

## **Memo to Housing Capacity Technical Advisory Committee**

**From Al Johnson**

**June 16, 2025**

Greetings, all. I won't be able to tune in to tomorrow's CAUTAC meeting, but I do have some (many) thoughts that I would like to share. This may be a better format, given their length.

### **I. Buildable residential land, market factors, and yields:**

It is important to understand the difference between classification as buildable lands and projection of yields of those lands. The buildable lands definition is appropriately broad and should be interpreted to favor inclusion in updating buildable lands and identifying lands most appropriate for inclusion in Urban Growth Boundary expansions addressing needed housing shortfalls.

An illustration: In 2013, the Eugene Homebuilders objected to Eugene's inclusion in its BLI inventory of "buildable lands," some lands with slopes exceeding 25%. Noting that the city had provided detailed evidentiary support for its choice and that it has appropriately projected reduced yields over the applicable 20-year planning period, DLCD's director responded as follows:

"We read your letter to contend that, because Eugene's code does not permit development on slopes of greater than 20 percent using clear and objective standards, all such lands must be removed from the 20-year inventory of buildable residential land in the city's current BLI update. Our inquiry found that the city has, in its draft work product, adjusted the amount of residential development it is calculating will be built in the area to account for unbuildable areas such as steep slopes. This is equivalent to netting out the steep slopes from the buildable lands inventory as you suggest." 2013 response by DLCD Director Jim Rue to Eugene HBA

This response is consistent with the allocation to local governments of both the privilege and the responsibility of doing the footwork—the citizen participation, factfinding and reasoned decisionmaking--necessary to "demonstrate," based on "an adequate basis in fact," that their UGB's have, or will have, 20-year supplies of "buildable" residential lands sufficient to meet

needs identified in their updated HNA's consistent with LCDC's Housing Goal and Oregon's Needed Housing Statutes.

Importantly, Director Rue recognized that Eugene's classification of land as "buildable" and Eugene's demonstration of the "capacity," or reasonably expected 20-year yield, of those lands, are separate issues, and that 20-year yields are matters of fact.

One key but not determinative fact is how much time there is for an expectation to be realized. A true "next-20-year" land supply, replenished on a frequent and regular schedule, is essential, according to my reading of the goals and statutes, to projected yields that do not include an additional "market factor." Other key facts affecting yields may include slopes, flood and fire hazards, Goal 10 equity, affordability, and locational requirements, public and private regulatory barriers, and other issues that surface during the local update process.

It is important to note that there is nothing in Goal 10 or the Needed Housing Statutes, to my knowledge, to support the statement in the ECONW "market factor" memo that "Goal 10 assumes that all buildable land within a UGB will develop over the 20-year planning period."

## **2. How to ensure the inadequacy of 20-year buildable lands inventories:**

### **1. Overestimate projected yields**

- a. Use "safe harbors" and other assumptions unsupported by "an adequate basis in fact."
- b. Invert statutory burden of "demonstrating" capacity by imposing burden of demonstrating lack of capacity.
- c. Use projected yields that are based on an "adequate basis in fact," as required by Goal 2 and the statutory requirement to "demonstrate" capacity for the "next 20 years."
- d. Ignore or minimize constraints and barriers identified in local records during updates.
  - a. Covenants, conditions and restrictions in deeds and plats.
  - b. Local code and plan provisions, including uses, criteria, overlays, policies, and procedures.
  - c. Gentrification, exclusion, and access to opportunity issues.
  - d. State, federal and local wetland, floodplain, tsunami zone issues, including unresolved delineations, buffer locations, hazard boundaries, etc.

e. Political and ownership issues.

2. Use a false “next-20-year” planning period that begins before and therefore ends less than 20 years after a HNA/BLI/UGB update is final and no longer subject to appeal.
3. Misallocate supplies in ways that do not align with HNAs by failing to align them with locational, price, rental, and housing type needs identified in HNAs pursuant to Goal 10 and Needed Housing statutes.
4. Fail to make goodness of fit with distributional and affordability requirements of Goal 10 and updated HNAs an important element in the Goal 14 factor balancing process for selecting lands to be added to Urban Growth Boundaries.
5. Fail to adjust projected yields to realistic levels in response to evidence and analysis placed in local records during updates.

