



600 NE Grand Ave.
Portland, OR 97232-2736

Council meeting agenda

Thursday, August 17, 2017

2:00 PM

Metro Regional Center, Council chamber

PACKET REVISED 08/16/17

1. Call to Order and Roll Call

2. Citizen Communication

3. Consent Agenda

3.1 Consideration of the Council Meeting Minutes for August 10, 2017 [17-4861](#)

3.2 Resolution No. 17-4825, For the Purpose of Confirming the Appointment of Deanna Palm to the Metro Audit Committee [RES 17-4825](#)

Attachments: [Resolution No. 17-4825](#)
[Exhibit A to Resolution No. 17-4825](#)
[Staff Report](#)

4. Resolutions

4.1 Resolution No. 17-4826, For the Purpose of Ratifying the 2017-2020 Collective Bargaining Agreement Between AFSCME 3580 and Metro [RES 17-4826](#)

Presenter(s): Terry Smith, Metro
Ross Hume, Metro

Attachments: [Resolution No. 17-4826](#)
[Exhibit A to Resolution No. 17-4826](#)
[Staff Report](#)

- 4.2 Resolution No. 17-4827, For the Purpose of Authorizing an Exemption to the Competitive Bidding Procedures and Authorizing Procurement by Request for Proposals for a Design-Build Approach to Construction of the Willamette Falls Riverwalk

[RES 17-4827](#)

Presenter(s): Brian Moore, Metro

Attachments: [Resolution No. 17-4827](#)
[Exhibit A to Resolution No. 17-4827](#)
[Staff Report](#)

5. Ordinances (Second Reading)

- 5.1 Ordinance No. 17-1406, For the Purpose of Amending the Urban Growth Boundary in the Vicinity of the City of Sherwood Upon Application by the Sherwood School District

[ORD 17-1406](#)

Presenter(s): Tim O'Brien, Metro

Attachments: [Ordinance No. 17-1406](#)
[Exhibit A to Ordinance No. 17-1406](#)
[Exhibit B to Ordinance No. 17-1406](#)
[Exhibit C to Ordinance No. 17-1406](#)
[Staff Report](#)
[Attachment 1 to Staff Report](#)

6. Chief Operating Officer Communication

7. Councilor Communication

8. Adjourn

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Ogeysiiska takooris la'aanta ee Metro

Metro waxay ixtiraamtaa xuquuqda madaniga. Si aad u heshid macluumaad ku saabsan barnaamijka xuquuqda madaniga ee Metro, ama aad u heshid warqadda ka cabashada takoorista, booqo www.oregonmetro.gov/civilrights. Haddii aad u baahan tahay turjubaan si aad uga qaybqaadatid kullanka dadweynaha, wac 503-797-1700 (8 gallinka hore illaa 5 gallinka dambe maalmaha shaqada) shan maalmo shaqo ka hor kullanka si loo tixgaliyo codsashadaada.

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សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានកម្រិតបណ្តឹងរើសអើងសម្រាប់សេចក្តីណែនាំ www.oregonmetro.gov/civilrights។ បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ ថ្ងៃធ្វើការ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

إشعار بعدم التمييز من Metro

تحتزم Metro الحقوق المدنية. للمزيد من المعلومات حول برنامج Metro للحقوق المدنية أو لإيداع شكوى ضد التمييز، يرجى زيارة الموقع الإلكتروني www.oregonmetro.gov/civilrights. إن كنت بحاجة إلى مساعدة في اللغة، يجب عليك الاتصال مقدماً برقم الهاتف 503-797-1700 (من الساعة 8 صباحاً حتى الساعة 5 مساءً، أيام الاثنين إلى الجمعة) قبل خمسة (5) أيام عمل من موعد الاجتماع.

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Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

Metro tributes cai. Rau cov lus qhia txog Metro txoj cai kev pab, los yog kom sau ib daim ntawv tsis txaus siab, mus saib www.oregonmetro.gov/civilrights. Yog hais tias koj xav tau lus kev pab, hu rau 503-797-1700 (8 teev sawv ntxov txog 5 teev tsaus ntuj weekdays) 5 hnub ua hauj lwm ua ntej ntawm lub rooj sib tham.

Television schedule for Metro Council meetings

<p>Clackamas, Multnomah and Washington counties, and Vancouver, WA Channel 30 – Community Access Network <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 Call or visit web site for program times.</p>	<p>Portland Channel 30 – Portland Community Media <i>Web site:</i> www.pcmtv.org <i>Ph:</i> 503-288-1515 Call or visit web site for program times.</p>
<p>Gresham Channel 30 - MCTV <i>Web site:</i> www.metroeast.org <i>Ph:</i> 503-491-7636 Call or visit web site for program times.</p>	<p>Washington County and West Linn Channel 30– TVC TV <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 Call or visit web site for program times.</p>
<p>Oregon City and Gladstone Channel 28 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.</p>	

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times. Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site www.oregonmetro.gov and click on public comment opportunities.

Agenda Item No. 3.1

Consideration of the Council Meeting Minutes for August 10,
2017

Consent Agenda

Metro Council Meeting
Thursday, August 17, 2017
Metro Regional Center, Council Chamber

Agenda Item No. 3.2

**Resolution No. 17-4825, For the Purpose of Appointing a
New Member to the Metro Audit Committee**

Consent Agenda

Metro Council Meeting
Thursday, August 17, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE)	RESOLUTION NO. 17-4825
APPOINTMENT OF DEANNA PALM TO)	
THE METRO AUDIT COMMITTEE)	Introduced by Council President Tom Hughes
)	
)	

WHEREAS, Metro Code Chapter 2.19.250 establishes the Metro Audit Committee; and

WHEREAS, the Committee enhances the external audit function by monitoring the external auditor’s services and activities to ensure that independence is maintained between the external auditor and management; and

WHEREAS, the Metro Code Chapter 2.19.030, “Membership of the Advisory Committees,” states that all members and alternate members of all Metro Advisory Committees shall be appointed by the Council President and shall be subject to confirmation by the Council; and

WHEREAS, the Metro Code Chapter 2.19.250 (d), provides that the Committee shall include a Commissioner of Metropolitan Exposition Recreation Commission (MERC); and

WHEREAS, Deanna Palm is the MERC Commissioner selected to serve a one-year term on the Audit Committee; and

WHEREAS, the Council President desires to confirm the appointment; now, therefore,

BE IT RESOLVED, that the Metro Council confirms the appointment of Deanna Palm to the Metro Audit Committee as set forth in Exhibit "A" attached hereto for the Committee position and terms set forth therein.

ADOPTED by the Metro Council this 17 day of August 2017.

Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

Exhibit A to Resolution No. 17-4825

METRO AUDIT COMMITTEE

Committee Member Appointment

The following person is appointed to serve a one-year term, from August 17, 2017 to August 16, 2018:

- **Deanna Palm** MERC Commissioner (voting)

BIOGRAPHY

Member appointment:

Deanna Palm has been President of the Hillsboro Chamber of Commerce since December 2001. The Hillsboro Chamber is a business organization representing more than 750 business and approximately 55,000 jobs in and around the Hillsboro community. The Chamber supports policies that enable businesses to grow and prosper.

Deanna is past chair of the Oregon State Chamber of Commerce, serves as president-elect for the Hillsboro Community Foundation, co-chairs the Hillsboro School Bond Steering Committee, serves on the Workforce Development Board for the Region and is a member of the Hillsboro Airport Master Plan Advisory Committee. Deanna was appointed to serve on the Portland Community College Board of Directors in 2009 and was elected to serve in that position in 2011 and again in 2015. She served as Chair of the Board for PCC in 2015 and 2016, which is the largest higher education institution in the state of Oregon. Deanna was appointed to serve on the Metropolitan Exposition and Recreation Commission for Washington County in June 2017.

Deanna is a native Oregonian graduating from Portland Community College in 1984 with an Associate's Degree in Administrative Services. She lives in Hillsboro, Oregon with her husband where they have raised their two children; Zack and Rae-Ellen.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION No. 17-4825 FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF DEANNA PALM TO THE METRO AUDIT COMMITTEE

Date: August 17, 2017

Prepared by: Brian Evans
Metro Auditor
503-797-1891

BACKGROUND

The Audit Committee assists the Metro Council in reviewing accounting policies and reporting practices as they relate to the Metro's Comprehensive Annual Financial Report. The Committee provides independent review and oversight of the government's financial reporting processes, internal controls and independent auditors.

The new member listed in Exhibit A serves in a voting capacity.

ANALYSIS/INFORMATION

1. **Known Opposition:** none

2. **Legal Antecedents:**

Metro Code Chapter 2.19, "Metro Advisory Committees," provides generally applicable rules for the creation of committees providing advice to the Metro Council and appointment of members to such committees.

Metro Ordinance 10-1233 for the Purpose of Establishing an Audit Committee and Amending Metro Code Section 2.15.080 External Audits and Adding a New Metro Code Section 2.19.250 Audit Committee.

3. **Anticipated Effects:**

By approving Resolution No. 17-4825, the Metro Council will confirm appointment of Deanna Palm to the Audit Committee.

4. **Budget Impacts:** None

RECOMMENDED ACTION

The Council President recommends adoption of Resolution No. 17-4825.

Agenda Item No. 4.1

Resolution No. 17-4826, For the Purpose of Ratifying the
2017-2020 Collective Bargaining Agreement Between
AFSCME 3580 and Metro

Resolutions

Metro Council Meeting
Thursday, August 17, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RATIFYING THE 2017-)	RESOLUTION NO. 17-4826
2020 COLLECTIVE BARGAINING)	
AGREEMENT BETWEEN AFSCME 3580 AND)	Introduced by Martha Bennett, Chief
METRO)	Operating Officer, in concurrence with
)	Council President Tom Hughes

WHEREAS, Metro's designated representatives for labor relations have negotiated in good faith with AFSCME Local 3580 ("the Union"); and

WHEREAS, Metro's designated representatives for labor relations and the Union's designated bargaining representatives have reached a signed tentative agreement for a three year collective bargaining agreement; and

WHEREAS, the Union merged with AFSCME 3580-1, a sub-unit that includes employees previously covered under a collective bargaining agreement between the Metropolitan Exposition Recreation Commission ("MERC") and the Union; and

WHEREAS, the collective bargaining agreement includes terms and conditions applicable to employees of the MERC venues and MERC approved the tentative collective bargaining agreement on August 2, 2017; and

WHEREAS, Metro's designated representatives recommend and support ratification by the Council. Now Therefore,

BE IT RESOLVED that the Metro Council hereby ratifies the agreement attached to this resolution as Exhibit A contingent upon ratification by the Union.

ADOPTED by the Metro Council this _____ day of _____ 2017.

Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

Collective Bargaining Agreement

Metro and the
American Federation
of State, County and
Municipal Employees
Local 3580

July 1, 2017 – June 30, 2020



Article 1: Preamble

This Agreement is between Metro, (Employer) and the American Federation of State, County and Municipal Employees Local 3580, AFL-CIO, (Union).

The purpose of this Agreement is to establish the complete Agreement between Metro and the Union on rates of pay, hours of work, fringe benefits and conditions of employment, and to promote efficiency in employee work performance.

This agreement also provides an equitable and peaceful process procedure to resolve disputes in interpreting and applying the terms herein consistent with Metro and the Union's mutual goal of-providing ever-improved public services.

This Agreement shall apply equally to all employees in the bargaining unit without regard to race, color, religion, creed, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, veteran status, disability or any other status protected by law, or union activity.

Except as otherwise provided by law, regulation, or grant provisions, the PARTIES AGREE AS FOLLOWS:

Article 2: Recognition

Section 2.1 Metro recognizes the Union as the exclusive bargaining representative of all regular and limited duration status employees of Metro, and temporary employees of Metro, including:

- Temporary employees that are Program Assistant[s] 1 at the Zoo, Hazardous Waste Technicians, Safety/Security Officers and Scalehouse Technicians, that work more than an average of four hours per week per calendar quarter;
- All full-time or part-time utility personnel at the Oregon Convention Center, Operations Department;
- All regular Utility Maintenance Specialist and Lead Utility Workers at the Portland Expo Center,

But excluding:

- Other temporary employees, supervisors, confidential employees as defined under ORS 243.650(6) and (23),
- Employees represented by other unions,
- Employees assigned to the Office of the Chief Operating Officer and Council Office,
- and employees in security, office, audio visual, clerical and professional employees at the Oregon Convention Center,
- And all other employees at the Expo Center and the Oregon Convention Center.

For the purposes of this contract a regular or limited duration status employee is defined as follows:

Regular Status Employee: An employee who is in a budgeted FTE position which is not designated limited duration and has passed the initial probationary period in effect at the time of his/her appointment or hire, and has been employed by Metro in such status continuously since passing the probationary period.

Limited Duration Status Employee: An employee who is in a budgeted FTE position and has passed the initial probationary period; and is serving in a limited duration position for a duration not less than three months. Employees hired into a limited duration position serve a probationary period and are governed under the same terms of the contract as regular status employees unless otherwise specified in this agreement.

Section 2.2 Temporary employees are not included in the bargaining unit except as stated in Section 2.1. Temporary employees shall be defined as those employees working less than one thousand forty (1040) hours per year in a twelve (12) month period from initial hiring, or any 12-month period thereafter. Temporary employees represented by the union as stated in section 2.1 shall be limited to working less than one thousand forty (1,040) hours per fiscal year. Temporary employees shall not be used to replace and/or diminish wages, hours or other conditions of employment of existing bargaining unit employees, or in a manner that circumvents the appropriate establishment of regular or limited duration status positions but may be used during bona fide recruitment of regular or limited duration status employees, leaves, or short-term non-recurring work operations. Metro agrees to provide the Union a monthly listing of temporary employees and hours worked from hire date.

Article 3: Management Rights

The employer shall have and retain the sole responsibility for the management and operation of all Metro functions and direction and control of its work force, facilities, properties, programs and activities, except as expressly limited by the terms and conditions of this Agreement. These rights include but are not limited to the following:

- (1) Determining the employer's mission, policies, and all standards of service offered to the public and other local governments;
- (2) Planning, directing, controlling and determining the operations or services to be conducted by employees;
- (3) Determining the methods, means, number of personnel needed to carry out any department's mission;
- (4) Directing the work force and issuing or changing work orders and rules.
- (5) Hiring and assigning or transferring employees within or between departments;
- (6) Promoting, suspending, disciplining or discharging, consistent with this Agreement;
- (7) Laying off or relieving employees due to lack of work or funds or for other legitimate reasons;
- (8) Making, changing, publishing and enforcing work practices, rules or personnel policies and regulations covering permissive subjects of bargaining, including issuing rules over issues which are nonnegotiable and are not in conflict with or otherwise addressed in a specific provision of this Agreement; and
- (9) Introducing new or improved methods, equipment or facilities.
- (10) Completing performance evaluations of employees as required.
- (11) Classifying, reclassifying or merging positions as required.

These rights are diminished only by the law and this Agreement.

Article 4: Union Security

Section 4.1 Membership

- a.) All employees covered by this Agreement shall within (30) days of employment either become and remain a member of the Union or tender to the Union their fair share of the cost of negotiating and administering the labor agreement. If the employee is a member of a church or religious body which has bona fide religious tenets or teachings which prohibit such employees from being a member of or contributing to a labor organization, such employee shall pay an amount equivalent to regular Union dues, to a non-religious charity or to another charitable organization mutually agreed upon by the employee and the Union. The employee shall furnish written proof to the Employer that this has been done on an annual basis.
- b.) Except for reasons stated in section a, employees who are current members of the Union at the time of signing this agreement or who sign a Union membership card subsequent to the signing of this agreement shall remain members of the union for the duration of the contract term as long as they are current employees of the employer.

Section 4.2 Fairshare

The employer agrees to deduct the fairshare amount in accordance with and pursuant to the terms of the Oregon Revised Statutes 243.650 (10) and (18) with the understanding that the fairshare amount for non-union employees shall be equivalent to the dues of the Union membership in the American Federation of State, County and Municipal Employees Local 3580, AFL-CIO.

Section 4.3 Effective Date

The effective date of withholding Union membership dues or fairshare shall be the first of the month following thirty (30) calendar days of employment.

Section 4.4 Dues Checkoff

Upon receipt of a signed authorization from the employee, the employer agrees to deduct from the paycheck of each employee authorized by the Union, the regular monthly dues uniformly required of members of the Union and the amount of fairshare determined by application of Article 4.2 of this Agreement from all non-union members of the bargaining unit for which the Union is the exclusive bargaining agent. The aggregate amount deducted, together with an itemized statement, shall be transmitted monthly to the Council 75 offices on behalf of all employees involved. The performance of this service is at no cost to the Union. Metro will not be held liable for any errors or delays, but will make any proper corrections as soon as possible.

Section 4.5 Indemnification

The Union agrees that it will indemnify, defend and hold the employer harmless from all suits, actions, proceedings, and claims against the employer, or person acting on behalf of the employer, whether for damages, compensation, reinstatement, or a combination hereof arising out of the employer's implementation of Sections 4.1 – 4.4 of this Article. In the event any decision is rendered by a court of competent jurisdiction or by enacted law that this Article is invalid and/or that reimbursement of the service fee (fairshare) must be made to employees affected, the Union shall be solely responsible for such reimbursement.

Section 4.6 Bulletin Boards

The employer agrees to furnish and maintain suitable bulletin boards in convenient places in each work area to be used by the Union. The Union shall limit its posting of notices to such bulletin boards. All posting of notices on bulletin boards by the Union shall be signed and dated by the individual doing the posting. Each bulletin board will have a sign designating a specific AFSCME posting area.

Metro Regional Center:

Employee Lounge/Lunchroom, Planning and Development Department, Communications Department, Property and Environmental Services Department, Finance and Regulatory Department, Parks and Nature Department.

South and Central Scalehouses

South and Central Hazardous Waste Facilities

Metro Paint

St. Johns Landfill

Zoo (Two separate bulletin boards)

Oregon Convention Center

Portland Expo Center

Section 4.7 Union Representatives

The Union shall appoint and certify the names of shop stewards to Metro.

Shop stewards shall be allowed to investigate and process grievances during working hours. In the event such activities would interfere with either the steward's or employee's work the employer agrees to arrange a mutually agreeable time within seventy-two (72) hours. The steward must notify his/her supervisor prior to engaging in Union activity.

Union Representatives Site Visits at the Oregon Convention Center and Portland Expo Center:

Union representatives shall be subject to normal building security requirements unless special arrangements are made in advance. Such visits shall not interfere with employees' duties or interfere with building activities or events in progress.

Section 4.8 Email Communication

Employees elected/appointed to official positions, stewards and/or other representatives may use Metro's email system to conduct Union business for the purposes of:

1. Notifying AFSCME represented employees of meetings and scheduling meetings (date, time, place and agenda); and
2. Scheduling meetings among Union officers, stewards other representatives and/or members (date, time, place, and agenda).

The employer shall provide one Metro email account for the sole purpose of the Union President, Vice President, Secretary or designee to create and manage such calendar appointments.

Section 4.9 Notification

Via once a month report(s) the employer will:

- a. Notify the Union of all new hires in the bargaining unit. Such notification shall include the employee's name, home mailing address, position for which they were hired, home phone number and date of birth.
- b. Provide the Union notice of any changes to name, home mailing address or position of current employees.
- c. Provide the Union notice of those individuals whom have retired during the previous month. This report will include the retiree's last known home address and effective date of retirement.

- d. Provide the Union notice of non-retiree terminations of employment effective date by: resignations, layoffs, or termination

Section 4.10 New Employee Union Orientation

With prior supervisor approval regarding when the employees can take time from work duties, a designated union representative shall receive 30 minutes on paid time to conduct a new member orientation, provided the time does not unreasonably detract from their work performance. The purpose of this orientation shall be to inform the member about the collective bargaining agreement and to discuss their options for membership status as outlined in section 4.1 of this article.

Section 4.11 Negotiations

For successor contract negotiations, management will pay a combined total of up to 360 hours of bargaining time in regular wages, on a scheduled work days, for those current AFSCME 3580 non-exempt employees who serve on the Union bargaining team. No overtime, shift differential, travel time, per diem, or any other premium pay shall apply to time spent bargaining.

Article 5: No Strike or Lockout

Section 5.1 During the term of this Agreement, neither the Union nor its agents or any employee, for any reason, will authorize, institute, aid, condone or engage in a slowdown, work stoppage, picketing, strike, or any other interference with the work and statutory functions or obligations of the employer. During the term of this Agreement neither Metro nor its agents for any reason shall authorize, institute, aid, or promote any lockout of employees covered by this Agreement.

Section 5.2 If any work stoppage, slowdown, picketing (excluding informational picketing), or strike shall take place, the Union agrees to immediately notify any employees engaging in such activities to cease and desist and to publicly declare that such work stoppage, slowdown, picketing (excluding informational picketing), or strike is in violation of this Agreement and is unauthorized. The Union agrees to immediately notify all Local officers and representatives of their obligation and responsibility for maintaining compliance with this Article including their responsibilities to remain at work during any interruption which may be caused or initiated by others and to encourage other employees violating Section 5.1 above to return to work.

Article 6: Hours and Shifts

Section 6.1 Workweek

Forty (40) hours shall constitute the normal workweek, eight (8) hours per day, five (5) consecutive days per week with two (2) consecutive days off. Notice of change in shift starting times or days off will be given prior to the end of the week before the week in which the change becomes effective, and such change will be effective for not less than one (1) week. Provided, however, that this Section shall not govern the payment of overtime, which shall be strictly governed by Article 7. For accounting purposes the work week will begin at 12:01 a.m. on Sunday and end at 12:00 a.m. (midnight) the following Saturday.

Workweek at Oregon Convention Center

For accounting purposes the workweek at the Oregon Convention Center will begin at 12:01 a.m. on Thursday and end at 12:00 a.m. (midnight) the following Wednesday. Hours of work for part-time Event Custodians shall be determined by event requirements.

Workweek at Portland Expo Center

In order to accommodate event needs the typical work schedule for Utility Maintenance Specialists at Portland Expo Center shall be seven (7) consecutive days on with two (2) days off, followed by three (3) consecutive days on with two (2) days off, rotating every other weekend off. The typical schedule during non-event periods will be five (5) consecutive days on with two (2) days off.

Section 6.2 Work Schedules at Oregon Convention Center and Portland Expo Center

Work schedules shall be posted at least two (2) weeks in advance of the effective date of the schedule. An employee's work schedule may be changed to meet building or events needs with no less than twenty-four (24) hours prior notice. While business needs are unpredictable, management shall endeavor to provide at least forty-eight (48) hours advance notice of a schedule change. Work hours assigned to employees shall not constitute a guarantee of hours or work per day or per week.

Section 6.3 Rest Periods

Except in cases of emergency, all employees shall be provided with a fifteen (15) minute rest period during every four (4) hours worked. Rest periods normally shall be taken near the middle of each one-half (1/2) shift whenever feasible.

Section 6.4 Exceptions to Workweek Definition

Notwithstanding the workweek set forth in 6.1 and 6.2 above, the Union may request and Metro may initiate an alternate workweek schedule, upon mutual agreement of the Union and Metro.

Section 6.5 Shifts Definition

Shift work shall be permitted in all classifications, without restrictions, on the following basis. The day shift for pay purposes is any shift which begins between 6:00 a.m. and 9:59 a.m. Part-time work which is commenced after 11:59 a.m. and completed by 6:59 p.m. is day shift work.

Section 6.6 Schedule Trade

When employees agree to trade shifts in a workweek, and it is approved by the Employer in advance, such change will not result in any overtime liability to the Employer and the employee shall waive the right to two consecutive days off.

Section 6.7 Change of Shift

Employees whose work shift is changed from one shift to another shift, unless relieved from work for at least eight (8) hours before starting their new shift shall be paid at the overtime rate for the first such new shift worked.

Section 6.8 Report Pay

Employees who report to work when their shift has been cancelled and were not notified of their shift cancellation shall be paid a minimum of four (4) hours. Where the scheduled shift is less than four (4) hours in duration the employee shall be paid the hours scheduled.

Section 6.9 Overtime in Cases of Shift Transfers

Employees transferred from one shift to another, unless relieved from work at least a full eight (8) hours before starting their new shift, shall be paid the overtime rates for the first such new shift worked.

Section 6.10 Swing Shift

The second or swing shift for pay purposes shall be defined as any shift which begins after 9:59 a.m. and ends after 6:00 p.m. Employees scheduled on the shift shall receive a shift premium of \$1.60 in addition to the regular hourly rate (as set forth in Exhibit A).

For Oregon Convention Center and Portland Expo Center Employees: The swing shift for pay purposes shall be defined as any shift that begins between the hours of 2:00 pm and 9:59 pm. Employees scheduled on the shift shall receive a shift premium of \$1.60 addition to the regular hourly rate (as set forth in Exhibit B).

Section 6.11 Graveyard Shift

The third or graveyard shift for pay purposes shall be defined as any shift which begins after 6:59 p.m. or prior to 6:00 a.m. Employees scheduled on the third shift shall receive a shift premium of \$1.70 in addition to the regular hourly rate (as set forth in Exhibit A).

For Oregon Convention Center and Portland Expo Center Employees: The graveyard shift for pay purposes shall be defined as any shift that begins between the hours of 10:00 pm and 4:59 am. Employees scheduled on the shift shall receive a shift premium of \$1.70, in addition to the regular hourly rate (as set forth in Exhibit B).

Section 6.12 Differential Payment Across Shifts

The shift differential shall apply to all hours worked during that shift. If an employee works one-half or more of the second or third shift, the employee shall receive the higher differential for all hours worked in that shift.

Section 6.13 Weekend Differential

Employees in the below-listed classifications who work weekends shall be paid a differential of \$1.50 for all hours worked between the hours of 12:00 a.m. Saturday to 11:59 p.m. Sunday. The weekend differential is in addition to the shift differentials in Section 6.10 and 6.11.

Household Hazardous Waste Technician, PES
Household Hazardous Waste Specialist, PES
Landfill and Environmental Technician, PES
Landfill and Environmental Specialist, PES
Latex Operations Technician, PES
Latex Operations Specialist, PES
Latex Retail Technician, PES

Program Assistant II in the Recycling Information Center of the Sustainability Center
Scalehouse Technician, PES
Lead Scalehouse Technician, PES

Article 7: Overtime, Compensatory Time, and Bonus Time

Section 7.1 Overtime

Overtime worked by employees non-exempt from the Fair Labor Standards Act (FLSA) shall be paid at one and one half (1-1/2) the employee's regular rate including any regular rate premiums. Overtime is time worked over eight (8) hours per day or over forty (40) hours in one (1) workweek. For employees working four day workweeks overtime is time worked over ten (10) hours per day or over forty (40) hours in one (1) workweek. The "workweek" for purposes of calculating overtime for non-exempt employees is defined as seven (7) consecutive calendar days. The employer may establish other, alternative workweeks for individual employees or classes of employees, consistent with the requirements of the FLSA, by so notifying the employees in writing. The "workday" for purposes of calculating overtime for non-exempt employees is defined as the 24-hour period beginning at 12:01 a.m. each day and ending at 12:00 midnight. Overtime shall be paid whenever required by this subsection or the FLSA.

Application of the overtime section shall not be construed to provide for compensation at a rate exceeding time and one-half or to affect a "pyramiding" of overtime.

Section 7.2 Compensatory Time for Non-Exempt Employees

Upon agreement with a non-exempt employee that overtime not be paid, non-exempt employees shall receive one and one-half (1-1/2) hours of compensatory time off for every hour worked in excess of eight (8) hours (ten (10) hours per day for four day workweek employees) or forty (40) hours per workweek. Compensatory time must be requested in the payroll period in which the excess hours were worked, and the employee may via written request default future excess hours to be received as Compensatory time rather than paid as overtime.

Section 7.3 Bonus Time for Exempt Employees

Exempt employees under FLSA, shall not be paid overtime. Additionally, the employer may, at its sole discretion, award exempt employees "bonus time" off as determined appropriate by the Department Director or designee. The decision to grant or disallow bonus time, including the promulgation of any standards or procedures for awarding bonus time, shall be considered as the exercise of a Management Right allowed by Article 3 of this Agreement.

