OHNA Rulemaking Advisory Committee
Meeting #15 – August 27, 2024
Meeting Notes
(Published October 22, 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 sixteenth meeting on August 27, 2025. Members reviewed and discussed draft impact statements and draft rules.

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 review the draft Fiscal, Housing, and Racial Equity Impact Statements; share proposed rules and how RAC feedback was incorporated; and engage in robust discussion and answer clarifying questions RAC members have on proposed rules.

Attendees

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

	Madeline Phillips Sean Edging Thea Chroman
	LCDC Commission Liaison
	Allan Lazo
	Governor's Office
	Matthew Tschabold Svetha Ambati Taylor Smiley-Wolfe
	OHCS
	Brandon Schrader Elise Kennedy Cordle Love Johnson Mitch Hannoosh
	DAS
	Joshua Lehner
	Consultant Team
	Anita keā'lani Yap, MultiCultural Collaborative Ben Duncan, Kearns & West Beth Goodman, ECOnorthwest Ellen Palmquist, Kearns & West
	Members of the Public
	Dan Riordan Mike Montero Stephen Wilde Connie Saldana Nathan Emerson

Key Insights Summary

- **Displacement risk**: Concern that inaction around middle housing and high housing demand can increase the risk of displacement. Interest in using innovative policies to reduce displacement risk. Interest in keeping unaffordable housing out of expansion areas and clearly articulating the plan for providing affordable housing.
- **Infrastructure costs**: Infrastructure costs continue to be a concern as cities consider expanding their Urban Growth Boundaries (UGB). In the past, growth was often supported by state and federal funds. With limited funds available, developers and residents are increasingly asked to shoulder the costs of infrastructure and new development. This raises equity concerns and questions about who will bear the cost of infrastructure.
- **Navigating impracticability**: Interest in considering impracticability for areas with physical barriers and existing developments. Discussion around what makes an area impracticable to serve and interest in providing clear and objective standards and a safe harbor.
- **Planning for the future**: Interest in making sure proposed rules are balanced with market trends and that affordable and accessible housing is realized on the ground. Mixed views on the feasibility of the proposed housing type mix for the Contextualized Housing Needs (CHN) compliance pathways and how this will play out across different market types.

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) Racial Equity Framework and Draft Impact Statements, 3) Proposed Rules: Capacity and Urbanization, 4) Public Comment, 5) Proposed Rules: Housing Actions, 6) Closing and Next Steps. Ethan Stuckmayer, DLCD, welcomed RAC members and reviewed the meeting goals. Ethan shared that DLCD is interested in hearing input on the draft rules and

the draft fiscal, housing, and racial equity impact statements. He noted that on October 1, the draft rules will be published to the Secretary of State website. This RAC meeting is a milestone and is not the last opportunity to provide feedback. The public comment period for the draft rules will open October 1 and close November 7.

Racial Equity Framework
Anita keā'lani Yap, MultiCultural Collaborative, reviewed Racial Equity Framework for Decision Making categories and the Racial Equity Impact Statement. LCDC Vice Chair Allan Lazo shared interest in hearing from all perspectives on the RAC. He noted the need to think about the Racial Equity Framework programmatically, across the full spectrum of this work.

Anita asked RAC members if they had any feedback on the Racial Equity, Housing, or Fiscal Impact Statements. RAC members shared the following questions and comments on the draft impact statements.

Comment: When we talk about displacement from potential actions we're often thinking of them as unintended consequences. In the Racial Equity Impact Statement, I'm curious about the framing of the word "require" under mitigation measures. I'm assuming this is a reference to the CHN where a city is required to address potential impacts that they have identified. We have heard from the department that their intention is to hold folks accountable for identified needs, but if it's an unintended consequence I'm not sure how we would hold someone accountable. This is connected to the framework in the proposed rules and not having a compliance pathway for some of these elements.

