



A. June Bradley
Attorney
Admitted in Oregon
jbradley@tomasilegal.com

121 SW Morrison Street, Suite 1850
Portland, Oregon 97204
Tel 503-894-990
Fax 971-544-7236
www.tomasilegal.com

May 9, 2025

BY EMAIL (Gordon.Howard@dlcd.oregon.gov, denise.johnson@dlcd.oregon.gov,
Laura.Kelly@dlcd.oregon.gov)

Land Conservation and Development Commission
Attn: Denise Johnson, Commission Assistant
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Ste. 150
Salem, Oregon 97301-2540

Re: Appeal of DLCD Order #001953: Approval of Metro Ordinance 24-1520,
Amending the Metro Regional UGB in the Sherwood West Planning Area

Dear Chair Hallová, Vice-Chair Lazo, and Commissioners:

This office represents Housing Land Advocates ("HLA"). HLA is a nonprofit organization that advocates for land use policies and practices that ensure an adequate and appropriate supply of affordable housing for all Oregonians. Please accept this letter as a valid appeal of the Department of Land Conservation and Development's ("DLCD") Order #001953 (the "Director's Decision"). The Director's Decision approves Metro Ordinance 24-1520 ("Ordinance"), which is a proposed amendment to the Metro regional Urban Growth Boundary ("UGB") that adds approximately 1,291 acres of land to the UGB in the Sherwood West planning area (the "UGB Expansion"), ostensibly for housing purposes.

I. INTRODUCTION

As HLA argued below, the Sherwood West Concept Plan around which Metro Ordinance 24-1520 is centered is merely a vehicle for bringing additional land into the UGB for industrial and technological development, and, as a result, the housing component of the Concept Plan is an afterthought, even in the most favorable light. Rec. 2925. In the Concept Plan, the City of Sherwood (the "City" or "Sherwood") proposes to meet the requirements of House Bill 2001 by selectively concentrating middle housing outside the existing UGB, and without any present or concrete guarantees as to affordability, connection to transportation, or provision of services, while preserving the low-density, single-family housing typology that, by design, predominates the City's core. Rec. 7089; 7095; 2927; 2932-72. *See* Attachment 1, Sherwood Zoning Map, Rec. 2928 (showing that the sweeping majority of the City's residentially-zoned land is Low-Density Residential). *And see* Attachment 2, Composite Concept Plan Map, Sherwood West Concept

Plan, Rec. 7576, alongside Attachment 3, Map of Existing Conditions, Rec. 6171 (showing that the connection between the planned-for middle and multifamily housing and Downtown Sherwood is interrupted by an expanse of sprawling, low-density neighborhoods, wildlands, and wooded areas and a major highway). As such, the only housing purpose the Concept Plan is certain to satisfy is the creation of an island of market-rate housing, isolated from the rest of the City and all that it has to offer.

Despite the proposal's many shortcomings, Metro Council accepted the Sherwood West Concept Plan as the sole concept plan submission received—the "only show in town"—without actual consideration. Rec. 1183. In rubberstamping the Concept Plan, Ordinance 24-1520 kicks the can of compliance with Statewide Land Use Planning Goal 10: Housing's ("Goal 10") housing choice and affordability requirements three years down the road to Sherwood's proposed 2028 adoption of a Housing Production Strategy ("HPS"), a decision which is not subject to appeal through the land use process. Also in noncompliance with Goal 10, the Ordinance actively works against the recently-adopted mandate to Affirmatively Further Fair Housing ("AFFH") by reinforcing Sherwood's existing patterns of segregation. Metro Council's retrospective attempts to explain how the UGB Expansion is exempt from or compliant with applicable housing law are incongruent with the law and facts, and the decision should be remanded.

II. PROCEDURAL REQUIREMENTS

This appeal is proper pursuant to OAR 660-025-0150(6). As recognized in the Director's Decision, HLA filed three valid objections to Metro Ordinance 24-1520. Director's Decision, p. 5; OAR 660-025-0150(6)(a). HLA files this appeal on Friday May, 9, which is within 21 days of the date the Director's Decision approving Metro Ordinance 24-1520 was sent on April 18, 2025. OAR 660-025-0150(6)(c). Also as recognized in the Director's Decision, HLA participated in the proceedings below. Director's Decision, p. 4; OAR 660-025-0150(6)(d)(A).

