October 21, 2025

Land Conservation and Development Commission
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Ste. 150
Salem, OR 97301

Dear Land Conservation and Development Commission Members,

The Association of Oregon Counties (AOC) and League of Oregon Cities (LOC) appreciate the opportunity to provide input on the Department's *Oregon Housing Needs Analysis Proposed Draft Rules*. Local governments are the state's partners in this work and are focused on ensuring our communities can continue to grow and prosper.

Overall, AOC and LOC have concerns about the direction this RAC has gone and the draft rules that are being proposed. Both AOC and LOC, as well as our members, have seats on the RAC. Because of this, we appreciate some aspects of these proposed rules, however the rules overall are moving in a direction of statewide control with local control being stripped away.

We share the goal of increasing housing production, affordability, and choice, but believe the draft rules are more prescriptive about process than focusing on achieving this shared outcome.

Below are comments regarding sections of the draft OHNA rules with ways we believe could fix the issue.

Major Statutory Oversteps:

1. **Model Codes**

A. Requirement to adopt

In an attempt to be compliant with SB 1564(2024), DLCD added the draft model codes for cities to the OHNA rulemaking.

SB 1564 states: "*On or before January 1, 2026, the Land Conservation and Development Commission shall adopt three model ordinances providing clear and objective standards for the development of various housing types within an urban growth boundary, including single-family detached housing, middle housing, as defined in ORS 197A.420, accessory dwelling units, as defined in ORS 197A.425, and multifamily housing, that* ***may be readily adopted*** *by a local government in compliance with the requirements of ORS 197.610*." (emphasis added).

DLCD is proposing two sets of model codes for local jurisdictions to use.[1] In both of these documents however, DLCD states:

> *1. Except as provided in subsection (2), below, in the event of a conflict between this Model Code and other development and design standards applicable to regulated housing, the standards of this Model Code control.*
>
> *2. If a locally adopted land use development standard conflicts with this Model Code but it would allow the development of more housing (additional square footage and/or units), an applicant may comply with either the standard in this Model Code or the locally adopted standard.*

As you can see, the model code **requires** cities of all sizes to adopt what DLCD has written regardless as to whether the local jurisdiction has ordinances currently in place.

SB 1564 did not require a local government to adopt the model codes by DLCD, but was intended to give one more option for the local government if it had the desire to adopt. It "may be readily adopted." The SMS provided to the Legislature during the 2024 session confirms this optional approach: "The measure directs the Land Conservation and Development Commission (LCDC) to adopt model ordinances that cities may use in order to implement housing-related statewide land use planning goals."

PROPOSED SOLUTION FOR MANDATORY ADOPTION: If the model codes move forward, Division 660-008-0200 (3)(A) and (3)(B) should be changed to a 'may' instead of 'must' as this would be in line with SB 1564 as adopted by the Legislature.

B. Rebuttable Presumption

Local governments have also shared concerns regarding the impact of requiring these model codes during the Housing Production Strategy process, and using the

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[1] Draft Housing Model Code for Small Cities
Draft Housing Model Code for Medium and Large Cities

compliance pathway of Rebuttable Presumption that a local development standard has with being just as permissible is not only onerous to the local government but also appears to create a burden on said local jurisdiction.

The proposed language in the model code for determining which code (model or local) prevails as written appears to leave full discretion to DLCD staff. But without more direction on how a local jurisdiction could successfully demonstrate compliance under the alternative compliance pathway, this would be better suited as a safe harbor. The same is also true for the rebuttable presumption regarding the model code for middle housing.

LUBA gives deference to locally created and adopted code in proceedings, a DLCD model code does not meet that standard, as it is not locally created, and will leave adopting jurisdictions more vulnerable to legal challenges. While a jurisdiction may decide that they wish to adopt the model code and that they are fine with the legal risk, that legal risk should not be forced upon them.

Furthermore, the assumption these model codes will provide better outcomes without on the ground review of the results or data on which to evaluate the model code is problematic. Cities have already implemented middle housing codes across the state, many of which are already resulting measurable results, new middle housing units across communities will throw this data collection and ability to provide measurable results into flux. There is not any documented evidence that the proposed model codes will produce more housing, better affordability, or stronger fair housing outcomes. Since local jurisdictions will be required to defend their codes during the rebuttal presumption process, jurisdictions are concerned with the likelihood of increased administrative, legal, and financial risk.

PROPOSED SOLUTION FOR REBUTTAL PRESUMPTION:

1. Model codes need to be clear in the guidance documents that support said code implementation. These documents need to specify how the local government is to measure the different impacts between the model code and local code.

2. Language should be added to the draft model code and OHNA rules that states a comparative analysis conducted by the land use consultant would be accepted as a safe harbor provision for determining which (model code or local code ordinance) prevails.

