

OHNA Rulemaking Advisory Committee

Meeting #11 – April 9, 2025



Meeting Notes

(Published April 30, 2025)

The Department of Land Conservation and Development (DLCD) convened a committee of people from across the state to help develop Oregon Administrative Rules (OARs) that will advise the Land Conservation and Development Commission (LCDC) on Goals 10 (Housing) and 14 (Urbanization). The Rulemaking Advisory Committee (RAC) held its twelfth meeting on April 9, 2025. Members received updates on the housing capacity and urbanization rulemaking process and the Housing Actions Work Group (HAWG).

The meeting was held virtually and hosted over Zoom. The meeting was live-streamed via [YouTube](#) and closed-captioning was provided.

The goals of the meeting were to share key outcomes from the 2024 rulemaking and reorient RAC members to the 2025 rulemaking process, provide updates on HAWG topics, and to ground RAC members in housing capacity and urbanization topics.

Attendees

Committee Members	Ex Officio Committee Members
Allen Hines	Becky Baxter (Ex Officio)
Ana Molina	Jevra Brown (Alternate for Dana Hicks)
Anne Kelly	Lucia Ramirez (Ex Officio)
Brock Nation	Megan Bolton (Ex Officio)
Cassera Phipps	Richard Rogers (Ex Officio)
Chantal Invenso	Committee Members Not Present
David Mattison	Alexandra Ring
Jessica Blakely	Benjamin Gurewitz
Julia Metz	Brandon Pursinger
Lindsey Hutchison	Brian Rankin
Mac Cunningham	Corie Harlan
Mary Kyle McCurdy	Dana Hicks (Ex Officio)
Miranda Bateshell	Elissa Gertler
Patricia Diefenderfer	Garet Prior
Rachel Mori Bidou	Garrett Stephenson
Shane Kwiatkowski	Gloria Sandoval
Shannon M. Vilhauer	Kathy Wilde
Ted Reid	Kelly Hart
Terra Wilcoxson	Mercedes Elizalde
Victor Saldanha	Michael Rock (Ex Officio)
	Morgan Greenwood
	Rian Vanden Hoof (Ex Officio)
	Samantha Bayer
	DLCD
	Aurora Dziadul
	Casaria Taylor
	Celestina Teva
	Ethan Stuckmayer
	Ingrid Caudel
	Jena Hughes

	Karen Guillén-Chapman Kevin Young Madeline Phillips Sean Edging Mari Valencia Aguilar Thea Chroman
	LCDC Commission Liaison
	Allan Lazo
	Governor's Office
	Consultant Team
	Anita keā'lani Yap, MultiCultural Collaborative Ben Duncan, Kearns & West Ellen Palmquist, Kearns & West Steve Faust, 3J Consulting

Key Insights Summary

Buildable land thresholds: Discussion around when to include, discount, or exclude land from the Buildable Land Inventory (BLI). Interest in having more certainty around what land is likely to be developed and when, and how to avoid phantom capacity. Concern that a jurisdiction may discount land to expand their UGB or to exclude affordable housing development.

Covenants, conditions, and restrictions (CC&Rs): Concerns about the constraints CC&Rs place on buildable land. CC&Rs limit the production of housing in many communities, especially those that were incorporated more recently. Interest in guidance on how to navigate CC&R constraints.

Constrained land benefits: Jurisdictions do not always have the same level of information about land outside versus inside Urban Growth Boundaries (UGBs). Jurisdictions may bring land into UGBs that is unsuitable for housing development, reducing the amount of land they can build on. This land may still provide value to a community as a park or other amenities.

Varying constraints: Recognition that cities face a variety of constraints across the state depending on their location, size, and topography. Some cities face wildfire risk while others are constrained by steep slopes or wetlands. Counties also face unique challenges with annexing land and working with cities. Flexibility is needed to account for these differences and the unique constraints faced by different jurisdictions.

Meeting Notes

Welcome and Meeting Overview

Ben Duncan, Kearns & West, welcomed attendees and viewers and provided meeting guidelines. Ben reviewed the agenda: 1) Welcome and Overview, 2) 2024 Rulemaking Refresher and Reflections, 3) Racial Equity Framework, 4) Housing Capacity and Urbanization Update and Discussion, 5) HAWG Update, and 6) Closing and Next Steps. Ethan Stuckmayer, DLCD, welcomed RAC members and reviewed meeting goals.

