

Appendix B. Follow-up Policy Work - Basis for a Statewide Housing Production Strategy



Follow-up Policy Work – Basis for a Statewide Housing Production Strategy

A key theme that emerged from discussion is a significant need for greater partnership and coordination between varying levels of government and between state agencies to have a more unified statewide approach towards achieving greater housing production, affordability, and fair and equitable outcomes. Currently, there are several agencies that work on housing-related or adjacent policy issues, but there is no administrative structure in place that ensures their coordination on policy issues or to ensure discussions do not occur in siloes. As a consequence of this dynamic, many stakeholders have raised policy issues outside of the Department of Land Conservation and Development's (DLCD) scope or authority but that are nonetheless critical for achieving better housing outcomes.

The core OHNA recommendations include establishing an administrative mechanism charged to work towards equitable housing production and coordinate and partner with state agencies and local governments on policies and investments that support production. Additionally, the core recommendations include tasking this administrative mechanism with developing a Statewide Housing Production Strategy that identifies needed policy follow-up work and timelines to adopt and implement that work. The following recommendations would serve as an extensive basis for this Statewide Housing Production Strategy. While these measures do not cover the full scope of *all* areas of needed follow-up work, it represents a multi-year and multi-agency work program that incorporates the major themes the project team heard through engagement and discussion with stakeholders.

Follow-up Policy Work Recommendations

A. Decrease barriers to production and affordability

A.1 Develop policy recommendations in response to Oregon Housing and Community Services report on System Development Charges (SDCs) and infrastructure planning (HB 3040).

In 2021, the Oregon Legislature directed Oregon Housing and Community Services (OHCS) to prepare a report on System Development Charges (SDCs) to be completed by December 15, 2022. OHCS is working with a consultant team to study SDCs and the role these fees play in funding infrastructure across the state and how they may act as an upward cost driver for market-rate and/or affordable housing across the state.

The study will analyze the history of SDCs across the country and in Oregon. It will also consider the various methodologies used for setting fees including an analysis of geographic and population size variances, timing of payments, and financing mechanisms of SDC charges, availability of funding for capital improvement projects, and how SDC's compare with other cost drivers for housing. The agency has consulted with local governments, special districts, developers, and builders of affordable and market rate housing.

System development charges remain a significant policy priority in the production of housing because they fund capital costs for infrastructure necessary to serve development. However, SDCs add to the total cost to the development of housing. Follow-up policy work to develop refinements to SDCs that better support more affordable and diverse housing options will be a critical follow-up for supporting housing production and affordability.

A.2 In a future building code amendment process conducted by the Building Codes Division, incorporate provisions that reduce barriers for housing production, including barriers to housing affordability, diversity, accessibility, and alternative construction methods that reduce cost and delay. The resultant changes must balance the following goals:

- 1. Increase affordability and housing choice, including middle housing, through the refinement of overly restrictive standards;*



2. *Increase and incentivize the provision of accessibility features suitable for people living with different types of disabilities;*
3. *Increase and incentivize the use of alternative construction techniques that reduce cost and delay, such as modular housing; and*
4. *Maintain standards necessary for the protection of life and property.*

Throughout this process, many stakeholders have raised substantial concerns to DLCD staff regarding provisions in building code and their impact on achieving statewide housing goals, including accessibility, affordability, and housing diversity. While DLCD does not have statutory authority to amend building code, staff recognize that it is an important consideration in addressing housing related barriers.

The Building Codes Division (BCD) is the state agency responsible for administering building codes and has an existing process by which they regularly revise building codes, as detailed below. In a future process, it would be possible to incorporate a more detailed review of policies that support housing goals expressed by stakeholders, in partnership with other state agencies, including DLCD.

The Building Code update process:

- There are seven boards administered by BCD. In a code revision process, the appropriate board chooses a model code to begin the process.
- Code committee applications are accepted, the board chooses a committee and opens a public proposal period for a minimum of 45 days.
- Code committee meetings begin and review proposed changes to the model code, existing Oregon amendments, and public code.
- The committee sends a recommendation for the new code to the board.
- The board approves, amends, or disapproves the committee recommendations with a finding that the added cost, if any, is necessary to health and safety or to conserve scarce resources.
- The division then approves or rejects the amendments and begins a rulemaking process, including fiscal impact statement and housing cost impact statement, if applicable.
- The division holds at least one public hearing on the proposed code and rules.
- The division adopts the code and rules and works with the model code publishing body to publish codebooks.