> *Celestina Teva, DLCD, responded that there is no specific compliance pathway requirement to have companion actions that mitigate unintended consequences of any kind including displacement, which is one of the most common consequences of some of the housing actions DLCD is striving to implement. The elements of the OHNA that have overarching requirement are the directive to Affirmatively Furthering Fair Housing (AFFH) and direction in the Housing Production Strategy (HPS) to analyze and mitigate benefits and burdens. Thea Chroman, DLCD, added that there remains a critical obligation within the OHNA for jurisdictions to analyze how they're approaching this type of issue. These pathways are only one part of that response. While there isn't a compliance pathway for this, it doesn't mean there isn't an obligation to do this and an accountability structure. If pulling these two sections apart in the response creates an issue in terms of what the follow-up looks like we're interested in hearing about it. The RAC member shared that we have a commitment to ensure the programming works. The benefit of having a compliance pathway defined is that it is clearly spelled out.*

Comment: I'm sitting in collective joy of how far this work has come and that these dynamics in land use planning are being explicitly named. This chart is exciting, and I want to see the next iteration. Charts like these are a work in progress. I like the compliance pathway and if this is the mode of operations that DLCD is doing for this work that's exciting. These charts will grow and become enhanced over time with on the ground experience and acumen. This is not comprehensive but the commitment to this lens in land use planning and who has access to certain amenities is exciting to lift up.

Comment: This is incredible progress, and I need to see more details. For example, ensuring UGB expansions include affordability provisions is a big lift. This hasn't been the way UGB expansions have developed. How will we guarantee that and make sure we have density and affordability and accessibility pathways? I'm less concerned about affordable housing being on the edge than I am about unaffordable housing being in our expansion areas. I need to see the specifics and how this will play out. We need more compliance pathways for accessibility and affordability.

Comment: I'm grateful and excited about this work. I'm surprised that the Racial Equity Framework wasn't one of the documents with stars. We are living in a wild federal climate. Regulations are bonkers

and if you allow a transgender athlete at your high school, your state may no longer receive federal funding. In the best of circumstances, transgender people are 1-2% of the population. If we owned a proportional amount of housing, we would only have 1% of the market. It's important that qualitative and quantitative means are used to meet our framework understanding that we will not accomplish everything. If we cannot accomplish everything, who will be the sacrificial lamb on the negligence alter. We know that this market for decades has produced the results. I view market realities as being synonymous with my oppressors. I am not holding the property. The people who own markets and run the government are currently ransacking our federal reserves like dogs and wild bulls. None of this is centered on my needs. I've always had housing filtered down because I've never made an income higher than poverty-level. I'm a low-income renter that has been displaced more than ten times in five years and someone that is transgender and HIV positive. We need to consider who we are serving, who we are willing to sacrifice, and why we are so deferential to a market that is synonymous with oppression and singular typologies. At the end of the day, there will always be an emotional consideration of what housing is, and it always need to be centered on who you are serving. The process of the Racial Equity Framework with the OHNA process has enough self-reference and check points that I feel in the generalized process the least or smallest of us will eventually be considered in some way or another. I hope that any community that needs to be named is named in these documents. I do not care about traditional modes of ownership and single-family housing at this point. These traditional modes of ownership have led us to the situation we're in. People fear change and I have had change every day of my life since I've come out as a transgender person. There were changes incurred upon me by my society, including changes I didn't consent to. Just because you live in a single-family home, that doesn't mean it's appropriate for everyone. 76% of our land is zoned so that you can have that and we don't need to serve you anymore. We need to be empathetic with change and piss and vinegar about the fact that we need to scootch our butts to make sure everyone is served. I cannot speak for other communities, but in my experience of my community I see fractal observations about how this market will never be equal until we have a robust social and public housing system and we disincentivize the idea that housing is not a human right.

Comment: It's good to have the Racial Equity Framework but it really asks the questions in the process that need to be asked in the beginning as we develop housing. We need to shine the light on this process. As housing is developed, include those that need to be included, ask the questions that weren't asked before, and highlight the issues communities face accessing housing. It's good to have a framework for how we're viewing and developing housing in the state.

