

**METRO HEARINGS OFFICER'S
ANALYSIS, CONCLUSIONS, AND
RECOMMENDATIONS
TO THE METRO COUNCIL**

**Sherwood School District Urban Growth Boundary
Major Amendment, Case 17-02**

JULY 21, 2017

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SECTION I: APPLICATION SUMMARY

FILE NAME: UGB Case 17-02: Sherwood School District Urban Growth Boundary Major Amendment

APPLICANT: Sherwood School District
23295 SW Main Street
Sherwood, OR 97140

PROPOSAL: 82-acre expansion of the urban growth boundary (UGB) for a high school campus with sports fields. Realign SW Elwert Road and SW Kruger Road in Sherwood.

LOCATION: Tax Lots 2S236-200, -201, -206, and -207

SITE ADDRESSES: 18880 SW Haide Road, 22895 SW Elwert Road and 18985 SW Kruger Road, Sherwood, Oregon 97140

URBAN RESERVE AREA: Area 5B.

CURRENT ZONING: AF-20

METRO CODE: Metro Code Sections 3.07.1425 (B, C, D, E & F) and 3.07.1440 (A & B). Code Section 3.07.1425(C)(1-9)

SECTION II: BACKGROUND INFORMATION

Proposal Description: The applicant requests an expansion of the City of Sherwood UGB to include approximately 82 acres for a high school campus with sports fields. This proposal also seeks to realign the intersection of SW Elwert Road and SW Kruger Road for improved and safer traffic flow.

Site Information: The site consists of four tax lots located within unincorporated Washington County on the west side of SW Elwert Road, between SW Haide Rd and SW Kruger Rd as shown in Attachment 1. The property has frontage on SW Elwert, SW Haide and SW Kruger Roads. The entire property is zoned AF-20 (Agricultural and Forest District) by Washington County with a minimum lot size of 80 acres. The entirety of the property is located within the Sherwood West Preliminary Concept Plan area (Metro Urban Reserve Area 5B). The site slopes

gently down to the east towards SW Elwert Road with approximately 40 foot grade change across the site. There is a shallow valley and ridge within this slope.

The properties have been used for various agricultural activities including a Christmas tree farm, tree plantation and row crops. The tax lot in the southeast corner of the site, adjacent to the intersection of SW Elwert and SW Kruger Roads is owned by the City of Sherwood, a portion of which will be used for the road realignment. A 40-foot wide permanent Northwest Natural gas easement zigzags along the western edge of the site, separating the northwest corner of the site from the remainder of the property.

Case History: The Sherwood School District (District) is centered on the city of Sherwood and extends into the surrounding rural area in all directions, including a small area east of I-5, between Wilsonville and Tualatin. The District includes an area of 4.31 square miles and an estimated population of 18,884. The District has seven schools that provide educational services to just over 5,000 students, the majority of which live in the city of Sherwood. The District experienced substantial growth in the late 1990's and early 2000's leading to a community effort in 2005 to determine facility needs. This resulted in the successful 2006 bond measure which included funding for an addition to the current high school to increase capacity to 1,550 students, consistent with phase 1 of the 2006 high school master plan. Current enrollment at the high school is over 1,700 students and projections show over 2,250 students by the 2025-26 school year. In early 2014 the District's Long Range Planning Committee made recommendations to the School Board regarding enrollment and growth challenges, facilities analysis and needs and financing options. In 2015 the District documented the condition and educational adequacy of its facilities, leading to bond visioning and steering committees in 2016. This resulted in the District's voters approving a bond measure in 2016 providing funding for school improvements including construction of a new high school. The District continues to engage the community through a design committee and community input sessions.

Local Government Statement: This UGB major amendment is being considered at the request of the Sherwood School District. The City of Sherwood completed the Sherwood West Preliminary Concept Plan for urban reserve area 5B and submitted a service provider form supporting the school district's application. The school district participated in the concept planning process and the subject site is one of the school locations identified in the preliminary concept plan. Washington County submitted a written statement supporting the application with proposed conditions for Metro to consider. Tualatin Valley Fire and Rescue submitted a written statement supporting the application and Clean Water Services is neutral on the application.

SECTION III: APPLICABLE REVIEW CRITERIA

The criteria for a Major Amendment to the UGB are contained in Metro Code Section 3.07.1425(B, C, D, E, & F) and 3.07.1440 (A & B). The approval criteria appear *bold 12-pt Aerial Narrow font*, and the hearings officer's analysis follows.

Metro Code Section 3.07.1440(A) The purpose of the major amendment process is to provide a mechanism to address needs for land that cannot wait until the next analysis of buildable land supply under ORS 197.299. Land may be added to the

UGB under this section only for the following purposes: public facilities and services, public schools, natural areas, land trades and other non-housing needs;

This code section requires that the applicant show, by substantial evidence in the whole record, that it is an eligible entity allowed to use the interim ORS 197.299 Major Amendment UGB process rather than wait until the next regular Metro UGB amendment cycle (in December, 2018).

Hearings Officer's Analysis: Title 14 of the Metro Code (*i.e.* Metro's Urban Growth Management Functional Plan) includes the Major Amendment process to amend the UGB for a number of specific non-housing needs, including schools and public parks. This process, which is designed to implement ORS 197.299(4), is intended to provide an opportunity to meet these specific land needs outside of the legislative housing needs process the Metro Council conducts on a six-year cycle as required by ORS 197.299(1) and ORS 197.296.

As part of the six-year legislative housing needs process, Metro conducts an inventory of the current residential and employment capacity within the UGB, forecasts population and employment growth over a 20-year timeframe, determines the capacity of the current UGB to accommodate that growth and documents the results of these analyses in an urban growth report. ORS 197.296(6)(a), which is one of the state's needed housing statutes, envisions that local governments with populations over 25,000 will factor in land for schools at the same time as they determine the amount of land needed to be brought in to the UGB for housing. In this regard, the need for land for schools under ORS 197.296(6)(a) is a "derivative need" which is linked to, and dependent upon, a finding that there is a need for land to be brought into the UGB to accommodate an identified housing need. As noted in more detail below, this process has proven to be long, drawn out affair, which is not sensitive to short-term needs. Furthermore, because it is done on a large-scale regional basis, is not always sensitive to more localized school and park needs.

In fact, Metro's most recent urban growth report, adopted in 2015, did not address school and park land needs at the regional level at all. Some school districts anticipate growth, others see declining enrollment and none look out over the 20-year timeframe that the urban growth report considers. Depending on the particular physical, financial and expected growth characteristics of each school district, plans for accommodating projected increases in enrollment vary. Similarly, park districts acquire property and develop park facilities based on numerous operational and funding parameters that can't be considered at the regional level. In addition, it is quite common for school districts and cities to collaborate on opportunities to meet the city's recreation needs as well as the school district's team needs. For these reasons, the Major Amendment process is the appropriate means of addressing specific school district and park needs that can be accommodated through UGB expansions.

Metro has adopted specific criteria to implement ORS 197.299(4). There are two criteria contained in Metro Code section 3.07.1440(A) that are analyzed separately below:

- 1) The proposal must be for a non-housing need, and

2) The proposal must be intended to meet needs that cannot wait until the next analysis of land supply (December 2018).

There does not appear to any disagreement that the first criterion is met: the applicant proposes to add land to the boundary for a public school and a public facility need, both of which are non-housing needs. The Sherwood School District's Sherwood High School is a "public school" within the meaning of Metro Code Section 3.07.1440(A).

However, whether the applicant has met the second criterion has proven to be more controversial. The applicant addresses its need as follows:

As of 2015, the Sherwood School District encompasses 4.31 square miles serving a population of approximately 18,884 residents and 5,000 students. The Sherwood School District includes:

- The City of Sherwood city limits;
- Portion of the western area of the City of Tualatin (mostly industrial land);
- Rural Clackamas County (primarily between Sherwood and Wilsonville); and
- Rural Washington County north and west of Sherwood, as well as a small area east of I-5 between Wilsonville and Tualatin.

To facilitate future planning and to comply with State requirements for a fast-growing school district, the District adopted a long-term facilities plan in January of 2008, which assumed that additional school capacity would therefore likely be needed within ten years of the plan's adoption. As predicted school facilities have recently become overtaxed. In 2015, to assess current resources, the Sherwood School District completed a Facilities Planning and Assessment Report to determine both condition and available capacity. Enrollment based on the most current demographic data and capacity shows that school capacity is near or over capacity at all school levels as shown in Staff Report Attachment 2 (Table 1 in petition).

The School District commissioned Davis Demographics & Planning Inc. to complete an updated 10-year demographic study in May of 2016. The study reviewed the following factors that determine student enrollment: (1) the current and planned residential development over the next ten years; (2) student yield factors that apply to new residential development; (3) birth factors for the District area; and (4) mobility factors, which examine the in/out migration of students within existing housing units. The forecast projects a deficiency in capacity in all levels, with the

high school level having the largest deficiency. Staff Report Attachment 3 (Table 2 in petition) shows 10-year enrollment projections compared with existing school building capacity. The table demonstrates that if no capacity is added (no-build) the school facilities will be far over capacity in 10 years with the Sherwood High School having the largest capacity issue operating at 141% of capacity.

From the updated capacity assessment and demographic data, it became apparent that facilities must be expanded to keep pace with continued student enrollment growth. A Long Range Planning Committee, Bond Steering Committee, Bond Visioning Committee and Sherwood High School Programming Committee were formed to study facility needs. Led by the Bond Management Team, these committees met from 2014 to 2016, making recommendations to the Sherwood School District Board. The process included input from a number of participants from the community including City Council and staff representation, School District staff, architects, civil engineers, financial advisors, business leaders, citizens, parents and students. Throughout this process, the Sherwood City Council was provided with updates and community input was sought via various public outreach methods.

As evidenced by capacity study and demographic growth data, the high school level is where there is the biggest need for additional capacity both now and to a greater extent within 7 to 10 years. Therefore, the Bond Management Team first looked to the existing high school campus for opportunities for expansion to accommodate this growth. With the conclusion that the existing high school cannot be upsized to meet demand, the District's Bond Management Team began looking for a long-term solution and the School Board, with voter approval, ultimately decided to build a new high school. The new high school is planned to be sized to initially accommodate 2,000 students, but allow for easy expansion to 2,400 students. This size will allow for projected growth over the next 10 years and foreseeable future.

Once a new high school is online, the existing high school building can be repurposed as a consolidated middle school with both existing middle schools (Laurel Ridge and Sherwood Middle) being relocated to the existing high school campus. Once this occurs, the two existing middle schools can be converted to elementary school use to expand needed elementary school capacity. Finally, the proposal allows for Hopkins Elementary School, a building nearing its useful lifespan, to be taken out of

school service and converted to administrative functions. The existing administrative offices consist of portable buildings in varying locations and with the conversion of Hopkins, office space can be centralized for increased efficiencies.

The primary opponent argues that the applicant has not justified the use of the Major Amendment process instead of waiting until the normally scheduled Metro 2018 UGB expansion. Their attorney states: “Metro's scheduled UGB expansion in 2018 is the appropriate time to analyze the expansion for the proposed high school because more data will be available and the full set of impacts can be analyzed. The delay will also resolve the issues with inadequate notice in the current application.” *See* Letter from Jennifer Bragar dated June 6, 2017, at p. 8.

What the opponents appear to be arguing is that this application is premature, and the applicant should wait until 2018 when the 20-year buildable lands analysis will be available. Furthermore, the opponents do believe that the Major Amendment process authorized by ORS 197.299(4)(a)(A) requires the same type and level of analysis required when Metro conducts its periodic legislative housing need analysis required by ORS 197.299(1) and ORS 197.296. The opponent’s unstated assumption is that school needs must be evaluated as a derivative need of housing using the ORS 197.296(6) process.

Metro staff weighed in on the debate via a Memorandum dated June 9, 2017, which states, in relevant part:

Metro’s legislative process for reviewing the UGB is guided partially by ORS 197.296. Subsection 197.296(2) directs Metro to demonstrate that there is sufficient buildable land within the UGB to accommodate estimated housing needs for 20 years. A housing need is the only need identified in the statute. ORS 197.296(6) says if the housing need is greater than the capacity of the UGB Metro shall take one or more actions that could include amending the UGB to include sufficient buildable lands to accommodate housing needs for 20 years. Subsection (6)(a) goes on to say that if the UGB was amended to accommodate housing needs for the next 20 years, then the amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities.

The statutory directive to Metro is to include sufficient land for school facilities as part of any UGB expansion that is required to meet a 20-year need for housing. In Metro’s most recent analysis of the 20-year housing supply (the 2015 UGR), Metro determined there was sufficient capacity inside the existing UGB to accommodate housing needs; therefore, no corresponding analysis for public school facilities was required.

Even if the Metro Council had determined there was a need to expand the UGB in 2015 to accommodate a 20-year housing need, there is no certainty that the location where the land would be added to meet the housing need is also a location where a local school district needs additional land to meet its facility needs. Likewise there is no certainty that the specific land needs of a school district are coordinated with the local jurisdictions desire for additional housing. For instance, a UGB expansion adjacent to Hillsboro to meet a regional housing need would not support the Sherwood School District's need for a new high school.

These difficulties arise, in part, from the size of the Metro region and the fact that it consists of 24 individual cities and 17 different school districts. It is important to recognize that the provisions of ORS 197.296(6)(a) regarding planning for accommodation of new school facilities is included in the statutory section that describes the analysis required for all cities in the State of Oregon. While it would not be as difficult for a smaller jurisdiction to coordinate future public school needs with future housing needs in making UGB expansions, that task is much more complicated in the Metro region.

The disconnect in the Metro region between the location of UGB expansions to meet a 20-year housing need and the needs of existing school districts is addressed, in part, by ORS 197.299(4)(a), which is the statute that directs Metro to establish the process being utilized by the Sherwood School District in this proceeding. ORS 197.299(4)(a) requires Metro to allow "off-cycle" UGB expansions as necessary to accommodate a need for land for a public school that cannot reasonably wait.

Given that the opponents have a very different interpretation of the purpose and meaning of ORS 197.299(4) when compared to Metro staff and the applicant, a discussion of statutory interpretation is in order.

A statute is considered "ambiguous" if it is capable of at least two reasonable interpretations. *State v. Tarrence*, 161 Or App 583, 985 P2d 225 (1999); *Kenton Neighborhood Ass'n v. City of Portland and Oregon Waste Systems, Inc.*, 17 Or LUBA 784, 797 (1990) (when code is internally inconsistent, it is ambiguous).¹ If the legislation is unambiguous, local governments and courts are bound to apply the statute in that manner, regardless of how inartful the enactment seems. *Sanchez v. Clatsop County*, 146 Or App 159, 164 n 4, 932 P2d 557 (1997). Stated another way, an unambiguous statute should not be "interpreted." *City of Hillsboro v. Housing Dev'l Corp of Washington County*, 61 Or App 484, 488, 657 P2d 726 (1983). See *GTE*

¹ See also *Fisher v. City of Gresham*, 69 Or App 411, 416, 685 P2d 486 (1984); *McCoy v. Linn County*, 90 Or App 271, 276 nl, 752 P2d 323 (1988).

Northwest, Inc., v. Oregon Public Utility Comm'n, 179 Or App 46, 39 P3d 201 (2002). Rather, unambiguous words should be given their plain, natural, and ordinary meaning. *PGE v. BOLI*, 317 Or at 611.²

In this case, the hearings officer believes that the relationship between ORS 197.296 and ORS 197.299 creates sufficient ambiguity to warrant an exercise of statutory interpretation.

Text and Context.

When construing a statute, the court will often first look directly at the text of the statute itself. See *Whipple v. Howser*, 291 Or 475, 635 P2d 782 (1981) (citing *Greyhound Corp. v. Mount Hood Stages, Inc.*, 437 US 322, 330, 98 S Ct 2370, 2375 (1978)). Emphasizing the need to look first to the language of the statute, the *Whipple* court stated:

“The cardinal rule for the construction of a statute is to ascertain from the language thereof the intent of the law makers as to what the purpose was to be served, or what the objective was designed to be attained.”

Whipple, 291 Or at 479 (citing *Swift & Co. and Armour & Cove, Co. v. Peterson*, 192 Or 97, 233 P2d 216 (1951)). See also *State of Oregon v. Buck*, 200 Or 87, 92, 262 P2d 495 (1953). The *Whipple* court also cited to *State ex rel. Cox v. Wilson*, 277 Or 747, 562 P2d 172 (1977), in which the court stated:

“There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give impression to its wishes.”

Courts do not view the text in a vacuum; they consider the context of the language at issue as well. In fact, the context of the statute is as important to the interpretation as the text. *State v. Webb*, 324 Or 380, 927 P2d 79 (1996); *Friends of Neaback Hill v. City of Philomath*, 139 Or App 39, 48, 911 P2d 350 (1996). See e.g., *Shadrin v. Clackamas County*, 34 Or LUBA 154 (1998). In some cases, the court may consider the context before examining the text, in situations where the context "provided perspective on the text." See *Plotkin v. Washington County*, 165 Or App 246, 250, 997 P2d 226 (2000). In this case, consider the two statutes in tandem.

ORS 197.299 provides as follows:

² See also *OSHU v. Hass*, 325 Or 492, 501, 942 P2d 261 (1997); *Zidell Marine Corp. v. West Painting, Inc.*, 322 Or 347, 906 P2d 809 (1995); *State v. Langley*, 314 Or 247, 256, 839 P2d 692 (1992); *Curly's Dairy, Inc. v. State Dept of Agriculture*, 244 Or 15, 415 P2d 740 (1966) (If statute is clear and unambiguous, the court may not resort to rules of statutory construction in ascertaining and declaring the legislative intent.); *Sullivan v. City of Ashland*, 130 Or App 480, 882 P2d 633, *rev den*, 320 Or 453, 887 P2d 792 (1994) (An unambiguous code provision cannot be interpreted, even if that provision is contrary to the express purposes of the provision.); *City of Portland v. White*, 61 Or App 120, 655 P2d 629 (1982).

197.299 Metropolitan service district analysis of buildable land supply; schedule for accommodating needed housing; need for land for school; extension of schedule.

(1) A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296(3) not later than six years after completion of the previous inventory, determination and analysis.

(2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296(6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

(b) The metropolitan service district shall take all final action under ORS 197.296(6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

(c) The metropolitan service district shall take action under ORS 197.296(6)(b), within one year after the analysis required under ORS 197.296(3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the estimated housing needs for 20 years from the time the actions are completed. The metropolitan service district shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

(3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the metropolitan service district has provided good cause for failing to meet the time limits.

(4)(a) The metropolitan service district shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The metropolitan service district shall design the process to:

(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3). [1997 c.763 §2; 2001 c.908 §2; 2005 c.590 §1; 2007 c.579 §2; 2014 c.92 §5]

As quoted above, ORS 197.299(1) cross-references ORS 197.296(3), which, in turn, cross-references to ORS 197.296(2). These two statutes together set forth a process for evaluating and accommodating housing needs:

(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional framework plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional framework plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years. (Underlined emphasis added).

As the underlined language indicates, ORS 197.296 is a statute narrowly-tailored towards the process used to establish and fulfill an identified housing need. It is an expansion of the basic concepts set forth in Statewide Planning Goal 10, but it goes beyond Goal 10 in scope.

As part of that process, the effect of ORS 197.296(6) should also be considered as context:

(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, the local government shall take one or more 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, the local government 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 the local government that has the authority to approve the urban growth boundary;

(b) Amend its comprehensive plan, 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. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or

(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

A few key points can be quickly gleaned from ORS 197.296. First, by its terms, ORS 197.296(2) only applies to periodic review or another "legislative review of the [...] regional framework plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use." This Major Amendment application is not periodic review and is also not a legislative review of Metro's regional framework plan, *i.e.*, the every six-year UGB amendment cycle. The Major Amendment application is subject to a quasi-judicial process and will result in a quasi-judicial decision by the Metro Council.

Strawberry Hill 4 Wheelers v. Board of Comm'rs sets out a list of factors to be weighed to determine whether a land use decision is legislative or quasi-judicial. 287 Or 591, 602-603, 601 P2d 769 (1979). Under *Strawberry Hills*, the Major Amendment is quasi-judicial because (a) the application process is bound to result in a decision, (b) the decision must apply pre-existing criteria to concrete facts, and (c) the action is directed at a closely circumscribed factual situation.

