



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

503-797-1532  
Fax: 503-797-1792  
roger.alfred@oregonmetro.gov

**Roger A. Alfred, Senior Assistant Attorney**

February 21, 2025

Periodic Review Specialist  
Department of Land Conservation & Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301

Re: Metro's Responses to Objections to Urban Growth Boundary Amendment

Dear Periodic Review Specialist:

This letter provides Metro's responses to objections filed with DLCD regarding the Metro Council decision in Ordinance No. 24-1520 expanding the urban growth boundary (UGB) for the Portland metropolitan region to provide capacity for housing and employment to the year 2044 as required by ORS 197A.350.

#### **A. David Marks Objections**

David Marks is a property owner in the Stafford urban reserve area who would prefer that Metro expand the UGB into Stafford. Marks raises three objections that are focused on Metro's analysis of alternative expansion areas under Goal 14 and the Metro Code.

##### **1. Metro applied the locational factors to all 27 urban reserve areas and properly gave more weight to the concept planned area.**

Marks argues that Metro's decision regarding where to expand the UGB is improperly based solely on the fact that the Sherwood West area has an adopted concept plan under Title 11 of Metro's Urban Growth Management Functional Plan (UGMFP). Marks argues that "Metro erred by refusing to consider any urban reserve areas for inclusion in the 2024 UGB amendment unless a local jurisdiction provided a concept plan for that area." Marks Objections at 3.

Marks is obviously incorrect. Metro's decision includes an extensive alternative location analysis that applied the Goal 14 locational factors to all 27 urban reserve areas in the Metro region. Metro's detailed Goal 14 analysis is provided in a 600-page report that is included in the record as Appendix 7 to the Urban Growth Report. Record 326-925. A separate 110-page analysis of the locational factors under the Metro Code is included as Appendix 7A. Record 925-1036. The results of the Goal 14 analysis regarding each of the 27 urban reserve areas are summarized in the table provided as Attachment 3 to Appendix 7. Record 794-795.

The Metro Council also adopted detailed findings in support of its decision describing the results of the Goal 14 analysis and explaining why, after applying the Goal 14 factors (and related Metro Code factors) to all 27 urban reserve areas, Metro concluded that Sherwood West provided the best location for the UGB expansion. Record 1195-1200.

Marks attempts to frame his argument as a failure by Metro to apply the Goal 14 factors to other areas besides Sherwood West. However, as described above, Appendix 7 provides a thorough application of the Goal 14 factors to all 27 urban reserve areas. Based on that detailed analysis, Metro concluded that Sherwood West was the best location for the UGB expansion. There was no failure by Metro to apply Goal 14 to all urban reserve areas, as Marks argues; rather, the real issue is that Marks does not like Metro's methodology, which allocates greater weight under the Goal 14 factors to areas with adopted concept plans. As discussed in detail below, Metro has discretion to weigh and balance the Goal 14 factors and to give greater weight to concept planned areas. Although Marks does not like the outcome, this approach is consistent with Goal 14.

The Metro region has an unfortunate history of expanding the UGB into areas that fail to be planned and developed, notably the 12,000-acre Damascus expansion in 2002. To address that problem, in 2010 Metro began requiring cities to adopt concept plans for new urban areas prior to those areas being added to the UGB. In all UGB amendments since that time, including the 2018 UGB expansion and the 2023 Tigard land exchange, the Metro Council has adopted decisions that provide greater weight under the Goal 14 locational factors to potential expansion areas that have concept plans. Metro's 2018 UGB decision was reviewed and approved by LCDC and the Oregon Court of Appeals. The Metro Council described its approach in the findings attached to the present 2024 decision:

“In undertaking this review of alternative urban reserve areas, the Metro Council is cognizant of the region's history of expanding the UGB into areas that have failed to develop, or have developed very slowly, due to a lack of governance and/or planning for development. Therefore, in its evaluation of the relative merits of the urban reserve areas under the factors in Goal 14 and the Metro Code, the Metro Council is exercising its discretion to place greater weight on the two factors that are impacted by the existence of adjacent cities with locally adopted concept plans for the relevant urban reserve area. Those two factors are: (1) efficient accommodation of identified land needs, and (2) orderly and economic provision of public facilities and services. A city's adoption of a concept plan that meets the requirements of UGMFP Title 11 demonstrates that the city has a plan for future development and is willing and able to efficiently accommodate the identified land need and provide public facilities and services within a time frame that will be considerably faster than other areas that do not have a concept plan.”

Record 1197.

Metro's approach in 2018 was described by the Oregon Court of Appeals in the *Marks v. LCDC* opinion:

“In the staff report, DLCD further explained, with regard to a recent expansion of the metropolitan area UGB, Metro gave ‘decisive weight’ to whether a concept plan had been adopted by various cities in determining whether to add land near those cities to the UGB, and that that methodology was approved by LCDC:

“In January 2020, [LCDC] approved a 2,100 acre Metro UGB expansion which utilized Metro's methodology. *The commission found that the methodology, as applied by Metro, was consistent with Goal 14, relevant state statutes, and Metro's own code and Regional Framework Plan.* Metro received four applications from cities within its boundaries (Beaverton, Hillsboro, King City, and Wilsonville) for a UGB expansion for which that city would take responsibility. All four cities submitted concept plans providing details on the proposed urban communities that would result. Metro also completed a technically sufficient analysis under Goal 14 of all of its urban reserve areas, \* \* \* but gave decisive weight to the adoption of the concept plans by these four cities as demonstrating that lands within these concept plan areas were best suited for UGB expansion.”

*Marks v. LCDC*, 327 Or. App. 708, 716 (2023) (emphasis added).

As also noted in the *Marks* opinion, DLCD explained in that case that “Metro does have the option of using the adoption of a concept plan as a strongly determining factor in its analysis of the four UGB expansion factors in Goal 14.” *Marks* at 715. That is exactly what Metro has done in the present decision. In his objections, Marks cites the *Marks* case extensively as if it supports his argument, but selectively ignores the parts of the opinion that describe how the Goal 14 boundary location methodology used by Metro in 2018 was endorsed by DLCD and approved by LCDC as being “consistent with Goal 14, relevant state statutes, and Metro’s own code.” *Marks* at 716. As described above by the Oregon Court of Appeals, LCDC reviewed and approved Metro’s methodology as being consistent with Goal 14 in its January 2020 final order.

The approval of Metro’s approach by DLCD and LCDC is consistent with established Oregon case law regarding the application of the Goal 14 locational factors. The Oregon Court of Appeals has previously described how Goal 14 allows the factors to be “considered and balanced” at the discretion of Metro:

“The locational factors are not independent approval criteria. It is not necessary that a designated level of satisfaction of the objectives of each factor must always be met before a local government can justify a change in a

UGB. Rather, the local government must show that the factors were ‘considered’ and balanced by the local government in determining if a change in the UGB for a particular area is justified. It is within a local government’s authority to evaluate the Goal 14 location factors and exercise its judgment as to which areas should be made available for growth.”

*1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 409-410 (2001); *see also Barkers Five LLC v. LCDC*, 261 Or App 259, 391-392 (2014) (explaining what “consideration of factors” means in the context of urban and rural reserve designations).

The first objection raised by Marks is premised on the completely fictional narrative that Metro failed to consider any urban reserve areas that are not concept planned as part of its Goal 14 locational analysis. Marks Objections at 6. As described above, Metro’s decision includes over 700 pages analyzing all 27 urban reserve areas under the Goal 14 and Metro Code locational factors, and includes detailed findings of the Metro Council explaining why Sherwood West was identified as the best expansion location when compared to all other urban reserve areas under the factors. Record 1195-1200.

The Metro Council properly exercised its discretion and judgment as described in *Ryland Homes* and *Barkers Five* to provide more weight to areas with adopted concept plans when it “considered and balanced” the factors, and to expand the UGB in Sherwood West.

Objection 1 should be denied.

## **2. Timing of Metro’s Goal 14 analysis**

The argument presented by Marks in the second objection is primarily focused on the timing of the Metro Council’s decision-making regarding the Goal 14 analysis. Marks contends that the Metro Council did not consider the Goal 14 factors until too late in the process, after Sherwood was already identified as the preferred expansion area.

First, and most importantly, this argument about when exactly the locational analysis was completed is irrelevant for purposes of DLCD’s review of Metro’s UGB decision. All that matters for purposes of legal review of a land use decision is what is included in the final written decision. Over forty years of Oregon land use case law stands for the proposition that review of a land use decision must be based on the contents of the final written decision, not on what is discussed (or not discussed) during the deliberations of the decision-making body or when certain discussions occur. *Rawson v. Hood River County*, 77 Or LUBA 415, 424 (2018); *Port Dock Four v. City of Newport*, 36 Or LUBA 68, 75 (1999); *Derry v. Douglas County*, 26 Or LUBA 25, 29 (1993); *Miller v. City of Ashland*, 17 Or LUBA 147, 157 (1988); *Citadel Corp. v. Tillamook County*, 9 Or LUBA 61, 67 (1983). These cases are discussed in more detail in section B.1 below in response to a similar objection raised by the West of Sherwood Farm Alliance.

As explained in those cases and many others, review of a local land use decision must be based solely on the written decision – specifically, the findings in support of the decision, and whether the findings are based on substantial evidence in the record. As described above, Metro’s decision includes a strong evidentiary basis in the form of 710 pages of analysis of all 27 urban reserve areas, and detailed Metro Council findings based on that evidence explaining why Sherwood West was identified as the best location under Goal 14. Those findings comprise Metro’s final decision that is now on review before DLCD.

Turning to the findings and evidence, Metro’s Goal 14 analysis is included as Appendix 7 to the Urban Growth Report. That analysis begins with an explanatory summary of the four boundary location factors under Goal 14. The description of Factor 1 regarding “efficient accommodation of identified land needs” provides, in part:

“However, the primary consideration in evaluating whether an urban reserve could efficiently accommodate an identified land need is whether it has an adopted concept plan under Title 11 of Metro’s Urban Growth Management Functional Plan. The purpose of concept planning is to ensure that there is a detailed local plan for future urban development, including estimated costs of infrastructure and potential methods for financing, prior to an area being added to the UGB. Also, having a concept plan that has been formally adopted by local officials following public engagement indicates a local willingness to urbanize and significantly increases the likelihood that the reserve will develop and efficiently accommodate identified land needs within a reasonable timeframe. As noted in the following pages, only one urban reserve, the Sherwood West Urban Reserve, has a locally adopted concept plan. Accordingly, in the analysis of which urban reserve demonstrates the highest likelihood of efficiently accommodating the identified land needs under Factor 1, the Sherwood West Urban Reserve rises to the top of the list.”

Record 334-335.

The description in Appendix 7 of Factor 2 regarding “orderly and economic provision of public facilities and services” provides, in part:

“The analysis under this factor requires an evaluation and comparison of the relative costs, advantages, and disadvantages of alternative UGB expansion areas with respect to the provision of these public facilities and services as needed to urbanize alternative boundary locations.

“\* \* \* \* \*

“Only one urban reserve, the Sherwood West Urban Reserve, has a locally adopted concept plan. That plan identifies how water, sanitary sewer, stormwater management, and transportation facilities could be extended to

serve urban development of the reserve and how such facilities and services could be financed.”

Record 335, 339.

Metro’s application of the four locational factors to the Sherwood West Urban Reserve Area in Appendix 7 is included at pages 722-742 of the record. That analysis provides, in part:

“As noted in the Introduction and Methodologies section of Appendix 7, as well as in Attachment 3, the Sherwood West Urban Reserve is the only urban reserve to have an adopted concept plan for its future urbanization. This concept plan indicates that the City of Sherwood is committed to urbanizing the reserve and has a plan in place to do so. The concept plan significantly increases the likelihood that the reserve will actually develop and be able to efficiently accommodate the identified need for residential and employment land within a reasonable timeframe.”

Record 723.

Based on the comparative analysis of all 27 alternatives under the four Goal 14 locational factors in Appendix 7 and Appendix 7A, the Metro Council adopted findings in support of its decision to expand in Sherwood West. Those findings provide, in part:

“The expansion area being approved in this ordinance is the Sherwood West urban reserve area. As described in Appendix 7 and 7A, Sherwood West ranked comparatively high under the Goal 14 factors and the Metro Code factors and has the benefit of completed concept planning by a city that is eager to annex, urbanize, and govern the areas. The Sherwood West concept plan describes the city’s ability to provide and pay for urban services, expected housing types and number of units, natural resource protection needs and governance issues. Identifying and planning for these issues in advance dramatically increases the likelihood that these urban reserve areas will be able to efficiently accommodate the identified residential land need within a reasonable timeframe and will provide public facilities and services in an orderly and economic manner. Therefore, the Metro Council finds that the Sherwood West urban reserve area will better accommodate the identified land need and more readily provide urban services under the first two locational factors in both Goal 14 and the Metro Code.”

Record 1198.

The validity of Metro’s decision under Goal 14 must be determined based on the findings adopted by the Metro Council and the supporting evidence in the record. The findings are clear and legally sound under Goal 14 and the evidence is detailed, voluminous, and not even

challenged by Marks. The Marks argument regarding the date on which the Goal 14 analysis was completed has no bearing on DLCD's review of whether Metro's decision is supported by adequate findings and substantial evidence in the record.

Regardless, the argument is nonsensical. According to the erroneous theory offered by Marks, it had not occurred to Metro staff that a Goal 14 locational analysis might be necessary until the issue was raised by Marks in his written testimony to the Metro Council on September 26, 2024. The Marks version of events is that once he alerted Metro to this deficiency, Metro staff had to scramble to fix this unforeseen problem by quickly throwing together a 710-page analysis as a "last minute" supplement to the Urban Growth Report. Marks Objections at 7.

In reality, Metro's work on the 2024 Goal 14 locational analysis dates back to 2017, when Metro staff began working on Metro's 2018 UGB decision. For the 2018 decision, Metro was required to undertake the same alternative location analysis of the same urban reserve areas. In the 2018 analysis, Metro used the same methodology where greater weight was provided to areas with concept plans. Four urban reserve areas were added to the UGB in 2018 applying that methodology, and expansion in all four locations was approved by LCDC. Then in 2023, Metro adopted a UGB "exchange" that added approximately 490 acres of land to the UGB adjacent to the City of Tigard and removed an equivalent amount of land in the Damascus area. As part of that decision, Metro staff updated the 2018 locational analysis to reflect changes that had occurred in the remaining urban reserve areas that had not been added to the UGB in 2018. Metro's 2023 decision concluded that the River Terrace urban reserve area was the best area to add in the UGB land exchange, based in part on the existence of a concept plan adopted by the City of Tigard. That decision was subsequently acknowledged by DLCD as being in compliance with the statewide planning goals, including Goal 14.

