



BY EMAIL

December 4, 2018

President Tom Hughes and Metro Councilors  
600 NE Grand Avenue  
Portland, OR 97232

Re: UGB Expansion Proposals

Dear President Hughes and Metro Councilors,

As Metro considers proposals to expand the urban growth boundary, Housing Land Advocates (“HLA”) believes that it is imperative that Metro recommit to providing present and future urban Clackamas, Washington, and Multnomah County residents with greater access to affordable housing. By Metro’s authority within Oregon’s statewide land use system, and pursuant to state and federal requirements as set forth below, HLA believes the time for Metro to integrate these obligations into any plans to expand the urban growth boundary is now. Please include this letter in the record.

I. Federal Case Law

As the elected body to represent and govern regional planning for more than 1.5 million Oregonians, Metro sets policies that profoundly affect local governments that are federal funding recipients. To support local entities in efforts to obtain funding for affordable housing endeavors and sustain grants, Metro must undertake all necessary measures to ensure that zoning ordinances and policies do not impede access to affordable housing.

Under the federal Fair Housing Act (“FHA”), it is unlawful to “otherwise make unavailable ... a dwelling to any person because of race, color, religion, sex familial status, or national origin.”<sup>1</sup> Pursuant to the decision in *Metropolitan Housing Development Corp. v. Arlington Heights* (“*Arlington Heights*”)<sup>2</sup> effect, rather than motivation, has long been the

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<sup>1</sup> 42 USC §3601.

<sup>2</sup> 616 F.2d 1006 (7th Cir. 1980). The procedural background in *Arlington Heights* included the Supreme Court’s consideration of whether the zoning decision at issue could be construed as violating the Equal Protection Clause. *Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977). The Supreme Court ruled that no federal constitutional violation occurred because under its then-recent decision in *Washington v. Davis*, 426 U.S. 229, 240-242 (1976), as no intent to discriminate was shown. The Supreme Court remanded the case to the 7th Circuit to consider whether discriminatory effect violates the FHA. The case was subsequently settled; however, the Seventh Circuit set out four factors to analyze the effects of housing discrimination that could not be shown to be intentional. These factors were effectively adopted by the Supreme Court in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. \_\_\_, 135 S.Ct. 2507, 192 L.Ed.2d 514 (2015).

touchstone in determining whether a government entity has denied individuals housing on the basis of race or interfered with the right to equal housing opportunities under the FHA.<sup>3</sup>

In *Arlington Heights*, the defendant city's zoning ordinance prohibited the Metropolitan Housing Development Corp. from building new low-cost housing that would be available to racial minorities. On remand the 7th Circuit held that if the challenged zoning ordinance had the ultimate effect of keeping members of protected classes out of the predominantly white suburban city, the defendant city was obligated under the FHA to refrain from implementing the zoning ordinance. As the City of Portland similarly noted in its June 17, 2011, Fair Housing Plan Analysis of Impediments, zoning that excludes or deters multi-family housing might result in the concentration of protected classes in particular areas of a city,<sup>4</sup> and as *Arlington Heights* indicated, such zoning ordinances might result in an FHA violation. Therefore, Metro's obligation does not end with simple policy choices. Rather, Metro unquestionably has an affirmative duty to alleviate discriminatory effects of its member jurisdiction's historic zoning decisions as they move forward to create modern plans.

Further, under Executive Order No. 12892, recipients of federal funding for "all programs and activities related to fair housing and development" have an affirmative duty to further fair housing.<sup>5</sup> The U.S. Department of Housing and Urban Development ("HUD") has defined three elements that certify a recipient in affirmatively furthering fair housing ("AFFH") and therefore in compliance with criteria crucial for maintaining or receiving such funds. The three elements to obtain certification are: (i) an Analysis of Impediments ("AI") to Fair Housing Choice; (ii) actions to overcome the effects of any impediments identified through the analysis; and (iii) records reflecting the actions taken in response to the analysis. As a recipient of federal transportation dollars, Metro must ensure that these three elements are being met, at least to the extent that Metro is responsible for reviewing and approving transportation and land use plans of member jurisdictions, and allocation of federal transportation funding throughout the region.

More recently, in *United States Anti-Discrimination Center of Metro New York v. Westchester County* ("Westchester County"), the county was found liable because its AI failed to

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<sup>3</sup> See also *U.S. v City of Black Jack, Missouri*, 508 F2d 1179, 1181 (8th Cir. 1974) (holding that a local ordinance that was shown to have racially discriminatory effect, and was not justified by a compelling government interest, violated the FHA).

<sup>4</sup> "Fair Housing Plan 2011: An Analysis of Implements to Fair Housing Choice and the Strategies to Address Them." City of Portland, Gresham, and Multnomah County. Available at <https://www.portlandoregon.gov/phb/article/653184> (Accessed November 29, 2018).

<sup>5</sup> Executive Order 12892, LEADERSHIP AND COORDINATION FOR FAIR HOUSING IN FEDERAL PROGRAMS: AFFIRMATIVELY FURTHERING FAIR HOUSING.

"...[A]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of the [Fair Housing Act] ... the phrase programs and activities shall include programs and activities operated, administered, or undertaken by the Federal Government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions)."

See also 24 CFR Parts 5, 91, 92, 570, 575, 576, and 903.

include any mention or analysis of impediments to fair housing by race and ethnicity.<sup>6</sup> In December 2010, HUD rejected the county's revised AI for failure to "make any material link between those impediments [to fair housing choice] and the actions the County will take to overcome them."<sup>7</sup> As a result, in addition to identifying impediments to fair housing choice in their AIs, counties must show a "material link" between the impediments and their proposed recommendations to ameliorate the impediments. Although the second and third AFFH requirements were not at issue in the *Westchester County* case, Metro must take affirmative and concrete steps to overcome impediments, and to keep records reflecting the actions taken. Metro should remember this instruction when undertaking its planning and coordination functions.<sup>8</sup>

## II. Metro Authority – Oregon Statutory Obligations

Metro has an affirmative duty to ensure that the comprehensive plans of cities and counties within its jurisdiction address their respective affordable housing needs.<sup>9</sup> Existing law gives Metro the authority to conduct reviews of local jurisdictions' comprehensive plans and to propose changes to bring these plans into compliance with Statewide Planning Goals, including Goal 10,<sup>10</sup> which requires a local jurisdiction to conduct a housing needs analysis ("HNA") and adopt a plan to accommodate current and future housing needs.<sup>11</sup>

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<sup>6</sup> *United States Anti-Discrimination Center of Metro New York v. Westchester County*, 668 F.Supp.2d 548, 562–65 (S.D.N.Y.2009).

