



Oregon

Tina Kotek, Governor

HPAC Work Group Recommendation Template

Last Update: 10/5/2023

Work Group

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

Recommendation #5: Expedited UGB Expansion

(This recommendation has been updated to reflect feedback received. Refinements are in red font.)

It will take bold action to reach the Governor's goal of producing 36,000 homes per year for the next 10 years to address the 140,000 housing-shortage and keep up with current need. Over the last 5 years we have produced 20,000 homes a year setting a **160,000-unit deficit** over the next 10 years.

A lack of available land inside UGBs and the cost of those lands is a major underlying factor in this underproduction of homes. **Expedited UGB Expansion** is a pressure relief valve for cities needing additional affordable land supply for rapid housing production. This solution has the potential to generate more than **150,000 units** in 10 years.

Land supply was identified within the initial HPAC framework and the Governor-supported, bipartisan Expedited UGB Expansion housing production solution included in House Bill 3414 proposed in the 2023 Legislative session. The bill failed by one vote on the final day of session in part due to a lack of opportunity for full discussion of the bill related to the walkout.

This recommendation takes this bipartisan solution, supported by the Governor, and carries forward the most valuable components and directs DLCD to align future UGB expansion criteria based on feedback from local governments that opt to utilize the Expedited UGB Expansion.

Recommendations Include:

- Ask the Legislature to **act urgently** to allow cities an optional, one-time UGB amendment to provide additional land for housing to facilitate rapid housing production to meet the Governor's housing production goals of 36,000 per year for the next 10 years.

- Require DLCD to invite members of each local government that opt to utilize the Expedited UGB Expansion to participate in OHNA rulemaking; either on the Rulemaking Advisory Committee, a Technical Advisory Committee, or in a stakeholder discussion.
- Encourage the Legislature to support the adoption of urban reserves: To include (1) appropriate funding to support establishing urban reserves and (2) provide prioritized support and direction to cities that opt into the one-time UGB amendment to subsequently adopt urban reserves (to be established no later than 5 years) with funding and technical support from DLCD, if they have not yet done so.
- Utilize Framework for HB3414 Section 14-24 as the basis for this Legislative action but with the following alterations:
 - Land will be made “development-ready” (i.e. annexed/zoned, served with infrastructure, and not encumbered by protective regulations) and the minimum affordability and development parameters will be achieved as outlined in bill.
 - Cities opting for a UGB expansion must show need by utilizing an objective metric that does not require a burdensome/onerous analysis.
 - Encouraging cities to be modest in their expansion; communities requesting less than 35 acres are not required to complete a master plan. Allowing for a typical development plan process including appropriate covenants, annexation, zoning, comp plan designation and demonstration of property owner and local government that ensure the land will be developed as set forth in the policy.
 - Commitment of partnership between permitting agencies and developers are a key component to an Expedited UGB Expansion. Required dialogue parameters to include; designating points of contact, required timelines for expedited review, expedited approval process of annexation/zoning, expedited land use approval, expedited public works review and expedited building permit reviews. Consolidated review and annexation procedures, including ministerial review is strongly suggested where appropriate.
 - Change Section 15(2) to
 “Net residential acre” means an acre of residentially designated buildable land, not including nondevelopable rights of way for streets, roads or utilities. As used in this section, buildable land does not include land that:
 - a. Is encumbered by any applicable local, state or federal protective regulations;
 - b. Is severely constrained by natural hazards, including lands in the Special Flood Hazard Area;
 - c. Has slopes of 25 percent or greater
 - d. Is economically feasible to serve with public facilities; or
 - e. Is parcelized at or below two acres.
 - Out of the 10 cities in Metro that would qualify for the Expedited Urban Growth Expansion, no less than 6 cities should be allowed to apply for a maximum of 150 acres each totaling no more than 900 acres within Metro.

Related Work Plan Topics

None

Adoption Date:

August 16, 2023

Method of Adoption

This recommendation was on the initial list of topics to consider from the Full HPAC Committee. Upon the work group creation, a survey was sent to the members asking to prioritize the recommendation based on speed of implementation, production of housing units, AMI levels of affordability and cost. This was identified in the top 10 items, The Land Availability Work Group agreed to elevate this recommendation at Meeting 6 on 7/5/2023 due to the end of the 2023 legislative session ending without the Governor Supported bill of HB3414 being passed.

At the August 16, Land Availability Work Group meeting the attending work group members voted to move forward the Expedited UGB Expansion recommendation as outlined in these standards of analysis form. The members present at the time of vote were Brenda Bateman, Rep Helfrich, Karen Rockwell (1st motion), Joel Madsen (2nd Motion) & Deb Flagan unanimously to advance to Full HPAC for consideration.

At 10/4/23 Work Group Meeting. Modifications were discussed based on Public Testimony, DLCDC Response and Draft Framework from Governors Office from 10/2/2023 for Housing Production Proposal. The items in Red have been updated in this document and were approved and voted to move forward to HPAC Full Committee by Elissa Gertler, Joel Madsen, Dr Bateman and Deb Flagan.

NOTE: The WG Committee does support the ideas in the Governor's Draft Framework Housing Package for the 2024 Short Legislative Session as possible demonstration of needs.

Include a demonstration of need requiring cities to meet one of two criteria:

- i. Need for additional land demonstrated by having 75% of land added to UGB in last 20 years fully annexed and zoned, or*
- ii. Need for additional affordable housing, where:*
 - 1. The median home sales price for the previous 12 months exceeded 150% of the affordable home price for a household at 130% AMI, or*
 - 2. The median rent for the previous 12 months exceeded 125% of the affordable rent for a household at 80% AM*

Co-chairs Guidance: Standards for Analysis

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

- 1. Describe the barrier(s) or solution(s) the recommendation seeks to address, and how the existence of the barriers hinders production or how the solution supports production.*

Framework of HB 3414 Section 14 – 24 with Recommended Alterations:

This recommendation brings the power of partnership to the forefront where local government, non-resourced/urban reserve land owners and a willing developer comes together to create an integrated, mixed income housing solution that includes a complete community concept of walking, biking and transit, an array of housing choices. This includes a minimum of 30% affordability for rental and homeownership options without the use of government funds and includes infrastructure.

- Local governments have a one-time **option** for and expedited UGB Expansion process with a 10 year sunset.
- The land must be contiguous to the existing UGB and have available infrastructure to the site.
- Cities over 25K maximum of 150 acres, Cities under 25K maximum of 75 acres, Metro 900 acres total.
- Land must be in an Urban Reserve or Non-Resourced Land
- Density: 15 Metro/8 Outside Metro/4 Eastern Oregon & Coastal
- Master planned for a complete community concept including walking, biking and transit options. Not required for expansions of 35 acres or less.
- Mix of diverse housing types
- Housing Affordability: 30% of housing units will be affordable at 80% AMI or below for rent or 130% AMI or below for ownership with a 60-Year Deed Restriction. **NOTE: Affordability requirements can be increased as outlined in Section 18.4 (page13 attached) which states “a city may require greater affordability requirements for residential units than are required under subsection (3)(f)(A) of this section, provided that *“the city significantly and proportionally offsets development costs related to: Permits and Fees, SDC, Property Taxes or Land Acquisition and predevelopment costs.”***

When Oregon passed Senate Bill 100, creating our unique land-use system, the concerns were preservation of our valuable forest and farm-lands while establishing a predictable process inside the UGB to support housing and economic development. Over time, this prioritization of land preservation and natural resources has resulted in unintended consequences for housing production. The result of added infrastructure restrictions (stormwater, bike lanes, pedestrian paths, etc.), increase in natural preservation (wetlands, parks, trees, etc.) and the uprise of Nimbyism (legal suits and appeals) has diminished the actual land that is available to be built inside the UGB. This constraint has eliminated affordable land for housing production within UGBs, leading to the underproduction of housing units and escalated home prices.

Lengthy, Cumbersome and Costly UGB Process:

According to data collected by DLCD since 2016, the process of approval of UGB expansions is relatively streamlined once cities have submitted final applications for approval by DLCD.

However, the UGB expansion process **leading up to submission** for final approval by DLCD is exceptionally difficult for cities across the state and is a factor in delayed UGB expansions resulting in more constraints on housing production.

In many cases, Oregon cities struggle for years and in some cases more than a decade to prepare necessary planning components such as buildable lands inventories, housing needs analyses, transportation plans, and comprehensive plan updates, which are required for completion prior to a UGB expansion submission to DLCD. HB2001 OHNA was spurred and passed due to this issue. However, due to the years of rule making and policy initiation, OHNA will not address the immediate short term housing supply issue.

These pre-UGB expansion planning processes involve enormous time and cost burdens on cities, especially in small communities with limited resources. Additionally, land-use watchdogs frequently submit legal challenges to the planning documents prepared by cities, further complicating and slowing down the expansion of UGBs, including inclusion of needed lands for housing production.

The cost, time and potential for litigation creates a cumbersome process for cities that wish to expand their UGBs. Meanwhile, as cities labor to meet the standards required to expand UGBs, the cost of the limited supply of buildable lands inside UGBs goes up and up—dramatically impacting the affordability of land for housing. This cycle is an underlying factor in Oregon’s unprecedented housing crisis. Some cities have given up and are not even willing to try.

Urban Reserves:

Urban Reserves help to set expectations for where the growth is planned. When expectations are set, the likelihood of appeal during the UGB expansion phase decreases dramatically. Urban Reserves provide guidance to focus resources because knowing where future growth is planned, time and resources can be scheduled and deployed. Urban Reserves help cities and counties plan for near-term and long-term growth collectively and allow for long term transportation and facility planning to be done more effectively because the assumptions for growth are clearer. **Lastly, Urban Reserves provide more opportunity for creative infrastructure funding because the work can occur over a longer period of time.**

This recommendation includes a directive for DLCD to provide technical assistance to cities to develop Urban Reserves. This tool has been available since 2007 and helps to make future UGB expansions more streamlined, but to date only 13 cities have taken advantage of this in addition to Metro. This is because Urban Reserve development is a resource-intensive process.

DLCD noted in the letter addressed to the HPAC Land Availability Work Group dated 8/17/2023 that with the recommendation from the 2023 -2025 Legislature appropriation of 3.5M in technical assistance for local governments funding that they have received 9 urbanization-related proposals to date.

