

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

HOUSING LAND ADVOCATES,  
*Petitioner,*

vs.

CITY OF HAPPY VALLEY,  
*Respondent.*

LUBA No. 2024-074

FAIR HOUSING COUNCIL OF OREGON,  
*Petitioner,*

vs.

CITY OF HAPPY VALLEY,  
*Respondent.*

LUBA No. 2024-075

FINAL OPINION  
AND ORDER

Appeal from City of Happy Valley.

Margaret Y. Gander-Vo filed a petition for review and reply brief and argued on behalf of petitioner Housing Land Advocates. Also on the brief was Joshua R. Hall and Saalfeld Griggs PC.

Steven M. Crawford filed a petition for review and reply brief and argued on behalf of petitioner Fair Housing Council of Oregon.

Christopher D. Crean filed the respondent's brief and argued on behalf of respondent. Also on the brief was Ashleigh K. Dougill and Beery, Elsner & Hammond, LLP.

1           ZAMUDIO, Board Chair; BASSHAM, Board Member; WILSON, Board  
2 Member, participated in the decision.

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4  
5                   REMANDED                   05/12/2025

6  
7           You are entitled to judicial review of this Order. Judicial review is  
8 governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal Ordinance 589, adopted by the city council, amending Happy Valley Municipal Code (HVMC) Title 16 approval standards for cottage clusters, and a map amendment that establishes a Cottage Cluster Exclusion Overlay zone where new cottage clusters are prohibited.

**MOTIONS TO TAKE OFFICIAL NOTICE**

Our review is generally limited to the record. ORS 197.835(2)(a). However, we may take official notice of documents that (1) constitute officially cognizable law under ORS 40.090 and (2) have some relevance to the issues on appeal. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688, 692 (2007); OAR 661-010-0046(1). A motion for official notice must explain “with particularity what the material sought to be noticed is intended to establish, how it is relevant to an issue on appeal, and the authority for notice under ORS 40.090.” OAR 661-010-0046(2)(a).

**A. Housing Land Advocates’ Motion to Take Official Notice**

Housing Land Advocates requests that we take official notice of the following documents as relevant to Housing Land Advocates’ argued interpretation of the Middle Housing Statute, ORS 197A.420:

(1) Testimony in Support of House Bill 2007, House Committee on Human Services and Housing, Speaker of the House Tina Kotek, April 13, 2017;

(2) Senate Bill 1051 (2017);

1 (3) House Bill 2001 (2019);

2 (4) House Bill 2003 (2019);

3 (5) House Bill 2001 (2023);

4 (6) Testimony in Support of House Bill 2001, House Committee on  
5 Human Services and Housing, Speaker of the House Tina Kotek,  
6 February 11, 2019; and

7 (7) HB 2001 (2019) -11 Amendment, Staff Measure Summary.

8 We regularly consider legislative history in interpreting state statutes and  
9 administrative rules, consistent with the legislative directive that LUBA  
10 “decisions be made consistently with sound principles governing judicial  
11 review.” ORS 197.805. ORS 174.020(1) provides:

12 “(a) In the construction of a statute, a court shall pursue the  
13 intention of the legislature if possible.

14 “(b) To assist a court in its construction of a statute, a party may  
15 offer the legislative history of the statute.”

16 Housing Land Advocates’ motion to take official notice is granted.

17 **B. City’s Motion to Take Official Notice**

18 **1. Legislative History**

19 The city requests that we take official notice of the following documents  
20 as relevant to the city’s argued interpretation of ORS 197A.420:

21 (1) House Bill 2001 (2019) Legislative Staff Summary, April 2,  
22 2019;

23 (2) House Bill 2001 (2019) Fiscal Impact Statement, June 7, 2019;  
24 and



1 (3) Testimony in Support of House Bill 2001 (-11 amendment),  
2 House Committee on Human Services and Housing, Speaker of the  
3 House Tina Kotek, April 3, 2019.

4 The city's motion that we take notice of the provided legislative history is  
5 granted.

## 6 **2. Happy Valley Ordinance 573 (2023)**

7 LUBA may take official notice of "[a]n ordinance, comprehensive plan or  
8 enactment of any county or incorporated city in this state, or a right derived  
9 therefrom." ORS 40.090(7). The city requests that we take official notice of City  
10 of Happy Valley Ordinance 573, An Ordinance Amending the Happy Valley  
11 Comprehensive Plan and Title 16 Land Development Code of the Happy Valley  
12 Municipal Code for Adoption of the Pleasant Valley/North Carver  
13 Comprehensive Plan and Declaring an Emergency, and supporting  
14 documentation as follows:

15 (1) Ordinance 573, March 7, 2023;

16 (2) Ordinance 573, March 7, 2023 staff report excerpts;

17 (3) Ordinance 573, Exhibit O, Sunrise Water Authority (SWA)  
18 Presentation and Master Plan; and

19 (4) Ordinance 573, Exhibit P, Clackamas County Water  
20 Environment Services (WES) Sanitary Sewer System Master Plan.

21 The city requests that we take official notice of that documentation  
22 pursuant to ORS 40.090(7) as "relevant to the City's [Statewide Planning] Goal  
23 11 [(Public Facilities and Services)] compliance." City Motion to Take Official  
24 Notice 2. That general statement is insufficient to explain "with particularity what

1 the material sought to be noticed is intended to establish[.]” OAR 661-010-  
2 0046(1).

3 As explained further below, in the respondent’s brief, the city attempts to  
4 rely on the findings in support of Ordinance 573 to establish that there are  
5 adequate public services to serve the dwelling densities allowed by the  
6 amendments challenged in this appeal. LUBA does not have authority to take  
7 official notice of adjudicative facts. We will not take notice of the findings in  
8 support of Ordinance 573 to establish facts in these appeals. *See Friends of*  
9 *Deschutes County v. Deschutes County*, 49 Or LUBA 100, 103 (2005)  
10 (explaining that LUBA may take official notice of city annexation resolutions as  
11 law, but LUBA does not have authority to take notice of the facts contained in  
12 those resolutions). We have explained that “documents that we officially notice  
13 do not become part of the local record or provide evidentiary support for the  
14 parties’ arguments or for the challenged decision itself.” *Oster v. City of*  
15 *Silverton*, 79 Or LUBA 1058, 1065-66 (2019), (citing *Martin v. City of Central*  
16 *Point*, 73 Or LUBA 422, 426 (2016), *aff’d*, 283 Or App 648 (2017); *Friends of*  
17 *Deschutes County v. Deschutes County*, 49 Or LUBA 100 (2005)). With those  
18 caveats, we will take official notice of Ordinance 573 under ORS 40.090(7).