With regard to the first question, the *Strawberry Hills 4-Wheelers* Court asks practitioners to consider the following question: "Does the statute require the [local government] to reach a decision after the hearing, as in an adjudication, or may it indefinitely postpone or abandon the issue, like a legislative proposal?" 287 Or at 605. At first glance, one might assume that any land use decision that originates from an application being submitted (as opposed to be initiated by the local government itself) would be "bound to result in a decision." Indeed, that seems to have been the original intent of the *Strawberry Hill* Court. However, over the years LUBA and the Court of Appeals have increasingly read this factor more and more narrowly and will only find that that a decision is "bound to result in a decision" if the code either expressly requires a decision to be made, or if that requirement can be fairly read into the language of the code based on the context. *Estate of Gold v. City of Portland*, 87 Or App 45, 48, 740 P2d 812 (1987) ("the statute simply says that the governing body *may* approve the proposal, not that it *must* do anything."); *Johnson v. City of La Grande*, 37 Or LUBA at 388; *Valerio v. Union County*, 33 Or LUBA 604 (1997); *Miner v. Clatsop County*, 46 Or LUBA 467 (2004). In some cases, LUBA has not been as exacting in its analysis, holding that although the code did not:

“expressly state that once a person requests an interpretation of a provision of the city's zoning ordinance that the person is entitled to a decision. We believe, however, that any reasonable person reading this ordinance would conclude that if a person requested an interpretation from the planning director, received that interpretation and then appealed the interpretation to the planning commission and to the city council, the person filing the appeal would be entitled to a decision from the city council.”

Hoffman Ind. Inc. v. City of Beaverton, 2 Or LUBA 411 (1981); *Dean v. City of Oakland*, 33 Or LUBA 806, 809 (1997) (“While the cited policy does not require a decision within a specified time, the most natural reading of its terms requires a decision.”) The fact that any given ordinance in question states that the decision-maker “may” make a decision should not be a fact which is determined to be indicative of a legislative decision, but unfortunately, in practice it is just that. In this regard, the statute at issue in *Strawberry Hill* did not expressly require that a decision be made. However, the Supreme Court found no difficulty in concluding that “although affirmative action is optional, the statute appears to contemplate that the County Court will eventually reach and pronounce some decision whether to act or not. *Id.* at 606. (Emphasis added).

In this case, the MC 3.07.1440(g) requires the Metro Council to make a final decision on the petition. Therefore, this factor suggests that the decision is quasi-judicial.

The second of the *Strawberry Hill* questions has, in practice, become somewhat of a non-factor. Both LUBA and the Court of Appeals have recognized that all land use decisions in Oregon are subject to “preexisting criteria” and apply to concrete facts. LUBA has addressed this issue as follows:

Turning to the “apply existing criteria to concrete facts” factor, that factor is present to some extent in all land use decisions. *Valerio*, 33 Or LUBA at 607. This factor is therefore less important than the other two factors, particularly where, as is the case here, the decisions are adopting new land use laws rather than applying existing land use laws to grant land use approval for a single property or a small number of properties. *Churchill v. Tillamook County*, 29 Or LUBA 68, 71 (1995); *McInnis v. City of Portland*, 27 Or LUBA 1, 5-7 (1994).

Carver v. Deschutes County, 58 Or LUBA 323 (2009). See also *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263, 271 (1998); *Johnson v. Jefferson Country*, 56 Or LUBA 72 (2008). In this case, the MC 3.07.1440 sets forth criteria for a Major Amendment to a UGB. Therefore, this factor suggests that the decision at issue is quasi-judicial.

Under the third factor, LUBA and the Courts are supposed to assess whether the decision either (1) affects either a small number of owners and properties or (2) the “action directed at a closely circumscribed factual situation,” or whether the decision has more broad

applicability. According to early decisions by the Court of Appeals, “the number of people affected and the size of the area covered are less important considerations,” and the focus should instead be on “the importance of assuring that the decision is factually correct and that the decision-maker gives fair attention to affected individuals.” *1000 Friends of Oregon v. Wasco Co. Court*, 80 Or App 532, 536, 723 P2d 1034 (1986), *rev’d on other grounds*, 304 Or 76, 742 P2d 39 (1987). In practice, this third bean-counting “factor” has become the most critical issue to LUBA, and, despite suggestions to the contrary, in most cases it is more-or-less the dispositive factor. In fact, LUBA has found decisions to be legislative even when the other two factors favored a determination that a decision was quasi-judicial. *Davenport v. City of Tigard*, 22 Or LUBA 577 (1992).

In this case, the proposal involves 82 acres consisting of four tax lots in unknown ownerships. This is well within the size and ownership limits that would allow the conclusion that the decision is quasi-judicial.

The primary opponent argues that this Major Amendment is a "legislative decision." The primary opponent states that “[t]he decision amends the Metro Boundary map that is incorporated into the Metro Urban Growth Functional Plan, and as such the change is legislative.” See Letter from Jennifer Brager dated June 23, 2017 at p. 1. However, map amendments are not necessarily or inherently legislative or quasi-judicial in nature. Compare *Thomas v. City of Veneta*, 44 Or LUBA 5 (2003) (TSP and zoning map amendment affecting two tax lots comprising 6.4 acres); *Dan Giles & Assoc., Inc. v. McIver*, 113 Or App 1, 3, 831 P2d 1024 (1992)(zone change for single 29-acre parcel in unified ownership is quasi-judicial); *Neuberger v. City of Portland*, 288 Or 155, 603 P2d 771 (1979) (re-zoning involving 601 acres of land owned by three landowners is quasi-judicial).³ Contrast *Valerio v. Union County*, 33 Or LUBA 604 (1997) (comprehensive plan amendment and zone change pertaining to 185 acres in a “number of different ownerships” is legislative); *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995) (PAPA relocating arterial and changing it from 5 lanes to 3 lanes is legislative, where it affects 40 properties and will carry 17,000 – 18,000 trips per day.); *McInnis v. City of Portland*, 27 Or LUBA 1 (1994) (Proposal which rezones 5000 acres in 110 different ownerships is legislative.); *Davenport v. City of Tigard*, 22 Or LUBA 577 (1992) (Transportation plan map amendment that directly involves nine property owners, but has “indirect effects” on a broader population is legislative). Nor is a UGB amendment inherently legislative in nature. *BenjFran Development, Inc. v. Metro*, 17 Or LUBA 30 (1988) (denial of request for UGB amendment comprising almost 500 acres in three ownerships is quasi-judicial).

Cases such as *Davenport* and *Friends of Cedar Mill* suggest that large transportation projects will be considered legislative due to the broad secondary effects that transportation facilities can have on commuters. The hearings officer does not believe that this line of cases can be extended to a school, however, based simply on the fact that many kids will attend the school. If that were the case, then any land use decision involving a Wal-Mart or Home Depot store would be legislative, because those uses have higher usage / trip generation rates than a typical school.

³ See *Neuberger v. City of Portland*, 37 Or App 13 (1978), *rev’d in part, aff’d in part*, 288 Or 155, 603 P2d 771 (1979).

Opponent's counsel cites *Colwell v. Washington County*, 79 Or App 82, 87-8 (1986) for the proposition that this Major Amendment is a legislative (and not a quasi-judicial) decision (see Bragar letter dated 23 June 2017, pp 1-2). *Colwell* does not support that conclusion, and is easily distinguished. In *Colwell*, the Washington County Planning Commission made a land use decision which opponents wished to appeal to the Board of Commissioners, but their appeal was dismissed for failure to timely pay for the quasi-judicial Planning Commission hearing transcript. *Colwell*, 79 Or App at 85. Opponents appealed to the LUBA, which dismissed the appeal for failure to exhaust remedies at the local (County) level. The Oregon Court of Appeals reversed and remanded, finding that the Washington County governing body (*i.e.* the elected Board of County Commissioners) - and not the unelected County Planning Commission - must make Comprehensive Plan amendments, pursuant to ORS 215.050(1) and ORS 215.060.

Opponent's argument might have some merit if this unelected hearings officer was the one to make the final decision on this Major Amendment land use application. Only the elected Metro Council has that authority, however. This hearings officer's findings and determination are merely a recommendation to the Metro Council, and the Council is free to accept or reject this Hearings officer's decision, as the Council sees fit. Since the Metro Council will be the governmental body to make the final land use decision in this case, the Court of Appeals' holding in *Colwell* shall be followed for this application.

Despite the lengthy analysis set forth above, the hearings officer does not really believe that the quasi-judicial vs. legislative debate is dispositive, in any event. Rather, it is a red herring. Stated another way, the hearings officer does not believe that ORS 196.296 would apply to this UGB Amendment even it was a legislative decision. By its terms, ORS 197.296 only applies to UGB amendments that "require the application of a statewide planning goal relating to buildable lands for residential use." As discussed elsewhere in this recommendation, an amendment to a UGB which adds AF-20 zoned land for use as a school does not implicate Goal 10 in any meaningful way .

Second, ORS 197.296 sets forth a mandatory periodic process that is focused on only one type of land need: a need for housing. We can credit the Home Builder Association for being active in the legislature over the past 30+ years and influencing the adoption of specific statutory language, such as ORS 197.296, which relates specifically to their industry. But we should also not lose sight of the fact that there are other types of land need under Goal 14 that don't implicate ORS 197.296.

Taking a step back, recall that Goal 14 states that a UGB amendment must be based on consideration of six factors set forth in the Goal. The first two factors are commonly referred to as the "need" factors. The need factors require either a demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments, or a demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories. While the need for housing is governed by ORS 197.296, other land needs are governed by Statewide Planning Goal 14, and in some cases, by OAR Ch. 660, Div 24. Note, as an example, that OAR Ch. 660, Div. 24 does not address now a livability need is established; Goal 14 seems to be the sole administrative pronouncement of its use. What is important to understand for purposes of this case is that ORS 197.296 is not the sole way to

establish land need, and a school need is not limited to being established as a derivative need of housing under ORS 197.296(6).

Among the more common types of land need mentioned in Goal 14 include a need for employment land, a need for public facilities, a need for schools, a need for parks, and the amorphous catch-all known as a “livability need.”⁴ With one exception related to public schools, ORS 197.296 does not govern substantively how these other types of land needs are established. Nor does it establish a *process* by which those other needs are established. Rather, ORS 197.296(2) & (3) are narrowly focused on accommodating a housing need, and as shown below, accommodating land for public schools as a derivative need stemming from housing need.

Consider ORS 197.296(6) as context: this statute applies when a local government is undertaking periodic review or a legislative review of a UGB that implicates Goal 10. If during such a process, the local government determines that a need exists for additional residential land and that accommodating that land need must necessarily involve a UGB amendment, then ORS 197.296(6)(a) requires that local government to “include sufficient land reasonably necessary to accommodate the siting of new public school facilities.” Thus, under that process, a public school facility is considered a derivative need that arises by operation of a demonstrated need for housing. However, there is nothing in ORS 197.296(6) that makes ORS 197.296 the exclusive process by which a need for schools can be established. As demonstrated by the applicant a need for new school facilities can exist independent of housing needs. And while the primary opponent chalks up the applicant’s current need to poor planning on the District’s part (a sentiment that may have some basis in fact), ORS 197.299(4) appears to be written as a safety valve that can be used by school districts regardless of the causes that led to the need.

ORS 197.299(4)(a)(A) provides additional key textual clues which help understand the nature of the process currently being undertaken. This provision authorizes Metro to “establish” and “design” a “process” that will fulfill a need that must be accommodated “*between*” periodic analyses of urban growth boundary capacity required by subsection (1) of this section.” By giving Metro the authority to “establish” and “design” a unique UGB amendment process for schools, the statute makes clear that the school need specific “4(a)” process is not the *same* process as the legislative six-year process required by ORS 197.299(1) and 197.296(3). The ORS 197.296 process is already “established” and “designed” by statute, and really only puts a regional government much as Metro in an implementation role. On the other hand, ORS 197.299 delegates to Metro a role that is greater than mere implementation of a pre-existing process. Furthermore, ORS 197.299(4)(a)(4) further emphasizes that the school-specific process is only supposed to be used “*between*” the 6-year legislatively-mandated processes for accommodating housing needs, and it can only be invoked if the identified school need cannot wait until the next scheduled six-year legislative process.

⁴ LUBA cases confirm that a need to improve livability can provide a basis for adding land to a UGB. Such an analysis requires, in addition to identifying a significant livability problem, an evaluation of probable and negative impacts on livability that may occur if the UGB is amended, and an explanation of why the livability benefits outweigh negative impacts on livability. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 383, *aff’d*, 130 Or App 406 (1994); *1000 Friends of Oregon v. Metro Service Dist.*, 18 Or LUBA 311, 320 (1989).

The gravamen of opponents' complaints with respect to ORS 197.299(4) stem from a misunderstanding of the relationship between the ORS 197.299(1) six-year UGB amendment process with the ORS 197.299(4) public school amendment process. Much of opponent counsel's testimony at the June 13, 2017, hearing and again in her June 23, 2017 letter, was directed generally at a dissatisfaction with how Metro plans for regional housing and employment needs and opponents' opinion that allowing out-of-cycle UGB expansions for public schools exacerbates Metro's alleged poor planning. In its June 23, 2017 letter, opponents argued that this Major Amendment application does not meet the requirements of ORS 197.296(2).

At its core, the opponent's argument hinges on the assumption that the school-specific process must be substantively the same as the periodic six-year legislative process. Stated another way, the opponents argue that the substantive standards and criteria that govern the school specific process are the same as the housing-specific legislative process under which school need can be established as a derivative need. However, if that were truly the case, however, there would be no need for Metro to "establish" and "design" a new process. Rather, if the legislative intent was to mandate the same rigorous process that is used to establish housing need and to otherwise limit school need as a derivative need, the legislature would have simply stated that a school-related need can form the basis for accelerating the time frame under which the legislative housing need process is conducted. And that in itself does not make any sense because nothing in ORS 197.299(1) or ORS 197.296 prohibits Metro from conducting the legislative housing-needs process sooner than on a 6-year increment. In fact, ORS 197.299(1) merely states that Metro must undertake the ORS 197.296 process "*not later than six years after completion of the previous inventory, determination and analysis.*" In theory, Metro could voluntarily conduct that inventory and analysis on a bi-annual or other timeline. In light of this observation, ORS 197.299(4) would be a redundancy if interpreted in the manner that the primary opponent advocates.

Courts strive to give effect to all parts of a statute, in order to produce a harmonious whole. ORS 174.010.⁵ As a corollary, courts will avoid interpretations that render a portion of the statute redundant or meaningless surplusage.⁶ See *State v. Stamper*, 197 Or.App. 413, 418, 106 P.3d 172, *rev. den.*, 339 Or. 230, 119 P.3d 790 (2005) ("we assume that the legislature did not intend any portion of its enactments to be meaningless surplusage"). If the school-specific process were not a separate process governed by different substantive criteria than ORS 197.296, it would not accomplish anything that Metro did not already have the right to do.

Rather than being drafted as an authorization to conduct the existing six-year legislative housing needs process at any time increment earlier than six years if a need exists that cannot wait six years, ORS 197.299(4)(a)(A) contemplates a *new* process *designed* by Metro to cater to

⁵ *Lane County v. LCDC*, 325 Or 569, 578, 942 P.2d 278 (1997); *Bolt v. Influence, Inc.*, 333 Or. 572, 581, 43 P.3d 425 (2002) ("we are to construe multiple provisions, if possible, in a manner that will give effect to all"). See also *Davis v. Wasco IED*, 286 Or 261, 267, 593 P.2d 1152 (1979); *Tatum v. Clackamas County*, 19 Or App 770, 775, 529 P.2d 393 (1974); *Plotkin v. Washington County*, 36 Or LUBA 378 (1996); *Walz v. Polk County*, 31 Or LUBA 363 (1996); *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996) (Ordinance).

⁶ *Certain Underwriters at Lloyd's London and Excess Ins. Co., Ltd. v. Massachusetts Bonding and Ins. Co.*, 235 Or.App. 99, 230 P.3d 103 (2010); *State v. Stamper*, 197 Or.App. 413, 417, 106 P.3d 172, *rev. den.*, 339 Or. 230, 119 P.3d 790 (2005); *EQC v. City of Coos Bay*, 171 Or.App. 106, 110, 14 P.3d 649 (2000).

school needs as a primary independent need, not as a secondary derivative need resulting from a housing need. Because it is a different process that is intended to evaluate a needs other than a housing needs, the process and requirements (*i.e.* inventory, determination, and analysis) of ORS 197.296 do not apply to this separate process. And discussed below, the legislative history confirms this analysis.

Legislative History

Prior to 2001, the case of *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or 606, 611–612, 859 P2d 1143 (1993) (hereinafter *PGE*) made clear that legislative history could not be used to determine legislative intent if the text and context of the law made the meaning of that law unambiguous. The case of *State v. Gaines*, 346 Or 160, 171–172, 206 P3d 1042 (2009) essentially acknowledges that the *PGE v. BOLI* approach was legislatively modified in 2001 via amendments to ORS 174.020, and that the statute now permits the consideration of legislative history even when the text and context seem to make the meaning unambiguous. For this reason, a careful treatment of *Gaines* is warranted here.

The OSB publication entitled “Interpreting Oregon Statutes” Steve Johansen, Hon. Jack Landau, and Anne Villella ed. OSB CLE (2009) contains a lengthy but highly relevant discussion of *Gaines*, as follows:

In *Gaines*, the defendant was convicted of obstructing governmental administration when she refused to cooperate in being photographed after her arrest. On appeal, she argued that her behavior did not constitute a “‘means of . . . physical . . . interference or obstacle’ “within the meaning of the relevant statute. *Gaines*, 346 Or at 162 (quoting ORS 162.235(1)). She argued further that the 2001 amendments to ORS 174.020 required the court to consider the legislative history of ORS 162.235(1) along with the text and context of the statute, even if the court found that its analysis of the text and context did not render the legislative intent ambiguous. *Gaines*, 346 Or at 165. Interestingly, in assessing the meaning of the 2001 amendments to ORS 174.020, the court found that a text-and-context analysis suggested that the amendments did not significantly change the *PGE* standard. *Gaines*, 346 Or at 166. However, the court did not stop its analysis at the text-and-context level. As the plaintiff argued that ORS 174.020 required, the court went on to examine the legislative history. The legislative history revealed a clear legislative intent to eliminate the requirement that a court only look to legislative history “if but only if” the text and context left the meaning ambiguous. *Gaines*, 346 Or at 169.

* * * * *

The court will now consider proffered legislative history even when the text and context of a statute appear to render it unambiguous. In effect, *Gaines* brings legislative history into the step-one analysis along with the text and context of a statute. That said, legislative history remains a second step of statutory analysis—the court will consider it only after analyzing the text and context of a statute. The weight the court gives that legislative history also remains within the discretion of the court. A party attempting to overcome seemingly plain and unambiguous text through reference to legislative history has “a difficult task before it.” *Gaines*, 346 Or at 172.

Although *Gaines* modifies the *PGE* methodology, the full extent of that modification remains to be seen. However, a recent appellate court decision suggests the extent may be relatively slight. *State v. Kelly*, 229 Or App 461, 211 P3d 932 (2009). *Kelly* raised the issue of the meaning of ORS 811.335(1)(b), which requires drivers to signal a turn “during not less than the last 100 feet traveled by the vehicle before turning.” The defendant, who signaled a turn after he had stopped at an intersection, argued that the legislative history showed that the intent of the statute was to require a signal for at least as long as it took to travel the last 100 feet, but not to signal for the specified distance. The court agreed that under *Gaines* it needed to consider the legislative history. The court also made several points as to what weight it would give that legislative history.

The court first made clear that legislative history alone cannot overcome statutory text that is truly capable of only one interpretation. *Kelly*, 229 Or App at 466. Beyond that caution, the court explained the traditional limits of legislative history: legislative history is most helpful when it uncovers the general legislative intent of a statute (*Kelly*, 299 Or App at 466); statements of single legislators or non-legislators are generally, though not always, less helpful (*Kelly*, 299 Or App at 466–467), and the existence of a particular problem that precipitated a bill does not necessarily mean the statute was intended to address only that problem (*Kelly*, 299 Or App at 468). What *Kelly* does not suggest is that *Gaines* changes in any significant way *how* courts use legislative history. Rather, it only changes *when* the court will consider legislative history. Thus, even under *Gaines*, legislative history will be most helpful when an analysis of the text and context does not resolve an ambiguity of the statute. Legislative history may also be useful to reinforce an apparently unambiguous interpretation of a statute. (Emphasis added).

