

# Appendix A. Housing Capacity Recommendations and Legislative Considerations



## Housing Capacity Recommendations and Legislative Considerations

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This document outlines a series of recommendations and considerations in response to legislative direction to streamline the state’s housing planning process, particularly as it relates to growth management planning. These recommendations include a range of statutory and programmatic changes that would clarify and ease the overall planning process including Buildable Lands Inventories (BLIs), Housing Capacity Analyses (HCAs) and Urban Growth Boundary (UGB) amendment processes. The recommendations are organized by the four primary issues the Legislature tasked DLCD with (House Bill 5202 - 2022 Legislative Session):

1. How land within Urban Growth Boundaries (UGBs) can be better utilized to increase housing types and units, including the reduction of restrictive or outdated zoning regulations and the appropriate conversion of commercial and employment uses to residential use.
2. How the process and level of data necessary to establish the need for UGB amendments can be streamlined, while considering the protection of resource lands.
3. How the regulatory review of UGB amendments can be streamlined, while considering the protection of resource lands.
4. How to fund additional capacity in cities below 10,000 to plan for and work to facilitate the development of housing in their communities.

The policies discussed in this document were informed by conversations with a broad spectrum of stakeholders including a 30-member Housing Capacity Work Group. There are a total of nine recommendations included in this document. Additionally, there are some policies that Work Group members could not ultimately agree upon. While DLCD does not include these policies in the nine recommendations, the department includes commentary and outlines the specific considerations that would be necessary should the Legislature have interest in pursuing such a policy in the future.

### Current UGB Amendment Process

UGB adjustments related to housing begin with a Housing Capacity Analysis, which consists of two major components: a 20-year housing needs projection and a Buildable Lands Inventory. These two analyses answer a critical question: “Is there enough land within the current UGB, zoned to sufficient capacity, to accommodate twenty years of projected growth?”

If there is a deficiency of land, a jurisdiction must adopt measures to accommodate needed housing. First, the jurisdiction must adopt “efficiency measures”, which are policies that increase development within a UGB. Once these policies are exhausted, the jurisdiction must adopt a UGB amendment, in which they conduct a Goal 14 analysis to determine which area would best suit the identified need.



Fig 1. Diagram of the Housing Capacity Analysis Process



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## How Recommendations Streamline the Process

The recommendations outlined in this document are intended to streamline the overall process by facilitating the following outcomes:

### Increase local capacity and reduce administrative burden

- Shift more of the analytical burden from local governments onto the state and provide more “off-the-shelf” analysis and tools for local jurisdictions, including the Oregon Housing Needs Analysis;
- Provide more local discretion to plan for housing types and characteristics in a manner that is more responsive to estimated housing need; and
- Build technical capacity to support local governments, especially smaller and more rural cities, through funding and consultant/direct planning support.

### Build on existing tools and provide new tools to streamline the process while maintaining resource protections

- Facilitate and emphasize urban reserve and concept planning to streamline UGB amendments;
- Incorporate the existing UGB land exchange process into the Housing Capacity Analysis to remove lands within the UGB that are unlikely to develop within a 20-year horizon while adding land that is more likely to develop;
- Integrate “efficiency measures” (ORS 197.296(6)-(9)) into the Housing Production Strategy to improve housing capacity and diversity while also decreasing administrative delay in pursuing UGB amendments; and

### Reduce the basis and incentive to appeal UGB amendments

- By achieving the outcomes described above, the state would provide a regulatory environment that includes pathways and clarity in statute and administrative rule that give jurisdictions more certainty in pursuing UGB amendments thereby minimizing the risk of appeal where land for housing supply is needed.

The recommendations are organized by the categories of legislative direction provided under HB 5202 and associated testimony. In addition to the recommendations, this document also provides legislative considerations for a policy option enabling small-scale UGB Amendments in exchange for delivery of affordable housing goals. While this kind of policy would take substantial continued discussion to thoughtfully develop, there are several considerations DLCD staff identified that could improve its efficacy and viability, should the Legislature decide to pursue such a policy in the future.

## A. Utilizing Land within the UGB

*Recommendation A.1: Amend the “Efficiency Measures” statute (ORS 197.296 (6)(b), (7), (8), and (9)) and Housing Production Strategy statute (ORS 197.290) to specify that efficiency measures be implemented as part of the Housing Production Strategy. Clarify that a local jurisdiction may demonstrate compliance with efficiency measure requirements through the previous adoption of strategies from an adopted Housing Production Strategy.*

Prioritizing “efficiency measures” is the first step jurisdictions take when they identify a land capacity deficiency. While efficiency measures are an important tool to increase the production and diversity of housing and reduce urbanization impacts to resource land, the current sequencing requires a jurisdiction to spend significant time and resources developing and adopting these measures in conjunction with a UGB amendment adoption.