Metro:

The total population in Oregon’s 241 Incorporated Cities is 2,662,352. The 23 cities in Metro represent 51% of this population at 1,349,310. Allowing a minimum of 900 acres (6 cities at 150 acres each) supports that homes get built where the majority of the population lives and works.

2. Provide a quantitative, if possible, and qualitative overview of

the housing production issue.

1. Summarize the quantitative and qualitative information available, and reviewed by the work group, that informed the analysis of the barrier or solution and led to the recommendation included in this form.

Since 2016, when updates were made to streamline the UGB expansion process, 18 cities plus Metro have successfully completed UGB expansions.

The total acreage of land brought into UGBs for residential land development from these expansions was 7,386 acres. While densities vary across these acres, if we estimate at 8 units per acre for all cities outside the metro area, and 15 units per acre within the Metro area in a **best-case** scenario these expansions may yield 77,28 units.

Over the last eight years, since the process has been improved, on average 8,466 units per year of housing capacity have been generated through the existing UGB expansion process.

If this rate of housing production were to continue, it would reflect just 24% percent of the Governor’s housing production goals – a quarter of what is needed.

In addition, with the adoption of OHNA, ~~we anticipate that DLCD will not be evaluating the current UGB expansion process with a focus on Goal 14 to assist in improving and streamlining the approving any UGB process expansions for an estimated 4 years due to the revised housing needs analysis rule making process, effectively delaying any additional UGB expansions until late 2026 or early 2027 causing our cities to fall further behind on availability of lands for housing and putting additional pressure on the need to “catch up” on years of underproduction related to available land supply allowing the opportunity for cities that opt into the UGB Expansion process to share their feedback on the process and how improvements can be made.~~

~~This Expedited UGB Expansion becomes even more critical for assisting cities to catch up quickly on underproduced housing units.~~

UGB AMENDMENTS SINCE 2016 INVOLVING RESIDENTIAL LAND ADDITIONS

| City | Year | Residential Acreage | Estimated Density (8/acre for cities + 15/acre for Metro) |
|--------------|------|---------------------|--|
| Newport | 2016 | 6 | 48 |
| Bend | 2016 | 1,142 | 9,136 |
| Cannon Beach | 2017 | 2 | 16 |
| Sandy | 2017 | 328 | 2,624 |
| Donald | 2018 | 76 | 608 |
| Mill City | 2018 | 18 | 144 |
| Sutherlin | 2018 | 173 | 1,384 |
| Gervais | 2019 | 1 | 8 |
| Medford | 2019 | 1,381 | 11,048 |
| Redmond | 2021 | 40 | 320 |
| Metro | 2021 | 2,100 | 31,500 |

| | | | |
|---------------|------|--------------|---------------|
| McMinnville | 2021 | 815 | 6,520 |
| Dayton | 2022 | 102 | 816 |
| Turner | 2022 | 49 | 392 |
| Central Point | 2022 | 320 | 2,560 |
| Phoenix | 2022 | 45 | 360 |
| Adair Village | 2023 | 37 | 296 |
| Bend | 2023 | 261 | 2088 |
| Metro | 2023 | 490 | 7350 |
| Total | | 7,386 | 77,218 |

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.

1. *List the observers and participating SMEs at the work group meetings as the recommendation was developed. Identify which participating SMEs provided information to the work group and how. Summarize the information and perspective provided by the participating SMEs. If the participating SMEs expressed disagreement or concern with the work group recommendation, describe the reason.*

Subject Matter Experts

- **5/25/2023: Sean Edging**, DLCD Housing Planner: Overview OHNA Recommendation Report implementation work
- **8/2/2023: Gordon Howard**, Community Services Manager, DLCD and Sean Edging, Housing Planner, DLCD: Reviewed HB3414 Sec 14 -22
- **8/16/2023:** Mary Kyle McCurdy, 1000 Friends
- **8/16/2023:** Nick Green, Catalyst
- **8/16/2023:** Andy Shaw, Metro
- Deb Flagan, Hayden Homes – HB4079 Pilot, Bend OR
- City of Bend, Karen Swenson - HB4079 Pilot Review
- **10/4/2020: Housing Works Bend, David Brandt**
- **Land Availability Meeting 1 (4/25/2023) Observers included:** n/a
- **Land Availability Meeting 2 (5/8/2023) Observers included:** n/a
- **Land Availability Meeting 3 (5/25/2023) Observers included:** Mary Kyle McCurdy (1000 Friends), Ted Red (Metro), Anneliese Koehler (Metro), Laura Combs (Metro) and Michael Burdick (AOC), Brian Hoop (Housing Oregon), Ariel Nelson (League of Oregon Cities), Michael Burdick (Association of Oregon Counties)
- **Land Availability Meeting 4 (6/7/2023) Observers included:** Mary Kyle McCurdy (1000 Friends), Ted Reid (Metro), Anneliese Koehler (Metro), Laura Combs (Metro), Brock Nation (Oregon Realtors), and Michael Burdick (AOC), Brian Hoop (Housing Oregon), Ariel Nelson (LOC)

- **Land Availability Meeting 5 (6/21/2023) Observers included:** Mary Kyle McCurdy (1000 Friends), Ted Reid (Metro), Anneliese Koehler (Metro), Laura Combs (Metro), Brock Nation (Oregon Realtors), Jeremy Rogers (Oregon Realtors) and Ariel Nelson (LOC).
- **Land Availability Meeting 6 (7/6/2023) Observers included:** Mary Kyle McCurdy (1000 Friends), Brian Hoop (Housing Oregon), Brock Nation (Oregon Realtors), Trell Anderson (Housing Oregon), Ramsay Weit (Housing Oregon)
- **Land Availability Meeting 7: (7/19/2023) Observers included:** Ted Reid (Metro), Andy Shaw (Metro), Anneliese Koehler (Metro), Laura Combs (Metro), Eryn Kehe (Metro), Trell Anderson (Housing Oregon), Travis Phillips (Housing Oregon), Michael Burdick (AOC),
- **Land Availability Meeting 8: (8/2/23) Observers included:** Ted Reid (Metro), Anneliese Koehler (Metro), Laura Combs (Metro), Trell Anderson (Housing Oregon), Travis Phillips (Housing Oregon), Ramsay Weit (Housing Oregon), Ariel Nelson (LOC), Mary Kyle McCurdy (1000 Friends), Peggy Lynch (LWVOR), Eric Zechenelly (OMHA)
- **Land Availability Meeting 9: (8/16/23) Observers included:** Ted Reid (Metro), Anneliese Koehler (Metro), Laura Combs (Metro), Trell Anderson (Housing Oregon), Travis Phillips (Housing Oregon), Ramsay Weit (Housing Oregon), Ariel Nelson (LOC), Mary Kyle McCurdy (1000 Friends), Peggy Lynch (LWVOR), Eric Zechenelly (OMHA), Jay Blake (City of Warrenton), Gail Henrikson (Clatsop County), Melody Rudenko (DSL), Mark Landauer (Special Districts), Lauren Poor (OFB), Tracy Rainer (Clean Water Services). **SME Nick Green (Catalyst), Mary Kyle McCurdy (1000 Friends), Andy Shaw (Metro)**
- **Meeting on 8/24/2023:** Mary Kyle McCurdy (1000 Friends), Corie Harlin (Central Oregon Land Watch) and Deb Flagan – Follow-Up on Presentation from 9/16 Meeting,
- **Phone Conversation on 8/25/2023:** Andy Shaw (Metro) and Deb Flagan – Follow-Up on Presentation from 9/16 Meeting.
- **Land Availability Meeting 10 (8/30/2023) Observers included:** Mary Kyle McCurdy (1000 Friends), Ted Reid (Metro), Laura Combs (Metro), Ariel Nelson (AOC), Michael Burdick (AOC), Brock Nation (Oregon Realtors), Eric Zechenelly, (OMHA), Peggy Lynch (LWVOR, Tracy Rainey (Clean Water Servicews), Mark Landauer (Special Districts), Jay Blake (City of Warrenton), Ethan Nelson (City of Eugene), Dana Hicks (DSL), Derek Bradley (City of Portland)
- **Public Testimony 9/8/2023:** See Public Testimony Record (Written & Verbal)
- **Land Availability Meeting 11 (9/20/2023) Observers included:** Ted Reid (Metro), Anneliese Koehler (Metro), Laura Combs (Metro), Eric Zechenelly, (OMHA), Peggy Lynch (LWVOR, Tracy Rainey (Clean Water Servicews), Mark Landauer (Special Districts), Jay Blake (City of Warrenton), Ethan Nelson (city of Eugene), Kenny Asher (City of Tigard), Abigail Elder (City of Hood River), Dana Hicks (DSL), Derek Bradley (City of Portland, David Brant (Housing Works)

- **Land Availability Meeting 12 (10/4/2023) Observers included:** Ted Reid (Metro), Anneliese Koehler (Metro), Brock Nation (Oregon Realtors), Jeremy Rogers (Oregon Realtors), Eric Zechenelly, (OMHA), Peggy Lynch (LWVOR, Tracy Rainey (Clean Water Servicews) Dana Hicks (DSL), David Brant (Housing Works)

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

1. *Outline the desired result or outcome of the recommendation for both housing production and different individuals and communities.*

We anticipate that cities will voluntarily elect to designate new lands for housing production, and prioritize planning and permitting on those lands in order to reach housing production targets. Below is a list of the number of cities in Oregon at each relevant population size that could use this pressure relief valve and the total number of housing units that could be created within a 10-year time period. If every city utilized this one time tool for rapid housing production we could achieve more than 40% of the Governor’s housing goals through this strategy alone concept.

NOTE: Utilizing the maximum acreage of 75/150 will be rare due to inconsistency of land sizes/parcels. In additional, many cities in rural Oregon are not eligible to take advantage of the recommendation due to their UGB being encompassed by farm and forest land. If the Legislature is interested in creating a water reduction program in rural communities a consideration could be allowed for Goal 3 lands to be used for residential housing if a significant water use reduction can be shown relative to currently zoned use.

