



Oregon

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February 22, 2018

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Anne Debbaut, Metro Regional Representative
Gordon Howard, Community Services Division Manager

SUBJECT: **Agenda Item 3, March 15-16, 2018, LCDC Meeting**

**APPEAL OF DIRECTOR'S DECISION TO APPROVE
CITY OF PORTLAND PERIODIC REVIEW TASKS 4 AND 5,
POLICY CHOICES AND IMPLEMENTATION**

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

The matter before the Land Conservation and Development Commission (commission) is an appeal of the approval of the City of Portland's periodic review Tasks 4 and 5 submittal by the Director of the Department of Land Conservation and Development (director), consisting of several amendments to the city's comprehensive plan. The department received six appeals. One appeal is from an individual property owner appealing Tasks 4 and 5 regarding the land use designation of an individual property. Five appeals are from the Multnomah Neighborhood Association (MNA) in Southwest Portland, three of which are for Task 4 and two of which are for Task 5. The MNA appeal is regarding a number of items related to the 2035 comprehensive plan map, goals and policies related to housing, zoning map amendments and zoning code amendments.

The director did not receive any objections to the remainder of the city's Task 4 and 5 submittal, which included: two citizen involvement reports; a public facilities plan; a list of infrastructure projects (water, sewer and drainage); policies addressing Portland International Airport expansion, Portland Heliport and coordination with school facilities plans; goals and policies of the transportation system plan, street classifications, and list of transportation projects; and, comprehensive plan amendments and policy language to incorporate major public trails into the land use map. None of these other matters are before the commission for review.

On an appeal of a director's decision, the commission must make a decision pursuant to OAR 660-025-0160(7). Following the public hearing, the commission must either:

- (a) Approve the work task or a portion of the task;
- (b) Remand the work task, or a portion of the work task to the local governments, including a date for re-submittal;
- (c) Require specific plan or land use regulation revisions to be completed by a specific date.
- (d) Amend the work program to add a task authorized under OAR 660-025-0170(1)(b); or
- (e) Modify the schedule for the approved work program in order to accommodate additional work on a remanded work task.

B. Staff Contact Information

If you have questions about this agenda item, please contact Anne Debbaut, DLCD Regional Representative, at (503) 725-2182 or anne.debbaut@state.or.us.

II. RECOMMENDED ACTION

The department recommends that the commission reject the six objections to the director's decision approving periodic review tasks 4 and 5, and approve the two work tasks.

III. BACKGROUND AND DESCRIPTION OF SUBMITTAL

A. Background

Portland's periodic review work program is organized to carry out the comprehensive plan update in several procedural phases rather than updating sections of the plan separately from each other. The work program includes the following tasks:

Task 1, Community Involvement. This task includes appointment of a Citizen Involvement Committee (complete) and reliance on the committee to assist the city with completion of subsequent tasks. This task is also the subject of this decision as the task includes an evaluation of community involvement leading up to the adoption of each Task 2,3,4, and 5 products.

Task 2, Inventory and Analysis. This task includes inventories and analyses establishing the factual basis for later tasks. The commission approved this task in LCDC order 14-WKTSK-001850 on June 11, 2014.

Task 3, Consideration of Alternatives. This task includes updates of the inventories completed in task 2, adoption of an economic opportunities analysis (EOA), and identification of the consequences of alternative patterns of development. The department director approved this task in DLCD Order 001882 on April 25, 2017.

Task 4, Policy Choices. Task 4 is a subject of this review. This task includes decisions related to the city's economic, housing, public facilities and transportation elements of the comprehensive plan as well as the comprehensive plan map. These decisions are informed by preliminary work

in tasks 2 and 3. The contents of this task submittal are listed in Section C of this report. The appeals concern only some of these elements.

Task 5, Implementation. Task 5 is also a subject of this review. This task is intended to carry out the policy decisions made in previous tasks. The contents of this task submittal are listed in Section C of this report. The appeals concern only some of these elements.

B. Procedural History

The submittals before the department for review includes task 4, Ordinance No. 187831, adopted by Portland on June 15, 2016, and task 5, Ordinance No. 188177, adopted by Portland on December 21, 2016.

1. On April 28, 2017, pursuant to OAR 660-025-0140 (1), the city submitted task 4 to the department.
2. On May 18, 2017, pursuant to OAR 660-025-0150(3), the city submitted a waiver of the 120-day deadline for a department decision on task 4.
3. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the task 4 submittal was May 19, 2017. The department received 11 letters of objection.
4. On August 7, 2017, pursuant to OAR 660-025-0140(1), the city submitted task 5 to the department.
5. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the task 5 submittal was August 28, 2017. The department received six letters of objection.
6. On December 5, 2017, pursuant to OAR 660-025-140, the department issued Order 001892 approving both Task 4 and 5 submittals, and either rejecting or invalidating all of the objections.
7. Pursuant to OAR 660-025-0150(6)(c), the deadline to file an appeal of the director's decision was December 26, 2017. The department received 6 letters of appeal.

As part of department Order 001892 (December 5, 2017) and pursuant to OAR 660-025-140, the department determined that of the 11 Task 4 letters of objection, the following objections were determined to be invalid: Kenny (4-2), Rose City Park Neighborhood Association (4-3), Davis (4-4b), Root (4-5), Malcom (4-8) Goose Hollow, *et al.* (4-9) and James Peterson (4-11); and that of the 6 Task 5 letters of objection, the following objections were determined to be invalid: Mascott LLC, *et al* (5-1), Ramsour (5-2), Multnomah Neighborhood Association 5-6b and c, and the Rose City Park Neighborhood Association (5-7). The remaining objections were determined to be valid.

One of the 6 letters of appeal is from James Harries and 5 are from the Multnomah

Neighborhood Association. More specifically, 3 of the 5 are from Eben` Fodor, representing the association and 2 are from James Peterson and Carol McCarthy, also representing the association.

C. MAJOR LEGAL AND POLICY ISSUES

The objections submitted to the department regarding the Portland Periodic Review Tasks 4 and submittal raise the following significant issues:

1. Whether the city complied with its community involvement work program, an implementation of Statewide Planning Goal 1: Citizen Involvement for the periodic review work program, and:

- Provided information that enables citizens to identify and comprehend the issues.
- Provided information necessary to reach decisions in a simplified, understandable form.
- Involved all citizens, and not just “communities,” in all phases of the planning process.
- Provided appropriate responses to citizen input to the periodic review planning process.

2. Whether the city complied with Statewide Planning Goal 2: Land Use Planning for the periodic review program, and:

- Established an appropriate policy framework as a basis for the periodic review decisions.
- Assured an adequate factual basis for the periodic review decisions.
- Coordinated periodic review plans and implementation measures with the plans of affected governmental units, including the city itself.

3. Whether the city has included all necessary implementation measures for the periodic review work program in its Task 5 submittal.

IV. REVIEW CRITERIA, PROCEDURAL REQUIREMENT & WRITTEN RECORD

A. Decision-making Criteria

The substantive criteria for these periodic review tasks 4 and 5 include: Goal 1 (Citizen Involvement) and Goal 2 (Land Use Planning); those aspects of Goal 7 (Areas Subject to Natural Hazards) to the extent that they relate to policy and implementation; Goal 9 (Economic Development) as it relates to policy and implementation of economic needs; Goal 10 (Housing) as it relates to policy and implementation of housing needs; Goal 11 (Public Facilities and Services) as it relates to policy and implementation of infrastructure needs; Goal 12 (Transportation) as it relates to policy and implementation of transportation needs; and all of the applicable Oregon administrative rules. Some of these provisions include other goals and rules by reference.

B. Procedural Requirements and Validity of Appeal

OAR 660-025-0150(6)(b) provides that persons who filed a valid objection may appeal a director's approval or partial approval of a work task to the commission.

OAR 660-025-0150(6)(c) provides that appeals of a director's decision must be filed with the department's Salem office within 21 days of the date the director's action was mailed.

OAR 660-025-0150(6)(d) provides that a person appealing the director's decision must:

- (A) Show that the person participated in the local proceedings leading to adoption of the work task orally or in writing;
- (B) Clearly identify a deficiency in the work task sufficiently to identify the relevant section of the submitted task and the statute, goal, or administrative rule the local government is alleged to have violated; and
- (C) Suggest a specific modification to the work task necessary to resolve the alleged deficiency.

OAR 660-025-0160(6) and ORS 197.633(3) provide that the commission will hear appeals based on the local record.

OAR 660-025-0085(5)(c) provides that oral argument is allowed from the local governments and those who filed an appeal. The local governments may provide general information on the task submittal and address those issues raised in the department review and appeal. OAR 660-025-0085(5)(f). Persons who submitted an appeal may address only those issues raised in their appeal. *Ibid.* The commission may take official notice of certain laws, as specified in OAR 660-025-0085(5)(h).

OAR 660-025-0160(7) provides that, in response to an appeal, the commission must issue an order that does *one or more* of the following:

- (a) Approve the work task or a portion of the task;
- (b) Remand the work task, or a portion of the work task to the local governments, including a date for re-submittal;
- (c) Require specific plan or land use regulation revisions to be completed by a specific date.
- (d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b); or
- (e) Modifies the schedule for the approved work program in order to accommodate additional work on a remanded work task.

The department received six letters of appeal, one is from James Harries and five are from the Multnomah Neighborhood Association (MNA #1-5). Three of these five are from Eben Fodor, representing the neighborhood association and two from James Peterson and Carol McCarthy, on behalf of the Multnomah Neighborhood Association.

The department has determined that two of the four elements of the MNA 5 appeal (b and c) were previously determined in the Director's Decision (Order 001892) to be invalid as they did not identify the relevant section of the statute, goal, or administrative rule the local government is alleged to have violated.

C. Standard of Review

ORS 197.633(3) and OAR 660-025-0150(9) provide the standard of review for the commission, which is expressed in OAR 660-025-0160(2):

- (a) For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government's decision.
- (b) For procedural issues, whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.
- (c) For issues concerning compliance with applicable laws, whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of its comprehensive plan or land use regulation in the manner provided in ORS 197.829.... For purposes of this subsection, "complies" has the meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.747.

D. Procedural Requirements

OAR 660-025-0085(5) provides commission hearing procedures.¹

¹ Commission hearings will be conducted using the following procedures:

- (a) The chair will open the hearing and explain the proceedings;
- (b) The director or designee will present an oral report regarding the nature of the matter before the commission, an explanation of the director's decision, if any, and other information to assist the commission in reaching a decision. If another state agency participated in the periodic review under ORS 197.637 or 197.638, the agency may participate in the director's oral report.
- (c) Oral argument will be allowed. The local government or governments whose decision is under review and parties who filed objections or an appeal may present oral argument. Oral argument will not be an opportunity to present new evidence regarding the matter before the commission. The local government that submitted the task may provide general information on the task submittal and address those issues raised in the department review, objections and the appeal. Persons who submitted objections or an appeal may address only those issues raised in objections or the appeal. Other affected local governments may address only those issues raised in objections or the appeal.
- (d) The commission may request new evidence or information at its discretion and will allow the parties an opportunity to review and respond to the new evidence or information, subject to the time limits in section (2) of this rule.

E. The Written Record for This Proceeding

OAR 660-025-0160(6) provides: “The commission shall hear appeals based on the local record. The written record shall consist of the submittal, timely objections, the director’s report, timely exceptions to the director’s report including materials described in section (5) of this rule, the director’s response to exceptions and revised report if any, and the appeal if one was filed.”

At the time of this report, the written record includes the following materials.

1. This DLCD staff report.
2. Three letters of appeal of director’s approval order filed by Eben Fodor, Fodor & Associates LLC, on behalf of the Multnomah Neighborhood Association, dated December 26, 2017 (Attachment B).
3. Two letters of appeal of director’s approval order filed by James Peterson and Carol McCarthy on behalf of the Multnomah Neighborhood Association, dated December 26, 2017 (Attachment B).
4. Appeal of director’s approval order filed by James Harries, dated December 15, 2017 (Attachment B).
5. DLCD Order 001892, dated December 5, 2017, approving the submittal, which includes responses to objections submitted by the appellants in this proceeding. (Attachment A).
6. Objections received to the City of Portland periodic review task 5 submittals.
7. Periodic Review Task 5 submittal, consisting of:

(e) The director or commission may take official notice of law defined as:

(A) The decisional, constitutional and public statutory law of Oregon, the United States and any state, territory or other jurisdiction of the United States.

(B) Public and private official acts of the legislative, executive and judicial departments of this state, the United States, and any other state, territory or other jurisdiction of the United States.

(C) Regulations, ordinances and similar legislative enactments issued by or under the authority of the United States or any state, territory or possession of the United States.

(D) Rules of court of any court of this state or any court of record of the United States or of any state, territory or other jurisdiction of the United States.

(E) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(F) An ordinance, comprehensive plan or enactment of any local government in this state, or a right derived therefrom.

(f) The commission must make a decision on the appeal or referral as provided in this division.

- Community Involvement Report for Task 5
- Zoning map amendments to implement the adopted 2035 Comprehensive Plan
- Zoning code amendments to implement the adopted 2035 Comprehensive Plan
- Task 4 transportation system plan amendments to add additional policies and update street classifications
- Task 4 comprehensive plan amendments to incorporate major public trails into the land use map, and corrections to policy language

8. Objections received to the City of Portland periodic review task 4 submittals

9. Periodic Review Task 4 submittal, consisting of:

- Community Involvement Report for Task 4 (submitted with Task 3)
- 2035 comprehensive plan map
- Goals and policies comprising the economic and housing elements of the 2035 comprehensive plan
- Public Facilities Plan – Citywide System Plan (submitted with Task 3)
- List of infrastructure projects: water, sewer and drainage
- Policies addressing Portland International Airport expansion, Portland Heliport and coordination with school facilities plans
- Goals and policies of the Transportation System Plan and list of transportation projects.

V. DEPARTMENT ANALYSIS AND RESPONSE TO APPEALS

A. Content of Appeal

The department's review of the original decision and objections are contained in the director's report attached to Order 001892 (Attachment A). The department received 6 letters of appeal to the director's order approving the submittal (Attachment B). The department's responses to the appeals use the numbering displayed below. We have retained the same identifying numbers from Order 001892 for clarity:

1. Task 4 Appeals

4-1 James Harries (indicated in his appeal letter that he was appealing 4 and 5. Previously appealed Task 4 only)

4-6 Multnomah Neighborhood Association #1, Eben Fodor

4-7 Multnomah Neighborhood Association #2, Eben Fodor

4-10 Multnomah Neighborhood Association #3, Carol McCarthy and James Peterson

2. Task 5 Appeals

5-5 Multnomah Neighborhood Association #4, Eben Fodor

5-6 Multnomah Neighborhood Association #5, Carol McCarthy and James Peterson

B. Department Response to Appeals – Tasks 4 and 5

1. Appeal 4-1 – James Harries

The director's decision included a response to the same Harries objection that has been raised in this appeal. Mr. Harries asserts again that the city has not properly evaluated his properties. He asserts that no one has bothered to visit or set foot in the area, and if planners and commissioners had come to the property, they would have discovered the vegetation is comprised of an invasive species and that further development would eliminate the invasive species as well as further a city and state environmental goal. He requests an error from a previous SW Neighborhood Plan (adopted prior to this proposed plan and referenced in his earlier objection) be corrected and the property returned to the pre-Southwest Neighborhood Plan R-10 designation from the current R-20 designation, which would allow the property to be subdivided. He contends that the alleged deficiency noted in the appeal is that the city has not followed "reasonable procedure", whereas his previous objection that local and statewide land use goals call for increasing density within city limits, is not repeated in the appeal letter. Attachment B at 1.

The proposed remedy is to change the plan map and zoning from R-20 to R-10.

Department Response:

The department recommends the commission reject this appeal. In a February 25, 2015 city staff Memorandum to the Planning and Sustainability Commission, beginning in Task 4 record at 19501 (Housing Affordability and Residential Capacity) there is a section titled "Proposed down-designations to address natural hazards, drainage concerns and infrastructure constraints." Task 4 Record at 19533-19538. The proposal summary states:

"The Draft Comprehensive Plan proposes to reduce potential future residential development in areas that are characterized by natural hazard risks (e.g., landslide, wildfire, earthquake, flooding), and drainage challenges due to steep slopes, poorly draining soils, wetlands, seeps, springs, and /or vulnerable stream channels. Most of these areas also have existing infrastructure constraints, including limited storm water, water supply, or sanitary system capacity, and lack of street and/or sidewalk connectivity.

The amount of additional development allowed under the current Comprehensive Plan designation and zoning would increase impervious areas and remove trees on steep slopes, increasing existing hazard risks, drainage problems, and demand on limited infrastructure capacity. Reducing future development will not solve existing problems in these areas, however, it will help protect public health and safety by reducing future risks and impacts associated with new development"

Task 4 Record at 19534

The memorandum identifies the location of the areas affected by the above analysis, one of which is the, “Southwest hills: Near Tryon Creek State Park or Marshall Park; along the west and northwest boundaries of the City and Multnomah County; near Council Crest; just north and south of the Sunset Hwy adjacent to the Hoyt Arboretum; and just South of West Burnside along SW Skyline”. Task 4 Record at 19534. The appellant’s property is located within this affected area in the Southwest hills near Tryon Creek State Park and Marshall Park.

The city further describes the methodology for their proposal and concludes with the following (note that a polygon is described as a cluster of contiguous dividable lots):

*“In conclusion it is important to emphasize that analysis was conducted and polygon boundaries drawn primarily using an area-scale focus, rather than a property-by-property focus. Some characteristics (e.g., steep slopes, landslide and wildfire hazard, storm water or water supply constraints) are shared across most polygons. However each polygon is unique in its location, character, and combination of issues and constraints that provide the basis for this draft proposal. The occurrence and severity of natural hazards and other constraints also vary within the individual polygons. The proposal as applied to each polygon is intended to reduce future natural hazard risks and infrastructure deficiencies and costs resulting from the cumulative impacts of development at an area scale. This analysis does not suggest that individual parcels could not be safely developed; instead, we are focused on **potential cumulative impacts** within the area in question.”*

Task 4 Record at 19534.

The Harries’ request also came before City Council on April 28, 2016, and the council concluded that the property is appropriately designated as R-20. Task 4 Record at 10677.

In conclusion, staff finds the city made an evaluation of an area including the appellant’s property and concluded there were sufficient natural hazards, drainage concerns or infrastructure constraints or some combination of that to support the retention of the R-20 zone on the subject property.

2. Appeal 4-6 – Multnomah Neighborhood Association #1

The Multnomah Neighborhood Association objects to the process leading to, and the final result of, Middle Housing Policy 5.6, quoted here:

Enable and encourage development of middle housing. This includes multi-unit or clustered residential buildings that provide relatively smaller, less expensive units; more units; and a scale transition between the core of the mixed use center and surrounding single family areas. Where appropriate, apply zoning that would allow this within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City.

The appeal is divided into four issues: 1) Lack of Adequate Information to Inform Citizens; 2) Lack of Need and Factual Basis for Policy; 3) Lack of Plan Consistency and Failure to Plan in a Comprehensive Manner; and 4) Lack of Adequate Response to Public Input.

Before discussion of the specific issues raised in the appeal, it should be noted that the remedy proposed by the Multnomah Neighborhood Association is that the commission partially remand task #4 of the periodic review to allow for proper comprehensive planning and public involvement for the Middle Housing Policy 5.6. This would include the development of complete, neutral, and objective public information about the policy proposal. Specifically, the city would be directed to analyze the impact of the policy on housing costs, and disseminate needed information, such as maps of affected areas, to the city's citizenry. Attachment B at 25.

a. Lack of Adequate Information to Inform Citizens

The appeal asserts that the city first formally introduced what became the Middle Housing Policy as a "vague, generalized concept" in a February 2016 memo to Portland Mayor Hales from the city's planning bureau, more than six years after the periodic review work program was approved by LCDC in 2009. Attachment B at 3-4. The appeal notes that an earlier reference to the Middle Housing Policy in an October, 2015 staff report offered no notice to the public that such a policy was under consideration. Attachment B at 4-5. The appeal asserts that the February, 2016 memo itself, was an extremely non-specific proposal that did not provide any factual evidence or basis for its assertions. Attachment B at 5-6. The appeal notes that in March, 2016 the middle housing policy was formally introduced for consideration by the Portland City Council, again without a balanced staff report supported by factual evidence, and with information about the consequences if the middle housing policy were adopted. Attachment B at 6-9. The appeal notes that the middle housing policy was adopted in June, 2016, only three months after its introduction. The appeal asserts that maps of the areas affected by the policy, which impacts large swaths of the city's low density zoned neighborhoods, were not made available until 2 days before, and for many parts of the city, after, the Portland City Council adopted the policy. Attachment B at 9-13.

The appeal alleges that this series of events violates Goal 1, which states "the citizen involvement program shall be appropriate to the scale of the planning effort," and "the program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues." Attachment B at 7. The appeal notes that these Goal 1 provisions are implemented by the city's Community Involvement Work Program. Attachment B at 8-9. The appeal alleges that this series of events also violates Goal 2, which states that "sufficient time should be allotted for ... incorporation of citizen needs and desires and development of broad citizen support," and "Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan." Attachment B at 9.

Department Response

The department recommends that this portion of the appeal be rejected by the commission. The

original objection regarding this issue focused on alleged procedural and technical violations of the city's own community involvement work program. The department decision rejected those assertions. However the appeal makes a more general attack on the city's process for disseminating public information and soliciting public involvement in the decision-making process for the Middle Housing policy.

This revised assertion is more difficult to judge against the city's adopted Community Involvement Work Program. Whereas determining whether a report was available at least 21 days before any City Council hearing is a reasonably straightforward matter, determining whether "information needed to make decisions [is] presented in a simplified and understandable form," and whether a report "contain[s] the facts and reasons necessary to make particular decisions," (both provisions in the city's Community Involvement Work Program adopted to comply with the city's Goal 1 obligations) are a much more subjective endeavor.

The February 2, 2016 memo to Mayor Hales from the Bureau of Planning and Sustainability can be found in the record for Task 4 at 11727-11730. Whether the memo is sufficient, by itself, to satisfy the city's commitments set forth in its adopted Community Involvement Work Program, is a matter of judgment. However this is not the only information in the record, or even in general public discourse regarding the issue of "middle housing." As stated in the department's decision, the issue actually arose earlier in the process, in a City Council work session on October 8, 2015. Task 4 Record at 11906 and 11916. The summary discussion presented to the Portland City Council at the February 2, 2016 work session where this memo was introduced states that the middle housing memo and presentation of policy options was written "in response to interest from several council offices, and recent hearing testimony." Task 4 Record at 11710. The February 2, 2016 materials also reference a report issued by Metro on Innovative Design and Development Codes and the "Eli Spevak proposal," Task 4 Record at 11720. Mr. Spevak is a well-known proponent of "missing middle" housing of the type contemplated by the city's adopted middle housing policy, and contributions from him prior to February, 2016 are contained in the compilation of testimony the Council received. See, e.g. Task 4 Record at 8059-8062. Given this additional information in the record, the department recommends that the commission find the city did satisfy the requirements of its adopted Community Involvement Work Program to provide information "in a simplified and understandable form" and containing "the facts and reasons necessary to make particular decisions." In addition to answering the Goal 1 violation allegations asserted in this appeal, the narrative of events described in this paragraph refutes a portion of the appeal's alleged Goal 2 violations, relating to "sufficient time ... allotted for ... incorporation of citizen needs and desires and development of broad citizen support."

Regarding the allegations of Goal 2 violations, the one specific assertion is that the city did not provide maps of the properties affected by the proposed middle housing policy in a timely manner. These maps showed the areas that could potentially be rezoned during the implementation of the adopted middle housing policy. However, the objector reads too much into the city's decision – adoption of this policy did not result in any actual rezoning of low-density residential lands in the city that met the locational criteria for consideration under the policy. The policy commits the city to a future analysis and determination as to which specific areas and properties, if any, are suitable for redesignation to allow the housing types

contemplated in the adopted middle housing policy. Thus the maps that the city provided at the end of its plan adoption process, or afterward, were not necessary for the city to make its decision with an appropriate factual basis. They are certainly key to a subsequent city decision, which will undoubtedly include extensive citizen input, as to where (if anywhere) the city should actually apply zoning contemplated by the adopted middle housing policy.

b. Lack of Need and Factual Basis for Policy

The appeal asserts that there is a lack of any factual evidence or basis for a middle housing policy, with no support in the fundamental documents of the Comprehensive Plan such as the housing needs analysis. The appeal asserts that the housing needs analysis shows no need for additional residential housing capacity in the city, because more than adequate capacity is available to meet demand through the 20-year planning period. Attachment B at 14-15. The appeal asserts that the housing needs analysis shows that the diversity of housing type production provided by existing zoning is sufficient to produce housing units to meet future demand across of a variety of income levels, with the exception of low income housing groups. Attachment B at 16. The appeal cites two analyses of the middle housing designation, prepared in 2016, which show that the middle housing policy will actually reduce the supply of affordable housing by incentivizing redevelopment of smaller affordable older homes with new market-rate units. Attachment B at 16. The appeal notes that the city-adopted growth scenarios report discusses targeted rezones to higher density in selected refinement plans, not the wholesale rezoning resulting from the adopted middle housing policy. Attachment B at 16-17. The appeal asserts that the city made no mention of any study or consideration of a city-wide rezoning of residential land as will happen under the middle housing policy in its periodic review program. Attachment B at 17-19.

The appeal alleges that this lack of data or information to support the middle housing policy violates Goal 2, which requires a factual basis for the policies and other decisions. The appeal notes that the approved periodic review work program contains no mention of the middle housing policy, which means that the policy is not consistent with the city's adopted periodic review work program. The appeal alleges that the city did not provide notice of any change to the periodic review work program as required by OAR 660-025-0080. Attachment B at 19.

Department Response

The department recommends that this portion of the appeal be rejected by the commission. The city has provided findings and conclusions based on substantial evidence regarding reasons the city adopted Policy 5.6. The reasons for adoption of this policy, which received significant public input both for and against, are succinctly summarized as follows:

The 2035 Comprehensive Plan provides enough zoned capacity to meet expected housing needs over the next 20 years. However, the 2035 Comprehensive Plan also highlights and addresses the need for more housing in the range between the single-family houses and units in larger multi-family or mixed-use buildings. There is growing demand for greater housing supply and choice in terms of price, size, location, tenure options and accessibility.

- *Less expensive. Creating more middle housing opportunities with the plan may help relieve some price pressure. Generally, these forms of housing can be built using wood frame construction methods. They are less expensive to build than 4-6 story mixed use buildings, and are more land-efficient than detached single family homes. Middle housing can also serve as a transition between denser mixed-use development and abutting single dwelling neighborhoods.*
- *Home ownership. Although home ownership is generally beyond the reach of the lowest income groups, there is also a challenge in supplying enough entry-level homes to meet expected demand. Most of the City's single-family supply is single-family lots in the 5,000-7,000 square foot range, while most of the expected demand over the next 20 years is for more affordable lots in the 1,600 to 4,000 square foot range. Much of the available land for additional single-family construction is in East Portland and outer Southwest Portland, while demand is highest in the inner most neighborhoods. Construction of more attached homes could help meet this demand.*
- *Access to complete communities. The 2035 Comprehensive Plan promotes compact development within walking distance of neighborhood and town center locations. To achieve our "complete neighborhood" goals, we want to be able to have about 3,500 to 7,000 households within a walkable ½-mile distance of our commercial main streets. Many centers are not yet to this level of density. Zoning for more attached housing options near the edges of the identified centers could be a way to help achieve that goal.*
- *Choice. There is demand for greater range of housing types that are adaptable to different life stages, and multigenerational living. Surveys have also suggested that many apartment dwellers would prefer to live in their own home, if they can afford it. While it is prudent to supply enough multifamily housing to meet rising demand for that housing type, it may also be desirable to provide other options.*

Task 4 Record at 45-46.

The department also finds the argument proffered in the objection that allowing greater densities in some neighborhoods will result in the demolition of less expensive housing, resulting in a loss of affordability is not supported by any evidence in the record or provided in the objection. The two sources noted in the appeal do not appear in the record provided by the city, and thus are outside the scope of review for this decision. In any case, the city's findings on this topic address this issue generally as follows:

State planning law requires that housing needs be analyzed and identified by affordability, and requires that land be made available in sufficient supply to accommodate the amount of affordable housing needed. Allowing for a robust supply of inherently more affordable housing types (small studio apartments, ADUs, small-lot single family, etc.) does not mean that these housing units will actually be affordable in practice. In a market economy, housing is allocated to the highest bidder. If supply is limited, the price of even the more affordable housing types can be bid up. In addition, new housing is typically more expensive than older housing. Not all new households will occupy new housing units. Higher income households will often occupy new

housing units, leaving older units to lower income households. If housing supply is tight, the price of older housing units can also be bid up. In light of these market dynamics, the primary impact of zoning on affordability will be the extent to which it allows for an adequate overall supply, and allows for a diverse mix of housing. The facts described above show that the Zoning Map adopted with this ordinance does this. Based on the facts and reasons stated above, the requirement to allow a diverse range of housing choices has been met.

Task 5 Record at 45.

Goal 2 requires the city “[t]o establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.” Goal 2 further provides that “[a]ll land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs.” The summary provided above, and the additional material in the record upon which it is based, demonstrates that the city adopted Policy 5.6 with an adequate factual base, and made an “ultimate policy choice” based upon: (1) the need for more housing with higher densities than single-family houses and lower densities than larger multi-family or mixed use buildings, and (2) the positive impacts on housing expense, home ownership, access to complete communities and housing choice provided by the policy.

While the objectors do not agree with the city’s decision, the department’s review of the submittal for Goal 2 compliance is not whether the city made the “correct” decision, but rather whether the city’s decision is supported by an adequate factual base, which is the equivalent of the requirement in ORS 197.633(3)(a) that the decision is based upon substantial evidence in the record as a whole. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994).

Regarding the alleged violation of OAR 660-025-0080, the appeal misreads the purpose of this administrative rule. It requires that the actual amendments to a city’s comprehensive plan be included in notice to the department as provided in requirements for post-acknowledgment plan amendments. The department records indicate that this notice was received on August 7, 2014.

c. Lack of Plan Consistency and Failure to Plan in a Comprehensive Manner

The appeal asserts that the impact of the late addition of the middle housing policy is greatly amplified and compounded by other policies in the comprehensive plan, and creates conflicts with other policies. The compounding of policies issue is described in a separate objection regarding the designation of Multnomah Village as a “center.” The appeal alleges that the middle housing policy is in conflict with another policy, promoting family-friendly housing options, because the middle housing policy will produce smaller units that are not conducive to larger families and therefore cannot be considered consistent with the policy promoting family-friendly housing options. Attachment B at 20. The appeal asserts that the term “family friendly” housing implies housing that can accommodate families with children, and this means generally housing

with three or more bedrooms. The appeal alleges that the middle housing policy also represents a significant deviation from the work program tasks as approved by the department in 2009, which call for meeting identified housing needs (middle housing is not an identified need) and preserving the existing stock of affordable housing (middle housing will result in the destruction of much of this stock). Attachment B at 20-21.

