



February 8, 2023

Senator Jama, Chair
Senate Committee on Housing and Development
900 Court St. NE
Salem, OR 97301

RE: SB 1537

Chair Jama and members of the Senate Committee on Housing and Development:

The City of Hillsboro recognizes the housing crisis our community and communities across Oregon face. We appreciate and support Governor Kotek's ambitious goal to build 36,000 housing units per year in order to make progress on Oregon's chronic undersupply of needed housing, as well as the objectives of HB 2001 (2023). Our city is ready to partner with the state to that end. I also want to share our appreciation for the Governor's staff and the collaborative process throughout the interim to get to where we are today. As you know, these are highly complex issues, and Mr. Tschabold took the time to understand the issues and concerns of cities at large, and individual cities, related to policies and funding strategies that will result in increased housing production. Our testimony on SB 1537 is in the spirit of supporting the Governor's efforts and the efforts of the Legislative Assembly to pass policies and funding that will actually make a difference and result in increased housing production.

The City of Hillsboro would like to support SB 1537, but as written, we cannot yet take a position of support. Most sections of the legislation contain critical technical issues that need to be addressed. We are aware that technical amendments are in the works, and we hope those resolve most or all of the issues. There are major policy concerns with several key sections of the legislation that will prevent the policies from working as intended. In order to be successful, this committee, legislative leadership, and the Governor, must commit to addressing these policy issues. Otherwise, we will pass legislation that contains promising policy concepts but disappointing results for the production of needed housing.

The City of Hillsboro will associate ourselves with the League of Oregon Cities' testimony and will defer to their perspectives on the bulk of SB 1537 so our testimony can focus on a couple key policies that need to be fixed so we can be effective partners in meeting our state's housing goals.

Sections 49 through 59

These sections propose to allow a city like Hillsboro to add up to 150 net acres to the Metro Urban Growth Boundary (UGB) and cap the total UGB net acreage for the region at 600 net acres. 600 net acres is not a lot of land. For context, the South Hillsboro expansion area is approximately 1,700 acres, and when fully built out, will include approximately 8,000 housing units with average densities of 12 – 15 units per acres. Even at the higher mandatory minimum density of 17 units per net acre in SB 1537, adding 600 net acres to the Metro UGB is only going to result in a fraction of needed housing statewide.

Yet under SB 1537 as currently drafted, no city interested and able to use an expedited UGB process, including Hillsboro, is going to be able to meet the needs criteria outlined in Section 52 of the bill.

Section 52. A city may not add, or petition to add, a site under sections 49 to 59 of this 2024 Act, unless:

(1) The city has demonstrated a need for additional land based on the following factors:

(a)(A) The city has had no urban growth boundary expansions in the prior 20 years; and
Hillsboro has had two urban growth boundary expansions in the prior 20 years. We do not qualify under this criterion.

(B) The city does not have within its existing urban growth boundary an undeveloped, contiguous tract that is zoned for residential use that is larger than 20 acres; or

South Hillsboro is approximately 1/3 developed, or approximately 2,700 housing units built in the last five years, leaving contiguous tracts zoned residential larger than 20 acres that are anticipated to be future phases of development as infrastructure progresses through the area. We do not qualify under this criterion.

(b) Within urban growth boundary expansion areas adopted by the city over the previous 20 years, 75 percent of the lands are developed or development-ready lands; and

South Hillsboro is a large expansion area that was brought into the UGB in 2014 and started the process of annexing to the city in late 2015. As a result, the undeveloped portions impact our ability to meet the 75 percent threshold. Development-ready is undefined, but the definition in ORS 197A is too onerous, goes beyond factors that a city can control, and will negatively impact our ability to meet the 75 percent threshold. We appreciate the work the Governor's Office is doing to make this particular criterion workable and hope to see language in the technical amendment that allows us to meet the 75 percent threshold. As written, we do not qualify under this criterion.

(2) The city has demonstrated a need for affordable housing, based on having a greater percentage of extremely cost-burdened households than the average for this state based on data from the United States Department of Housing and Urban Development.

