



# Oregon

Tina Kotek, Governor

## HPAC Work Group Recommendation Template

### Work Group

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

### Recommendation

Create expedited appeals process for Limited Land Use Decisions (existing), Expedited Land Use Decisions (existing), and Urban Housing Decisions (new category).

An “Urban Housing Decision” shall be any land use action subject to LUBA review that meets all of the following criteria:

- a) Is wholly within an Urban Growth Boundary;
- b) Is on land that permits residential development, and;
- c) Primarily relates to the approval of residential development (such as plat approval, design review, CUP, etc.).

The expedited appeals process shall consist of the following rules (which supersede standard LUBA rules where in conflict):

- No interventions allowed other than applicant; LUBA shall administratively consolidate all appeals related to same housing decision
- Briefs to be limited to 250 words per assignment of error; filed and served electronically.
- Record to be transmitted within 7 days of NITA; record limited to final decision including approved site plan.
- Opening brief due within 7 days from record transmission; reply brief due within 7 days of opening brief; Oral argument at discretion of LUBA – to be ordered and held within 15 days of reply brief; decision within 21 days of oral argument.
- Standard for review to be “*obvious error which is substantially prejudicial to appellant.*”
- Applicant may elect to proceed under standard LUBA rules by so stating in their NITA or by filing a notice within 15 days of appellant’s initial brief.
- Remands shall be administratively resolved by local jurisdiction within 15 days.
- Appeals to COA subject to surety posting of \$1,000 per dwelling unit in the subject application; award of same amount + attorney fees for affirmation on

**Related Work Plan Topics**

*Identify topics assigned to the work group that informed the development of this recommendation.*

**Adoption Date**

*Enter the date the work group adopted the recommendation.*

October 9, 2023

**Method of Adoption**

*Describe if the adoption was a vote, by consensus, etc., and if the recommendation is unanimous.*

Unanimous

## Co-chairs Guidance: Standards for Analysis

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

Uncertainty and delay when securing entitlements increases the cost of development. By shortening the time to resolve appeals, development will see increased financial feasibility.

NOTE: This recommendation is primarily aimed at housing production land use decisions where the local government has conducted a public process and approved the development. Given the nature of the housing emergency, the state-level appeals process should give increased deference to the public policy choices/balances that are made during the land use process.

2. Provide a quantitative, if possible, and qualitative overview of the housing production issue.

*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.*

While significant progress has been made under the “clear and objective standards” reforms, LUBA’s low-barrier appeals process adds disproportionate uncertainty and delay compared to the value created when reviewing relatively straightforward housing decisions. Creating an expedited process preserves LUBA’s Goal 1 nature (being a relatively informal forum for review) while speeding the production of housing.

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.

*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.*

- Johnathan Balkema, City of Albany
- LUBA Members (2 of 3)
- Damien Hall (land use attorney)
- Tia Lewis (land use attorney)

4. Provide a quantitative, if possible, and qualitative overview of the outcome of the recommended action(s).

*Outline the impact of the recommendation on housing production.*

Adopting this expedited review procedure should result in quicker final/non-appealable decisions for subject projects. Reducing uncertainty related to time and expense of the appeals process will enable developers to lower overall cost and/or increase production.

5. Provide an 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).

*Outline the work group's estimate of the time for implementation of the recommendation and its impact on housing production once implemented. Describe the work group's assessment of the feasibility of the recommendation being implemented and feasibility of success. Provide any estimates on the cost for implementation.*

Time Frame .....Short  
Feasibility .....High  
Cost .....Low

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

*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.*

- Legislature to amend ORS 197 to create definition of Urban Housing Decision and direct LUBA to implement expedited timelines
- LUBA to amend relevant OARs to establish expedited filing process

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

*Identify the data the Governor's Office would need to track to determine if the recommendation is increasing housing production.*

- Numbers of appeals handled under expedited/priority framework
- Remand rates to local jurisdictions
- Remand rates from Court of Appeals to LUBA

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

*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.*

<b>Pros</b>	<b>Cons</b>
<ul style="list-style-type: none"> <li>• Significantly increased speed of executive branch appellate review.</li> <li>• Preserves Goal 1 nature of LUBA</li> <li>• Limits record transmission burden on local governments</li> <li>• Reduces low-merit appeals to Court of Appeals (establishes financial compensation)</li> <li>• Significantly reduces legal costs for all parties</li> </ul>	<ul style="list-style-type: none"> <li>• Briefing limitation may not allow parties to fully develop arguments</li> <li>• Briefing schedule not suited to complex, technical arguments</li> <li>• Judicial review by Court of Appeals may be more time consuming if LUBA appellate analysis is not fully developed</li> </ul>

*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.*