### **3. Genuine next-20-year planning periods are key to defensible yield demonstrations:**

**Jon Chandler, Homebuilders**, testifying in 2001 on HB 2976 (March 19, 2001, House Water and Environment Committee):

“Back in 1995 we brought forward statutory 20 year land supply. Not a novel idea. We were trying to get at several issues.”

“We have amendments to clarify and provide guidance in that important task.”

“The term buildable land has been somewhat aggressively interpreted to include things like steep slopes, flood plains, infill. Infill is either tearing down and rebuilding and increasing density. Infill and redevelopment. That can aggravate neighbors something fierce. What we are trying to get at here is that you can count infill and redevelopment, but it has to be somewhat realistic to what has occurred and what is likely to occur in that jurisdiction.”

“Second large area that we are discussing in this bill is about what assumptions they can make. Talking here about sideboards of assumptions they can make. We are talking here about the concept of density. We support UGBs, but they are sometimes overstated. They are a good planning tool. Not the end of the land use process. What we have seen too often is that the motivating force seems to be nonmovement of the boundary, not the provision of affordable housing, economic development, etc. within the boundary.”

“From our standpoint that is a distortion not only of Oregon land use law but of good public policy. The idea is to maintain vibrant communities, economically diverse communities, with a range of housing affordability and choices, and the movement of the boundary is part of that mix.”

“What we are trying to say in 2976 is that in making the analysis, a jurisdiction can assume greater performance. We are not trying to tie communities into the past. They can make assumptions, but that encouragement needs to be reined in a bit. It’s good to be artistic, but make sure you color on the paper, not on the walls.”

**Bob Rindy, DLCD, from 2009 DLCD Report<sup>1</sup>** to joint meeting of The Senate Environment and Natural Resources Committee and the House Agriculture, Natural Resources and Rural Communities Committee:

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<sup>1</sup> **A note on missing history:** DLCD’s 2009 history, which follows this note, omits any reference to the 2001 Legislature’s attempt to reinforce its 1995 statute’s codification of the 20-year planning period requirement. As proposed, HB 2976 specified that the 20-year period is supposed to begin at completion of an update, not backdated to sometime in the past.

“(2) At periodic review **pursuant to ORS 197.628 to 197.650 or at** any other legislative review of the urban growth boundary **that includes a determination of housing needs**, comprehensive plans or *[functional]* **regional** plans shall provide sufficient buildable lands within urban growth boundaries established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. **The 20-year period shall begin when the local government completes the periodic or legislative review.**

The House adopted this language, but the Senate added the following language, which looks innocent enough but has had significant consequences in practice:

“In line 8, after ‘shall’ delete the rest of the line and insert “commence on the date initially scheduled for completion of the”

This amendment (by the Senate Committee on Rules and Redistricting) has resulted in significant backsliding and backdating similar to that which both the 1995 and 2001 legislatures sought to remedy. It has also given opponents an inviting opportunity to shorten planning periods, reduce population forecasts, and frustrate meaningful BLI/HNA/LUEM/UGB updates through appeals and other means of delay. The combined effect has not been pretty.

- “The 20-year land supply requirement was derived primarily from Statewide planning Goal 14, adopted by LCDC in 1974. Goal 14 requires each city to establish an urban growth boundary (UGB) ‘to identify and separate urbanizable land from rural land ... [and to] accommodate long range urban population growth ... ’”
- “As cities began preparing land use plans to meet the goals in the late 1970’s, LCDC was asked to better-define vague Goal 14 terms, including ‘long range,’ and ‘sufficient land to ensure choices in the market place.’ LCDC interpreted the goals through review of local land use plans. By 1979, after a number of plan and UGB reviews, LCDC had established that these Goal 14 terms meant ‘a 20-year supply.’”
- “Other 1974 planning goals regarding land supply for housing (Goal 10), economic development (Goal 9), and transportation and public facility planning (Goals 11 and 12) also contributed to LCDC’s determination of a standardized 20-year planning period.”
- “An adopted Goal 14 advisory “Guideline” recommending that ‘plans should designate sufficient amounts of urbanizable land to accommodate the need for future urban expansion, taking into account ... population needs (by the year 2000)’ is also

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A key example is Bend, which began its update in 2004 and initially scheduled it for completion in 2008, giving it four years to complete a 2008-2028 update. That schedule was consistent with the lead time DLCD/LCDC gave cities in adopting their original 20-year UGBs. In the event, however, Bend did not complete its update until 2016. The result was a 12-year HNA, BLI, and UGB for the state’s fastest-growing and least affordable large city.