We read Section 52 to require us to meet (2) in order to qualify, and we do not qualify under this criterion. In order for us to qualify under Section 52, (1)(b) and (2) must be modified. The state average for extremely cost-burdened households is 14.35 percent. Hillsboro is at 10.2 percent. That is not a result of home prices or rents being lower, but rather that average incomes are higher given the concentration of advanced manufacturing jobs that result in higher average wages. Even with higher average wages and a lower percentage of extremely cost burdened residents, Hillsboro still has significant challenges with homelessness, housing insecurity, and is home to the second most impoverished urban census tract in the entire state, that is also considered a Racially or Ethnically Concentrated Area of Poverty by the U.S. Department of Housing and Urban Development (HUD). The HUD data and associated criteria in 52(2), therefore, is a poor metric of housing need. We strongly recommend pivoting from the HUD data and utilizing local Housing Needs Analysis (HNA) that are mandated under our planning system. Our HNA demonstrates that approximately 40 percent of our housing needs over the next 20 years are for housing units at 80 percent AMI and below.

In addition to the above issues, another major issue that needs to be addressed for sections 49 through 59 to function is the arbitrary mandatory density minimums that UGB expansions would be required

to meet. SB 1537 requires UGB areas under the bill to be planned at a minimum of 17 units per net acre. If the goal is to facilitate needed housing, including ownership opportunities, then the legislature should consider a minimum density threshold of 10 – 15 units per net acre. Otherwise, the housing that will be constructed will be primarily or exclusively rental product. If a mix of rental product and home ownership opportunities is the goal, the mandatory minimum density needs to be lowered. A UGB expansion to secure only rental housing is not a good outcome for needed housing nor for the judicious use of land resources.

I will also address the rhetoric we (and you) hear about UGB expansion areas. For example, the idea that UGB expansion areas are more expensive to serve with public infrastructure, or that they are not located near services, that they result in more driving, that they are not complete communities, or that cities have all of this land inside UGBs that only requires infrastructure investments and all the housing we need will suddenly spring forth from the ground.

This type of thinking is a relic of the past. No city in Oregon is interested in adding land in order to create sprawling tracts of large single-family houses. The UGB expansion areas of today, at least in the Metro area, are subject to strict requirements at the regional and state level that ensure precious land is maximized and that sufficient public facilities are available. South Hillsboro, for example, is planned and developed between 12 – 15 units per acre. It includes dense multifamily rental housing, middle housing like duplexes, triplexes, and town homes, single-family attached, single-family detached homes, and smaller footprints like accessory dwelling units and cottage clusters. On the services side, it has trails, cycle tracks, sidewalks, parks, natural areas, commercial areas with medical, health, food, and grocery options, and will be partially served by transit in the near future. And it is located immediately adjacent to the T.V. Highway corridor that has additional amenities and frequent bus service. Regional commute trips in Hillsboro have decreased since South Hillsboro housing units have come online, because that housing stock is allowing people who work in Hillsboro and throughout Washington County to live in Hillsboro. In that regard, the climate argument doesn't hold water either.

It is sometimes true that extending infrastructure to a greenfield is more expensive than upgrading infrastructure inside the UGB. But it is certainly not a hard and fast rule. The benefit of extending infrastructure in a greenfield is that you do not have to tear up existing roads and public facilities to do the work, and you can achieve economies of scale in larger developments that are often not possible with infill or redevelopment projects. It is very similar to how a building renovation or conversion may be more expensive than knocking it down and building a brand-new building.

Finally, while it may be true for some cities that their 20-year land supply is contained within existing UGBs, that is not the case for Hillsboro. As you know, the state has passed sweeping legislation over the last decade designed to maximize and incentivize housing development inside UGBs. We know that even with the best infrastructure, a redevelopment and infill strategy alone will never result in enough housing to close the massive deficit of needed housing in our state.

If sections 49 through 59 of SB 1537 are modified in a manner that renders them usable, the City of Hillsboro is prepared to use this new tool to support the state's housing production goals.

Sections 1 through 7

We understand and support the intent of the Housing Production and Accountability Office (HAPO). We will defer to LOC's recommendations for the bulk of technical and policy issues that need to be addressed, and will instead, focus our testimony on one issue. Outside of interagency coordination, HAPO's jurisdiction seems to be limited to the policies and decisions of local governments with an emphasis on land use entitlements and construction permitting. That scope is far too narrow.