In January of 2024, Metro staff began working on updating the locational analyses from the 2018 and 2023 decisions in anticipation of a potential UGB expansion in 2024. A description of the work done by Metro staff in updating the Goal 14 analysis is provided in Appendix 7:

"As was done with previous growth management decisions, Metro staff completed the majority of the Goal 14 analysis, assessing each reserve according to Factors 1, 3, and 4 above. The 'public facilities and services' referred to in Factor 2 include water, sanitary sewer, stormwater, and transportation services. Metro staff completed the transportation element of the Factor 2 analysis following a review of local transportation system plans and consultation with transit service providers, including TriMet; the methodologies used in the transportation-related analysis are detailed further in Pages 7-10. Metro also contracted with Mackenzie, Inc., a Pacific Northwest multidisciplinary design firm with expertise in civil and structural engineering, land use planning, and architecture, to assist with background research on

water, sanitary sewer, and stormwater system capacities and needs;  
Mackenzie's assumptions and methodology are detailed in Attachment 4."

Record 330.

Mackenzie's analysis of utility availability, capacity, and impacts for all 27 urban reserve areas is included at pages 796-924 of the record. Not that the timing matters, but the final written report from Mackenzie is dated June 3, 2024. Record 796. Likewise, the draft 2024 UGR was released on July 9, 2024 and listed Appendix 7 in the table of contents as "pending," because the Metro Council had not yet reached a conclusion that there was a regional need for an expansion. The Metro Council did not identify a need for a UGB expansion until after the final public hearing on October 3, 2024. The Goal 14 analysis justifying a UGB expansion based on an identified land need would have been premature for release until after that happened.

In this objection Marks describes Appendix 7 as "an after-thought designed to give the appearance that Metro followed the required process." Marks also asserts that Appendix 7 was "drafted in late October of 2024," and was a "last-minute addition in response to a legal issue raised by an objecting party," which was merely an "attempt to cover up this flaw in its decision." Marks Objections at 8. Marks is entirely misguided. His assertion that Metro staff threw together a 710-page Goal 14 analysis in late October as an attempt to quickly "cover up" its mistake might be offensive if it were not so absurd.

Most importantly, this argument regarding the timing of the release of the locational analysis in Appendix 7 and 7A is completely irrelevant to DLCD's review of Metro's decision. Metro's decision explains exactly why Sherwood West was identified as the best location for an expansion under the factors. Marks is correct that a few other urban reserve areas received comparable scores to the Sherwood West area as shown on the table included as Attachment 3 to Appendix 7. Record 794. However, as explained in the Metro Council findings, and as described in the Court of Appeals decision in *Marks*, the Metro Council exercised its discretionary authority to assign "decisive weight" to the adoption of a concept plan by a city, which demonstrates a commitment to plan and develop the area in a timely and efficient manner. According to DLCD, "Metro does have the option of using the adoption of a concept plan as a strongly determining factor in its analysis of the four UGB expansion factors in Goal 14." *Marks* at 715. That option was previously exercised by Metro in 2018 and 2023, and approved by LCDC in 2020.

Objection 2 should be denied.

### **3. Metro's decision regarding future housing need is supported by substantial evidence.**

The third objection raised by Marks appears to be a claim that Metro's housing need projections and capacity assumptions are not supported by substantial evidence in the record.



The header of the objection also references “employment needs” but the objection itself includes no arguments related to employment land; all arguments are directed at Metro’s projected housing needs and capacity estimates. Accordingly, Metro responds to the arguments presented regarding housing needs and capacity.

First, Marks argues that Metro has dramatically underestimated the number of needed housing units by somewhere between 140,000 and 200,000 units. Marks Objections at 10. However, Marks makes the simple mistake of failing to subtract existing housing capacity from the future need projections. Marks argues that Metro’s estimation of future housing needs demonstrates a “need for 143,300 to 203,200 new housing units in the Metro UGB” in the next 20 years and that those numbers are considerably larger than the need for 3,100 new units that Metro identifies in the UGR. *Id.* Therefore, Marks argues that Metro’s analysis is internally inconsistent.

However, Marks misses the critical and seemingly obvious step of subtracting out existing capacity inside the UGB from the 20-year need projection. The UGR first identifies an existing capacity of 175,500 units inside the existing UGB, as shown on table 9 of the UGR. Record 56. Next, using a baseline future growth forecast, the UGR projects a need for 178,000 new housing units by 2044, as shown on table 14 of the UGR. Record 61. Existing capacity is then subtracted from the future need projection for each housing type, as shown on table 15 of the UGR, resulting in a total deficit of 3,100 units for single-unit detached and middle housing. Record 64. This part of the analysis is basic arithmetic.

Next, Marks argues that Metro’s capacity numbers are not supported by substantial evidence. Marks claims that the capacity projections in table 9 “do not match the numbers or conclusions in Appendix 2” and that “Metro failed to explain why it chose the specific numbers it chose and the basis for its conclusion.” Marks Objections at 11.

Marks may not have spent enough time reviewing the details of the UGR. Each of the components of capacity shown in UGR Table 9 are directly derived from the numbers and conclusions in UGR Appendix 2. As described in UGR Table 9 and UGR Appendix 2, there are several sources of residential capacity, including:

- Vacant land
- Redevelopment
- Recent UGB expansion areas that lack urban zoning
- Other planned development (projects in the approval stages that bypassed modeling because they had known unit counts)
- Office-to-residential conversion
- Accessory dwelling units and middle housing conversion

As described in UGR Appendix 2, Metro used a variety of methods and assumptions to assess these different sources of residential growth capacity. Using several different methods and varying the assumptions allows Metro to depict the inherent uncertainty in the analysis.

For instance, in UGR Appendix 2 Metro used two different assumptions for estimating potential capacity on vacant buildable lands to recognize that future market uptake of middle housing on vacant lands is uncertain. Record 178, 198-199. Likewise, redevelopment capacity is dependent on unknown future market conditions. In light of that uncertainty, Metro created three redevelopment scenarios that recognize the potential for weaker, stronger, or “baseline” market conditions. *See* Record 179, 202; Record 222-237; Record 1057. This capacity forecasting approach is necessary for estimating the future capacity that already-developed or partially-developed land may provide over the 20-year planning period. This is contemplated by a statute directing Metro to consider “market factors that may substantially impact future urban residential development.” ORS 197A.350(5)(a)(C).

Metro’s housing needs analysis in UGR Appendix 8 describes several housing need scenarios that utilize different combinations of capacity sources detailed in Appendix 2 combined with different household demand assumptions (low, baseline, and high growth). One of the scenarios described in Appendix 8 is the “Selected Scenario,” which is the baseline growth scenario that the Metro Council decided to adopt. Record 1059-1060. The selected scenario is summarized in UGR Table 9 and is the basis for Metro’s decision. Record 56. As the basis for Metro’s decision, the capacity numbers from the selected scenario shown on UGR Table 9 represent Metro’s best estimate of the most likely “baseline” growth scenario and resulting capacity. The rationale for selecting the capacity estimate within each range is described are described as part of the selected scenario in Appendix 8. Record 1059-1060. The table below indicates where each of these estimates can be found in UGR Appendix 2.

	UGB Capacity Assumptions (number of homes)				UGR citation
	single-detached	middle housing	multifamily	Total	
Vacant land (mix leans toward single-unit detached)	34,944	13,228	42,970	91,142	See Appendix 2, page 4, Expected Density Method – Heavy SFR mix (total 91,142). Record 178.
Redevelopment (Baseline)	12,292	11,727	24,382	48,400	See Appendix 2, page 5, Baseline Scenario (total 48,400). Record 179.
Concept plan areas and planned development on vacant land	9,096	6,662	4,138	19,896	See Appendix 2, page 6, New urban areas planned development (total 30,033). Record 180.
Other planned redevelopment (e.g., OMSI District)	135	172	9,830	10,137	

Office-to-residential conversion (baseline)	-	-	1,000	1,000	See Appendix 2, page 8 (total 1,000 units). Record 182.
ADUs and middle housing conversion/infill (low)	-	4,955	-	4,955	See Appendix 2, page 8 (total 4,995 units). Record 182.
<b>Total UGB capacity (rounded)</b>	<b>56,500</b>	<b>36,700</b>	<b>82,300</b>	<b>175,500</b>	See Appendix 8, page 23, which describes this “selected scenario” (total of 175,530 units). Record 1059.
Capacity housing mix	32%	21%	47%	100%	

Next, Marks claims that “Metro selected scenario 3 without explaining why,” and that Metro’s selection is not supported by substantial evidence. Marks Objections at 11-12. Marks may not have read the Metro Council findings, which state:

“The Metro Council accepts the recommendation of the Metro COO and staff to plan for the baseline ‘new normal’ scenario as described in the 2024 UGR, combined with an assumption that vacant land will trend more toward being developed with single unit detached homes rather than middle housing. This is generally described on page 39 of the UGR as Scenario 3 and a more data-driven description of the scenario is provided in Appendix 8 at page 19. Based on the detailed and extensive evidence and analysis provided by staff and described in the UGR, the Metro Council finds that Scenario 3 provides the most reasonable estimate of the amount and type of future growth that the region can expect over the next 20 years.”

Record 1190.

As explained in the findings, the Metro Council’s selection of scenario 3 is supported by evidence in the record that a reasonable person would rely on. Marks does not challenge that evidence or cite any conflicting evidence. Therefore, Metro’s decision is supported by substantial evidence. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff’d* 133 Or App 258 (1995).

Objection 3 should be denied.

## **B. West of Sherwood Farm Alliance Objections**

The West of Sherwood Farm Alliance (WSFA) is a coalition of individuals and property owners located primarily in the rural reserve area west of the UGB expansion who are generally concerned about the impacts of urbanization.

A consistent theme throughout WSFA's objections is asserting policy preferences regarding what they think Metro "should have" done in this UGB decision, without regard for what the applicable law actually requires. DLCD must review Metro's decision to determine whether it violates the applicable law, not whether it furthers WSFA's policy preferences. For example:

- In objection B.1, WSFA argues that Metro "should have" applied efficiency measures instead of expanding the UGB; however, the applicable statute is extremely clear that Metro may choose "one or both" of those options.
- In objection B.2, WSFA argues that Metro's Goal 14 alternative location analysis "should have" considered whether the identified land needs could be met in smaller parts of the other 26 urban reserve areas, rather than applying the factors to entire reserve areas; however, there is nothing in Goal 14 or the applicable statutes and rules that requires this.
- In objection C, WSFA argues that Metro should have based its UGB decision in part on whether future development in the Sherwood West expansion area will provide affordable housing; however, that is not part of the legal task assigned to Metro in this process, which is to ensure there is a 20-year supply of buildable land inside the UGB.
- In objection C, WSFA also argues that Metro should have applied the state's recently released Oregon Housing Needs Analysis (OHNA) numbers for the City of Sherwood as part of Metro's analysis of future need; however, the relevant statutes and rules impose no such directive.
- In objection D, WSFA argues that Metro should have considered whether the identified land needs could be satisfied by the recent North Plains UGB expansion; but there is no statute or rule that would authorize, let alone require, Metro to consider whether Metro's identified 20-year land need could be met inside a neighboring city.
- In objections G, H, and I, WSFA argues that Metro's decision is inconsistent with various general policies regarding compact development, racial equity, and climate change; however, none of these policies impose mandatory approval criteria for a Metro UGB decision or provide a basis for DLCD to remand.

The majority of WSFA's objections are long on policy arguments and short on legal support regarding the applicable standards for a UGB expansion. Each of WSFA's 17 objections are addressed below.

## 1. Timing of Metro's Goal 14 analysis

In objection A, WSFA raises an argument that is very similar to the second objection raised by Marks regarding the timing of Metro's Goal 14 alternative location analysis. WSFA argues that because the Goal 14 analysis in Appendix 7 and 7A was not made publicly available on Metro's website until October 18, 2024, the Metro Council did not adequately consider other urban reserve areas as potential locations for the UGB expansion.

This objection should be rejected for the same reasons explained above regarding the second Marks objection. WSFA's argument is entirely premised on whether the Metro Council deliberations included discussion of other possible expansion locations. As described above, more than 40 years of case law consistently holds that review of a land use decision must be based on the findings in the final written decision, not on what is discussed (or not discussed) during the deliberations of the governing body. *See, e.g., Lowery v. City of Portland*, 68 Or LUBA 339, 359 (2013) ("As we have stated on many occasions, our review in an appeal of a land use decision is limited to the written land use decision"); *Port Dock Four v. City of Newport*, 36 Or LUBA 68, 75 (1999) ("it is the city's written decision, rather than its oral deliberations that is important"); *Derry v. Douglas County*, 26 Or LUBA 25, 29 (1993) (rejecting challenge that written decision did not accurately reflect oral deliberations); *Citadel Corp. v. Tillamook County*, 9 Or LUBA 61, 67 (1983) ("What controls the outcome of the case is the written decision").

In *Miller v. City of Ashland*, 17 Or LUBA 147 (1988), the petitioners challenged a conditional use permit approval, arguing that the proposed development was inconsistent with the city's comprehensive plan. The city adopted findings explaining why the proposal was consistent with relevant comprehensive plan policies; nonetheless, petitioners argued that the city decision should be remanded because the city council "did not discuss during its deliberations, in any substantive manner, whether the proposal was in conformance with the comprehensive plan." *Id.* Just like WSFA's objection here, the petitioners in *Miller* cited minutes of the city council meetings as proof that the council never discussed comprehensive plan conformance. LUBA held:

"We review, as the justification for the city's decision, the final written order adopted by the city council, not comments made by the council members during their deliberation. *Oatfield Ridge Residents v. Clackamas County*, 14 Or LUBA 766 (1986); *Citadel Corp. v. Tillamook County*, 9 Or LUBA 61 (1983), *aff'd* 66 Or App 965 (1984). Petitioners have not cited, nor are we aware of, any legal requirement that the city's determination of conformance with its plan policies be reflected in the minutes of the city council's deliberations. *See Kellog Lake Friends v. City of Milwaukie*, 16 Or LUBA 755 (1988)."

*Miller* at 157-158.