As will be set forth in more detail, HLA continues to object to the Director's Decision and Metro Ordinance 24-1520 for the following reasons:¹

1. The Ordinance does not comply with Statewide Planning Goal 10 because the Ordinance fails to promote housing choice and fails to ensure the provision of affordable housing.

¹ HLA also argued to DLCD that, in issuing the Ordinance, Metro Council did not *adequately consider* the factors enumerated under Metro Urban Growth Functional Plan Title 14 § 3.07.1424(d)(4) and (5). This was Objection No. 3 in HLA's January 9, 2025 Objection Letter and is addressed on pages 58 to 59 of the Director's Decision. As the Director rightly pointed out in her Decision, HLA did not explicitly argue under Objection No. 3 that Metro Council "did not consider the factors" at all. Director's Decision, p. 58. Therefore, the Director rejected HLA's Objection No. 3. HLA joins fellow objectors in reiterating that it is apparent that Metro Council *never considered* any of the locational factors under Goal 14 or the Metro Code in selecting the Sherwood West location because Metro Council never considered any alternative locations. Director's Decision, Attachment D, p. 2. This fundamental failure is addressed at length in the materials submitted by the other objectors, including West of Sherwood Farm Alliance and 1000 Friends of Oregon.

2. The Ordinance does not comply with Statewide Planning Goal 10 because the Ordinance fails to Affirmatively Further Fair Housing.²

OAR 660-025-0150(6)(d)(B).

HLA respectfully asks the Land Conservation and Development Commission ("LCDC" or the "Commission") to resolve the forgoing deficiencies by remanding Metro Ordinance 24-1520 for Metro to wait for and consider alternative concept plan submissions. OAR 660-025-0150(6)(d)(C).

III. BASES OF APPEAL

HLA appeals two determinations made by the Director in DLCD Order #001953 relating to the compliance of the UGB Expansion with Statewide Planning Goal 10:

1. The Director wrongly concluded that the Ordinance promotes housing choice and affordability; and
2. The Director wrongly concluded that the Ordinance is not required to Affirmatively Further Fair Housing.

HLA cross-adopts the objection made on appeal by West of Sherwood Farm Alliance ("WoSFA") related to Metro Council's failure to consider densification of development within the existing UGB as a means to address housing need and as an alternative to the proposed UGB Expansion. HLA also cross-adopts WoSFA's other housing-related objections and arguments to the extent that those objections and arguments do not contradict those made by HLA.

A. The Director's Decision and Metro Ordinance 24-1520 fail to promote housing choice and affordability.

HLA argued to DLCD in HLA's January 9, 2025 Objection Letter under Objection No. 1 that the Ordinance does not comply with Statewide Land Use Planning Goal 10 because the Ordinance fails to promote housing choice and fails to ensure the provision of affordable housing. The Director addresses HLA's Objection No. 1 on pages 54 to 56 of the Director's Decision.

The applicable standard of review is whether Ordinance 24-1520 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. ORS 197.633(3)(c).

² HLA also argued to DLCD under Objection No. 2 that the Ordinance does not comply with *federal and state* law which require DLCD, Metro, and Sherwood to Affirmatively Further Fair Housing. Ignoring HLA's argument that state law incorporates AFFH, the Director rejected HLA's Objection No. 2, only addressing DLCD's opinion that the federal Fair Housing Act (FHA) is not an applicable statute pursuant to ORS 197.633(3)(c). Director's Decision, p. 57.

Goal 10 requires that "plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density." OAR 660-015-0000(10). "Needed housing" includes housing for households with low incomes, very low incomes and extremely low incomes. ORS 197A.348(1).

Metro Ordinance 24-1520 incorporates and relies on the Sherwood West Concept Plan, which concentrates denser, more affordable housing types—specifically middle housing—outside the city center in the UGB expansion area, while the City has declined to commensurately stimulate the production of those housing types within the existing UGB. Therefore, to the extent that the Ordinance might result in the production of affordable housing in a single, isolated area, the Ordinance does not allow for flexibility of housing location, type, and density.

Further, Metro Ordinance 24-1520 addresses the Concept Plan's complete lack of guarantees as to housing affordability in the expansion area with an unenforceable condition of approval. Rec. 14. In rejecting HLA's Objection No. 1, the Director leans on one element of Metro's weak housing affordability condition of approval,

"As stated by Housing Land Advocates, Metro Ordinance 24-1520 includes Exhibit B, Conditions of Approval, including a condition that Sherwood work to meet housing affordability targets as part of its upcoming Housing Production Strategy. Record at 14.