- 7.3.1 Bonus time must be used within the fiscal year in which it is awarded, and if unused will be forfeited at the end of the fiscal year unless it is awarded during the month of June. If Bonus time is awarded in the month of June, the employee may have until June 30th of the following year to use the bonus time.
- 7.3.2 An employee being awarded bonus time shall receive notice in writing, to include the number of hours awarded and the reason for the award.
- 7.3.3 Bonus time shall be provided in the electronic time-keeping system as a separate leave bank for employee's use, shall be pre-approved, and scheduled as time off.

Article 8: Holidays

Section 8.1 Recognized Paid Holidays

- (1) New Years Day;
- (2) Martin Luther King Day;
- (3) President's Day;
- (4) Memorial Day;
- (5) Independence Day;
- (6) Labor Day;
- (7) Veterans Day;
- (8) Thanksgiving Day;
- (9) Day after Thanksgiving; For those employees whose worksite is Metro Regional Center. For employees, with the exception of the Oregon Convention Center and Portland Expo Center employees, whose worksite remains open for business on the day after Thanksgiving, upon mutual agreement with their supervisor, they may take that day if business operations allow, or choose another day to take this holiday prior to the end of the fiscal year.
- (10) Christmas Eve; for those employees whose worksite is the Oregon Convention Center or Portland Expo Center.
- (11) Christmas Day;
- (12) Two (2) Personal Holidays are allowed each fiscal year on days of each employee's choice, subject to schedule approval of the supervisor. Employees hired after January 1 of each fiscal year shall be entitled to one (1) such holiday in that fiscal year. For purposes of this section, a Personal Holiday is any day chosen by the employee and approved by the supervisor which would otherwise be a regular scheduled workday. The personal holidays must be taken by the employee within the fiscal year in which they accrue.

Section 8.2 Holiday Pay

Eligible employees shall receive the amount of hours regular pay equal to that of their regularly scheduled work day for each of the holidays set forth above on which they perform no work. Holiday pay is provided for the day in which the shift began.

Section 8.3 Part-time Proration

Holiday pay for part-time employees will be prorated based on average hours paid per week during a six (6) month period of time (semi-annual). This semi-annual calculation shall be from October 1st through the end of March and April 1st through the end of September of each year, and shall hereinafter be referred to as the calculation period.

Personal holidays will be calculated once a year based on the previous two qualifying six-month calculation periods (annual calculation) and shall be placed in the employees personal holiday bank once a year.

The following table shows the months worked on the left to calculate the hours of holiday pay for the holiday on the right, including personal holidays:

Qualifying Six-Month Average Hours Paid	Holidays
April 1st through the end of September	New Year's Day Dr. Martin Luther King Jr. Day President's Day <hr/> Veteran's Day Thanksgiving Day Day after Thanksgiving Christmas Eve Christmas Day
Oct 1st through the end of March	Memorial Day Independence Day Labor Day

1. Average hours paid per week shall be calculated as follows:
 - a. Employees with average hours paid of 20-26.69 per week shall receive a prorated holiday of 50% of their regular shift, such that if their regular shift was eight (8) hours they would receive four (4) hours of pay; or if their regular shift was ten (10) hours they would receive five (5) hours of pay.
 - b. Employees with average hours paid of 26.7-31.99 per week shall receive 75% of their regular shift as holiday pay, such that if their regular shift was eight (8) hours they would receive six (6) hours of pay; or if their regular shift was ten (10) hours they would receive seven-and-a-half (7.5) hours of pay.
 - c. Employees with average hours paid of 32 hours per week or more shall receive the equivalent of their full shift, either 8 or 10 hours, respectively.
2. Exempt employees shall receive holiday pay pro-rated equal to their FTE status.
3. Newly Hired regular status employees (including probationary employees) who have not yet worked a complete qualifying period (six months for holidays and twelve months for personal holidays) and employees not in paid status for half or more of the qualifying period (per the table above) will be paid pro-rated holidays based on their FTE status.
4. Part-time employees shall not be required but may be allowed to use their (non-sick-leave) accruals to "back fill" any holiday where pro-rated holiday pay is provided.

5. Within 30 days of the close of each six-month period outlined in number one (1) above, employees and the Local shall be notified of their amount of holiday hours for that period.

Section 8.4 Alternate Holiday Scheduling

Whenever a holiday shall fall on the first day not included in the employee's regularly scheduled work week, the preceding day in an employee's regular workweek shall be observed as a holiday. Whenever a holiday shall fall on the second day not included in the employee's regularly scheduled workweek, the following day in an employee's regular workweek shall be observed as a holiday.

Section 8.5 Holidays which occur during vacation or sick leave shall not be charged against such leave.

Section 8.6 Holiday Worked/Deferred

In addition to holiday pay, any non-exempt employee shall be paid the overtime rate for any holiday actually worked, with the exception of the day after Thanksgiving. However, if an employee is scheduled to work on a holiday, that employee will be permitted to defer the holiday with regular pay until a later date. An employee under this section can accumulate no more than five deferred holidays.

Section 8.7 Holiday Scheduling

The employer shall offer work available on holidays to qualified volunteers from any shift. Employees interested in working the holiday will advise the employer of their desire to do so as soon as possible and no less than four (4) calendar days prior to the holiday. If two or more qualified employees volunteer with four (4) calendar days prior to the holiday, the most senior will be selected. If there are no volunteers, the least senior non-probationary employee will be required to work.

If an employee volunteers to work on a holiday, the following shall apply, in accordance with Article 6: Hours and Shifts and Article 7: Overtime, Compensatory and Bonus Time:

- a. The employee shall waive the right to two consecutive days off as outlined in Article 6.
- b. If the holiday shift begins prior to the employee being relieved from work for eight (8) hours, the employee shall not receive additional overtime pay as outlined in Article 7.

Article 9: Vacation

Section 9.1 Vacation Accrual for Employees Hired on or Before June 30, 2012

Subject to department approval and the provision on initial probationary period, employees shall be granted annual vacation leave with pay based on hours worked, accruing at the following rates:

Total Years of Continuous Service	Accrual Rate Per Hours	Equivalent Annual Hour Full-Time Employees
Date of hire through completion of 3 yrs	.0385 hours	80 hours
4 years through completion of 7 yrs.	.0577 hours	120 hours
8 years through completion of 11 yrs.	.0770 hours	160 hours
12 years plus	.0862 hours	180 hours

Oregon Convention Center and Portland Expo Center employees that were accruing two-hundred (200) vacation hours per year (per full-time employee) at the time of ratification of this agreement shall continue to accrue vacation hours at a rate of two-hundred (200) vacation hours per year (per full-time employee).

Section 9.2 Vacation Accrual for Employees Hired On or After July 1, 2012

Subject to department approval and the provision on initial probationary period, all bargaining unit employees hired on or after July 1, 2012 shall be granted annual vacation leave with pay based on hours worked, accruing at the following rates:

Total Years of Continuous Service	Accrual Rate Per Hours	Equivalent Annual Hour Full-Time Employees
Date of hire through completion of 3 yrs	.0577 hours	120 hours
4 years through completion of 7 yrs.	.0692 hours	144 hours
8 years through completion of 11 yrs.	.0808 hours	168 hours
12 years plus	.0923 hours	192 hours

Section 9.3 Vacation Leave Approval

Regular and limited duration status employees who have been employed by Metro for more than six (6)

consecutive months may be granted accrued vacation leave by approval of the department director or his/her designee.

Department directors or their designees shall schedule vacation for their respective staff with consideration for vacation accrued, seniority, the desires of the staff, and for the work requirements of the department. Vacation schedules may be amended to allow the department to meet emergency situations. Vacation requests more than thirty (30) working days in advance shall not be arbitrarily denied or amended without demonstration of conflict with a prior request or a bona fide work emergency. All employees are generally required to submit vacation requests through the electronic timekeeping system. In the instances where vacation has yet to accrue in employee's leave balance, employees may request vacation in writing to their department director or his/her designee. Approval of vacation leave shall be provided in a timely manner.

Section 9.4 Vacation Accrual Maximum

Employees shall not accumulate more than two hundred seventy-five (275) hours of vacation leave. Additional hours that would have accrued at the rates in this Agreement shall be forfeited unless a denial of a vacation request prevents an employee from avoiding the 275 hours maximum. If denial of a vacation request prevents an employee from avoiding the 275 hour maximum, the employee shall be paid at regular rate for those hours accrued over 275 hours. This article is subject to the provision that Metro shall have the option to "buy back" any vacation hours over 250 that an employee has accrued at the end of each fiscal year, at the employee's regular straight time rate.

Section 9.5 Vacation Payout at Separation

Any regular employee who resigns, retires, is laid off or dismissed from employment with Metro shall be entitled to immediate lump sum payment for accrued and unused vacation at the employee's existing salary rate provided, however, that such lump sum payment shall not be made if separation occurs prior to the completion of the initial probationary period including any extensions.

Article 10: Sick Leave

Section 10.1 Sick Leave Accrual

Bargaining unit members shall earn sick leave with pay at a rate of .05 hours per hour paid accrued in an unlimited amount. Qualified employees shall be eligible for use of earned sick leave after working one (1) day of service with the employer. Sick leave cannot be used until the beginning of the pay period after which it is accrued.

Sick leave shall not continue to accrue during periods of leave unpaid by the employer.

Section 10.2 Use of Sick Leave

Employees may use sick leave for illness, disability or medical appointments for themselves or their immediate family which includes an employee's spouse, domestic partner, parent, parent-in-law, step parent, and in loco parentis; biological, adopted, step and foster child; grandchild and grandparent; and any other person for which the employee is a legal guardian; or as otherwise required by law.

All employees, for schedule use of sick leave, are generally required to submit request through the electronic timekeeping system. In the instances when the sick leave has yet to accrue in employee's leave balance, employees may request leave through email to their department director or his/her designee. Approval of sick leave shall be provided in a timely manner.

Section 10.3 Sick Leave Notification

Employees unable to report to work shall report the reason for absence to their supervisor within (1/2) hour before the scheduled beginning of their shift. At locations where multiple shifts are worked, employees unable to report to work due to illness shall report the reason for the absence to their supervisor one (1) hour prior to the scheduled beginning of their shift.

Section 10.4 Sick Leave Use in Conjunction with Workers' Compensation

The employer and the Union agree that no employee should receive full net wages in paid sick leave while also receiving time loss payments on an insured Workers' Compensation claim. The parties therefore agree as follows:

Where the dual payment would result from the employee filing a claim for time loss payments for an injury or disease the employee shall receive only the paid sick leave, if any, for the same condition necessary to bring the employee to full net take-home pay for the pay period. The employer may recoup any overpayment of sick leave paid, either by deductions from gross wages per pay period in an amount not exceeding 20 percent gross wages until the total overpayment is recouped, or the employer and the employee may, by mutual agreement, provide for some other means for repayment. Upon repayment of the total amount of the excess, the employee's sick leave account shall be credited with that portion of the sick leave repaid.

Section 10.5 Excessive Sick Leave Use

Notwithstanding the foregoing, employees who excessively use sick leave may be subject to discipline pursuant to Article 17 Discipline and Discharge.

An employee who meets any one of the following criteria may be deemed a high sick leave user:

- a) use of ten (10) days of unprotected sick leave, paid or unpaid in the preceding twelve (12) months; or

- b) patterns of sick leave usage; such as use of sick leave in conjunction with regular days off, vacation, personal holidays, or holidays on four occasions within the preceding 1 year.

An employee who meets the above criteria as a result of a single incident of illness or injury, as evidenced by a physician's certificate, shall not be included as information leading to the determination that an employee is excessively using sick leave.

An employee's absences that are covered by FMLA/OFLA, Workers' Compensation, or the American's with Disabilities Act shall not be included in determining that an employee is a high sick leave user.

Sick leave for medical appointments scheduled and approved by management in advance shall not be considered as excessive use of sick leave.

The employer shall not conclude that any employee has misused sick leave without first notifying the employee in writing that he/she appears to be misusing sick leave, and giving the employee an opportunity to respond.

Section 10.6 Unused Sick Leave

The employer shall participate in the PERS unused sick leave program as provided in ORS 238.350. The employer shall report the number of unused sick leave hours to PERS for use in the calculation of the employee's final average salary.

Section 10.7 Infrequent Absences of Exempt Employees

When an exempt employee has an absence of four hours or more, such absences will be tracked in the leave management system and covered through the use of available leave accruals as appropriate for the situation.

Infrequent absences of less than four hours by an exempt employee that does not negatively impact expected work performance or productivity will not be covered through the use of leave accruals. In addition, this section would not apply if an employee has received prior approval from their manager to flex their schedule in a given workweek.

Section 10.8 Physical Examination

Where the Employer has reason to believe the employee is not physically capable of performing the duties of the position, the Employer may require the employee to submit to a physical examination by a physician selected by the Employer. The employee shall be notified in writing of Employer's intent to require a physical examination. The notification shall include information regarding the employee's right to Union representation. In all discussions with Employer's officials or representatives, the employee shall be entitled to union representation. Costs for such examination shall be at no cost to the employee and performed on duty time at no charge to leave accruals.

Article 11: Other Leaves

Section 11.1 Bereavement Leave

An employee absent from duty by reason of the death of his or her spouse, domestic partner, parents, children, sister, brother, grandparent, grandchildren, aunt, uncle, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, grandparent-in-law, or relatives of domestic partners that are the equivalent of in-laws as stated in this section, or other household member shall be allowed time off duty, not to exceed three (3) days, without deduction of pay on account of such absence. If travel is required, up to four (4) additional days (chargeable to sick leave) may be allowed upon request to the employee's Department Director.

The employer shall comply with the Oregon Family Leave Act.

Under special circumstances and upon the death of a person other than the employee's immediate family member, sick leave as described in section (a) above to attend a funeral may be granted at the sole discretion of a Department Director at the request of the employee.

Employees may attend a funeral ceremony for a fellow employee with four (4) hours time off with pay to attend such funeral ceremony, subject to the needs of the operation. When an employee participates in a funeral service, he/she will be granted four (4) hours time off with pay and chargeable to any accrued leave balance, or leave without pay if the employee has no accrued leave balances, to attend such funeral service subject to the approval of the Department Director.

Section 11.2 Military Leave

Eligible employees shall be granted military leave with pay, as required by law. Any remaining leave shall be without pay, as required by law.

Section 11.3 Jury Duty/Court Appearances

Employees shall be granted a paid leave of absence for time off for jury service, or as a result of service upon the employee of a lawful subpoena requiring his/her appearance in a court of law. Any jury or witness fees will be endorsed over to Metro. In the event that an employee is excused from jury duty prior to the end of his/her daily work shift, the employee shall promptly return to work.

- 11.3.1 Employees shall not be eligible for leave with pay under Section 11.3 if the subpoena is for a non-work related dispute in which the employee is either the plaintiff or defendant, or is for a dispute between the employer and employee. The employee is entitled to use any accrued vacation in these circumstances. Union related arbitrations are exempt if they occur on an employee's regularly scheduled work day.

Section 11.4 ADA and Family Medical Leave

- 11.4.1 Employer abides by the Americans with Disabilities Act (ADA), ADA Amendments Act (ADAAA), Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA) when administering qualifying leave for employees. Employees shall be allowed to use accrued leave balances in the following order: (sick leave, compensatory time, personal holiday and vacation) for FMLA and OFLA leave. Once an employee reaches a leave balance of 40 hours vacation leave, employee may elect to take leave without pay and retain accrued vacation leave.
- 11.4.2 If a leave of absence for a disability extends beyond the authorized FMLA or OFLA leave and the employee is on an authorized leave without pay, the employee shall elect

COBRA if he/she wishes to continue health benefits. An employee shall be notified of eligibility for COBRA benefits as required by law. In the event a leave of absence extends beyond the authorized FMLA or OFLA leave, the employee will not be eligible to retain a leave bank of any accrued hours as stated in section 11.4.1 of this Article.

Section 11.5 Leave Without Pay

All regular and limited duration status employees may be granted leave of absence without pay and without employee benefits for a period not to exceed six (6) months provided such leave can be scheduled without adversely affecting the operations of Metro. Such leave may be extended once by the Chief Operating Officer for an additional six (6) months. All requests for leave of absence without pay shall be in writing, shall be directed to the department director and shall contain reasonable justification for approval. Requests of less than ten (10) calendar days may be approved by the Department Director. Both the request and the Chief Operating Officer's approval of the request shall be in writing and shall be filed in the Human Resources Department Office. The employee may elect to continue employee coverages and benefits under COBRA. Any and all such extensions of coverages and benefits shall be subject to any and all restrictions and conditions which may exist in each applicable benefit policy or plan. No employee may be denied leave without pay for arbitrary or capricious reasons. Any employee returning from an approved leave shall be reinstated with no greater or lesser employment rights than if the employee had not taken the leave.

Article 12: Health and Welfare

Section 12.1 Joint Labor Management Committee

A Joint Labor Management Committee (JLMC) for health benefits comprised in accordance with adopted by-laws shall review health, dental and vision insurance plans and costs and make plan offering recommendations to the Human Resources Director and Chief Operating Officer in an effort to keep health care costs at a minimum for employees and for the employer. The Union is entitled to select one voting member, who is a current Metro employee, to serve on the Joint Labor-Management Committee on Health Benefits.

Metro shall make available to the committee current information regarding insurance premium rates and projected increases as such information becomes available to Metro. The committee shall meet to maintain an ongoing review of health benefit related issues for employees of Metro.

A lawful meeting shall be comprised of an equal number of Union and Metro Committee members with not less than two of each group. The Committee shall make recommendations to the Human Resource Director and Chief Operating Officer. The Chief Operating Officer shall consider the committee's recommendations and have the authority to make Plan modifications as necessary. In the event that the Parties do not agree, the Union has the right to utilize the remedies available under ORS 243.698 – 243.722 including mediation and fact finding.

Section 12.2 Benefit Eligibility

Regular and limited duration status employees as defined below are eligible to participate in the Metro health insurance programs. Non prorated insurance will be available to employees who work thirty-two (32) hours a week or more.

Health benefits will be prorated for part time employees except for employees at the Oregon Convention Center and Portland Expo Center. Their premium share will be calculated based on the total cost of the health insurance premium for the plan selected by the employee, less the employee's FTE status multiplied by Metro's full-time employee premium portion for that plan.

Example: using a health insurance premium of \$1,000 and Metro's portion for a full-time employee of \$940.

- An employee working .5 FTE would pay $\$1,000 - (.5 \times \$920) = \$540.00$
- An employee working .75 FTE would pay $\$1,000 - (.75 \times \$920) = \$310.00$

An employee's FTE status, for the purpose of benefits, shall be based on average paid hours per week during a six (6) month period of time (semi-annual). This semi-annual calculation shall be from October 1st through the end of March, and April 1st through the end of September of each year, and shall hereinafter be referred to as the calculation period.

- Employees with hours paid of 20-26.69 per week (according to the calculation period) shall receive benefits prorated on a .5 FTE basis.
- Employees with hours paid of 26.7-31.99 per week (according to the calculation period) shall receive benefits prorated on a .75 FTE basis.

Newly hired employees who have not yet worked a complete qualifying six-month calculation period (as outlined above) and employees not in paid status for half or more of the qualifying period shall have prorated benefits based on their budgeted FTE status.

No modifications will be made to the calculation period unless an employee has a change in position FTE status (i.e. through the budget) or they experience a federal qualifying event.

When a manager becomes aware that a newly hired employee will be working over their hired FTE within their first six (6) months, the employee's benefits will be based on their anticipated hours.

Eligibility will begin on the first of the month following thirty days of employment for all benefit eligible employees who elect to participate in one of the Metro plans.

All employees (.5 - 1.0 FTE) (except for employees at the Oregon Convention Center and Portland Expo Center) who have worked for the Agency prior to July 1, 1999, and who are working less than full time at the time of ratification of this contract, are eligible for full health and welfare benefits. Employees hired prior to July 1, 1999 who experience an involuntary reduction in FTE status (e.g. lay-off, seniority bidding) shall retain eligibility for full health and welfare benefits.

Section 12.3 Premium Sharing

Effective upon ratification, the employer shall contribute ninety-two percent (92%) of the insurance premium costs per plan and employees shall pay eight percent (8%) of the premium costs per plan selected by the employee.

The premium cost used in these calculations shall be the amount agreed to with the carriers. No cost sharing between plans or any other premium cost adjustments shall be made.

These premiums will be paid through payroll deduction for medical, dental, and vision plans provided by an HMO and/or indemnity carrier.

The employer agrees to pay an amount of \$150 per month to full-time benefit eligible employees and a prorated amount equivalent to their FTE status for those in less than full-time benefit eligible positions, who provide proof of other medical coverage and who opt out of medical and dental coverage through Metro. Should contracts with insurance carriers, financial consideration, or health insurance plan designs indicate a need to change the opt out amount, the parties will meet to confer and come to mutual agreement on this paragraph.

12.3.1 Excise Tax Reopener

Effective January 1, 2019, and for the duration of this agreement, should the employer be subject to a health insurance related excise tax, the employer may reopen Article 12 (Health and Welfare) for further negotiations under the expedited bargaining rules. Other articles may be reopened only by mutual agreement of the parties.

Section 12.4 Long Term Disability and Accidental Death Dismemberment Insurance

Life Insurance and accidental death and dismemberment and long term disability coverages shall be provided to all employees who are health insurance benefit eligible and shall be maintained at current levels at no cost to the employee.

Section 12.5 Child Care

The employer shall establish under the terms of Section 129 of the IRS Code, as a pre-tax benefit, a voluntary deduction by the employee to a flexible spending account for childcare.

Section 12.6 Employee Assistance Program

The employer shall provide at no cost to the employee an employee assistance program, subject to approval of funding by the Metro Council.

Section 12.7 Voluntary Short-Term Disability

The employer shall make available voluntary short-term disability insurance to all employees who are health insurance benefits eligible. Employees may voluntarily elect short-term disability insurance and shall pay their insurance premiums through voluntary payroll deductions. Voluntary short-term disability is subject to participation requirements of the insurance carrier. While Metro will make every effort to meet these participation requirements, should participation not be met, the employer shall attempt to offer short-term disability again in the following year.

Article 13: Retirement Benefits

Section 13.1 Participation

During the term of this Agreement, all eligible unit employees shall participate in the Oregon Public Employees Retirement System (PERS), as provided in the Oregon Revised Statutes and by applicable court decisions. The extent of PERS membership shall include prior eligibility service, but shall not include prior benefit service.

Section 13.2 Employee Contribution for Employees, Excluding Oregon Convention Center and Portland Expo Center

Metro shall continue to pay the employee's contribution to the Oregon Public Employees Retirement System in the amount of six (6) percent of the employee's base salary, in addition to the required employer contributions for current employees active on the payroll as of June 30, 2012. Any employee hired July 1, 2012 or thereafter will pay the six (6) percent of base salary employee contribution through payroll deductions.

Section 13.3 Employee Contribution for Oregon Convention Center and Portland Expo Center employees

Employees shall continue to be eligible for participation in the Oregon Public Employee Retirement System PERS pursuant to the law. Full-time employees active on the payroll June 30, 2014 shall continue to have the Employer "pick-up" their required six-percent (6%) monthly contribution to the PERS. Full-time employees hired July 1, 2014 or thereafter shall pay the employee contribution, as defined by PERS, through payroll deductions.

After ratification of this agreement, should Metro resume contributing the employee contribution to PERS for non-represented employees hired July 1, 2011 or thereafter, all AFSCME represented employees hired July 1, 2012 or thereafter will receive the same benefit in addition to the employer required contributions.

Section 13.4 Unused Sick Leave

The employer shall participate in the PERS unused sick leave program as provided in ORS 238.350. Metro shall report the number of unused sick leave hours to PERS for use in the calculation of the employee's final average salary.

Section 13.5 Change to PERS

The employer shall "pick-up" the 6% employee contribution consistent with Section 13.2 and 13.3. The parties acknowledge the 6% payment is inapplicable to employees who are not PERS or OPSRP members due to insufficient service. For the duration of this agreement, if for any reason the entire 6% payment becomes no longer legally available for deposit into the Individual Account Program (IAP), the employer shall on the first payroll period following the effective date of the change increase the wages of any affected employee by 6%. Bargaining unit members who are paying their own employee PERS contribution shall not be eligible for this adjustment.

In the event that there are other changes to PERS that impacts a mandatory subject of bargaining that result in a reduction to the contribution to the Individual Account Program (IAP), and a cost savings for Metro, the Union may demand to bargain the impacts of such a decision in accordance with the expedited bargaining process (ORS 243.698).

Article 14: Salary Administration

Section 14.1 New and Revised Classifications

The employer shall notify the Union when creating a new classification or substantially revising an existing classification. The Union shall have fourteen (14) calendar days to request wage negotiations for a new or substantially revised classification.

Section 14.2 The employer will implement a salary rate for a new or revised classification. This rate shall remain in effect subject to negotiations between the employer and the Union. If negotiations result in an increase in salary rate, the increase shall be effective back to the date the new or revised classification was implemented.

Section 14.3 Working Out of Classification Assignments

When an employee is assigned for a limited period to perform the duties of a position at a higher level classification for more than three (3) consecutive days, the employee shall be compensated for all hours worked at the higher level classification. The employee shall be compensated at the next higher step in his/her classification range or the first step in the higher classification whichever is greater.

The period for working out of an employee's current classification in a higher classification shall be limited to no more than 18 months.

PES employees at Metro Central and South:

HHW employees who are assigned to work in a higher classification (non-supervisory) shall only receive out-of-class pay when they are assigned and work out-of-classification for 1 hour or more.

If a Scalehouse or HHW employee is assigned to be the acting supervisor for more than three (3) consecutive days he/she shall be eligible for overtime based upon the hours worked as an acting supervisor. If a holiday occurs during the acting supervisory period, and the employee works the holiday, he/she shall be eligible for holiday pay as determined by this agreement. The rate of pay for holiday overtime shall be at the rate of the acting supervisor position.

For periods of less than three (3) consecutive days the employee shall not receive out-of-class pay when filling in for a supervisor, but shall be eligible for overtime. Such employees shall not be required to hold a cell phone; however, if the supervisor determines it necessary for the employee to hold a cell phone he/she shall be paid at two-hour minimum for the time worked if he/she is called. Such assignment will be made on a rotational basis by volunteers in order of seniority. In the event, there are no volunteers, such duty will be assigned in reverse seniority order.

Section 14.4 Anniversary Date and Step Advancement

Employees shall be placed at the next step in the salary range after completion of probation. The employee's date of completion of probation shall become the employee's anniversary date. One (1) year after the employee's anniversary and each anniversary date thereafter the employee shall advance one (1) step in the salary range until the employee reaches the top step. Nothing in this section is to be construed to prohibit the employer from placing employees above step one or advancing employees to higher levels of the salary range.

Section 14.5 Promotion

Employees promoted through a recruitment process into a higher classification at Metro shall be placed at the next higher step in the new salary range. The next higher step in the new salary range means the next rate that would provide for a five percent (5%) increase for the promoted employee. Upon completion of promotional probation, employees shall advance to the next step in the new range. The date of completion of promotional probation shall constitute a new "anniversary date" and employees shall advance one (1) step on each anniversary date until the employee reaches the top step. Nothing in this section shall be construed to prohibit Metro from starting promoted employees higher or advancing employees upon the steps faster.

Section 14.6 Probationary Period

Initial Probation: For the purposes of this section, initial probation shall be six (6) calendar months from the first day of hire or promotion. At any time during the initial probationary period Metro may remove the probationary employee from service. Initial probationary employees may be terminated without recourse to the grievance procedure. The initial probationary period shall be extended by the number of days an employee is on leave provided such leave exceeds ten (10) consecutive work days.

For part-time employees at the Oregon Convention Center and Portland Expo Center the initial probationary period shall be 900 hours but in no case more than nine (9) months unless extended in accordance with this agreement.

Promotion: For employees promoted through a recruitment process into a higher classification, promotional probation shall be six (6) calendar months from the first day of promotion. Promotional probationary employees shall return to their former classifications and rate of pay if they fail to complete their probation without recourse to the grievance procedure. Promotional probationary employees shall not be discharged without just cause and shall have recourse to the grievance procedure. The probationary period may be extended by the number of days an employee is on leave provided such leave exceeds ten (10) consecutive work days.

Demotion:

- a. Employees who are demoted as a result of a disciplinary action will not serve an additional probationary period.
- b. For voluntary demotions the employee will serve a three (3) calendar month probationary period. These employees shall not be discharged without just cause and shall have recourse to the grievance procedure. A voluntary demotion shall not reflect discredit on the employee.