All of the above-cited cases stand for the obvious proposition that when a local governing body adopts a written land use decision, that written decision is what becomes the final and legally binding expression of the governing body's deliberations and decision for purposes of review on appeal. Just as in the *Miller* case, the fact that the Metro Council did not spend time in a public meeting debating the relative merits of alternative UGB expansion areas does not mean, as opponents argue, that the Metro Council made an uninformed or unsupported decision under Goal 14. The decision made by the Council regarding Goal 14 is clearly expressed in the final written decision that was reviewed by the Council and adopted by the Council on December 5, 2024. The Metro Council adopted the following findings regarding the Goal 14 factors that explain the specific reasons for its decision:

“Therefore, in its evaluation of the relative merits of the urban reserve areas under the factors in Goal 14 and the Metro Code, the Metro Council is exercising its discretion to place greater weight on the two factors that are impacted by the existence of adjacent cities with locally adopted concept plans for the relevant urban reserve area. Those two factors are: (1) efficient accommodation of identified land needs, and (2) orderly and economic provision of public facilities and services. A city's adoption of a concept plan that meets the requirements of UGMFP Title 11 demonstrates that the city has a plan for future development and is willing and able to efficiently accommodate the identified land need and provide public facilities and services within a time frame that will be considerably faster than other areas that do not have a concept plan.

“\* \* \* \* \*

“Therefore, the Metro Council finds that the Sherwood West urban reserve area will better accommodate the identified land need and more readily provide urban services under the first two locational factors in both Goal 14 and the Metro Code.”

Record 1197-1198.

It is also worth noting that this WSFA objection is based on a flawed assumption – just because the final Goal 14 analysis in Appendix 7 and 7A was not published on the Metro website until October 18 does not mean that the Metro Council was not already aware of the outcome of that analysis and its relevance to this decision. As described above, the analysis in Appendix 7 and 7A was largely an update of the previous analyses that were adopted by the Metro Council for the UGB expansion in 2018 and the Tigard land exchange in 2023. All of those analyses applied the same Goal 14 and Metro Code locational factors to the same urban reserve areas. Some of the rankings of individual areas changed due to new circumstances on the ground in those areas, such as new development making urban services more accessible. But what did not change is the Metro Council's commitment to providing

“decisive weight” under two of the Goal 14 factors to areas with adopted concept plans. In the present case, the only urban reserve area with a concept plan was Sherwood West.

Objection A should be denied.

**2. Metro is not required to apply efficiency measures rather than expanding the UGB.**

In objection B.1, WSFA argues that Metro failed to consider measures that would meet the identified land needs inside the existing UGB. But WSFA does not explain why Metro would be required to consider and adopt “efficiency measures” rather than expanding the UGB, because there is no such requirement. The relevant statute is ORS 197A.350(6), which provides that if the projected 20-year housing need exceeds existing capacity, Metro has the choice to “take one or both of the following actions,” which are to *either* expand the UGB or adopt measures to use land more efficiently inside the existing UGB.

The statute expressly provides Metro the choice of choosing one path or the other. Metro decided to expand the UGB. The discretionary nature of this choice was identified by the Oregon Court of Appeals in the appeal of Metro’s 2018 UGB expansion:

“Thus, pursuant to ORS 197.296(6), if the analysis a local government conducts pursuant to ORS 197.296(3) reflects a projected shortfall of housing over the next 20 years, a local government, including Metro, can either expand its UGB to meet that need under ORS 197.296(6)(a), implement measures to make more efficient use of land within the existing UGB to meet that need under ORS 197.296(6)(b), or a combination of those two options under ORS 197.296(6)(c).”

*Housing Land Advocates v. Metro*, 311 Or App 326, 331 (2021).

ORS 197.296 has since been recodified as ORS 197A.350(6), but the statutory language remains the same and still provides Metro a choice regarding which path to choose. Accordingly, DLCD may ignore the arguments presented in Objection B.1 and reject this objection on that basis alone.

Regarding the merits of their arguments, WSFA is providing DLCD with incorrect acreage numbers in support of their argument regarding housing capacity in the City of Sherwood. Metro has pointed out this flaw several times, but nonetheless WSFA continues to make this misleading argument.

WSFA argues that the map it “commissioned” of vacant land in the Sherwood Planning Area shows that there are currently 335 acres of land in residential and future development zones that are available for housing in Sherwood. WSFA Objections at 17. WSFA “commissioned” this map by having a former Metro staff member call the Metro Data Resource Center and

request a map of all vacant land in the Sherwood Planning Area. Based on the terms of that request, Metro DRC staff provided a map of all vacant land. The problem of course is that “vacant” land is not the same as buildable land.

The “vacant” acres cited by WSFA do not take into account the ownership, use, or developability of individual tax lots due to environmental constraints. The vacant acreage also includes tax lots owned by churches, homeowners’ associations, the City of Sherwood, Washington County Facilities Management, and PGE. Metro’s required inventory of *buildable* lands properly excludes all of those tax lots from consideration. Additionally, there are significant environmental constraints present on many of the vacant tax lots that preclude development including steep slopes, floodplains and protected habitat; those areas are also excluded.

WSFA argues that the map of vacant lands they “commissioned” by asking a Metro staff member without explaining the true purpose of their request (which would have resulted in a more accurate map being provided) shows that there are 335 acres of land that could be used for housing. In reality, the actual buildable acreage for the vacant residential lands identified by WSFA is approximately 88 acres, which is what Metro properly inventoried in its BLI.

It is important to note that ORS 197A.350(3)(a) requires Metro to adopt an inventory of buildable lands for the entire region, not just for the City of Sherwood. Arguments regarding housing capacity in one of the 24 cities in the Metro region are not determinative regarding the accuracy of Metro’s regional buildable lands inventory.

WSFA first provided their incorrect analysis regarding vacant land to the Metro Council in September. Immediately afterward, Metro staff contacted the former Metro staff member who made the map request for WSFA and informed them that the vacant land acreage numbers were being used incorrectly. Metro staff also described WSFA’s error in subsequent Metro Council meetings. Nonetheless, WSFA is still electing to present their misleading claims to DLCD.

WSFA believes that Metro failed to apply efficiency measures that could have increased the supply of buildable areas within the existing UGB. However, it seems that WSFA might not understand what types of “efficiency measures” could theoretically be applied by Metro, if Metro had elected to do so. In the table on pages 17-18 of Objection B.1, WSFA suggests that as one efficiency measure, Metro could simply assert that higher density development must occur on lands already inside the existing UGB. That sounds great, but the reality is considerably more complicated.

If Metro were to attempt to rely on “efficiency measures,” ORS 197A.350(6)(b) requires Metro to take actions that will lead to more efficient use of land and potentially to provide a “quantifiable validation” that those densities have been achieved in similar zones. WSFA simply asserts that “changes to zoning and incentives for infill and redevelopment could meet the region’s needs.” WSFA Objection at 18. That is theoretically correct; however, Metro



does not zone land and it has little or no control over those fundamentally local decisions. Further, as discussed in detail in the Court of Appeals opinion affirming Metro's 2018 UGB expansion in *Housing Land Advocates*, Metro is prohibited by Section 5(4)(b) of the Metro Charter from requiring increases in density in single-family neighborhoods in the Metro region. In *Housing Land Advocates*, the court affirmed LCDC's conclusion that Metro's decision to expand the UGB rather than attempt to require higher residential densities was consistent with Goal 14. *Id.* at 344. In any event, in this case as in *Housing Land Advocates*, Metro chose to expand the UGB as allowed under 197A.350(6)(a) and therefore WSFA's arguments about efficiency measures in Objection B.1 are irrelevant.

WSFA goes on to argue that Metro could have met the identified housing capacity needs on surplus industrial lands. In addition to the fact that Metro does not control local zoning decisions, Metro cannot unilaterally decide that industrial lands provide additional residential capacity as WSFA suggests. In many cases, local jurisdictions prohibit or limit residential development in industrial zones, typically in order to separate conflicting uses and to protect industrial land under Goal 9. Under ORS 197A.350(4)(a), Metro's inventory of "buildable lands" must include locally zoned residential land, not industrial:

- (A) Vacant lands planned or zoned for *residential* use;
- (B) Partially vacant lands planned or zoned for *residential* use;
- (C) Lands that may be used for a mix of residential and employment uses *under the existing planning or zoning*; and
- (D) Lands that may be used for *residential* infill or redevelopment.

Objection B.1 should be denied.

### **3. Metro is not prohibited from analyzing complete urban reserve areas under the Goal 14 locational factors.**

In objection B.2, WSFA argues that Metro's alternative location analysis under Goal 14 should have considered whether the identified land needs could be met in smaller parts of the other 26 urban reserve areas, rather than applying the factors to entire reserve areas. There is nothing in Goal 14 or the applicable statutes and rules that requires such a parcel-by-parcel dissection.

This argument is based on a procrustean and illogical interpretation of language in Goal 14, Oregon land use statutes, and DLCD rules regarding the use of the words "location" and "land." WSFA asserts that because the language in Goal 14 says that Metro must evaluate "alternative boundary *locations*" rather than "alternative urban reserve areas," that means Metro is prohibited from analyzing entire urban reserve areas under the locational factors. WSFA also asserts that because the buildable land statutes direct Metro to include "sufficient buildable *lands*" to accommodate a 20-year land need, that means Metro is prohibited from applying the locational factors to entire urban reserve areas, because the statutes use the word "land" and not "urban reserve areas." Similarly, because the DLCD rules regarding the

location alternatives analysis refer to the priority of “land” to accommodate a need, the WSFA theory is that also prohibits consideration of entire urban reserve areas.

The complete lack of textual or contextual support for these arguments indicate that WSFA’s forced interpretations are a reach, to say the least. First, the use of the words “locations” and “land” in the language cited by WSFA pre-dates the enactment of the Metro urban and rural reserve statutes in 2007 and the adoption of urban and rural reserves by Metro and the counties in 2011. So as a matter of statutory interpretation, we cannot assign a legislative intent that those particular words were deliberately intended *not* to apply to Metro’s urban reserve areas, which did not exist at the time. Also, those words have their own particular significance and meaning in their context, *e.g.*, “buildable lands,” and the context of those rules and statutes cannot be read to conclude that there was legislative intent to also exclude urban reserve areas from those phrases as part of their distinct intended meanings.

WSFA provides no legal reason why the phrase “alternative boundary locations” in Goal 14 *must* be interpreted to prohibit the “locations” from including entire urban reserve areas. Neither does WSFA explain why the term “land” in the cited statute and DLCD rule *must* be interpreted to prohibit Metro from considering entire urban reserve areas. The entire extent of the WSFA analysis is that the words “location” and “land” are different words than “urban reserve areas,” so therefore they *must* be interpreted to exclude urban reserve areas. Logical fallacies abound.

The consistent interpretation used by Metro, DLCD, and LCDC in every Metro UGB expansion since the adoption of urban reserves in 2011 has been to apply the locational factors to an entire urban reserve area for purposes of the Goal 14 alternatives analysis. Metro has expanded the UGB into urban reserve areas four times: in 2011, 2018, 2023, and now in 2024. The analysis used by Metro and previously affirmed by DLCD and LCDC in the first three of those decisions has always involved application of the Goal 14 locational factors to the urban reserve areas as a whole in order to determine which areas are the most suitable for an expansion.

WSFA cites nothing in Goal 14, applicable statutes, or administrative rules that prohibits the approach that has been consistently used by Metro and approved by DLCD and LCDC since 2011. Metro acknowledges that if DLCD agrees with WSFA that it would be better planning policy to require Metro to break up a need determination into smaller components and analyze each separate acreage need for a particular housing type and/or employment land need against smaller corresponding acreages in all of the urban reserve areas, the Department could make that requirement clear by amending its rules to provide that direction. However, from a planning perspective, that would make what is already an incredibly cumbersome UGB location alternative analysis nearly impossible.

More importantly, this argument has no legal or practical effect on the challenged decision. As concluded in Metro’s findings, no portion of any of the 26 other urban reserve areas besides Sherwood West have concept plans that describe where and how future development

would occur. Accordingly, under Metro’s analysis none of those areas would provide a better location than Sherwood West for even a smaller portion of the identified land needs.

Objection B.2 should be denied.

**4. Metro properly applied Metro Code locational factor 7 regarding farmland protection in urban reserve areas.**

In objection B.3, WSFA argues that Metro incorrectly interpreted its code by not undertaking a comparative analysis of each urban reserve area under a locational factor in the Metro Code regarding the protection commercial agriculture on important farmland.

The relevant locational factor is in Metro Code section 3.07.1425(c)(7), which provides:

“If the Council determines there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering the following factors:

“\* \* \* \*

“(7) Protection of farmland that is most important for the continuation of commercial agriculture in the region.”

WSFA asserts that Metro did not consider this factor, which is not correct. Metro did consider this factor in its location analysis under the Metro Code factors but decided to give the same “high” rating to all 20 of the remaining urban reserve areas for this factor, because having an urban reserve designation inherently indicates that those areas are less important for the continuation of commercial agriculture than farmland located elsewhere. This is explained in Appendix 7A:

“The urban and rural reserves adoption process designated the most important land for commercial agriculture as rural reserves, and the most suitable land for urbanization as urban reserves. Designation of an area as an urban reserve means farmland within this reserve area is not the most important for the continuation of commercial agriculture in the region compared to farmland located elsewhere. Therefore, protection of farmland within in any of the urban reserves is not, for the purposes of responding to this Metro Code factor, considered important for the continuation of commercial agriculture in the region. Each reserve fully satisfies (i.e., scores highly on) this factor.

“\* \* \* \*

“As explained above, all 20 urban reserves received a “high” ranking for the Metro Code factor related to protection of farmland for commercial agriculture, because all areas are urban reserves that, by definition, have been deemed appropriate for urbanization, while land important for commercial agriculture has already been designated as rural reserve.”

Record 930, 933.

WSFA contends that Metro is attempting to “ignore” one of its code factors and should be required to compare the relative importance of farmland in different urban reserve areas despite the fact that they are all essentially planned for future urbanization.

Again, Metro is not ignoring this factor; rather, Metro is applying the factor as required, and electing to assign the same ranking under the factor to all urban reserve areas. This issue was raised below by WSFA and the Metro Council adopted the following findings:

“One opponent, the West of Sherwood Farm Alliance, asserts that Metro’s analysis incorrectly applies factor seven under the Metro Code, which requires a comparative evaluation of urban reserve areas based on ‘protection of farmland that is most important for the continuation of commercial agriculture in the region.’ Metro Code § 3.07.1425(c)(7). Metro’s analysis in Appendix 7A considered and applied this factor to all 20 relevant urban reserve areas, and reached a conclusion that all urban reserve areas score highly regarding this factor, because the decision made by Metro and the three counties in 2011 to designate these areas as urban reserve necessarily made them the most appropriate for urbanization under state law. In other words, all urban reserve areas are equally less important for protecting commercial agriculture than Goal 3 farmland that is not an urban reserve. Since all urban reserve areas are designated as potentially the next areas that will be added to a UGB and urbanized, there is no basis to rank some higher than others in terms of protecting farmland. Potential urbanization of each urban reserve area and its compatibility with nearby agricultural activities occurring on Goal 3 protected farmland outside the UGB was evaluated in Appendix 7 under Goal 14 factor 4, and those rankings are in Attachment 3 to Appendix 7.

