



Oregon

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September 19, 2025

To: Land Conservation and Development Commission

From: Brenda Ortigoza Bateman, Ph.D., Director
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Laura Kelly, Portland Metro Regional Representative
Bill Holmstrom, Land Use and Transportation Planning Coordinator
Jena Hughes, Housing and Growth Management Analyst
Kelly Reid, Portland Metro Regional Representative
Kevin Young, Senior Urban Planner
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Subject: **Agenda Item 5, September 25-26, 2025, LCDC Meeting
Supplemental Report Responding to Exceptions**

I. Summary

The matter before the Land Conservation and Development Commission (LCDC, or commission) involves an amendment to the Portland Metro urban growth boundary (UGB) to add the Sherwood West area. The Department of Land Conservation and Development (DLCD, or department) issued a report on September 2, 2025 recommending approval of the amendment and responding to appeals to the director's decision of April 18, 2025. As provided in OAR 660-025-0160(4), the department provided the report to those who submitted valid objections at least 21 days before the commission hearing. OAR 660-025-0160(5) provides the appellants 10 days to submit "exceptions" to the department's report as an opportunity to allege errors.

OAR 660-025-0160(5) further provides that "the department may provide the commission a response or revised report at or prior to its hearing on the referral or appeal." This supplemental report responds to the five exceptions received.

Three exceptions— from 1000 Friends of Oregon/Tualatin Riverkeepers (1000 Friends/TRK), Housing Land Advocates (HLA), and the West of Sherwood Farm Alliance (WoSFA) — require additional discussion and analysis. The department also addresses procedural issues raised by Ron Bunch (Bunch) and WoSFA. The department does not additionally address the other exceptions, which either raise issues outside the scope of review or are adequately addressed in the September 2 report.

II. Consideration of Exceptions

A. Goal 10 Housing Compliance and Timing

Exception: Appellants 1000 Friends/TRK, HLA, and WoSFA contend that Metro could not rely on Sherwood's local Housing Needs Analysis without reconciling it to Metro's regional Housing Needs Analysis, given differences in methodology and results. They argue that Goal 10 and OAR 660-008 require consistency between local and regional analyses to ensure the UGB expansion addresses actual housing needs.

Response: Metro's findings explain that its decision to expand the UGB into Sherwood West was based on Metro's own regional Housing Needs Analysis in the 2024 Urban Growth Report, as required by ORS 197A.350, Goal 10, and OAR chapter 660, division 8, and not on Sherwood's local HNA alone; the regional analysis identified a deficit of about 3,100 single-unit detached and middle-housing units, and Metro conditioned Sherwood's concept plan to provide 3,120 units or an average density of 9.2 units/net acre to meet that regional need (Record at 1191). While Sherwood's local HNA informed its concept planning under Title 11, Metro's findings explain that local analyses serve different purposes and need not match the regional methodology or results, so long as the expansion is coordinated and demonstrably addresses the quantified regional housing shortfall (Record at 1190-1191).

Metro's decision was made under the version of Oregon Administrative Rules (OAR) Division 8 in effect prior to January 1, 2025. Those rules did not require reconciliation of local and regional Housing Needs Analysis when evaluating a UGB amendment. Under OAR Division 7, Metro is responsible for the regional Housing Needs Analysis; local governments prepare their own Housing Needs Analyses for city level planning. Metro's explicit reliance on the regional Housing Needs Analysis for Goal 10 compliance, with the local Housing Needs Analysis used only for supplemental context, is consistent with the applicable rules.

B. Climate and Greenhouse Gas Analysis

Exception: Appellants 1000 Friends/TRK and WoSFA assert that Metro was required to quantify greenhouse gas emissions from Sherwood West development and evaluate consistency with the region's adopted Climate Smart Strategy targets. The appellants contend that without a quantified analysis of vehicle miles traveled and associated emissions, Metro cannot demonstrate minimization of environmental consequences under the third Goal 14 locational factor (economic, social, environmental, and energy consequences of different potential areas that could be added to the UGB). 1000 Friends/TRK also cite OAR 660-044-0020 as requiring Metro to demonstrate compliance with specific light vehicle greenhouse gas reduction targets.

Response: Metro's findings address climate impacts qualitatively, but do not include a quantified greenhouse gas inventory. OAR 660-044-0020 is not a generally applicable standard for all Metro land use decisions. OAR 660-044-0020 establishes light vehicle greenhouse gas emissions reduction targets for the Portland metropolitan area and directs Metro to use those targets "as it develops two or more alternative land use and transportation scenarios" in the process of creating or updating its Climate Smart Communities Strategy. The department has consistently interpreted this provision to apply only within the context of the scenario planning process required by OAR 660-044-0040 through 660-044-0060, which occurs when Metro initially adopts or subsequently updates its Climate Smart Communities Strategy.

Metro's UGB amendment is not an adoption or update of that strategy, and Metro was not engaged in the Division 44 scenario planning process when it adopted Ordinance 24-1520. Accordingly, OAR 660-044-0020 does not impose an independent obligation on Metro in this proceeding to quantify greenhouse gas emissions or demonstrate compliance with the numeric reduction targets specified in that rule.

Based on applicable statute and rule, Metro was required to address environmental consequences under Goal 14 but was not required to apply the Division 44 targets outside the context of a Climate Smart Communities Strategy update. The department concludes that Metro's qualitative analysis meets the applicable standard.

C. Fair Housing and AFFH

Exception: Appellant HLA asserts that Metro failed to fulfil their obligations to affirmatively furthering fair housing (AFFH), including addressing segregation and increasing access to opportunity.

Response: Metro's decision was made under the version of OAR Division 8 in effect prior to January 1, 2025. Those older rules required planning for housing for all income levels but did not include the explicit AFFH provisions added in 2025. The rules did not require Metro to conduct a standalone AFFH analysis, compile disaggregated data by protected class, map segregation or concentrations of poverty, or link each housing production action to AFFH outcomes. Equity-related work Metro undertook — such as applying its regional equity framework and considering dispersal of growth — was policy-driven and consistent with Goal 10's general requirements but not compelled by an explicit AFFH provision (Record at 1207-1208).

HLA's exception does not distinguish between the pre-2025 rules in effect for Metro's decision and the amended rules effective January 1, 2025. HLA applies current AFFH expectations to Metro's decision without acknowledging that those provisions were newly added in 2025. This context is critical in evaluating the weight to give HLA's assertions.

The department finds that Metro considered equity through its Goal 14 social consequences factor, regional dispersal of growth, and housing diversity conditions, and that under the rules in effect at the time, this satisfied its Goal 10 and Goal 14 obligations. The department also notes that Metro's conditions of approval include affordability requirements for Sherwood West, which further support Goal 10 compliance and demonstrate a policy commitment to housing access.

Clarification: In prior findings, the director referred to Metro as having "imposed an affordability target" on the expansion area. To be precise, Metro's decision did not set a numeric or percentage-based target for affordable housing production. The requirement is qualitative — it obligates Sherwood to plan for and implement measures that will result in a range of housing choices, including affordable options — but it does not prescribe a quantitative affordability benchmark in the UGB amendment itself. Any numeric targets or income specific thresholds would be established during Sherwood's subsequent plan amendments to implement Condition 2 and upcoming Housing Capacity Analysis and Housing Production Strategy. As part of the OHNA program, the city will receive a 20-year allocated housing need and 6-year housing production target from Department of Administrative Services, both of which are disaggregated

by income bracket, and will include a specific number of units for low-income households that Sherwood will be required to plan for in their Housing Capacity Analysis and Housing Production Strategy. The earlier “target” reference should be understood as shorthand for this binding affordability requirement.

D. Procedural Issues – Director’s Invalidation of Appeal and Objection Issues

Exception: Appellants Bunch and WoSFA raise procedural concerns regarding the director’s handling of their filings. They assert that the director improperly invalidated portions of their appeal and objections, thereby limiting the scope of issues preserved for commission review.

Specifically, they contend that:

- Certain issues they raised in their filings were dismissed as outside the scope of OAR 660-025-0140(2) without adequate explanation;
- The Director’s determination that some issues were not raised with “sufficient specificity” was erroneous; and
- The invalidation of these issues prejudiced their ability to obtain full commission review.
- These rulings are overly rigid and inconsistent with the Court of Appeals’ fair notice standard from *Boldt v. Clackamas County* (1991) and *Confederated Tribes v. Deschutes County* (Thornburgh) (2024) - these cases hold that preservation before LUBA requires only fair notice to adjudicators and opponents, not judicial-level particularity.

Response: The department reviewed the director’s determinations and finds that the invalidation of certain issues was consistent with the requirements of OAR 660-025-0140(2). Subsection (2)(b) of the rule states that the objection “[c]learly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated. Subsection (2)(c) of the rules states that the objection “[s]uggest specific revisions that would resolve the objection.” Objections that fail to identify a statute, goal, or rule and do not suggest a specific remedy do not meet the validity threshold. General references to goals and statutes do not satisfy the rule’s requirement for specificity. Proposed remedies must identify the specific analysis or corrective action to be undertaken. Objections lacking detailed methodology or data requirements do not constitute “specific revisions.”

The department evaluated each objection independently based on its content and supporting detail. For example, WoSFA objection 6.A included a clear articulation of the alternatives not considered and referenced applicable planning goals. In contrast, objections 6.B and 6.M lacked sufficient detail and failed to connect the objection to a specific statutory or rule violation.

The department also notes that the cited Court of Appeals cases concern deliberations before LUBA, which are not the same as deliberations that come before the commission under ORS 197.626 and OAR 660-025. OAR 660-025-0140(3) limits commission review to objections deemed valid under the rule. The director’s determinations are consistent with the rule’s procedural framework. This “gatekeeping” function ensures focused and efficient commission review of the submitted UGB decision. This is especially important for complex matters such as this, where “moving targets” would undermine the integrity of the review process.

The department interprets the rules to require that an objector must provide an objection with sufficient specificity during the objection stage for the director to find valid and preserved for commission review on appeal; issues not meeting this standard at that stage are barred from later introduction on appeal or exception. To interpret the rules to allow an invalid objection to be “revived” at the appeal phase of the process would inject uncertainty, even chaos, into the review process under ORS 197.626 and OAR 660-025.

As a practical matter, the commission will be considering many of the issues that the objectors were attempting to raise in their invalid objections, because other objectors provided a valid objection on the same or a similar issue.

III. Summary of Recommended Action

The department continues to recommend approval of Metro’s Ordinance No. 24-1520 and the findings of fact and conclusions of law, rejecting the filed exceptions. None of the exceptions demonstrate that the Metro UGB decision fails to rely on an adequate factual base, fails to address all applicable criteria, or is unreasonable based on the evidence in the whole record.

IV. Attachments

Attachment 1.	1000 Friends/TRK Exception
Attachment 2.	Bunch Exception
Attachment 3.	HLA Exception
Attachment 4.	Marks Exception
Attachment 5.	WoSFA Exception



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Friday, September 12, 2025

Barbara Bateman, Director
Land Conservation and Development Commission
Oregon Department of Land Conservation and Development
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Salem, Oregon 97301-2540

RE: Appeal of DLCD Order 001953: Approval of Metro Council Ordinance No. 24-1520, Metro's Urban Growth Boundary Amendment - Exceptions to the Director's Report

Chair Hallova, Vice-Chair Lazo, and Commissioners:

Pursuant to OAR 660-025-0160(5), 1000 Friends of Oregon (1000 Friends) and Tualatin Riverkeepers (TRK) respectfully submit these Exceptions to the Director's Report in response to the appeal of the Director's decision to approve Metro's submittal of Ordinance No. 24-1520. Metro Ordinance No. 24-1520 amends the urban growth boundary (UGB) by incorporating a 1291-acre area known as Sherwood West. We preserve all our prior objections and appeal issues, even though not all are addressed in these Exceptions.

I. INTRODUCTION

Under Oregon state law, Metro is charged with managing the greater Portland region's UGB, and works with citizens, elected leaders, and researchers to plan for future growth and meet the needs for housing, jobs, and transportation. R. 001187–95. Every six years, Metro assesses whether there is enough capacity inside the UGB for 20 years of housing and job growth. R. 001187. To determine whether there is a regional need for expanding the UGB, Metro must provide current information regarding, among other things, development trends and estimates of buildable land inside the UGB. R. 004037. In response to the Metro Council's call for city submissions for expansion proposals, on March 5th, 2024 the City of Sherwood proposed bringing in the 1291 acre-Sherwood West urban reserve to support regional housing and employment needs. At Metro Council's public meeting on November 21, 2024, following a



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variety of public testimony, including written testimony submitted by 1000 Friends and TRK, Metro staff recommended that the Metro Council expand the UGB to include the Sherwood West urban reserve to address regional land needs identified in Metro’s 2024 Urban Growth Report (UGR). R. 000008–11, 001338–41. On December 5th, 2024, following another round of public comments, the Metro Council adopted Ordinance No. 24-1520 amending the existing UGB to include the Sherwood West area. (R-000007). Metro submitted Ordinance No. 24-1520 to DLCD on December 19, 2024. 1000 Friends and TRK, along with eight other parties, filed objections to the UGB amendment submittal. (R-A). On April 18, 2025, DLCD Director approved Metro’s Ordinance No. 24-1502 (DLCD Order 001953), rejecting all 38 valid objections. Seven parties filed six appeals (1000 Friends and TRK filed a joint appeal) during the 21-day appeal period, raising 47 distinct appeal issues. Director’s Report pp. 6. On September 2, 2025, the Director issued the report, responding to the appeal letters. 1000 Friends and TRK’s Exceptions to the Director’s Report are discussed in this letter.

II. PROCEDURAL REQUIREMENTS

Pursuant to OAR 660-025-0160(5), “[t]he persons specified in OAR 660-025-0085(5)(c) may file written Exceptions to the Director’s Report within 10 days of the date the report is sent.”

OAR 660-025-0085(5)(c) limits those eligible to file Exceptions to:

- [...] (B) Persons who filed a valid objection to the local decision in the case of commission hearing on a referral;
- (C) Persons who filed a valid appeal of the Director’s decision in the case of a commission hearing on an appeal. [...]

1000 Friends and TRK filed individual, valid objections to the Metro’s adoption of Ordinance No. 24-1520 on January 9, 2025. DLCD Order 001953 pp. 4. Following the Director’s decision published on April 18, 2025, 1000 Friends and TRK filed a joint, valid appeal of the Director’s decision on May 9, 2025. Accordingly, both 1000 Friends and TRK meet the requirements of OAR 660-025-0085(5)(c). OAR 660-025-0160(5) further provides that the written Exceptions be filed within 10 days of the date the Director’s Report is sent, which was



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September 2, 2025. Accordingly, the deadline to file these written Exceptions is September 12, 2025, and these Exceptions are timely filed.

III. SUMMARY OF EXCEPTION ISSUES

All appeal issues raised by 1000 Friends and TRK were determined to be valid in the Director's Report. The Director ultimately recommended that the commission reject each appeal issue raised. The Director's Report relies on the Director's Order 001953 to respond to the appeals, except where appellants raise information supplementing a valid objection (Director's Report pp. 6). Accordingly, these Exceptions address responses made both in DLCD Order 001953 and the Director's Report. We reiterate everything in our previous objections and appeal, and respond to additional concerns raised in the Director's Report.

Exception Issue One: Consideration of reasonable land use measures

This issue was addressed in 1000 Friends' Objections 1.A, 1.B in its January 9, 2025 Objections and addressed on pp. 31-40 in DLCD Order 001953, and in TRK's Objections 8.A.1, and 8.A.3 in its January 9, 2025 Objections and addressed on pp. 70-73 in DLCD Order 001953, pp. 4-12 of our joint appeal, and pp 11-13 of the Director's Report. Our objection centered around the fact that Metro Council failed to demonstrate a need for a UGB expansion and that the record shows that there is viable land within the existing UGB to support long-term growth for employment and housing in the region.

Exception Issue Two: Consideration of alternative sites

This issue was addressed in Objections 8.A.2, 8.A.3, and 8.B in TRK's January 9, 2025 Objections and addressed on pp. 72-75 in DLCD Order 001953, pp. 12-19 of our joint appeal, and pp. 13-14 of the Director's Report. Our argument centered around the fact that the Metro Council never considered the 27 alternative reserve areas for inclusion in the UGB, and accordingly violated environmental and housing requirements outlined in State Planning Goals and Metro's own Code.



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Exception Issue Three: Determination of housing need

This issue was addressed in Objections 1.C.1 and 1.C.2 in 1000 Friends' January 9, 2025 Objections and addressed on pp. 40-43 in DLCD Order 001953, pp. 19-24 of our joint appeal, and pp. 14-15 of the Director's Report. We argued that Metro Council failed to align the UGB expansion with explicit affordable-housing objectives of Goal 10, Metro's Regional Framework Code Section 1.3, and the Urban Growth Management Functional Plan.

Exception Issue Four: Reduction of carbon pollution and relevance of Climate Smart Communities

This issue was addressed in Objection 1.D in 1000 Friends' January 9, 2025 Objections and addressed on pp. 43-44 in DLCD Order 001953, pp. 24-26 of our joint appeal, and pp. 16 of the Director's Report. We argued that Metro and the City of Sherwood failed to demonstrate how the 1,291-acre UGB expansion reduces carbon pollution, as required by the regionally adopted Climate Smart Communities Strategy and state legislation.

IV. Exceptions

I. The DLCD Director incorrectly finds that Metro Council adequately evaluated reasonable land use measures for accommodating the region's twenty-year housing and employment needs within the existing UGB.

Prior to expanding its UGB, Metro is required to evaluate reasonable land use measures to accommodate the region's twenty-year housing and employment needs within the UGB.¹ The Metro Council found that expanding the UGB to include the Sherwood West urban reserve area will provide sufficient buildable land acreage to meet existing and future housing needs over the next 20 years,² and the Director approved Metro Council's findings. Director's Report pp.13. Sufficient land exists within the current UGB to meet the housing needs for the next 20 years

¹OAR 660-024-0040.

² R. 001191.



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without an expansion, and therefore a UGB expansion to include Sherwood West is unnecessary and unlawful.

In our appeal, we presented three sub-issues relating to Metro’s failure to evaluate reasonable land use measures within the UGB:

(1) Metro failed to consider development potential within the existing city of Sherwood and adjacent lands within the Metro UGB;

(2) Metro failed to consider the city of Portland’s Housing Capacity Analysis, which demonstrated that the city has more than enough additional capacity to meet the 20-year housing need for the entire Metro area; and

(3) Metro ignored evidence that the region has more than enough employment land to meet 20-year land needs within the existing Metro UGB. Director’s Report pp. 11-12.

We note that the Director concedes a legal error by Metro and exceeds the scope of her authority by substituting her own judgement for that of the Metro Council.³ The Director made the following admission: “Metro must demonstrate that its identified need cannot be reasonably accommodated through increasing residential capacity within the existing UGB, the alternative set forth in ORS 197A.350(6)(b).” The Director then goes on to say that “*although Metro’s adopted findings do not directly address this requirement*, the Director reviews the 2024 Urban Growth Report and other information in the record...” *Id.* (Emphasis added). Authorities listed in the previous paragraph demonstrate that the DLCD Director may not substitute her judgement for the responsibilities statutorily assigned to Metro Council. The Metro Council must meet the requirements of ORS 197A.350(6), including an analysis of alternative areas for the UGB expansion, and it failed to do so. The Director cannot simply review the information in the record to remedy this defect. For that reason alone the decision should be remanded to Metro to demonstrate that the regional need cannot be accommodated through increasing residential capacity within the existing UGB.

After assessing each argument, the Director's Report recommended that the commission reject this appeal issue for the reasons outlined below. We disagree with the Director’s

³ DLCD Order 001953 pp. 32.



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recommendation and maintain that the Metro Council failed to demonstrate that viable land does not exist within the current UGB to support long term growth for employment and housing in the region.

1. Sherwood Development Capacity:

Director's Report:

The Director claims that our appeal misunderstands the nature of the decision: a UGB expansion for the entire Portland Metro region, not just Sherwood.⁴ The Director admits that Sherwood may have capacity for additional residential and employment development within the city and that Metro might have capacity in the existing UGB. Director's Report pp. 12. The Director further recognizes that most employment lands can be met within the existing Metro UGB, then concludes that even after counting Sherwood's capacity, Metro found the region still falls about 2,500 homes short of projected needs over 20 years, plus a scarcity of large industrial sites. *Id.* The Director notes that Metro is not allowed by state law to calculate individual sub-regional needs and land inventories for parts of the Metro UGB. *Id.*

Our Exception:

Statewide Planning Goal 14 requires that, prior to expanding the UGB, a local government must demonstrate that estimated needs cannot be reasonably accommodated on land already inside the UGB. OAR 660-024-0050(4). By failing to consider reasonable measures of land use within the existing UGB to meet estimated needs, Metro Council did not comply with Statewide Planning Goal 14. In fact, viable land exists within the current UGB that meets the housing and job needs of the proposed expansion. While the City of Sherwood claims that UGB

⁴ The Director's Report cites to DLCD Order 001953 pp. 70–72: “Metro has already accounted for the developable lands within Sherwood’s portion of the existing UGB in meeting Portland area-wide anticipated needs and there remains a deficit that Metro must address. To put this decision in context, Metro anticipates an additional 315,000 residents in the region by 2044, per the “baseline” estimate. Metro’s housing needs analysis finds that of the 178,000 new dwelling units needed to serve those new residents, 175,530 of those dwelling units can be accommodated within the existing UGB, leaving a deficit of approximately 2,500 dwelling units. R. pp. 1059.