<sup>7</sup> HUD Priv. Lrt. Rule (Dec. 21, 2010) Available at [https://prrac.org/pdf/12-21-2010\\_HUD\\_Response\\_to\\_Westchester\\_AI.pdf](https://prrac.org/pdf/12-21-2010_HUD_Response_to_Westchester_AI.pdf) (Accessed November 29, 2018).

<sup>8</sup> HUD's Fair Housing Planning Guide defines an AI as "a comprehensive review of a jurisdiction's laws, regulations, and administrative policies, procedures, and practices affecting the location, availability, and accessibility of housing, as well as an assessment of conditions, both public and private, affecting fair housing choice." "Impediments to fair housing choice are any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin that restrict housing choices or the availability of housing choices, or any actions, omissions, or decisions that have [such an] effect." Fair Housing Planning Guide at 4-4. Available at [https://prrac.org/pdf/12-21-2010\\_HUD\\_Response\\_to\\_Westchester\\_AI.pdf](https://prrac.org/pdf/12-21-2010_HUD_Response_to_Westchester_AI.pdf) (Accessed December 4, 2018).

<sup>9</sup> Metro Code (Or.) §3.07.730. Cities and counties within the Metro region shall ensure that their comprehensive plans and implementing ordinances:

- A. Include strategies to ensure a diverse range of housing types within their jurisdictional boundaries.
- B. Include in their plans actions and implementation *measures designed to maintain the existing supply of affordable housing as well as increase the opportunities for new dispersed affordable housing within their boundaries.*
- C. Include in their plans actions and implementation measures aimed at increasing opportunities for households of all income levels within individual jurisdictions in *affordable housing.* (emphasis added).

<sup>10</sup> Goal 10 provides for "[b]uildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

<sup>11</sup> In 2010, Ordinance No. 10-1233B and Ordinance No. 11-1252A demonstrated Metro's acknowledgement of its responsibilities and prescribed Metro's compliance procedures and Regional framework plan.



For the greater Portland metropolitan area, Metro manages the shared urban growth boundary for the 24 cities in the area, which includes Beaverton, Hillsboro, King City, and Wilsonville. Prior to any Urban Growth Boundary (“UGB”) expansion, a local jurisdiction needs to demonstrate its current compliance with that HNA and how it will continue to comply with that HNA and with the proposed UGB expansion. Metro must use its authority to require cities and counties to change their comprehensive plans and land use regulations to comply with the FHA.<sup>12</sup>

Goal 14 also requires Metro to demonstrate how the region’s housing needs under Goal 10 are being met within the current UGB and how they will continue to be met if the UGB is expanded.<sup>13</sup> This includes housing “at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density.”<sup>14</sup>

Metro’s own studies in preparation for its January 2010 urban growth report confirmed that these affordable housing needs were not being met. To meet demand, Metro’s Regional Framework Plan called for the establishment of affordable housing production goals to be adopted by local governments.<sup>15</sup> Metro and local governments are required to issue a biennial affordable housing inventory to demonstrate their continued dedication to reaching affordable housing goals. This report must include not only the number and types of affordable housing units preserved during the reporting time, but also the number of new units built and the county resources committed to the development of these affordable housing units.

Metro also has the power to create and enforce Functional Plans<sup>16</sup> and direct changes in city or county plans and land use regulations as needed to bring them into compliance with such

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<sup>12</sup> Metro’s authority under ORS 268.390 is greater than the authority of individual counties under ORS 195, allowing them to recommend them to “recommend or *require cities and counties, as it considers necessary, to make changes in any plan and any actions taken under the plan substantially comply with the district’s functional plans* adopted under subsection (2) of this section and its urban growth boundary adopted under subsection (3) of this section ...” (emphasis added).

<sup>13</sup> Goal 14 requires that “[p]rior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.”

<sup>14</sup> In addition, the “Statement of Purpose” for OAR 660-007-0000 states, “OAR 660- 007-0030 through 660-007-0037 are intended to establish by rule regional residential density and mix standards to measure Goal 10 Housing compliance for cities and counties within the Metro urban growth boundary, and to ensure the efficient use of residential land within the regional UGB consistent with Goal 14 Urbanization.”

<sup>15</sup> Metro Code (Or.) §3.07.740 (2011).

<sup>16</sup> Metro Code (Or.) §3.07.850.

- A. The Metro Council may initiate enforcement if a city or county has failed to meet a deadline for compliance with a functional plan requirement or if the Council has good cause to believe that a city or county is engaged in a pattern or a practice of decision-making that is inconsistent with the functional plan.

Functional Plans.<sup>17</sup> In addition to the existing Regional Solid Waste Management Plan and Urban Growth Management Functional Plan, of which voluntary affordable housing production goals are a subsection, Metro should implement, compel and enforce a separate affordable housing functional plan on a uniform level. HLA continues to believe that a distinct Functional Plan addressing regional shortfalls in needed housing would establish clear expectations and elicit more robust compliance with needed housing goals.

Further, the Metro Code sets out Metro's responsibility to oversee local compliance with statewide planning goals and Metro's power to enforce compliance by issuing orders in accordance with its own Functional Plan.<sup>18</sup> If the Land Conservation and Development Commission ("LCDC"), charged with overseeing statewide compliance with planning goals, so determines that compliance with planning goals is lacking, it may order a local government – a term that expressly includes Metro as well as the cities and counties within Metro's boundaries – to bring its plans and land use regulations in compliance.<sup>19</sup> Taken together, HLA believes that Metro's state-delegated authority and statutory obligations demonstrate that Metro has a duty to implement affordable housing initiatives, and that Metro's duty should not be taken lightly

### III. Metro Authority – UGB Expansion

In addition to Metro's duty to oversee the compliance of cities and counties in conjunction with its regional framework plan, Metro itself must address local affordable housing concerns when it decides to expand the Urban Growth Boundary ("UGB"). Metro is subject to the mandates of ORS 197.296.<sup>20</sup> Consequently, Metro must take into account the region's housing needs when establishing buildable lands within the UGB.<sup>21</sup>

In 2010, Metro adopted two ordinances that each reflected Metro's responsibility to account for affordable housing during UGB expansion: Ordinance 10-1252A and Ordinance 10-1244B.<sup>22</sup> The Staff report for Ordinance 10-1252A stated that its purpose was to "[h]elp ensure opportunities for low-income housing types throughout the region so that families for modest means are not obligated to live concentrated in a few neighborhoods," because concentrating poverty is not desirable for the residents or the region.<sup>23</sup> Furthermore, Ordinance 10-1244B reinforced that goal and stated that "particular attention" will be given to affordable housing when expanding the UGB, and that Metro would seek agreement with local governments to

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<sup>17</sup> *Id.*

<sup>18</sup> ORS 268.390.