The appeal asserts that the result of these action is that the city's decision directly violates Goal 2 and ORS 197.015(5), which defines "comprehensive plan" in a manner that interrelates functional and natural systems and activities relating to the use of lands, and defines "coordinated" as occurring when the needs of all levels of governments and citizens have been considered and accommodated as much as possible. The appeal alleges that the last minute nature of the middle housing policy resulted in a failure to conduct comprehensive planning. Attachment B at 22.

Department Response

The department recommends that this portion of the appeal be rejected by the commission.

The "compounding" of the effect of different plan policies will also be addressed in the staff report in response to the separate objection regarding the designation of Multnomah Village as a "center."

The department does not agree that the objection has established that Policy 5.6 and Policy 5.5, Housing Centers, are in conflict regarding the provision of "family-friendly" housing. The term "family-friendly" is not defined in the Portland Comprehensive Plan, and could mean many different things to different people, not necessarily including the presence of children. The objection does not provide any evidence, nor does anything in the record provide any indication, that a "family," even a family with children, is less likely to live in a smaller housing unit, or a rental unit, than it is likely to live in a larger housing unit, or a unit owned by its occupant (especially if income constrains the choices of a particular "family" regarding unit size). The department does not perceive any conflict between the middle housing policy and the policy promoting family-friendly housing.

Finally the department does not perceive any conflict between the periodic review work program and the middle housing policy as adopted. Contrary to the assertions of the appeal, Portland has identified a need for middle housing as described above. Portland has also countered the assertions stated in the appeal that the middle housing policy will reduce housing affordability. Given the city's findings, the middle housing policy is an appropriate response to the periodic review work program.

d. Lack of Adequate Response to Public Input

The appeal asserts that, contrary to an assertion by the city that the middle housing policy was written in response to interest from several council offices and recent hearing testimony, a detailed search of the record indicates that only four individuals commented on this topic before

it was officially introduced on February 2, 2016. In contrast, the appeal notes, after the policy was introduced the city received 157 comments on the policy, 2/3 of which were negative, and in addition more than a quarter of the positive comments were generated by two individuals. Attachment B at 23. This despite the short period of time between February, 2016 and adoption of the policy later in the year by the Portland City Council, as noted in the appeal. The appeal notes that the council's response to the testimony in the findings for Task 4 consists of one sentence, which states "opponents of policy 5.6 viewed the policy as effectively rezoning land," and a follow-up sentence stating that the council disagreed with this statement. Attachment B at 24.

The appeal alleges that this sequence of events violates Goal 1, which requires a "feedback mechanism," or a process for quantifying and synthesizing citizens' attitudes that is developed and reported to the general public. Attachment B at 24.

Department Response

The department recommends that this portion of the appeal be rejected by the commission. Whatever the specific origins of the middle housing policy, as the appeal documents, after the policy was introduced the city received a lot of testimony on the subject. It was the Portland City Council's prerogative to weigh the testimony and use the information as input into its decision, and it appears that, despite the majority of testimony being opposed to the policy, the city council considered the positive testimony and the information provided by its professional staff to be more persuasive. Characterization of a majority of testimony received as being opposed to the eventual result, as the appeal alleges, is not a basis for remand of a city decision under either Goal 1 or Goal 2. And the council's finding that the policy did not constitute a rezone of property is, in the considered judgment of the department, correct, as is discussed elsewhere in this report.

3. Appeal 4-7 – Multnomah Neighborhood Association #2

The Multnomah Neighborhood Association objected to the designation of Multnomah Village, a community in Southwest Portland, as a neighborhood center. The neighborhood association, throughout the process which led to the completion of this task, requested that Multnomah Village be designated as a neighborhood corridor, instead of a neighborhood center, on the city's comprehensive plan map. After the director's decision rejected their objection the neighborhood association filed an appeal of that rejection. In this appeal, the neighborhood association is primarily concerned with the combined impact of the designation of Multnomah Village as a neighborhood center and the middle housing policy (subject of another objection) upon zoning in the single-family residential neighborhoods surrounding Multnomah Village. The association's objection to the specific zoning applied to the Multnomah Village neighborhood center area is the subject of a third, different, objection.

The appeal is divided into four issues: 1) Inadequate Response to Public Testimony; 2) Confusing and Uncoordinated Policies; 3) Inadequate Mapping of Centers; and 4) Compliance with Metro Code.

Before discussion of the specific issues raised in the appeal, it should be noted that the remedy proposed by the Multnomah Neighborhood Association is that the commission partially remand task #4 of the periodic review to allow for proper public involvement in the designation of centers and corridors and their boundaries, explaining the concept in its entirety with needed mapping, identifying the need for designating Multnomah Village as a neighborhood center, reevaluating the potential impacts of a neighborhood center designation for Multnomah Village, and demonstrating compliance with the Metro Code. Attachment B at 47.

a. Inadequate Response to Public Testimony

The appeal asserts that the city failed to adequately consider the weight of evidence and public testimony in making its designation. Attachment B at 28-30. The appeal alleges that the city failed to describe the basis for the Multnomah Neighborhood Association's opposition to the neighborhood center designation, failing to mention the association's desired alternative neighborhood corridor designation, with city staff presenting only its own "strident advocacy position favoring centers. Attachment B at 30. The appeal contends the city failed to quantify and synthesize citizens' attitudes for reporting to the general public, and did not provide open and meaningful opportunities for individuals and organizations to effectively influence comprehensive plan updates, as is required by Goal 1. Attachment B at 31. Additionally, the appeal asserts that the city ignored its own code and charter, which requires city agencies to include affected neighborhood associations in planning efforts which affect neighborhood livability. Attachment B at 31. While the appeal acknowledges that Goal 1 does not dictate a particular result, the city's lack of consideration of citizen input and the unfairness of the city's process must be called into question. Attachment B at 30.

Department Response

The department recommends that this portion of the appeal be rejected by the commission. While city decision-makers are required to have an open, fair, and transparent process for considering community involvement and input on amendments to its comprehensive plan, those decision-makers are not required to satisfy the demands of that input in their final decision. The objection itself documents that large amount of input provided by the Multnomah Neighborhood Association and its members to the city. Goal 1 requires creation and implementation of a plan for public process – it does not guarantee a particular result. Regarding the allegations that the city staff did not present a fair and balanced discussion of the issue, the record is replete with general discussions of the purpose of neighborhood centers within the city's comprehensive plan land use structure, for example, in a report to the Portland Planning & Sustainability Commission in 2014. Task 4 Record at 20033-20039. This section of the record also includes a brief comment on the request of the Multnomah Neighborhood Association to redesignate Multnomah Village as a corridor. Task 4 record at 20041-20042. As the association points out in its appeal, the City Council and Planning & Sustainability Commission heard voluminous testimony disagreeing with the staff recommendation. Neighborhood Center Appeal at 5. The City Council had access to all arguments relating to this issue prior to making its final decision on the matter.

b. Confusing and Uncoordinated Policies

The appeal asserts that the city adopted confusing and uncoordinated policies regarding the Multnomah Village Town Center. According to the appeal, Policy 5.5 (Housing in Centers) provides a generalized policy statement typical of comprehensive plans, but this policy was supplemented late in the process with Policy 5.6 (Middle Housing), which, when taken in combination with Policy 5.5, creates a large-scale re-designation, and eventual up-zoning, of the residential areas in and around neighborhoods designated as centers. Attachment B at 31-33. The appeal asserts that while Policy 5.6 sets a study area of one-quarter mile around neighborhood centers for rezoning, another, separate policy, Policy 3.15 (Housing in Centers), further expands the centers designation by implicitly allowing up-designation and up-zoning of residential areas within one-half mile of centers. Neighborhood Center Objection at 8. While the appeal acknowledges that the policies do not actually rezone property, they guide implementation of the rezones in Task 5 that actually took place. Attachment B at 33-34.

The appeal contends that the result of combining two disparate policies in different chapters of the comp plan (Policies 3.15 and 5.5) with a new policy (Policy 5.6) is a major policy change to a large, overlapping area affecting a large portion of the single-family residential land in the city. The appeal alleges that such a sweeping overhaul of residential areas, impacting so many people, could not have been reasonably anticipated until after the adoption of the comprehensive plan. Attachment B at 34. The appeal states that this constitutes a failure to provide information that enables citizens to identify and comprehend the issues, as required by Goal 1. The appeal states that it also constitutes a failure to present information needed to make decisions in a simplified and understandable form, and make those decisions open, transparent, and accessible, as required by the city's community involvement work program. Attachment B at 35-36.

Department Response

The department recommends that this portion of the appeal be rejected by the commission. The policies do not accomplish what the objection claims they do. They do not rezone large areas of the city that are currently zoned for single-family detached residential development. These policies commit the city to a process of studying whether the specified areas should be rezoned. Task 4 Record at 45. Any subsequent rezones to implement these policies will require additional notice and action by the city, and will be subject to requirements for public notice and subject to appeal. The city has rezoned portions of the actual Multnomah Village center area, which is a subject of a separate appeal of Task 5 from the Multnomah Neighborhood Association and is discussed under that appeal.

c. Inadequate Mapping of Centers

The appeal asserts that the city inadequately mapped neighborhood centers. The appeal alleges that the city provided inaccurate and misleading information about the ultimate boundaries of proposed centers and the inclusion of single-family neighborhoods. The appeal notes that a map provided near the beginning of the planning process – in January 2015 – show the Multnomah Village center as limited to the existing commercial areas of Multnomah Village. Attachment B at 36-38. The appeal cites a September 2015 map showing radius circles around centers such as

Multnomah Village which, according to the city, were intended to be a symbol for centers, not a map boundary. Attachment B at 38-39. However, the appeal asserts that a map provided to the Multnomah Neighborhood Association in June 2016 shows a different and expanded neighborhood center designation. Attachment B at 39-40.

The appeal contends that this violates ORS 197.010(1)(c), which requires that comprehensive plans “be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans,” because the vague and overly flexible nature of the plan policies and map designations related to centers does not sufficiently define and guide implementation through the zoning code in a manner that is clear, understandable, and predictable to the public. Attachment B at 41. Similarly, the appeal asserts that this violates Goal 2, which states that “the various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.” Attachment B at 42.

Department Response:

The department recommends that this portion of the appeal be rejected by the commission. The city has adopted plan policies that may result in future changes to zoning in the vicinity of neighborhood centers. Task 4 Record at 277. Such future changes would result from subsequent study and analysis to see where the adopted Middle Housing policy is best applied in candidate areas. The Multnomah Neighborhood Association, and other individuals and groups, will have an opportunity to provide input into that process, and potentially object to or appeal any city actions to implement Policy 5.6. The city did not adopt any Task 5 rezoning of the neighborhoods around the Multnomah Village neighborhood center area related to the confluence of the neighborhood center designation and the middle housing policy.

Regarding the two maps in question raised in the objection, the first map is part of a grouping that is prefaced with a statement that “The following maps reflect adopted local plans, and are in effect today. All other center boundaries are provisional for planning and analysis purposes, and are pending further future refinement planning.” The subsequent list of centers with adopted local plans does not include Multnomah Village. Task 4 Record at 20077. The second map referenced by the objector does not appear to be in the record and thus is outside the scope of review for this decision, but in any event is illustrating a different idea – the areas within one-quarter mile of the preliminary neighborhood center boundaries that could be potentially affected by adoption of Policy 5.6. The fact that this latter map does not appear to be in the record makes it outside the scope of review, but in any event the maps are intended to show two different concepts.

d. Compliance with Metro Code

The appeal asserts that, in designating Multnomah Village as a neighborhood center, the city failed to comply with prior regional planning, including the Metro Code and the Metro 2040 Growth Concept Map. Attachment B at 42-44. The appeal notes that the Metro 2040 Growth Concept Map shows that Multnomah Village is not designated as a center, but that the primary thoroughfares in the neighborhood have been designated as “main streets.” The appeal asserts

that the department's rejection of the Multnomah Neighborhood Association's objection regarding this matter is mis-applying a different section of the Metro Code. Attachment B at 46. The appeal alleges that this represents a violation of Goal 2, which requires coordination between Portland and Metro.

Department Response:

The department recommends that this portion of the appeal be rejected by the commission. The "neighborhood center" designation on the Portland Comprehensive Plan Map does not implement a Metro town center designation, it implements a Metro "main street" designation. Task 4 Record at 85. The city recognizes that Multnomah Village is not a Metro "Town Center" designation, and the implementation of Metro's Title 6 for Multnomah Village actually achieves a lower jobs-and-residents-per-acre figure than is set forth in Metro's Title 6 for this area. Task 4 Record at 103. The department is unclear regarding the appeal's statements relating to the director's decision, but in any case, if the city's projections for development are at lower densities than for Metro's designation of this area as a "main street," then the assertion that the city is somehow violates the Metro Growth Concept Plan with its designation of Multnomah Village as a neighborhood center is an elevation of form over substance.

4. Appeal 4-10 – Multnomah Neighborhood Association #3

This is an appeal of a previous three-part objection to chapter 2 of the city's comprehensive plan (Community Involvement) alleging non-compliance with Goal 1.

1. The first part of the appeal asserts that the term "community groups" and "community" fail to meet the requirements of Goal 1 because it is not clear whether community groups are the same as the general public and that the use of the term "community" has inappropriately replaced "citizen". Attachment B at 49.
2. The second part of the appeal asserts that the city, by partnering with a "community" has the potential for excluding "citizens" (as required by Goal 1) who do not belong to a clearly identified "community." Attachment B at 50.
3. The third part of the appeal asserts that Policy 2.14 of the comprehensive plan² does not use the more general term "public involvement", and instead uses the term "community involvement", which is a more restrictive term than the Goal 1 term of "citizen involvement". The appeal alleges that this violates Goal 1, Part 3 because it reduces a "citizen's" ability to influence each stage of the planning process, .Attachment B at 50.

To correct the deficiencies, the appellant requests the commission partially remand Task #4 with

² Policy 2.14 provides: "At each stage of the process, identify which elements of a planning and investment process can be influenced or changed through community involvement. Clarify the extent to which those elements can be influenced or changed." Task 4 Record at 214.

instructions to the city to revise chapter 2, “to recognize the citizen’s role in the planning process,” and to define a process requiring public meetings and official status for all groups participating in the planning process, and to remove Policy 2.14.

Department Response:

The department recommends this appeal be rejected by the commission. If the city engages communities in the planning process, citizens will be provided the opportunity to participate; broadening the city’s program to involve “communities” does not exclude citizens.

Note Chapter 2 of the comprehensive plan, Community Involvement, Policy 2:

Representation. Facilitate participation of a cross-section of the full diversity of affected Portlanders during planning and investment processes. This diversity includes individuals, stakeholders, and communities represented by race, color, national origin, English proficiency, gender, age, disability, religion, sexual orientation, gender identity, and source of income.

Task 4 Record at 216.

Also, in Chapter 2, Community Involvement, Policy 2.24 Representation, the city describes:

Portland benefits when community members are meaningfully involved in planning and investment decisions. By building and maintaining partnerships with individuals and a wide range of formal and informal organizations that represent a variety of interests, the City of Portland government will have a better understanding of various communities’ diverse needs and concerns. These policies support building and maintaining strong and supportive relationships with an increasingly diverse and growing Portland population.

Task 4 Record at p.216

And further, city Policy 2.1 – Partnerships and coordination, (Record p. 211) identifies who the city intends to coordinate and engage with in their community involvement program:

2.1.a. Individual community members.

2.1.b. Communities of color (including those whose families have been in this area for generations such as Native Americans, African Americans, and descendants of immigrants), low-income populations, Limited English Proficient (LEP) communities, Native American communities, immigrants and refugees, and other under-served and under-represented communities.

2.1.c. District coalitions, Neighborhood Associations, watershed councils, and business district associations as local experts and communication channels for place-based projects.

2.1.d. Businesses, unions, employees, and related organizations that reflect

Portland's diversity as the center of regional economic and cultural activity.

2.1.e. Community-based, faith-based, artistic and cultural, and interest-based non-profits, organizations, and groups.

2.1.f. People experiencing disabilities.

2.1.g. Institutions, governments, and Sovereign tribes.

Task 4 Record at p. 211

Policy 2.14 commits the city to identifying actions that could be affected by public involvement. The objection appears to assume that the city is unable or unwilling to correctly identify those actions, resulting in lost opportunities for public involvement. Policy 2.14 resides in a section of chapter 2 that includes four policies implementing comprehensive plan goal 2.D, "Transparency and accountability," related to improving the quality of communication during the planning process. The plan also includes six other goals with implementing policies, and considering this larger context, Policy 2.14 refines and informs, and does not limit, the city's plan to involve the public in the planning process. See, especially, goal 2.E.³

The objection does not demonstrate that the city's citizen involvement program fails to comply with Goal 1.

5. Appeal 5-5 – Multnomah Neighborhood Association #4

The Multnomah Neighborhood Association objected to the City of Portland's decision to rezone much of the Multnomah Village Neighborhood Center area to the CM2 zoning district, which the association asserts allows densities, intensities, and building heights that are excessive for the Multnomah Village Neighborhood Center Area. After the director's decision rejected this objection, the association filed an appeal of that decision.

The appeal is divided into four issues: 1) Inadequate Response to a Long History of Public Input Seeking to Protect the Character of Multnomah Village; 2) Failure to Perform Planning Actions in Multnomah Village Based upon Facts and Evidence; 3) Failure to Provide the Public with Adequate Information and Facts About the Lack of Adequacy of Design Review to Protect Neighborhood Character; and 4) Failure to Direct Planning Actions in a Manner That Would Achieve Local Goals and Be Consistent With Past Planning Efforts.

³ Portland 2035 Comprehensive Plan goal 2.E provides: "Community members have meaningful opportunities to participate in and influence all stages of planning and decision making. Public processes engage the full diversity of affected community members, including under-served and under-represented individuals and communities. The City will seek and facilitate the involvement of those potentially affected by planning and decision making." Task 4 Record at 209.

Before discussion of the specific issues raised in the appeal, it should be noted that the remedy proposed by the Multnomah Neighborhood Association is that the commission partially remand Task 5 of the periodic review to reconsider application of the CM1 zoning district in the Multnomah Village area to reflect the community character issue and topography and also apply a zoning district with clear and objective standards addressing the association's concerns. Attachment B at 66.

a. Inadequate Response to a Long History of Public Input Seeking to Protect the Character of Multnomah Village

The appeal asserts that the city made an inadequate response to public input seeking to protect the character of Multnomah Village. The appeal notes that since at least 2003 the Multnomah Neighborhood Association has expressed concerns about the height and general compatibility of new development in Multnomah Village, concerns that have been supported by large numbers of individuals in the area. Attachment B at 54-55. The appeal notes that this culminated in a request that the Multnomah Village area be zoned CM1, a lower intensity zoning district, rather than CM2, in task 5 of periodic review. CM2 Zoning Objection at 4. However, as noted in the appeal, the city only zoned a small portion of the Multnomah Village area as CM1, with the rest being zoned CM2. Attachment B at 55. The appeal alleges that this constitutes a failure of the city to adequately quantify, synthesize, and report public involvement, and is a violation of Statewide Goal 1, which requires that "a process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public." The appeal contends that this also violates the city's community involvement work program, which commits the city to providing "open and meaningful opportunities for individuals and organizations to effectively influence comprehensive plan updates." Also a violation of the citizen involvement objectives of the Southwest Community Plan, according to the appeal. Attachment B at 56.

Department Response:

The department recommends that this portion of the appeal be rejected by the commission. While city decision-makers are required to have an open process for considering community involvement and input on amendments to its comprehensive plan, those decision-makers are not required to satisfy the demands of that input in their final decision. The objection itself documents that large amount of input provided by the Multnomah Neighborhood Association and its members to the city. Goal 1 requires creation and implementation of a plan for public process – it does not guarantee a particular result.

b. Failure to Perform Planning Actions in Multnomah Village Based upon Facts and Evidence

The appeal asserts that the city has failed to perform planning actions in Multnomah Village based on facts and evidence. According to the appeal, the stated reason the city has rezoned central Multnomah Village to the more intensive CM2 district is that changing housing needs require more high-density and multi-family housing in centers and corridors within Portland. The appeal contends the city's analysis of capacity shows that the existing residential buildable lands

inventory provides a sufficient 20-year supply of such housing. Attachment B at 57. Therefore, the appeal alleges that the city has violated Goal 2's provision that "inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan."

Department Response:

The department recommends that this portion of the appeal be rejected by the commission. The reason for the department's recommendation are the same as found in the discussion of the Multnomah Neighborhood Association Appeal to Objection 4-6, sub-issue b.

c. Failure to Provide the Public with Adequate Information and Facts About the Lack of Adequacy of Design Review to Protect Neighborhood Character

The appeal asserts that the city has failed to provide the public with adequate information about the lack of adequacy of design review to protect neighborhood character. The appeal asserts that the design review overlay is inadequate because the city must provide an alternative set of standards which are clear and objective, and do not provide for discretionary community input into design of development which is at least partially residential. Attachment B at 60-61. The appeal alleges that is a violation of Goal 1, which requires a citizen involvement program to provide "information that enables citizens to identify and comprehend the issues" and the city's community involvement work program, which commits the city to providing "effective tools and information in order to make effective public participation possible."

Department Response:

The department recommends that this portion of the appeal be rejected by the commission. The Multnomah Neighborhood Association is correct that such design review overlays, if they contain discretionary standards, may be avoided by applicants for residential development standards who insist on review of their projects under clear and objective standards. However, the appellant is mistaken in its assumption that Portland's design review overlay is not implemented with standards that are clear and objective. The city's submittal indicates that "in keeping with Goal 10, the Community Design Standards offer a clear and objective path to implement this overlay, as an alternative to discretionary review." Task 5 Record at 45. Therefore, the city did provide the information needed to the appellant regarding this issue, as required by the city's own community involvement work program.

d. Failure to Direct Planning Actions in a Manner That Would Achieve Local Goals and Be Consistent With Past Planning Efforts.

The appeal asserts that the city failed to direct planning actions in a manner that would achieve local goals and be consistent with past planning efforts. The appeal notes that the 2000 Southwest Community Plan (SWCP) planned for a "small-town" atmosphere for Multnomah Village, with height and design of buildings appropriate for the neighborhood, with a mix of residential and neighborhood-scale commercial development. The appeal contends the SWCP is

not mentioned in the recommended draft for Mixed Use Zoning Districts, which applies the CM2 district to Multnomah Village. Attachment B at 62-63. The appeal also contends this action violates the citizen involvement provisions of the SWCP, which state, “use the Southwest Community Plan policies and objectives to create, develop, implement or evaluate new citywide policies, programs, or project proposals to ensure that the concerns of the Southwest community are addressed.” Attachment B at 63. In addition, as noted by the appellant, Multnomah Village has been identified in the past as worthy of a historic district designation, which makes it a Goal 5 resource; the CM2 zoning ignores this history, and thus violates Statewide Planning Goal 5. Attachment B at 64-65.

Department Response:

The department recommends that this portion of the appeal be rejected by the commission. The city is not bound by the language or contents of the 2000 Southwest Community Plan. The purpose of periodic review is to update and, where appropriate, modify the city’s previously adopted comprehensive plan and implementing land use regulations. In any case, the city’s decision to mix the CM1 and CM2 districts in Multnomah Village, with the CM1 district being applied to a part of the village core area, is consistent with the excerpts from the 2000 community plan for Multnomah Village provided in the appeal.

Regarding the Goal 5 issue, the appellant has not demonstrated that Multnomah Village is a significant historic resource in the city’s comprehensive plan. The city is not obligated by the provisions of Goal 5 to protect any particular historic character within an area unless the resource has been found to be significant and the city has decided to protect it under its historic preservation ordinance.

6. Appeal 5-6 – Multnomah Neighborhood Association #5

The appeal asserts four issues similar to those objected to previously and addressed in the Director’s Decision, with two additional assertions included in the first issue and additional argument in the first and second issue. The appeal asserts the following: 1) The index of the record is not sufficiently detailed, the city provided inappropriate commentary to DLCD, and the DLCD order needs to be signed by the DLCD Director; 2) “The Comprehensive Plan Map in Task 5 is inconsistent with the approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.”; 3) “In the recent EG Zones in Mass Shelter and Housing Zoning Code Update the city of Portland changed the zoning code title 33 to allow Mass Shelters in EG zones.”; and 4) “The city of Portland since the adoption of Task 5 has had a number of major implementation projects going on after the approval of Task 5”, and thus the Task 5 submittal is incomplete. Attachment B 67-72.

The proposed remedies provided by the appellant are: 1) send the Task 5 product back to the city for a detailed index of the public record and to revise the staff reports and findings to reference the new index, “...remove the city commentary from the DLCD review in the DLCD Order 001892”, and, “The Order needs to be signed by the Director and the DLCD Order 001892 needs to be sent out for again with another 21 days for the objectors to respond.”; 2) strike the language

from the 2035 Comprehensive Plan so that allows flexibility in the zoning code so that the 2035 Comprehensive Plan base zone governs residential density; 3) amend the zoning code title 33 not to allow Mass Shelters in EG zones; and 4) require the city to incorporate a list of plan and code amendments in task 5 or to amend the work plan and add Task 6 for these and other projects that are required to carry out the Comprehensive Plan.

Each of the four issues is discussed further below.

a. Failure to Provide a Complete Index, Inappropriate City Commentary, and Improper Signature on the Director's Decision

The appeal asserts that the city's record index for this task is incomplete because it only provides the name of the submitter/testifier and this level of detail is inadequate, that some testimony was submitted by individuals on behalf of organizations or groups and these groups and organizations are not identified in the index. The appeal questions whether the Portland Planning and Sustainability Commission and city council reviewed all the testimony as the staff reports and findings are not linked to individual testimony. The appeal asserts that without a sufficiently detailed index to the public record, the public and the DLCD cannot adequately review the merits of any objection and therefore violates OAR 660-025-0130(3)(b)⁴ and Goal 1. Attachment B at 67-69.

In addition, the appeal asserts two items that were not included in the initial objections. First, the appeal alleges that the city provided inappropriate commentary under OAR 660-025-0130(4) when the department requested record locations and this commentary should be considered ex parte contact. The proposed remedy from the appellant is for the commentary from the city to be removed from the DLCD review in the DLCD Order 001892. Attachment B at 69. And second, the appeal asserts that the DLCD Order (001892) needs to be signed by the DLCD Director. The proposed remedy from the appellant is to properly sign and send out the decision again for another 21 days for the objectors to respond.

The appellant's proposed remedy is to send the Task 5 record back for the index to be detailed and referenced to the staff reports and findings. Then, according to the appellant, the public, Planning and Sustainability Commission and City Council need time to then review the record and then have hearings before it is submitted back to the DLCD.

⁴ OAR 660-025-0130(3)(b) provides: "If the local record exceeds 2,000 pages, a submittal must include adopted ordinances, resolutions, and orders; any amended comprehensive or regional framework plan provisions or land use regulations; findings; hearings minutes; materials from the record that the local government deems necessary to explain the submittal or cites in its findings; and a detailed index listing all items in the local record and indicating whether or not the item is included in the submittal. All items in the local record must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or commission may require a local government to submit any materials from the local record not included in the initial submittal;"

Department Response

The department recommends the commission reject this appeal. OAR 660-025-0130(3) requires an index of the entire record partially because the city is not required to submit the contents of the entire record if it exceeds 2,000 pages, and an index enables participants to and the department to identify those materials that were not part of the submittal. The index also enables participants and the department to identify where in the submittal relevant materials were included. The rule requires a “detailed” index.

The appeal appears to allege that a detailed index should link individual testimony with the specific elements of the staff report and findings to which it is related. For example, if there is testimony regarding the middle housing policy, then the index should link all testimony regarding this topic to the staff report and findings on this same topic. No reasonable reading of OAR 660-025-0130(3)(b) would lead to this conclusion.

OAR 660-025-0130(3)(b) identifies what a submittal must include, one of which is a detailed index listing all items in the local record and indicating whether the item is included in the submittal. The city has provided a master index and a table of contents, both of which provide a detailed list of items in the local record.

The department concludes that the city has submitted the required elements of a record exceeding 2,000 pages, including a detailed index of the items in the local record and the oral and written testimony from the public hearings.

Regarding the assertion of “inappropriate commentary” in the letter from the city identifying record locations at the request of the department and the comment that the Director must sign the DLCD order: The city’s response to a DLCD request for record locations is not part of the record and thus is outside the scope of review, and specific department staff have the authority to sign for the department director, including the community services division manager.

b. Densities in the Zoning Code Inappropriately Differing from the Map.

Department Response

The department recommends the commission reject this appeal. Per OAR 660-025-015 (6)(a), a work task may be appealed to the commission only by a person who filed a valid objection. The Director’s decision (Order 001892) found this objection to be invalid based on the OAR 660-025-0140(2) requirement that an objection must, among other things, “clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated.”

c. Incomplete Task 5 Implementation.

Department Response

The department recommends the commission reject this appeal. Per OAR 660-025-015 (6)(a), a work task may be appealed to the commission only by a person who filed a valid objection. The Director's decision (Order 001892) found this objection to be invalid based on the OAR 660-025-0140(2) requirement that an objection must, among other things, "clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated."

d. Current City Implementation Projects Should Have Been Included in Task 5.

This appeal asserts that the city has undertaken a number of implementation projects after the city adopted Task 5, and states that these should have been included as part of Task 5. The appellant's conclusion is that the Task 5 submittal is thus incomplete and limits appeal opportunities, which is inconsistent with provisions of Goal 1 to provide the opportunity for citizens to be involved in all phases of the planning process. The appeal notes the relative ease and no cost, to file an objection to a work task compared to filing a LUBA appeal. Attachment B at 73-75.

The proposed remedy is to send these projects back to be included in Task 5 or amend the work plan and add Task 6 for these and other projects that are required to carry out the Comprehensive Plan. Attachment B at 74.

Department Response

The department recommends the commission reject this appeal. The work program for task 5 states, "whatever policy decisions are made, they must be carried out by sufficiently robust implementation measures." Further, the work program identifies "possible new implementation measures," and lists those items. The product required is: "Ordinance of City Council adopting regulations, projects, and agreements sufficient to carry out the amended Comprehensive Plan."