However, as many Housing Capacity Work Group members have noted, the current statute has significant overlap with the Housing Production Strategy which results in unclear expectations



and process sequencing. Shifting the timing of the efficiency measure requirement by integrating it into the Housing Production Strategy eliminates this redundancy and achieves two outcomes concurrently:

1. **Provides a systematic process of review and implementation of efficiency measures over a six- to eight-year Housing Production Strategy horizon.** This is beneficial because the Housing Production Strategy program provides more thorough and structured process for the evaluation of the efficiency measures a city plans to adopt.
2. **Reduces or eliminates a time- and resource-intensive step between a Housing Capacity Analysis finding of land capacity deficiency and a UGB amendment.** Rather than implementing a suite of efficiency measures and an amendment to the UGB all at once, cities would instead be required to demonstrate that they have acted to implement the tools, actions, and policies and other efficiency measures identified in their previously adopted HPS and are meaningfully responsive to the identified housing need.

Historically, the UGB amendment was a de facto regulatory “check” to ensure compliance on efficiency measures. Case law clarified that jurisdictions were required to adopt efficiency measures concurrently with a Housing Capacity Analysis and UGB Amendment, because there was no other regulatory mechanism to ensure that jurisdictions would follow through with their commitments to comply with statute. In practice, this requirement turns a UGB amendment into both a “carrot” and a “stick”, and local jurisdictions must engage in an extensive process identifying a suite of measures to adopt concurrently with a UGB amendment.

It is critical to ensure the timely adoption of efficiency measures, but the current sequencing of requirements functionally requires layering significant additional process, which has often delayed the adoption of Housing Capacity Analyses and UGB amendments from months to years. This change to statute enables a jurisdiction to decouple an Urban Growth Boundary amendment from adoption of efficiency measures, provided they demonstrate that they have been adopting efficiency measures from their previously adopted HPS.

In effect, this clarification enables a jurisdiction to “frontload” the adoption of efficiency measures before their next HCA, reducing the delay between a finding of deficiency in land capacity and a UGB amendment. This sequencing change provides cities a much longer and more consistent time horizon to implement strategies: six years for Metro cities and eight years for non-Metro cities.

Coupled with meaningful policy options and guidance from DLCD, it significantly increases local capacity to adopt meaningful policies to support production. As discussed in the following recommendation, LCDC should articulate a wider suite of efficiency measures that support equitable housing production, including rezoning of underutilized employment and public lands, public facilities & infrastructure planning, and reducing cost and delay to housing production, among other measures.

This sequencing change also shifts the accountability mechanism for timely adoption of efficiency measures to the Housing Production Strategy, while maintaining the UGB amendment as a final “check” on sufficient adoption of efficiency measures. First, identification of efficiency measures in the HPS provides a formal review window in which DLCD can evaluate the sufficiency of proposed efficiency measures by a jurisdiction. This means that the agency will be much more pro-active in evaluating local action on housing, in contrast to the current system, where LCDC evaluates adopted efficiency measures during review of a UGB amendment.

Additionally, the HPS accountability framework ensures timely adoption of identified efficiency measures. As specified by ORS 197.293 and OAR Chapter 660, Division 8, regulatory



enforcement begins collaboratively and escalates if a jurisdiction fails to take action or adopt policies that address housing need. As discussed in the main report, the Legislature may consider strengthening this system to ensure timely and comprehensive review and action from state agencies and local governments. OHNA Recommendation 1.3 describes these considerations in greater detail.

*Recommendation A.2: Direct the Land Conservation and Development Commission, in consultation with Oregon Housing and Community Services, Oregon Department of Transportation, Department of Environmental Quality, Oregon Health Authority, and Business Oregon, to adopt administrative rules and guidance to implement **Efficiency Measures via the Housing Production Strategy**. The resultant rules must provide clear parameters on the types and extent of efficiency measures needed and be consistent with the technical and resource capacities of varying sized jurisdictions. The rules should emphasize the following considerations:*

- (a) Recognition of local action on housing in response to direction from the Legislature or Governor's Office as efficiency measures, including implementation of middle housing code amendments (ORS 197.758) and Climate-Friendly and Equitable Communities rules;*
- (b) Increasing housing diversity, efficiency, and affordability, including new construction and the preservation of naturally-occurring affordable housing;*
- (c) Enhancing flexibility in housing choice and location;*
- (d) Reducing cost or delay and increasing procedural certainty for the production of housing; and*
- (e) Preparing land for development or redevelopment, including:
  - (A) Public facilities planning and other investment strategies that increase the development-readiness of land for housing production;*
  - (B) Site preparation, financial incentives, or other incentive-based measures that increase the likelihood of development or redevelopment of land; and*
  - (C) The redevelopment of under-utilized commercial and employment lands for housing or a mix of housing and commercial uses.**

This recommendation would direct the Land Conservation and Development Commission to adjust existing administrative rules to provide significant clarification surrounding “efficiency measures” and their implementation through the Housing Production Strategy. The parameters articulated in this recommendation better recognize the broader range of actions cities can take to support diverse housing production, land readiness, and affordability. It would also provide greater clarity to local governments on “how much is enough” by articulating a wide variety of off-the-shelf options and criteria for implementing locally tailored measures.