<sup>19</sup> ORS 197.320. The Land Conservation and Development Commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions into compliance with the goals, acknowledged comprehensive plan provisions or land use regulations if the commission has good cause to believe.

<sup>20</sup> *GMK Developments, LLC v. City of Madras*, 225 Or. App. 1 (2008).

<sup>21</sup> ORS 197.296

<sup>22</sup> See MC 3.07.1120 Planning for Areas Added to the UGB.

<sup>23</sup> Metro, Or., Staff Report for Ordin. 10-1252A (Dec. 29, 2010).

improve affordable housing.<sup>24</sup> Together, these ordinances plainly announced Metro's intention to implement affordable housing initiatives throughout Clackamas, Washington, and Multnomah counties.

A. *Housing Land Advocates v. City of Happy Valley*

In *Housing Land Advocates v. City of Happy Valley*,<sup>25</sup> the City of Happy Valley approved an application for the zoning reduction of a previously zoned Mixed Use Residential property to a 31-lot subdivision allowing development of detached single-family residential dwellings on individual lots.<sup>26</sup> HLA appealed the city's decision, arguing that the city failed to show how the 31 single-family homes would meet the housing needs of current and future Happy Valley and Portland-area residents of all income levels.<sup>27</sup> HLA specifically cited the city's responsibility under Title 1 of Metro's Urban Growth Management Functional Plan, specifically Metro Code Section 3.07.120(e), which requires a local government to "maintain or increase its housing capacity" in line with "a compact urban form and a 'fair share' approach to meeting housing needs."<sup>28</sup> Without an adequate housing analysis, the city, HLA claimed, failed to comply with statewide planning goals, namely Goal 10 and the Needed Housing Statutes at ORS 197.295 to .314.<sup>29</sup> In response to HLA's claims, the city argued that the zone change produced a reduction of "a mere .004 percent."<sup>30</sup> The city concluded that this reduction was "negligible," which the city argued conformed to the standard established under Metro Code Section 3.07.120(e).

While the Land Use Board of Appeals ("LUBA") agreed that this zone reduction "qualifies as negligible," LUBA determined that the comparison used by the city to calculate this reduction was not the comparison required under MC 3.07.120(e). The reason being the city's findings "neither identifies what the minimum zoned residential capacity of the subject property is nor how much that minimum zoned residential density is reduced by the challenged amendment."<sup>31</sup> LUBA concluded that the city would instead need to compare the reduction of the minimum zoned capacity of the property to the city's overall minimum zoned residential capacity.<sup>32</sup> Ultimately, LUBA upheld the standard under the acknowledged MC 3.07.120(e) that only "negligible" reductions were permitted when a city reduced the minimum zoned capacity of

<sup>24</sup> Metro, Or., Exhibit A to Ordin. 10-1244B Section 1.3.10 (Dec. 16, 2010).

<sup>25</sup> *Housing Land Advocates v. City of Happy Valley*, LUBA No. 2016-031-105 (Mar. 24, 2017).

<sup>26</sup> *Id.*, at 3.

<sup>27</sup> *Housing Land Advocates v. City of Happy Valley*, LUBA No. 2016-031-105 at 3, 6.

<sup>28</sup> MC §3.07.120 ("Housing Capacity").

<sup>29</sup> ORS 197.307(3) provides, "When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need." ORS 197.307(4) provides, "Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

<sup>30</sup> *Housing Land Advocates v. City of Happy Valley*, LUBA No. 2016-031-105 at fn.10.

<sup>31</sup> *Id.*, at 23-24.

<sup>32</sup> *Id.*, at 23.



a single lot or parcel.<sup>33</sup> As a result, LUBA remanded the case and ordered the city to include in its findings the “methodology and math” used to calculate the percent reduction in minimum zoned residential capacity.

Under the *Happy Valley* case, Metro needs to give the "negligible" loss standard means on a region-wide basis. Otherwise, we face the same battle and die the death of a thousand cuts. A 1% cumulative reduction could qualify as "negligible," as could 100 units (depending on the capacity of the jurisdiction). This should be a prerequisite Metro-wide prior to considering any boundary expansion, including the one proposed for the four cities involved in this round. Further, at this time, none of the four city proposals include findings that demonstrate that they meet the standard under the acknowledged MC 3.07.120(e) that only "negligible" reductions are permitted. That code section must be interpreted consistently with the Goals it implements, specifically Goals 10 and 14, under 197.829(1)(c) and (d). A new expansion of the UGB must show compliance and, particularly, demonstrate compliance with the "orderly and efficient" accommodation of land uses within a UGB under Goal 14. The mechanisms to assure compliance must be within the Metro Actions allowing for the boundary expansion. Moreover, we assert that the evaluation of the UGB amendments cannot be limited to the four candidate areas for the boundary expansion, but must include the entire UGB as amended in order to demonstrate compliance with the statewide planning goals. In addition, Goal 2 requires that the plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans.

While HLA can point to the specific shortcomings of these proposals, these cities, not HLA, have a legal duty to show that they are in compliance with MC 3.07.120(e). Moreover, Metro also has a legal duty to hold these cities to the standard upheld by LUBA and the very codes that Metro adopted in its Functional Plan. Until then, Metro will continue to be in violation of its own code and state laws.

#### B. *Deumling v. City of Salem*

In 2016, the City of Salem enacted Ordinance No. 14-16, which amended the Salem/Keizer regional urban growth boundary (UGB) to add approximately 35 acres of land located in Polk County and zoned for exclusive farm use (EFU) to the city's UGB.<sup>34</sup> The ordinance also adopted an exception to Statewide Planning Goal 15 (Willamette River Greenway),<sup>35</sup> in connection with a new bridge over the Willamette River.<sup>36</sup> The petitioners argued that the city's proposal violated OAR 660-004-0018(4)(a). Under OAR 660-004-0018(4)(a), when a local government adopts a reasons exception to a goal, “plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.” The land subject to the Goal 15 exception was entirely within the city's UGB as it

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<sup>33</sup> *Id.*

<sup>34</sup> *Deumling v. City of Salem*, LUBA No. 2016-126, 5-6 (August 9, 2017).

<sup>35</sup> Goal 15 is “to protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.”