The future adoption of implementation amendments may be dependent on the 2035 comprehensive plan but that does not make them inappropriate or mandate that they should have been adopted as part of periodic review. The city has amended the zoning map and zoning code to implement the comprehensive plan map and housing and employment policies. ORS 197 establishes the jurisdiction of the commission and the Land Use Board of Appeals (see ORS 197.644 and 197.825). The appellant is certainly able to participate in all phases of the adoption of future comprehensive plan implementation and amendment projects.

VI. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

A. Recommendation

The department recommends that the commission deny these appeals and approve the city of Portland's Task 4 and 5 submittals.

B. Motions

Recommended Motion: I move that the commission deny the Harries and Multnomah Neighborhood Association appeals and approve the City of Portland's Task 4 and Task 5 submittals, based on the information contained in the director's order, the department's report on the appeal, and argument at the hearing.

Alternative Motion: I move that the commission uphold the Harries and/or the Multnomah Neighborhood Association appeals and remand [*a portion or all*] the City of Portland's adopted Task 4 and 5 submittals, and uphold the approval of [*remaining elements*] of the Task 4 and 5 submittals. The remand is based on [*findings*]. On remand the city shall [*nature of additional work needed on remand*].

ATTACHMENTS

- A. Director's Approval Order 001892
- B. Appeal letter from James Harries and 5 appeal letters from Eben Fodor, representing the Multnomah Neighborhood Association and from Carol McCarthy and James Peterson, also representing Multnomah Neighborhood Association

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

REPORT ON THE CITY OF PORTLAND PERIODIC REVIEW TASKS 4 AND 5

DLCD Order 001892

December 5, 2017

I. SUMMARY OF DECISION

The Department of Land Conservation and Development (department) finds that the actions of the city of Portland (city) to complete tasks 4 and 5 of the city's periodic review work program comply with the statewide planning goals, related statutes, and implementing administrative rules, based on the findings and conclusions contained in this report. These tasks are approved.

II. REVIEW PROCEDURES AND CRITERIA

A. Director Review

OAR 660-025-0150(1) provides that, in response to a periodic review task submittal, the director may take action as follows:

- (a) Issue an order approving the completed work task;
- (b) Issue an order remanding the work task to the local government including a date for resubmittal;
- (c) Refer the work task to the [Land Conservation and Development Commission (commission)] for review and action; or
- (d) The director may issue an order approving portions of the completed work task provided these portions are not affected by an order remanding or referring the completed work task.

OAR 660-025-0150(9) provides that the director's standard of review is the same as that for the commission, which is expressed in ORS 197.633(3) and OAR 660-025-0160(2):

- (a) For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government's decision.
- (b) For procedural issues, whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.
- (c) For issues concerning compliance with applicable laws, whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the

regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of its comprehensive plan or land use regulation in the manner provided in ORS 197.829[.] * * * For purposes of this subsection, "complies" has the meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.747.

A director's decision approving or partially approving the submittal may be appealed to the commission only by a person who filed a valid objection. OAR 660-025-0150(6)(a). Appeals of a director's decision must be filed with the department's Salem office within 21 days of the date the director's action was mailed. OAR 660-025-0150(6)(c).

B. Review Criteria

The substantive criteria for these periodic review tasks 4 and 5 include: Goal 1 (Citizen Involvement) and Goal 2 (Land Use Planning); those aspects of Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and Goal 7 (Areas Subject to Natural Hazards) to the extent that they relate to policy and implementation; Goal 9 (Economic Development) as it relates to policy and implementation of economic needs; Goal 10 (Housing) as it relates to policy and implementation of housing needs; Goal 11 (Public Facilities and Services) as it relates to policy and implementation of infrastructure needs; Goal 12 (Transportation) as it relates to policy and implementation of transportation needs; Goal 14 (Urbanization) as it relates to coordination with Metro; and all of the applicable Oregon administrative rules. Some of these provisions include other goals and rules by reference.

III. BACKGROUND AND DESCRIPTION OF SUBMITTAL

A. Background

The city organized its periodic review work program to carry out the comprehensive plan update in three procedural phases: inventory, alternatives analysis, and policy choices and implementation. The work program includes the following tasks:

Task 1, Community Involvement. This task includes appointment of a citizen involvement committee (complete) and reliance on the committee to assist the city with completion of subsequent tasks. This task is also the subject of this decision as the task includes an evaluation of community involvement leading up to the adoption of each Task 2, 3, 4, and 5 products. The contents of this task submittal are listed in the next subsection of this report.

Task 2, Inventory and Analysis. Task 2 includes inventories and analyses establishing the factual basis for later tasks. The commission approved this task in LCDC order 14-WKTSK-001850 on June 11, 2014.

Task 3, Consideration of Alternatives. This task includes updates of the inventories completed in task 2, adoption of an economic opportunities analysis (EOA), and identification of the consequences of alternative patterns of development. The

department director approved this task in DLCD Order 001882 on April 25, 2017.

Task 4, Policy Choices. Task 4 is a subject of this review. This task includes decisions related to the city's economic, housing, public facilities and transportation elements of the comprehensive plan and the plan map. These decisions are informed by preliminary work in tasks 2 and 3.

Task 5, Implementation. Task 5 is the also a subject of this review. This task is intended to carry out the policy decisions made in previous tasks.

B. Procedural History

The submittals before the department for review includes task 4, Ordinance No. 187831, adopted June 15, 2016, and task 5, Ordinance No. 188177, adopted December 21, 2016.

1. On April 28, 2017, pursuant to OAR 660-025-0130(1), the city submitted task 4 to the department.
2. On May 18, 2017, pursuant to OAR 660-025-0150(3), the city waived the 120-day deadline for a department decision on task 4.
3. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the task 4 submittal was May 19, 2017. The department received a total of 11 written objections.
4. On August 7, 2017, pursuant to OAR 660-025-0130(1), the city submitted task 5 to the department.
5. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the task 5 submittal was August 28, 2017. The department received six written objections.

C. Description of Submittal

The city made a final decision regarding adoption of its task 4 submittal on June 15, 2016, and its Task 5 submittal on December 21, 2016. In reaching this decision, the city adopted the following documents, reports, and maps as part of the city's comprehensive plan:

1. Task 4

1. Community Involvement Report for Task 4 (submitted with Task 3)
2. 2035 comprehensive plan map
3. Goals and policies comprising the economic and housing elements of the 2035 comprehensive plan
4. Public Facilities Plan – Citywide System Plan (submitted with Task 3)

5. List of infrastructure projects: water, sewer and drainage
6. Policies addressing Portland International Airport expansion, Portland Heliport and coordination with school facilities plans
7. Goals and policies of the Transportation System Plan and list of transportation projects

2. Task 5

1. Community Involvement Report for Task 5
2. Zoning map amendments to implement the adopted 2035 Comprehensive Plan
3. Zoning code amendments to implement the adopted 2035 Comprehensive Plan
4. Task 4 transportation system plan amendments to add additional policies and update street classifications
5. Task 4 comprehensive plan amendments to incorporate major public trails into the land use map, and corrections to policy language

The department performed a completeness determination of the task 4 and task 5 submittals as required by OAR 660-025-0130(2).

OAR 660-025-0130(3) provides:

For a periodic review task to be complete, a submittal must be a final decision containing all required elements identified for that task in the work program. The department may accept a portion of a task or subtask as a complete submittal if the work program identified that portion of the task or subtask as a separate item for adoption by the local government.

* * *

The department finds the task 4 and 5 submittals to be complete.

IV. DEPARTMENT REVIEW & RESPONSE TO OBJECTIONS

A. Objections Received

The department received objections from the following parties. The department's responses to objections uses the numbering displayed for identification only; the numbers have no other significance:

1. Task 4 Objections

- 4-1 James Harries
- 4-2 Enda Kenny
- 4-3 Rose City Park Neighborhood Association #1
- 4-4 Margaret Davis
- 4-5 Daniel Root
- 4-6 Multnomah Neighborhood Association #1
- 4-7 Multnomah Neighborhood Association #2
- 4-8 Dave Malcolm
- 4-9 Goose Hollow Foothills League and Sustasis Foundation, Michael Mehaffy
- 4-10 Multnomah Neighborhood Association #3
- 4-11. James Peterson

2. Task 5 Objections

- 5-1 Mascott LLC, Eitan Ovadia, Kin Properties, Inc.
- 5-2 Rod Ramsour
- 5-3 Garlynn Woodsong #1
- 5-4 Garlynn Woodsong #2
- 5-5 Multnomah Neighborhood Association #4
- 5-6 Multnomah Neighborhood Association #5
- 5-7 Rose City Park Neighborhood Association #2

B. Validity of Objections

OAR 660-025-0140(2) provides that in order for an objection to be valid, it must:

- (a) Be in writing and filed no later than 21 days from the date the city mailed the notice;
- (b) Clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated;
- (c) Suggest specific revisions that would resolve the objection; and
- (d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

Except for Mr. Peterson's objection (4-11), all of the objections received for tasks 4 and 5 were filed within the required 21-day period. As noted in section III.B above, the task 4 deadline to file objections was May 19, 2017. Mr. Peterson's objection was received on

May 22, 2017. Therefore, this objection did not comply with OAR 660-025-0140(2)(b) and is invalid.

The Rose City Park Neighborhood Association's identical objections (4-3) and (5-7) on behalf of 59 individuals for both plan and zone designations, does not demonstrate that the individuals participated orally or in writing at the local level and during the local process. The validity of these objections is further addressed in subsection C.3.

The remaining letters of objection were timely and demonstrated that the objectors participated during the city's hearings process. Therefore, OAR 660-025-0140(2)(a) and (d) have been satisfied with the exception of the Peterson objection (4-11) and the Rose City Park objections (4-3 and 5-7). The department found that objections 4-2 (Kenny), 4-4b (Davis), 4-5 (Root), 4-8 (Malcomb), 4-9 (Goose Hollow, *et al.*), 5-1 (Mascott LLC, *et al.*), 5-2 (Ramsour), and 5-6b and c (Multnomah Neighborhood Association) did not satisfy OAR 660-025-0140(2)(b) because they did not clearly identify an alleged deficiency in the submittal either by providing adequate detail regarding the portion of submittal alleged to be deficient of identifying what relevant law was violated.

C. Objections and Department Responses – Tasks 4 and 5

1. Objection 4-1 – James Harries

The department understands Mr. Harries' objection to be that the city ignored his requests to apply an R-10 zone to his properties at 10500 and 10614 SW 25th Ave., Portland. Attachment A at 1. He indicates that adjacent and nearby properties are either R-10 or R-7 and that there are no distinguishing features on the properties that would preclude development.

The alleged deficiency is that local and statewide land use goals call for increasing density within city limits. The proposed remedy is for the city to rezone the property.

Department Response: The department rejects this objection. Tasks 4 and 5 require the city to, among other things, adopt long-term policies and shorter-term strategies for meeting identified housing needs, and to implement these policy decisions. The results of those tasks must comply with applicable statewide planning goals, administrative rules, and statutes. The city must zone individual residential properties in a manner that is consistent with the comprehensive plan. The plan for and zoning of residential land must comply with Statewide Planning Goal 10 (Housing). Goal 10 and its applicable implementing rule, OAR chapter 660, division 7, the metropolitan housing rule, require the city to develop a projection of future housing need, provide a supply of residential land sufficient to meet identified housing needs, and to adopt maps and policies to accommodate needed housing to meet minimum housing mix and density requirements at price ranges commensurate with the financial capabilities of the projected population. As summarized in the comprehensive plan findings (Task 4 Record at 29-42), the city completed some of this analysis in periodic review task 2, which the department approved, and the remaining analysis is in this task 4 where the city determined that the

projected and mapped housing capacity exceeds the projected need for new housing. Task 4 Record at 39.

Because the city has provided for its identified need for residential housing, the objection has not established a basis for the department to reject the submittal. The department reviews the submittal for compliance with relevant requirements. The fact that the city could have applied a different zone to a property that is also consistent with applicable goals and rules is not a basis to sustain an objection.

2. Objection 4-2 – Enda Kenny

Ms. Kenny notes that senior citizens have unique needs and must be included in the planning process. Attachment A at 2. One of the specific needs identified is to “age in place” within their own neighborhood, and another to build more therapy swimming pools and/or to maintain the existing swimming pools.

Department Response: The department determined that the objection is invalid under OAR 660-025-0140(2)(b). The concerns raised are beyond the scope of tasks 4 and 5; therefore they provide no basis for the department to remand the submittal. The objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

3. Objections 4-3 and 5-7 – Rose City Park Neighborhood Association

The department jointly considers these objections because they are essentially identical. The objection was submitted for both the task 4 plan designation and the task 5 zone designation. Attachment A at 3 and Attachment B at 41. The Rose City Park Neighborhood Association (RCPNA) established standing in the city’s comprehensive plan update by participating in testimony submitted to the city on November 13, 2015. This testimony was in support of rezoning three properties (from R-2 to mixed-use commercial) located at the southeast corner of the intersection of NE Fremont and 50th Ave.

The objection states that, on March 21, 2017, after the city had adopted tasks 4 and 5, a special association board meeting was held for concerned property owners in opposition to the rezone. The board agreed to the following:

“Since our original recommendation to rezone the Peterson Properties from R2 to Mixed Use Commercial in 2015 we have heard additional concerns from neighbors to this property as well as additional testimony from Jim Peterson, Property owner. We firmly believe that all of these neighbors, in the attached Objection and Proponent testimony, should be heard by DLCD and the City of Portland.” Attachment B at 43.

The objection from the RCPNA provides both a letter from the property owner and proponent of the proposed rezone, and a letter from a group of 59 neighbors in opposition to the rezone so that it would be heard by the department and the city.

None of the 59 individuals who signed the letter of opposition included by RCPNA participated orally or in writing in the local proceedings.

Department Response: The department determined that the objection is invalid. RCPNA has not objected to the submittal, only transmitting the concerns of persons who have not participated orally or in writing in any task 4 or 5 proceeding. To be valid, the objection must allege a deficiency in the submittal and suggest specific revisions to resolve the objection. An objection that merely purports to advance the views of proponents and opponents of a particular aspect of a submittal does not comply with OAR 660-025-0140(2).

4. Objection 4-4 – Margaret Davis

Ms. Davis filed a two-part objection to a comprehensive plan policy adopted by the city. Attachment A at 39.

Objection 4-4a. Ms. Davis first objects that the city introduced the middle housing policy, Policy 5.6, on March 18, 2016, in a large document less than three months before the city council adopted the comprehensive plan on June 15, 2016. Policy 5.6 provides:

Enable and encourage development of middle housing. This includes multi-unit or clustered residential buildings that provide relatively smaller, less expensive units; more units; and a scale transition between the core of the mixed use center and surrounding single family areas. Where appropriate, apply zoning that would allow this within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City.

As stated by Ms. Davis, the policy is now being implemented and will allow more than doubling of the residential density in most of the residential neighborhoods in Portland. In addition, the objection incorporates Multnomah Neighborhood Association's concerns that the city's implementation of this middle housing policy results in allowing a significant increase in density in single-family residential neighborhoods without the appropriate planning process including: a failure to meet Goal 1 and Goal 2; a failure to justify actions with objective evidence; a failure to adequately inform the public about potential impacts; and a failure to plan in a comprehensive manner, including planning for greatly increased growth capacity without appropriate infrastructure planning to support that growth. The objector's proposed remedy is to void the middle housing policy.

Department Response: The department rejects this objection. The Goal 1 and Goal 2 portion is addressed in the department's response to objection 4-6 below (Multnomah Neighborhood Association #1).

Policy 5.6 does not accomplish what the objection claims. It is not self-executing; it therefore does not rezone large areas of the city that are currently zoned for single-family detached residential development. It commits the city to a process of studying whether the specified areas “within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City” should be rezoned “where appropriate” to allow development of middle housing. Any subsequent rezones to implement this policy will require additional notice and action by the city, and will be subject to requirements for public notice and subject to appeal.

Objection 4-4b. The second objection is to the rezoning of a segment of NE Fremont from CM1 to CM2. The objector indicates that the Beaumont-Wilshire Neighborhood Association filed comments in favor of zoning the area the lower density zone of CM1 on the basis of lack of street connectivity, lack of frequent transit service and other factors that are not identified in the objection. The objector adds that these “...last minute reversals such as this, void the public input/accountability elements of comprehensive planning.” The objector’s proposed remedy is to void the rezone.

Department Response: The department determined that the objection is invalid. Although the objection presents a basis for CM1 zoning, the objection does not clearly identify an alleged deficiency with CM2 zoning that allows the department to identify the relevant statute, goal, or administrative rule the task submittal has violated as required by OAR 660-025-0140(2)(b).

5. Objection 4-5 – Daniel Root

Mr. Root objects to the rezone of property at 6141 SW Canyon Court from R20 to R5 (objection referred to R20,000 to R5,000). Attachment A at 41. The objection does not clearly identify an alleged deficiency, although it is stated that the site has a number of challenges related to the distance to public transit, location on a steep slope and in a landslide hazard area, in addition to limited road access and future traffic concerns. The objector also alleges that the normal public process was bypassed and that the predominance of the data was ignored when the proposal came to a final vote at city council.

Department Response: The department determined that the objection is invalid. The objection states a disagreement to the submittal, but it does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

6. Objection 4-6 – Multnomah Neighborhood Association #1

The Multnomah Neighborhood Association objects to the process leading to, and the final result of, Middle Housing Policy 5.6. The policy is quoted in subsection 4, “Objection 4-4 – Margaret Davis.” The objection can be divided into two sub-objections.

Objection 4-6a. This sub-objection faults the city’s public involvement process relating to the introduction and adoption of Policy 5.6, contending that the submittal threatens to undermine public confidence in the integrity of Goal 1 and Goal 2, requiring coordinated comprehensive planning. Attachment A at 45-53. Although the objector concedes that the middle housing maybe a legitimate policy, because city staff introduced it towards the end of the six-year periodic review task process, along with a large group of proposed amendments, and with no maps of the areas affected by this policy (the quarter-mile area around various centers and corridors) until after the city council’s adoption, the objection argues that the decision was simply too rushed.

The objection contends that the process by which this policy was considered and adopted violated the city’s Community Involvement Work Program to guide community involvement for periodic review, which states:

Decisions will be open, transparent, and accessible. Reports containing the facts and reasons necessary to make particular decisions will be available at least 21 days before any Planning and Sustainability Commission or City Council hearing.

The objection alleges that no such reports were ever released by the city in conjunction with adoption of Policy 5.6. Additionally, the objection alleges that a 30-day minimum public notice is required by City Code 3.96.050(C) for the type of planning action the city proposed, which led to adoption of Policy 5.6. The objection alleges the city issued the proposed amendments for the first time on March 18, 2016, only 27 days before the city council’s first public hearing on the topic on April 14, 2016.

To correct the deficiencies identified in this objection, the objectors request that the department partially remand task 4 to allow for proper public involvement for consideration of Policy 5.6. The objection contends that, if the policy leads directly or indirectly to zone changes, notification of all affected owners and renters should be required.

Department Response: The department rejects this sub-objection. To demonstrate a Goal 1 violation, the objector must establish a failure to comply with the acknowledged citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995). The department finds that the city complied with its acknowledged citizen involvement program regarding the adoption of Policy 5.6, as described below.

The city’s adopted Community Involvement Work Program states that the city would provide “reports containing the facts and reasons necessary to make particular decisions” at least 21 days prior to a public hearing on the matter. Portland August 6, 2008 Resolution 36626. City staff issued a staff report on March 18, 2016 for a city council hearing on the matter on April 14, 2016, a 27-day difference. Task 4 Record at 11530. While the city revised the report as late as March 29, 2016, such revisions in response to initial review and comment by the public are common, and such revision is a sign of city

responsiveness to comments. Task 4 Record at 11530. While the objectors are correct that the first inkling of what became Policy 5.6 did not occur until February 2016, this in itself is not a violation of the city's Community Involvement Work Program standards, and therefore the provisions of Goal 1. Task 4 Record at 11727.

City Code 3.96.050(C) states, in its entirety:

Notice of pending policy decisions affecting neighborhood livability shall be given to the Neighborhood Association(s) affected at least 30 days prior to final action on the decision by a City agency. If said 30 day period may injure or harm the public health, safety, welfare, or result in a significant financial burden to the City, this notice provision shall not apply.

The record indicates that city staff issued a report on this matter, with notification to neighborhood associations, on March 18, 2016. Task 4 Record at 11551. While the city council held its first hearing in response to the report on April 14, 2016, only 27 days after issuance of the staff report, the council did not make a *final* decision adopting the policy until June 15, 2016, almost 90 days after the issuance of the staff report, considerably more than the 30 days required by the relevant code provision. Therefore, the objection does not establish that the city violated City Code 3.96.050(C) regarding notice to neighborhood associations.

Regarding the assertion that Portland violated Goal 2 provisions requiring coordinated comprehensive planning, Goal 2 defines "coordinated" in reference to ORS 197.015(5). This statutory provision defines "coordinated" as "when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." The objection states that the first introduction of the "vague, generalized concept" of middle housing occurred in a February 2, 2016 memo from city staff to Mayor Hales. Attachment A at 48. However, a summary discussion presented to the Portland City Council at the February 2, 2016 work session where this memo was introduced states that the middle housing memo and presentation of policy options was written "in response to interest from several council offices, and recent hearing testimony." Task 4 Record at 11710. Furthermore, the topic of middle housing had actually been raised at an October 8, 2015, city council work session on housing issues, and a staff analysis presented at that work session highlighted the need for, and lack of supply, for middle housing options. Task 4 Record at 11906 and 11916.

Contrary to the assertions of the objectors, the topic of middle housing and the need for such housing had already been raised by February 2016, in part as a response to public input. The city had determined that a need for a particular type of housing (middle housing) was present, and was working to address that need, in the context of overall housing need and the entire comprehensive plan. This constitutes the coordinated planning required by Goal 2.

Objection 4-6b. This sub-objection argues that the city has no demonstrated need for housing that requires adoption of Policy 5.6. Attachment A at 53-57. According to the objection, the city’s adopted housing needs analysis shows a capacity of 141,000 to 189,000 dwelling units, depending upon whether the assumptions of the city or Metro are used. Both of these capacity figures are well above the projected 20-year housing need, which ranges from 105,000 to 136,000 dwelling units. Additionally, the objection states that the city found no additional need for the types of housing enabled and encourages by Policy 5.6 so the policy was not founded on objective, factual evidence.

This sub-objection also makes the following contentions:

- Policy 5.6 works in contradiction to Policy 5.5 (Housing in Centers). Policy 5.5 supports a diversity of housing adjacent to centers that includes “family-friendly” housing. Rezoning large areas of the city to allow smaller rental units in place of larger detached dwelling units works to reduce the amount of “family-friendly” housing around centers.
- Policy 5.6 works to reduce the amount of affordable housing in Portland, as older, less-expensive detached dwellings in areas subject to the policy are replaced with newer, more expensive dwellings.

To summarize, the sub-objection contends that the city adopted Policy 5.6 with an inadequate factual basis, violated its work program, and failed to maintain plan consistency and coordination, as required by Goal 2.

To correct the deficiencies identified in this sub-objection, the objectors request that the department partially remand Task 4 to allow for proper comprehensive planning and public involvement for Policy 5.6. The public information would include all the evidence and factual information from Task 3 that bear on the need, or lack of need, for such a policy, including the existing available development capacity and mix of housing types.

Department Response. The department rejects this sub-objection. The city has provided findings and conclusions based on substantial evidence regarding reasons the city adopted Policy 5.6. The reasons for adoption of this policy, which received significant public input both for and against, are succinctly summarized as follows:

The 2035 Comprehensive Plan provides enough zoned capacity to meet expected housing needs over the next 20 years. However, the 2035 Comprehensive Plan also highlights and addresses the need for more housing in the range between the single-family houses and units in larger multi-family or mixed-use buildings. There is growing demand for greater housing supply and choice in terms of price, size, location, tenure options and accessibility.

- Less expensive. Creating more middle housing opportunities with the plan may help relieve some price pressure. Generally, these

forms of housing can be built using wood frame construction methods. They are less expensive to build than 4-6 story mixed use buildings, and are more land-efficient than detached single family homes. Middle housing can also serve as a transition between denser mixed-use development and abutting single dwelling neighborhoods.

- Home ownership. Although home ownership is generally beyond the reach of the lowest income groups, there is also a challenge in supplying enough entry-level homes to meet expected demand. Most of the City's single-family supply is single-family lots in the 5,000-7,000 square foot range, while most of the expected demand over the next 20 years is for more affordable lots in the 1,600 to 4,000 square foot range. Much of the available land for additional single-family construction is in East Portland and outer Southwest Portland, while demand is highest in the inner most neighborhoods. Construction of more attached homes could help meet this demand.
- Access to complete communities. The 2035 Comprehensive Plan promotes compact development within walking distance of neighborhood and town center locations. To achieve our "complete neighborhood" goals, we want to be able to have about 3,500 to 7,000 households within a walkable ½-mile distance of our commercial main streets. Many centers are not yet to this level of density. Zoning for more attached housing options near the edges of the identified centers could be a way to help achieve that goal.
- Choice. There is demand for greater range of housing types that are adaptable to different life stages, and multigenerational living. Surveys have also suggested that many apartment dwellers would prefer to live in their own home, if they can afford it. While it is prudent to supply enough multifamily housing to meet rising demand for that housing type, it may also be desirable to provide other options.

Task 4 Record at 45-46.

Goal 2 requires the city "[t]o establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions." Goal 2 further provides that "[a]ll land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs." The summary provided above, and the additional material in

the record upon which it is based,¹ demonstrates that the city adopted Policy 5.6 with an adequate factual base, and made an “ultimate policy choice” based upon: (1) the need for more housing with higher densities than single-family houses and lower densities than larger multi-family or mixed use buildings, and (2) the positive impacts on housing expense, home ownership, access to complete communities and housing choice provided by the policy.

While the objectors do not agree with the city’s decision, the department’s review of the submittal for Goal 2 compliance is not whether the city made the “correct” decision, but rather whether the city’s decision is supported by an adequate factual base, which is the equivalent of the requirement in ORS 197.633(3)(a) that the decision is based upon substantial evidence in the record as a whole. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994).

The department also does not agree that the objection has established that Policy 5.6 and Policy 5.5, Housing Centers, are in conflict regarding the provision of “family-friendly” housing. The term “family-friendly” is not defined in the Portland Comprehensive Plan, and could mean many different things to different people. The objection does not provide any evidence, nor does anything in the record provide any indication, that a “family” is less likely to live in a smaller housing unit, or a rental unit, than it is likely to live in a larger housing unit, or a unit owned by its occupant.

The department also finds the argument proffered in the objection that allowing greater densities in some neighborhoods will result in the demolition of less expensive housing, resulting in a loss of affordability is not supported by any evidence in the record or provided in the objection. The two footnoted sources provided in the objection, from Professor Emeritus Lutzenhiser and Johnson Economics (Attachment A at 12) do not appear in the record provided by the city. In any case, the city’s findings on this topic address this issue generally as follows:

State planning law requires that housing needs be analyzed and identified by affordability, and requires that land be made available in sufficient supply to accommodate the amount of affordable housing needed. Allowing for a robust supply of inherently more affordable housing types (small studio apartments, ADUs, small-lot single family, etc.) does not mean that these housing units will actually be affordable in practice. In a market economy, housing is allocated to the highest bidder. If supply is limited, the price of even the more affordable housing types can be bid up. In addition, new housing is typically more expensive than older housing. Not all new households will occupy new housing units. Higher income households will often occupy new housing units, leaving older units to lower income households. If housing supply is tight, the price of older housing units can also be bid up. In light of these market dynamics, the primary impact of zoning on affordability will be the extent to which it

¹ Task 4 Record at 11527-11530

allows for an adequate overall supply, and allows for a diverse mix of housing. The facts described above show that the Zoning Map adopted with this ordinance does this. Based on the facts and reasons stated above, the requirement to allow a diverse range of housing choices has been met. Task 5 Record at 45.

Finally, Policy 5.6 does not necessarily accomplish what the objection claims. The objection appears to recognize that any given home is only “potentially affected” and that potential only occurs “if [Policy 5.6] is implemented” by the city. Attachment A at 46. To be clear, the department does not understand the submittal to rezone large areas of the city that are currently zoned for single-family detached residential development. Instead, Policy 5.6 commits the city to a process of studying whether the specified areas, “within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City” should be rezoned “where appropriate” to allow development of middle housing. Any subsequent rezones to implement this policy will require additional notice and action by the city, and will be subject to requirements for public notice and subject to appeal.

7. Objection 4-7 – Multnomah Neighborhood Association #2

The Multnomah Neighborhood Association objects to the designation of Multnomah Village, a community in Southwest Portland, as a neighborhood center. The Multnomah Neighborhood Association, throughout the process that led to the completion of this task, requested that Multnomah Village be designated as a neighborhood corridor, instead of a neighborhood center, on the city’s comprehensive plan map. The department considers the objection in four sub-objections.

Objection 4-7a. This sub-objection alleges that the city failed to adequately consider the weight of evidence and public testimony in making its designation, thus failing to comply with Goal 1. Attachment A at 65-68. The objection expounds that the city failed to provide adequate and timely public information about the meaning and implications of the center designation and failed to provide adequate mapping of center boundaries in violation of Goal 1 and Goal 2 and the city’s Community Involvement Work Program. The objector contends the city failed to adequately justify and support the expansion of center boundaries with factual evidence, as required by Goal 2.

Department Response. The department rejects this objection. While the statewide planning goals require the city to have an open, fair, and transparent process for considering community involvement and input on amendments to its comprehensive plan, the objector has not established that the goals require decision-makers only to legislate a comprehensive plan that accords with all of the input received. The objection itself documents the large amount of input provided by the Multnomah Neighborhood Association and its members to the city. Establishing that there may have been support for a different submittal does not provide the department a basis for rejecting the submittal under review. The department must review what was submitted for compliance with applicable law. Goal 1 requires a program for consideration of citizen input and a

fair process – it does not dictate a particular result. Regarding the allegation of inaccurate information, please see the discussion under sub-objection 4-7c, below.

Objection 4-7b. This sub-objection alleges that the city adopted confusing and uncoordinated policies regarding the Multnomah Village Town Center. Attachment A at 68-71. According to the objection, Policy 5.5 (Housing in Centers) provides a generalized policy statement typical of comprehensive plans, but this policy was supplemented late in the process with Policy 5.6 (Middle Housing), which, when taken in combination with Policy 5.5, creates a large-scale re-designation, and eventual up-zoning, of the residential areas in and around neighborhoods designated as centers. While Policy 5.6 sets a study area of one-quarter mile around neighborhood centers for rezoning, another, separate policy, Policy 3.15 (Housing in Centers), further expands the centers designation by implicitly allowing up-designation and up-zoning of residential areas within one-half mile of centers.