The resultant rules should recognize practical local capacity and demands on staff time. First, it should recognize the substantial work that local jurisdictions have already completed or will complete on recent Legislative and Gubernatorial initiatives on housing and provide “credit” towards meeting statutory requirements. Additionally, “off-the-shelf” policy packages developed in this process should minimize substantial additional analyses that often coincide with housing-related work. For example, if a jurisdiction pursues redevelopment of a vacant shopping mall with mixed-use housing and commercial development, the rules should clarify that this would not trigger requirements to update either an Economic Opportunity Analysis or Transportation System Plan.



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## B. Establishing Need

*Recommendation B.1: Amend the “**Needed Housing**” statute (ORS 197.303) to require cities to plan for housing allocations provided in the Oregon Housing Needs Analysis and to provide more local discretion to plan for future housing types and characteristics in a manner that is responsive to need and market feasibility, rather than based on past development trends.*

Currently, cities conduct extensive analysis as part of the Housing Capacity Analysis to establish 20-year housing needs projections based on a population projection provided by the Portland State Population Research Center and local market data. Current statute requires local governments to appropriately characterize *how much* and *what types* of housing they will need through detailed analysis, based primarily on future population growth and past development trends.

The current framework places a heavy analytical burden on local governments, introduces risk of appeal of adopted needs projections, and binds jurisdictions to planning for housing characteristics and types that may not be responsive to the current needs or financial capabilities of both current and future households in their communities.

The implementation of the OHNA shifts that analytical burden to the state. This change would have the dual benefit of reducing the need for time- and resource-extensive local analysis and associated basis for appeal. Additionally, the estimates provided in the OHNA account for many factors not currently taken into consideration – including housing for people experiencing homelessness, second and vacation homes, and housing underproduction – all of which substantially increase housing needs projection numbers.

Clarifying a greater emphasis on planning for housing types and characteristics that are realistic, responsive to identified needs, and market feasible, rather than based primarily on past trends, enables jurisdictions to have much greater discretion and authority to make important policy decisions about the planned future mix of housing in their communities.

However, it is important to distinguish *housing needs projections* from the *calculation of urban land capacity*. Under this recommendation, estimations of the zoned capacity of developable lands would continue to be based on past production trends to avoid artificially inflating the actual capacity of lands with “phantom” or “paper” capacity that is unlikely to be realized. As discussed below, these recommendations include several refinements to the Buildable Lands Inventory that provide local governments tools and assumptions that more accurately assess the realistic capacity of lands within the UGB.

By maintaining a skeptical evaluation of land capacity within the UGB as described above, local governments will be able to adopt ambitious policies that support housing production and diversity without inhibiting their ability to pursue a UGB amendment. This reflects a “yes, and” approach in which building within the UGB and expanding the UGB are not mutually exclusive; they are both necessary strategies for increasing housing production in communities across the state.

Finally, this option could be strengthened with DLCD-provided guidance on the development feasibility of various market-rate and affordable housing types and characteristics that local jurisdictions can plan for without risk of appeal. This would provide jurisdictions much clearer parameters on the housing type assumptions they can reasonably make to respond to a given housing need at a specific affordability threshold, while acknowledging that providing housing affordable to the lowest incomes will also require public subsidy.



*Recommendation B.2: Adjust the “Buildable Lands” statute (ORS 197.296) to reflect a more realistic estimation of 20-year residential land supply and minimize inclusion of “phantom” capacity (i.e. identified capacity that is not likely development feasible) in buildable lands inventories.*

Current state law on buildable lands inventories (ORS 197.296) is already relatively optimized to reduce the inclusion of “phantom capacity” in local Buildable Lands Inventories (BLIs). However, there are several amendments and clarifications to the statute that can further reduce this. These amendments are also intended to simultaneously provide cities more flexibility to adopt policies that increase housing capacity and diversity.

- Clarify that, upon remand of a Housing Capacity Analysis by the Land Use Board of Appeals, the 20-year planning horizon must restart to reflect a full 20-year period, rather than continue with the shortened horizon and associated diminished housing needs projection caused by appeal-related delay;
- Clarify that “partially vacant” parcels less than two acres in size may be considered “infill or redevelopment” sites under ORS 197.296(4)(a); and
- Enable, but do not require, the application of land developability and readiness adjustments reflecting the reduced likelihood of development or redevelopment in light of regulatory or market constraints. Land developability and readiness adjustments must have a reasonable basis in economic analysis, legal review, or quantifiable validation, and baseline market factor estimates may be developed and provided to jurisdictions by DLCDC.