Certainly, local governments play a significant role in the development of needed housing, and we are the first to admit that we can always improve our administration of local policy and process to make sure we are not creating undo barriers to housing production. We are happy to be held accountable in that regard. Yet the largest barriers to housing planning and production are not at the local level, but rather at the regional level with Metro, and at the state level with the Department of Land Conservation and Development (DLCD). The regulations and decisions of both Metro and DLCD should be within the HAPO's jurisdiction. As such, **ORS 268.380 should be added to the list of statutes in Section 1(5)(a).** Below is a list of Metro and DLCD issues that should be examined by the HAPO going forward.

Metro and State Policies and Decisions Impacting Housing Production

- Regional growth modeling and forecasting.
- Regional growth and functional plans.
- UGB decisions.
- Urban and rural reserve decisions.
- Land swap decisions.
- Appeals of local housing related land use decisions.
- Infrastructure funding, including transportation, decisions.
- Impact of existing and future regulations on housing production.
- Alignment of implementation of housing legislation with state housing goals.
- Guidance to local governments and written comments to local governments related to local housing related land use decisions.

An example of the need for state and regional decision-making to be brought within HAPO's jurisdiction is unfolding in real time. Just this week, the Hillsboro City Council unanimously approved our HNA. Current state law requires cities within Metro to use Metro's prescribed population growth rate in our housing planning. The current population growth rate assigned to Hillsboro by Metro is 0.7 percent. For context, the average population growth rate in Hillsboro over the last 20 years is 1.4 percent. To maintain alignment with current law, we utilized Metro's artificially low 0.7 percent growth rate in our HNA, but we included an alternative analysis as an appendix to our HNA utilizing a still conservative 1.4 percent growth rate. Not including an alternative analysis with a more realistic growth rate poses a risk of under-planning housing production by **50 percent.**

Metro, 1,000 Friends of Oregon, and DLCD have all lined up in opposition to the City's HNA and have secured standing for an appeal that must be filed within the next 21 days. There is little doubt that one or more of those organizations will appeal. Their letters to our Planning Commission and City Council are attached below. The main point to understand from the letters is the statement that Hillsboro

cannot use the more accurate growth rate when implementing comprehensive plan policies without the likelihood of litigation, which will lead to an undersupply of housing. Our land use system prevents cities within Metro from planning for the **actual** growth that is projected to occur within our cities, and then we wring our hands in distress wondering why the housing we need cannot and does not get built.

If we need 1,000 homes, but we plan for only 100 homes, and rather than interrogating why we are only planning for 100 homes we instead focus on whether local permitting on those 100 homes has been completed in 14 days or 28 days, in the end, we still only have 100 homes and not the 1,000 we need. We can and must do better. That is why HAPO must be assigned a role in ensuring that Metro DLCD are not suppressing housing production in conflict with the Governor's stated housing goals and the objectives of the recently approved Oregon Housing Needs Analysis report and legislation.

In conclusion, we applaud the Governor for her leadership to address the housing crisis in our state, and we thank her staff for the great partnership with cities over the interim to develop SB 1537. However, as written, SB 1537 does not work. Although there are various components of SB 1537 that we have concerns with, like the land use adjustments, we are willing to live with those changes in the spirit of more housing production if a workable expedited UGB expansion process, along with providing the HAPO sufficient jurisdiction to navigate systemic housing barriers across our housing planning system are fixed. Those issues need to be addressed in order for us to support SB 1537.

Sincerely,



Andy Smith
Government Relations Manager

Attachment 3



600 NE Grand Ave.
Portland, OR 97232-2736
oregonmetro.gov

January 23, 2024

Hillsboro Planning Commission
150 E. Main Street
Hillsboro, Oregon 97123

Re: Hillsboro draft Housing Needs Analysis

Commissioners,

Thank you for considering Metro staff's comments on the City of Hillsboro's (City's) draft Housing Needs Analysis (HNA). Please include this letter in the record of proceedings.

As the elected regional government that serves nearly 1.7 million people in the 24 cities and three counties of the Portland metropolitan area, Metro works with our partners to advance solutions to our region's most pressing issues. This includes working alongside public and private sector partners to support needed housing production in all our constituent jurisdictions.