I co-chaired the city’s Residential Lands Technical Advisory Committee from 2014-2016, and saw how a truncated planning period with a truncated population projection and a truncated BLI only increased heightened competition for insufficient land supplies. Bend is now down to a three-year BLI/HNA/UGB, with ever-increasing pressure on workers, rents, prices, neighboring communities, and the roads connecting them. That shortfall has been only slightly tempered by legislative interventions that should not have been necessary with a genuine next-20-year planning horizon. Which is to say, a UGB update process that works.

cited in LCDC staff reports and orders issued around 1979 in support of the 20 year interpretation, especially an order regarding the proposed Eugene-Springfield UGB.”

- “A widely distributed 1979 LCDC document providing advice to local governments regarding Goal 14, ‘Common Questions on Urban Development,’ asserts that: ‘The plan will include an approximate 20-year supply of buildable land within the urban growth boundary.’
- “In a September 1979 City of Newberg UGB review, LCDC rejected the inclusion of ‘surplus land’ beyond 20 years. In affirming that decision, the Court of Appeals cited key portions of the related LCDC report, which declared:

“This Commission has not previously interpreted Goal 14 as allowing a vacant land ‘surplus’ of any kind, Rather, this Commission has interpreted Goal 14 as providing for an initial 20 year vacant land supply sufficient to accomplish all urban land requirements of the Goals – one of which is to avoid economically disruptive, artificial land scarcities and adverse escalation in urban and urbanizable land prices.” (Williamson v. Yamhill Co, 3 LCDC 353, 359 (1980)).

- “In a 1982 compilation of LCDC precedent and case law, the Oregon State Bar’s ‘Continuing Legal Education’ series outlines additional history of the 20-year requirement, including LCDC interpretations beginning in 1978 derived from Goals 9, 10 and 14 regarding long term housing, industrial and commercial needs, as well as consideration of needs for schools, transportation, parks and open space. That compilation also refers to the [1974] Goal 14 guideline reference of “the year 2000” as a basis for the “20-year” interpretation.”
- “The amount of land was not considered separately from critical policy issues regarding the ‘efficient use of land’ (also required under Goal 14). Land supply cannot be evaluated without simultaneous consideration of efficient land use patterns, for housing, industrial and commercial uses, as well as for transportation and other infrastructure.”

“By the time all land use plans and UGBs were approved (“acknowledged”) in 1985, the “20-year supply” interpretation was well-established by LCDC precedent and had been affirmed by many court opinions issued in review of LCDC’s interpretation.”

- “Formal reference of the words ‘20-year supply’ were not provided in statute until 1995, when ORS 197.296 was enacted with several references to a “20 year supply”, including a provision declaring that

“At periodic review ... or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years.”

- “A related 1997 statute, ORS 197,299 specified deadlines for Metro “to accommodate a 20-year buildable land supply” in the regional UGB.”
- “In 2006, LCDC amended Goal 14 to specify that urban growth boundaries shall be based on ‘Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments.’
- In 2006, LCDC also adopted a Goal 14 interpretive administrative rule, OAR 660, division 24, that clearly specified ‘the UGB must be based on the adopted 20-year population forecast for the urban area ... and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period ...’”
- “In 2009, LCDC amended OAR 660, division 24, to clarify that ‘The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.’”

“2. What was the purpose of this policy – what was the state trying to accomplish?

- “It is clear by the documents referenced above (and others) that LCDC’s establishment of a more precise “planning period”, including a policy specifying the appropriate “land supply” for UGBs, was necessary in order for local governments to adopt local land use plans in response to Goal 14 and other land use Goals.”
- “LCDC’s choice of “20 years” as the necessary planning period was based on consideration of several interrelated land use policy questions, including:
  1. The interpretation or policy choice made by various local governments in land use plans submitted to LCDC for acknowledgment review.