*Recommendation B.3: Direct the Land Conservation and Development Commission, in consultation with Water Resources Department, Department of State Lands, Oregon Department of Transportation, the Oregon Health Authority, and the Department of Environmental Quality, to adopt administrative rules outlining revised methodological assumptions and safe harbors for estimating the **capacity of buildable lands** in consideration of analysis accuracy, replicability, cost, and ability to respond to local market conditions. This includes:*

- (a) Capacity estimates for areas that are partially vacant or available for infill and redevelopment;
- (b) Capacity estimates for areas that are rezoned to allow greater housing variety;
- (c) Appropriate omission of constrained and goal-protected lands from land capacity tabulations, consistent with best available mapping data; and
- (d) Appropriate land developability and readiness adjustments reflecting the reduced likelihood of development or redevelopment in light of regulatory and market constraints. Adjustments must be justified through reasonable economic or quantitative analysis. Examples of factors the Department may consider include but are not limited to:
  - (A) The effect of parcelization and parcel size on development;
  - (B) Reasonable infill and redevelopment rates based on past development trends or economic factors;
  - (C) Market-related constraints that may substantially impact future urban residential development; or
  - (D) Regulatory constraints, including lands subject to state wetland regulations.

The intent of this rule refinement is to provide local jurisdictions more sound methodological options to complete a Buildable Lands Inventory with greater certainty that the assumptions will not serve as the basis for appeal of the analysis or UGB amendment. This will have the effect of providing cities more options to remove “phantom capacity” from their inventories to reflect a more realistic inventory of capacity within UGBs.



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## C. Regulatory Review of UGB Amendments

***Recommendation C.1: Adjust the Urban Reserve statute (ORS 195.145) and direct the Land Conservation and Development Commission to amend administrative rules specific to urban reserves and concept planning (OAR Chapter 660, Division 21) to increase flexibility and ease of implementation.***

In discussions with cities that have recently completed UGB amendments, a common theme is that cities that had analyzed and designated urban reserves to accommodate future UGB amendments were able to both expediently move through the amendment process and much more likely to realize development on designated land. The difference in outcomes between cities was often significant, with many cities utilizing the urban reserves process reporting substantially shorter process timelines with relatively minimal risk of additional cost and delay. City staff cited several reasons for this:

1. Urban reserve and concept planning increases certainty that a proposed UGB amendment will be successful, by mitigating potential legal controversy surrounding the priority scheme (ORS 197A.320, 197.298 for Metro). In ORS 197A.320, Urban Reserve land is the first priority of land to be considered when expanding a UGB;
2. Urban reserve planning reduces analytical burden for cities seeking UGB amendments by completing priority and locational factor analysis before a need is identified;
3. Urban reserve planning increases certainty in infrastructure planning and delivery by establishing a more clear and orderly transition of rural lands to urban uses over a longer time-horizon; and
4. Concept planning increases the development-readiness of lands by establishing the planned uses and public facilities for an expansion area even before it is brought into the UGB.

This suggests that emphasizing the urban reserve and concept planning process as part of regular work cities complete could facilitate more streamlined UGB amendments. While work group members pushed back against the prospect of *requiring* urban reserve planning, even for larger cities, members generally supported revisions to the statute and administrative rule to reduce barriers in pursuing urban reserve planning. Work Group members also highlighted the need for increased technical and capacity support from the state to assist jurisdictions seeking to establish urban reserves as the process is not currently readily used.

The following amendments to statute and associated administrative rule would:

- **Simplify the planning time horizon associated with an urban reserve designation** - Currently, urban reserves plan for a 10- and 30-year supply of developable land beyond the 20-year urban growth boundary amendment (ORS 195.145(4) and OAR 660-021-0030). In practice, this requirement means that a city must complete urban reserve planning as part of, or immediately subsequent to, a UGB amendment, instead of being able to complete this analysis independently. Clarifying that this timeframe may simply be up to a 50-year supply of land and may be designated independently of an UGB amendment would provide significantly more flexibility in pursuing urban reserve planning.
- **Specify Urban Reserve land as first priority under ORS 197A.320** – ORS 197.298 is the statute specifying the priority of lands for inclusion within the UGB for the Portland Metro Region. In this statute, urban reserve lands are designated as first priority. However, jurisdictions outside of Metro must also consider exceptions lands as first priority alongside urban reserve land, which means that land included in a UGB amendment may not be the land where a city has already organized planning and





infrastructure to support urbanization. By specifying urban reserves are truly first priority, non-Metro cities will be further incentivized to pursue urban reserve planning.

- **Enable non-Metro cities and counties to designate rural reserves** – Work group members noted that limitations of the rural reserve process for jurisdictions outside of Metro inhibit their ability to support urban reserve planning. Enabling jurisdictions outside of the Portland Metro Region to designate rural reserves concurrently with urban reserves would help clarify the long-term plan for an area and support buy-in from community members in the comprehensive growth management planning process.