Comment: Nice job on the Racial Equity Impact Statement. You've covered complex topics with nuance. Consider the potential risks of inaction on middle housing and multi-unit housing in existing urban areas. If there is inaction accompanied by high housing demand, that can also lead to displacement. It's sort of covered under "over-discounting infill potential," but seems slightly different since inaction can be intentional, not just a disbelief that infill is likely to happen.

Proposed Rules: Capacity and Urbanization

Madeline Phillips, DLCD, shared policy direction around UGBs including how cities can operate the expansion process and how cities determine where to grow to meet their housing needs. She asked the RAC to consider the ways that cities have flexibility and latitude to consider how and where they grow, what are some of the safeguards that guide cities to urbanize in specific ways, and what outcomes the land use system seeks to engender in this process.

Madeline reminded the RAC of Land Use Efficiency Measures (LUEMs) and how they fit into the Goal 10 and Goal 14 process. She reviewed the definition, priorities, and purpose of LUEMs. Madeline also reviewed the process for establishing a UGB study area including what stays in and what is ruled out. She noted that DLCD is not recommending study area consideration changes in rule but has highlighted areas of confusion where guidance or rule clarification could be included.

After a city establishes a study area, they must compare potential areas of urbanization using Goal 14 Location Factors. Madeline reviewed the Location Factors, and the process cities go through to demonstrate which areas are most suitable. She shared that DLCD is recommending retaining Location Factors as they are in the draft rules with some refinements for clarity. DLCD wants to provide enough flexibility to allow cities to use their local and contextual knowledge to make decisions.

Madeline reviewed UGB amendments, including swaps and expansions, and outlined tradeoffs. A swap removes some land from the existing UGB and adds land "equivalent" to UGB. A swap can replace land that is not likely to develop in the 20-year planning horizon with land that is more likely to. Not all land needs can be accommodated by swapping land out. In a UGB expansion, existing land remains the same and land is added to address the identified deficit. DLCD is proposing rules to help cities reduce the analytical burden of UGB amendments and improve clarity. The draft rules are trying to accomplish flexibility around taking land out of the UGB.

Ben asked RAC members the following discussion question. RAC members responded with the following questions and comments.

How can local governments evaluate and plan for land under consideration for being brought into their current boundaries in relation to other key policy considerations: urban and rural values, equity, and other statewide planning goals?

Question: Will the definition of "impracticable" be made clear and objective since local standards for housing must be? How far will we have to take “clear and objective” in terms of what we end up with locally? It’s always nice when state standards can begin in a clear and objective way.

> *Madeline Phillips responded that impracticability is starting to be on the radar of cities because they know they have land that is not cost effective to serve or will not produce the outcomes they intend. There are some clear criteria in Division 24 Subsection 65 that describe impracticability. The key is that impracticability is rooted in physical characteristics of the land that don’t change. These have cost outcomes. Secondary outcomes are cost or complexity to serve. With impracticability, there are certain physical characteristics that are difficult for a city to overcome. In that way a city can be fairly objective in determining impracticability. There are a wide range of characteristics that factor into the standard, and I don't know if we'll find a succinct punch list of things that it could meet. This is something CAUTAC has considered and will refine further if possible. Karen* Guillén-Chapman*, DLCD, highlighted land swaps on p.3 of the CAUTAC Discussion Memo. Many UGBs include land that was added decades ago that is impracticable with today’s environmental regulations. The draft rules are trying to add flexibility around land swaps. Land in UGBs is often zoned for large lot low density residential. Instead of swapping land that is zoned the same, why not swap in land with higher densities and more uses? Let’s change how an urbanizable expansion area looks entirely with mixed use development and higher densities.*

Comment: I’m fine with how the land swap has landed. UGB land swaps have to occur along the edge, correct? There are lands within existing UGBs that couldn't be swapped out but could be discounted. I also don't want to lose sight of cities that are landlocked and need tools to use the land they do have more efficiently and equitably. There are a lot of cities that a land swap will not be an option for, and they still have obligations to meet the needs of current and future residents. I want to understand what's in DLCD’s control and what's within the control of other entities. The notion of physical impracticalities is good. We need to think of land that may be impracticable because it has existing developments on it. Happy Valley came kicking and screaming into the Metro and that was an ex-urban sprawling residential area that is now growing rapidly. The importance of infrastructure investment is that eventually a corner is turned and a lot more is developed. This does not happen overnight.