C. Lack of Clear and Objective

The proposed rule language is not clear and objective and most of the draft rules are overly complex to interpret, which leaves local jurisdictions vulnerable to legal challenges**.**

This is particularly an issue because residential standards at the local level are required to be clear and objective. The lack of objectivity in rule language and difficulties with interpretation will cause jurisdictions to implement the rules differently. It will leave local governments vulnerable to legal challenges, which absorb money and capacity. It will also leave well-intended jurisdictions vulnerable to HAPO enforcement. Already, local jurisdictions are increasingly looking to DLCD and HAPO for support on how to interpret and implement recent land use changes, but DLCD and HAPO cannot provide sufficient guidance or legal protection.

a. Example 1: **660-008-0005** *"Housing type" means a category of housing distinguished by its physical form and underlying parcel of land*. (This definition was switched from aligning with the definition of needed housing types, which are clear and objective).

b. Example 2: **660-008-0325 (6)(a)(B)(ii):** *Non-adoption of applicable incentives in OAR 660-008-0200(3) or incentives that are of commensurate in impact.* (Local jurisdictions find this language to be unclear as OAR 660-008-0200(3) does not discuss incentives. Also, questions have arisen if a city cannot afford to provide additional incentives).

a. Example 3: **660-008-0330 (3)(a)(G)** "*All actions that have not been completed on schedule or replacement actions that meet the same need and have commensurate or greater magnitude of impact"* (greater magnitude of impact is not clear and objective and will be problematic for local jurisdictions to identify magnitudes of impact).

PROPOSED SOLUTION FOR DRAFT LANGUAGE: DLCD staff should rewrite the model codes to ensure the language the local government chooses to adopt is both clear and objective.

D. **Unrealistic data collection and evaluation expectations.** Jurisdictions requested assistance with data collection as it is overly burdensome under the current proposed rules. Instead of listening to this request, the list of mandated data sources to be used has ballooned beyond what is reasonably beyond capacity.

a. Example 1: **660-008-0075 Contextualized Housing Need**, lists 18 data sources to be used to evaluate housing needed.

PROPOSED SOLUTION TO DATA COLLECTION: Provide assistance to the local jurisdiction on the types of data that is necessary, simply requiring additional data sources to be used does not solve this problem.

2. Urban Reserves

The issue local governments have with the proposed OHNA rules as they pertain to Urban Reserves are twofold.

1. The proposed rules fail to implement the legislative direction of OHNA to reduce analytical burden, minimize procedural redundancy and increase legal certainty for local governments. See HB 2001 §9(2)(c).
2. The proposed rules weaken the effectiveness of urban reserves for housing planning and transform a vital urban planning tool into another Goal 3 farmland preservation rule.

Our hope, upon the passage of SB 1537 (2023) and SB 1129 (2025) was that there would be a recognition from the Department that urban reserves are an important long term planning tool that we need to make easier for local jurisdictions to adopt – not more difficult.

Unfortunately, the proposed rules exacerbate existing issues with the rules and dilute the effectiveness of this planning tool.

a. Example 1: **OAR 660-021-0030(3)** expands the number of categories in the priority framework for urban reserve designation, increasing the analytical burden on local governments rather than streamlining it, which is inconsistent with legislative intent.
b. Example 2: **OAR 660-021-0060(2)** imposes a new threshold requiring 80% of existing urban reserve lands to be brought into the UGB before new lands can be added to the urban reserve. This is inconsistent with ORS 197A.245, as it ensures that new urban reserves will not be established given the impossibilities created by the prioritization rule.

These two issues together remove any sort of incentive for a jurisdiction to adopt urban reserves and make them even more technically burdensome, which is contrary to the legislature's intent when passing HB 2001. As drafted, the proposed rules serve to further restrict local flexibility without advancing housing production.

Furthermore, Section 2 of SB 1129 (2025) which tasked the Department with making changes to the Urban Reserve rules states:

> *On or before January 1, 2026, the Land Conservation and Development Commission shall amend its rules related to the prioritization of lands being added to an urban reserve in order to allow local governments to: (1) Give a lower priority to the inclusion of lands within an exception area approved under ORS 197.732 or nonresource lands containing planned developments or subdivisions compared to other nonresource lands or lands within an exception area. (2) Give a lower priority to the inclusion of otherwise higher priority land where providing urban services, as defined in ORS 195.065, is not reasonable or cost effective due to topographical or other physical constraints.*

OAR 660-021-0060 (2) places the 80% requirement in rule.

> *(2) At least eighty percent of land from the original acknowledged urban reserve area or previous expansion areas of an urban reserve must be included in the urban growth boundary before the inclusion of subsequent urban reserve areas from more recent amendments to the urban reserve.*

For DLCD to place a requirement of 80% of the land from the original urban reserve area or previous expansion to be used in an urban growth boundary before any additional land is set aside, far exceeds the statutory authority given in SB 1129 (2025).

PROPOSED SOLUTION FOR URBAN RESERVES:

a. Local governments respectfully request that if urban reserves are going to be included in the OHNA rules, they simply mirror the already statutorily directed process found in ORS 197A.245(6).

