



Oregon

Tina Kotek, Governor

HPAC Work Group Recommendation Template

Last Update: June 21, 2023

Work Group

- Availability of land
- Land development permit applications
- Codes and design
- Workforce shortages
- Financing

Recommendation

For the development of housing:

Allow the applicant to apply for density swap that shall be allowed when limitation render portions of sites undevelopable (i.e. floodplain, landslide hazard areas, topography, wetlands, trees, etc.) at or above 15% of the total property. Could be done through density swap allowable outright or an increase in building height. Applicant is not required to build up to the maximum allowable density.

When density swap is applied for, dimensional lot standards shall no longer apply in order to allow for density to be achieved without the use of a PUD process.

Related Work Plan Topics

- Increase affordability and housing choice, including middle housing, through the refinement of overly restrictive standards.
- Reduce barriers for housing production.
- Removed barriers and make it less complex to build smaller, more affordable homes.

Adoption Date

October 17, 2023

Adoption of Recommendation

Discussed in Land Development Permit Applications meeting on October 9 and 16.
Discussed in Codes and Design meeting on October 10 and 17.

Adopted by both groups on October 16, 2023 (LDP) and October 17, 2023 (C & D).

Co-chairs Guidance: Standards for Analysis

1. Clearly describe the housing production issue that the recommended action(s) will address.

Current land within existing city limits and urban growth boundaries can be saddled with site conditions that render the area undevelopable. Things like floodplains, topography, landslide hazard areas, wetlands, and trees can greatly reduce the area of property in which housing can be provided.

These site constraints may not have been taken into consideration when the land was included in a jurisdiction's building land inventory.

Many cities take this issue into account. In those cities, an applicant may ask for a density swap, but it is not a guaranteed process. Outright allowing the density swap takes away one more unknown in the design process. Under this recommendation, the applicant would submit the land use application for either site plan/site design review or a subdivision with the density swap taken into account and would provide a finding for how the overall site density is met. The density swap would be outright allowed as long as the overall density for the site met the underlying zone.

2. Provide an overview of the housing production issue, including quantitative/qualitative context if available.

Current land within existing city limits and urban growth boundaries can be saddled with site conditions that render the area undevelopable. Things like floodplains, topography, landslide hazard areas, wetlands, and trees can greatly reduce the area of property in which housing can be provided.

These site constraints may not have been taken into consideration when the land was included in a jurisdiction's building land inventory.

In addition, certain development costs are fixed on given projects, regardless of the number of housing units that are constructed. Certain infrastructure needs to be provided to the site and through the site to neighboring properties. Reductions in the number of units that can be built on the property increases the cost per unit and affects affordability.

When specifically looking at single family zoned properties, it is possible that allowing the density swap would result in a multi-family project being built in an area originally slated for single family. But the overall density would even out, with the overall impact on infrastructure being similar to what would have occurred had the site constraint not been present.

This will ensure the same number of units (but perhaps not the type of unit) can be provided.

3. To assess the issue and potential action(s), include subject matter experts representing all sides of the issue in work group meetings, including major government, industry, and stakeholder associations.

Lisa Anderson-Olgive, Planning Administrator for City of Salem

Miranda Batschell, Planning Director for City of Wilsonville

Ethan Nelson, City of Eugene

Matthew Ruetters, Community Development Director for City of Albany

Brandie Dalton, Land Use Planner

Written comments from the above cities can be seen following this document. In general, cities have methods to account for site constraints within their codes. However, there are different methods for achieving this. While some remove the area from area calculated for density, some allow for a density swap provision through a more discretionary path. Salem allows a PUD process. Albany does cluster development through a Type III process.

Concern is raised regarding allowing higher density developments in single-family zone areas, especially since there aren't provisions in the single family criteria to address site design criteria.

4. Provide an overview of the expected outcome of the recommended action(s), including quantitative/qualitative context if available.

Provide a clear and allowed path to develop property at the density which is has been established, without the extra delay or uncertainty of having to ask permission and risk being denied.

5. Estimate of the time frame (*immediate, short, medium, long-term*), feasibility (*low, medium, high*), and cost (*low, medium, high*) for implementation of the recommended action(s).

Time Frame

Long-term

Medium-term

Short-term

Immediate

Feasibility

High

Medium

Low

Cost

High

Medium

Low

Many properties left in UGBs have some kind of site constraint. While most of them may be surmountable, this will help ensure units can be provided at the density accounted for in the city's buildable land inventory.

6. Provide a general overview of implementation, the who and how for the recommended action(s).

Implementation would be done at the City level. Density swap provisions could be added to the Needed Housing statutes.

7. Outline the data and information needed for reporting to track the impact and implementation of the recommended action(s).

Properties that are constrained by things that make portions of them undevelopable are hindering cities from being to utilize all of their buildable lands. While some of these things are known by cities, not all of them are. This provision will allow cities to closer achieve the densities planned for in their land inventories.

Without a clear and objective measure like that, the encumbered lands need to be removed from cities' inventories. This would require a great deal of staff work because not all site constraints are known to cities and don't become known until due diligence is performed on a property.

Cities could report projects that have applied for the density swap as a part of the OHNA reporting.

8. Identify any major externalities, unknowns, tradeoffs, or potential unintended consequences.

Density swaps could result in properties which were previously designated for single family develop to potentially be developed as higher density developments.