Last June, my staff were afforded a brief opportunity to review an earlier draft of Hillsboro's HNA, and we expressed our appreciation that the draft HNA applied Metro's coordinated population forecast as required by state law. Regional growth forecast coordination is essential for ensuring that jurisdictions' plans work together in our regional housing market. We encourage the City to continue relying on this coordinated forecast.

We have recently been made aware that a new draft of Hillsboro's HNA includes an alternative scenario analysis that doubles the expected population growth rate described in Metro's adopted forecasts. If the City is proposing to adopt this alternative analysis, we have concerns about its inconsistency with the regional forecast, and request responses to these questions:

- What would the source of more population growth be?
- Which analysis does the City intend to adopt?
- What would the City do to address the housing capacity deficit that results from assuming higher population growth rates?

What would the source of more population growth be?

Our region has experienced significant population growth in recent decades. The alternative analysis in the City's draft HNA points to that history as evidence that Hillsboro's population growth rates will be higher in the future as well. However, available data indicate that global, national, state, and regional population growth rates have slowed and will continue to do so because of declining birth rates and mortality of the sizable baby boom generation. This view

was universally shared in an expert panel that Metro recently convened, which included demographers and economists from Portland State University's Population Research Center, the Oregon Office of Economic Analysis, the Oregon Employment Department, and ECONorthwest.

While we and participants in our expert forecast panel expect that migration will remain a source of some population growth in the Metro region, migration won't likely be adequate to maintain historic growth rates. Consequently, we are interested in understanding how the population growth depicted in the draft HNA alternative analysis could occur considering well-documented demographic factors pushing in the opposite direction.

Which analysis does the City intend to adopt?

Because the draft HNA now includes two estimates of need, we are curious which one the City will adopt for purposes of its future planning efforts, including the new state Housing Production Strategy requirements.

What would the City do to address the housing capacity deficit?

As you are aware, an HNA establishes the basis for subsequent actions to be taken by the City in response to its identified housing needs. With that in mind, we would like to understand if the City intends to adopt the alternative analysis and, if so, whether the City has initial ideas about steps it would take to increase the development of needed housing within its existing urban footprint to meet that deficit. Metro provides grant funding for local planning including strategies to increase the likelihood of housing development in the city. We would welcome an opportunity to discuss possible grant-funded efforts.

We know these analyses and plans are critical components to ensuring the continued vitality of our region and we look forward to working closely with the City of Hillsboro to increase the production of needed housing in the region.

Thank you,



Malu Wilkinson

Deputy Director, Planning, Development and Research

Cc: Dan Rutzick, Hillsboro Long Range Planning Manager
Roger Alfred, Office of the Metro Attorney
Eryn Deeming Kehe, Urban Policy and Development Manager
Ted Reid, Principal Regional Planner



Oregon

Tina Kotek, Governor

Attachment 6

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD



January 24, 2024

Sent via E-mail

Dan Rutzick
Long Range Planning Manager
City of Hillsboro
150 E. Main Street, 4th Fl.
Hillsboro, OR 97123

Re: City of Hillsboro, Notice of Plan Amendment (DLCD File No. 007-23);
Comprehensive Plan Text Change

Dear Dan,

The Department of Land Conservation and Development (DLCD) appreciates the opportunity to provide comments on City of Hillsboro File # HCP-001-23, the proposed adoption of the city's revised Housing Capacity Analysis (HCA), dated December 15, 2023, and asks that this letter be introduced into the record.

In a July 12, 2023, letter of comment, DLCD identified two issues related to the methodology in the buildable land inventory (BLI). DLCD staff wish to thank the city for revisions to the BLI to correct its methodology to comply with statutory requirements. We consider these two items resolved; the purpose of this letter is to raise a separate issue.