<sup>36</sup> *Deumling v. City of Salem*, LUBA No. 2016-126, at 3.

existed prior to the ordinance adoption.<sup>37</sup> In response, the city claimed that the existing plan and zoning designations would be maintained for the land subject to the Goal 15 exception.<sup>38</sup>

LUBA determined that the city failed to explain why the existing plan and zoning designations limit the uses “public facilities and services, and activities” to only those justified in the exception.<sup>39</sup> For this reason, LUBA remanded the case and required the city to “more clearly explain” why the existing plan and zoning designations for the land subject to the Goal 15 exception satisfied those requirements in OAR 660-004-0018(4)(a).<sup>40</sup>

In addition to the reporting requirements under MC 3.07.120(e), the four cities proposing expansion to the UGB must also clearly explain how they will be in compliance with statewide planning goals, as discussed above. Should one of these local governments adopt a reasons exception to a statewide planning goal to expand the UGB, that city’s plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in that exception. For this reason, Metro must remain cognizant of this case as it considers the four UGB expansion proposals.

#### IV. HLA Questions Whether Metro Will be able to Make Adequate Goal 10 Findings

The local government, Metro in this case, 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 *Burk v. Umatilla County*, 20 Or LUBA 54 (1990). The regional housing crisis is well-known. Yet, Metro has done little to proactively contribute to solving the problem. Instead, it attempts to make the decision here without any explanation of its compliance with Goal 10.

Goal 10 findings are not only required by the goal, but are necessary as a practical matter so a record of the ability to provide needed housing throughout the region is made under Goal 2, Land Use Planning. Already one of the most expensive suburbs in the region, Happy Valley, was let off the hook in complying with Goal 10 in the downzone case described above, and the need for affordable housing across the region grows. For example, see Exhibit 1, a letter submitted in the Happy Valley record showing that needed housing for all income levels was not provided within that city or urban Clackamas County, which are both within Metro’s jurisdiction.

In Washington County, and the City of Sherwood, the story is very similar to the Clackamas County/Happy Valley situation where Sherwood is a less economically integrated suburb of Washington County. According to the Washington County Consolidated Plan, Sherwood residents make the highest income of all cities within the county limits, and has the highest median income levels. See Exhibit 2, page 1. Failure to analyze the impacts of this proposed urban growth expansion across the region calls into question Goal 10 compliance of a

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<sup>37</sup> *Id.*, 30.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*, at 31.



narrow UGB expansion that does not address the exclusive zoning in member cities like the cities of Happy Valley and Sherwood.

Metro has created its own problem to figure out how to make Goal 10 findings in this case. On November 28, 2007, Metro's Chief Operating Officer ("COO") issued a letter to member local jurisdictions suspending reporting requirements related to housing and employment accommodation (then 3.07.120(D)), and housing choice for the affordable housing supply under Metro Code 3.07.740(B). See November 28, 2007 COO Letter attached as Exhibit 3. HLA has no knowledge that the suspension described in the November 28, 2007 letter has been lifted, despite years of advocating for a lift of the suspension. So far as we are able to ascertain, there was no Metro Council action to undertake this suspension. Unfortunately for Metro and the cities seeking the expansion here, a 10-year "temporary suspension" may mean that making Goal 10 findings are more difficult.<sup>41</sup> If the member jurisdictions had submitted reports on meeting their fair share of affordable housing, then the public would be able to analyze whether expanding the UGB to include the proposals here makes sense in the context of the Statewide Planning Goals and regional compliance with Goal 10.

Metro must ensure that a decision to expand the boundaries in Beaverton, King City, Hillsboro, and Wilsonville does not, in effect, push off onto other cities within the region a housing responsibility it is required to assume. *Gresham v. Fairview*, 3 Or LUBA 219 (1981). Nowhere in the record is there any evidence concerning a reasoned analysis of Goal 10, Metro's regional buildable lands inventories, housing need projections, fair share allocations, housing and coordination policies, or of their application to this proposed UGB amendment. This is particularly concerning given that Sherwood had initially considered participating in the current expansion, but as soon as affordable housing was mentioned as part of the expansion goals, the city abandoned its plan to apply. Metro did not even take a step to insist that Sherwood needs to take steps to address affordability, thus, exclusionary zoning in Sherwood continues.

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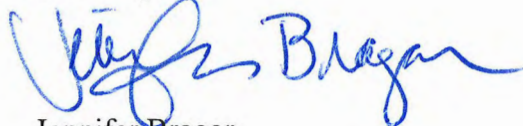
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<sup>41</sup> While Metro may try to avoid the direct application of the legislative UGB amendment criteria, by claiming its adoption of criteria in MC 3.07.1428 is the exclusive process for reviewing this expansion, nothing in the code states that the criteria under its own legislative decision making under 3.07.1525 do not apply (rather only direct compliance with Goal 14 is directly resolved). In any event, Metro's own code should provide context for the necessary evaluation that needs to take place in any UGB expansion, particularly MC 3.07.1425(c)(5) that requires Metro to consider, "**Equitable** and efficient distribution of housing and employment opportunities throughout the region." (emphasis added).

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Above are the results of our research and show Metro's legal duty to require the cities of Beaverton, King City, Hillsboro, and Wilsonville to incorporate changes to their housing plans prior to the proposed land coming inside the UGB. We look forward to working with Metro to assure that it meets its obligations under the statewide planning goals. Please add Housing Land Advocates to the notice list, Housing Land Advocates, c/o Jennifer Bragar, 121 SW Morrison Street, Suite 1850, Portland, OR 97204.

Sincerely,



Jennifer Bragar

President, Housing Land Advocates

cc: (by e-mail)  
Taylor Smiley-Wolfe  
Anna Braun  
Gordon Howard  
Roger Alfred  
Paulette Copperstone

City of Happy Valley  
Planning Commission  
16000 SE Misty Drive  
Happy Valley, OR 97086

January 19, 2016

**RE: "EAGLES LOFT ESTATES"**  
**COMPREHENSIVE PLAN MAP/ZONING MAP AMENDMENT (CPA-14-15/LDC-15-15); 31-LOT SUBDIVISION (SUB-03-15); AND VARIANCE (VAR-08-15)**

Dear Planning Commissioners:

This letter is jointly submitted by the Fair Housing Council of Oregon (FHCO) and Housing Land Advocates (HLA). Both FHCO and HLA are Oregon non-profit organizations that advocate for land use policies and practices that ensure an adequate and appropriate supply of affordable housing for all Oregonians.

For the reasons set forth below, we request that the proposed comprehensive plan and zoning amendments be denied, together with the subdivision and variance applications that depend on those amendments.