The city's Housing Production Strategy includes requirements to ensure consistency with Goal 10 to take action to meet identified housing needs (OAR 660-008-0200)." Director's Decision, p. 55.

As Metro itself admits, market forces are unlikely to result in anything less than market-rate affordability, and filtering alone will not meet the needs of low-income households. Rec. 45-46. Therefore, the Ordinance does not encourage the availability of needed housing, including housing for households with low incomes, very low incomes, and extremely low incomes. Accordingly, the Ordinance does not comply with Goal 10.

Goal 10 applies to the present UGB Expansion, and housing affordability must be considered at this juncture in addition to in relation to Sherwood's as-yet unadopted HPS. The City's future adoption of an HPS cannot work retroactively to amend a planning decision which, at the time of its adoption, does not comply with Goal 10. Additionally, an HPS is not a land use decision subject to land use appeal. ORS 197A.100(7); ORS 197A.103. Consequently, the public's only opportunity to meaningfully reach these issues as a matter of right is now, at the land use stage.

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B. The Director's Decision and Metro Ordinance 24-1520 fail to Affirmatively Further Fair Housing.

HLA argued to DLCD under Objection No. 2 that the Ordinance does not comply with state law which requires the Ordinance to Affirmatively Further Fair Housing ("AFFH") because the Ordinance reinforces existing patterns of segregation. The Director addressed HLA's Objection No. 2 on pages 56 to 58 of the Director's Decision. The applicable standard of review is set forth above under Section A, above.

OAR Ch. 660 Div. 8 provides standards for compliance with Goal 10. OAR 660-008-0000(1). Pursuant to OAR 660-008-0200(2), "[t]he provision of needed housing includes its development, preservation, rehabilitation, adaptation, and maintenance while also affirmatively furthering fair housing by maximizing benefits and minimizing burdens for protected classes and named communities in needed housing as provided in ORS 197A.018, with particular focus on communities of color, low-income communities, individuals with disabilities, and tribal communities."

For the purposes of OAR Ch. 600 Div. 8, AFFH includes "meaningful actions that, when taken together, address significant disparities in housing needs and access to opportunity and replace segregated living patterns with truly integrated and balanced living patterns to transform racially and ethnically concentrated areas of poverty into areas of opportunity and foster and maintain compliance with civil rights and fair housing laws." OAR 660-008-0005(4); ORS 197A.100(9).

Again, Goal 10 applies to the present UGB Expansion. Even if the Goal 10 AFFH requirement does not apply directly to the UGB Expansion, Goal 10 explicitly requires Sherwood to adopt an HPS that Affirmatively Furthers Fair Housing. To the extent that the Ordinance impedes AFFH in the City's future HPS, the Ordinance does not comply with Goal 10. By forging ahead with this UGB Expansion, Metro Council and the Director enable Sherwood's attempt to beat the clock on the City's adoption of an HPS by implementing a housing strategy which is a thinly veiled act of exclusion.

For the reasons articulated under Section A, above, Metro Ordinance 24-1520 further entrenches Sherwood's existing patterns of segregation. Income status is recognized as a proxy for protected classes, including but not limited to race, ethnicity, and disability. Lumping more affordable housing options together and isolating this supply from the rest of the City amounts to segregatory zoning. Therefore, the Ordinance fails to Affirmatively Further Fair Housing, and therefore, the Ordinance does not comply with Goal 10.

In rejecting HLA's Objection No. 2, the Director wholly ignores HLA's argument that state law provides an independent requirement to AFFH. *See* Director's Decision, p. 56 (titling the section responding to HLA's Objection No. 2 as "Applicability of Federal Fair Housing Act") and p. 57 (only discussing AFFH in the context of the FHA).

TOMASI BRAGAR DUBAY

May 9, 2025

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II. CONCLUSION

For the foregoing reasons, HLA respectfully asks the Commission to resolve the forgoing deficiencies by remanding Metro Ordinance 24-1520 for Metro to wait for and consider alternative concept plan submissions.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. June Bradley', with a long horizontal line extending to the right.