A.3 Audit and develop recommendations on state-authorized local policy and financial incentive tools to increase their flexibility and use.

A variety of communities have reported challenges in pursuing state-authorized tools intended to increase housing production and affordability that have rendered their implementation impracticable. Examples include:

- *Tax Increment Finance (TIF)* – Smaller and more rural communities have reported challenges implementing TIF, especially for the purpose of financing infrastructure improvements that support housing production.
- *Multiple-Unit Property Tax Exemption (MUPTE)* – Smaller and more rural communities have reported challenges implementing the MUPTE, in part due to a requirement for a fixed-transit route within one-quarter (1/4) mile of the project.
- *Inclusionary Zoning (IZ)* – Communities have reported challenges associated with the inclusionary zoning statute that inhibits its use in a context other than multi-family development. Because the statute is narrowly tailored to apply to multifamily structures of 20 units or more, jurisdictions have limited ability to develop inclusionary zoning programs,



including voluntary programs, to other housing development contexts, including middle housing.

- *Historic Preservation and Adaptive Reuse-Related Financial Incentives* – Historic preservation and related programs represent an often-overlooked tool that could significantly increase the adaptive reuse or preservation of housing, including subsidized affordable housing. Aligning these programs with other statewide policy and funding efforts would require careful coordination with the State Historic Preservation Office (SHPO).

Making specific adjustments to existing statutory tools that increase flexibility of use in varying contexts would help refine and make them more useful and implementable for local communities. Refinements would require careful deliberation and involvement of a variety of interests, including the development community.

A.4 Audit and develop recommendations for training programs and licensing requirements for housing- and construction-related contractors to increase the capacity to produce housing.

Through extensive outreach to market-rate and subsidized affordable developers, it has become clear that a major limitation to the development and cost of housing is the supply and availability of labor, especially skilled trades. In many communities, especially smaller and more rural communities, the lack of skilled laborers and contractors has resulted in significant capacity constraints to construct housing, and many existing licensing requirements make alleviating this constraint challenging.

A.5 Develop policy recommendations in response to a Department of State Lands (DSL) report on wetlands permitting streamlining and the partial 404 assumption (HB 2436 – 2019 Legislative Session)¹

Multiple communities, especially in the mid- and upper-Willamette Valley and on the Coast, noted significant development challenges that result from the wetlands permitting process. In response, the recommendations include direction to the Land Conservation Development Commission (LCDC) to adjust rulemaking to ensure Buildable Lands Inventories are able to discount the capacity of lands affected by wetlands regulations. However, to better facilitate the development of housing, especially on lower value wetlands within the Urban Growth Boundary (UGB), DSL was directed by the Legislature in 2019 to develop a report with recommendations related to wetlands permitting. The agency has completed this report, but there is a need for follow-up policy work to develop recommendations that better facilitate housing production in response. Future policy work on this issue will require close coordination with federal administrative agencies, including the Environmental Protection Agency, to ensure policy work on this is substantially consistent with federal law.

A.6 Study and develop recommendations on policies related to taxation that affect housing production and affordability, including property and income taxation, with an emphasis on the following outcomes:

1. *Increase the supply and affordability of housing;*
2. *Increase opportunities for homeownership, especially in historically underserved communities and communities of color;*
3. *Incentivize the development of vacant and partially vacant lands; and*
4. *Disincentivize speculative ownership of land and housing.*

¹ HB 2436 (2019). Partial 404 Assumption. Legislative Update. Oregon Department of State Lands. Accessed via: https://www.oregon.gov/dsl/WW/Documents/HB2436_Partial404AssumptionLegUpdate_FINAL.pdf



Underlying discussion around housing production, development readiness, and achieving fair and equitable housing outcomes included broad acknowledgement that the current systems of taxation distort incentives towards housing as an investment and inhibit equitable housing production. While Measure 5 creates significant restrictions on the tools available to address taxation-related issues, there are still a variety of potential tools that could address distorted incentives and significantly incentivize production, such as land value taxation. This will require specialized taxation expertise and careful navigation of trade-offs between various tools.

A.7 Conduct a study of short-term rentals (STRs) in recreation cities and counties and develop policy recommendations that provide more local tools to regulate and leverage STRs.

A major dynamic affecting recreation communities, such as the Oregon Coast or Central and Eastern Oregon, is the effect of short-term rentals on the price and availability of housing stock, especially workforce housing. While the OHNA incorporates methodological changes that enables jurisdictions to account for the impact of second and vacation homes on the overall supply of housing, it does not address the underlying policy dynamic.