HOUSING PRODUCTION POSSIBLE WITH PASSAGE OF RECOMMENDATION

| City size | # in Oregon | # in Metro | Net w/out Metro | Acres allowed | Total acres | Total units (avg. 8/acre + avg. 15/acre for Metro) |
|--------------------|-------------|------------|-----------------|---------------|-------------|--|
| 2,499 or less | 133 | 3 | 130 | 75 | 9750 | 78,000 |
| 2,500 - 4,999 | 29 | 1 | 28 | 75 | 2100 | 16,800 |
| 5,000 - 9,999 | 22 | 1 | 21 | 75 | 1575 | 12,600 |
| 10,000 - 24,999 | 33 | 5 | 28 | 75 | 2100 | 16,800 |
| 25,000 - 49,999 | 13 | 8 | 5 | 150 | 750 | 6,000 |
| 50,000 - 99,999 | 6 | 2 | 4 | 150 | 600 | 4,800 |
| 100,000 or greater | 6 | 3 | 3 | 150 | 450 | 3,600 |
| Metro | 1 | 23 | N/A | 900 | 900 | 13,500 |

| | | | | | | |
|------------------------|--|--|--|--|--|----------------|
| TOTAL UNITS | | | | | | 152,100 |
|------------------------|--|--|--|--|--|----------------|

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 – If Legislature Funds Urban Reserves
- Low – Allow the Expedited UGB Expansion Process

Add additional context here: [See Above](#)

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

1. *To the extent the work group knows, is this implemented in state statute or rule, by the state or local government, by a particular agency, etc.*

- [Ask Legislature to Pass Expedited UGB Expansion with urgency utilizing the framework for HB3414 Section 14-24 with the alterations outlines in the recommendation section.](#)
- [Direct DLCD to engage and allow each local government that opted to utilize the Expedited UGB Expansion to participate in rulemaking, either on the Rulemaking Advisory Committee, a Technical Advisory Committee, or in a stakeholder discussion.](#)
- [Ask Legislature to support funding and technical support to support local governments with the creation of urban reserves prioritizing cities that opt in for the Expedited UGB Expansion.](#)

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

1. *Identify the data the Governor's Office would need to track to determine if the recommendation is increasing housing production. Flag any areas where data does not exist leaving a gap in understanding outcomes or impacts.*

- Utilize framework is included in HB3414 Sec 21 outlining reporting to DLCD

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

1. *Based on the work group's analysis and information provided by participating SMEs, outline what is unknown, the tradeoffs exist by implementing the recommendations, and any known potential unintended consequences. Identify if there are any potential unintended impacts on different individuals or communities.*

Primary concerns raised about this recommendation is a degradation of Oregon's land-use system. Goal 14 provides for Urban Reserves as the first priority for Urban Growth Expansion and this recommendation allows for technical and financial support from DLCD for cities that take advantage of the Expedited UGB Expansion program as well as for other cities based on funding. This program is the extent of the emergency order and will end in 10 years.

A secondary concern is the circumvention of the Metro process that is unique to the rest of the state. There is a belief that confusion and conflict will transpire with an alternate path. Additional concerns from Metro are due to the belief that there will be a lack of cities interested based on the most recent offering for UGB expansion (In 2023: 490 acres were approved). Specific rules have been addressed in the framework HB3414 pertaining to how Metro cities must approach the use of this recommendation including timelines and process. The timing of the last expansion opportunity was near the end of COVID pandemic and could have possibly challenged cities due to staffing and alternate focuses during that time.

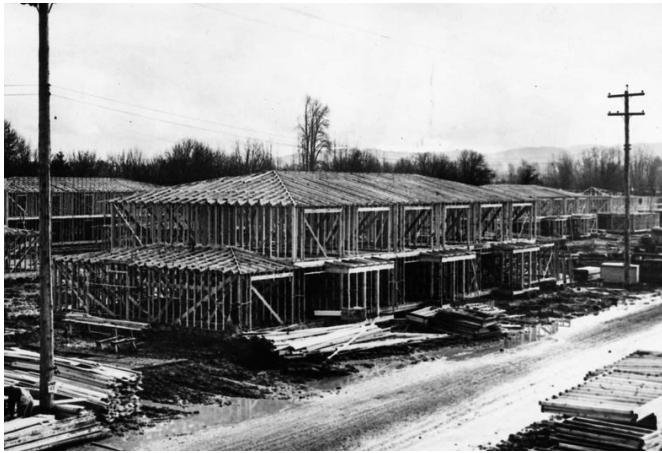
A third concern is that we have plenty of land inside the UGB and the lack of housing is an infrastructure problem. This program requires the community that is selected to be infrastructure ready. It will take years, even if the Legislature approves funding urgently, to complete the critical infrastructure projects across the state and cities. In addition, more land is being required **inside** the UGB for stormwater, utilities, wetlands, bike paths, walking paths, trees, parks, etc. constricting the overall land that is available to build homes.

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.

Supporting Attachments:

- [HB 4079 \(2016\)](#)
- [Stevens Road Project – Bend OR \(2020\)](#)
- [HB3414-S \(2023\)](#)
- SME Presentation (Nick Green, Catalyst) - Attached
- SME Presentation (Mary Kyle McCurdy, 1000 Friends) - Attached

- SME Presentation (Sean Edging, Gordon Howard, DLCD HB 3414 Overview) - Attached
- SME Presentation (Sean Edging, DLCD OHNA Overview) - Attached
- SME Presentation (Andy Shaw, Metro) - Attached
- [Oregonian Editorial Board Letter from April 9, 2023 “Oregon is dealt a blow”](#)
- OR House Session – 6/24/2023 [Recording HB3414](#)
- OR Senate Session – 6/25/2023 [Recording HB3414](#)
- DLCD Memo Feedback 8/17/2023 – Attached
- **DLCD Memo Feedback 8/29/2023 – Attached**



OREGON

Department of
Land Conservation
& Development



House Bill 3414

Housing Production Advisory Council

Land Availability Work Group

August 2, 2023

Sean Edging, Housing Planner
Gordon Howard, CSD Manager

House Bill 3414 (B-Engrossed)

Bill language:

[https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/
HB3414](https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/HB3414)

Three major sections:

Development Standard
Adjustments (§1-5)

Housing Accountability
and Production Office
(§6-13)

Urban Growth
Boundary Amendment
(§14-23)

Development Adjustments (§1 to 5)

Establishes a process to request adjustments from some local land use regulations:

Side/rear setbacks

Landscape/common/open area $\leq 25\%$

Parking minimums

Min/max lot sizes $\leq 10\%$

Min/max lot width/depth $\leq 10\%$

Bike parking standards (partial)

Min/max lot coverage (ADU $\leq 15\%$; 2+ units $\leq 20\%$)

Density maximums (up to necessary amount)

Height maximums (greater of 1 story or $\leq 20\%$)

Ground floor requirements (partial)

Design standards, including:

Façade | Roofing | Entry/Garage Door

Garage Orientation | Windows | Building Orientation

Height Transition | Balconies, Porches

- Ministerial process; Appeal limited to applicant or HAPO
- Optional expedited appeal to LUBA
- Required reporting to DLCD & Legislature

Housing Accountability and Production Office (§6 to 13)

Establishes joint Housing Accountability and Production Office (HAPO) between DLCD and DCBS (BCD). The duties of this office are to:

- **Technical assistance** to 1) comply with housing laws, 2) reduce barriers, & 3) support reliable & effective local implementation
- **Serve as resource** to housing developers experiencing barriers
- **Investigate and respond to complaints** of housing law violations
- **Mediate disputes** relating to housing laws between developers and local gov't

Outlines processes for HAPO investigation, notice, appeal, and enforcement.

HAPO directed to contract with entity to prepare Legislative report to identify improvements in the local building plan approval, land use, zoning and permitting

Budget: \$4.8m for new DLCD staff | \$10m for technical assistance to local gov't
\$1m for legal services | \$525k to BCD

Urban Growth Boundary Amendment (§14 to 23)

Outside of Metro

One-time Urban Growth Boundary amendment:

- On urban reserve, nonresource, or exception lands
- 150 acres for city \geq 25k population | 75 acres for city <25k
- County approval not required
- Must adopt concept plan, reviewed by DLCD, including demonstration of:
 - Affordability restrictions (60 years) for 30% units: 80% MFI rentals or 130% MFI ownership
 - Diversity of housing types & sizes
 - Average density of 8 du/ac or 4 du/ac in specified counties (Eastern OR and the Coast)
 - Recreation/open space & smaller-scale commercial/mixed uses
 - Walk/bike/transit transportation options in cities above 5k
- Not a land use decision | City submits progress report to DLCD every two years

Urban Growth Boundary Amendment (§14 to 23)

Inside of Metro

Cities may petition Metro to add urban reserve site to UGB

- If approved petitions total <600 acres by Jul 1, 2024, Metro must add to UGB by Nov 1, 2024
- If approved petitions total >600 acres by Jul 1, 2024. Metro must select the best petitions up to 600 acres to add to UGB by Jan 1, 2026
- Petitions must include concept plan, reviewed by Metro, including demonstration of:
 - Affordability restrictions (60 years) for 30% units: 80% MFI rentals or 130% MFI ownership
 - Diversity of housing types & sizes
 - Average density of 15 du/ac
 - Recreation/open space & smaller-scale commercial/mixed uses
 - Walk/bike/transit transportation options in cities above 5k
- Not a land use decision | City submits progress report to DLCD every two years

Misc Provisions and Deadlines (§24 to 32)

- Attorney fees for applications including the development of 'needed housing', operative for appeals filed on/after Jan 1, 2024
- Adjustments operative on Jan 1, 2024 and repealed Jan 2, 2032
- HAPO operational on Apr 1, 2024 (agencies may act before to stand up office)
- UGB amendment provision operational Jul 1, 2023 and repealed Jan 2, 2033



DLCD
Department of
Land Conservation
& Development

Housing Production Advisory Council

Land Availability Work Group

August 2, 2023

Questions & Discussion

HB 3414 – B-Engrossed

- Review of UGB Amendments (Sections 15 to 22)
- Recommending **two alternative language adjustments**:
 1. Redefine “net residential acre” to account for **land constraints** as defined in statute and regulation; or
 2. Adjust the area limits for
 - Population greater than 25,000 to not exceed **160 acres**
 - Populations less than 25,000 to not exceed **320 acres** (double the urban limit)
- Consider a **bonus for net water conservation** based on water budget analysis