19 **C. Fair Housing Council’s Motion to Take Official Notice**

20 Fair Housing Council requests that we take official notice of the following  
21 documents cited in Fair Housing Council’s petition for review, “to provide

1 context for interpretation of the Affirmatively Furthering Fair Housing mandate  
2 in ORS 197A.100 and Statewide Land Use Planning Goal 10 [(Housing)].” Fair  
3 Housing Council Motion to Take Official Notice 1.

4 (1) Article 1, section 35, of the Oregon Constitution;

5 (2) Statewide Planning Goal 10 (Housing);

6 (3) Exec. Order No. 11063, 27 Fed. Reg. 11527 (1962);

7 (4) U.S. Fed. Housing Admin., Underwriting Manual (1936);

8 (5) Department of Land Conservation and Development (DLCD),  
9 *Oregon Housing Needs Analysis Legislative Recommendations*  
10 *Report: Leading with Production* (Dec 31, 2022); and

11 (6) State of Oregon’s Transportation and Growth Management  
12 Program, *Character-Compatible, Space-Efficient Housing Options*  
13 *for Single-Dwelling Neighborhoods* (May 2016).<sup>1</sup>

14 We take official notice of the first three items under ORS 40.090(1) and  
15 (2). We have previously taken official notice of state agency publications under  
16 ORS 40.090(2). *See Foland v. Jackson County*, 18 Or LUBA 731, 739-40, *aff’d*,  
17 101 Or App 632, 792 P2d 1228 (1990), *aff’d*, 311 Or 167, 807 P2d 801 (1991)  
18 (taking notice of a DLCD destination resort handbook); *Shaff v. City of Medford*,  
19 79 Or LUBA 317, 321 (2019) (taking notice of an ODOT manual). We take  
20 official notice of items four through six under ORS 40.090(2).

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<sup>1</sup> The Transportation and Growth Management Program is joint program of DLCD and the Oregon Department of Transportation (ODOT).



1   **BACKGROUND**

2           The challenged Cottage Cluster Exclusion Overlay amendments to the  
3   HVMC concern the application of the Middle Housing Statute, ORS 197A.420.  
4   House Bill 2001 (2019), Or Laws 2019, ch 639, § 2. We begin by explaining that  
5   statute and implementing administrative rules. “Middle housing” means  
6   duplexes, triplexes, quadplexes, townhouses, and cottage clusters. ORS  
7   197A.420(1)(c). The city is subject to ORS 197A.420(2), which provides, in part:

8           “[E]ach city with a population of 25,000 or greater and each county  
9           or city within a metropolitan service district shall allow the  
10          development of:

11          “(a) All middle housing types in areas zoned for residential use  
12               that allow for the development of detached single-family  
13               dwellings; and

14          “(b) A duplex on each lot or parcel zoned for residential use that  
15               allows for the development of detached single-family  
16               dwellings.”

17          The Land Conservation and Development Commission (LCDC) adopted  
18   administrative rules implementing the Middle Housing Statute at OAR chapter  
19   660, division 46 (Middle Housing Rules). Those rules treat duplexes differently  
20   than triplexes, quadplexes, townhouses, and cottage clusters. A large city “must  
21   allow for the development of Duplexes in the same manner as required for  
22   Medium Cities in OAR 660-046-0100 through OAR 660-046-0130.” OAR 660-  
23   046-0205(1). Large cities “must allow for the development of Triplexes,  
24   Quadplexes, Townhouses, and Cottage Clusters, including those created through

1 additions to or conversions of existing detached single-family dwellings, in areas  
2 zoned for residential use that allow for the development of detached single-family  
3 dwellings.” OAR 660-046-0205(2)(a). However, a large city “may regulate or  
4 limit” development of “Triplexes, Quadplexes, Townhouses, and Cottage  
5 Clusters” in master planned communities and “on Goal-Protected Lands as  
6 provided in OAR 660-046-0010(3).” *Id.* “Goal-Protected Lands” are “lands  
7 protected or designated pursuant to” Statewide Land Use Planning Goals 5  
8 through 7, 9, and 15 through 18. OAR 660-046-0020(7). Large cities “may  
9 regulate Middle Housing to comply with protective measures (including plans,  
10 policies, and regulations) adopted and acknowledged pursuant to statewide land  
11 use planning goals.” OAR 660-046-0010(3). The city found that its adoption of  
12 the Cottage Cluster Exclusion Overlay is valid because it was adopted, in part, to  
13 comply with floodplain development limitations in the city code, which the city  
14 found are protective measures under Goal 7 (Areas Subject to Natural Hazards).

15 Under the Middle Housing Rules, a large city may allow for the  
16 development of middle housing in areas zoned for residential use that allow for  
17 the development of detached single-family dwellings as provided in OAR 660-  
18 046-0205 through OAR 660-046-0235 or “[a]pply separate minimum lot size and  
19 maximum density provisions than what is provided in OAR 660-046-0220,  
20 provided that the applicable Middle Housing type other than Duplexes is allowed  
21 on [a specified percentage] of Lots and Parcels zoned for residential use that  
22 allow for the development of detached single-family dwellings, excluding [Goal-



Protected Lands].” OAR 660-046-0205(3)(b). The city referred to the latter alternative as the “Performance Metric Approach,” and we adopt that nomenclature in this decision.

Under the Performance Metric Approach, the city must allow cottage clusters on 70 percent of lots or parcels zoned for residential use that allow for the development of detached single-family dwellings, excluding Goal-Protected Lands. OAR 660-046-0205(3)(b)(D). OAR 660-046-0205(3)(b)(E) provides:

“A Middle Housing type is considered ‘allowed’ on a Lot or Parcel when the following criteria are met:

“(i) The Middle Housing type is a permitted use on that Lot or Parcel under the same administrative process as a detached single-family dwelling in the same zone;

“(ii) The Lot or Parcel has sufficient square footage to allow the Middle Housing type within the applicable minimum lot size requirement;

“(iii) Maximum density requirements do not prohibit the development of the Middle Housing type on the subject Lot or Parcel; and

“(iv) The applicable siting or design standards do not individually or cumulatively cause unreasonable cost or delay to the development of that Middle Housing type as provided in OAR 660-046-0210(3).”