The appropriate policy or regulatory approach for short-term rentals is highly context- and market-specific. In many cases, demand for STRs has significant potential to be leveraged to support housing for recreation communities.² However, the current regulatory landscape does not provide many tools to support local jurisdictions in managing the impact of STRs. Conducting a study of STRs in recreation communities to better understand specific market dynamics and relationship with needed housing and developing local policy options, such as taxation authority or regulatory tools, will be critical to provide these communities support in ensuring housing affordability and availability for community members.

A.8 Audit and develop recommendations for supporting developer capacity to increase housing production in coastal communities.

Through outreach to housing developers working in coastal communities, it has become clear there are additional unique challenges that housing developers face when trying to build housing in coastal communities. Those challenges include securing labor and subcontractors when needed is difficult and often requires a premium to get firms and contractors from inland to travel to the coast, additional material costs tied to building materials for coastal weather such as rain screen, upgraded windows and flashing, roofing, etc., and longer planning, and permitting process times due to lack of local planning staff capacity. To offset these challenges, job programs to build developer capacity in coastal areas is an area that governments haven't played a major role in but could be beneficial.

B. Increase homeownership and housing stability

B.1 Evaluate policy options to increase homeownership opportunities in market-rate and subsidized affordable contexts, including Limited Equity Housing Cooperatives (LEHCs).

Limited Equity Housing Cooperatives are a structure of "shared lot" residential ownership, in which multiple units share a single lot and members own shares in a cooperative which owns and manages the entire property. LEHCs are an emerging alternative to fee-simple or condominium development and have the ability to deliver many of the advantages and stability of

² Bekkerman et. al. (2021). Research: Restricting Airbnb Rentals Reduces Development. Accessed via: <https://hbr.org/2021/11/research-restricting-airbnb-rentals-reduces-development>



homeownership for households with lower-incomes and with limited subsidy³. Exploring opportunities to incentivize and increase use of these models, in a manner that closely considers the trade-offs of LEHCs⁴, will help deliver more long-term affordable homeownership opportunities which do not currently exist.

B.2 Evaluate policy changes to support the production of condominiums, especially for smaller-scale projects and middle housing.

A clear challenge in the development of “starter homes” are restrictions associated with condominium law. While condominiums are an important tool to deliver homeownership opportunities in circumstances where multiple units share a common lot, the current statute disincentivizes the development of smaller-scale condominium and clustered living situations. Many of the costs and requirements associated with current condominium law require economies of scale to compensate, meaning that larger and more expensive projects are much more economically feasible than small-scale and less expensive projects. A Condominium Working Group was established by the Legislature in 2019 to develop refinements to existing statute⁵, but the results from this working group are unclear at the time of this report. Policy recommendations intended to encourage smaller-scale condominiums, such as for middle housing projects recently legalized by House Bill 2001 (2019), will significantly enhance ownership options in circumstances where lot divisions for fee-simple ownership are impracticable such as when individual units are stacked vertically.

B.3 Develop permit-ready plans for smaller-scale, fee-simple “starter homes” and partner with local jurisdictions to adopt and incentivize.

Oregon has a much greater proportion of local, small-business developers than other states, which presents both challenges and opportunities in scaling up statewide housing production and promoting affordability. One major challenge is that a lack of specialized development and contractor expertise makes delivering larger-scale developments, such as mid-rise apartments, more challenging. Combined with existing local and state regulations, many smaller scale developers have a substantial incentive to maximize return on investment by building larger and more expensive single-family detached dwellings that are inaccessible to many Oregonians.

State agencies are in a unique position to design and publish permit-ready housing projects that are feasible for small-scale developers and partner with local governments to ensure that these projects can be reviewed and approved in an expedient manner. Additionally, this creates an opportunity to incorporate other housing-related goals into the design of these housing projects, such as the inclusion of accessibility and sustainable features.

³ Lamar, Picha, Thrall-Nash (2022). Affordable Middle Housing Co-ops: Opportunities and Barriers to Expanding Oregon Homeownership. ECONorthwest. Accessed via: https://static1.squarespace.com/static/597fb96acd39c34098e8d423/t/62194fda9ea2a1286ccec859/1645826018426/Co-Op+Housing+Whitepaper_February-2022.pdf

⁴ Okun. (2022). Coloring the Co-op: Limited Equity Cooperatives, Local Governance, and Black Homeownership in Washington, DC. Accessed via: <https://blogs.lse.ac.uk/progressingplanning/2022/01/31/coloring-the-co-op-limited-equity-cooperatives-local-governance-and-black-homeownership-in-washington-dc/>

⁵ Condominium/HOA Working Group (2019). Accessed via: <https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/191538>



B.4 Audit and develop recommendations on Loan Guarantee Programs to preserve existing naturally-occurring affordable housing and to increase accessibility and maneuverability as people age in their existing housing situation.