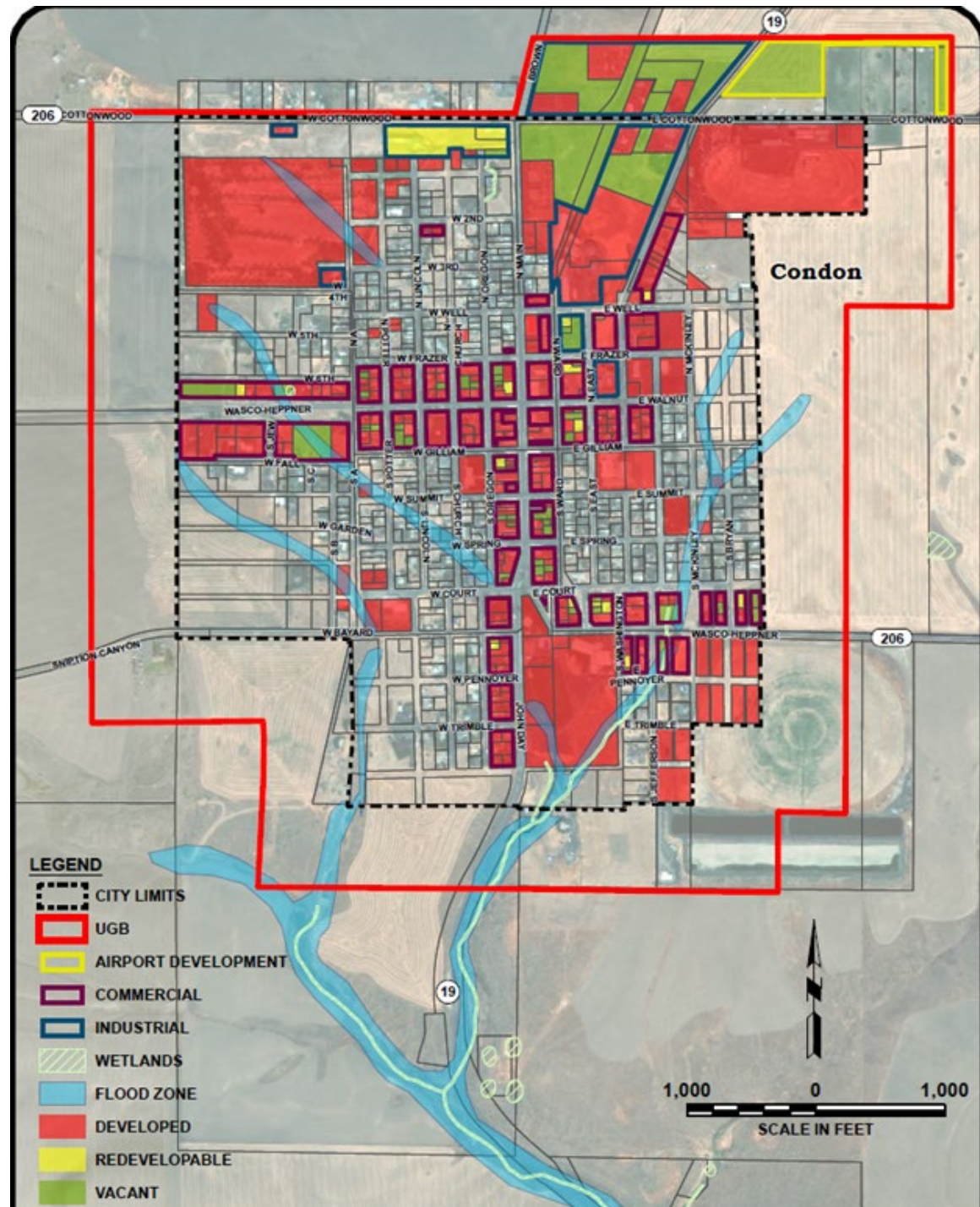


Option 1: Adjust the Net Residential Acre Definition

- Section 15(2) “**Net residential acre**” means an acre of residentially designated buildable land, not including nondevelopable rights of way for streets, roads or utilities, **and lands determined by the local government to be unbuildable due to development constraints as defined in OAR 660-009-0005(2).**
- Many rural cities are built along rivers and streams surrounded by regulated flood zones, wetlands, large ranches or farms, and slopes that render the lands unbuildable due to topography and other natural features
- [OAR 660-009-0005\(2\)](#) defines constrained land further than ORS 197: “**Development Constraints**” means factors that temporarily or permanently limit or prevent the use of land for economic development. Development constraints include but are not limited to, wetlands, environmentally sensitive areas such as habitat, environmental contamination, slope, topography, cultural and archeological resources, infrastructure deficiencies, parcel fragmentation, or natural hazard areas.

2018-2020 Economic Opportunity Analyses

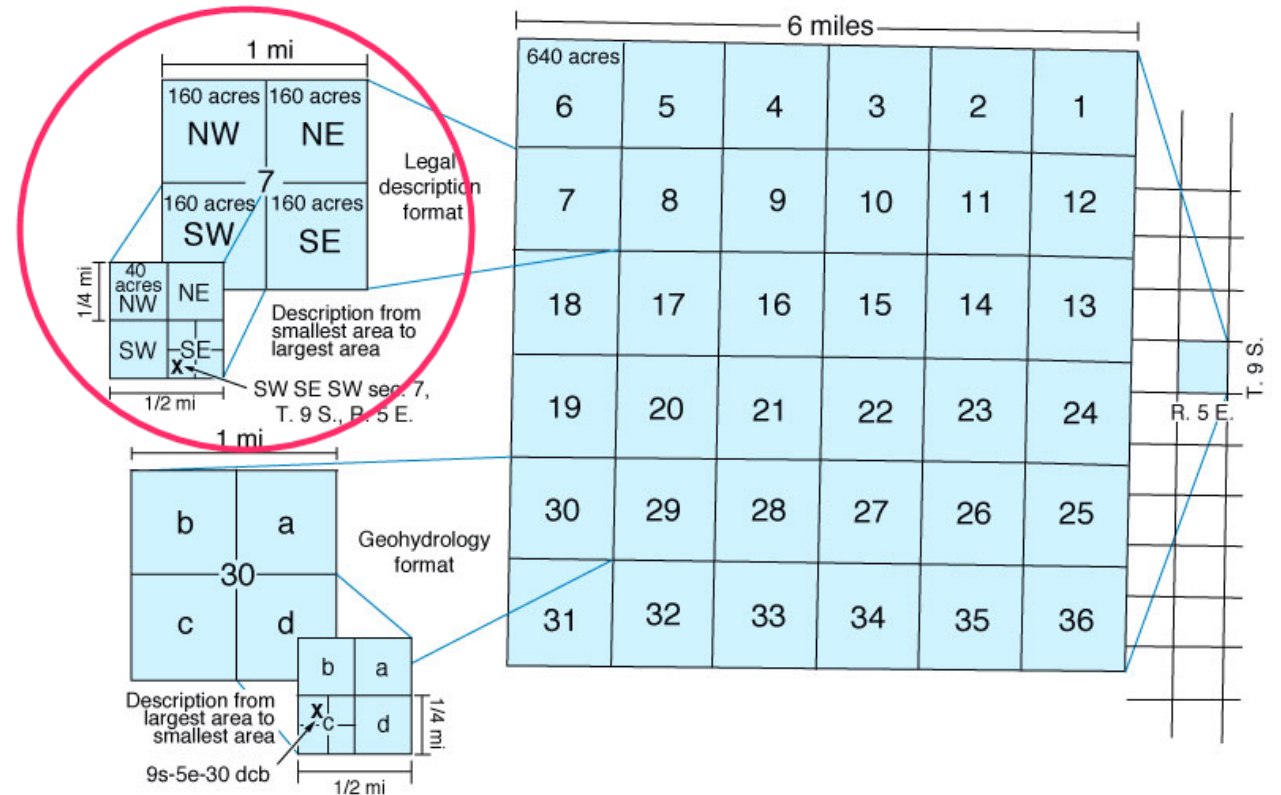
- Assessment covered 32 cities in eight counties and included buildable land inventories (BLIs) as part of the scope
- Identified an abundance of buildable lands but roughly 20% of the UGB land areas had development constraints
- Creating a housing concept that gets you to **75 net residential acres (Section 16(e)(B))** for rural cities may take 200 or more total acres once you try to work around all these constraints
- Development constraints also impact density requirements in **Section 18(3)(a)(B)(ii)**, which identifies 20 rural counties and three cities that must achieve “**at least four dwelling units per net residential acre**”
- **Large parcels (3,000+ acres) surround many of these urban growth boundaries** and are owned by farming and ranching families. A 75-acre sale is not meaningful for most of these landowners and is inconsistent with the Public Land Survey System. Many ranching and farming families also lack a succession plan and would be willing to consider selling for development, but not if it devalues the rest of the property. The prime ranch and farming land is adjacent to the same rivers and streams as the UGBs.



Option 2: Match the acreage to the Public Land Survey System (PLSS)

- **Townships** (36 square miles) = approx. 6 miles per side
- **Sections** (1 square mile) = 640 acres
- **Quarters** (1/4 sq. mile) = **160 acres**

This is what they're selling



Bonus for Land Conversions with Net Water Budget Gains

- **Highly consumptive and unsustainable water uses** in rural Oregon can be converted to more sustainable systems
- Residential uses for a single-family home typ. **48,000 gallons per year**; at prescribed densities = 4 DUs or **192,000 gallons per year per acre of consumptive water use**
- Alfalfa farming (reference crop) is a high water use because it has a long growing season, a deep root system, and a dense canopy of vegetation; termination of irrigation during summer may be associated with permanent reduction in forage yield; 1.38 acre-feet, or about **450,000 gallons per year to produce one ton of alfalfa** and will produce 8-14 tons per year per acre = **3.6M to 6.3M gallons per acre per year** or **18 to 32x the annual water use** of four residential homes.
- Eastern Oregon residents have considered and worked toward developing additional storage opportunities for over 50 years.
- Water is stored in multiple existing reservoirs, but the **stored water does not meet late summer water demand for irrigation and instream water rights for fish habitat**. Water diversions to roughly **80 percent of irrigated lands are shut down by late summer**, which in turn impact stream health, fisheries, and recreation potential.
- Allow for greater land conversion based on water budget bonuses = more sustainable water systems in rural Oregon

