

To: Representative Maxine Dexter, Chair, and Members
House Committee on Housing and Homelessness
From: Al Johnson
Retired land use attorneyⁱ
Re: House Bill 2889
February 16, 2023, committee hearing
Date: February 16, 2023

Greetings, Co-Chairs and Subcommittee Members:

The dash-1 amendments are a definite improvement. I am writing this in haste and hope there is another opportunity to comment after people have had a chance to review them in depth. I write today to support in particular the need to improve accountability and coordination at the state level.

I am especially concerned that lack of coordination with the Division of State Lands currently inflates 20-year buildable lands inventories. DSL's requirement that it be notified whenever an application is filed involving land with hydric soils so that a wetland determination can be made before proceeding, combined with DLCD's narrow reading of the statutory needed housing methodology, means that 20-year housing supplies currently include thousands of acres that are subject to state wetland determination standards and procedures that are not clear and objective and permanently take many of those acres off the table for residential development.

I am also concerned that DLCD doesn't have a performance standard that comes anywhere close to telling the public or their representatives just how well it is doing in meeting statutory housing capacity metrics.

DLCD's current "Key Performance Measure (KPM)" is worded as follows:

"HOUSING LAND SUPPLY – Percent of cities that have an adequate supply of buildable residential land to meet housing needs.

DLCD's latest report to the Legislature explains that

"This measure tracks the percentage of cities with a population over 10,000 that have completed a major update of their local land use plans in order to provide a 20-year supply of buildable residential land within the city's urban growth boundary (UGB). Planning and zoning a sufficient amount of land, based on up-to-date housing needs analysis . . . helps assure that enough land is available for construction of new housing at various price ranges and rent levels in these communities. . . "

DLCD Annual Performance Progress Report, Reporting Year 2022 (Jan 11, 2023).

DLCD's methodology is inconsistent with the legislature's statutory definition of adequacy. ORS 197.296 requires, among other things, that Oregon's cities, counties, and regions "demonstrate," using a statutorily-prescribed methodology, that they have planned and zoned "sufficient buildable lands" within their urban growth boundaries "to accommodate estimated housing needs for 20 years."

The statutory methodology speaks repeatedly of "**the next 20 years.**" It defines the applicable the 20-year period as "commencing on the date initially scheduled for completion" of the review. That forward-looking language, added by the legislature 20 years ago, has not solved the problem because jurisdictions too frequently fail to complete by "the date initially scheduled," and DLCD has apparently not pushed them to be more realistic about time to completion.

DLCD's metric tells us nothing about how many, if any, of the cities that it counts as having an "adequate" supply of residential lands meets or approaches this standard today--or ever did.

My own experience over the decades has been that few, if any, cities have anything approaching a true "next 20-year" supply of buildable lands. There are a number of reasons for this, some more complex than others. The least complex is failing to assure that the "next 20 years" doesn't include 5 or 10 of the last 20 years.

Bend, where I co-chaired the residential lands task force from 2014-2016, commenced an update in 2004. Bend missed its 2008 initial completion date, had its update remanded by LCDC in 2010, and finally completed its "next-20-year" update in 2016. That gave Bend a 12-year land supply, ending in 2028. It is now 2023. Bend's nominal "next-20-year" land supply is down to five years. Its actual supply is no doubt less.

Eugene, where I live now and where I lived from 1970-2000, scheduled its most recent update for completion in 2012 and didn't get it done until 2017. I believe it now has nine years left of a nominal 2012-2032 supply.

Meanwhile, Eugene and Bend are free to rezone for other uses any residential lands in excess of their approved supplies until they complete their next updates.

I expect that both cities are counted in the "mission accomplished" slice of DLCD's pie chart.

These major cuts in nominal 20-year land supplies are automatic. Opponents of density increases or UGB expansions don't have to win their appeals to win substantial reductions in urban land needs. Local governments don't have to set or meet realistic completion dates. Those dates are not deadlines. They are not enforceable. That bypass around the unmistakeable legislative intent expressed in your Needed Housing statutes needs to be closed, and I hope it will be, as part of another bill.

Thank you for your continuing commitment to fully realizing the vision of Oregon's 50-year-old statewide housing goal earlier than later in its second half-century.

ⁱ Statewide practice 1974-2010. Wide range of clients, public and private, for-profit and non-profit, residential, commercial, industrial, governmental. Several low-income housing projects approved over neighborhood opposition with help of Oregon's needed housing statutes and statewide housing goal.

Housing related volunteer work has continued since retirement, including:

- Co-chair, Bend Residential Lands Technical Advisory Committee, during 2014-201 BLI-HNA-UGB update.
- Member, Steering Committee, Wild Rivers Coast Alliance (focus on workforce housing inside coastal UGBs).
- Member, DLCD Regional Housing Needs Analysis (OHNA) advisory committee and Housing Capacity work group
- Alternate, DLCD Climate-Friendly and Equitable Communities rulemaking advisory committee.

Served as LCDC hearings official in 1970's. Drafted early LCDC statewide housing goal decisions including ***Seaman v Durham*** (explaining least cost, regional fair share requirements of Goal 10) and ***Kneebone v Ashland*** (restricting density reductions). Co-editor of Oregon State Bar Administrative Law handbook.

Represented prevailing party in leading cases enforcing Oregon's statewide housing and needed housing statutes, including:

- Opus v. Eugene*** (requiring cities to account for impacts of site review standards on housing inventories)
- Jaqua v. Springfield*** (limiting type and scale of nonresidential uses on urban residential lands)
- Creswell Court v Creswell*** (prohibiting city from excluding manufactured home parks without coordinating with nearby cities)
- Homebuilders/Eugene Chamber v Eugene*** (2002 Eugene code update (requiring cities to account for losses to residential lands inventories from amendments overlaying up to 200,000 density-reducing tree buffers on inventoried 20-year residential land supply).