Courts are not likely to be persuaded by legislative history when that history does not give any indication that the precise legal question at issue was considered during the legislative enactment.⁷

The subsection in question, subsection 4, was added to ORS 197.299 in 2005 as part of Senate Bill 1032. Testimony at legislative committee hearings from bill authors and proponents indicates SB 1032 was intended to grant Metro new expedited authority to expand the UGB for the purpose of allowing construction of new schools, and such a process would be separate from the “normal” UGB expansion process typically required by state statutes.

Testimony of several speakers during the May 17, 2005 public hearing provide insight regarding the policy goals behind SB 1032. The main speaker, Gary Conkling, represented the Beaverton School District and was one of the authors of the bill. Mr. Conkling began his testimony in favor of the bill by outlining the pressing problems that face the city of Beaverton. He stated that “in the last decade or so the Beaverton School District has added more than ten thousand students” and that those students alone would make up the fifteenth largest school district in the state.⁸

Mr. Conkling explained that overabundance problems are common in the metropolitan areas of Portland, and most suitable plots of land for schools have been used for other projects intended to spur economic development. Mr. Conkling “anticipate[d] [Beaverton] will have to look outside the UGB for one or more additional school sites” to meet the growing demand. He ended his testimony by stating two main objectives of SB 1032. First, the bill is designed to gain “guidance from Metro, cities, and urban service providers as to where we should look outside the UGB” for suitable plots of land for schools. Second, the bill has language that “will encourage Metro to provide an accelerated process to add those lands once . . . the need has been established . . . so that lands can be added on an accelerated basis to the UGB.”⁹

Metro Legislative Affairs Director Randy Tucker, a second advocate of SB 1032, added some additional points regarding the purpose and scope of the bill. Mr. Tucker explained that developing lands for schools requires additional planning considerations than developing lands for other purposes because schools must be located in particular locations. These additional considerations include that ideally, schools should be located near city centers, and schools must fall within existing school district boundaries. This makes it even more difficult to find suitable land for new school construction without expanding the UGB.

⁷ For example, the court often dispense with legislative history in one sentence by stating simply that the legislative history is silent on the particular issue facing the court. *Ritcherson v. State*, 131 Or App 183, 186, 884 P2d 554 (1994) (seeking to determine if ORS 138.510(2) included retroactive application of its two-year statute of limitations period); *see also Windsor Ins. Co. v. Judd*, 321 Or 379, 387, 898 P2d 761 (1995) (“[W]hat little [discussion of the amendment] there was reveals nothing that sheds light directly on the question posed in this case.”); *State v. Holloway*, 138 Or App 260, 267, 908 P2d 324 (1995) (“Unfortunately, our examination of the legislative history sheds no light on the matter.”); *In Def. of Animals v. Or. Health Scis. Univ.*, 199 Or App 160, 173 n 9, 112 P3d 336 (2005) (“We note that the legislative history . . . provides no assistance in determining the provision’s meaning.”).

⁸ Hearing on S.B. 1032 Before the S. Comm. on Environment & Land Use, 2005 Leg., 73rd Assemb., Reg. Sess. (Or. 2005) (statement of Gary Conkling, Representative of Beaverton School District).

⁹ *Id.*

Finally, Mr. Tucker added that Metro intended to implement SB 1032 by amending its own code to make it easier to expand the UGB for schools “when [new schools] cannot be reasonably accommodated in the UGB, and when they must be accommodated before we would normally do an UGB expansion.” Here, Mr. Tucker indicated that Metro should be authorized to quickly initiate UGB expansion for schools outside of the “typical” or “normal” legislative process of reevaluating the buildable land supply inside the UGB every [six] years.

Later, in a May 31, 2005 work session on SB 1032, Messrs. Conkling and Tucker again provided testimony in support of the bill and explained its purpose and scope. Mr. Conkling stated the bill’s main purpose is to provide Metro “[with a] process that can work in between its periodic review, and provide for an accelerated process to bring these school sites inside the UGB.”

After the testimony of Mr. Tucker, Senator Charlie Ringo, Chair of the Committee, asked if the bill will “facilitate Metro addressing the problem with high growth districts not finding land for schools.”¹⁰ Mr. Tucker stated his answer was yes, and that the bill would provide the basis for immediate negotiation as to what land should be included in the UGB as part of an amendment. Mr. Tucker explained that the bill would be beneficial to districts like Beaverton because “it facilitates the process for expanding the UGB for a school district that has need.” Mr. Tucker stated that ideally, after revising the Metro code to implement the statute, the process to expand the UGB to include land for a school would take only four months.

The legislative history of HB 1032 indicates that one main purpose of the bill was to streamline the process for amending the UGB for the purpose of building new schools. The testimony of both Conkling and Tucker describe a pressing need for land in metropolitan areas for new school construction that cannot always be met within the typical five-year UGB cycle. Proponents of the bill clearly express intent to grant Metro authority to amend the UGB through a process that would be separate from the regular review cycle and corresponding 20-year need analysis.

Proponents of the bill used words such as “streamline” and “accelerated” in the context of a new expansion process that could occur outside and separate from the “normal” time intensive 20-year need analysis, and described a process that would be based exclusively on a demonstrated need for additional school facilities. Testimony regarding the purpose of SB 1032 indicates that the purpose of the legislation was to allow a separate and expedited process exclusively for school siting, which would not be tied to the 20-year buildable land supply analysis that is required under ORS 197.296.

As described above, it is clear from legislative history that the 2005 Oregon legislature was acutely aware of the problem of holding school districts to a six year Metro planning cycle during the enactment of SB 1032. Metro’s Randy Tucker specifically stated that SB1032

¹⁰ Work Session on S.B. 1032 Before the S. Comm. on Environment & Land Use, 2005 Leg., 73rd Assemb., Reg. Sess. (Or. 2005) (statement of Sen. Charlie Ringo, Chair, S. Comm. on Environment & Land Use).

“facilitated” school districts obtaining a UGB amendment for school facilities.¹¹ According to the Merriam-Webster dictionary, the word “facilitate” means “to make (an action or process) easy or easier.” It makes little sense to believe that the legislature would desire to make obtaining a Metro UGB amendment *just as, or even more difficult* for schools while simultaneously creating an “accelerated” process specifically for schools. Indeed, Metro’s own Legislative Affairs Director – no stranger to tightly-crafted statutory language - was quite clear in stating that the purpose of SB 1032 was to “facilitate” (that is, make easier) the process for Metro-area schools.

In addition, the hearings officer finds that the ORS 197.299’s school-specific UGB amendment process is no less thorough or exacting than an application that could have been filed in due course of the next six-year Metro planning cycle. It is true, as opponents claim, that the next Metro 20-year buildable lands analysis is not yet available, and thus cannot be taken into account during this application. The law does not require that, however, and requiring school applicants to wait until the next six-year Metro planning cycle would render the passage of ORS 197.299 pointless. The entire point of ORS 197.299 was to provide schools with an interim, accelerated, easier (“facilitated”) application process, rather than waiting for the next 6 year Metro planning cycle. Statutes should not be construed such that they make other statutes completely meaningless.

As noted above, the Metro Council is required to complete a 20-year forecast and analysis of land need to maintain a 20-year supply of residential and employment land inside the UGB on a six-year cycle. However the Metro Council has directed staff to complete an urban growth report in 2018, three years after the urban growth report was adopted in 2015, with a possible growth management decision occurring in December 2018 that may or may not result in an expansion of the UGB. Delaying the proposed amendment for these specific school and park needs until that time, when these types of specific needs are not addressed in the regional analysis, is not an appropriate or an efficient way to provide these needed services and would result in the District experiencing ever-increasing overcrowding of their facilities.

Thus, in summary, review of the text and context of ORS 197.299 and ORS 197.296 in combination with the legislative history of the 2005 Amendments which created ORS 197.299(4) bring the legislative intent into clear focus. ORS 197.299(4) explicitly provides a “safety valve” of sorts for public school needs. The statute de-couples the need for schools from the derivative secondary needs analysis set forth in ORS 197.296(6). The legislature apparently understood the critical nature of schools to serve the community and felt strongly enough about that to provide a mechanism to ensure that needed schools can be built. Opponents' attempt to saddle Major Amendments with all of the trappings of a six-year legislative review of the region's UGB is contrary to both the plain text of ORS 197.299(4) and its legislative history.

Having resolved the statutory interpretation question, we turn back to the evidence of need. The District originally adopted a long-term facilities plan in January 2008 that assumed additional school capacity would be needed in ten years. This proved true, as of 2017 the high

¹¹ Testimony before the Senate Environment and Land Use Committee, May 31, 2005, beginning at minute 1.13, available at <http://records.sos.state.or.us/webdrawer/webdrawer.dll/webdrawer/rec/4193397/>. Mr. Tucker’s statement is found at minute 1.18, in response to a question from Senator Ginnie Burdick.

school is at 109% of capacity and the four elementary schools are at 99% capacity. A ten-year demographic study by Davis Demographics & Planning Inc., completed in May 2016, forecasted a deficit in capacity at all levels with the high school operating at 141% of capacity. In order to meet the growing need, the District determined, with the assistance of numerous committees, that a new high school would be needed. Voters approved a bond measure in 2016 to construct a new high school and make other facility improvements. The applicant adequately addressed the urgent need for the new high school by substantial evidence in the whole record in its application submittal and its subsequent submittals. (See application narrative ("Narrative") at 14-15, 33, Appendices G, H, and I; June 8, 2017, District letter at 1-3, Attachment i; June 13, 2017, District letter at 5.)

The applicant has met its burden of showing compliance of the two criteria found in Metro Code section 3.07.1440(A) by substantial evidence in the whole record.

Metro Code Section 3.07.1440(B)

3.07.1440 Major Amendments - Criteria

(b) The applicant shall demonstrate that the proposed amendment to the UGB will provide for an orderly and efficient transition from rural to urban land use and complies with the criteria and factors in subsections (b), (c), (d), (e), and (f) of section 3.07.1425. The applicant shall also demonstrate that: (1) The proposed uses of the subject land would be compatible, or through measures can be made compatible, with uses of adjacent land; (2) If the amendment would add land for public school facilities, the coordination required by subsection (c)(5) of section 3.07.1120 of this chapter has been completed; and (3) If the amendment would add land for industrial use pursuant to section 3.07.1435, a large site or sites cannot reasonably be created by land assembly or reclamation of a brownfield site.

[Note: This Provision Incorporates by Reference: 3.07.1425(B), (C), (D), (E), & (F), which are Discussed Below].

MC 3.07.1425(B)(1): Demonstrated need to accommodate future urban population, consistent with a 20-year population range forecast coordinated with affected local governments;

Hearing Officer's Analysis: MC 3.07.1425(b)(1) requires that the Major Amendment application show a [d]emonstrated need to accommodate future urban population, consistent with a 20-year population forecast coordinated with affected local governments. " This criterion is taken word for word from the first need factor set forth in Statewide Planning Goal 14. In the context of periodic review, Factor 1 pertains to a determination of overall land need in order to accommodate population growth. In this case, the need is for additional school capacity to alleviate an overcrowding situation at the Sherwood high School. For this reason, the first need factor set forth at MCC 3.07.1425(B)(1) is to be considered, but it is not determinative by itself.

In *Residents of Rosemont v. Metro*, 173 Or App 321, 328, 21 P3d 1108 (2001), the Court of Appeals explained that "[w]e held in *Baker [v. Marion County]*, 120 Or App 50, 852 P2d 254, *rev den*, 317 Or 485, 858 P2d 875 (1993),] that factors 1 and 2 of Goal 14 are interdependent and

that, if one of the factors is not fully satisfied, or is less determinative, that factor must still be considered and discussed in deciding if a need for expansion of a UGB has been shown under factors 1 and 2 of Goal 14."

This factor requires the applicant to show, by substantial evidence in the whole record, that there is a demonstrable need for the new Sherwood High School based on a forecast that is consistent with the adopted 20-year population range forecast which has been coordinated with affected local governments.

The District and Metro staff address this provision at: Application Narrative at pp. 15, 34, App'x H; May 4, 2017, staff report ("Staff Report") at 5; June 9, 2017, Metro memo; June 13, 2017, District letter at 1-2. In particular, the applicant attempts to meet its burden of proof with the following analysis:

As described herein, the need for additional school capacity including the need for a new high school is well documented as described in Section III of the petition. The existing high school is operating overcapacity and the constraints of the existing high school site and building do not allow for feasible expansion to 2,400 students to serve long-term needs. Building a new high school will also allow the existing high school building to be converted to middle school use by consolidating the two existing middle schools to one location. This will further allow for the conversion of the two existing middle schools to elementary school use. The capacity analysis and 10-year demographic projections indicate that there will be capacity issues at all school levels if nothing is done. The proposed project will provide the long-term capacity needed.

The School District commissioned Davis Demographics & Planning Inc. to complete an updated 10-year demographic study in May of 2016. The study reviewed the following factors that determine student enrollment: (1) the current and planned residential development over the next ten years; (2) student yield factors that apply to new residential development; (3) birth factors for the District area; and (4) mobility factors, which examine the in/out migration of students within existing housing units. The forecast projects a deficiency in capacity in all levels, with the high school level having the largest deficiency. Staff Report Attachment 3 (Table 2 in petition) shows 10-year enrollment projections compared with existing school building capacity. The table demonstrates that if no capacity is added (no-build) the school facilities will be far over capacity in 10 years with the Sherwood High School having the largest capacity issue operating at 141% of capacity.

Metro's 20-year population range forecast is part of the 2015 urban growth report ("UGR"). Therein, the Metro Council determined that the region could meet the expected 20-year residential and employment forecast need within the UGB and no expansion of the UGB was needed to meet housing or employment needs. The UGR did not address specific school and park land needs. As a result, the District prepared a ten-year demographic study that supports a need for additional land for a new high school in order to accommodate future urban population. The District completed this demographic study using population and demographic projections for the cities of Sherwood and Tualatin.

The parties do not focus much, if any, of their debate on whether the population and demographic projections in the District's 10-year study are "consistent" with the assumptions in the 2015 UGR. Such as comparison is complicated by the fact that the UGR takes a high-level regional look at residential and employment needs, whereas the District's 10-year demographic study is much more narrowly focused on Sherwood's population. Nonetheless, the hearings officer reviewed both the 10-year study and the UGR and finds that there is no glaring inconsistency between them. The 2105 UGR anticipates continued high levels of growth in our region. The UGR further recognizes that there is still a considerable amount of vacant and redevelopable land located in and near the City of Sherwood. This would indicate that the District needs to be prepared to accommodate a large amount of additional school children. Given that the regional 20-year forecast did not address school and park land needs, the District's ten-year demographic study, which supplements the long-term facility plan completed in 2008, demonstrates a need to accommodate future urban population by substantial evidence in the whole record. The applicant has provided information regarding a ten-year demographic study showing a need for providing specific school facilities to meet present and future populations based on established methodologies for the proposed use. The applicant also provided written and verbal testimony from experts such as architect Karina Ruiz of Dull Olson Weekes IBI Group Architects, Inc, planner Keith Jones AICP of Harper Houf Peterson Righellis Inc, and traffic engineers Scott Mansur, P.E. and Carl Springer, P.E. of DKS Associates. Having reviewed these materials and observed their testimony, the hearings officer finds them more credible and assigns great weight to their views.

Staff is also correct when it states that even if Metro had expanded the UGB in 2015 for a 20-year housing need, there is no guarantee that the location of the added land would have accommodated the specific need for a new high school in Sherwood. ORS 197.299(4) provides a safety valve for such a situation.

The primary opponent argues that the District could only demonstrate consistency with the 2015 UGR by submitting a new 20-year demographic study. *See* letter from Jennifer Bragar dated June 23, 2017, at p. 20. The opponent points to no specific law which expressly states such a requirement, and the hearings officer does not believe that such a requirement exists. As far as the hearings officer can determine, "consistency" in this context simply means using the same or similar growth rates contemplated in the 2015 UGR, and that appears to be the case here. *See* the updated 10-year demographic study conducted by Davis Demographics & Planning Inc. dated May, 2016. This is consistent with Goal 2, which requires the factual inventories and assumptions included in the comprehensive planning documents to form the "basis for all decisions and actions related to land use." *Rivergate Residents Ass'n v. LCDC*, 38 Or App 149,

5990 P2d 1233, *rev den.* 286 Or 521 (1979); *Hildenbrand v. City of Adair Village*, 217 Or App 623, 177 P3d 401 (2008) (“Plan policies or inventories can serve to justify subsequent and related plan amendments because comprehensive plans must be internally consistent under Goal 2.”) *See also 1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 26 P3d 151 (2001). *Compare GMK Developments v. City of Madras*, 225 Or App 1, 199 P3d 882 (2008) (Nothing in Goal 2 itself requires the sort of continuous data correction that the opponents urge us to impose in this case).

MC 3.07.1425(B)(1) requires the District to demonstrate a need to accommodate future urban population; consistent with the demographic study contained in the 2015 UGR. The District has done that, and that is all that is required. The applicant has met its burden of showing compliance with this factor by substantial evidence in the whole record.

MC 3.07.1425(B)(2): Demonstrated need for land suitable to accommodate housing, employment opportunities, livability or uses such as public facilities and services, schools, parks, open space, or any combination of the foregoing in this paragraph;

This factor requires the applicant to show, by substantial evidence in the whole record, that there is a demonstrable “need for land suitable to accommodate * * * uses such as * * * schools * * *.” The applicant presents its case as follows:

As described herein, the need for additional school capacity including the need for a new high school is well documented as described in Section III of the petition. The existing high school is operating overcapacity and the constraints of the existing high school site and building do not allow for feasible expansion to 2,400 students to serve long-term needs. Building a new high school will also allow the existing high school building to be converted to middle school use by consolidating the two existing middle schools to one location. This will further allow for the conversion of the two existing middle schools to elementary school use. The capacity analysis and 10-year demographic projections indicate that there will be capacity issues at all school levels if nothing is done. The proposed project will provide the long-term capacity needed.

The School District commissioned Davis Demographics & Planning Inc. to complete an updated 10-year demographic study in May of 2016. The study reviewed the following factors that determine student enrollment: (1) the current and planned residential development over the next ten years; (2) student yield factors that apply to new residential development; (3) birth factors for the District area; and (4) mobility factors, which examine the in/out migration of students within existing housing units. The forecast projects a deficiency in capacity in all levels, with the high school level having the largest deficiency. Staff Report Attachment

3 (Table 2 in petition) shows 10-year enrollment projections compared with existing school building capacity. The table demonstrates that if no capacity is added (no-build) the school facilities will be far over capacity in 10 years with the Sherwood High School having the largest capacity issue operating at 141% of capacity.

The City of Sherwood and the Sherwood School District have an intergovernmental agreement to share ballfields. The City of Sherwood owns an extensive system of parks and trails. However, the City's ballfield resources are very limited with only one soccer field located at the City's Snyder Park. In the early 1990s, prior to rapid growth in the preceding 20 years, the City took measures to protect natural resources. This included the protection of floodplains and wetland areas surrounding the Cedar Creek stream corridor that flows south to north through the center of the City limits to the Tualatin National Wildlife Refuge. The City acquired much of this land and maintains these areas as natural open space, wetlands and walking paths. Since most of the areas are sensitive and passive recreation areas, they are off limits to ballfield construction. Because Sherwood has a very active sports community, the City and School District decided to share sports fields with most of these facilities being on school grounds.

In the case of the new High School site, the City owns the approximately 20-acre parcel in the southeast corner of the property. Some of this land, approximately 4 acres, will be used for the Elwert and Kruger Road realignment and roundabout, but the remaining balance will become part of the new high school campus and allow for construction of additional ballfields to be shared with both school and City sports functions.

As documented in Section III of the petition, viable high school sites are not available within the current UGB. The only viable sites, including the proposed site, have been identified within the Sherwood West Concept Planning Area (Urban Reserve Area 5B).