The Legislature could significantly strengthen this option through provision of planning assistance from DLCD staff or through direct funding or consultant support for urban reserve planning. As part of the expertise/technical capacity-building recommendations below, DLCD recommends committing additional funding to support urban reserve and concept planning. This funding and staff support should be used for the following:

- **Public facilities and infrastructure planning** – Comprehensive public facilities and infrastructure planning will help ensure that new expansion areas are planned much more completely and ready for development.
- **Data and guidance to support analyses related to soils and natural resources** – Urban reserve planning, and UGB amendments generally, require extensive analysis of soils and natural resources to identify resource lands. The Oregon Department of Agriculture manages soils data (Soil Survey Geographic Database or SSURGO) from the National Resources Conservation Service, but this information often is not readily available for jurisdictions performing Goal 14-related analysis. Connecting jurisdictions with existing data sources on soils and natural resources will help support urban reserve planning.
- **Clarity and guidance on urban reserve-related analyses** – There is often a lack of clarity and certainty on how best to conduct analysis related to urban reserves, including farmland capability analyses. Through a statewide lens, DLCD staff have worked with various jurisdictions to provide support on UGB amendment analyses, but there is a significant need for formal guidance. Additional staff support to provide guidance and direction on how to conduct such analyses will help provide jurisdictions certainty in pursuing urban reserves and UGB amendments generally.

The combination of statutory and rule refinements along with additional funding and support for local governments to pursue urban reserves, concept planning, and public facilities planning would greatly increase the ease and certainty of pursuing a UGB amendment. Efficiencies in the UGB amendment process have the secondary benefit of increasing the readiness of land to develop with housing. These improvements would likely increase the number of cities with urban reserves, thereby reducing administrative and legal constraints associated with future UGB amendments.

*Recommendation C.2: Direct the Land Conservation and Development Commission, in consultation with Water Resources Department, Oregon Department of Transportation, the Department of Environmental Quality, the Oregon Health Authority and the Department of Agriculture, to adjust administrative rules related to UGB Land Exchanges (OAR 660-024-0070) to increase its flexibility and enable its utilization as part of a Housing Capacity Analysis.*

As a consequence of UGB adoption and amendment decisions made in the past, many cities have large areas of land within UGBs that are unlikely to develop in the future, even with appropriate zoning and public facilities planning. Because of overlapping serviceability,



regulatory, geographic, and land ownership constraints, many of these areas have remained undeveloped for decades.

Recently, several cities have pursued an existing administrative pathway that allows for an exchange of lands within and outside of a UGB, sometimes known as “land swaps,” to remove highly-constrained lands from the UGB in exchange for lands outside of the UGB that are more development ready (e.g., more easily served with infrastructure). UGB land exchanges have been increasingly used as a flexible option for jurisdictions with underserved or constrained lands or with comparatively slow population growth. Currently, this process occurs separately from the Housing Capacity Analysis.

It would be possible to promote the use of UGB land exchanges to exchange land that is unlikely to develop within twenty years through strategic amendments to statute and administrative rule. Specifically, incorporating the existing UGB land exchange process as part of the Goal 10 analyses that jurisdictions above 10,000 population are currently required to complete. Rather than completing one-off UGB land exchanges, cities would have the ability to regularly evaluate lands within the UGB that have not developed over a significant amount of time as part of a Housing Capacity Analysis.

Additionally, this option could be strengthened by making amendments to statute that further increase flexibility, including enabling jurisdictions to exchange lands within the UGB that have not developed in exchange for lands outside of the UGB that are substantially similar under the priority scheme. Such an update would require amendments to ORS 197.320(A) and OAR 660-024-0070.

Several work group members noted that agricultural lands can often have value beyond their soil classification, such as its location or economic context. To mitigate the potential of removing valuable resource lands through a UGB land exchange, such a provision should be tailored more narrowly to either exclude high value resource lands or require some demonstration of equivalency as part of the local government’s UGB amendment findings if the land exchange includes high value resource lands generally.

This option could be strengthened with additional guidance from DLCD on Measure 49 and removing land from the UGB. Current legal interpretation by DLCD and Department of Justice (DOJ) staff indicate that removing lands from a UGB where the applicable zone and land use regulations do not change does not implicate Measure 49. However, many practitioners perceive a risk of a potential Measure 49 claim associated with removing land from the UGB. DLCD and the Department of Justice should provide written legal guidance that removing land unlikely to develop from a UGB that is not yet zoned for urban uses bears no risk of a potential Measure 49 claim. This would provide additional assurance to jurisdictions in pursuing a UGB land exchange.

## D. Building Expertise / Technical Capacity

*Recommendation D.1: Direct more funding, capacity, and technical support for Goal 14-related work, including UGB amendments, UGB land exchanges, public facilities planning for housing, and urban reserve and concept planning.*

DLCD has submitted an Agency Request Budget to establish a biennial budget of \$2.5 million for direct planning assistance to local jurisdictions in order to complete housing planning requirements, including Housing Capacity Analyses and Housing Production Strategies. In the previous biennium alone, a historic investment from the Legislature in housing planning totaling \$4.5 million supported 92 projects in 76 jurisdictions. While much of this work will support



jurisdictions in pursuing UGB amendments, DLCD has neither the authorization nor direction from the Legislature to use housing-related funding for planning work related to Goal 14 planning.