“The Metro Council is afforded deference in the interpretation of its own code provisions. The Council finds that the analysis of Metro Code section 3.07.1425(c)(7) provided in Appendix 7A and described above is consistent with the purpose and intent of that section. Further, the Metro Council finds that there is insufficient evidence in the record to support a conclusion that urbanization of Sherwood West would have significantly greater impacts on commercial agriculture than in other urban reserve areas. Finally, even if there are potential impacts on current commercial agriculture activities in Sherwood West, that factor under the Metro Code is outweighed by the fact that there is

an adopted concept plan for Sherwood West, which provides greater weight in favor of that location under the first two factors of Goal 14 and Metro Code 3.07.1425(c). For these reasons, the Metro Council finds that even if impacts to agricultural activities exist and are considered, such impacts are outweighed by the ability of Sherwood West to efficiently accommodate the identified land need and provide orderly and economic public facilities and services; accordingly, Sherwood West still provides the best location for this UGB expansion when all of the factors are considered, weighed, and balanced.”

Record 1200.

As correctly stated in the findings quoted above, which are not challenged or even mentioned by WSFA, the Metro Council is afforded deference in the interpretation of its own code. *See Hoffman v. Deschutes County*, 237 Or App 531, 539 (2010). The findings explain the basis for the Metro Council’s decision and find that there is insufficient evidence in the record to support a conclusion that urbanization of Sherwood West would have significantly greater impacts on commercial agriculture than other urban reserves areas. The findings also provide an alternative interpretative basis for Metro’s decision to expand the UGB into Sherwood West, even if potential impacts to agricultural activities do exist.

Objection B.3 should be denied.

## **5. Metro Code locational factor challenges**

In Objection B.4, WSFA challenges some of Metro’s conclusions under the locational factors under the Metro Code. These arguments mostly present minor disputes about the evidence that Metro relied on in its selection of the Sherwood West urban reserve area for the UGB expansion under the locational factors. In this objection, WSFA asserts that Metro relied on incorrect evidence, or failed to rely on evidence provided by WSFA, or failed to rely on “simple logic.” WSFA Objections at 33.

WSFA neglects to identify the standard of review that DLCD applies to an evidentiary challenge, perhaps because that standard sets a high bar. Review by DLCD in the manner of periodic review is subject to the standard of review stated in ORS 197.633(3)(a): “For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government’s decision.” Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decisions that the local government made in view of all the evidence in the record, the choice between conflicting evidence belongs to the local government. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff’d* 133 Or App 258 (1995); *Barkers Five*, 261 Or App 259, 349 (2014).

To summarize, if Metro makes a finding based on evidence that a reasonable person would rely on, the decision is supported by substantial evidence, even where there is conflicting evidence that could support a different conclusion. None of the WSFA arguments come close to meeting that standard and many do not even present reviewable arguments. Each of WSFA's evidentiary challenges under the Metro Code factors are addressed below.

**a. 3.07.1425(c)(1) – Efficient accommodation of identified land needs**

First, regarding Metro Code section 3.07.1425(c)(1), WSFA disputes Metro's conclusion that adding Sherwood West to the UGB will more efficiently accommodate the identified land needs. WSFA does not provide any analysis regarding the basis for this assertion. WSFA does not challenge the evidence Metro relied on and does not identify any conflicting evidence other than a vague reference to "parcel maps and other information about the urban reserves." WSFA Objection at 31. This argument does not articulate a basis for remand under the substantial evidence standard and is not sufficiently developed for review. *Hough v. City of Redmond*, 33 Or LUBA 483, 486 (1997) ("It is not our function to supply petitioners with legal theories or to make their case for them") (citing *Deschutes Development v. Deschutes County*, 5 Or LUBA 218, 220 (1982)).

**b. 3.07.1425(c)(2) – Orderly and economic provision of public facilities and services**

Next, regarding Metro Code section 3.07.1425(c)(2), WSFA points to an appendix in the City of Sherwood's expansion proposal regarding infrastructure funding that estimates infrastructure costs for three "catalyst projects" in Sherwood West as being approximately \$334 million. WSFA notes that another objector, Ron Bunch, submitted his own analysis suggesting that the city's "cost estimates are low." WSFA Objections at 32. WSFA does not describe what the Ron Bunch testimony said and does not explain why Metro should have relied on the unidentified Ron Bunch testimony instead of the evidence that Metro chose to rely on.

WSFA also cites evidence that it submitted related to the cost of the new Sherwood High School and enrollment projections. Again, WSFA does not explain why this evidence is more reasonable than the evidence that Metro chose to rely on regarding this factor.

As part of this argument, WSFA questions why Metro did not compare the projected infrastructure costs for Sherwood West against infrastructure costs per acre for the alternative urban reserve areas. The answer is that Metro *did* complete detailed assessments of projected costs of infrastructure for each of the alternative urban reserve areas, as required by this factor. That information is provided for each of the 27 urban reserve areas in Appendix 7, which includes tables showing itemized cost estimates for all areas as required by factor 2 of Goal 14. *See, e.g.*, Record 725-733 regarding the infrastructure costs estimates for Sherwood West.

WSFA does not identify the evidence that Metro did rely on in support of this factor or explain why a reasonable person would not have relied on that evidence. This argument does not articulate any basis for remand under the applicable standard of review.

**c. 3.07.1425(c)(3) – Comparative environmental, energy, economic and social consequences**

This argument presents general policy-based complaints about the Sherwood West UGB expansion related to climate change, environmental impacts on Chicken Creek and segregation. Other than generally arguing that Metro “should have” done a better job explaining some of the ESEE consequences of expanding the UGB, WSFA does not articulate a reason why Metro’s decision incorrectly applies the law or is not supported by substantial evidence in the record. WSFA points to evidence that it submitted based on census data showing a lack of correlation between jobs and housing and commute lengths, but does not identify the evidence relied on by Metro that conflicts with the WSFA evidence and does not explain why it was unreasonable for Metro to rely on the evidence that it did.

WSFA does not identify what specific evidence Metro relied on in support of its conclusion under this factor or explain why a reasonable person would not have relied on that evidence. This argument does not articulate any basis for remand under the applicable standard of review.

**d. 3.07.1425(c)(4) – Compatibility of proposed urban uses with nearby agricultural and forest activities**

WSFA asserts that Metro did not identify impacts of urbanization of Sherwood West on commercial agriculture in the vicinity and did not compare those impacts with other urban reserve areas. This argument is puzzling because Appendix 7 of the UGR includes detailed assessments of all 27 urban reserve areas under this factor. The analysis of Sherwood West under factor 4 is at pages 735-737 of the record. WSFA notes that some of the urban reserve areas are adjacent to areas without any existing agriculture or forestry practices. WSFA is correct, and that is one reason why some of the other urban reserve areas were ranked “high” by Metro in its analysis under this factor, as shown in the table included in Appendix 7 as Attachment 3, including Stafford and Tonquin. Record 794-795.

WSFA states that there will be transportation system impacts from developing in Sherwood West that could adversely impact adjacent farmland near Roy Rogers Road. This was also considered by Metro. Impacts arising out of future urbanization on farm activities along Roy Rogers Road are specifically identified in Metro’s analysis of Sherwood West under factor 4. Record 736.

This argument fails to articulate any basis for remand.

**e. 3.07.1425(c)(5) – Equitable and efficient distribution of housing and employment opportunities throughout the region**

WSFA argues that “simple logic dictates” that adding new housing at the edge of the UGB “cannot represent an equitable and efficient distribution of housing and employment opportunities.” WSFA Objections at 33. That is the extent of WSFA’s argument in support of this objection. WSFA does not identify any of the allegedly incorrect evidence that Metro relied upon under this factor and does not explain why that evidence defies “simple logic” or why it is not evidence that a reasonable person would rely upon. This argument does not articulate any basis for remand under the applicable standard of review.

**f. 3.07.1425(c)(6) – Contribution to the purposes of Centers and Corridors**

WSFA generally asserts that “some urban reserve areas” are given lower rankings than Sherwood West under this factor despite having greater proximity to a corridor than Sherwood West. WSFA does not identify which urban reserve areas it believes were given improperly low rankings and does not cite any evidence regarding specific locations or distances, which makes it impossible to respond to or resolve this part of their objection.

WSFA appears to misunderstand this factor as being exclusively tied to “proximity to centers and corridors,” while the factor actually considers the overall “contribution to the purpose” of centers and corridors by each urban reserve area. Each urban reserve area is ranked on a number of other considerations in addition to proximity. As described in Appendix 7A, other considerations applied to each area under this factor include connections to transit service, the character of the land uses between the locations, and the availability of land for new development. Sherwood West received a higher ranking than other areas not just because of proximity but also of its more direct connection to the Sherwood Town Center, and the availability of land for development. Record 933.

WSFA does not explain how Metro incorrectly applied the law or why Metro’s decision under this factor is not supported by substantial evidence. This argument does not articulate any basis for remand under the applicable standard of review.

**g. 3.07.1425(c)(7) – Protection of farmland that is most important for the continuation of commercial agriculture in the region**

WSFA’s argument under this factor is addressed above in section B.4 at page 19.

**h. 3.07.1425(c)(8) – Avoidance of conflict with regionally significant fish and wildlife habitat**

WSFA asserts that other urban reserve areas would have fewer impacts on significant fish and wildlife habitat than the potential impacts on Chicken Creek in Sherwood West and the



downstream Tualatin River National Wildlife Refuge. Metro's analysis under this factor includes a detailed assessment of the regionally significant riparian and upland habitat within the Sherwood West urban reserve area, including Chicken Creek. Record 1026-1027. Due to the identified impacts from future development on habitat, Sherwood West was given a "medium" ranking under this factor. Record 1027. WSFA does not challenge or even cite to any part of Metro's findings under this factor.

WSFA makes a vague reference to evidence that it submitted to Metro on the topic of habitat impacts, as well as evidence submitted by Tualatin Riverkeepers, but does not bother to explain what any of that evidence says or how it conflicts with the evidence relied upon by Metro. WSFA Objections at 34. It is unclear what WSFA believes DLCD should do with this evidentiary objection in the absence of any description of the allegedly conflicting evidence or any legal analysis. WSFA does not identify what specific evidence Metro relied on in support of its conclusion under this factor or explain why a reasonable person would not have relied on that evidence. This argument does not articulate any basis for remand under the applicable standard of review and is not sufficiently developed for review. DLCD should not be expected to make WSFA's arguments for them. *Haugh, supra*, at 486.

**i. 3.07.1425(c)(9) – Clear transition between urban and rural lands, using natural and built features to mark the transition**

WSFA asserts that the Sherwood West urban reserve area does not provide a clear transition between urban and rural lands because the expansion area will be separated from the rest of Sherwood by Highway 99W and Chicken Creek riparian areas. WSFA argues that "these facts cannot be reconciled with a conclusion that this expansion area provides the requisite clear transition." WSFA Objections at 34.

WSFA appears to misunderstand the nature of the location analysis under the factors. The factor in this Metro Code section does not create an approval standard that must be met – *i.e.*, there is no "requisite clear transition" that must be provided for an area to be selected for the expansion. Rather, this is one of nine Metro Code factors that are each ranked, and then weighed and balanced by the Metro Council to reach a conclusion that identifies the most suitable UGB expansion location.

Metro's analysis of the Sherwood West area under this factor describes the topography of the area and the presence or absence of natural and built features, concluding that there are natural or built features that would provide a transition between urban and rural lands for just over half of the reserve area's edge, resulting in a "medium" ranking for this factor. Record 1025-1026. That ranking was then compiled with the other Sherwood West rankings and compared against the other 26 urban reserve areas, as shown on the table included in Appendix 7A as Attachment 3. Record 1036. In this argument, WSFA does not challenge or even refer to any part of Metro's analysis to explain why it is erroneous or not supported by substantial evidence in the record. This argument does not articulate any basis for remand under the applicable standard of review.

Objection B.4 should be denied.

## **6. Affordable housing and Goal 10**

In objection C, WSFA asserts that Goal 10 and various statutes require Metro to base its UGB expansion decision on whether the development that will occur in the Sherwood West expansion area will provide affordable housing. There is no such requirement.

### **a. Need for affordable housing under Goal 10 is not part of Metro's Goal 14 land supply analysis in a UGB expansion**

In this objection WSFA first presents a general assertion that “multiple legal authorities” require Metro to make a UGB expansion decision based in part on whether future development in the expansion area will provide affordable housing. WSFA then sets out three pages of blocked quotes of various authorities with underlined words that generally relate to affordable housing. However, at no point in those three pages of blocked quotes and underlined words does WSFA attempt to explain why or how the underlined words apply to a Metro UGB decision or why they would require the outcome urged by WSFA. That is because they do not.

The Goal 10 language quoted by WSFA places no requirements on Metro's adoption of a UGB decision. The fundamental purpose of Goal 10 is to require cities and counties to adopt policies, comprehensive plans, and zoning codes that will “encourage” opportunities for an adequate amount of needed housing units at prices and rents that are affordable. Under Goal 10, cities and counties, who unlike Metro have zoning and permitting authority, “shall encourage the availability” of needed and affordable housing. The Goal 10 guidelines cited by WSFA describe the required “housing elements of a comprehensive plan.” WSFA Objections at 35. Comprehensive plans are city and county planning documents; Metro does not have a comprehensive plan. ORS 197.015(16). The cited requirements do not apply to Metro.

On the other hand, the purpose of Metro's UGB analysis under ORS 197A.350 is to ensure that there is a 20-year supply of buildable land for housing inside the UGB. Unlike cities and counties, Metro has no ability to zone land, no land use permitting authority, and no ability or obligation to ensure that housing will be built at particular price points in UGB expansion areas. Metro's statutory directive is very broad and long-range – to ensure that the region has an adequate land supply for 20 years of future growth. The zoning, permitting and building part of the urbanization process is governed solely by cities and counties.

WSFA quotes, without explanation or analysis, the definitions of “needed housing” in both ORS 197A.018 and ORS 197A.348. WSFA Objections at 36-37. Although the definition and factors in ORS 197A.348 do apply to Metro's land need analysis in a UGB decision as stated in ORS 197A.350(3)(b), the definition in ORS 197A.018 does not, because it is directed only

at UGB decisions by cities within Metro as stated in ORS 197A.335(1)(b). Regardless, it makes no difference because the definitions are nearly identical.