In addition,

“[a] Large City must ensure the equitable distribution of Middle Housing by allowing, as defined in paragraph (3)(b)(E) above, at least one Middle Housing type *other than Duplexes and Cottage Clusters* on 75 percent or more of all Lots or Parcels zoned for residential use that allow for the development of detached single-

1 family dwellings within each census block group, with at least four  
2 eligible Lots and Parcels as described in section (2), within a Large  
3 City.” OAR 660-046-0205(3)(b)(F) (emphasis added).

4 The Middle Housing Statute required the city to amend its comprehensive  
5 plan and adopt land use regulations not later than June 30, 2022. Or Laws 2019,  
6 ch 639, § 3(1)(b). In June 2022, the city adopted middle housing code  
7 amendments to comply with the Middle Housing Statute. Record 70. In  
8 December 2022, the city adopted regulations limiting cottage clusters to one  
9 cluster per development and establishing a maximum of eight units per cottage  
10 cluster. *Id.*<sup>2</sup>

11 In 2023 and 2024, the city council engaged in five work sessions aimed at  
12 adopting additional limitations on cottage cluster development. Record 101. The  
13 city adopted code amendments limiting cottage clusters in the Flood  
14 Management Overlay Zone and implemented a Performance Metric Approach,  
15 limiting the development of cottage clusters to 70 percent of the lots where  
16 single-family detached homes are a permitted use. Record 72-75. The Cottage  
17 Cluster Exclusion Overlay Zone prohibits cottage cluster development on 548  
18 properties. Record 106. The city explained that the Cottage Cluster Exclusion  
19 Overlay “boundary was designed to result in the greatest preservation of existing

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<sup>2</sup> The Middle Housing Statute, Middle Housing Rules, and local implementing ordinances do not require the development of middle housing or require the city to impose a quota for middle housing development. Rather, the city must allow middle housing, and property owners and developers decide whether to construct middle housing.

1 housing types and neighborhood character within ‘the Bowl’ (the geographic  
2 region east of Mt. Scott and west of Scouters Mountain).” Record 103. The city  
3 explained:

4 “The new overlay district will prohibit cottage clusters in a more  
5 established portion of the city, while reducing the minimum lot size,  
6 lot width, and frontage requirements for cottage clusters outside of  
7 the overlay. As a result, the number of lots that can feasibly  
8 construct a cottage cluster will increase citywide by nearly 42%  
9 from 1,511 to 2,143. Cottage clusters will be allowed on 100% of  
10 single-family parcels outside of the overlay zone that have enough  
11 estimated buildable area (*i.e.*, 5,000 square feet of non-goal-  
12 protected land) to accommodate a cottage cluster. Further, the  
13 overlay is mitigated to some extent because all the existing approved  
14 cottage clusters are located within the overlay, all other types of  
15 middle housing are allowed within the overlay, and the irregular  
16 shape of the overlay.” Record 103.

17 These appeals followed.

## 18 **HOUSING LAND ADVOCATES’ FIRST ASSIGNMENT OF ERROR**

19 Housing Land Advocates argues that the decision misconstrues the  
20 applicable law because the Cottage Cluster Exclusion Overlay is inconsistent  
21 with and prohibited by the Middle Housing Statute. ORS 197.835(9)(a)(D). As  
22 set out above, ORS 197A.420(2), requires that the city

23 “allow the development of:

24 “(a) *All middle housing types in areas zoned for residential use*  
25 *that allow for the development of detached single-family*  
26 *dwellings; and*

27 “(b) *A duplex on each lot or parcel zoned for residential use that*  
28 *allows for the development of detached single-family*  
29 *dwellings.” (Emphases added.)*



1       Housing Land Advocates argues that ORS 197A.420(2)(a) mandates that  
2   the city allow *all* middle housing types, including cottage clusters, on every lot  
3   or parcel that allows for the development of detached single-family dwellings.  
4   Housing Land Advocates further argues that the city’s application of the  
5   Performance Metric Approach in OAR 660-046-0205(3) is inconsistent with  
6   ORS 197A.420(2)(a) and either that Middle Housing Rule is invalid on its face  
7   or it is invalid as applied.

8       **A.     The Middle Housing Statute ORS 197A.420(2) does not prohibit**  
9       **the Cottage Cluster Exclusion Overlay.**

10       The city first responds that the Cottage Cluster Exclusion Overlay is  
11   consistent with ORS 197A.420(2). The city argues that the statutory text requires  
12   the city to allow “all” types of middle housing in “areas” where single-family  
13   detached dwellings are allowed, but does not require the city to allow all middle  
14   housing types *on each lot or parcel* where a single-family detached dwelling is  
15   allowed. For the reasons explained below, we agree with the city that the Cottage  
16   Cluster Exclusion Overlay is not inconsistent with ORS 197A.420(2).

17       In interpreting ORS 197A.420(2), we examine the statutory text, context,  
18   and legislative history with the goal of discerning the enacting legislature’s intent.  
19   *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of*  
20   *Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993). We are  
21   independently responsible for correctly construing statutes. *See* ORS 197.805  
22   (providing the legislative directive that LUBA “decisions be made consistently

1 with sound principles governing judicial review”); *Gunderson, LLC v. City of*  
2 *Portland*, 352 Or 648, 662, 290 P3d 803 (2012) (“In construing statutes and  
3 administrative rules, we are obliged to determine the correct interpretation,  
4 regardless of the nature of the parties’ arguments or the quality of the information  
5 that they supply to the court.” (Citing *Dept. of Human Services v. J. R. F.*, 351  
6 Or 570, 579, 273 P3d 87 (2012); *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722  
7 (1997).)).

