

# Affordable Housing Pilot Project RAC Notes

OCTOBER 24, 2016

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<b>RAC Attendees</b>	Steve Wheeler; Bill Hall; Mary Kyle McCurdy; Kim Travis; Erin Doyle; Rebecca Lewis; Lisa Bates; Shawn Cleave
<b>Absent</b>	Robin McArthur
<b>DLCD Staff</b>	Carrie MacLaren; Gordon Howard; Evan Manvel; Casaria Taylor
<b>LCDC Members</b>	Bart Eberwein; Greg Macpherson
<b>Note Taker</b>	Casaria Taylor

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## Agenda Topics

1:00pm – 1:15pm	Orientation to Draft Rule Structure and Parts
1:15pm – 1:45pm	Application Process
1:45pm – 2:15pm	Basic Requirements
2:15pm – 2:30pm	Affordable Housing on Pilot Project Site
3:00pm – 3:20pm	Housing Measures Inside UGB
3:20pm – 3:45pm	Consensus Items
3:45pm – 3:55pm	Public Comment
3:55pm – 4:00pm	Next Steps

Evan introduced Greg Macpherson, Chair of the Land Conservation and Development Commission, who has joined the group for this meeting. Greg is joining to substitute for Robin McArthur, who will be missing the final two meetings.

These last two meetings are work sessions on the actual rule draft. The goal of the meeting is for the RAC to understand the structure of the rule, review the policy choices, make suggestions, determine general consensus, and determine issues that need further work. **RAC members should submit any additional written comments by Friday, October 28**, so a second draft of the rule can go out to the RAC by November 9.

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### Agenda item: Orientation to Draft Rule Structure and Parts

Staff: Gordon Howard

#### Discussion

Gordon walked the RAC through the rule structure.

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### Agenda item: Application Process

Staff: Carrie MacLaren

#### Discussion

##### Process Overview – Carrie MacLaren

Staff is asking: Do the rules strike the right balance between: 1) giving the Commission enough information to select a good pilot project; and 2) not being so burdensome as to discourage cities from applying?

- Cities who want to be considered must participate in a pre-application process which has submittal requirements included in the rule. If the department finds the information incomplete the department will contact the applicant and provide an opportunity for the city to submit the missing information. The department will also contact all applicants to discuss the proposed project and provide input to the applicant. The department will not complete the application, but will offer support and assistance.
- Once all of that has been completed a more detailed final application will be required. A list of the submittal requirements are included in the draft rule. [See draft rule 0020(6), beginning on page 3 of the 10/20 draft]
- Completeness check is done by the department, again with an opportunity for the city to submit missing information

- Commission goes through their selection process
  - Through the course of a public meeting
  - Will issue an order for an application from a city that has more than 25,000 people
  - Will issue an order for an application from a city that has 25,000 or fewer people
- Pilot project begins
  - City should be prepared to move forward within two years of an acknowledged UGB amendment (see draft rule 0090(1)(b))
  - Reporting requirements
  - If the site can't be used for affordable housing the city must withdraw that land from the UGB before using that site for other purposes

Steve asked about the “land use designation and zoning” requirement in the application and asked if that is current zoning or planned zoning. Evan responded that it is referring to the land use designation and zoning existing of the proposed project site at the time of the application.

Mary Kyle McCurdy asked staff to be specific about when they are talking about current (at time of application) and later (after UGB) and use the appropriate language. There is overlapping language that sounds similar. Be clear about lands that are inside the UGB and about lands that are being added to the UGB. This clarification should be done in the rule and any handouts that are being used. Mary Kyle also asked for clarification of what is in the concept plan and what is submitted separately.

Mary Kyle McCurdy reminded the group we don't want a bait and switch so she is concerned about the word “phasing”.

Mary Kyle McCurdy asked to have “balance sheet” defined.

Carrie asked if the RAC for input on the following two options (1) ask cities to provide an explanation about how they would guarantee the 50 year commitment of the affordable housing in the application process, and then – after selection – have the city submit the form of the guaranty (e.g., such as a deed restriction; or (2) have the city submit the form of the guaranty as part of the application. Carrie noted that the rules are drafted based on Option 1, but was looking for input as to: whether it would be better to be able to compare the contents of the guaranties, whether it is too much work for a city to prepare (in the event that city isn't selected), etc.