**1. The proposed amendments do not comply with Oregon's Needed Housing Statutes, with Oregon's Statewide Housing Goal (Goal 10) and Planning Goal (Goal 2), or with LCDC's interpretive rules.**

ORS 197.307(6) provides that local governments cannot adopt standards that have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

ORS 197.303(3) provides that, when a need has been shown for housing of particular ranges and rent levels, such needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

The record lacks evidence sufficient to enable the city to determine, among other things, the city's current state of compliance or noncompliance with these statutes, such as the city's housing needs, the relevant buildable lands inventories, how the current designation addresses existing and projected needs, the city's fair share of regional housing needs and supplies, and other information necessary to establish that the proposed amendments will not have the effects proscribed by ORS 197.307(6) and that city will either remain in compliance or not slip further out of compliance as a result of the proposed amendments and variances.

The City's decision does not comply with Goal 10 requirements that land use regulations related to housing must be based on an inventory of buildable lands. Goal 10 requires the city:



“To provide for the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.”

Goal 10 requires local governments to inventory their buildable land, identify needed housing, and designate and zone enough buildable land to satisfy the identified housing need. *Burk v. Umatilla County*, 20 Or LUBA 54 (1990). See also, *McIntyre-Cooper Co. v. Board of Comm. Washington County*, 2 Or LUBA 126, 129 (1980), *aff'd*, 55 Or App 78, *rev den*, 292 Or 589 (1981). The burden of proving that housing needs are met by the land use regulation rests with the City. *Gann v. City of Portland*, 12 Or LUBA 1, 4 (1984).

When a city with an acknowledged comprehensive plan and implementing ordinances amends its implementing ordinances to downzone or impose other substantial restrictions on lands within its acknowledged Goal 10 land supplies, the city must demonstrate that its actions do not leave it with less than adequate supplies in the types, locations, and affordability ranges affected. *Opus Development v. City of Eugene*, 28 Or LUBA 670 (1995) (*Opus I*); 30 Or LUBA 360, 373 (1996) (*Opus II*), *aff'd* 141 Or App 249, 918 P2d 116 (1996) (*Opus III*); *Volny v. City of Bend*, 37 Or LUBA at 510-11; *Mulford v. Town of Lakeview*, 36 Or LUBA 715, 731 (1999) (rezoning residential land for industrial uses); *Gresham v. Fairview*, 3 Or LUBA 219 (same); *Home Builders Assn. of Lane County v. City of Eugene*, 41 Or LUBA 370, 422 (2002) (subjecting Goal 10 inventories to tree and waterway protection zones of indefinite quantities and locations).

Further, OAR 660-008-0010 provides LCDC’s interpretation of Goal 10 Housing specific to Portland Metro and its planning jurisdictions:

“The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation.”

LCDC’s generally-applicable housing interpretive rule defines “housing needs projection” as:

“[a] local determination, justified in the plan, as to the housing types, amounts and densities that will be: (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period; (b) consistent with OAR 660-007-0010 through 660-007-0037 and any other adopted regional housing standards; and (c) consistent with Goal 14 requirements for the efficient provision of public facilities and services, and efficiency of land use.”  
OAR 660-007-0005(5)

OAR 660-007-0005(6) defines “Multiple Family Housing” as “attached housing where each dwelling unit is not located on a separate lot.”

OAR 660-007-0005(7) defines “Needed Housing” as follows:

“‘Needed Housing’ means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy; . . .’

Nowhere in the record is there any evidence concerning or reasoned analysis of these statutes, goals, and rules, of Happy Valley or Portland Metro’s buildable land inventories, housing needs projections, fair share allocations, housing and coordination policies, or of their application to these proposed amendments and entitlements.

Such analysis and evidentiary support is essential. In one of its earliest affordable housing opinions, *Kneebone v. Ashland*, 3 LCDC 131 (1979), the LCDC remanded a City of Ashland ordinance downzoning needed residential lands because the city’s record failed to demonstrate that the downzoning would not reduce Ashland’s supply of lands for needed housing in violation of the statewide housing goal. In its opinion, LCDC reminded Oregon’s local governments that

“Planning decisions must meet the standards set by the goals. Insofar as compliance depends upon specific, ascertainable fact, compliance must be shown by substantial evidence in the record. Insofar as compliance depends upon value judgments and policy, compliance must be shown by a coherent and defensible statement of reasons relating the policies stated or implied in the goals to the policies of the planning jurisdiction.” 3 LCDC at 124

LCDC’s Metro Housing Rule, at OAR 660-008-0060, provides as follows:

“(2) For plan and land use regulation amendments which are subject to OAR 660, Division 18 [Post-Acknowledgment Plan and Zoning Amendments, or PAPAs], the local jurisdiction shall either:

(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or

(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.”

The city has not made, and almost certainly cannot make, either the demonstration called for in subsection (a) or the commitment called for in subsection (b), both of which would require a

showing of surpluses in supplies over projected needs, supported by the kind of reasoned analysis and evidentiary support that LCDC required in *Kneebone*. Given the current shortage of buildable, available, affordable lands planned and zoned for multi-family housing in Happy Valley, its sub-region, and Portland Metro as a whole, FHCO and HLA do not believe that the requisite demonstrations can be made at this time or in the foreseeable future.

**2. The proposed amendments do not comply with the intergovernmental coordination requirements of LCDC's statewide Goals 2 (Land Use Planning) and 10 (Housing) because the city failed to coordinate its actions with all other affected governmental units.**

There is no evidence in the record of this proceeding that the Oregon Department of Land Conservation and Development, Portland Metro, as regional coordinator, or other nearby jurisdictions such as Gresham, Portland, Clackamas County, and Oregon City, have agreed to increase their share of comparably planned, zoned, serviced, and located land or that Happy Valley has made any efforts to coordinate with them concerning their ability and willingness to accommodate the reallocation of housing need effected by the proposed amendments. See *Creswell Court v. City of Creswell*, 35 Or LUBA 234 (1998); *1,000 Friends of Oregon v. North Plains*, 27 Or LUBA 371, *aff'd* 130 Or App 406, 991 P2d 1130 (1994).

**3. The proposed amendments and variances are inconsistent with the City of Happy Valley's Comprehensive Plan.**

Applicable Happy Valley Comprehensive Plan Policies that are not addressed adequately or at all to date include the following:

**Policy 8:** To assume proportionate responsibility for development within the City of Happy Valley consistent with projected population for the City.

**Policy 42:** To increase the supply of housing to allow for population growth and to provide for the housing needs of a variety of citizens of Happy Valley.