The subject site ("Site C") is the best alternative site considering that it has:

- No mapped sensitive areas (habitats, wetlands or waterways),
- Gently sloping topography to allow for construction of ballfields,
- Close proximity to SW Elwert Road and Highway 99W for ease of access,
- Availability of public utilities (water and sewer),

- Available downstream discharge point for stormwater, and
- Sufficient area to provide high school campus for 2,400 students and needed City/School District shared ballfields.

As shown above, the applicant has shown a compelling need for providing specific school facilities to meet present and future populations.

The City of Sherwood and the District have an intergovernmental agreement to share sports fields with most of the facilities on school grounds. The City has an extensive system of parks and trails but sport field resources are very limited with one soccer field located in a city park. Thus, the applicant has shown there is a demonstrated land need to accommodate both school and park services by substantial evidence in the whole record. That evidence may be found in the following: Applicant’s Narrative at p. 12-32, 34, Appendices C, G, H, and I; June 8, 2017, District letter pp 1-3. Additionally, the applicant demonstrated that district bond financing rules require moving ahead with the application now, rather than wait until the end of 2018. *See* letter from applicant’s counsel Kelly Hossaini dated June 8, 2017, page 3 (discussing the district’s finances).

The applicant has met its burden of showing compliance with this factor by substantial evidence in the whole record.

MC 3.07.1425 (B)(3): A demonstration that any need shown under paragraphs (1) and (2) of this subsection cannot be accommodated on land already inside the UGB.

MC 3.07.1425(B)(3) requires an alternatives sites analysis showing that the needed new school cannot be accommodated within the existing UGB. This requirement stems from state law. Among other laws, Statewide Planning Goal 14 requires the applicant to consider, as part of the needs analysis, all suitable lands inside the UGB as positive alternatives, and even requires the City to consider whether zone changes could make land suitable for the project. *See Brandt v. Marion County*, 22 Or LUBA 473, 481 (1991); *Turner v. Washington County*, 8 Or LUBA 234, 258 (1982), *aff’d*, 70 Or App 575,689 P2d 1318 (1984).

The applicant’s narrative discusses MC 3.07.1425(B)(3) at p. 19-21, 34-35. For example, on pages 16-17 of the narrative, the applicant states as follows:

As evidenced by capacity study and demographic growth data, the high school level is where there is the biggest need for additional capacity both now and to a greater extent within 7 to 10 years. Therefore, the Bond Management Team first looked to the existing high school campus for opportunities for expansion to accommodate this growth.

Expansion of Existing High School

The existing Sherwood High School is located on approximately 37.8 acres of land at 16956 SW Meinecke Road. The existing high

school has capacity for 1,550 students and, as of the writing of this report, is well over capacity with an enrollment of 1,689. This growth is expected to continue with a needed student capacity of approximately 2,200 by the year 2025 and peaking at approximately 2,400 students. Therefore, the School District will need a long-term high school capacity for 2,400 students.

Expanding the existing high school campus to meet this need is problematic on many fronts due to existing size limitation and irregular configuration of the site boundaries. Further, the campus cannot expand beyond its current boundaries as the campus is completely surrounded by existing residential development to the north, south and west and Stella Olsen Park and the sensitive wetland areas along Cedar Creek to the east as shown in Staff Report Attachment 4(Figure 5 in petition).

With respect to the buildings themselves, the School District has made additions over the years to accommodate growth, but the buildings are now completely overtaxed. Based on capacity analysis performed by the School District's contract architect, DOWA, the existing high school campus could be renovated to accommodate only another 450 students. This would increase capacity from 1,550 to approximately 2,000 students. However, at 2,000 students, the school would only have capacity for 7 years requiring the School District to add capacity again down the road. In review of the School District's bonding capacity, the School District will not be in a financial position to make any changes in 7 years and would be saddled with overcapacity schools for the foreseeable future. Therefore expanding the existing campus would provide for a short-term fix but would not provide the long-term solution the District is looking for.

New High School Siting Criteria

With the determination that a new high school is needed, the Bond Management Team identified the following criteria for aid in locating sites for further consideration:

1. Minimum Size: 50 acres
2. Zoning: Site must be zoned or planned for residential or institutional use that allow schools
3. Location: Site must be in Sherwood or contiguous to Sherwood (The City of Sherwood and mostly western Sherwood is where 90% of the student population resides)
4. Topography: Flat to mostly flat to accommodate ballfields

5. Wetlands and Waterways: No wetlands or minimal wetlands/waterways
6. Water and Sanitary Sewer: Adequate public utilities must be available or can feasibly be extended to serve the site
7. Stormwater Drainage: Downstream drainage capacity must exist to accommodate new impervious areas
8. Transportation: Site must be located near major streets to allow ease of access for students and limited routing of school traffic and buses through existing or planned residential areas

Inside the Current UGB

Using Metro's Regional Land Information System, City's Residential Buildable Lands Map and concept planning documents, potential sites were searched within the Sherwood School District Boundary that is inside the Existing Sherwood Urban Growth Boundary and within the Wilsonville or Tualatin existing Urban Growth Boundary.

Northeast Sherwood (Commercial and Industrial Land)

Sherwood City Limits

The northwest area of the City of Sherwood is zoned commercial and industrial, zoning that does not allow for school uses. In addition, much of the commercial and industrial land is built-out or contains wetlands and sensitive areas that cannot be developed. The largest vacant developable site in this area is located at the southeast corner of SW Langer Farms Parkway and SW Century Drive and is only 22 acres, too small for a high school.

Tonquin Employment Area

In 2004, 300 acres of industrial land was added to the Sherwood urban growth boundary in east Sherwood, known as the Tonquin Employment Area. A concept planning document was completed for this area in October of 2010. None of the area has of yet been annexed into the City of Sherwood to allow for urban development. There is an 88 acre parcel that fronts SW Tualatin-Sherwood Road that has potential to accommodate a new high school (12900 SW Tualatin Sherwood Road – 2S128D000100). However, this parcel was added to the UGB for the purpose of providing industrial uses and not for school uses. In addition, this site is located at the far east end of the existing Sherwood city limits and is not close to the student population that predominately resides on the west side of Sherwood. Therefore, locating the

school here would result in an inconvenient and isolated high school campus in the midst of industrial uses. Thus, the site was rejected from further consideration.

South and West Sherwood (Residential Land)

The southern and western areas of Sherwood are mostly residential. Residential zoning allows for school uses. This is also where most of the School District's student population resides (more than 90% of the student population lives in southern and western Sherwood). South of the existing city limits and within the urban growth boundary is the 250-acre Brookman Road Addition Concept Planning Area (Brookman Planning Area). The primarily-residential Brookman Planning Area has a completed concept plan from May of 2009. However, the area has not yet been annexed into the City of Sherwood and therefore has not been developed for urban uses.

The City of Sherwood recently completed a draft Housing Needs Analysis dated June 2015 for the existing urban growth boundary. The housing needs analysis contained a 2014 residential buildable lands inventory map that identified vacant buildable residential land within the City's UGB including the Brookman Planning Area. The residential buildable lands inventory map identified some available residential land. However, the available land is fragmented and/or constrained with no large developable sites that would accommodate a high school campus of 50 acres. Further there is no opportunity to consolidate this fragmented land in a way that would meet the District's criteria for a high school site. The Sherwood Buildable lands map is shown in Staff Report Attachment 5 (Figure 6 in petition).

Within the Wilsonville or Tualatin Urban Growth Boundary

There are some limited areas of the Sherwood School District that are within Wilsonville and Tualatin's urban growth boundary, including the following:

Southwest Tualatin Concept Planning Area

Adjacent and east of the Sherwood Tonquin Employment Area is the Southwest Tualatin Concept Planning Area. Similar to Tonquin, this 614-acre area was added to the urban growth boundary in 2004. The area is planned for industrial use, and is even further away from west Sherwood students than Tonquin Road. Therefore, the area was rejected from further consideration.

Basalt Creek and Coffee Creek Planning Areas

Both of these planning areas are too far from the west Sherwood student population to be seriously considered. In addition, discussions with the City of Tualatin, who is leading the planning for Basalt Creek, indicates that there are no sites large enough with the correct zoning within Basalt Creek that would accommodate a new high school. The Coffee Creek planning area is designated by Metro as Regionally Significant Industrial land. This designation does not allow for school uses under any circumstances.

In summary as noted in Section III of the petition there are no suitable sites for a new high school within the current UGB to serve the Districts target population.

As noted in the findings set forth above, the District first examined the ability to expand the current high school to meet future capacity needs. However expanding the existing high school building is problematic due to existing size limitation and the configuration of the existing school campus. The current high school building includes a series of additions designed and constructed in an attempt to incrementally accommodate growth in the student population, resulting in a crowded non-operational and functional facility. Thus additional expansions to meet long term needs are not possible. In addition, the current high school campus is surrounded by residential development on three sides with the fourth side bordering a city park and natural resource area, thereby not allowing expansion of the campus itself.

The District identified eight site location criteria to help guide their search for appropriate site locations within the Sherwood city limits as well as limited areas within Tualatin and Wilsonville that are within the District boundary. The analysis of land within the city limits offered no usable sites. The city's industrial and commercial zones don't allow school uses and the vacant and developable land within the residentially zoned portions of the city is fragmented and constrained with no large enough sites available. The industrial designated land within the UGB but not in the city (Tonquin Employment Area) does contain one site large enough to meet the need; however it was included in the UGB for industrial purposes, is adjacent to existing industrial uses including an active quarry site and is located away from the main student population base. The limited land area within Tualatin and Wilsonville also include either industrially zoned land or very limited parcel sizes that does not provide an opportunity to site a high school. In addition, these areas are even a longer distance from the main student population base in the central and western portions of the city.

No opponents take issue with the applicant's analysis.

The hearings officer believes that it is relatively obvious that there are no sites within the City limits that could meet the need, even considering rezoning as an option. While there is vacant land in the existing UGB, the applicant has shown there are no suitable sites within the

UGB to meet the identified land need. The applicant has met its burden of showing compliance with this factor by substantial evidence in the whole record.

MC 3.07.1425 (C)(1): If the Council determines that 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:

(1) *efficient accommodation of identified land needs;*

Hearing Officer's Analysis: Once a local government establishes a "demonstrated need" to expand the urban growth boundary, it then must apply the Goal 14's four "locational factors." When Goal 14 was amended in 2005, the locational factors were amended to make clear that the analysis is to be comparative in nature, as opposed to establishing minimum thresholds. The rule now states:

The location of the urban growth boundary and changes to the boundary shall be determined *by evaluating alternative boundary locations* consistent with ORS 197.298 and with consideration of the following factors:

- (1) efficient accommodation of identified land needs
- (2) orderly and economic provision of public facilities and services;
- (3) *comparative* environmental energy, economic and social consequences; and
- (4) compatibility of the proposed urban uses with nearly agricultural and forest activities accruing on farm and forest land outside the UGB. (Underline emphasis added).

Metro has taken the four state-mandated locational factors set forth in Goal 14 and expended them to nine factors. Regardless of this, the goal of the locational analysis remains the same as state law, which is to determine the "best" land to include within the UGB to meet the land need, based on appropriate *consideration and balancing* of each factor. *1000 Friends of Oregon v. Metro (Ryland Homes)*, 38 Or LUBA 565, 584 (2000), *rev'd in part on other grounds* 174 Or App 406, 26 P3d 151 (2001). In *Barkers Five, LLC v. LCDC*, 261 Or App 259, 289 (2014), the court stated that consideration of factors means that the local government must:

"(a) apply and evaluate each factor, (b) weigh and balance the factors which are not independent approval criteria-as a whole, and (c) meaningfully explain why a designation as urban or rural reserves is appropriate. "

Barkers Five, 261 Or App at 300.

OAR 660-024-0060(3) also provides guidance for how one "considers" the location factors and states:

The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the Metro UGB location, Metro must show that all of the factors were considered and balanced.

In conducting this analysis, one point that cannot be over-emphasized is that no one locational factor can be considered to be a determinative reason to include or exclude any one particular site. Thus, a decision to include or exclude land from a UGB must be based on a *balancing* of all these factors, rather than reliance on any one factor. OAR 660-024-0060(3). *See also Branscomb v. LCDC*, 64 Or App 738, 745, 669 P2d 1192 (1983)(Court held that land could not be excluded from consideration *solely* because it was agricultural land and, as such, fared badly under factor 6). *D.S. Parklane*, 165 Or App at 25; *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 409-10 (2001).

A related issue is that local governments often incorrectly treat the locational factors as threshold criteria. In fact, this misunderstanding was so pervasive that at one point LUBA even wrongly suggested that each of the locational factors had a “minimum objective threshold” that had to be identified and met by each site included in a UAR/UGB. *See D.S. Parklane Development, Inc., v. Metro*, 35 Or LUBA 516, 572-3 (1999), *aff’d as modified*, 165 Or App 1, 24, 994 P2d 1205 (2000). However, on appeal, the Court of Appeals clarified that the locational factors were not intended to be applied as threshold (“go - no go”) criteria. *Id.* In other words, the intent is *not* to confirm that the preferred site was “good enough” to urbanize based on minimum threshold standards. Rather, the locational factors were intended to be “applied equally” to include lands into a UGB only “where all of the factors justify that inclusion.” *Id.* In other words, the intent in establishing these factors was to assist in evaluating and ranking which site(s) amongst *all* potential candidate sites were, relative to one another, the *best* sites to urbanize in order to meet the demonstrated land need.

With that introduction in mind, we turn to a discussion of the first factor. The applicant discusses the first locational factor as follows:

Urban reserves are lands outside the existing urban growth boundary that are considered suitable for accommodating urban development and expanding the growth boundary when additional urban land is determined to be needed over a 50-year period. The following urban reserve areas are within the Sherwood School District Boundary and are identified in Staff Report Attachment 6 (Figure 7 in petition):

Sherwood North – North of Sherwood UGB
Sherwood South – South of Sherwood UGB
Sherwood West – West of Sherwood UGB
Tonquin – South and West of Sherwood UGB
Grahams Ferry – Northwest of Wilsonville

I-5 East – East of I-5 and north of Wilsonville
Elligsen Road - East of I-5 and north of Wilsonville

I-5 East, Elligsen Road and Grahams Ferry Urban Reserve Areas
These urban reserve areas were immediately rejected from further consideration due to the distance from west and south Sherwood where the majority of the student enrollment resides. These areas are 2 to 5 miles away in a straight line and even further when traveling on the road network.

Tonquin Urban Reserve Area
This area is directly south of the Sherwood Tonquin Employment UGB area and west of the Southwest Tualatin UGB area. The Tonquin Urban Reserve area encompasses approximately 571 acres. The area has parcels large enough to accommodate the high school site. However, much of the property is mapped as containing Upland Habitat Class A (Metro Title 13) and Riparian Areas Class I, II and III (Metro Title 3). This urban reserve area and it is likely to be designated industrial and/or employment due to its close proximity to other industrial areas. This urban reserve area is on the east side of the City and not centrally located for use by the majority of the School District students. The area is further isolated by a rock bluff that forms the eastern boundary of the current urban growth boundary and Sherwood City limits. This bluff is perched above the Rock Creek stream corridor that effectively isolates this area from the existing residential neighborhoods of Sherwood. Finally, the area does not have adopted concept plan or plan for how utilities will be extended to serve the area.

Sherwood North Urban Reserve Area
This area represents slivers of land along the existing urban growth boundary at the north end of the City of Sherwood. The area was designated urban reserve because it is not within the floodplain of the Tualatin River. However, this land is not large enough to accommodate a high school site and therefore was rejected from further consideration.

Sherwood South Urban Reserve Area
This area is directly south of the Brookman Road UGB area. This area consists of rolling hills with much of the area identified by Metromap online mapping system having slopes greater than 10%. There is also two stream corridors that travel through the area with many areas mapped by Metromap as being riparian or upland habitat. One potential site is located between Oberst Road and Labrousse Road that is not mapped as having upland habitat or

riparian areas. However, this land is mapped by Metro as having slopes of greater than 10% making development of a high school campus and ballfields difficult. The biggest challenge of developing in this area is that the Brookman Road UGB area would need to be annexed and developed first before this area can be made available for development. Therefore, development in this urban reserve area is likely years away and the only promising site is at the south end of and not next to the existing Brookman Road UGB area. This area also does not have a concept plan. For these reasons, this area was rejected from further consideration.

Sherwood West Urban Reserve Area

In February 2016, Sherwood completed a Preliminary Concept Plan for the Sherwood West Planning area (aka Metro Urban Reserve Area 5B). Sherwood West encompasses 1,291 acres along the west border of Sherwood’s existing urban growth boundary. The Sherwood West Planning Area is shown in Staff Report Attachment 7 (Figure 8 in petition).

Six alternative high school sites (A-F) were identified within the Sherwood West Urban Reserve Area that are large enough to accommodate a new high school. The six alternative sites (A-F) within the Sherwood West Concept Plan Area were evaluated based on site selection criteria. The site locations and evaluation criteria are indicated in Staff Report Attachment 8 (Figures 9 to 14 in petition). The School District’s site alternative analysis is summarized in the table below.

(Table 1 – Alternative Sites Summary in petition)

<i>Alternative Selection Criteria</i>	<i>Alternative Sites*</i>					
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>
<i>Flat Topography</i>	<i>N</i>	<i>U</i>	<i>Y</i>	<i>U</i>	<i>U</i>	<i>U</i>
<i>Wetlands</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>U</i>	<i>Y</i>	<i>N</i>
<i>Water Service</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>N</i>
<i>Sanitary Sewer Service</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>N</i>	<i>Y</i>
<i>Storm Drainage</i>	<i>Y</i>	<i>Y</i>	<i>U</i>	<i>N</i>	<i>N</i>	<i>Y</i>
<i>* Y-Meets Criteria - N-Does Not Meet Criteria – U-Undetermined</i>						

From the site alternatives analysis, it became clear that Sites B and C were the most promising with other sites lacking utilities, having significant wetlands, drainage issues and/or significant topography that would make construction challenging. Alternative Sites B and C are located near each other both west of SW Elwert Road at SW Haide Road, just north of Highway 99W. Site C was selected due

to having more of a gentle slope and less grade changes. Most of Site C has a consistent slope change of approximately 40 feet over the length of the site with only a small valley and ridge. Site B has a more drastic slope change of 50 to 60 feet with a more defined ridge running through the middle of the site. Site B would be far more challenging to grade and develop for a high school than Site C. The Sherwood West Concept Plan contained a phasing and funding strategy. The phasing plan identified six phases (A-F). The subject site (Site C) is located within Phase A of the concept plan.

The subject site represents an efficient location because:

- The location is next to existing western Sherwood and close to the vast majority of the District's student population (90%).
- City utilities are available to serve this site or can be extended as the site is adjacent to the city limits.
- Direct and efficient access will be available via major streets that are intended to accommodate significant motor vehicle, pedestrian and bicycle needs.
- The site will be developed on the north, south and west along existing right-of-ways and will be developed to the existing City limits and UGB. This location is a logical location to develop first within the Sherwood West Concept Plan, as it is really the first site north of 99W. Other sites in Sherwood West would result in undesirable leapfrog development.
- Utilizing the approximate 76-acre site to ultimately accommodate the large 2,400-student high school and the School District/City shared ballfields will provide greater efficiency than developing play fields independently. The district and City have a long history of partnering to maximize use of shared ball field resources.

As set forth in the District's narrative and response to MC 3.07.1440(a), there is an identified need for a major amendment of the UGB to provide for a new high school site and this need cannot wait until the next analysis of the building land supply under ORS 197.299. As allowed by MC 3.07.1425(b), the District specified characteristics necessary for land to be suitable for the identified need, *i.e.*, the new high school. *See* Applicant's Narrative at 18-19, 33-35. These characteristics included a minimum site size of 50 acres; zoning that would allow for an institutional use; within or contiguous to Sherwood, where 90% of the children served by the District reside; flat to mostly flat topography; no or minimal constraints such as streams, wetlands, intact upland habitat; adequate/feasible access to public utilities, including water, sanitary sewer, and storm sewer; and near to major (collector or arterial) streets to accommodate high school-level transportation impacts. As also required by MC 3.07.1425(b), the District has demonstrated that the need for the new high school cannot be accommodated on land already inside the UGB.

As shown above, the District undertook an analysis of seven urban reserve areas that are within the district boundary, three of which are not adjacent to the city of Sherwood. The Metro Code does not allow for the creation of an island of urban land so the analysis must be limited to those properties that are directly adjacent to the current UGB. MC 3.07.1425(f).