The preservation of existing affordable housing is a critical strategy for long-term affordability, especially in smaller and more rural communities where there is less development pressure to redevelop existing housing stock. Additionally, as Oregonians age, it will be increasingly important to enhance the accessibility of existing housing stock to ensure that households are better able to age in place.

Many of the improvements that are necessary for housing preservation and increasing accessibility are taken on by individual property owners, often utilizing some type of loan to finance the improvement. Because of the risk associated with these loans, it is often difficult for property owners to secure financing that supports the improvement, even if they would otherwise be able to afford the improvement. Establishment of a type of loan guarantee or similar program that reduces risk for lenders in financing certain types of housing improvements could go a significant way towards state preservation and accessibility goals with relatively minimal public investment.

C. Increase accessibility and housing choice for people with disabilities

Throughout the recommendations on the implementation of an OHNA and follow-up policy work, it is clear that there is an urgent need for state and local government agencies to better plan for a range of housing types and accessibility features suitable for people living with different types of disabilities.

Adjustments to statutory provisions to incorporate accessibility and housing for people with disabilities is a core part of the recommendations on the implementation of an OHNA. Together, they ensure that DLCD and local governments will be systematically planning policies intended to increase accessibility and housing choice for people with disabilities. These recommendations include the following:

1. Amending the “Needed Housing” statute (ORS 197.303) to include in its definition of “needed housing,” housing that has accessibility features for households that include individuals with a variety of disabilities and broaden the types of needed housing to include “Accessible units”, “Type A”, “Type B” or higher levels of accessibility features.
2. Amending the “Housing Production Strategy” statute (ORS 197.290) to reinforce the responsibility of local governments to adopt strategies that affirmatively further fair housing and work towards equitable housing production, and direct LCDC to complete conforming rulemaking to incorporate these changes. See the “Affirmatively Furthering Fair Housing” section below for greater detail.

Note: “Equitable housing production is defined as diverse, quality, physically accessible, affordable housing choices with access to economic opportunities, services, and amenities.”

3. Regularly track and evaluate housing outcomes for people with disabilities and accessibility of housing stock as part of the Housing Production Dashboard that local jurisdictions respond to via the Housing Production Strategy.
4. Adjust existing housing reporting requirements (HB 4006, 2018 Legislative Session) to require reporting cities to track the actual number of dwelling units with accessibility-related features at different levels of accessibility, such “Accessible units”, “Type A units”, and “Type B units.”

In addition to these changes to the statutory framework implementing Statewide Planning Goal 10, the project team heard the need for significant follow-up work on housing for people with disabilities and accessibility. While these items are not within the scope and authority of DLCD, they nonetheless remain



critical for improving housing outcomes for people with disabilities and should be incorporated into the Statewide Housing Production Strategy that the core OHNA recommendations include.

C.1 In a future building code amendment process conducted by the Building Codes Division, incorporate provisions that increase and incentivize accessibility features of new housing construction at different levels of accessibility (e.g., Type A, Type B, or Accessible units).

Throughout this process, many stakeholders have raised substantial concerns to DLCD staff regarding the inclusion of accessibility features in existing and new housing, including a lack of meaningful housing choices for people with disabilities due to a substantial lack of accessible options. These features are regulated under building code, which DLCD does not have statutory authority to amend.

Under current statute, there are a variety of provisions that include accessibility features for people with disabilities. This includes federal requirements, including the Americans with Disabilities Act (ADA), which applies to virtually all commercial buildings and accessory uses, and the Fair Housing Act, which requires all “covered multifamily dwellings” to be adaptable⁶. Additionally, other state policies establish other classifications of units containing accessible features, including “visitable” units, “Type A” units, and “Type B” units⁷. While a more robust standard was proposed in [HB 2336](#) in the 2021 session that would have incorporated “Type C” units, this bill did not pass. Currently, while there are requirements for “Type A” and “Type B” accessible units for some types of multifamily construction, there are no federal or state requirements for “visitability”.