Increase in density could result in taller construction. A lot of wood-frame walk up style apartment buildings are 3-stories. Going to four stories increase the fire rating required, which could increase construction costs. However, this would be a density swap initiated by the applicant.

Please include any relevant reports, data analyses, presentations, or other documents that would be informative and useful for the full HPAC as the recommendation is discussed and considered.

From Miranda Batschell, City of Wilsonville:

Thanks again for engaging me on this HPAC recommendation. Overall, I am not sure the extent of the issue or the potential benefit to housing production. The issue as you have described we do not see existing in Wilsonville. I would need more detail on the exact scenarios this is coming from and the extent of them.

I would disagree with the statement that there is a widespread issue with BLI's. I would be surprised if it is in other jurisdictions. I think if these are being missed in BLI's, the BLI's need to be addressed. For us, all of the areas mentioned (flood plans, natural areas) are taken out of BLI, which is the same throughout the entire Portland Metro region. Where a site does have significant natural resources constraints, the density of the site is all allowed within the area that is not subject to resource protections already (so inherently the developer is already allowed the density for the site, meeting underlying zoning). So our code does already "Provide a clear and allowed path to develop property at the density which is has been established" and there is not an "extra delay or uncertainty of having to ask permission and risk being denied."

My sense is the new Middle Housing standards per HB 2001 (2019) would also help resolve some of this issue if and where it exists. All middle housing unit types would be allowed, so you could have townhomes, triplexes, or quadplexes on every equivalent SFR lot, allowing multiple more units and increasing density on the developable area of the site.

In cities where a density transfer is needed, the biggest challenge will be in adjusting siting and design standards in order to accommodate additional density. Where Wilsonville has allowed a density transfer from a natural area (areas where the new methodology was not used), it has run into siting and design standards. We have had to provide a number of waivers, especially lot size and setbacks, to enable the transfer, which would require a discretionary decision by the Planning Director at a minimum, but traditionally (per State law) it would be handled through a hearing, and with public notice. This would run counter to your desire for a clear and objective process.

So, if this became a recommendation from the HPAC, I think it would be best to distinguish this would only be in places that do not already resolve the issue through its BLI, density assumptions, and zoning code. Because layering this on top of cities that already plan and address for this would not be viable. In addition, I am not sure how this recommendation would end in a clear and objective decision process as site design standards will potentially conflict especially if housing types change.

From Ethan Nelson, City of Eugene:

My apology for the delay in getting back to you. Here are some thoughts, based on some brief internal conversations.

The concept on its face makes sense, basically, allowing density swaps for parcels that are not able to achieve allowable density due to physical constraints. Additionally, there seems to be the interest to address buildable lands and the development constraints related to the physical characteristics that due to local or state regulation reduce the 'productivity' of the land. This seems to also be part of the issue with the Tree Code recommendation. My sense is that there would likely be a good discussion about focusing on how cities conduct buildable lands analysis and how to 'true' those up based on the reality on the ground.

While the concept makes sense, the recommendation may need additional drafting support for clarity on intention and implementation. Of note, cities are likely going to not be able to support the 'density swap allowed outright', as it seems to be a parcel by parcel evaluation. Including this language may make it challenging to build broader consensus on the issue.

Thanks for your engagement and patience in our response.

From Lisa Anderson-Olgive, City of Salem:

Thanks for sending this to us to review. Salem already has a path to swap density through a PUD. We also exempt many of these things when calculating minimum density on the RS zone – see SRC 510.010(c)(3). The subdivision process and the RS zone allow townhouse development which could be used to cluster and avoid wetlands, slopes, etc., and of course middle housing is allowed.

I think Salem's position would not be supportive allowing multi-family development in the RS zone – even if it meets overall density. We would also have to amend our RS zone to include development standard, design review, etc., for multi-family in the single family zone.

If the goal is to allow multi-family in the single family zone, we already allow that for affordable housing pursuant ORS 197.308 – see SRC 704.010. We have already approved development pursuant to this provision.

From Mathew Ruetters, City of Albany:

Thank you for the opportunity to provide my comments and thoughts on your proposed recommendations. As we discussed the City of Albany already has a process which does almost exactly what you have described. Known as “Cluster Development” it is an option which is added on to land division, site plan, or conditional use processes. Utilizing the Cluster Development strips away nearly all of the dimensional standards and relies on Maximum Density to govern development based on a gross unit per acre. Currently Cluster Developments are processed as a Type III application which does require a decision by planning commission, however both David and I feel we could process a Cluster Development as a Type II administrative decision with little to no modification to our existing code, as it is very prescriptive (clear and objective). I have attached that portion of Article 11 of our Development Code for you to review.

As I also noted we are currently in the implementation process of the City's recently adopted Housing Implementation Plan (HIP). The HIP identifies actions the City can take to help increase housing options that create more housing for more people, with a focus on Housing Affordability across the spectrum, including market rate housing, and not just Affordable Housing. I encourage you to take a look at the strategies and you can see some of the steps locally Albany has taken to help address the housing crises. Our current implementation plan involves the medium to high priority strategies that were identified in the plan, in particular relevant to our conversation is strategy 1.2. Another one I know a lot of developers/builders are excited about is strategy 2.3 which proposes the deferral of SDC's until the certificate of occupancy.