By investing funding and directing DLCD to utilize this funding to support Goal 14 planning-related work, including UGB amendments, urban reserves, UGB land exchanges, and public facilities planning, local jurisdictions will have the support and resources needed to pursue UGB amendments. And more importantly, land added to the UGB will be much more likely to realistically develop with housing, especially if they are coordinated with public facilities plans.

A critical operational amendment DLCD will be implementing in the next biennium is a pathway for small, resource-constrained local jurisdictions to access housing-related capacity assistance without needing to submit a grant application. This could be achieved through a lump sum contract or series of contracts with local Councils of Government and similar organizations to perform housing-related work on behalf of smaller jurisdictions.

It is important to emphasize that while the \$2.5 million request represents a significant commitment from the state to support housing planning, expanding that scope to Goal 14 planning will significantly increase the pressure on this funding source. Many plans related to Goal 14, especially public facilities plans, are more time and cost intensive than Housing Capacity Analyses and Housing Production Strategies. Therefore, additional funding will be critical in supporting jurisdictions seeking to pursue Goal 14-related work, including UGB amendments.

Additionally, while DLCD will be dedicating a portion of funding to support smaller jurisdictions, any additional funding for housing planning assistance will support even more jurisdictions in completing necessary housing and Goal 14-related work, especially simpler, less expensive tasks such as annexation/zone changes, land use entitlement, and permitting.

***Recommendation D.2:** Direct the Department of Land Conservation and Development to focus new housing staff included in the Agency Request Budget, on Goal 14 and public facilities planning and support for local jurisdictions. The role of this staff will be to provide Goal 14-related technical feedback and support to larger communities and to complete Goal 14-related analysis for smaller communities that are ready for adoption.*

Planning for UGB amendments under Goal 14 requires specialized, in-depth technical knowledge in order to successfully develop a Goal 14 analysis that can withstand potential legal scrutiny. For larger cities, this often means staff weigh whether to expand into land that is legally and technically easier to justify over land that is more suitable for development. For smaller cities, this often means that they are wholly unable to expand solely due to the time and cost of hiring a private consultant to complete the analysis. DLCD currently has one full-time staff person with an explicit role in providing support and guidance to jurisdictions seeking UGB amendments, and this position also has other duties in addition to UGB technical assistance.

DLCD's Agency Request Budget includes a request for three new planning positions for the implementation of the Oregon Housing Needs Analysis (OHNA). This recommendation would re-focus this team to explicitly support Goal 14-related work and provide technical guidance and direct support to communities seeking UGB amendments. For larger cities, the team would provide technical support and guidance on relevant statute and administrative rule. For smaller cities, the team could perform Goal 14 analyses identifying one or more potential expansion areas into which cities can expand without needing to complete an analysis in-house.

Additionally, a clear theme highlighted by the Housing Capacity Work Group is the need for more coordinated public facilities and infrastructure planning to ensure land is development ready. To meet the scope of supporting housing production more comprehensively throughout the state, the addition of one full-time position specializing in public facilities planning at DLCD would



significantly aid both Goal 14 planning and ensuring land is development ready. The addition of such expertise to DLCD could significantly support the core OHNA recommendation 3.1 which would establish a statewide Housing Production Team to provide specialized expertise to diagnose and overcome barriers and to align policies and funding in a manner that supports housing production in partnership with local jurisdictions.

### Legislative Policy Consideration – Small-scale UGB Amendment

*Please note: This item is not a recommendation – it is a summary of legislative considerations surrounding a policy option discussed as part of the Housing Capacity Work Group process. Whether to adopt and implement such a policy is a Legislative decision.*

The following item related to a small-scale streamlined UGB expansion process garnered substantial disagreement amongst Work Group members. Additionally, the legislatively prescribed timeline required a fast process – DLCD staff only had sufficient time to facilitate seven work group meetings over the course of six months. Because of these dynamics, it was impracticable to develop a comprehensive and balanced policy proposal with substantial buy-in from the range of viewpoints represented on the Work Group. However, these discussions resulted in several key takeaways that warrant legislative consideration. This section is intended to describe the most critical elements and regulatory considerations should the Legislature decide to pursue such a policy.

**Small-scale UGB Amendment** – *Adjust statute and direct the Land Conservation and Development Commission to amend rules to authorize utilization of a streamlined UGB amendment process in exchange for delivering statewide housing policy goals, including the development of diverse or publicly-supported housing options.*

#### Background

House Bill 4079 (2016) was initially adopted to evaluate the barriers to affordable housing production arising from the UGB amendment process, and whether a removal of that process (with limitations) would stimulate provision of affordable housing. This legislation enabled two cities (later three) to pursue a UGB amendment without completing a Goal 10 and Goal 14 analysis for a qualifying proposal. To date, two of the three cities (Bend and Redmond) are still processing, but have not yet completed, projects, and the third (Pendleton) has not yet begun its process.