2024 Rulemaking Refresher and Reflections

Rulemaking Refresher

Ethan reviewed the Goal 10 process and highlighted how state and local actions work together to help determine housing needs, respond to housing needs, and track and monitor progress. He reminded the RAC of the OHNA process, and the three major topic areas rulemaking covers including housing need and production, housing acceleration, and housing capacity and urbanization. Rules for housing need and production and housing acceleration were adopted in December 2024. Ethan highlighted how RAC input

received on the Contextualized Housing Need (CHN), Housing Production Strategy (HPS), and the Housing Acceleration Program was used to draft and refine rules.

Ethan shared that in December 2024, LCDC amended the rulemaking charge to allow for continued discussion of compliance pathways in the HPS and Housing Acceleration Program. The HAWG is developing adoption ready actions, including model codes, that affirmatively further fair housing and clear compliance pathways through the HPS and Housing Acceleration programs. LCDC Vice-Chair Allen Lazo added that there is flexibility around what the pathways might look like and the opportunity to come back later if the state doesn't get it right. He noted that LCDC wants the program to be as successful as it can be.

Ben Duncan asked RAC members if they had any clarifying questions. RAC members shared the following questions and comments.

Question: Thank you for amending the rulemaking charge. Does the HAWG scope include the development of safe harbors and minimum requirements?

Ethan Stuckmayer responded that the HAWG's scope includes compliance pathways, modeling codes, minimum requirements, and rebuttable presumptions. The HAWG is considering which tool is appropriate for programmatic design.

Rulemaking Reflections

Anita keā'lani Yap, MultiCultural Collaborative, shared key takeaways from RAC member interviews conducted in early 2025.

- Rulemaking topics can be complex, technical, and difficult to engage with.
- Appreciation for the diverse voices DLCD brought to the RAC.
- RAC drop-in sessions and RAC buddies helped RAC members navigate meetings and complex topics.

Anita also noted suggested recommendations to improve the rulemaking process and RAC meetings:

- Simplifying and clarifying materials, especially those with legal language.
- Outlining decision points, clarifying what the rules can and cannot do, and communicating how feedback is used.
- Continuing to use the RAC buddy system, offering drop-in sessions, and supporting RAC members outside of meetings.
- Improving representation and outreach by holding meetings outside of school hours for youth voices and working with community organizations to hold additional focus groups.
- Provide opportunities for in-person feedback and use meeting tools that are accessible.

Racial Equity Framework

Anita keā'lani Yap reminded the RAC of the purpose of the [Racial Equity Framework for Decision Making](#) and asked members to share ideas and thoughts on racial equity during the discussion.

LCDC Vice Chair Allen Lazo thanked Anita and the DLCD team. He asked DLCD to continue to hold these elements throughout the process and when responding to RAC member feedback. He noted that the Racial Equity Framework will continue to be used during the implementation of this work.

Housing Capacity and Urbanization Update and Discussion

Karen Guillén-Chapman, DLCD, shared how the Housing Capacity and Urbanization Technical Advisory Committee's (CAUTAC) work fits into the broader OHNA rulemaking process. She noted that the CAUTAC has been working on land supply issues and discussing how to estimate capacity and determine

if land is ready for development. Karen provided context around the Housing Capacity Analysis (HCA), BLI, and the state's housing need allocations.

Natural Resource and Hazard Constraints

Jena Hughes, DLCD, shared how natural resource and hazard constraints impact housing and urbanization. In the BLI, the first step is excluding or discounting land not suitable for housing development such as land with natural resources or hazards. This helps a city determine if there is enough residential land to meet their housing need. If they don't have enough land, they will need to respond to the deficiency by making better use of land in the UGB or swapping and adding land. Jena shared examples of different constraints and why land may be considered unsuitable.

Jena reviewed key takeaways from CAUTAC conversations on BLIs including:

- While the current Buildable Land definition is vague, TAC members appreciated **flexibility** in how the rules are implemented for cities with varying contexts.
- **Lack of data** makes it difficult to map natural resource and hazard constraints. TAC members requested more data and **guidance** to improve accuracy and to help protect against litigation and appeal.
- "Islands" or **areas of buildable land that are surrounded by constraints** were also discussed as an additional constraint not currently mentioned in rule or guidance.

