities and counties to include exception areas within UGBs and an incentive to draft findings to justify inclusion of high value farm land instead.

Nevertheless, at it makes good policy sense to encourage cities include nearby exception areas within UGBs where urban services can reasonably be provided. In many cases, exception areas are better protected by interim development standards within UGBs than by rural residential zoning outside the UGB. By including exception areas within a UGB, everyone is put on notice that such areas eventually can be provided with urban services and redeveloped to urban densities. Unlike farm land, including too much exception area land with a UGB is not necessarily a bad thing.

As set forth in ORS 197 and Goal 14, there are sound policy reasons to assume and require efficient development of farm and forest land when it is needed within a UGB.

#### **Proposed differentiated density standard for small-parcel exception areas.**

As discussed above, small-parcel exception areas are costly to serve, have residents who frequently oppose annexation to cities, and typically develop at lower densities than undeveloped farm and forest land. While the standard density safe harbors in Section 660-0024-040(e)(8) make sense for UGBs with relatively few nearby exception areas, the standard density safe harbors probably are not achievable when there are many small-parcel rural residential areas immediately outside a growing urban area.

**Recommended Change: Allow cities to assume lower densities for small-parcel exception areas.** In the cases of Portland Metro and Woodburn, future urban densities within small-parcel exception areas were assumed at around three units per acre, based on an analysis of redevelopment potential. As a safe harbor, I would suggest that it's reasonable to assume that densities will occur at half the applicable standard "safe harbor" density. However, the density assumption would be used for estimating capacity in exception areas only. Cities would still have to zone land to meet the minimum and allowable density standards found in the standard density safe harbor.

#### **Proposed differentiated density standard for high value farm land.**

A similar logic applies in reverse to high-value farm land. High-value farmland is typically flat, buildable and held in large parcels. So, it makes sense that high value farm land – if it must be included within a UGB to meet residential land needs – should be subject to higher

density standards to ensure that it develops more efficiently than assumed by the standard density safe harbor.

**Recommended Change: If the differentiated small-parcel exception area safe harbor is used, then local governments must adopt minimum and allowable density standards for high value farm land that exceed – by two units per net buildable acre -- the standard density safe harbor.** For example, under draft Section 660-024-0040(e)(8), a city with an standard safe harbor density of six units per net buildable acre must allow at least eight units per net buildable acre under clear and objective standards with a minimum overall density of four units per net buildable acre. Under this alternative, the local government would be required to adopt a minimum density of eight units per net buildable acre on high-value farm land and allow 10 units per net buildable residential acre under clear and objective standards.

## Summary

**Table 1** shows the standard density safe harbor, as well as the standard density/mix safe harbor discussed at last month's meeting. **Table 2** shows an optional density safe harbor that differentiates between small-parcel exception areas and high value farm land. The density / mix safe harbors in Table 1 would remain unchanged.

In summary, a local government could either (a) use the standard density safe harbor discussed in Section 660-024-0040(e)(8) of the draft rule, or (b) chose to apply a density safe harbor that differentiates between small-parcel exception areas and high value farmland. Under option (b), the standard density safe harbor assumptions would continue to apply to residential buildable land that is within or added to the UGB except that:

- Half the standard density assumed in the standard safe harbor would be applied to buildable land within small-parcel, developed exception areas (lots of 5 acres or less with a house); and
- Two units more per acre per net buildable acre would be assumed for high value farm land. Minimum and allowable densities permitted under clear and objective standards would also be two units per acre higher when applied to high value farm land.

In both cases, the density safe harbor would be used to estimate the amount of residential land needed for housing within a UGB, and would be backed up by minimum and allowable density requirements.