2. Consideration of usual or standard planning practices at the time, in Oregon and elsewhere, including widespread use of 20-year population forecasts;
  3. Concern about the potential for oversupply of land in UGBs, which could increase urban sprawl, unnecessary loss of farm and forest resource land, and ineffective measures to achieve transportation and public facility efficiencies;
  4. Concern about having an enough land in order for the land markets to function inside UGBs without unreasonable increases in housing cost;
  5. The need for an adequate supply of industrial and other “employment” land to ensure local job growth and economic development;
  6. Standard accepted planning practices at the time regarding reasonable time horizons for population forecasting, including forecasts used for near-term and long-term transportation and public facility planning.
- “Establishment of the 20-year UGB land supply was in response to concern about ‘too much’ land supply AND simultaneous concern about the detrimental effects of ‘not enough’ land supply. In the latter case, concern included the detrimental effects on housing affordability, as well as spillover effects on neighboring jurisdictions or nearby rural areas:
    1. Concern about the effects of an overly restrictive land supply is mentioned in a 1978 Court of Appeals opinion regarding the City of Beaverton: “A decision by one city to limit or prohibit growth within its boundaries can cause a spillover effect of increased development in adjacent areas which may be unable to accommodate it.”
    2. In a 1978 continuance order for the City of Aumsville, LCDC indicated that “growth not allowed in the city might result in added pressure for residential development in rural areas of the county.”
  - “An important related policy discussion during the same time period concerned housing affordability and adequate land for ‘housing needs’ under Goal 10. This ultimately led to a parallel determination that sufficient land supply was critical under Goal 10. In general, a 20 year supply was determined to be a reasonable standard. Drawing on LCDC Goal 10 interpretations beginning about 1979 regarding adequate land supply for various housing types, a 1981 state law established that
 

“When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts with sufficient buildable land to satisfy that need.”



- “Equally important, land supply policy cannot be separated from policies intended to improve land use efficiency inside UGBs. Urban sprawl can and does occur inside UGBs as well as outside. Transportation and public facility efficiency is not simply a function of land supply, and to the extent those efficiencies are more and more important, we should not be focusing on land supply alone as we continuously evaluate the effectiveness of Oregon land use policy. A fundamental requirement of Goal 14 is that local governments must demonstrate they have taken steps to increase the efficient use of land inside a UGB in before they are allowed to expand the UGB. Using land efficiently not only effectively increases land supply without UGB expansion, it also reduces costs for public facilities and transportation infrastructure.”

- “Finally, when considering UGB policy, we cannot ignore the spillover effects of UGBs established around large urban centers on nearby smaller cities occupying the same commute-shed. These effects are not limited to unanticipated growth rates for nearby cities, such as increased growth in smaller cities near Salem or Eugene. UGBs and related planning policies adopted by large cities also affect inter-city transportation systems. ODOT studies demonstrate a considerable percentage of automobile trips in various regions are to and from cities outside of major urban centers. As such, for example, targets for automobile greenhouse gas reduction cannot be achieved if we focus only on the land-supply policies of individual cities rather than land-supply policies of large urban centers AND the interconnected cities surrounding those centers.”

## **Goal 10 locational equity issues**

I continue to be concerned that the importance of assuring access to areas of opportunity is being given far too little weight in relation to other priorities, especially given Oregon’s deep history of exclusion and ghettoization. Relabeling urban areas to which unfavored populations have been confined as areas of opportunity is, to put it mildly, not remotely sufficient to demonstrate compliance with Oregon’s statewide housing goal, needed housing statutes, and fair housing laws. This deserves a more in-depth treatment, which I will try to provide before the next meeting.