Jena shared DLCD's draft approach for constraints in the BLI:

- Minimal changes to rule to retain current flexibility
- Minor changes to reflect language in statute related to "needed housing"
- Floodway added to list of constraints that are generally considered not suitable and available for housing.
- Guidance around data sources to estimate natural resource and hazard constraints
- Guidance around how to consider publicly owned land, land constrained by wetlands, land with slopes less than 35%, islands of buildable land, and covenants, conditions, and restrictions (CC&Rs).

Ben Duncan asked RAC members if they had any clarifying questions. RAC members shared the following questions and comments.

Question: At the last CAUTAC meeting, we talked about proposed rule 6e which includes language about land "that cannot be provided with public facilities". We were told that there is a state statute that requires it to be "cannot be served" as opposed to "is infeasible to serve". Is there a citation for this statute?

Jena Hughes responded that DLCD would get back to them on the statute question.

Comment: For the island of buildable land constraints, there is proposed guidance for land less than one acre and 100% surrounded by constraints. Why were these metrics chosen? Land could be constrained on one side and require a public facilities connection to go all the way around. Refinement may be needed here.

Jena Hughes responded that this is a draft concept in the guidance section of the [discussion memo](#). There is a recommendation to take this out of the BLI because it would be difficult to develop this parcel. This was an idea and DLCD will need to conduct further research.

Comment: The latest amendment to HB 2038 proposed removing a provision that would make CC&Rs unenforceable regardless of when they were adopted. The amendment may have been changed to only affect CC&Rs that came up after HB 2001. CC&Rs are currently constraints, and this will impact whether they will have constraining effects or not.

Ethan Stuckmayer shared that DLCD will not be able to establish rules in this process that will directly interface with CC&Rs because it is a legal question outside the RAC's scope of work. DLCD is proposing to develop guidance around how local governments can interact with CC&Rs. The RAC member responded that most of Washington County's development occurred in more recent decades and CC&Rs are prominent. Jena Huges added that DLCD is aware CC&Rs exist and can be prohibitive for many housing types. It may also be difficult for jurisdictions to tell if CC&Rs are being enforced. DLCD's draft approach for guidance is to not consider CC&Rs in a BLI because of this uncertainty.

Ben asked RAC members the following question. RAC members provided the following questions and comments.

What do RAC members think about the draft approach in helping cities estimate capacity and achieve housing goals?

- *Does the approach help achieve the goal of housing **production, affordability, and choice**?*
- *Does the approach help **provide clarity and certainty** to local governments?*
- *How does the proposed approach help **mitigate burdens and extend benefits** to vulnerable populations?*

Comment: CAUTAC has had multiple discussions about how to consider lands that have been within a UGB for a long time and haven't progressed towards development. Including direction on when to exclude these would be beneficial.

Karen Guillén-Chapman asked the RAC to think broadly about the threshold for not including land in a BLI. The rules are intended to provide greater certainty and clarity about how to inventory land. If a piece of land hasn't developed for 15-30 years should a jurisdiction discount it?

Comment: CC&Rs are a huge roadblock to housing production, especially in younger communities. It would be helpful to have guidance around how to deal with CC&Rs because they will impact housing capacity for a long time.

Comment: The proposal strikes a good balance between acknowledging there is a need for certainty and there are unique circumstances best addressed in guidance. There needs to be some flexibility in how jurisdictions do this work.

Comment: Commercial CC&Rs can block multi-family residential in centers and corridors in addition to homeowner association (HOA) CC&Rs.

Karen Guillén-Chapman responded that DLCD will bring constraints, public facilities, and estimating capacity to the RAC at a future meeting. She noted that looking at land capacity and showing development trends that provide quantifiable validation for capacity estimates can include CC&Rs. She asked the RAC to table the topic for now and save it for future discussion.

Jena shared example tradeoffs for the RAC to consider. On the coast, jurisdictions can build on steep slopes and may not want to exclude land from the BLI. Building on steep slopes can be expensive and may not produce affordable housing. These areas can also pose safety risks and construction can damage the natural environment. On the other hand, some communities are almost entirely constrained and would have little to no land left to build on if it wasn't allowed. Over a 20-year period, is this going to result in the type of housing that we want to see?