Reclassification:

- a. Employees who are being reclassified to a higher classification as a result of a reorganization or other business need and who have not previously performed those duties shall serve a three (3) calendar month probationary period. These employees shall not be discharged without just cause and shall have recourse to the grievance procedure. The date of reclassification shall become the new "anniversary date" and employees shall advance one step on each anniversary date until the employee reaches top step.
- b. Employees who are reclassified laterally or lower as a result of reorganization shall not serve an additional probationary period.
- c. Employees who are reclassified as a result of recognition and they have previously been performing those duties will not serve a new probationary period.

Layoff: Employees who choose to transfer laterally or to a lower classification as a result of bumping during a layoff process shall not serve an additional probationary period.

Section 14.7 Downward Reclassification

If an employee is moved to a classification with a lower salary range, for reasons unrelated to discipline, the employee's rate of pay shall remain the same and he/she shall not receive cost of living adjustments, until such time the top of the salary range in the new classification exceeds the employee's rate of pay. At such time the employee's rate of pay shall be placed on the step of the salary range closest to his/her rate of pay without decreasing his/her rate of pay. The employee's anniversary date shall remain the same for downward reclassification.

Section 14.8 Voluntary Demotion

If an employee voluntarily moves to a classification with a lower salary range and the employee's current rate of pay exceeds the salary range for the new classification, the employee's rate of pay will be placed at the top step of the range for the new classification. If the employee voluntarily moves to a classification with a lower salary range and the employee's current rate of pay falls within the salary range for the new classification, the employee's rate of pay will remain the same. The employee's anniversary date shall remain the same for voluntary demotion.

Section 14.9 Lateral Transfer

When an employee is appointed to a different classification having the same salary range, the employee's rate of pay and anniversary date shall remain the same. If the essential duties and minimum requirements of the new position are distinctively different, the employee may be required to serve a six (6) month probationary period. If the employee is unable to successfully complete the probationary period, the employee shall return to his/her former classification without recourse to the grievance procedure. If the prior position has been filled, provisions on seniority and bumping rights found in Article 16 of the contract will apply. The employee's anniversary date shall remain the same for lateral transfer.

Section 14.10 Reclassification Procedure

An employee may submit a written request for reclassification through their department supervisor to be reviewed by Human Resources. The department supervisor will submit the request to Human Resources within one (1) month of receipt. The requesting employee shall receive a response on the decision from Human Resources no later than four (4) months from the initial submission date.

If a reclassification request is approved by Human Resources, for an employee moving to a higher classification, the employee shall be placed at the next higher step in the new salary range. The next higher step in the new salary range means the next rate that would provide for a five percent (5%) increase for the employee. Any new rate of pay will be effective the first of the month in which the request was received in Human Resources. Employees sharing the same or substantially similar position descriptions or employees Metro agrees to treat as a group may file an appeal as a group.

Article 15: Wages

Section 15.1 Effective upon ratification by both parties, employees shall be paid in accordance with the classifications and rates of pay contained in Exhibit A (attached), Exhibit B Oregon Convention Center and Portland Expo Center (attached), and Exhibit C Temporary Employees (attached). Employees will keep their current salary eligibility date.

Exhibit A: Effective August 1, 2017, employees will receive a wage increase 2.00%. Effective upon ratification, but no earlier than July 1, 2018, employees will receive a wage increase of 2.50%. Effective upon ratification, but no earlier than July 1, 2019, employees will receive a wage increase of 2.50%.

Each year the negotiated wage increase will be added to Step 1 of Pay Range 01N; from there the remainder of the schedule will be developed with 5% differences between ranges and steps. Pay schedule adjustments shall be applied to the hourly rates in each classification. Annual rates shall be generated by multiplying the hourly rates by 2080. All pay adjustments shall be performed using standard rounding principles (i.e. 5 or higher rounds up and lower than 5 rounds down) to the nearest one hundredth decimal place (e.g. the decimal 0.846 rounded to the nearest hundredth is 0.85).

Exhibit B Oregon Convention Center and Portland Expo Center: Effective the pay period following the ratification of this agreement, employees will be placed on the salary schedule at a rate equal to their current rate of pay (step 5 for regular status employees). The date of ratification shall become the anniversary date for the purpose of step advancement for all active employees on payroll at the time of ratification. Probationary employees upon ratification of this contract will be placed at Step 4 of the new salary schedule and advance to Step 5 upon completion of the probationary period outlined in Article 15 Salary Administration.

Effective upon ratification, but no earlier than July 1, 2019, employees will receive a wage increase of 2.50%.

Effective the payroll period following ratification of this agreement employees at the Oregon Convention Center and Portland Expo Center shall receive a one-time payment based on years of services as follows:

Date of hire through completion of 3 years	\$300
4 years through completion of 7 years	\$550
8 years through completion of 11 years	\$800
12 years plus	\$1,050

Exhibit C: Effective the pay period following the ratification of this agreement, employees will receive a wage increase of 2.00%. Effective upon ratification, but no earlier than July 1, 2018, employees will receive a wage increase of 2.50%. Effective upon ratification, but no earlier than July 1, 2019, employees will receive a wage increase of 2.50%.

Section 15.2 Call Back Pay

Any non-exempt employee required to return to work before the employee's next work shift shall be paid for a minimum of two (2) hours at the rate of one and one-half (1-1/2) times the regular rate. However, when any non-exempt employee is required to work in excess of their regularly scheduled work day; eight (8) or ten (10) hours in any workday, and the excess time is adjacent to the employee's regular work schedule, the employee will be paid time and one-half (1-1/2) only for the time worked in excess of their regular work day; eight (8) or ten (10) hours.

For Oregon Convention Center and Portland Expo Center employees: Employees whose work shift is changed from one shift to another shift, unless relieved from work at least for eight (8) hours before starting their new shift shall be paid the overtime rate for the first such new shift worked.

Section 15.3 Household Hazardous Waste Response

1. Any regular, full-time or part-time Household Hazardous Waste (HHW) Technician and/or Household Hazardous Waste (HHW) Specialist (hereinafter referred to as “employee”), who is required to report to either HHW facility outside of their normal work schedule to respond to a radiation alarm, acid spill, asbestos response call, or response of a similar nature, shall be paid for a minimum of four (4) hours at the rate of one and one-half (1-1/2) times the regular rate.
2. In the event the four (4) hour response time overlaps with the start of the employee’s next scheduled shift, the employee shall continue to receive pay at the rate of one and one-half times the regular rate for the remainder of the four (4) hour period. The employee shall receive their regular rate of pay beginning with the fifth hour directly following the four (4) hour radiation response time period.
3. In the event the employee is responding during their regularly scheduled shift and the employee is required to work beyond the end of their shift, the employee shall be paid time and one-half (1-1/2) only for actual time worked in excess of their regular shift. The call back pay minimum of (4) four hours will not apply.
4. When an employee having a regular 4-day/10 hours work schedule is required to work in excess of ten (10) hours in any workday, outside of the above circumstance, the employee shall be paid time and one-half (1-1/2) only for the time worked in excess of ten (10) hours.
5. Shift differential will not apply when an employee is required to report to either HHW facility outside of their normal work schedule, to respond.

Section 15.4 Landfill and Facilities Maintenance Call Back Pay

Any regular or limited duration status Facilities Maintenance Worker, Facilities Maintenance Technician, Landfill and Environmental Technician or Landfill and Environmental Specialist, Facilities Coordinator who is required to report to work outside of their normal work schedule to respond to an emergency, shall be paid for a minimum of four (4) hours at the rate of one and one-half (1-1/2) times the regular rate of pay. In such instances, shift differential will not apply.

Article 16: Seniority

Section 16.1

Seniority shall be computed from date of hire or entry into an AFSCME classification. Seniority shall be calculated based on continuous service in any AFSCME classification. Time spent on approved leave or as a result of on the job injury or illness shall not be considered a break in service and employees shall continue to accrue seniority during these leaves. Metro shall publish and distribute to the union semi-annually and thirty (30) days prior to any layoff a seniority list for all employees.

For full-time Utility Maintenance Specialists at the Portland Expo Center, the above definitions and applications of seniority shall apply, except that continuous service shall include employment with Multnomah County accomplished in accordance with the law.

Seniority shall be applied for layoff, shift bidding and elsewhere as specified in this Agreement. In cases in which an employee in a represented class applies for, accepts, and serves time in another represented AFSCME classification, and then voluntarily returns to the originally held class, seniority for the purposes of shift bidding shall be calculated as the total time from the original appointment to the date of the shift bid, less the time served in the second class.

Section 16.2 Multiple Shifts

Where the employer employs multiple shift operations, such employees shall have the right to choose appropriate shifts twice annually, with the duration of such bids set upon the initial posting for both bid periods. Employees shall indicate their shift preference in writing to their immediate supervisor prior to the filling of a vacancy. The supervisors shall assign employees based on written seniority preference. Employees may not be denied seniority preference for arbitrary and capricious reasons. The parties hereby agree that the shift bidding process specified in this Section 16.2 will be implemented in the following manner:

Section 16.2.1 Shift Bidding at Oregon Zoo

For Zoo security, part-time shifts are not eligible for bidding.

Section 16.2.2 Shift Bidding at Oregon Convention Center and Portland Expo Center

Except for part-time Event Custodians at the Oregon Convention Center and Utility Maintenance Specialists at Portland Expo Center, employees shall bid for work shifts established by the Employer under the following conditions:

- a) Shifts and days off will be bid every six (6) calendar months for implementation each July 1st and January 1st.
- b) When shifts and days off are bid, the employee shall identify in writing to their immediate supervisor the established designated shift the employee wishes to work. Shifts will be assigned based on the seniority of the employee as defined in Article 21 (Seniority), except as stated in subsection (a) above.
- c) A newly hired employee on initial probation shall be placed on shifts according to operational and training requirements. Following three (3) months of continuous service the employee will be allowed to shift bid at the next shift bid opportunity.
- d) Shifts will be posted for bidding by October 15 or April 15, as appropriate. Shift bids will be completed by December 1 or June 1 as appropriate. An employee who does not

sign up for a shift within a reasonable amount of time will be moved to the bottom of the seniority list for purposes of that specific shift bidding cycle. The Chief Steward or designee, and the Director of Operations/Operations Manager, or designee, will agree what constitutes a “reasonable amount of time,” after consultation with the employee. If the Chief Steward, or designee, and the Director of Operations/Operations Manager, or designee, do not agree, the Director of Operations/Operations Manager, or designee, will have the authority to make the decision to move the employee to the bottom of the list. Any employee who is moved to the bottom of the list during a shift bidding cycle will be restored to their appropriate seniority level for the next shift bidding cycle. If any employee refuses to sign up for a shift by December 1 or June 1, the Director of Operations/Operations Manager or designee has authority to assign them to an available shift.

Section 16.3 Assignment of Overtime at Oregon Convention Center and Portland Expo Center

It shall be the responsibility of Management to determine in each instance if overtime work is required, and if so, how many employees will be required to perform work.

All overtime work shall normally be distributed to the employees who work in the job classifications in the areas which normally engage in the work based upon seniority, under the following guidelines:

- a. Scheduled overtime shall first be offered to the most senior employee when overtime is required, and shall proceed in an order of descending seniority until the shifts are filled.
- b. Unscheduled overtime shall be offered to on-shift employees based upon seniority and shall proceed in an order of descending seniority until the shifts are filled.
- c. Mandatory overtime shall be assigned to the least senior, on-shift employees until the required shifts are filled. The employer will make every effort to give the employee as much notice as reasonably possible of the mandatory overtime. Additionally, no employee will be required to work involuntarily more than fourteen (14) consecutive days.

Section 16.4 Layoff

Layoff shall be defined as a separation from service for involuntary reasons not reflecting discredit upon employees or an involuntary reduction of full time equivalent (FTE) status of .5 or greater from the last voluntary FTE status change. The Chief Operating Officer shall determine the number and classifications to be laid off. All temporary, seasonal and probationary employees within the classification selected for layoff shall be laid off prior to any layoff of regular status employees. When the employer determines a layoff will be necessary, the employer will notify the Union prior to notifying the employee.

Section 16.5 Seniority in Layoff

Employees will be laid off by classification within the department with the least senior employees laid off first.

- a. If two (2) or more employees have equal seniority, per Section 16.1, the tie shall be broken as follows, with most credit given to:
 1. Length of continuous service with Metro
 2. Length of continuous service in the job classification
 3. Coin toss
 - a) All impacted employees, at least one union representative and one Human Resources representative shall be present at the time of the coin toss.

- b) A union officer or business representative shall toss the coin unless another person is designated by mutual consent of the parties.
- c) The coin shall be tossed in as many rounds as needed to narrow the selection of employees.
 - i) Heads shall indicate more seniority, tails shall indicate less.
 - ii) The coin shall be tossed for each employee individually to determine the level of seniority.
- b. Part-time Employee: Seniority shall be calculated the same as a full-time employee.
- c. Job-Share: Seniority shall be calculated respective of each job share participant. Should the least senior employee in a job share position be laid off, the remaining job share partner shall be treated as a part-time employee.
- d. Limited Duration: Employees newly hired into limited duration AFSCME positions shall not be entitled to any layoff or seniority rights under this agreement until they have been employed continuously for three (3) years in the limited duration position. At that time they will receive seniority back to their hire date into the limited duration position they currently hold. If a regular AFSCME employee transitions to a limited duration position without a break in service from the regular status AFSCME position, he/she shall have layoff and seniority rights to his/her former regular status AFSCME classification based on his/her seniority in that classification.

Section 16.6 Notice of Layoff and Potential Bumping

Employees shall be given thirty (30) days notice of layoff. Employees given notice of layoff shall within ten (10) working days:

- a. Bump the least senior employee in the same classification, provided that the receiving manager determines that, on the basis of relevant job skills, the employee can perform all of the duties of the specific position adequately within three weeks. The three-week time period is for the purposes of orienting the employee to the position, not training the employee to perform the work. Therefore, it is necessary for the employee to possess the knowledge, skills and abilities to perform all of the essential duties and responsibilities of the position prior to bumping into the position, as determined by the receiving manager. The employee will receive performance coaching during this three-week period as assistance for successfully performing the duties of the position.
- b. Accept demotion to a former classification previously served, including bumping the least senior employee in that former classification, provided the bumping employee has more classification seniority in the former classification, and provided that the receiving manager determines that, on the basis of relevant job skills, the affected employee can perform all of the duties of the specific position adequately within three weeks. The three-week time period is for the purposes of orienting an employee to the position, not training the employee to perform the work. Therefore, it is necessary for the employee to possess the knowledge, skills and abilities to perform all of the essential duties and responsibilities of the position prior to bumping into the position, as determined by the receiving manager. The employee will receive performance coaching during this three-week period as assistance for successfully performing the duties of the position.

- c. Apply for appointment to a vacant Metro position at the same or lower salary range for which the employee meets the minimum qualifications. The best qualified employee given notice of layoff shall be appointed to a vacant position for which the employee applies and meets the minimum qualifications, provided that the receiving manager determines that, on the basis of relevant job skills, the affected employee can perform all of the duties of the specific position adequately within three weeks.
- d. Accept layoff.
- e. Disputes concerning layoffs shall be handled through the grievance procedure, beginning at step 3.

16.7 Recall List

All employees on the layoff list shall have the right to be recalled to a vacant position, in order of seniority, in the same classification they were in when laid off for a period of three (3) years. The recalled employee will be considered to be qualified and offered the vacant position unless there is a distinct difference in the essential functions and required knowledge, skills and abilities of the vacant position. In those situations, the employee will be provided an interview and given an opportunity to demonstrate their qualifications and knowledge/skills/abilities to successfully perform the job. Should the supervisor determine that the employee does not possess the qualifications and knowledge/skills/abilities for the vacant position, the supervisor may elect to conduct a recruitment for the position and not recall the laid off employee to the vacant position. Should an employee be offered a recall to the same classification from which they were laid off and the employee declines the offer, the employee shall be removed from the recall list. An employee impacted by an involuntary reduction of full time equivalent (FTE) status of .25 or greater from their last voluntary FTE status change can elect to be placed on the recall list in order of seniority for a period not to exceed two years.

If recalled to the former position, the employee will return to the same range and step as when laid off and will have a new anniversary date for purposes of step increases. The employee will have his/her seniority in classification restored to the level it was at time of layoff. If an employee is recalled to a different position in the same or lower classification and is successful in demonstrating their qualifications in the above mentioned interview, the employee will serve a three month probation period. If an employee is unsuccessful during this probation period they will be returned to the recall list for the remainder of their original duration and placement on the list.

The employee may also elect to be placed on a recall list for a vacant position in a lower salary range classification in which they have previously worked. If the employee declines an offer for a position from this lower level classification list, the employee's name will be removed from the lower level list but will remain on the list for the position at the same classification he/she was laid off from should the employee choose to remain active on that list.

Upon recall to any position in Metro, the employee will be immediately reinstated to the rate of vacation and other leave accruals as what they were at time of layoff.

On re-employment of laid off employees, the Employer shall notify the employee by certified letter, with a copy to the Union, mailed to their last known address. The employee shall have five (5) calendar days to report their intentions to the Employer and shall report to work within two (2) weeks after notification by the Employer or as mutually agreed. Failure to accept recall to work will terminate any rights for re-employment.

16.8 Rights of Return

Employees who move to another position after being notified of the elimination of their previous position shall have the right to return to their previous position if the position is either 1) not eliminated or 2) restored for any reason within the three (3) years immediately following the employee's move to the new position.

All contractual rights under this agreement and seniority time shall be forfeited if an employee resigns, is terminated, retires, or does not return to work from a leave of absence, or is on a layoff list for more than three (3) years.

16.9 Temporary assignment to a supervisor or management position

An employee who accepts a temporary assignment to a supervisory or management position will have seniority suspended while serving in that role as of date of last day worked in a represented position. For purpose of this article only, temporary assignment is defined a period not to exceed six (6) months, and may be extended once by an additional six (6) months. During this time, the employee will not pay union dues or be considered eligible for union representation.

Article 17: Discipline and Discharge

Section 17.1 Just Cause

No regular or limited duration status employee may be disciplined or discharged without just cause.

Section 17.2 Union Representation

No employee shall be denied Union representation in any investigation. Employees shall receive all rights and safeguards provided by the State and Federal Constitutions.

Section 17.3 Discharge Appeal Process

Any regular or limited duration status employee who is discharged may appeal such action in writing within fourteen (14) calendar days directly to step 3 of the grievance procedure, provided that all other requirements of Article 19 shall apply. In the case of discharge of a regular or limited duration status employee the union shall be copied on the discharge notice. All other disciplinary actions shall be processed through the grievance procedure from the first step.

Section 17.4 Respectful Treatment

If the employer has reason to reprimand or discipline an employee, every reasonable effort shall be made to avoid embarrassment to the employee before other employees or the public.

Section 17.5 Union Notification of Disciplinary Action

When a regular status or limited duration employee exercises their representation rights and involves a Union Steward in the due process meeting, the Union shall be sent a copy of any disciplinary action issued to the employee including written reprimand, suspension, demotion, reduction in pay or termination.

Article 18: Safety and Health

Metro agrees to provide a safe and healthful workplace, as required by law. Metro also agrees to provide and maintain all clothing, tools and equipment required by Metro for use by the employee. (See Article 31)

Metro and the Union will establish joint labor-management safety committees in compliance with current Oregon law and administrative rules. Joint safety committees will be established to represent the following primary places of employment:

1. Metro Regional Center
2. Oregon Zoo
3. All facilities under Property and Environmental Services Department control.
4. All facilities under Parks and Nature Department control.
5. Oregon Convention Center
6. Portland Expo Center

The employer and the Union will each elect or appoint an appropriate number of representatives and alternates to the committees specified above in accordance with the statute. Metro and the Union agree to establish new committees as required by expansion or reorganization.

Each safety committee shall inquire into and make recommendations to the employer on all safety issues in the work area. Any employee who observes an unsafe condition in the workplace shall promptly report the same to his/her supervisor and safety committee representative for their respective workgroup.

No employee shall be disciplined for failure to perform an unsafe work operation or operate unsafe equipment.

Article 19: Grievance Procedure

Section 19.1 Notice of Investigation

In the event the Employer provides advance written notice of an investigatory or due process meeting to an employee represented by AFSCME Local 3580, the Union Council Representative, Chief Steward or Union President shall also be notified of such meeting.

Section 19.2 Grievance Defined

A grievance for the purpose of this Agreement is any dispute regarding the meaning, application or interpretation of any provision of this Agreement. Grievances except as noted elsewhere in this Agreement shall be processed as follows:

Section 19.3 Level I – Supervisor

Within twenty-one (21) calendar days of the alleged dispute, or the employee's first knowledge of such dispute, the employee alone or accompanied by the Union shall file the written grievance with the employee's immediate supervisor. Within fourteen (14) calendar days of receipt of the grievance, the supervisor shall respond in writing to the employee and Union. Failure of the supervisor to respond, or failure of the grievance to be resolved at this level, shall permit the employee and Union to advance it to Level II.

The Union may choose to skip Level I and submit a grievance directly to the Department Director in matters where the Department Director made the decision that resulted in the grievance.

Section 19.4 Level II – Director

Within fourteen (14) calendar days of the receipt of the supervisor's response, or absent a response fourteen (14) calendar days from the deadline for the supervisor's response at Level I, the Union and employee shall submit the advanced written grievance to the Director of the employee's particular Department. The Director or designee may respond within fourteen (14) calendar days of receipt of the written grievance. Failure of the Director or designee to respond, or failure of the grievance to be resolved at this level, shall permit the employee and Union to advance the grievance to Level III.

The Union may choose to skip Level I and II and submit a grievance directly to the COO in matters where the COO made the decision that resulted in the grievance.

Section 19.5 Level III – Chief Operating Officer (COO)

Within fourteen (14) calendar days of the receipt of the Department Director's response, or absent a response fourteen (14) calendar days from the deadline for the Department Director's response at Level II, the Union and employee may submit the grievance to the Chief Operating Officer of Metro. The Chief Operating Officer or his/her designee shall respond within fourteen (14) calendar days of receipt of the written grievance. Failure of the Chief Operating Officer or his/her designee to respond, or failure of the grievance to be resolved at this level, shall permit the employee and the Union to advance the grievance to arbitration within fourteen (14) calendar days of the response, or of the deadline for the Chief Operating Officer's response.

Section 19.6 Arbitration

In order to advance the grievance the Union shall request a list of five (5) arbitrators from the State of Oregon Mediation and Conciliation Service within 30 days of stating their intent to advance the grievance. Upon receipt of the list of arbitrators, the parties will strike names within fourteen (14) calendar days. The parties will make best efforts to schedule arbitration within three (3) months of selecting an arbitrator. Such request shall not prohibit the parties also requesting grievance mediation at the same time. Any mediation shall be mutually agreeable to the parties. Upon receipt of the list, the

parties shall select an arbitrator by mutual agreement or alternate striking of names with the Union proceeding with the first strike. The Arbitrator thus selected shall be contacted by the parties to set a hearing.

Section 19.7 Arbitrator's Decision

The Arbitrator's decision in the grievance shall be final and binding upon the parties. The Arbitrator's decision shall be within the scope of the Agreement. The Arbitrator shall have no authority to alter, amend, modify, add to or detract from the Agreement, The losing party shall pay the cost of the Arbitrator's award. All other expenses shall be borne by the party incurring them.

Section 19.8 Deadline Extension

If mutually agreed upon by both Metro and the Union, and the request is made prior to the response due date, deadlines for all of the above sections may be extended.

Article 20: Equal Opportunity

Section 20.1 Metro and the Union agree to continue their policies of not unlawfully discriminating against any employee because of race, color, religion, creed, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, veteran status, disability, political affiliation, Union activity or any other status protected by law.

Section 20.2 Any complaint alleging unlawful discrimination based on race, color, religion, creed, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, veteran status, disability, political affiliation or any other status protected by law which is brought to the Union for processing will be submitted directly to the Chief Operating Officer or designee. If such a complaint is not satisfactorily resolved within thirty (30) days of its submission, it may be submitted to the Bureau of Labor and Industries for resolution.

Section 20.3 If an employee has a grievance alleging unlawful discrimination based on Union activity, it shall be first pursued through the grievance procedure at the Chief Operating Officer's level, however, the parties may mutually agree, in writing, to waive arbitration on any such grievance allowing the matter to be resolved through the Employment Relations Board.

Article 21: Complete Agreement, Letters of Agreement, Demand to Bargain

Section 21.1 Complete Agreement

This agreement constitutes the parties' complete agreement regarding the subject matter herein and supersedes all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter as contained herein.

Section 21.2 Letters of Agreement and Notice Thereof

This agreement may be amended only by mutual written agreement executed by the parties. The employer shall provide duly executed letters of agreement that affect the entire membership to all AFSCME represented employees within twenty one (21) calendar days of the signature of such modifications.

Section 21.3 Demand to Bargain

If the employer has refused to bargain a subject change and the union believes it is a mandatory subject of bargaining, the Union may then file an unfair labor practice complaint with the Employment Relations Board. If the Board determines that the change is a permissive or prohibited subject of bargaining, the Union shall withdraw its demand to bargain. If the Board determines the change is mandatory, the parties shall meet to negotiate the change. If, after bargaining, the parties do not reach agreement, the Union may submit the matter to arbitration. The arbitrator shall have authority to set aside changes, which are arbitrary and capricious. The notice must be received by the Director of Human Resources within fifteen (15) days immediately following the last date the parties met to negotiate the change. Nothing herein is intended to prevent the parties from agreeing, on a case-by-case basis, to resolve matters covered by this Article through a collaborative interest-based process.

Article 22: Personnel File

Section 22.1 Metro shall maintain one (1) official personnel file for all employees. This file shall be maintained in the Metro Human Resources Office. No document, report or correspondence of an adverse nature shall be placed in this file without a signature by the employee or a statement signed by the supervisor which indicates the employee has been shown the document and refused to sign it. An employee's signature shall not be construed to mean the employee agrees with the content.

Section 22.2 All material in the official personnel file of any employee may be inspected by the affected employee. No material of an adverse nature may be used against an employee unless entered in the official Metro file as described in subsection 22.1. An employee upon request shall have the right to view all material in the employee's personnel file.

Section 22.3 At the request of the employee or a union representative, disciplinary material, except discrimination and harassment policy violations, shall be expunged from the personnel file two (2) years or thereafter from the date the material was entered, and provided that the employee has received no other disciplinary action. Discrimination and harassment policy violations shall be expunged from the personnel file four (4) years from the date the material was entered, and provided that the employee has received no other disciplinary action. Periodic performance appraisals shall permanently remain part of the official personnel file. Supervisors may elect to remove disciplinary material from an employee's personnel file prior to the end of the 2-year period specified above. Any material of an adverse nature shall be removed if not entered in accordance with subsection 22.2. Employees may include in their official personnel file any material rebutting disciplinary material that they believe to be incorrect. Grievances shall not be maintained in the personnel file.

Section 22.4 A written record of an oral reprimand may be included in the personnel file as disciplinary material subject to the restrictions specified in 22.3. Such a written record will consist only of the date of the reprimand and a brief explanation of the reason for the reprimand.

Article 23: Outside Employment

Employees may engage in outside employment, provided that such outside employment does not:

1. Create a conflict of interest with the employee's duties; and
2. Create an inability to perform employee's job duties.

Employees who engage in outside employment found to violate the above restrictions may be disciplined, as set forth in Article 17: Discipline and Discharge, including due process and just cause standards.

Article 24: Inclement Weather

Section 24.1 Upon determination of the Chief Operating Officer or the Chief Operating Officer's designee, that inclement weather conditions exist, and such determination results in the decision to open later than regularly scheduled hours or close any Metro site to send the staff home before the end of their normal shift, those employees shall receive pay for a regular shift. Employees who are absent or are scheduled to be absent on an approved leave when their worksite has been closed or opens later than regularly scheduled hours due to inclement weather will be subject to the use of such applicable leave.

Section 24.2 If an employee reasonably decides that weather conditions make it unsafe to report to their worksite, the employee may use accrued vacation, personal holidays, or unpaid leave for that shift.

Section 24.3 The employer may authorize teleworking in the event of an inclement weather event that does not require a closure of the employee's worksite at management's discretion.

Section 24.4 Employees who are designated as essential personnel, and are required to report to work when their worksite has been closed due to inclement weather, shall be compensated for hours worked at the overtime rate for a minimum of four (4) hours per incident, in addition to their regular pay.