Steve Wheeler said it should be done after approval, and required as part of the order. It shouldn't be a requirement at the point of judging, but the Commission should have an opportunity to review.

Mary Kyle McCurdy said if it is a two part process it should be clear it is not just a paperwork process, and that Commission should clearly have the power to review the City's effort for sufficiency before the pilot moves forward.

Erin Doyle agrees with the process others have discussed.

Bart Eberwein asked if there is a lessons learned, best practices, etc. criteria that is included in the Commission's decision-making process. Carrie said, yes and no. There are some requirements outlined in rule that ask for lessons learned from the selected cities, but the rules do not require that applying cities explain why their submittal is a particularly good pilot. We do intend to use the lessons learned in planning assistance materials that the department prepared, and to provide that assessment so communities can learn from each other.

## Conclusions

Evan Manvel heard RAC consensus:

- the application and approval process sets the right balance between sufficient information and application burden,
  - the rule should allow cities to wait until after project selection to provide the form of their guarantee of the 50 year dedication to affordable housing, and the Commission should be able to review that submittal for sufficiency.
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<b>Agenda item: Application Process</b>		<b>Staff: Carrie MacLaren</b>
<b>Action items</b>	<b>Person Responsible</b>	<b>Deadline</b>
✓ Clarify language of “land use designation and zoning”	Gordon	11/9/2016
✓ Be clear about lands that are inside the UGB and about lands that are being added to the UGB. This clarification should be done in the rule and any handouts.	DLCD Staff	11/9/2016
✓ Clarify what’s in the concept plan in the summary handout	Evan	11/9/2016
✓ Define “balance sheet” (if necessary)	Gordon	11/9/2016

**Agenda item: Basic Requirements** **Staff: Gordon Howard**

**Discussion**

Proposing seven dwellings per acre as the minimum. Paige Townsend had previously provided input that a minimum density was necessary for public transit service. It is also the low end of residential density for manufactured home parks. This would be for both the affordable and the market rate portions of the project.

There is general language about a city indicating some factors and reasons that it wouldn’t be likely that such a project would be built within the existing UGB.

The goal compliance piece requires compliance with Goal 5 (natural resources) as would be done with any UGB amendment – same as with Goal 7 (natural hazards).

The rest of the goal compliance that is normally required would not be required, nor would an applicant need to demonstrate compliance with the need or location analysis in Goal 14. Recall that provisions for public facilities are required by HB 4079, and there is a probation in the bill that the pilot site not be located on high value farmland.

Evan asked what the RAC thought of the seven units per acre minimum staff recommendation.

Erin asked why it was separated out between market rate and affordable. Gordon responded saying we wouldn’t want to see a high density affordable component with a low density market rate. Looking for complementariness to the project. Erin responded that sounds very intelligent.

Evan asked if staff captured the findings necessary to show that the project wouldn’t happen without the pilot project approval. Mary Kyle McCurdy asked if this finding is part of the concept plan – the response is that it is not in the concept plan, but is required as part of the application.

Mary Kyle McCurdy said “site availability” is very vague. Gordon said the original list did say “lack of zoned land.” Wanted to leave it general as to why it wouldn’t happen in the UGB but didn’t need strong proof, or as it was put in a previous meeting, “trying to prove a negative.”

Bart Eberwein asked if the city will have a developer partner. He asked if there is any criteria about the developer’s history or track record. He said he would want to see that, to find out about the partners in the application and know more about them. Should be included in the pre-application (at least structured) and then really there at the final application. Evan noted general indication of RAC support.

Erin Doyle said a letter of intent with the county and special district should be included as well. She wouldn’t want to discourage a market rate developer who is trying something new with affordable housing.

Steve Wheeler wanted to include the ability for a hybrid between a private developer and a non-profit housing developer as well. Evan asked if there was RAC consensus to add information about the developer partners into the application requirements and RAC members agreed.

