

UGB Rulemaking Advisory Committee

Policy and Research Tasks Necessary for New UGB Rules

This document lists broad policy and research tasks necessary in order for the Land Conservation and Development Commission (LCDC or the Commission) to adopt new administrative rules for the streamlined UGB process described in 2013 legislation (HB 2254).

OVERALL GUIDANCE FOR RULEMAKING

HB 2254 directs LCDC to develop and adopt simplified methods for a city (outside Metro) to evaluate or amend its UGB. As an overall guide to this rulemaking, the law requires that *the commission should design the new methods to:*

1. *Become, as a result of reduced costs, complexity and time, the methods that are used by most cities with growing populations to manage the urban growth boundaries of the cities;*
2. *Encourage, to the extent practicable given market conditions, the development of urban areas in which individuals desire to live and work and that are increasingly efficient in terms of land uses and in terms of public facilities and services;*
3. *Encourage the conservation of important farm and forest lands, particularly lands that are needed to sustain agricultural and forest products industries;*
4. *Encourage cities to increase the development capacity within the urban growth boundaries of the cities;*
5. *Encourage the provision of an adequate supply of serviceable land that is planned for needed urban residential and industrial development; and*
6. *Assist residents in understanding the major local government decisions that are likely to determine the form of a city's growth."*

POLICY TASKS

In order to draft the rules to implement HB 2254 the following general "policy tasks" are necessary:

- 1) Regions: Determine major regions of the state. This will be informed by Research Tasks described later in this document. Several
- 2) Need Factors to determine need for housing and employment, including land necessary for those needs, for a 14-year period. This task has two major elements:

- a) Factors: The rules must establish “factors” for converting 14-year forecasts of population and employment into a determination of the need for housing, employment and other needs. These “factors” must:
- i) be based on an empirical evaluation of the relation between population and employment growth and the rate and trends of land utilization in the recent past in the applicable major region of the state (See Research tasks 1 and 2);
 - ii) reflect consideration of any significant changes occurring or expected to occur in the markets for urban land uses in the major regions of the state (See research task 3);
 - iii) be designed to encourage an increase in the land use efficiency of a city, subject to market conditions;¹ and
 - iv) provide a range of policy choices for a city about the form of its future growth.
- b) Employment Forecasts: A city’s long term (14-year) land needs for all categories must be forecast using a population and employment growth forecast (see subtask a, above). A city may forecast employment growth based on either the population growth forecast for the city or “the employment growth forecast issued by the Employment Department for the county or region.”² For the latter purpose, the rules must provide a method to convert the 10-year Employment Department forecast (issued for regions established by OED) into forecasts for individual UGBs.
- 3) Simplified land inventories: The rules must provide simplified methods to conduct inventories of the development capacity of lands inside the UGB. Related to this, the rules must provide factors for inventorying the capacity of lands that are proposed to be added to a UGB. It is presumed that these methods will be similar for evaluating capacity of both the land inside the UGB and the lands considered for adding to the UGB, but not necessarily the same.
- a) Buildable lands inventory: Provide a method for conducting “a simple inventory of vacant and partially vacant buildable lands” within the UGB.³ Provide “simple factors” for forecasting the “supply and development capacity of lands” within the UGB at the time of the UGB evaluation based on the comprehensive plan designation and the zoning, including “the redevelopment capacity of developed urban lands” and “the development and redevelopment capacity of urbanizable lands.” (Research Task 4, 5, 6)
- b) Study Area Capacity: The rules must provide “factors” for determining the supply and development capacity of lands in a “study area” of land considered for addition to a UGB. The determination must be based on a simple inventory of vacant and partially vacant lands in the proposed UGB expansion areas and the simple factors for forecasting “the development and redevelopment capacity” of these lands. (Research Tasks 4, 5, 6)

¹ The requirement that population per square mile must increase is “subject to market conditions” for large cities (Section 5 of HB 2254); however, consideration of market conditions is not required for the “small cities” method in Section 4 of the law.

² See Sections 4(3)(a) and 5 (3)(a) and Sections 4(4) and 5 (4)

³ HB 2254 does not specify “a simple inventory” for large cities, only for small. Nevertheless, we should strive to simplify.