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expansion is needed to support the development of housing and jobs for the next 20 years, a recent vacant lands capacity analysis suggests otherwise. In September 2024, West of Sherwood Farm Alliance conducted a capacity analysis of vacant land in the Sherwood Planning Area, which comprises the land inside of Sherwood’s city limits, along with Brookman Addition area and Tonquin Employment area that had been previously added to the UGB. The analysis compares Sherwood West with Sherwood Planning Area’s vacant lands for meeting the needs of housing and job growth development. According to the analysis, the Sherwood West proposal would result in a 41% expansion of the city’s land area, support 3,117 to 5,582 new expensive low-density homes and apartments and 4,524 new jobs, and lead to a \$58–70 million funding shortfall for infrastructure. Alternatively, the vacant lands within the Sherwood Planning Area could support 4,572 new homes that more closely fit housing needs of the area, 5,526 new jobs, and \$58–70 million taxpayer and ratepayer savings saved on unneeded infrastructure. Additionally, the Sherwood Planning Area vacant lands conserves rather than develops precious farmland, forests, streams, and wildlife. Accordingly, there is viable land within the existing UGB to support long-term growth for employment and housing in the region, and therefore no need exists for a legislative amendment to bring in land to the current UGB.

2. Portland Housing Capacity Analysis:

Portland’s HCA concludes that the city has capacity for 236,977 housing units over the next 20 years,⁵ which is more than enough to meet the 20-year housing need for the entire Metro region, which Metro found was for 176,500 to 180,800 units.⁶

Director’s Report:

The Director found that Metro is not required to incorporate the “assumptions of the city of Portland or any other local government in the Portland Metro area into its buildable lands inventory.” Director's Report pp. 12.⁷ On page 33 of DLCD Order, the Director states that Metro Council is not required to “reconsider the capacity for the 20-year land needs for the region

⁵ Portland Housing Needs Analysis: Executive Summary, 2023, pp.3.

⁶ 2024 urban growth management decision recommendations, August 2024 pp. 13.

⁷ The Director's Report cites to DLCD Order 001953 pp. 32-35.



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based on Portland's Housing Needs Analysis and Housing Production Strategy." The Director goes on to state that neither statute nor administrative rules require that Metro incorporate *locally adopted* Housing Capacity Analyses or Housing Production Strategies in its determination of housing needs or capacity. DLCD Order 001953 pp. 33.

Our Exception:

Metro must take into account Portland's 20-year housing capacity as documented in the city's HCA. When determining land need under OAR 660-024-0040, "the UGB must be based on the appropriate 20-year population forecast for the urban area [...] and must provide for *need housing*, employment, and other urban uses [...] consistent with the land need requirements of Goal 14 and this rule." OAR 660-024-0040(1). Under OAR 660-024-0010(3), "housing need" and "housing need analysis" are defined as a "*local determination* as to the needed amount, types and densities of housing [...]." Therefore, Metro must, in fact, consider local determination of housing needs, and therefore must consider the updated Portland HCA in determining whether the existing UGB is sufficient to accommodate regional housing needs. Further, under Goal 14, "a local government is not permitted to establish an urban growth boundary containing more land than the locality 'needs' for future growth." *City of Salem v. Families For Responsible Govt*, 64 Ore App 238, 243, 668 P2d 395 (1983), rev'd and rem'd on other grounds, 298 Ore 574, 694 P2d 965 (1985).

Employment Lands:

Director's Report:

The Director found that Metro has compiled sufficient evidence to justify the expansion of the UGB for commercial lands, based on an overall deficit of such land within the Portland region. Director's Report pp. 12.⁸ Further, the Director acknowledges that there is a large surplus overall of industrially designated land within the Portland Metro UGB, but claims a shortage of large industrial sites justifies the addition of two 50-acre industrial sites as part of this UGB expansion decision.

⁸ The Director refers to DLCD Order 001953 pp. 35-40 in its response.



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Our Exception:

Statewide Planning Goal 14, statute, and case law prohibit expanding UGBs to add industrial land beyond need. In *1000 Friends of Or. v. Land Conservation & Dev. Comm'n*, 237 Ore. App. 213, 220-221(2010) [Woodburn I], the Court of Appeals concluded that “*LCDC did not adequately explain the reasons* that the [proposed] UGB amendment - which included more industrial land than will be developed during the planning period so that the city could provide for market choice among sites - was consistent with both Goals 9 and 14, therefore its order failed to respond to petitioners' objections and is inadequate for judicial review.” In *1000 Friends of Or. v. Land Conservation & Dev. Comm*, 260 Ore. App. 444 (2014) [Woodburn II], the Court of Appeals again held that LCDC did not adequately explain the reasons that led it to conclude the city's UGB amendment complied with applicable law. The Court argued that LCDC failed to provide substantial reason, which would require, at the least, an explanation of why the process in which a local government engaged *and* the results that it reached are consistent with the law. *Id.* at 460.

Metro has failed to provide substantial reason as to how the UGB amendment complies with Statewide Planning Goal 14. LCDC and Metro are not permitted to establish a UGB that contains more land than the locality ‘needs’ for future growth. *City of Salem v. Families For Responsible Govt*, 64 Ore App 238, 243, 668 P2d 395 (1983). The main question before the Metro Council is whether there is sufficient capacity within the existing UGB to accommodate current and future employment needs. The answer, based on Metro’s own data and private sector reports, is a resounding yes. Metro’s own staff analysis demonstrates a surplus of nearly 3,400 acres for industrial employment uses. Urban Growth Report, August 2024, *Table 19: Industrial land capacity gap for Metro UGB 2024-2044*. While the UGR notes a deficit of 286 acres of commercial lands, Metro’s own analysis suggests that this deficit could be resolved by rezoning surplus industrial land.

What’s more, Metro staff appear to note that the categories between commercial and industrial lands are interchangeable. “Consistent with observed development trends, assume a small portion (about 150 acres) of the region’s industrial land surplus is available for commercial



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employment uses, thereby addressing any remaining commercial capacity gap.” R. 000084. Using that logic consistently, Metro has effectively determined that there is a 3,391 acre-surplus of employment lands and, therefore, does not meet the threshold to expand the UGB. However, in concluding that commercial and industrial lands are interchangeable, Metro failed to provide reasoning in its determination that only 150 of the 286 acres of the commercial land deficit could be repurposed/ rezoned as industrial land. Metro, without any factual basis, concluded that a UGB expansion is required to supply the remaining deficit of 136 acres of commercial land without explaining why it could not be repurposed along with the 150 acres Metro determined could be rezoned as industrial land. A local government cannot attempt to justify land beyond what is allowed by developing very specific needs that only its sites would satisfy.

Accordingly, DLCD’s Order 001953 violates Goal 14 by approving a UGB expansion that includes more industrial lands than will be developed within the 20-year planning period. Metro did not adequately explain why that inclusion is consistent with Statewide Land Use Planning Goal 14.

II. The DLCD Director incorrectly determines that the Metro Council adequately considered alternative sites for inclusion in the UGB. It is the Metro Council, not Metro staff and the DLCD Director, that must consider alternative sites and make a determination. The record clearly demonstrates that Metro Council never considered any alternatives sites, both inside and outside of the current UGB.

1000 Friends and TRK reminds the commission that, because Metro Council has not demonstrated that the land within the existing UGB is insufficient to meet the regional need, Metro Council should not even consider alternative sites. *DLCD v. City of Klamath Falls*, 76 Or LUBA 130 (2017). (A local government complies with Goal 14, and OAR 661-024-0050(4), where it first demonstrates that the need cannot reasonably be accommodated on land already inside the UGB. *Only if* land within the UGB cannot reasonably accommodate the identified need would the local government proceed to consider sites outside the UGB to satisfy the identified need) (Emphasis added). As Metro Council has not met the threshold requirement, they need not consider alternative areas. However, because the Metro Council found a need to expand the UGB, this exception addresses the Council’s lack of alternatives analysis.



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When considering a Metro UGB amendment, Metro Council must determine which land to add by evaluating alternative urban growth boundary locations. OAR 660-024-0060. Metro claims it analyzed all 27 urban reserve areas in the Metro region, set forth in Appendix 7 to the Urban Growth Report. R. 001196. The Director concluded that Metro did adequately analyze all potential UGB expansion areas adjacent to the Portland Metro UGB. Director's Report pp. 14. However, it is the Metro Council, not Metro Staff, who must analyze alternative sites prior to approving a UGB expansion, and the Council failed to do so.

In our appeal, we addressed the following two sub-issues:

(1) Metro staff's alternatives analysis, published in Appendices 7 and 7A ten days after the Council's October 8, 2024 work session, was not considered by the Metro Council during that session or at the November 21 and December 5 public hearings, thus the Metro Council did not meaningfully consider alternative UGB expansion sites; and

(2) The failure to consider UGB expansion alternatives violated Goal 5 and Metro's Titles 3 and 13, as Sherwood West contains extensive floodplains, wetlands, riparian corridors, vegetated buffers, and high-value habitat conservation areas. Director's Report pp. 13–14.

The Director's Report recommended that the commission reject this appeal issue for the reasons outlined below. We disagree with the Director's recommendation and maintain that while the Metro staff considered the 27 urban reserve areas, it is the Metro Council that must consider alternative areas for the UGB expansion proposal and the Council failed to do so. Accordingly, the decision to approve the UGB expansion as a whole cannot comply with Statewide Planning Goals 5, 10, and 14, among others, as well as Metro's Regional Framework Plan, Metro Code Titles 3 and 13, and the Urban Growth Management Functional Plan.

General failure to consider UGB alternative sites:

Director's Report:



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The Director outlines an alternatives analysis conducted by Metro staff, not Metro Council, and set forth in Appendix 7 to the Urban Growth Report.⁹ The Director then goes on to say the Metro Council adopted findings explaining why, after applying the Goal 14 factors and Metro Code factors to all 27 urban reserve areas, *Metro staff* concluded that Sherwood West would be the best area for the UGB expansion. *Id.* R. 925–1036. Finally, the Director states that Metro’s determination of Sherwood West is valid because Metro is afforded deference to how it weighs the analysis factors.¹⁰

Our Exception:

It is the Metro Council, not Metro staff nor the DLCD Director, that is charged with considering alternative measures and sites prior to making a decision on a UGB expansion. According to both the Metro Charter and the Urban Growth Management Function Plan in the Metro Code, the Metro Council exercises all the powers of Metro as its governing body. Section 16 of Chapter IV of the Metro Charter provides that: “The Metro Council is created as the *governing body of Metro*. Except as this charter provides otherwise [...] all Metro powers are *vested in the Council*.” Metro Charter, Chapter IV, Section 16: Metro Council, pp. 7 (Emphasis added). The Metro Charter further establishes that the Metro Council adopts and amend the Regional Framework Plan, which includes adopting and amending the urban growth boundary. Section 5 of Chapter II of the Metro Charter provides that: “The Council shall adopt a regional framework plan [...] The regional framework plan shall address [...] (2) *management and amendment of the urban growth boundary*.” Metro Charter, Chapter II, Section 5, Subsection 2, pp. 2. Finally, the Urban Growth Management Functional Plan in the Metro Code specifies that it is the Metro Council that is given the responsibility for an alternatives analysis, not Metro staff nor the DLCD Director. Metro Code 3.07.1425 states that “(c) If *the Council determines* there is

⁹ The Director's Report distinguishes “Metro” and “Metro Council,” and refers to Metro findings in the record that were conducted by Metro staff. The Director's Report cites to DLCD Order 001953 pp. 60–64, 72–73.

¹⁰ This argument misunderstands our appeal issue. Our argument is that Metro Council, not Metro staff, failed to consider the alternative areas altogether, not that they have chosen to place more weight on one analysis factor than the other. 1000 Friends and TRK do not disagree that Metro *Council* are afforded deference to which analysis factors they give more weight to, so long as all analysis factors are considered. This is inline with LUBA’s conclusion in *Baker v. Marion County*, LUBA No. 92-174 (1993).



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a need to amend the UGB, *the Council shall evaluate* areas designated urban reserve for possible addition to the UGB.

The timeline of Metro’s urban growth management (UGM) decision establishes conclusively that the Metro Council failed to consider Metro staff’s alternative location analysis before approving the Sherwood West Concept Plan. This analysis, provided in Appendix 7 and 7A of the UGR, was published on Metro’s website on October 18, 2024, 10 days after Metro Council’s work session on October 8, 2024. Clearly the alternatives analysis was not presented to Metro Councilors at their work session and alternative sites were not discussed, as these analyses had not been published prior to the work session. Further, minutes from the October 8 work session state that the majority of the Councilors had made an initial determination to approve the Sherwood West UGB expansion without ever evaluating alternative sites: “Council President Peterson summarized that the majority of Council supported introducing an ordinance to bring Sherwood West within the UGB based on a medium growth forecast.” R. 003053. The minutes from the October 8 Metro Council Work Session also suggest that, because the Council had not been presented with the staff’s alternatives analysis, Metro Council’s recommendations to staff for UGB approval conditions were uninformed: “there being no further discussion, Council President Peterson summarized the Council’s recommendations to staff for updating the conditions of approval and moved on to the next agenda item.” R. 003054.

Additional minutes and videos from subsequent Metro Council public hearings reinforce that alternative sites and measures were not discussed by Metro Councilors in its UGB expansion decision. For example, at Metro Council’s November 21, 2024 public hearing, while Appendix 7 and its attachments were a part of the meeting packet, Metro staff did not present any alternative sites for the Council to evaluate nor discuss alternative reasonable measures, and Metro Councilors did not discuss alternative measures. R. 001324–27. Finally, at its final public hearing involving Ordinance No. 24-1520 on December 5, 2024, Metro Councilors failed to discuss alternative sites or measures when it approved the Sherwood West UGB Expansion. R. 001309–11.

Finally, Metro Council’s adopting ordinance affirms that the analysis was conducted by Metro staff, not Metro Council:



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WHEREAS, Metro staff evaluated all land in the region designated as urban reserves for possible addition to the UGB based upon their relative suitability under the Goal 14 locational factors [...]

R. 006. The failure of the Metro Council to discuss alternative sites and measures, along with the fact that Metro staff's alternatives location analysis was published 10 days after Metro Council's working session, call into question whether the Metro Councilors ever evaluated the alternative sites and measures analysis prior to approving the Sherwood UGB expansion. The failure of the Council to evaluate reasonable measures and alternative sites violates state regulations and local codes, and remedial measures are required to rectify these violations. This issue would be easily solved by the Commission, by remanding the decision back to Metro Council to adequately consider alternative areas for the UGB expansion, inside and outside the existing UGB.

Failure to consider environmental impacts in Sherwood West:

Director's Report:

The Director concluded that Metro did adequately analyze all potential UGB expansion areas adjacent to the Portland Metro UGB. Director's Report pp. 14.¹¹ Metro is allowed by Goal 14 to weigh Factor 2, economic provisions, over Factor 3, comparative environmental, energy, economic and social consequences, and therefore Metro is allowed to select Sherwood West despite identifying significant environmental resources within that area.

Our Exception:

The Metro Council failed to reasonably consider alternative areas because they were not given Metro staff's alternatives analysis before approving the Sherwood West Concept Plan. Accordingly, in failing to consider reasonable alternatives, Metro Council violated Statewide Planning Goal 5, and Metro Titles 3 and 13. As both the Director's Report and DLCD Order 001953 fail to adequately demonstrate that Metro Council considered alternative areas for the

¹¹ The Director's Report cites the DLCD Order 001953 pp. 73–75.



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Sherwood UGB expansion, we incorporate the following arguments from our appeal on May 9, 2025.

Title 3 (“Water Quality and Flood Management”) and Title 13 (“Nature In Neighborhoods”) are impliedly at issue in Metro Council’s UGB amendment decision, as there are substantial Title 3 and Title 13 classified natural areas in Sherwood West. By failing to consider alternative sites for UGB expansion, Metro Council failed to follow its own policies on protecting water quality and habitat conservation as required in Metro Code Titles 3 and 13, specifically Metro Code 3.07.340(d)(3)(D)(i) and 3.07.1340(b).

Firstly, Title 3 flood hazard areas and wetlands surround Chicken Creek, which runs through the heart of the proposed expansion area. Title 3’s stated purpose is to protect the beneficial water uses and functions of resources within the Water Quality and Flood Management Areas. Title 3 Water Quality and Flood Management Areas consist of:

- Flood hazard areas (e.g., FEMA “100-year” floodplains and 1996 flood inundation areas);
- Wetlands (e.g., from an enhanced National Wetlands Inventory and local wetlands inventories);
- Wetland areas, measured 50 feet from the edge of a wetland or up to 200 feet from the edge of wetland located adjacent to slopes greater than 25 percent; and
- Vegetated corridors between 15 feet and 200 feet in width, depending on the area drained by the water feature and the slope of the land adjacent to the water feature. R. 000331.

Title 3 Water Quality and Flood Management areas exist within Sherwood West. First, there is a defined 100-year floodplain for a portion of Chicken Creek within Sherwood West. R. 007141. Additionally, there are 31 acres of wetlands within Sherwood West, mapped by the National Wetland and Metro’s inventories. R. 007141. These wetlands are most prominently found along the riparian corridor of Chicken Creek and the headwaters of Goose Creek, and additional wetland areas are likely to exist within the project area. R. 007141.



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In failing to consider practicable alternatives for the UGB expansion, Metro Council violated Title 3.07.340(d)(3)(D)(i). Under Title 3.07.340, “[a]dditions [...] and development in the Water Quality and Flood Management Area may be allowed provided that: [...] (D) [i]n determining appropriate conditions of approval, the [applicant must]: (i) [d]emonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed.” TRK recommends that DLCDD remand the UGB amendment to Metro Council to consider alternative sites that would have less impact on Title 3 Water Quality Resource Areas.

Statewide Planning Goal 5 serves to protect natural resources and conserve scenic and historic areas and open spaces. These resources promote a healthy environment and contribute to Oregon's livability. Goal 5 tasks local governments with adopting programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. Statewide Planning Goal 5 requires inventory of the following resources: riparian corridors, including water and riparian areas and fish habitat; wetlands; wildlife habitat; and federal wild and scenic rivers. In this case, Goal 5 is locally implemented via Metro Title 13 (Nature in Neighborhoods). R. 006552, 006740, 006795.

Sherwood West contains substantial Title 13 areas designated as high value Habitat Conservation Areas (HCAs), which include rivers, streams, wetlands, and adjacent resource areas. Metro Title 13 establishes baseline requirements to protect, conserve, and restore the region's significant riparian corridors and wildlife habitat resources, which are Habitat HCAs. Metro Code 3.07.1310. HCAs include rivers, streams, wetlands, and adjacent resource areas, as well as upland wildlife habitat areas. Metro Code 3.07.1310. According to the Sherwood West Concept Plan, the mapping of Title 13 habitat areas will be further refined and protections will be established as part of the comprehensive planning for Sherwood West once it is brought into the UGB. R. 007141.

Metro Title 13 habitats are present in Sherwood West. R. 006262, 007156; R. 006248, 007142. What's more, Metro's own MetroMap demonstrates a substantial amount of high value Title 13 HCAs in Sherwood West, particularly alongside Chicken Creek, which are also subject to Statewide Planning Goal 5. Under Title 13, HCAs are subject to performance standards and



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best management practices outlined in Metro Code 3.07.1340. Additionally, HCA maps identify which areas will be subject to habitat conservation as part of Metro Council's Title 14 consideration of ESEE consequences. Metro Code 3.07.1320(b).

Metro Code 3.07.1340(b) further provides that:

City and County comprehensive plans and implementing ordinances shall contain review standards applicable to development in all [HCAs] that [contain standards that meet the requirements of other sections of Metro Title 13. This includes]:

(A) Avoid Habitat Conservation Areas:

- (i) Development may occur within a [HCA] only [if it is demonstrated] that *no practicable alternatives* to the requested development exist which will not disturb the [HCA];
- (ii) When implementing this requirement to determine whether a practicable alternative exists, cities and counties shall include consideration of the type of [HCA] that will be affected by the proposed development. For example, *High Habitat Conservation Areas* have been so designated because they are areas that have been identified as having *lower urban development value and higher-valued habitat*. (emphasis added).

Bringing Sherwood West into the existing UGB without considering practicable alternative sites violates Metro Code 3.07.1340(b) and Goal 5. Further, failing to consider alternatives that would be less ecologically impactful violates Metro's own policies that establish baseline requirements to protect, conserve, and restore Washington County's Title 13/ Goal 5 riparian corridors and wildlife habitat resources.

Case law demonstrates that the UGB expansion would also violate Title 13's "roll back" provisions relating to upland wildlife habitat protection. In *Metro v. City of Lake Oswego*, LUBA No. 2021-062, Metro argued that the City of Lake Oswego violated Title 13's "roll back"



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provision when it sought to remove a tree grove protected by components of the City’s Goal 5 program and, later, by corresponding Metro’s Title 13 upland wildlife habitat map. The “roll back” provision, codified at MC 3.07.1330(A)(2), provides that a city or county “shall not repeal...nor shall it amend” “any comprehensive plan amendments or land use regulations” instituted to meet Goal 5 requirements “in a manner that would allow any more than a de minimis increase in the amount of development that could occur in areas identified as upland wildlife habitat.” The court (court? LUBA?) acknowledged “That the meaning of the term *de minimis* is admittedly somewhat subjective” *Id. at 15*, but “If the additional development of Metro’s inventoried upland wildlife habitat that is made possible by removing the RC overlay from TG-13 [tree grove at issue] is ‘trifling’ or ‘so insignificant that it may be overlooked’ that additional development is *de minimis*.” *Id. at 15*. In other words, Title 13 prevents a city or county’s repeal or amendment of Goal 5 program components that protect habitat values is only permitted if the impact is “trifling” or “so insignificant that it may be overlooked.”