**Policy 43:** To develop housing in areas in areas that reinforce and facilitate orderly and compatible community development.

**Policy 44:** To provide a variety of lot sizes, a diversity of housing types including single family attached (townhouses) duplexes, senior housing and multiple family and range of prices to attract a variety of household sizes and incomes to Happy Valley.

**Policy 45:** The City shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels that are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

**Policy 46:** The City shall provide a range of housing that includes land use districts that allow senior housing, assisted living and a range of multi-family housing products. This



range improves housing choice for the elderly, young professionals, single households, families with children, and other household types.

Before the city can approve the amendments and the related subdivision and variance entitlements, you must be able to find that the applicant has proven by a preponderance of the evidence that all of the above policies have been satisfied. HLA simply does not believe this is possible given the current state of affordable housing need and supply in Happy Valley, its sub-region of Portland Metro, and Portland Metro as a whole.

**4. The proposed amendments and variances are inconsistent with Metro's Functional Plan.**

The applicant has not demonstrated compliance with Title I of the Metro Urban Growth Management Functional Plan, which requires each city to maintain or increase its housing capacity. FHCO and HLA do not believe that the applicant can meet this requirement because the requested zone change would reduce the city's housing capacity with respect to scarce needed housing types, densities, location, and affordability ranges.

**5. The proposed amendments risk violation of federal fair housing requirements.**

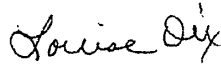
HLA believes that any action by the City that results in a reduction in housing diversity and affordability could violate the city's obligation to affirmatively further fair housing under the Federal Fair Housing Act, 42 U.S.C. §§ 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C-1(d)(16).

The Fair Housing Act (the Act) declares that it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." It does so by prohibiting discrimination in the sale, rental, and financing of dwellings, and in other real estate-related transactions because of race, color, religion, sex, familial status, national origin, or disability. In addition, the Fair Housing Act requires that HUD administer programs and activities relating to housing and urban development in a manner that affirmatively furthers the policies of the Act.

Courts have examined the legislative history of the Fair Housing Act and related statutes. They have found that the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal housing and urban development funds do more than simply not discriminate: recipients also must address segregation and related barriers for groups with characteristics protected by the Act, including segregation and related barriers in racially or ethnically concentrated areas of poverty. In the 1972 Supreme Court case, *Traffigante v. Metropolitan Life Insurance Company*, 409 U.S. 205, 211 (1972), the Court quoted the Act's co-sponsor, Senator Walter F. Mondale, in noting that the Fair Housing Act was enacted by Congress to replace the racially or ethnically concentrated areas that were once called "ghettos" with "truly integrated and balanced living patterns." In 2015, in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. \_\_\_\_ (2015), the Supreme Court again acknowledged the Fair Housing Act's continuing role in moving the Nation toward a more integrated society, holding that disparate impacts on protected classes, whether intended or not, can result in violations of the Act.

High concentrations of wealth appear to be a proxy for exclusionary zoning practices in Happy Valley. As reported on June 23, 2015, in the Oregonian, Happy Valley is the "richest town" in Oregon. See Exhibit A attached here. This raises concerns about the city's ability to comply with the Act. The Clackamas County Consolidated Plan ("Con Plan" available at [http://www.clackamas.us/communitydevelopment/documents/conplan\\_final.pdf](http://www.clackamas.us/communitydevelopment/documents/conplan_final.pdf) - pages referred to below are attached as Exhibit B) shows that Happy Valley's population growth between 2000-2010 was 208%, and in 2010, 76% of the population was white. See Con. Plan p. 26 and 31. Poverty has increased in the County by 10.4% between 2000 and 2010 and nearly half of female householders with young children under 5 (a protected class) lived in poverty. *Id.* at 53. Notwithstanding this crisis, Happy Valley's housing supply consists almost exclusively of single family units. *Id.* at 55. Downzoning the subject property will continue the trend of ignoring the need for affordable housing in areas of opportunity, such as Happy Valley.

Thank you for your consideration. Please provide written notice of your decision, to FHCO and HLA, c/o Louise Dix, at 1221 SW Yamhill Street, Portland, OR 97205.



Louise Dix  
Fair Housing Council of Oregon



Jennifer Bragar, President  
Housing Land Advocates

## 'Richest town in Oregon' may surprise you



[\[http://connect.oregonlive.com/staff/oregonian/index.html\]](http://connect.oregonlive.com/staff/oregonian/index.html) By The Oregonian/OregonLive

[\[http://connect.oregonlive.com/staff/oregonian/posts.html\]](http://connect.oregonlive.com/staff/oregonian/posts.html)

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on June 23, 2015 at 10:41 AM, updated June 23, 2015 at 12:15 PM

The website 24/7 Wall St. recently pored through Census data to come up with a list of the richest towns in each state. For their list, the site's editors stuck to only incorporated towns with 25,000 or fewer residents. (Sorry, Lake Oswego and West Linn.)

Even so, **the town at the top** [\[http://247wallst.com/special-report/2015/06/17/the-richest-town-in-each-state/9/\]](http://247wallst.com/special-report/2015/06/17/the-richest-town-in-each-state/9/) will likely surprise a lot of people. Happy Valley has more often been in the news for its unprecedented over-development just before the Great Recession, and subsequent real estate collapse. Images of empty subdivisions are rooted in many Oregonians' minds when it comes to Happy Valley.

But 24/7 Wall St. found Happy Valley's median income of \$92,773 to be tops in Oregon. **At the other end of the spectrum: Prineville** [\[http://247wallst.com/special-report/2015/06/05/the-poorest-town-in-each-state/9/\]](http://247wallst.com/special-report/2015/06/05/the-poorest-town-in-each-state/9/), long one of the areas with the highest unemployment in the state, and a median income of \$29,959.

The gap between richest small town and poorest small town puts Oregon about in the middle of the pack nationally, the website said.

-- The Oregonian/Oregonlive.com

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**EXHIBIT A**

[http://www.oregonlive.com/business/index.ssf/2015/06/richest\\_town\\_in\\_oregon\\_happy\\_va...](http://www.oregonlive.com/business/index.ssf/2015/06/richest_town_in_oregon_happy_va...) 1/19/2016





# **2012-2016 CONSOLIDATED PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT**

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**CLACKAMAS COUNTY  
COMMUNITY DEVELOPMENT DIVISION**



**April 2012**

**EXHIBIT B**

## HOUSEHOLDS AND FAMILIES

According to the 2012 ACS data, there were 200,160 households in Washington County, of which approximately 134,176 (67.0%) were considered “family” households. The remainder (33.0%) was “non-family” households, consisting of individuals living alone or unrelated individuals living together. Of the 134,176 family households, 79.0% consisted of a male or female householder living with a spouse, including those with children or other related family members. The remaining families consisted of a male (6.0%) or female (15.0%) householder living with children or other family members but not with a spouse.