Question: This is helpful context, and I appreciate the flexibility for cities. If communities have a lot of residential land that looks available but won't be for a long period of time, should it be included? What are the consequences of including a farm in the BLI that will not be sold for 20 years? If a city does not have

buildable land, they may need to build vertically. Most communities should have townhomes in their codes now. Sometimes it feels like the development community is carrying more weight than others.

Jena Hughes responded that the BLI looks at a 20-year period.

Comment: I understand the purpose of identifying constraints. We cannot work with what we don't have limits on, and steep slopes and natural areas can be reasons to limit development.

Question: Are housing requirements adjusted if a jurisdiction identifies many limits to its buildable lands? For example, if a jurisdiction has less buildable land they need to focus on denser housing. I'm concerned that exclusive communities may use constraints on buildable land as a reason to limit development or investment.

Jena Hughes responded that a local government may try to overestimate constrained land to secure a UGB amendment and add more land. This is something DLCD is considering. DLCD is proposing flexibility for a local government to determine which areas should and should not be counted. Madeline Phillips, DLCD, reflected on whether a city should count on land that may not be developed for a long time. There is risk and reward with including constrained land in a BLI. Should the market assume or encourage development of the land at a certain urbanized density or is there a likelihood that to subsidize or ask the market to produce that housing might take an inordinate amount of resources or risk? There is a balance between a jurisdiction being able to count on units being developed and the risk of creating phantom capacity because it is unlikely that land be developed. Jurisdictions also need to consider the use of the land. Is it a conservation easement or could the use change over time? With the BLI, jurisdictions are considering physical constraints that can be mitigated but cannot be changed.

Comment: These lands could receive a risk rating and count as 50% available instead of 100% available.

Karen Guillén-Chapman responded that this will be a later discussion when looking at capacity and development trend data.

Question: How will a city prioritize needed housing for low-income populations if land is more limited? A city could argue that they need to attract more expensive development to make up for missed volume.

Karen Guillén-Chapman responded that highly constrained cities, like City of Astoria, are looking at production strategies and land use efficiency measures including UGB exchanges or swaps. They are considering how to build more efficiently within their boundaries. Cities are required to build units according to income and affordability. There is no way to comply with the OHNA rules adopted in 2024 by only building high income or middle-income units. Ethan Stuckmayer added that this is a fundamental question of this work. Cities need to focus on building within their limits or growing the city when meeting housing needs.

Comment: Unless you have a justification for why you think land is going to develop in the next 20 years when it hasn't for the last several decades, capacity is assumed to be zero, but it gets to stay in the BLI.

Comment: Counties in the Portland Metropolitan Area are also subject to these requirements and have unique constraints that are less quantifiable. Counties cannot grow in the same way that cities can. Counties face unique constraints and shrinking capacity. Washington County's urban area would be the second largest city in Oregon. The county is covered with CC&Rs and cannot annex land to meet targets like cities can. The ability to define constraints will be difficult for counties and they need flexibility.

UGB Study Areas

Jena reviewed how constraints play a role in the analysis of land for potential inclusion in the UGB. If a city is pursuing a boundary amendment to urbanize land outside their current boundaries, it involves analyzing a study area and removing land from the study area that is considered unsuitable. She noted that while this is similar to removing land in a BLI, some of the constraints listed in rule are different. By

estimating constraints in the study area, a city can make decisions about which areas may be the most suitable for future housing and urbanization.

Jena reviewed key takeaways from CAUTAC conversations on UGB study areas including:

- Citing data sources in guidance instead of rule to allow cities to use alternative data sources.
- Appreciation for the current rule structure.
- Interest in adding liquefaction as a hazard in rule.

Jena shared that DLCD's draft approach for UGB study areas:

- Minimal changes to rule to retain current flexibility.
- Removal of specific data sources in rule to add flexibility.
- Liquefaction added to the list of hazards that may be excluded from the preliminary study area.
- Guidance around data sources to estimate natural resource and hazard constraints.
- Guidance around how to consider islands of land, floodplains, and other hazards.

Ben asked RAC members the following question. RAC members provided the following questions and comments.

What do RAC members think about the draft approach in helping cities estimate capacity and achieve housing goals?

- *Does the approach help achieve the goal of housing **production, affordability, and choice**?*
- *Does the approach help **provide clarity and certainty** to local governments?*
- *How does the proposed approach help **mitigate burdens and extend benefits** to vulnerable populations?*

Comment: The updated code for ORSC Section R327, wildfire hazard mitigation, makes properties susceptible to wildfire substantially less risky. This is a reasonable justification to say these properties should not be removed entirely.