**Conclusions**

Evan confirmed RAC consensus that:

- The basic application requirements and process are on target, except:
- Applicants should be required to provide information about the development team and their track records

Action Items	Person Responsible	Deadline
✓ Will add rule provisions requiring information about the development team and their track record	DLCD staff	11/9/2016

**Agenda item: Affordable Housing on Pilot Project Site**

**Staff: Gordon Howard**

**Discussion**

Gordon explained draft phasing requirement is that all affordable units be issued certificates of occupancy before last 50% of market rate units are issued certificate of occupancy.

- Discussion on phasing
  - Steve suggested specifying between certificates of occupancy and temporary certificates of occupancy. Perhaps allow temporary certificates, but be sure to limit in time (as a bridge).
  - Shawn expressed some skepticism that the phasing requirement would work and suggested talking to [Jon] Chandler or other people with more development expertise. Maintaining a ratio throughout the development might work.
  - Evan replied it is difficult to find a phasing scenario that works for all hypothetical development models; and reminded the RAC that the purpose is to ensure that the affordable housing portion of mixed income projects gets built.
  - Shawn asked if there are builders in Oregon who can do the type of volume we are talking about especially in cities with less than 25,000 population on a 50 acre site. Steve Wheeler said it is much more likely to have smaller amounts of acreage in the pilot project for a smaller city.
  - Staff will give some thought to other options for phasing.
- Shawn mentioned the farm worker housing and asked what that means and is referring to. Gordon said it is a needed type of housing listed in the needed housing statute. The department hasn't given it a lot of thought. Carrie explained that the rules would still require independent living units but it could serve the farmworker housing population. Shawn said this language adds complexity and might be able to be removed.
- Capture concern about common amenities accurately (pg 13, line 17)
  - The group agreed the staff captured everything
  - Lisa Bates asked about the quality of the unit and having requirements for that. Gordon said the department had trouble determining how to measure that it is of substantially similar quality, and at what stage of the project. Gordon will follow up to determine how jurisdictions such as the City of Portland accomplish this. Evan requested suggested language from RAC members.
- Discussion of the 20% minimum affordable housing requirement
  - Mary Kyle McCurdy thought 20% was too low at the last meeting, and still believes so.
  - Shawn's perspective was there was a robust discussion that it wasn't ambitious enough. But then with the site specifics maybe it was too high. Acknowledgement that it was a political number and maybe it was the best we can do. Maybe more emphasis on the point system, giving projects with greater percentages and numbers of affordable housing a higher score in ranking against other projects.
  - Steve Wheeler said he could live with 20% but thought it was a very low bar. He suggested 33% - might be a better number.
  - Bill Hall can live with 20% or 33%. He agrees that 20% is a low bar and hopes proposals come in higher than that.
  - Mary Kyle McCurdy said this is a huge change and if we are going to learn from this we should have a higher bar. 30 – 40% sounds good.
  - Bart Eberwein asked if setting aspirational goals could be done above and beyond a 20% minimum. Goals would be set and announced in the rule but they are not minimums. Could telegraph what we are all feeling here.
  - Lisa Bates said 20% is too low. 30% or something higher would be better.

- Greg understands this is a competitive process where we will be choosing the two best candidates. He is concerned the 20% is getting more attention than it should. He said it doesn't feel right that an "affordable housing" project have a minimum of only 20%. Seems out of kilter with the overall policy we are trying to follow through on.
- Evan asked RAC members present if they were okay with the following minimum thresholds. Of the seven present, the counts:
  - Perhaps no minimum (0)
  - 20% (3)
  - 30% (7)
  - 40% (4)
  - Majority (2)
  - Aspirational goal (6)
- Shawn said we'd be doing a disservice if we don't provide for housing at the 80-120% AMI level as well. These households are not served by the housing market in many communities. Staff clarified that what Shawn was suggesting was that mixed income projects that include 80-120% AMI in the market rate category be considered differently than those that would be general market rate. Evan asked for RAC consensus on including Shawn's suggestion as something for the commission to consider and received it.
- Kim asked if there is a requirement that the market rate housing would be primary residences, not second homes or vacation rentals. Gordon said that the affordable housing would be required to be a primary residence but it wasn't a requirement for the market rate housing. Bill Hall thinks it is worth thinking about. Shawn thinks it is hard to quantify systematically. Erin said it should be considered and should have some sort of enforceable piece to be sure these are residences. Steve also agreed that it should be considered.
- Evan asked for RAC consensus the rule should aim to require market rate housing units be primary residences and received it.
- 30 unit minimum for larger cities
  - Shawn suggested the possible cities is so small we might lower the number.
  - Steve said might want to provide more flexibility
  - 20 units (4)
  - 30 units (2)
  - Evan asked for RAC consensus that members could live with 20 units, and got it.
  - Gordon notes that there are nine cities that are included in the program and have population greater than 25,000.
- Right things in the right boxes
  - Bart asked if we will have latitude for communities that are tied; an additional consideration of whether we should select the project we could learn the most from or where there was higher need.
  - Bart is more concerned that not a lot of cities will apply and is also concerned that cities will say they weren't treated fairly during their application process, which means that it is important for the factors to be transparent.