LUBA further clarified that the “...correct inquiry is whether the ‘increase in the amount of development’ that ‘could occur’ in areas identified as upland wildlife habitat is more than *de minimis*, not whether the increase in the amount of development is ‘likely to occur’ in areas identified as upland wildlife habitat is more than *de minimis*.” (p. 15)

When the determinations of this case are applied to the Sherwood West UGB expansion area, it is clear that the proposed amendments to the Metro-identified upland wildlife habitat areas are significantly more than *de minimis*. Sherwood West contains many HCAs and by Metro’s own arguments in *Metro v. Lake Oswego*, repealing or amending the Goal 5 protections for these areas to allow for new development would violate the Title 13 “roll back” provision.

What’s more, Metro Council must consider the high value of the HCAs in its determination of its adequacy for a boundary location. Under Statewide Planning Goal 14 (Urbanization), there are four factors that must be considered to determine the location of, and changes to, a UGB:

Factor 1 – Efficient accommodation of identified land needs

Factor 2 – Orderly and economic provision of public facilities and services



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Factor 3 – Comparative environmental, energy, economic and social consequences

Factor 4 – Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB. R. 329, 1195–96.

While Metro is free to give more weight to certain factors, it must consider all factors. Factor 3 requires an assessment of long-term environmental, social, energy, and economic (ESEE) consequences that could result from urbanization of land considered for inclusion within the UGB. R. 000339. Metro’s staff alternative location analysis, provided in Appendix 7 and 7A of the UGR and published after Metro Council’s work session on October 8, 2024, contained an ESEE analysis of Sherwood West. R. 733–734. In this analysis of environmental consequences, Metro staff assigned Sherwood West “medium-high.” R. 000734. Notably, the analysis mentions several times the potential for significant impacts on habitat areas if new road crossings were to be built:

- “[I]f new road crossings were to be built through the habitat areas, then the impacts could be significant;
- The stream corridor has associated inventoried habitat areas, which may be impacted by urbanization, particularly new street crossings serving development in the area
- If numerous and/or sizable road crossings are constructed to serve new development, then the impacts to natural resources could be more significant.” R. 000733–734.

Metro Staff acknowledges potential significant impacts of building a new road through Metro designated Title 13 high value HCAs in its ESEE analysis. R. 000733–34. Pursuant to Metro Code 3.07.1340, high value HCAs are subject to performance standards and best management practices. R. 000015. What’s more, Sherwood’s Comprehensive Plan contains a list of methods in which the water quality of Chicken Creek, and other tributaries, is to be protected: construction site sediment control; storm sewer design and location; regulation of floodplain alterations; adoption of the regional Storm Water management plan; establish buffers between development and the designated wetlands; acquire through dedication at the time of development, or through purchase, all wetlands and floodplains; maintain or reduce stream temperatures; maintain natural stream corridors; and minimize erosion, nutrient and pollutant loading into water. Supplemental R. (3/22/25) D at 3. If Sherwood West is brought into the UGB,



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Metro and LCDC must ensure that performance standards, best management practices, and habitat friendly development practices are enforced.

III. The DLCD Director incorrectly states that Metro is not required to incorporate locally adopted analyses to determine housing need or capacity of the UGB.

The purpose of Goal 10, in part, is to “promote safe, accessible, and affordable housing options for all Oregonians in their communities of choice, in alignment with the Affirmatively Furthering Fair Housing mandate.” OAR 660-008-0000(1). Metro claims that it considers affordable housing in its larger analysis of 20-year housing need because it considers “needed housing,” and affordable housing is a type of housing represented under this. R. 001191. According to Metro, addressing the need for more specific types of housing only become relevant when cities and counties adopt their own HNAs. *Id.* The Director agrees with Metro’s analysis. Director Report pp. 15. We disagree with the Director’s and maintain that Metro and LCDC must ensure that the UGB expansion proposal meets Goal 10 requirements prior to approval. LCDC, Metro, and the City of Sherwood cannot defer important requirements related to affordability to after the decision is approved.

Our appeal addressed the following two-sub issues:

(1) Metro’s decision conflicts with both Metro’s and Oregon’s affordable-housing mandates because Sherwood and Metro failed to use updated Oregon Housing Needs Analysis (OHNA) figures, relying instead on individual and disparate determinations of housing needs; and

(2) the UGB expansion fails to guarantee a full spectrum of affordable housing. The Director’s Report ultimately recommended that the commission reject the appeal issue for the reasons below.

1. Affordable Housing Mandates & Guarantee

Director’s Report:



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Metro completed this decision in 2024; Sherwood completed its HNA in 2019, prior to the issuance of OHNA final projects on January 1, 2025. The Director concludes that neither could have been expected to incorporate those numbers into its analysis. Director's Report pp.15.¹² The Director further notes that Metro is not required to incorporate assumptions of any other local government in the Portland Metro area, including the City of Sherwood into its BLI or HNA. *Id.*

2. Affordable Housing Guarantees

Director's Report:

The Director concluded that Metro's conditions of approval in its decision, in part requiring Sherwood to work to meet housing affordability targets, sufficiently demonstrates Metro's proactive approach to providing a range of housing types in this UGB expansion area, including agricultural workforce housing as a subset of affordable housing needs for lower-income individuals.¹³ The Director further notes that it is the City of Sherwood's responsibility to demonstrate compliance with housing supply and affordability requirements. Director's Report pp. 15.

Our Exception:

Metro defers the responsibility of meeting Goal 10 requirements related to affordability to the City of Sherwood, once a UGB expansion is approved. This is legally impermissible. If Metro Council had applied Goal 10 properly at the time, the decision would likely have been entirely different. Instead, Metro's condition of approval essentially kicks the can down to the City of Sherwood to meet housing affordability targets, instead of demonstrating that the expansion proposal meets affordability requirements prior to approving the UGB decision.

Various legal decisions demonstrate that LCDC, Metro, and the City of Sherwood cannot defer Goal compliance to the future; they must demonstrate that compliance is currently met. In

¹² The Director's Report cites to DLCD Order 001953 pp. 40-43.

¹³ The Director's Report cites to DLCD Order 001953 pp. 42-43.



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Collins v. LCDC, petitioners sought review of an LCDC acknowledgment order declaring that the City of Jacksonville’s comprehensive plan and land use regulations were in compliance with LCDC’s Statewide Planning Goals. 75 Or App. 517, 519 (1985). The Court of Appeals determined that Goal 5 had not been met, in part because LCDC and the City delegated responsibility to the Historical Architectural Review Commission (HARC) to show future compliance with the Goal. *Id.* The Court determined that “the city merely assigned any problem [identifying conflicting uses pursuant to Goal 5] to HARC,” and that “the city itself is required to identify existing conflicts, and if none exist, to preserve the resource. *Id.* at 522. As applicable here, Sherwood, the Metro Council and LCDC cannot substitute a promise of future compliance with Goal 10 for compliance with Goal 10 in approving the UGB expansion. We adopt appellant HLA’s arguments relating to Goal 10 housing affordability.

IV. The DLCD Director incorrectly finds that the Greenhouse Gas Emissions Reduction Target (OAR 660-044-0020) is not an applicable review standard for this UGB expansion proposal.

Director’s Report:

The Director cites to DLCD Order 001953 pp. 44. The Director concludes that Metro has met its obligations to show that, even with a UGB expansion, Metro complies with its Greenhouse Gas Emissions Reduction Target pursuant to OAR 660-044-0020. The Director further concludes that it is not an applicable review standard and thus would not provide a basis for remand. Director’s Report pp.16.

Our Exception:

The Director fails to support its conclusion that OAR 660-044-0020 is not an applicable review standard in both the DLCD Order and the Director’s Report. Under OAR 660-044-0020(1), Metro is required to use greenhouse gas emissions reduction targets in the rule as it develops two or more alternative land use and transportation scenarios that accommodate planned population and employment growth while achieving a reduction in greenhouse gas emissions. The greenhouse gas emissions reduction target is a 20 percent reduction in the year



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2035.¹⁴ Without further explanation, we assume that OAR 660-044-0020 is an applicable review standard and we maintain our position in our appeal of DLCD Order 001953. We are not aware of an analysis done by Metro or City of Sherwood staff to determine if this expansion proposal demonstrates how the 1,291-acre UGB expansion reduces carbon pollution required by Metro's Climate Smart Strategy, the state's greenhouse gas emission reduction targets, or the goals outlined in the Climate Friendly Equitable Communities rulemaking. In summary, Metro Ordinance No. 24-1520 fails to provide transportation choices for future residents of this area by failing to plan for more connected, dense, and complete communities. Without plans or funding to connect the expansion area to public transit, it is reasonable to conclude the UGB expansion encourages, and arguably requires, an automobile-dependent lifestyle, for residents to enjoy Sherwood and the surrounding region. This not only limits the opportunities of residents who call Sherwood home, but also limits the ages, abilities, and income levels of who is able to live in Sherwood by effectively requiring car ownership upon residency.

This also threatens the ability of Metro and the City of Sherwood to meet carbon pollution reduction targets outlined in Metro's Climate Smart Strategy and OAR 664-004-0200. Maybe more importantly for everyday Oregonians, effective carbon pollution reduction strategies bring co-benefits: more compact, walkable, and rollable centers and corridors guide conservation and development investments in ways that create more livable, affordable, and vibrant communities for residents and visitors alike. This UGB expansion would continue to bring added costs to the daily lives of residents, ranging from costs to build and maintain the roads, lighting, sewer and water pipes, and emergency services.

V. CONCLUSION

For the reasons outlined in these Exceptions, 1000 Friends and TRK urge LCDC to remand the UGB decision back to the Metro Council to, among other things:

- (1) consider the full range of alternative measures and areas, that in combination will best meet regional needs for land for housing for all income levels and for jobs, as required by Oregon's and Metro's laws, goals, policies, rules and regulations;

¹⁴ OAR 660-044-0020(3). OAR 660-044-0020(4) lists targets for the years 2040 through 2050.



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-
- (2) incorporate updated numbers finalized through the OHNA process for regional totals and for the City of Sherwood to update its HNA and HPS;
 - (3) Incorporate the updated numbers finalized through the OHNA process or regional totals for agricultural housing needs and for the City of Sherwood to update its HNA and HPS with specific agricultural housing needs and strategies to meet those needs; and
 - (4) Analyze the carbon pollution increase resulting from the current UGB expansion and concept plans submitted by the City of Sherwood.

We preserve all arguments raised in our objections and appeal that were not addressed in the Director's Report and therefore not discussed in these Exceptions. Thank you for the opportunity to make our case before the commission. We look forward to your decision on these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Eve Goldman".

Eve Goldman (she/her)
Staff Attorney, Oregon Bar No. 244201
1000 Friends of Oregon
eve@friends.org

A handwritten signature in black ink, appearing to read "KJ Shaw Nakama".

Kelsey Shaw Nakama (she/her)
Policy and Advocacy Director
Tualatin Riverkeepers
kelsey@tualatinriverkeepers.org

Barbara Bateman, Director
 Oregon Department of Land Conservation and Development
 635 Capitol Street Northeast Suite 150
 Salem, Oregon 97310

Via Email : September 12, 2025

Re: Exceptions to Directors Report on Appeal of the Director's affirmation of Metro Council Ordinance 24-1520, the Sherwood Urban Growth Boundary Amendment

Dear Ms. Bateman,

This correspondence is an “exception” to my appeal issues rejected on technical procedural grounds.

In your report you have rejected several of my objections because they failed to specify a violation of particular provisions of the Goals, rules or statutes.

I am participating in this proceeding as a volunteer, as a concerned citizen and without legal training but with extensive local government experience in Oregon's land use laws and programs. For example, during my 40-year career I have worked on and managed many acknowledged comprehensive plans in both urban and rural parts of the state. This includes work in the Portland Metro area on several urban growth boundary (UGB) related decisions. Most likely a similar level of experience can be said of you and members of the staff that prepared the responses to my objections and appeals. In essence, they, like me, have lots of experience with the relevant authorities.

My objections and appeal issues are based on my decades of doing land use planning and public administration in Oregon, and in this case more specifically:

- Understanding how local comprehensive planning should be done – the logical sequence, the information required and an understanding of alternatives analysis;
- Examining the details of the work done by local governments and their consultants in determining infrastructure and other public services, what those costs are, how they will be funded and the nature of consequent development;
- Understanding market-related real estate development patterns and their implications for housing affordability, transportation access and the efficient or inefficient use of land; and thus
- How the above and related factors address or conversely, do not address, the stated the goals of the state and Portland Metro region.

I find it hard to understand or believe that your staff does not know or understand the relevance my objections have pursuant to the statewide planning goals; such as Goal 1 when I discuss

citizen involvement or Goals 10, 11, 12 and 14 related to our state's policies on accommodating critical housing needs and compact, efficient growth in general.

The Sherwood West UGB , as proposed, is specifically inconsistent with state and metro goals and policies. This is because of the area's projected very low yield of developable land combined with an overall extraordinary high cost of new public facilities and services. These factors and others will most likely result in a predominantly auto-dependent development pattern of mostly high value, single – family homes. In other words, private developers will have to build high-value lower density housing to make a profit. Fundamentally, high infrastructure and related costs reduce the feasibility of providing low- and moderate-income housing at a density necessary to also accommodate transit, accessible goods and services and jobs. Therefore, it is essential to weigh the lost regional and state-wide opportunities of leveraging an estimated \$472 million of public and private investment to expand the UGB in this location and in the manner proposed.

From this perspective what is most obvious about the Sherwood West UGB proposal is that it has the characteristics of a real estate development plan rather than a “comprehensive community plan”. The core difference between the two is one is oriented to a specific development type, product and client while the other is generally guided by state and regional planning goals and the needs of whole community

My allies in this appeal have passed along the following cases they think should overcome your rejections about the validity of the appeal, I am copying them here, as a formality:

In *Boldt v. Clackamas County*, 107 Or App 619, 623, 813 P2d 1078 (1991) the Court of Appeals “requires no more than fair notice to adjudicators and opponents, rather than the particularity that inheres in judicial preservation concepts.” *Boldt* was recently affirmed by the Court of Appeals in *The Confederated Tribes of the Warm Springs Reservation of Oregon v. Deschutes County (Thornburgh)*, 332 Or App 361, 385 (2024). “In *Thornburgh*, the court of appeals reiterated the *Boldt* standard: “[t]he standard for preservation of an issue for review before LUBA ‘requires no more than fair notice to adjudicators and opponents, rather than the particularity that inheres in judicial preservation concepts.’” *Thornburgh*, 332 Or App 361 at 385.

I will leave the recitations of the array of legal authorities to the lawyers on both sides who are much better equipped for this kind of contest.

I think the information I have prepared on those subjects will be valuable to the Commission in helping it make the right decision. The essential question is, “Does it serve the public interest prevent them from hearing me out based on these technicalities?”

Exception to the Director's rejection of my valid objections and appeal issues

With respect to the objections which the Director found valid, I understand why the Director and staff may feel compelled to defend Metro's decision and Sherwood's proposal but the responses were not satisfying and I stand by my objections and appeal issues.

With great respect for the Commission and my current and former colleagues in the planning profession, I remain:

Respectfully yours,

Ron Bunch
2215 SE Lincoln Street
Portland, Oregon 97214

Copy Roger Alfred, Senior Assistant Attorney – Portland Metro Regional Government
 Steve Shipsey, Oregon Department of Justice
 Eric Rutledge, Community Development Director
 Laura Kelly, DLCD Portland Metro Area Representative

File: bunch objections ldc sherwood appeals



September 12, 2025

BY EMAIL (Gordon.Howard@dlcd.oregon.gov, denise.johnson@dlcd.oregon.gov,
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Re: Appeal of DLCD Order #001953: Approval of Metro Ordinance 24-1520,
Amending the Metro Regional UGB in the Sherwood West Planning Area –
Exceptions to Director's Report

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

I represent Housing Land Advocates. This letter is submitted on behalf of Housing Land Advocates ("HLA"), a nonprofit organization that advocates for land use policies and practices that ensure an adequate and appropriate supply of affordable housing for all Oregonians.

HLA filed valid objections to Metro Ordinance 24-1520 (the "Ordinance") and subsequently appealed the Department of Land Conservation and Development's ("DLCD") Order #001953, approving Metro Ordinance 24-1520. In response to HLA's appeal and others, DLCD issued a Director's Report, dated September 2, 2025. Pursuant to OAR 660-025-0160(5), HLA submits the following exceptions to the Director's Report within 10 days of the issuance of the Report. In addition to the issues noted herein, HLA renews all arguments raised in HLA's original appeal, including arguments previously cross-adopted from 1000 Friends of Oregon and West of Sherwood Farm Alliance.

I. INTRODUCTION

The Ordinance on the whole does not comply with Statewide Land Use Planning Goal 10: Housing ("Goal 10") because the Ordinance does not conform with and works against housing choice and affordability and Affirmatively Furthering Fair Housing ("AFFH"), which are central purposes of Goal 10.¹ OAR 660-008-0000(1) (stating, "this division aims to promote safe, accessible, and affordable housing options for all Oregonians in their communities of choice, in alignment with the Affirmatively Furthering Fair Housing mandate").

¹ For issues concerning compliance with applicable laws, the Commission must determine whether the Ordinance on the whole complies with the statewide land use planning goals. ORS 197.633(3)(c). "Compliance with the goals" means the Ordinance on the whole conforms with the purposes of the goals. ORS 197.633(3)(c); ORS 197.627.

Pursuant to Goal 10, the City of Sherwood (the “City” or “Sherwood”) will, in 2028, be required to adopt a Housing Production Strategy (“HPS”) including specific actions which promote: (a) The development of needed housing; (b) The development of diverse and affordable housing types; (c) Housing with access to economic opportunities, services, and amenities; and (d) AFFH. ORS 197A.100(2).

Yet, now, Sherwood attempts to address the City’s housing obligations through this Urban Growth Boundary (“UGB”) expansion, which will cluster middle housing at the edge of the City, away from access to economic opportunities, services, and amenities, and without any guarantees as to affordability. Rec. 7095. This is proposed without any upzoning or densification within Sherwood’s existing UGB, which the City has long avoided. As a result, the City’s practice and pattern of all-but excluding affordable housing from within the UGB is reinforced.

The Ordinance, and the Director’s Decision and Report, would have the Commission defer compliance with Goal 10 until Sherwood’s adoption of the City’s HPS. However, at the same time, the Ordinance enables the City to undertake a housing production strategy which would not be allowed as a part of the City’s HPS because the strategy does not promote housing choice and affordability or AFFH. Most importantly, the Ordinance effectively insulates an action which is not in conformance with Goal 10 from land use review and legal challenge because the City’s future HPS is not a land use decision and is not appealable by the public through the land use process. ORS 197A.100(7); ORS 197A.103.

II. EXCEPTION 1: Housing Choice and Affordability.

This was Objection No. 1 in HLA’s January 9, 2025, objection letter and is addressed on pp. 54-56 of DLCD Order #001953, pp. 3-4 of HLA’s May 9, 2025, appeal letter, and pp. 21-22 of the Director’s Report. HLA’s objection concerned the Goal 10 requirement 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). In particular, HLA objected to the failure of the Ordinance to promote housing choice.

In response, the Director’s Report states that “allowing for a variety of housing types in the Sherwood West urban reserve will result in more housing choice by providing more opportunities for people to live in more areas, not to the exclusion of other areas within the existing UGB.” Director’s Report, p. 22. This is an unsupported, conclusory statement.

HLA disagrees that selectively concentrating middle housing in Sherwood West will result in more housing choice. Fair housing choice includes the choice to live in areas with access to opportunity and in integrated areas. OAR 660-008-0005(18). Fair housing choice must also be actual, meaning the existence of realistic housing options – options that are affordable, attainable, accessible, and otherwise meet the needs of the household in the housing types, characteristics, and locations of their choice. OAR 660-008-0005(18)(b). Sherwood West is isolated from transit, existing services, and a diversity of employment opportunities. Rec. 7576, 6171. Additionally, as

discussed below, the Ordinance provides no certainty that the housing in Sherwood West will be affordable.

Further, HLA objected to the failure of the Ordinance to promote housing affordability. HLA agrees with the Director's Report and Metro that "new market-rate housing alone will not meet low-income needs and that other interventions are required." Director's Report, p. 22; Rec. 1190. That is why HLA also objected to the Ordinance's weak affordability condition of approval ("Condition 2"), which is Exhibit B to the Ordinance. HLA argued that Condition 2 is neither measurable nor enforceable because Condition 2 does not actually commit the City to adopt any strategies or incentives to encourage the production of affordable housing.

In response, the Director's Report states that, "Metro Ordinance 24-1520, Exhibit B imposes affordability targets on Sherwood and mandates annual reporting on compliance and development status for six years." Director's Report, p. 22.

HLA takes exception to this statement, which is inaccurate. Condition 2 does not impose affordability targets; rather, Condition 2 requires that, "As part of its upcoming work on a Housing Production Strategy, the City of Sherwood *shall work with Metro and Washington County to identify funding opportunities with the goal of meeting citywide housing affordability targets to be set by the State of Oregon.*" Rec. 15. While the conditions of approval do require Sherwood to report on compliance with the conditions, to comply with Condition 2, the City must merely "work" to identify funding opportunities, "work" to institute an undefined number or selection of strategies and incentives at a date uncertain, and "explore" the feasibility of regulated affordable housing. Rec.-15.