### 8                   **1.     Text and Context**

9           The city argues, and we agree, that the text of ORS 197A.420(2) does not  
10 require the city to allow cottage clusters on each and every lot or parcel zoned for  
11 residential use that allows for the development of detached single-family  
12 dwellings. ORS 197A.420(2) requires that the city allow “[a]ll middle housing  
13 types *in areas zoned for residential use* that allow for the development of  
14 detached single-family dwellings.” The statute does not define the terms “all”  
15 and “areas,” so we rely on the plain meaning of those words. *See State v. Kimble*,  
16 236 Or App 613, 618-19, 237 P3d 871 (2010) (“When the legislature has not  
17 provided an express definition for a particular term, we generally look to the  
18 term’s plain and ordinary meaning.”); *Pete’s Mountain Homeowners v. Ore.*  
19 *Water Resources*, 236 Or App 507, 516-17, 238 P3d 395 (2010) (“The usual  
20 source for determining the ordinary meaning of statutory terms is a dictionary of  
21 common usage.”).



1        “All” is used in ORS 197A.420(2)(a) as an adjective that modifies “middle  
2   housing types.” “All” when used as an adjective can mean “every member or  
3   individual component.” *Webster’s Third New Int’l Dictionary* 54 (unabridged ed  
4   2002). “Area” means “a section, district, or zone of a town or city.” *Webster’s* at  
5   115. The language in ORS 197A.420(2)(a) is ambiguous. Read in isolation, the  
6   sentence in ORS 197A.420(2)(a) could mean, as petitioners argue, that the city  
7   must allow all middle housing types, including cottage clusters, in all sections of  
8   the city that are zoned for residential use that allow for the development of  
9   detached single-family dwellings *and* that means, implicitly, that the city must  
10   allow cottage clusters on each lot or parcel zoned for residential use that allows  
11   for the development of detached single-family dwellings. However, ORS  
12   197A.420(2)(a) could also be read to mean, as the city argues, that the city must  
13   allow all middle housing types in sections of the city that are zoned for residential  
14   use that allow for the development of detached single-family dwellings, *but* that  
15   *does not* mean that the city must allow each and every type of middle housing,  
16   including cottage clusters, on each lot or parcel zoned for residential use that  
17   allows for the development of detached single-family dwellings. In other words,  
18   the city must allow all middle housing types to be developed somewhere within  
19   residential areas within the city, but the Middle Housing Statute does not require  
20   the city to allow each and every middle housing type on each and every lot or  
21   parcel zoned for residential use that allows for the development of detached  
22   single-family dwellings. Under this latter view, the city must permit all middle

1 housing types in residentially zoned areas within the city, but may restrict cottage  
2 cluster development on certain lots and parcels within the overlay.

3 We agree with the city that the ambiguity in the terms “all” and “areas”  
4 and the ambiguity in the sentence structure of ORS 197A.420(2)(a) is resolved  
5 by the context in ORS 197A.420(2)(b). ORS 197A.420(2)(b) requires the city to  
6 allow “[a] duplex on each lot or parcel zoned for residential use that allows for  
7 the development of detached single-family dwellings.” If ORS 197A.420(2)(a)  
8 means what petitioners argue that it means, then ORS 197A.420(2)(b) would be  
9 redundant. That is, if subsection (a) required the city to allow each and every type  
10 of middle housing, including cottage clusters and duplexes, on each lot or parcel  
11 zoned for residential use that allows for the development of detached single-  
12 family dwellings, then subsection (b) would be meaningless surplusage. “As a  
13 general rule, we construe a statute in a manner that gives effect, if possible, to all  
14 its provisions.” *Crystal Communications, Inc. v. Dept. of Rev.*, 353 Or 300, 311,  
15 297 P3d 1256 (2013); *Northwest Natural Gas Co. v. Dept. of Rev.*, 347 Or 536,  
16 556, 226 P2d 28 (2010) (same); *see also* ORS 174.010 (“[W]here there are  
17 several provisions or particulars such construction is, if possible, to be adopted  
18 as will give effect to all.”). As a corollary to that rule, “we assume that the  
19 legislature did not intend any portion of its enactments to be meaningless  
20 surplusage.” *State v. Stamper*, 197 Or App 413, 418, 106 P3d 172, *rev den*, 339  
21 Or 230 (2005). We thus agree with the city that it did not misconstrue the Middle  
22 Housing Statute as permitting the city to exclude cottage cluster development

1 from some lots or parcels zoned for residential use that allow for the development  
2 of detached single-family dwellings.

3 Housing Land Advocates argues that other context in ORS 197A.420  
4 contradicts the city's interpretation and points to ORS 197A.420(5), which  
5 allows the city to "regulate middle housing to comply with protective measures  
6 adopted pursuant to statewide land use planning goals." Housing Land Advocates  
7 argues that subsection (5) indicates that the legislature intended for all middle  
8 housing types to be permitted in all areas zoned for detached single-family  
9 dwellings unless the city identifies a conflict with protective measures adopted  
10 pursuant to statewide land use planning goals.

11 The city responds that subsection (5) is not exclusive. That is, subsection  
12 (5) does not provide that a city may regulate middle housing types *only* to comply  
13 with protective measures pursuant to a statewide land use planning goal. Instead,  
14 subsection (5) also permits local governments to "regulate siting and design of  
15 middle housing required to be permitted under this section, provided that the  
16 regulations do not, individually or cumulatively, discourage the development of  
17 all middle housing types permitted in the area through unreasonable costs or  
18 delay." We agree with the city that the legislature has permitted local



1 governments to regulate middle housing both through siting and design standards  
2 and protective measures adopted pursuant to statewide planning goals.<sup>3</sup>

3 Housing Lands Advocates also quotes ORS 197A.420(6), which clarifies  
4 that the Middle Housing Statute “does not prohibit local governments from  
5 permitting \* \* \* [m]iddle housing in areas not required” to allow middle housing.  
6 Housing Land Advocates argues that context is evidence that the legislature  
7 intended the statutory scheme to expand the availability of middle housing by  
8 requiring middle housing in all areas where single family residential uses were  
9 permitted, while also allowing local governments to permit middle housing in  
10 zones where it was previously restricted and where single-family residential  
11 housing is not a permitted use.

12 Both subsections (5) and (6) demonstrate the overall legislative aim of the  
13 Middle Housing Statute to generally increase the supply of Middle Housing,  
14 while granting cities some leeway to restrict or regulate Middle Housing in  
15 certain ways or circumstances. That context provided by subsections (5) and (6)  
16 does not contradict our conclusion that the city’s decision is consistent with the  
17 text of subsection (2)(a) in context of subsection (2)(b).