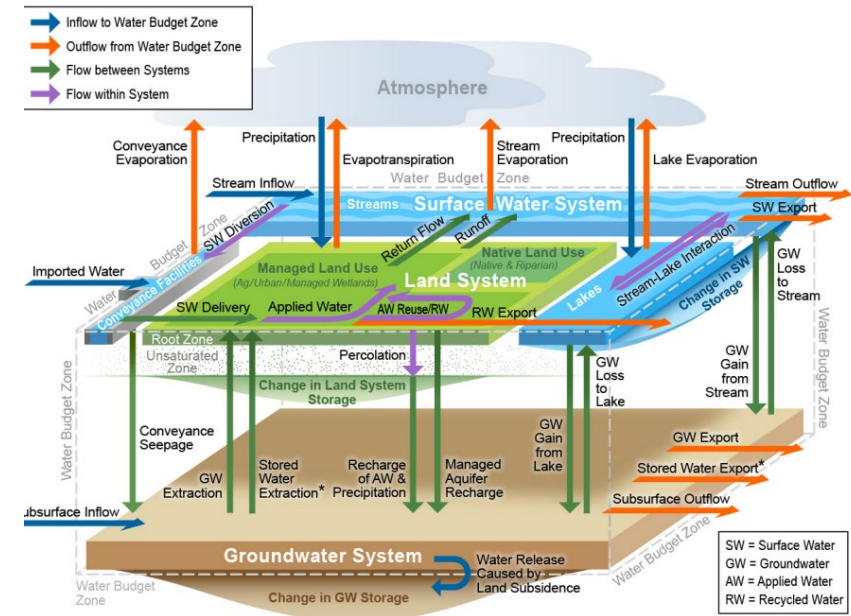
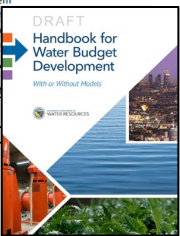


Figure 1-5 Water Budget Accounting Template — Total Water Budget

- Color Key:
- Blue** Inflow to Water Budget Zone
 - Orange** Outflow from Water Budget Zone
 - Green** Flow between Systems
 - Purple** Flow within Systems

| TOTAL WATER BUDGET | | | |
|---------------------------------|---|--------------------|---|
| Flow Type | Component | Credit(+)/Debit(-) | Relationship with Other Systems |
| Inflow | Precipitation on Land System | + | Equal to the Precipitation term in the land system |
| Inflow | Precipitation on Lakes | + | Equal to the Precipitation on Lakes term in the surface water system |
| Inflow | Stream Inflow | + | Equal to the Stream Inflow term in the surface water system |
| Inflow | Imported Water | + | Equal to the Imported Water term in the surface water system |
| Inflow | Subsurface Inflow | + | Equal to the Subsurface Inflow term in the groundwater system |
| Inflow | Water Release Caused by Land Subsidence | + | Equal to the Water Release Caused by Land Subsidence term in the groundwater system |
| Total Inflow | | | Precipitation on Land System plus Precipitation on Lakes plus Stream Inflow plus Imported Water plus Water Release Caused by Land Subsidence |
| Outflow | Evapotranspiration | - | Equal to the Evapotranspiration term in the land system |
| Outflow | Stream Evaporation | - | Equal to the Stream Evaporation term in the surface water system |
| Outflow | Lake Evaporation | - | Equal to the Lake Evaporation term in the surface water system |
| Outflow | Conveyance Evaporation | - | Equal to the Conveyance Evaporation term in the surface water system |
| Outflow | Stream Outflow | - | Equal to the Stream Outflow term in the surface water system |
| Outflow | Subsurface Outflow | - | Equal to the Subsurface Outflow term in the groundwater system |
| Outflow | Surface Water Export | - | Equal to the Surface Water Export term in surface water system |
| Outflow | Groundwater Export | - | Equal to the Groundwater Export term in the groundwater system |
| Outflow | Stored Water Export | - | Equal to the Stored Water Export term in the groundwater system |
| Outflow | Recycled Water Export | - | Equal to the Recycled Water Export term in the land system |
| Total Outflow | | | Evapotranspiration from Land System plus Stream Evaporation plus Lake Evaporation plus Conveyance Evaporation plus Stream Outflow plus Subsurface Outflow plus Surface Water Export plus Groundwater Export plus Stored Water Export plus Recycled Water Export |
| Storage Change | Change in Total System Storage | | |
| Total System Mass Balance Error | | | |



Housing production in the greater Portland region

Housing Production Advisory
Council:

Land availability working group

August 16, 2023



Metro



What problem are we trying to solve with HB 3414?

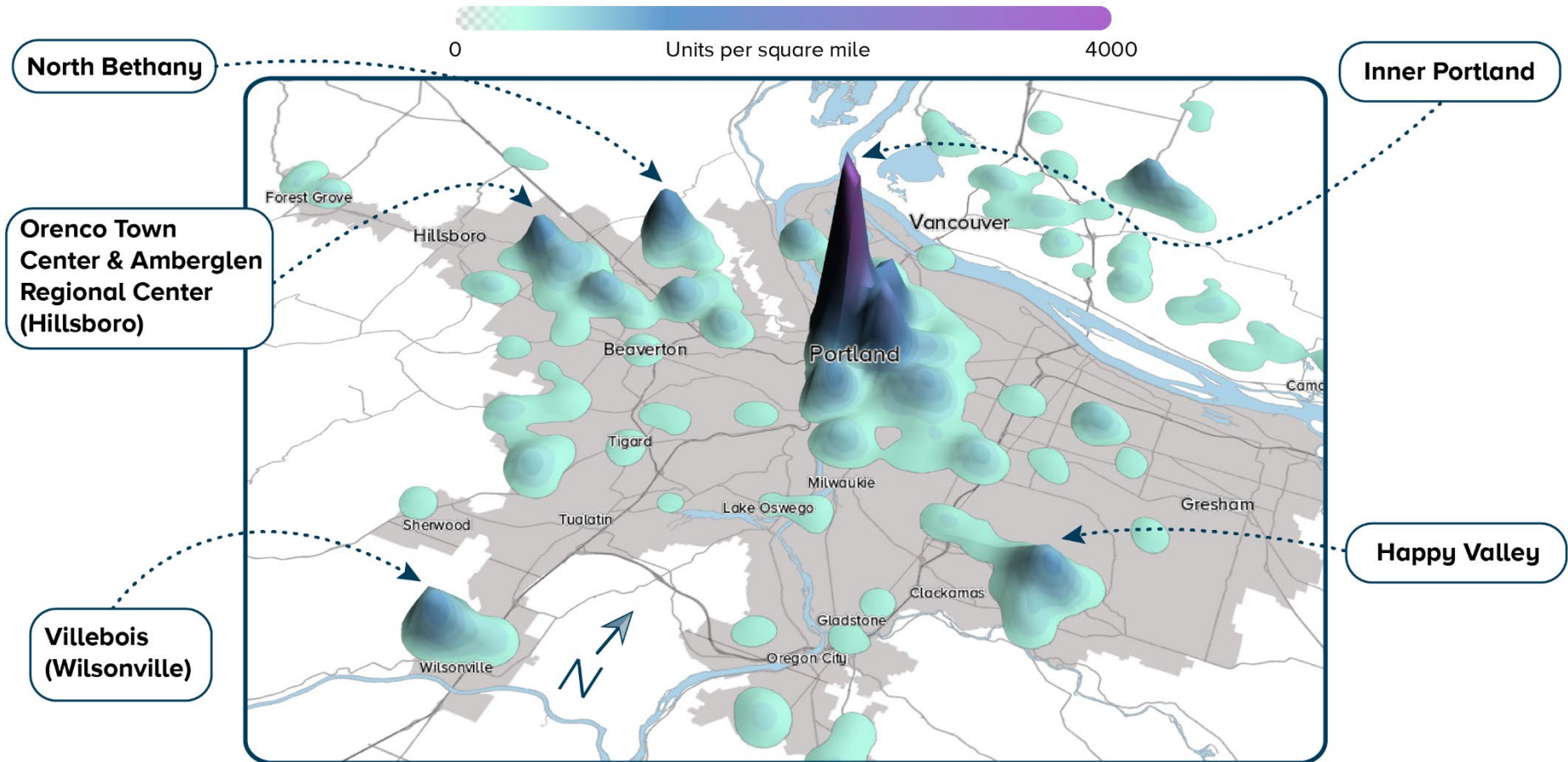
- Housing production?
- Housing affordability?
- Metro responsiveness to cities?
- Avoid having to demonstrate need for land?

What problem are we trying to solve with HB 3414?

- Housing production?
- Housing affordability?
- Metro responsiveness to cities?
- Avoid having to demonstrate need for land?

Over 90% of new housing built inside 1979 UGB

Housing permits in the Portland Metro area, 2009-2017 - units per square mile



Source: Construction Monitor data report Q1 2009 - Q2 2017. Created October 2017

Land readiness is essential

UGB expansions only produce jobs or housing when governance, infrastructure and market are addressed.



Proposal: housing production

- State funding for infrastructure to support housing production.
- Prioritize investments in existing urban areas.
- Fund infrastructure in UGB expansions that are made because of a demonstrated need for land.
- Require more density in any expansion areas.

What problem are we trying to solve with HB 3414?

- Housing production?
- **Housing affordability?**
- Metro responsiveness to cities?
- Avoid having to demonstrate need for land?

HB 3414 affordability definitions are too lenient

- “Affordable” could be for households with incomes up to \$109,000 in the Metro region (up to 130% AMI)
- Only 30% of housing must be “affordable”

Proposal: housing affordability

- Tighten definition of affordable and require a larger share of housing to be affordable.
- Increase state funding for affordable housing.
- Require that affordable units be built sooner than market rate.

What problem are we trying to solve?

- Housing production?
- Housing affordability?
- **Metro responsiveness to cities?**
- Avoid having to demonstrate need for land?