Karen Guillén-Chapman *confirmed that DLCD did not change existing rules requiring swaps to be along the edge – there are no islands or donut holes allowed in the UGB.*

Comment: Counties cannot expand outside of the UGB, and cities will be annexing our land. On the flip side, there aren't either LUEMs or expansion outside the UGB for cities. Many in the metro area can expand into massive unincorporated urban areas that already exist. There is a huge amount of urban land in low density developed areas, and we have 13 cities partially or totally within our boundary. Clackamas County has similar situations where they won't necessarily have to go outside of the UGB. There is a middle ground for a lot of cities. In terms of the impracticability of developing land with Goal 5 resources, it makes sense for land with water related Goal 5 resources, but it has been common practice for upland habitat areas that are Goal 5 to be developed. Lots of urban land includes Goal 5 upland resources. That would take many lots off the table.

Question: What does the process for connecting with Tribes earlier in the process look like for UGB study areas? Does this include Tribes within a certain distance or Tribes that have ties to the area but are not geographically close?

Comment: The Federal Emergency Management Agency (FEMA) released the updated Draft Implementation Plan and Draft Environmental Impact Statement (DEIS) for National Flood Insurance Program (NFIP)-Endangered Species Act (ESA) Integration in Oregon. The report shows that between 2010 and 2020 around 11% of housing built in the state was developed within a Special Flood Hazard Area (SFHA). This covers a decent amount of land in total. While I know that in Rule 65 Subsection 4 a city can exclude SFHA we haven't touched on what to do with the areas that are currently within UGBs and how that capacity is counted. FEMA is estimating that the average cost of building a new home on a vacant, undeveloped lot in the SFHA will be 20-57.6% more expensive than housing currently there today. While this is not necessarily a restriction that will make the land unbuildable, it will make the areas less likely to develop. That is not sufficient justification to say that we need to account for those lost acres. If Alternative 2 or 3 is selected there will be significant land capacity impacts, and we need to have something in place to address this.

Madeline Phillips shared that it is important to recognize that cities will be doing HCAs on a more frequent basis and will be able to look to their UGB more than they have in the past. This fits within the framework of how a city rules land out of their study area and how they evaluate the capacity of the land. This would be new information a city would use to determine whether certain land is not suitable. The RAC member responded that there is already a large portion of land for cities that are within the SFHA. Madeline responded that this land would be eligible for a 100% discount.

Comment: What does it mean for something to be impracticable to serve? Most cities do not have a lot of these features. There are no proposed changes that relate to the costs of services and the costs of infrastructure. Is this because we don't have legislative authority or direction? Why not jump into this and try to address it? In my practical experience with landowners, developing the cost of infrastructure is a significant constraint in terms of bringing any new economic development areas online. If we continue a model where land can be brought in but the cost to serve is five to ten times greater than other areas, we are stifling the ability to bring housing onto the market and get into a situation where a city is expected to front the money through rates. There are equity considerations when you spend more money per acre to make an area viable for development. Rate increases take money out of everyone's pockets to fund needed infrastructure.

Madeline Phillips responded that cost is typically in direct contrast to the land prioritization scheme. There is a desire to see impracticability used in ways that allow a city to choose land that will satisfy their housing production needs. At the same time, land that is attractive to developers and less costly to serve is often flat farmland. Cities have a challenge balancing these

two factors. The impracticability standard is meant to rule out land before it is considered within the sub area selection process knowing that there may be challenges related to service. What we would like to provide and don't have the time or capacity to address is the criteria or standards of consideration. We can provide guidance, but DLCD's ability to specify the amount of disparity, like two times the amount of cost that an area needs in order to be ruled out, to determine that the land is truly impracticable is limited. The more we push out of existing land that is the highest priority, the more pressure we put on rural lands and their protections and resources. The RAC members responded that DLCD is setting some bold standards that have mixed factual base and evidence to support them. Any direction is better than no direction. Kevin Young clarified that there is language in existing rules that speaks to this issue and allows a city to analyze the likely yield and cost of infrastructure. It's tough to say "here's a number where it's impracticable" because it's going to vary. That is why we're looking to develop guidance on this topic.