The city's revisions to its HCA went beyond the edits necessary to resolve the issues raised in DLCD's July 12 comments. Notably, the city added a new section entitled "Alternative Analysis" (HCA, beginning at p. 92). The city explains that the purpose of this section is to offer a means to provide a forecast and analysis that differs in methodology and assumptions from the state-required report on housing need, and which "may be referred to when making subsequent housing policy considerations". The analysis assumes higher future population growth rate and household size than the official forecast the city is required to use for its HCA¹. It also relies on methodologies

¹ ORS 197.303 (2) *For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), a local government shall use the population projections prescribed by ORS 195.033 or 195.036...*

related to BLI calculations that are not supported by state statute or rule. For these reasons, the city's reliance upon the "Alternative Analysis" as an adequate factual base when planning for needed housing would leave the city very vulnerable to legal challenge.²

Statewide Planning Goal 10 requires cities and counties to inventory their buildable land for residential use and provide for "needed housing." State statute and rules specify what constitutes needed housing and provide the required methodologies to be used in planning for needed housing, including in determining which lands are considered buildable and source of the population growth forecast.

Currently, the HCA document contains two separate analyses: 1) the HCA report 2) the "Alternative Analysis". Because only the HCA report can serve as an adequate factual base for the city's housing policies and strategies, the city's adoption of its HCA should make it clear that the "Alternative Analysis" portion of the document is not part of the adoption. DLCD recommends separation of the two reports so that only the components of the HCA document are the HCA report and Appendix A. Doing so will allow the city to cleanly adopt the document without ordinance language describing that the "Alternative Analysis" and Appendix B are excluded from adoption.

DLCD staff are aware that the city is beginning work on its Housing Production Strategy (HPS) with a deadline set for December 31, 2024. With the recent adoption of HB 2001 and HB 2889 (2023), incorporating the Oregon Housing Needs Analysis, has resulted in changes to Goal 10 obligations. However, the Land Conservation and Development Commission (LCDC), was granted authority under Section 7(2)³ to usher in cities currently in progress with their Goal 10 process based on the 'old rules'. This is aimed at preventing cities from having to re-complete analysis that does not comply with recently adopted statute. Hillsboro has been granted this authority, and the LCDC is on track to officially adopt it during their meeting scheduled for January 25-26, 2024.

Please note that for the reasons described herein, the city could not use the "Alternative Analysis" for the HPS without risking legal challenge. Under ORS 197.290(2)⁴, actions

² Under Oregon Statewide Planning [Goal 2](#), all land use decisions must have an adequate factual base.

³ HB 2889 (2023) Section 7(4) (4) *To avoid interference with current planning activities or to avoid unjust or surprising results, the Land Conservation and Development Commission may postpone, for cities specified by the commission, the applicability of sections 13, 21, 22 or 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), and the amendments to ORS 197.286, 197.290, 197.296, 197.297 and 197.303, by sections 12 and 25 to 28, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), until a date that is not later than January 1, 2027*

⁴ ORS 197.290(2) *A housing production strategy must include a list of specific actions, including the adoption of measures and policies, that the city shall undertake to promote development within the city to address a housing need identified under ORS 197.296 (6)(b) or (10)(b) or 197.297*

in a HPS must address a housing need identified under ORS 197.297. For the city, this need is identified in the HCA report, not the "Alternative Analysis".

Please feel free to contact Housing Planner, Mari Valencia Aguilar, at 503-930-9739, or at mari.valencia-aguilar@dlcd.oregon.gov if you have any questions or need further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ethan Stuckmayer".

Ethan Stuckmayer, AICP
Housing Services Division Manager
Oregon Department of Land Conservation & Development

cc: Laura Kelly, Metro-Area Regional Representative, DLCD
Mari Valencia-Aguilar, Senior Housing Planner, DLCD
Gordon Howard, Community Services Division Manager, DLCD

Attachment 5



January 23, 2024

To: Hillsboro Planning Commission
150 E. Main Street
Hillsboro OR 97123

From: Mary Kyle McCurdy, Deputy Director
P.O. Box 40367
Portland OR 97240

Re: Hillsboro Draft Housing Needs Analysis

1000 Friends of Oregon appreciates the opportunity to comment on the City of Hillsboro's draft Housing Needs Analysis (HNA). Please include this letter in the record.

A city's HNA is a foundational element in ensuring that a city meets the objectives and requirements of Goal 10, Housing, and its associated statutes and administrative rules. These are all aimed at meeting the housing needs of those who will be living in Hillsboro over the planning period "commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density." (Goal 10)

Core to this undertaking is accurate data, and in the Metro region, that is to be coordinated with the Metro regional government. Given limits on state and local infrastructure funding and other housing production tools, particularly to meet the needs of Oregonians at moderate and lower income levels, this data integrity is critical to accurately assess and meet housing needs.