## Conclusions

- RAC consensus that
  - Phasing process needed more work
  - Address temporary certificates of occupancy
  - All members present could live with a requirement that 30% of the units be affordable housing
  - All members present could live with a 20 unit requirement for larger cities
  - Rule should limit vacation rentals in pilot project sites (for both affordable and market units)
  - Rule should direct the Commission to consider whether proposals are addressing housing for 80-120% AMI

Action Items	Person Responsible	Deadline
✓ Review the phasing provision with RAC members and outside people experienced with development	DLCD staff	11/9/2016
✓ Review language around temporary certificates of occupancy	DLCD Staff	11/9/16
✓ Staff will look at the farmworker housing element	DLCD Staff	11/9/16

✓ Staff will look at how to have significantly similar quality of units in response to Lisa Bates' concern	Gordon	11/9/16
✓ Staff will look at requirements that market rate housing units be used as primary residences as well as affordable housing units	DLCD Staff	11/9/16
✓ Staff will draft language to allow the commission to give additional consideration to pilot projects that provide for 80-120% AMI as part of a mixed income project.	DLCD Staff	11/9/16

**Agenda item: Housing Measures Inside UGB**

**Staff: Gordon Howard**

**Discussion**

Gordon discussed the staff recommendation that of the 50 points total among the affordable and needed housing measures a city be required to have at least 12 points and at least three points from the list of affordable housing measures. There is a provision that if a city could show it had an equal or better approach they could substitute for up to six of the points required but would have to provide findings on those measures.

Shawn asked about the heavy emphasis on property tax – any reason why? Gordon explained the relative weight is based on discussions on the simplified urban growth process that individuals like Mary Kyle and Jon Chandler participated in.

Shawn didn't see anything about aspirational bonus points about increasing above the maximum standard. In his mind this would have been the place for it. Gordon said affordable housing measures inside the UGB is included in the project selection overview, with cities having adopted more measures getting favorable consideration.

Shawn asked if it would work to have the rule suggest a good proposal would have no less than X points. Carrie said we have a floor of 12 (pg 9, line 5) and an applicant city would get extra points if you do more.

Shawn asked if needed housing measures on ADUs are contemplated as being built with or...do we want to be more specific. Gordon said this is intended to be “zoned for,” not actually built.

Steve Wheeler asked about the property tax exemption being for the full 50 year. Gordon clarified the requirement is for the lands in the existing UGB; tax exemption provisions and durations are set by the relevant Oregon Revised Statutes.

Shawn asked if an analysis has been done to see if many cities have adopted measures that would add up to at least 12 points. Rebecca said some of that is included in the case study documents.

**Conclusions**

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<b>Action Items</b>	<b>Person responsible</b>	<b>Deadline</b>
✓ Send case study info to RAC	DLCD Staff	11/9/2016
✓ Send one page summary of housing measures to RAC	DLCD Staff	11/9/2016
✓ Review whether 12 points is a bar being met by cities	Gordon	11/9/2016
✓ Consider treatment of vacation rental	DLCD Staff	11/9/2016
✓ Add Construction Excise Tax to list of measures	DLCD Staff	11/9/2016

**Agenda item: Consensus Items**

**Staff: Gordon Howard**

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## Discussion

### Purpose – 0000

- First three points are from the statute
- Fourth is an additional goal
- Mary Kyle thinks there's value in looking at bill section 5(1)(d) as well as Section (4) ...the local government has to demonstrate provision of housing, not just land... is a better statement than the first one chosen by the department. She thinks there is something missing in the rule about learning about affordable housing development overall, not just the relationship with land supply.