Since adopting urban reserves, Metro has approved every city-proposed expansion

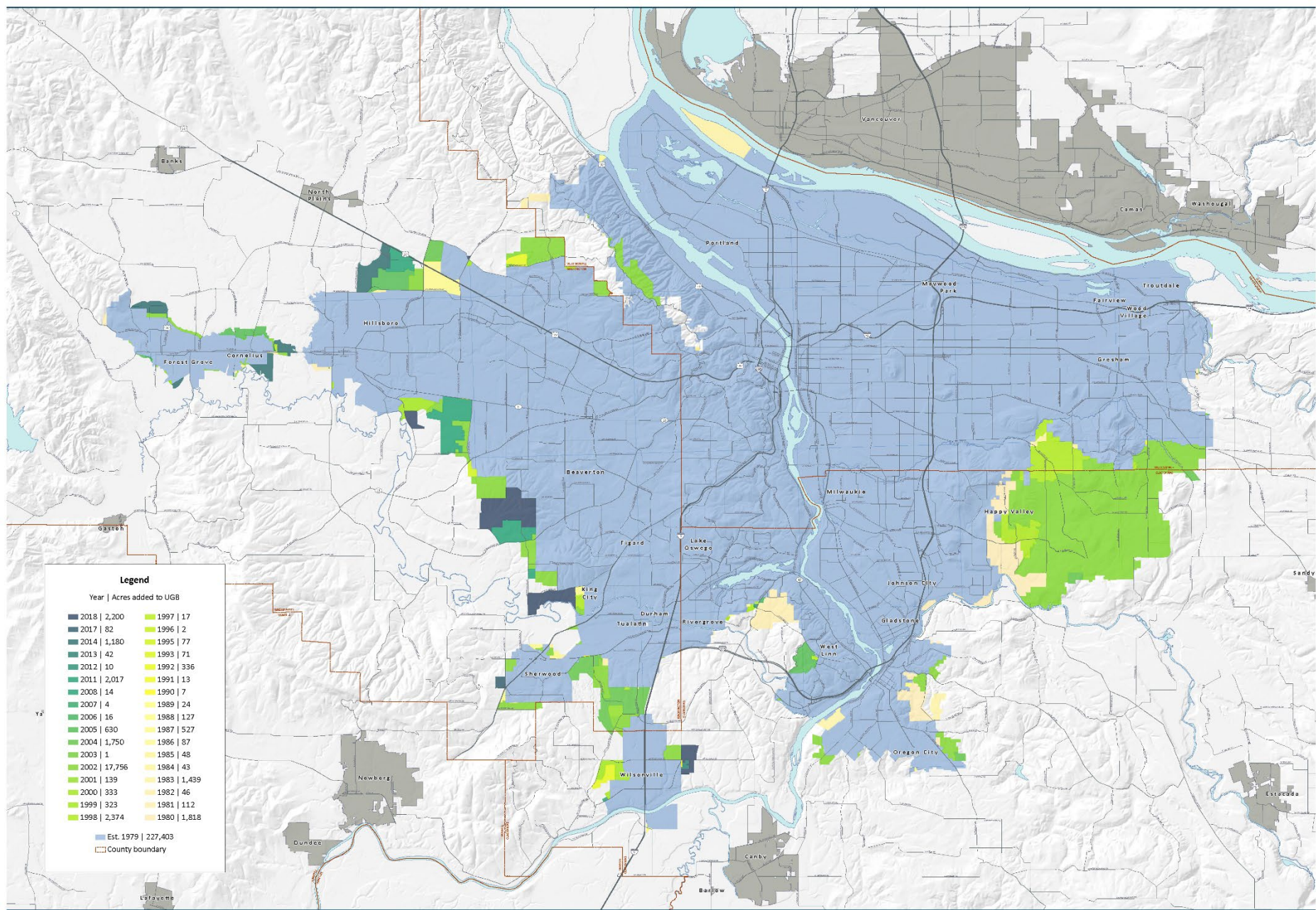
- Hillsboro (2011, 2018)
- Beaverton (2011, 2018)
- Wilsonville (2018)
- King City (2018)
- Tigard (2023)

Proposal: Metro responsiveness to cities

- Recognize multiple existing avenues for UGB expansion in Metro.
- Carve out Metro UGB from HB 3414.

What problem are we trying to solve?

- Housing production?
- Housing affordability?
- Metro responsiveness to cities?
- **Avoid having to demonstrate need for land?**



Legend

Year | Acres added to UGB

| | |
|---------------|--------------|
| 2018 2,200 | 1997 17 |
| 2017 82 | 1996 2 |
| 2014 1,180 | 1995 77 |
| 2013 42 | 1993 71 |
| 2012 10 | 1992 336 |
| 2011 2,017 | 1991 13 |
| 2008 14 | 1990 7 |
| 2007 4 | 1989 24 |
| 2006 16 | 1988 127 |
| 2005 630 | 1987 527 |
| 2004 1,750 | 1986 87 |
| 2003 1 | 1985 48 |
| 2002 17,756 | 1984 43 |
| 2001 139 | 1983 1,439 |
| 2000 333 | 1982 46 |
| 1999 323 | 1981 112 |
| 1998 2,374 | 1980 1,818 |

■ Est. 1979 | 227,403
 County boundary



DATA RESOURCE CENTER
 #3181P Clatsop
 PO Box 68 97132-0068
 503-866-6702

Urban Growth Boundary expansion history

This information is the property of Metro. All rights reserved. No liability is assumed for errors, omissions, or outdated information. This map is for informational purposes only and does not constitute a contract. Metro is not responsible for any actions taken based on this information. For more information, please contact Metro at 503-866-6702.

Proposal: demonstrated need

- Cities should be ineligible for UGB expansions if they have not yet annexed, planned, zoned, and begun construction of homes in past expansions.

Questions?

Andy Shaw, Metro

Director of Government
Affairs and Policy
Development

Andy.Shaw@oregonmetro.gov

oregonmetro.gov



Oregon's Housing Need



- Target: produce 36,000 housing units annually
- 63% of housing need is for those making under 120% AMI
- 46% of housing need is for those making under 80% AMI

Land Readiness is What Matters

Bend

- Over 2,500 acres for residential development added to the UGB since 2016
- Almost none of it developed yet
- Cost estimate for transportation infrastructure alone is over \$100 million

Medford

- Approximately 1,000 acres for residential development added to the UGB in 2018
- No housing yet built
- Going through the annexation process and needs infrastructure

Land Readiness is What Matters

Grants Pass

- 540 acres brought into UGB for residential development in 2014
- “This and other land within the Grants Pass UGB need new urban infrastructure, such as roads, water service, sanitary sewer service, and stormwater facilities, available near the land before it can be developed for residential uses. The costs of development of this new infrastructure will be considerable.”

Newport

- “[M]any areas of Newport with vacant buildable land need infrastructure to be extended to them (such as roads, water service, or wastewater service) to support new housing development.***[Need to] lobby legislature for changes to existing laws to allow the City more approaches to fund infrastructure development.”

Land Readiness is What Matters

South Hillsboro

- About 1,400 acres of EFU land brought into UGB in 2011.
- Development delayed due to annexation and transportation infrastructure costs – estimated to be @ \$300 million in 2019

Baker City

- “We have plenty of buildable land within the UGB but the infrastructure costs of development – especially for middle housing, workforce housing and supported housing – is the choke hold.”

Solutions!

HB 2980: “Big Idea Loan Fund”

- Revolving Loan Fund: \$300 million
- Units produced in first deployment: 12,000 (plus ongoing from reinvestment)
- Target population: 60–120% AMI
- Subsidy per unit: \$15,000–\$35,000 (est.)
- Project control: local jurisdictions with state support
- Eligible housing: Single and multi-family; rental or ownership
- Fire districts: fully funded
- Fund leverage: \$4.5 billion in other funding

HB 2981

- \$20 million for an infrastructure grant or loan fund associated with new workforce housing developments
- \$20 million for the Oregon Land Fund (revolving) to provide low-cost capital for land acquisitions by workforce housing developers

Benefits

- Works equally well for urban and rural projects
- Scalable – works for small projects, too
- Local jurisdictions drive the process
- Revolving fund(s): will continue to produce as loans are repaid
- Will leverage a considerable amount of other funding, most private
- Can be layered with other resources for greater subsidy
- Simple to administer
- Works equally for rental or ownership projects
- Local communities really need workforce housing, and no meaningful subsidies available



Washington State CHIP Fund

Criteria:

Applicant must be city, county, or public utility district, partnering with affordable housing project, and:

- The city or county must have imposed a sales and use tax for affordable housing.
- Must include at least 25% affordable units at or under 80% AMI, “with a strong probability of serving the target group for at least 25 years.”
- Affordable housing must begin construction within 24 months of the grant award.

Eligible costs:

- Onsite water, sewer, and stormwater improvements
- Offsite water, sewer, and stormwater improvements in the right-of-way, connecting to the development
- Waived SDCs

Results to Date:

- In 18 months, CHIP supported the development of over 4,800 affordable housing units (and therefore, many more market-rate units as well)

HB 2001 directs DLCD to

- Facilitate housing production, affordability, and choice on buildable lands in UGBs
- Provide greater clarity and certainty in the adoption of housing capacity analyses, UGB amendments, UGB land exchanges, and urban reserves
- Reduce analytical burden, minimize procedural redundancy, and increase legal certainty for UGB amendments, UGB exchanges, or urban reserves
- Support coordinated public facilities planning, annexation, and plan amendments to facilitate the development of lands brought into a UGB



Oregon

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Department of Land Conservation and Development

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To: Deb Flagan, Housing Production Advisory Council

From: Brenda Ortigoza Bateman, Ph.D., Director, DLCD

CC: Ethan Stuckmayer, AICP, Housing Services Division Manager, DLCD
Palmer Mason, J.D., Senior Policy Advisor, DLCD
Mari Valencia-Aguilar, Senior Housing Planner, DLCD
Sean Edging, Housing Planner, DLCD



Subject: House Bill 3414 Enhancements – DLCD Comments

The purpose of this memorandum is to summarize feedbacks on proposed enhancements to House Bill 3414. The Oregon Department of Land Conservation and Development (DLCD) appreciates the on-going work of the Housing Production Advisory Council and the opportunity to provide comments on proposed recommendations. If you would like to discuss any of our feedback, we would be happy to set up a time to meet.