Comment: Infrastructure availability and practicability is a major concern for cities.

Comment: Providing infrastructure for farmland can have higher premiums because of the high cost of developing that infrastructure. It is an oversimplification that developing farmland is often the cheapest. Infrastructure is needed wherever housing is being developed and is usually paid for by rate payers, homeowners or renters, developers, and the state. Many of us are living in homes where the state or the federal government picked up infrastructure costs and that's not there anymore. It costs money to develop new land, sometimes more than redevelopment or infill inside UGBs. There are so many factors that would go into this comparison, including how much time it would take to develop something. It is a complex question that brings in other policy decisions about protecting farmland and resource lands, and reducing vehicle miles traveled and impervious surfaces to address climate change.

Comment: Think of two cities that are a smaller and larger square. If you have to do three subject area analyses within the squares, some cites could have circles that don't overlap and some would overlap. Is it possible cities would be allowed to have subject area analyses that overlap? Are there analyses to see which circle is going to be the best one?

Madeline Phillips responded that the circles categorically cannot overlap. They are exclusive pockets of land that are divided up into 75-100 acres and each circle must be contiguous to the UGB. The RAC member asked why the circles cannot overlap when they may have interlocking relationships. Madeline responded that this is a challenge that cities have with balancing Location Factors. Not all 100 acres in every circle are likely to be prime development opportunities. Some may have constraints and opportunities that aren't present in other study areas. A city must balance if the opportunity in Area A is worth the tradeoff of also having steep slopes. A city is not bound to selecting one of the sub areas, they can select several depending on what their land need is.

Question: Is there work happening with data analysis to add co-objective variables to visualize the intensity of these barriers? For example, as cost intensifies, the color could change from blue to red to help people understand.

Comment: Mortality in the future will truly affect what potential land can be available. In the next 20 years, there will be opportunities to integrate previously privately owned land for single family homes. Right now, so many people are constrained. It's important to think efficiently about the potential future.

Karen Guillén-Chapman directed the RAC to p.3 and 4 of the *CAUTAC Discussion Memo* and reviewed Urban Reserve Areas (URAs). Karen reviewed the purpose of URA, how they are established, and how they help cities plan for growth. The process to create URAs can be separate or together with a UGB amendment process. She shared that CAUTAC will continue to look for opportunities to create more

consistency in language between Division 21 and Division 24 and any possible process redundancy in the establishment of URAs and amending the UGB to bring in the URA land.

Ben asked RAC members the following discussion question. RAC members responded with the following questions and comments.

How can we facilitate local governments planning for future growth with URAs?

Comment: If DLCD is uncomfortable providing a threshold in rule due to varying local conditions, I think that is a reasonable justification to add a safe harbor that if a local government determines lands to be impracticable to serve, a city is protected from appeal. Related to Division 21, the first slide referenced trying to bring in better alignment with statute ORS 197A.285. This is the wrong statute; it should be ORS 197A.245. Subsection 1 speaks to the intention and subsection 6 speaks to the specific prioritizations. None of this is reflected in the rule. I'm disturbed that 3–land suitable for an urban reserve–may be included with a URA only according to the following priorities, none of which reflect the priority considerations in the statute. I understand that there is potentially a value concern because once you bring the most suitable land into your URAs those lands can more easily be added into your UGB following your next expansion. What the statute is telling the rules to do is not that. URAs exist to support future development and not to protect resource lands. This fundamentally needs to change. The way the first priority category for planned development and subdivisions is, is the way this rule should be adopted. I don't think we should go in and further define these terms. It's most appropriate to say we have common knowledge of what these terms mean within the scope of what we're doing, and I don't think they need to be further refined. Additionally, 4a does not include stormwater. This is a good reference to cite there but we need to add "and stormwater" to align with the definition of public utilities in Division 8. I don't know what benefit the UGB expansion piece where 80% of land from the original URAs has to be added before it can be expanded serves to housing production. It seems to serve to the benefit of protecting resource lands but as the statute clearly explains that is not the purpose of these rules and should be removed.