The objection contends that the result of combining two disparate policies in different chapters of the comp plan (Policies 3.15 and 5.5) with a new policy (Policy 5.6) is a major policy change to a large, overlapping area affecting a large portion of the single-family residential land in the city. Such a sweeping overhaul of residential areas, impacting so many people, could not be reasonably anticipated. The objection states that this constitutes a failure to adequately inform and engage the public in the land use planning process, as required by Goal 1 and the city's Community Involvement Work Program.

Department Response. The department rejects this objection. As discussed above, the policies do not accomplish what the objection claims they do. They do not rezone large areas of the city that are currently zoned for single-family detached residential development. These policies commit the city to a process of studying whether the specified areas should be rezoned. Task 4 Record at 45. Any subsequent rezones to implement these policies will require additional notice and action by the city, and will be subject to requirements for public notice and subject to appeal.

Objection 4-7c. This sub-objection alleges that the city inadequately mapped neighborhood centers. Attachment A at 71-76. The city allegedly provided inaccurate information about the ultimate boundaries of proposed centers and the inclusion of single-family neighborhoods that objector found misleading. A map showing the Multnomah Village center provided in January 2014 near the beginning of the planning process was supplemented by information from the city indicating that the neighborhood center boundaries were generally fixed and were going to be the location of more intensive land uses, but not to the point of making existing low-density commercial uses non-conforming. However, a map provided to the Multnomah Neighborhood Association in June 2016 shows a different and expanded neighborhood center designation.

The objection contends that this sequence of events does not comply with Goal 1 and is in violation of the 21-day notice requirement found in the city's Community Involvement Work Program. The objection also alleges that this also violates ORS 197.010(1)(c),

which requires that comprehensive plans “be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans,” because the vague and overly flexible nature of the plan policies and map designations related to centers does not sufficiently define and guide implementation through the zoning code in a manner that is clear, understandable, and predictable to the public. Similarly, it violates Goal 2, which provides that “the various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.”

Department Response. The department rejects this objection. The city has adopted plan policies that may result in future changes to zoning in the vicinity of neighborhood centers. Task 4 Record at 277. Such future changes would only occur as a result of subsequent study and analysis to determine where the adopted middle housing policy is best applied in candidate areas. The Multnomah Neighborhood Association, and other individuals and groups, will have an opportunity to provide input into that process, and potentially object to or appeal any city actions to implement Policy 5.6.

Regarding the two maps described in the objection, the department found the first in materials for a January 27, 2015 (not 2014) Planning and Sustainability Commission workshop, among a group of all Portland neighborhood center maps. Task 4 Record at 20098. The map grouping is prefaced with the statement: “The following maps reflect adopted local plans, and are in effect today. All other center boundaries are provisional for planning and analysis purposes, and are pending further future refinement planning.” The subsequent list of centers with adopted local plans does not include Multnomah Village. Task 4 Record at 20077. The second map referenced by the objector does not appear to be in the record, but in any event is illustrating a different idea – the areas within one-quarter mile of the preliminary neighborhood center boundaries that could be potentially affected by adoption of Policy 5.6.² In any event, the department concludes that any discrepancy is not relevant because the two maps are intended to show two different concepts.

Objection 4-7d. This sub-objection alleges that, in designating Multnomah Village as a neighborhood center, the city failed to comply with prior regional planning, including the Metro Code and the Metro 2040 Growth Concept Map. Attachment A at 76-78. The Metro 2040 Growth Concept Map shows that Multnomah Village is not designated as a center, but that the main streets in the neighborhood have been designated as “main streets.”

Department Response. The department rejects this objection. The “neighborhood center” designation on the comprehensive plan map does not implement a Metro Town Center designation, it implements a Metro “main street” designation. Task 4 Record at 85. The city recognizes that Multnomah Village is not a Metro “Town Center” designation. Task 4 Record at 103.

² The fact that this latter map does not appear to be in the local record renders the map outside the department’s scope of review under ORS 197.633(3).

8. Objection 4-8 - David Malcolm

Mr. Malcom also objects to the rezone of property at 6141 SW Canyon Court from R20,000 to R5,000 and is essentially identical in form to objection 4-5 from Dan Root. Attachment A at 86.

Department Response: Please refer to the 4-5 Dan Root response in subsection 5. The objection is invalid.

9. Objection 4-9 – Goose Hollow Foothills League, Sustasis Foundation, and Michael Mehaffy

This objection requests multiple changes to the draft Central City 2035 (CC2035) plan. Attachment A at 88.

Department Response: The department finds this objection invalid. The Central City 2035 Plan is not the subject of the city’s periodic review task 4 or 5 submittal. Therefore, any such questions or challenges are not before the department.

10. Objection 4-10 - Multnomah Neighborhood Association #3

This is a three-part objection to chapter 2 of the city’s comprehensive plan (Community Involvement) alleging non-compliance with Goal 1.

1. The first part asserts that the term “citizen” is not mentioned in the text, even though Goal 1 requires that “citizens” have a role in all phases of the planning process. It is also stated that the objector does not advocate to exclude non-citizens, but are advocating that citizen rights and responsibilities in the planning process be recognized in the comprehensive plan. Attachment A at 126.
2. The second part asserts that the city, by not defining the process it uses to recognize a community, there is the potential for citizens to be excluded from the planning process as required by Goal 1, Part 3. Attachment A at 127.
3. The third part alleges that Policy 2.14 of the comprehensive plan³ limits community, and thus citizen, ability to influence elements of the planning process at each stage of the planning process, in violation of Goal 1, Part 3. Attachment A at 127.

The proposed remedy is a remand of Task 4 with instructions to the city to revise chapter 2 to “to recognize the citizen’s role in the planning process,” to define a process requiring public meetings and official status for all groups participating in the planning process, and to remove Policy 2.14.

³ Policy 2.14 provides: “At each stage of the process, identify which elements of a planning and investment process can be influenced or changed through community involvement. Clarify the extent to which those elements can be influenced or changed.” Task 4 Record at 214.

Department Response: The department rejects this objection. If the city engages communities in the planning process, citizens will be provided the opportunity to participate; broadening the city’s program to involve “communities” does not exclude citizens. The objection does not establish that Goal 1 requires that the city involve the public in land use decision-making exclusively through formally recognized groups or associations that comply with open meetings and public records laws.

Policy 2.14 commits the city to identifying actions that could be affected by public involvement. The objection appears to assume that the city is unable or unwilling to correctly identify those actions, resulting in lost opportunities for public involvement. Policy 2.14 resides in a section of chapter 2 that includes four policies implementing comprehensive plan goal 2.D, “Transparency and accountability,” related to improving the quality of communication during the planning process. The plan also includes six other goals with implementing policies, and considering this larger context, Policy 2.14 refines and informs, and does not limit, the city’s plan to involve the public in the planning process. *See, especially, goal 2.E.*⁴ The objection does not demonstrate that the city’s citizen involvement program fails to comply with Goal 1.

11. Objection 4-11 - Peterson

This objection (Attachment A at 129) is invalid due to filing of objection after the end of the 21-day objection period. See section III.B.

12. Objection 5-1 – Mascot LLC, Eitan Ovadia, Kin Properties, Inc.

This objection was submitted by the managing agent for Mascot LLC, the owner of property located at 2720 NW 35th Avenue, Portland. Attachment B at 1. It expresses objection to the establishment of the Industrial (I) Overlay and/or any reclassification or modification to the property’s base zone of Heavy Industrial (IH). The objection further states that any modification to the current base zone may depreciate the value of the property. In addition, the objection demands that the tenant’s operations at the property be “grandfathered in” to allow the tenant’s continued operation.

Department Response: The department determined that the objection is invalid. The objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

13. Objection 5-2 – Rod Ramsour

Mr. Ramsour disagrees with a proposed change to his property located at 10000 SW Riverside Dr., Portland. Attachment B at 13. The objection contends that the city is trying

⁴ Portland 2035 Comprehensive Plan goal 2.E provides: “Community members have meaningful opportunities to participate in and influence all stages of planning and decision making. Public processes engage the full diversity of affected community members, including under-served and under-represented individuals and communities. The City will seek and facilitate the involvement of those potentially affected by planning and decision making.” Task 4 Record at 209.

to incorporate an area between his garage and house for a trail, resulting in a division of his property that would allow public access to his property.

Department Response: The department determined that the objection is invalid. The objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

14. Objection 5-3 – Garlynn Woodsong #1

This objection asserts that the comprehensive plan transportation element performance fails to meet the goals for that performance. Attachment B at 14-16. More specifically, the transportation system plan sets a 25 percent bicycle commute rate and the comprehensive plan projects achievement of a 3.6 percent overall bicycle mode share. Therefore, the objection asserts, the plan does not comply with Goal 12 because it does not minimize adverse social, economic and environmental impacts and costs; and because it does not conform to local and regional comprehensive land use plans.⁵ The proposed remedy is for the city to “re-zone existing single-family neighborhoods within bicycling distance of employment areas to allow for the construction of more Missing Middle housing units.”

Department Response: The department rejects this objection. The objection based on Goal 12, section (5) contends the comprehensive plan, which may not meet the goal of 25 percent bicycle commute mode share, will not “minimize adverse social, economic, and environmental impacts and costs” as much as a plan that met the target would. As noted below, it is not clear that the proposed comprehensive plan would fail to meet the target. The city has authority to interpret this provision of the goal to determine what is reasonable, and fully minimizing the transportation system’s social, economic, and environmental impacts and costs would require a near-zero auto mode share. This is unreasonable during the 2035 planning timeframe. The proposed comprehensive plan is a strong advancement toward that direction, and is planned to make substantial increases in bicycle mode share and other non-auto mode shares.

The objection based on Goal 12, section (9) contends the comprehensive plan, which may not meet the goal of 25 percent bicycle commute mode share, does not “conform with local and regional comprehensive land use plans.” The city amended the transportation plan to include a compound objective, including objective 9.26g, which includes a target for 11 miles traveled per-day-per-capita by car; a target for non-single-occupancy auto

⁵ Goal 12 provides: “A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) *minimize adverse social, economic and environmental impacts and costs*; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) *conform with local and regional comprehensive land use plans*. Each plan shall include a provision for transportation as a key facility.” (Italics added.)

commutes of 70 percent; and approximate targets for the distribution of the non-single-occupancy auto commute mode shares, with bicycling set at 25 percent. Task 5 Record at 882.

The objection notes that the modelling for the results of the comprehensive plan in 2035 shows a 3.6 percent mode share for bicycling. Task 5 Record at 59. However, these rates cannot be directly compared as the 25 percent target is for a *commute* mode share, and the 3.6 percent model rate is for *all trips*.

Further, the model used was found to not be particularly sensitive to transportation demand management, bicycling, and pedestrian system measures taken in the proposed comprehensive plan. Further review of the model and its deficiencies by the city demonstrated that the actual bicycling rate in 2035 could be as high as 15.7 percent, again for all trips. This is citywide; in some areas, the rate could be as high as 22.5 percent for all trips. Task 4 Record at 11386-11405.

Objective 9.26g importantly also states that the 25 percent target for bicycling commute mode share is *approximate*, presumably to allow the non-single occupancy auto mode shares to fluctuate among each other. Considering the difference between commute trips and all trips, the deficiencies of the model, and the approximate rather than specific mode share goal, the objection does not clearly demonstrate how the transportation plan fails to conform to local and regional land use plans.

15. Objection 5-4 – Garlynn Woodsong #2

Mr. Woodsong’s second objection contends the city failed to provide for adequate supply of affordable housing by income quartile to sufficiently allow for use of bicycles for commuting at the rate identified as the mode share target. Attachment B at 16-19. The proposed remedy is for the city to provide for a “sufficient number of housing units by type to meet demand within a distance of compatible employment types to allow for the use of the bicycle for commute mode trips.”

Department response. The department rejects this objection. This objection is based on Goal 10 guidelines, which are suggested approaches that local governments may use in achieving compliance with the goals; they are not requirements with which local governments must comply. *Churchill v. Tillamook County*, 29 Or LUBA 68, 73 (1995). While the city has not adopted the objector’s suggested remedy in whole, the city has taken action to increase housing supply in areas accessible to alternative modes of transportation such as bicycle. *See, e.g.*, Policy 5.4 Housing Types, Policy 5.5 Housing in Centers, Policy 5.6 Middle Housing. Task 4 Record at 277-278. The city has taken various implementing zoning actions intended to allow for housing development in areas accessible to alternative modes of transportation, such as bicycles. Task 5 Record at 1.

16. Objection 5-5 – Multnomah Neighborhood Association #4

This objection relates to the city's decision to rezone the Multnomah Village Neighborhood Center area to the CM2 zoning district, which allows densities, intensities, and building heights that the objectors believe are excessive for the Multnomah Village Neighborhood Center area. Attachment B at 20.

More specifically, the objection contends:

1. The city made an inadequate response to public input seeking to protect the character of Multnomah Village. The failure of the city to adequately quantify, synthesize, and report public involvement is a violation of Statewide Goal 1, which requires that “a process for quantifying and synthesizing citizens’ attitudes should be developed and reported to the general public.”
2. The city has failed to perform planning actions in Multnomah Village based on facts and evidence. The stated reasons the city has rezoned central Multnomah Village to the more intensive CM2 district is that changing housing needs require more high-density and multi-family housing in centers and corridors within Portland. The objection contends the city's analysis of capacity shows that the existing residential buildable lands inventory provides a sufficient 20-year supply of such housing. Therefore, the city has violated Goal 2's provision that “inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan.”
3. The city has failed to provide the public with adequate information about the lack of adequacy of design review to protect neighborhood character in violation of Goal 1, which requires a citizen involvement program to provide “information that enables citizens to identify and comprehend the issues.”
4. The city failed to direct planning actions in a manner that would achieve local goals and be consistent with past planning efforts. The 2000 Southwest Community Plan (SWCP) planned for a “small-town” atmosphere for Multnomah Village, with height and design of buildings appropriate for the neighborhood, with a mix of residential and neighborhood-scale commercial development. The objection contends the SWCP is not mentioned in the recommended draft for Mixed Use Zoning Districts, which applies the CM2 district to Multnomah Village. The objection contends this action violates the citizen involvement provisions of the SWCP, which state, “use the Southwest Community Plan policies and objectives to create, develop, implement or evaluate new citywide policies, programs, or project proposals to ensure that the concerns of the Southwest community are addressed.” Attachment B at 11.
5. Multnomah Village has been identified in the past as a candidate for a historic district designation, which makes it a Statewide Planning Goal 5 resource, and the CM2 zoning ignores this history, and thus violates Goal 5.

Department Response. The department rejects this objection. While the statewide planning goals require the city to have an open, fair, and transparent process for

considering community involvement and input on amendments to its comprehensive plan, the objector has not established that the goals require decision-makers only to legislate a comprehensive plan that accords with all of the input received. The objection itself documents the large amount of input provided by the Multnomah Neighborhood Association and its members to the city. Establishing that there may have been support for a different submittal does not provide the department a basis for rejecting the submittal under review. The department must review what was submitted for compliance with applicable law. Goal 1 requires a program for consideration of citizen input and a fair process – it does not dictate a particular result.

The objection also seems to minimize the fact that a significant portion of Multnomah Village was, in fact, zoned CM1 by the city decision, in concert with, although not fully in agreement with, the recommendations of the Multnomah Neighborhood Association (which advocated for the entire Multnomah Village neighborhood center area be zoned CM1). Task 5 Record 115.

The Multnomah Neighborhood Association is correct that such design review overlays, if they contain discretionary standards, may be avoided by applicants for residential development standards who insist on review of their projects under clear and objective standards. However, the objector is mistaken in its assumption that Portland's design review overlay is not implemented with standards that are clear and objective. The city's submittal indicates that "in keeping with Goal 10, the Community Design Standards offer a clear and objective path to implement this overlay, as an alternative to discretionary review." Task 5 Record at 45.

The purpose of periodic review is to update and, where appropriate, modify the city's previously adopted comprehensive plan and implementing land use regulations, including the 2000 Southwest Community Plan. In any case, the city's decision to mix the CM1 and CM2 districts in Multnomah Village, with the CM1 district being applied to a part of the village core area, is consistent with the excerpts from the 2000 community plan for Multnomah Village provided in the objection. Attachment B at 29-30.

Regarding the Goal 5 issue, the objector has not demonstrated that the city has inventoried Multnomah Village as a significant historic resource in its comprehensive plan. The city is not obligated by the provisions of Goal 5 to protect any particular historic character within an area unless the resource has been found to be significant and the city has decided to protect it under its historic preservation ordinance.

17. Objection 5-6 – Multnomah Neighborhood Association #5

This objection letter contains four separate objections.

Objection 5-6a. This objection asserts that the city's record index for this task is incomplete because it only provides the name of the submitter/testifier and this level of detail is inadequate, that some testimony was submitted by individuals on behalf of organizations or groups and these groups and organizations are not identified in the index. Attachment B at 37. The objection questions whether the Portland Planning and

Sustainability Commission, city council, and city staff reviewed all of the testimony. The objection asserts that the lack of ability to search for testimony violates OAR 660-025-0130(3)(b) ⁶ and Goal 1.

Proposed revisions to resolve the objection are to remand the Task 5 submittal to the city for a detailed index of the public record and to revise the staff reports and findings to reference the new index.

Department Response. The department rejects this objection. OAR 660-025-0130(3) requires an index of the entire record partially because the city is not required to submit the contents of the entire record if it exceeds 2,000 pages, and an index enables participants and the department to identify those materials that were not part of the submittal. The index also enables participants and the department to identify where in the submittal relevant materials were included. The rule requires a “detailed” index.

The objection appears to allege that a detailed index should link individual testimony with the specific elements of the staff report and findings to which it is related. For example, if there is testimony regarding the middle housing policy, then the index should link all testimony regarding this topic to the staff report and findings on this same topic. No reasonable reading of OAR 660-025-0130(3)(b) would lead to this conclusion.

OAR 660-025-0130(3)(b) identifies what a submittal must include, one of which is a detailed index listing all items in the local record and indicating whether the item is included in the submittal. The city has provided a master index and a table of contents, both of which provide a detailed list of items in the local record.

The department concludes that the city has submitted the required elements of a record exceeding 2,000 pages, including a detailed index of the items in the local record and the oral and written testimony from the public hearings.

Objection 5-6b. This objection states, in its entirety:

The current Comprehensive Plan Map in Task 5 allows density to differ from the base zone densities defined in the Comprehensive Plan. This is inconsistent with the approved worked order for Task 4 which requires a

⁶ OAR 660-025-0130(3)(b) provides: “If the local record exceeds 2,000 pages, a submittal must include adopted ordinances, resolutions, and orders; any amended comprehensive or regional framework plan provisions or land use regulations; findings; hearings minutes; materials from the record that the local government deems necessary to explain the submittal or cites in its findings; and a detailed index listing all items in the local record and indicating whether or not the item is included in the submittal. All items in the local record must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or commission may require a local government to submit any materials from the local record not included in the initial submittal;”

product of a Land Use Map depicting property-specific locations and intensity of housing.

The city is allowing the base zones to be defined in the zoning code. ORS 197.015 (5) defines the comprehensive plan as coordinating land use with everything associated with it. Thus allowing an exception to base zones to be defined in the zoning code is inconsistent with ORS 197.015 (5). Attachment B at 38.

The proposed remedy is “any exceptions that allows density to differ from the base zone densities defined in the 2035 Comprehensive Plan be removed so that the map depicts property-specific locations and intensity of housing.”

Department Response. OAR 660-025-0140(2) provides, among other things, that for an objection to be valid it must “clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated.” See section IV.B. The objection cites the comprehensive plan map as the relevant section of the final decision at issue. The department’s review of the map (Task 5 Record at 113) does not reveal any provision that allows varying of densities. The objection does not identify what portion of task 4 with which the task 5 submittal conflicts. The department finds that this objection fails to satisfy the minimum requirements of a valid objection and is therefore invalid.

Objection 5-6c. This objection asserts that the city’s change to the zoning code to allow mass shelters in the EG (General Employment) zone should not be allowed as it is inconsistent with the comprehensive plan. Attachment B at 39. The remedy indicated is to amend the zoning code Title 22 to not allow mass shelters in the EG zone.

Department Response. The department finds this objection invalid. The city’s zoning code change to allow mass shelters in the EG zone was submitted as a Post Acknowledgement Plan Amendment (DLCD file no. 010-16). The city’s decision was not part of periodic review.

Objection 5-6d. This objection asserts that the city has undertaken a number of implementation projects after the city adopted task 5, and should have been included as part of task 5. The objector’s conclusion is that the task 5 submittal is thus incomplete and limits appeal opportunities, which is inconsistent with provisions of Goal 1. Attachment B at 39. The proposed remedy is to require the city to incorporate a list of plan and code amendments in task 5.

Department Response. The department rejects this objection. The work program for task 5 states, “whatever policy decisions are made, they must be carried out by sufficiently robust implementation measures.” Further, the work program identifies “possible new implementation measures,” and lists those items. The product required is: “Ordinance of City Council adopting regulations, projects, and agreements sufficient to carry out the amended Comprehensive Plan.”

The objection does not establish a connection between the cited list of plan amendments and the plan updates carried out in periodic review. ORS 197 establishes the jurisdiction of the commission and the Land Use Board of Appeals (*see* ORS 197.644 and 197.825). Goal 1 does not provide the department or commission authority to usurp the Land Use Board of Appeals' jurisdiction for the convenience of a potential appellant.

18. Objection 5-7 – Rose City Park Neighborhood Association #2

See subsection 3 regarding objection 4-3 regarding the objection and department response.

V. OVERALL CONCLUSIONS AND DECISION

The city adopted amendments to the Portland 2035 Comprehensive Plan with implementing measures and submitted them to the department for review. The submittal consists of findings of fact and conclusions.

The department finds the actions of the city to amend the Portland 2035 Comprehensive Plan to include: the Community Involvement Report for task 4, the 2035 Comprehensive Plan Map, goals and policies comprising the economic and housing elements of the 2035 Comprehensive Plan, the Citywide Systems Plan, list of infrastructure projects: water, sewage and drainage, policies addressing Portland International Airport expansion, Portland Heliport and coordination with school facilities plans, and goals and policies of the transportation system plan and list of transportation projects, complies with the applicable statewide planning goals, related statutes and implementing administrative rules, based on the findings and conclusions contained in this report. The objections do not demonstrate that the local decisions fail to rely on an adequate factual base or are unreasonable based on the evidence in the whole record.

The department also finds the action of the city to amend the Portland Comprehensive plan to include: the Community Involvement Report for task 5, zoning map amendments to implement the comprehensive plan, zoning code amendments to implement the adopted comprehensive plan, amendments to the transportation system plan to add additional policies and update street classification, and amendments to the comprehensive plan to incorporate major public trails into the land use map, and make corrections to policy language, complies with the applicable statewide planning goals, related statutes and implementing administrative rules, based on the findings and conclusions contained in this report. The objections do not demonstrate that the local decisions fail to rely on an adequate factual base or are unreasonable based on the evidence in the whole record.

All objections to the submittal are determined to be invalid or are rejected. The submittal is approved.

ATTACHMENTS

A. Task 4 Objections

- James Harries
- Enda Kenny
- Rose City Park Neighborhood Association #1
- Margaret Davis
- Daniel Root
- Multnomah Neighborhood Association #1
- Multnomah Neighborhood Association #2
- Dave Malcolm
- Goose Hollow Foothills League, Sustasis Foundation, and Michael Mehaffy
- Multnomah Neighborhood Association #3
- James Peterson

B. Task 5 Objections

- Mascott LLC, Eitan Ovadia, and Kin Properties, Inc.
- Rod Ramsour
- Garlynn Woodsong
- Multnomah Neighborhood Association #4
- Multnomah Neighborhood Association #5
- Rose City Park Neighborhood Association #2

James R Harries – PE
10500 SW 25th Ave
Portland, OR 97219

Rob Hallyburton
Community Services Division Manager
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

Dear Mr. Hallyburton
Appeal of City of Portland Periodic Review Tasks 4 and 5 Approval (Order 001892) 1-Objection
4.1 –James Harries

We appreciate the response that our properties on SW 25th in Portland would meet the Planning goals if the zoning were returned to the previous R-10 designation. However, our objection is that the City has not done its homework. I attended several workshops, and made both written and oral appeal at two City Council Comprehensive Plan meetings.

When our appeal came up at the video recorded Council working session, staff showed a high level aerial picture and stated that since there were trees in a nearby natural area as well as trees on our properties, zoning requests were not to be answered. No one has bothered to visit or even set foot in the area. Had the city planners and commissioners come to the properties or even zoomed in on the aerial, they would have quickly discovered the properties were developed in an old holly orchard, and that the trees in question are invasive species. Further development would eliminate the invasive species as well a further city and state environmental goal.

Please consider that the City has not followed reasonable procedure, and sustain our objection requesting the R-10 zoning we previously had.

Sincerely,
James R Harries



Appeal to the Land Conservation and Development Commission of Middle Housing Policy 5.6 in the Portland Comprehensive Plan Update

Filed: December 26, 2017

This is an appeal to the Land Conservation and Development Commission (LCDC) under OAR 660-025-0150(6) of the Department of Land Conservation and Development's (DLCD) formal review and rejection of all the objection issues we submitted on Tasks 4 and 5 of Portland's Periodic Review. This Appeal is made on behalf of the Multnomah Neighborhood Association.

This Appeal is the first of three separate appeals to the LCDC.

- **Part 1: Appeal of Middle Housing Policy 5.6 (Task 4)**
- Part 2: Appeal of the Designation of the Multnomah Neighborhood as a "Neighborhood Center" (Task 4)
- Part 3: Appeal of the Adoption of CM2 Zoning in Multnomah Village (Task 5)

The original Objection has already been determined to be valid, as required by OAR 660-025-0150(6)(a). The standing of the appellant, the Multnomah Neighborhood Association, has already been established per OAR 660-025-0150(6)(d)(A) in each of the original objections under the heading "Party of Record," and therefore is not repeated here. The DLCD has rejected all the valid objections that were filed with the Department.

In addition to restating some of the original Objections, we are including with each issue the specific rules that have been violated so that it is clear what

governs the decision. Key sections of the DLCD decision are quoted and responded to. The DLCD has created specific sub-objection issues in their December 5, 2017 approval letter for the related Objection. While we attempted to match these topics in our appeal, we found that they were not suitable for this appeal because they were both overly broad and limiting of the issues raised. The appeal issues are presented based on the Objection number (Part #) and sub-issue letter (alphabetical).

Part 1: Appeal of Middle Housing Policy 5.6

Our objection is to both to the process leading to, and final end result of, the Middle Housing Policy 5.6. Based on a review of the record for Periodic Review of the Comprehensive Plan, the City of Portland's Bureau of Planning and Sustainability (BPS) has failed to adequately inform Portland residents about the nature, magnitude, and consequences of its efforts to conduct an overhaul and up-designation of City's residentially-zoned single-family homes to allow infill beyond any actual identified housing need. The BPS has also failed to provide complete, objective, and balanced public information about their proposal. Such information is necessary for the public to understand the nature, scope, implications, and potential consequences of the proposal. The BPS generated information earlier in the process indicating that upzoning of single-family residential would not be under consideration, further confounding the public.

This Appeal is divided into four specific appeal issues, as follows:

- Appeal Issue 1.A. Lack of Adequate Information to Inform Citizens
- Appeal Issue 1.B. Lack of Need and Factual Basis for Policy
- Appeal Issue 1.C. Lack of Plan Consistency and Failure to Plan in a Comprehensive Manner
- Appeal Issue 1.D. Lack of Adequate Response to Public Input

Appeal Issue 1.A. Lack of Adequate Information to Inform Citizens

Middle Housing started as a vague, generalized concept that was first introduced to the Comprehensive Planning process in a February 2, 2016 memo to Mayor Hales from Principal BPS Planner Eric Engstrom titled "Middle housing options."¹ It is noteworthy that, at the time this memo was issued, the Periodic Review for

¹ See <http://www.portlandoregon.gov/bps/article/563074>

the Comprehensive Plan had already been ongoing for more than six years since the Work Plan was approved by LCDRC on September 30, 2009, and no prior official mention of a “middle housing” policy proposal had been made.

The DLCD states (page 11) that an earlier reference to the topic of “middle housing” was made in a City Council Work Session on October 8, 2015. Upon review of the Record, there is a brief mention of the middle housing concept at this Work Session. The “missing middle” housing jargon has been around since at least 2010. The mere mention of this topic in no way affects the facts of our Objection or this Appeal. No policy was proposed at this Work Session and no public reports or documents were issued indicating that a middle housing policy was under consideration. Therefore, there was nothing for the public to react or respond to.

The same October 8, 2015 staff report cited by the DLCD (Record at page 11914) states that:

Although little change is expected to the character of Portland's predominantly single family residential neighborhoods (they will remain single family residential neighborhoods), single family homes are expected to make up a smaller share (47 percent by 2035) of the housing mix in coming years.

This offers a clear statement by BSC staff that upzoning of single-family neighborhoods is not under consideration in the Comprehensive Plan Update.

The other portion of this October 8, 2015 staff report cited by the DLCD states in its entirety (Record at 11916):

- 2. Middle housing. Some types of housing are particularly challenging to produce affordably – particularly large lot single family and high rise buildings.*
 - a. Market rate development will not adequately provide for affordable housing and will leave low-income groups with fewer choices.*
 - b. “Middle housing”, such as duplexes, attached housing, ADU's, or small lot single family homes are inherently cheaper to build, but may end up [being] expensive due to the overall scarcity of housing.*
 - c. There could also be a lack of options for middle income households as the price for traditional SFR houses is bid up, and there are not enough “middle housing” alternatives to pick up the slack. [Refer to the middle housing forms on the pie chart, and the lack of growth relative to the other forms].*

Since the above material is quoted in its entirety, it is important to note that the last line of the citation refers to a pie chart that, in fact, shows middle housing types will increase faster than other types of housing (Record, page 11915). For example, attached SFR will more than double from 6,000 to 14,000 units over the planning period.

This material offers no suggestion that a middle housing policy is under consideration. It also provides no factual basis or evidence to support such a policy. In fact, this staff report clearly shows that the City has more than double the capacity necessary to support growth throughout the planning period of 2010-2035 (see Residential Development Capacity, Record at 11,913).

The February 2, 2016 Engstrom memo referred to earlier, reflects the first mention of middle housing as a consideration in the Comprehensive Plan Update. However, there is still no mention of possible policies. The memo states:

What is middle housing?

For purposes of this memo, "middle housing" is defined as multi-unit or clustered housing types that are compatible in scale with single-family homes. Middle housing has more and usually smaller units than typical detached single-family development. Examples include row houses, townhouses, and plexes (duplexes, triplexes, four-plexes), or small garden apartments. ADUs and clusters of small cottages also could be considered middle housing.