The Director's Report also states:

"Metro's Conditions of Approval are part of the land use decision, Metro Ordinance 24-1520, and the director considers them in assessing compatibility with Statewide Planning Goal 10. The condition to require the city to take actions in its housing production strategy to ensure affordability is consistent with Goal 10, since the housing production strategy is a critical component of Goal 10 implementation." Director's Report, p. 22.

HLA takes exception to this statement, which again misstates the condition, quoted above. Rec. 15.

Even if Condition 2 did explicitly require Sherwood to include actions in the City's HPS to ensure affordability consistent with Goal 10, the City is already bound to include such actions as a matter of state law. 197A.100(2)(b). Thus, the condition is meaningless. Notwithstanding this simple logic, as HLA has previously pointed out, actions included in Sherwood's HPS in 2028 cannot undo the course of development in the intervening years. In other words, nothing in Sherwood's as-yet-adopted HPS can ensure affordable development in the expansion area.

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III. EXCEPTION 2: Affirmatively Furthering Fair Housing.

This was Objection No. 2 in HLA's January 9, 2025, objection letter, and is addressed on pp. 56-57 of DLCD Order #001953, pp. 5 of HLA's May 9, 2025, appeal letter, and pp. 22-23 of the Director's Report.

HLA's objection concerned the Goal 10 requirement to Affirmatively Further Fair Housing including through: "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..." OAR 660-008-0005(4); ORS 197A.100(9). In particular, HLA objected to the Ordinance's reinforcement of Sherwood's existing patterns of segregation.

In response, the Director's Report states, "Metro lacks statutory authority to enforce AFFH in a UGB amendment and HLA did not identify any basis for Metro's AFFH enforcement power over local governments." Director's Report, p. 23.

The Director's Report misconstrues HLA's argument, which is not that Metro is required to enforce AFFH, but rather that the Ordinance must conform with the purposes of Goal 10, including AFFH. The Commission must assess compliance with the Goals, including Goal 10 and the newly incorporated obligation to AFFH, which is paramount to current land use decisions, including UGB expansions in Oregon.

The Director's Report also states that "HLA does not adequately explain how the UGB expansion would result in or perpetuate segregated living patterns" and "HLA does not provide evidence that Metro's decision impedes AFFH in the city's future housing production strategy." Director's Report, p. 23.

As HLA explained above and previously, the Ordinance perpetuates Sherwood's segregated living patterns because the Ordinance enables Sherwood to continue to avoid upzoning and densification within the City's existing UGB by allowing the City to fulfill its obligation to provide denser, naturally more affordable housing types in the expansion area instead within the already-segregated existing UGB. Income status is recognized as a proxy for protected classes, including but not limited to race, ethnicity, and disability. Lumping the more affordable housing options together and isolating them from the rest of the City amounts to segregatory zoning.

Moreover, HLA submitted evidence showing that low density, single-family housing predominates in the City's core. Rec. 2928. Further, HLA submitted evidence showing that the absence of denser, more affordable housing in the City's core is by design. Notably, in 2018, Sherwood initially considered participating in an out-of-cycle UGB expansion, but as soon as affordable housing was mentioned as part of the expansion goals, the City abandoned its plan to apply. Rec. 2944. Then, in 2021, Sherwood proposed to meet the City's housing obligation through annexations from Brookman and Sherwood West. Rec. 2932-2934.²

² See in particular, Attachments 2 and 3 to that HLA Letter. Rec. 2929-2931; Rec. 2932-2972. LCDC can continue to be complicit in Sherwood's avoidance of its obligations under state housing law, or require meaningful attention to AFFH.

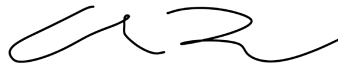
For much the same reason, the Ordinance impedes AFFH in the City's future HPS. The Ordinance allows Sherwood to further entrench this existing pattern of segregation, making it more difficult for the City to affirmatively further fair housing, which requires the City to "replace segregated living patterns with truly integrated and balanced living patterns." ORS 197A.100(9).

Lastly, the Director's Report appears to improperly shift the burden onto HLA to reprove Sherwood's segregatory patterns and practices. HLA raised the issue with specific data available to the public. Yet, neither the City, Metro, nor DLCD have provided any evidence showing that Sherwood's living patterns are integrated. HLA finds this remarkably disappointing after HLA's and the Fair Housing Council of Oregon's efforts to raise awareness of this issue over the last decade, and in light of recent policymaking around AFFH. HLA will continue to push for a better future by requiring compliance with Goal 10 as currently written.

IV. CONCLUSION

For the foregoing reasons, HLA continues to object to the Ordinance and respectfully asks the Commission to remand Metro Ordinance 24-1520 for Metro to wait for and consider alternative concept plan submissions.

Sincerely,



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HATHAWAY LARSON

Koback · Connors · Heth

September 9, 2025

VIA EMAIL (DLCD.PR-UGB@dlcd.oregon.gov)

Anyeley Hallova, Chair
Allan Lazo, Vice Chair
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Re: Appeal of DLCD Director's Decision - Metro's 2024 UGB Amendment
DLCD Order No. 001953
David Marks – Objections to DLCD Staff Report

Dear Commissioners:

I. INTRODUCTION

This firm represents David Marks who owns property in the Stafford area that is part of Metro's urban reserves area. Mr. Marks filed objections (the "Objections") under OAR 660-025-0140 with the Department of the Land Conservation and Development ("DLCD") regarding Metro Council's adoption of Ordinance No 24-1520, which amends the Metro regional Urban Growth Boundary ("UGB"). Pursuant to DLCD Order No. 001953, dated April 18, 2025 (the "DLCD Order"), the DLCD Director deemed the Objections valid under OAR 660-025-0140(2), but she denied all the objections. Mr. Marks filed an appeal of the DLCD Order pursuant to OAR 660-025-0150(6) and OAR 660-025-0160. DLCD's Staff Report, dated September 2, 2025 (the "Staff Report"), acknowledged that Mr. Marks filed a valid appeal but recommended that the Commission deny the appeal. Mr. Marks is filing these objections in response to the Staff Report pursuant to OAR 660-025-0160(5).

The Staff Report takes the same flawed approach as the Director's decision. Although Metro formally adopted an "outcome-based" concept plan approach in 2010 that limits UGB expansions to those areas for which a city provides a concept plan, used this approach for every UGB decision since then, adopted findings that explicitly acknowledge Metro used this approach in 2024 and the

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record demonstrates Metro only seriously considered the Sherwood West concept planned area, staff continues to maintain that Metro did not base its 2024 decision on this outcome-based concept plan approach. Staff doubled down on this point even though LCDC previously acknowledged that Metro “outcome-based” concept plan approach limits Metro’s consideration to urban reserve areas with a concept plan when it reviewed Metro’s 2018 UGB decision.

The Director, DLCD staff and Metro all changed their position on this issue recently because they now recognize Metro’s approach violates Goal 14. In 2018, nobody challenged Metro’s outcome-based concept plan approach so Metro, DLCD and LCDC openly acknowledged that Metro was only willing to consider concept planned areas for inclusion in the UGB. When Mr. Marks successfully appealed LCDC’s denial of his petition for enforcement and directly challenged Metro’s sole reliance on concept plans for its UGB decisions, Metro and DLCD were forced to change their position.

In *Marks v. LCDC*, 327 Or App 708, 712-716, 536 P3d 995 (2023), the Oregon Court of Appeals determined that Metro is prohibited from basing its UGB decision solely on the existence of a concept plan because it violates Goal 14. The Court concluded that Goal 14 requires Metro to: (a) determine the need for expansion based on regional housing and economic needs for the next 20 years; (b) evaluate all the urban reserve areas using the Goal 14 boundary location factors; and (c) determine where to expand the UGB to meet the regional needs based on the Goal 14 boundary location factors. *Id.* at 712-714. The Court determined that Metro cannot base its UGB decision solely on the existence of a concept plan because the Goal 14 boundary location factors do not mention concept plans, let alone allow Metro to rely exclusively on them. *Id.* at 715-716. If Metro identifies a need for additional land in the UGB, it must determine which land to add based solely on the Goal 14 boundary location factors. *Id.* at 725 & 737; OAR 660-024-0060(3). Neither the Director nor staff challenged the fact that *Marks* prohibits Metro from relying solely on the concept plan.

Instead, the Director, staff and Metro now claim the concept plan was merely one of several factors Metro relied on in reaching its 2024 UGB decision despite Metro’s findings and overwhelming evidence to the contrary. The Director and staff take this approach by relying on select findings, while ignoring other more relevant findings and evidence that undermine their claim. This selective and biased approach to reviewing Metro’s 2024 UGB decision is wholly inconsistent with LCDC’s standard of review.

As set forth in ORS 197.633(3), the Commission is required to review Metro’s decision and the substantial evidence as a whole. ORS 197.633(3) imposes the following standards of review:

(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.

* * * * *

(c) For issues concerning compliance with applicable laws, is 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 the comprehensive plan or land use regulations in the manner provided in ORS 197.829 (Board to affirm certain local government interpretations). For purposes of this paragraph, "complies" has the meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.627 (Meaning of "compliance with the goals" for certain purposes). (Emphasis added).

The underlined language emphasizes that the Commission is required to review Metro's decision "on the whole" and the substantial evidence "as a whole," and it may not cherry-pick certain findings and evidence and ignore other relevant findings and evidence. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*, 305 Or 346, 360, 752 P2d 262 (1988). The substantiality of the supporting evidence must be evaluated "by considering all the evidence in the record." *Younger*, 305 Or at 356. (Emphasis added). The Commission "must evaluate evidence against the finding as well as evidence supporting it to determine whether substantial evidence exists to support that finding" and only "[i]f a finding is reasonable in light of countervailing as well as supporting evidence, the finding is supported by substantial evidence." *Garcia v. Boise Cascade Corp.*, 309 Or 292, 295, 787 P2d 884 (1990); *Barkers Five, LLC v. Land Conservation & Dev. Comm'n*, 261 Or App 259, 360–61, 323 P3d 368 (2014).

Applying this standard of review to Metro's 2024 UGB decision, there is no question Metro violated Goal 14 based on its own findings and the substantial evidence in the record. Metro announced upfront that it will only expand the UGB if a city submits a concept plan and imposed a deadline for submission of concept plans. Since the City of Sherwood was the only city to submit a concept plan, Metro spent the vast majority of the UGB process evaluating and refining the Sherwood West area concept plan. The Metro Council provided a public comment period and public hearings, reviewed the Metro staff recommendations and instructed staff to prepare an ordinance expanding the UGB to include the Sherwood West area before either the 20-year housing and economic needs analysis or the Goal 14 boundary location analysis were completed and provided to the Council. The 20-year housing and economic needs analysis and the Goal 14 boundary location analysis did not inform the Metro Council's decision as required by Goal 14, rather the Metro Council's decision to limit the UGB expansion to the Sherwood West concept planned area dictated the outcome of the 20-year housing and economic needs analysis and the Goal 14 boundary location factors analysis. This approach is backward and clearly inconsistent with Goal 14 and *Marks*.

Metro's outcome-based concept plan approach to its six-year UGB expansion review has turned the process on its head. Metro is allowing the cities to dictate when and where the regional UGB expansions will occur, effectively abdicating its authority over UGB expansions to the cities in contravention of the legislature's intent. *Marks v. LCDC*, 327 Or App at 712-713. Allowing local

jurisdictions to dictate when and where the Metro UGB expansion occurs is not only inconsistent with *Marks*, Goal 14, and the implementing statutes and the administrative rules, it is a recipe for disaster that will significantly constrain the Metro region's ability to meet the housing and employment needs for decades to come. The Commission needs to provide leadership on this issue and ensure that Metro complies with the required Goal 14 process and is willing to make the hard decisions necessary to address the difficult housing supply and housing affordability issues plaguing our region.

II. OBJECTIONS TO THE STAFF REPORT

Although the Staff Report did a relatively good job describing Mr. Marks' arguments, it did not necessarily respond to the four (4) discrete appeal issues raised in Mr. Marks' appeal and intermixes the various issues throughout staff's responses. The objections below address each of Mr. Marks' discreet appeal issues and the staff responses to those issues.

A. Appeal Issue 4.A – Goal 14 prohibits Metro from basing its UGB expansion decision solely on the concept plan factor.

Mr. Marks' first appeal issue asserts that Goal 14 and the implementing statutes and administrative rules prohibit Metro from using the concept plan as the sole factor for its 2024 UGB expansion decision. This argument is based on Goal 14 and the recent *Marks* decision.

As previously explained, *Marks* determined that Metro cannot rely exclusively on the concept plan for purposes of its UGB decisions. The Court noted that Goal 14 and the implementing statutes and the administrative rules do not even reference a "concept plan," and certainly do not require a concept plan as a prerequisite to inclusion in the UGB. *Id.* at 714. The Court determined that if Metro identifies a need for additional land in the UGB to accommodate the regional housing and employment needs, it must determine which land to add by evaluating all the urban reserve areas using the Goal 14 boundary location factors. *Id.* at 725. *See also* OAR 660-024-0060(1) & (3). Metro cannot use the concept plan factor to avoid the Goal 14 requirement that it study all urban reserve lands for possible inclusion in the Metro UGB. *Marks*, 327 Or App at 737.

The Staff Report did not challenge this argument or address the *Marks* in any detail. Instead, staff ignored this argument and claimed Metro did not rely solely on the concept plan factor. Although staff did not expressly admit that Goal 14 and *Marks* prohibit Metro from basing its UGB expansion decision solely on the concept plan factor, staff conceded this argument by failing to contest or address it. Therefore, if the Commission concludes that Metro relied solely on the concept plan factor for its 2024 UGB decision, the Commission must grant Mr. Marks' appeal and remand Metro's decision to ensure that Metro conducts a six-year review of the UGB expansion that complies with Goal 14.

B. Appeal Issue 4.B – the Director erred by concluded that Metro did not use the concept plan as the sole factor in determining the 2024 UGB expansion.

Mr. Mark’s second appeal issue asserts that the Director erred in concluding Metro did not rely solely on the concept plan factor for its 2024 UGB expansion decision. The Director admitted that Metro repeatedly stated in the record that it only expands the UGB into areas that have been concept planned and limited the 2024 UGB expansion to the one urban reserve area that had a concept plan, but she dismissed these statements as mere policy statements and not actual requirements:

Marks cites several instances in the record where Metro explains that it only expands the UGB into areas that have been concept planned, and that it requires an area to have a concept plan before it is added to the UGB. Marks objection at 8-9. While these statements are in the record, the director finds that they refer to a “policy” rather than a strict code requirement and that they contradict the actual Metro code in Title 14, which does not require a concept plan. DLCD Order, p.60. (Emphasis added and in original).

The Director concluded that “[w]hile Metro has indicated a strong policy and preference to only add to the UGB areas that have an adopted concept plan, their governing documents allow for UGB expansions in the absence of such concept plans.” DLCD Order, p.61.

The Staff Report takes the same flawed approach as the Director’s decision. Staff claimed that “[a]lthough Metro often states it only expands the UGB into concept-planned areas, these statements reflect policy preference, not a Title 14 code mandate.” Staff Report, p.24. Staff maintained that Metro’s methodology merely gives “decisive weight to concept plans” and that approach has been previously upheld by LCDC and the Oregon Court of Appeals. Staff Report, p.24.

Mr. Marks objects to staff’s response to the second appeal issue because it is inconsistent with Metro’s findings, LCDC’s Order Approving Metro 2018 UGB Amendment and the substantial evidence in the record as a whole. ORS 197.633(3)(a) & (c).

Staff’s claim that Metro did not use the concept plan as the sole factor for its UGB expansion decision is inconsistent with the Metro Council’s own findings. The Metro Council’s findings clearly state that Metro formally adopted an “outcome-based” approach in 2010 that limits UGB expansions to those urban reserve areas for which a local government provides a concept plan prior to Metro’s UGB decision:

In 2010, the Metro Council adopted a policy of taking an outcomes-based approach to future growth management decisions. This policy is based in part on Metro’s experience with prior UGB expansions into areas where there was no existing plan for governance, development, or financing of needed infrastructure; unfortunately, those areas have often failed to develop. The history of Metro UGB expansions over the last 20 years clearly demonstrates that land readiness is more important than land supply

for addressing housing needs and job growth. In order to increase the likelihood that development will actually occur in new UGB expansion areas, Metro now requires advance planning for areas that cities want to annex and urbanize. In 2010, Metro adopted amendments to Title 11 of the Urban Growth Management Functional Plan requiring cities to adopt concept plans for urban reserve areas prior to those areas being added to the UGB. Metro's Findings of Fact and Conclusions of Law (Appendix F) supporting Ordinance No. 24-1520, p.1. (Emphasis added).

These Metro Council findings are corroborated by several other documents in the record. The Draft 2024 Urban Growth Management Decision: Metro Chief Operating Officer/Staff Recommendations, dated August 26, 2024 (the "Draft 2024 Report") states: "For those reasons, in 2010 the Metro Council adopted a policy to only expand the UGB into urban reserve areas that have been concept planned by a local government and that demonstrate readiness to be developed." Draft 2024 Report, p.1. (Emphasis added). The 2024 Urban Growth Report dated December 5, 2024 (the "2024 Urban Growth Report"), further confirmed Metro's new concept plan requirement: "Since 2010, it is the Metro Council's policy to only expand the UGB into urban reserves that have been concept planned by a local jurisdiction." 2024 Urban Growth Report, p.9-10. (Emphasis added). There is no question based on these multiple findings and statements in the record that Metro formally adopted an "outcome-based" approach that limits UGB expansions to those urban reserve areas for which a city provides a concept plan. The Staff Report ignored these findings.

The Metro Council's findings also clearly state that Metro used this concept plan approach for its 2024 UGB decision:

This 2024 UGB decision is the second application of Metro's new approach to UGB expansions. Consistent with the directives of the Task Force and the Metro Council, in 2017 Metro staff created a process where interested cities may submit proposals for UGB expansions. In 2018, four cities submitted proposals; however, in 2024 only the City of Sherwood submitted a concept plan proposal to Metro by the May 31, 2024 deadline. Metro's Findings of Fact and Conclusions of Law (Appendix F) supporting Ordinance No. 24-1520, p.2. (Emphasis added).

These Metro Council findings are corroborated by several other documents in the record. Ordinance No. 24-1520 provides: "WHEREAS, consistent with Metro's approach to regional growth management decisions focusing on city readiness for development, on April 3, 2024, the City of Sherwood submitted a proposal to Metro to add approximately 1,291 acres of land to the UGB in its Sherwood West planning area for housing and employment purposes." Ordinance No. 24-1520, p.1. (Emphasis added). The Draft 2024 Report states:

In the current 2024 UGB cycle, the City of Sherwood is the only city that has prepared a concept plan and proposed a UGB expansion, and they have shown that these elements are in place. * * * * *

Consequently, Metro staff recommend that the Metro Council consider expanding the UGB to include the Sherwood West urban reserve. Draft 2024 Report, p.1-2. (Emphasis added).

The 2024 Urban Growth Report provides: “For the 2024 growth management decision, one city, Sherwood, has proposed a UGB expansion in the Sherwood West urban reserve” and recommended that the Metro Council expand the UGB to include the Sherwood West area. 2024 Urban Growth Report, p.10. Based on these multiple findings, there is no question Metro used this same concept plan approach for its 2024 UGB decision.

Both the Director and staff claimed that Metro merely has a policy preference for concept plans, but they fail to cite any actual findings that support that claim. That is because there are no such findings. Metro did not describe the concept plan requirement as a policy preference, but simply as a requirement. Nor did the Director and staff explain why it matters if it is merely a Metro “policy” – if Metro’s policy is to require a concept plan as a prerequisite to inclusion in the UGB it still violates Goal 14. The Commission must base its decision on the Metro Council’s actual findings, not the Director and staff’s attempts to recharacterize or justify Metro’s approach.

Staff’s claim that Metro did not use the concept plan as the sole factor for its UGB expansion decisions is also inconsistent with LCDC’s Order approving Metro 2018 UGB decision. The Commission already acknowledged that Metro’s concept plan approach limits consideration of UGB expansions to those urban reserve areas for which a local government provides a concept plan. LCDC’s Order approving Metro 2018 UGB decision explained:

Based on feedback from local jurisdictions, community organizations, and state agencies, Metro took a different approach to expanding the UGB, adopting an outcomes-based approach. This approach change by Metro began back in 2010 with adoption of the urban and rural reserves. Metro now requires that concept plans in an urban reserve area be adopted by local governments planning to annex and provide public services to areas covered in the concept plan before consideration for, and potential addition to, the Metro UGB. LCDC’s Order Approving Metro 2018 UGB Amendment (LCDC Order No. 20-001910), p.2-3. (Emphasis added).

The Commission also concluded that Metro’s concept plan approach is a requirement of Metro’s functional plan: “Title 11 of the Urban Growth Management Functional Plan, Planning For New Urban Areas, requires local governments to prepare concept plans for new urban areas with housing prior to inclusion into the UGB and specifies the contents of the concept plans.” LCDC’s Order Approving Metro 2018 UGB Amendment (LCDC Order No. 20-001910), p.10. (Emphasis added).

The Staff Report did not acknowledge this prior LCDC determination or explain why the Commission should change it for purposes of Metro’s 2024 UGB decision. Ironically, staff suggested that LCDC’s

approval of Metro's methodology in 2018 is binding. Staff Report, p.24 & 27. If that is the case, the Commission cannot change its previous determination that Metro's UGB approach requires a concept plan before an area can be considered for inclusion in the UGB. Since no party challenged Metro's sole reliance on the concept plan factor in 2018, which staff acknowledged, the Commission must now evaluate if Metro's sole reliance on the concept plan factor is consistent with Goal 14. Staff Report, p.29. Staff's attempt to recharacterize Metro's methodology is a clear indication that staff recognizes Metro's approach violates Goal 14 based on the *Marks* decision.