## HOUSING NEED SAFE HARBOR: The Mix / Density Safe Harbor Table

20-Year Coordinated Population Projection	Density Safe Harbor (Dwelling Units per net buildable acre)	Mix Safe Harbor (Percentage Allowed by zoning under Clear & Objective Standards)* [Note: May go up in density range, but not down.]		
		Low Density Residential (2-6 du/nba)	Medium Density Residential (6-12 du/nba)	High Density Residential (12-30 du/nba)
Less than 2,500	<ul style="list-style-type: none"> <li>• Minimum Overall 3</li> <li>• Plan (assume) UGB for 4</li> <li>• Zone C&amp;O for 6</li> </ul>	70%	15%	15%
2,501 – 10,000	<ul style="list-style-type: none"> <li>• Minimum Overall 4</li> <li>• Plan (assume) UGB for 6</li> <li>• Zone for 8</li> </ul>	60%	20%	20%
10,001 – 25,000	<ul style="list-style-type: none"> <li>• Minimum Overall 5</li> <li>• Plan (assume) UGB for 7</li> <li>• Zone C &amp; O for 9</li> </ul>	55%	25%	20%
25,001 – 100,000	<ul style="list-style-type: none"> <li>• Minimum Overall 6</li> <li>• Plan (assume) UGB for 8</li> <li>• Zone C &amp; O for 10</li> </ul>	50%	25%	25%

- **Low Density Residential** (permits outright detached single family and manufactured homes on individual lots somewhere in the density range of 2-6 units per net buildable acre)
- **Medium Density Residential** (permits outright attached single family housing, manufactured dwelling parks and possibly other needed housing types somewhere the density range of 6-12 units per net buildable acre)
- **High Density Residential** (permits outright multiple family housing and possibly other needed housing types somewhere in the density range of 12-30 units per net buildable acre)

**Condition: If use mix safe harbor, must also use density safe harbor. Benefit: If use both density and mix safe harbors, then deemed to have adopted adequate efficiency measures.**

**Alternative Density Safe Harbor That Differentiates Between  
Highly Parcelized Exception Areas *and* High Value Farm Land**

<b>20-Year Coordinated Population Projection</b>	<b>Standard Density Safe Harbor*</b> (Dwelling Units per net buildable acre)	<b>Small-Parcel Exception Areas</b> (Dwelling Units per net buildable acre)	<b>High Value Farm Land</b> (Dwelling Units per net buildable acre)
<b>Less than 2,500</b>	<ul style="list-style-type: none"> <li>• Minimum Overall 3</li> <li>• Plan UGB for 4</li> <li>• Zone C&amp;O for 6</li> </ul>	<ul style="list-style-type: none"> <li>• Plan (assume) Exp. Area UGB for 2</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum Overall 4</li> <li>• Plan Expanded UGB for 6</li> <li>• Zone Expanded UGB C&amp;O for 8</li> </ul>
<b>2,501 – 10,000</b>	<ul style="list-style-type: none"> <li>• Minimum Overall 4</li> <li>• Plan UGB for 6</li> <li>• Zone C&amp;O for 8</li> </ul>	<ul style="list-style-type: none"> <li>• Plan (assume) Exp. Area UGB for 3</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum Overall 6</li> <li>• Plan Expanded UGB for 8</li> <li>• Zone Expanded UGB C&amp;O for 9</li> </ul>
<b>10,001 – 25,000</b>	<ul style="list-style-type: none"> <li>• Minimum Overall 5</li> <li>• Plan UGB for 7</li> <li>• Zone C &amp; O for 9</li> </ul>	<ul style="list-style-type: none"> <li>• Plan (assume) Exp. Area UGB for 3.5</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum Overall 7</li> <li>• Plan Expanded UGB for 9</li> <li>• Zone Expanded UGB C &amp; O for 11</li> </ul>
<b>25,001 – 100,000</b>	<ul style="list-style-type: none"> <li>• Minimum Overall 6</li> <li>• Plan UGB for 8</li> <li>• Zone C &amp; O for 10</li> </ul>	<ul style="list-style-type: none"> <li>• Plan (assumed) Exp. Area UGB for 4</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum Overall 8</li> <li>• Plan Expanded UGB for 10</li> <li>• Zone Expanded UGB C &amp; O for 12</li> </ul>

\* The Standard Density Safe Harbor density assumption would continue to apply to land within the existing UGB and to land within the expanded UGB that is *not* included in the “Small-Parcel Exception Areas” or the “High Value Farm Land” categories within the expanded UGB area.

- To assume lower densities in small-parcel exception areas, higher densities must be assumed and assured for high value farm land.
- Small-parcel exception area land would be required to meet the same minimum overall density and allowable density standards as required by the standard density safe harbor.
- High value farmland would need to be planned and zoned to achieve at least two units more per net buildable acre than required by the standard density safe harbor.