Based on this introduction to the topic, *middle housing* could include virtually any size or type of residential development on, or adjacent to, established single-family homes, as long as it is "compatible in scale." The term "scale" appears only to refer to building size and/or bulk, and does not address an array of other compatibility issues that should be addressed in a proper planning process.

It is important to note that the February 2, 2016 memo does not provide a balanced discussion of the topic, and instead provides only alleged benefits, which are asserted without the support of any factual evidence or basis, as required by Statewide Planning Goal 2. While the memo speculates on the potential benefits, it does not mention a single potential disadvantage or drawback.

The memo refers to "study areas evaluated by staff." A map of study areas by BPS dated January 26, 2016 does not show any study areas in Southwest Portland. One of the un-mapped options described in the preceding text associated with

the map included under “E. More flexibility in R5 – Residential Infill Project” states: “*Potential Study Areas: All R5 zones, or R5 zones near centers.*” This is an extremely broad, vague, and non-specific proposal.

No map or other information was provide to show which homes or how much of the City would be included under this option “E.” There was no information about how many homes and properties would be affected. There was no analysis of the potential impact of the option on existing neighborhoods, housing affordability, or infrastructure needs, such as parkland, schools, roads, sewers, etcetera, as required by Statewide Planning Goal 2.

Therefore, as recently as February 2, 2016, an astute and highly-informed resident of the City of Portland would have no idea that their single-family home in a well-established and developed neighborhood was proposed for up-designation and eventual rezoning.

On March 18, 2016, the BPS introduced a large group of proposed Comprehensive Plan amendments that included 109 policy amendments and new policies along with many other amendments in a 112-page document.² On page 22 of this document, a major new policy was introduced. Initially referred to as “Amendment #P45,” this became the new *Middle Housing Policy*, Policy 5.6. With little public outreach and awareness, this policy became the vehicle for an unprecedented, large-scale, up-designation of single-family homes around the City.

The DLCD states (page 11) that:

The record indicates that city staff issued a report on this matter, with notification to neighborhood associations, on March 18, 2016. Task 4 Record at 11551.

A review of the Record indicates that the “report” cited by the Department is actually the same as this list of amendments. The middle housing policy proposal is “buried” among 109 other amendments. The one-paragraph description included on page 22 with the new policy amendment surely does not constitute a “report” by staff.

² Amendment P45 appeared on page 22 of 112 pages of the *2035 Comprehensive Plan Draft City Council Amendments*, March 18, 2016 (minor corrections through 3/29/16), by Bureau of Planning and Sustainability.

When this new policy amendment was introduced and under public consideration, there was no information available to the public about how many homes would be potentially affected and up-designated by amendment P45 (Policy 5.6). However, the figure now appears to be approximately 87,000 single-family properties, reflecting 58% of all single-family lots in the City of Portland (the City).³

The DLCDC states in their response (page 12) that:

The city has provided findings and conclusions based on substantial evidence regarding reasons the city adopted Policy 5.6.

However, no “substantial evidence” is cited by the Department. Instead, the Department cites and fully quotes from the Findings (DLCDC, pages 12-13) the same general list of conjecture and anecdotal information offered by the City in the Engstrom memo of February 2, 2016 claiming that middle housing will be less expensive, promote home ownership, offer access to complete communities, and offer housing choice. No evidence is offered that housing will be less expensive. In fact middle housing will likely be more expensive on a square-foot basis than the existing housing it replaces. No evidence is offered by the City for increased home ownership from middle housing. In fact middle housing units are most likely to be rental units. There is no evidence provided by the City that there is large-scale, pent-up demand for middle housing that is unmet. In fact, the largest unmet demand will be for single-family homes and for low-income housing. Neither of these will be addressed by middle housing.

In conclusion, the City offered no data, analysis, study, or technical report to provide evidence or a factual basis for this middle housing policy proposal. The staff memo provides only generalized and anecdotal statements about the possible benefits of middle housing.

Goal 1: Citizen Involvement, states:

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

³ Source: *Residential Infill Project, An Update to Portland’s Single-dwelling Zoning Rules*, Discussion Draft, October 2017, page 42.

In conflict with Goal 1, there was no specific public involvement program for the Middle Housing Policy, in spite of the fact that this policy is the basis for one of the largest planning efforts in Portland's recent history, the Residential Infill Project. Also in conflict with Goal 1, the citizen involvement program did not provide the information necessary to enable citizens to "identify and comprehend the issues," as has been documented above.

The adopted Community Involvement Work Program, under "Guiding Principles" states:

The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.

Information needed to make decisions will be presented in a simplified and understandable form. Assistance will be provided to interpret and effectively use technical information. Copies of technical information will be available on the Internet, at public libraries, at neighborhood coalition offices and at other locations open to the public. Translations of key documents will be available.

Decisions will be open, transparent and accessible. Reports containing the facts and reasons necessary to make particular decisions will be available at least twenty-one days before any Planning and Sustainability Commission or City Council hearing, and these reports will be retained for the life of the plan. All hearings venues will be accessible.

Contrary to the Community Involvement Work Program, the City did not provide "effective tools and information" on the middle housing policy, and did not provide information in an "understandable form." The City did not provide "copies of technical information" on middle housing in any format. The City did not provide "reports containing the facts and reasons necessary to make particular decisions," as required. Therefore, the City is in clear violation of the Community Involvement Work Program.

The adopted Community Involvement Work Plan, under "Purpose" states:

The purpose of community involvement in the periodic review work program is to provide open and meaningful opportunities for individuals

and organizations to effectively influence Comprehensive Plan updates.

According to this statement, there are supposed to be “meaningful opportunities” for citizens to “effectively influence” the Comprehensive Plan update. In the case of the Middle Housing Policy, the policy was first introduced on March 18, 2016 (along with 109 policy amendments). It was adopted along with the Comprehensive Plan by the City Council on June 15, 2016, 89 days after introduction. In between, the City held a public hearing on April 14th, and continued the hearing on April 20th. These hearings started just 27 days after release of the list of amendments and represented the first and only opportunity for the public to comment on the entire list of amendments and a revised Economic Opportunity Analysis. The short 27-day period is inadequate to meet the purpose of “community involvement” and fails to provide “meaningful opportunities for individuals and organizations to effectively influence the Comprehensive Plan updates,” as required by the Community Involvement Work Program.

Goal 2 states:

Sufficient time should be allotted for:

(3) incorporation of citizen needs and desires and development of broad citizen support.

The time allotted for citizen involvement was inadequate under Goal 2 and there was no “incorporation of citizen needs and desires” and no “development of broad citizen support” for the Middle Housing Policy.

Goal 2 also states:

1. Factual Basis for the Plan

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan.

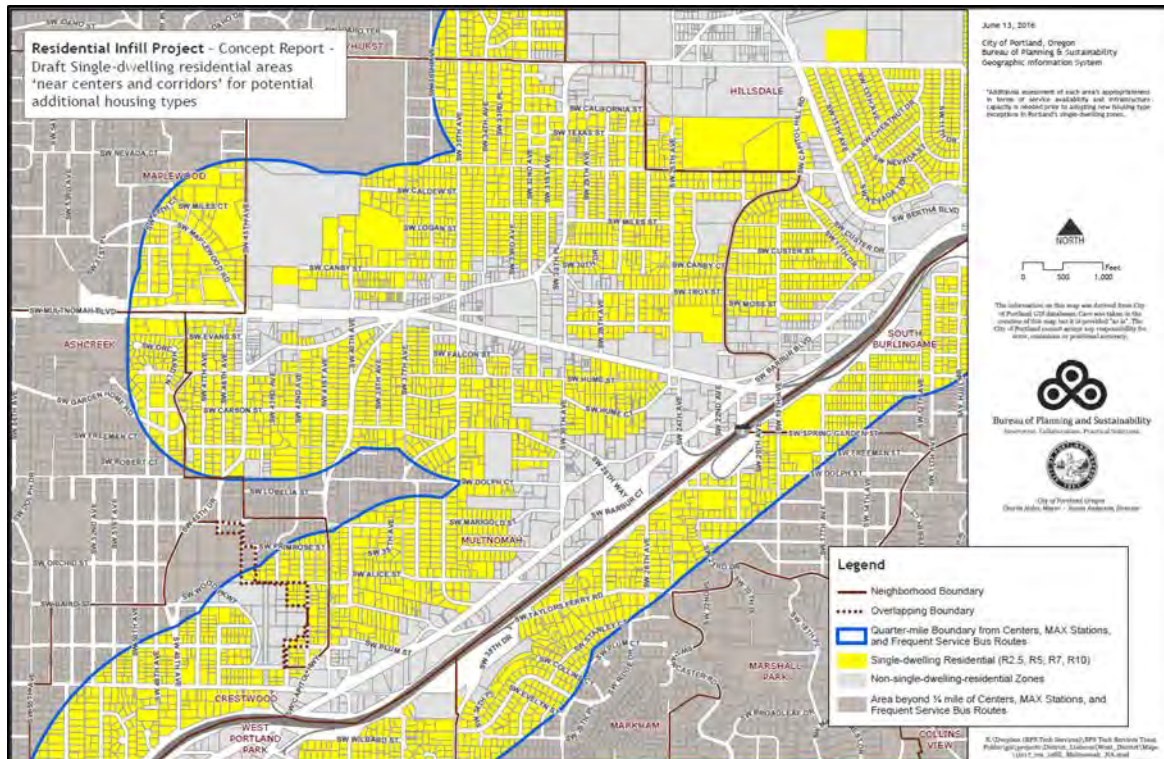
The City failed to provide a factual basis for the Middle Housing Policy, as required by Goal 2, making it impossible for citizens to understand the issue. The lack of “inventories and other forms of data” supporting the Middle Housing Policy is addressed further under ***Appeal Issues 1.B*** and ***1.C***.

In the case of the Middle Housing Policy proposal, mapping is an essential element of the reporting and public information necessary to understand the

policy implications. The Multnomah Neighborhood Association (MNA) requested and received the only publicly-available map showing the properties affected in this one neighborhood. The map is provided in Figure 1, below. The map is dated June 13, 2016, just two days before the City Council adopted the Comprehensive Plan on June 15, 2016. It shows that most of the single-family homes in and around the MNA will be affected by this policy, if it is implemented. This map was provided far too late to be of use to citizens in the Periodic Review process.

Additional maps for the remainder of the City were not produced until June 30, 2016, fifteen days after adoption of the Plan on June 15, 2016. These additional maps show a vast area of the City would be upzoned under the Middle Housing Policy and designated as "Housing Opportunity Areas" in the Residential Infill Project (see maps under heading: *Draft Proposal Conceptual Centers and Corridors Maps* about half way down the page at <http://www.portlandoregon.gov/bps/67730>).

Figure 1: Map provided to the MNA by BPS dated June 13, 2016



Without these maps it is virtually impossible for the public to understand the extent and full impact of the Middle Housing Policy. This is because the effect of the Middle Housing Policy is combined with other policies and plan materials defining centers, corridors, boundaries, and distances therefrom. Given the magnitude of the impact of the Middle Housing Policy, which we now know will affect a majority of all single-family properties in Portland, a far greater amount of public information should have been provided, and considerably more effort and time should have been allocated by the City to inform and engage the public.

Goal 1 states:

D. TECHNICAL INFORMATION

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those **maps and photos necessary for effective planning.**

In this case, mapping was clearly necessary for “effective planning,” and therefore the lack of mapping is a violation of Goal 1.

Goal 1 states:

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

The failure to provide this mapping is a clear violation of the Goal 1 requirements to provide “information that enables citizens to identify and comprehend the issues.”

Goal 2 states:

The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.

And Goal 2 also states:

Techniques to carry out the goals and plans should be considered during the preparation of the plan.

The failure to provide mapping is a violation of Goal 2, requiring the consideration of implementation measures during all phases of the planning process.

For reference, the middle housing policy is provided below from the adopted June 2016 2035 Comprehensive Plan, page GP5-6:

Policy 5.6 Middle housing. Enable and encourage development of middle housing. This includes multi-unit or clustered residential buildings that provide relatively smaller, less expensive units; more units; and a scale transition between the core of the mixed use center and surrounding single family areas. Where appropriate, apply zoning that would allow this within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City.

As a late addition to the Comprehensive Plan policies, Policy 5.6 goes far beyond merely creating a new land use designation in the Comp Plan for middle housing.

It states that middle housing development should be enabled and encouraged, and that zoning is to be applied “where appropriate” to centers, corridors with frequent service transit, high capacity transit stations, and etcetera. Because the policy goes far beyond creating a land use designation, and into the actual implementation of the proposed designation, far more information and public involvement is required by Goal 1.

Goal 1 states:

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Instead, the public was forced to evaluate the policy proposal in a very brief period without the benefit of essential information about the policy. The BPS initially issued the proposed 2035 Comprehensive Plan Draft City Council Amendments on March 18, 2016, which included the new amendment #P45 Middle Housing Policy. The Amendments were revised several times through March 29th. The City Council then held the first public hearing on the topic on April 14, 2016. There was no hearing before the PSC. This is a 27-day period from initial issue of the Amendments to the public hearing before the Council, and is far from adequate to allow meaningful public involvement.

Twenty-seven days is a very short time for public consideration of a complex topic such as the Middle Housing Policy proposal. In fact, it is so short that it precludes participation by many neighborhood associations. Neighborhood associations typically meet on a monthly basis, and any notice less than 30 days makes it extremely difficult, if not impossible, for the neighborhoods to inform residents, hold a meeting, take a representative position, and formulate comments. Neighborhood associations are operated by volunteers in a public service capacity. It seems extraordinarily inappropriate for the City to preclude their involvement in any major aspect of the Comprehensive Plan development.

Individual property owner notification is required under the adopted Community Involvement Work Program, which states:

The approved concept plan will be used as the basis for the final plan, which will include a "physical plan" component. The "physical plan" will be the more detailed basis for revision or replacement of the

comprehensive plan map. Since this map serves as the basis for land use regulations, the presentation of the draft "physical plan" may require individual notice to property owners whose development opportunities would be affected by the proposed plan.

No individual notice to property owners was given by the City to inform them that their property could be effectively rezoned under the Middle Housing Policy, which would certainly affect their "development opportunities."

City Code states:⁴

Notice of pending policy decisions affecting neighborhood livability shall be given to the Neighborhood Association(s) affected at least 30 days prior to final action on the decision by a City agency.

Surely the long list of 109 Comprehensive Plan amendments issued by the BPS on March 18, 2016 does not constitute a suitable notice of a decision affecting neighborhood livability.

Appeal Issue 1.B. Lack of Need and Factual Basis for Policy

There is a lack of any factual evidence or basis for a middle housing policy developed in prior work tasks. No support for a middle housing policy can be found in the fundamental documents upon which the Comprehensive Plan is based, including the Housing Needs Analysis, the Growth Scenarios Report, and the Periodic Review Work Program. This constitutes a violation of Goal 2, which states:

PART I -- PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The official basis for establishing adequate housing capacity for projected population growth is the City's Housing Needs Analysis. According to this analysis, there is no need for additional residential housing capacity through increased density or "up-designations." This analysis found that there is more than adequate existing capacity under current zoning through the 2035 planning

⁴ City of Portland Code and Charter, 3.96.050 Responsibility of City Agencies, Subsection C.

period. It states:⁵

- *Currently zoned land "capacity" in Portland is sufficient to meet housing demands* - that is, enough land in Portland is currently zoned so as to be available to house the projected numbers of new households citywide and in each particular subarea. Capacity is determined not only by current zoning but also by expected redevelopment levels (vacant land plus redevelopment of existing built sites). (For further explanation of the methods for determining available land, please refer to the appendix to this report.)
- *Land capacity for new Portland housing units is projected to range up to 189,100 units by 2035* (at the upper level of capacity, according to the calculations used by Metro), down to at least 141,191 units (the City of Portland model, with its somewhat more restrictive definitions of land development "capacity"). *These figures are well above the projected need by 2035 for 105,000 to 136,000 new units, as noted above.*

According to an April 6, 2015 BPS Memo to the Planning and Sustainability Commission, on the subject of "Residential Densities: Up-Designations," under the heading of "Residential housing capacity," it states in regard to citywide capacity:

"The vacant and underutilized land within these residentially designated areas have a combined development capacity that is double the expected growth, after considering constraints." [page 3]

As recently as the February 2, 2016 "middle housing memo" to Mayor Hales (referenced earlier), Principal BPS Planner Eric Engstrom states:

"The recommended Comprehensive Plan provides enough zoned capacity to meet expected housing needs over the next 20 years."

In addition to there being no identified need for additional housing capacity, there is no identified need for "middle housing," or a different mix of housing than that which is already allowed by the draft Comprehensive Plan. According to the April 6, 2015 BPS memo on residential housing capacity:

⁵ See Key Findings, page 4 of *Household Demand and Supply Projections*, Planning and Sustainability Commission, July 12, 2011, available at the City's Housing Needs Analysis web page: <https://www.portlandoregon.gov/bps/59298>.

The allowed mix of housing in the residential zones has also been examined relative to expected incomes. In general, the diversity of the housing type production should be sufficient to produce enough housing units to meet the future demand across a variety of income levels, except for the low income groups, which will have fewer choices from new development. [page 3]

The City failed to provide factual evidence or documentation that the designation of *middle housing* was necessary to meet identified housing needs, or that low-income housing needs would be served by the policy. In fact the Middle Housing Policy, as implemented through the Residential Infill Project, may reduce the supply of affordable housing by incentivizing redevelopment of smaller, affordable, older homes with multiple, new, market-rate units, as shown in testimony provided to the City by Loren Lutzenhiser, Professor Emeritus of Urban Studies & Planning, in the form of a research paper.⁶

The City hired Johnson Economics to examine a very limited range of economic issues related to middle housing.⁷ This study found that middle housing, as implemented through the Residential Infill Project, would have the effect of reducing the number of residential dwelling units developed in Portland. The policy would have the effect of reducing housing supply by almost 6,000 units over the 20-year study period. Under the scenarios modeled, the new middle housing would certainly not be low-income and would not be affordable to those who need it.

Note that the City has stated that the two reports cited above are not included in the official Task 4 Record. None-the-less, they represent empirical evidence in the City's domain that contrasts directly with the anecdotal information on middle housing presented to the public by the City.

The City's key Growth Scenarios Report of July 2015 contains no mention of "middle housing." The BPS has tried to point to pages 52 and 53 of this report to help justify their middle housing agenda.⁸ However, these pages point to a need

⁶ See the analysis of the impacts of the Residential Infill Project reported in "Testimony to the Portland City Council Public Hearing on Residential Infill Project Concept Report," Nov. 16, 2016, by Loren Lutzenhiser, Professor Emeritus of Urban Studies & Planning, Portland State University.

⁷ "Economic Analysis of Proposed Changes to the Single Dwelling Zone Development Standard," by Jerry Johnson, Johnson Economics LLC, for Bureau of Planning and Sustainability, October 17, 2016.

⁸ See for example BPS website page associated with the introduction of the amendments including #P45 at <https://www.portlandoregon.gov/bps/article/569930>.

for low-income housing, which is not addressed by the Middle Housing Policy.

On page 53 of the Growth Scenarios Report, it states:

Ideally these reductions in the supply of affordable single family and low-cost multifamily options would be offset by increasing the amount of land available for this kind of development in more opportunity-rich locations. For example, adding more R2.5 or R2 zoning near neighborhood centers could increase the supply of small lot single family homes, duplexes, townhomes, and low density multifamily development types. This should be a consideration as refinement plans are developed for centers and corridors.

This mere example of upzoning to R2.5 and R2 is not the same as what is proposed with the far-reaching Middle Housing Policy, and it is important to note that the report states “This should be a consideration as refinement plans are developed for centers and corridors.” The refinement plan process would indeed be a reasonable place to carefully consider sensitive rezoning and density changes to established neighborhoods. However, the City has instead proceeded to a wholesale citywide rezoning without refinement planning. It is clear that the Growth Scenarios Report is not authorizing, justifying, nor recommending the kind of wholesale rezoning that the Middle Housing Policy would enable.

Therefore, it is clear that the Middle Housing Policy is not necessary to meet the identified, projected housing needs or growth scenarios over the planning period. The policy is not founded on objective, factual evidence developed during the Periodic Review planning process. Not only did the City fail to develop a factual basis for adopting a Middle Housing Policy, it failed to acknowledge evidence indicating that such a policy was not needed, would not produce affordable housing, and would result in less housing production in general.

Thus, the policy adoption process was a failure to plan in a comprehensive manner based on actual evidence and factual findings, as required by Goal 2, which states:

1. Factual Basis for the Plan

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan.

The Periodic Review Work Program forms the basis for the Comprehensive Plan Update. As of its most recent update on April 13, 2015, the Work Program Does

not mention anything about the up-designations of residential zones or “middle housing.”

Under Task #4: Policy Choices, the Work Program makes no mention of designating centers and corridors, nor of the possibility of up-designating or up-zoning the residential areas in and near these centers and corridors. Instead, the Work Program Task #4 states:

Subtask C – The Housing Element

1. The City will adopt long-term policies and shorter-term strategies for meeting identified housing needs.

However, the actual identified housing needs were already met in the draft Comprehensive Plan without the need for the designation of centers, corridors, or middle housing. Therefore, this policy can be viewed as an unplanned and unneeded policy amendment that was not consistent with the Work Program and was not based on evidence gathered in the prior work tasks.

Under Task #5: Implementation, the Work Program lists:

Possible new implementation measures might include:

3. Adjustments to minimum residential density requirements, or application of minimum density requirements to mixed use development or residential development in non-residential zones,

No mention is made in the Work Program of the possibility of increasing density or up-designation of residential zones. There is no indication in the Work Plan that large swaths of single-family homes across the City would be rezoned to double or triple the currently-allowed density, as is now being proposed under the Middle Housing Policy.

Just before the Work Plan was amended for the last time, an April 6, 2015 BPS Memo to the Planning and Sustainability Commission, titled “Residential Densities: Up-Designations, April 14, 2015 Work Session,” indicated that there were no plans for wide-scale up-designating of residential lands. In fact the memo states:

Why weren’t additional up-designations considered?

There are additional locations in the city where selective up-designations would expand opportunities for new housing, where owners and renters

could take advantage of proximity to the Central City and/or centers or corridors and the availability of transit, services, and amenities. Rather than address these opportunities through the citywide Comprehensive Plan update process, staff recommends that residential densities are considered through area-specific planning projects with localized and inclusive community engagement. Through these projects, we should also consider the potential for tenant displacement as a result of up-designations and/or up-zonings, and apply approaches to ensure that permanently affordable housing is available to low- and moderate-income Portlanders. [page 4]

The Middle Housing Policy 5.6 is therefore not consistent with the Periodic Review Work Program and the supporting materials developed under prior Work Tasks. The Policy is therefore in violation of OAR 660-025-0080, which states:

(3) A local government proposing to change an acknowledged comprehensive plan or a land use regulation under a work task must provide notice of the proposed change to the department 35 days in advance of the first evidentiary hearing, as provided in ORS 197.610 and OAR 660-018-0020.

We are not aware of any notice of a proposed change regarding middle housing policy provided to the Department 35 days in advance of the first public hearing, which occurred on April 14, 2016.

Appeal Issue 1.C. Lack of Plan Consistency and Failure to Plan in a Comprehensive Manner

While the creation of a “middle housing” land use designation may be a legitimate policy in the Comprehensive Plan, the use of the policy to also direct and implement up-designation and rezoning of single-family homes across the city goes beyond the reasonable, necessary, and appropriate role and function of a single new policy amendment and creates conflicts with other policies.

The impact of the late addition of the Middle Housing Policy is greatly amplified and compounded by other policies included in the new Comprehensive Plan, including *Policy 5.5 Housing in centers* and *Policy 3.15 Housing in centers*. This issue of the compounded effect of multiple separate policies is described in our separate formal objection filed with the DLCD regarding the designation of Multnomah Village as a “center,” and is incorporated by reference herein as an

integral part of this appeal.

Policy 5.6 (Middle Housing) is inconsistent with Policy 5.5 (Housing in Centers) with regard to “family-friendly housing.” Policy 5.5 from the 2035 Comprehensive Plan, page GP5-6, reads:

Policy 5.5 Housing in centers. Apply zoning in and around centers that allows for and supports a diversity of housing that can accommodate a broad range of households, including multi-dwelling and family-friendly housing options.

The Middle Housing Policy, as it is currently being interpreted in the Residential Infill Project (RIP), is intended to produce multiple smaller units to replace existing single-family homes.⁹ These smaller units would be in the form of duplexes, triplexes, cottage clusters, and accessory dwelling units (ADUs). Most of these units will be in the form of studios, one-bedroom, and two-bedroom rental units, which are not conducive to larger families, and therefore cannot be considered consistent with the family-friendly housing required in Policy 5.5. The City did not address how the housing needs of families with children would be met under the Middle Housing Policy.

The DLCD states that the term “family-friendly” is not defined in the Comprehensive Plan, and therefore could have many possible meanings (DLCD, page 14). However, this is not a meaningless term and is used in the policy statement for a reason. “Family-friendly housing” implies housing that can accommodate families with children. Families with two or more children typically require housing with three or more bedrooms. These families will not be served by middle housing. Regardless of the definition of “family-friendly,” the City cannot simply ignore the needs of families with children in its Comprehensive Plan housing policy.

In fact, one of the false claims made by middle housing advocates is that households with children will decline rapidly in the future, and therefore middle housing policies need not consider such households. However, the City’s own Housing Needs Analysis projects that families with children will decline only slightly over a 30-year period from 2005 to 2035 from 28 percent of households

⁹ See “Recommendation 4: Allow more housing types in select areas and limit their scale to the size of house allowed” on page 15 of Residential Infill Project: Concept Report to City Council, October 2016, by Bureau of Planning and Sustainability.

to 25 percent.¹⁰ This hardly constitutes a remarkable transition that requires radical zoning changes. The Middle Housing Policy also seems to ignore the fact that families with children tend to have a higher poverty rate and greater need for affordable housing.

The Middle Housing Policy also represents a significant deviation from the Work Program Tasks as approved by DLCD in the original Period Review Work Program Approval Order 001773, issued on September 30, 2009. Under Task #4, Subtask C: Housing Element, the approved Work Program states:

Adopt long-term policies and shorter-term strategies for meeting identified housing needs. Consider alternative housing conservation policies, particularly policies aimed at preserving the existing stock of affordable housing. Identify sufficient vacant, partially developed, and re-developable land will be identified to meet expected employment needs.

While the Work Program was amended several times (most recently on 4/13/2015), the essential wording and intent of this subtask remained unchanged. Housing needs are officially identified through requirements for a “housing needs analysis,” as specified in ORS 197.296(3)(b).

The creation of a new Middle Housing Policy, which includes an implementation component, represents a departure from “meeting identified housing needs.” As has already been demonstrated in this Appeal, no factual basis was established under Task #3 for a need for middle housing. The Middle Housing Policy also fails to “preserve the existing stock of affordable housing,” as the policy is intended to induce redevelopment of existing, modest and affordable single-family homes with new multiple dwelling units.

These failures to comply with the Work Program also undermine the public involvement process. Citizens cannot properly identify what the City is actually working on during Periodic Review, nor can they understand the evidence, factual basis, and rationale for City actions, such as the last-minute addition of the middle housing policy amendment.

The up-zoning that would result from the Middle Housing Policy creates the

¹⁰ See *Household Demand and Supply Projections Background Report* (one of five reports constituting the City’s Housing Needs Analysis) page 7.

potential for a vast increase in the number of allowable dwelling units in the City, which would not be consistent with any number of other Comprehensive Plan goals and policies, the Transportation System Plan, and other infrastructure planning, and therefore compromises other elements of the Plan.

Goal 2 requirements for comprehensive planning are defined in *ORS Chapter 197 — Comprehensive Land Use Planning*, where it states:

197.015(5) “Comprehensive plan” means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. “Comprehensive” means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. “General nature” means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is “coordinated” when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. “Land” includes water, both surface and subsurface, and the air.

The last-minute nature of the Middle Housing Policy resulted in a failure to conduct comprehensive planning. The City has still not produced an estimate of the number of additional housing units the policy would allow. Rather than address facilities and infrastructure needs associated with the policy, the City claims that they have located middle housing where adequate infrastructure already exists. However, since they are effectively rezoning 58% of the single-family lots in Portland, how is it possible to make such a claim? Of course these new middle housing units will require new parks, schools, roads and other facilities which the City has failed to plan for in a comprehensive manner, as required by Goal 2.

Therefore, the last-minute introduction of Policy 5.6 with an inadequate factual basis has violated the City’s own Work Program and failed to maintain Plan consistency, coordination, and comprehensive planning, as required by Goal 2.

Appeal Issue 1.D. Lack of Adequate Response to Public Input

The DLCDC indicates in their response to our objection, that the City based the introduction of the Middle Housing Policy in part on the input from citizens requesting such a policy.

DLCDC, page 11:

However, a summary discussion presented to the Portland City Council at the February 2, 2016 work session where this memo was introduced states that the middle housing memo and presentation of policy options was written “in response to interest from several council offices, and recent hearing testimony.”

Our review of the Record Index for the middle housing topic provided by the City indicates that only four individuals commented on this topic before it was officially introduced in a list of amendments on February 2, 2016. One individual commented multiple times, and one represented an organization. One of the individuals does not appear to support the Middle Housing Policy and has since expressed opposition to the RIP. The three supporters hardly constitute a groundswell of public support for a new Middle Housing Policy. It is important to note that these individuals were commenting in advance of any actual proposal, and therefore the general public would not have had any awareness that this issue was under active consideration.

The true measure of public sentiment regarding middle housing did not become apparent until after amendment P45 was introduced.

The Task 4 Record Index for the Middle Housing topic was evaluated by the MNA to determine the weight of public testimony occurring after the middle housing issue was first introduced on February 2, 2016. A total of 157 comments were received as testimony in the form of oral comments, letters, or emails. Of these, 105 were in opposition to the Middle Housing Policy and only 52 were in support. Therefore, the City received testimony that was more than two-to-one in opposition to the proposed Middle Housing Policy.

In analyzing the supporting testimony, we found that one individual testified on his own behalf nine times in support of the policy. Another individual testified five times in support. These two individuals alone generated 27% of the supporting testimony.

The adopted Community Involvement Work Program, under “Purpose” states:

The purpose of community involvement in the periodic review work program is to provide open and meaningful opportunities for individuals and organizations to effectively influence Comprehensive Plan updates.

According to the Work Program, public involvement is a meaningful activity that has an effect on the outcome of the Comprehensive Plan Update. We find that the City has failed to respond to the large volume of testimony in opposition to the Middle Housing Policy and the overall weight of testimony in opposition, and therefore is in violation of the Community Involvement Work Program.

