



September 25, 2018

BY EMAIL

Oregon Land Conservation and Development Commission
c/o Jim Rue, Director
635 Capitol St. NE
Salem, OR 97301-2540

Re: Continued Discussion on Land Use Planning For Housing And Goal 10

Dear Commissioners:

Housing Land Advocates ("HLA") is a nonprofit organization with the purpose of ensuring that Oregon's state, regional, and local land use authorities meet their obligations under Oregon's statewide housing goal and needed housing statutes. LCDC started a conversation at its last meeting about Goal 10 but did not reach out to HLA or other stakeholders around the discussion. HLA anticipated a continued conversation in September, but did not see an item on the agenda. HLA writes to urge LCDC to continue the conversation to allow all interested parties to participate in problem-solving around planning for needed housing. HLA looks forward to being a part of what it hopes is a continuing, in-depth effort by the Commission and its staff to fully understand and forcefully implement Goal 10 with the same vigor and commitment that they have shown with respect to other statewide goals.

Our particular concern is that all Oregon cities and counties establish and maintain required supplies of properly planned and zoned lands to fulfill the promise of Goal 10 and our Needed Housing Statutes. That promise, as LCDC is aware, is to ensure the availability of such lands for all types of needed housing for all Oregonians at price ranges and rent levels they can afford and that there be flexibility in terms of location, type and density.

Notwithstanding the fact that these obligations, as supplemented by legislative action, have been on the books for nearly 45 years, too many state and local land use authorities (at times including this Commission) have regarded these mandates as aspirational, unrealistic, secondary, or all three. That has to change. We are encouraged to see signs of such change at some local governments, at DLCD/LCDC, at LUBA, at the Governor's office, and in the Oregon legislature, as outlined for you last month by Gordon Howard.

There is no more important policy topic before you. The current housing crisis increases the urgency of a response by the Commission that is as bold and strong as that of the Commission's first generation of commissioners, including several co-authors of Goal 10 and the other statewide land use goals. Unfortunately, that original momentum faded with the next recession and has yet to be fully regained. Unlike the early Commission, LCDC now has additional tools provided by the Oregon legislature through the Needed Housing Statutes, first

adopted in the early 1980s and frequently supplemented since then. HLA is here to help make sure those tools are used to their full potential.

In its July 19, 2018 memorandum, DLCD staff generally set out the process for assessing and meeting state housing obligations. The Housing Needs Analysis (HNA) and Buildable Lands Inventory (BLI), and their role in shaping subsequent policy choices are necessary elements in dealing with these obligations. But these elements too seldom result in effective implementation through plan and code changes. Too often, efficiency measures, density increases, and additions to urban growth areas add to land supplies that are realistically available only for high-end housing that fails to address the needs identified in oftentimes excellent Housing Needs Analyses.

HLA believes there is enormous room for improvement here. Oregon's current set of needed housing statutes, together with the LCDC's Housing Goal and rule, properly enforced, can bring about a much better fit between identified needs and improved buildable lands inventories. Tightening that fit should be a focus of PAPA reviews and comments, participation in LUBA appeals, enforcement efforts, rulemaking, requiring updated Housing Needs Analyses, grant funding, and technical assistance. For its part, HLA will continue to make the realization of Goal 10's focus on actual availability and actual affordability a focus of its efforts.

Since the last local government plan was acknowledged in 1986, the Department and Commission have been relatively minor players regarding Goal 10. We know LCDC and current DLCD staff are ready to see that change. Last month's presentation and discussion are a good start. Here are a few comments moving forward.

The staff memorandum lists four primary state contact points for Goal 10 application at the local level.

The first point, technical assistance, is difficult to assess. Field representatives are spread too thinly and, in our experience, are unwilling to do much more than provide toolkits to local governments. However, local governments are often more interested in approving the latest plan amendment or zone change proposed by an individual developer without regard to housing consequences, much less application of a "toolkit." Maybe the funds appropriated in the current biennial budget will lead to a different result, but we think much more is needed.

The second point is regulatory application. As you know, for too many years, there has been virtually no periodic review obligation and local governments feel no obligation (especially in view of the lack of state funding) to update their acknowledged plans, some of which date from the 1980s. That has to change.