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<sup>3</sup> The city claims, and petitioners do not dispute, that the Cottage Cluster Exclusion Overlay is a city siting and design standard. Because it is undisputed, we express no opinion on that issue and assume for purposes of this decision that the Cottage Cluster Exclusion Overlay is a city siting and design standard.

## 2. Legislative History

Housing Land Advocates asserts that the legislative history supports their argument that ORS 197A.420(2) requires that cottage clusters be allowed on all lots and parcels that are zoned to allow detached single-family dwellings. The chief sponsor of House Bill 2001 (2019) testified that the legislation will “[r]e-legalize ‘missing middle’ housing choices in residential areas where they are currently banned,” and require large cities to allow “the siting of duplexes, triplexes, quadplexes, and cottage clusters in areas that allow detached single-family housing.” Testimony in Support of House Bill 2001 (2019), House Committee on Human Services and Housing, Speaker of the House Tina Kotek, February 11, 2019. The city relies on that same testimony in support of its conclusion that “all middle housing types must be generally permitted in residentially zoned *areas*, but that all middle housing types are not necessarily permitted on each residentially zoned *lot or parcel* within the zone.” Respondent’s Brief 10. The legislative history indicates a general intent, but does not assist us in construing the specific text and context of ORS 197A.420(2), as indicated by the fact that the cited legislative history can be and has been used to support the parties’ conflicting interpretations.

## 3. Statutory Interpretation Conclusion

We conclude that ORS 197A.420(2)(a) does not impose the categorical mandate that petitioners contend that it does. That is, ORS 197A.420(2)(a) does not obligate the city to allow every type of middle housing on each and every lot



1 or parcel zoned for residential use that allows for the development of detached  
2 single-family dwellings. While the statute is ambiguous, its text and content  
3 indicate that cities have some limited discretion to exclude middle housing types  
4 (except duplexes) from at least some lots and parcels. However, the statute does  
5 not provide clear sideboards on the permissible limits that a city may place on  
6 middle housing types other than duplexes. While we reject petitioners'  
7 categorical reading of (2)(a), we do not purport to describe the precise scope of  
8 the statute's mandates and limits in this decision. The Middle Housing Rules may  
9 be understood as LCDC's attempt to define and prescribe the scope of limitations  
10 that a city may impose on middle housing types other than duplexes, including  
11 the Performance Metric Approach. We address petitioners' challenges to that rule  
12 immediately below.

13 **B. The Middle Housing Rule OAR 660-046-0205(3)(b) is not**  
14 **inconsistent with the Middle Housing Statute on its face or as**  
15 **applied.**

16 Housing Land Advocates argues that the city impermissibly relied on OAR  
17 660-046-0205(3)(b), which sets out the Performance Metric Approach allowing  
18 cities to limit cottage clusters to 70 percent of lots or parcels. Housing Land  
19 Advocates argues that rule is invalid on its face or as applied because it conflicts  
20 with the statutory mandate in ORS 197A.420(2)(a). This argument is premised  
21 on Housing Land Advocates' contention that ORS 197A.420 "requires middle  
22 housing to be treated as a single category." Housing Land Advocates' Petition

1 for Review 25. We rejected that interpretation above and we reject the rule  
2 challenge for the same reason.

3 Housing Land Advocates' first assignment of error is denied.

4 **FAIR HOUSING COUNCIL'S FIRST ASSIGNMENT OF ERROR and**  
5 **HOUSING LAND ADVOCATES' THIRD and FOURTH ASSIGNMENTS**  
6 **OF ERROR**

7 Goal 10 requires the city to plan housing "allow[ing] for flexibility of  
8 housing location, type and density." OAR 660-015-0000(10). Petitioners argue  
9 that, even if the Performance Metric Approach is permissible, the city's  
10 application of the Performance Metric through the city's adoption of the Cottage  
11 Cluster Exclusion Overlay violates ORS 197A.100 because it prohibits a type of  
12 housing for approximately 30 percent of the residential properties in the city, and,  
13 thus, the decision violates the Goal 10 requirement to plan for flexible housing  
14 options. Petitioners argue that the Cottage Cluster Exclusion Overlay will retain  
15 or result in segregated living patterns and reduce housing type options within the  
16 overlay zone.

17 ORS 197A.100(1) requires the city to develop and adopt a housing  
18 production strategy. Actions that may be included in the housing production  
19 strategy include "[a]ctions that affirmatively further fair housing," ORS  
20 197A.100(3)(e), which means

21 "meaningful actions that, when taken together, address significant  
22 disparities in housing needs and access to opportunity and replace  
23 segregated living patterns with truly integrated and balanced living

1 patterns to transform racially and ethnically concentrated areas of  
2 poverty into areas of opportunity and foster and maintain  
3 compliance with civil rights and fair housing laws.” ORS  
4 197A.100(9).

5 Fair Housing Council argues that “the Ordinance does not comply with  
6 ORS 197A.100(2)(d) and (3)(e) because it does not affirmatively further fair  
7 housing in that it does not foster and maintain compliance with civil rights and  
8 fair housing laws.” Fair Housing Council Petition for Review 32-33. Fair  
9 Housing Council does not argue that the decision directly violates federal civil  
10 rights and fair housing laws. Instead, those arguments are premised on the  
11 applicability of ORS 197A.100.

12 The city responds, and we agree, that ORS 197A.100 does not apply to the  
13 challenged amendments, and even if it did, we lack jurisdiction to review  
14 decisions for compliance with ORS 197A.100. ORS 197A.100 establishes the  
15 standards and procedures for the city’s adoption of a required housing production  
16 strategy. The amendments do not adopt a housing production strategy.  
17 Furthermore, decisions that do adopt a housing production strategy are not  
18 subject to LUBA review. ORS 197A.100(7) (“The adoption of a housing  
19 production strategy is not a land use decision and is not subject to appeal or  
20 review except as provided in ORS 197A.103.”).

21 These assignments of error provide no basis for remand and are denied.

## 22 **FAIR HOUSING COUNCIL’S SECOND ASSIGNMENT OF ERROR**

23 Fair Housing Council argues that in adopting the amendments, the city  
24 failed to consider regional housing needs, citing *former* OAR 660-008-0030(1)



(2012), *repealed* by LCDC Permanent Administrative Order 15-2024, effective January 1, 2025. *Former* OAR 660-008-0030(1) provided:

“(1) Each local government shall consider the needs of the relevant region in arriving at a fair allocation of housing types and densities.