Staff's interpretation of Metro's decision is also inconsistent with the substantial evidence in the record. Metro announced up front that it would only consider urban reserve areas with a concept plan and set a deadline of May 31, 2024 for cities to submit concept plans. Ordinance No. 24-1520, p.1; Metro's Findings of Fact and Conclusions of Law (Appendix F) supporting Ordinance No. 24-1520, p.2. Metro spent months and numerous meetings focused solely on the Sherwood West concept plan. Ordinance No. 24-1520, p.1-2. Neither the Metro Council nor staff discussed any other urban reserve area during the public hearings. The Metro Council directed Metro staff to prepare an ordinance to expand the UGB to include the Sherwood West area before either the Goal 14 boundary area locational factor analysis or the 20-year housing and economic needs analysis were completed. Ordinance No. 24-1520, p.2. In both 2018 and 2024, Metro limited its UGB expansion decision to those areas where a city provided a concept plan.¹ This undisputed evidence overwhelmingly demonstrates that Metro relied solely on the concept plan factor for its 2024 UGB decision.

C. Appeal Issue 4.C – the Director erred in concluding that the Metro Council's decision to expand the UGB was based on the Goal 14 boundary location factors.

Mr. Mark's third appeal issue asserts that the Director erred in concluding the Metro Council's UGB decision was based on the Goal 14 boundary location factors. Although the record includes a Goal 14 boundary location factors analysis, it is clear from Metro's findings and the substantial evidence in the record that the Metro Council did not actually base its decision on that analysis. The findings and undisputed evidence in the record demonstrate that Metro spent months focused exclusively on the Sherwood West concept plan and the Metro Council made its decision to limit the UGB expansion to the Sherwood West area before the Goal 14 boundary location factors analysis was completed or provided to the Council.

Staff conceded that the Metro Council directed staff to prepare the ordinance limiting the UGB expansion to the Sherwood West concept planned area before it completed or reviewed the Goal 14 boundary location factors analysis, and never once discussed the Goal 14 analysis during the entire UGB process. Staff Report, p.26 & 28. Nonetheless, staff claimed these facts are immaterial. Staff noted that the Metro Council's decision to approve the Sherwood West concept planned area was a

¹ In 2018, four cities submitted concept plan proposals and Metro limited the UGB expansion to these four concept planned areas. In 2024, the City of Sherwood was the only city to submit a concept plan proposal and Metro limited the UGB expansion to that one concept planned area.

preliminary decision and “councilors remained free to weigh the record anew.” Staff Report, p.28. Staff explained that “[a]lthough the Council’s public hearings did not expressly revisit the Goal 14 analysis or discuss other urban reserves, the record contains no indication that the Metro Council ignored the analysis.” Staff Report, p.26. Staff also claimed that because the Goal 14 boundary location factor analysis was submitted into the record before the Metro Council made its final decision, that fact alone is sufficient to conclude that Metro’s decision was based on the Goal 14 boundary location factors.

Mr. Marks objects to staff’s response to the third appeal issue because it is inconsistent with Metro’s findings, LCDC’s Order Approving Metro 2018 UGB Amendment and substantial evidence in the record as a whole. ORS 197.633(3)(a) & (c).

As explained in Section II.B above, Metro’s own findings and LCDC’s Order Approving Metro 2018 UGB Amendment acknowledge that Metro’s new “outcome-based” approach limits UGB expansions to those urban reserve areas for which a local government provides a concept plan. If Metro limited its consideration to those areas with a concept plan, it is not possible to conclude that Metro based its decision on the Goal 14 boundary location factors. As the Court noted in *Marks*, the Goal 14 boundary location factors do not even reference a “concept plan” and certainly do not permit Metro to rely exclusively on a concept plan. *Marks*, 327 Or App at 714.

Metro’s findings also confirm that the UGB process focused on the Sherwood West concept planned area and the Metro Council approved its inclusion in the UGB before it reviewed the Goal 14 boundary location factors analysis. Metro’s findings provide:

Metro held a 45-day public comment period on the draft UGR from July 9, 2024 through August 22, 2024. After reviewing the draft UGR and the public comments, the Metro COO issued her recommendation on August 26, 2024, recommending that Sherwood West should be added to the UGB with conditions of approval designed to ensure an adequate supply and mix of housing, affordability, and protection of two 50-acre parcels for large-lot industrial use. The COO recommendation was endorsed by MPAC on September 25, 2025, with three additional recommendations from the committee to the Metro Council. After taking testimony regarding the city’s proposals and the COO recommendation at a public hearing on September 26, 2024, the Metro Council held a work session on October 8, 2024, at which time the Metro Council endorsed the COO recommendation regarding adding Sherwood West to the UGB and directed Metro staff to prepare an ordinance and proceed with finalizing the planning and analysis to support expanding the UGB in Sherwood West. Metro’s Findings of Fact and Conclusions of Law (Appendix F) supporting Ordinance No. 24-1520, p.1-2. (Emphasis added).

Staff relied heavily on the fact that the Metro Council must have based its decision on the Goal 14 boundary location factors analysis since that analysis was included in the record, but it ignored the undisputed evidence that Metro completed the analysis at the very end of the process after the Metro

Council had already made its decision. Staff's attempt to dismiss the highly suspicious timing of the completion of the Goal 14 boundary location factors analysis – after the Metro Council reviewed the Sherwood West concept plan proposal and approved it for inclusion in the UGB – impermissibly requires the Commission to ignore relevant findings and evidence.

Metro's explanation for why it waited until the very end of the process to provide the Goal 14 boundary location analysis only adds to the suspicion. Metro claimed it was required to wait until the very end of the process because "the Metro Council had not yet reached a conclusion that there was a regional need for an expansion." Metro's Responses to Objections to Urban Growth Boundary Amendment, dated February 21, 2025, p.8. Metro explained:

The Metro Council did not identify a need for a UGB expansion until after the final public hearing on October 3, 2024. The Goal 14 analysis justifying a UGB expansion based on an identified land need would have been premature for release until after that happened. Metro's Responses to Objections to Urban Growth Boundary Amendment, dated February 21, 2025, p.8. (Emphasis added).

If it was improper for Metro to consider any urban reserve areas until the Metro Council identified a need for a UGB expansion, how could it possibly be proper for Metro Council to spend months focused exclusively on the Sherwood West area and direct staff to prepare the ordinance to expand the UGB to include the Sherwood West area before the need for an UGB expansion was identified? There is no rational explanation for this major discrepancy. Metro is merely trying to cover up the fact that the Metro Council's UGB decision had nothing to do with the Goal 14 boundary location factors analysis. The Goal 14 boundary location factors analysis was a last-minute addition to give the appearance of compliance with Goal 14.

Staff's claim that the Metro Council's October 8 decision to prepare the ordinance to expand the UGB to include the Sherwood West area was "preliminary" and the "councilors remained free to weigh the record anew" is not supported by the record and misses the point. Neither Ordinance No. 24-1520 nor Metro's findings describe the Metro Council's October 8 decision as "preliminary." Additionally, staff's claim begs the question – why would the Metro Council make a preliminary decision to expand the UGB and direct staff to draft an ordinance to that effect before reviewing and considering the Goal 14 boundary location analysis? The Metro Council was required to use the Goal 14 boundary location analysis, and that analysis alone, to determine where to expand the UGB, not merely an afterthought to consider if it wanted to change its "preliminary" decision.

The fact that the Metro Council did not acknowledge the Goal 14 boundary location factors analysis, discuss the analysis, ask questions about the analysis or discuss any of the other urban reserve areas during the entire process, a fact staff conceded, is also highly relevant. Staff Report, p.26. How can the Commission conclude that Metro based its decision on the Goal 14 boundary location factors analysis when it made its decision prior to the completion of the analysis and never once discussed

it? There is nothing in the record to support staff's assumption that the Metro Council made its decision based on the Goal 14 boundary location factors analysis.

Staff's reliance on the fact that Metro issued the Goal 14 boundary location factors analysis before the November 21 and December 5 meetings is misplaced. Neither the November 21 nor the December 5 meeting were public hearings.² Although the November 21 meeting allowed some public testimony, it was not a public hearing, and the testimony was limited to two minutes. The purpose of the November 21 meeting was the Metro Council's first reading of the adoption of Ordinance No. 24-1520. The December 5 meeting was the second reading for Ordinance No. 24-1520 and did not allow for any public testimony. The Metro Council did not discuss or ask a single question about the Goal 14 boundary location factors analysis at either meeting. This evidence clearly demonstrates that the Metro Council had already made its decision and did not rely on the Goal 14 boundary location factors analysis.

Additionally, Ordinance No. 24-1520 clarified that it was Metro staff, not the Metro Council, that evaluated the other urban reserve lands under the Goal 14 boundary location factors. Ordinance No. 24-1520 provides: "Metro staff evaluated all land in the region designated as urban reserves for possible addition to the UGB based upon their relative suitability under the Goal 14 locational factors." Ordinance No. 24-1520, p.2. (Emphasis added). There are no similar findings stating that the Metro Council evaluated the other urban reserve areas under the Goal 14 boundary location factors. Staff's attempt to disregard this finding by claiming that "the record contains no indication that the Metro Council ignored the analysis" is erroneous. Staff Report, p.26. The Commission cannot ignore the Metro Council's findings, which deliberately used the phrase "Metro staff," based on the absence of evidence that the Metro Council ignored the analysis. The absence of evidence is not substantial evidence. Moreover, the Metro Council's decision to direct staff to draft the ordinance before reviewing the Goal 14 boundary location analysis and the Council's complete failure to mention or discuss the analysis is substantial evidence that the Council ignored the Goal 14 boundary location analysis.

The Goal 14 boundary location factors analysis clearly did not inform the Metro Council's decision because the Council made its decision before that analysis was completed and submitted into the record. Instead, Metro staff completed the Goal 14 boundary location factors analysis after the Metro Council's decision to give the appearance of compliance with Goal 14. The Metro Council's decision to limit the UGB expansion to concept planned areas dictated the outcome of the Goal 14 boundary location factors analysis, not the other way around. That approach clearly violated Goal 14.

² As previously noted, Metro identified the October 3, 2024 public hearing as the "final public hearing" for this matter. Metro's Responses to Objections to Urban Growth Boundary Amendment, dated February 21, 2025, p.8.

D. Appeal Issue 4.D – Metro’s housing and employment needs analysis is an outcome-driven determination that is inconsistent with Goal 14 and is not supported by substantial evidence.

Mr. Mark’s fourth appeal issue asserts that Metro erred in its methodology for determining the 20-year housing and economic needs because it used the needs analysis to justify, rather than inform, Metro’s UGB decision. The whole purpose of Metro’s six-year review of the Metro area UGB is to ensure there is a 20-year supply of urban land within the UGB to satisfy the regional housing and employment needs. ORS 197.299; OAR 660-024-0040(1) & (4); *Marks*, 327 Or App at 713. If Metro determines that the land supply is inadequate, it must expand the UGB or take other measures to ensure that the identified need can be accommodated. ORS 197.296(6); ORS 197.299(2); *Marks*, 327 Or App at 713. Therefore, Metro was required to first determine if there is a need for additional urban land within the UGB to satisfy the 20-year housing and employment needs, and if so, determine the best location(s) to expand the UGB to accommodate that need based on the Goal 14 boundary location factors. *Id.*; MC 3.07.1435(b) & (c).

Similar to the Goal 14 boundary location analysis, Metro’s approach to the regional housing and employment needs analysis was backwards. Metro waited until the very end of the process to finalize the regional housing and employment needs analysis and did so after the Metro Council had already made its decision. Metro was forced to adopt a housing and employment needs analysis that justified the Metro Council’s UGB decision because Sherwood West concept planned area is small. Metro’s decision to defer this determination until the end of the process demonstrates that Metro did not understand its Goal 14 UGB obligations.

Mr. Marks explained in his appeal how this backwards approach skewed the results of the housing and employment needs analysis. Metro relied on lower-end growth projections and its “latitude” to assume a need for less housing units to justify its outcome-driven approach. 2024 Urban Growth Report, p.38-39. Metro admitted that the housing capacity gap figures are based on several demand and capacity scenarios that can materially change the results depending on what assumptions are adopted by Metro, but Metro selected a particular scenario without explaining the basis for that selection. 2024 Urban Growth Report, p.39 & 41. Metro’s housing capacity numbers are contradictory and are not supported by substantial evidence. As a result, the housing and employment needs analysis significantly underestimated the needs because Metro had to legitimize the Metro Council’s decision to limit the UGB expansions to the Sherwood West concept planned area.

Mr. Marks was not the only party to raise these concerns and attribute them to Metro’s new outcome-based concept plan approach. Every local jurisdiction that commented on the Draft 2024 Report stated that Metro underestimated the Metro regional housing needs due to its focus on the concept plan requirement. The City of Portland, Clackamas County, Washington County, the City of Gresham, and other local jurisdictions all submitted comments to this effect. The City of Portland specifically noted that Metro’s focus on the Sherwood West concept area is the primary cause of the low estimates:

Metro is narrowly framing this decision as to whether or not the Sherwood West expansion area should be brought into the UGB. The UGB has broader implications for the region in terms of how we expect to grow in a way that is equitable and meets other regional goals, such as reducing carbon emissions. Draft 2024 Urban Growth Report Public Comment Report, dated August 2024, p.104. (Emphasis in original).

Surprisingly, Metro ignored these local jurisdiction comments and concerns. The Metro Council's decision and supporting documents do not acknowledge or respond to any of these local jurisdiction's comments.

Metro's manipulation of the housing and employment needs analysis to legitimize its outcome-based concept plan approach is evident from the 2018 and 2024 results. In both 2018 and 2024, Metro determined that the cities' concept plan proposals just so happen to provide the exact number of additional housing units needed to satisfy the regional housing needs over the next 20 years. In 2018, the four cities submitted concept plans that provided for 6,100 single-family housing units and Metro determined there is "an anticipated gap of 6,100 single-family units that cannot be accommodated within the current UGB." LCDC's Order Approving Metro 2018 UGB Amendment (LCDC Order No. 20-001910), p.17-18. In 2024, the City of Sherwood submitted a concept plan that provided for 3,100 housing units and Metro determined there is "a regional capacity deficit for single unit detached and middle housing that totals approximately 3,100 units." Metro's Findings of Fact and Conclusions of Law (Appendix F) supporting Ordinance No. 24-1520, p.10. In both cases, Metro adopted the housing needs analysis after it extensively reviewed, refined and approved the cities' concept plans. It is either a statistical anomaly or a clear indication that Metro's housing needs analysis is an outcome-driven determination that in both cases the amount of housing proposed by the cities' concept plans just so happened to supply the exact number of new housing units necessary to accommodate the Metro regional housing needs over the next 20 years. Considering all the evidence in the record, it is clearly the latter.

The Staff Report ignored these discrepancies and simply regurgitated Metro's rationale for the housing and employment needs analysis. Staff Report, p.29-30. Staff did not respond to these discrepancies because they are too difficult to explain away. With respect to the suspicious timing of the housing and employment needs analysis, the only discrepancy staff addressed, staff stated that the "concurrent adoption of the needs analysis and the UGB amendment is lawful, and in fact, required." Staff Report, p.30. To be clear, the problem was not Metro's concurrent adoption of the needs analysis and the UGB amendment. The problem was the Metro Council's decision to expand the UGB to include the Sherwood West concept planned area before Metro finalized the housing and employment needs analysis and determined the 20-year need for additional housing.

III. CONCLUSION

Metro's whole approach to this six-year UGB expansion review has turned the process on its head. The Oregon legislature granted Metro the authority to administer the regional UGB because it "required Metro's unique regional perspective, rather than leaving adoption and administration of the UGB to the large number of cities and counties making up the metropolitan area." *Marks*, 327 Or App at 712-713. Metro's approach is the opposite of that legislative directive and process. Metro is allowing the local jurisdictions to dictate when and where the regional UGB expansions will occur, effectively abdicating its authority over UGB expansions to the cities in contravention of the legislature's intent.

Not only is Metro's approach to this UGB expansion process inconsistent with *Marks*, Goal 14, and the implementing statutes and administrative rules, but it will exacerbate the current housing crisis in the Metro region. The Metro region clearly does not have a sufficient housing supply, and many residents are priced out of the market. That trend will only worsen over time. LCDC needs to provide leadership on this issue and ensure that Metro complies with the required Goal 14 process and is willing to make the hard decisions necessary to address the difficult housing supply and housing affordability issues plaguing our region. The first step in doing so is to ensure the 2024 UGB expansion process follows the requirements of Goal 14 and the implementing statutes and administrative rules.

We appreciate your consideration of our objections and look forward to addressing this issue further with the Commission at the September 25, 2025 appeal hearing.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

EMC/ep

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September 12, 2025

Re: Exceptions to Directors Report on Appeal of the Director's affirmation of Metro Council Ordinance 24-1520, the Sherwood Urban Growth Boundary Amendment

Dear Director Bateman,

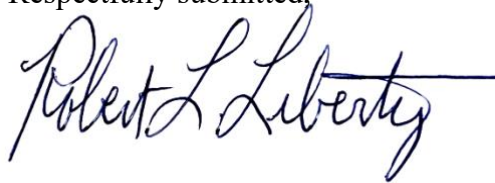
This letter presents the West of Sherwood Farm Alliance's and its individual members' (David Nemarnik, Claudio Ponte, Juliet Ponte) exceptions to September 2, 2025 report, which incorporates your prior decision, (DLCD Order 001953 of April 18 2025) approving the Metro Council's Urban Growth Boundary Amendment Decision, Metro Council Ordinance No. 24-1520

These exceptions are submitted pursuant to OAR 660-025-0085(5) which provides "The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to the director's report within 10 days of the date the report is sent. . . . The persons specified in OAR 660-025-0085(5)(c) include, "(C) Persons who filed a valid appeal of the director's decision."

Fourteen of the nineteen appeal issues raised by West of Sherwood Farm Alliance were determined to be valid in the Director's report, and five were not. West of Sherwood Farm Alliance and its members also challenge the Departments finding on those five appeal issues were not valid, and the validity of the Departments Rule that purports to prevent the Land Conservation and Development Commission from considering the validity of those rulings and consequently the merits of the appeal issues.

This letter is submitted within 10 days after receipt of the Director's report on September 2, 2025.

Respectfully submitted,

A handwritten signature in blue ink that reads "Robert L. Liberty". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Copies: Steve Shipsey, Legal Counsel for DLCD
Roger Alfred, Legal Counsel for Metro
Eric Rutledge, Sherwood Planning Director

Introduction: The fatal errors in Metro’s urban growth boundary decision process.

Many of the various grounds of objection and appeal stem from some basic mistakes in Metro’s decision making.

- Metro decided to consider only concept plans for UGB expansion areas, should a regional need for a UGB expansion was found in its Urban Growth Report.
- It set a deadline for the receipt of those concept plans for entire urban reserves months before it had completed its draft analysis of regional urban land needs. This meant local governments had to develop concept plans before there was any official determination of what the regional needs were, whether any UGB expansion might be required and what regional needs were for housing and jobs and in what acreage amounts.
- Metro received only a single concept plan by its April 2024 deadline, for Sherwood West. At that point Metro could and should have reconsidered its flawed procedure but did not.

After May 2024 it became increasingly evident that Metro and Sherwood had begun coordinating to shape Metro’s determination of regional needs to fit Sherwood West’s Concept Plan, ultimately finding that what Sherwood proposed was exactly what the region needed. The match of (revised Concept Plan) to regional need was so close that it was within one acre of commercial land, within a 20 units needed housing units¹ and within 100 acres of needed industrial sites. After Metro’s final hearing in early November, Sherwood’s consultants were preparing reports to specifically rebut WoSFA’s objections (discussed below.)

As Metro Councilor Nolan said at Metro’s final hearing on the UGB expansion:

We are supposed to start by asking do we need more land in the urban growth boundary or is the land we have in the urban growth boundary sufficient to meet our need for housing and employment needs. We started instead with asking for proposals, and one could look at the process then as fitting our answer to the first question into the proposals that we got.

[December 5, 2024 Metro Council meeting video](#) at 1:51:37 - 1:52:09

¹ That remark is supported by this excerpt from Metro’s findings of fact and law in support of its decision: “The outcome is a regional capacity deficit for single unit detached and middle housing that totals approximately 3,100 units. The concept plan adopted by the Sherwood City Council for Sherwood West indicates that it can provide a total of 3,120 single family, middle housing, and multifamily units.” Exhibit F to Ordinance No. 24-1520 page 10. As noted above, Sherwood proposed that number of housing units in its draft concept plan in December 2023, which is later revised and submitted on in May 2024, two months before the draft UGR was released.

Appeal Issue 6.A. The Metro Council did not consider any alternative measures and sites (other than the Sherwood West Concept Plan) in violation of ORS 197A.350(6)(a) and (b) Goal 14 and related Administrative Rules, the Metro Charter and the Metro Urban Growth Management Functional Plan.

Director's summary of her determination:

To summarize: the director addresses Metro's consideration of alternative boundary locations based on applicable criteria in the response to objection 6.A., finding that Metro's analysis considered all 27 urban reserve areas for inclusion within the UGB and made a reasonable decision based on applicable criteria.

Director's decision at age 31.