A. June Bradley

cc: (all by email)
Jennifer Bragar
client
1000 Friends of Oregon
West of Sherwood Farm Alliance
Tualatin Riverkeepers
Verde

City of Sherwood Plan and Zone Map

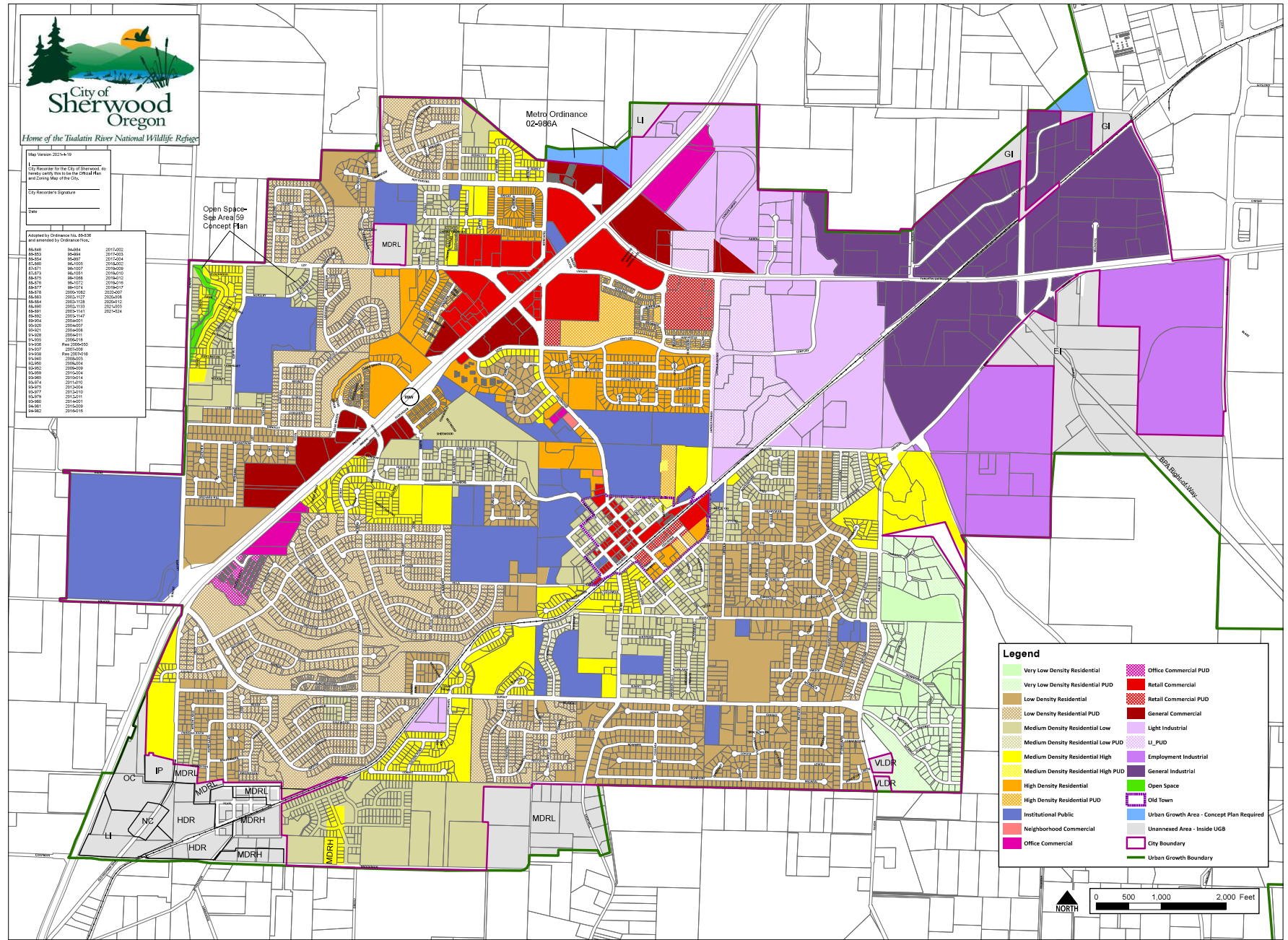
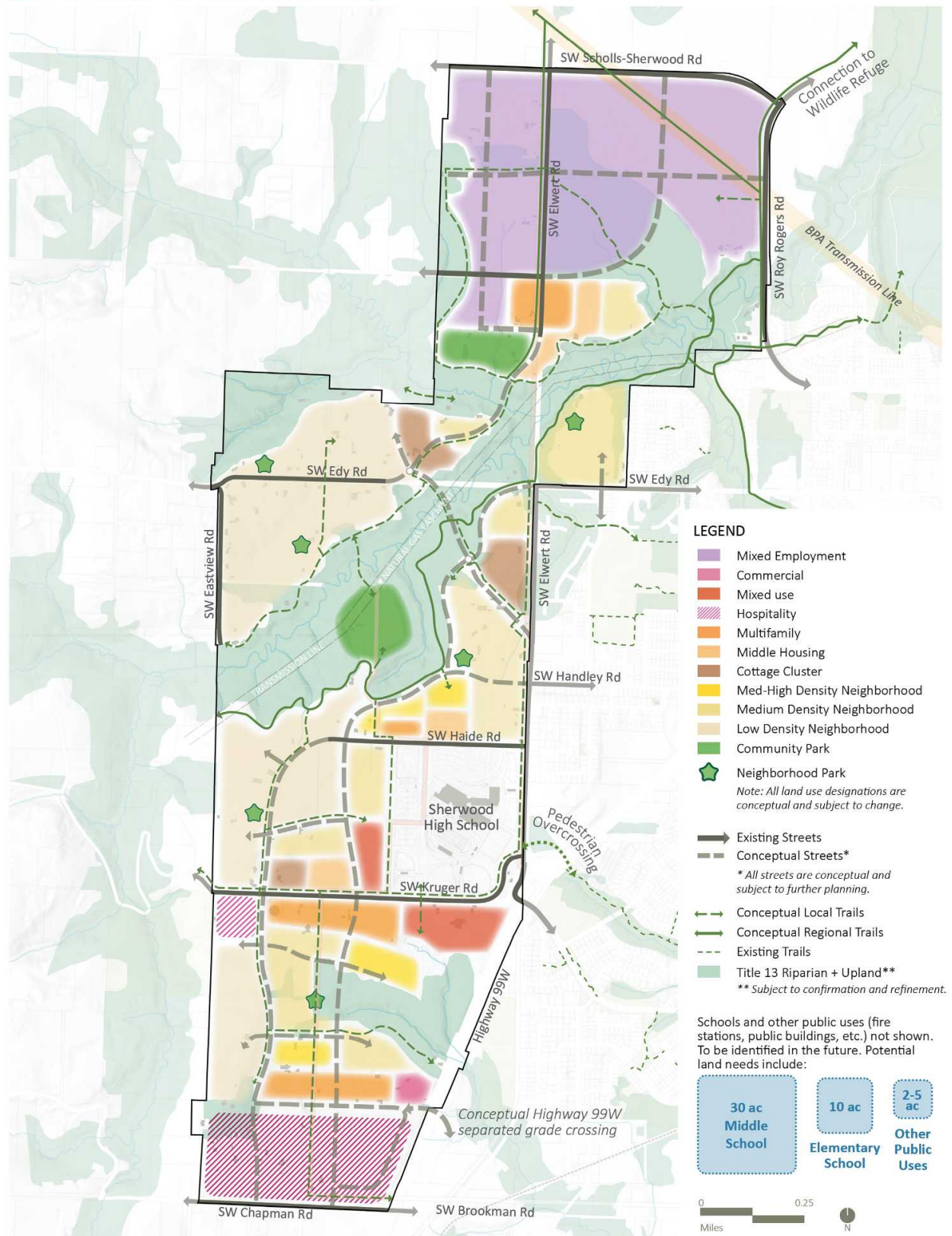


EXHIBIT A: Sherwood West Concept Plan Map

Figure 8. Composite Concept Plan Map



EXISTING CONDITIONS



Study Area

Sherwood West is a 1,291-acre area just west of the existing Sherwood city limits—see Figure 2. The area is bounded on the east by Highway 99W, SW Elwert Road, and SW Roy Rogers Road. The area's southern boundary is SW Chapman Road; its northern extent is SW Lebeau Road and SW Scholls-Sherwood Road. The western boundary is the outer edge of Metro's Urban Reserves, with Rural Reserve land lying further to the west). Site topography generally slopes from west to east, with an elevation difference of approximately 150 to 200 feet.

Figure 2. Sherwood West Study Area



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SHERWOOD WEST CONCEPT PLAN **20**