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January 29, 2023

To: Sean Edging, Housing Planner, DLCD

From: Mary Kyle McCurdy, Deputy Director

Re: Specific language recommendations for HB 2889

Thank you for meeting with me earlier this month to go through in some detail LC 1917, now HB 2889. I promised to put in writing our main recommendations for language changes; they are below. These are not necessarily our final recommendations; it is a long bill so we might find other sections where we have recommendations that we did not catch. Also, we know the department has changes they would like to see in the next draft, ranging from housekeeping to substantive changes, and we will want to review those.

Please let me know if you have any questions or comments.

Section 3

(1)(e): What is meant by “Anticipated changes during the next 20 years of housing need.”? This is vague and could be open to misuse from any perspective.

(2)(a): Needed housing that must be planned for under Goal 10 is inside cities and their UGBs, not counties and outside UGBs. This language is confusing and needs to be cleaned up.

(2)(b): Where does the “forecasted regional job growth” come from – whose forecast? Also, we are pretty sure we understand what is meant by an “equitable statewide distribution of housing”, but it might be useful to clarify this, either in the statute or in some other document the department puts together on this bill.

Section 5

(2)(b): We assume this refers to the so-called “peer city” comparison. We remain concerned that this might result in mediocre performance being deemed good enough because all or most peer cities also have a mediocre performance.

Section 9

- (2): The phrase “information” in the sentence “... should have used a better methodology, calculation, assumption, or information if the” Is much too vague. We assume that here the objective is to insulate from appeal decisions made by a local government that are based on the best practices, methods, and calculations that DLCD has pre-approved, as described in Section 9(1)). Throwing in the word “information”

(which is not in Section 9(1)) opens the entire local decision-making into confusion and possible abuse.

- Therefore, we recommend deleting “information” in Section 9(2). And when implementing Section 9(1), we recommend that DLCD define the scope of “methodologies, calculations, and assumptions.” The word “assumption” is a bit squishy.
- (2)(b): We also recommend deleting “information” or defining more precisely what is meant by OHCS’s “information” here (the citation to Sections 2-6 is pretty broad).

Section 10

(2)(a)-(d): The legal role of the Department and Commission is not to “facilitate” UGB amendments, etc.. but rather to evaluate whether a need has been demonstrated with substantial evidence and whether the law has been followed. Therefore, we recommend revising these sections to reflect what we believe is the objective: to provide smaller jurisdictions with clarity and certainty regarding the level of analysis and process required as they evaluate whether or not a UGB expansion, boundary exchange, or urban reserve designation is appropriate.

(3)(c)(C): The word “flexibility” is too vague, and leaves open the possibility that one city’s or neighborhood’s “flexibility” would mean certain housing types would not be allowed, or allowed in certain locations.

Section 12

(5): It does not seem that “anticipated to be developed” is the actual phrase you mean here. That is too undefined and open for abuse.

Section 15

(3)(c): It seems the word “action” should be plural in “Take any necessary action described in ORS 197.290(3)....”

Section 16

(3)(a)(A): This is the current language:

“(3)(a) For the purpose of the inventory of supply of buildable lands and the determination of housing capacity the local government shall consider: (A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;”

However, the phrase “prohibited or restricted by local regulation and ordinance” seems way too broad and could encompass, for example, local regulations limiting height of buildings, residential density, types of housing, FAR, etc..... If this subsection is intended to refer to environmental-related and health and safety regulations, this language should be far more specific.

(3)(a)(C): The phrasing here seems odd – it lists two things: a very specific type of housing – “single family dwelling” – and then everything else – “other structures.” What is the objective here?

(3)(b): We are not sure what this subsection is trying to achieve.

It seems that all of Section 16(3) is trying to address how to inventory lands, and their capacity, with residential infill and redevelopment potential. If so, we have seen this explained more clearly in other planning guidance.

(4)(a): Should the word “current” be inserted before “housing capacity”?

(4)(a)(E): Should “current” or “adopted” be inserted before “the housing production strategy”?

(5): This is the current statutory language of ORS 197.296, but to make it consistent with what we believe is the direction of OHNA, it should be made clear that in looking at “one or both of the following actions [efficiency measures or UGB expansion], the action(s) chosen must be shown to be reasonably likely to meet the housing need, including at the income category. In other words, the *choice* must be tied to the OHNA allocation and HPS. We recommend making conforming language changes here.

(6)(c): The phrase “....and are in areas where sufficient urban services are planned to enable the higher density development to occur over the 20-year period” seems inconsistent with how the land use planning program handles infrastructure planning and is too broadly worded, such that a city could prevent housing types and densities it did not want, or did not want in certain areas, by not planning the urban services for that in the first place, or by not revising infrastructure plans to meet the needed zoning.

Section 18

(7): This section provides an opportunity to clarify, including by rule, how the land swap procedure should incorporate Goals 3, 4, and 5. The current shortcomings were described to the Commission at its January 26, 2023 meeting.

Sections 26-28

These sections would authorize cities over 10,000 in population around the state to designate rural reserves and urban reserves. Given current legislative threats to the integrity of the current urban and rural reserves, we might seek stronger language to make premature conversion more difficult.