WosFA's exceptions:

- 1. The Director failed to respond to WoSFA's objection to the Metro Council's failure to consider reasonable alternative measures to accommodate regional need on land inside the UGB.**

Before expanding the UGB, Goal 14 requires Metro to show a:

- (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local for cities applying the simplified process under ORS chapter 197A, a 14-year forecast;*
- (2) In determining need, local governments may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary."*

Those requirements, as applied specifically to housing need, are set out in statute in ORS 197A.350(6)(a) and (b):

- (6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, Metro shall take one or both of the following actions to accommodate the additional housing need:*
 - (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, Metro shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of*

lands for new public school facilities shall be a coordinated process between the affected public school districts and Metro that has the authority to approve the urban growth boundary.

(b) Amend its regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary.

They are duplicated in Metro's Urban Growth Management Functional Plan 3.07.1425) as applied to possible expansions into urban reserves.

WoSFA's Objection A challenged the Metro Council's failure to consider both reasonable measures to meet regional need inside the boundary and failure to consider alternative lands and sites outside the UGB:

Objection A *The Metro Council itself did not evaluate alternative sites or consider reasonable alternative measures to use land already in the boundary to meet identified regional needs as required by state statutes, Goal 14 and appellate court precedent."*

WoSFA Objections at page 10 (emphasis added.). The Director responses failed to address WoSFA's objection on the failure to consider either land inside the boundary or lands and sites outside the boundary.

This omission by the Director was a procedural error under OAR 660-025-150(5) and ORS 197.635(5) which can be remedied by the Commissions consideration of the merits of the objection.

This same issue is considered in the next appeal subsection, 6.B..

2. Under Metro's Charter and Code, it is the Metro Council that must considers alternatives and makes the decision, not Metro staff nor the Director of DLCD. The record shows the Metro Council never considered any alternatives, whether inside or outside of the UGB.

When the Director's report refers to "Metro" in her response to this appeal issue she is referring to an after-the-fact analysis conducted by Metro's planning staff, carried out in October of 2024, in Appendices 7 "Goal 14 Boundary Location Factors Analysis of UGB Expansion Candidate Areas" Rec. 326 – 924 and **Appendix 7A** "Metro Code Factors Analysis of UGB Expansion Candidate Areas" Rec. 925 – 1036, that was never discussed or considered by the Metro Council.

The Metro Council's adopting ordinance confirms this evaluation was conducted by Metro staff, not the Metro Council:

WHEREAS, Metro staff evaluated all land in the region designated as urban reserves for possible addition to the UGB based upon their relative suitability under the Goal 14 locational factors;

Rec, 006 (emphasis added.)

According to its voter-approved Charter, it is the “Metro Council” that as the governing body of Metro exercises all the powers of Metro:

Section 16. Metro Council. (1) Creation and Powers. The Metro Council is created as the governing body of Metro. Except as this charter provides otherwise, and except for initiative and referendum powers reserved to the voters of Metro, all Metro powers are vested in the Council.

Metro Charter, Chapter IV, Form of Government, Section 16 Metro Council, page 7. The Charter specifies that it is the Metro Council that adopts and amends the Regional Framework Plan, including adopting and amending the urban growth boundary:

(2) Regional Framework Plan.

(a) Adoption. The Council shall adopt a regional framework plan by December 31, 1997 with the consultation and advice of the Metro Policy Advisory Committee (MPAC) created under Section 26 of this charter. The Council may adopt the regional framework plan in components. (b) Matters Addressed. The regional framework plan shall address: . . . (2) management and amendment of the urban growth boundary;

. . . .

(d) Amendment. The Council may amend the regional framework plan after seeking the consultation and advice of the MPAC.

Metro Charter, Chapter II, Functions and Powers, Section 5. Regional Planning Functions, Subsection 2 Regional Framework, pages 2, 3.

According to the Urban Growth Management Functional Plan in its Code, it is the Metro Council that is given the responsibility for considering alternatives, not Metro staff and not the Director of DLCD:

Urban Growth Management Functional Plan

Metro Code 3.07.1425 Legislative Amendment to the UGB - Criteria

(a) This section sets forth the factors and criteria for amendment of the UGB from state law and the Regional Framework Plan. Compliance with this section shall constitute compliance with statewide planning Goal 14 (Urbanization) and the Regional Framework Plan.

. . . .

(c) If the Council determines there is a need to amend the UGB, the Council shall evaluate

areas designated urban reserve for possible addition to the UGB

Metro Code 3.07.1425 (a), (c) (emphasis added)

In *1000 Friends of Oregon v. LCDC (Ryland Homes)* 174 Or App 406, 26 P3d 151 (2001) the Court of Appeals refused to allow LCDC or LUBA to substitute its evaluation of alternatives for a UGB expansion, for an evaluation done by the local government, which is given that responsibility under state statute, the Goals and the Administrative Rules:

Ryland Homes argues that "the findings taken as a whole adequately explain why Metro determined, balancing all considerations and impacts," that expanding the UGB at this location was a better alternative than expanding at other locations. Ryland Homes then points to certain evidence throughout the record and findings under portions of Metro's decision concerning other Goal 14 factors, as well as other portions of its decision, and contends that we should essentially put the pieces of the puzzle together and conclude that Metro did adequately address the ESEE consequences under factor 5.

....

We agree with LUBA that Metro's failure to articulate its findings regarding each of the locational factors and its reasons explaining how it balanced the factors makes it impossible to conduct a meaningful review of Metro's decision.

As noted above, Ryland Homes asserts that, even if Metro did not address all of the factors, LUBA and this court can determine how Metro considered and balanced the factors by looking to other portions of Metro's decision and considering Metro's findings "as a whole." The first problem with Ryland Homes's position is that pertinent statutes and rules specifically require a local government to set forth findings of fact and statements of reasons when adopting or amending an urban growth boundary pursuant to Goal 14. ORS 197.732(4); OAR 660-004-0020(1) (Goal 2, Part II); OAR 660-004-0010(1)(b)(B).

Further, we do not agree that attempting to divine Metro's unexpressed reasoning is an appropriate role for LUBA or this court on review.

1000 Friends of Oregon v. LCDC (Ryland Homes) 174 Or App 406, at 410, 26 P3d 151(2001)

For the same reasons given by the Court, it is not an appropriate role for the unelected staff of DLCD either; that responsibility for considering alternatives is reserved to the Metro Council, elected by the voters of the region to make the critical decisions about urban growth and development.

- 3. Councilor Nolan made an unchallenged statement of fact that the Council had failed to consider alternatives, not a statement of her policy preference, about the UGB decision.**

The Director stated:

Additionally, despite the appeal's contention that Councilor Nolan's comments demonstrate a remandable failure of public process on Metro's part, the director notes that Councilor Nolan – the sole Metro Councilor to vote against the UGB amendments – was exercising discretion to dissent on a matter of policy.

Expressing one's opinion during decision making on policy matters provides no evidence of a factual deficiency nor procedural error.

Director's decision at page 32.

The Director misrepresents Councilor Nolan's remarks as being an expression of her *policy preference* against the UGB expansion. Councilor Nolan is not expressing a policy preference, she is stating a fact, about the legal defects in Metro's decision making – the failure to ever discuss or considered any alternatives for land inside or outside the UGB.

Neither Councilor Nolan's Council colleagues nor the staff contradicted this statement, which is confirmed by a review of all the minutes of the Metro Council's public meetings, its hearings and its work sessions on the Urban Growth Report and UGB amendment:

Council meeting December 5, 2024 Rec. 1309-1311
Council meeting November 21, 2024 Rec. 1323-1327
Council work session October 8, 2024 Rec. 3050-3054
Council meeting October 3, 2024 Rec. 3102-3103
Council meeting September 12, 2024 Rec. 4830-4833
Council meeting July 9, 2024 Rec. 5973-5977
Council work session May 28, 2024 meeting of Rec. 6187-6190
Council work session April 9, 2024 Rec. 7838-7840
Council work session February 13, 2024 Rec. 8147-8149
Council work session January 23, 2024 Rec. 8240-8246
Council work session September 19, 2023 (no minutes just the worksheet for the agenda item) Rec. 9234-9235
Council work session March 7, 2023 Rec. 9709 – 9714

4. The Director admitted that Metro's findings did not consider alternative measures for accommodating regional housing need inside the UGB.

On page 32 of her April 18, 2025, decision rejecting the objections made by WoSFA and other parties, the Director made this admission:

*Thus, Metro must demonstrate that its identified need cannot be reasonably accommodated through increasing residential capacity within the existing UGB, the alternative set forth in ORS 197A.350(6)(b). **Although Metro's adopted findings do not directly address this requirement**, the director reviews the 2024 Urban Growth*

Report and other information in the record for the required demonstration of land use efficiencies and analysis that support more efficient use of land within the current UGB.

Emphasis added.

Basis for Commission remand under its standards of review

OAR 660-025-0160(2) specifies the Commission's standards of review:

“(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.

The Metro Council's failure to consider alternative measures, areas, lands and sites, inside the UGB or in the Urban Reserves as required by law, prejudiced the rights of WoSFA and its members. Its members include farmers operating adjacent to and very near the proposed expansion area², who testified about the damaging impacts of having urban development near their lands, and the loss of land that is part of the land base for their kind of farming without the Metro Council consider alternatives for to meet regional land use needs.

“(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 or to Metro's interpretation of its regional framework plan or functional plans. For purposes of this subsection, 'complies' has the meaning given the term 'compliance' in the phrase 'compliance with the goals' in ORS 197.747.

The local government decision on the whole cannot comply with Goals 2, 3, 4, 5, 10, 11, 12, 14, and Metro's Regional Framework Plan or Urban Growth Management Functional Plan because the consideration of alternative measures is a core element of the Metro Council's decision-making process and consideration of those alternative measures and sites could have yielded an entirely different decision.

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.*

Although WoSFA regards Metro Council's error as an error in law and an error in procedure, the Commission here should determine that the Director's decision fails the substantial

² A photograph of Hawksview Vineyard, the vineyard operated by WoSFA members Claudio and Juliet Ponte was included in the Concept Plan materials relating to the land to be use for hospitality related development serving as a gateway to wine country.

evidence test. This is because the minutes and video recordings of all Council's proceedings show that alternatives to Sherwood West were never discussed or even listed on the agendas. (See prior citations to the Metro Council meeting minutes and videos.) This is confirmed by Councilor Nolan's specific and un rebutted statement of fact on the record on December 5, 2025 (quoted in WoSFA's appeal.)

Under all three standards of review, the Commission should remand the decision to the Metro Council (the Council not its staff) to carry out the correct review of alternatives – measures for making better use of land inside the boundary and to consider lands and sites in its Urban Reserves.

Appeal Issue 6.B. The Metro Council failed to consider reasonable alternative measures to use land inside the UGB.

Summary of Director's decision:

This appeal item is based upon an objection the director found to be invalid because it did not satisfy the provisions of OAR 660-025-0140(2). The Commission may not consider this appeal item. OAR 660-025-0140(3).

Director's decision on appeal, page 32.

This is the Director's finding in her April 18, 2025 Order 001953, at page 78:

Because the objector did not suggest specific revisions that would resolve the objection (see OAR 660-025-140(2)(c)), the director finds that this objection invalid. In any event, the director provides a response to the substantive assertions of this objection in her response to Objections 1.A. and 1.B. To sustain a challenge based on conflicting evidence, WoSFA would have to demonstrate that a reasonable person could not reach the decision Metro made in view of all the evidence in the record. Mazeski, 28 Or. LUBA at 184.

WoSFA's exceptions

- 1. WoSFA's Objection A was a general objection about failure to consider alternatives and the Director found those other parts of the same objection to be valid.**

A review of WoSFA's objection A at pages 10 to 16 show the objection was stated as: **"Objection A** The Metro Council itself did not evaluate alternative sites or consider reasonable alternative measures to use land already in the boundary to meet identified regional needs as required by state statutes, Goal 14 and appellate court precedent." WoSFA Objections at page 10 (emphasis added.)

The Director found this a valid objection. Director's Order 001953 at page 6.

Objection B addressed a sub-component of that issue, failure to consider reasonable measures inside the UGB, referencing additional evidence and supporting authorities.

It is a contradiction, and error, to find the exact same objection valid in one place and invalid in another.

2. WoSFA fully complied with the Departments rules governing both objections and appeals to the Commission of a decision by the DLCD Director by identifying specific revisions to Metro’s work task that would address the original objection.

The Administrative Rule governing appeals to the Director is OAR 660-025-150 “Director Action and Appeal of Director Action (Work Task Phase.)” This Rule has different wording for what constitutes a valid appeal issue.

Subsection (d) provides:

(d) A person, other than the local government that submitted the work task or plan amendment and an affected local government, appealing the director's decision must:

(A) Show that the person participated in the local proceedings leading to adoption of the work task or plan amendment orally or in writing;

(B) Clearly identify a deficiency in the work task or plan amendment sufficiently to identify the relevant section of the submittal 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 or plan amendment necessary to resolve the alleged deficiency.

On page 16 of WoSFA’s objection, WoSFA identified the very specific modifications to Metro’s work tasks that would address its objections to Metro’s failure to consider alternative measures inside the boundary, as well as outside the boundary:

3. Proposed remedy.

LCDC should remand Metro’s decision and direct Metro staff, advisory committees and the Metro Council to consider sites in alternative Urban Reserves, or various other measures to meet regional needs inside the existing UGB, to the extent LCDC finds those needs have been properly determined by Metro.

The Metro Council’s decision should be remanded to the Metro Council to:

- *Identify and evaluate alternative measures that will accommodate all or some of the regional needs (for additional housing and employment identified in the UGR) on land within the UGB.*

WoSFA identified several sources of information that Metro could have consulted, but did not consult, regarding reasonable alternative measures.

OAR 660-025-140(2) governing the objection process uses different language: “Persons who participated orally or in writing in the local process leading to the final decision may object to the local government’s submittal. To be valid, objections must: “(c) Suggest specific revisions that would resolve the objection;” This is the subsection the Director relied on to rule that WoSFA did not file a valid issue on appeal.

Assuming for argument that this subsection of the Department’s rule on objections is relevant to the appeal proceeding, the Director did not explain what the defect was in WoSFA’s appeal by explaining what a “specific revision” would be other than a revision to the invalid procedure used by the Metro Council.

Beyond that, neither WoSFA, nor any other objector can specify “specific revisions” in the form of changes to Metro’s decision regarding specific lands that would in turn address an objection to the absence of information about alternatives.

3. OAR 660-025-0140(2) as applied and (3) are invalid as being in derogation of the Commission’s authority in ORS 197.040(1)(a); (2)(d) and inconsistent with the delegation authority provisions in OAR 660-002-0020.

ORS 197.040(1)(a) and (2)(d) provide:

(1) The Land Conservation and Development Commission shall:

(a) Direct the performance by the Director of the Department of Land Conservation and Development and the director’s staff of their functions under ORS chapters 195, 196, 197 and 197A.

(2) Pursuant to ORS chapters 195, 196, 197 and 197A, the commission shall

(d) Review comprehensive plans for compliance with goals;

OAR 660-002-0020(1) Commission Review of Director’s Action Under Rule 660-002-0005 provides:

(1) Any action of the Director pursuant to the authority vested in the Director pursuant to OAR 660-002-0010 shall be reviewed by the Commission upon petition filed by any “party” as defined in ORS 183.310(6) or upon its own motion, except that all actions of the Director under OAR 660-002-0010(8) [Ballot Measure 49 claims] are final and will not be reviewed by the Commission unless legislation is enacted that appropriates funds for the payment of claims under Chapter 1, Oregon Laws 2005.

OAR 660-025-140(3) is in derogation of the powers assigned to the Commission by state statute and in conflict with the Commission’s rules governing delegation of decision making powers to the Director. As such it is invalid.

4. WoSFA addressed the merits of the Director’s decision on the substantive of the error previously in section 6.A.

As previously stated, on page 32 of her April 18, 2025, decision rejecting the objections made by WoSFA and other parties, the Director made this admission:

*Thus, Metro must demonstrate that its identified need cannot be reasonably accommodated through increasing residential capacity within the existing UGB, the alternative set forth in ORS 197A.350(6)(b). **Although Metro’s adopted findings do not directly address this requirement**, the director reviews the 2024 Urban Growth Report and other information in the record for the required demonstration of land use efficiencies and analysis that support more efficient use of land within the current UGB.*

Emphasis added.

The authorities presented in the prior section show that the Director of DLCD does not have the authority to substitute her judgment for the responsibilities assigned to the Metro Council by statutes, the Goals, Metro’s Charter and Code. Metro must make the findings addressing the alternatives specified in state statute.

Basis for Commission remand under its standards of review

Assuming that the Commission’s standard of review applies to the Director’s own decision, the Director’s invalidation of this objection and failure to consider the arguments and evidence regarding failure to consider the use of lands inside the boundary, then it was a procedural error that prejudiced the rights and interests of WoSFA and its members by attempting to prevent them from presenting their arguments and evidence on the merits.

On the merits, the standards of review which are ground for remand are the same, and for the same reasons, as appeal issue 6A as well as substantive violations of the relevant legal authorities.

6.C. Metro staff’s failure to evaluate and compare lands *within* urban reserves as opposed to entire urban reserve areas.

Summary of Director’s decision:

- *There is no legal requirement under OAR 660-024-0060(6), Goal 14, or Metro Code for Metro to divide each of the 27 urban reserves into smaller units for evaluation.*
- *Conducting a parcel-level analysis would be impractical and complex, since infrastructure extensions depend on contiguous networks—selecting one subarea could oblige inclusion of adjacent subareas.*
- *OAR 660-024-0060(6) expressly allows grouping multiple parcels with identical priority status for boundary-location analysis. Metro’s assessment of entire urban reserve areas therefore complies with both the rule and its statutory mandate.*

Based on this analysis, the director recommends that the commission reject this appeal issue.

WoSFA's exceptions:

As explained previously, any analysis by the Metro staff is not a legal substitute for the Metro Council evaluation of alternatives, a duty imposed on the Council, not the staff, by law. For that reason, the following exceptions are offered as arguments in the alternative.

1. The clear language in ORS 197.355 and OAR 660-024-0060 requires Metro to examine the suitability of alternative “lands” not compare alternative urban reserves.

The Director has failed to provide any legal authority in response to WoSFA's citation to ORS 197A.355(1), which specifies the priority of “land” to be included within Metro urban growth boundary:

(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary of Metro except under the following priorities:

(a) First priority is land that is designated urban reserve land under [ORS 197A.245 \(Urban reserves\)](#), rule or Metro action plan.

It is not possible to comply with subsection (2) of ORS 197.355 by comparing or analyzing entire urban reserves instead of land (emphasis added):

(2) Under this section, higher priority must be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

Metro's Urban Reserves contain hundreds and thousands of acres of land with widely varying terrain and land cover that cannot have a single soil capability class. For example, consider the Boring Urban Reserve of 2,727 acres which contains streams, riparian areas and “pastureland and wooded tax lots” and steep slopes. Rec. 397 (acres), 405 (references to streams, riparian areas, pastureland and wooded tax lots) aerial view Rec. 409, steep slopes Rec. 411.

As LCDC's staff and several Commission members understand, even a single parcel may contain a wide varieties of soil capability classes. See e.g. *Central Oregon Land Watch v. Deschutes County, Central Oregon Landwatch v. Deschutes County*, 78 Or LUBA 136 (page 4 of online report) (2018) August 2018

The statutory directive to Metro to analyze and compare land within Urban Reserves is implemented by 660-024-0060 Metro Boundary Location Alternatives Analysis (emphasis added):

(1) When considering a Metro UGB amendment, Metro must determine which land to add by evaluating alternative urban growth boundary locations. For Metro, this

determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, Metro must determine which land in that priority is suitable to accommodate the need deficiency determined under OAR 660-024-0050.

The statutes and Metro's code require the comparative evaluation of lands within urban reserves not a comparison of entire reserves. Metro erred by evaluating and comparing entire urban reserves with Sherwood's urban reserve and Concept Plan.

2. The analysis and comparison by Metro's staff of entire Urban Reserves is legally defective for the same reason comparison of entire exception areas was found defective by the Court of Appeals in the McMinnville UGB amendment process.

The Court of Appeals found that LCDC erred when it approved McMinnville's approval of category for UGB expansions under ORS 197A.355(1)(b) and analyzing whether those entire exception areas would satisfy particular needs. *1000 Friends of Oregon et al, v. LCDC and City of McMinnville*, 244 Or App 239, at 278, 259 P3d 1021 (2011.)

3. DLCD's director does not have the legal authority to waive the legal duties assigned to Metro based on her opinion that an analytic task is "impractical." DLCD has recognized an obligation to review thousands of acres inside an entire UGB and outside of it, to find alternatives that would meet a need of 27 to 38 acres for a "lifestyle center."

The Director now argues that regardless of legal requirements it is not practical for Metro analyze individual parcels.

The Director does not and cannot cite any legal authority for the proposition that the DLCD director can waive requirements in statutes and administrative rules to examine "lands" in urban reserves. because she feels that work is impractical or too hard..

DLCD appealed Klamath Falls's UGB expansion to LUBA in 2017. LUBA held: "...we agree [with DLCD] that the city must consider the entire area inside the UGB and the perimeter of the entire UGB when considering alternative sites under Goal 14 and OAR 660-024-0060(5)." *DLCD v. City of Klamath Falls and Badger Flats LLP*, 76 Or LUBA 130 (2017) LUBA noted that "The Klamath Falls UGB includes approximately 24,000 acres - 4,322 developed acres and 10,250 undeveloped acres." Affirmed by the Court of Appeals 290 Or App 495 (2018)

If DLCD required Klamath Falls to examine all 10,250 undeveloped acres inside its UGB plus thousands of acres of land around the UGB to meet a regional need for a "lifestyle center," DLCD cannot now be heard to argue that Metro, with vastly more staff capacity and resources, need not do the same. If DLCD required Klamath Falls to examine all 10,250 undeveloped acres inside its UGB plus thousands of acres of land around the UGB to meet a regional need for a "lifestyle center," DLCD cannot now be heard to argue that Metro, with

vastly more staff capacity and resources, need not do to the same. If any government body has the staff and resources to comply with the law, it's Metro. Lowering the bar for Metro would serve to eliminate it for much smaller jurisdictions. This is not fair play, and is simply bad law.