Article 25: Recoupment of Wage and Benefit Overpayments and Underpayments

Section 25.1 Overpayments

- (1) In the event that an employee receives wages or benefits from the Employer to which the employee is not entitled, regardless of whether the employee knew or should have known of the overpayment, the Employer shall notify the employee and the Union in writing of the overpayment which will include information supporting that an overpayment exists and the amount of wages and/or benefits to be repaid. For purposes of recovering overpayments by payroll deduction, the following shall apply:
 - (A) The Employer may, at its discretion, use the payroll deduction process to correct any overpayment made within a maximum period of two (2) years before the notification.
 - (B) Where this process is utilized, the employee and the Employer shall meet and attempt to reach mutual agreement on a repayment schedule within thirty (30) calendar days following written notification.
 - (C) If there is no mutual agreement at the end of the thirty (30) calendar day period, the Employer shall implement the repayment schedule stated in subsection (D) below.
 - (D) If the overpayment amount to be repaid is more than five percent (5%) of the employee's regular monthly base salary, the overpayment shall be recovered in monthly amounts not exceeding five percent (5%) of the employee's regular monthly base salary. If an overpayment is less than five percent (5%) of the employee's regular monthly base salary, the overpayment shall be recovered in a lump sum deduction from the employee's paycheck. If an employee ends employment before the Employer fully recovers the overpayment, the remaining amount may be deducted from the employee's final check.
- (2) An employee who disagrees with the Employer's determination that an overpayment has been made to the employee may grieve the determination through the grievance procedure.
- (3) This Article does not waive the Employer's right to pursue other legal procedures and processes to recoup an overpayment made to an employee at any time.

Section 25.2 Underpayments

- (1) In the event the employee does not receive the wages or benefits to which the record/documentation has for all times indicated the employer agreed the employee was entitled, the Employer shall notify the employee and the Union in writing of the underpayment. This notification will include information showing that an underpayment exists and the amount of wages and/or benefits to be repaid. The Employer shall correct any such underpayment made within a maximum period of two years before the notification.
- (2) This provision shall not apply to claims disputing eligibility for payments which result from this Agreement. Employees claiming eligibility for such things as leadwork, work out of classification payor reclassification must pursue those claims pursuant to the timelines elsewhere in this Agreement.

Article 26: Contracting Out

In the event that a decision to contract out work normally performed by bargaining unit members would result in a reduction of hours for, or the layoff of bargaining unit members, the employer shall provide the Union with notice of its intent to contract out and shall, upon demand, bargain the impact of such a decision in accordance with the expedited bargaining process (ORS 243.698).

Article 27: Education and Training

Section 27.1 The employer and AFSCME Local 3580 share a desire to retain a skilled workforce. To the extent possible, the employer will make available to regular employees, including support and technical staff, current information about available training opportunities.

Section 27.2 Job-related training for employees may be conducted both during and outside of an employee's work schedule. When an employee's attendance is required by the employer, she/he shall be notified in writing and shall be paid for the time as time worked. When a regular status employee requests job related training/education, the request shall be made in writing to his/her Department Director. Department Directors have the discretion to approve or deny the request. Department Directors may agree to provide financial assistance and/or paid leave to employees who request to participate in job-related training/educational programs. Department Directors may deny requests based on, but not limited to, operating requirements, priorities or budget limitations.

Section 27.3 The employer may offer in-house training for employees to improve their knowledge, skills and abilities to perform their job.

Article 28: Job Sharing

Section 28.1 "Job Sharing Position" means a full-time position that may be held by more than one individual on a shared-time basis where each of the individuals holding the position works less than full time.

Section 28.2 Job sharing is voluntary. An employee who wishes to participate in job sharing shall submit a written request to his/her supervisor and the Human Resources Director. The Human Resources Director shall register the requesting employee by name, department, classification and date of request. When a hiring manager requests to fill a vacant position by "job share," the internal recruitment will include that the position is a job share opportunity.

Section 28.3 An employee working in a job share position shall be treated as a part-time employee for purposes of calculating leave accruals and health and welfare benefits.

Section 28.4 If one (1) job sharing partner in a job sharing position is removed, dismissed, resigns, or otherwise is separated from employment, the hiring supervisor has the right to determine if job sharing is still appropriate for the position. If it is determined that job sharing is not appropriate or the employer is unable to recruit qualified employees for the job share position, the employer shall have the right to terminate the job sharing arrangement. In such event, the remaining job share partner shall have the following options: (1) assume the position on a full-time basis; (2) request a lateral transfer to a vacant part-time position for which he/she is qualified; or (3) voluntarily demote to a vacant part-time position for which he/she is qualified.

Article 29: Flexible Schedules and Teleworking

Section 29.1 Individual Flexible Schedule Requests

A Flexible Schedule is defined as an alternate work schedule for regular full-time employees which accommodates Metro's operating requirements. A flexible schedule shall be mutually agreed to in writing between the supervisor and the employee(s). A flexible schedule will not impair Metro's need to meet operating requirements through assigned overtime or other similar scheduling. A flexible schedule may be canceled with twenty one (21) calendar days notice to the employee(s). A manager shall not unreasonably deny or change a flexible schedule arrangement.

Section 29.2 Work Group Flexible Schedule Request

An employee or a group of employees in the same work unit desiring a flexible work schedule or a change in work schedule may request such a change in writing from his/her/their supervisor. Where an employee's request for an alternative schedule is denied, such denials shall be in writing with an explanation for the denial. The request shall include benefits to Metro of the requested schedule. If the supervisor approves the flexible work schedule, the employee(s) waives all rights to reporting pay, overtime compensation or other forms of penalty pay during the transition from one schedule to another to the maximum extent permitted by the FLSA.

Section 29.3 Special Flex Time Allowance

An exempt employee that is required by their supervisor to attend an after hours (before 7A or after 6P) meeting or an event on a weekend to represent Metro shall be allowed to take an equal amount time off at a later date.

Property and Environmental Services: An exempt employee assigned to complete a facility inspection or audit; investigation of an illegal dump site; or investigation of potential violators after hours (before 7A or after 6P) shall be allowed to take an equal amount time off at a later date.

Time must be used within thirty (30) days of the assignment. Managers and employees will mutually keep track of this time and mutually schedule time off. Employees may not count work time that is required beyond normal business hours to complete regularly assigned work.

Section 29.4 Teleworking

Teleworking is defined as a working arrangement in which the workplace is located at an alternate location than the employee's regular office. A department may permit teleworking on a routine, temporary/ or ad hoc basis in accordance with the Metro Policy.

Article 30: CDL Policy

In the event that any AFSCME-represented employees are assigned duties which require a Commercial Drivers License (CDL), those employees shall be subject to the CDL Drug and Alcohol Policies required by the Federal Department of Transportation.

Article 31: Clothing Allowances

Employees working in the classifications identified in this article shall receive clothing allowance or reimbursement, as stated herein. All reimbursements listed will only be provided upon the employee submitting an original receipt to their supervisor. Where a dollar amount is not listed, the item will either be provided by Metro or must be preapproved by the employee's supervisor prior to purchase.

A. Parks and Environmental Services Department (PES)

Scalehouse Technician
Lead Scalehouse Technician
Hazardous Waste Technician
Hazardous Waste Specialist
Landfill and Environmental Technician
Landfill and Environmental Specialist
Facilities Maintenance Technician
Latex Operations Technician
Latex Operations Specialist
Building Service Technician
Building Service Worker
Building Custodian MRC
Lead Building Custodian MRC
Facility Coordinator MRC

For the above-listed classifications Metro will, in each year of the Collective Bargaining Agreement, provide the following uniform:

Five (5) pairs of pants/shorts (reimbursed up to \$175.00 per 12-month period)
Five (5) shirts
Two (2) sweatshirts
One (1) belt
One (1) winter jacket (reimbursed up to \$80 per 12-month period, with the option to combine and spend up to \$160 in a 24-month period).

1. Scalehouse Technician
Lead Scalehouse Technician
Building Service Technician
Building Service Worker

The above-listed classifications shall receive one (1) pair of enclosed shoes (reimbursed up to \$150 per 12-month period)

2. Hazardous Waste Technician
Hazardous Waste Specialist
Landfill and Environmental Technician
Landfill and Environmental Specialist
Facilities Maintenance Technician
Latex Operations Technician
Latex Operations Specialist
Metro Paint Sales Technician

The above-listed classifications shall receive one (1) pair of safety shoes (reimbursed up to \$175 per 12-month period).

B. PES Waste Transfer Station Operations Staff

Waste transfer station operations staff who regularly visit the waste transfer stations shall receive the following uniform:

Two (2) shirts with the Metro logo, each 12-month period
One (1) pair of safety shoes (reimbursed up to \$300 per 24-month period)
Personal protective equipment, as needed (e.g., safety vest, hard hat, etc.)

C. PES Construction Project Management and Engineering Staff

The property management technician and property management specialist, as well as those employees working in the PES Construction Project Management Office and Engineering Staff who periodically visit construction sites shall be provided with:

Two (2) pair pants (reimbursed up to \$70 per 12-month period)
One (1) coat with Metro logo every 24 months
One (1) pair of safety shoes (reimbursed up to \$300 per 24-month period)
Personal protective equipment, as needed (e.g., safety vest, hard hat, etc.)

D. Parks and Nature Property Management Staff

The property management technician and property management specialist who periodically visit property and construction sites shall be provided with:

Two (2) pair pants (reimbursed up to \$70 per 12-month period)
One (1) coat with Metro logo every 24 months
One (1) pair of safety shoes (reimbursed up to \$300 per 24-month period)
Personal protective equipment, as needed (e.g., safety vest, hard hat, etc.)

E. PES Inspection Staff

Those employees who regularly conduct regulatory field inspections shall be provided with the following uniform:

Two (2) shirts with Metro logo, each 12-month period
Two (2) pair pants each year (reimbursed up to \$70 per pair)
One (1) coat with Metro logo every 24 months
One (1) pair of safety shoes (reimbursed up to \$300 per 24-month period)
Personal protective equipment, as needed (e.g., safety vest, hard hat, safety glasses, etc.)

F. Parks and Nature Science and Stewardship Staff

All science and stewardship field positions who regularly perform duties in the field shall be provided with the following uniform:

Two (2) shirts with Metro logo each 12-month period
One (1) winter coat with Metro logo every 24-month period

- One (1) rain hat
- One (1) raincoat
- One (1) pair rain pants or rainproof coveralls
- One (1) pair of safety shoes (reimbursed up to \$300 per 24-month period)

G. Education Naturalists

Education naturalist staff who regularly perform field work requiring a ranger uniform shall receive the following uniform:

- Two (2) long-sleeved shirts with Metro logo
- Two (2) short-sleeved shirts with Metro logo
- Two (2) pair pants in a color determined by Metro
- One (1) winter-weight hat with Metro logo
- One (1) summer hat with Metro logo
- One (1) heavy-duty ranger parka with Metro logo
- Nametag
- One (1) pair enclosed shoes (reimbursed up to \$150 per 12-month period)

H. Oregon Zoo Family Farm and Wildlife Live Show Staff

To be replaced by Metro every twelve (12) months unless otherwise specified:

- Two (2) pairs of pants (reimbursed up to \$50 per 12-month period)
- Five (5) shirts (employee's choice of long or short sleeve)
- One (1) belt
- One (1) pair enclosed shoes (reimbursed up to \$125 per 12-month period)
- One (1) winter cap (washable and rainproof)
- One (1) summer windbreaker jacket to be replaced every 24 months
- One (1) winter coat

I. Safety and Security

Safety and Security Officers at the Oregon Zoo and Metro Regional Center, shall receive the following clothing and uniform items. These items will constitute the uniform to be worn while on duty.

To be replaced by Metro every twelve (12) months unless otherwise specified:

- Four (4) pairs of trousers (employee's choice of winter or summer weight)
- Black shoes (reimbursed up to \$150 per 12-month period with the option to combine and spend up to \$250 in a 24-month period).

To be replaced by Metro every twenty-four (24) months:

- Six (6) shirts (employee's choice of long or short sleeve)
- One (1) hat (baseball hat)
- One (1) Black waterproof brimmed hat (reimbursed up to \$50 every two years)
- One (1) jacket multi-season (replaced as needed due to wear and tear)
- One (1) waterproof rain jacket (replaced as needed due to wear and tear)

The items listed above will be of such quality as to remain serviceable for the applicable twelve (12) or twenty-four (24) month period, under normal conditions. Items damaged in the line of duty will be repaired or replaced by Metro. Upon ratification, there will be an annual dry-cleaning

allowance of \$18.00 to clean the jacket. There will be a monthly allowance upon ratification of \$19.00 for laundering and maintenance of the other uniform pieces.

Both uniform allowances will be paid to each security officer by Metro. It will be the responsibility of each security officer to care for the equipment, to keep uniforms neat, clean, relatively wrinkle-free, and maintain good personal hygiene; all in keeping with the portrayal of a positive Metro representative. Security Officers will be responsible for purchasing the shoes and Metro will reimburse them after being presented with an original receipt of purchase.

The following uniform equipment will be provided to each security officer by Metro:

- One (1) officer notebook and case
- One (1) nylon duty belt
- One (1) badge
- One (1) nameplate
- One (1) mini-maglite flashlight and holster
- One (1) glove pac (for minor first aid)
- One (1) CPR mask
- One (1) security office access key
- Ten (10) shoulder patches
- One (1) flashlight holder
- One (1) key ring holder with protector

Each employee who receives a uniform will be granted upon ratification \$19.00 per month to clean and care for the uniform to be paid to each employee once per month.

J. Oregon Convention Center and Portland Expo Staff

Full-time employees:

- Shall receive five (5) sets of uniforms, including shirts and pants, upon hire. Each fiscal year thereafter full-time employees shall receive up to six (6) items, shirts or pants, as needed.
- Upon presentation of an original receipt of purchase, full-time employees will be reimbursed up to one-hundred dollars (\$100) per fiscal year for one (1) pair of quality work shoes.
- All employees shall receive one coat per contract.

Part-time employees:

- Shall receive two (2) sets of uniforms, including shirts and pants, upon hire. Each fiscal year thereafter part-time employees shall receive up to three (3) items, shirts or pants, as needed.
- Employees who perform outside custodial duties shall be provided an outside coat to be used at work and stored on site; washed on-site, as needed.
- Employees who work outside will be provided safety and rain gear to be used at work and stored on site.

- All employees shall receive one coat per contract.

Metro will determine the style and color of the uniform; any changes to the style and color of the uniform and reasonable rules concerning the maintenance and wearing of the uniform shall be made at the discretion and direction of the site supervisor. Changes in the uniform rules will be posted with due notice. Metro retains the right to alter, amend or discontinue this practice of providing uniforms at its sole discretion.

Normal wear and tear is expected and any uniforms that are damaged or suffer unusual wear due to the performance of on-the-job duties will, at the discretion and direction of the site supervisor, be replaced by Metro. Uniforms are to be provided for wear during work hours, including travel to and from the job site, and may not be worn at any other time.

Employees who have special needs may with the approval of their supervisor select different fabric types or sizes to accommodate those needs.

Employees shall promptly return all Metro uniform items issued to them in the preceding 12-month period upon termination. Failure to return any uniform items shall result in the replacement cost being assessed against the employee.

Nothing in this article shall prevent Metro management from providing additional clothing, equipment or other items of higher value or utilizing a uniform services provider to meet the clothing requirements for a given role.

Article 32: Joint Labor Management Committee

To improve communications and further each party's commitment to solving problems and improve relations (including but not limited to employee/management relations), the parties agree to create, a joint labor/management committee within Metro, as further agreed between the parties.

The committee will consist of four (4) employee members appointed by the Union and four (4) members of management. The parties may increase the number of appointed members by mutual agreement. Employees appointed by the Union will be in pay status during the time spent in committee meetings. Time spent in committee meetings shall neither be charged to leave credits nor considered as overtime worked. The committee shall meet as mutually agreed.

The committee may use the interest-based problem solving method to reach consensus. The parties will share the costs of training of the committee members in interest-based problem solving.

Other labor/management committees may be mutually created as required by this agreement, or as deemed necessary by the parties (e.g., JLMC on Health Care).

It is understood by the parties that the committee shall be on a "meet and confer" basis only and shall not have the authority to negotiate amendments to this Agreement or other mandatory or permissive subjects of bargaining.

Matters that should be resolved through the grievance and arbitration procedure shall be handled pursuant to that procedure. The committee shall not discuss disciplinary actions.

Article 33: Savings Clause

Should any Article, Section or portion thereof of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific Article, Section or portion thereof directly specified in the decision. Upon the issuance of any such decision, the Parties agree immediately to negotiate a substitute, if possible, for the invalidated Article, Section or portion thereof. All other portions of this Agreement and the Agreement as a whole shall continue without interruption for the term of this Agreement.

Article 34: Parking and Transportation Demand Management (TDM) Program

All employees who are eligible and voluntarily elects to participate in the parking program will pay the full cost of the parking program via pre-tax payroll deduction. As parking fees increase, all employees in the parking program will cover the increases through the pre-tax payroll deduction program. Such increase shall be limited to increasing the monthly fee by no more than \$5 in a fiscal year.

Section 2.

All full-time Oregon Convention Center employees hired before January 1, 2003 will be eligible for a pre-tax payroll deduction of \$20.00 per month for parking and exempt from any parking fee increases.

Section 3.

Oregon Convention Center part-time and event-driven employees may purchase passes for parking lots designated by management on a first come first served basis.

Section 4.

All Oregon Convention Center non-probationary full-time employees will continue to be enrolled in the Universal Pass Program until the program terminates or MERC opts out of the program.

Part-time employees at the Oregon Convention Center and Full-Time employees at the Portland Expo Center will be eligible to receive a 2.5 hour transit pass upon showing proof (used ticket) that public transportation was used to travel to work for a scheduled shift until the program terminates or MERC opts out of the program.

Section 5.

Non-probationary, benefits-eligible employees are eligible to participate in Metro's TDM program.

Section 6.

Tri-Met Pass: Based on the availability and Metro's participation in the plan, a Tri-Met pass may be made available to employees on a first come, first serve basis.

Bicycle/Walk Certificate: \$22.00 certificate for merchandise at selected vendors for those employees that do not drive a vehicle but instead bicycle or walk from home to work for the majority of their commute for 80% of the month.

Carpooling: If and when an off-site facility charges a fee for parking, employees who certify they are carpooling with one or more licensed driver(s) that are employees and park at a Metro facility, will be eligible for a parking reduction of \$11.00 per month per each eligible employee in the carpool; according to Metro policy.

Guaranteed Ride Home: For eligible employees participating in the TDM program who carpool, use transit, walk or bike to work the employer will pay for a ride home if the need arises to leave work unexpectedly or stay late due to job demands or emergency.

Article 35: Temporary Employees

For the purpose of this contract, Metro recognizes the Union as the exclusive bargaining representative of all temporary employees that are in the job classification of Program Assistants 1 at the ZOO, Hazardous Waste Technicians, Safety/Security Officers, and Scale House Technicians, who average more than four hours per week per calendar quarter. The following represents the terms and conditions for temporary employees:

All provisions of the collective bargaining agreement apply to Temporary employees except Article 6 Hours and Shifts, Article 8 Holidays, Article 9 Vacation, Article 12 Health and Welfare, Article 16 Seniority, Article 28 Job Sharing, Article 29 Flexible Schedules and Teleworking, Article 31 Clothing Allowance.

1. Temporary employees with less than one thousand forty (1040) continuous service hours are at-will. The employer reserves the right to terminate temporary employees at any time and for any reason, including lack of work, with or without cause. Temporary employees with more than one thousand forty (1040) continuous service hours will not receive disciplinary action without just cause and may process their grievance in accordance to Article 19.
2. Hours and Shifts: Work scheduled for temporary employees will be made based on availability. Notwithstanding needs that arise due to unforeseen circumstances, the employer shall endeavor to make weekly work schedules available at a minimum of ten (10) days in advance.

A temporary employee scheduled to work on a shift which begins after 1:59 p.m. shall receive \$1.35 per hour in addition to their regular hourly rate.

A temporary employee scheduled to work on a shift that begins after 9:59 p.m. shall receive \$1.45 per hour in addition to their regular hourly rate.

A temporary employee who reports to work when their shift has been cancelled and were not notified of their shift cancellation shall be paid a minimum of four (4) hours. Where the scheduled shift is less than four (4) hours in duration, however, the employee shall be paid for the hours scheduled.

3. Holidays: Temporary employees that work on a holiday will be compensated for hours worked at one and half (1.5) times their regular hourly rate. The observed holidays shall include:
 - a. New Years Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.
4. Health and Welfare: In order to comply with the Affordable Care Act, Prorated insurance will be available to temporary employees who work thirty (30) hours a week or more during a twelve (12) month measurement period. The premium share will be calculated based on the total cost of health insurance premium for the plan selected by the employee, less the employee's FTE status (based on average weekly hours) multiplied by Metro's full-time employee premium portion for that plan.

Example: using a health insurance premium of \$1,000 and Metro's portion for a full-time employee of \$900.

- An employee working 32 hours weekly average would pay $\$1,000 - (.8 \times \$900) = \$280.00$

- An employee working 30 hour weekly average would pay $(\$1,000 - (.75 \times \$900) = \$375.00$
5. Recruitment: Temporary employees will be hired through the general Metro recruitment process, except for the community college program interns who may be appointed as Temporary employees following their internship. Temporary employees will be considered internal applicants for Metro recruitments.
 6. Clothing Allowance: The following items shall be made available to temporary employees for use during their working hours:
 - a. Hazardous Waste Technicians:
 - i. Personal protective equipment as need (e.g. OSHA Toes, respirator), two (2) t-shirts, one (1) sweatshirt and following five hundred and twenty (520) hours of employment one pair of safety shoes (reimbursed up to \$125) and prescription safety glasses as required.
 - b. Scale House Technicians:
 - i. Three (3) t-shirts, one (1) sweatshirt, one hat, and personal protective equipment as needed (e.g., safety vest)
 - c. Safety/Security Officers:
 - i. Two (2) pairs of pants, two (2) polo shirts, pepper spray, handcuffs, ASP baton, and one (1) multi-season jacket.
 - d. Program Assistant 1 – Zoo:
 - i. Those working in husbandry: three (3) tops (short or long sleeve), two (2) pairs of pants, one (1) hat and one (1) jacket.
Those working in a show capacity: two (2) polo shirts, a fleece vest, a jacket, and one (1) pair of pants. Program Assistant 1's working in husbandry shall have boots made available to them during their work shift.

Article 36: Term of Agreement

This Agreement shall remain in full force and effect from July 1, 2017 to June 30, 2020. It shall be automatically renewed from year to year thereafter unless either party notifies the other in writing not later than sixty (60) days prior to the expiration of the subsequent anniversary date that it wishes to modify this Agreement for any reason.

Exhibit A: AFSCME Pay Schedule

Pay Range	Job Code	Job Classification	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	
01	6012*	Office Assistant	13.33	13.99	14.70	15.43	16.21	17.02	17.87	Hourly
	6003*	Visitor Services Worker III	27,729.31	29,108.35	30,572.26	32,099.81	33,712.22	35,409.50	37,170.43	Annual
02	0032*	Building Custodian – MRC	13.99	14.70	15.43	16.21	17.02	17.87	18.77	Hourly
			29,108.35	30,572.26	32,099.81	33,712.22	35,409.50	37,170.43	39,041.60	Annual
03	0050*	Printing/Mail Services Clerk	14.70	15.43	16.21	17.02	17.87	18.76	19.70	Hourly
			30,572.26	32,099.81	33,712.22	35,409.50	37,170.43	39,016.22	40,976.00	Annual
04	0037*	Accounting Technician I	15.43	16.21	17.02	17.87	18.76	19.71	20.69	Hourly
	0033*	Lead Building Custodian – MRC	32,099.81	33,712.22	35,409.50	37,170.43	39,016.22	40,989.31	43,035.20	Annual
05	6005*	Administrative Specialist I	16.21	17.02	17.87	18.76	19.71	20.69	21.72	Hourly
			33,712.22	35,409.50	37,170.43	39,016.22	40,989.31	43,026.05	45,177.60	Annual
06	0040*	Program Assistant I	17.02	17.87	18.76	19.71	20.69	21.72	22.81	Hourly
	6026*	Safety and Security Officer	35,409.50	37,170.43	39,016.22	40,989.31	43,026.05	45,168.86	47,444.80	Annual
	0013*	Scalehouse Technician								
07	0038*	Accounting Technician II	17.87	18.76	19.71	20.69	21.72	22.81	23.94	Hourly
	0006*	Food Service/Retail Specialist	37,170.43	39,016.22	40,989.31	43,026.05	45,168.86	47,438.98	49,795.20	Annual
	6020*	Payroll Technician								
	0330*	Planning Technician								
08	6006*	Administrative Specialist II	18.76	19.71	20.69	21.72	22.81	23.95	25.14	Hourly
	0015*	Facilities Maintenance Worker	39,016.22	40,989.31	43,026.05	45,168.86	47,438.98	49,815.17	52,291.20	Annual
	0051*	Printing/Mail Services Lead								
09	6007*	Administrative Specialist III	19.71	20.69	21.72	22.81	23.95	25.14	26.40	Hourly
	0014*	Lead Scalehouse Technician	40,989.31	43,026.05	45,168.86	47,438.98	49,815.17	52,297.44	54,912.00	Annual
	0042*	Program Assistant II								
10	0036*	Accounting Specialist	20.69	21.72	22.81	23.95	25.14	26.40	27.72	Hourly
	0005*	Storekeeper	43,026.05	45,168.86	47,438.98	49,815.17	52,297.44	54,907.01	57,657.60	Annual
11	6034*	Property Management Technician	21.72	22.81	23.95	25.14	26.40	27.72	29.11	Hourly
	6036*	Education Specialist I	45,168.86	47,438.98	49,815.17	52,297.44	54,907.01	57,665.09	60,548.80	Annual
	6030	Zoo Registrar								
12	6001*	Accountant I	22.81	23.95	25.14	26.40	27.72	29.11	30.57	Hourly
	6031*	Assistant Visual Communication Designer	47,438.98	49,815.17	52,297.44	54,907.01	57,665.09	60,550.46	63,585.60	Annual
	6016*	GIS Technician								
	0053*	Facilities Maintenance Technician								
	0055*	Landfill & Environmental Technician								
	0052*	Metro Paint Operations Technician								
13	6008*	Administrative Specialist IV	23.95	25.14	26.40	27.72	29.11	30.57	32.10	Hourly
	0331*	Hazardous Waste Technician	49,815.17	52,297.44	54,907.01	57,665.09	60,550.46	63,584.35	66,768.00	Annual
	6018*	Payroll Specialist								
	6024*	Program Assistant III								
	0057*	Technical Specialist I								
14	0016*	Building Service Technician	25.14	26.40	27.72	29.11	30.57	32.11	33.71	Hourly