We are concerned that the most recent draft of Hillsboro's HNA includes an alternative scenario that doubles the expected population growth of the city, over Metro's coordinated and adopted population forecast. This is also in contrast to an earlier Hillsboro HNA draft, in which the population forecast was in line with Metro's coordinated population forecast. We are concerned about this development from both a legal and practical perspective. As noted in the city's materials:

The Alternative Analysis assumes a higher future population growth rate and refinements to the assumptions used in the BLI. **** The HNA forecast and analysis described in the main report provide the formal and legal compliance with State and Regional requirements, and the Alternative Analysis may be referred to when making subsequent housing policy considerations.

In addition to not being coordinated with Metro, a city cannot use different population projections for different land use planning purposes.

We look forward to the city's further clarification, analysis, factual basis, and coordination with Metro as we all plan for a future that includes housing for all.



Oregon

Tina Kotek, Governor

Attachment 11

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

Phone: 503-373-0050
Fax: 503-378-5518
www.oregon.gov/LCD



February 5, 2024

Sent via E-mail

Dan Rutzick
Long Range Planning Manager
City of Hillsboro
150 E. Main Street, 4th Fl.
Hillsboro, OR 97123

Re: City of Hillsboro, Notice of Plan Amendment (DLCD File No. 007-23); Comprehensive Plan Text Change

Dear Dan,

The Department of Land Conservation and Development (DLCD) appreciates the opportunity to provide comments on City of Hillsboro File # HCP-001-23, the proposed adoption of the city's revised Housing Capacity Analysis (HCA), dated December 15, 2023, and asks that this letter be introduced into the record.

In a January 24, 2024, letter of comment, DLCD identified a statutory issue related to an "Alternative Analysis", which created conflict with the implementing statutes of the HCA¹, requiring use of an official population forecast. The analysis also relied on methodologies related to Buildable Land Inventory (BLI) calculations that are not supported by state statute or rule.

Since submitting this letter, DLCD has corresponded with city staff, who had indicated that the "Alternative Analysis" and "Alternative Analysis BLI" were moved to appendices, and the main body of the HCA relies on the population forecast and methodologies consistent with statute. While DLCD is appreciative to staff for this adjustment, the purpose of this letter is to clarify in the record that neither the "Alternative Analysis" nor "Alternative Analysis BLI" in the appendix, comprise a statutorily compliant HCA and may not be used as factual basis for either the city's Housing Production Strategy (HPS) or for land use decisions.

Statewide Planning Goal 10 requires cities and counties to inventory their buildable land for residential use and provide for "needed housing." State statute and rules specify what

¹ ORS 197.303 (2021 Edition) – (2) *For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), a local government shall use the population projections prescribed by ORS 195.033 or 195.036...*

constitutes needed housing and provide the required methodologies to be used in planning for needed housing, including in determining which lands are considered buildable and source of the population growth forecast. These Goal 10 elements must be adopted into city and county comprehensive plans.

A comprehensive plan serves as the basis of local decision-making and implementation and Goal 2² requires the plan must be based on factual information and data. Under Goal 2, local land use decisions and actions shall be consistent with the comprehensive plan. Findings in the city staff report state that only the main body of the HCA meets the applicable requirements of statute and administrative rule implementing Goal 10. As such, this is the only analysis that constitutes the “adequate factual base” for the city’s Goal 10 housing policies in its comprehensive plan and is the only HCA that identifies the “housing need” under ORS 197.303 (2021 Edition).

However, the adoption materials retain the “Alternative Analysis” and “Alternative Analysis BLI” in the appendices of the HCA, which could raise future questions about the adequacy of these components to serve as a factual base. Because these components do not meet applicable statutory and administrative rule requirements meeting Goal 10, DLCD does not consider them to be valid factual information and advises they cannot be used in land use decisions.

This extends to the upcoming Housing Production Strategy (HPS), which as detailed in the previous letter, has a deadline set for December 31, 2024. ORS 197.290 (2021 Edition)³ requires an HPS to identify strategies to promote development within the city to address an identified housing need in the HCA. To meet statute, the report must use the core HCA for this purpose and not an alternative that does not meet ORS 197.303 (2021 Edition).