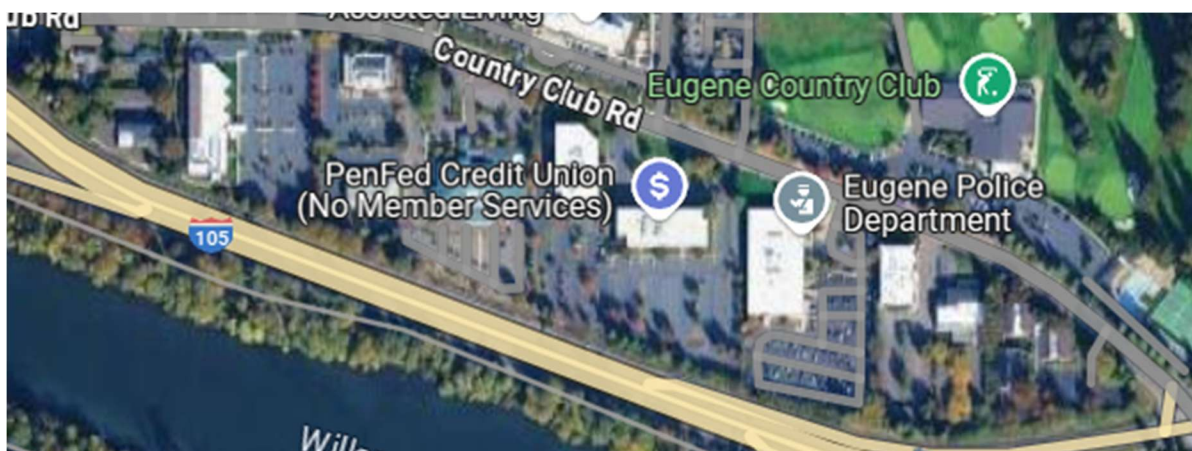
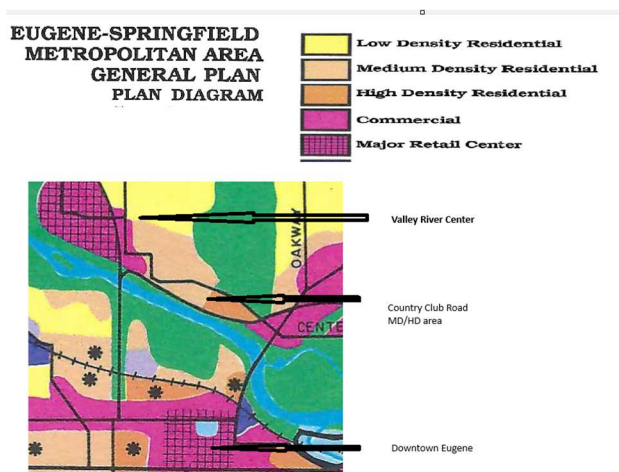
What follows are a couple of examples of how poor mixed-use draftsmanship and understated long-term land needs have resulted in significant losses to long-term buildable residential lands in Eugene and Springfield.

See you all next time, grandkids permitting.

## Case studies:

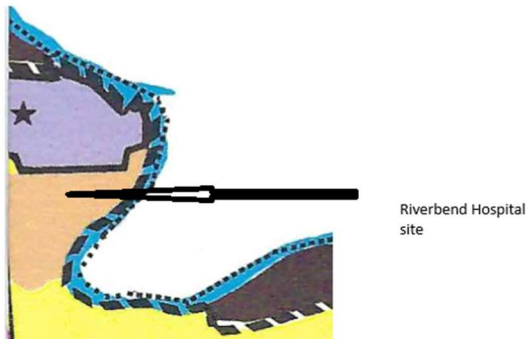
### Commercial v. Residential in Mixed Use Zones

A substantial part of Eugene's medium and high residential lands inventory is shown below on the 1980 Eugene-Springfield Metro Plan diagram. The area is centrally located and well-served. Shortly after the Metro Plan was acknowledged, the city amended its code to allow professional offices as a permitted use in its MD and HD zones. The area quickly built out with office buildings, as shown in the photo below. Not a single apartment building ever went up. The Metro Plan was subsequently amended to recognize the *fait accompli* and redesignate the entire area as commercial.



## How unreplenished BLIs expose urban residential lands to competing uses:

Riverbend Hospital site was designated Medium Density Residential (MDR) on Metro Plan.



Site was redesignated to allow Regional Hospital and Medical Offices based on a surplus in 20-year MDR supply.



As explained by the hospital's planning consultant,

“The PeaceHealth proposal contains provisions for sufficient residential housing to retain the existing and projected metropolitan housing surplus. Mr. Radabaugh’s suggestion that the proposal results in “a significant reduction of needed housing in an MDR designation” simply does not comport with the fact that a housing surplus will remain. PeaceHealth is under no obligation to maintain precisely the existing Metro Plan inventory, nor is the City obligated to provide an analysis on “maintaining” the existing inventory. **The threshold is to ensure that the proposal does not cause a deficit in the inventory** such that the City is no longer in compliance with Goal 10.”