Comment: I have the same concerns that the statute for urban reserves is its own statute and we should be drafting off of that.

Comment: When I was talking about urbanized areas in Washington County, I was not talking about rural residential exception lands outside the UGB and future development land that has already been brought in. A lot of these are not served by services. I was speaking to urbanized land with services. We cannot go outside of the UGB and I wanted to clarify that we have more land area in our urban and incorporated area than the City of Eugene and we have larger populations than Eugene and Salem. There is a significant amount of urbanized land cities can and are going into and that has been the pattern of development we've seen for decades.

Public Comment
Ethan Stuckmayer opened public comment and Ben Duncan reviewed public comment guidelines. The following public comments were shared.

- **Nathan Emerson, CSA Planning:** Division 24 subsection 65, 4B is the section that includes additional reasons to remove lands from a study area. I specifically want to look at wildfire. Study area is the first step in the UGB process and wildfire is an ambiguous thing to try and evaluate, especially at the local level. If you look at Jackson County where we're located, they have an adopted wildfire map and the things outside of that overlay are flat farmlands at the center of the valley. Our concern is that if cities are allowed to disqualify lands using this wildfire metric, you might be in a situation where higher priority lands such as urban reserves, exceptions, or non-resource are removed from the study area in favor of farmland. If you remove it from the study area, they don't have to go through the prioritization schema, and you could have a situation

where farmland is brought in before existing urban reserves which have been adopted by the jurisdictions are brought in. We encourage the wildfire piece to be quantified or considered in an objective manner and considered as a relative risk to the rest of the study area. There aren't really areas down here that don't have wildfire risk. Providing some boards on that would be helpful.

Proposed Rules: Housing Actions

Thea Chroman, DLCD, shared that the Housing Actions Work Group (HAWG) focused on developing a set of compliance pathways through elements of the HPS program. DLCD is suggesting a range of compliance tools to apply in different areas with a spectrum of prescriptiveness. She reviewed the set of compliance pathways in the CHN section of the HPS program including guidance, safe harbor, rebuttable presumption, and minimum standards.

Sean Edging, DLCD, reminded the RAC that DLCD was directed to produce and adopt model codes for specific city sizes by SB 1564. Over the past six months, DLCD has developed a draft of the model codes and is in the process of refining the model code with developers, local jurisdictions, and other key parties. DLCD also developed a set of administrative rules that operationalize the details of specific statutory functions prescribed for model codes in different bills. Sean outlined four major functionalities of the rules including optional adoption and application by reference, compliance with a housing law, comparison to local actions/land use regulations, and mandatory application.

Thea reviewed compliance pathways for HPS action selection. Similarly to the CHN, these are distributed across guidance, safe harbor, rebuttable presumption, and minimum standard. She noted that most provisions point back to the model codes and set the standards that cities have to reach either by comparison or by direct adoption of the model codes. Thea noted that cities still must select non land use actions to address other elements of their housing need based on current rules. Moving forward, DLCD will refer to these actions as LUEMs for consistency across the OHNA.

Thea reviewed how the compliance pathways will interact with the Acceleration Program. She explained that an audit is required to identify if the code standards have been achieved and to identify any barriers with implementation. DLCD is proposing to add a new section to the audit that refers back to the compliance pathways in the HPS to ensure those standards are being met in a city's code.

Ben asked RAC members the following discussion question. RAC members responded with the following questions and comments.