“(2) The local coordination body shall be responsible for ensuring that the regional housing impacts of restrictive or expansive local government programs are considered. The local coordination body shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.”

The city responds that the requirement to consider regional housing needs is inapplicable to the challenged decision. Furthermore, the city responds that Fair Housing Council fails to acknowledge or address the findings and evidence in the record demonstrating that the city did consider local and regional housing needs.

Fair Housing Council replies that OAR 660-008-0030 was repealed by LCDC in 2024, effective January 1, 2025, and, thus, it was effective when the challenged decision was adopted in September 2024. Furthermore, Fair Housing Council argues, “considering regional housing needs and providing actual housing choice is an inherent requirement of Goal 10.” Fair Housing Council Reply 3. Fair Housing Council points out that OAR Chapter 660 Division 8 applies generally to interpretations of Goal 10 and that 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.” OAR 660-008-0000(1).

1 The principal problem with this argument is that Fair Housing Council has  
2 not addressed what the language of former OAR 660-008-0030 requires of the  
3 city. It is not clear to us from Fair Housing Council's argument whether or what  
4 the city was required to consider as "the needs of the relevant region in arriving  
5 at a fair allocation of housing types and densities." OAR 660-008-0030(1). Fair  
6 Housing Council does not describe what process requires "fair allocation of  
7 housing types and densities" or whether the city's process challenged in this  
8 appeal amount to an "allocation." The OAR 660-008-0030 argument is  
9 undeveloped for our review. *Deschutes Development Co. v. Deschutes County*, 5  
10 Or LUBA 218, 220 (1982).

11 Finally, Fair Housing Council has not cited anything that requires the city  
12 to consider regional housing needs in applying the Performance Metric Approach  
13 in the Middle Housing Rules. Thus, Fair Housing Council's second assignment  
14 of error provides no basis for remand.

15 Fair Housing Council's second assignment of error is denied.

#### 16 **HOUSING LAND ADVOCATES' SECOND ASSIGNMENT OF ERROR**

17 Housing Land Advocates argues that the city's findings supporting the  
18 Cottage Cluster Exclusion Overlay amendments fail to demonstrate compliance  
19 with Statewide Planning Goals 2 (Land Use Planning) and 11 (Public Facilities  
20 and Services).

21 Post-acknowledgement code amendments must comply with applicable  
22 Statewide Planning Goals. ORS 197.175(2)(a), (c). While there is no generally



1 applicable requirement that legislative land use decisions be supported by  
2 findings, the decision and record must be sufficient to demonstrate that applicable  
3 criteria were applied. Further, “to permit LUBA and [the appellate courts] to  
4 exercise our review functions, there must be enough in the way of findings or  
5 accessible material in the record of the legislative act to show that applicable  
6 criteria were applied and that required considerations were indeed considered.”  
7 *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16, n 6, 38 P3d  
8 956 (2002).

9 Goal 2 is “[t]o establish a land use planning process and policy framework  
10 as a basis for all decision and actions related to use of land and to assure an  
11 adequate factual base for such decisions and actions.” OAR 660-015-0000(2).  
12 With respect to evidence, Goal 2 requires that a decision that amends a  
13 comprehensive plan or land use regulation must be supported by an adequate  
14 factual base. An “adequate factual base” is equivalent to the requirement that a  
15 quasi-judicial decision be supported by substantial evidence in the whole record.  
16 *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 378, *aff’d*,  
17 130 Or App 406, 882 P2d 1130 (1994). Substantial evidence exists to support a  
18 finding of fact when the record, viewed as a whole, would permit a reasonable  
19 person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855  
20 P2d 608 (1993); *Younger v. City of Portland*, 305 Or 346, 351-52, 752 P2d 262  
21 (1988). The Goal 2 “adequate factual base” requirement is satisfied if the decision  
22 is supported by either: (1) findings demonstrating compliance with the applicable

1 legal standards; or (2) argument and citations to facts in the record adequate to  
2 demonstrate compliance with the applicable legal standards.  
3 *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560, 564  
4 (1994).

5 **A. Goal 2**

6 Housing Land Advocates argues that the city did not establish an adequate  
7 factual base for restricting cottage clusters in the overlay zone or consider  
8 alternatives. Housing Land Advocates argues that there is no factual base for  
9 adopting regulations that differentiate between types of middle housing.

10 The city responds that Goal 2 does not require the city to demonstrate why  
11 it chose to regulate different types of middle housing differently as a policy  
12 matter. Rather, the city argues that Goal 2 requires the record to demonstrate that  
13 the city considered various regulatory alternatives to achieve its preferred policy  
14 before ultimately settling on the amendments. The city responds that Housing  
15 Land Advocates fails to identify any alternatives that the city failed to evaluate  
16 and asserts that the record demonstrates that the city considered numerous  
17 alternatives before it adopted the Cottage Cluster Exclusion Overlay.

18 As a threshold issue, we disagree with the city that Goal 2 does not require  
19 an adequate factual base for the city council's policy choices adopted in a  
20 legislative land use decision. The city provides no citation or analysis to support  
21 that assertion. Goal 2 provides:

22 "All land use plans shall include identification of issues and

1 problems, inventories and other factual information for each  
2 applicable statewide planning goal, *evaluation of alternative*  
3 *courses of action and ultimate policy choices*, taking into  
4 consideration social, economic, energy and environmental needs.  
5 The required information shall be contained in the plan document or  
6 in supporting documents. The plans, supporting documents and  
7 implementation ordinances shall be filed in a public office or other  
8 place easily accessible to the public. The plans shall be the basis for  
9 specific implementation measures. These measures shall be  
10 consistent with and adequate to carry out the plans. Each plan and  
11 related implementation measure shall be coordinated with the plans  
12 of affected governmental units.

13 “All land-use plans and implementation ordinances shall be adopted  
14 by the governing body after public hearing and shall be reviewed  
15 and, as needed, revised on a periodic cycle to take into account  
16 changing public policies and circumstances, in accord with a  
17 schedule set forth in the plan. Opportunities shall be provided for  
18 review and comment by citizens and affected governmental units  
19 during preparation, review and revision of plans and implementation  
20 ordinances.”