Although no explanation or analysis is provided, WSFA's quotation of the "needed housing" definition in ORS 197A.348 appears to suggest that Metro did not consider or apply the affordable housing component of that statute. If that is what WSFA is arguing, they are mistaken. As required under ORS 197A.350(3)(b), Metro's 2024 Urban Growth Report includes an analysis of future housing needs that includes affordability as one of the factors. This is described in Metro's housing needs analysis attached as Appendix 8 of the UGR. Record 1051-1059. Metro's analysis regarding affordability is also described in the findings adopted by the Metro Council, which explain:

"As described in Appendix 8, the core analysis required of Metro is to determine whether there will be a need for more buildable land in the next 20 years. This is fundamentally a question of land capacity and what the demand for varying densities of future housing types will be, based largely on what types are allowed under local zoning codes. Metro's future need analysis is necessarily focused on the three basic structure types because those housing types are quantifiable under the local zoning codes of the 24 cities and three counties in the Metro region. Other more specific types of housing described in the "needed housing" definition of ORS 197A.348(1) such as government assisted housing, affordable housing, manufactured homes, and farmworker housing, could be any of the types of housing analyzed by Metro depending on how the building is designed and built. Accordingly, they are folded into the broader categories for purposes of identifying a 20-year land need for housing. Assessing needs for the more specific types of housing identified in ORS 197A.348(1) becomes relevant when cities and counties are adopting their own local housing needs analyses and adopting local zoning codes that are responsive to specifically identified local needs as required under state law."

Record 1190-1191.

As described above and in Appendix 8 of the UGR, Metro's analysis of affordability is provided in order to assess the sufficiency of the UGB's supply of land for housing, which is the core of Metro's obligations under ORS 197A.350 and Goal 14.

Under 197A.350(2)(a), Metro is required to "demonstrate that its regional framework plan provides *sufficient buildable lands* within the urban growth boundary" (emphasis added). To make that determination, Metro is required under ORS 197A.350(3) to inventory buildable lands and conduct an analysis of housing needs "*to determine the number of units and amount of land needed* for each housing type for the next 20 years" (emphasis added). These statutes make clear that the housing needs analysis conducted by Metro – while it contains required details about affordability – is intended to determine whether there is enough *land* to

accommodate that housing. Household income, along with household size, household age, and presence of children provide one means of determining demand for different housing types. Understanding demand for those housing types is a means to an end for determining 20-year land need, which is Metro's assigned task.

Further, Metro is subject to limitations on its authority regarding affordable housing. Under ORS 197A.465(2), Metro may not adopt a regulation that "has the effect of establishing the sales or rental price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale or rent to a particular class or group of purchasers or renters." Metro is also prohibited by Section 5(4)(b) of the Metro Charter from requiring cities or counties in the Metro region to increase density in single-family neighborhoods. *See Housing Land Advocates, supra*, at 344.

The relationship between Goal 10 and ORS 197.296 (now ORS 197A.350) was described by LUBA in *GMK Developments v. City of Madras*, 57 Or LUBA 81, *aff'd* 225 Or App 1 (2008), where LUBA said:

"The Goal 10 rules are concerned with zoning land within a jurisdiction's boundaries to achieve an adequate mix and density of housing units, not with expanding the jurisdiction's boundaries. \* \* \* Unlike ORS 197.296(3), however, the Goal 10 rules do not equate the need for specific housing types with land need requirements. A Goal 10 housing need may be, but is not necessarily, met by increasing land supply. *Moreover, a residential land need, in Goal 14 terms, is a broader concept than a Goal 10 housing need.*"

*GMK Developments* at 88-89 (emphasis added).

As explained by LUBA, the primary purpose of Goal 10 is to require cities and counties to zone land to achieve a mix of housing units, including affordable housing, and it is not directed at UGB expansions. As also noted, the Goal 14 analysis undertaken by Metro in a UGB expansion requires consideration of broader and longer-range land need issues than what is required under Goal 10. In short, contrary to WSFA's arguments, although affordability is a component of Metro's need analysis for purposes of projecting future UGB capacity under ORS 197A.350 and ORS 197A.348, Goal 10 does not require Metro to base a UGB expansion decision on whether future development in the expansion area will provide affordable housing.

The Metro Council did impose conditions of approval on the UGB decision directing the City of Sherwood to advance housing affordability citywide. The conditions achieve this in three ways. First, the conditions direct the city to institute new strategies and incentives to encourage affordable housing production. Second, the conditions direct the city to work with Metro and Washington County to identify funding opportunities, with the goal of meeting citywide housing affordability targets set by the State of Oregon under the Oregon Housing Needs Analysis program. Third, the conditions direct the city to explore the feasibility of

regulated affordable housing within the existing Town Center. Ordinance No. 24-1520 Exhibit B, Conditions of Approval. Record 14.

Metro correctly acted within the scope of its legal authority and obligations under Goal 10, Goal 14, and the applicable statutes regarding affordable housing.

This objection should be denied.

**b. The state's OHNA housing need allocations are not part of Metro's projected 20-year housing need analysis for the UGB**

Next, WSFA argues that recently released Oregon Housing Needs Analysis (OHNA) numbers for the City of Sherwood should have been applied by Metro as part of its projection of future need under ORS 197.350A(3). WSFA Objections at 38-44.

WSFA cites nothing in the statutes or rules governing Metro's UGB analysis or in the OHNA statutes or rules in support of this assertion. There is no legal requirement that Metro use housing need numbers from the OHNA program. In fact, the OHNA program has been developed with the expectation that Metro will continue its statutory obligation to adopt its own regional forecast and housing needs analysis and that Metro's projected housing need numbers will be relied upon by the state when establishing housing need allocations for cities within Metro. *See* ORS 184.453(3).

As a practical matter, OHNA housing need allocations to cities were not finalized until December 2024, after the completion of Metro's growth management decision.

Objection C should be denied.

**7. The North Plains UGB expansion has no relevance to Metro's analysis of land capacity inside the Metro UGB**

In objection D, WSFA argues that Metro "failed to consider and address" the City of North Plains' UGB expansion in 2023 as part of Metro's inventory of the supply of housing and employment land in the Metro UGB. WSFA asserts that this alleged failure "violates multiple coordination requirements in statute, administrative rules, and as interpreted by LUBA." WSFA Objections at 46. Despite this assertion of "multiple" legal violations, WSFA does not provide a single citation to any statute, rule, or case law that they allege Metro violated. That is because they do not exist.

Metro's capacity analysis is governed by ORS 197A.350(3)(a), which directs Metro to "inventory the supply of buildable lands *within the urban growth boundary*." The statute does not direct Metro to also consider capacity within the UGBs of neighboring cities. Similarly, the relevant DLCD rule states: "When evaluating or amending a UGB, a local government *must inventory land inside the UGB* to determine whether there is adequate

development capacity to accommodate 20-year needs determined in OAR 660-024-0040.” OAR 660-025-0050(1). There is nothing in the statutes or rules – or the entire history of DLCD’s statewide implementation of UGB amendments under Goal 14 – to suggest that a UGB decision should consider the possibility of meeting identified land needs inside a different jurisdiction’s UGB.

Metro is responsible for inventorying buildable land inside the Metro UGB, not in other UGBs outside of its jurisdiction. Appendix 2 of the UGR describes Metro’s land inventory and capacity estimates. Record 175. It is true that Metro is part of a larger regional economy. To recognize this, Metro completes a population, household, and employment forecast for the larger 7-county Metropolitan Statistical Area, described in UGR Appendix 1 (Record 87), and then applies a “UGB capture rate” to household and employment demand to determine how much of the demand is in the Metro UGB. These UGB capture rates are based on historic trends. A discussion of residential UGB capture rates is provided in UGR Appendix 8. Record 1057-1058. A discussion of employment UGB capture rates is provided in UGR Appendix 3. Record 252-253. By taking these steps, Metro has appropriately considered potential future growth in North Plains as well as other neighboring cities and counties. However, Metro is not obligated, or even authorized, to consider capacity in North Plains as part of the capacity analysis for the Metro UGB.

Objection D should be denied.

#### **8. Responses to WSFA objections regarding UGB expansion for 130 net acres of employment land in the north district of Sherwood West.**

In objection E, WSFA raises five sub-objections to Metro’s decision regarding the addition to the UGB of approximately 265 net acres of land for employment uses in Sherwood West. The employment land expansion consists of two separate areas: approximately 130 net acres in the north district of the expansion area identified for future mixed employment and industrial purposes, and approximately 135 net acres in the south district of the expansion area identified for future commercial use. Record 82-84.

##### **a. Conceptual development scenarios and net acreage**

In objection E.1, WSFA points to one of the two potential development scenarios in a study prepared for the city by Mackenzie, Inc. for the north district of Sherwood West. That study is attached to the city’s concept plan as Appendix R. Record 6568. As discussed in more detail in response to other objections below, the two scenarios presented in that study do not represent final development plans by the City of Sherwood that were somehow approved or endorsed by Metro as part of the UGB decision. Rather, they are exactly what they described to be: conceptual scenarios showing possible future development sites and possible configuration of lots within the north district of the expansion area. As explained in the Mackenzie study:

“To illustrate a range of potential employment land lot configurations and transportation and utility corridors in the North District, Mackenzie has prepared two different scenarios of how the area could develop in the future.

“\* \* \* \* \*

“Notably, the scenarios are for illustrative purposes only, as a means to draw conclusions about the developability of the study area and will require further refinement during Comprehensive Planning efforts if Metro adds Sherwood West to the UGB.”

Record 6596.

The Mackenzie study considers two potential development scenarios, identified as Scenario A and Scenario B. Record 6597-6603. WSFA points to Scenario A and makes arguments as if that conceptual scenario is a development site plan being reviewed for final permit approval under a city land use code. Rather, it is one theoretical scenario for lot configuration and street locations attached to a Title 11 concept plan that may or may not actually occur.

In objection E.1, WSFA points to a table and a map for Scenario A in the Mackenzie study that provide estimates of acreage for seven different theoretical employment sites, and approximate total gross and net acreage for those areas. Record 6597-6598. Based on the acreage amounts shown in Scenario A in Table 1, WSFA argues that “Metro approved a UGB expansion for 227.1 acres of industrial land in excess of the 130 acres it justified to create two 50-acre high tech manufacturing sites.” WSFA Objections at 51.

WSFA is mistaken. The Metro UGB expansion approval added 130 net acres of mixed employment and industrial land in the north district, as clearly described in the UGR and Metro Council findings. The estimated acreage numbers provided in Table 1 are for both gross acres (227.1) and net acres (152.7). Record 6597. As noted on that table, the 152 net acre figure only subtracts an estimated amount of area that might be subject to habitat protections once added to the UGB. However, it does not estimate the amount of land that would be subtracted for roads and other right-of-way. The city’s proposal for 130 net acres of employment and industrial land in the north district also includes a reduction for right-of-way, which the Mackenzie study does not.

WSFA is confusing gross acres with net acres. This objection should be denied.

#### **b. Potential site restrictions on 50-acre industrial sites**

Metro’s UGB decision approved the addition of 130 net acres of mixed employment land in the north district of Sherwood West based in part on a finding that the area will be able to provide two large-lot sites of 50 acres or larger for future industrial development. In objections E.2 through E.4, WSFA argues that, for various reasons, two particular (and

entirely theoretical) development sites described in the Mackenzie study attached to the city's concept plan would actually *not* be able to provide 50 or more acres for industrial use. WSFA Objections at 51-58. Even if WSFA were correct, this argument does not create a basis for remand.

WSFA challenges the evidentiary basis for Metro's conclusion that the proposed employment area in the north district of Sherwood West could provide two 50+ acre sites for future industrial use. WSFA's argument is based on one of two potential future development scenarios provided by the city as part of its expansion proposal, which is identified in the city's materials as "Scenario A." In this objection, WSFA relies on a map included in Scenario A to support its incorrect premise that the theoretical Sites A5 and A6 shown on that map provide the single and exclusive way that two 50-acre sites could be provided. There is also a "Scenario B" in the city's concept plan materials that is not considered by WSFA. The tables and maps related to each of these scenarios are part of a study provided to the city by Mackenzie titled "Sherwood West North District Concept Plan Refinement." Record 6568.

It is important to focus on what Metro's decision actually did, which was *not* to select or require any particular site or street configuration for the location of the two 50-acre industrial sites when they are ultimately planned by the city. Rather, Metro added a total of approximately 265 net acres in the north district, including a conceptually planned mixed employment area containing approximately 130 net acres. Record 6269. In order to ensure that two 50-acre industrial sites will be provided somewhere within that employment area, Metro imposed a condition of approval requiring the city to take steps in its future planning for the area to protect and provide enough land to meet that need. Metro's decision leaves the specific future lot configuration, site assembly, and site and street planning up to the city's future comprehensive planning efforts. Metro's decision does not require the city to provide the two 50-acre sites on sites A5 and A6, or in any other particular location in the future employment area. It just requires the city to ensure two 50-acre sites are provided somewhere.

Thus, even if correct, WSFA's argument regarding site constraints that might apply to sites A5 and A6 and restrict the ability of those sites to provide two sites for industrial use does not require a conclusion that the north district employment area cannot possibly provide two 50-acre sites once the district is planned by the city. This objection does not consider other potential street and lot configurations, including Scenario B. Nor does the WSFA objection consider the possibility that one 50-acre site could be provided on the west side of Elwert Road and the other could be provided on the east side of SW Elwert Road, as identified in the two tables for Scenario A and Scenario B. Record 6597-6600. The City of Sherwood's code includes procedures for partitions, property line adjustments and lot consolidations that could be used to assemble two 50-acre sites using site A5 and A6 or other sites on the west side of SW Elwert Road. It is also possible that the city could adjust the boundary of the employment zone prior to formal adoption in order to ensure there is enough developable



acreage. The two particular and conceptual sites that WSFA is relying do not provide the exclusive way for the needed industrial sites to be assembled in the future.

Nonetheless, WSFA's arguments regarding the alleged site restrictions are without merit for the reasons addressed below.

**c. Effect of BPA easement and habitat on site A5**

In objection E.2, WSFA argues that the presence of a BPA powerline that crosses Site A5, combined with protected habitat under Metro Title 13, renders that site incapable of providing 50 net developable acres. WSFA states that "the facts show that Metro's conclusion that Site A5 provides a 50-acre site suitable for high tech manufacturing are [sic] contradicted by the facts." WSFA Objections at 54. However, as described above, at no point in the Metro decision did Metro "conclude that Site A5 provides a 50-acre site." Rather, Metro added 130 net acres with instructions to the city to take steps to ensure that two such sites are eventually assembled.