As mentioned in A.2, the Building Codes Division is the state agency responsible for administering building codes and has an existing process by which they regularly revise building codes (see A.2 for greater detail). In a future process, it would be possible to incorporate a more detailed review of policies that support housing accessibility, in partnership with other state agencies, including DLCD. This work could draw from other existing bodies of work, such as the [Lifelong Housing Certification Checklist](#) developed by the Rogue Valley Council of Governments.

C.2 Conduct an audit and develop recommendations to improve housing outcomes for people with disabilities in subsidized affordable housing programs, including the following:

- 1. Improving accessibility in subsidized affordable housing projects receiving funding from Oregon Housing and Community Services. Actions to consider include assigning additional points for project proposals with higher levels of accessibility features, policy development that supports stimulating the supply of housing for households that include a person with a disability, and amending Chapter 456 to include definitions for “Accessible unit”, “Type A unit”, and “Type B unit” consistent with building code provisions;*
- 2. Ensuring that people with disabilities and also living in subsidized affordable housing have priority for units with accessibility features;*
- 3. Incentivizing the preservation, retrofit, or adaptation of existing housing stock with accessible features; and*
- 4. Improving the connection between housing supports and services.*

⁶ Housing and Urban Development. Accessed via: https://www.hud.gov/program_offices/fair_housing_equal_opportunity/accessibility_first_coverage#:~:text=Covered%20multifamily%20dwellings%20are%3A,more%20units%2C%20without%20an%20elevator.

⁷ Building Codes Division. Accessed via: <https://www.oregon.gov/bcd/codes-stand/Documents/whitepaper-2012-dwellunitcomparison.pdf>



As highlighted in the Legislative Report on the Oregon Housing Needs Analysis developed by OHCS, the analysis found that people with disabilities disproportionately faced increased cost burden and housing insecurity. Within the context of subsidized affordable housing, stakeholders highlighted two major challenges in providing more accessible, affordable housing options: 1) Incorporating accessibility features in subsidized affordable housing and 2) Ensuring that people with disabilities are able to access that housing as well as the services they need. OHCS, in working with a broad range of stakeholders, has continued to work on issues related to accessibility to increase access and availability for people with disabilities. This recommendation is intended to continue and reinforce that work refining existing programs to better address these challenges and enhance accessibility in subsidized affordable housing programs generally.

C.3 Direct the Oregon Health Authority to add a module to the [Adult Behavioral Risk Survey \(BRFSS\)](#) assessing housing-related metrics for people with disabilities, including affordability, availability, quality, and accessibility features. Specify that they must provide notice to the [Oregon Office on Disability and Health](#), DLCD, and OHCS once reports are published.

The Oregon Housing Needs Analysis relies on existing data for the purpose of estimating housing needs. The data landscape on the intersection between housing and disability status is very poor. However, the Oregon Health Authority regularly conducts surveys and collects data through the Adult Behavioral Risk Survey (BRFSS), in part to assess specific health outcomes, including for people with disabilities. Considering the intrinsic connection between housing quality/stability and public health, adding a module to better assess housing outcomes for people with disabilities could provide a critical data point for the implementation of the OHNA and the Housing Production Dashboard that will inform resultant state and local policy.

D. Support Oregon's nine federally recognized Tribes and their members

[Oregon's nine federally recognized Tribes](#) face a myriad of regulatory and resource challenges in responding to the housing needs of their members, many of which are connected to a deeper history in which actions by state and federal governments disenfranchised communities, often in violation of previous agreements and treaties. While the Tribes are sovereign governments that are not subject to the requirements of Goal 10, it is important that many of the same supports to increase equitable housing production are accessible to these communities. The following policy recommendations were identified as needed areas of follow-up work to support the Tribes in working towards equitable housing production.

D.1 Provide housing-related analysis and data through the Oregon Housing Needs Analysis to the Tribes.

Currently, the Portland State University Population Research Center (PRC) is piloting a methodology to develop a population projection for tribal areas. This pilot will provide critical information that will enable the Tribes to plan for housing and seek policy and funding support from state and federal governments. While these communities would not be subject to the same statutory housing obligations that state and local governments would be via the OHNA, the analysis could provide analytic information for these communities that supports their housing-related work.

D.2 Audit existing funding sources that support housing for members of the Tribes and develop recommendations to consolidate and increase flexibility of funding sources to increase their accessibility and use.