The Seven Urban Reserve Areas

Within the District's boundary, there are seven areas that contain urban reserves (*see* Application Narrative p. 22 of 39, showing map of all seven areas). They are:

- Sherwood North
- Sherwood South
- I-5 East
- Elligsen Road
- Tonquin
- Graham's Ferry
- Sherwood West

Each will be discussed in turn.

The Sherwood North Urban Reserve Area

The Sherwood North urban reserve area is comprised of slivers of land without flood plain constraints north of the existing city limits and south of Tualatin River. This area does not contain one or more contiguous parcels that would be large enough to meet any of the District's siting criteria for a high school site. Therefore, the hearings officer finds that the Sherwood North urban reserve area cannot accommodate the need for a new high school.

The Sherwood South Urban Reserve Area

The Sherwood South urban reserve area is adjacent to the Brookman Road UGB area. Some of the Brookman Road UGB area was recently annexed to the city, but much of it still has not been annexed. The Sherwood South area consists of rolling hills with much of the area identified by Metro Map as having slopes greater than ten percent, which would not meet the District's siting criterion of a flat to relatively flat site. (See Attachment 3.) There are also two stream corridors that traverse the area with many areas mapped by Metro as being riparian or upland habitat. (See Attachment 4.) There is a potential site located between Oberst Road and Labrousse Road that is not mapped as being constrained by upland habitat or riparian areas, but is mapped as having slopes greater than ten percent, which would not meet the District's siting criterion for a flat to relatively flat site. A challenge in the overall development of this area is that the Brookman Road area within the UGB must be annexed and developed first before the Sherwood South area will have the public services it needs to be able to develop. Further, Sherwood South is not even concept planned yet. As far as the hearings officer is aware, no such planning has been scheduled. As noted earlier, MC 3.07.1110 requires that urban reserve areas be concept planned before they be considered for inclusion in the UGB. As set forth in response

to MC 3.07.1440(a) there is a pressing need for the new high school. To wait at least one or more years for the City to concept plan the Sherwood South urban reserve area under MC 3.07.1110 is not consistent with the pressing need for the new high school that precipitated this major amendment application. Therefore, the hearings officer concludes Sherwood South cannot accommodate the need for a new high school.

The I-5 East Urban Reserve Area

The I-5 East urban reserve area is at the extreme eastern end of the District's boundary, east of I-5, next to Tualatin. This urban reserve area does not meet the District's siting criterion that the new high school site be within or contiguous to Sherwood, where 90% of the children served by the District reside. Further, as set forth in the staff report, these urban reserves are constrained by natural resources issues and steeper slopes yielding no buildable areas big enough to accommodate a new high school. For all of these reasons, the hearings officer finds and concludes that this urban reserve cannot accommodate the new high school.

The Elligsen Road Urban Reserve Area

Similarly, the Elligsen Road urban reserve area is at the extreme eastern end of the District's boundary, east of I-5, next to Tualatin, and immediately south of the I-5 East urban reserve area. This urban reserve area does not meet the District's siting criterion that the new high school site be within or contiguous to Sherwood, where 90% of the children served by the District reside. Travel to western Sherwood would be at least five miles for the vast majority of students along the already-congested Tualatin-Sherwood Road (*see* Application Narrative p. 22 of 39, showing map). Further, as set forth in the staff report, these urban reserves are constrained by natural resources issues and steeper slopes yielding no buildable areas big enough to accommodate a new high school. For all of these reasons, the hearings officer finds and concludes that this urban reserve cannot accommodate the new high school.

The Tonquin Urban Reserve Area

The fifth urban reserve is the Tonquin urban reserve area. This area lies on the east side of Sherwood and is contiguous to Sherwood's city boundary. As set forth in the Narrative, this urban reserve area is directly south of the Sherwood Tonquin Employment UGB area and, according to Julia Hajduk, the City's Community Development Director, will be used to accommodate the City's future industrial and employment needs given its proximity to other industrial uses and Sherwood's employment/industrial core. Therefore it is not likely to allow for zoning for an institutional use. As noted in the staff report, another issue with building a new high school in this area is that the majority of adjacent land within the UGB is not yet developed to urban standards. Any out-of-sequence development in this area, then, would require a costly and inefficient extension of public services. Further, much of the property in this urban area is mapped as containing Upland Habitat Class A (Metro Title 13) and Riparian Areas Class I, II, and III (Metro Title 13). (See Attachment 1.) This area is further isolated by a rock bluff that forms the eastern boundary of the current UGB and city limits. This bluff is perched above the Rock Creek stream corridor that effectively isolates the area from the existing residential neighborhoods of Sherwood, thereby making it less efficient to serve the student population

given that the bulk of that population is in the southern and western areas of the city. Significant areas of the urban reserve also have substantial slopes of ten percent and greater, along with floodplain constraints, which would not meet the District's siting criterion of a flat to relatively flat site. (See Attachment 2.) Further, this urban reserve area does not have a concept plan in place or a plan for how utilities might be extended to serve the area. Concept planning has not been completed for this area. MC 3.07.1110 requires that urban reserve areas be concept planned before these areas can be considered for inclusion in the UGB. As set forth in response to MC 3.07.1440(a) there is a pressing need for the new high school. To wait at least one or more years for the City to concept plan the Tonquin urban reserve area under MC 3.07.1110 is not consistent with the pressing need for the new high school that precipitated this major amendment application.¹² Therefore, the hearings officer concludes the Tonquin urban reserve area cannot accommodate the need for a new high school.

The Grahams Ferry Urban Reserve Area

The Grahams Ferry urban reserve area is at the District's extreme southeast boundary next to Wilsonville. This urban reserve areas meet the District's siting criterion that the new high school site be within or contiguous to Sherwood, where 90% of the children served by the District reside. Travel to from Graham's Ferry to western Sherwood would be at least seven miles for the vast majority of students along the already-congested Tualatin-Sherwood Road (*see* Application Narrative p. 22 of 39, showing map). Further, as set forth in the staff report, this urban reserve area is constrained by natural resources and steeper slopes yielding no buildable areas big enough to accommodate a new high school. For all of these reasons, the hearings officer finds and concludes that these urban reserves cannot accommodate the new high school.

The Sherwood West Urban Reserve Area

The seventh and final urban reserve area studied was Sherwood West. The hearings officer finds this is the only urban reserve area that can efficiently accommodate a new high school consistent with the citing criteria, for these reasons: Sherwood West has been MC 3.07.1110 concept planned and so may be considered for inclusion within the UGB. Sherwood West is adjacent to the city's existing UGB and in close proximity to the bulk of the District's student population. The area is planned for predominantly residential uses, including schools, and so as Sherwood West develops even more of the student population will reside in the vicinity of the proposed high school site. The District studied the 1,291-acre Sherwood West urban reserve for places within it that could accommodate a new high school site. The applicant District did this by utilizing an engineer and architect to evaluate all sites in the urban reserve that were flat to relatively flat; had a minimum buildable site size of approximately 50 acres or more; no or minimal constraints from streams, wetlands, and intact upland habitat; adequate/feasible access to public utilities; and proximity to a major (collector or arterial) street network. Findings addressing MC 3.07.1425(c) can be found in the Narrative and in the staff report. The applicant District included an analysis of the six areas within Sherwood West. Therefore, the hearings officer finds that, given the framework of MC 3.07.1425(b) and (c), no urban reserve except for

¹² Urban Reserve Areas are intended to provide a 50-year supply of land. Given that the City has no plans to complete a concept plan for the area, and because contiguous areas within the UGB would need to develop first to extend the needed infrastructure, it is safe to conclude that development of this area is at least several years away.

Sherwood West should advance to MC 3.07.1425(c) to determine which urban reserve can best meet the identified need, because no other urban reserve can meet that need.

The Six Sites Studied within the Sherwood West Urban Reserve Area

The District identified six sites (designates Sites A through F) within the Sherwood West urban reserve area that were large enough to accommodate a new high school campus. Each of the six is discussed in turn:

Site A – The hearings officer finds this site cannot efficiently accommodate the new high school due to slope, natural area constraints, public infrastructure issues or a combination of these factors. There is a small wetland in the center of this site. The western portion is mostly occupied by Chicken Creek. There is no water service available from SW Elwert Road, and water extensions would be required along Elwert frontage and east from SW Edy Road. The site is low-lying and sanitary sewer connection is not available from SW Edy Road, so a major pumping station would have to be built.

Site B - The hearings officer finds this site *could* possibly accommodate the new high school. However, it has a significant ridge running through the middle of the site, which would require extensive grading, with slopes running both east and west with a 50-60 foot grade change. Both public water and a 15” sanitary sewer pipe are available off SW Elwert Road.

Site C - This site is quite flat, with no more than a 40 foot grade change required. It has water and sewer connections off SW Elwert Road. There are no wetlands. The hearings officer finds that Sites B and C are the two areas that can most efficiently accommodate a new high school, but Site C is clearly superior because Site B has a significant topographic ridge running north-south through the middle of the site with an approximately 50-60 foot grade change. Site C has less topography to manage, which is important when one considers that ballfields, tracks, and other sports facilities needed as part of the new high school cannot be developed on slopes. Therefore, the hearings officer concludes and finds Site C can most efficiently meet the identified need of a new high school.

Site D - The hearings officer finds this site cannot efficiently accommodate the new high school due to slope, natural area constraints, and public infrastructure issues. The entire site slopes down to the east towards private property, with a grade change in excess of 50 feet. There is no sanitary sewer service available. A very costly sewer line extension and public system improvements would be necessary. There are no established public storm drains in the vicinity. Street improvements on Kruger Road and offsite improvements would likely be required. Sites D also suffers from not being adjacent to the existing Sherwood UGB, which means more land would be required to be brought into the UGB than is necessary for the school site in order to ensure contiguity and public infrastructure would have to be extended further to serve the new high school, which is inefficient and expensive.

Site E - The hearings officer finds this site cannot efficiently accommodate the new high school due to slope, natural area constraints, and public infrastructure issues. The entire site slopes down to the east towards Highway 99, with a grade change around 75 feet. There is no

sanitary sewer service available. A very costly sewer line extension and public system improvements would be necessary. There are no established public storm drains in the vicinity.

Site F - The hearings officer finds this site cannot efficiently accommodate the new high school due to wetlands, drainage, powerlines, and lack of public water supply. While quite flat, this site has wetlands, drainage, and a BPA power line easement running through it. While there is a nearby sewer line, there is no water line, and costly improvements would have to be made to supply the school with drinking and irrigation water as well as meeting firefighting needs. Site F is further constrained by a BPA easement that cuts diagonally through what would otherwise be the flattest, least constrained part of that area and this flat area is segregated from the existing UGB by Chicken Creek and protects a riparian corridor. Site F also suffers from not being adjacent to the existing Sherwood UGB, which means more land would be required to be brought into the UGB than is necessary for the school site in order to ensure contiguity and public infrastructure would have to be extended further to serve the new high school, which is inefficient and expensive.

Conclusion of the Alternative Sites Analysis for the Six Sites in Sherwood West

The District evaluated the alternative sites related to five selection criteria noted above and determined that four of the six sites (A, D, E & F) lacked utilities, had significant wetlands, drainage issues or topography that restricted the ability to efficiently accommodate the identified land need. In addition, site D is not adjacent to the current UGB and therefore would create an island of urban land which is not allowed under Metro Code. Areas B & C better met the selection criteria with site C being the best site due to less grading and site work to accommodate the identified land need. Based on the urban reserve areas analyzed site C in the Sherwood West urban reserve best meets the need considering efficient accommodation of the identified land need. For these reasons, the hearings officer concludes and finds that proposed Site C (on the northwest corner of SW Elwert and Kruger Roads) can most efficiently meet the identified need of a new high school.

MC 3.07.1425(c)(2): 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:

(2) the orderly and economic provision of public facilities and services.

Hearings Officer's Analysis: This suitability factor focuses on the orderly and economic provision of public facilities and services. Because Sherwood West has been concept planned pursuant to MC 3.07.1110, the provision of public facilities and services within the Sherwood West Concept Plan area has been studied to a larger degree than other URAs. The Sherwood West Concept Plan was prepared with analyses of existing sanitary sewer, water, storm water, and transportation conditions and analyses of how those systems need to be upgraded, extended, and phased to meet the future development of Sherwood West. (See Sherwood West Concept Plan, pages 15-21, 40-44, Appendix 3 (Existing Conditions Report), and Appendix 8 (Transportation Options Alternative Analysis Report and Cost Estimates). The concept plan was prepared in coordination with all of the future service providers, including those services that

will be provided by the City and those that will be provided by others, including Clean Water Services, ODOT, Tualatin Valley Fire & Rescue, and Washington County. (See Sherwood West Concept, acknowledgements page and Appendix 6 (Service Provider Interviews). The District was also part of the Technical Advisory Committee that informed the concept planning effort. Because all of this extensive analysis and coordination work had already been done for Sherwood West, the District used that work as the jumping off point for its analysis of the area for orderly and efficient accommodation of public services.

As demonstrated in the Narrative, pages 24-31, four of the six sites (A, D, E, and F) have significant barriers to provision of public infrastructure. Sites B and C have the fewest barriers and are most feasible for public infrastructure service. This is consistent with the findings of the Sherwood West Concept Plan, which anticipates phasing public infrastructure to serve the area encompassed by Sites B and C first, i.e., Area A. (See Sherwood West Concept Plan, pages 40-44.) Service provider interviews conducted as part of the concept planning effort also identified Area A as the "first stage development area." (See Sherwood West Concept Plan, Appendix 6, page 5.) It is also worth noting that, according to the concept plan, Area A of the concept plan has most infrastructure in place, "presents the best near-term opportunity for development in Sherwood West," and the cost to serve is on the lower end of the cost scale. (Sherwood West Concept Plan, pages 42-43.) The District also engaged a licensed traffic engineer to prepare the March 15, 2017, Sherwood High School UGB Expansion Transportation Study (the "Transportation Study") to address effects of a new high school on Site C on the surrounding transportation system. The Transportation Study found that, with appropriate mitigation, Site C can accommodate the new high school while maintaining an adequate transportation system. See also District's findings in response to Goals 11 and 12 with respect to the provision of public facilities and services to Site C.

As part of this UGB amendment application effort, the District obtained service provider comments from the City of Sherwood, Washington County, Tualatin Valley Fire and Rescue, and Clean Water Services, all of whom supported the siting of the new school on Site C from an infrastructure provision standpoint, consistent with the Sherwood West Concept Plan.

In sum, Sites B and C best meet the need for a new high school considering the orderly and economic provision of public services per the Sherwood West Concept Plan and the District's own analysis.

The primary opponent makes only a desultory effort to challenge the applicant's proposed findings. See letter from Jennifer Brager dated June 23, 2017, at p. 7. Ms. Bragar concludes, without much in the way of analysis, that "Site C is unworkable." The only evidence that the opponent cites as support for this theory is the DKS Traffic Study dated March 15, 2017, which shows that currently there are several failing intersections in the vicinity. However, failing intersections is not in any way determinative when considering the locational factors.

The proposed site has positive attributes from the transportation and traffic perspective. The site is close to the area's major north-south highway (Highway 99) and east-west arterial (the Tualatin-Sherwood Road). It has a relatively flat topography, reducing hazards in wet or snowy conditions. With the planning modifications, the site will have adequate access and

capacity for peak school commuting times (7.15 to 8 am and 2.50 to 3:45 pm). Road widths and sightlines will be sufficient for safety purposes, an important consideration for less-experienced drivers, such as high school juniors and seniors.

The traffic issue has been addressed by un rebutted evidence from the applicant's civil and traffic engineers - the *only* expert testimony in the record - and is belied by the fact that all of the public service providers for the Sherwood West area, including Washington County, the City of Sherwood, and Clean Water Services, submitted service provider letters that support the new high school on Site C, and state that such services can be provided. (*see* Appendix to the Application Narrative for copies of these letters).

At the public hearing, local residents Carolyn McBee and Karen Labahn raised issues of traffic safety at the proposed site, specifically on Kruger and Elwert Roads. They testified, convincingly, that the roads abutting the preferred alternative site are rural in nature and not capable of handling the traffic generated by the school. As the hearings officer emphasized at the hearing, the analysis is comparative in nature. A site does not have to be good; it just has to be better than the alternatives. This is true even if all of the alternatives are objectively bad. In fact, it will undoubtedly be the case that the roads in all seven of the candidate urban reserve areas are rural in nature and incapable of handling urban levels of traffic. At this stage, the analysis is high level and really only focused on identifying issues that made any one site particularly good or horrendously bad in relation to the others.

In this case, the applicant's traffic engineers Scott Mansur, P.E. and Carl Springer, P.E. of DKS Associates wrote the following in a June 28, 2017 memorandum:

DKS prepared the March 15, 2017, Sherwood High School UGB Expansion Transportation Study ("March Transportation Study"). The March Transportation Study assesses the proposed UGB amendment impacts and identifies a roster of system improvements for the short-term and long-term. This study acknowledges that several local intersections are heavily congested during peak hours, and that the rural street infrastructure nearby the proposed UGB amendment site does not meet either the City's or the County's facility design standards today. What this study also tells us, however, is that with proper mitigation the proposed school site can be adequately served with transportation infrastructure. The next step in the planning process is the post-UGB amendment Title 11 planning, as required by Metro, and it is during that process that the next transportation planning steps will be taken. These planning steps include designating urban zoning and land use types within the newly added UGB area. During this stage, we will engage in additional technical studies, including a second transportation impact study, to (1) refine the specific project needs, (2) ensure that the Transportation Planning Rule is met, (3) ensure that performance standards can be maintained over time, and (4) ensure that a safe transportation network is provided for the new

high school. Based on our transportation analyses so far, we are confident that the Sherwood School District can provide adequate state and local transportation facilities to support the proposed Site C high school.

While the residents' traffic safety concerns are well meant, and taken seriously by the hearings officer, the engineers are undoubtedly correct that the applicant's preferred alternative site can be improved with reasonable cost expenditure. The improvements discussed at the hearing were typical of what one would expect when land urbanizes, and do not involve any highly extravagant technical solutions such as bridges over wetlands / streams, or expensive highway overpasses. The hearings officer had the opportunity to evaluate these engineering experts and considers their representations highly credible. No evidence was presented pertaining to other sites that would suggest that any other site would be significantly better from a transportation standpoint, and several of the sites required more expensive improvements.

The opponents argue that the applicant gamed the system by counting traffic in the middle of winter. *See* letter from Jennifer Brager dated June 23, 2017, at p. 8. Again, this argument seems to lose focus of the intended exercise. That argument might have merit if the applicant's traffic engineers had performed their traffic counts at some locations in winter, but at other locations in summer (when traffic is lighter because school is out of session and many workers are not commuting, due to vacations). That did not happen. The applicant's traffic study clearly states:

To perform the intersection analysis, traffic counts were collected during the AM peak (7:00 – 9:00 am) on Feb 1, 2017 and the PM peak (4:00-6:00 pm) on Jan 31, 2017. Study intersections on ODOT facilities (i.e. OR 99W) were analyzed using estimated 30th highest hour traffic volume (30 HV) conditions. The 30 HV development process for existing conditions *includes the determination of seasonal adjustments*. (DKS "Sherwood High School UGB Expansion Transportation Study" dated March 15, 2017, p. 9, italic emphasis added).

Site C is located in close proximity to existing urban arterials, which in and of itself makes it a better site as compared to alternatives such as Sites D and F, which are more isolated and remote. Sites A, E, and F will be more expensive to develop than Sites B and C. Sites D and F suffer from not being contiguous with the existing UGB and so public infrastructure would have to be extended further, out of sequence, to reach those sites. This creates a significant unnecessary expense. Further, sites with steeper topography and natural resource constraints, like Sites A, D, E, and F will also be more costly to develop. Sites B and C will cost less than the other sites to develop, but Site C will cost even less than Site B due to its flatter topography.

The hearings officer wishes to emphasize that the public will have many additional opportunities to comment on and influence the types of transportation improvements that will be built.

MC 3.07.1425(c)(3): 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:

(3) comparative environmental, energy, economic, and social consequences.