> (1) Urban reserves shall include an amount of land estimated to be at least a 20-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land.
>
> (2) Inclusion of land within an urban reserve shall be based upon the factors described under ORS 197A.245(6) and locational factors of Goal 14. Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan Area Urban Growth Boundary, shall first study lands adjacent to, or nearby, the urban growth boundary for suitability for inclusion within urban reserves, as measured by the factors and criteria set forth under ORS

197A.245(6) and subsection (3) of this section. Local governments shall then designate, for inclusion within urban reserves, the amount of suitable land necessary to ensure an adequate supply of developable land as described in subsection (1) of this section.

(3) Land shall be found to be suitable for inclusion in an urban reserve if the land:

(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;

(b) Includes sufficient development capacity to support a healthy urban economy;

(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;

(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;

(e) Can be designed to preserve and enhance natural ecological systems;

(f) Includes sufficient land suitable for a range of housing types.

(4) Findings and conclusions concerning the results of the consideration required by this rule shall be adopted by the affected jurisdictions.

b. Remove (2) from OAR 660-021-0060 in its entirety.

3. **Urban Growth Boundaries**

The issues mentioned above have also permeated the proposed Division 24 rules for land swaps, found in OAR 660-024-0070(3)(b). Jurisdictions currently use land swaps to promote growth, correct past planning mistakes, and respond to real-world development needs. Unfortunately, the proposed changes to Division 24 appear to eliminate or severely limit existing opportunities to use land swaps to meet residential, employment, and industrial needs.

The proposed rules also unnecessarily complicate the land swap process by imposing excessive emphasis on increasing housing density. See **OAR 660-024-0070(3) and (4).**

Read together, the rules make this far more complicated and difficult to understand, which is counter to the statutory direction of OHNA. Local governments increasingly rely on land swaps because the traditional UGB expansion process is dysfunctional, slow, costly, and often unworkable. In many cases, land is added to the boundary with

the expectation it will develop, but real-world conditions make that impossible. Market realities frequently clash with mandated density targets or infrastructure standards, leaving land undeveloped and communities stuck.

Local governments are directed to zone their buildable lands based on their needed housing type mix. As a result, if the local government removes lower density land from their UGB and replaces it with higher density lands, they now have a deficit of lower density lands to meet those housing needs.

The proposed rules ignore these challenges and instead continue to force jurisdictions to pursue planning decisions that don't make economic sense. This not only delays development, but it also actively undermines their progress toward OHNA goals. It is unclear to us why the Department has taken this approach – again, there is no statutory direction (or policy reason) to make these tools harder for jurisdictions to use. As drafted, these rules make it more difficult to plan for housing and employment needs together. By layering on more restrictions, DLCD demonstrates a fundamental misunderstanding of how and why local governments make growth decisions.

Proposed SOLUTION FOR URBAN GROWTH BOUNDARY:

a. **OAR 660-024-0070 (3)(a)** – remove "or estimated capacity."
b. **OAR 660-024-0070 (3)(b)** – remove "or higher"

4. **Housing Type Mix**

Under Division 8, DLCD creates a rebuttable presumption that all jurisdictions must plan for the Metro region's housing type mix, referenced in **OAR 660-008-0075(6).**

> *(a) Needed multi-unit housing identified as at least 40 percent of the city's housing production target and allocated housing need,*
>
> *(b) Needed middle housing identified as at least 20 percent of the city's housing production target and allocated housing need,*

The point of OHNA is to allow a region's housing needs to be planned accordingly, a blanket proportion based off the Metro region is contrary to the purpose. Cities are required to create a Contextualized Housing Needs (CHN) analysis, that or a regional proportion is much more consistent with the original conception of OHNA. Additionally, the rules do not provide a methodology for how a jurisdiction would need to rebut this standard, nor an objective process for staff to confirm whether the analysis is sufficient.

PROPOSED SOLUTION FOR HOUSING TYPE MIX: Local governments respectfully request that the "housing type mix" be established on a regional or local basis. Either based on a jurisdiction's CHN or a regional analysis available to DLCD.

5. **Minimum Standard for Homeownership**

HB 2698 (2025) does not direct DLCD, nor provide legislative authority, to integrate the statewide homeownership targets into the OHNA rules. Within OHNA rule (**OAR 660-008-0320**) there is an added income level mix not included in the original bill, creating a minimum standard that cities plan for homeownership at 0-30% AMI, 30-60% AMI, 60-80% AMI, and 80% AMI and above. Our members fully support promoting homeownership in Oregon, we have one of the lowest homeownership rates in the country. The expectation that cities help promote homeownership for those 0-30% AMI is unrealistic, while admirable, even for non-profits whose whole goal is giving low-income Oregonians access to homeownership is difficult even for those 60-80% AMI.

PROPOSED SOLUTION FOR MINIMUM STANDARD FOR HOMEOWNERSHIP: Local governments respectfully request that the income targets be removed. It would be more appropriate to create rules designed to address racial disparities in homeownership within the bounds of federal fair housing laws.

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