21 Goal 2 requires the city to demonstrate that it has an adequate factual base  
22 for a policy choice that it adopts in land-use plans and ordinances. Housing Land  
23 Advocates acknowledges that, in this case, the state has prescribed the policy  
24 choice by mandating the city to allow middle housing in areas zoned for  
25 residential use that allow single-family dwellings. Housing Land Advocates  
26 argues that the city is required and yet failed to demonstrate an adequate factual  
27 base for treating cottage clusters differently than all other middle housing types  
28 and restricting cottage clusters within the exclusion overlay.

29 The city responds that the Middle Housing Statute and Rule permit the city  
30 to treat different types of middle housing differently and Goal 2 does not require



1 the city to demonstrate an adequate factual base for a decision the law expressly  
2 allows. The city relied on the Middle Housing Rules as prescribing alternative  
3 permissible policy choices. The city's findings explain how it reached its  
4 conclusion that the Cottage Cluster Exclusion Overlay Zone is consistent with  
5 the Performance Metric Approach in OAR 660-046-0205(3)(b).

6 "The Happy Valley City Council has held several work sessions  
7 regarding cottage clusters and directed staff to implement the  
8 Performance Metric Approach and goal protected areas as defined  
9 in State law.

10 "The Performance Metric Approach offers an alternative path for  
11 allowing cottage clusters in all residential areas that allow single-  
12 family detached housing, per OAR 660-046-0205(3). The proposed  
13 Land Development Code (LDC) amendments are intended to ensure  
14 that cottage clusters can feasibly be constructed on 70% of lots  
15 zoned to allow single-family detached housing. This approach was  
16 chosen by the City to provide flexibility for where the City allows  
17 cottage clusters while still complying with state rules." Record 100.

18 In response to DLCD comments, city planning staff noted:

19 "Some additional findings were added to the staff report and a  
20 supplemental memorandum was added to the record prior to the  
21 Planning Commission hearing. These amendments will revise  
22 existing cottage cluster standards which were drafted to be  
23 consistent with safe harbor provisions of the middle housing  
24 administrative rules (OARs) and the state's Middle Housing Model  
25 Code. The new overlay district will prohibit cottage clusters in a  
26 more established portion of the city, while reducing the minimum  
27 lot size, lot width, and frontage requirements for cottage clusters  
28 outside of the overlay. As a result, the number of lots that can  
29 feasibly construct a cottage cluster will increase citywide by nearly  
30 42% from 1,511 to 2,143." Record 103.

31 The city's Goal 2 findings are as follows:

1 “In the process of conducting the Performance Metric Analysis, the  
2 City examined the number of properties that are not overly  
3 constrained by natural resources and determined the City’s potential  
4 capacity for cottage cluster development under this alternative  
5 framework for complying with state rules for middle housing (*i.e.*,  
6 HB 2001/OAR 660-046). The Information contained within the  
7 Performance Metric Methodology and Analysis memos provides a  
8 factual basis that informs the draft LDC amendments for compliance  
9 with OAR 660-046-0205(3) as well as potential future amendments.  
10 The requirements of Goal 2 are met.” Record 104-105.

11 In essence, the city found in the challenged decision, and maintains on  
12 appeal, that so long as the decision comports with the Performance Metric  
13 Approach, and so long as we do not conclude that the Performance Metric  
14 Approach is inconsistent with the Middle Housing Statute, then the city need not  
15 demonstrate an adequate factual basis to support its ultimate policy choice for  
16 treating cottage clusters differently from other middle housing types.

17 We agree with the city that the Middle Housing Rules prescribe  
18 permissible alternatives for the city to regulate middle housing in a manner that  
19 complies with the Middle Housing Statute mandate. As explained above, the  
20 Middle Housing Statute itself does not treat all middle housing types in the same  
21 manner because it treats duplexes differently from other middle housing types.  
22 The Middle Housing Rules allow the Performance Metric Approach. OAR 660-  
23 046-0205(3)(b). In addition, the Middle Housing Rules require the city to “ensure  
24 the equitable distribution of Middle Housing by allowing \* \* \* at least one Middle  
25 Housing type *other than Duplexes and Cottage Clusters* on 75 percent or more  
26 of all Lots or Parcels zoned for residential use that allow for the development of

1 detached single-family dwellings within each census block group[.]” OAR 660-  
2 046-0205(3)(b)(F) (emphasis added). The Middle Housing Rules were adopted  
3 to provide cities a safe harbor within which cities have some flexibility to treat  
4 different middle housing types differently. Given that legal framework, we agree  
5 with the city that Goal 2 did not require the city to establish an independent  
6 factual base for its policy choice to treat cottage clusters differently from other  
7 middle housing types.

8 This portion of Housing Land Advocates’ second assignment of error is  
9 denied.

#### 10 **B. Goal 11**

11 Goal 11 provides that local governments are “[t]o plan and develop a  
12 timely, orderly and efficient arrangement of public facilities and services to serve  
13 as a framework for urban and rural development.” OAR 660-015-0000(11). Goal  
14 11 requires cities to “develop and adopt a public facility plan for areas within an  
15 urban growth boundary.” *Id.*; *see also* ORS 197.712(2)(e) (requiring the city to  
16 adopt a public facility plan); OAR 660-011-0045(1) (requiring the city to adopt  
17 the public facility plan as part of its comprehensive plan, including a list of  
18 proposed projects).

19 In *Coopman v. City of Eugene*, the Court of Appeals held that a city is  
20 required to analyze the adequacy of public facilities when amending the city code  
21 to allow for the development of middle housing and the associated increased  
22 density permitted under the Middle Housing Statute. 327 Or App 6, 534 P3d 1105



(2023). Housing Land Advocates argues that the city failed to demonstrate that the amendments comply with Goal 11. Housing Land Advocates emphasizes that the Cottage Cluster Exclusion Overlay allows more cottage cluster developments on smaller lots outside of the overlay and points to the city's finding that "[a] significant portion of the areas that will be available for future cottage cluster development will be in East Happy Valley, which contains most of the City's remaining buildable land and will have opportunities to better accommodate the additional dwellings with more planned utility and transportation infrastructure and better access to public transit." Record 106. However, Housing Land Advocates argues that the city does not "discuss any planned infrastructure projects in the areas where cottage clusters will be permitted to demonstrate that there is either existing or planned infrastructure available at the size and scale needed to support the higher density it is projecting in the remainder of the City." Housing Land Advocates' Petition for Review 33. As we understand it, Housing Land Advocates' Goal 11 argument is that, in adopting the amendments, the city did not analyze the impact on public facilities or find, based on an adequate factual base, that existing or planned public facilities are adequate to support a higher density of development in areas outside of the adopted overlay zone.