- *Do the draft rules reach far enough towards the HAWG policy objectives and the Racial Equity Framework for Decision Making?*
- *Do the rules make sense? Is this landing?*
- *Where do the draft rules fall short?*
- *Do the draft rules meet the needs of all interested parties?*
- *Do the draft rules introduce negative externalities?*

Comment: I'm concerned that historically, when diverse neighborhoods with single family housing at lower price point have seen increased density, it can result in displacement. There are some innovative land use policies cities use to prohibit this. For example, developers can receive density bonuses for producing affordable units.

> *Thea Chroman agreed with the RAC member and added that you lose that leverage for those incentives to work if you apply it very broadly.*

Comment: I don't think the minimum standard here is aligned with requirements in statutes for when these can be applied. Rebuttable presumption would be allowed. Specific to rule 200 subsection 3 is whether this is truly a rebuttable presumption. When we're considering whether to add these amendments, we need to consider whether cities will try to rebut this or if it a rebuttable presumption in name only that functions as a minimum standard. The best thing we can do is look to recent examples of similarly structured rules. The most similar is rule 320 Division 12 subsections 8 and 9 about the way that land use regulations work in climate friendly areas (CFAs). Subsection 8 is the presumption that would need to be rebutted and 9 is the alternatives outcome-based pathway that you can use if you rebut the presumption in subsection 8. While a lot of cities had concerns with baseline assumptions in 8, no cities have tried to use subsection 9 because it's too complex. If a city has good middle housing or multifamily housing standards, but they're not confident they will rebut the presumption, they might scrap it to have legal certainty. If we create an impractical rebuttable presumption, it creates a minimum standard. I'm interested to hear from cities if they're confident their development standards would live up to this. Additionally, if you apply this directly then it becomes a safe harbor and if you've done enough to remove development barriers there might be other barriers that exist that are not related to development standards. If we apply this on the front end as enough, we might disincentivize governments from taking action to remove other barriers that are not directly related to the model code.

Comment: Something we're still crunching the numbers on is if these are rebuttable. Many jurisdictions are still working on that. The feedback I've received is that some of these are not reflective of market trends. Cities will have to rebut because it's not reflective of the trends we're seeing on the ground. The flexibility of the rebuttal is wonderful for some jurisdictions that don't have capacity, but if it's not based on market trends and goals it's not as helpful. We received feedback from a couple of cities that it's workable and from many that it needs more work.

Question: Why are you talking about 4+ stories for accessible housing when our discussions have been about 4+ units? There needs to be a standard for affordability. I've been pushing since the beginning on how we're going to meet 0-30% and 0-60%. This will be difficult to meet and we're not providing standards for how to meet these thresholds. There is also no discussion of sale for these properties which is critical for building wealth in these populations.

> *Sean Edging responded that DLCD does not have statutory authority over building codes. In the model code there are different provisions for the inclusion of additional Type A/B units where they otherwise might not be provided. The way to do this is by providing development bonuses to incentivize the provisions of adaptable or accessible housing. In the model code, we set a threshold allowing apartments up to 3 stories and provide a bonus for the provision of type A units to add an additional story. Sean shared the draft model code for more information. Thea Chroman added that there is room to develop the affordability compliance pathway more. The aim is to provide homeownership and rental options at the lowest level. We're still trying to identify the best tool to apply to specifically elevate this. Ethan Stuckmayer shared that the compliance pathways are an opportunity for local governments to be certain in the actions they take to meet some of the obligations they have under the HPS. Cities would still be obligated to take action in response to affordable housing need, but this is sharpened by articulating the safe harbor, minimum standard, or rebuttable presumption that a city might be held to in terms of taking LUEM actions to meet that need. In the context of affordable housing, one of the reasons this is proposed as guidance is that there are a limited number of LUEMs available to meet the obligation that they may have identified in their CHN for affordable housing. This necessitates local governments to look elsewhere to meet that obligation.*

Comment: There are a number of cities that have studies that say 4+ story buildings will not pencil in their jurisdictions because of the rising costs of building. Market conditions continue to worsen as we look at housing production in ways that cities cannot adjust for.