Recognizing the numerous policy considerations and refinements within a limited timeframe, this feedback focuses on the proposed enhancements discussed during the Land Availability Work Group meeting on August 16, 2023 and refined following the meeting. These proposals included:

1. Direct an Emergency Order to add rapid land supply to allow a one-time catch-up to get land ready for housing.
2. Direct DLCD to meet with each city that initiates the Expedited UGB Expansion process to understand the barriers and benefits of the program. Utilize these findings to refine the UGB Expansion process to create a less cumbersome process and provide a legal standing to reduce appeals for these cities.
3. Direct DLCD to provide technical assistance to support cities outside Metro in establishing an Urban Reserve in coordination with their next comp plan update that provides cities legal confidence for future expansions.
4. Utilize Framework for HB3414 Section 14 – 22 as the basis for Executive Order with the following alterations:
 - A. Communities requesting less than 35 acres are not required to complete a master plan
 - B. Cities will convene and facilitate regular meetings with applicant, interdepartmental agencies, utility providers, etc. and city staff to assist in expediting the planning and permitting process.
 - C. Change Section 15(2) to “Net residential acre” meaning an acre of residentially designated buildable land, not including nondevelopable rights of way for streets, roads or utilities, and lands determined by the local government to be unbuildable due to development constraints as defined in OAR 660-009-0005(2)

Emergency Production Performance Evaluation

- Cities must set housing production targets by income level
- Cities must set emergency housing production timeline (within 10 years)
- Cities must meet or exceed minimum density target (See HB3414 Framework)

- [Cities will report annually to DLCD on production progress](#)
- [DLCD will meet with cities who do not meet emergency production targets to understand and address any barriers impacting cities housing goals for this land.](#)

Comments on Recommendations

[1. Direct an Emergency Consideration to add rapid land supply to allow a one time catch-up to get land ready for housing.](#)

Our feedback for this recommendation primarily relate to the description of the recommendation and the legal method of implementation. First, this section describes an "Emergency Consideration", which is not a clearly defined term. Recommendation 4 more specifically references issuing an Executive Order, which we presume is the intent of this recommendation. We would suggest revising this to match. Additionally, we suggest more accurately defining what the policy is, which is "to allow cities an optional, one-time Urban Growth Boundary amendment to provide additional land for housing". This makes the policy prescription of the recommendation clear.

In relation to issuing an executive order, ORS 401.168 outlines the Governor's powers during a state of emergency. The statute provides broad latitude to exercise authority over executive agencies, including any orders or rules of state agencies, including DLCD. However, the statute does not grant the authority to supersede Oregon Revised Statute, which would require an act of the Legislature. Because provisions related to the amendment of an Urban Growth Boundary are outlined in statute, an executive order suspending those statutes may exceed the Governor's authority and raise substantial legal questions that introduces risk of litigation. For this reason, we would suggest framing the mechanism to implement this recommendation as a Legislative bill, rather than an Executive Order.

[2. Direct DLCD to meet with each city that initiates the Expedited UGB Expansion process to understand the barriers and benefits of the program. Utilize these findings to refine the UGB Expansion process to create a less cumbersome process and provide a legal standing to reduce appeals for these cities.](#)

As part of the development of the [Oregon Housing Needs Analysis recommendations](#), the Legislature provided specific direction to the agency under [HB 5202 \(2022\)](#) to prepare recommendations related to land supply and the Urban Growth Boundary amendment process. To prepare these recommendations, DLCD staff convened a Housing Capacity Work Group and engaged with local governments across the state to evaluate the types of refinements necessary to refine the UGB amendment process, make it more accessible for cities to complete, and reduce the time, analysis, and legal risk associated with the process. This resulted in Recommendation 1.4 of the OHNA report: "Streamline land capacity and urbanization processes to expedite well-planned expansions", which includes nine sub-recommendations on actions that will facilitate a UGB amendment where a city identifies a need. These recommendations are described in substantial detail in [Appendix A](#) of the report.

These recommendations were taken up by the Legislature during the 2023 Session and were embedded in a variety of statutory amendments and direction to DLCD to undergo rulemaking on the Urban Growth Boundary amendment process with the following priorities:

- (a) Facilitating and encouraging housing production, affordability and housing choice on buildable lands within an urban growth boundary;
- (b) Providing greater clarity and certainty in the adoption and acknowledgement of housing capacity analyses, urban growth boundary amendments, urban growth boundary exchanges or urban reserves to accommodate an identified housing need;
- (c) Reducing analytical burden, minimizing procedural redundancy and increasing legal certainty for local governments pursuing urban growth boundary amendments, urban growth boundary exchanges, or urban reserves where a housing need is identified, especially for smaller cities, consistent with the appropriate protection of resource lands; and
- (d) Supporting coordinated public facilities planning, annexation, and comprehensive plan amendments to facilitate the development of lands brought into an urban growth boundary.

The proposed recommendation suggests that DLCD has not had conversations with local governments and stakeholders on the UGB amendment process, which is inaccurate. The feedback from our implementation partners at the local level has been critical to the OHNA policy, and we believe it will continue to be essential for the success of rulemaking and on-going implementation.

In the upcoming rulemaking process, we will be updating the UGB amendment process with the express purpose of refining the process and making it more accessible for local governments to readily complete. We expect that the experiences and perspectives of local governments who opt into this one-time UGB amendment will be important. Therefore, our suggestion is to refine this recommendation to require DLCD to invite local governments that opt into this pathway to participate in rulemaking, either on the Rulemaking Advisory Committee, a Technical Advisory Committee, or in stakeholder discussions. This will enable us to build on the discussions we have already been having on the UGB amendment process and directly translate that feedback into administrative rule and guidance for local governments, rather hold a de novo conversation as this recommendation suggests.

[3. Direct DLCD to provide technical assistance to support cities outside Metro in establishing an Urban Reserve in coordination with their next comp plan update that provides cities legal confidence for future expansions.](#)

As mentioned previously, the OHNA report included a variety of recommendations that will help facilitate a UGB amendment where a need is identified. This includes the following sub-recommendation:

"Appropriate funding to support local urbanization planning, including UGB amendments, UGB land exchanges, public facilities planning, urban reserve, and concept planning, prioritizing supporting smaller and more rural communities."

The Legislature responded to this recommendation with an appropriation of \$3.5 million in technical assistance funding to local governments to support Housing and Urbanization-related planning work during 2023-25. This means that, for the first time since the introduction of urban reserves, there is direct funding assistance with the express purpose of supporting cities in the adoption of urban reserves. When we opened applications for funding this summer, we received nine urbanization-related proposals, including cities interested in establishing urban reserves. Of course, the total funding requested exceeds the funding allocated by the Legislature, meaning that we will need to prioritize which projects are funded now and how much each project is awarded in alignment with our statutory direction.

We encourage the Legislature to appropriate additional resources and direction to support the adoption of urban reserves, and we think this recommendation could be strengthened in two ways: 1) clarify that the Legislature appropriate funding to support establishing urban reserves, and 2) provide more explicit direction to cities that opt into the one-time UGB amendment to subsequently adopt urban reserves with funding and technical support from DLCD, if they have not yet done so.

4. Utilize Framework for HB3414 Section 14 – 22 as the basis for Executive Order with the following alterations:

A. Communities requesting less than 35 acres are not required to complete a master plan

As highlighted by practitioners across the state, when land is added to a UGB without sufficient consideration of development-readiness, the land often sits vacant for years if not decades. The purpose of the master plan is to ensure that, when the land is included in the Urban Growth Boundary, it will achieve the intended outcomes of the policy and ensure the land is development-ready and that housing will actually be built.

However, we recognize that the development of a full master plan may create a barrier for including smaller areas and disincentivize some cities from utilizing the pathway. We agree that it may be appropriate to not require a full master plan in these scenarios, however, we consider it important to ensure that there is a mechanism in the policy to ensure that:

1. The affordability and development parameters outlined in the bill are achieved.
2. The land will be made 'development-ready' (i.e. annexed/zoned, served with infrastructure, and not encumbered by protective regulations) upon inclusion in the UGB.

For smaller sites, this could be achieved with appropriate covenants, annexation/zoning/comprehensive plan designations, and demonstration by the property owner and/or local government that ensure the land will be developed under the parameters set forth in the policy. These parameters would not require a master plan, would encompass processes that cities and developers already undergo in typical development, and would be more appropriate for a smaller expansion area.

B. Cities will convene and facilitate regular meetings with applicant, interdepartmental agencies, utility providers, etc. and city staff to assist in expediting the planning and permitting process.

We agree that, in order to achieve the intended outcomes of the policy, that partnership between developers and permitting agencies will be essential. While we agree that a

commitment from all parties is an important first step, we also think that more tangible parameters to ensure projects are not delayed in the review process will be necessary to achieve the intended outcome of the policy. We believe these parameters should be established in dialogue with both local governments and the development community as the policy is refined. Examples of potential parameters include:

- Designated points-of-contact
- Timelines and deadlines for review & approval, including annexation/zoning, land use approval, public works review, and building permit review
- Consolidated review and annexation procedures, including ministerial review where appropriate

C. Change Section 15(2) to “Net residential acre” meaning an acre of residentially designated buildable land, not including nondevelopable rights of way for streets, roads or utilities, and lands determined by the local government to be unbuildable due to development constraints as defined in OAR 660-009-0005(2)

We agree that the definition of "net residential acre" should not include lands that are constrained by geographical or regulatory constraints. However, OAR Chapter 660, Division 009 is administrative rule implementing Goal 9 related to Economic Development. As such the focus of the definition of “Development Constraints” is specific to economic development:

(2) “Development Constraints” means factors that temporarily or permanently limit or prevent the use of land for economic development. Development constraints include, but are not limited to, wetlands, environmentally sensitive areas such as habitat, environmental contamination, slope, topography, cultural and archeological resources, infrastructure deficiencies, parcel fragmentation, or natural hazard areas.

Referencing this specific definition in the policy would create major interpretive questions, which risks introducing confusion and legal risk in implementation. Rather, we suggest directly defining the types of land that would not be considered buildable in the policy. As an example of how the definition could be constructed:

(1) “Net residential acre” means an acre of residentially designated buildable land, not including nondevelopable rights of way for streets, roads or utilities. As used in this section, buildable land does not include land that:

- (a) Is encumbered by any applicable local, state or federal protective regulations;
- (b) Is severely constrained by natural hazards, including lands in the Special Flood Hazard Area;
- (c) Has slopes of 25 percent or greater;
- (d) Is economically infeasible to serve with public facilities; or
- (d) Is parcelized at or below two acres.¹

¹ [OAR 660-004-0040](#) (6) establishes a ‘safe harbor’ minimum lot size of two acres in which rural residential lands do not require a Goal 14 exception resulting from parcelization of future urbanizable lands. If you have additional questions about this, we would be happy to discuss.

This example encompasses all of the elements contained in the definition of "Development Constraints" in OAR 660-009-0005(2) and would provide substantial clarity that minimizes potential legal risk for cities pursuing this pathway. Many of these provisions are derived from the current definition of residential "Buildable Land" in OAR 660-008-0005(2) and include refinements that we expect to incorporate as part of rulemaking to ensure that "buildable lands" include lands that are realistically developable over the planning horizon.