In its brief, the city explains that the city does not provide sewer or water services. Clackamas County Water Environment Services (WES) provides sewer and stormwater services and Sunrise Water Authority (SWA) provides water service. Both of these service districts have adopted master plans for their

1    respective service areas, which include all of the areas within the city, including  
2    those areas outside of the Cottage Cluster Exclusion Overlay. The city responds  
3    that those existing public facilities plans demonstrate that existing and planned  
4    public facilities are adequate to serve increased density allowed by the  
5    amendments outside of the overlay zone.

6            The city contends that the 2020 Buildable Lands Inventory (2020 BLI)  
7    “includes an evaluation of the public facilities available to support development  
8    in both developed and undeveloped areas,” citing Record 160-76. Respondent’s  
9    Brief 36. The 2020 BLI shows that the city had capacity for 3,700 dwelling units  
10   in the city’s 2020 residential zones. However, the city forecasted a need for only  
11   3,087 new dwelling units through 2040. Record 107, 203, 208. The city argues  
12   that this demonstrates that there is adequate and excess public facilities capacity.

13           The Pleasant Valley/North Carver plan area, which consists of 2,092 acres,  
14   was annexed into the city and zoned for urban uses in March 2023, in Ordinance  
15   573. Record 175. The city points out that Ordinance 573 adds building capacity  
16   for an additional 7,414 dwelling units. Record 173-76. Accordingly, including  
17   the Pleasant Valley/North Carver plan area, the city has a building capacity for  
18   an additional 11,114 dwelling units.

19           Housing Land Advocates replies that the 2020 BLI data does not support  
20   a conclusion that the challenged amendments comply with Goal 11 and that the  
21   city fails to address whether existing plans account for increased density,

1 “especially in locations where public services do not currently exist.” Housing  
2 Land Advocates’ Reply Brief 3. We agree.

3 Starting with the 2020 BLI, we have reviewed Record 160-76 and do not  
4 find evidence therein that, in determining the dwelling unit *building* capacity in  
5 the 2020 BLI, the city evaluated *public facility* capacity. The 2020 BLI  
6 introduction explains that the 2020 BLI dwelling unit building capacity was  
7 determined by assessing (1) land classification (zoning); (2) constraints (steep  
8 slopes, protected water quality resources, and utility corridors); and (3)  
9 development status (developed, vacant, partially vacant) to determine  
10 developable acreage and development capacity. Nothing in Record 160-76  
11 evaluates public facility capacity to serve new dwelling units at the density  
12 allowed by the challenged amendments.

13 Even assuming that the 2020 BLI analysis implies adequate public facility  
14 capacity for the then-existing zoning, the city points to nothing that shows that  
15 the city considered whether the public facilities are adequate to support densities  
16 allowed under the challenged amendments, which reduces the minimum lot size,  
17 lot width, and frontage requirements for cottage clusters outside of the overlay.  
18 As a result, the number of lots that can feasibly construct a cottage cluster will  
19 increase citywide by nearly 42% from 1,511 to 2,143. The 2020 BLI does not  
20 “demonstrate at least adequate capacity,” as the city contends. Respondent’s  
21 Brief 37. The 2020 BLI does not demonstrate that the challenged amendments  
22 comply with Goal 11 as construed by the Court of Appeals in *Coopman*.



1 As part of Ordinance 573, the city evaluated whether WES and the SWA  
2 are able to provide public facility services to the Pleasant Valley/North Carver  
3 plan area based on those service districts' master plans. The city's brief quotes  
4 and relies on the city's findings in support of Ordinance 573, which is not in the  
5 local record and was not before the city council in adopting the amendments  
6 challenged in this appeal. More importantly, those findings do not demonstrate  
7 that the challenged amendments comply with Goal 11 because there is no  
8 evidence that WES and SWA considered whether the public facilities that they  
9 provide are adequate to support densities allowed under the challenged  
10 amendments.

11 The city points to the city's findings in this appeal under HVMC  
12 16.61.050(F)(3), which requires the city council to consider in a legislative land  
13 use decision whether

14 "[t]he property and affected area is presently provided with adequate  
15 public facilities, services and transportation networks to support the  
16 use, or such facilities, services and transportation networks are  
17 planned to be provided concurrently with the development of the  
18 property."

19 The city found:

20 "Areas in east Happy Valley where cottage cluster development  
21 opportunities will improve are presently provided with adequate  
22 public facilities and services or they include plans for future  
23 improvements and services, consistent with City facility master  
24 plans for water, wastewater and transportation facilities and services  
25 and other relevant planning efforts for East Happy Valley and  
26 Pleasant Valley/North Carver Comprehensive Plan." Record 123.

1           We understand the city to argue that the building capacity for the East  
2 Happy Valley and Pleasant Valley/North Carver planning areas exceeds the  
3 number of dwelling units that the city estimates will be developed in those areas,  
4 based on the 2020 BLI, and that the annexation decision demonstrates that there  
5 is or will be adequate infrastructure to support increased density permitted by the  
6 challenged amendments in those areas.

7           We agree with Housing Land Advocates that the 2020 BLI does not  
8 demonstrate compliance with Goal 11 because it does not evaluate public facility  
9 capacity. Likewise, Ordinance 573 does not evaluate the level of density  
10 permitted by the challenged amendments. In adopting the Cottage Cluster  
11 Exclusion Overlay, the city increased the number of lots outside of the overlay  
12 that can be developed with cottage clusters. The evidence from WES and SWA  
13 that supported Ordinance 573 was based on a different zoning code. We conclude  
14 that remand is necessary for the city to consider whether existing or planned  
15 public facilities are adequate to support the densities allowed under the  
16 challenged amendments.

17           This portion of Housing Land Advocates' second assignment of error is  
18 sustained.

19           Housing Land Advocates' second assignment of error is sustained, in part.

20           The city's decision is remanded.