A systemic problem with WSFA's arguments is that they misconstrue Title 13 by incorrectly assuming that everything shown on the Metro Title 13 inventory map from 2005 is prohibited from being developed. The Metro Council described this flaw in WSFA's arguments in its findings, which WSFA chooses to ignore:

"Contrary to assertions made by opponents, the requirements of Metro Title 13 will not be a hindrance to assembling two 50-acre flat buildable parcels in the northern part of Sherwood West. The existing Title 13 inventory for the area is from 2005 and is outdated; because the area is currently outside of Metro, Title 13 does not create habitat protection requirements that are binding until it is added to the UGB and to Metro's jurisdictional boundary. When this area is added to the UGB, Title 13 requires the city and Metro to update the inventory to reflect any changes in conditions that have occurred since 2005, including the removal of a substantial number of trees that has occurred since that time. The city's new comprehensive plan and land use regulations for the area will need to comply with Title 13; however, under Metro Code, compliance can mean allowing some encroachment even into inventoried habitat."

Record 1195.

This flaw in WSFA's argument is demonstrated by evidence included in their objections. The aerial photo included on page 56 of the WSFA objections is dated 2016 and it shows a large, forested area occupying portions of sites A5 and A6. Comparing that photo to the two more recent aerial photos on pages 53 and 54 reveals that a substantial portion of those trees have been removed. The aerial photo at page 53 clearly depicts the area that has now been clear-

cut, and is obviously no longer habitat, but WSFA has misleadingly placed a green overlay on it labeled “Title 13 Habitat.”

As described in the above-quoted Metro Council findings, the evidently deforested, non-riparian areas would not be included in the required habitat inventory update, and therefore would not be subject to Title 13 habitat protections once they are annexed, planned and zoned by the city. *See* Metro Code 3.07.1370.

Thus, WSFA’s arguments regarding the amount and location of Title 13 habitat areas are incorrect and overstate the amount of protected habitat on both Site A5 and A6. In fact, as shown on the photos in WSFA’s objections, here is no longer *any* Title 13 habitat on Site A5.

Regarding the BPA powerline easement, the WSFA objections appear to assume that absolutely nothing can occur within the easement area, which is incorrect. While it is true that buildings may not be located under the power lines, those areas could still be industrially zoned and developed for parking, landscaping, and utilities, which happens regularly throughout the region. Metro’s condition of approval does not require that the 50-acre sites include buildings underneath power lines; it merely requires that two 50-acre sites must be created somewhere in the city’s 130-acre mixed employment area.

This objection should be denied.

#### **d. Effect of habitat on Site A6**

In objections E.3 and E.4, WSFA makes similar arguments regarding Site A6. Unlike Site A5, Site A6 does include existing habitat that would probably need to be included in an updated Title 13 inventory after being annexed and planned by the city. However, this objection is also based on the incorrect premise that the challenged decision includes “Metro’s conclusion that Site A6 contains a developable parcel of at least 50 acres.” WSFA Objections at 57.

Metro made no such conclusion. Metro’s decision does not require or endorse any particular configuration of parcels or road alignments for purposes of how the city will ultimately provide two 50-acre sites. The two scenarios depicted in the Mackenzie report represent two conceptual development scenarios regarding future planning options, not final depictions of what is going to be adopted by the city when it undertakes its comprehensive planning for this area.

Contrary to WSFA’s argument in this objection, there is nothing in Metro’s decision to indicate that Site A6 will necessarily comprise one of the two 50-acre sites. However, as indicated in Scenario B, which assumes a different road location further to the south, Site B5 could occupy the northern part of what Scenario A identifies as A6 to create a larger parcel. Record 6602.

Further, these objections misunderstand the habitat area classifications and how they must change with urban planning of the area after inclusion in the UGB.

The ratings of “high,” “moderate,” and “low” Habitat Conservation Areas (HCAs) that are shown in the maps referenced in objection E.4 correspond to the urban development values for habitat areas that were based on the 2005 inventory and assumptions for *rural* land uses at that time, since the areas were then outside of the UGB and not planned for urban uses.

After the inventory map is updated as required by Metro Code 3.07.1370(b) following inclusion in the UGB, and as part of updating Metro’s HCA map as also required by that subsection, new urban development values will be determined, and new HCA designations will be assigned to regional habitat that was still remaining upon inclusion in the UGB. Under Title 13, habitat located in portions of the Sherwood West mixed employment area that now have a Title 4 Industrial Areas designation under Ordinance 24-1520 as shown on Exhibit D, will be considered to have “medium” urban development value as described in footnote 2 to Table 3.07-13b of Title 13. All the upland habitat on the existing inventory from 2005 for the mixed employment area is Class B upland habitat, and Class B upland habitat with a Title 4 Industrial Area designation will have a “low” HCA level, not a “moderate” HCA level as assumed in objection E.4. *See* Table 3.07-13b.

In other words, the urban development value of the habitat areas with a Title 4 designation will increase and the required HCA protection level for those areas will decrease. Therefore, WSFA’s references to 2005 HCA designations that were based on a 2005 inventory and rural land use classifications are irrelevant to determining how most of the mixed employment area could actually be developed with industrial uses consistent with Title 13.

Even those areas that remain on the updated post-UGB expansion inventory and are assigned a “low” HCA level are not prohibited from development by Title 13. Objection E.4 refers to the Title 13 Model Ordinance and its limitations on disturbance of habitat areas; however, the City of Sherwood is not required by Title 13 to regulate habitat using the Model Ordinance; Metro Code 3.07.1330, titled “Implementation Alternatives for Cities and Counties,” provides roughly half a dozen pathways that the city could consider during its post-UGB expansion comprehensive planning phase to protect habitat in a manner consistent with Title 13, and only one of those pathways is adopting the Model Ordinance. The Model Ordinance, if the City chooses to adopt it, also allows for disturbance of habitat areas with mitigation elsewhere, and expressly allows disturbance for certain kinds of development, such as wastewater and stormwater facilities that may be necessary to support urban (*e.g.*, industrial) land uses. *See* section 3 of the Model Ordinance. So, it is not correct to assume that any areas with even a “low” HCA level cannot be developed.

In summary, the currently mapped Title 13 habitat inventory from 2005 in Sherwood West does not control future levels of developability of those areas. That will be determined once they are added to the UGB and planned for future development.

This objection should be denied.

**e. Sites A5 and A6 vs. other urban reserve areas**

In objection E.5, WSFA again incorrectly asserts that Metro “concluded” that Sites A5 and A6 on the conceptual scenario A map are the two locations that will necessarily provide the two 50-acre industrial sites. As explained above, that is not the case. Nonetheless, WSFA argues that Metro’s “conclusion that Sites A5 and A6 are appropriate and developable locations for high tech manufacturing” is contradicted by findings in the Goal 14 boundary location analysis that other sites are not suitable for the use. WSFA Objections at 60.

WSFA attempts to compare Metro’s nonexistent “conclusion” regarding Sites A5 and A6 to its decision regarding the suitability of other urban reserve areas under the locational factors. Because Metro made no such conclusion, this objection should be rejected on that basis alone.

Further, the extent of the WSFA analysis is that Metro determined Sites A5 and A6 were better locations than other urban reserve areas even though those two sites are comprised of smaller parcels compared to “larger parcels in the Bendemeer Urban Reserve Area.” In other words, WSFA argues that simply because unidentified “larger parcels” may exist in Bendemeer, that means Metro’s decision to include Sites A5 and A6 in the UGB is erroneous, or perhaps not supported by substantial evidence, it is hard to tell which. Either way, this argument presents no basis for remand.

This objection should be denied.

**9. Metro’s condition of approval regarding 50-acre industrial sites**

In objection F, WSFA challenges the effectiveness of a condition of approval attached to the UGB expansion. Metro’s UGB analysis identified a need for two large-lot industrial sites of at least 50 acres each that could accommodate high-tech industrial manufacturing uses. To help ensure this identified need will be met in Sherwood West, the Metro Council did two things as part of its UGB decision: (1) it amended the Title 4 Industrial and Employment Area map to place an Industrial designation on the northern portion of the expansion area (as depicted on Exhibit D to Ordinance No. 24-1520), and (2) it imposed a condition of approval requiring the City of Sherwood to plan that area in order to provide for two 50-acre industrial sites to accommodate the identified need.

WSFA argues that the condition of approval is not sufficiently specific to prevent the city from approving other types of uses that will not meet the identified need. However, Metro has been very specific with the city regarding its expectations for the planning of this expansion area. Metro staff will be working closely with the city in its future planning and zoning efforts for Sherwood West, and Metro will be providing planning grant funding to the city for its work, the receipt of which will be subject to compliance with Metro’s conditions

of approval. Essentially this objection questions Metro’s ability to enforce its conditions of approval attached to a UGB, which Metro is expressly granted under Metro Code section 3.07.1455, which provides in part: “(c) If a city or county fails to satisfy a condition, the Council may enforce the condition after following the notice and hearing process set forth in section 3.07.850 of this chapter.”

Objection F does not allege a valid basis for remand and should be denied.

## **10. Compact urban growth**

In objection G, WSFA argues that Metro’s decision to expand the UGB violates various policies that favor compact and efficient urban development.

As in WSFA’s objection C, addressed above in section B.6, WSFA submits two pages of blocked quotes of statutes and planning goals with underlined words that are generally related to promoting a compact urban form, but fails to provide any explanation or analysis regarding why Metro’s decision is inconsistent with any of the underlined words in those policies.

First, WSFA quotes ORS 197.012, which creates a policy directive to state agencies, cities and counties that they “should consider” giving priority to investments that will encourage compact urban development and density. WSFA does not attempt to explain exactly how or why this policy applies to require remand of a Metro UGB decision.

Next, WSFA quotes Goal 14, which is to provide for the efficient use of land. WSFA provides no explanation regarding why it believes this UGB expansion is inconsistent with Goal 14. The Metro Council adopted extensive and detailed findings of fact and conclusions of law explaining how the decision is consistent with Goal 14; however, in this objection WSFA does not challenge or even mention any of those findings. In the absence of any analysis regarding the challenged decision, it appears that WSFA might be arguing that *any* expansion of the UGB is necessarily inconsistent with Goal 14, which is obviously incorrect. Metro’s previous 2018 UGB expansion decision was challenged under Goal 14 for not adequately accommodating the land need inside the existing UGB, and those arguments were rejected by LCDC and the Oregon Court of Appeals. *Housing Land Advocates, supra*.

Finally, WSFA quotes a policy in Metro’s Regional Framework Plan (RFP) to maintain a compact urban form and to use land efficiently. Again, WSFA does not explain exactly how or why the challenged UGB decision violates the policy, which again suggests that it is WSFA’s belief that *any* UGB expansion would necessarily violate this policy. As described above, the Metro decision is consistent with Goal 14 – for the reasons described in the Metro Council’s unchallenged findings – and is also consistent with this corresponding policy in the RFP.

Metro's commitment to compact urban growth is well-established. As described in Metro's UGR, which provides the analytical basis for the UGB expansion, Metro's decision relies very heavily on redevelopment and infill of lands already inside the existing UGB. In this decision, Metro is planning for an additional 178,000 homes in the Metro region by 2044. Record 61. As described in Table 15 of the UGR summary, 175,500 of those homes will be accommodated in the existing UGB. Record 64. Stated differently, Metro is accommodating over 98 percent of future housing through 2044 inside the existing UGB. Only approximately one percent of new housing will be accommodated in the Sherwood West UGB expansion area.

This objection does not allege a valid basis for remand and should be denied.

### **11. Racial equity and diversity**

In objection H, WSFA argues that Metro's decision to expand the UGB into an affluent part of the region violates Metro equity policy regarding attempting to achieve an equitable regional distribution of the burdens and benefits of growth.

Again, WSFA quotes a Metro strategic plan and an RFP policy statement related to equity, and notes that the City of Sherwood is not very diverse compared to other cities, but that is the extent of its argument for remand. WSFA provides no explanation regarding why this UGB decision must be remanded under the quoted policy and plan. As described in the UGR, Metro undertook an extensive and detailed assessment of regional land capacity, projected future growth and regional land needs, applied the Goal 14 locational factors, and reached a conclusion supported by findings describing why the decision is consistent with all the myriad applicable statutes, rules, and Goal 14 regarding where the UGB should be expanded.

Objection H should be denied.

### **12. Climate change**

In objection I, WSFA argues that Metro's decision is inconsistent with one of the Metro Council's "six desired outcomes" for a successful region, which is that Metro should strive to be "a leader on climate change, on minimizing contributions to global warming."

Again, WSFA cites Metro's "desired outcome" regarding climate change, but does not provide any explanation regarding why DLCD must remand Metro's decision based on the policy expressed in that desired outcome.

In 2017, the Metro Council incorporated the six desired outcomes into its code regarding UGB expansions. Metro Code section 3.07.1425 sets forth the factors and criteria applicable to Metro UGB amendments. The six desired outcomes were added in subsection (d), which directs the Council to "consider the following factors" in determining where to expand the UGB, and includes subsection (5) regarding whether the city proposing the UGB expansion

has taken actions to advance the outcomes. Accordingly, the Metro Council adopted specific findings that “consider” the six desired outcomes as “factors” for the UGB expansion, including the following introductory statement:

“The Council also notes that in adopting these factors, the expressly stated intent was not to create criteria that must be satisfied, but factors to be considered and weighed, in the manner of the Goal 14 locational factors.”

Record 1200.

As explained by the Metro Council, the six desired outcomes were incorporated into the Metro Code to be considered as factors, not to be applied as mandatory approval criteria as WSFA contends.

Objection I should be denied.

### **13. There were no ethics violations by Metro Councilor Gonzalez**

In objection J, WSFA argues that Metro’s decision violates various provisions of the Metro Code regarding ethics standards and Goal 1 regarding citizen involvement. WSFA contends that these violations were committed by Metro Councilor Gonzalez, because he announced his support for the UGB expansion in a social media post on July 11, 2024, prior to Metro’s first public hearing. WSFA Objections at 72.

Once again, WSFA quotes two pages of Metro policies and Metro’s public engagement guide statements with underlined words and phrases, but provides no legal analysis to support their position that Councilor Gonzalez violated any ethical standards. There is plenty of legal authority regarding ethical behavior by elected officials, and yet WSFA cites nothing in support of their allegations. Once again, that is because no such authority exists.