	6037*	Education Specialist II	52,297.44	54,907.01	57,665.09	60,550.46	63,584.35	66,787.97	70,116.80	Annual
	0059*	Technical Specialist II								
	0058*	Volunteer Coordinator I								
	0333*	Assistant Management Analyst								
	0338*	Assistant Public Affairs Specialist								
	6032	Associate Visual Communication Designer								
	0639	Video and Photography Technician								
15	0063*	Metro Paint Operations Specialist	26.40	27.72	29.11	30.57	32.11	33.71	35.39	Hourly
	0043*	Facilities Coordinator	54,907.01	57,665.09	60,550.46	63,584.35	66,787.97	70,118.88	73,611.20	Annual
	6002	Accountant II								
	0062	Systems Administrator I								
	0061	Systems Analyst I								
16	0332*	Hazardous Waste Specialist	27.72	29.11	30.57	32.11	33.71	35.39	37.17	Hourly
	0064*	Landfill & Environmental Specialist	57,665.09	60,550.46	63,584.35	66,787.97	70,118.88	73,619.52	77,313.60	Annual
	0306	Assistant Engineer								
	6009	Assistant GIS Specialist								
	0354	Assistant Regional Planner								
	0343	Assistant Solid Waste Planner								
	6011	Assistant Researcher & Modeler								
	0348	Assistant Transportation Planner								
	0334	Associate Management Analyst								
	0339	Associate Public Affairs Specialist								
	6038	Education Specialist III								
	0056	Records & Information Analyst								
	6033	Senior Visual Communication Designer								
	0065	Volunteer Coordinator II								
17	0067	Systems Administrator II	29.11	30.57	32.11	33.71	35.39	37.17	39.03	Hourly
	0066	Systems Analyst II	60,550.46	63,584.35	66,787.97	70,118.88	73,619.52	77,311.10	81,182.40	Annual
18	6004	Accountant III	30.57	32.11	33.71	35.39	37.17	39.04	40.99	Hourly
	0307	Associate Engineer	63,584.35	66,787.97	70,118.88	73,619.52	77,311.10	81,193.63	85,259.20	Annual
	6013	Associate GIS Specialist								
	6014	Associate Natural Resource Scientist								
	6015	Associate Transportation Modeler								
	0355	Associate Regional Planner								
	0344	Associate Solid Waste Planner								
	6015	Associate Researcher & Modeler								
	0349	Associate Transportation Planner								
	6025	Property Management Specialist								
	0335	Senior Management Analyst								
19	6040	Endocrinology Research Technician	32.11	33.71	35.39	37.17	39.04	40.98	43.04	Hourly
	6017	Investment Coordinator	66,787.97	70,118.88	73,619.52	77,311.10	81,193.63	85,245.89	89,523.20	Annual
	0340	Senior Public Affairs Specialist								
20	0476	Construction Coordinator	33.71	35.39	37.17	39.04	40.98	43.03	45.19	Hourly
	0068	Digital Media Specialist	70,118.88	73,619.52	77,311.10	81,193.63	85,245.89	89,510.30	93,995.20	Annual
	0365	Real Estate Negotiator								
	0070	Systems Administrator III								
	0069	Systems Analyst III								
21	6035	Lead Real Estate Negotiator	35.39	37.17	39.04	40.98	43.03	45.19	47.45	Hourly
	0308	Senior Engineer	73,619.52	77,311.10	81,193.63	85,245.89	89,510.30	93,986.88	98,696.00	Annual

	6027	Senior GIS Specialist									
	6028	Senior Natural Resource Scientist									
	0356	Senior Regional Planner									
	0345	Senior Solid Waste Planner									
	6029	Senior Researcher & Modeler									
	0350	Senior Transportation Planner									
	6039	Senior Real Estate Analyst									
22	6021	Principal GIS Specialist	37.17	39.04	40.98	43.03	45.19	47.45	49.82	Hourly	
	6022	Principal Natural Resource Scientist	77,311.10	81,193.63	85,245.89	89,510.30	93,986.88	98,696.83	103,625.60	Annual	
	0357	Principal Regional Planner									
	0346	Principal Solid Waste Planner									
	6023	Principal Researcher & Modeler									
	0351	Principal Transportation Planner									
	0072	Systems Administrator IV									
	0071	Systems Analyst IV									
	0077	Transportation Engineer									

Exhibit B: Utility Workers Pay Schedule

Pay Range	Job Classification	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
970	Event Custodian	13.96	14.42	14.88	15.34	15.80	16.43	17.09
952	Utility Worker	17.01	17.69	18.40	19.13	19.90	20.70	21.52
849	Utility Maintenance Technician	17.51	18.21	18.93	19.69	20.48	21.30	22.15
941	Utility Grounds Maintenance	18.66	19.41	20.18	20.99	21.83	22.70	23.61
961	Utility Lead	18.54	19.28	20.05	20.86	21.69	22.56	23.46
950	Utility Maintenance	20.59	21.42	22.27	23.16	24.09	25.05	26.06
962	Utility Maintenance Specialist	21.27	22.12	23.00	23.92	24.88	25.88	26.91
972	Utility Maintenance Lead	22.97	23.89	24.84	25.84	26.87	27.94	29.06

Exhibit C: Temporary Employees Pay Schedule

Pay Range	Job Code	Job Classification	Rate
101	2041	Zoo Program Assistant 1	16.95
102	2331	Hazardous Waste Technicians	18.53
103	2538	Safety/Security Officers	16.68
104	2013	Scale House Technicians	16.68

Signature Page

FOR METRO:

**FOR AMERICAN FEDERATION OF
STATE, COUNTY, AND MUNICIPAL
EMPLOYEES LOCAL NO. 3580:**

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

By _____

Date: _____

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4826, FOR THE PURPOSE OF RATIFYING THE 2017-2020 COLLECTIVE BARGAINING AGREEMENT BETWEEN AFSCME 3580 AND METRO

Date: August 17, 2017

Prepared by: Ross Hume
503-797-1769

BACKGROUND

The Metro-AFSCME Local 3580 collective bargaining agreement represents a contract of the terms and conditions of employment for approximately 340 employees currently represented by Local 3580. Effective upon ratification, employees represented by AFSCME Local 3580-1, representing utility workers, custodial, and maintenance employees at the Oregon Convention Center and Portland Expo Center, and four temporary employee classifications will be represented by AFSCME Local 3580.

The negotiations began on March 14, 2017 and a tentative agreement was reached on July 24, 2017. The collective bargaining agreement includes terms and conditions applicable to employees of the MERC venues and MERC approved the tentative collective bargaining agreement on August 2, 2017. A vote for union ratification will be finalized August 17, 2017.

This resolution is submitted to ratify the contract between AFSCME Local 3580 and Metro for the period July 1, 2017 through June 30, 2020. This three-year agreement contains the following key economic provisions:

Wage Increases:

- I. Employees Currently Represented by Local 3580
 - i. Employees will receive a negotiated wage increase instead of an annual Consumer Price Index (CPI) adjustment.
 - ii. Effective August 1, 2017, a 2.00% wage increase will be made to the wage schedule.
 - iii. Effective July 1, 2018, a 2.5% wage increase will be made to the wage schedule.
 - iv. Effective July 1, 2019, a 2.5% wage increase will be made to the wage schedule.

- II. Employees Currently Represented by Local 3580-1 (Oregon Convention Center and Portland Expo Center)
 - i. A new seven step salary schedule will be implemented effective upon ratification of the agreement. Regular employees will be placed at step 5 of the salary schedule at their current rate of pay.
 - ii. Effective upon ratification, no wage increase will be made to the wage schedule. Employees will receive a one-time payment based on years of service (see Article 15).
 - iii. Effective July 1, 2018, no wage increase will be made to the wage schedule. Employees will be eligible for step advancement based on anniversary date. Anniversary Date will be established as the date of ratification of this agreement.
 - iv. Effective July 1, 2019, a 2.5% wage increase will be made to the wage schedule.

- III. Temporary Employees Currently Represented by Local 3580
- i. Effective upon ratification, a 2.00% wage increase will be made to the wage schedule.
 - ii. Effective July 1, 2018, a 2.5% wage increase will be made to the wage schedule
 - iii. Effective July 1, 2019, a 2.5% wage increase will be made to the wage schedule.

Health Insurance:

- I. Health Insurance Plan Design
 - i. Effective January 1, 2018 plan design changes will be implemented resulting in cost savings equal to approximately 2%.

Vacation:

- I. Vacation Accrual
 - i. Effective upon ratification, Oregon Convention Center and Portland Expo Center employees will follow the same vacation accrual schedules followed by other AFSCME Local 3580 employees.
 - ii. Part-time employees will be eligible for vacation accrual based on the criteria established in the collective bargaining agreement.

Holidays:

- I. Holidays
 - i. Effective upon ratification, Oregon Convention Center and Portland Expo Center employees will reduce from 24 hours of personal holiday leave to two (2) days of personal holiday leave.
 - ii. Part-time employees will be eligible for Holiday leave based on the criteria established in the collective bargaining agreement.

Maintenance of Standards:

- I. Eliminate the maintenance of standards clause that existed in the 3580-1 agreement.

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** Previously ratified AFSCME 3580 and 3580-1 collective bargaining agreements
3. **Anticipated Effects** Metro operations will continued uninterrupted.
4. **Budget Impacts** For the current year beginning July 1, 2017, the COLA and the health insurance premium costs are accounted for in the budget passed by Council.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of the resolution.

Agenda Item No. 4.2

Resolution No. 17-4827, For the Purpose of Authorizing an
Exemption to the Competitive Bidding Procedures and
Authorizing Procurement by Request for Proposals for a
Design-Build Approach to Construction of the Willamette
Falls Riverwalk

Resolutions

Metro Council Meeting
Thursday, August 17, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

RESOLUTION OF THE METRO COUNCIL) RESOLUTION NO. 17-4827
ACTING AS THE METRO CONTRACT REVIEW)
BOARD, FOR THE PURPOSE OF AUTHORIZING)
AN EXEMPTION TO THE COMPETITIVE)
BIDDING PROCEDURES AND AUTHORIZING) Introduced by Chief Operating Officer
PROCUREMENT BY REQUEST FOR PROPOSALS) Martha J. Bennett, in concurrence with
FOR A DESIGN-BUILD APPROACH TO) Council President Tom Hughes
CONSTRUCTION OF THE WILLAMETTE FALLS)
RIVERWALK)

WHEREAS, Blue Heron Paper Company, Inc. operated a mill on the Willamette River waterfront in the City of Oregon City at the base of the Willamette Falls. In February 2011, the mill closed its doors, and Metro and its public partners, including the City of Oregon City, Clackamas County, and the State of Oregon (the “public partners”) began to investigate the site guided by four core values: economic redevelopment, healthy habitat, historic and cultural interpretation and public access to Willamette Falls, a natural wonder in our region;

WHEREAS, Metro and its public partners entered into a Memorandum of Understanding in September of 2014, promising to collaborate on a vision to bring public access to Willamette Falls through a “riverwalk” project on the former Blue Heron Paper Mill site;

WHEREAS, the riverwalk is intended to be a critical first investment in the site that will spur redevelopment and connect to a view of Willamette Falls from property owned by Falls Legacy, LLC and Portland General Electric (PGE);

WHEREAS, given the site’s significant historic associations and strong connection to the Willamette River and Willamette Falls, the site has been identified as a “legacy opportunity,” and the partners have since directed a team to prepare a design for the riverwalk that ensures the world-class vision is realized;

WHEREAS, the conceptual design was finalized in June 2017. “Phase 1” for the project will involve demolition and the construction of access and a falls viewing location;

WHEREAS, permitting for Phase 1 is anticipated to begin in August 2017 and will take approximately 12 months, followed by construction that is expected to begin in the summer of 2018, with completion in 2020;

WHEREAS, the State of Oregon’s funding for the riverwalk provided by SB 5506 and HB 5030 requires completion by June 2020; and

WHEREAS, ORS 279C.335 and Metro’s Local Contract Review Board “Administrative Rules” require that all Metro public improvement contracts shall be procured based on competitive bids (Administrative Rule 49-0130) , unless exempted by the Metro Council, sitting as the Metro Contract Review Board (Administrative Rule 49-0620);

WHEREAS, ORS 279C.335(2) and Administrative Rule 49-0620 authorizes the Metro Contract Review Board to exempt a public improvement contract from competitive bidding and

direct the appropriate use of alternative contracting methods that take account of the public benefits, reduced risks, and efficiencies of such alternative methods, so long as they are consistent with the public policy of encouraging competition;

WHEREAS, recognizing the uniqueness, complexity and State funding deadlines of the Phase 1 project, the Willamette Falls project staff wish to obtain an exemption from competitive bidding for the Phase 1 project, and instead procure Phase 1 project demolition and construction by an alternative contracting method known as design-build;

WHEREAS, ORS 279C.335(2) and (4), and Administrative Rule 49-0620, require that the Metro Contract Review Board hold a public hearing and adopt written findings establishing, among other things, that the exemption of a public improvement contract is unlikely to encourage favoritism in the awarding of public improvement contracts, the exemption is unlikely to substantially diminish competition for the public improvement contracts; and that the exemption will likely result in substantial cost savings to Metro;

WHEREAS, in accordance with Administrative Rule 49-0620(7), notice of this hearing was published in at least one trade newspaper of general statewide circulation a minimum of fourteen (14) days before this hearing, which notice stated that the purpose of this hearing is to take comments on Metro's findings regarding an exemption from the competitive bidding requirements, and the draft findings were available to the public at the time of the published notice; now therefore:

BE IT RESOLVED THAT THE METRO CONTRACT REVIEW BOARD:

1. Exempts from competitive bidding the procurement and award of a public improvement contract for demolition and the Phase 1 construction of the Willamette Falls riverwalk; and
2. Adopts as its findings in support of such exemption the justifications, information, and reasoning set forth in the attached Exhibit A, which is incorporated by reference as if set forth in full; and
3. Authorizes the Chief Operating Officer to prepare or delegate a form of Request for Proposals for design-build services that includes, but is not limited to, as evaluation criteria for contractor selection: contractor's demonstrated public improvement project expertise, contractor's demonstrated design-build project experience, contractor's record of completion of projects of similar type, scale and complexity, contractor's demonstrated quality and schedule control, demonstrated value engineering experience, contractor's experience in incorporating sustainability construction practices and design into projects, and contractor's demonstrated commitment to workforce diversity and record of use of minority, women, disable-veterans and emerging small businesses and any other criteria that ensures a successful, timely, and quality project, in the best interest of Metro and in accord with ORS 279C.335 and Administrative Rule 49-0620; and
4. Following the approval of said form of Request of Proposals by the Office of the Metro Attorney, to issue such approved form, and thereafter to receive responsive proposals for evaluation in accordance with Administrative Rule 49-0690; and

5. Following evaluation of the responses to the Request for Proposals, authorizes the Chief Operating Officer to execute a contract that is most advantageous to Metro to construct the Phase 1 riverwalk project.

ADOPTED by the Metro Council this ____ day of August 2017.

Tom Hughes, Council President

Approved as to form:

Alison R. Kean, Metro Attorney

EXHIBIT A

Findings in Support of an Exemption from Competitive Bidding

Pursuant to ORS 279C.335(2) and (4), and Administrative Rule 49-0630, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Willamette Falls riverwalk Phase 1 demolition of structures and construction improvements from competitive bidding, in favor of a Request for Proposals (RFP) solicitation for a public improvement construction contract:

The exemption is unlikely to encourage favoritism or substantially diminish competition.

The Metro Contract Review Board finds that exempting the procurement of the demolition of structures and construction of the Phase 1 riverwalk improvements at the former Blue Heron Mill site from competitive bidding is “unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts” as follows: The RFP will be formally advertised with public notice and disclosure of the planned alternative contracting method and made available to all qualified contractors. Award of the contract will be based on the identified selection criteria and dissatisfied proposers will have an opportunity to protest the award. Full and open competition based on specific criteria, which will include at a minimum those set forth in the Metro Contract Review Board resolution, will be sought, with the contract award going to the contractor that is the most advantageous to Metro. Competition will be encouraged by: posting on ORPIN (Oregon Procurement Information Network), contacting local sub-contractors, including COBID certified business, and notifying them of any opportunities within their area of expertise; utilizing the Oregon Daily Journal of Commerce and a minority business publication for the public advertisement; performing outreach to local business groups representing minorities, women, disabled-veterans, and emerging small businesses; and by contacting contractors known to Metro to potentially satisfy the RFP criteria. Given the type of project, it is likely that the same general contractors that would have bid on the project will also submit a proposal in response to the RFP.

The exemption will likely result in substantial cost savings and other substantial benefits to Metro.

The Metro Contract Review Board finds that exempting the procurement of the demolition of structures and construction of the Phase 1 riverwalk improvements from competitive bidding will likely result in substantial costs savings and other substantial benefits to Metro, considering the following factors:

a. Number of people available to bid.

It is anticipated that there will be numerous firms interested in participating in the procurement, many of which would have bid on the project in the absence of the exemption from competitive bidding. The alternative procurement choice will not impact the number of people available to bid.

The design-build delivery method is appearing as an industry trend for similar unique, complex and large projects. For example, the City of Portland is utilizing the method for its Willamette River Crossing tunnel and water main project.

b. Construction budget and projected operating costs for the completed project.

Utilizing a design-build process will allow Metro to contract with one entity to provide final design and to construct the project in accordance with that design. The delivery method affords Metro the ability to define the scope for both design and construction without 100% complete designs. This is intended to result in earlier project cost certainty, and also allow for cost reductions through pre-construction services by the contractor during the final design phase, including a constructability review, and estimates of probable material/installation costs and other services. Given the uniqueness of the project improvements, having one responsible entity is expected to result in improved communication, a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro.

Given the site's significant historic associations and strong connection to the Willamette River and Willamette Falls, the site has been identified as a "legacy opportunity." The site is unique, complex and extremely technical in nature.

Given the high degree of complexity of the project improvements, the need to integrate with pre-existing infrastructure (that may be unknown until uncovered), and challenging environmental and site constraints, having earlier integration of design and constructor is anticipated to lower overall project costs.

The delivery method also allows for an ongoing review of the long term operating costs of design options, allowing for innovative midcourse design choices leading to a project having lower long term operating maintenance and repair costs.

c. Public benefits in granting exemption.

The deliver method establishes distinct roles and responsibilities. Design-build provides Metro with a single point of contact for the project responsibilities and thereby eliminates the need for resolving conflicts between design professionals and constructors. Risks can then be effectively and efficiently managed by the design-builder. This results in enhanced project benefits, including, quality control, time savings, and additional financial efficiencies, since project budget, schedule and constructability are emphasized throughout the process. The process provides the ability to evaluate alternative design, materials, and methods efficiently and accurately. This continuing project scrutiny often results in substantial cost savings, both initially and over the life of the project. In the design-build system, firm construction costs are known earlier in the process. The design-build process will also promote the efficient and effective completion of the project, thereby making it available for use by the public as soon as possible, thus more quickly bringing safe, unique, inclusive and world-class amenities to not only the Blue Heron site and the regional center of downtown Oregon City, but to the surrounding areas of West Linn, Clackamas County and the greater metro region. In addition to the cost-savings noted above, given the timing constraints on the state's funding, the public will benefit from use of those funds for a better project.

d. Value engineering techniques.

The design build process will integrate the contractor's construction team and design and engineering team to improve implementation of the demolition plan and improvement design and help reduce demolition and construction costs by providing early input and constructability review to designers, avoiding costly redesigns and change orders, and providing opportunities for the project team to work together on both practical and innovative solutions to complex design and construction issues. The site was constructed in a piecemeal fashion over a period of 150 years. This type of contract will allow the project team to more easily explore with the feasibility of innovative design solutions, respond to unanticipated conditions, and incorporate ongoing value engineering. Such solutions are expected to result in a more innovative project, at a lower cost, with shortened project completion time.

e. Specialized expertise required.

The closing of the Blue Heron Paper Mill operations in 2011 left 23 acres of land with abandoned industrial buildings stretching from Willamette Falls to the southern doorstep of Oregon City's historic downtown. The site includes dozens of buildings and elements that are regulated under state and federal historic and cultural preservation standards. The site also represents a significant cultural resource to Native Americans throughout the Pacific Northwest. It is intended that several historical elements will be incorporated into the project and project improvements, thus requiring careful review and development of demolition plans and construction activities. It is also expected that cultural resources will be unearthed, thus requiring a unique approach to ground disturbing and other construction activities. As well, Endangered Species Act protected fish and wildlife are present and must be accounted for during demolition, deconstruction, and construction activities.

This complex site and these unique project elements require special qualifications. The demolition, design, and construction of the riverwalk require special expertise, knowledge, and experience, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with such specialized and proven expertise to construct the project will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on or ahead of schedule, resulting in lower costs and increased benefit to visitors of the riverwalk. The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not normally part of the traditional competitive bid process.

f. Increase in public safety.

The Blue Heron site is privately owned by Falls Legacy, LLC, which has granted Metro an easement for construction of the riverwalk on its property. It is adjacent to the working PGE dam. Construction will occur on private property, but wholly within the easement, while the rest of the site continues to be closed to the public. The alternative contracting process will enable the project team to understand, plan for, and minimize safety hazards and conflicts between the project and ongoing site and PGE operations. Integrated early planning efforts are expected to limit delay-causing conflicts and decrease risks to public safety, thus reducing the risk of delays and costly injury claims.

g. Reduced risks to Metro or the Public.

The selection of a contractor with demonstrated experience and success in implementing complex projects will result in a substantially lower risk to Metro because it increases the likelihood of the project being completed on budget, with fewer construction delays and change orders, resulting in lower costs and increased benefit to Metro and the project partners and park patrons. The RFP process will take into account each contractor's past performance, technical knowledge, and sub-consultant experience.

Design-build provides Metro with a single point of contact for the project responsibilities and thereby eliminates the need for resolving conflicts between design professionals and constructors. Risks can then be effectively and efficiently managed by the design-builder. This results in enhanced project benefits, including, quality control, time savings, and additional financial efficiencies, since project budget, schedule and constructability are emphasized throughout the process.

h. Impact on source of funding.

As stated above, the alternative contracting process allows agency staff to coordinate with one design-build construction team, resulting in a better, safer design, fewer change orders, and faster progress with fewer unexpected delays, ensuring that Metro can take advantage of the state's funding as a source of funding for the project, within the deadlines attached to that funding.

i. **Impact on agency's ability to control the impact of market conditions and costs and time necessary for completion.**

The alternative contracting process will allow the agency to more effectively and efficiently control the project and ensure its timely completion. Constructing a world-class riverwalk will not involve off-the-shelf installations. Rather, it will require one-of-a-kind construction details for which the professional design community and/or construction industry do not have standard pricing structures.

j. **Technical complexity of project.**

The project involves many unique, technically complex elements. As mentioned above, the site was developed piecemeal, over a period of 150 years. The site includes dozens of building and elements that are regulated under state and federal historic preservation standards. A substantial amount of non-native fill now covers the site and natural grades and conditions have been substantially altered. It is intended that structures will be repurposed for reuse during and after demolition. Also, past uses resulted in the site being classified as a brownfield. The site also represents a significant cultural resource to Native Americans throughout the Pacific Northwest. Given historical Native American use and activity around Willamette Falls, it is anticipated that cultural resources may be unearthed or disturbed during construction activities. As such, ground disturbing activities that may impact archaeological and culturally significant resources will be strictly regulated, including state and federal oversight. Also, Endangered Species Act listed species are present, adding an additional layer of complexity and additional regulatory oversight.

The design, demolition and construction of the riverwalk require technical expertise, knowledge, and experience, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with demonstrated experience and success in implementing such projects will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on budget, with fewer construction delays and change orders, resulting in lower costs and increased benefit to Metro and park patrons. The RFP process will take into account each contractor's past performance and technical knowledge. Based on the necessary quality of the finished product, and the uniqueness of the undertaking, the Procurement Officer believes an alternative contracting process to be necessary and in the best interest of the agency.

k. **New construction.**

The project is for demolition, deconstruction and new construction. The need to ensure that it is properly, safely, efficiently, and successfully implemented is of importance. Some of the design limitations and conditions are likely to be unknown until uncovered by work performed under an early work assignment, which can be performed during design development to inform the design process.

l. **Occupation.**

Construction will occur across the site while the rest of site must continue to operate safely, in the case of the PGE dam. Public tours will also continue during construction. The contracting process will enable the project team to minimize conflict between the project and ongoing operations, by providing early input into issues of construction staging areas, construction access corridors, and scheduling. Such integrated early planning efforts are expected to limit conflicts thus reduce the risk of construction delays and costly change orders.

m. **Phases.**

The project will involve a single phase of construction (Phase 1). The need to ensure that it is properly, safely, efficiently, and successfully implemented is of importance. Subphases, in terms of early work amendments, to begin demolition while finalizing design will ultimately save time on the overall project. Early work phases are expected to uncover latent conditions at the project site that once exposed, can be addresses efficiently and less expensively during ongoing design, avoiding costly redesigns and change orders.

n. **Experienced agency staff.**

Metro staff, including project managers, the Procurement Department, and Office of Metro Attorney, has the expertise and substantial experience in the design-build alternative contracting method and have assisted in developing the alternative contracting method to be used in awarding and executing on this public improvement contract. Agency staff will also help negotiate, administer and enforce the terms of the public improvement contract.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4827 OF THE METRO COUNCIL ACTING AS THE METRO CONTRACT REVIEW BOARD, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE COMPETITIVE BIDDING PROCEDURES AND AUTHORIZING PROCUREMENT BY REQUEST FOR PROPOSALS FOR A DESIGN-BUILD APPROACH TO CONSTRUCTION OF THE WILLAMETTE FALLS RIVERWALK.

Date: August 17, 2017 Prepared by: Brian Moore, Parks & Natural Areas, Ext. 1761

BACKGROUND

On June 01, 2017, Metro Council, acting as the Local Contract Review Board, passed a resolution authorizing an exemption to the competitive bidding procedures and authorizing procurement by request for proposals for a Construction Management General Contractor for construction of the Willamette falls riverwalk. It was determined that a more integrated project delivery method will be more efficient and better use of public resources. Doing so will allow cost and time savings resulting from a clearer authority and decision making structure within the consulting team.

The intended procurement method remains a Request for Proposals based on qualifications and is now expanded to include a designer as part of the responding team.

This request is presented to ensure proper adherence to purchasing requirements. The resolution and attached findings describe the specialized nature of this technical and unique project. Based on these findings, staff believes that a value and experience based selection process (RFP) for design build is more appropriate than a traditional, RFB competitive bid (which looks solely at lowest bid price).

ANALYSIS/INFORMATION

1. **Known Opposition:** None known.
2. **Legal Antecedents:** Oregon Revised Statutes 279C.335; Metro Local Contract Review Board Rule 49-0600 through 49-0630
3. **Anticipated Effects:** Procurement process will be open and competitive, but items other than cost will be considered in the awarding of the contract. Increased use of MWESB subcontractors is anticipated.
4. **Budget Impacts:** The alternative procurement process offers safeguards for cost control of the project, by reducing change orders through integration of the construction management and design team and by aligning contract incentives for project delivery.

RECOMMENDED ACTION

Approve an exemption from competitive bidding, authorizing Metro to procure through an RFP process a Design Build Contract for the Phase I riverwalk project.

Agenda Item No. 5.1

Ordinance No. 17-1406, For the Purpose of Amending the
Urban Growth Boundary in the Vicinity of the City of
Sherwood Upon Application by the Sherwood School District

Ordinances (Second Read)

Metro Council Meeting
Thursday, August 17, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE URBAN) Ordinance No. 17-1406
GROWTH BOUNDARY IN THE VICINITY OF THE)
CITY OF SHERWOOD UPON APPLICATION BY) Introduced by Chief Operating Officer
THE SHERWOOD SCHOOL DISTRICT) Martha Bennett with the Concurrence of
) Council President Tom Hughes

WHEREAS, the Metro Urban Growth Management Functional Plan Title 14: Urban Growth Boundary provides a mechanism to amend the urban growth boundary (UGB) through a major amendment process for public facilities and other non-housing purposes; and

WHEREAS, the Sherwood School District filed an application for a major amendment pursuant to Metro Code Section 3.07.1430 to add approximately 82 acres to the UGB for the purpose of constructing a new high school to serve the Sherwood area; and

WHEREAS, the application was considered by a hearings officer appointed by Metro at public hearings in the City of Sherwood on May 24, 2017 and June 6, 2017; and

WHEREAS, on July 21, 2017 the hearings officer submitted to Metro a proposed order recommending approval of the application, together with findings of fact and conclusions of law in support of a decision by the Metro Council that the application satisfies the requirements of the Metro Code and applicable state law; and

WHEREAS, the Council considered the proposed order and testimony at a public hearing on August 10, 2017 under the procedural requirements of Metro Code Section 3.07.1430(u); now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The UGB is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, to add 82.3 acres to the UGB for development of a high school with sports fields and a roadway improvement, subject to the following three conditions of approval:
 - a. The property must be used for a public high school, associated accessory uses, and public transportation improvements consistent with the application for this UGB amendment.
 - b. The applicant must comply with the state Transportation Planning Rule (TPR) at the time the zoning is established on the subject property.
 - c. The City of Sherwood shall complete the requirements of Urban Growth Management Functional Plan Title 11, section 3.07.1120: Planning for Areas Added to the UGB, prior to development occurring.

2. The Findings of Fact and Conclusions of Law contained in the hearings officer's recommendation attached as Exhibit B and hereby incorporated into this ordinance, explain how this amendment to the UGB complies with applicable provisions of the Regional Framework Plan, Metro Code, and applicable statewide planning laws.
3. The Metro Council adopts as supplemental findings in support of its decision the legal memorandum dated August 15, 2017 attached as Exhibit C and hereby incorporated into this ordinance, which includes responses to issues raised at the public hearing by opponents of the application.

ADOPTED by the Metro Council this ____ day of August 2017.