A major barrier in the development of affordable housing to house members of the Tribes is the siloed and disparate pots of state and federal funding available to support production. Because many of these funding sources implement different programmatic requirements and criteria to receive funding, it raises additional barriers in accessing funding and results in scenarios in which



certain strings make funding sources impracticable to use. This recommendation is intended to audit the full scope of funding sources and recommend consolidation and flexibility-increasing opportunities to increase their accessibility and use by Tribal Housing Authorities.

D.3 Direct the Land Conservation and Development Commission to adopt administrative rules that enable the development of housing on tribal lands that are not held in tribal trust.

This issue was highlighted via discussion with staff from the Confederated Tribes of Grand Ronde. The Tribe [throughout its history](#) faced significant disenfranchisement by state and federal actions that significantly reduced the size of their original reservation, resulting in significant portions of land ending up in non-Tribal ownership. While the Tribe has been building back this ownership through acquisition of land held in trust, much of the original land base is subject to County zoning and statewide land use regulations. While placing land in trust nullifies state and local regulations, it is an onerous process that inhibits the ability for the Tribe to develop subsidized affordable and workforce housing on tribal-owned lands. This rulemaking would address that barrier by providing some administrative path to enable exceptions for tribal-owned lands that are not held in tribal trust.

D.4 Coordinate and partner with the [Legislative Commission on Indian Services](#) and Commission Members on housing production and affordability.

A core recommendation of the Oregon Housing Needs Analysis is to establish an administrative mechanism that coordinates and partners with various state agencies and local governments to work towards equitable housing production. While the recommendations do not set forth the specific structure, it will be important that the resultant administrative entity coordinate and partner with the Legislative Commission on Indian Services and Commission Members directly to identify policy and funding interventions that support housing production and affordability in their communities.

E. Affirmatively Further Fair Housing

Recommendation 2.2 of the core set of recommendations is intended to advance fair and equitable housing outcomes and housing choice for all through the Housing Production Strategy program. Meaningful progress towards these outcomes requires urgent need for state and local government entities to better connect fair housing, and more specifically affirmatively furthering fair housing (AFFH) best practices, and equitable housing production strategies in their housing production efforts. As such, the following statutory provisions are needed to reinforce the existing obligation for state and local governments to plan in manner that centers housing choice and opportunity for all, regardless of state or federally protected class, in their housing production efforts. Statutory recommendations include the following:

1. Amending the “Housing Production Strategy” statute (ORS 197.290) to reinforce the obligation of local

Per the U.S. Department of Housing and Urban Development (HUD), affirmatively furthering fair housing is defined as “taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and inclusive living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” In other words, this means ensuring everyone, regardless of state or federally protected class (e.g., race, color, national origin, religion, sex, disability, familial status, domestic violence, marital status, sexual orientation, and sources of income) has equal access to housing choice and opportunity



- governments to adopt strategies that affirmatively further fair housing and work towards equitable housing production, and direct LCDC to complete conforming rulemaking to incorporate these changes.
- (a) “Equitable housing production” is defined as diverse, quality, physically accessible, affordable housing choices with access to economic opportunities, services, and amenities.
 - (b) “Affirmatively Furthering Fair Housing” is defined as taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.
2. Regularly track and evaluate housing outcomes for protected classes as part of the Housing Production Dashboard that local jurisdictions respond to via the Housing Production Strategy, per the best available data.

Beyond these changes to the statutory framework implementing Goal 10, the project team heard the need for follow up work in other areas of fair housing to ensure a statewide approach to this important issue. Much of this follow-up policy work is outside of the direct scope and authority of the department, but they are critical in advancing housing choice for all Oregonians and should be included in a statewide housing production strategy that the core OHNA recommendations include.

E.1 Direct a multi-agency effort to develop statewide policy recommendations that establish Affirmatively Furthering Fair Housing (AFFH) policy. The intent is to ensure all state agencies with touchpoints connected indirectly or directly to housing have a responsibility to ensure their actions, programming and practices achieve fair and equitable outcomes.

Many state agencies, including Oregon Bureau of Labor and Industries (BOLI), Business Oregon, and Oregon Housing and Community Services (OHCS), currently receive federal funding to support housing services and/or develop affordable housing specifically for state and federally protected classes. As a condition for receiving these federal funds, the agencies must affirmatively further fair housing. Other agencies like DLCD and the Oregon Health Authority (OHA) have indirect or direct connections to housing services and development.

To ensure that all state agencies are operating collectively to achieve fair and equitable outcomes for all Oregonians, regardless of state/federal protected classes, it would be beneficial to develop a statewide policy that establishes affirmatively furthering fair housing policy. Crafting and establishing this policy would be a collective effort by all these state agencies with support of other organizations with fair housing expertise, such as the Fair Housing Council of Oregon (FHCO), Coalition of Communities of Color (COC) and the Oregon Community Alliance of Tenants (CAT).