When considering expansion of this pilot program, several Work Group members raised significant concern and opposition on the prospect of any policy proposal that is perceived as a “bypass” of current Goal 10 and Goal 14 analysis requirements. These members indicated that the Affordable Housing Pilot Project (HB 4079 - 2016 Session) functionally waived such analytical requirements and expressed concern that adoption of a permanent program based on HB 4079 establishes a concerning precedent that erodes the intent of the land use planning program. Consequently, these members recommended removing this recommendation altogether.

However, DLCD staff believe that a core intent of the Legislative direction provided under HB 5202 requires a genuine discussion on the prospect of a policy option that reduces local analytical burden in exchange for the advancement of statewide housing goals. The Legislative direction driving this work under HB 5202 is a direct response to a bill considered in the 2022 Session, [HB 4118](#), which proposed requiring expansions in response to “workforce” housing proposals. Therefore, DLCD does not consider wholesale removal of this policy option as appropriate or faithful to Legislative intent. Nonetheless, a critical element of any related policy should not establish any precedent that erodes the intent of the land use planning program writ large.



Therefore, this document includes two additional options for Legislative consideration that seek to balance the perspectives from work group members, as well as the original proposal based on HB 4079 (2016). The two additional options offer alternative approaches that seek to provide a streamlined process for housing projects that advance state policy goals that do not bypass Goal 10 and 14-related analyses.

All policy options would need to include the following:

1. Some legal mechanism that guarantees delivery of statewide housing policy goals in conjunction with an amendment to a UGB in this manner, such as a UGB amendment “condition of approval” requiring the establishment of a deed restriction for the development of regulated affordable or diverse housing options. The policy would need to provide various alternatives to increase the pool of eligible projects. Below are a few examples of potential eligibility parameters for consideration:
  - a. At least 30 percent of the total housing units proposed and developed on an eligible site are housing units affordable to households who meet applicable maximum income limits, not to exceed 80 percent of the area median income; or
  - b. At least 30 percent of the total housing units proposed and developed on an eligible site are manufactured dwelling park spaces, with or without government assistance, by households who meet applicable maximum income limits, not to exceed 100 percent of the area median income;
  - c. At least 40 percent of the total housing units proposed and developed on an eligible site are housing units affordable to households who meet applicable maximum income limits, not to exceed 100 percent of the area median income; or
  - d. At least 50 percent of the total housing units proposed and developed on an eligible site are middle housing units as defined in ORS 197.758.

Examples a) and b) draw from existing HB 4079 affordable housing requirements, whereas examples c) and d) do not currently exist but represent housing outcomes that the Legislature has expressed interest in promoting – workforce and middle housing.

2. A pathway to mitigate potential long-term impacts to resource lands. As discussed above, some work group members have expressed serious concern that an approach modeled on HB 4079 (2016) bypasses the intent of existing resource protections. To provide a meaningful alternative that is useful for smaller jurisdictions while avoiding overwhelming DLCD staff capacity or risking degradation of resource lands, any viable policy option will require limiting factors to the scope and applicability of the pathway. Examples include:
  - a. **A population threshold** – Because the primary intent of the approach is to ease analytical burden on smaller, less-resourced jurisdictions, it would be reasonable to establish an upper population threshold, above which a jurisdiction would not be eligible for the pathway. Larger jurisdictions will be supported with staff support, resources/funding, and analytical flexibility to pursue UGB amendments through existing pathways, and as discussed by the work group, these jurisdictions can leverage affordable housing through Goal 14 locational factors (e.g. Bend’s 2016 UGB Amendment<sup>1</sup>). This population threshold can be established by the Legislature; the most common thresholds related to Goal 10 are for cities below 10,000 or 25,000 population.

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<sup>1</sup> Bend Urbanization Report. 2016. Accessed via:  
<https://www.bendoregon.gov/home/showpublisheddocument/28128/63635534057450000>



- b. **Applicability, scope, and size** – To ensure that the pathway complements, rather than undermines, the existing systems of resource protections and growth management, some limitations on the applicability, scope, and size of qualifying proposals are warranted.
- i. **Site size** - An upper acreage limit for qualifying proposals. HB 4079 (2016) included a 50-acre threshold, whereas HB 4118 (2022) included a 100-acre threshold. However, the latter was limited to urban reserve land.
  - ii. **Resource land limitations** - Requiring that a proposal does not include high value farmland or resource lands.
  - iii. **Goal 10 & 14 analysis** - Requiring, at a minimum, a limited Goal 10 and Goal 14 analysis, either by the jurisdiction with a narrowed focus or by shifting the analytical burden to DLCD.
  - iv. **Local government eligibility** - Limiting applicability to a subset of jurisdictions identified as facing significant population growth, affordability challenges, or other needs-based criteria.
  - v. **Frequency of use** – Some limit on the frequency of use of the streamlined pathway, such as defining a set number of years in which a jurisdiction may submit a proposal, would be important to ensure that the pathway 1) does not overwhelm DLCD staff capacity and 2)

Below are three potential approaches on how to structure such a policy: the first based substantially on HB 4079 (2016), the second shifting the burden of analysis to DLCD, and the third offering a more focused analytical pathway for a smaller subset of qualifying jurisdictions. All three options would require amendments to statute and administrative rule to clarify applicability, limitations, and implementation details.