As has been discussed with staff, the HPS is an opportunity for a city to take meaningful actions to support housing production, affordability, and choice. The city has conveyed its ambition to DLCD staff, expressing a desire to be proactive in this pursuit. DLCD encourages the city’s ambitious approach, recognizing the potential for positive impact in advancing housing initiatives. However, unlike the HCA, the HPS is reviewed and approved directly by DLCD⁴,

² *Goal 2 establishes “a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. City... plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268. All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal... The required information shall be contained in the plan document or in supporting documents... The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans...”*

³ ORS 197.290(2) *A housing production strategy must include a list of specific actions, including the adoption of measures and policies, that the city shall undertake to promote development within the city to address a housing need identified under ORS 197.296 (6)(b) or (10)(b) or 197.297*

⁴ ORS 197.291 (2021 Edition) – (6) *Based upon criteria adopted by the Land Conservation and Development Commission, including any criteria adopted under ORS 197.293 (2), the department shall, within 120 days after receiving the submission under subsection (1) of this section:*

who must approve, approve with conditions, or remand the HPS based on its consistency with applicable statute and administrative rule. Because DLCD is vested in the success of our local partners to facilitate housing production, affordability, and choice in accordance with state statute and administrative rule, it is crucial to note that any submittal of an HPS not rooted in the acknowledged HCA, in compliance with state statute and administrative rule, will face the possibility of remand. DLCD is committed to ensuring compliance of the HPS with state regulations, and strongly advise the city to refer to the core HCA as the basis for the HPS.

As the city continues the development of the HPS, DLCD encourages city staff to collaborate with agency staff to ensure the HPS is robust, implementable, and reflects the city's vision to support housing production, affordability, and choice in accordance with state law. Emphasizing our shared commitment to the values of a successful and thriving community, DLCD stands ready to support and foster collaboration, encouraging the city in its pursuit of housing production, affordability, and choice.

Please feel free to contact Housing Planner, Mari Valencia Aguilar, at 503-930-9739, or at mari.valencia-aguilar@dlcd.oregon.gov if you have any questions or need further assistance.

Sincerely,



Ethan Stuckmayer, AICP
Housing Services Division Manager
Oregon Department of Land Conservation & Development

cc: Laura Kelly, Metro-Area Regional Representative, DLCD
 Mari Valencia-Aguilar, Senior Housing Planner, DLCD
 Gordon Howard, Community Services Division Manager, DLCD

-
- (a) Approve the housing production strategy;
 - (b) Approve the housing production strategy, subject to further review and actions under ORS 197.293 (2); or
 - (c) Remand the housing production strategy for further modification as identified by the department.

Attachment 12

From: [Roger Alfred](#)
To: ["Chad Jacobs"](#)
Cc: [Dan Dias](#); [Dan Rutzick](#); [Christopher Crean](#); [Yen Huynh](#); [Eryn Kehe](#); [Ted Reid](#)
Subject: RE: Hillsboro HNA
Date: Tuesday, February 6, 2024 2:35:18 PM

Chad,

Thank you for the detailed follow-up regarding the concerns raised by Metro and DLCD regarding the city's adoption of an alternative need analysis as part of its HNA. As you know, Metro has a statutory obligation to ensure that local comprehensive plans across the Metro region are coordinated. Because Metro has sole responsibility for regional UGB expansions, we pay particularly close attention to local plan amendments regarding long-range planning for regional growth.

We appreciate your email message below, which reflects the type of open and transparent dialogue we hope the city will pursue when it comes to adoption of growth-related analyses that have regional implications. As we discussed in our meeting, both Metro and DLCD were taken by surprise when we learned, a week before the hearing, that the city was planning to actually adopt the alternative analysis into its comprehensive plan as part of the HNA. We do not agree that it is common for a comprehensive plan to include alternative growth scenarios – arguably, it is inconsistent with Goal 2 for the reasons described by the Court of Appeals in 1000 Friends v. City of Dundee, which emphasizes the fact that one purpose of an acknowledged comprehensive plan is to provide the sole basis for future land use planning decisions. Your email cites a recent similar decision by the City of Milwaukie – however, we have reviewed Milwaukie's 2023 HCA and do not see that it includes anything similar to what is being adopted by Hillsboro.