> *Sean Edging responded that the model code was informed by studies. DLCD reviewed market studies happening in relation to the Climate Friendly Areas (CFAs) and noticed that 6-7 story buildings with podium construction will not pencil except in the most valuable markets, like central cities. Wood framed apartments will pencil and we should try to structure the standards to make them as feasible as possible. If it is illegal to build multifamily apartments, you will not see them. The RAC member responded that the real concern is that they need housing in all areas of the city and elevators are needed to make the units accessible. This increases building costs and cities are not always in a position to provide incentives to make it pencil. Sean responded that nothing in the code requires building multi-story apartments but that they should be allowed to exist. At 5 stories you're required to have an elevator and at 6 have podium construction. We are focused on 3-4 stories where there is broad feasibility.*

Comment: Could you send out the CFA market studies? I've seen the response for Bend and have been trying to get the remaining nine since June. The results for Bend were abysmal, and garden apartments were the only thing that had a chance of penciling. The study looked at nine types of housing that could be developable and middle housing was not included. When talking about needed housing, we have spent the last twenty months talking about type, characteristic, and location. We have not spent much time on market factors which are required to be part of the determination.

Comment: The rebuttable presumption standard is 40% in multi-unit, 20% in middle, and 40% in single unit detached. I went back to ECOnorthwest's memo suggesting slightly lower numbers for larger cities in recognition that these rules and this process should shift towards more affordable housing types because the vast majority of housing tends to be in single unit detached. ECOnorthwest's recommendation was 50% and a mix of multi-unit and middle housing to bend the curve. There are downsides to over assuming that housing will be constructed. What we're seeing is almost the inverse of what's being constructed in these markets and outside of the metro region. Going beyond 50% is concerning. ECOnorthwest noted that we need to move in this direction and need to do so with caution because underestimating the total land supply could lower housing production in these areas. I'm concerned that the numbers under the rebuttable presumption are too high and want to understand why we are not keeping it within that recommendation. There are references to the Portland metro region which has different economic factors. Applying these factors to the rest of the cities in Oregon is concerning and I would recommend going back to what ECOnorthwest recommended instead of moving it further. I'm concerned about total housing production across the state.

> *Ethan responded that this is a core tenant of the OHNA program. We are planning towards a future that more accurately represents the housing need present in the state. The approach of not relying on or influencing the type/mix conversation with what is achievable and feasible is an intentional part of the OHNA program. This thread is carried through with the needed housing allocation and housing production targets. These are geared towards the true number and types of units needed in the state. We take actions in response to realize that future. Sean emphasized that he is now a homeowner because of middle housing legalization. This diversity sets the stage for people to be able to afford different options that are illegal now. The RAC member responded that these are different issues. We can plan for it, but do we have a good factual basis that says it will get built. They shared that they are not arguing the housing needs to be single unit detached but that we need to consider if we are planning too much. Ethan shared that DLCD is thinking about this holistically. We are asking cities to plan to meet a number or a unit type mix and carry out actions to make that feasible.*

Comment: We are trying to build a future that we haven't seen yet. This is going to be uncomfortable, and we might not get everything perfect. That doesn't mean we shouldn't do it. Don't keep our future bound by our past, especially with things like building components offsite while infrastructure is built. Innovative partnerships are forming between cities and developers that are just starting to exist but are not common practice. Let's hold space for innovation.

Closing and Next Steps
Ethan thanked the RAC members for their participation and reminded them to email DLCD at housing.dlcd@dlcd.oregon.gov with any comments or questions. He asked the RAC to share citations, questions, and feedback with DLCD to inform the draft rules. Ethan outlined upcoming milestones including:

- Oct. 1: Rules will be published to the Secretary of State website and public comment on the draft rules will open.
- Oct. 23: LCDC will hold a public hearing.
- Oct. 29: The RAC will hold its final meeting.
- Nov. 7: The public comment period will end.
- Dec. 4: LCDC will hold a meeting for the adoption of draft rules.