To further advance state agencies collective efforts towards AFFH, ongoing collaboration among the agencies would be beneficial. A lead agency would need to be identified to organize meetings and check in on the status of implementing agreed-upon tasks. Outcomes from this multi-agency collaboration could inform the State’s annual report (i.e., CAPER) to HUD related to the fair housing actions outlined in the state’s Analysis of Impediments to Fair Housing Choice Report.

E.2 DLCD will participate as a partner with Business Oregon, OHCS, and the Oregon Health Authority in the next update of the [State of Oregon's Analysis of Impediments to Fair Housing Choice as a commitment to AFFH](#).



Business Oregon, OHCS, and Oregon Health Authority receive federal funds for housing and/or community development projects from HUD. As a condition for receiving these federal funds, HUD requires these state agencies to affirmatively further fair housing (AFFH) based upon HUD's obligation to administer the Department's housing and urban development programs in a manner to affirmatively further fair housing found under Section 808 of the Fair Housing Act.⁸ (Note: This AFFH obligation extends to all recipients of HUD funds, including local governments.)

HUD requires recipients of their funds to implement the AFFH mandate by engaging in fair housing planning through the development of an Analysis of Impediment to Fair Housing Choice (AI). The fundamental goal of HUD's fair housing policy is to make housing choice a reality through Fair Housing Planning (FHP). HUD suggests that jurisdictions conduct/update their AI at least once every 3 to 5 years or consistent with their Consolidated Plan cycle. The intent behind the AI is to identify impediments to fair housing choice for protected classes in the jurisdiction, take meaningful actions, in addition to combating discrimination that overcome impediments fair housing choice (e.g., overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on federal protected class, and maintain records reflecting the analysis and actions taken.

While DLCD does not receive federal funds from HUD, it would be beneficial for the department to work jointly with the other state agencies in future AI updates. The AI includes the review of impediments to fair housing choice in the public and private sector and involves:

- A comprehensive review of State laws, regulations and administrative policies, procedures
- An assessment of how those laws, etc. affect the location, availability, and accessibility of housing
- An assessment of conditions, both public and private, affecting fair housing choice for all protected classes
- An assessment of the availability of affordable, accessible housing in a range of unit sizes

As a result, a wealth of data, quantitative and qualitative, is collected and used to inform Business Oregon, OHCS, and OHA's housing programs in a manner that centers AFFH principles. If DLCD becomes a collaborator in the next update of the State AI, the department can better align the effort with the State's HPS program which seeks to achieve fair and equitable outcomes. It should be noted that the current AI for the Balance of the State is not organized to be used by individual jurisdictions. Instead, the data was made available at a variety of geographic levels (e.g., balance of state, county, region, etc.) however, for the future update, DLCD's recommendation would be for the data to be allowed to be more granular so that individual jurisdictions that don't receive HUD funding (and thereby not subject to AI requirements) can also use the data from the State AI to inform their Housing Production Strategies.

E.3 DLCD to partner with OHCS, Business Oregon, and OHA on the implementation of relevant actions identified in the current (and future) State AI with direct connection/implication to DLCD's housing program (goal 10) and as part of the agency's commitment to AFFH.

There are a few actions identified in the current State AI where DLCD would be an appropriate state agency partner to support addressing the identified impediments to fair housing choice including:

⁸ The Fair Housing Act, Section 808, AFFH <https://www.justice.gov/crt/fair-housing-act-2>



- Action 2 under the Actions to Reduce Disparities in Rental Housing Choice category. “New approaches to preserving and developing affordable housing: Identify and implement effective strategies (e.g., incentives, requirements) to increase the number of accessible and adaptable affordable rental housing units statewide. Impediment 1-4.”
- Action 3 under the Actions to Reduce Disparities in Rental Housing Choice category. “New approaches to preserving and developing affordable housing: review the effectiveness of recent legislation (e.g., HB 2001) in expanding the supply of housing in the balance of state. If units are not being built, identify remaining barriers, which could include other land use or environmental rules, and develop policies or incentives to mitigate them. Impediment 1-1.”
- Action 1 under the Current Strategies to Continue category. “Continue to incentivize siting affordable housing in communities with strong economic assets like proficient schools, employment opportunities, and affordable and accessible transportation. Impediment 3-1.”