Goal 2 states:

**Sufficient time should be allotted for:
(3) incorporation of citizen needs and desires and development of broad citizen support.**

Based on the Record of public testimony, the City failed to develop “broad citizen support” for the Middle Housing Policy, in violation of Goal 2.

The City’s Findings for Task 4 state (Record, page 46)

“Opponents of policy 5.6 viewed the policy as effectively re-zoning land.”

This constitutes the City’s sole characterization of the public input received in opposition to the Middle Housing Policy. Their response is that the Council disagreed with this argument.

Goal 1 states:

E. FEEDBACK MECHANISM

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

The City failed to accurately and adequately quantify, synthesize, and report the public testimony received on the Middle Housing Policy to the general public.

Action Requested on Middle Housing Policy

OAR 660-025-0140(2)(c) Suggest specific revisions that would resolve the objection;

To correct the deficiencies identified in this appeal, we are requesting that the LCDC partially remand Task #4 of the Periodic Review for the Comprehensive Plan to allow for proper comprehensive planning and public involvement for the Middle Housing Policy 5.6. This would include the development of complete, neutral, and objective public information about the policy proposal. The public information would include all the evidence and factual information from Task #3 that bear on the need, or lack of need, for such a policy, including the existing available development capacity and mix of housing types. It would include available empirical data from other cities and independent economic analysis showing how the policy proposal would most-likely affect housing costs, affordability for low-income households, fixed-income households, and families with children, home ownership rates, and other socio-economic housing indicators which the policy is purported to address. It would include adequate dissemination of information – including mapping of impacted areas – to the neighborhoods, households, and property owners who would be affected. If the policy will lead directly or indirectly to a zoning change, notification of all affected owners and renters should be required. Allow adequate time for the public to review, consider, and respond to the information. Provide opportunities for the public to raise questions and obtain answers. Provide convenient opportunities for meaningful public involvement. Develop a revised final policy that is responsive to the input received from citizens.

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Appeal to the Land Conservation and Development Commission of the “Center” Designation to Multnomah Village in the City of Portland Comprehensive Plan Update

Filed: December 26, 2017

This is an appeal to the Land Conservation and Development Commission (LCDC) under OAR 660-025-0150(6) of the Department of Land Conservation and Development’s (DLCD) formal review and rejection of all the objection issues we submitted on Tasks 4 and 5 of Portland’s Periodic Review. This appeal is made on behalf of the Multnomah Neighborhood Association (MNA).

This Appeal is the second of three separate appeals to the LCDC.

- Part 1: Appeal of Middle Housing Policy 5.6 (Task 4)
- **Part 2: Appeal of the Designation of the Multnomah Neighborhood as a “Neighborhood Center” (Task 4)**
- Part 3: Appeal of the Adoption of CM2 Zoning in Multnomah Village (Task 5)

The original Objection has already been determined to be valid, as required by OAR 660-025-0150(6)(a). The standing of the appellant, the Multnomah Neighborhood Association, has already been established per OAR 660-025-0150(6)(d)(A) in the original Objection under the heading “Party of Record,” and therefore is not repeated here. The DLCD has rejected all the valid objections that were filed with the Department.

Part 2: Appeal of “Center” Designation to Multnomah Village

The Multnomah Neighborhood Association (MNA) has requested that the City of Portland (City) designate the Multnomah Village as a “Neighborhood Corridor,” rather than as a “Neighborhood Center.” This request has been made on many occasions throughout the Periodic Review process and has been amplified by supporting testimony from hundreds of neighborhood residents.

In this appeal, we show that the City failed to comply with State, regional, and local regulations guiding Periodic Review and land use planning. The City failed to adequately consider the weight of evidence and public testimony in making its designation, thus failing to comply with Statewide Planning Goal 1 (Citizen Involvement) of the Land Use Planning System. The City failed to provide adequate and timely public information about the meaning and implications of the *center* designation and failed to provide adequate mapping of center boundaries in violation of both Statewide Goal 1 and Goal 2 (Land Use Planning), as well as in violation of the City’s adopted Community Involvement Work Program. During the Periodic Review process the City repeatedly provided inaccurate and misleading information about the ultimate boundaries of proposed centers and the inclusion of single-family neighborhoods. In designating Multnomah Village as a *neighborhood center*, the City also failed to comply with prior regional planning, including the Metro Code and the Metro 2040 Growth Concept Map.

The appeal issues are organized based on the appeal part number (2) and alphabetically by specific appeal issue, as follows:

- Appeal Issue 2.A. Inadequate Response to Weight of Public Testimony
- Appeal Issue 2.B. Confusing and Uncoordinated Policies
- Appeal Issue 2.C. Inadequate Mapping of Centers
- Appeal Issue 2.D. Compliance with Metro Code

Appeal Issue 2.A. Inadequate Response to Weight of Public Testimony

On January 14, 2015 the Portland Bureau of Planning and Sustainability (BPS) recommended in a staff report to the Planning and Sustainability Commission (PSC) entitled "Centers and Corridors Growth Strategy, January 27 PSC Work Session," that the City's proposed Multnomah Neighborhood Center designation be retained in spite of neighborhood testimony in opposition.¹ This is addressed in a single row in a table on page 9 of the 93-page report. This staff report was one of five memos considered at the January 27, 2014 PSC work session.²

The BPS staff report stated only that the Neighborhood's request was to remove the *center* designation and did not accurately characterize or explain the basis for the MNA's request. The BPS did not provide adequate rationale or basis for rejecting the request. The BPS failed to give sufficient weight to the testimony of the MNA and Southwest Neighborhood Inc. (SWNI), which both endeavor to provide informed and representative engagement in land use planning on behalf of the many residents they represent.

In written comments on the record to the PSC by James Peterson, MNA Land Use Chair, on behalf of the neighborhood association in a letter dated October 28, 2014, he states:

The Multnomah Neighborhood Association requests that the Planning and Sustainability Commission change the designation of Multnomah Village from a Neighborhood Center to a Neighborhood Corridor in the Draft of the Comprehensive Plan. Multnomah Village is classified as Mainstreet in the current Comprehensive Plan. The regional planners have described Multnomah as the model Mainstreet. The village is more linear in nature and thus the characteristics are better defined by the Neighborhood Corridor designation. Since Multnomah Boulevard is designated a Neighborhood Corridor the change would make the business district of the Village contained within the Neighborhood Corridor designations of the intersection of Multnomah Boulevard and Capital Highway. The Neighborhood Center designation with the ½ mile radius defined in the Comprehensive Plan would overlap with the 1 mile radiuses of the two adjacent town centers leaving little room for the existing

¹ Note that the *Centers and Corridors Growth Strategy* memo is mislabeled as being written in 2014 rather than 2015.

² See: <http://www.portlandoregon.gov/bps/article/515430>

single family zoning. The Mainstreet designation had a prescribed depth of 180 ft which is more consistent with the definition of a Neighborhood Corridor. The Bureau of Planning and Sustainability has projected the capacity with their proposed changes to Mixed Use zoning in Multnomah Neighborhood to increase 28%, thus there is no need for the Neighborhood Center designation. Neighborhood Corridor designation better fits the design and character of the village.

Mr. Peterson subsequently submitted written comments into the record in a letter to the City of January 27, 2015 stating that the above reference letter was:

... endorsed in a letter from SWNI which is a coalition of Neighborhood Associations that comprises twenty percent of all Neighborhood Associations in the city of Portland.

As stated by the Multnomah Neighborhood Association Chair, Carol McCarthy, in her City Council Testimony of Nov. 19, 2015:

"The sentiment that [Multnomah] Village needs protection was expressed by people from all over Portland and the US, in fact, from around the world, in the almost 700 written comments submitted as part of the attached online petition that was signed by over 1,800 people."

As stated by the MNA in written testimony to Mayor Hales and City Commissioners regarding "City Council Amendment P#45 to the Draft 2035 Comprehensive Plan," dated April 14, 2016:

Hundreds of Multnomah Village residents and taxpayers, the Multnomah Neighborhood Association and Southwest Neighborhoods, Inc. have all considered and specifically requested that the Portland City Council change the proposed designation of Multnomah Village from a Neighborhood Center to a Neighborhood Corridor in the 2035 Comprehensive Plan.

... The Neighborhood Corridor designation better fits with the extant design and character of Multnomah Village and is more in keeping with the prevalent semi-rural character of the neighborhood that we currently live in and enjoy.

As can be seen from the 2035 Comprehensive Plan, the description and policy statement for "neighborhood corridors" cited below is perfectly compatible with Multnomah Village:

Neighborhood Corridors [page GP3-17]

Neighborhood Corridors are narrower main streets that connect neighborhoods with each other and to other parts of the city. They have transportation, land use, and design functions that are important at a neighborhood or district level. They support neighborhood business districts and provide housing opportunities close to local services, amenities, and transit lines. They are streets that include a mix of commercial and higher-density housing development. This policy is intended to balance the important transportation functions of Neighborhood Corridors with their roles in supporting the viability of business districts and residential livability.

Policy 3.52 Neighborhood Corridors. Enhance Neighborhood Corridors as important places that support vibrant neighborhood business districts with quality multi-family housing, while providing transportation connections that link neighborhoods.

The BPS placed the issue of designating Multnomah Village as a “neighborhood center” before the City Council in its Comprehensive Plan Council Work Session Agenda for February 2, 2016.³ However, once again the BPS failed to describe the weight of public testimony received, failed to describe, characterize, or qualify the basis for the MNA’s opposition to the *center* designation, failed to mention or present to the Council the MNA’s desired alternative *corridor* designation, failed to provide a neutral, objective, and balanced analysis of the issue, and presented only the Bureau’s strident advocacy position favoring centers.

An analysis by the MNA of the Task 4 Record Index on the topic of designating Multnomah Village as a “center” shows that 364 comments were received on this topic. Of these comments, 360 were in opposition and only 4 were in support. This constitutes an overwhelming rejection of the City’s proposal by the public.

The DLCD response to this issue states, “Goal 1 requires a program for consideration of citizen input and a fair process – it does not dictate a particular result.” While we generally agree with this statement, given the overwhelming weight of public testimony, the City’s consideration of citizen input and the fairness of the process must be called into question. It seems that the City had a predetermined outcome in its “centers” designations and extensive public input had no influence on this outcome.

³ See page three of the agenda at <http://www.portlandoregon.gov/bps/article/563068>

Goal 1 states:

A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

Goal 2 states:

**Sufficient time should be allotted for:
(3) incorporation of citizen needs and desires and development of broad citizen support.**

The adopted Community Involvement Work Program, under “Purpose” states:

The purpose of community involvement in the periodic review work program is to provide open and meaningful opportunities for individuals and organizations to effectively influence Comprehensive Plan updates.

The City of Portland Code and Charter states under Section 3.96.050, Responsibility of City Agencies:

B. City agencies shall include affected Neighborhood Associations and District Coalitions in planning efforts which affect neighborhood livability.

Over a period of more than two years, the MNA and its members have diligently and repeatedly testified in opposition to the *center* designation and in favor of the *corridor* designation. The failure of the City to adequately respond to such clear and extensive public input and input from its official neighborhood associations indicates a failure to comply with Statewide Planning Goal 1, Statewide Planning Goal 2, the City’s adopted Community Involvement Work Program, and the City of Portland Code and Charter.

Appeal Issue 2.B. Confusing and Uncoordinated Policies

Public concerns about the boundaries for *centers* and the designation of Multnomah Village as a *center* were compounded by the last-minute introduction of “amendment P45,” which became Comprehensive Plan Policy 5.6 (Middle Housing Policy). Our specific objections to Middle Housing Policy 5.6 are

reported in a separate objection filed with the DLCD and are incorporated by reference herein as an integral part of this objection.

The nature of the *center* designation was described in general and broad terms in the Comprehensive Plan update with Policy 5.5 in the final June 2016 version of the **2035 Comprehensive Plan**, Page GP5-6:

Policy 5.5 Housing in centers. Apply zoning in and around centers that allows for and supports a diversity of housing that can accommodate a broad range of households, including multi-dwelling and family-friendly housing options.

While Policy 5.5 indicates that areas in and around centers will be targeted to support a diversity of housing options, it does not indicate which specific areas, nor does it identify what specific changes would be proposed. Thus, it is a generalized policy statement typical of comprehensive plans.

The late introduction of amendment P45 on March 18, 2016,⁴ which became Policy 5.6, adds specific language that, taken together with Policy 5.5, would create a large-scale up-designation, and eventual up-zoning, of the residential areas in and around neighborhoods designated as *centers*.

For reference, the middle housing policy is provided below from the adopted June 2016 2035 Comprehensive Plan, page GP5-6:

Policy 5.6 Middle housing. Enable and encourage development of middle housing. This includes multi-unit or clustered residential buildings that provide relatively smaller, less expensive units; more units; and a scale transition between the core of the mixed use center and surrounding single family areas. Where appropriate, apply zoning that would allow this within a quarter mile of **designated centers**, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City.

Policy 5.6 compounds the impact of a *center* designation by specifically allowing increased densities in the residential areas in and around a center. The language

⁴ Late in the comprehensive planning process on March 18, 2016, the BPS introduced a new policy along with a large group of proposed amendments that included 109 policy amendments and new policies along with many other amendments in a 112-page document. Initially referred to as "amendment P45," this became the new Middle Housing Policy, Policy 5.6.

“within a quarter mile of designated centers” has been interpreted by the City to not refer to ¼ mile from a single point at the midpoint of a center, but rather ¼ mile from the center boundaries – a much larger area. Furthermore, Policy 5.6 adds the area within ¼ mile of corridors with frequent service transit and high capacity transit stations to the up-designation of centers, creating a larger, overlapping area.

A third policy related to housing in centers – which is inexplicably located in *Chapter 3: Urban Form* of the Comp Plan, rather than *Chapter 5: Housing* – further expands the *centers* designation by implicitly allowing up-designation and up-zoning of residential areas within one-half mile of centers.

Policy 3.15 Housing in centers. Provide housing capacity for enough population to support a broad range of commercial services, focusing higher-density housing within a half-mile of the center core.

This policy uses a different metric than the other related policies, measuring its influence as one-half mile from the “center core.” It also seems to have a stated purpose of increasing population to support commercial services, which doesn’t seem related to either “Urban Form” or “Housing” chapters of the Comprehensive Plan, yet clearly has a significant potential influence on both.

The result of combining two disparate policies in different chapters of the Comp Plan (Policy 3.15 and Policy 5.5) with a new policy (Policy 5.6) introduced late in the Periodic Review process, is a major policy change to a large, overlapping area affecting a large portion of the single-family residential land in the City of Portland. Such a sweeping overhaul of residential areas, impacting so many people, could not be reasonably anticipated by an astute person closely following the Periodic Review process.

The DLCD response to this issue states, in part:

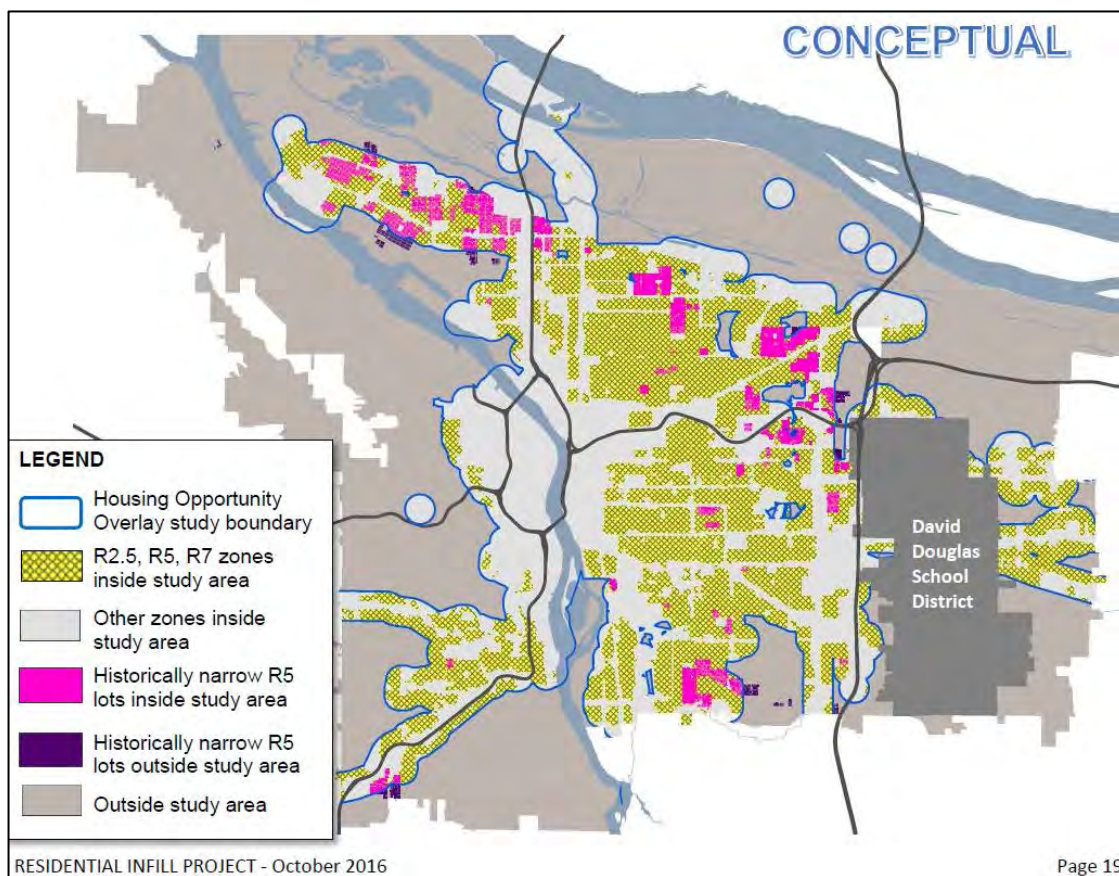
As discussed above, the policies do not accomplish what the objection claims they do. They do not rezone large areas of the city that are currently zoned for single-family detached residential development. These policies commit the city to a process of studying whether the specified areas should be rezoned.

The Department states that a policy does not implement zoning. This is obvious, as the policies developed in Task 4 are intended to guide implementation in Task

5. Instead, this objection issue makes the case that the policies guide and authorize the rezoning, which is actually taking place.

We now know that these three policies, when combined, include an area so large that it includes 58% of all single-family-zoned lots within the City of Portland. This area has been termed the “Housing Opportunity Overlay” area by the BPS and includes almost 87,000 single-family-zone properties (see Figure 1). Note that the City has stated that the *Figure 1* map is not technically part of the Task 4 Record. However, the figure is provided only for contextual hindsight to illustrate how these policies are being implemented. This makes it clear that information about the potential consequences and implications of these policies was not made available to citizens and did not become apparent to the public until after the Comprehensive Plan was adopted by the City Council on June 15, 2016.

Figure 1: Residential Infill Project, Concept Report to City Council



It is clear from the record of correspondence with the City that the MNA has done its due diligence in both requesting and gathering information, and in informing the City Council and BPS staff about the preferences of the

Neighborhood for a “neighborhood corridor” designation and not a “neighborhood center” designation.

Unfortunately, this considerable effort by the MNA and its members went unheeded by the City. Instead, the BPS pursued an abstract, idealistic, and dogmatic version of reality that had its own vision of centers placed conveniently around the city like a “checkerboard.” The citizens who actually live in these areas and know them best were given short shrift because of a myopic view by BPS regarding what is best for the greater good of the City. This is a heavy-handed, top-down style of planning that fails to respect and honor Portland’s established, cherished, stable, and high-functioning neighborhoods. In short, the BPS would destroy much of what is best about Portland in order to pursue their vision of urban centers and so-called “complete neighborhoods.”

The designation of the Multnomah Village as a “center” rather than a “corridor” has a profound difference in meaning in the 2035 Comprehensive Plan. This is because the “center” designation triggers two additional Plan policies related to centers. The City failed to provide information making it possible for citizens to understand how these policies would work together to create a large-scale up-designation and effective rezoning of the single-family residential areas around Multnomah Village.

Goal 1 states:

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

The Community Involvement Work Program, under “Guiding Principles” states:

The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.

Information needed to make decisions will be presented in a simplified and understandable form. Assistance will be provided to interpret and effectively use technical information. Copies of technical information will be available on the Internet, at public libraries, at neighborhood coalition

offices and at other locations open to the public. Translations of key documents will be available.

Decisions will be open, transparent and accessible. Reports containing the facts and reasons necessary to make particular decisions will be available at least twenty-one days before any or City Council hearing, and these reports will be retained for the life of the plan. All hearings venues will be accessible.

Goal 2 states:

The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.

Goal 2 also states:

Techniques to carry out the goals and plans should be considered during the preparation of the plan.

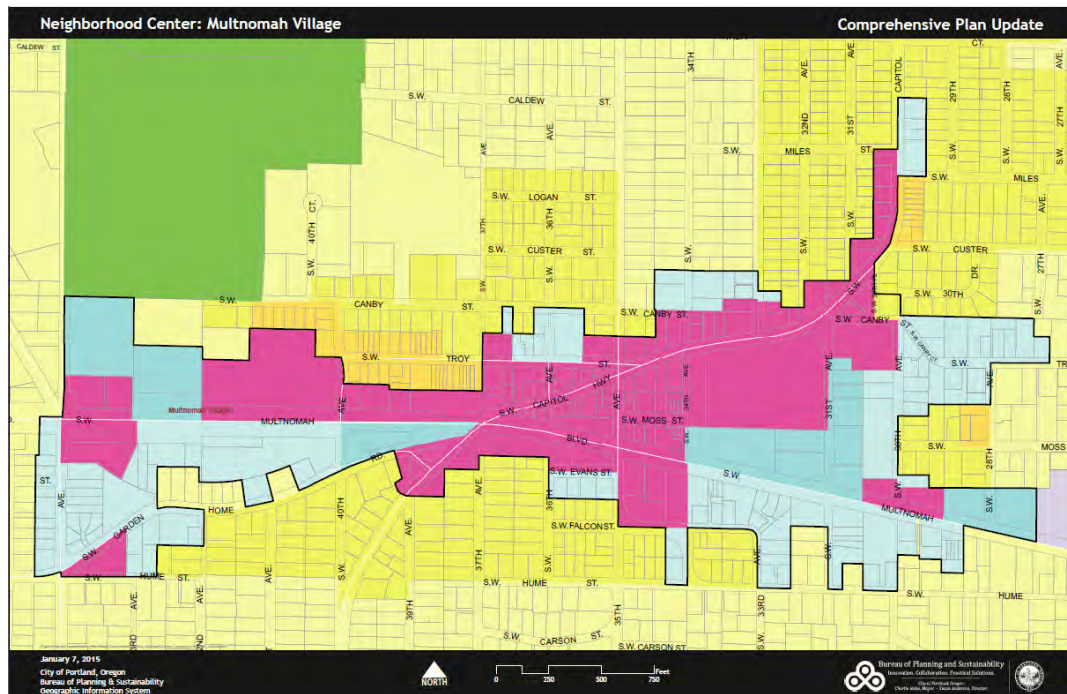
Therefore, the City has failed to adequately inform the public about the potential impacts of the “center” designation and thereby failed to engage the public in the land use planning process, as required by Statewide Planning Goal 1, the City’s adopted Community Involvement Work Program, and Statewide Planning Goal 2.

Appeal Issue 2.C. Inadequate Mapping of Centers

An essential piece of public information regarding the designation of centers is the map showing the proposed center boundaries. The earliest record of the proposed boundaries of neighborhood centers is found in the memo from Eric Engstrom, Principal Planner at BPS, to the Planning and Sustainability Commission (PSC) on January 14, 2015 titled, “Centers and Corridors Growth Strategy, January 27 PSC Work Session.”⁵ The Multnomah Neighborhood Center is shown with boundaries limited to the existing commercial areas of Multnomah Village (See Figure 2).

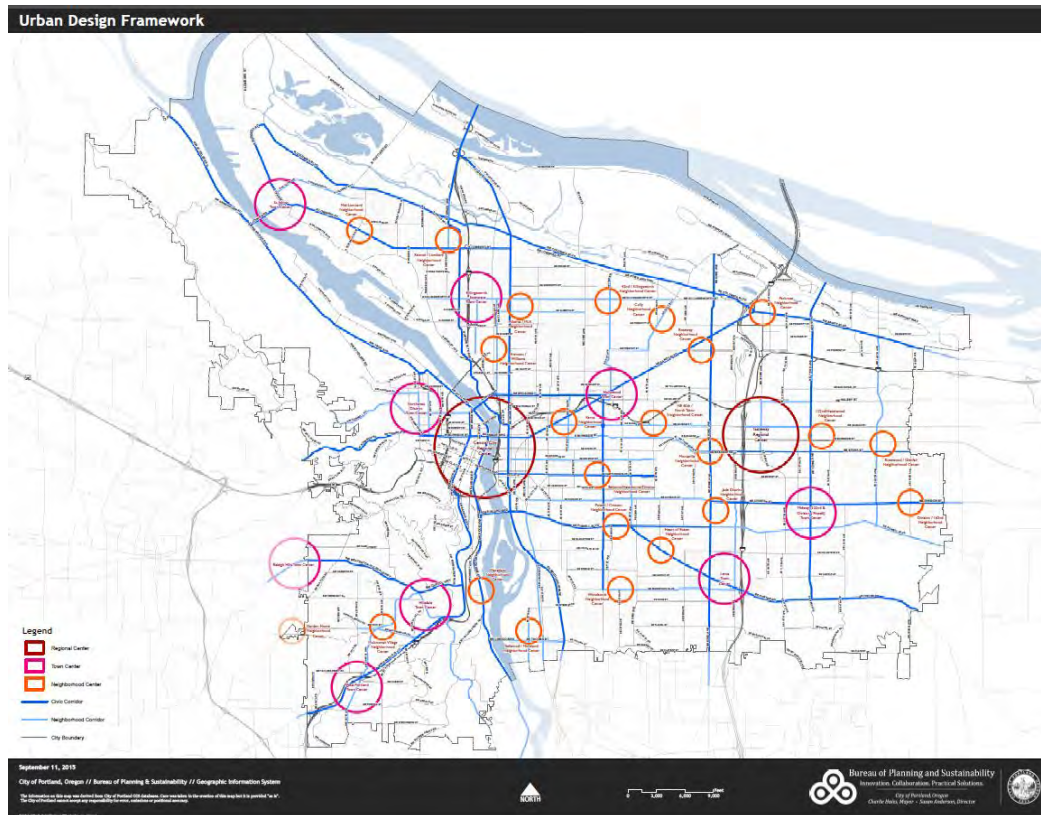
⁵ Note that this BPS memo is incorrectly dated as being written in 2014, rather than 2015.

Figure 2: Map of Multnomah Neighborhood Center as of January 14, 2015.



The City also used another map to show proposed centers (see Figure 3). It showed circles around proposed centers that were vague and generalized and raised concerns from the public about where the actual boundaries were located.

Figure 3: City map of centers dated September 11, 2015.



According to a February 3, 2015 email from Joan Frederiksen, West District Liaison for BPS, in response to an inquiry from the MNA about the different maps showing center boundaries:

The half a mile radius circle ("circle") has always been meant to be a symbol for centers, not a map boundary. In response to testimony and feedback conveying confusion and concern about the implication of the circle on single family zoned areas adjacent to or near the commercial area, staff has proposed provisional center boundaries to underscore that the intended concentration of growth is in the existing commercial and multi-dwelling zoned areas.

The commercial and multi dwelling zones already in place are a key element of centers. The provisional boundaries recently proposed reflect this in that they are drawn fairly strictly as an outline of these existing zones and properties.

With the exception of one property that has an existing non-conforming situation, the Comp Plan proposal does not include any expansion of mixed use or multi-dwelling beyond existing commercial and multi-dwelling designated properties in Multnomah Village.

According to an email of 8/11/15 in response to inquiries from the MNA, Principal Planner Deborah Stein of Portland Bureau of Planning & Sustainability states:

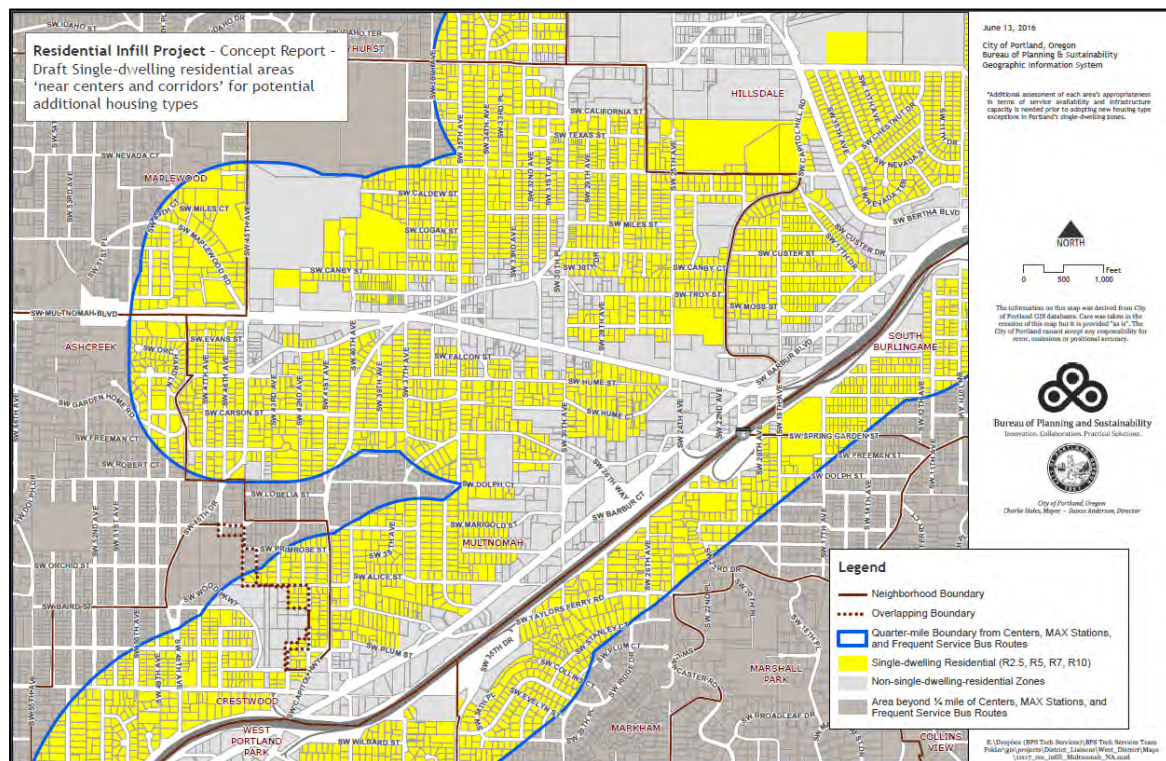
A Neighborhood Center is our local implementation of Metro's "main street" designation and best reflects the status quo in terms of scale, development capacity and amenities. Zoning that is proposed to apply to this designation corresponds to the zoning now in place in the Village. Staff intends to avoid applying commercial/mixed use zoning that would render existing businesses in the Village as nonconforming uses due to their size or the nature of the business.