Tom Hughes, Council President

Attest:

Approved as to form:

Nellie Papsdorf, Recording Secretary

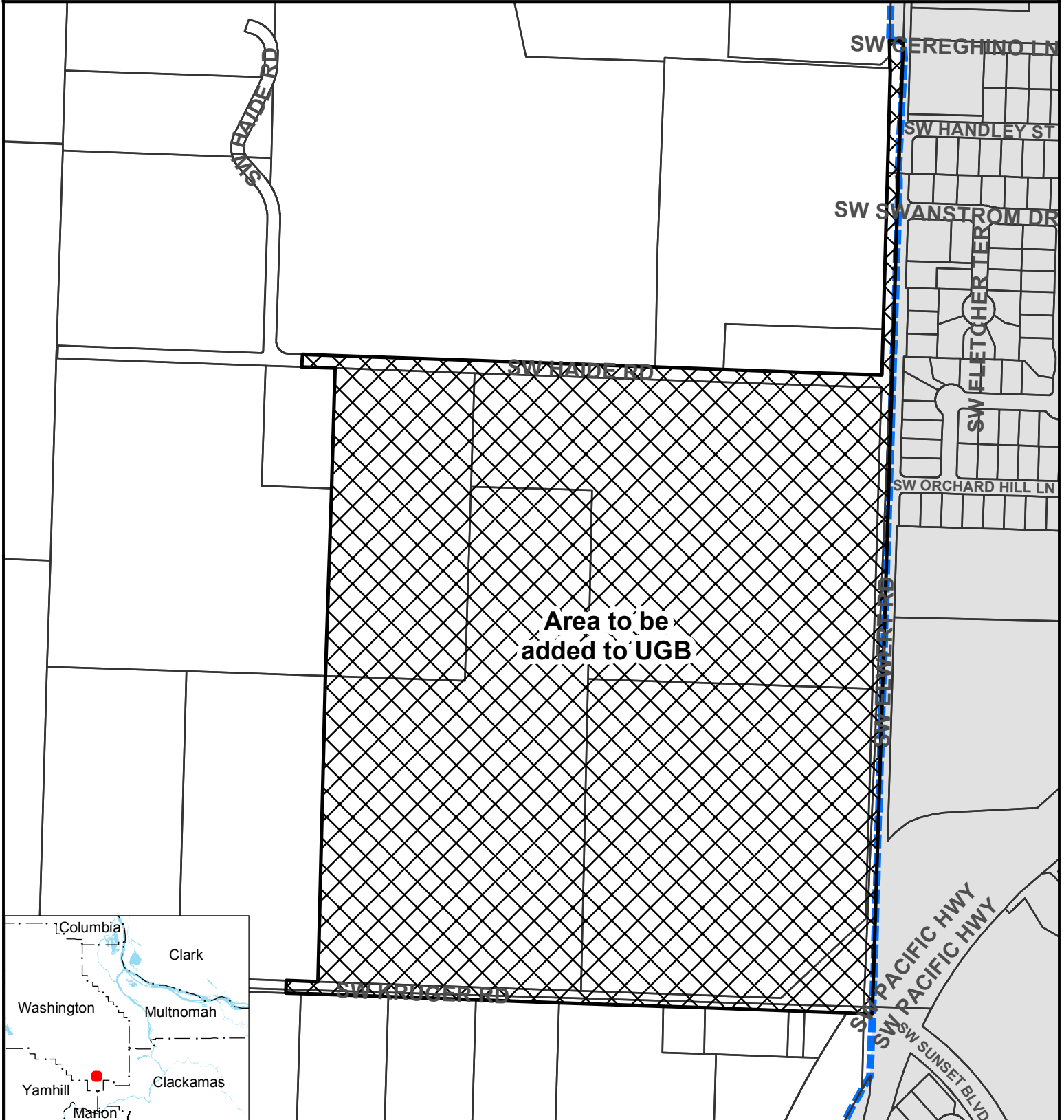
Alison R. Kean, Metro Attorney

Case No. 17-02

2S2W25, 2S2W36

Urban Growth Boundary Major Amendment




Washington County



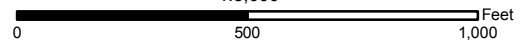
Case No. 17-02 UGB Major Amendment



Research Center
 600 NE Grand Ave
 Portland, OR 97232-2736
 (503) 797-1742
<http://www.oregonmetro.gov/drc>

-  Area to be annexed
-  Taxlots
-  Urban growth boundary

1:5,000



The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

Exhibit B

**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

**ANDREW H. STAMP, P.C.
KRUSE-MERCANTILE PROFESSIONAL OFFICES, SUITE 16
4248 GALEWOOD STREET
PORTLAND, OR 97035**

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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

Andrew H. Stamp

AHS:ahs

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

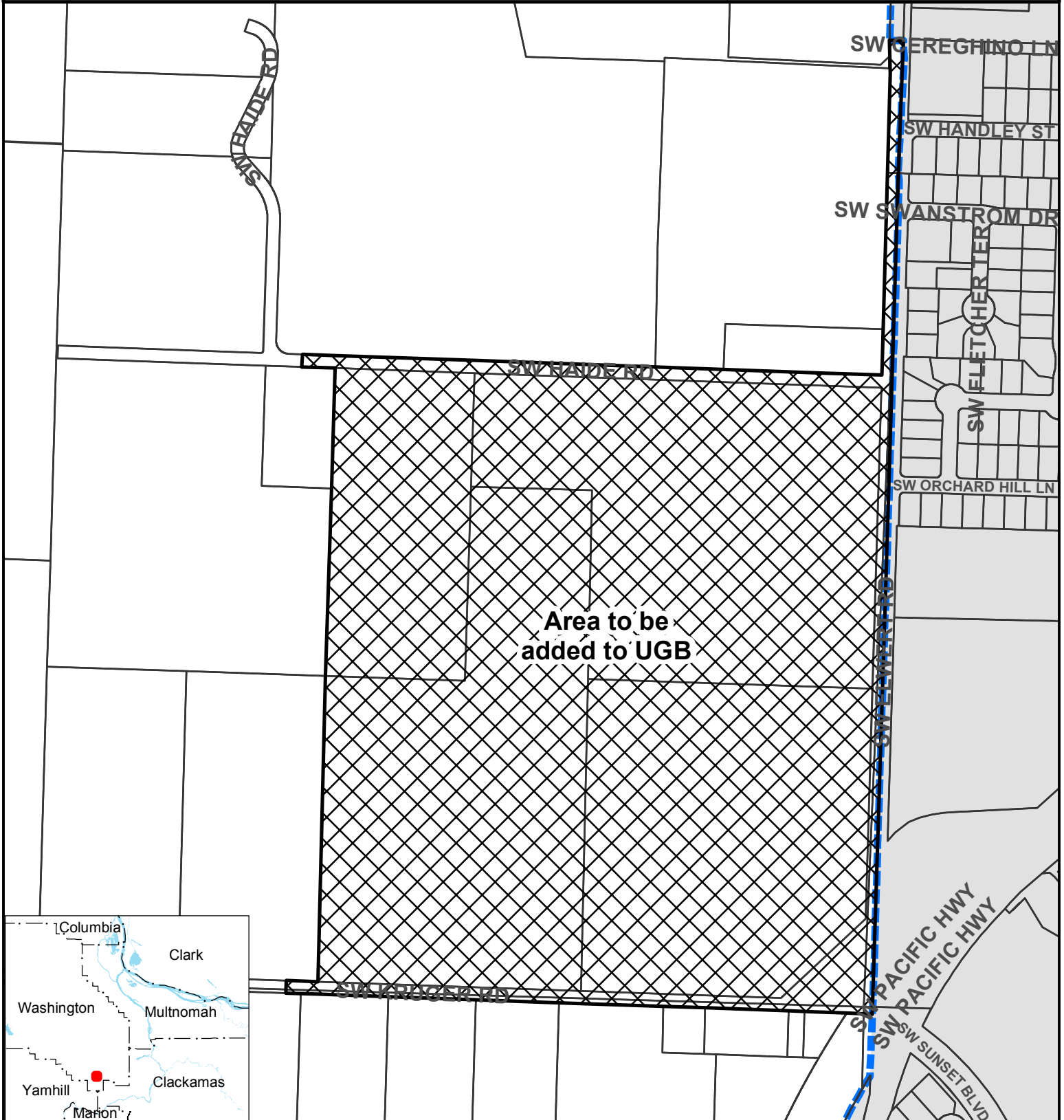
Attachment 8: Sherwood West Alternative High School Sites, Figures 9-14 of petition

Case No. 17-02

2S2W25, 2S2W36

Urban Growth Boundary Major Amendment




Washington County



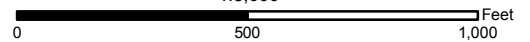
Case No. 17-02 UGB Major Amendment



Research Center
 600 NE Grand Ave
 Portland, OR 97232-2736
 (503) 797-1742
<http://www.oregonmetro.gov/drc>

-  Area to be annexed
-  Taxlots
-  Urban growth boundary

1:5,000



The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

Attachment 2

Current Enrollment and Main School Building Capacities

Existing Conditions	Enrollment March 1, 2017	January 2016 Main Building Capacity (without portables) (DOWA Architects)	% Capacity
Elementary School			
Archer Glen	548	500	110%
Edy Ridge	572	575	99%
Hopkins	529	625	85%
Middleton	599	575	104%
<i>Subtotal</i>	2248	2275	99%
Middle School			
Laurel Ridge	478	620	77%
Sherwood Middle	712	940	76%
<i>Subtotal</i>	1190	1560	76%
High School			
Sherwood High School	1689	1550	109%

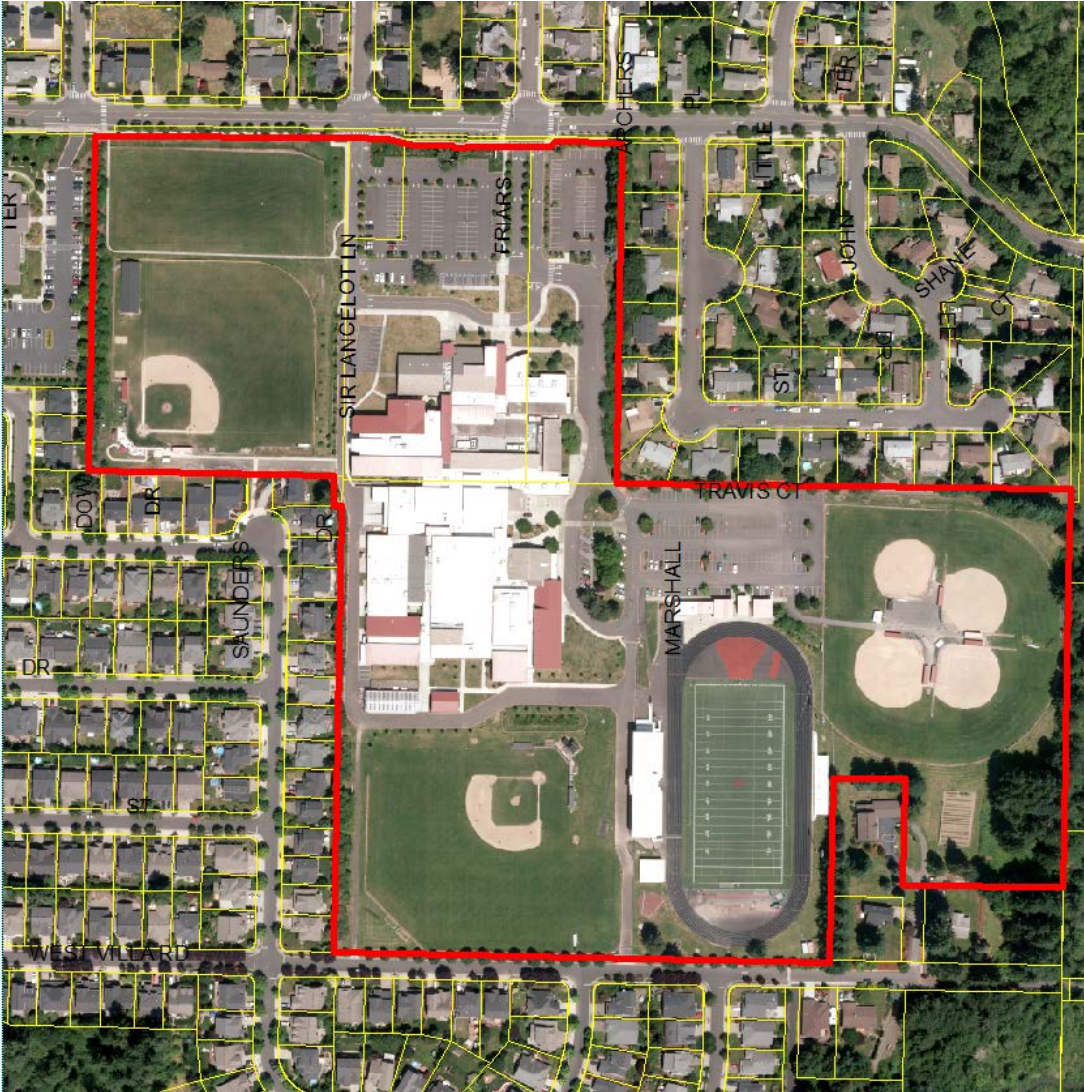
Attachment 3

Projected Enrollment (No Build)

Future Capacity (No-Build)	10-year Projection - Year 2025 (Davis Demographics)	January 2016 Main Building Capacity (without portables) (DOWA)	% Capacity
Elementary School			
Archer Glen	704.8	500	141%
Edy Ridge	505.8	575	88%
Hopkins	750.2	525	143%
Middleton	633.2	575	110%
<i>Subtotal</i>	<i>2594.0</i>	<i>2175</i>	<i>119%</i>
Middle School			
Laurel Ridge	554.1	620	89%
Sherwood Middle	1069.9	865	124%
<i>Subtotal</i>	<i>1624.0</i>	<i>1485</i>	<i>109%</i>
High School			
Sherwood High School	2181.9	1550	141%

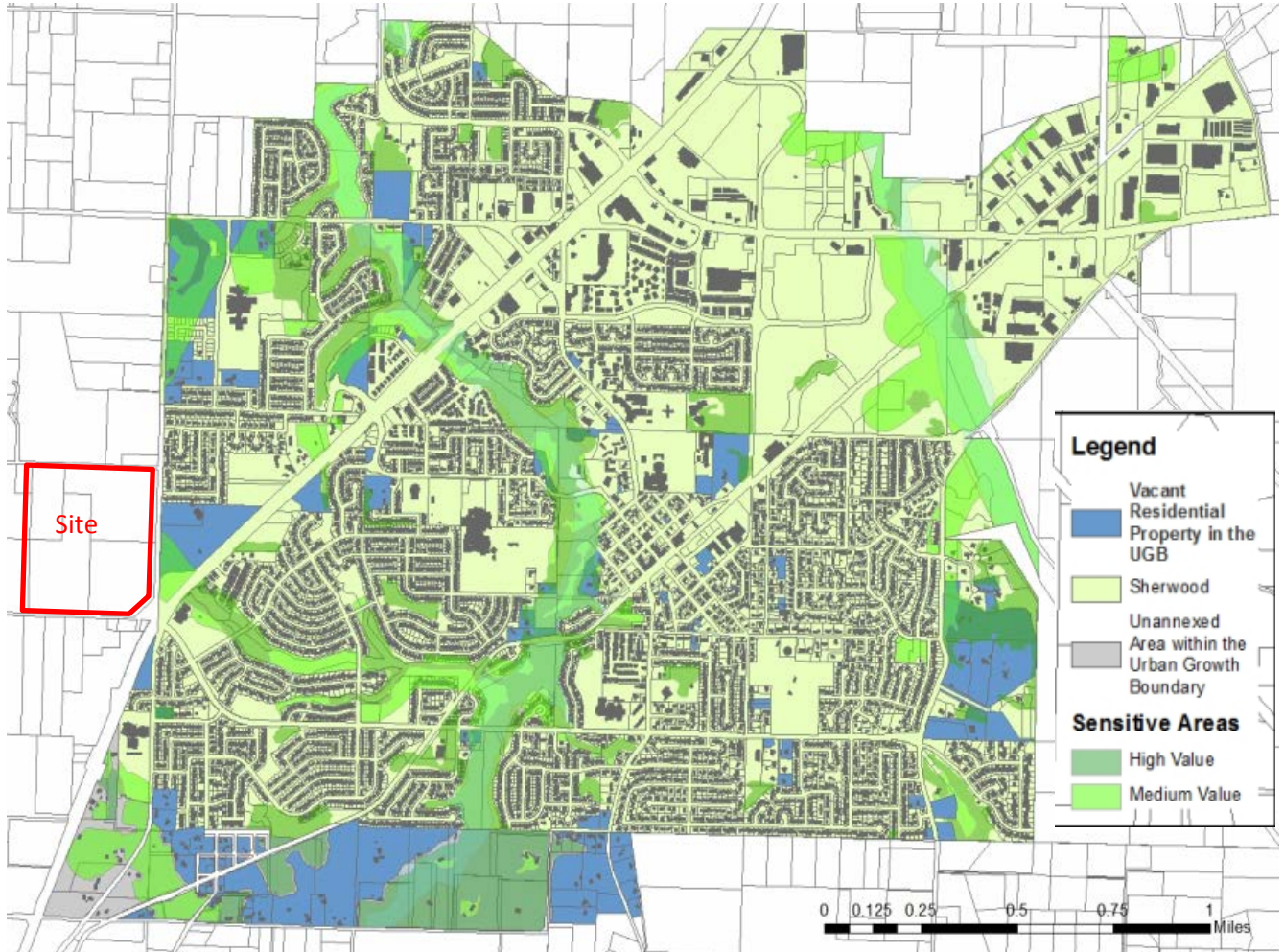
Attachment 4

Existing High School Campus



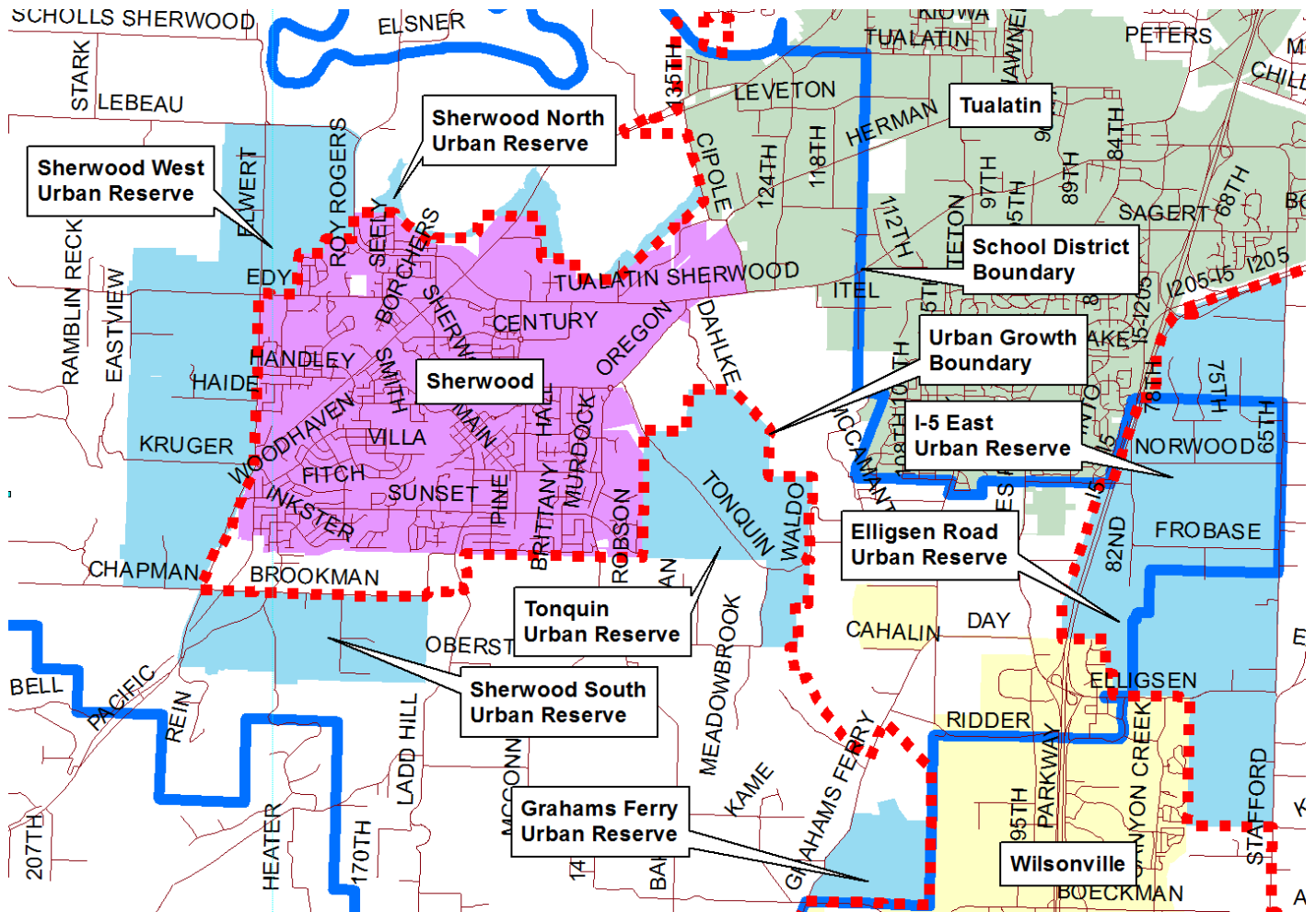
Attachment 5

2014 Sherwood Residential Buildable Lands Inventory Map



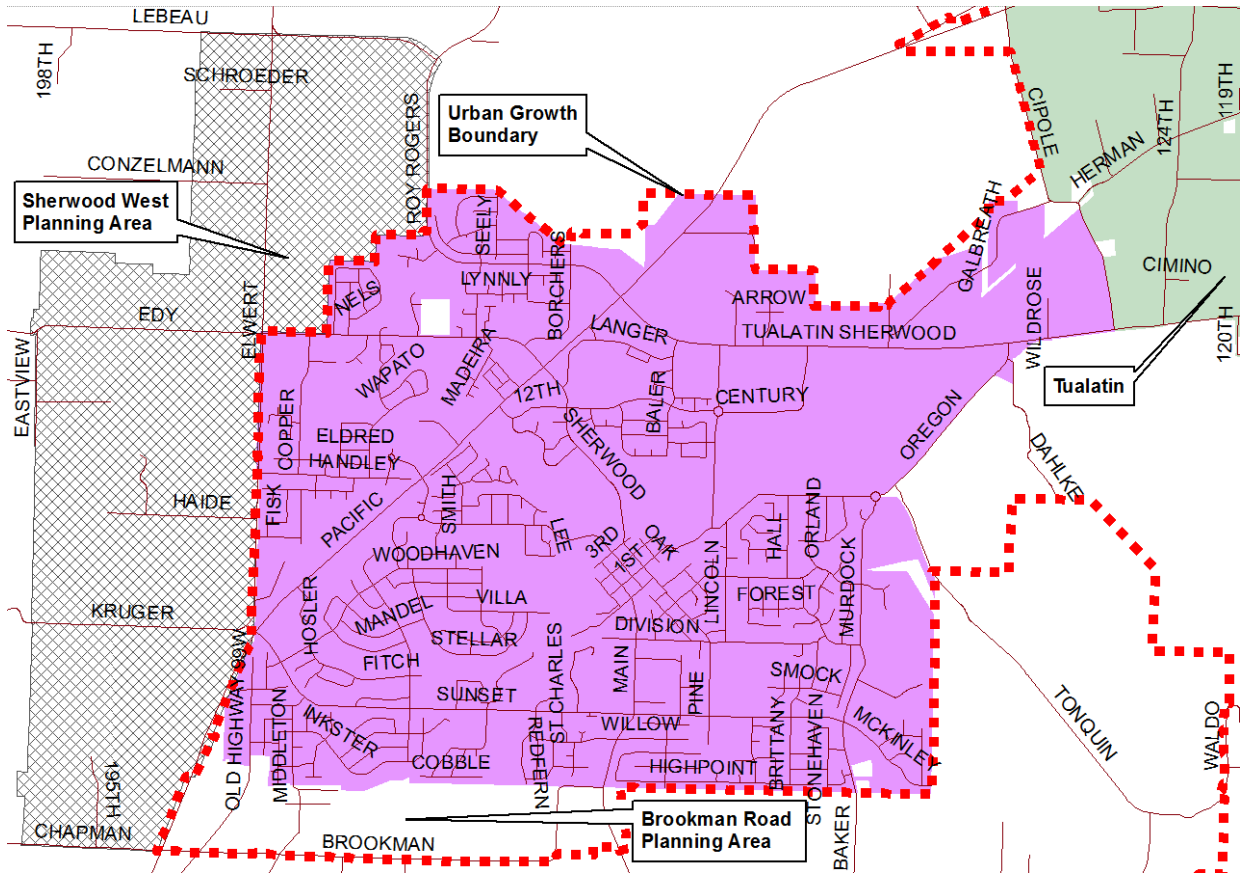
Attachment 6

Urban Reserve Areas within Sherwood School District Boundary



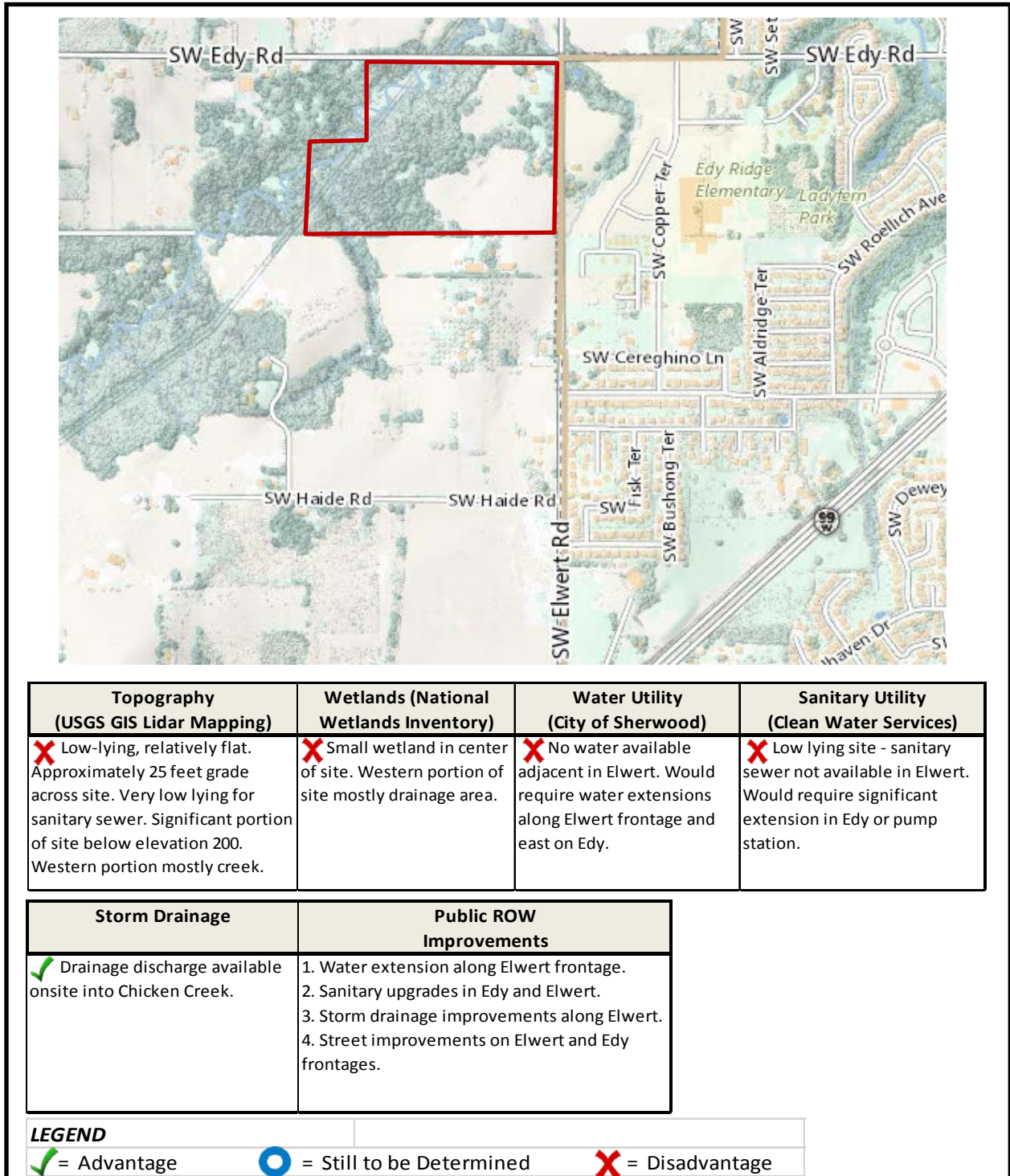
Attachment 7

Sherwood West Planning Area



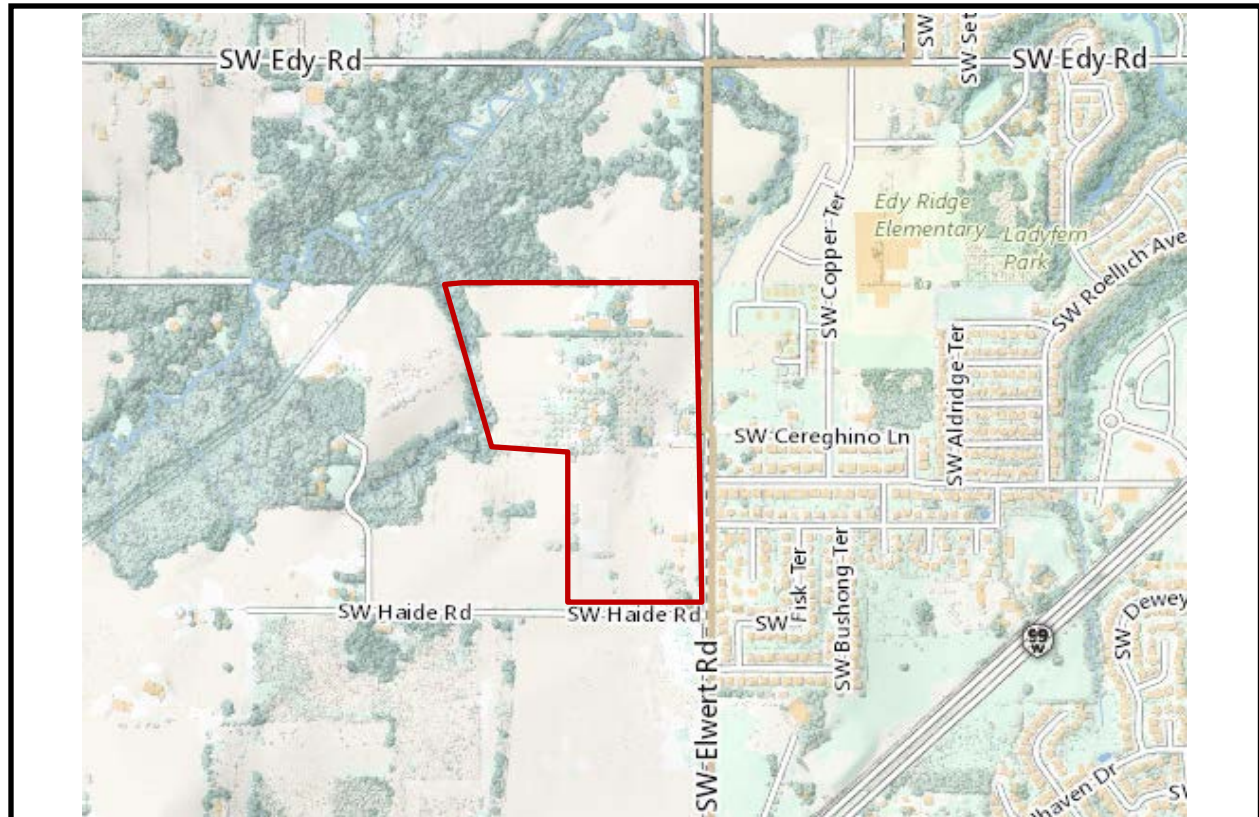
Attachment 8

Alternative High School Site A (SW Corner of Edy & Elwert Road)