Emergency Production Performance Evaluation

- Cities must set housing production targets by income level
- Cities must set emergency housing production timeline (within 10 years)
- Cities must meet or exceed minimum density target (See HB3414 Framework)
- Cities will report annually to DLCD on production progress
- DLCD will meet with cities who do not meet emergency production targets to understand and address any barriers impacting cities housing goals for this land.

These additional provisions were included in the refinements sent to DLCD on August 17th. We do not fully understand the intent surrounding these provisions and whether it is intended to be integrated as part of the one-time UGB amendment policy or as a standalone recommendation. However, we feel it is important to highlight that many of these provisions are already incorporated into statute under the OHNA Policy in [HB 2001 \(2023\)](#) and apply statewide.

Specifically, the Office of Economic Analysis is directed to publish housing production targets for cities, which serve as the benchmark for evaluating their progress on achieving housing outcomes. Cities above 10,000 population annually report data on the number of units they produce, which are tracked statewide as part of a housing production dashboard that will be developed and maintained by Oregon Housing and Community Services. This information on cities' progress towards meeting production targets will be used as the basis for a new housing accountability policy, which directs DLCD to evaluate the potential state and local barriers to housing production in underperforming cities and to provide recommendations that local governments must address as part of their housing production strategy.

If the intent is to incorporate an accountability framework into the UGB policy or expedite and refine the implementation of the OHNA accountability framework, we would be happy to offer suggestions on how to successfully do so. However, we would advise against re-creating an accountability policy that has already been established by the Legislature to avoid potential confusion in implementation for our local government partners.



Oregon

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From: Brenda Ortigoza Bateman, Ph.D., Director, DLCD

Date: August 29, 2023

CC: Ethan Stuckmayer, AICP, Housing Services Division Manager, DLCD
Palmer Mason, J.D., Senior Policy Advisor, DLCD
Mari Valencia-Aguilar, Housing Planner, DLCD
Sean Edging, Housing Planner, DLCD

Subject: Land Availability Work Group's Expedited UGB Expansion (House Bill 3414) Recommendation – DLCD Comments



The purpose of this memorandum is to provide clarification and feedback to specific sections highlighted in the standards of analysis form relating to the Housing Production Advisory Council's Land Availability "Expedited UGB Expansion" recommendation. This action is in response to your request made to the housing team through email on August 23, 2023.

The Oregon Department of Land Conservation and Development (DLCD) appreciates the opportunity to provide this commentary. If you would like to discuss any of our feedback, we would be happy to set up a time to meet.

The following is our response to the two sections (in blue) from the standards of analysis form and the associated questions (bulleted) that you asked our feedback on:

SOA section 1 and associated question:

Encourage the Legislature to support the adoption of urban reserves: To include (1) appropriate funding to support establishing urban reserves and (2) provide prioritized support and direction to cities that opt into the one-time UGB amendment to subsequently adopt urban reserves with funding and technical support from DLCD, if they have not yet done so.

- "For clarification, is it the agencies expectation that the Urban Reserve's would take place AFTER the UGB Expansion has been approved? If the verbiage needs to be changed to ensure this happens, I would ask for your recommendation on how this should be stated. NOTE: We want to ensure that the Urban Reserve process does not "hold up" or impede the Expedited UGB expansion process."

To address your question, the agency's expectation is indeed that Urban Reserves would be established following the approval of the one-time UGB Expansion. This sequence ensures a strategic approach where expansion comes before the allocation of designated urban reserve areas. This approach is designed to promote efficient and well-coordinated urban growth by making the one-time expansion fit into a larger approach for future UGB adjustments. In our discussions with cities on this issue, urban reserves were clearly identified one of the most

effective tools in reducing the time and analytical requirements associated with a UGB amendment.

In line with these considerations, we wholeheartedly encourage the Legislature to appropriate additional resources and provide clear direction to bolster the adoption of urban reserves. We are of the opinion that this recommendation could be fortified in two ways:

1) Clarify that the Legislature should appropriate funding to support the establishment of urban reserves: By explicitly mentioning the allocation of funds to establish urban reserves to cities engaging in the one-time expansion, we ensure that the financial aspect aligns with the broader vision of urban reserve development.

2) Provide more explicit direction to cities opting for the one-time UGB amendment to subsequently adopt urban reserves: We recommend offering clear and unambiguous guidance to cities that choose to participate in the one-time UGB amendment. Specifically, these cities should be directed to adopt urban reserves with the backing of funding and technical support from the DLCD, if they have not already done so. This clarity ensures that cities can seamlessly integrate urban reserves into their planning process.

HB 2001 amended ORS 195.145 to enable cities outside of the Metro to adopt urban reserves at any time, including before or after a UGB amendment. The subsequent adoption of urban reserves would support future UGB amendments by identifying lands designated for urbanization. This refinement would both support the stated policy intent of the SOA of 'address[ing] the immediate short term housing supply issue' while simultaneously laying the groundwork for the more effective and efficient implementation of Goal 14.

We also think this refinement would help address a cited concern raised by stakeholders that this policy represents an ad hoc 'bypass' or 'runaround' of the land use planning system. By embedding urban reserve planning into this pathway, cities would be engaging in the essential work necessary to support urbanization and enhance the development readiness of lands brought into the UGB to achieve housing production, affordability, and choice in line with the Governor's goal.

We are fully aligned with your perspective that the Urban Reserve process should not hinder or delay the expedited UGB expansion process. Striking the right balance is paramount to the successful realization of these initiatives.

In terms of the verbiage, we understand your concern for clarity in this process. To align with the desired sequence, we recommend a revision that explicitly indicates that Urban Reserves will be established after the approval of the UGB Expansion. This wording could help prevent any unintended confusion.

SOA section 2 and associated question:

In addition, with the adoption of OHNA we anticipate that DLCD will not be approving any UGB expansions for an estimated 4 years due to the revised housing needs analysis rule making process, effectively delaying any additional UGB expansions until late 2026 or early 2027 causing our cities to fall further behind on availability of lands for housing and putting

additional pressure on the need to “catch up” on years of underproduction related to available land supply.

- “Please review question #2 paragraph 5 regarding my understanding of the timing for UGB Expansions due to the OHNA implementation process. I understand from my conversation with Ethan and Sean that there are “other items” that cities can be working on to prepare for a UGB expansion. However, the Housing Needs analysis will take time to administer, compile and have the cities approve before submitting to DLCD once the OHNA guidelines are implemented (estimations of 18 – 2 years’ time frame for cities to submit) longer if legal issues arise. In addition, it will take DLCD the 18-month time frame these to be approved. I ask for you to clarify if my assumptions are incorrect.”

First, it's important to emphasize that our commitment to addressing housing needs remains steadfast. The adoption of the OHNA policy will require a substantial rulemaking process to amend rules related to Statewide Planning Goals 10 (Housing) and 14 (Urbanization) as well as housing- and urbanization- related sections of Oregon Revised Statute (ORS 197.286 to 197.314). Specifically, the bill directs LCDC to provide greater clarity and certainty in the adoption and acknowledgement for both housing- and urbanization-related planning processes. This includes adopting and amending Oregon Administrative Rules and developing guidance on appropriate methodologies to inventory buildable lands and calculate housing capacity and to clarify urbanization-planning processes to facilitate a UGB amendment where a need has been identified. This work includes examining OARs related to buildable lands inventories, UGB amendments, UGB land exchanges, and urban/rural reserves. The rules for this work must be adopted by January 1, 2026, but supplemental guidance materials may be completed at any time if they are not adopted as an attachment in rule.

However, it is inaccurate to state that “DLCD will not be approving any UGB expansions for an estimated 4 years” – in fact, we have received application requests to fund three UGB amendments resulting from previous Goal 10 work for the cities of Canby, Molalla, and McMinnville. While we have not yet issued funding decisions, these projects are statutorily required under ORS 197.296 and are high funding priorities for the agency. These projects are now possible as a direct result of the funding and legislative direction provided by the Oregon Legislature in past biennia.

In light of this work, we recognize the urgency of maintaining a steady supply of available land for housing, and we share your concern about not falling behind in meeting housing demands. To this end, House Bill 2001 provided LCDC limited abilities to support cities who are in the midst of Housing Capacity Analysis (HCA) work. From HB 2001 (as amended by HB 2889):

(4) To avoid interference with current planning activities or to avoid unjust or surprising results, the Land Conservation and Development Commission may postpone, for cities specified by the commission, the applicability of sections 13, 21, 22 or 23 of this 2023 Act and the amendments to ORS 197.286, 197.290, 197.296, 197.297 and 197.303, by sections 12 and 25 to 28 of this 2023 Act, until a date that is not later than January 1, 2027.

In other words, LCDC can postpone these laws for cities that have already been working on their HCAs or they can provide some flexibility in extenuating circumstances to avoid 'unjust or surprising results'. We expect several cities to complete Goal 10 planning requirements this biennium under the 'old' statutes and rules.

With this said, the SOA is correct in noting a delay in new HCAs because of the revised estimates of need and administrative rules forthcoming from the Oregon Housing Needs Analysis policy. We have advised jurisdictions that have not yet commenced a Housing Capacity Analysis to hold off until at least January 1, 2025, when the OHNA estimates are published for two reasons:

- 1) Commencing a Housing Capacity Analysis now under the 'old' rules creates a risk of appeal, because 'needed housing' is statutorily required to be based on the OHNA estimates. While cities already underway were provided an exemption, cities beginning an HCA after HB 2001 adoption are vulnerable to potential appeal.
- 2) Waiting to commence a Housing Capacity Analysis will improve the likelihood that a city will identify a deficiency of lands necessitating a UGB amendment, because 1) the housing need identified by the OHNA will be greater and 2) BLIs will be more skeptical about the capacity of lands to accommodate housing need when capacity-related rules are adopted by January 1, 2026.

Additionally, if jurisdiction is exploring a potential future Urban Growth Boundary amendment, there are several potential actions a city could take this biennium that would increase the success of a future effort in lieu of an HCA. These projects include the development, study, or adoption of efficiency measures, development code amendment projects, concept and public facilities planning, or the establishment of urban and rural reserves. Each of these project types are fundable under DLCD's housing technical assistance grant program in this biennium and would substantially increase the likelihood of a successful UGB amendment in the future, should a need be identified.