The current State AI includes a “Legislative, policy development, regulatory changes” category which warrants underscoring here also:

- “Action 1: Support regulatory changes to strengthen the state’s source of income protection including increased resources dedicated to enforcement, higher fines, and piloting locally delivered housing provider protection/insurance funds. Impediments 1-1, 1-2, 1-3, 1-4, 1-6.”
- “Action 2: Support adding immigrants and refugees as a protected class at the state level. Impediment 1-3.”
- “Action 3: Reform the state housing provider protection/insurance fund to be more responsive to housing provider needs and expand the fund or develop other incentives to mitigate or offset the risk housing providers take when renting to high barrier tenants who otherwise would not meet standard screening criteria (e.g., prior eviction, criminal history, poor credit). Impediment 1-3.”
- “Action 4: Convene housing providers and fair housing stakeholders to develop a best practice process housing providers can use to fairly screen applicants who are undocumented and a process for individualized assessments for those with criminal histories. Learn from Portland’s implementation of the FAIR ordinance. Impediment 1-3.”

E.4 Support Oregon of Bureau of Labor and Industries (BOLI) efforts to increase enforcement of fair housing laws as a HUD-funded Fair Housing Advocacy Program (FHAP) grant recipient.

BOLI is the state agency charged with primary authority for enforcing state fair housing laws and protections. Community members who experience housing discrimination based on any of the state protected classes can file a complaint with BOLI who must investigate violations of state fair housing laws. Community members who experience housing discrimination based on any of the federally protected classes can file a complaint with the U.S. Department of Housing and Urban Development (HUD) who investigates federal violations of federal fair housing laws.

Prior to 2016, Oregon’s fair housing law was designated as “substantially equivalent” by HUD (this designation was granted in 2008). However, due to legislative changes to Oregon’s state law, HUD deemed BOLI no longer substantially equivalent and terminated its contract/partnership with BOLI as of April 3, 2016. The impact of this procedural change has lengthened the time in which complaints are investigated by HUD significantly. This delay is primarily due to the loss of a



substantially equivalent state partner to review complaints. It is said that the backlog of complaints yet to be investigated and adjudicated is multiple years behind.

Support BOLI working with HUD to reinstate FHAP grant, providing resources to BOLI to investigate and adjudicate federal fair housing law violations occurring in Oregon to better support community members experiencing unfair treatment and discrimination and further supporting a statewide effort to achieving fair housing outcomes for all.

E.5 Create a new “Disparate Impact” provision in Oregon fair housing law that would make it a violation of state fair housing law (adjudicated by BOLI or LCDC) for a government entity to have laws, regulations, or practices that have a substantial and negative disparate impact on Oregon and federal protected classes. The remedy to said practice would include changes to the law, regulation, or practice.

Disparate impact refers to a policy or practice which is “neutral” on its face but has a disproportionately adverse negative outcome on a protected class group regardless of whether the original intent of the policy or practice was discriminatory. Disparate impact, which has its origins in employment law, has been a vital pathway for enforcing the Fair Housing Act federally. The positive ramifications include anything from potentially providing additional protections for survivors of domestic violence to possibly ensuring zoning laws in local communities are not harmful. Implementing a State of Oregon disparate impact provision is a critical tool for fighting housing discrimination and ensuring equitable housing opportunities and choices for all Oregonians.

Such a provision would need to include similar reasonable burden of proof standards as federal statute, requiring establishing several factors in the evaluation of whether a particular law, regulation, or practice creates a disparate impact:

- Identify the specific policy or practice at issue
- Establish adversity or harm
- Establish disparity
- Establish causation

E.6 Adopt provisions to state law that would make existing Covenants, Conditions, and Restrictions (CC&Rs) for Homeowner Associations (HOA) on real property unenforceable if they restrict size of homes, prohibit ADUs, middle housing types, or conflict with land use regulations implementing state housing laws.

Covenants, Conditions and Restrictions (also called restrictive covenants) for HOAs are a set of rules that describe what one can do or not do with their home. The Oregon legislature has already passed legislation to negate any provision in existing HOAs that are contrary to public policy. However, the recent legislative changes related to ADUs, and middle housing were not in place at that time. As such, if an HOA prescribes minimum unit size, prohibits homeowners from adding units (like ADUs) or subdividing the existing home and converting it into a triplex (for example), then legally it would be allowed. For this reason, it is important to craft provisions to state law to ensure HOAs are not used as tools to limit these housing options for Oregonians.