Attachment 8 continued

Alternate High School Site B
(NW corner of Haide & Elwert)



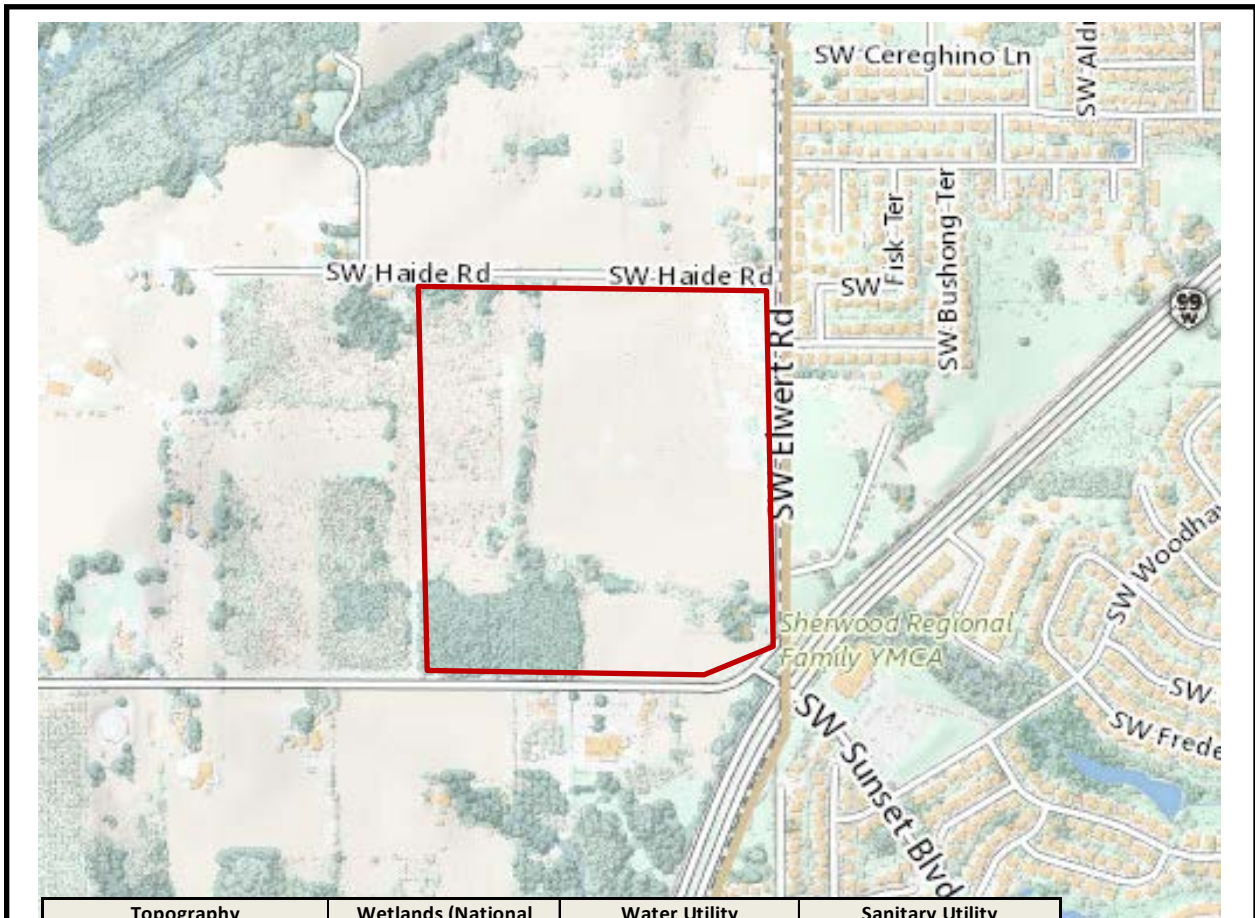
Topography (USGS GIS Lidar Mapping)	Wetlands (National Wetlands Inventory)	Water Utility (City of Sherwood)	Sanitary Utility (Clean Water Services)
<p>ⓘ Significant topographic ridge running N-S through middle of site. Site slopes both east and west. Approximately 50-60 feet grade change. Significant grading for fields.</p>	<p>✓ No wetlands shown.</p>	<p>✓ 12" City of Sherwood public water main available in Elwert.</p>	<p>✓ 15" sanitary sewer and manhole available in Elwert at Daybreak subdivision. (Confirmed with City of Sherwood). City would likely still require public sanitary improvement in Elwert.</p>

Storm Drainage	Public ROW Improvements
<p>✓ North-south ridge running through site. West portion could drain directly to Chicken Creek. East portion drains to public improvements and across road to Chicken Creek.</p>	<p>1. Although not needed for site development, sanitary and storm sewer improvements likely needed in Elwert frontage as part of public frontage improvements. 2. Street improvements on Elwert & Haide frontages.</p>

LEGEND		
✓ = Advantage	ⓘ = Still to be Determined	✗ = Disadvantage

Attachment 8 continued

Alternate High School Site C (Preferred Site)
(NW Corner Krugger & Elwert)



Topography (USGS GIS Lidar Mapping)	Wetlands (National Wetlands Inventory)	Water Utility (City of Sherwood)	Sanitary Utility (Clean Water Services)
<p>✓ Entire site slopes down to the east toward Elwert. Relatively gentle topography. Approx. 40 feet grade change across entire site. Note: shallow valley and ridge complicates storm drainage.</p>	<p>✓ No wetlands shown.</p>	<p>✓ 12" City of Sherwood public water main in Elwert; also 18" public water main in Kruger.</p>	<p>✓ Feasible to extend 15" sanitary sewer main south on Elwert. Would require approximate 2,000 linear foot public extension. (Confirmed with City of Sherwood).</p>

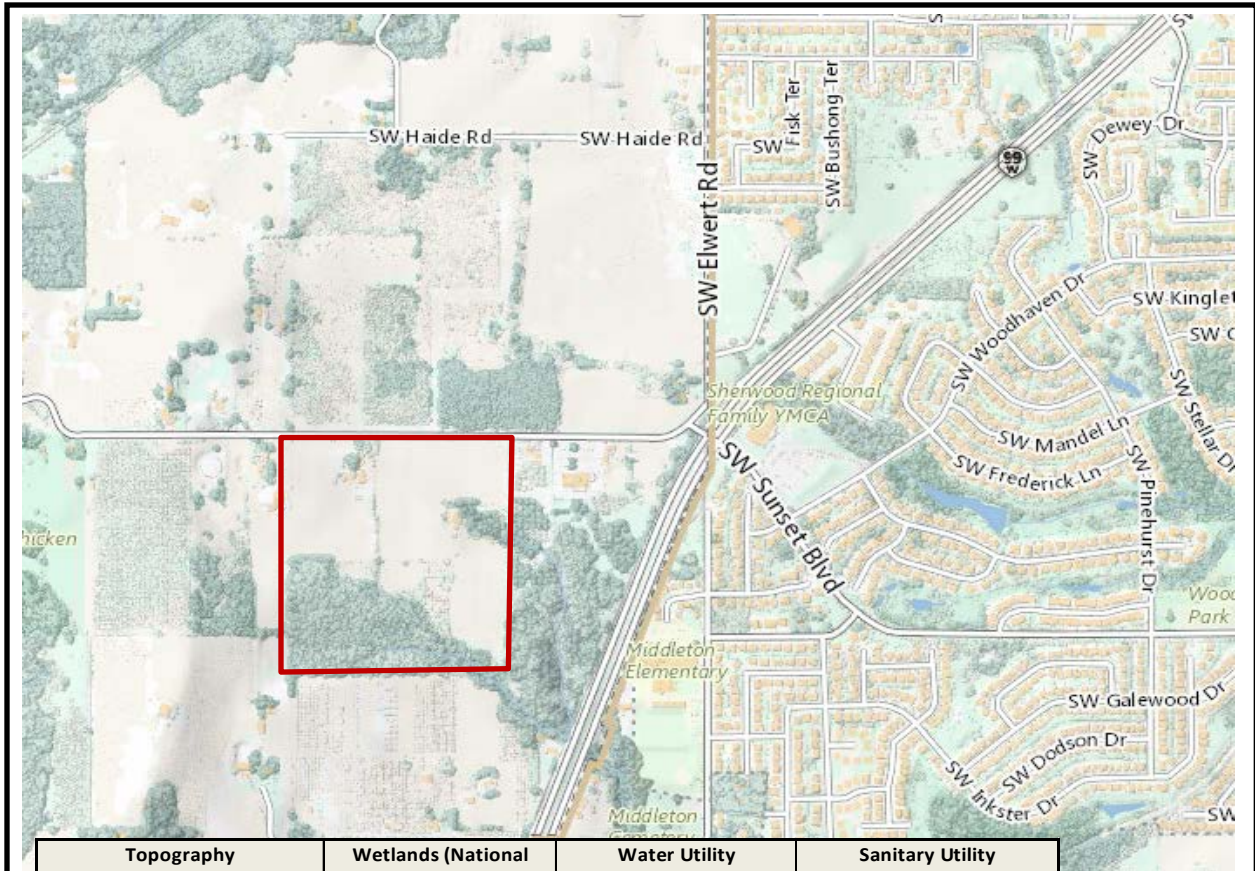
Storm Drainage	Public ROW Improvements
<p>⊙ East-west ridge running through site. North portion could require long public storm extension to Chicken Creek. South portion would need to drain to new City intersection improvements at Elwert & Kruger intersection.</p>	<p>1. Sanitary extension in Elwert. 2. Storm drainage improvements along Elwert north to Chicken Creek. 3. Street improvements on Elwert frontage. 4. Need to consult with CWS to work out storm discharge.</p>

LEGEND

✓ = Advantage ⊙ = Still to be Determined ✗ = Disadvantage

Attachment 8 continued

Alternative High School Site D
(South Side of Kruger Road)

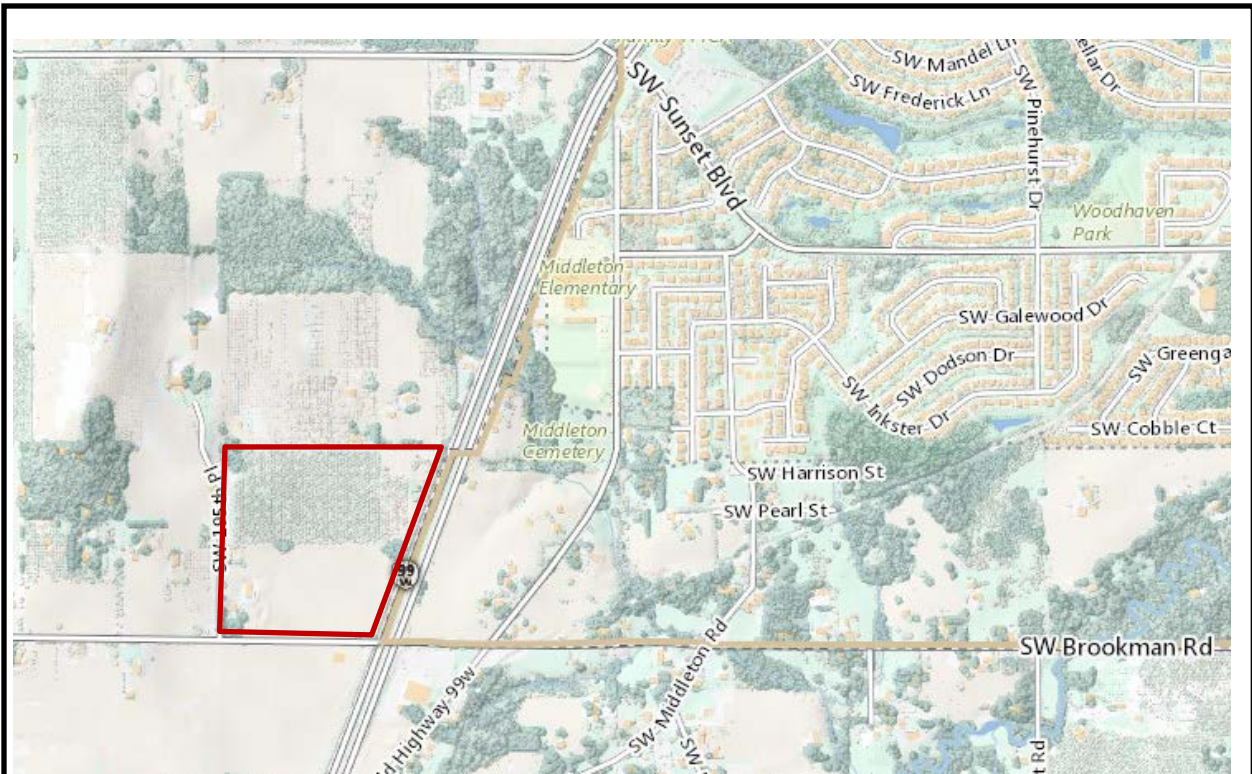


Topography (USGS GIS Lidar Mapping)	Wetlands (National Wetlands Inventory)	Water Utility (City of Sherwood)	Sanitary Utility (Clean Water Services)
<p>● Entire site slopes down to the east toward private property. Moderate topography. Approximately 50-60 feet grade change.</p>	<p>● No wetlands shown, but creek drainage runs through south portion of site.</p>	<p>✓ 18" public water main in Kruger.</p>	<p>✗ No sanitary sewer services available. Significant sewer extension and public system improvements necessary.</p>

Storm Drainage	Public ROW Improvements
<p>✗ No established public storm drainage systems in vicinity. Storm discharge would need to be worked out with the City and CWS along 99W. Storm extension likely required.</p>	<p>1. Sanitary sewer extension (exact route to be determined). 2. Storm drainage extension (exact route to be determined). 3. Street improvements on Kruger. 4. Offsite street improvements likely required.</p>

Attachment 8 continued

Alternative High School Site E
(NW Corner Chapman & Pacific Highway)



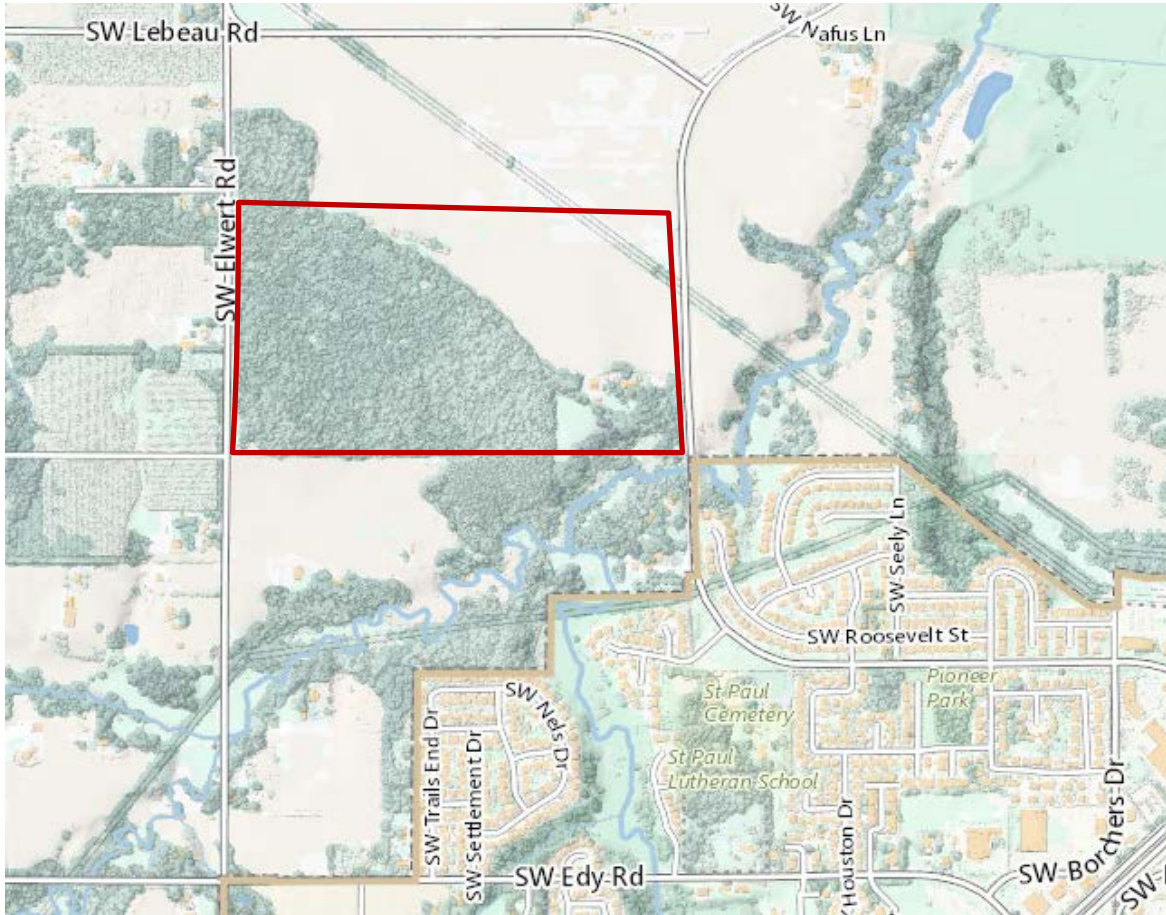
Topography (USGS GIS Lidar Mapping)	Wetlands (National Wetlands Inventory)	Water Utility (City of Sherwood)	Sanitary Utility (Clean Water Services)
<p>○ Entire site slopes down to the east toward Pacific Highway. Slightly steeper topography. Approximately 75 feet grade change. Would need to evaluate for fields.</p>	<p>✓ No wetlands shown.</p>	<p>✗ No public water service in immediate vicinity of site. Need to extend water south from Kruger or under Pacific Highway.</p>	<p>✗ No sanitary sewer services available. Significant sewer extension and public system improvements necessary.</p>

Storm Drainage	Public ROW Improvements
<p>✗ No established public storm drainage systems in vicinity. Storm discharge would need to be worked out with the City and CWS along 99W. Storm extension likely required.</p>	<p>1. Sanitary sewer extension (exact route to be determined). 2. Storm drainage extension (exact route to be determined). 3. Street improvements on Chapman.</p>

LEGEND		
✓ = Advantage	○ = Still to be Determined	✗ = Disadvantage

Attachment 8 continued

Alternate High School Site F
(North Elwert)



Topography (USGS GIS Lidar Mapping)	Wetlands (National Wetlands Inventory)	Water Utility (City of Sherwood)	Sanitary Utility (Clean Water Services)
○ Very flat site, but complicated by power lines and drainages running through.	✗ Drainages and potential wetlands running through site.	✗ Significant improvements to public water system would be needed to get adequate fire water supply.	✓ Sanitary sewer available along Chicken Creek.

Storm Drainage	Public ROW Improvements
✓ Storm drainage available into Chicken Creek drainages.	1. Public water line extensions. 2. Street improvements along Elwert.

LEGEND		
✓ = Advantage	○ = Still to be Determined	✗ = Disadvantage

Memo

Date: August 15, 2017
To: Metro Council
From: Roger Alfred, Senior Assistant Attorney
Subject: Sherwood School District UGB Amendment; Metro Ordinance No. 17-1406
Responses to Issues Raised at Public Hearing

This memorandum provides responses to issues raised in the letter submitted by attorney Jennifer Bragar on behalf of Byers Properties LLC (“Byers”) at the public hearing before the Metro Council on August 10, 2017. For the reasons set forth below, the Office of Metro Attorney concludes that the arguments are without merit, and the Metro Council may adopt the hearings officer’s recommendation of approval.

Most of the issues raised in the Byers letter have been considered and addressed in the hearings officer’s decision. Where that is the case, this memo refers to the appropriate pages of that decision.

1. This UGB amendment process is quasi-judicial, not legislative

Byers first contends that Metro is making a legislative decision, rather than a quasi-judicial decision. This issue is thoroughly analyzed at pages 13-16 of the hearings officer’s decision, where he correctly reaches the fairly obvious conclusion that this is a quasi-judicial process. The hallmark of a quasi-judicial land use process is that it is initiated by an application, which the local government is then obligated to either approve or deny. Here, the “major amendment” process is initiated when an applicant files a request for a UGB amendment with Metro. Metro then appoints a hearings officer, who holds a public hearing that is governed by the quasi-judicial procedures set forth in Oregon statute (ORS 197.763). It is worth noting that, during the hearing before the hearings officer, Byers invoked the quasi-judicial procedures in that statute by requesting that the record be held open for additional evidence, a request that was granted by the hearings officer. Metro’s final decision on the application is based on applying preexisting criteria to the facts of the application, and it impacts a discrete parcel of property, rather than a broad population. The process is clearly quasi-judicial under the relevant case law.

2. This UGB amendment does not involve or implicate housing

The reason Byers contends this process is legislative is in order to implicate ORS 197.296(2), which is the statute that directs Metro to ensure there is a 20-year supply of housing inside the UGB when it conducts the 6-year “regular cycle” urban growth management process (which is a legislative process, not quasi-judicial). As correctly concluded by the hearings officer, the arguments raised by Byers regarding the decision being legislative are a “red herring,” because even if this UGB major amendment process was legislative, ORS 197.296(2) would still not apply because the express purpose of the major amendment process is to provide land for non-housing uses. There is no legal,

or rational, reason why Metro would undertake a regionwide housing need analysis as part of a decision to expand the UGB for a non-housing use. The fact that this UGB amendment process is governed by a different statutory section, and does not implicate housing need under ORS 197.296, is analyzed in detail by the hearings officer at pages 16-24 of his decision, and is also addressed in my memorandum to the hearings officer dated June 9, 2017.

Byers also argues, for the first time, that the ESEE analysis is inadequate because it fails to address social consequences arising out of “the loss of housing land” resulting from approving this UGB expansion. Byers is correct that this issue is not addressed in the hearings officer’s analysis, but that is because Byers failed to raise this issue below. Under Metro Code, this proceeding before the Metro Council is “on the record” of what was before the hearings officer. Specifically, section 3.07.1430(u) of the Metro Code provides: “Argument must be based upon the record of those [hearings officer] proceedings.” Accordingly, participants before the Metro Council may not introduce new evidence or issues beyond what was presented to the hearings officer. *See DLCD v. Tillamook County*, 34 Or LUBA 586, 591 (1998) (noting that where a hearing is held on the record, “petitioner could not have raised a new issue at that stage of the proceeding.”) Allowing parties to raise new issues before the Metro Council could trigger a need to respond with new evidence, which is not permitted in an “on the record” process.

Adoption of this memorandum by the Metro Council in support of approving the application is an express interpretation by the Council of 3.07.1430(u) to mean that any issues not raised before the hearings officer are waived. This interpretation is consistent with the meaning of “on the record” expressed in the statutes governing LUBA’s scope of review (ORS 197.835(2)(a) and (3)), which prohibit new issues from being raised on appeal.

Even if this issue had not been waived by Byers, the hearings officer expressly rejected Byers’ argument below that approval of this UGB amendment results in a “loss of housing land.” The land being added to the UGB is currently zoned for agricultural use, not housing. Accordingly there are no social impacts arising out of a loss of land for housing.

3. The application is based on a demonstrated need for a high school, not for parks

Byers contends that the application includes a request for a park use, and is deficient because it did not consider “alternatives to the park use separate from collocation with the high school.” Like the ESEE argument addressed above, Byers did not raise this issue in the proceedings before the hearings officer, and has therefore waived the ability to raise it before the Metro Council.

In the event this issue was not waived, on the merits Byers mischaracterizes the nature of the UGB amendment application. The application is for a high school use, a use that necessarily and customarily includes active play space, including a number of ball fields, and other sports facilities, such as a track and tennis courts. This is depicted on the concept plan for the high school, which is included in the application, and explained in the application narrative and in the applicant's

testimony before the hearings officer. The UGB amendment application is not for park land, and the references to the future shared use of the new high school's active ball fields should not be construed to that effect. The nature and purpose of the application is not changed by the facts that (1) the city does not generally provide ball fields or other active sports facilities, and (2) the city and the school district have an IGA that generally allows the community to use the District's ball fields and other active sports facilities when those fields and facilities are not in use by the school district. As set forth in the record, the property proposed for the relocated high school will be fully utilized by the needs of the high school, and the larger campus of the new high school (when compared to the existing high school) will allow for the full range of facilities normally provided at a comprehensive high school. The availability of more sports fields that can be shared with the community is merely an additional benefit arising out of the agreement between the school district and the city.