Metro agrees with and joins DLCD's letter to the City Council dated February 5, 2024. We ask that staff make note to the Council on the record that Metro shares the concerns stated by DLCD in that letter about not relying on the alternative analysis for future land use planning decisions. It is our understanding that the city does not intend to do so.

Thanks for jumping in to assist with this on short notice.

Roger

From: Chad Jacobs <chad@gov-law.com>
Sent: Tuesday, January 30, 2024 2:00 PM
To: Roger Alfred <Roger.Alfred@oregonmetro.gov>
Cc: Dan Dias (Dan.Dias@hillsboro-oregon.gov) <Dan.Dias@hillsboro-oregon.gov>; Dan Rutzick <Dan.Rutzick@hillsboro-oregon.gov>; Christopher Crean <chris@gov-law.com>; Yen Huynh <yen@gov-law.com>

Subject: [External sender]Hillsboro HNA

Roger,

Thank you and Metro staff for taking the time to meet with Dan, Dan and I this morning. We appreciate your time and continued partnership. As requested, please find below a brief summary of our discussion. Do not hesitate to reach out to discuss further as needed.

In consideration of the issues being raised by Metro and DLCD, and in furtherance of our continued partnership, City staff has proposed to Council a new draft of the HNA, which removes any reference to the alternative analysis within the body of the report. The alternative analysis has been moved to an appendix, and the only other mention of it is in the table of contents. Here is a [link](#) to the proposed report, which reflects this change.

Chris and I both believe that this approach is legally permissive, and in fact, we have been informed that several other jurisdictions have done something similar in the recent past, including Estacada and Milwaukie. We are unaware of anything in state law that would preclude including this alternative analysis within an appendix (and in fact, we were informed that Milwaukie and Estacada did so within the actual text of their HNA as a separate chapter and not just as an appendix). As noted in our discussion, the City fully recognizes that there are legal limitations on its ability to rely on an alternative analysis in an appendix when making certain future land use decisions, but those limitations exist down the road and not today. Today's decision, which is simply adopting the HNA, is not limited by state law as far as we can tell from including an alternative analysis, especially if it is simply in an appendix. (To be clear, we do not believe it is legally improper to include the alternative analysis in the body of the report itself, but again, as a recognition of Metro's concerns and out of respect for our partnership, City staff is trying to reach a reasonable compromise by proposing to move it to an appendix).

Also as we discussed, there are various policy and political reasons why the Council may want to include this alternative analysis in the report, which as you know could influence decisions that are not land use decisions. For example, planning documents such as these are often used to form policy and political arguments as to how the Council should spend general fund dollars. If the Council desires to spend funds on affordable housing, opponents of the project could use the HNA to argue that such a project is not needed to meet our housing needs. With the alternative analysis included as an appendix, there is more flexibility for such future decisions and less of a chance the document will be used to argue against them. As I understand it, such flexibility for policy decisions where the HNA may be discussed or relied upon was the Council's goal in requesting that staff look at such data as part of this process. Again, the City fully recognizes and respects the limitations that may exist on certain future land use decisions, but as noted, there are many other decisions where the HNA may be relied upon that are not so limited.

Finally, we will share Metro's request to delay a final decision on the HNA until at least the 2/20 Council meeting. However, we are still a week away from the 2/6 Council meeting, which I hope provides you with more than enough time to consider this new approach. If for some reason you believe that there is some legal limitation here that Chris and I are not thinking of please do not

hesitate to share that with us as we are more than willing to consider any such concerns. Again, we are trying to make sure your legal concerns are adequately addressed.

All the best,

Chad

Chad A. Jacobs ([he/him](#))
BEERY ELSNER & HAMMOND, LLP
1804 NE 45TH AVENUE
PORTLAND, OR 97213
[\(d\) \(503\) 802-0011](tel:(503)802-0011) | [\(t\) \(503\) 226-7191](tel:(503)226-7191) | [\(f\) \(503\) 226-2348](tel:(503)226-2348)
www.gov-law.com

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