As to the third point, post-acknowledgement plan amendments (PAPAs), DLCD's memorandum notes that DLCD receives proposed amendments and can comment, and even

appeal, the same.¹ The sad fact, however, is that there has almost never been a DLCD appeal of a local government PAPA on Goal 10 grounds. The one exception that comes to mind was the Department's filing of a brief, twenty years ago, in a case involving the exclusion of mobile home parks from the City of Creswell. That Department brief was effective in enforcing the regional housing obligations of cities outside of Metro. See *Creswell Court LLC v. City of Creswell*, 35 Or LUBA 234 (1998). HLA would very much like to see more such briefs more often, and we would like to see the Department's Goal 10 PAPA comments increase from seldom to frequent.

The fourth point is the enforcement order process. HLA is pleased and encouraged to see that the Commission acted decisively and correctly in the Corvallis case. HLA would be delighted to see, during your terms, on your watch, the first-ever Commission-initiated enforcement under Goal 10.

Because of the near-abdication of official oversight over the years, it has fallen upon organizations such as our own or 1000 Friends of Oregon or on private groups, such as Homebuilder Associations, to take action to assure housing obligations are met. As a result, the leading cases and controlling precedents on group homes, accessory dwelling units, and use of clear and objective conditions come mainly from LUBA, not from DLCD or LCDC. With one exception, which involved watering down LUBA's straightforward and forceful interpretation of a term in DLCD's housing rule, the Commission has never updated its housing interpretive rules. Contrary to a 1982 statute requiring the Commission to follow statutory goal making and rulemaking procedures, the Commission hasn't even adopted its 1997 residential lands housing needs analysis guidebook as a rule. That, of course, makes it useless as a source of meaningful guidance to local governments, LUBA, the courts, and, indeed, to you.

There are some modest steps that can be taken to move the housing needle.

First, the Department should comment on all PAPAs dealing with housing and those comments should refer to the obligation to measure the housing impacts in terms of the local governments HNA and BLI.

Second, the Department should identify certain Goal 10 violations in a PAPA to appeal. There is a rich supply of candidates. 1000 Friends of Oregon, the Homebuilders, and others have demonstrated the effectiveness of strategic litigation. Department oversight is especially important today, since many local governments have adopted local appeal fee schedules that put such appeals out of reach for most individuals and advocacy organizations.

¹ DLCD staff is well-aware of a joint Fair Housing Council of Oregon (FHCO) and Housing Land Advocates PAPA project. The project has reviewed hundreds of PAPAs over many years, and comments on a significant number of those PAPAs that fail to make Goal 10 findings or apply HNAs and BLIs to those decisions. As recently as July 11, 2018, FHCO and HLA received a response back from the City of Lebanon planning staff that DLCD staff had no problem with three individual zone change requests even though those reviews did not assess the HNA or BLI under the Goal 10 findings. LCDC is failing on Goal 10 by not even attempting to raise the bar, and relying instead on FHCO and HLA to continue to try consciousness raising, coupled with the occasional LUBA appeal.

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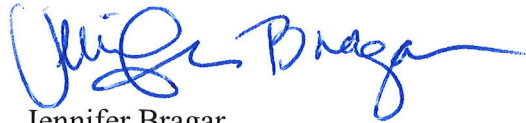
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Third, the state must require that HNAs and BLIs be updated on a periodic basis, even in the absence of a periodic review obligation. Once updated, these analyses and inventories need to be adopted as part of the local government's comprehensive plan.

HLA sincerely hopes that the Commission will take up the challenge of Goal 10, which is to provide housing that makes Oregon "livable" for all Oregonians in all parts of our state, from Metropolitan Portland to Brookings, from Medford to Ontario, and from Bend to Enterprise. Please don't settle for a few chats with stakeholders, followed by a few bromides about the need to do something about housing, about how very complicated it all is, and how land use is only part of the problem. It is complicated and it isn't going to solve all of a complicated problem, but Goal 10 can be an important part of the solution, if LCDC chooses to make it so. The choice is yours.

Sincerely,



Jennifer Bragar
President

cc: Gordon Howard (by e-mail)
Kevin Young (by e-mail)
LCDC Commissioners (by e-mail)