A comparison of the six sites with respect to environmental, energy, economic, and social consequences of development is set forth below:

Environmental Consequences: There are areas within Sherwood West that have significant natural resources within them. The maps at Figure 6 of the Sherwood West Concept Plan and Appendix B of Appendix 3 of the Sherwood West Concept plan are instructive in this regard. From those maps one can see that Sites A, D, and F have significant areas of floodplains, wetlands, protected stream corridors, and inventoried wildlife habitat. In contrast, Sites B and C have little to no environmental resources on them. Further, Sites B and C are closest to the city's existing urban core, which give them the most direct transportation connections, thus limiting air quality degradation. Therefore, development of these sites with a high school would have the least negative environmental consequences of all of the alternative sites.

Energy Consequences: From an energy standpoint, all of the sites are reasonably close to the bulk of the student population to be served, but Sites E and F are more remote. This will be exacerbated as Sherwood West develops with mostly residential uses. Sites A, B, C, and D are most centrally located, which will allow more students to walk and bike to school and reduces the number of students being bused and driven to school, and allows for the least vehicle miles traveled for those who use cars and buses. Site D would require an out-of-sequence extension of public infrastructure to the more interior of the urban reserve, however, which ticks its adverse energy consequences somewhat higher than Sites A, B and C.

Economic Consequences: Public bond dollars are finite and must not be wasted. Taxpayers expect that school districts will be good stewards of the public money and building new school facilities is no exception. Being more remote from the existing urban area and public infrastructure, Sites A, E, and F will be more expensive to develop than Sites B and C. Sites D and F suffer from not being contiguous with the existing UGB and so public infrastructure would have to be extended further, out of sequence, to reach those sites. This creates a significant unnecessary expense. Further, sites with steeper topography and natural resource constraints, like Sites A, D, E, and F will also be more costly to develop. Sites B and C will cost less than the other sites to develop, but Site C will cost even less than Site B due to its flatter topography. The effect of topography on the cost of building a high school site with its need for ball fields and other sports facilities should not be underestimated. Even small amounts of slope will have significant, expensive consequences on a school site due to the cost of grading.

Site C has another factor that weighs in its favor over Site B, which is that Site B contains a number of single-family residences that would have to be purchased and demolished to build the new high school. Purchasing houses to tear them down is not a good use of bond dollars if it can be avoided. Therefore, Site C clearly comes out ahead in this consideration.

Social Consequences: Siting the new high school in the most centrally located area possible is important to fostering a sense of civic and school pride. Although high schools can have fairly significant impacts on an area, they should be sited where the bulk of the population resides and be a use that brings people together in a place that the citizens identify as an integral part of their community. One of the alternatives that the District considered in its facilities planning to alleviate the capacity issue at the existing Sherwood High School was building a second high school. The community, however, was very much opposed to that idea. A small, cohesive community like Sherwood wants to remain bound together not divided by different allegiances to different high schools. All of the sites analyzed in Sherwood West would be superior to any sites in any other urban reserve for these reasons alone; however, within Sherwood West Sites B and C are most centrally located - both now and in the future as the city continues to grow to the south and west. Even so, development of Site B has a more immediate social consequence that Site C does not have. There are a number of residences in Site B that would have to be purchased and demolished in order to develop the new high school. Displacing residents from their homes needlessly is a very adverse social consequence and should not occur if it can be avoided, which in this case it can. Therefore, Site C comes out ahead here, too.

Conclusion: Sites B and C are the two sites that come out the most favorably when one factors in the environmental, energy, economic, and social consequences. However, Site C edges ahead of Site B due to Site B's increased adverse economic and social consequences.

MC 3.07.1425(c)(4): 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

- (4) compatibility of proposed urban uses with nearby agricultural and forest activities occurring on land outside the UGB designated for agriculture or forestry pursuant to a statewide planning goal.*

Hearings Officer's Analysis: The District identified a number of site characteristics that a new site would need to meet in order to accommodate a new high school. As discussed above, is one urban reserve area that can efficiently accommodate a new high school - Sherwood West. Sherwood West has been MC 3.07.1110 concept planned and so may be considered for inclusion within the UGB. Sherwood West is adjacent to the city's existing UGB and in close proximity to the bulk of the District's student population. The area is planned for predominantly residential uses, including schools, and so as Sherwood West develops even more of the student population will reside in the vicinity of the proposed high school site. The District studied the 1,291-acre urban reserve for areas within it that could accommodate a new high school site. The District did this by utilizing an engineer and architect to evaluate all sites in the urban reserve that were flat to relatively flat; had a minimum buildable site size of approximately 50 acres or more; no or minimal constraints from streams, wetlands, and intact upland habitat; adequate/feasible access to public utilities; and proximity to a major street network. This analysis yielded six sites, which were then ranked according to the site criteria.

With respect to how the six sites meet the need for a new high school considering the compatibility of proposed urban uses with nearby agricultural and forest activities, it is important to note that the entire Sherwood West area is slated for eventual urban development, regardless of the current uses and zoning of land within it. It was designated as an urban reserve instead of a rural reserve partly due to its small-scale, intermittent farming and forestry activity, parcelization, and rural residential development. That said, urbanizing land that is adjacent to existing urban development is more consistent with this boundary location factor than urbanizing land further into the undeveloped portions of an area, which will likely remain in rural use much longer whether the new high school is built in the area or not. Sites A, B, and C are closest to existing urban development. Sites D, E, and F are more remote from existing urban development. Therefore, in this respect, A, B, and C will have fewer impacts on any nearby agricultural and forest activities. Site A does not appear to have any adjacent agricultural or forest activities occurring adjacent to it. The other sites have very minor to small amounts of agricultural activities occurring on adjacent land. Therefore, none of the sites would appear to have much impact on agricultural or forest activities. Given the sites' rough equivalency in this regard, Sites B and C are the least costly to serve and most readily developable according to the Sherwood West Concept Plan, so developing in those areas "now" will have fewer impacts on nearby agricultural and forest activities than jumping ahead to an area that might have otherwise remained rural for the next 20 years. This gives Sites B and C the edge in considering this factor.

MC 3.07.1425(c)(5): 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

(5) equitable and efficient distribution of housing and employment opportunities throughout the region.

Hearings Officer's Analysis: This factor is not directly relevant to the siting of a new high school and therefore is not determinative in any way.

MC 3.07.1425(c)(6): 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

(6) contribution to the purposes of Centers and Corridors.

Hearings Officer's Analysis: This factor is not found within Statewide Planning Goal 14 but is instead a consideration created internally at Metro. According to Metro's 2040 Growth Concept Map, the proposed site is not in a Regional or Town center, nor is it directly on a Corridor. Site A is closest to a Corridor, but as staff pointed out in the staff report, it is mostly undeveloped or in single-family residential use. None of the other sites are close enough to any Centers or Corridors to contribute to them at this point in time. Therefore, none of the alternatives support the purposes of Centers and Corridors in any significant way.

MC 3.07.1425(c)(7): 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:

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

Hearings Officer's Analysis: This factor is not found within Statewide Planning Goal 14 but is instead a consideration created internally at Metro.

As noted by staff in the staff report, Metro and Washington County completed an urban and rural reserve process that designated the most important land for commercial agriculture in the county as rural reserve and the land most suitable for urban development as urban reserve. This means that development within any urban reserve will, at least presumptively, protect farmland that is most important for the continuation of commercial agriculture in the region.

However, this factor seems to reach beyond that concern and require further differentiation of urban reserve areas, at least to the extent that any of these urban reserves are still in commercial agricultural production. Of the six sites studied in Sherwood West urban reserve area, none appear to have any significant commercial agriculture. As such, it seems their agricultural output does not form a significant component of the Sherwood area's economy.

The applicant points out that development of sites within an urban reserve that are closest to the existing UGB and to areas within the UGB that actually contain urban-level development, helps to keep agricultural and forest land further from the UGB and urban areas in unaffected operation until such time as urban development grows further in that direction.

MC 3.07.1425(c)(8): 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

(8) avoidance of conflict with regionally significant fish and wildlife habitat.

Hearings Officer's Analysis: This factor is not found within Statewide Planning Goal 14 but is instead a consideration created internally at Metro.

The Sherwood West urban reserve has some significant fish and wildlife habitat within in it, much of which is associated with Chicken Creek. According to the Sherwood West Concept Plan, Steelhead (*Oncorhynchus mykiss*), a federally listed species, are known to exist within Chicken Creek. Sites located closer to Chicken Creek would therefore tend to be less suitable for this project.

All of the sites *except* for Sites B and C are constrained by a significant or moderate level of natural resources:

Site A has a wetland right in the middle, and the entire western portion of this site is mostly creek, and its drainage discharge is right into Chicken Creek (see Narrative, p. 25).

Site D has creek drainage running through the southern portion of the site. Since there is no established public storm drainage anywhere in the vicinity, so a costly system to route storm discharge would have to be built with input from the City of Sherwood and Clean water Services to avoid negatively impacting significant fish and wildlife habitat.

Site E is steeply sloped down to the east towards Highway 99, with a grade change around 75 feet. There are no established public storm drains in the vicinity. so a costly system to route storm discharge would have to be built with input from the City of Sherwood and Clean water Services to avoid negatively impacting significant fish and wildlife habitat.

Site F has creek drainage and potential wetlands running through the entire site (see Narrative, p. 30), so extensive mitigation measures could be required to avoid negatively effecting significant fish and wildlife habitat.

As shown on Figure 6 of the Sherwood West Concept Plan, the western edge of Site B abuts a tributary of Chicken Creek and includes some associated wildlife habitat. Site C has no such identified resources, and, therefore, the hearings officer concludes and finds that Site C best avoids conflicts with regionally significant fish and wildlife habitat.

MC 3.07.1425(c)(9): 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

- (9) a clear transition between urban and rural lands, using natural and built features to mark the transition.**

Hearings Officer's Analysis: This factor is not found within Statewide Planning Goal 14 but is instead a consideration created internally at Metro.

The boundaries of Sherwood West do not appear to have been designated according to providing a clear transition between urban and rural reserves using natural or built features. It is bisected in large part at its northern end by Chicken Creek. But Chicken Creek will not form a natural barrier between urban and rural uses, as the Sherwood West Concept Plan contemplates development on either side of the creek. So, Chicken Creek will end up being a natural area within an urban area - not a boundary between urban and rural uses. Because the boundaries of Sherwood West were not created according to natural or built features, and because all of the six sites studied within Sherwood West for a new high school are internal to Sherwood West and will eventually be in the midst of other urban area, this factor is not particularly relevant to this application. Even so, as staff notes in the staff report, there are no built or natural features that would mark even an internal transition from urban to rural lands for Sites C and E. Site B is flanked by Chicken Creek, which could form such a barrier, but, again, there will be urban development on the other side of that "barrier" one day. Site A is also flanked by Chicken Creek, but the creek and natural resources associated with that site also limit the development

potential of that site for a new high school. Further, there will be urban development on the other side of those natural barriers one day, so they will not really mark the transition that this factor contemplates. Site D has some natural resources on it that could provide a barrier of sorts, but which also reduce the buildable area, and, again, the concept plan does not contemplate these natural areas being any sort of permanent barrier between urban and rural uses. Site F has a large amount of wildlife habitat, but that habitat, too, cuts into the buildable area and will provide no such barrier as contemplated by this factor.

Hearings Officer's Analysis and Summary of the Nine MC 3.07.1425(c) Locational Factors

In summary, little weighing and balancing is needed in this case, because the applicant's preferred alternative, Site C, nearly always came out as the site that best met the intent of each individual factor. With respect to two factors, Sites B and C equally met the intent of the factor, and with respect to another factor Site B came in a fairly close second to Site C. All in all, however, Site C best met all of the factors. In sum, all of the factors were applied and evaluated, and on-balance, Site C came out ahead. Thus, whatever weighing and balancing of all of the nine locational factors with respect to the six sites that could potentially accommodate a new high school is required, the Hearings officer finds that the applicant's analysis clearly demonstrates that the proposed site, Site C, better meets the applicable locational factors than the other sites.

No discussion presented by any opponent to the contrary is convincing. In disputing the District's location factor analysis, the primary opponent pointed to individual aspects of different sites and argued why it believed those aspects made one site better than another with respect to a given, discrete aspect. The opponent's sniping is ineffective, however, because unlike the applicant, the opponent did not evaluate the sites *holistically* based on the nine enumerated factors. Stated it another, it may be the case, that some of the alternative sites fair better than the applicant's preferred alternative in some particular or another. No site is perfect, after all, and each site has its positives and its negatives. However, when viewed as a whole, on balance, the applicant's preferred alternative fairs the best over the broadest consideration of the nine factors. Therefore, the opponent failed to demonstrate that the MC 3.07.1425(C) factors findings are deficient.

The opponent also argues that Sherwood South cannot be ruled out as a possible area for the Major Amendment even though it has not been concept planned under MC 3.07.1110, because MC 3.07.1110(6) provides that such an area can be added even if it has not yet been concept planned. *See* Brager letter dated June 23, 2017 at p.7. MC 3.07.1110(6) states:

"If the local governments responsible for completion of a concept plan under this section are unable to reach agreement on a concept plan by the date set under subsection (a), then the Metro Council may nonetheless add the area to the UGB if necessary to fulfill its responsibility under ORS 197.299 to ensure the UGB has sufficient capacity to forecasted growth."

First, the MC 3.07.1110(6) exception is restricted to situations where "the local governments responsible for completion of a concept plan under this section are unable to reach agreement on a concept plan." There is no evidence that any local governments responsible for a concept plan for Sherwood South are unable to reach agreement on that concept plan. In fact, there seems to be no question that the City of Sherwood will be planning for Sherwood South-it just hasn't done it yet, and has no current plans to do so. Second, the fact that no pre-UGB expansion concept planning has been done for Sherwood South is just one of many reasons the District gave for why Sherwood South ceased to be considered as a viable area for the new high school. The opponent has not pointed to an area within Sherwood South that would meet the District's siting criteria. In fact, in the opponent's June 23, 2017, letter, the opponent points to "a large block of property" south of the recent Brookman Road annexation area, but then appears to agree that it is too sloped to work as a high school site. See Letter from Jennifer Brager dated June 23, 2017, at p.6.

Metro Code section 3.07.1425(D) The Council may consider land not designated urban or rural reserve for possible addition to the UGB only if it determines that:

- 1. Land designated urban reserve cannot reasonably accommodate the need established pursuant to subsection B of this section; or*
- 2. The land is subject to a concept plan approved pursuant to section 3.07.1110 of this chapter, involves no more than 50 acres not designated urban or rural reserve and will help the concept plan area urbanize more efficiently and effectively.*

Hearing Officer's Analysis: The proposed expansion is within an urban reserve. This criterion is not relevant because the site and surrounding properties to the north, east and south are within an Urban Reserve area (no property within or next to the subject site is outside of urban reserve areas).

This criterion is not applicable.

Metro Code section 3.07.1425(E): The Council may not add land designated rural reserve to the UGB.

Hearing Officer's Analysis: The proposed expansion is not within a rural reserve. This criterion is not relevant because the subject site and surrounding properties to the north, east and south are within an Urban Reserve area.

This criterion is either not applicable or has been met.

Metro Code section 3.07.1425(F): The Council may not amend the UGB in such a way that would create an island of urban land outside the UGB or an island of rural land inside the UGB.

Hearing Officer's Analysis: The subject site and the remaining portion of the Sherwood West urban reserve are adjacent to the City of Sherwood. The transformation of this area from rural to urban represents a logical and methodical way to enlarge an urban area, which will not create an island of urban development outside of the UGB.

The proposed expansion will not create an island of urban land outside the UGB or an island of rural land inside the UGB. The applicant has met its burden of showing compliance with this factor by substantial evidence in the whole record.

Metro Code section 3.07.1440 (B)(1) The applicant shall also demonstrate that:

- (1) The proposed uses of the subject land would be compatible, or through measures can be made compatible, with uses of adjacent land.*

Hearing Officer's Analysis: The applicant addresses this criterion as follows:

The proposed major amendment site is surrounded by land that is either within the City of Sherwood or the Sherwood Urban Reserve Area 5B (aka Sherwood West Preliminary Concept Plan Area) (see Attachment 6). The land in the City located north and east of SW Elwert Road is fully urbanized with single-family subdivisions and constructed houses. City land located south and east of SW Elwert Road is the location of the Sherwood Elks Lodge. The Elks Lodge site contains a large area of vacant land around the existing building and parking lot. The Elks Lodge and undeveloped surrounding land is zoned Low Density Residential (LDR).

Land to the north, south and west is currently rural and within the urban reserve area (Sherwood West Concept Plan). This County land is zoned Agricultural Forest (AF) and is a patchwork of sites zoned AF-5, AF-10 and AF-20 with the subject site zoned AF-20. AF-5 has a minimum lot size of 5 acres, AF-10 of 10 acres and AF-20 has a minimum lot size of generally 80 acres. The surrounding property has been highly parcelized and consists of a patchwork of small forests/farms and rural residential properties with none more than 80 acres and many under five acres in size.

The site is compatible with surrounding residential properties as the property has separation provided by existing streets on the north (Haide Road), south (Kruger Road) and west (Elwert Road) boundaries. The eastern boundary consists of mostly forestland with only one house near the site boundary near the northwest corner of the site. All school traffic will be able to access the site

from Elwert Road and will not be routed through existing or proposed residential areas or streets.

While the development of a school site will be the first urban development in the Sherwood West Concept Plan Area, the regional and local plans anticipate redevelopment of this entire area for primarily residential land. Schools typically locate within residential areas and are considered to be compatible with residential land uses when the impacts of the school on residential uses are considered within the design.

The first urban development projects to occur within rural areas typically can cause some tension between existing residents who welcome the change, and those who are content with its current rural character. So well-designed solutions to deal with compatibility issues may still feel like “encroachment” to rural residents. The development of the site will include public involvement during the design development and permit approval process, allowing ample opportunity for the neighbors to help address specific compatibility issues. In the long term, establishing the school will provide the opportunity for subsequent urban developments to be oriented and designed to optimize their physical relationship with the school. This will allow the development of future Sherwood West properties to “grow up together” compared to infilling a large public facility into an established residential neighborhood.

The subject site borders the UGB on the east along SW Elwert Road. Adjacent land uses include single family homes and the Sherwood Robin Hood Elk Lodge that also includes some vacant land that is zoned for residential use, which is expected to develop over time. Directly to the southeast across Highway 99W is the Sherwood Regional Family YMCA. To the north across SW Haide Road is mostly open land with some out-buildings and one dwelling that appears to be vacant. To the west are forested parcels with one dwelling adjacent to the NW corner of the subject parcel. To the south across SW Kruger Road is the Countryside Community Church, limited agricultural activities and four dwellings. The typical weekend use of the church complements the weekday uses of a school. The land to the south also borders Highway 99W.

The District has developed a preliminary site plan that shows the school buildings located in the center of the property with sports fields generally to the south and west and parking located to the north. The southeast corner of the site will contain the realignment of SW Elwert and SW Kruger Roads. The three adjacent roads provide some buffering for the very few adjacent homes and the NW Natural Gas Easement also buffers the southwest corner of the site. The district currently has a High School Design Committee charged with working with the design team to provide advice on a number of design elements and a couple of community input meetings will be scheduled in 2017. In addition there will be public input opportunities during the City’s development review and permit approval process.

Finally the subject site is within a very large urban reserve area that has the potential to urbanize over time. As noted previously this portion of the Sherwood West urban reserve was identified as phase A in the preliminary concept plan the City completed. This allows the adjacent land to be designed and developed in a manner that enhances and embraces this important community facility. Therefore the proposed use of the site can be made compatible, through measures, with the uses of the adjacent land.

The applicant has met its burden of showing compliance with this factor by substantial evidence in the whole record.

Metro Code section 3.01.1440 (B)(2) The applicant shall also demonstrate that:

If the amendment would add land for public school facilities, the coordination required by subsection C(5) of section 3.07.1120 of this chapter has been completed.

Hearing Officer's Analysis: MC 3.07.1120(C)(5) states:

"Provision for the amount of land and improvements needed, if any, for public school facilities sufficient to serve the area added to the UGB in coordination with affected school districts. This requirement includes consideration of any school facility plan prepared in accordance with ORS 195.110."

The applicant addresses this requirement as follows:

This requirement is satisfied as described in Section III of the application. In summary, the Sherwood School District adopted a long-term facilities plan in January of 2008. The long-term plan assumed that additional school capacity would likely be needed within 10 years of the plan's adoption. (The 2008 Long Term Facilities Plan is provided in Appendix C).