4. Consistently in the past, and even in a portion of the current proceeding, Metro has indeed analyzed alternative lands down to the parcel level within Urban Reserves. It has not simply viewed Urban Reserves as a single block.

Metro's past practice has been to examine parcels of land within urban reserves, not just entire urban reserves.

DLCD is aware of Metro's ability to conduct analyses down to the parcel, as noted in Metro's Appendix 6, "Employment land site characteristics":

This analysis uses a general approach developed in consultation with Oregon Department of Land Conservation and Development staff for the 2014 Urban Growth Report. Table 1 summarizes the site characteristics mentioned in the Administrative Rules and the various data points used to summarize them. For practical reasons, this report presents regional maps and summary tables. Metro can provide its tax lot level buildable land inventory GIS database on request.

Rec. 300 (emphasis added.)

Basis for the Commission's remand of the decision under its standards of review

The Commission should remand Metro's decision for consideration of alternatives lands and sites outside the UGB on the grounds Metro's decision "on the whole" did not comply with "applicable statutes, administrative rules, the comprehensive plan, the regional framework plan, the functional plan" as well as DLCD's own legal and administrative precedents. OAR 660-025-0160(2)(c). This is a failure to follow the procedures specified by those authorities to the prejudice of WoSFA, which is grounds for remand under 660-025-0160(b).

6.D. Failure to evaluate the relative value of agricultural and forest lands in the Sherwood West Urban Reserve *vis a vis* the agricultural and forest land in other urban reserves.

Summary of Director's response:

Metro states that Metro Code 3.07.1425(c)(7) is obviated by the designation of the 27 urban reserve areas, arguing that "protection of farmland within any of the urban reserves is not, for the purposes of responding to this Metro Code factor, considered important for the continuation of commercial agriculture in the region," thus essentially finding that the designation of these areas as urban

reserves makes them all unimportant for the continuation of commercial agriculture in the region.

ORS 197.633(3)(c) requires the director to give deference to a local government interpretation of its own plan, and references standards in ORS 197.829. ORS 197.829(1) provides that the director shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the director determines that the local government's interpretation:

(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or

(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

The director determined, looking at these factors, that Metro is afforded deference to its interpretation of Metro Code 3.07.1425(c). Metro met the express language of the provision with its finding that all the urban reserve areas were equally unimportant for commercial agriculture. The director accepts Metro's interpretation of the purpose of Metro Code 3.07.1425(c), and also agrees with Metro that, with regard to this particular UGB decision, that purpose is consistent with not distinguishing among different urban reserve areas. The director agrees with the underlying policy that these urban reserve areas will eventually be urbanized. Accordingly, they are not important for long-term commercial agriculture in the Portland Metro area. And finally, the director finds that Metro's interpretation is not contrary to any relevant state statute, land use goal, or rule.

WoSFA's exceptions:

1. The standard of review by the Commission of Metro's interpretation of its regulations governing urban growth boundary amendments.

LCDC has incorporated LUBA's statutory standards of review of local government interpretation of their plans and regulations under 197.829, by reference in OAR 660-025-160(2)(c). Those standards are:

197.829 (1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

- (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;*
- (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or*
- (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.*

Those are the standards of review addressed in this exception.

2. Metro’s interpretation is “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation.”

What Metro did was clearly inconsistent with the express language of its regional framework plan, Metro Code Section 3.07.1425(c), which states (emphasis added):

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

- (7) Protection of farmland that is most important for the continuation of commercial agriculture in the region;*

Those provisions were adopted after Metro designated urban reserves. If all of the farmland in urban reserves was considered unimportant then why did Metro include this language requiring a comparative evaluation and comparison of the areas in Urban Reserves?

3. Metro’s interpretation “is inconsistent with the purpose for the comprehensive plan or land use regulation,” “inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation” and “contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.”

Goal 14 sets the priorities for expansion of UGBs, to which Metro’s Code must comply and the Goal and related Administrative Rules give priority to the protection of better farm (and forest) lands, even if the land is in the same priority category, such as urban reserves. OAR 660-024-0067 provides (emphasis added):

(1) A city considering a UGB amendment must decide which land to add to the UGB by evaluating all land in the study area determined under OAR [660-024-0065](#), as follows:

- (a) Beginning with the highest priority category of land described in section (2), the city must apply section (5) to determine which land in that priority category is suitable to satisfy the need deficiency determined under OAR [660-024-0050](#) and select for inclusion in the UGB as much of the land as necessary to satisfy the need.*

The Director's deference to Metro's code interpretation is inconsistent with the logic of her interpretation of OAR 660-024-067 in her decision on the Roseburg UGB amendment process:

Rather than identifying land within the priority categories defined in OAR 660-024-0067(2), the submittal identifies subareas containing a mix of priority lands and ranks them based on a method developed by the city that weighs the amount of nonresource and resource lands, the amount of high-value farmland and the amount of higher class soil types present in each subarea. The submittal does not demonstrate how this approach complies with the methodology provided in OAR 660-024-0067(2)-(4). Roseburg UGB Exchange – Final - 04-15-24 at 54-62.

Department of Land Conservation and Development Director's Decision in City of Roseburg Urban Growth Boundary Adjustment, DLCD Order 001950 January 29, 2025 page 25.

In its review of LCDC's approval of McMinnville's UGB expansion, the Court of Appeals directed consideration of alternatives including various lower-quality agricultural lands in and outside of various exception areas, and not just exception areas as a whole., *1000 Friends of Oregon and Friends of Yamhill County v. LCDC and McMinnville*, 244 Or App 239, at 278, 259 P3d 1021 (2011)

The Commission's basis for remand under its standards of review

Metro's interpretation of the provisions in its Code governing UGB amendments fails to meet the standards in ORS 197.829 Metro's decision "on the whole" it did not comply with "applicable statutes, administrative rules, the comprehensive plan, the regional framework plan, the functional plan" as well as DLCD's own legal and administrative precedents. This is grounds for remand under OAR 660-025-0160(2)(c). It also constitutes a prejudicial failure to follow the procedures specified by those authorities, compelling remand under 660-025-0160(b).

Appeal Issue 6.E. Metro's failure to address the locational factors in Metro Code 3.07.1425(c)(3) to (9)

Summary of Director's decision:

Metro conducted a detailed evaluation of Sherwood West's suitability for urban development across nine locational factors, including infrastructure costs, environmental consequences, agricultural compatibility, and housing distribution. WoSFA challenged these findings but [WoSFA] offered limited evidence, relying mainly on general concerns or data inconsistencies. The director found Metro's assessments, supported by technical studies and policy criteria, comply with both Metro Code and Oregon's Statewide Planning Goals, leading to the conclusion that WoSFA did not demonstrate any substantial flaws that would justify overturning Metro's decision.

Director's report at page 34.

WoSFA's exceptions:

- 1. The Director's report misrepresents and does not respond to WoSFA's objection to Metro's use of a defective methodology. That defective methodology means Metro's decision lacked an adequate factual basis. WoSFA was not required to provide substantial evidence for its objection.**

The Director report misrepresents and does not respond to WoSFA's objection to Metro's use of a defective methodology. That defective methodology means Metro's results were not an adequate factual basis for its decision. WoSFA was not required to provide substantial evidence for its objection; that evidentiary burden is on Metro and DLCD.

Appeal Issues 6.F., G., H³, and J: The unsuitability of the proposed "sites" in the Sherwood West North District for high tech industrial manufacturing.

Summary of Director's responses:

To summarize, Metro's Urban Growth Report, based on the Oregon Semiconductor Competitiveness Task Force's 2022 findings, identifies a need for four 50–100-acre industrial sites to support semiconductor manufacturing. Although WoSFA argues that the employment area in Sherwood West cannot meet this need due to net developable acreage constraints, neither the Task Force report nor the Urban Growth Report distinguishes between net and gross acreage, and Metro's UGB expansion approval explicitly requires only two sites of at least 50 gross acres each. Title 13 gives cities alternative compliance paths for habitat conservation. Net developable acreage for the sites in question will not be known until Sherwood and Metro update the Title 13 inventory and Sherwood amends its comprehensive plan. Title 13 habitat protections do not come into effect until the area is added to the UGB and Metro's jurisdiction.

Directors report at page 35.

To summarize, the director addresses Metro's consideration of alternative boundary locations based on applicable criteria in the response to objection 6.A. In summary, the director finds that Metro's analysis considered all 27 urban reserve areas for inclusion within the UGB and made a reasonable decision based on applicable criteria.

Director's response at page 36.

³ The Director contended that the challenge to Site A.6. was "not raised as an objection." Director's response, page 36. But in fact it was raised in objection E.3., on page 55 followed by evidence and argument on the next three pages. WoSFA has consistently been arguing that employment lands in the North District do not satisfy the regional large-site need for high tech manufacturing which Metro and the Director have relied upon.

WoSFA's consolidated exception

1. Review of the Sherwood Concept Plan's provisions for employment land and the specific regional need that is claimed justifies a UGB expansion in excess of regional industrial land needs.

The Sherwood West Concept Plan's employment lands were based on an Economic Opportunity Analysis of Sherwood's employment land needs prepared pursuant to ORS 197A and OAR 660-09 *etc.* by Leland and Associates. The Executive Summary of that reports interviews with experts in employment land real estate development includes the following:

Exec Summary: Plan for Mixed Employment. *Most of the opportunities for long-term job creation will likely require a mixed employment approach—namely industrial, flex, and office. Mixed Employment in centers/parks of 20-100 acres is the strongest market.*

Rec. 7285. That report notes that the large site in demand in the region are not for use for high manufacturing but to be broken up into smaller parcels within an office or industrial park:

[I]nstitutional developers are generally purchasing 40- to 50-acre sites in order to phase development over time, with the main focus on five to six-acre developments with around 50,000 square feet of multitenant, mixed employment space.

Rec. 7289

Here is how the Sherwood West Concept Plan described that need, that would be satisfied in the North District Employment Area:

Employment Sherwood wants and needs more jobs.

Expanding existing businesses and attracting new employment to Sherwood—particularly the right kind of jobs in the right places—will provide opportunities for industrial and commercial development with higher wage jobs, help diversify and balance the City's tax base, and build a self-sustaining and vibrant local economy. Key employment concepts for Sherwood West are described below. Mixed Employment Mixed Employment, which involves a mix of office, light industrial, and flex space uses within the same development or area of the city, emerged as an important theme of the Concept Plan. The economic opportunities study (Appendix G) identified mixed employment as a key economic development and job creation opportunity for Sherwood West. The land use plan locates Mixed Employment areas in the North district based on favorable characteristics for siting this type of use: large sites (at least 40-50 acres), flat topography (less than 3-5% slopes), larger ownerships, and easy access to major freight routes. The City completed an additional study on the mixed-employment zone

(Appendix R) that identifies opportunities to attract target industries and provides a detailed list of infrastructure improvements and costs needed to develop the area with employment uses.

Sherwood West Concept Plan at 48, Rec. 6178 . The Economic Opportunity Study (Appendix G) discussed how the large parcels would be used for industries similar to those being developed in the Tonquin Employment Area previously added to Sherwood:

However, it became clear in briefings by Metro staff to the Metro Policy Advisory Committee meetings (attended by Sherwood Mayor Tim Rosenor) held in early 2024, that the region was not growing as fast as in the past, would have reduced demand for additional, which might mean it would have a surplus of industrial land. January 24, 2024 MPAC meeting, Rec. 8191; February 28, 2024 MPAC meeting, Rec. 7959; and the March 27, 2024 MPAC meeting:

Mayor Rosener expressed concern about forecasts that rely on the status quo, particularly regarding manufacturing and industrial land. He highlighted the potential for growth if larger, shovel-ready sites were available for advanced manufacturers. Mayor Rosener questioned whether any modeling has been done to assess the impact of adding such land on future growth beyond what is currently within the urban growth boundary.

Rec. 7875-7876 His concern about the inability to justify additional industrial lands was confirmed by Metro's ultimate conclusion, based on its choice of the baseline growth forecast that the region would have a surplus of 3,931 acres on industrial land, shown in Table 19 Industrial Land Capacity Gap for Metro 2024-2044 in the Urban Growth Report at page 55. .

Industrial land in excess of regional need is not allowed under Goal 14:

Generally, and consistently with Goal 14, "a local government is not permitted to establish an urban growth boundary containing more land than the locality 'needs' for future growth." City of Salem v. Families For Responsible Govt, 64 Ore App 238, 243, 668 P2d 395 (1983), rev'd and rem'd on other grounds, 298 Ore 574, 694 P2d 965 (1985).

[1000 Friends of Or. v. Land Conservation & Dev. Comm'n, 237 Ore. App. 213, 218](#)

That meant that Sherwood could not justify inclusion of a “mixed employment” area in the North District to serve any general industrial needs.

Consequently, beginning in the spring of 2024, Metro and Sherwood begin commissioning and preparing additional arguments and documentation to define and then meet a regional need for land for certain kinds of high tech manufacturing, basing its argument, and findings, on the August 2022 Oregon Semiconductor Task Force

report which Metro attached as Appendix 11 and which Metro incorporated as part of its UGR. Rec. 081.

The semiconductor report referenced by Metro described the need as follows:

The semiconductor industry is poised for a 1990s-like growth surge. Though the Metro region has thousands of acres of industrial land, it lacks supply of development-ready large industrial sites (25- plus buildable acres) the semiconductor industry needs to grow.

. . . .

At an aggregate level, the Metro region shows thousands of acres designated as industrial property over a 20-year planning cycle. However, a closer look at this land shows very few sites of appropriate size that development-ready and suitable for major manufacturing investment, especially semiconductor R&D and manufacturing.

Since 2012, the Metro region has studied land readiness to gain a sense for the number of large sites that are development ready, ranked by tiers, and to understand pathways toward moving sites to Tier 1 (ready) status. A 2022 review of the available inventory of large industrial sites reveals that the inventory has fallen sharply since 2017. In that year the Metro region had 47 industrial sites with more than 25 acres. Today, that inventory has fallen by 40% to only 28 sites.

Most troubling is the paucity of large sites that are “Tier 1” or “development ready”, meaning they have infrastructure in place and development can begin within six months or less. The Metro region currently has only two development ready sites totaling 82 acres. There are only six sites in the Tier 2 category, meaning they require significant permitting and infrastructure improvements to be developed within three years. This subcommittee determined that only three of those six sites and 352 acres would meet the industry’s site requirements (including those listed above and other factors like site grade).

Notably, there are no development ready sites of the size needed to attract a major semiconductor investment, or to support larger size suppliers.

Rec. 1167

The report set out its recommendations for short-term work to be carried out by a consultant under the direction of “the subcommittee and coordinated by the staff team.”

The consultant work scope will include:

.

- *Creating an updated map to identify sites most suitable for semiconductor expansion during this industry investment cycle, including the following, keeping in mind demand could exceed these needs:*
 - *Two sites of 500+ acres each to accommodate large-scale semiconductor R&D and/or production fabrication operations.*
 - *Four sites of 50-100 acres suitable for integrated device manufacturers or major semiconductor equipment manufacturers.*
 - *At least eight sites of 15-35 acres to enable key suppliers to the semiconductor cluster to locate and expand.*

Rec. 1168.

That was the specific regional need identified by Metro in its Urban Growth Report, Rec. 82 and in Metro's findings Rec. 1193.2. **The record contains contradictory definitions of the "sites" are in the Sherwood West Concept Plan that will fill the regional need for two "50-100 acre sites suitable for integrated device manufacturers or major semiconductor equipment manufacturers."**

The two sites referenced in Metro's findings that Sherwood's concept plan filled the regional need for 50-100 acre developable sites suitable for integrated device manufacturers or major semiconductor equipment manufacturers are a block of land of 65.4 acres in the North District west of SW Elwert Road. Rec. 1283 and another block of land east of SW Elwert Road of 140.7 acres. Rec. 1284

However, these two "sites" are unrelated to the sites as defined by the conceptual streets for the North District presented in the Concept Plan in *Figure 14. Conceptual Street Framework for Sherwood West* Rec. 6181 and *Figure 22. Overall Transportation Framework for Sherwood West*. Rec. 6281

Sherwood's consultant team prepared two alternate conceptual street layouts for the North District which would define a different set of development sites, Rec. 6659 (which seems to match the street layout in Figures 8 and 22) and Rec. 6602. These also , are inconsistent with the "sites" referenced by Metro.

2. **Metro has not provided a logical basis or substantial evidence for its finding that the two sites identified in its findings are two developable "50-100 acre sites suitable for integrated device manufacturers or major semiconductor equipment manufacturers" given the boundaries of the employment area in the North District as defined by Sherwood BPA transmission line, Title 13 habitat, need for access streets, a Chicken Creek greenway trail, levels of fragmentation, steep slopes and other factors.**

Metro did not address or reconcile its findings that the two sites for high-tech manufacturing total 206.1 acres Rec. 1283, 1284, but the total acreage for mixed employment in the North District, according to the Sherwood West Concept Plan is only 130 acres. Rec. 6179 and Figure 9 Rec. 6174. In its objections and its appeal WoSFA pointed out that the employment area's acreage and shape made was a major if not fatal limitation on the identification of 50+ acre potential sites.

As WoSFA has described previously in detail in its objections and appeal Metro did not address or explain its findings about how those two "sites" could be suitable sites of 50 or more acres given the BPA right of way, the Goal 13 protected habitat, and land needed for street rights of way, all of which are shown in in the Concept Plan in *Figure 14. Conceptual Street Framework for Sherwood West* Rec. 6181 and *Figure 22. Overall Transportation Framework for Sherwood West*. Rec. 6281 and in the other parts of the record cited in WoSFA's objection and appeal.

Metro's staff's methodology for calculating buildable lands in urban reserves includes (for obvious reasons) subtracting the land need for streets, roads, parks and other facilities. Rec. 333

The Director and Metro contend that the current protections are not controlling because the boundaries protected by Title 13 might be revised by the city after the addition of the expansion area to the city limits.⁴ Metro and DLCD must base its decision on the fact of Title 13 protections today, not an unsupported speculation that the area may be reduced in the future.

In addition, assuming the mapping is currently accurate, Metro's staff said this about the impact of Title 13 habitat protections on land development capacity, in describing their methodology used to analyze the urban reserves:

Metro's Title 13 regulations do not preclude all development in inventoried areas so an additional step described below (Step 5) [sic Step 4] recognizes that some limited development will occur in those areas.

Rec. 332. Metro staff's Step 4 in its methodology assumed that 10% of "regionally significant protected habitat might be developed. Rec. 333.

In its analysis of the Boring Urban Reserve, Metro staff found that Title 13 protections might be increased rather than decreased, if that land was added to the UGB. Rec. 404

Metro and Sherwood did not explain how the much-touted Chicken Creek Greenway Trail, heavily touted in its Concept Plan, Rec. 7176, 7178 (which visitors to its open house indicated they wished to be protected rather than accessible Rec. 7236) would take up land and interfere

⁴ It is very likely this possible future revision will be based on the logging carried out of a large part of the upland habitat supposedly protected by Title 13 which WoSFA showed in Google Earth images in its prior submissions.

with high tech manufacturing on site B, as shown in the Figure “Sherwood West - Regional Trails” at Rec. 6658.

The fragmentation of land is a barrier to the site assembly, according to the developers realtors and other regional employment land experts interviewed as part of Sherwood’s Concept Plan Appendix G Economic Opportunity memo prepared by Leland Associates:

Developers tend to prefer large sites with single ownership in order to avoid the significant delays and hurdles associated with assembling enough land from multiple parcels. Further, property owners are rarely on the same page regarding long-term plans and it is difficult to predict if, when, and why private property owners will sell or develop their land.

Rec. 7287

Metro found: “North District Mixed Employment Area of the Sherwood West urban reserve has specific characteristics that meet a regional need for large 40 to 50-acre parcels with minimal need for site aggregation, slopes under seven percent, and proximity to the highway and existing semiconductor companies. Rec. 082

Metro’s findings of a “minimal need for site aggregation” is directly contradicted by the level of fragmentation of these lands into different parcels and ownerships, Rec. 6573.

The prospect that the fragmentation of ownerships will be a barrier to site assembly is confirmed in the record reporting and mapping the results of inquiries sent to the landowners about their willingness to sell their land for development; many of those owners, including the owners of some of the largest blocks of land do not intend to sell their land for industrial development. Rec. 6583 *Figure 8, Sherwood West Concept Plan Property Owner Development Interest.*

With respect Metro’s finding that the sites have slopes under 7%, Sherwood’s consultants maps show that portions of “sites” A and B have slopes greater than 10% and 25%, Figure 5 Sherwood West Concept Plan North District Contours & Slope Rec. 6577, let alone 7%.

The aerial photograph also shows that not all of the properties are vacant; there are structures, possibly homes on some of them. Rec.6573. Metro staff treated pre-existing rural homesite development as a constraint on future urban development in its review of alternative urban reserves in describing its methods, quoted below.