In 2012, the average household size for the county was 2.63 persons. There was a significant difference between the average household size for the county’s Latino population (4.30 persons) and that of the non-Latino population (2.34 persons) in 2012. Table 3-99 in Chapter 3 provides information on the average household size for all cities in the county for 2012, the most recent year for which this information is available. This table shows that the average household sizes for the cities with all or a portion of their land within Washington County ranged from 3.57 persons (Cornelius) to 1.57 persons (King City). More current data on average household sizes (from the five year 2008-2012 American Community Survey) show the household sizes for the following cities: Banks, (3.26 persons), Sherwood (2.97 persons), Forest Grove (2.72 persons), Hillsboro (2.94 persons), Tualatin (2.65 persons), Tigard (2.50 persons), Beaverton (2.45 persons) and Durham (2.25 persons).

## INCOME AND POVERTY

In 2012, the county’s cost of living was among the highest in Oregon. The median household income in Washington County was \$64,375. The standard for self-sufficiency in Washington County, as reported by Worksystems, is \$65,800 for a four-person household, which is currently the highest self-sufficiency standard in Oregon. The cities in the county with the highest median income were Sherwood (\$82,257), Durham (\$65,313) and Banks (\$65,000). The lowest median household incomes were in King City (\$36,446), Forest Grove (\$45,892) and Cornelius (\$50,977). The per capita income in Washington County in 2012 was \$31,476, with the highest in Durham (\$41,490). The lowest per capita income was in Cornelius (\$17,582).

Median household incomes in Washington County grew by \$12,253 from 2000 to 2012, an increase of 23.5%.

In 2000, 7% of residents had incomes below the poverty rate; by 2012, the poverty rate had increased to 10.9%. All told, between 2000 and 2012, the number of people in poverty in Washington County grew by 76%. Poverty rates were lowest in Sherwood (4.6%) and Banks (5.1%). Poverty rate was highest in Cornelius (16.9%) and Forest Grove (19.6%). The poverty rate in Forest Grove grew by almost 4 percentage points since 2007.

County-wide, over half of the residents below the poverty level were White, although the percentage of all White residents who were below the poverty level was lower than any other ethnic group. The highest poverty rates in 2012 were found among residents who defined themselves as having some other race (25.8%), American Indian or Alaska Native residents (25.5%) and Black or African American (18.6%). The poverty rate for the Latino population was 24.1%. All of these ethnic and racial groups bear a disproportionate percentage of poverty. See Table 1-4 for a full description of the percentages of persons living in poverty in Washington County by race and ethnicity.

The demand for low-cost affordable housing far exceeds the supply. In addition to market-rate units that serve low- and moderate-income households, there were approximately 7,000 subsidized rental housing units and 2,700 households with rental housing vouchers in Washington County in 2011, based on information in the Regional Affordable Housing Inventory prepared by Metro and data related to Section 8 vouchers from the Washington County Department of Housing Services. Since some vouchers are used in subsidized units, there are an estimated 7,000 - 9,000 households living in subsidized rental housing in Washington County, which represents 3.6% - 4.6% of all housing units in the County. Based on the estimates of available housing for households with incomes below 50% of the area median, there is an estimated need for 14,000 - 23,000 units for households with incomes below 50% of median available through private market (unsubsidized) and subsidized housing units and/or vouchers for subsidized units. This represents approximately 7 to 11% of all households in Washington County.

Ethnic and racial minorities comprise a disproportionate percentage of lower income households and are concentrated in specific areas. For example, 38% of Latino households have extremely low- or low-incomes, in comparison to 17% of all households in the County. In addition, there are 9 Census Tracts in the County that have concentrations of racial or ethnic minorities or "Minority Concentrations". Minority Concentrations are defined as those Census Tracts that have a percentage of racial or ethnic minority households from the 2010 Census that is at least 20% higher than the percentage for that racial or ethnic minority population across the whole County overall. All but two of these Census Tracts represent a concentration of Latino residents.

A significant number of households in the County also have special needs, including older adults, people with substance abuse problems, survivors of domestic violence, people with AIDS, ex-offenders, people with physical and mental disabilities, farmworkers and the homeless. Data on these populations are presented later in this section. These needs are presented in tabular form in Table 3-12.

The following is a table showing the population and household growth in Washington County between 2000 to 2011 utilizing data from the 2000 Census and 2007-2011 ACS.

**TABLE 3-3 Housing Needs Assessment Demographics**

<b>Demographics</b>	<b>Base Year: 2000</b>	<b>Most Recent Year: 2011</b>	<b>% Change</b>
Population	443,906	520,562	17%
Households	168,543	197,364	17%
Median Income	\$52,054	\$63,814	23%

*Source:: 2000 Census (Base Year), 2007-2011 ACS (Most Recent Year)*

## CHAPTER 3

As noted in the regulation at 91.205(b)(2), a “disproportionately greater need” exists when the percentage of persons in a category of need who are members of this particular racial group is at least 10 percentage points higher than the percentage of low income persons in Washington County with one or more of the four housing problems: lacks complete kitchen facilities; lacks complete plumbing facilities; more than one person per room; or housing cost burden is greater than 30% of household monthly income. Three racial or ethnic groups have disproportionately greater needs, as identified in Tables 13 – 16 across income levels ranging from 0% to 100% of the Area Median Income (AMI) derived from 2007-2011 CHAS data. Those racial or ethnic groups include: persons who are Black or African American, Pacific Islanders and persons who are of Asian descent.

As indicated in Table 3-17, 86% of persons in the 0-30% Area Median Income (AMI) range reported having one or more of four housing problems: lacks complete kitchen facilities; lacks complete plumbing facilities; more than one person per room; or housing cost burden is greater than 30% of household monthly income. Of the described racial and ethnic categories, Pacific Islanders showed a disproportionately greater need in that 100% of persons in this category of need (0-30%AMI) reported having one or more housing problems (14 percentage points higher than the County as a whole). While not quite exceeding the 10 percentage points higher than threshold to meet the regulatory definition of “disproportionately greater need”, it should be noted that 93% of American Indian/Alaska Natives (7 percentage points higher than the County as a whole) and 95% of Hispanic or Latino persons (9 percentage points higher than the County as a whole) in the 0-30% AMI income range reported having housing problems.