So clearly, as of August 2015, there is no indication of a plan to expand center boundaries into the residential areas, nor is there an indication that residential areas would be up-designated or up-zoned. In fact, the City has made repeated assurances that this would not be the case.

These are a few of what appear to be many instances in which the engaged residents of the MNA were offered misleading and ultimately false assurances that their neighborhood would not be significantly impacted or affected by the proposed *center* designation. These actions constitute not merely a failure to provide adequate public information, but actually the provision of inaccurate information.

It was not until the MNA requested and received a map dated June 13, 2016, titled "Residential Infill Project – Concept Report," that it was possible to see the magnitude and potential impact of the "center" designations applied by the City (See Figure 4). This map was supplied just two days before the Council approved the Comprehensive Plan on June 15, 2016. Maps for the remainder of the city did not become available until at least June 30, 2016, leaving most neighborhoods in the dark about the potential impacts of the policies related to centers and corridors until after Plan adoption.

Figure 4: Map provided to the MNA by BPS dated June 13, 2016



As a practical matter, neighborhood associations meet on a regularly-scheduled monthly basis. Obtaining quality public involvement and input from neighborhood associations requires a minimum of 30 days' notice in advance of a public hearing. This enables the neighborhood associations to receive and distribute the notice, add it to the next month's meeting agenda, obtain feedback from membership, and to formulate a response or position on the matter. That's a great deal of work for an all-volunteer group to accomplish in such a short time. For better results on complex Comprehensive Plan Updates, The Work Program should allow 45 days, rather than the unrealistic 21 days.

Attentive neighborhood associations, including the MNA, seemed to be aware that the vague policies in the Comprehensive Plan could lead to unexpected and undesirable outcomes. They requested a time extension back in 2014 so that Plan implementation (through zoning and code development) could catch up with the new Comp Plan policies, and so that the public would be able to see how these policies would be interpreted before they became final. Their concerns were rejected in a September 18, 2014 memo from Eric Engstrom, Principal BPS Planner, to the Planning and Sustainability Commission where he states:

Within the written testimony you received this month on the Comprehensive Plan are several letters from recognized neighborhood associations requesting a 90-day extension of the comment period. The letters express a desire to know the specifics of potential new code provisions before closing testimony on the proposed Comprehensive Plan Goals and Policies and Comprehensive Plan Map.

However, before specific code provisions can be proposed, the Comprehensive Plan needs to first define desired outcomes through goals and policies, and the plan map. Establishing goals and policies and directional maps before developing more detailed implementing actions is essential. The specifics of any zoning changes that will be adopted to implement the new Comprehensive Plan will be subject to additional public hearings before final action by the PSC and City Council.

The Comprehensive Plan is the guiding document for zoning and ORS 197.010(1)(c) requires that comprehensive plans “**Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans.**” The vague and overly-flexible nature of the Plan policies and map designations related to centers does not sufficiently define and guide implementation through zoning code in a manner that is clear, understandable, and predictable to the public, as required by the Community Involvement Work Program, which states:

The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.

Information needed to make decisions will be presented in a simplified and understandable form.

The DLCD response to this issues reads, in part:

The city has adopted plan policies that may result in future changes to zoning in the vicinity of neighborhood centers. Task 4 Record at 277. Such future changes would only occur as a result of subsequent study and analysis to determine where the adopted middle housing policy is best applied in candidate areas. The Multnomah Neighborhood Association, and other individuals and groups, will have an opportunity to provide input into that process, and potentially object to or appeal any city actions to implement Policy 5.6.

However, Goal 2 addresses this issue by requiring that implementation measures be considered in all phases of the planning process. Goal 2 specifically states:

The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.

Goal 2 also states:

Techniques to carry out the goals and plans should be considered during the preparation of the plan.

The refusal by BPS to provide information about the zoning code implications of the proposed policies related to centers, upon repeated requests from the public, represents a failure to comply with Statewide Goal 2 and the adopted Community Involvement Work Program.

Appeal Issue 2.D. Compliance with Metro Code

The BPS staff report “Centers and Corridors Growth Strategy, January 27 [2015] PSC Work Session,” states on page 7:

The specific location of Centers and Corridors was built on the existing Metro 2040 center and corridor designations...

However, this does not appear to be the case with regard to Multnomah Village. The City’s proposed designation of Multnomah Village as a “Neighborhood Center” is not consistent with Metro regional planning for the area. According to the Urban Growth Management Functional Plan (Metro Code, Chapter 3.07.010):

The comprehensive plan changes and related actions, including implementing regulations, required by this functional plan as a component of the Regional Framework Plan, shall be complied with by cities and counties as required by Section 5(e)(2) of the Metro Charter.

The Plan specifically addresses centers and corridors in Section 3.07.650:

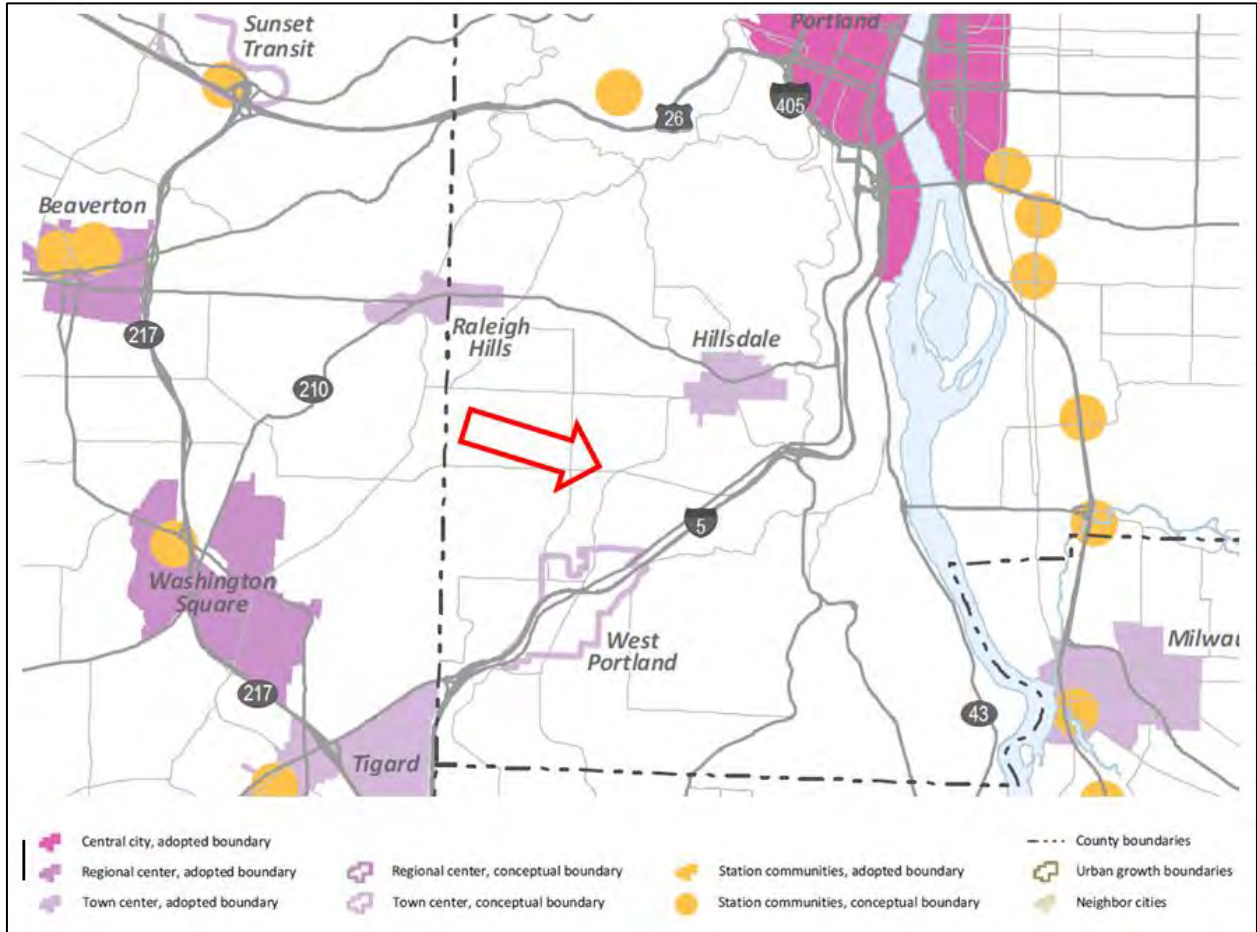
3.07.650 Centers, Corridors, Station Communities and Main Streets Map

(a) The Centers, Corridors, Station Communities and Main Streets Map is incorporated in this title and is Metro’s official depiction of their boundaries. The map shows the boundaries established pursuant to this title.

(b) A city or county may revise the boundary of a Center, Corridor, Station Community or Main Street so long as the boundary is consistent with the general location on the 2040 Growth Concept Map in the RFP [Regional Framework Plan]. The city or county shall provide notice of its proposed revision as prescribed in subsection (b) of section 3.07.620.

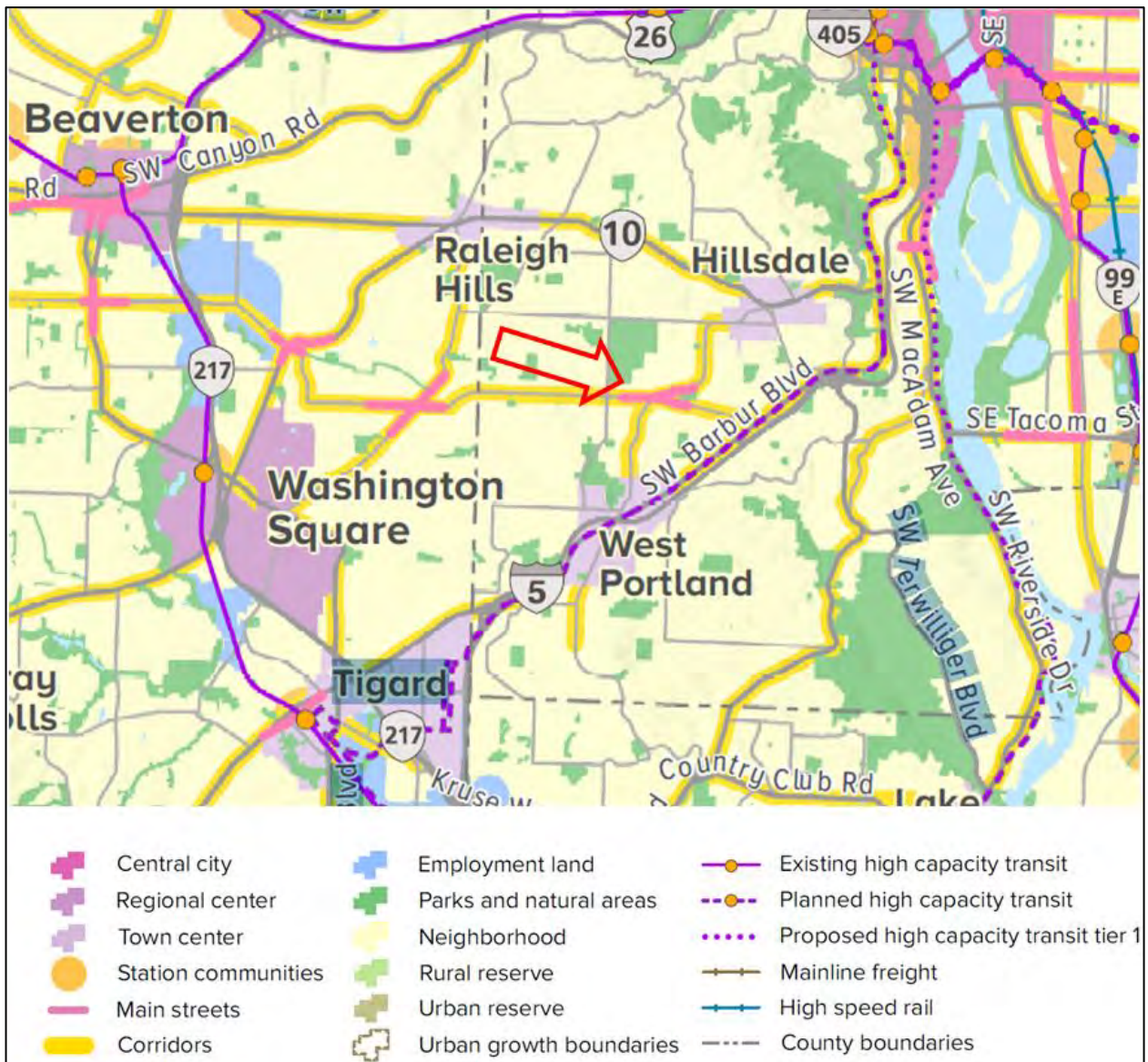
The map referred to in Metro Code Section 3.07.650(a) is provided below in Figure 5. The location of Multnomah Village is indicated with an added red arrow for reference. There is no official depiction of a “center” designation on this map.

Figure 5: Title 6, Centers, Corridors, Station Communities and Main Streets, Adopted Boundaries [expanded view showing Multnomah Village with red arrow] October 29, 2014



Metro Code Section 3.07.650(b) indicates that the boundary of a center may be changed ***“so long as the boundary is consistent with the general location on the 2040 Growth Concept Map.”*** The 2040 Growth Concept Map is shown in Figure 6 with the location of Multnomah Village again indicated with a red arrow added for reference. The map shows that Multnomah Village is not designated as a *center*, but that the main streets in the Village have been designated as “main streets.” This appears to be consistent with the MNA’s testimony requesting designation as a “Neighborhood Corridor,” rather than as a “Neighborhood Center.” It is not consistent with the City’s designation of the area as a *center*.

Figure 6: 2040 Growth Concept Map, September 2014 [expanded view showing Multnomah Village with red arrow]



The DLCD response on this issue states in its entirety (DLCD, page 17):

The department rejects this objection. The “neighborhood center” designation on the comprehensive plan map does not implement a Metro Town Center designation, it implements a Metro “main street” designation. Task 4 Record at 85. The city recognizes that Multnomah Village is not a Metro “Town Center” designation. Task 4 Record at 103.

The first section of the Findings cited by the DLCD (Record, page 85) applies to the issue of “minimum zoned capacity” and applies to a different section of the Metro RFP (Section 3.07.120) than cited here. Zoning is a Task 5 implementation activity that does not apply to Task 4. The City’s Findings state:

The City-designated Neighborhood Centers are a local designation, generally equivalent to the Metro Main Street designation...

We do not see evidence in the Record that this statement is true or accurate with regard to either the designation or the boundaries. Perhaps it applies only in the context of “minimum zoned capacity.”

The second section of the Findings cited by the DLCD (Record, page 103) merely provides a table showing that the Metro designation for Multnomah Village is as a “Main Street,” confirming what we have reported in this appeal.

Therefore, the City’s proposed “Neighborhood Center” designation does not comply with Metro Code and the 2040 Growth Concept Map, as required.

Action Requested

The remedy requested in this appeal is for the LCDC to partially remand Task #4 of Periodic Review to allow for proper public involvement in the designation of centers and corridors and their boundaries. Under this remand the City would be required to present the concept for centers and boundaries in its entirety so that the public can reasonably understand the complete proposal. This would include proposed maps, boundaries, land use changes, and potential implications in terms of zoning, density increases, and possible changes to single-family zones. The City would be required to provide factual evidence derived from Periodic Review Tasks #2 and #3 bearing on the issue of whether or not there is any real, significant, identified need for up-designating Multnomah Village as a *center*. The City would be required to evaluate potential impacts of a *center* designation, such as the impact on low income housing, on housing affordability, and the adequacy of public facilities, including transportation, parking, sewerage, parks and open space, etcetera (i.e., comprehensive planning). The City would address and demonstrate its compliance with Metro Code and the 2040 Growth Concept Map.

While this remand request reflects the minimum LCDC should require of the City, ideally the City would be required to present a full range of options to the public on centers, including the “no-change” option and the “neighborhood corridor” option requested by the MNA. We also request that the City endeavor to provide neutral, balanced, and objective information on this matter and avoid an advocacy role in which it stridently promotes a single outcome.

The remand would enable the public to fully engage with the City in compliance with Statewide Planning Goal 1: Citizen Involvement, Statewide Goal 2: Land Use Planning, in compliance with the City’s adopted Community Involvement Work Program, and in compliance with Metro Code and Regional Planning in the 2040 Growth Concept Map.

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Appeal to the Land Conservation and Development Commission on Task 4 Objection Issues regarding Citizen Involvement in the Portland Comprehensive Plan Update

Filed: December 26, 2017

Introduction

The Multnomah Neighborhood Association (MNA) is appealing to the Land Conservation and Development Commission (the Commission) to reverse the Department of Land Conservation and Development's (the Department's) rejection of our May 19, 2017 objection (the Objection) to the exclusion of the word "citizen" from the 2035 Comprehensive Plan (2035 CP) as a violation of Goal 1 of OAR 660-015-0000(1). The Objection is attached for reference and should be considered part of this appeal.

The Department determined that the Objection was valid, however it rejected it for the reasons quoted below in the Department's response. Following the Department's response, we provide counterarguments clarifying our commitment to Goal 1.

The Department Response and MNA Counterarguments

On December 5, 2017, the Department gave the following response to the Objection in the approval letter for Tasks 4 and 5, "City of Portland Periodic Review Tasks 4 and 5 Approval (Order 001892)":

Department Response: *The department rejects this objection. If the city engages communities in the planning process, citizens will be provided the opportunity to participate; broadening the city's program to involve "communities" does not exclude citizens. The objection does not establish that Goal 1 requires that the city involve the public in land use decision-making exclusively through formally recognized groups or associations that comply with open meetings and public records laws.*

Policy 2.14 commits the city to identifying actions that could be affected by public involvement. The objection appears to assume that the city is unable or unwilling to correctly identify those actions, resulting in lost opportunities for public involvement. Policy 2.14 resides in a section of chapter 2 that includes four policies implementing

comprehensive plan goal 2.D, “Transparency and accountability,” related to improving the quality of communication during the planning process. The plan also includes six other goals with implementing policies, and considering this larger context, Policy 2.14 refines and informs, and does not limit, the city’s plan to involve the public in the planning process. See, especially, goal 2.E.⁴ The objection does not demonstrate that the city’s citizen involvement program fails to comply with Goal 1.

⁴ Portland 2035 Comprehensive Plan goal 2.E provides: “Community members have meaningful opportunities to participate in and influence all stages of planning and decision making. Public processes engage the full diversity of affected community members, including under - served and under - represented individuals and communities. The City will seek and facilitate the involvement of those potentially affected by planning and decision making.” Task 4 Record at 209.

The following sections of this appeal state the Department’s arguments for rejection followed by the MNA’s counterarguments.

[Argument and Counterargument #1](#)

Department’s Rejection Argument #1: *If the city engages communities in the planning process, citizens will be provided the opportunity to participate; broadening the city’s program to involve “communities” does not exclude citizens.*

MNA’s Counterargument #1: The Title of Chapter 2 of the 2035 CP is “Community Involvement” and all the chapter’s goals and policies promote engagement between the City and communities and their members. Yet the entry of “community” in the glossary so vague as to be almost undefined, except that it clearly excludes any citizen who does not share a sense of identity or belonging with any group of people:

Community: *A group of people with a shared sense of identity or belonging.*

This glossary entry does not require that a community explicitly state their sense of identity or belonging so that a citizen may determine whether or not they are in the group. Nor does the definition guarantee that the complete list of communities includes all or even most citizens. The Department interprets that by basing the city’s program on community involvement it has been broaden, whereas it may actually have been narrowed. It may result in the exclusion of citizens who form the basis of the current CP but who do not belong to communities.

Chapter 2’s almost exclusive reliance on community groups fails to meet the requirements of the first paragraph of Goal 1, because it is not “...a program that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.” It is not clear whether community groups are the same as the general public. For the same reason, Chapter 2 also does not fulfill the requirements of Goal 1, Part C.6 that “The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendation on proposed changes in comprehensive land use plans...”. Goal 1 requires a clear definition, but we do not know and we have no way of knowing whether all citizens of Portland are in communities.

Argument and Counterargument #2

Rejection Argument #2: *The objection does not establish that Goal 1 requires that the city involve the public in land use decision-making exclusively through formally recognized groups or associations that comply with open meetings and public records laws.*

Counterargument #2: The Objection points out that the 2035 CP failed to require a process to define how groups of people with shared senses of identity and belonging are given status as communities or even that a list of recognized communities be made public. The Objection also points out that Chapter 2 jeopardizes rather than promotes transparency since communities need not follow established procedures, such as open meetings and public records laws, or that they adhere to bylaws that define how advocacy positions are adopted and how spokespeople are chosen.

Without these or any similar protections, the city is opening itself up to partnering with people who share a sense of identity or belonging that may actually be a community that has unidentified conflicts of interests that cannot be audited. This potential for lack of accountability will make it virtually impossible for citizens to be informed about who is influencing the city and how decisions are being made. Part 3 of Goal 1 requires that “Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning...” and this implies a requirement for an open, auditable process.

Argument and Counterargument #3

Rejection Argument #3: *Policy 2.14 commits the city to identifying actions that could be affected by public involvement. The objection appears to assume that the city is unable or unwilling to correctly identify those actions, resulting in lost opportunities for public involvement. Policy 2.14 resides in a section of chapter 2 that includes four policies implementing comprehensive plan goal 2.D, “Transparency and accountability,” related to improving the quality of communication during the planning process. The plan also includes six other goals with implementing policies, and considering this larger context, Policy 2.14 refines and informs, and does not limit, the city’s plan to involve the public in the planning process. See, especially, goal 2.E.⁴ The objection does not demonstrate that the city’s citizen involvement program fails to comply with Goal 1.*

⁴ Portland 2035 Comprehensive Plan goal 2.E provides: “Community members have meaningful opportunities to participate in and influence all stages of planning and decision making. Public processes engage the full diversity of affected community members, including under - served and under - represented individuals and communities. The City will seek and facilitate the involvement of those potentially affected by planning and decision making.” Task 4 Record at 209.

Counterargument #3: In Rejection Assertion #3, the Department mischaracterizes the city’s commitment to be to “**public involvement**,” whereas the actual name of Policy 2.14 is “**Community Influence**” and its focus is “**community involvement**” rather than the more general “public involvement” in the Department’s rejection argument:

*Policy 2.14: **Community Influence**. At each stage of the process, identify which elements of a planning and investment process can be influenced or changed through **community** involvement. Clarify the extent to which those elements can be influenced or changed.*

The crux of the Objection is that Goal 1, Part 3 states that “**Citizens shall have the opportunity to be involved in all phases of the planning process...**”, not just in those phases identified by the city. The policy should not restrict any involvement in the planning process. If the policy had been worded, per Goal 1, that “Citizens shall have the opportunity to be involved in all aspects of the planning process...” the MNA would not have requested that the Policy be stricken from the 2035 CP.

Similarly, the Department mentions Goal 2.D as the goal originating Policy 2.14, as well as four other policies. However, Goal 2.D mentions “community interests” and addresses “community input” but not “public interests” or “public input.” The Department then considers the other goals and their implementing policies, and interprets them in a larger context of the city informing and refining the “public involvement” in the planning process. This part of the rejection argument conflates “community” with “public” and then extrapolates that the 2035 CP goals and policies comply with Goal 1. Goal 1 requires citizen involvement, which is not guaranteed by Chapter 2 of the 2035 CP.

[Requested Action](#)

The Commission should reject the Department’s response for the reasons stated above in this appeal.

To correct the deficiencies identified in the Objection, we are requesting that the Commission partially remand Task #4 of the Periodic Review for the 2035 CP to allow for Chapter 2 to be revised to recognize the citizen’s role in the planning process as required by Goal 1.

Chapter 2 should also be revised to clearly define the City’s process for granting planning partnership status to communities based on their adherence to the State’s public meeting law (ORS 192.610 to 192.690) and records laws (ORS 192.450 and 192.460), as well as compliance with the City’s Standards as set forth in City Code Chapter 3.96. Community partners should be publically identified.

Finally Policy 2.14 should be removed from the 2035 CP.

Without these changes, the citizens will not be able to participate the planning process as required by Goal 1.



Appeal to the Land Conservation and Development Commission on the Adoption of CM2 Zoning in Multnomah Village in the City of Portland Comprehensive Plan Early Implementation, Task 5

Filed: December 26, 2017

This is an appeal to the Land Conservation and Development Commission (LCDC) under OAR 660-025-0150(6) of the Department of Land Conservation and Development's (DLCD) formal review and rejection of all the objection issues we submitted on Tasks 4 and 5 of Portland's Periodic Review. This appeal is made on behalf of the Multnomah Neighborhood Association (MNA).

This Appeal is the third of three separate appeals to the LCDC.

- Part 1: Appeal of Middle Housing Policy 5.6 (Task 4)
- Part 2: Appeal of the Designation of the Multnomah Neighborhood as a "Neighborhood Center" (Task 4)
- **Part 3: Appeal of the Adoption of CM2 Zoning in Multnomah Village (Task 5)**

The original Objection has already been determined to be valid, as required by OAR 660-025-0150(6)(a). The standing of the appellant, the Multnomah Neighborhood Association, has already been established per OAR 660-025-0150(6)(d)(A) in the original Objection under the heading "Party of Record," and therefore is not repeated here. The DLCD has rejected all the valid objections that were filed with the Department.

In addition to restating some of the original Objection, we are including with

each issue the specific rules that have been violated so that it is clear what governs the decision. Key sections of the DLCD decision are quoted and responded to. The appeal issues are presented based on the Objection number (Part #) and sub-issue letter (alphabetical).

Part 3: Appeal of Adoption of CM2 Zoning in Multnomah Village

The Multnomah Neighborhood Association, its members, and others have participated extensively in the Periodic Review process related to the Task 5 implementation of appropriate zoning for Multnomah Village. Public testimony almost unanimously supported the use of CM1 zoning, rather than the CM2 zoning proposed by the City. The City made minor adjustments to the zoning which did not achieve the intent expressed in public testimony. The City failed to adequately justify the limited nature of its response. The issue of whether or not “design review” applied to development in the Village resulted in public confusion that unnecessarily affected participation in the Periodic Review process.

The appeal issues are organized based on the appeal part number (3) and alphabetically by specific appeal issue, as follows:

- Appeal Issue 3.A. Inadequate response to a long history of public input seeking to protect the character of Multnomah Village.
- Appeal Issue 3.B. Failure to perform planning actions in Multnomah Village based on facts and evidence.
- Appeal Issue 3.C. Failure to provide the public with adequate information and facts about the lack of adequacy of design review to protect neighborhood character.
- Appeal Issue 3.D. Failure to direct planning actions in a manner that would achieve local goals and be consistent with past planning efforts.

Appeal Issue 3.A. Inadequate response to a long history of public input seeking to protect the character of Multnomah Village.

The MNA has been working diligently for many years to achieve reasonable building height limits in the Village. At least as far back as February 18, 2003 the MNA wrote a letter from Martie Sucec, acting Chair, to Mayor Vera Katz and City

Commissioners expressing the MNA's concern about a proposed mixed use development at 7838 SW Capitol Highway (#LU 02-132261 DZ). The letter expresses concern about the height of the proposed four-story building and the fact the existing CS (Commercial Storefront) zoning does not adequately protect the character of the neighborhood. This letter mentions the problem of changing grade on the property, which has the effect of allowing a taller building from the reference of the lowest grade. Building heights need to be measured from the lowest elevation. The letter urges the City Council to employ *design review* to address building height as a significant design element.

In a July 6, 2015 letter from MNA Chair Carol McCarthy to Mayor Charlie Hales and City Commissioners, the MNA expressed concern about another new development proposed to be four stories in height and requested that the City meet the intent of the *Southwest Community Plan* and employ *design review* to help keep the scale compatible with the existing development in Multnomah Village. The letter advocates for a maximum three-story building with a setback on the third story.

The July 6, 2015 letter from the MNA also included initial results from a neighborhood petition begun on June 7, 2015. The petition was conducted online and on paper. The petition asks the Portland City Council to:

"Limit development in Multnomah Village to 2 or 3 stories, and mandate 1 parking space per rental unit."

The MNA updated the Mayor and City Council in a letter of July 19, 2015, reporting that the petition had 1,648 signatures and 630 individual comments in support of the petition, which were attached to the letter. The number of signatures gathered in a short span of time (less than six weeks), along with the many comments in support of the height limits, demonstrates the very strong and unified public sentiment on this topic.

In a September 13, 2015 letter to Mayor Charlie Hales, the Planning and Sustainability Commission (PSC), and other officials, MNA Chair Carol McCarthy specifically requests that the Mixed-Use Zoning Project of the 2035 Comprehensive Plan employ CM1 zoning (35 ft. height limit) to replace existing CS zoning in the Village, rather than using the CM2 zoning (45-55 ft. height) proposed by the City.

In addition to the direct correspondence from the MNA, and the responses from

the petition, the MNA analyzed the Task 5 Record Index of public testimony on the topic of CM1 versus CM2 zoning. Of 192 total comments received on this topic, 191 supported applying CM1 zoning to the Village. Only one supported the CM2 zoning. This can only be characterized as overwhelming public support for CM1 zoning and opposition to CM2 zoning.

Part of the record of public testimony on limiting building heights in Multnomah Village is in connection with the designation of the Village as a “Neighborhood Center” in Task 4 of Periodic Review. This testimony is described in the Appeal to the LCDC filed by the MNA on this topic.¹

The City did partially respond to public testimony by changing a small area of zoning on Capital Highway from CM2 to CM1. This is specifically addressed in the Mixed Use Zones Project – Recommended Draft of August 2016 on pages 44 and 45 under the heading “Low-rise Commercial Storefront Areas,” where it states:

The recommended draft includes new mapping and Zoning Code regulations intended to continue the scale and characteristics of a few older main street areas where low-rise (1 to 2 story) Streetcar Era storefront buildings are predominant. This responds to community interest in preserving the character of these areas, which are often the historic commercial cores of centers, while being applied strategically to retain ample capacity for growth in the majority of mixed use areas. Areas mapped for the new low-rise commercial storefront zoning approach are locations with contiguous concentrations of low-rise Streetcar Era storefront buildings extending for at least a 2-block or 400’ length of corridor, and are located in neighborhoods centers, which are intended to have less of an emphasis on growth than larger centers. They are located on portions of the following streets: SE Belmont Street in Sunnyside; SE 13th Avenue in Sellwood; and SW Capitol Highway in Multnomah.