*Option 1 – The “analysis waiver” approach based on House Bill 4079 (2016) or 4118 (2022), in which jurisdictions with qualifying proposals would not be required to prepare Goal 10 or Goal 14-related analysis.*

Under this option, a jurisdiction, in exchange for delivering specific housing policy goals, would not be required to conduct the full Goal 10 and Goal 14 analysis for a UGB amendment of up to 50 acres onto non-high value resource lands. As stated previously, work group members have expressed concern/opposition on any process that operates as a “bypass” to the current framework. This option would likely be the most politically contentious to implement and would garner a coalition of opposition in the Legislature.

Under this option, the Legislature would need to establish very clear parameters for jurisdictions and projects that would be eligible for a streamlined UGB amendment. A jurisdiction should be required to submit a qualifying project through the Post Acknowledgement Plan Amendment (PAPA) process and be evaluated and acknowledged by DLCD’s director under a set of minimally discretionary standards. In other words, if a proposal meets the requirements of the statute, it would necessarily be approved.

*Option 2 – A “shifted burden” approach, in which submittal of a qualifying project triggers a requirement for DLCD to conduct a limited Goal 10 and 14 analyses within a specified timeframe.*

In response to the concern raised above that any approach that waives Goal 10 and 14 analytical requirements could compromise the statewide land use system, Option 2 ensures that both a housing needs and urbanization analysis will occur. However, under this option, the burden of analysis could be shifted from the jurisdiction to DLCD. The explicit intent of this alternative is to ease the burden of analysis on smaller jurisdictions without undermining the intent and scope of resource protections.



Under this approach, if a jurisdiction submitted a qualifying proposal to DLCD, the agency would be required to perform a basic Goal 10 and Goal 14 analysis, on behalf of the jurisdiction, within a statutorily defined timeframe to determine the following:

1. Whether the proposal addresses a documented housing need identified in the OHNA, including consideration of subsidized affordable housing need within the region.
2. Whether there are readily developable lands within an Urban Growth Boundary that are better suited to accommodate the proposal, considering infrastructure availability, owner willingness to develop, zoning/regulatory barriers, and the cost of development.  
*Note: if there are developable lands within the UGB that are unlikely to develop, DLCD could facilitate a UGB land exchange in partnership with the city.*
3. Whether there are urbanizable areas outside of the UGB that are better suited to accommodate the proposal, including an analysis of relevant Goal 14 priority and locational factors intended to protect high value farmland and resource lands.

Based on this analysis, DLCD would be required to issue a decision accepting, denying, or modifying the proposal. In practice, this would ensure that relevant Goal 10 and Goal 14-related analyses occur, while minimizing the analytical burden of such an analysis on smaller cities. It also shifts the burden of demonstration – rather than a jurisdiction carrying the burden of establishing the need and substantiate that expansion is best suited to support the need, DLCD carries the burden to demonstrate that the proposal does not address an identified need or that there are alternatives better suited to support the proposal. To ensure DLCD staff capacity is not overwhelmed by this option, some limitation on the number of eligible cities or total number of proposals DLCD reviews per year could be warranted.

*Option 3 – A “limited analysis” approach, in which a subset of jurisdictions identified as facing significant growth and affordability challenges under the OHNA qualify for a limited Goal 14 site alternative analysis, weighing priority and locational factors for several potential expansion areas for regulated affordable, workforce, manufactured, or middle housing.*

Under this approach, the Legislature could direct the implementing agency for the OHNA (i.e. OHCS or OEA) to identify a subset of qualifying jurisdictions that face significant population growth, affordability challenges, or other needs-based criteria. These jurisdictions would qualify for a limited analysis for the siting of a project that meets the program’s housing affordability/diversity parameters.

Rather than conducting a full housing capacity analysis and urbanization analysis, a qualifying jurisdiction would evaluate a series of sites within and immediately adjacent to the Urban Growth Boundary to assess which site would be best suited to support a qualifying project, in consideration of infrastructure availability, owner willingness to develop, zoning/regulatory barriers, and the cost of development. If that site is outside of the UGB, then the jurisdiction would perform a limited Goal 14 priority and locational analysis. DLCD would provide guidance and support for jurisdictions seeking such a pathway.

Given that all jurisdictions above 10,000 population are required to conduct regular Goal 10 work under existing statute, this option would best be reserved for communities below 10,000 to provide them a more streamlined alternative to the traditional pathway. This could also be enhanced by offering communities financial and technical support to conduct limited analyses.