On this point, one aspect of the hearings officer's findings should be clarified. At page 29 the hearings officer includes a finding that the applicant has shown there is a "demonstrated land need to accommodate both school and park services." This is a mis-statement by the hearings officer, as the school district's application is based on the need for a new school, and not on a need to provide park services.

4. The application is "consistent with" Metro's 20-year population range forecast

One criterion for a UGB expansion under the Metro Code is that the application must show a need to accommodate future urban population "consistent with a 20-year population range forecast." Byers argued below, and argues again to the Council, that this requires Metro to undertake a new regionwide 20-year population forecast, and the school district's 10-year school population forecast is therefore deficient. The hearings officer addressed this argument at page 26, concluding that the code requires the applicant to show a need that is "consistent with" a 20-year forecast, which "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."

In support of this argument Byers references materials attached to their August 10, 2017 letter to the Metro Council regarding a 2016 study of race and ethnicity impacts. This is a new document that was not part of the evidentiary record before the hearings officer and therefore cannot be considered by the Metro Council in this proceeding.

5. Public facilities and services are available to serve the proposed site, and the applicant must comply with the TPR upon rezoning

As part of the consideration of alternative urban reserves areas for potential expansion of the UGB, one location-related factor that must be considered is the "orderly and economic provision of public facilities and services." This issue is analyzed and addressed at pages 43-45 of the hearings officer's decision. The hearings officer also correctly notes, at page 35, that these are locational "factors" that

must be *considered* by Metro, and are not criteria that must be satisfied: “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 a reliance on any one factor.”

Nonetheless, Byers contends that this factor is a criterion that must be satisfied, arguing that the applicant must show whether the proposal will impact availability of public facilities. Byers then contends that the applicant’s traffic impact analysis does not demonstrate that nearby intersections will meet applicable level of service standards.

The issue raised by Byers is not relevant to the applicable inquiry for purposes of a UGB expansion, which is a much more general question of whether public facilities are available to serve the site. Questions related to traffic impacts from a new school on existing and planned transportation facilities in the area will need to be addressed as part of the comprehensive plan and zoning map amendments that will be necessary to develop a school, which will trigger application of the state Transportation Planning Rule (TPR). The ordinance proposed for adoption by the Metro Council includes the hearings officer’s recommended condition of approval requiring application of the TPR at the time zoning for the school is being adopted.

6. Metro has satisfied the coordination requirement

Byers contends that Metro failed to coordinate with affected local governments as required by ORS 195.025. This issue was not raised before the hearings officer and is therefore waived. In the event the issue is not waived, the hearings officer adopted the following findings regarding the coordination requirement at page 58 of his decision:

“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.”

The record includes evidence that Metro fulfilled its coordination obligation by providing written notice to all cities and counties inside the UGB regarding the proposed UGB amendment, as well as to ODOT and relevant service providers. The City of Sherwood supports approval of the application and included the following comments in its service provider letter dated March 11, 2017:

“The Sherwood West preliminary concept plan was developed through community input and had community and Council support. The voters within the Sherwood School District approved a bond for the new high school. While there will be challenges to building a new school within the Sherwood West area, and coordination between the District, City, County and ODOT will be

required, the District is committed to ensuring that it serves as a great cornerstone to the future growth in the area.”

In response to questions at the public hearing from members of the Metro Council regarding coordination with the City of Sherwood, the school district representatives verbally stated that the district is currently working with the city on Title 11 concept planning and that district representatives attended a city planning commission meeting earlier in the week where they were told that the planning effort is on the right track. These are evidentiary statements that were not included in the record before the hearings officer and therefore will not be considered or relied upon by the Metro Council in its final decision.

Finally, Byers suggests that the school district has not satisfied a coordination obligation, but cites no authority regarding why or how the school district is obligated to coordinate as part of its application. The coordination requirement applies to Metro through the major amendment process and ORS 195.025, and not to the school district. Byers also states that comments received from Washington County “suggest that coordination is incomplete as the management of transportation systems has not been finalized.” It is not entirely clear what this means; however, there is no requirement, coordination-related or otherwise, that management of transportation systems must be “finalized” at the point of a UGB amendment. The Metro Ordinance includes a condition of approval requiring the city to finalize its concept plan for the area prior to development occurring on the site, which will include coordination with the county regarding transportation planning. Additional transportation planning will occur at the time of annexation by the city and rezoning of the property, at which point the TPR must be applied to ensure that transportation facilities serving the new school will be adequate.

All coordination obligations have been satisfied.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 17-1406, FOR THE PURPOSE OF AMENDING THE URBAN GROWTH BOUNDARY IN THE VICINITY OF THE CITY OF SHERWOOD UPON APPLICATION BY THE SHERWOOD SCHOOL DISTRICT

Date: July 27, 2017

Prepared by: Tim O'Brien
Principal Regional Planner

PROPOSED ACTION

Adoption of Ordinance 17-1406, approving *UGB Case 17-02: Sherwood School District*, a major amendment to the urban growth boundary (UGB). The proposed amendment area is shown on Attachment 1. Staff recommends approval of the ordinance as described below, which would add approximately 82 acres to the UGB west of Sherwood for a high school campus and sports fields. In addition a portion of the land will be used for the construction of a roundabout at SW Elwert and SW Kruger Roads.

SUMMARY OF PROCESS

The proposed amendment is a “major amendment” to the UGB under the Metro Code, which is a special process reserved for requests to include land for public facilities and other non-housing needs that cannot wait until the next UGB cycle. An application for a major amendment is first considered at a public hearing before a hearings officer appointed by Metro. After receiving testimony from interested parties, the hearings officer prepares a proposed order, with findings of fact and conclusions of law recommending approval or denial of the application, and forwards the recommendation to the Metro Council along with the record of the hearing. The Metro Council must consider the hearings officer’s report and recommendation at an “on the record” public hearing where individuals who participated in the proceeding before the hearings officer are allowed to submit oral and written argument. The argument must be based on the evidence that was provided to the hearings officer, and no new evidence may be submitted to the Metro Council. If the Council decides to approve the application and expand the UGB, the Council must adopt an ordinance within 15 days after holding a public hearing.

BACKGROUND AND ANALYSIS

Proposal Description:

The Sherwood School District filed an application for an 80-acre amendment to the UGB for a high school campus and sports fields. The site consists of four tax lots located within unincorporated Washington County on the west side of SW Elwert Road, between SW Haide Road and SW Kruger Road, immediately west of the City of Sherwood. The site has frontage on all three roads, is zoned Agriculture and Forest (AF-20) and is located within Sherwood West Urban Reserve 5B. The adjacent properties to the north, south and west are also within Urban Reserve 5B and contain rural residences with limited agriculture and a church to the south, wooded lots and rural residences to the west and open fields and rural residences to the north. The subject 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 SW Elwert and SW Kruger Road roundabout improvement. 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.

The Sherwood School 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 1990s and early 2000s 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.

Public Hearing before the Hearings Officer

The hearings officer, Andrew H. Stamp, conducted a public hearing at the Sherwood Police Department Community Room on May 24, 2017. Metro staff recommended approval of the application. Six people testified at the hearing, five in favor of the application and one against the application. The hearings officer continued the hearing to June 13, 2017 in response to a procedural question. Three people testified at the June 13th hearing, all in opposition to the application, including one who had also testified at the May 24th hearing. The hearings officer granted a request to keep the record open for ten days, followed by additional time for rebuttal by participants and final argument by the applicant; the record closed on July 7, 2017.

The primary opponent of the application is Byers Properties, LLC, which is the entity that owns one of the parcels of property to be included in the proposed expansion. Byers is currently involved in condemnation proceedings with the Sherwood School District regarding acquisition of the property for public use. Byers raised numerous legal issues in the proceedings before the hearings officer, all of which were ultimately rejected in the final order and recommendation to the Metro Council.

Hearings Officer Recommendation and Proposed Findings

On July 21, 2017 the hearings officer submitted a proposed order recommending approval of Case 17-02, based upon the findings and conclusions in his report. The hearings officer included two conditions of approval in his recommendation:

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

A hearing on the recommendation before the Metro Council is set for August 10, 2017. All parties to the case were notified in writing of the Council hearing date and the notice was also posted on Metro's website. In addition, the hearings officer's proposed order was made available for review by all parties.

Record ([Click here to view record](#))

Sherwood School District Application, dated March 14, 2017, with supplemental information dated March 23, 2017

Letter from attorney Jennifer Bragar of Tomasi Salyer Martin on behalf of Byers Properties LLC, dated May 22, 2017

Presentation by Sherwood School District dated May 24, 2017

Sherwood West Preliminary Concept Plan (12/08/15) submitted by applicant on May 24, 2017
Letter from hearings officer Andrew Stamp dated May 25, 2017
Email from Gayle Ostgard dated May 25, 2017
Sherwood West Preliminary Concept Plan Appendices, submitted by applicant on June 1, 2017
Sherwood High School UGB Expansion Transportation Study, submitted by applicant on June 1, 2017
Letter from attorney Jennifer Bragar on behalf of Byers Properties LLC, dated June 6, 2017
Letter from attorney Kelly Hossaini of Miller Nash LLP on behalf of the Sherwood School District, dated June 8, 2017
Metro Staff memorandum, dated June 9, 2017
Letter from attorney Kelly Hossaini on behalf of the Sherwood School District dated June 13, 2017
Written testimony from Carolyn Mcbee and Karen Labahn dated June 13, 2017
Email from Carolyn Mcbee and Karen Labahn dated June 21, 2017
Letter from attorney Jennifer Bragar on behalf of Byers Properties LLC, dated June 23, 2017
Metro Staff memorandum, dated June 23, 2017
Letter from attorney Jennifer Bragar on behalf of Byers Properties LLC, dated June 30, 2017
2014 Metro Urban Growth Report, submitted June 30, 2017
Memo from Mark Wharry, KPFF Consulting Engineers, dated June 30, 2017
Letter from Metro attorney Roger Alfred to hearings officer Andrew Stamp dated June 30, 2017
Memo from DKS Associates dated June 28, 2017
Letter from attorney Kelly Hossaini on behalf of Sherwood School District, dated July 7, 2017

SUMMARY/OPTIONS

According to Metro Code 2.05.045(b), the Council may either:

- Adopt Ordinance 17-1406 to approve *Case 17-02: Sherwood School District* based on the findings of fact and conclusions of law in the hearings officer's order. Staff recommends this option.
- Vote in favor of adopting Ordinance 17-1406 to approve *Case 17-02: Sherwood School District* based on revised findings of fact and conclusions of law to be prepared by Metro staff.
- Remand the proceeding to the Hearings Officer for further consideration.
- Vote to adopt a Resolution entering an order to deny *Case 17-02: Sherwood School District* based on revised findings of fact and conclusions of law to be prepared by Metro staff.

In addition, pursuant to Code Section 3.07.1455, the Council may establish conditions of approval it deems necessary to ensure the addition of land complies with state planning laws and the Regional Framework Plan. Metro staff recommends the Council include the following three conditions of approval, the first two of which were recommended by the hearings officer:

1. The property must be used for a public high school, associated accessory uses, and public transportation improvements consistent with the application for this Major Amendment.
2. The applicant must comply with the state Transportation Planning Rule (TPR) at the time the zoning is established on the subject property.
3. The City of Sherwood shall complete the requirements of Urban Growth Management Functional Plan Title 11, section 3.07.1120: Planning for Areas Added to the UGB, prior to development occurring.

INFORMATION

Known Opposition: Attorney Jennifer Bragar, representing one of the subject property owners, testified verbally and in writing in opposition to the application before the hearings officer and by providing additional written information during the open record period. Two persons who live in the vicinity of the proposed UGB expansion area testified verbally and in writing in opposition to the application before the

hearings officer and by providing additional written information during the open record period. One person who lives in the vicinity of the proposed UGB expansion area testified in writing in opposition to the application during the continued public hearing timeframe.

Legal Antecedents: The Metro Regional Framework Plan and Urban Growth Management Functional Plan Title 14: Urban Growth Boundary authorizes amending the Urban Growth Boundary through the major amendment process.

Anticipated Effects: The adoption of Ordinance 17-1406 will add 82.3 acres of land to the urban growth boundary in the vicinity of Sherwood for a high school campus with sports fields and road improvements.

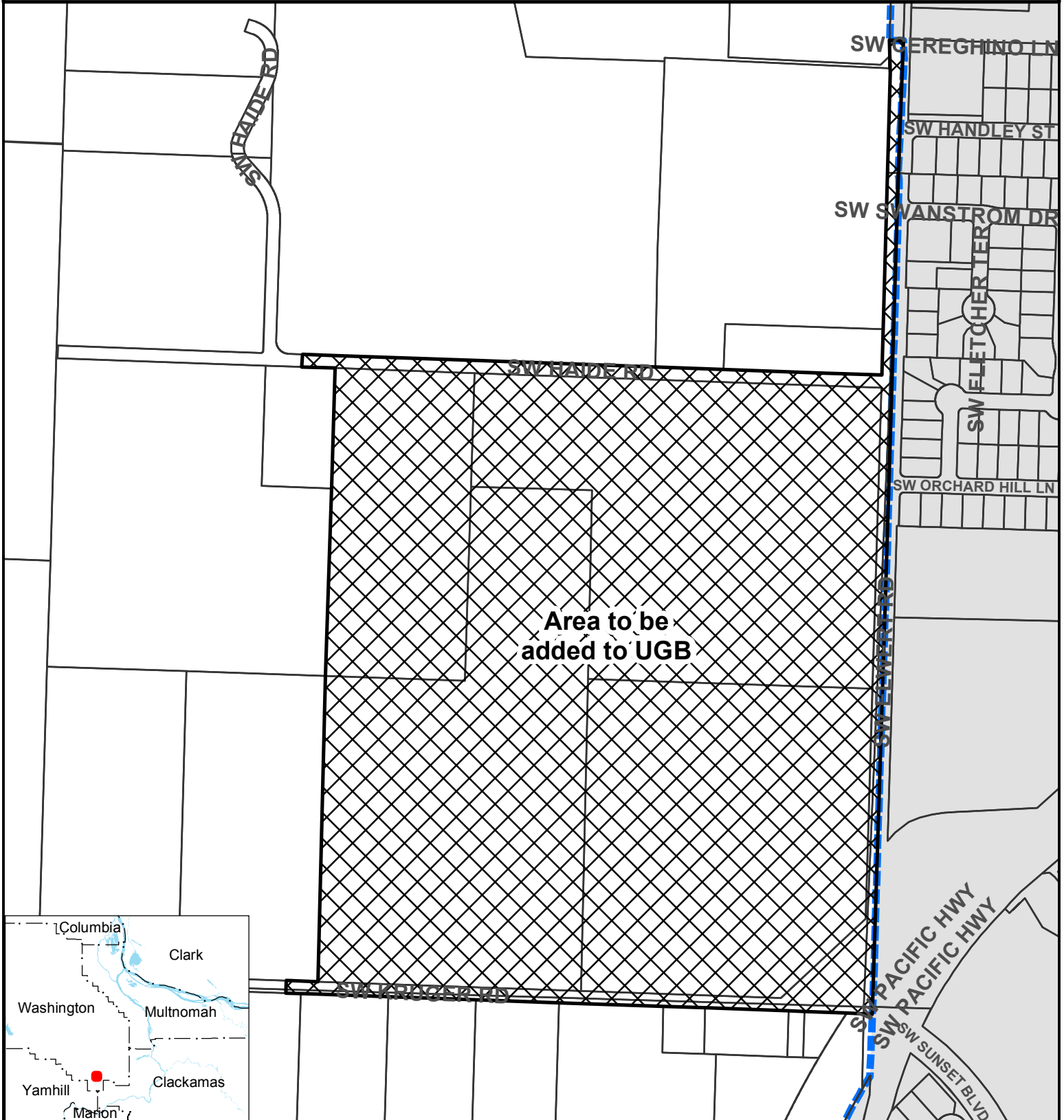
Budget Impacts: There is no budget impact from adopting this ordinance.

Case No. 17-02

2S2W25, 2S2W36

Urban Growth Boundary Major Amendment




Washington County



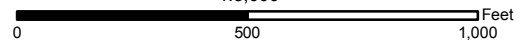
Case No. 17-02 UGB Major Amendment



Research Center
 600 NE Grand Ave
 Portland, OR 97232-2736
 (503) 797-1742
<http://www.oregonmetro.gov/drc>

-  Area to be annexed
-  Taxlots
-  Urban growth boundary

1:5,000



The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

Materials following this page were distributed at the meeting.

Metro

*600 NE Grand Ave.
Portland, OR 97232-2736
oregonmetro.gov*



Metro

Minutes

Thursday, August 10, 2017

2:00 PM

Metro Regional Center, Council chamber

Council meeting

1. Call to Order and Roll Call

Council President Tom Hughes called the Metro Council meeting to order at 2:01 p.m.

Present: 7 - Council President Tom Hughes, Councilor Sam Chase, Councilor Carlotta Collette, Councilor Shirley Craddick, Councilor Craig Dirksen, Councilor Kathryn Harrington, and Councilor Bob Stacey

2. Citizen Communication

There was none.

3. Consent Agenda

3.1 Consideration of the Council Meeting Minutes for July 27, 2017

Councilor Harrington requested that the July 27 minutes be amended to include a more accurate version of her comments on page four, i.e. "Councilor Harrington asked if the characteristics of the map ensured that sufficient right of way to allow for proposed sidewalks and bike lanes on both sides of the road would be preserved if the area outside of the UGB was brought into it in the future."

A motion was made by Councilor Harrington, seconded by Councilor Collette, that this item be approved as amended. The motion passed by the following vote:

Aye: 7 - Council President Hughes, Councilor Chase, Councilor Collette, Councilor Craddick, Councilor Dirksen, Councilor Harrington, and Councilor Stacey

Approval of the Consent Agenda

A motion was made by Councilor Harrington, seconded by Councilor Collette, to adopt items on the consent agenda. The motion passed by the following vote:

Aye: 7 - Council President Hughes, Councilor Chase, Councilor Collette, Councilor Craddick, Councilor Dirksen, Councilor Harrington, and Councilor Stacey

3.2 Resolution No. 17-4819, For the Purpose of Amending the 2015-18 Metropolitan

Transportation Improvement Program (MTIP) to Modify and/or Add New Projects as Part of the June 2017 Formal MTIP Amendment (JN17-06-June) Involving a Total of Four Projects Affecting Clean Water Services, Gresham, Portland, and ODOT

4. Ordinances (First Reading and Public Hearing)

- 4.1 Ordinance No. 17-1406, For the Purpose of Amending the Urban Growth Boundary in the Vicinity of the City of Sherwood Upon Application by the Sherwood School District

Metro Attorney Alison Kean and Council President Hughes read the requirements on holding a quasi-judicial hearing and Council President Hughes introduced Mr. Tim O'Brien, Metro staff, to provide a brief staff report. Mr. O'Brien explained that if approved, Ordinance No. 17-1406 would amend the urban growth boundary (UGB) and add approximately 82 acres located within unincorporated Washington County, immediately west of the City of Sherwood, per the Sherwood School District's request for a new high school campus and associated sports fields. Mr. O'Brien provided a background of the annexation process thus far, noting that Metro staff recommended approval of the request as they found that the application met the major amendment criteria in Title 14 of the Functional Plan. Mr. O'Brien informed the Metro Council that the Hearings Officer submitted a recommended approval of the application, based upon findings and conclusions in his report. He added that the recommendation included two conditions for approval: the property must be used for a public high school, associated accessory uses, and public transportation improvements, consistent with the application; and the applicant must comply with the state transportation planning rule at the time zoning was established on the property. Mr. O'Brien explained that Metro staff proposed an additional condition that the City of

Sherwood complete the requirements for the UGB Functional Plan Title 11. Mr. O'Brien provided an overview of the Metro Council's different approval options and summarized the Hearings Officer's report, highlighting how the report found that the request met the criteria for a UGB expansion and the site best met the comparative location factors for accommodating identified land need.

Council Discussion

Councilor Harrington asked about the Hearings Officer's recommendations and how they related to addressing the conditions of the transportation planning rule. Mr. Roger Alfred, Metro counsel, noted that the transportation planning rule was the state rule that required that transportation facilities were commensurate with land use development and explained that part of the recommendation was meant to ensure that the transportation facilities in the area would adequately serve the new development by the time the new high school was operating. Councilor Craddick asked about the history of school district UGB expansions in the region and how approving the school district's request might affect the Metro Council's discussions regarding future UGB expansions, particularly in the City of Sherwood. Mr. O'Brien noted that he felt the annexation would be compatible with the city's existing land use plans, as the city had completed a preliminary Concept Plan for West Sherwood that identified potential school sites, including the proposed location. Councilors discussed the demonstration of need requirements for annexation requests.

Mr. O'Brien then introduced representatives of the applicant, the Sherwood School District, to provide an

overview of why the annexation was needed. Ms. Karina Ruiz summarized the process the district used to identify the site and the bond planning that started considerations of a new high school. Mr. Keith Jones, the district's land use planning consultant, shared a map of the city, the existing school facilities, and the proposed site. Mr. Jones explained that the school faced serious capacity issues and noted that a capacity analysis' ten-year projections showed that the school would operate at 141% capacity if new facilities were not created. Ms. Ruiz noted that to address these issues, the district began developing a long-range plan to meet students current and future needs. She informed the Metro Council that the current site was incredibly constrained, which meant that the ability to expand it and its capacity was compromised. She explained that because of this, the school district began its bond planning, which eventually led to the idea of creating a new high school and converting the existing high school into a middle school for the district. Ms. Ruiz noted that there was significant community support for the annexation request. She also highlighted that the plan was compatible with the Sherwood West Concept Plan and emphasized that it would meet the growing city's school needs.

Council Discussion

Councilor Collette asked why this site was chosen, when it appeared that there was available land within the current UGB. Ms. Ruiz noted that the sites available within the UGB were determined not to be suitable as they were either not large enough, constrained, and/or included topographical challenges and/or stream corridors. Councilor Chase asked the applicant to elaborate on the need for a site of that size and how the request planned for population growth.

4.1.1 Public Hearing for Ordinance No. 17-1406

Council President Hughes opened up a public hearing on Ordinance No. 17-1406 and requested that those wishing to testify come forward to speak.

Shauryavat Gauer, City of Sherwood: Mr. Gauer, a student at Sherwood High School, spoke in support of Ordinance No. 17-1406 and shared how a new high school would benefit students. He noted that at its current size, the high school was overcrowded which made it difficult for students to study, eat, and do recreational activities comfortably.

Elizabeth Barrett, City of Sherwood: Ms. Barrett testified on behalf of Mr. Ken Bell, the principal of Sherwood High School, in support of the UGB expansion. She read a letter from Mr. Bell that outlined how the school was overcapacity and highlighted that the building of a new high school on the site proposed would allow the school to adequately serve the needs of its current and future students. (Mr. Ken Ball also provided written testimony; please see the August 10 meeting packet.)

Karina Ruiz, City of Portland: Ms. Ruiz testified on behalf of Ms. Jessica Adamson, Sherwood School District Board Chair, in support of Ordinance No. 17-1406. She explained that the expansion was urgently needed in order to accommodate the facility needs of the Sherwood School District. She noted that there was strong community support for the new high school and no appropriate land within the current UGB for a new facility. She urged the Metro Council to approve the school district's request.

Ms. Alexa Byers, City of Sherwood: Ms. Byers testified on

behalf of her attorney, Ms. Jennifer Brager, against Ordinance No. 17-1406. She noted that her attorney was unable to attend the hearing but had provided written testimony that outlined their concerns regarding the ordinance. (Please see the August 10 meeting packet.) Ms. Byers explained that her family owned a parcel of the property to be annexed into the UGB if the ordinance was approved.

Councilors discussed the property and how it would be affected if the ordinance was approved. Councilor Craddick asked about Ms. Brager's written testimony and her concerns that land availability analysis standards and coordination requirements were not met. Mr. Roger Alfred, Metro counsel, proposed that Metro staff review the documents and provide the Metro Council with formal responses and additional findings before the second read on August 17 if necessary.

Council President Hughes then called on the applicant for a rebuttal. Ms. Kelly Hossaini, the attorney for the Sherwood School District, noted that many of the arguments made in the written testimony from Ms. Brager had already been addressed by the hearings officer. She also shared concerns about new evidence and/or arguments included that were not raised earlier in the hearings process. Ms. Hossaini stated that page 58 of the Hearing Officer's Recommendation included a paragraph noting that the coordination requirements were met.

Councilor Craddick asked about park construction requirements. Councilor Chase asked about the size of the existing school and the site proposed. He also asked what

would become of the existing school; Ms. Ruiz noted that it would become the middle school for the school district. Councilor Dirksen asked about the City of Sherwood's position on the proposed expansion. Ms. Ruiz explained that the city had expressed support for the UGB amendment. Councilor Harrington asked about the Hearings Officer's Recommendation, included as Exhibit B. She noted that the document included a list of eight attachments but the attachments were not in the meeting packet. Mr. O'Brien replied that the ordinance would be revised to include the attachments.

Council President Hughes gaveled out of the public hearing. He noted that second read, Council consideration, and vote on Ordinance No. 17-1406 would take place on Thursday, August 17.

Council Discussion

Councilor Harrington noted that she was not aware of the preliminary Sherwood West Concept Plan previously. She explained that during the urban and rural reserve process, the Metro Council had encouraged all communities to ensure that they had done community visioning so that there was adequate opportunity for job expansion as well as residential expansion. Separate from the UGB expansion request at hand, she expressed concerns that the Sherwood plan might not allow for enough job opportunity growth in its current state. Councilor Chase asked how the expansion might affect the region's industrial and residential goals in the area.

5. Ordinances (Second Reading)

- 5.1 Ordinance No. 17-1407, For the Purpose of Amending the Title 14 Map of the Urban Growth Management Functional Plan to Conform with Changes Enacted

by the Oregon Legislature in House Bill 2047

Council President Hughes stated that the first reading and public hearing for Ordinance No. 17-1407 took place on Thursday, July 27. He informed the Metro Council that Mr. Tim O'Brien, Metro staff, was available for questions.

Council Discussion

There was none.

A motion was made by Councilor Harrington, seconded by Councilor Stacey, that this item be adopted. The motion passed by the following vote:

Aye: 7 - Council President Hughes, Councilor Chase, Councilor Collette, Councilor Craddick, Councilor Dirksen, Councilor Harrington, and Councilor Stacey

6. Chief Operating Officer Communication

Ms. Martha Bennett provided an update on the following events or items: the final closure of the Oregon Convention Center hotel project, Twilight Thursday at Smith and Bybee Wetlands on August 10, and Norah the polar bear's last day at the Oregon Zoo on September 10. She also introduced two new members of Metro staff: Ms. Jes Larson, Government Affairs Specialist, and Mr. Jonathan Blasher, Parks and Nature Director. Ms. Bennett thanked Mr. Don Robertson for his great help during his time as Interim Parks and Nature Director.

7. Councilor Communication

Councilors provided updates on the following meetings or events: the Metro Policy Advisory Committee (MPAC). Council President Hughes noted that Governor Brown would host a two-day signing event of House Bill 2017 on August 28 and 29. Ahead of the event, he asked for the Council's support to sign a letter on their behalf thanking the state

legislature for supporting state transportation funding. The Council expressed unanimous support.

8. Adjourn

There being no further business, Council President Hughes adjourned the Metro Council meeting at 3:44 p.m. He announced that the Metro Council would convene in the Council Annex for an executive session pursuant to ORS 192.660(2)(i). The Metro Council will convene the next regular council meeting on August 17 at 2:00 p.m. at the Metro Regional Center in the council chamber.

Respectfully submitted,



Nellie Papsdorf, Legislative and Engagement Coordinator

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF AUGUST 10, 2017

ITEM	DOCUMENT TYPE	DOC DATE	DOCUMENT DESCRIPTION	DOCUMENT No.
3.1	Minutes	08/10/17	Council Meeting Minutes from July 27, 2017	081017c-01
4.1	PowerPoint	08/10/17	New Sherwood High School	081017c-02
4.1	PowerPoint	08/10/17	Sherwood UGB Map	081017c-03
4.1	Handout	08/10/17	McBee and Labahn testimony to Council	081017c-04
4.1	Handout	08/10/17	Bell testimony to Council	081017c-05
4.1	Handout	08/10/17	TSM testimony to Council	081017c-06
7.0	Handout	08/10/17	Post-legislature transportation sign-on letter	081017c-07