Comment: Having consistency between what is considered as buildable land within the UGB versus in a planned expansion area is important to look at. If we're not considering these criteria we end up with phantom capacity where the land might be in the UGB, but it isn't truly buildable.

Jena Hughes noted that this is described in the [discussion memo](#). She noted that the constraints in the UGB study area rules and the BLI do not fully align. A jurisdiction could bring land into the UGB that is constrained and not buildable. Sometimes a city does this to use the land for parks for residents or to reduce confusion with boundary lines. DLCD received feedback that the constraints in these rule areas should be better aligned to avoid jurisdictions bringing land in that is later considered not suitable for housing development. Kevin Young, DLCD, added that cities may not have the same level of information about the land coming into the UGB as they do in the BLI. It takes time and resources to inventory wetlands and natural features and figure out what needs to be protected.

Comment: There are reasons why a city would want to bring in constrained land. If a city decides it needs 50 acres to support its housing production target, and 10 acres might be better as a park, then that counts as land added to the UGB, but the city still needs to find another 10 acres for housing. In this way, a city can still plan for parks while not inadvertently reducing the capacity of the land they're bringing into the UGB.

Karen Guillén-Chapman shared that this is a capacity question and will be discussed with the RAC at a later meeting. She repeated that there is a 20-year housing need allocation and cities are planning for their needs based on that. Cities above 10,000 people will have a six-to-eight-

year housing production target and will inventory land based on the development-ready land inventory.

Comment: There is a distinction to be made between areas in urban reserves versus a BLI for the HCA. This operates a little differently in the Portland Metropolitan region in terms of capacity of UGB areas. For example, if 50 acres is brought in, the jurisdiction will conduct an analysis and remove any land that ends up in Goal 5 and the Significant Resource Overlay Zone. Housing unit requirements for that area remain the same. The jurisdictions must put all the housing units on the land even if it is reduced from 50 acres to 40 acres.

Madeline Phillips responded that expansion areas might support community amenities and things that support a complete community. Sometimes bringing in land that has constraints might offer an opportunity.

HAWG Update

Thea Chroman, DLCD, shared that the HAWG started meeting in January 2025 to develop a set of adoption-ready actions by June. She reviewed the group's policy objectives and how the HAWG is using the Racial Equity Framework for Decision Making to guide their discussions. Thea reviewed the working definition of an "adoption-ready action" and the framework the HAWG is using to evaluate potential actions. Thea shared examples of adoption ready actions that are immediately adoptable and implementable (Level 3), mostly developed but require local testing (Level 2), and partially developed but require substantial local preparation (Level 1).

Celestina Teva, DLCD, shared that the HAWG is also working on developing compliance pathways by June. She shared examples of pathway tools including safe harbors, rebuttable presumptions, minimum standards, and regulatory requirements. Safe harbors are the least prescriptive compliance pathways and regulatory requirements are the most restrictive. Celestina reviewed options the HAWG is considering to standardize identifying housing types, characteristics, and locations in the CHN. She also shared alternatives the HAWG is considering in the HPS including a simple menu of options, actions with an impact rating, actions with points criteria, and statewide requirements.

Ben Duncan asked RAC members if they had any clarifying questions. RAC members did not share any questions or comments.

Closing and Next Steps

Karen Guillén-Chapman and Ben Duncan introduced a series of questions for the RAC to consider following the meeting that would be available on Miro and in the post-meeting survey:

- In what ways do you hope this rulemaking will influence how communities plan for housing?
- How are land supply and residential capacity issues related to your interests and priorities?
- How could rulemaking decisions affect your community or the communities you serve?
- What elements of the HAW scope are you most interested in digging into further?
- Is there anything else you would like to highlight for staff?

Ethan thanked the RAC for their participation and reviewed upcoming opportunities and meetings:

- RAC buddies are available to support RAC members with the rulemaking process and content. RAC members can indicate interest in the post-meeting survey.
- DLCD will hold drop-in sessions in advance of RAC meetings to answer clarifying questions. Information will be provided in packet materials.
- RAC members can email DLCD at housing.dlcd@dlcd.oregon.gov.
- The next RAC meeting is May 7, 9am-12pm.