HB 2254 – Section-by-Section Analysis (4/4/2013)

As described to the 2013 legislature and written by Richard Whitman, Governor's Natural Resource Advisor

Introduction

HB 2254 establishes a new, streamlined, option for cities to evaluate and amend their urban growth boundaries (UGBs). The new method does not replace existing means of amending UGBs, but it is designed with the intent that most small cities and many larger cities will use it.

Problem Addressed

All cities in Oregon have an urban growth boundary. The purpose of UGBs is to define where infrastructure, development and growth should be focused – reducing the costs of growth and conserving agricultural and forest lands for those industries. Most UGBs were established 30 to 35 years ago. Many cities have seen much of the vacant and developable lands within their UGBs develop over this time, and more and more cities are coming to a point where they need to consider expansion.

The system for UGB amendments has grown complex over time, requiring significant expense and with substantial uncertainty of outcome. There have been __ appeals of UGB amendments in the past __ years, with __ of those decisions being reversed or remanded. The time, complexity, cost and uncertainty of the system is undermining our land use system making it difficult for residents to participate and leading many cities to avoid UGB amendments for as long as possible.

The new methods established in HB 2254 simplify our UGB system while protecting the core outcomes that the land use system is designed to produce: efficient and desirable places to live and work, and conservation of farm and forest lands for our agricultural and forest industries. The new methods will not work for all cities, but they are designed and intended to work for most. The new method does not apply within the Portland metro area, in order to allow the urban and rural reserve system adopted in 2007 to be fully implemented.

Section 1 -- Definitions

This section contains key definitions for the legislation.

Section 2 – Key Outcomes

Section 2 described the key purposes of the bill. The subsections set out high level outcomes that they system is intended to achieve, and directs the Land Conservation and Development Commission (LCDC) to design its rules to achieve those outcomes. Those outcomes are:

- **Reduced costs, complexity and time for UGB amendments;**
- **The development of urban areas that are attractive places to live and work and that are increasingly efficient in terms of land uses and public facilities and services;**
- **The conservation of important farm and forest lands;**
- **Increased development capacity within UGBs;**

- **An adequate supply of serviceable land that is planned for needed urban residential and industrial development; and**
- Better **local government decision-making, where residents can understand the key choices that are likely to determine the form of a city's growth.**

Section 3 – Direction to Agency

Subsection 3(1) directs LCDC to adopt rules to set up the new streamlined UGB system.

Subsection 3(2) is a signpost, directing smaller cities to section 4 and larger cities to section 5.

Subsection 3(3) establishes when a city may repeat its use of the streamlined method (50% of the forecasted population growth, or 50% of the buildable land developed). Cities must evaluate whether they have enough land in their UGB by the time they reach 100% of the forecasted population growth.

Subsection 3(4) makes it clear that a city may start to use the streamlined method and then, if the results are not consistent with the city's expectations, stop the process. This subsection also clarifies that cities using the traditional UGB amendment process may switch to the new method.

Subsection 3(5) requires LCDC to evaluate how well the new system is working, every five years, and make adjustments as needed.

Section 4 -- Smaller Cities

Subsection 4(1) directs LCDC to adopt a streamlined UGB amendment process for smaller cities.

Subsection 4(2) directs LCDC to design the new method to meet certain performance standards assuring an adequate supply of land for development over a 14-year period (note change from 20), that growth is efficient, and that the rate of conversion of farm and forest lands does not increase in major regions of the state (e.g. Willamette Valley, the coast, etc.)

Subsection 4(3) changes the planning period for UGBs using the new method to 14 years, from 20, and specifies how the demand for land and development capacity, and the supply of land and development capacity will be determined under LCDC's rules. The rules must require cities to show that they have at least seven years of serviceable lands, and that all of the lands added to the UGB are suitable for urbanization. The rules also must require cities to plan and zone lands to meet requirements for needed housing, and to avoid significant adverse effects on key transportation facilities.

Subsection 4(4) Identifies what population forecast the city must base its planning on (HB 2253). It allows cities to use either the population forecast, or the Employment Department forecast, for jobs forecasting. These forecasts are converted to an amount of land, based on LCDC rules. The rules will be based on an empirical analysis of cities in the same region, and will give the city a range that it can use to adapt its decision based on local values and desires.

Subsection 4(5) directs LCDC to establish factors that cities will use to estimate how much growth can be handled on lands already inside of the UGB. Again, these factors will be based on an empirical look at cities in the same area.

Subsection 4(6) addresses the same issue as 4(5), but for the lands that are proposed for addition to the UGB.

Subsection 4(7) deals with circumstances where lands added to a UGB for development purposes do not develop as intended. It allows for the lands to be removed from the UGB, or for their development capacity to be downgraded. It does not require LCDC to do this, but gives them the discretion to do so.

Subsection 4(8) provides that if lands are added to a UGB and planned and zoned for industrial or residential uses, that they must remain planned and zoned for those purposes unless LCDC, by rule, allows a change based on change in circumstance.

Section 5 – Larger Cities

The streamlined method for larger cities (with a population over 10,000), parallels the method for the smaller cities, with the following differences:

- The buildable lands inventory, identifying development potential on vacant and partially-vacant lands must be more thorough than for smaller cities;
- The factors for forecasting the development and redevelopment capacity of lands that are already inside of the UGB, but not yet given urban planning and zoning, will be more refined.
- Larger cities must consider measures to encourage further redevelopment and infill, and either adopt at least one of those measures or show that it already has a rate of redevelopment over the planning period that exceeds the median for the area.

Section 6 – Urban Service Agreements

This section requires cities using the streamlined UGB method to notify certain types of districts that has territory within land being studied for a UGB expansion. If the district wishes to enter into an urban service agreement, it must respond within 60 days of the notice. If the district choses not to negotiate an agreement, the city may withdraw lands from the district's territory that are included within a UGB and annexed to the city. If the district shoses to negotiate an agreement, this section sets up a phased process beginning with negotiation, then mediation and then, if necessary, arbitration.

Section 7 – Location (Where a UGB Expansion May Occur)

Current law directs cities to expand on urban reserves first, then exception lands, and finally resource lands. This section replaces current law for all cities, except those within Metro, and will apply whether a city uses the new streamlined UGB amendment process of the existing process. The section clarifies what lands must be studied. In particular, the legislation clarifies that a city is not required to study land if it is impracticable to provide public facilities and services that are needed for the anticipated uses.

LCDC is tasked with establishing, based on empirical evidence of what lands have and have not developed in similar areas, criteria for cities to use in making this determination.

The other major change in this section, relative to existing law, is that it would put urban reserve, exception, and non-resource lands on an even level of priority for including in a UGB – leaving that choice to the local governments.

Finally, if a city includes lands for a particular industrial use, and justifies the location of the expansion on that use, this section would restrict the city's ability to rezone the lands for another use. LCDC rules will define when a change is allowed.

Section 8 – Judicial Review

A major change in this legislation is that it would move the review responsibility for all UGB amendments using the new streamlined method from LCDC to LUBA. That change is expected to lead to significant time savings for local governments, and helps more clearly define the roles of LCDC (policymaking) and LUBA (judicial review of particular cases).

This section also provides that cities that use this new streamlined method are not required to go through periodic review of their land use regulations. Again, this is expected to be a major cost savings for local governments. LCDC would develop other means to help cities update their land use regulations over time.

Sections 9-12 – Conforming Amendments

Sections 13 and 14 – Effective Date

The legislation will become effective on January 1, 2016, after LCDC has completed the rulemaking needed to implement the legislation.

Section 15 – Emergency Clause