- 4) Compare need and supply: Cities opting to use the new method must compare their needs (determined by Policy Task 2) with the capacity of lands in the current UGB (Policy Task 3a) and determine whether the UGB includes sufficient land for a 14-year period. The city must demonstrate the land “can be serviceable” and in addition the land must actually be “serviceable land” for at least a 7-year period. If the current supply is not adequate, the city is eligible to use the new process to add additional land to the UGB. The process for this comparison will need to be specified in the rules. HB 2254 also states that LCDC should design the process to “encourage cities to increase the development capacity” within the UGB before adding land.

- 5) Study Area: In order to evaluate lands for inclusion within an expanded UGB, for those cities that determine a need to expand, the city must establish a “study area” that includes all land that is contiguous to the urban growth boundary and *within a distance specified by rules*. However, land may be excluded from the study area because of certain criteria in HB 2254 – these criteria would be reflected in the new rules but may need additional detail not provided in the law. Reasons to exclude land from the study area include the following (note: some of these may be a considered a separate policy task or a “subtask” due to their complexity; they are lumped here under Task 5 since they all pertain to the study area exclusions):
 - a) Impracticability: Land may be excluded because it is impracticable to provide necessary public facilities or services to the land. The commission must determine “impracticability” by rule and the determination must be made “considering the likely amount of development that could occur on the lands within the planning period, the likely cost of facilities and services, physical, topographical or other impediments to service provision and whether urban development has occurred on similarly situated lands such that it is likely that the lands will be developed at an urban level during the planning period.” The law further states that “when impracticability is primarily a result of existing development patterns, the rules of shall require that the lands be included within the study area, but may allow the development capacity forecast for the lands to be specified at a lower level over the planning period.” Finally, the determination must be “based on an evaluation of how similarly situated lands have, or have not, developed over time.” (Research Task 6)

 - b) Development Hazards: Land may be excluded from the study area because the land is subject to significant development hazards (definition needed), including a risk of land slides, a risk of flooding because the land is within the 100-year floodplain or is subject to inundation during storm surges or tsunamis, and other risks determined by the commission. (Research Task 5)

 - c) Significant Resources: Land may be excluded because the long-term preservation of significant scenic, natural, cultural or recreational resources requires limiting or prohibiting urban development of that resource land. The law requires that the commission by rule shall determine the circumstances in which, and the resources to which, this exclusion will apply.

- d) Federal Land: Land may be excluded if the land is owned by the federal government and managed primarily for rural uses. The law does not define “rural uses” so this term will need a better description.
 - e) Site Characteristics: In some cases (see 197A.320(6)) a city may exclude land from the study area because it does not have particular “required” site characteristics. Note: if included in the UGB because of such identified characteristics, such lands must remain planned and zoned for the intended use unless the city removes the land from the UGB, “except as allowed by rule of the commission that is based on a significant change in circumstance or the passage of time.”
- 6) Adding Land to the UGB: The city must add land to the UGB from the study area only. (Note: the rules must provide “factors” for determining the supply and development capacity of lands in the “study area”; see Policy Task 2). Land must be added to the UGB according to specified “priorities,” which are similar to the site characteristic priorities that have been in law since 1993, but not exactly the same (as such, these may or may not require additional clarification in the rules):
- a) Priorities Criteria: the city must *evaluate* land for inclusion in the UGB and *select* as much of the land in the study area as necessary to satisfy the need “*using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.*” The law does not provide any specifics about these criteria and the law does not indicate *how* to prioritize or blend the commission’s criteria with criteria in an acknowledged local plan.
 - b) Priority Jumping: Clarification may be needed for provisions that allow inclusion of land that is lower priority but contain a “small amount” of resource land that is “needed to connect” a nearby area of higher priority land, or that contain a “small amount” of resource land that is not predominantly high value farmland and is “completely surrounded” by land of higher priority.
- 7) Planning the Amended UGB: A city shall demonstrate that the amended UGB Includes sufficient serviceable land that can all be serviceable over a 14-year period, that it also includes “serviced land for at least a seven-year period” and finally that the UGB will not become less efficient. These terms need careful definition. Lands included in the UGB:
- a) Must be planned and zoned for categories of land uses in amounts that are *roughly proportional* to the land need determined for each category of use and for an intensity of use that is *generally consistent* with the estimates that were used to determine the amount of land needed (at a minimum the terms *roughly proportional* and *generally consistent* need rule clarification).
 - b) Must be planned and zoned to meet the requirements for needed housing (i.e., as in ORS 197.295ff, Goal 10 and OAR 660, div 8), and those requirements must be specified by rule of the commission in a manner that is as objective as practicable; and