### Provision of Public Facilities and Services – 0040

- Need to review transit requirement

### Mass transit

(pg 7)

- Steve has a concern about the demonstration for mass transit (subsection 2). It is more applicable to cities over 25,000. The words "fixed route" are concerning. Gordon said we'd need to look and see if language could be added to allow a city with a system like Hood River with "on-demand service" to qualify under this provision.

### Reporting Requirements – 0100

- Shawn suggested additional language on page 5 to show what is required and what is not for cities to show they will continue to use the affordable housing as such for 50 years; perhaps something between 'D' and 'E'.
- Shawn asked for more clarity on the 100ft wide buffer zone – being inside or outside of the 50 acres. Carrie responded that it is inside.

Action Items	Person responsible	Deadline
✓ Comments should be sent to the department by Friday, October 28 to <a href="mailto:Casaria.Taylor@state.or.us">Casaria.Taylor@state.or.us</a>	RAC members	10/28/2016
✓ Analysis of adding "on demand" transit service alternative	Gordon	11/9/2016
✓ Review purpose statement for completeness	DLCD Staff	11/9/2016
✓ Review 0020(6)(l) for and, or, may, must implications	DLCD Staff	11/9/2016

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**Agenda item: Public Comment**

**Staff: Evan Manvel**

## Discussion

### Dawn Phillips:

Reading all of the rules has caused a gut feeling where we are micromanaging the criteria and it feels scripted. She hopes we are not doomed for failure. Intended for this to be flexible and they could experiment with different combinations. Doesn't want to exclude rentals of single family housing. She appreciated what Greg Macpherson said with lots of applicants. She's afraid that we are making this too hard and no one will apply. The goal was to help local communities meet their needs.

### John VanLandingham:

The way to get at some of the criteria is with aspirational like Bart said. Good way to do it. We've done it before with similar housing projects within the state. Not happy with 80% of AMI. He thinks that is too low for certain areas (coast) and manufactured home parks. AMI is not universal around the state. Need to be careful about different types of product in terms of quality. Measures within the UGB – be surprised if anyone other than Portland looks at inclusionary zoning. More likely thing to adopt is the new construction excise tax. Keep in mind a lot of the things on the list are not easy. Eugene does look at the track record of developers, so that's good. Needs clarification on difference between cottage housing and ADUs. Farmworker housing has two types. There is on farm and not on farm. Might make it clear that this is not on farm housing.

Common to ask for developer information. Worried about phasing. Affordable housing usually takes years to get the funding figured out, which means the project may take time for it to come together.

**Peggy Lynch:**

Need to include a cover page that tells cities who can and cannot qualify. HB4078 (2016) has good testimony related to the transit that is going on around the state. On page 6, line 27 – other than Goal 5 the coastal goals are also very important. Have concerns that the coastal goals are not being addressed. Page 8, lines 25, 26 related to fire protection – what kinds of fire building codes are needed if the units are built near forests. The list is not easy, it is also meant to spark conversations within communities about their housing and housing values.

Action Items	Person responsible	Deadline
✓ Clarify difference between cottage housing and ADUs	Gordon	11/9/2016
✓ Make sure that construction excise tax is included in housing measures	Gordon	11/9/2016

**Agenda item: Next Steps**

**Staff: Evan Manvel**

**Discussion**

Will look at Fiscal Impact Statement at next RAC meeting on November 14  
Will receive UO Research  
Will look at items identified today that needed work  
Get written comments to staff by Friday, October 28.

**Special Notes**

- New draft rule out November 9, 2016
- Next meeting November 14, 2016, 1 to 4 pm

[http://intranet.dlcd.state.or.us/projects/ahpp/documents/20161024\\_ahppracnotes.docx](http://intranet.dlcd.state.or.us/projects/ahpp/documents/20161024_ahppracnotes.docx)