However, it is unclear why the City’s response was so limited, leaving most of the Village commercial as CM2. The rationale for “strategically” retaining capacity for growth is not adequately justified. The City’s response did not meet the requests from citizens and the MNA to maintain and protect the quality, character and scale Multnomah Village.

DLCD’s response states (page 23):

¹ See: *Appeal to the Land Use and Development Commission of the “Center” Designation to Multnomah Village in the City of Portland Comprehensive Plan Update*, filed with the DLCD on December 26, 2017.

Goal 1 requires a program for consideration of citizen input and a fair process – it does not dictate a particular result.

This statement is true, however, the issue we are raising is whether the City adequately considered the citizen input received. As we have documented here, public sentiment was overwhelmingly in favor of CM1 zoning and opposed to CM2 zoning in Multnomah Village.

The failure of the City to adequately quantify, synthesize, and report public involvement on this topic is a violation of Statewide Goal 1, which requires:

A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

The lack of an adequate response by the City to the extensive public testimony on this topic is also a violation of the Community Involvement Work Program, which states "Purpose:"

The purpose of community involvement in the periodic review work program is to provide open and meaningful opportunities for individuals and organizations to effectively influence Comprehensive Plan updates.

The Community Involvement Work Program, requires under "Guiding Principles" that:

The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.

It also violated the "Citizen Involvement Objectives" of the Southwest Community Plan, which states:

4. Identify, strengthen, and use communication links between the Planning Commission, City Council, city staff, and citizens throughout the creation, development, and implementation of the Southwest Community Plan. Ensure that citizens receive responses from policymakers, including the rationale for decisions.

Appeal Issue 3.B. Failure to perform planning actions in Multnomah Village based on facts and evidence.

In spite of the extensive public testimony in support of three-story height limits in Multnomah Village and in favor of applying the new CM1 zone to commercial properties, the City has applied higher-density CM2 zoning without adequate justification or factual basis.

The Mixed Use Zones Project – Recommended Draft of August 2016 was originally missing from the City’s record for Task 5, but has been added as an Addendum on the City’s website. On page 10 of this report (Ord. 188177, Addendum, page A-10) it provides justification for the mixed use zone changes:

Why is this important?

Portland is expected to grow significantly over the next 20 years – in both new households and new jobs. The development produced by this growth, if located and designed correctly, will support and enhance the qualities that help make Portland an attractive place. As Portland’s population grows, its households will also change. In the next two decades the size of households is expected to decrease, and more Portlanders will live alone, and live longer. Accommodating this need, roughly 80% of new housing built over the next 20 years is expected to be multifamily development, much of it in centers and corridors within the mixed use zones.

This does not appear to be adequate justification for applying CM2 zoning to most of Multnomah Village, rather than CM1 requested by the MNA for the following reasons:

First, as noted in the Task 5 Findings, Portland has far more zoned capacity for residential development than required to meet the forecasted growth.² The City has existing capacity for 200,000 new units, while forecasted growth will require an estimated 123,000 new households (units). Therefore, the need for the increased density allowed by the CM2 zone is not justified by the growth forecast.

Second, the MNA and its residents are especially capable of determining the qualities that help make Multnomah Village “an attractive place” to live. They

² Further Findings of Fact, page 32 (Ord. 188177, Vol. 1.1.A, page 41).

have provided clear and extensive testimony that limiting height to three stories is an essential element for maintaining the character that residents value.

Third, the MNA has filed an Appeal to the LCDC on the Task 4 designation of the Village as a “Neighborhood Center,” rather than the more-appropriate designation as a “Neighborhood Corridor.” The issues raised in this Task 4 Appeal are included herein by reference.³ Assuming the LCDC is supportive of this Task 4 Appeal, the proposed intensity of future development in the Village should be adjusted accordingly and would be more consistent with the requested CM1 zoning.

Lastly, it is worth noting that the assumptions upon which these zoning changes are being made may be outdated. The U.S. Census reports that household size increased from 2010 to 2015 from 2.34 to 2.38 persons per household. Also the average life expectancy of Americans has decreased over the past two years.

The final, adopted description of the CM1 zone is found in the 2035 *Comprehensive Plan Early Implementation – As-Amended Draft*, December 5, 2016 (Ord. 188177, Vol. 1.1.E, Record page 226):

Commercial/Mixed Use 1 zone. *The Commercial/Mixed Use 1 (CM1) zone is a small-scale zone intended for sites in dispersed mixed use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers. The zone is also appropriate in core commercial areas of centers in locations where older commercial storefront buildings of 1 to 2 stories are predominant. This zone allows a mix of commercial and residential uses. The size of commercial uses is limited to minimize impacts on surrounding residential areas. Buildings in this zone will generally be up to three stories tall. Development is intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise commercial areas.*

Based on this description of the CM1 zone, it appears to be perfectly suitable for the Multnomah Village commercial areas.

The City cites 11 pages of Comprehensive Plan Goals and Policies that the City considers to support the proposed mixed use zoning in the Mixed Use Zones

³ See: *Appeal to the Land Use and Development Commission of the “Center” Designation to Multnomah Village in the City of Portland Comprehensive Plan Update*, filed with the DLCD on December 26, 2017.

Project – Recommended Draft. However, many of these Goals and Policies apply to designated “centers” and would not apply to Multnomah Village if it were designated a “Neighborhood Corridor.”

The 2035 Comprehensive Plan states in Policy 3.36 that Neighborhood Centers are intended to have at least 3,500 households.

Policy 3.36 Housing. Provide for a wide range of housing types in Neighborhood Centers, which are intended to generally be larger in scale than the surrounding residential areas, but smaller than Town Centers. There should be sufficient zoning capacity within a half-mile walking distance of a Neighborhood Center to accommodate 3,500 households.

However, the City’s data shows that Multnomah Village will only have 2,553 housing units within ½ mile of the Village core under the proposed Comprehensive Plan by 2035.⁴ This would seem to disqualify the Village from the “neighborhood center” designation. No explanation for the conflict with this Policy is provided by the City.

Therefore, the City has failed to comply with Goal 2, which requires a factual basis for planning:

1. Factual Basis for the Plan

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan.

The Community Involvement Work Program states:

Decisions will be open, transparent and accessible. Reports containing the facts and reasons necessary to make particular decisions will be available at least twenty-one days before any Planning and Sustainability Commission or City Council hearing, and these reports will be retained for the life of the plan. All hearings venues will be accessible.

The City has failed to adequately justify the need for CM2 zoning in Multnomah Village and has failed to provide the “facts and reason necessary” for the zoning,

⁴ Attachment to email from Barry Manning, Senior Planner at BPS dated June 16, 2016 in response to an inquiry from James Peterson dated June 7, 2016. Attachment is labeled “Comp Plan update - Multnomah Neighborhood Center details” and is from Joan Frederiksen and dated September 9, 2014.

as required by the Community Involvement Work Program.

Appeal Issue 3.C. Failure to provide the public with adequate information and facts about the lack of adequacy of design review to protect neighborhood character.

The Design Overlay Zone that applies to Multnomah Village is described in Title 33, Planning and Zoning Chapter (7/24/15). Under *Section 33.420 Design Overlay Zone*, it states:

33.420.010 Purpose

The Design Overlay Zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

This code language clearly implies that design review will protect the character of the area and ensure compatibility. Residents of Multnomah neighborhood believed that the “d” Design Review Overlay protected them from overly tall, bulky, and poorly designed developments that could potentially be constructed under the CS, Commercial Storefront zoning. As noted in Appeal Issue 3.A of this Appeal, the MNA letter of February 18, 2003 requested the City Council use design review to address building height for a proposed 4-story development. The City Council declined to take any action. A similar request from the MNA was made in a July 6, 2015 letter to the Mayor and City Council asking that they apply design review to another four-story development proposal.

The Mayor responded in an August 11, 2015 letter to the MNA in which he consulted the City Attorney and states “State law limits our ability to impose Design Review where there is not already a discretionary review underway.” This response created further confusion for the MNA, since the review for this project was not yet “underway.”

What the City failed to clearly state is that the “needed housing” statute of ORS 197.303 and ORS 197.307 requires “clear and objective” standards for all developments containing “needed housing.” Since the City of Portland has interpreted “needed housing” to mean any housing, all mixed use development will be subject only to the base zone requirements and the Community Design Standards. This correspondence from the Mayor clearly communicates that the City precluded any consideration of addressing the Neighborhood’s concerns.

The City of Portland failed to provide the public with the facts about the lack of adequacy of “design review” to protect and preserve desirable neighborhood qualities. This includes a failure to inform residents of Multnomah, and the general public, about the fact that design review will not apply to mixed use development involving any amount of residential development, unless the developer specifically requests it.⁵ In other words, the design review overlay provides no assurance that the local community will have any influence regarding the nature of future development in the mixed uses zones.

As such, design review cannot be considered to offer value or benefit to local residents of Portland communities, such as Multnomah. Instead it must be viewed as a device for giving developers greater flexibility, if they find they cannot meet the clear and objective code language.

Therefore, the “d” Design Review Overlay in Multnomah Village cannot be viewed as a response to the extensive public testimony submitted by the Multnomah Neighborhood Association (MNA) and by the highly-supportive public in Portland and beyond.

Since the design review overlay has little or no functional benefit to residents of Multnomah neighborhood and the Village, the City of Portland should have focused on achieving the desired results (as expressed clearly in public testimony) through clear and objective code language that conforms with state law. This could have been accomplished through the Mixed Use Zones Project or through other means, as described in the “Action Requested” section of this Appeal.

If the public had understood that design review would not play a role in limiting building heights, then it is reasonable to assume that the public input would have been more focused on other solutions to protect the character of Multnomah Village during the Periodic Review process.

⁵ Central City and Gateway are the only exceptions.

The lack of accurate information about design review is a violation of Goal 1, which requires:

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

It is also a violation of the Community Involvement Work Program, which requires under “Guiding Principles” that:

The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.

Information needed to make decisions will be presented in a simplified and understandable form. Assistance will be provided to interpret and effectively use technical information. Copies of technical information will be available on the Internet, at public libraries, at neighborhood coalition offices and at other locations open to the public. Translations of key documents will be available.

Appeal Issue 3.D. Failure to direct planning actions in a manner that would achieve local goals and be consistent with past planning work.

The Southwest Community Plan: Vision, Policies and Objectives, adopted by the City Council in July 2000, provides the most contemporary planning process for the area that includes Multnomah Village. In the *Introduction* to the SWCP, the lengthy process required to adopt the Plan is described. It states:

In endorsing the revised process, the Planning Commission and the City Council believed that successful completion of the policy phase of the *Southwest Community Plan* was a vital prerequisite for continuing on with any subsequent phases of the plan, such as the Comprehensive Plan/zoning map. This set of policies provides the foundation upon which any additional plan components will be built.

While the SWCP process was not fully implemented as a local refinement plan, the Periodic Review process was the logical place to achieve this implementation.

The SWCP envisioned that Multnomah Village would grow, but also that its historical and cultural essence would remain intact. In the Plan's "Vision for Southwest Portland," it states:

Multnomah Village has retained its charm, partially through an historic district designation, even as merchants expand and new businesses begin. The village area has continued to prosper and attract neighborhood and community residents. Local gathering spots offer opportunities for friends and neighbors to meet, providing a small town atmosphere that residents continue to treasure.

The SWCP states under "C. Main Street Objectives:"

Main streets are a part of and provide services to the neighborhoods within which they are located. Generally linear in form, main streets contain buildings whose height, scale, and designs are appropriate for their neighborhoods and uses which are a mix of residential and neighborhood-scale commercial. While main streets typically serve the surrounding community, they may develop a regional specialization. They may have a village or urban character. Their growth and development will occur in tandem with changes to the surrounding neighborhood. Main streets in Southwest Portland are Garden Home, Macadam, and Multnomah.

The Mixed Use Zone Project was a logical place to implement the SWCP's Vision and Objectives as they relate to Multnomah Village. However the SWCP is not even mentioned in the Mixed Use Zones Project – Recommended Draft.

Therefore, Task 5 failed to address and implement the SWCP in the adopted zoning for Multnomah Village. It also violated the Citizen Involvement Objectives of the SWCP, cited below:

5. Use the Southwest Community Plan policies and objectives to create, develop, implement or evaluate new citywide policies, programs, or project proposals to ensure that the concerns of the Southwest community are addressed.

The historic character of Multnomah Village has made it a top candidate for historic designation and protection in the past. In a 1978 report by the Portland Bureau of Planning titled *Potential Historic Conservation Districts*, Multnomah Village was selected as one of the top 16 sites in the City from an initial group of 50 candidate sites.⁶ The report states:

These areas were selected primarily as collections of individual properties and features, which although often singularly unremarkable, are combined in an ensemble representative of a distinctive period in Portland's history or which typify a unique Portland quality.

Around the same time as the *Southwest Community Plan* was being developed, the MNA was encouraged by State officials and the City Planning Bureau to pursue the creation of an historic district. However, after a two-year process by a MNA subcommittee that involved historical documentation of every property and the consultation of a PSU historian in extensive interviews with a variety of property owners and elder residents of the area, a proposal submitted by the MNA was ultimately rejected by the Planning Bureau.

In the City's partial response to public input in the Mixed Use Zones Project – Recommended Draft, cited previously under **Issue 3.A.**, the City acknowledges the historic character of this area:⁷

The recommended draft includes new mapping and Zoning Code regulations intended to continue the scale and characteristics of a few older main street areas where low-rise (1 to 2 story) Streetcar Era storefront buildings are predominant. This responds to community interest in preserving the character of these areas, which are often the historic commercial cores of centers, while being applied strategically to retain ample capacity for growth in the majority of mixed use areas.

The CM2 zoning fails to comply with Statewide Goal 5 (OAR 660-015-0000(5)), which requires protection of historic areas like Multnomah Village. Goal 5 states:

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

⁶ See:

http://www.oregon.gov/oprd/HCD/OHC/docs/multnomah_portland_potentialconservationdistricts.pdf

⁷ Mixed Use Zones Project – Recommended Draft of August 2016 on pages 44 and 45 under the heading "Low-rise Commercial Storefront Areas."

To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

Under "Guidelines for Goal 5," "Planning," it states:

4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

Action Requested

OAR 660-025-0140(2)(c) Suggest specific revisions that would resolve the objection;

The MNA is requesting that Task 5 be partially remanded to include specific actions to protect the character of Multnomah Village through clear and objective standards. These standards should limit building heights to three stories to help assure the compatibility of new development. The Village is on a hillside with a large number of lots with streets on opposite sides. The measurement of height of new development on lots with more than one street frontage, the building height should be measured from the street frontage with the lowest elevation. The City should achieve this through either a plan district or through a base zone that preserves the historic neighborhood character.

Extensive public testimony supports using the new CM1 zone to replace the old CS zoning. The City instead elected to apply CM2 zoning to most of the commercial property in Multnomah Village. We are requesting that all CS commercial storefront in the Village be designated CM1 zoning.

According to Title 33, Planning and Zoning, Plan Districts in General, Section 33.500.010 Purpose: "Plan districts address concerns unique to an area when other zoning mechanisms cannot achieve the desired results." Therefore, a plan district could be a suitable alternative to zoning for limiting heights and assuring development is compatible with the neighborhood.

◇◇◇

James F Peterson
Multnomah
Land Use Co-Chair
2502 SW Multnomah Blvd
Portland, OR 97219

December 26, 2017

Oregon Department of Land Conservation and Development Commission
Attention: Periodic Review Specialist
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re: Appeal OAR 660-025-0150(6)(a)
Objection Task 5 (Ordinance 188177)
DLCD 17. Objection 5-6 – Multnomah Neighborhood Association #5

The Multnomah Neighborhood Association (MNA) is filling this appeal to Task 5 of the City of Portland 2035 Comprehensive Plan (Ordinance 188177).

The Objection (DLCD 17. Objection 5-6 – Multnomah Neighborhood Association #5) consisted of four issues. These are presented below posting the original objection first, followed by the DLCD response and then by the appeal.

The record lists James Peterson testifying as follows:
Peterson, James F Comment ID #21723 Oct 13, 2016

Issue #1 (Objection 5-6a)

If you review OAR 660-025-0130 shown below the record needs to have detailed index which the city to need provide to public and submit. The name of the submitter or the testifier is inadequate. In reviewing the testimony it appears some of the testimony is incorrectly filed and belongs with other tasks. Some testimony is being submitted for organizations or groups. In the present format the testimony needs to read to determine how or if it applies. It is unclear how the Planning and Sustainability Commission and the City Council were able to review it all. Note the Staff reports and findings are not linked to individual testimony. Note: The Multnomah Neighborhood Association has requested technical assistance under provisions of Goal 1 from Susan Anderson and Mayor Wheeler to find all the testimony for the Middle Housing Amendment for Task 4 with no response. In the present format it would be impossible for the neighborhood to find. The Oregon Department Conservation and Development will have the same problem in their review. I made this objection in Task 3. The DLCD staff made requests to the City of Portland to find testimony and records to decide on the merits of my Task 3 objection. The City forwarded a link at that time to DLCD staff and myself an extremely poor search option for the record. Unfortunately it would not find all the testimony on the Middle Housing Amendment that the Multnomah Neighborhood Association is filing an objection on. This is inconsistent with provisions of Goal 1 of OAR 660-015-0000(1) (Goal 1) requires that

citizens have a role in all phases of the planning process. The record needs to be sent back for the index to be detailed and referenced to the staff reports and findings. Then the public, Planning and Sustainability Commission and City Council need time to then review the record and then have hearings before it is submitted back to the DLCD.

660-025-0130

3) For a periodic review task to be complete, a submittal must be a final decision containing all required elements identified for that task in the work program. The department may accept a portion of a task or subtask as a complete submittal if the work program identified that portion of the task or subtask as a separate item for adoption by the local government. All submittals required by section (1) of this rule are subject to the following requirements:

(b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances, resolutions, and orders; any amended comprehensive or regional framework plan provisions or land use regulations; findings; hearings minutes; materials from the record that the local government deems necessary to explain the submittal or cites in its findings; and a **detailed index listing all items in the local record and indicating whether or not the item is included in the submittal**. All items in the local record must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or commission may require a local government to submit any materials from the local record not included in the initial submittal;

DLCD Response 5.6a

The department rejects this objection. OAR 660-025-0130(3) requires an index of the entire record partially because the city is not required to submit the contents of the entire record if it exceeds 2,000 pages, and an index enables participants and the department to identify those materials that were not part of the submittal. The index also enables participants and the department to identify where in the submittal relevant materials were included. The rule requires a “detailed” index. The objection appears to allege that a detailed index should link individual testimony with the specific elements of the staff report and findings to which it is related. For example, if there is testimony regarding the middle housing policy, then the index should link all testimony regarding this topic to the staff report and findings on this same topic. No reasonable reading of OAR 660-025-0130(3)(b) would lead to this conclusion. OAR 660-025-0130(3)(b) identifies what a submittal must include, one of which is a detailed index listing all items in the local record and indicating whether the item is included in the submittal. The city has provided a master index and a table of contents, both of which provide a detailed list of items in the local record. The department concludes that the city has submitted the required elements of a record exceeding 2,000 pages, including a detailed index of the items in the local record and the oral and written testimony from the public hearings.

Appeal 5.6a

This is inconsistent with provisions of Goal 1 of OAR 660-015-0000(1) (Goal 1) which require that **citizens** have a role in all phases of the planning process. After the objections were submitted, DLCD staff requested that the city provide the testimony under 660-025-0130(4).

660-025-0130

(4) A submittal includes only the materials provided to the department pursuant to section (3) of this rule. Following submission of objections pursuant to OAR 660-025-0140, the local government may:

(a) Provide written correspondence that is not part of the local record which identifies material in the record relevant to filed objections. The correspondence may not include or refer to materials not in the record submitted or listed pursuant to section (3) of this rule. The local government must provide the correspondence to each objector at the same time it is sent to the department.

(b) Submit materials in the record that were not part of the submittal under section (3) if the materials are relevant to one or more filed objections. The local government may not include or refer to materials not in the local record. The local government must provide the materials to each objector at the same time it is sent to the department.

The testimony the city provided under this request is indexed only by the submitter's name. It would be difficult or impossible for the public or DLCD staff to locate testimony with only the name of the submitter using this index of the record. There is no way to tell how complete the testimony the city submitted is without reading the complete record. Thus the record needs a [detailed index](#) as required under OAR 660-025-0130(3)(b) for the citizens to review the record in a timely manner when technical assistance has not been made available. The DLCD staff also needed a complete index in order to perform their review. This detailed index as stated above was also needed for the PSC and City Council to review the record. It was not available.

With the testimony provided under 660-025-0130(4), the city also provided inappropriate commentary. The commentary that the city submitted with the DLCD request is inconsistent with ORS 660-025-0130 and should be considered ex parte contact. The commentary from the city needs to be removed from the DLCD review in the DLCD Order 001892.

It also appears that the DLCD Order needs to be signed by the DLCD Director. The Order needs to be signed by the Director and the DLCD Order 001892 needs to be sent out for again with another 21 days for the objectors to respond.

Issue #2 (Objection 5-6b)

[The Comprehensive Plan Map in Task 5 is inconsistent with the approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.](#)

The Multnomah Neighborhood Association put forward a proposal that is titled Truth in Zoning and the following will clarify the issue.

After the SW Plan blew up the City of Portland decided that they would no longer do community plans but instead would change the development code to achieve more infill. The minimum lot size in the zoning code was reduced for each base zone. For example an R5 lot the minimum lot size was reduced to 3000sqft. They allowed corner lots to be duplex lots and later made changes to allowed corner lots in R5 and R7 zones to be divided if the lot was over 50 x 100 for attached dwellings. This worked for a few years but now demolitions are at record levels, the character of neighborhoods are changing and what people value about Portland is now being destroyed. Over 150 requests have been submitted requesting the Truth in Zoning proposal be incorporated into the 2035 Comprehensive Plan it would remove the exception that allows for land divisions less than the base zone. With the adoption of the Comprehensive Plan the zoning code would then need to be amended to comply. If the language remains the size of lots in land divisions would be based on minimum lot size in the zoning code. The base zone lot size in the Comprehensive Plan would then be meaningless. The Comprehensive Plan is intended to be the governing document but with the proposed language the lot size would be governed by the zoning code

Re: Truth in Zoning

The specific language shown struck below needs be removed from the general description of land use designations on page GP10-3 the 2035 Comprehensive Plan. This would preserve neighborhood character and would reduce the number of demolitions. This would remove the exceptions that allow land divisions less than the base zone. A Comprehensive map amendment would then be required for a land division less than the base zone. The approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing. The map is impossible to produce if the base zones are not defined. The City of Portland has put forth implementing the Middle Housing Amendment Policy 5.6 (P45) by proposing changing the definition of the base zone of a 100,000 single family zoned properties to multifamily. This would increase the capacity of these 100,000 properties 300%. This excess capacity would be considered Market Factor which case law has not allowed. ORS 197.015 (5) defines the comprehensive plan as coordinating land use with everything associated with it. Thus allowing an exception to base zones to be defined in the zoning is inconsistent with the definition.

The remedy is that the exception struck below be removed from the 2035 Comprehensive Plan so that the base zone defined and mapped governs. The zoning code would be required to be changed so that the base defined in the comprehensive plan governs. If the city wants to allow corner lots to be divided the base zone should be changed or other land divisions less than size permitted in the base zone a zone change would be required. New Comprehensive Plan Map consistent with the approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.

Land use designations - Amendment

The Comprehensive Plan is one of the Comprehensive Plan’s implementation tools. The Map includes land use designations, which are used to carry out the Comprehensive Plan. The land use designation that best implements the plan is applied to each area of the city. This section contains descriptions of the land use designations. Each designation generally includes:

- Type of place or Pattern Area for which the designation is intended.
- General use and intensity expected within the area. ~~In some cases, the alternative development options allowed in single dwelling residential zones (e.g. duplexes and attached houses on corner lots; accessory dwelling units) may allow additional residential units beyond the general density described below.~~
- Level of public services provided or planned.
- Level of constraint.

197.015 Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325

(5) “Comprehensive plan” means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. “Comprehensive” means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. “General nature” means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is “coordinated” when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. “Land” includes water, both surface and subsurface, and the air.

DLCD Response 5.6b

OAR 660-025-0140(2) provides, among other things, that for an objection to be valid it must “clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated.” See section IV.B. The objection cites the comprehensive plan map as the relevant section of the final decision at issue. The department’s review of the map (Task 5 Record at 113) does not reveal any provision that allows varying of densities. The objection does not identify what portion of task 4 with which the task 5 submittal conflicts. The department finds that this objection fails to satisfy the minimum requirements of a valid objection and is therefore invalid.

Appeal 5.6b

The deficiency as stated above is as follows:

The Comprehensive Plan Map in Task 5 is inconsistent with the approved work order for Task 4 which requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.

The Comprehensive Plan Map in Task 5 is also inconsistent with ORS 197.015 (5) that defines the comprehensive plan as coordinating land use with everything associated with it. Thus allowing an exception to base zones to be defined in the zoning is inconsistent with the definition.

The remedy is that the exception struck below be removed from the 2035 Comprehensive Plan so that the base zone defined and mapped governs. The zoning code would be required to be changed so that the base defined in the comprehensive plan governs. If the city wants to allow corner lots to be divided the base zone should be changed or other land divisions less than size permitted in the base zone a zone change would be required. New Comprehensive Plan Map consistent with the approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.

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- Type of place or Pattern Area for which the designation is intended.
- General use and intensity expected within the area. ~~In some cases, the alternative development options allowed in single dwelling residential zones (e.g. duplexes and attached houses on corner lots; accessory dwelling units) may allow additional residential units beyond the general density described below.~~
- Level of public services provided or planned.
- Level of constraint.

Issues #3 (Objection 5-6c)

In the recent EG Zones in Mass Shelter and Housing Zoning Code Update the city of Portland changed the zoning code title 33 to allow Mass Shelters in EG zones.

This is inconsistent with the below language in the adopted 2035 Comprehensive Plan and should not be allowed. The Comprehensive Plan is the governing document to implement the zoning code so this proposal should not have come to this stage in the process. The city of

Portland also is short on available land for employment and for this additional reason it should be denied.

Policy 10.19 Mixed Employment This designation encourages a wide variety of office, creative services, manufacturing, distribution, traded sector, and other light-industrial employment opportunities, typically in a low-rise, flex-space development pattern. Most employment uses are allowed but limited in impact by the small lot size and adjacency to residential neighborhoods. Retail uses are allowed but are limited in intensity so as to maintain adequate employment development opportunities. Residential uses are not allowed to reserve land for employment uses, to prevent conflicts with the other uses, and to limit the proximity of residents to truck traffic and other impacts. The corresponding zones are General Employment 1 (EG1) and General Employment 2 (EG2).

This is also inconsistent with the current Comprehensive Plan

The remedy is to amend the zoning code title 33 not to allow Mass Shelters in EG zones.

Department Response 5-6c

The department finds this objection invalid. The city's zoning code change to allow mass shelters in the EG zone was submitted as a Post Acknowledgement Plan Amendment (DLCD file no. 010-16). The city's decision was not part of periodic review.

Appeal 5-6c

The adopted work plan requires adopting regulations sufficient to carry out the amended Comprehensive Plan. Thus Title 33 needs to be amended as part of Task 5 not to allow mass shelters in EG zones.

Task 5 Products

Ordinance of City Council adopting regulations, projects and agreements sufficient to carry out the amended Comprehensive Plan

The remedy is to amend the zoning code title 33 not to allow Mass Shelters in EG zones.

Issue 4 (Objection 5-6d)

The city of Portland since the adoption of Task 5 has had a number of major implementation projects going on after the approval of Task 5. Thus the submittal of Task 5 is incomplete. Implementation done outside of a Task limits the citizen's ability to appeal. To file an objection to a Work Task is a relatively inexpensive and easy process compared to filing a LUBA APPEAL. This is inconsistent with provisions of Goal 1.

GOAL 1: CITIZEN INVOLVEMENT OAR 660-015-0000(1)3. Citizen Influence –

To provide the opportunity for citizens to be involved in all phases of the planning process

Here is a partial list of significant projects the city has been implementing after the adopting Task 5. The Residential Infill project as being implemented affects 100,000 properties. These projects affect large areas will significant impacts on the city and should have been included in Task 5.

DOZA- Design Overlay Amendments
Residential Infill Project
Portland Central City Plan
Better Housing by Design
2035 Comp Plan Reconciliation Project
Map Refinement Project

These implementation projects should have been included in Task 5 as required in the work plan. Thus the Task 5 submittal is incomplete.

Task 5 Products

Ordinance of City Council adopting regulations, projects and agreements sufficient to carry out the amended Comprehensive Plan

The remedy is to send these projects back to be included in Task 5 or amend the work plan and add Task 6 for these and other projects that are required to carry out the Comprehensive Plan.

DLCD Response 5-6d

The department rejects this objection. The work program for task 5 states, “whatever policy decisions are made, they must be carried out by sufficiently robust implementation measures.” Further, the work program identifies “possible new implementation measures,” and lists those items. The product required is: “Ordinance of City Council adopting regulations, projects, and agreements sufficient to carry out the amended Comprehensive Plan.” Portland PR Tasks 4 and 5 Page 26 DLCD Order 001892 The objection does not establish a connection between the cited list of plan amendments and the plan updates carried out in periodic review. ORS 197 establishes the jurisdiction of the commission and the Land Use Board of Appeals (see ORS 197.644 and 197.825). Goal 1 does not provide the department or commission authority to usurp the Land Use Board of Appeals’ jurisdiction for the convenience of a potential appellant.

Appeal 5-6d

The City of Portland is adopting a new Comprehensive Plan. The projects listed are significant projects amending the Comprehensive Plan and changing the zoning code to comply with the new Comprehensive Plan. The Residential Infill Project is implementing Policy 5.6. The Draft of the Residential Infill project increases the capacity almost 170,000 housing units. This almost

doubles the capacity of the 2035 Comprehensive Plan. The city of Portland is shifting to implementation of the 2035 Comprehensive Plan at this link <https://www.portlandoregon.gov/BPS/article/661511> and transitioning to the new plan at this link <https://www.portlandoregon.gov/bps/72977>. Task 5 has fallen way short of adopting regulations sufficient to carry out the new comp plan as required by the work order. Thus the submittal of Task 5 is incomplete. Implementation done outside of a Task limits the citizen's ability to appeal. To file an objection to a Work Task is a relatively inexpensive and easy process compared to filing a LUBA APPEAL. This is inconsistent with provisions of Goal 1.

The remedy is to send these projects back to be included in Task 5 or amend the work plan and add Task 6 for these and other projects that are required to carry out the Comprehensive Plan.

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