- c) May be either planned and zoned, or otherwise conditioned, to avoid significantly affecting a state highway, a state highway interchange or a freight route designated in the Oregon in the Oregon Highway Plan, or allowed to significantly affect such routes subject to mitigation, consistent with rules of the commission, provided the lands are planned and zoned for compact urban development or industrial uses (the rules should define “significantly affect”, “avoid”, “compact” and “mitigation”).
 - d) Measures and Performance Standards: The rules must establish “a range or combination of measures to accommodate” future housing need, whereby the city must implement “at least one measure or satisfy an alternate performance standard.”⁴
- 8) Periodic Review Replacement: When a city evaluates or amends the urban growth boundary using the new streamlined methods, that city is not required to commence or complete periodic review. Instead “the commission shall, by rule, specify alternate means to ensure that the comprehensive plan and land use regulations of the city comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs.” Currently, mandatory periodic review only applies to cities over 10,000 in population, and so it may be presumed that this task concerns only large cities.
- 9) Goal Amendments: Goal 14 may need to be amended to be consistent with the new laws. If so, the department will recommend that the RAC propose amendments that are “the minimum necessary to conform the goal to the new statutory requirements,” such as described by ORS 197.235(4), in order to avoid needing “ten goal hearings” around the state.
- 10) UGB Land Exchange: This is an optional task; HB 2253 provides that the commission *may* adopt rules that specify circumstances under which a city may exchange land within the UGB for land that is outside, and that are designed to avoid adverse effects of an exchange on agricultural or forest operations in the surrounding area. Such rules under the “traditional process” already exist in OAR 660-024-0070, but this provision suggests that those rules may be amended to sync with this new streamlined process.

NOTE: There are many provisions of HB 2254 that are self-implementing, such as the requirements for periodic “reuse” of the new UGB method (See Section 3 of HB 2254) and requirements for urban service agreements (Section 6). These are not mentioned in the above list because no additional policy work appears to be necessary to implement the requirements (other than writing rules reflecting the requirements). It is possible that during the course of this rulemaking the RAC will determine that this or other topics need further clarification. Such items will be discussed if/as they arise.

⁴ In the Design Team this was discussed as a “needed housing” requirement in lieu of Goal 10 findings. Note that HB 2254 requires cities to consider these measures “to accommodate future need for land within the urban growth boundary.” The word “housing” is not mentioned in this phrase, but it is mentioned in the subsequent phrase indicating that the standard is satisfied when the city adopts a development code for needed housing.

RESEARCH TASKS

The following research tasks are necessary in order to complete various tasks and performance measures described above:

1. Determine the historical rate of “land efficiency” and land consumption by region (per person/acre). This is necessary to complete Policy Task 2.
2. Determine past employment growth rates/trends of land utilization by region. This is necessary to inform Policy Task 2.
3. Determine significant changes “occurring or expected to occur” in the markets for urban land uses in the major regions of the state. This is necessary for Policy Task 2.
4. Determine historic and projected infill and redevelopment patterns of land in UGBs. This is necessary for Policy Task 3.
5. Determine past trends for development of land with development impediments, e.g., hazards, wetlands, other resources. This is necessary for Policy Task 5(b).
6. Determine conditions that make land considered for UGB expansion “impracticable” to serve. Study will include capacity of rural residential exception areas, infrastructure finance, physical barriers, etc. This is necessary for Policy Task 5(a).
7. Analyze effectiveness of various methods and codes intended to encourage development and infill of needed housing – literature review and best practices research. This is necessary for Policy Task 7d.
8. Analyze data to determine rates of conversion of farm and forest land to urban use, by region. This is necessary in order to apply performance measure 3.

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