WSFA raised this issue in a previous submittal to the Metro Council, and the Metro Council adopted the following findings:

“The West of Sherwood Farm Alliance asserts that Metro Councilor Gonzalez made a public endorsement of the Sherwood West UGB expansion prior to the conclusion of the public process that “violates the spirit” of Goal 1 and Metro’s public engagement principles. The Farm Alliance does not identify the statement or when it was made, and does not attempt to explain why a public statement by an elected official in support of a legislative proposal is legally improper or should require recusal. The Metro Council finds no basis for this claim.”

Record 1208.

WSFA has now identified the statement by Councilor Gonzalez that they were referring to, which appears to be social media post in which the councilor states that he “supports Sherwood’s request” for a UGB expansion. WSFA Objections at 73.

However, as noted by the Metro Council in the above-quoted findings, which are not challenged or even mentioned by WSFA, WSFA still does not attempt to explain why a public statement by an elected official in support of a legislative proposal is ethically or legally improper. WSFA appears to be confused about the nature of legislative decisions as opposed to quasi-judicial decisions.

The distinction between quasi-judicial and legislative land use procedures is well-established under Oregon law, and dates back to the venerable Oregon Supreme Court decision in the *Fasano* case. *See, e.g., Sahagian v. Columbia County*, 27 Or LUBA 592, 599 (1994) (citing *Fasano v. Washington County*, 264 Or 574 (1973)); *Columbia Riverkeeper v. Clatsop County*, 267 Or App 578 (2014). The requirement for an impartial decision maker does not apply to a local legislative land use process. *See, e.g., Granada Land Co. v. City of Albany*, 56 Or LUBA 475, 491 (2008) (because the county’s decision was legislative, there was no basis for a challenge based on alleged bias of decision makers); *Stevens v. Jackson County*, 47 Or LUBA 381, 386-387 (2004) (disclosure of *ex parte* contacts is not required in legislative land use decisions).

Councilor Gonzales is an elected representative from the western part of the region, whose job is to represent his constituents and make political decisions regarding legislative matters that come before the Metro Council. His announcement of support for a proposed legislative UGB expansion does not violate any ethical principles or standards and provides no basis for remand by DLCD.

Objection J should be denied.

### **C. 1000 Friends of Oregon Objections**

1000 Friends of Oregon submitted four objections, which are addressed below.

#### **1. Metro’s conclusion regarding housing capacity inside the UGB is supported by substantial evidence in the record; Metro is not required to apply the City of Portland’s inventory as part of its analysis.**

In objection A, 1000 Friends argues that Metro’s inventory of buildable land does not account for all the existing residential capacity inside the UGB, specifically housing capacity that was identified by the City of Portland in its own separate analysis under OHNA. 1000 Friends contends that Metro should have considered the results of Portland’s Housing Production Strategy and incorporated those results into Metro’s assessment of regional capacity, specifically arguing that Metro “failed to adopt, incorporate, and reassess the capacity for the 20-year land needs for the region with [Portland’s] updated housing



production strategy in accordance with several requirements,” including Goal 14, ORS Chapter 197A and Metro Code. 1000 Friends Objections at 7.

Similar to many of the WSFA objections addressed above, although 1000 Friends cites to Goal 14 and the entirety of ORS Chapter 197A, at no point in this objection does 1000 Friends clearly explain *why* Metro’s decision not to adopt and apply the City of Portland’s OHNA housing capacity numbers violates Goal 14 or the relevant statutes.

City of Portland staff participated in the review of Metro’s 2024 UGR buildable land inventory and capacity estimates. During that review, Portland and Metro staff recognized that Metro uses a different model than Portland for estimating housing capacity, which is why the results are different. Unlike Portland, Metro’s methodology accounts for the fact that, even when financially feasible, many properties will not redevelop over the 20-year planning period. That assessment is described in UGR Appendix 2 Attachment B, and it is based in part on Metro’s analysis of historic redevelopment trends. Record 230-233. This consideration of past development trends is consistent with the requirements in ORS 197A.350(5)(a).

Metro contracted with Johnson Economics to develop a regional model that estimates infill and redevelopment potential on lands inside the existing UGB. That “pro forma” model and methodology are described in UGR Appendix 2. Record 223. In Metro’s opinion, the pro formal model provides a more reliable model than the one used by the City of Portland and produces more accurate long-range predictions of which properties will redevelop or not over the next 20 years.

In DLCD’s review of this argument it is important to note that much of the capacity estimated by the City of Portland and by Metro is for multi-unit housing. Metro’s UGR inventory shows an existing capacity for 82,300 multifamily homes inside the UGB. Record 56. A surplus of capacity for multi-unit housing does not address the deficit for single-unit housing that Metro identified in the UGR. Record 64.

Applying DLCD’s standard of review to 1000 Friends’ objection, DLCD may remand Metro’s decision only if it finds that either: (1) Metro’s decision does not comply with applicable law because it does not use the City of Portland’s housing capacity estimates, or (2) Metro’s decision is not supported by substantial evidence because it does not use the city’s numbers. ORS 197.633(3). Neither of those standards are met here.

First, in this objection 1000 Friends does not specifically identify the legal authorities that it alleges Metro violated and provides no analysis of why those authorities were allegedly violated. The extent of any legal analysis in this objection is a statement that “Metro failed to demonstrate that the estimated needs cannot reasonably be accommodated on land inside the existing UGB.” 1000 Friends Objections at 6. Casting this vague argument in its most favorable light, it appears to present a substantial evidence challenge to Metro’s findings under Goal 14. Properly framed under the applicable standard of review, 1000 Friends is

arguing that the City of Portland's housing capacity numbers present evidence that conflicts with Metro's, and therefore Metro's conclusion that the identified housing need cannot be accommodated inside the UGB is not supported by substantial evidence.

Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decisions that the local government made in view of all the evidence in the record, the choice between conflicting evidence belongs to the local government. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258 (1995); *Barkers Five*, 261 Or App 259, 349 (2014).

The evidence relied upon by Metro regarding its housing capacity inventory is set forth in Appendix 2 of the UGR – it is detailed and voluminous. Record 175-250. Metro's analysis is summarized at pages 31-33 of the UGR. Record 54-56. As noted above, as part of that analysis Metro contracted with Johnson Economics to develop a regional pro forma model in order to improve Metro's ability to estimate infill and redevelopment potential on lands inside the existing UGB over the next 20 years. That model and analysis are described in detail in UGR Appendix 2. Record 223.

1000 Friends does not contend that any of the evidence relied on by Metro in UGR Appendix 2 is not evidence that a reasonable person would rely on to make a decision. The extent of the 1000 Friends argument is to simply point to conflicting evidence from the City of Portland and to assert that Metro should have relied on that evidence instead. As noted above, when faced with conflicting evidence, the choice regarding which evidence to rely on belongs to the local government. *Mazeski, supra*. Where conflicting evidence does not "so undermine" the evidence relied upon by the local decision maker that it is unreasonable for the decision maker to rely upon it, the choice between such conflicting believable evidence belongs to the local government decision maker and LUBA will not disturb that choice. *Harwood v. Lane County*, 23 Or LUBA 191, 198 (1992).

1000 Friends does not explain why the evidence relied upon by Metro is unreasonable and does not explain why the capacity numbers generated by the City of Portland by using a different model "so undermine" Metro's conclusion as to make that conclusion unreasonable. This objection should be denied.

Properly framed, this is a substantial evidence challenge as described above. But to dispose with any potential assertion that Metro misconstrued some unidentified part of applicable law, 1000 Friends cites no authority to support a proposition that Metro is required to apply and rely upon a different local government's housing capacity analysis as part of Metro's buildable land inventory that is required under ORS 197A.350(3)(a) and OAR 660-024-0050. That is because no such authority exists.

As discussed above in section B.6 regarding WSFA's objection C, Metro is not required to consider or apply state or city OHNA analyses as part of Metro's estimate of regional housing capacity for purposes of a UGB analysis. In fact, the OHNA program has been developed with the expectation that Metro will continue its statutory obligation to adopt its own regional forecast and housing capacity and needs analysis, and that Metro's projected housing need numbers will be relied upon by the state when establishing housing need allocations for cities within Metro. *See* ORS 184.453(3).

Objection A should be denied.

**2. Metro's decision to add 135 acres of commercial employment land in Sherwood West is supported by substantial evidence.**

In objection B, 1000 Friends challenges Metro's decision to add 135 acres of land in the southern part of the expansion area for commercial employment uses. 1000 Friends argues that, based on the identified 3,900 acre surplus of industrial land in the UGR and evidence submitted by 1000 Friends from Colliers International regarding industrial vacancy rates, Metro's decision adds "approximately 135 acres of hospitality/retail use without demonstrating these uses cannot be accommodated within the existing UGB." 1000 Friends Objections at 10.

First, 1000 Friends appears to misunderstand the nature of the 135-acre UGB expansion at the southern district of Sherwood West, which is for commercial uses identified by the City of Sherwood in its concept plan, not industrial uses. The 3,900-acre surplus of employment land identified in Table 19 of the UGR describes land available for industrial use. Record 78. With regard to commercial land capacity, Table 20 of the UGR identifies a deficit of 286 acres. Record 83. 1000 Friends' argument that the surplus of 3,500+ acres of industrial employment land may be used for purposes of a commercial land need appears to conflate Metro's two separate capacity analyses for these land types.

1000 Friends also argues that based on the Colliers data regarding vacancy rates, there is more capacity in the existing UGB than Metro accounted for, and therefore Metro "has not met the threshold to determine that the employment needs cannot be reasonably accommodated inside the existing UGB." 1000 Friends Objections at 8.

As in objection A, this argument by 1000 Friends also presents an evidentiary challenge, although it is not described as such. 1000 Friends is arguing that, based on the evidence submitted by 1000 Friends from Colliers International regarding industrial vacancy rates, a reasonable person would not have concluded that there is insufficient capacity inside the existing UGB for the City of Sherwood's proposed 135 acres of commercial uses. First, as described above, the identified need is for commercial uses, not industrial uses. Metro found a 20-year deficit of 286 acres of commercial land inside the UGB. Record 83. Evidence regarding industrial vacancy rates has no bearing on this analysis.

Further, 1000 Friends provides no legal analysis that explains why Metro's decision should be remanded by DLCD under the substantial evidence standard of review, which provides that where there is conflicting evidence, the choice regarding which evidence to rely on belongs to Metro. *Mazeski, supra*. Metro's decision to add 135 acres of commercial employment land in Sherwood West is supported by substantial evidence in the record that is not challenged by 1000 Friends.

Objection B should be denied.

### **3. Goal 10 and affordability**

In objection C, 1000 Friends presents the same argument that was raised by WSFA in their objection C regarding affordable housing and Goal 10. This objection should be denied for the same reasons set forth above in section B.6 at page 26.

1000 Friends includes an argument that Metro failed to address needs for agricultural workforce housing. 1000 Friends Objections at 18. This is addressed in the Metro Council findings: "Agricultural workforce housing is allowed under ORS 197A.395 in any residential or commercial zone that allows housing; accordingly, Metro's assessment of housing capacity and needs addresses farmworker housing in the same way that it addresses housing needs for all types of workers." Record 1190.

Objection C should be denied

### **4. Climate**

In objection D, 1000 Friends argues that Metro's decision is inconsistent with Metro's Climate Smart Communities Strategy and the state's Climate Friendly and Equitable Communities (CFEC) rules because it does not demonstrate how the UGB expansion will reduce greenhouse gas emissions.

This is yet another policy argument in search of a legal standard. 1000 Friends cites nothing in the statutes or rules governing Metro UGB decisions that makes compliance with Metro's Climate Smart Strategy or with CFEC rules. Nor does 1000 Friends cite anything in the CFEC rules or the Climate Smart Strategy that would make them mandatory approval criteria for a UGB decision. In the absence of any identified legal standards that apply to this decision or analysis regarding how those standards are violated, this argument is insufficiently developed for review and should be dismissed. *Deschutes Development v. Deschutes County*, 5 Or LUBA 218, 220 (1982); *see also Collier v. Marion County*, 29 Or LUBA 462 (1995) ("Where petitioners fail to identify any applicable legal standard allegedly violated by the county's decision, petitioners have supplied no basis for reversal or remand of the challenged decision."); *Hough v. City of Redmond*, 33 Or LUBA 483, 486 (1997) ("It is not our function to supply petitioners with legal theories or to make their case for them.") (citing *Deschutes*).

Objection D should be denied.

#### **D. Tualatin Riverkeepers Objections**

Tualatin Riverkeepers (TRK) submits two objections. The first objection consists of three sub-arguments that are largely duplicative of objections raised by WSFA regarding Metro's alleged failure to apply efficiency measures to meet the identified land need and alleged failure to analyze alternative expansion locations under Goal 14. The second objection raises concerns about protection of habitat areas in Sherwood West.

##### **1. Metro is not required to apply efficiency measures rather than expanding the UGB.**

In objection A.1, TRK presents the same argument that was raised by WSFA in their objection B.1 that Metro failed to apply efficiency measures to meet the identified land need inside the existing UGB. TRK also relies on WSFA's flawed analysis regarding "vacant" acreage in the Sherwood Planning Area. This objection should be denied for the same reasons set forth above in section B.2 at page 15.

##### **2. Alternative boundary location analysis**

In objections A.2 and A.3, TRK presents essentially the same arguments raised by Marks and WSFA in their objections regarding Metro's alternative boundary location analysis under Goal 14 and Metro Code. These objections should be denied for the same reasons set forth above in section A and section B.1.

##### **3. The UGB expansion does not violate Title 3 or Title 13 of the Metro Code.**

In objection B, TRK presents arguments based on Title 3 and Title 13 of the Metro Code regarding floodplains, wetlands, and other habitat. Objection B is premised, in part, on the recurring and incorrect assertion that Metro failed to analyze alternative locations for the UGB expansion under Goal 14 and Metro Code. Based on that incorrect allegation, TRK challenges Metro's conclusion that Sherwood West is the best location for an expansion when floodplains, wetlands, and other habitat areas are considered: "Bringing in Sherwood West to the existing UGB without considering practicable alternative sites violates [Title 13]." TRK Objections at 12.

As described above in response to the Marks and WSFA objections, Metro did undertake a thorough analysis of all 27 urban reserve areas before concluding that Sherwood West provided the most suitable location. As required under the Goal 14 and Metro Code locational factors, that analysis includes a detailed consideration of potential environmental consequences and natural resource impacts. The potential environmental consequences of

expanding in Sherwood West, including impacts on Chicken Creek and inventoried wetlands, are specifically discussed in Metro's analysis of Sherwood West under the Goal 14 factors. Record 733-734. Possible conflicts with riparian and upland habitat associated with Chicken Creek are also discussed in the Metro Code locational factor analysis regarding avoidance of conflicts with fish and wildlife habitat. Record 1026-1027. TRK may not have fully reviewed Metro's decision before asserting that Metro failed to consider water quality and habitat conservation as part of the decision to include Sherwood West in the UGB.