In 2014 to 2016, the School District did significant planning prior to placing a bond on the November 2016 ballot that was ultimately approved by voters. This included inventorying existing school facilities, completing updated demographic information, as well as significant planning and public outreach to identify a plan for school facilities that includes the proposed new high school.

As the District points out, it experienced substantial growth in the late 1990's and early 2000's leading to a community effort in 2005 to determine facility needs. This resulted in the successful 2006 bond measure which included funding for an addition to the current high school to increase capacity to 1,550 students, consistent with phase 1 of the 2006 high school master plan. The District completed a long term facilities plan in 2008. Current enrollment at the high school is over 1,700 students and projections show over 2,250 students by the 2025-26 school

year. In early 2014 the District's Long Range Planning Committee made recommendations to the School Board regarding enrollment and growth challenges, facilities analysis and needs and financing options. In 2015 the District documented the condition and educational adequacy of its facilities, leading to bond visioning and steering committees in 2016. This resulted in the District's voters approving a bond measure in 2016 providing funding for school improvements including construction of a new high school. The District and the city of Sherwood have an intergovernmental agreement to share sport fields with most of the facilities occurring on school grounds. Thus the coordination required by subsection C(5) of Metro Code Section 3.07.1120 has been completed.

The applicant has met its burden of showing compliance with this factor by substantial evidence in the whole record.

Metro Code section 3.01.1440(B)(3) The applicant shall also demonstrate that:

If the amendment would add land for industrial use pursuant to section 3.07.1435, a large site or sites cannot be reasonably be created by land assembly or reclamation of a brownfield site.

Hearing Officer's Analysis: The proposed expansion is not for industrial use. This criterion is not applicable.

Findings Addressing OAR 660- Division 24 and the Applicable Statewide Planning Goals.

OAR 660-024-0020 requires that all UGB amendments apply the Statewide Planning Goals to the amendment process. This directive applies to the whole gamut of UGB amendments, from the every-six-year Metro legislative review of its UGB to a quasi-judicial major amendment under the Metro code to provide land for a specific public need, such as a school or other public facilities. However, this does not mean that the Goals will apply equally and in the same way in each situation. It may even be that one or more of the Goals may not apply at all to a given situation.

The primary opponent asserts that the applicant failed to adequately address the Statewide Planning Goals. *See* Letter from Jennifer Brager dated June 6, 2017. While that was correct at the time Ms. Brager wrote her letter, the applicant followed up two days later with proposed findings. The Hearings officer finds that the applicant did adequately demonstrate compliance with the applicable Statewide Planning Goals by substantial evidence in the whole record, and adopts the applicant's suggested findings, with slight modification, as set forth below. The opponent's specific objections are also addressed below.

OAR 660-024 -0020

OAR 660-024-0020 sets out which of the Statewide Planning Goals are applicable to UGB amendments. The Goals will have a somewhat limited applicability to a UGB amendment for a specific need, but the relevant Goals are addressed below.

Goal 1 - Citizen Involvement

"To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."

Hearings Officer Analysis: This Major Amendment application does not alter Metro's citizen involvement program. Consequently, compliance with Goal 1 is established through compliance with the public involvement requirements of Metro's code. Those requirements have been followed.

Goal 2 - Land Use Planning

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

Hearings Officer Analysis: OAR 660-024-0020(1)(a) states that the exceptions process in Goal 2 and OAR 660, Division 4 are not applicable unless a goal exception is part of the application. A goal exception is not part of the Major Amendment application and so those provisions will not be addressed. Other than goal exceptions, Goal 2 requires the establishment of a comprehensive plan, a need for coordination of government entities in planning, and the need for public hearings and an opportunity for comment and review.

1) Coordination: This Major Amendment application has required coordination with and between Metro, Washington County, the City of Sherwood, and public service providers including ODOT, Tualatin Valley Fire & Rescue, and Clean Water Services. This includes coordination at the Major Amendment level and at the Sherwood West Concept Plan level. Therefore, the required coordination has occurred.

2) Public Hearings/Opportunities for Comment and Review: Metro staff sent the required notice for the hearing before the hearings officer, and there has been opportunity for comment and review of the application materials. The hearing was continued, which provides additional opportunity for comment and review, and the hearings officer has stated he is likely to leave the record open after the second hearing concludes. There will also be at least one hearing before Metro Council. Further, the proposed high school will have additional approvals to obtain after the Major Amendment application has been approved, such as annexation, a zone change and a conditional use permit, all of which include a public involvement component. Therefore, there has been and will continue to be public hearings and an opportunity for comment and review.

Goal 3- Agricultural Lands

Hearings Officer Analysis: Not applicable under OAR 660-024-0020(3)(b).

Goal 4 - Forest Lands

Hearings Officer Analysis: Not applicable under OAR 660-024-0020(3)(b).

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

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

Hearings Officer Analysis: OAR 660-024-0020(1)(c) requires states that Goal 5 and its related rules apply only in areas added to the UGB. The area to be added to the UGB is the site identified in this application. There are no Goal 5 resources on the site identified by Metro, Washington County or the City of Sherwood in the Sherwood West Concept Plan. Therefore, this goal is not applicable.

Goal 6 - Air, Water and Land Resources Quality

"To maintain and improve the quality of the air, water and land resources of the state."

Hearings Officer Analysis: As LUBA recently stated:

“[t]he relevant Goal 6 inquiry for a decision that amends comprehensive plan and zoning map designations, without approving any particular new development, is whether there is a reasonable expectation that applicable state and federal environmental quality standards can be met at the time the property is developed in the future. *See Friends of the Applegate Watershed v. Josephine County*, 44 Or LUBA 786, 802 (2003), (at the post-acknowledgment plan amendment stage, a local government need only show it is reasonable to expect that applicable state and federal environmental quality standards can be met); *see also Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 583 (1995) (same).

See Nicita v. City of Oregon City, ___ Or LUBA ___ (LUBA No. 2016-045, Jan 25, 2017, slip op. at 27).

The hearings officer does not see how there could not be any “reasonable expectation that applicable state and federal environmental quality standards can be met at the time the property is developed [as a school].” The proposed school campus poses no significant adverse air, land or water quality impacts. There are no expected significant "waste or process discharges" from the new high school campus. The high school does not "process" anything and so there are no process discharges associated with the high school. Any waste that will be produced by high school activities will be handled through the normal course of business. For example, any solid waste generated by the school will be subject to recycling and solid waste collection by the franchised garbage hauler for the area. Any waste associated with sanitary sewers or storm events will be handled as part of the public sanitary and storm water facilities. As the property develops, the District will be required to coordinate with the state Department of Environmental Quality and with Clean Water Services to ensure that air, land and water resources are not degraded. As noted in response to Goal 5, no significant Goal 5 resources have been mapped on this property by Metro, Washington County or the City. Further, the proposed new high school site is adjacent to the existing UGB and will allow for efficient multi-modal transportation of the

bulk of the student population - especially as Sherwood West builds out with primarily residential uses in the decades to come.

The primary opponents make a half-hearted attempt to challenge the applicant's Goal 6 compliance, but its argument is too vague and too unfocused to provide a basis for denial. First, the opponent state that "air quality issues should be examined for a new school to be built near Highway 99." See letter from opponent's counsel Jennifer Brager, at p. 2, 6. This argument appears to assume that highway 99 causes sufficient level of pollution that a school should not be located in close proximity thereof. The opponents suggest that a "buffer" and "distancing is needed. The opponent never suggests what a proper buffer would be. The Hearings officer finds this concern to be speculative, unsupported by substantial evidence in the record, and beyond the scope of Goal 6's reach. Even if the hearings officer believed this was a valid concern, the hearings officer finds the air quality benefits of locating a school away from a major arterial would be offset by the additional VMT needed to transport school children a further distance.

Goal 7- Natural Hazards

"To protect life and property from natural disasters and hazards."

Hearings Officer Analysis: Goal 7 (Areas Subject to Natural Hazards). Goal 7 requires local governments to evaluate risks to people "upon receiving notice" of new hazard information from DLCD, and based on evaluation of that risk to prohibit development in areas "where the risk to public safety cannot be mitigated." Natural hazards for purposes of this goal are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.

No natural hazards have been mapped on the properties that comprise the proposed school site. (See, e.g., Sherwood West Concept Plan, figures 6 and 7.) The applicant's proposed site appears to be devoid of any natural hazards: It is not in a flood plain or a coastal zone. It does not have steep slopes that would be vulnerable to landslides. It does not contain soils that are exceptionally vulnerable to being an earth quake hazard (at least any more so in comparison to the rest of the Portland Metro region generally). Therefore, this goal is inapplicable.

Goal 8- Recreational Needs

"To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts."

Hearings Officer Analysis: As set forth in the Narrative, the District provides most of the athletic fields for the City of Sherwood. The City and the District have had a long history of partnering in the provision, use, and maintenance of these fields so that recreational opportunities are provided as efficiently as possible. The new high school campus will include a number of new fields and sports facilities on which the City and the District will continue to partner. The new fields and sports facilities will be in addition to the existing fields and sports facilities already in use as part of the existing school facilities. See page 32 of the Narrative for additional

detail. The new high school campus, then is supportive of this goal, as it will help satisfy the need for recreational facilities in the city and in the District.

Goal 9 - Economic Development

"To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."

Hearings Officer Analysis: Goal 9 applies to areas within an urban growth boundary. OAR 660-09-0010(1). *Port of St. Helens v. Land Conservation & Development Committee*, 164 Or App 487, 495, 996 P 2d 1014 (2000). Goal 9 requires that jurisdictions provide adequate opportunities for a variety of economic activities. Goal 9 planning is limited to areas within UGBs, and local land use plans are required to comply with Goal 9 at periodic review and whenever a jurisdiction undergoes a post-acknowledgment plan amendment that changes the plan designation of more than two acres of land from industrial/employment use to a nonindustrial/non-employment use. OAR 660-009-0010(1), 0010(2), and 0010(4).)

Pursuant to OAR 660-024-0020, certain Goals, including Goal 9, are also applicable when the UGB is amended. The Major Amendment application expands the UGB to allow an existing high school to move several miles away from one site within the City of Sherwood to another site that will be annexed into the City of Sherwood for that purpose. This appears to be fairly neutral from the standpoint of economic opportunities.

The opponent cites *Barkers Five, LLC v. LCDC*, 261 Or App 259, 289 (2014), and states that Goal 9 "requires a determination of the potential future land need for employment and is supposed to occur at the time the UGB is expanded," and that "the school itself has to be analyzed as an 'other employment use' as defined under OAR 660-009-0005 because it will involve a governmental employment activity." *See* letter from Jennifer Bragar dated June 6, 2017, at p. 2. That might be true for a UGB amendment that proposes to add employment land, but it not explain the relevance of Goal 9 to this particular UGB application, which is specific to a need for land for a new high school. In this case, the UGB amendment is targeting a specific need, *i.e.*, the relocation of an existing high school several miles away within the same city. Goal 9 is not applicable as the UGB expansion is for a specific need for a high school.

The cited passage from *Barkers Five* should be read in context. LCDC was referring to OAR 660-027-0050(2) and Metro's analysis for employment land needs occurring as part of its urban growth report. There is nothing in that passage that would make such an analysis a requirement for a major amendment application submitted under ORS 197.299(4). As stated in the findings for Goal 9, this goal is not applicable to a UGB amendment for a specific high school need. To the extent that the high school will have any Goal 9 impacts, the Hearings officer finds those impacts will be positive in terms of temporary construction jobs during development and provision of part-and-full time employment year-round.

Furthermore, if the opponent is implying that Metro must engage in a full-blown economic opportunities analysis in the context of a major amendment application for a high school, that conclusion does not follow from the opponent's stated premises or from Goal 9. The

opponent's argument is not developed well enough to allow the hearings officer to evaluate it on the merits: the opponent has not explained how this application actually impacts the requirements or scope of Goal 9.

Goal 10 - Housing

"To provide for the housing needs of citizens of the state."

Hearings Officer Analysis: The applicant states that Goal 10 is not applicable as the UGB expansion is for a specific need for a high school. The opponent states that "Goal 10 is implicated because housing opportunities will be lost as a result of this large land grab by the school district." See letter from Jennifer Bragar dated June 6, 2017, at p. 2. While it is true that any use of land for non-residential purposes results in that land not being available for housing, that truism does not create a Goal 10 violation. As best as the hearings officer can determine, the opponent is arguing that the Preliminary Sherwood West Concept Plan shows a small school site surrounded by housing, and the applicant's current plan shows the entire site being used for a school and no housing. The opponent concludes that this change in plans 'will limit the planned housing in the Sherwood West Concept Plan Area,' which, according to the opponent, "has Goal 10 implications." See letter from Jennifer Bragar dated June 6, 2017, at p. 2-3. It appears that the opponent is arguing that the Concept Plan locks in the density and mix of housing, and any change to the Concept Plan requires an analysis of Goal 10 compliance.

The hearings officer finds that the concept plan does not have the regulatory effect that the opponent assigns to it. The opponent cites to nothing in any local zoning code or Comprehensive Plan that gives this sort of regulatory effect to this (or any other) concept planning effort. Goal 10 would not have that type of regulatory effect until the property subject to the Concept Plan is brought into the UGB and assigned urban zoning designations. As currently situated, the land at issue is not within the UGB and so is not considered "buildable lands" under Goal 10 and Goal 14, and is not included in any buildable land inventory. Therefore, there is no buildable lands inventory to measure the Major Amendment application against and Goal 10 does not anticipate that there would be in this situation. By its terms, Goal 14 requires that jurisdictions "provide for the housing needs of citizens of the state" by inventorying "buildable lands for residential use." Goal 10 defines buildable lands as lands in "urban and urbanizable areas that are suitable, available and necessary for residential use." Under the definitions section of the Statewide Planning Goals, "urban land" is defined as "land inside an urban growth boundary," and "urbanizable land" is defined as urban land, i.e., land inside a UGB, that is presently unavailable for any number of reasons. Therefore, the opponent's argument that, in the context of a Major Amendment, Goal 10 requires Metro to "demonstrate that its actions do not leave it with less than adequate residential land supplies" is wrong.

Moreover, as the applicant points out, the City's urban reserves include a 50-year land supply for the City. There is no evidence that siting a new high school in Sherwood West, in the location that the Concept plan contemplated a new school, will in any way negatively impact the ability of the City to provide for its housing needs, especially when Sherwood West is combined with Sherwood North and Sherwood South.

The opponent also complains that the applicant is seeking to bring in 82 acres when it defined its current need as requiring only a 50-acre site. *See* letter from Jennifer Bragar dated June 6, 2017, at p. 2. The hearings officer is at a loss to understand the relevance of this argument to a Goal 10 challenge. The opponent's argument is simply not developed sufficiently to allow the hearings officer to understand the nature of the complaint.

The opponent also argues that an 82-acre school site "contradicts the two school sites considered in the Preliminary Sherwood West Concept Plan. *See* letter from Jennifer Bragar dated June 6, 2017, at p. 2. However, Concept Plans are not regulatory documents in the sense that they do not limit the size of planned facilities. The Concept Plan took the provision of additional school sites into account when it was developed. Although the concept plan includes two identified school sites, it is important to remember that the Concept Plan is a general plan that addresses how the area will develop generally. The Concept Plan does not specify the types of schools that the conceptual school sites reflect, e.g., elementary, middle or high school. Therefore, one should not view the blue squares denoting school sites in the Concept Plan in the literal sense of trying to determine how big the Concept Plan believed the sites will ultimately be. Such information comes from future refinement of the Concept Plan after areas are brought into the UGB.

Moreover, as the applicant points out, Goal 10 concerns itself with land already within a UGB, which the subject property is not. Therefore, Goal 10 has very limited applicability to a Major Amendment application for a new public school site. That said, the justification for the proposed expansion area of 82 acres is included in the Narrative. (Narrative at 31-32.) As set forth in the Narrative, approximately seven of the 82 acres will be needed for transportation improvements that will support the new high school. There is also a 40-foot wide gas pipeline easement that runs across the site, occupying approximately 2.2 acres but requiring protection of additional, adjacent property of approximately 20 feet on either side. This pipeline easement essentially gives the site an irregular shape, which reduces the efficiency with which it can be developed. The Narrative also discusses the shared sports fields arrangement between the City of Sherwood and the District that provides for additional ballfields. The District would also note that Figure 3 of the Narrative depicts a conceptual layout of the high school site and related transportation improvements over the entire 82-acre area. (Narrative at 7.) As one can see on that conceptual layout, the entire site will be fully utilized.

In the Appendix 6 Service Provider Interviews, the District warns that the current high school was at-capacity at the time of the interview (the appendix is dated June 15, 2015), and with the growth expected in Sherwood the high school could be expected to become over-capacity. (See Appendix 6, pages 3-4.) The District stated that expanding the existing high school and adding a new high school to the District would both be explored. The relevant information to be gleaned from the Concept Plan is that the majority of Sherwood West is intended to be developed with varying densities of housing and that the Concept Plan integrated the need for at least two additional school sites, with an understanding that the existing Sherwood High School would soon be over-capacity.

In its June 23, 2017 letter, the opponent argues that Metro "must demonstrate that its actions do not leave it with less than adequate residential land supplies in the types, locations,

and affordability ranges affected." *See* letter from Jennifer Bragar dated June 23, 2017, at p.2. As support for this requirement, the opponent relies on *Burk v. Umatilla County*, 20 Or LUBA 54 (1990). In *Burk*, the Port of Umatilla filed an application with the City of Umatilla to amend the city's comprehensive plan map for a 42-acre area within the city's urban growth boundary, but outside the city limits, from single-family residential to industrial. The city's buildable land inventory for housing included the 42 acres, because that acreage was within its UGB. Even with the 42 acres included in the buildable lands inventory, the city was deficient in land available for single-family housing. The city approved the map amendment even though it increased that deficiency, which earned the city a remand by LUBA.

The facts of *Burk* are different than those presented by this Major Amendment application. The land in question in *Burk* was inside a UGB and was already planned for zoned and residential uses. That is a key factual difference from the present case, because the land in this case is planned for agriculture and forestry. The land proposed to be added to the UGB is not "buildable land," and is not in any current inventory. For this reason, the Goal 10 analysis required in *Burk* is not applicable here.

Goal 11 - Public Facilities and Services

"To Plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."

Hearings Officer Analysis: As set forth in response to MC 3.07.1425(c)(2), the Sherwood West Concept Plan extensively studied the provision of public facilities and services with respect to that urban reserve. The concept plan was prepared with analyses of existing sanitary sewer, water, and storm water conditions and analyses of how those systems need to be upgraded, extended, and phased to meet the future development of Sherwood West. The concept plan was prepared in coordination with all of the future service providers, including those services that will be provided by the City and those that will be provided by others, including Clean Water Services. The concept plan discusses the provision of public facilities and services to the area at pages 16-18 and 40-44, as well as in Appendix 3 (Existing Conditions Report) and Appendix 6 (Service Provider Interviews). According to the Concept Plan, the area in which the school site is proposed "presents the best near-term opportunity for development in Sherwood West," and the cost to serve the area is on the lower end of the cost scale. (Sherwood West Concept Plan, pages 42-43.) The District used this work as a jumping off point to study the proposed site for inclusion in the UGB (as well as other sites within Sherwood West). See Narrative, pages 24-31 and Application Appendix A (New High School Preliminary Site and Utility Exhibit) and Appendix B (Service Provider Letters). All of the foregoing information addresses the orderly and efficient arrangement of sanitary sewer, water, and storm drainage facilities to serve the new school property, as well as the larger Sherwood West area and all of the evidence consistently points to the chosen property as a property that can served in a timely, orderly, and efficient manner.

The opponents argue that Goal 11 is not met, because the local sewer and water agency (Clean Water Services) has a concern about the installation of a temporary pump station. *See* letter from Jennifer Bragar dated June 23, 2017, at p. 5. The opponents offer no testimony, expert

opinion, or evidence that would call into question the conclusions reached by the applicant's engineers, KPFF. Goal 11 does not require that every technical engineering solution be worked out at the time of UGB amendment. The KPFF engineers seem to believe that an engineering solution is not only possible, but likely, which is all that is required at this stage. See KPFF memo dated June 13, 2017. This Hearings officer has evaluated the opinion of the KPFF engineers, and finds them more credible.