Metro, DLCD and Sherwood did not explain how these sites are consistent with other aspects of site suitability analysis Metro conducted of land in alternative Urban Reserves:

Lands that are considered vacant may not necessarily be buildable for new urban land uses. Therefore, the next step in a buildable lands assessment is to subtract those areas from the vacant lands inventory that are topographically

or environmentally constrained. The following constrained areas were not considered buildable in this analysis and were removed from the vacant lands inventory:

1. Urban Growth Management Functional Plan (UGMFP) Title 3, Water Quality and Flood Management Areas, consisting of:

- Flood hazard areas (e.g., FEMA “100-year” floodplains and 1996 flood inundation areas)*
- Wetlands (e.g., from an enhanced National Wetlands Inventory and local wetlands inventories)*
- Wetland areas, measured 50 feet from the edge of a wetland or up to 200 feet from the edge of wetland located adjacent to slopes greater than 25 percent*
- Vegetated corridors between 15 feet and 200 feet in width, depending on the area drained by the water feature and the slope of the land adjacent to the water feature*

2. UGMFP Title 13, Nature in Neighborhoods, areas identified as riparian habitat Class I and II and upland habitat Class A and B on the Metro Regionally Significant Fish and Wildlife Habitat Inventory Map

Rec. 331-332.

“Sites” A and B do not conform to the employment land inventory requirements under Goal 9 as established in the Goal 9 Rule. OAR 660-009-0015(3).

Metro did not explain why it found Sherwood’s November 26, 2024 memo on the subject compelling, Rec. 1194, given that this memo only evaluated the suitability of other sites inside the UGB with Sherwood’s sites outside the UGB. Rec. 1271 -1283 to meet regional needs for housing and employment, but did not do that for the 50-acre high tech manufacturing sites it found the region needed.

Basis for Commission remand under its standards of review

OAR 660-025-0160(2) specifies the Commission’s standards of review including:

(a) For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government’s decision.

Metro’s, Sherwood’s and the Director’s attempt to justify the North District employment land, in excess of any regional need for industrial land are a foggy and illogical compilation of inconsistent statements, and factual contradictions without any connecting logic.

The Commission should find Metro’s decision fails to meet the Supreme Court’s standard in the *Lane County* decision: “The substantial evidence test is not met by evidence that lacks a reasonable connection between the evidence and the conclusions which the evidence is designed to support.” *1000 Friends of Oregon v. LCDC and Lane County* 305 Or. 384 at 407; 752 P.2d 271 (1988). And see [1000 Friends of Or. v. Land Conservation & Dev. Comm’n](#),

[237 Ore. App. 213, 220-221 239 P.3d 272](#) |(2010) (remanding LCDC’s approval of Woodburn expansion of its UGB to serve specialized regional industrial needs for failing to provide an adequate explanation of its decision,); Barker 5 LLC v.

Appeal Issue 6.K. Metro’s conditions will allow the use of high-tech manufacturing sites for uses other than what were the basis justifying the addition of unneeded industrial land to the UGB.

Director’s response:

This appeal item is based upon an objection the director found to be invalid because it did not satisfy the provisions of OAR 660-025-0140(2)(b). The commission may not consider this appeal item. OAR 660-025-0140(3).

Director’s response at page 37. The original basis for this determination is found on pages 92-93 to of the Directors April 18, 2025 response to the objection:

The director finds this objection invalid. OAR 660-025-0140(2) states that an objecto must “[c]learly identify an alleged deficiency in the work task 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.” WoSFA’s objection does not reference any alleged provisions violated on this issue. In reviewing objections, the director only needs consider those that “make an explicit and particular specification of error by the local government.” 1000 Friends of Oregon v. LCDC, 244 Or App at 268.

WoSFA’s exception:

In *Boldt v. Clackamas County*, 107 Or App 619, 623, 813 P2d 1078 (1991) the Court of Appeals “requires no more than fair notice to adjudicators and opponents, rather than the particularity that inheres in judicial preservation concepts.” *Boldt* was recently affirmed by the Court of Appeals in *The Confederated Tribes of the Warm Springs Reservation of Oregon v. Deschutes County (Thornburgh)*, 332 Or App 361, 385 (2024). “In *Thornburgh*, the court of appeals reiterated the *Boldt* standard: “[t]he standard for preservation of an issue for review before LUBA ‘requires no more than fair notice to adjudicators and opponents, rather than the particularity that inheres in judicial preservation concepts.’” *Thornburgh*, 332 Or App 361 at 385.

WoSFA’s objections repeatedly cited the legal requirement for Metro to comply with Goal 14 and other Goals and related statutes when it makes it decision. The Director found that Metro’s conditions of approval were a basis for it to find Metro complied with the Goals and statutes, without citing any authority for its position, but demanded that WoSFA to re-cite the Goal compliance requirement again for this argument in order for it to have “fair notice” of what the issue in dispute was.

The Director's rejection of the objection was unreasonable and inconsistent with the Court of Appeals standards decisions in *Boldt*, *Confederated Tribes* and *Thornburgh*

Appeal Issue 6.L. Metro's failure to consider housing needs of all income levels and relevance of Oregon Housing Need Analysis.

Summary of the Director's decision:

Several of the objections and now the appeals raise variations of this specific issue – that Sherwood West will not meet the region's identified housing needs. The director's decision is responsive to this issue on pages 40-43, 54-56, and 85, as summarized in the department's response to Appeal Issues 1.C. and 3.A.

Director's decision page 38.

Summary of Department's response to Appeal issue 1.C:

The director's decision addresses these appeal issues as follows:

Affordable Housing Mandates: Metro completed this decision in 2024. Sherwood completed its housing needs analysis in 2019, prior to the issuance of OHNA final projections on January 1, 2025. Neither could have been expected to incorporate those numbers into its analysis. The director's decision is responsive to this issue on pages 40-43.

WoSFA exception to Director's decision: Metro staff, advisory committees and the Council were briefed by DLCD staff on the draft Housing Needs Analysis months before the Metro Council made its decision.

The claim that Sherwood, Metro staff and the Metro Council were unaware of the developing OHNA analysis and therefore could not consider it, is contradicted by the briefings to the Metro Council and its various advisory committees on the developing OHNA methodology during 2024, at the same time Metro was preparing its Urban Growth Report. The draft OHNA methodology was discussed by the Metro Policy Advisory Committee on May 22, 2024, presented by DLCD's Sean Edging. Rec. 6667-6679.

This was being done in tandem with briefings to the Metro Council and its advisory committees on its own housing need assessment which pointed out the obligation for Metro to address the affordability of housing. See for example the presentation to the Metro Policy Advisory Committee (MPAC) on April 24, 2024, Rec. 7720-7727 and presentation slides at 7747, and 7751 ("Existing needs are for lower incomes") and the discussion at the March 27, MPAC meeting at which Mayor Rosenor commented

Mayor Rosener requested more detail on their density assumptions, noting that 18 houses per acre feels very high. He shared that in Sherwood, developers only want to build single family detached homes.

....

Mayor Rosener shared that in Sherwood they have a three-story limit, so 18 houses per acre will be apartments. He shared that receiving additional information on the density would be very helpful.

Rec. 7877.

The draft Department of Administrative Service (DAS) affordable housing methodology was published in September of 2024. It included this table of housing need for the Metro area on page 21:

Figure 18. Metro Region 20-Year Needed Housing Units by Income Level and Component

Income Level	Current Need		Future Need			Total Need
	Underproduction	Units for Homelessness	Second & Vacation Homes	Demographic Units	Pop. Growth Units	
0-30%	4,274	9,806	-	6,569	11,837	32,486
31-60%	5,391	881	-	8,893	16,025	31,190
61-80%	2,738	331	-	6,221	11,210	20,499
81-120%	2,254	-	2,297	10,879	19,605	35,035
120%+	703	-	1,107	24,193	43,597	69,600
Metro	15,360	11,018	3,404	56,754	102,273	188,810

March 2025 Record. Item C. Oregon Housing Needs Analysis Draft Methodology at page 21.

Below is the same table in the final December 2024 Oregon Housing Needs Analysis Draft Methodology at page 39.⁵ The differences are negligible.

Figure 21. Metro Region 20-Year Total Housing Need by Income Level and Component

Income Level	Current Need		Future Need			Total Needs
	Underproduction	Units for Homelessness	Second & Vacation Homes	Demographic Change	Pop. Growth	
0-30%	4,478	7,026	-	6,626	12,904	31,034
31-60%	5,256	1,703	-	8,568	16,629	32,156
61-80%	2,588	360	-	5,999	11,644	20,591
81-120%	2,314	-	2,295	10,848	21,108	36,566
>120%	786	-	1,106	22,498	43,540	67,929
Total	15,422	9,090	3,401	54,539	105,825	188,276

Summary of Director's response, next paragraph:

⁵ LCDC can take official notice of acts of the executive departments of the state, OAR 660-025-0085 (5)(h)(B), which logically would include the OHNA final methodology report, which was presented to the Commission, which its staff helped prepare and which DLCD is charged with helping to implement.

Additionally, as noted in the department's response to Appeal Issue 1A, Metro is not required to incorporate the assumptions of any other local government in the Portland Metro area, including the City of Sherwood, into its buildable lands inventory. This is also true of its housing needs analysis. The question before the commission is whether Metro's analysis is consistent with state law and sufficiently justified with analysis, and the director determined that it met these standards.

Director's report at page 15.

WoSFA's exception **WoSFA is not objecting to the Metro Council's "failure to incorporate other cities' assumptions about housing needs," but a failure to address's requirement that housing meet the needs of a full range of incomes and failure to base a decision on substantial evidence in the record.**

The referenced UGR and its appendices do not address the Goal 10 mandate in any way; not for the Sherwood West Concept Plan and not for the existing UGB. This is a violation of Goal 10 and the needed housing statutes referenced in WoSFA's objection and appeal.

In addition, and in the alternative, if the Director is attempting to justify this under the substantial evidence standard in its rules and ORS 197.829, the Oregon Supreme Court has held, in a review of LCDC's approval of the Lane County comprehensive plan, that: "The substantial evidence test is not met by evidence that lacks a reasonable connection between the evidence and the conclusions which the evidence is designed to support." *1000 Friends of Oregon v. LCDC and Lane County* 305 Or. 384 at 407; 752 P.2d 271 (1988) and see [Barkers Five, LLC v. Land Conservation & Dev. Comm'n, 261 Ore. App. 259 at 265 323 P3d 368 \(2014\).](#)

Summary of Director's finding that LCDC and Metro can rely on future implementation to find Metro's December 2024 decision complies with Goal 10.

To summarize:

- *Metro acknowledges that new market-rate housing alone will not meet low-income needs and that other interventions are required;*
- *Metro Ordinance 24-1520, Exhibit B imposes affordability targets on Sherwood and mandates annual reporting on compliance and development status for six years;*
- *Metro completed a Buildable Land Inventory (Appendix 2) and a Housing Needs Analysis (Appendix 8), both consistent with Goal 10 requirements; and*

- *The inventory includes redevelopment estimates—accessory dwelling units and middle housing conversions—showing 782 middle housing units in Sherwood under the Baseline Scenario.*

Additionally, contrary to the appeal’s assertion, allowing for a variety of housing types in the Sherwood West urban reserve will result in more housing choice by providing more opportunities for people to live in more areas, not to the exclusion of other areas within the existing UGB. As HLA notes, Sherwood’s “future adoption of [a housing production strategy] cannot work retroactively to amend a planning decision” and that a housing production strategy “is not a land use decision subject to land use appeal”. HLA appeal at 4. However, Metro’s Conditions of Approval are part of the land use decision, Metro Ordinance 24-1520, and the director considers them in assessing compatibility with Statewide Planning Goal 10. The condition to require the city to take actions in its housing production strategy to ensure affordability is consistent with Goal 10, since the housing production strategy is a critical component of Goal 10 implementation.

It is worth reiterating that Metro has an obligation to plan for needed housing, including housing for low-income households, consistent with Goal 10. As Metro states in Exhibit F, Metro has incorporated government assisted housing, affordable housing, manufactured homes, and farmworker housing into the broader housing type categories in its Housing Needs Analysis, consistent with OAR 660-024-0040(8)(b).

Based on this analysis, the director recommends that the commission reject this issue raised on appeal.

Director’s decision, pages 21-22.

WoSFA exception

Sherwood, the Metro Council and LCDC cannot substitute a promise of future compliance with Goal 10, for compliance with Goal 10 when Metro made its decision, because its decision would have been different if it had complied with Goal 10.

The Director and Metro did not cite any provisions in statute and Metro Code that gives Metro the future authority to require Sherwood to provide or assure provision of housing affordable to households at 30%, 60% or 80% of the area median household income.

As possible guidance for the Commission it may Land Use Board of Appeals decisions in which it has identified situations, analogous to those here, when deferral of compliance with a standard through the use of a condition of approval is inappropriate. Here are some headnotes from cases addressing this issue:

- It may not be appropriate to grant conditional approval while deferring required findings to a subsequent approval stage, even where there will be a full public right to

participate in the subsequent approval stage, where the initial decision has the effect of rendering the subsequent review moot or prevents meaningful review. However, where the initial decision has no legal or preclusive effect on the subsequent review, such conditional approval provides no basis for reversal or remand. *Meadow Neighborhood Assoc. v. Washington County*, 55 Or LUBA 472 (2007)

- OAR 660-12-060(1) is applicable to comprehensive plan amendments which significantly affect a transportation facility. Compliance with this rule provision must be addressed when a UGB amendment is adopted; it cannot be deferred to future annexation decisions within the UGB expansion area. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994) and see
- A county impermissibly defers a finding that a proposed dwelling complies with applicable land use design standards when, in the absence of substantial evidence supporting a finding of compliance, the county imposes a condition that the dwelling's compliance with design standards be reviewed at a later building permit stage. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

Appeal Issue 6.M. Metro failed to consider reasonable alternative measures to accommodate needed housing inside the UGB.

Director's response:

This appeal item is based upon an objection the director found to be invalid because it did not satisfy the provisions of OAR 660-025-0140(2)(c). The commission may not consider this appeal item. OAR 660-025-0140(3).

Page 38.

WoSFA's exceptions

As noted previously, WoSFA's Objection A at pages 10 to 16 was: "**Objection A** The Metro Council itself did not evaluate alternative sites or consider reasonable alternative measures to use land already in the boundary to meet identified regional needs as required by state statutes, Goal 14 and appellate court precedent." WoSFA Objections at page 10 (emphasis added.)

6.N. Metro failed to consider and apply its policies and rules on racial equity, diversity and inclusion

Summary of Director's response:

To summarize: the objector has not shown any meaningful connection between the generalized Metro Regional Framework Plan policy and the proposed UGB expansion in Sherwood. The director noted in responses to related objections that nearly all projected housing and employment growth needed to meet 20-

year land needs for the entire Metro region will occur within the existing Metro UGB.

WoSFA's exception:

The “meaningful connection” is the requirement that Metro Council’s own Framework Plan requires it to consider equity, the connection it assumed when it consulted its Committee on Racial Equity and the unrebutted Census and school data presented by WoSFA showing Sherwood UGB expansion and the \$334,000,000 in taxes and fees to support its development would benefit a city with one of, if not the highest incomes and lowest racial and economic diversity in the region.

Metro’s Regional Framework Plan include six desired outcomes for the region which are to govern the exercise of its powers:

Chapter 1 Land Use

It is the policy of the Metro Council to exercise its powers to achieve the following six outcomes, characteristics of a successful region:

. . . .

6. The benefits and burdens of growth and change are distributed equitably.

In June 2016 the Metro Council adopted its *Strategic plan to advance racial equity, diversity and inclusion* which includes this commitment:

Metro is committed to arriving at an equitable and prosperous Portland region where everyone has opportunities to enjoy a good quality of life. Taking a racial equity approach by removing barriers and increasing equitable outcomes for people of color in the region is the most intentional and effective path to get there.

Metro’s Committee on Racial Equity (CORE) was consulted, during several meetings over the course of several months, on the Sherwood UGB expansion. Video recording of September 26, 2024 Metro Council hearing on items 6.1 “2024 Urban Growth Management: Public Hearing on Chief Operating Officer Recommendations” at 1:21:50 to 1:24:42.

Clearly Metro itself thought there was “a meaningful connection” between that policy and the Sherwood UGB expansion or they would not have presented it to the CORE.

In its appeal, WoSFA provided Oregon Department of Education, US Census Bureau and other data showing that Sherwood is one of the most affluent parts of the region and that taxes from across Washington County, including much less affluent communities, like Beaverton, will be helping to pay for the \$334,000,000 in taxes to build the infrastructure needed for Sherwood West.

6.O. Metro failed to demonstrate compliance with statutes, goals and its own Code State preferencing compact and efficient urban development

Summary of Director's response:

To summarize: Metro's pro forma buildable-land inventory projects that identified redevelopment sites can yield 48,400 of the 175,500 new dwelling units the region needs by 2044. From 2013 to 2022, the region added 93,000 homes—more than half through redevelopment—with multi-unit buildings making up 56 percent of new construction and substantial gains in “middle housing” types, while single- detached houses, though 52 percent of the existing stock, accounted for only 30 percent of recent builds. Development in Metro's centers, corridors, and main streets achieved an average density of 48 units per acre—versus 10 units per acre outside those areas and 16 region-wide—outperforming statewide averages. The director found that growth between 2013 and 2022 not only met but significantly exceeded the minimum density and housing-mix standards set by OAR 660-007-0030 and OAR 660-007-0035, evidencing the success of programs like ClimateSmart Communities and robust statutory compliance backed by nearly 10,000 pages of record. Based on this analysis, the director recommends that the commission reject this appeal issue.

Page 39.

WoSFA's exception: There are no findings by the Metro Council addressing the compact growth standards as applied to the Sherwood West UGB expansion of 1,291 acres to satisfy a regional need of 575 acres.

It is undisputed that Metro's decision would expand the regional UGB by 1,291 acres in order to accommodate a need - quantified by Metro and Sherwood - of 575 acres.

The Director response is based on regional performance in compact growth between 2013 and 2022 by pointing to data about the overall efficiency of urban growth in past years. That data and argument are irrelevant.

The issue on appeal is the compliance of Metros' decision with the compact growth policies in statutes, Goals and Metro's Code cited by WoSFA. The Director cannot legally justify a current decision by the Metro Council based on what happened as a result of prior decision by Metro, that are not on appeal here.

In addition, the Director does not reference any findings by Metro addressing those policies because there are none. That is error. *Ryland Homes*, above.

6.P. Failure to consider cost-effective alternative lands and areas that will be less burdensome on taxpayers and fee payers.

Note: If Ron cross- adopted our objections then he can make his arguments under this heading

6.Q. Efficient accommodation of needs (parallel to 6.O)

Much of the Director's response is a rebuttal of WoSFA's reliance on the consultants' own use of 20 du/acre standard for evaluating cost effective. This response misses the point – Also this is irrelevant if we prevail on the failure to consider alternatives.

6.R. Failure to consider climate change impacts

Summary of the Director's response:

To summarize, the Director addresses consideration of climate change based on applicable criteria in the response to objections 1.D. and 10.G, finding that Metro considered the potential VMT from the Sherwood West urban reserve as part of its Goal 14 locational analysis. The director also found that although WoSFA argued its own census-based evidence undermines Metro's decision, the objector failed to address Metro's conflicting data or explain why relying on it was unreasonable – making its challenge insufficient under Mazeski 28 Or LUBA 184.

Page 41.

WoSFA exception: The Director's defense of Metro's decision is based on a LUBA precedent rather than the standards articulated by appellate decisions remanding LCDC's prior decisions.

The controlling standards for the adequacy of DLCD and LCDC's reasoning and its connection to the evidence in the record, is not LUBA's decision in *Mazeski* but 1000 Friends of Oregon v. LCDC (Lane County), 1000 Friends of Oregon v. LCDC (Woodburn), Confederated Tribes⁶, Boldt and Thornburgh discussed previously.

6.S. Violation of ethics, Goal 1 and Metro Public Engagement Principles.

Director's response:

This appeal item is based upon an objection the director found to be invalid because it did not satisfy the provisions of OAR 660-025-0140(2). Accordingly, the commission may not consider this appeal item. OAR 660-025-0140(3).

Director decision at page 42. The Director's April 18, 2025, response to the original objection was:

The director finds this objection to be invalid. The director does not have the authority to review and consider alleged violations of state ethics laws, ORS chapter 244.. Metro's public engagement principles are not a part of Metro's plan or code that is subject to director review. Where the director does have review authority, Goal 1, the

⁶ *Confederated Tribes* is more recent Court of Appeals precedent which should govern this matter instead of the inconsistent Court of Appeals decision in *1000 Friends of Oregon v. LCDC* 244 Or App 273

objector does not make an assertion of violation specific enough to review. In reviewing objections, the director only need consider those that “make an explicit and particular specification of error by the local government.” 1000 Friends of Oregon v. LCDC, 244 Or App at 268.

WoSFA’s exceptions:

- 1. WoSFA fully complied with the requirements for an appeal to the Commission of a Director’s decision by making a “*particular specification of error by the local government,*” in its objections, which the Director refused to consider without explanation.**

LCDC has jurisdiction to review allegations that a county’s proceedings under periodic review failed to comply with Goal 1 and LCDC’s rules for conducting periodic review. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

Amendments to Metro’s Regional Framework Plan and the Metro Code that do not amend or affect Metro’s citizen involvement program can violate if the decision is inconsistent with Metro’s citizen involvement program. *Homebuilders Assoc. v. Metro*, 42 Or LUBA 176 (2002).

Other decisions stating that failure to follow an adopted Citizen Involvement Plan can be a violation of Goal 1: *Jaffer v. City of Monmouth*, 51 Or LUBA 633 (2006); *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998); *Western PCS, Inc. v. City of Lake Oswego*, 33 Or LUBA 369 (1997); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995).