TRK generally asserts that Metro "failed to follow" Metro's Title 3 and Title 13 regarding water quality and habitat in adding Sherwood West to the UGB, specifically citing Metro Code sections 3.07.340(d)(3)(D)(i) and 3.07.1340(b). TRK Objections at 10. However, the Metro Code provisions cited by TRK expressly create requirements created by Metro that apply to cities and counties within Metro's jurisdiction when they take actions that could impact water quality areas or habitat. These are not policies or rules that apply to Metro as part of a UGB expansion decision.

Specifically, TRK argues that Metro's UGB expansion decision violates Title 3 provisions regarding development in water quality and flood management areas, citing Metro Code section 3.07.340(d)(3)(D)(i). TRK Objections at 11. TRK misconstrues that code section, which is actually one of several Metro requirements that apply to city and county development application permit requirements. That subsection obligates cities and counties, when determining appropriate conditions to place on a permit approval for proposed development in a Water Quality and Flood Management Area, to require that an applicant demonstrate that no reasonably practicable alternative design or development exists that would have a lesser impact on the Water Quality Resource Area. This is a requirement that applies to local development permitting in a Water Quality Resource Area; it is not a requirement that applies to Metro as part of a UGB decision. Moreover, it could not possibly apply to this decision because it expressly applies only within Metro's existing jurisdiction.

Regarding Title 13, TRK argues that "Title 13 HCAs in the Sherwood West area should be finalized in the Sherwood West Concept Plan prior to evaluating whether this area will best meet the need of a UGB expansion." TRK Objections at 11. A fundamental problem with this claim is that it is contrary to Title 13, specifically section 3.07.1370. As described above in Metro's response to WSFA's objection B.8, that section provides that the existing 2005 habitat inventories are to be updated following inclusion in the UGB, not before a decision on whether to expand the UGB has been made. Further, updating HCAs prior to inclusion in the UGB would not be logical or feasible. Before an update to the HCA map could occur, Metro would first need to update the inventory map to reflect what regionally significant resources existed in the area at the time the area was added to the UGB. Under Title 13, HCA values can only be set after matters that inform urban land development values, such as Title 4 designations, are determined. *See* Metro Code sections 3.07.1370(b)-(c) and Table 3.07-13b.

Finally, TRK asserts that “Metro’s own MetroMap demonstrates a substantial amount of high value Title 13 HCAs in Sherwood West, particularly alongside Chicken Creek.” TRK is correct that MetroMap does show “HCAs,” but those have no regulatory effect regarding protecting habitat until the area is added to the UGB and the city is required to adopt protections under Title 13. Moreover, what MetroMap currently shows is essentially interim information based on the 2005 habitat inventory and rural development values. *See* Metro Code 3.07.1370. Therefore, Title 13 requires that when an area is added to the UGB, the inventory map must be updated to reflect what habitat was there at that the time of the UGB expansion and the HCA values are then updated to reflect subsequently determined urban development values.

In order for Chicken Creek and the rest of Sherwood West to benefit from Title 13 habitat protections, the area must be brought into the UGB. There are no Title 13 protections along Chicken Creek or elsewhere in Sherwood West until they are included in the UGB. Until then, natural resources, such as forested areas, may be removed consistent with rural county zoning (*e.g.*, for lawful commercial timber harvesting).

This objection should be denied.

## **E. Housing Land Advocates Objections**

Housing Land Advocates (HLA) presents three objections, which are addressed below.

### **1. Goal 10 and affordability**

In objection 1, HLA presents essentially the same argument that was raised by WSFA in their objection C regarding affordable housing and Goal 10. This objection should be denied for the same reasons set forth above in section B.6 at page 26.

HLA also argues that the condition of approval imposed by Metro on the UGB expansion regarding affordability is ineffective. This is the same argument raised by WSFA in their objection F, and it should be denied for the same reasons set forth above in section B.9 at page 36.

### **2. The Fair Housing Act is not applicable in this proceeding.**

In objection 2, HLA argues that Metro’s UGB decision violates an alleged obligation by Metro to affirmatively further fair housing under the federal Fair Housing Act (FHA). HLA fails to mention that it raised this same argument on appeal of Metro’s 2018 UGB decision, and it was soundly rejected by LCDC.

In 2018, HLA argued that Metro failed to apply the FHA as part of its decision to expand the UGB. HLA also raised this argument in exceptions it filed with LCDC. In its final order dated January 20, 2020, LCDC rejected HLA’s arguments. In addition to explaining why

there is no basis on which the FHA could apply to a Metro UGB decision, LCDC also concluded that review of a UGB decision for compliance with the FHA is not properly part of its review process. Specifically, LCDC held:

“There is also no precedential case law that would include compliance with the FHA as being a standard for a decision by the Commission on a local government comprehensive plan amendment or periodic review submittal that is required by state law. Assuming for purposes of discussion only that the FHA or ORS chapter 659A applied to Metro, HLA has not established why or how it would be an applicable law to the Commission's review of the UGB submittal. Under its statutory standard of review, the Commission is not authorized to sustain an objection that seeks to make new provisions of law applicable to its review. The Commission concludes that as a matter of law, compliance with the FHA is not a basis for an objection under OAR 660-025-0140(2)(b) or subject to review as an applicable law under ORS 197.633(3)(c) and OAR 660-025-0160(2).

“\* \* \* \* \*

“The Commission concludes that this objection provides no basis to determine the submittal does not comply with applicable law and rejects this objection.”

LCDC Approval Order, January 20, 2020 at 42.

Given LCDC’s emphatic rejection of all facets of their argument, it is somewhat surprising that HLA has elected to raise this issue again. HLA presents no arguments suggesting that the law on this topic has changed since 2020. This objection should be rejected for all of the reasons identified at pages 38-42 of LCDC’s 2020 final order cited above.

### **3. Metro correctly considered the factors in Metro Code section 3.07.1425(d).**

In objection 3, HLA argues that Metro did not adequately consider two of the factors listed under Metro Code section 3.07.1425(d) in determining which urban reserve area better meets an identified housing need.

The fundamental flaw in the HLA argument is that they are treating the Metro Code factors as if they are mandatory approval criteria rather than “factors” that must be “considered” by Metro. First, HLA argues that “Factor 4 is not met” because Sherwood has not instituted best practices for increasing affordable housing. HLA Objections at 8. Next, HLA argues that “Factor 5 is not met” because Sherwood has not taken actions to advance two of the “six desired outcomes.” HLA Objections at 10. Contrary to these assertions, the factors do not create mandatory standards that must be “met.” Rather, they are factors they must only be considered by Metro as part of its decision.



The Metro Council adopted seven pages of findings that consider and apply all of the additional factors for UGB expansions proposals in Metro Code section 3.07.1425(d). Record 1200-1208. The findings begin by stating:

“The Council also notes that in adopting these factors, the expressly stated intent was not to create criteria that must be satisfied, but factors to be considered and weighed, in the manner of the Goal 14 locational factors.”

Record 1200.

The Oregon Court of Appeals has explained what is required of a local government when it “considers” the Goal 14 locational factors:

“The locational factors are not independent approval criteria. *It is not necessary that a designated level of satisfaction of the objectives of each factor must always be met* before a local government can justify a change in a UGB. Rather, the local government must show that the factors were ‘considered’ and balanced by the local government in determining if a change in the UGB for a particular area is justified. It is within a local government’s authority to evaluate the Goal 14 location factors and exercise its judgment as to which areas should be made available for growth.”

*Ryland Homes, supra*, at 409-410 (emphasis added); *see also Barkers Five, supra*, at 391-392 (explaining what “consideration of factors” means in the context of urban and rural reserve designations).

Contrary to the explanation highlighted above in *Ryland Homes*, HLA’s argument in this objection is that their designated level of satisfaction for the factors has not been met. For example, HLA asserts that “Sherwood does not satisfy” Factor 4 because the city has not “implemented best practices” regarding increasing the supply and diversity of affordable housing. HLA Objections at 9. However, Metro considered the city’s actions under this factor and concluded that, while the city might not have achieved best practices, the city “has demonstrated success” in increasing the supply and diversity of housing types” and “taken steps toward increasing the supply of affordable housing.” Record 1202. Metro considered the factor as it applies to the city and described a conclusion regarding the city’s progress. As noted in *Ryland Homes*, no particular level of satisfaction of compliance is required to establish that a factor has been adequately considered.

Regarding Factor 5, HLA incorrectly claims that “Metro Council must make some determination and findings as to the satisfaction of the enumerated factors, including Factor 5.” HLA Objections at 10. As described above, and by the court in *Ryland Homes* and *Barkers Five*, HLA is completely wrong. Those cases make it clear that “considering a factor” does not involve or require a determination that the factor has been satisfied.

Factor 5 requires the Metro Council to “consider ... whether the city responsible for preparing the concept plan has taken actions to advance Metro’s six desired outcomes.” Metro Code section 3.07. 1425(d)(5). The Metro Council adopted five pages of findings that consider actions taken by the city regarding the six desired outcomes. Record 1202-1207. The Metro Council concluded:

“The Metro Council finds that the city has demonstrated progress toward this desired outcome. The Council also reiterates that, in adopting the factors in section 3.07.1425 of the Metro Code, the Council’s expressly stated intent was not to create criteria that must be satisfied, but factors to be considered and weighed, in the manner of the Goal 14 locational factors. The Council finds that the city has demonstrated progress toward each of the six desired outcomes and toward the other factors that must be considered under section 3.07.1425 of the Metro Code.”

Record 1207.

This objection should be denied.

#### **F. Verde Objections**

Verde includes one objection that presents the same argument raised by Marks and WSFA in their objections regarding Metro’s alternative boundary location analysis under Goal 14 and Metro Code. This objection should be denied for the same reasons set forth above in section A and section B.1.

#### **G. Ron Bunch Objections**

Ron Bunch raises twelve objections, some of which are addressed below.

##### **1. Goal 1**

In Objection A, Bunch argues that Metro’s UGB decision violates Goal 1. Bunch provides no clear explanation regarding exactly how a Goal 1 violation occurred, or how Metro’s public engagement guide was allegedly violated.

The Metro Council adopted detailed findings regarding citizen involvement and Goal 1. Record 1186. As noted in those findings, since early 2023 there were more than 30 public meetings held by Metro’s advisory committees MTAC and MPAC regarding the 2024 urban growth management decision. Record 1184-1185. Those were all public meetings that could be attended by any interested person or advocacy group. The findings also describe extensive engagement with public and private sector stakeholders, as well as nine public meetings of the Metro Council in 2024 regarding the growth management decision, including three public hearings and a 45-day public comment period. Record 1186-1187. All of these public

meetings and hearings were properly noticed by Metro and there were no barriers to involvement by or input from any member of the public, including the “neighborhood and civic organizations” or advocacy groups referenced by Bunch.

Objection A contains vague complaints about “managed input from select groups” but does not articulate any violation of Goal 1 or Metro’s public engagement guide.

This objection should be denied.

## **2. Infrastructure costs**

In objection B, Bunch argues that the UGB expansion will require large infrastructure costs, will be overly auto dependent, and will not result in a “complete community.” This objection presents disagreements with the urban planning outcomes of the Sherwood West Concept Plan adopted by the City of Sherwood that have nothing to do with Metro’s decision to expand the UGB.

Bunch refers generally to the RTP and various Titles of Metro’s Urban Growth Management Functional Plan (UGMFP) but does not specifically identify which parts of the cited provisions are relevant to a UGB decision or explain how any applicable criteria were allegedly violated by Metro. Bunch Objections at 5. This objection does not articulate any basis for remand and is not sufficiently developed for review. *Haugh, supra*, at 486 (“It is not our function to supply petitioners with legal theories or to make their case for them”).

This objection should be denied.

## **3. Affordable housing**

In objection C, Bunch argues that Sherwood West will not provide affordable and middle housing. Like objection B, this objection describes general planning-related disagreements with the Sherwood West Concept Plan but does not specifically identify any applicable UGB expansion criteria or explain how they were allegedly violated by Metro. This objection does not articulate any basis for remand and is not sufficiently developed for review.

This objection should be denied.

## **4. Housing need**

Objection D provides more complaints about the city’s planning for Sherwood West and the city’s housing needs analysis. There is no direct link to Metro’s UGB decision until the end, where Bunch asserts that Metro’s approval of the expansion is not consistent with Metro’s Title 11 because the high cost of future infrastructure will make it difficult to efficiently urbanize the area. Bunch Objection at 10. The objection does not specifically identify what part of Title 11 was allegedly violated by Metro and does not cite any evidence regarding the

cost of future infrastructure in support of that argument. This objection does not articulate any basis for remand and is not sufficiently developed for review.

## **5. Remaining objections E-L**

The remaining objections from Bunch may be denied for the same reasons as the objections addressed above. Most of the objections are based on disagreements with the City of Sherwood's planning efforts for Sherwood West rather than Metro's UGB decision. None of the objections identify specific UGB expansion criteria that were allegedly violated by Metro or explain how any alleged violation occurred.

### **Additional Objections**

Additional objections were filed by Daniel Hoyt, James Marsh, and the Eastview Road Neighborhood Association. These objections primarily relate to general concerns about regional growth, housing, and concerns about how future development in the expansion area might impact natural resources and transportation. Issues regarding regional growth, housing, and natural resources are addressed above in responses to other objections. Protection of natural areas, avoiding development in floodplains, and detailed transportation planning for future development are issues that will need to be addressed and resolved by the city as part when it adopts comprehensive plan and zoning provisions for Sherwood West, including future protections for habitat and natural areas.

### **Conclusion**

For all of the above-stated reasons the objections should be denied.

Sincerely,



Roger A. Alfred  
Office of Metro Attorney

cc: E. Michael Connors, Hathaway Larson  
Jeffrey Kleinman, West of Sherwood Farm Alliance  
Robert Liberty, West of Sherwood Farm Alliance  
Sam Diaz, 1000 Friends of Oregon  
June Bradley, Tomasi Bragar DuBay, Housing Land Advocates  
Eve Goldman, Tualatin Riverkeepers  
Indi Namkoong, Verde  
Brian Fields, Eastview Road Neighborhood Association  
Daniel Hoyt  
James Marsh  
Ron Bunch