The opponents further argue that "fire flow tests have not been completed." See Letter from Jennifer Brager dated June 23, 2017, at p. 5. The opponents do not explain why fire flow tests are mandated by Goal 11 in the context of a UGB amendment, nor is it obvious why they would be. The KPFF engineers seem to be satisfied that the fire flow issue can be adequately handled, and this hearings officer finds them more credible.

Goal 12 - Transportation

"To provide and encourage a safe, convenient and economic transportation system."

Hearings Officer Analysis: Early LUBA cases suggested that a local government could not "pass the buck" by deferring compliance with Goal 12 and the TPR until the time of site plan review.¹³ However, more recent case law clarifies that conditions of approval can be used to limit new development until such time as the TPR is addressed. For example, in *Citizens for Protection of Neighborhoods v. City of Salem*, 47 Or LUBA 111 (2004) (*Citizens*), the City of Salem approved a zone change to allow mixed residential and commercial use of a 275-acre property. That approval included a condition that prohibited development of the property until later adoption of a master plan for the property. The City of Salem's code criteria applicable during the master plan process included requirements that were substantially identical to the requirements of the TPR. Based on the condition requiring master plan approval, the city found that the zone change did not significantly affect the transportation facility because no development could occur until the subsequent master plan phase. *Id.* at 115, 116. LUBA held that the city could properly conclude that the rezoning of the property did not significantly affect any transportation facility because the condition essentially prohibited development on the property without first showing that any allowed development is consistent with the function, capacity and performance standards of affected transportation facilities. *Id.* at 120.

In *ODOT v. City of Klamath Falls (Southview Dev'l, LLC)*, 39 Or LUBA 641, 660, *aff'd* 177 Or App 1, 34 P2d 667 (2001), LUBA affirmed that portion of a county decision which approved a zone change with a condition that prevented additional development from impacting a transportation facility until such a time in the future when the TPR is addressed. LUBA found that this condition was sufficient to ensure compliance with the TPR in the interim.

Finally, in *Willamette Oaks, LLC v. City of Eugene*, 59 Or. LUBA 60 (2009), the city approved a zone change, and imposed a condition of approval prohibiting development of the property without approval of a planned unit development (PUD) application and a showing of

¹³ *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994), *aff'd*, 130 Or App 406 882 P2d 1130 (1994); *Concerned Citizens of the Upper Rogue v. Jackson County*, 33 Or LUBA 70 (1997).

consistency with the TPR as part of the PUD application and review. LUBA approved this approach, stating as follows:

In sum, with one caveat discussed below,¹⁴ we think it is permissible for the city to defer consideration of compliance with the TPR to a subsequent review process at the time actual development is proposed, provided that the zone change or plan amendment is effectively conditioned to prohibit traffic or other impacts inconsistent with the TPR's requirements unless and until those requirements are fully addressed. Applicant offers no reason in the present case why deferring the application of the provisions of the TPR to a later PUD application process is insufficient to ensure that allowed uses of the subject property are consistent with

¹⁴ LUBA stated in a footnote that the PAPA procedural requirements would still need to be satisfied as part of the deferred process:

The caveat mentioned above is that unless the local government takes steps to ensure otherwise, the subsequent review process may not require a comprehensive plan or land use regulation amendment and therefore will not trigger **[**12]** the notice obligations of a post-acknowledgement action under ORS 197.610 *et seq.* Under those statutes, a local government that amends its comprehensive plan or land use regulations, including zone changes, must provide to the Department of Land Conservation and Development (DLCD) timely notice of the hearing on the proposed amendments as well the decision adopting the amendments. DLCD, in turn, provides notice of the proposed amendments and any subsequent adoption to persons or agencies who request such notice. OAR 660-018-0025. The requirement to provide notice of post-acknowledgment plan amendments to DLCD and other parties is a critical component of a statutory and rule-based scheme that is designed to ensure that post-acknowledgment plan and land use amendments comply with the applicable statewide planning goals and rules, including the TPR. *See Oregon City Leasing, Inc. v. Columbia County, 121 Or App 173, 177, 854 P2d 495 (1993)* (failure to provide DLCD the notice required under ORS 197.610 *et seq.* is a substantive, not procedural error). The efficacy of that scheme is undermined if a local government defers consideration **[**13]** of compliance with the TPR to a subsequent review process that does not provide equivalent notice to that required by ORS 197.610 *et seq.* Without such notice, it is possible that DLCD and parties who may rely on DLCD's re-notice, potentially including ODOT, may not learn of the review proceeding or have an opportunity to participate in that proceeding.

the function, capacity and performance standards of the affected transportation facilities. *ODOT v. City of Klamath Falls*, 39 Or LUBA at 660.

Under OAR 660-024-0020(1)(d), the Transportation Planning Rule ("TPR") need not be applied to a UGB amendment if the land will remain zoned as urbanizable. That will be the case with the properties subject to the proposed UGB amendment. The current AF-20 zoning will remain until the is annexed into the City of Sherwood. During the forthcoming Metro Title 11 concept planning process for the properties, the City will determine the appropriate zone and this will include a TPR analysis. The zoning will not actually be changed, however, until after annexation.

With respect to Goal 12 generally, as set forth in response to MC 3.07.1425(c)(2), the Sherwood West Concept Plan extensively studied the provision of public facilities and services, including transportation, with respect to that urban reserve. The concept plan analyzed the existing transportation system and how that system will need to be upgraded, extended, and phased to meet the future development of Sherwood West. The concept plan was prepared in coordination with all of the future transportation service providers, including Washington County and ODOT. The concept plan discusses the transportation system within the plan area at 18-21, 40-44, as well as in Appendix 3 (Existing Conditions Report), Appendix 6 (Service Provider Interviews), and Appendix 8 (Transportation Options Alternative Analysis Report). The District used this work as the jumping off point to study the proposed site for inclusion in the UGB (as well as other sites within Sherwood West). See Narrative at pages 10-11, and Appendix B (Service Provider Letters). The District also engaged a licensed traffic engineer to prepare the March 15, 2017, Sherwood High School UGB Expansion Transportation Study (the "Transportation Study") to address the provision of a safe, convenient, and economic transportation system for the new high school site. (The Transportation Study has been submitted to the record.) The Sherwood West Concept Plan takes a higher-level look at the transportation needs of the Sherwood West area in general, including the need for new streets and intersection improvements. The Narrative provides general information about how the school site will be served and the Transportation Study provides more detail than is commonly found at the UGB expansion stage, but finds that, with some mitigation improvements, a new high school on the proposed site can be served by the appropriate transportation system. The Transportation Study will become more relevant at the Title 11 concept planning and annexation stages of the high school site development. Because the new high school is very near to an existing, urban-level street system, and because Washington County and the City will be constructing a new intersection improvement adjacent to the new high school, the provision of transportation services to the new school will be more economical. According to the concept plan, the area in which the school site is proposed "presents the best near-term opportunity for development in Sherwood West," and the cost to serve the area is on the lower end of the cost scale. (Sherwood West Concept Plan, pages 42-43.) In sum, all of the cited evidence supports a finding that it is possible to safely, conveniently, and economically provide for the transportation needs of the new high school.

For this reason, the applicant proposes a condition of approval to the UGB amendment that prohibits any new development on the subject property until a Comprehensive Plan Map and Zoning Map Amendment are completed, and that the TPR will be addressed at that time.

Several opponents expressed concerns about the adequacy of the surrounding transportation system to support the proposed high school. It is tempting to jump ahead to the specific traffic impacts of a proposed use even at this early stage of the land use process. It is important to keep in mind, however, that the Major Amendment application is just the first application in a series of land use proceedings that must occur prior to the high school actually being approved on the property. With respect to the Major Amendment application, Goal 12, OAR 660-024-0060(8), and MC 3. 07. 1425(c)(2) are applicable and implicate transportation facilities. The District has submitted findings with supporting substantial evidence to address all of those provisions. The District also submitted additional evidence from its traffic engineer to address particular issues raised with respect to the March 15, 2017, Sherwood High School UGB Expansion Transportation Study. (See June 28, 2017, DKS memorandum.)

No one besides the District provided any evidence or testimony from a traffic engineer regarding any aspect of the Major Amendment application. Opponents correctly point out that there are existing transportation deficiencies in the area that surrounds the proposed high school site. Those opponents also correctly point out that if those deficiencies are not addressed then the new high school will exacerbate them. All of that is true, but it would be expected to be true regardless of where the new high school is sited, *i.e.*, nearly every area in and around Sherwood has existing transportation deficiencies and siting a new high school in any of those areas would impact the transportation system. Where the opponent's logic fails is in the apparent assumption that the transportation impacts of the new high school will not be addressed as part of the planning and permitting processes that are required prior to the new school opening its doors in 2020. That assumption is incorrect.

The laws and regulations that govern the permitting of the new high school simply do not allow the new school to be plopped down anywhere without transportation impacts being analyzed and mitigated in accordance with the law. The specifics of that analysis and mitigation for the chosen site are largely irrelevant at the UGB amendment stage. Instead, those specific transportation impacts will be addressed through subsequent Title II planning for the UGB amendment area, and through annexation, zone change, and conditional use permit processes. Through these processes, the Transportation Planning Rule will be addressed, appropriate off-site mitigation within an appropriate timeframe will be required, and appropriate frontage improvements for all of the abutting streets will be conditioned. Public involvement is included in each of those steps as part of each of the planning and permitting processes. (See June 28, 2017, DKS & Associates memorandum.)

Goal 13 - Energy Conservation
"To conserve energy."

Hearings Officer Analysis: LUBA and the Courts have never given any regulatory affect to this Goal. The Hearings officer views this goal as being essentially meaningless. The general practice has been for applicants and staff to write some flowery prose that extorts the energy

saving virtues of the project. In this vein, the applicant states:

As explained under the District's response to MC 3.07.1425(c)(3), which is the analog of Goal 14, Location Factor 3 (ESEE energy consequences), the proposed school site's adjacency to the existing UGB, served by major streets, facilitates multi-modal access for students, teachers, families, and administrative staff to and from the school campus. This multi-modal facilitation will only increase as Sherwood West builds out into a predominantly residential area with nodes of neighborhood commercial.

Without some baseline standard to measure against, it is difficult to evaluate whether any given proposal will “conserve energy” or not. But at least it sounds good.

For its part, the opponent’s arguments do not shed much light on the issue. They merely state that an “energy analysis” must be provided. *See* Letter from Jennifer Brager dated June 6, 2017, at p. 3. The opponents do not explain exactly what an “energy analysis” entails, nor is it particularly apparent on its face. Given that no focused argument concerning Goal 13 was raised by any party, the hearings officer finds that the applicant’s proposed findings comply with Goal 13 – whatever it means.

Goal 14 - Urbanization

"To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

Hearings Officer Analysis: Goal 14 is addressed throughout this submittal.

Goals 15 through 19

Hearings Officer Analysis: These goals are not applicable, as the proposed UGB expansion does not include Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes or Ocean Resources.

OAR 660-024-0040 - 0050

OAR 660-024-0050 directs local governments to inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. The District's Major Amendment application does not directly implicate these rule provisions, because the need for the new high school site did not arise out of an OAR 660-024-0040 overall land needs analysis and subsequent OAR 660-024-0050 buildable lands analysis. A specific need for a new high school site arose out of long-term facilities planning engaged in by the District. However, once the need for the new high school was identified, the District analyzed land that was within both the District boundaries and the Sherwood, Wilsonville, and Tualatin UGBs for land that could accommodate the need for the

new high school based on its suitability criteria. (See Narrative at pages 8-21.) There was no suitable land within those areas. The analysis required by OAR 660-024-0050 tracks closely in some respects with the analysis required by MC 3.07.1425(a), which was addressed by the District in its application. The caveat, however, is that identified specific land need, such as land for a new school, is not the same as a generalized need for more residential land or employment land. Given the specific need for a new school site, MC 3.07.1440(a) allows a UGB expansion tailored to just that need under certain circumstances.

OAR 660-024-0060 - Metro Boundary Local Alternatives Analysis

OAR 660-024-0060 sets forth the provisions that apply when a need within the Metro UGB has been specified and there is no land within the UGB that can accommodate that need. The provisions in OAR 660-024-0060 track closely with the provisions contained in MC 3.07.1425(c), which have been addressed in the District's application submittal, the Metro staff report, and the additional findings submitted by the District in response to the hearings officer's request.

OAR 660-024-0060:

(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.

Hearings Officer Analysis: The highest priority of land available is land designated urban reserve. (ORS 197.298(1)(a).) The District's application included an analysis of urban reserve land.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, Metro must apply the location factors of Goal 14 to choose which land in that priority to include in the Metro UGB.

Hearings Officer Analysis: As set forth in the District's Major Amendment application, there is suitable land within an existing urban reserve to satisfy the need deficiency, i.e., the new high school. Accordingly, the location factors of Goal 14 were applied to that land. Those location factors are the first four location factors found in MC 3.07.1425(c)(1)-(9) and have been addressed in the District's application submittal, the Metro staff report, and the additional findings submitted by the District in response to the hearings officer's request.

(c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, Metro must determine which land in the next priority is suitable to

accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

Hearings Officer Analysis: This is not applicable as there is urban reserve land that can accommodate the need.

(d) Notwithstanding subsection (a) to (c) of this section, Metro may consider land of lower priority as specified in ORS 197.298(3).

Hearings Officer Analysis: This is not applicable as there is urban reserve land that can accommodate the need.

(e) For purposes of this section, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

Hearings Officer Analysis: This provision is similar to MC 3.07.1425(b), in which site characteristics may be specified for land to be suitable for an identified need. The District specified such characteristics in the Narrative at page 19.

(2) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during a legislative review of the Metro UGB, Metro may approve an application under ORS 197.610 to 197.625 for a Metro UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

Hearings Officer Analysis: This provision is not applicable.

(3) The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the Metro UGB location, Metro must show that all the factors were considered and balanced.

Hearings Officer Analysis: This provision is consistent with how Metro interprets its analogous boundary location factors in MC 3.07.1425(c), which were applied to the District's Major Amendment application.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

Hearings Officer Analysis: The District's analysis took into account all of the land in the urban reserves that otherwise met the District's siting criteria. Some of the land analyzed did not abut the UGB, but was rejected for other reasons.

(5) If Metro has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, Metro may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

Hearings Officer Analysis: This provision is similar to MC 3.07.1425(b), in which site characteristics may be specified for land to be suitable for an identified need. The District specified such characteristics in the Narrative at page 19.

(6) The adopted findings for a Metro UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

Hearings Officer Analysis: The District mapped all of the alternative areas evaluated in the boundary location alternatives analysis and evaluated them separately.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

Hearings Officer Analysis: The District took into account the public facilities and services enumerated in this provision when it evaluated MC 3.07.1425(c)(2), which is the analog to Goal 14 Boundary Location Factor 2.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative Metro UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation (ODOT) with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the Metro UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the Metro UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

Hearings Officer Analysis: As set forth in the responses to Goals 11 and 12, Sherwood West has been concept planned pursuant to MC 3.07.1110, and so the provision of public

facilities and services within the Sherwood West concept plan area and as those services relate to the rest of the city have been studied extensively, as required by MC 3.07.1110. The Sherwood West Concept Plan was prepared with analyses of existing sanitary sewer, water, stormwater, and transportation conditions and analyses of how those systems need to be upgraded, extended, and phased to meet the future development of Sherwood West without adversely impacting the existing city development. The concept plan was prepared in coordination with all of the future service providers, including those services that will be provided by the City and those that will be provided by others, including Clean Water Services, ODOT, and Washington County.¹⁵

Additional Issues Raised by Opponents

1. Metro Staff Provided Proper Notice to DLCD.

Opponents allege that Metro failed to provide notice to DLCD of a proposed plan map amendment under ORS 197.610. *See* Letter from Jennifer Bragar dated June 23, 2017, at p. 8. This is not correct. Metro submitted the requisite notice to DLCD on April 20, 2017, as evidenced on the weekly DLCD notice summary dated April 21, 2017, which is attached to the June 30, 2017 letter from Metro counsel Roger Alfred.

2. The Fair Housing Act Is Inapplicable.

The opponent argues that Metro must apply the Fair Housing Act ("FHA") to the Major Amendment application, because "Metro has a duty to affirmatively further fair housing." *See* Letter from Jennifer Bragar dated June 23, 2017, at p. 3-5.

The opponent does not point to any approval criterion that requires Metro to apply the FHA directly to this application, and did not include any convincing argument as to why a UGB expansion to accommodate a new public high school would require the FHA to be addressed. As best as the hearings officer can ascertain, the opponent's core argument is that the FHA is a *de-facto* approval standard for every Comprehensive Plan Amendment and zone change decision. In this regard, Ms. Brager states that "Metro has a duty to affirmatively further fair housing" and that "Metro needs to address fair housing implications in this Major Amendment application through analysis under Goal 10 and under Metro's locational factors, Metro Code 3.07.1425(c)(5) regarding equitable and efficient distribution of housing." The argument is not well-developed; the opponent seems to be arguing that the FHA must be complied with, but that compliance with Goal 10 and the Metro Code establishes compliance with the FHA.

Beyond that, the opponent complains that Sherwood does not have enough subsidized housing, which "does not properly address the housing issues in Washington County for low-income households, especially protected classes." That statement is followed up with the conclusion that the "failure to analyze the school siting in context of the regional need for fair housing only exacerbates the inequitable distribution of affordable housing in the Metro region."

¹⁵ This coordination effort included service provider interviews included as Appendix 6 of the Sherwood West Concept Plan. Appendix 8 provides more detail regarding the provision of transportation infrastructure to the Sherwood West Concept Plan area.

Letter from Jennifer Bragar dated June 23, 2017, at p. 5. Again, the hearings officer is at a loss to understand the opponent's argument, especially since the opponent does not tie their ultimate policy concern back to any specific language in the FHA or any other law for that matter. This argument is simply not developed sufficiently to allow for its review and evaluation. If the argument is that every school siting project has an inclusionary zoning requirement for additional low-income / subsidized housing, that argument is rejected.

SECTION IV: HEARINGS OFFICER'S SUMMARY, RECOMMENDATION, AND PROPOSED CONDITIONS OF APPROVAL.

The applicant seeks to amend the UGB to include approximately 82 acres for a high school with sports fields and the realignment of SW Elwert and SW Kruger Roads. The Applicant has provided sufficient evidence to demonstrate that the criteria are satisfied and the locational factors have been addressed. As detailed herein, the applicant has demonstrated that the high school is currently over capacity and by 2025 will be severely over capacity. Delaying the decision to await a legislative amendment of the UGB by the Metro Council which may or may not occur in the 2018 timeframe only exacerbates the capacity issues which impacts the District's ability to meet the goals of its strategic plan. The applicant provided adequate comparison of the proposed UGB expansion area with other possible expansion areas in seven different urban reserve areas and a determination that the need cannot be met on land currently within the urban growth boundary. In addition the applicant has shown the proposed use can be made compatible with adjacent uses through site design and the city's development design review process provides for public involvement. Additionally the adjacent land is within an urban reserve and is expected to urbanize over time, allowing for the development of a cohesive neighborhood and school/park facility.

Therefore, the hearings officer forwards a recommendation to the Metro Council for *approval* of this petition, with the following two conditions of approval:

1. The property must be used for a public high school, associated accessory uses, and public transportation improvements consistent with the application are required for this Major Amendment.
2. The applicant must comply with the Transportation Planning Rule (TPR) at the time the zoning is established on the subject property.

Respectfully submitted this 21st day of July, 2017.

ANDREW H. STAMP, P.C.

Andrew H. Stamp

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ATTACHMENTS

Attachment 1: Subject Property Map

Attachment 2: Current Enrollment and School Building Capacities, Table 1 of petition

Attachment 3: Projected Enrollment, Table 2 of petition

Attachment 4: Existing High School Campus, Figure 5 of petition

Attachment 5: 2014 Sherwood Residential Buildable Lands Inventory Map, Figure 6 of petition

Attachment 6: Urban Reserve Areas within Sherwood School District Boundary, Figure 7 of petition

Attachment 7: Sherwood West Planning Area, Figure 8 of petition

Attachment 8: Sherwood West Alternative High School Sites, Figures 9-14 of petition