As indicated in Table 3-18, 84% of all persons in the 30-50% AMI range reported having one or more of four housing problems. Of the described racial and ethnic categories, Pacific Islanders showed a disproportionately greater need in that 100% of persons in this category of need (0-50% AMI) reported having one or more housing problems (16 percentage points higher than the County as a whole). While not quite exceeding the 10 percentage points higher than threshold to meet the regulatory definition of “disproportionately greater need”, it should be noted that 91% of Hispanic or Latino persons in the 0-50% AMI range reported having housing problems (9 percentage points higher than the County as a whole).

Table 3-19 shows that 53% of all persons in the 50-80% AMI range reported having one or more of the four housing problems. Of the described racial and ethnic categories in this category of need (50-80% AMI), Black or African Americans, Asians and Pacific Islanders all showed a disproportionately greater need. 82% of persons who are Black or African American reported having one or more of the four housing problems (29 percentage points higher than the County as a whole). 64% of persons who are Asian reported having one or more of the four housing problems (11 percentage points higher than the County as a whole). 80% of persons who are Pacific Islanders reported having one or more of the four housing problems (27 percentage points higher than the County as a whole).

Table 3-20 shows that 35% of all persons in the 80-100% AMI range reported having one or more of the four housing problems. Of the described racial and ethnic categories in this category of need (80-100% AMI), persons who are Asian showed a disproportionately greater need. 52% of persons who are Asian reported having one or more of the four housing problems (17 percentage points higher than the County as a whole). 64% of persons who are Asian reported having one or more of the four housing problems (11 percentage points higher than the County as a whole). 80% of persons who are Pacific Islanders reported having one or more of the four housing problems (27 percentage points higher than the County as a whole). 39% of Hispanic or Latino persons reported having one or more of the four housing problems (only 4 percentage points higher than the County as a whole, but the only other racial/ethnic category that indicates a greater percentage of need in the 80-100% AMI range).

### Number of Housing Units

#### Total Housing Units

There were an estimated 212,386 housing units in Washington County in the year 2012. The number of housing units has grown approximately 19% from 2000 to 2012. (2000 figures were based on 2000 decennial Census data, 2012 figures were estimated based on 2008-12 ACS data).

## CHAPTER 3

**TABLE 3-66 Total Housing Units, Washington County 2012**

Name of Area	Housing units	% of housing units
Banks	576	0.3%
Beaverton	38,957	18.3%
Cornelius	3,474	1.6%
Durham	568	0.3%
Forest Grove	7,946	3.7%
Gaston	293	0.1%
Hillsboro	34,639	16.3%
King City	2,046	1.0%
Lake Oswego (part)	0	0.0%
North Plains	852	0.4%
Portland (part)	778	0.4%
Rivergrove (part)	15	0.0%
Sherwood	6,244	2.9%
Tigard	20,257	9.5%
Tualatin (part)	9,465	4.5%
Wilsonville (part)	297	0.1%
Subtotal Incorporated	126,407	59.5%
Unincorporated	85,979	40.5%
<b>TOTAL</b>	<b>212,386</b>	<b>100.0%</b>

Source: 2008-2012 ACS

- The largest cities in terms of number of housing units are Beaverton (18.3%), Hillsboro (16.3%) and Tigard (9.5%). Combined, the three cities contain 44.3% of all housing units in the County.
- Unincorporated areas contain 40.5% of all housing units.
- The remaining 15.4% of housing units are dispersed among the smaller communities.
- The City of Sherwood experienced the fastest growth rate in the area, with an increase in housing units of 40% (1,788 units) between 2000 and 2012.
- Hillsboro added the most absolute units, constructing an estimated 7,447 housing units between 2000 and 2012.



Table 3-69 Distribution of Subsidized Housing highlights where the 7,030 regulated and unregulated units are located in Washington County.

**TABLE 3-69 Distribution of Subsidized Housing, Washington County (2011)**

Jurisdiction	Number of sites	Unregulated units	Regulated units	Total units
Beaverton	34	11	501	512
Cornelius	10	0	10	10
Durham	1	0	210	210
Forest Grove	31	7	597	604
Hillsboro	62	4	2,196	2,200
North Plains	1	0	33	33
Sherwood	7	1	96	97
Tigard	18	10	632	642
Tualatin	3	0	604	604
Unincorporated County	89	7	2,096	2,118
<b>Washington County</b>	<b>256</b>	<b>40</b>	<b>6,975</b>	<b>7,030</b>

Source: 2011 Metro Affordable Housing Inventory Report

A significant percentage of the units (almost a third) are located in Hillsboro. Tigard, Tualatin, Forest Grove and Beaverton each include nearly 500 or more units. A substantial number of units in the inventory are also located in unincorporated portions of the County. In comparing these numbers to the proportion of the population living in these areas of the County, Hillsboro, Forest Grove and Tualatin appear to have higher concentrations of units compared to their share of County population.

The Washington County Department of Housing Services (DHS) manages public housing units owned by the County and administers the Section 8 vouchers. HUD directly administers the Section 811 and 202 housing assistance programs.

Altogether, there are 7,030 subsidized housing units and 2,784 households with housing vouchers in Washington County. Some households with housing vouchers live in subsidized housing units and some live in private market units. There are about 7,000 – 9,000 households living in subsidized housing in Washington County, which represents 3.6% - 4.6% of all housing units in the County. As discussed in the following section, this supply of subsidized housing does not necessarily meet the demand for it, particularly for those in Washington County who are earning less than 30% AMI, given that there are approximately 29,000 low- and moderate-income households in Washington County that are “cost-burdened” (spend more than 30% of their income on housing).

**Rental Costs:** Per the 2008-12 ACS data, the median gross rent countywide was \$961. During that same time, the median contract rent was \$839. The difference in amount can be attributed most likely to monthly utility costs. Gaston had the lowest median gross rent (\$627) while Sherwood the highest (\$1,212). The median gross rent in Washington County grew at an estimated 2.4% per year between 2000 and 2012. This is roughly the rate of inflation during that period. Median gross rents are lowest in some of the smaller outlying communities (e.g., Banks, Gaston and Forest Grove) and highest in Sherwood, Tualatin and King City.

## CHAPTER 3

**TABLE 3-73 Median Rents, Washington County (2012)**

Name of Area	Median Rent (\$)
Banks	869
Beaverton	920
Cornelius	920
Durham	844
Forest Grove	756
Gaston	627
Hillsboro	1,023
King City	984
Lake Oswego (part)	0
North Plains	939
Portland (part)	684
Rivergrove (part)	0
Sherwood	1,212
Tigard	920
Tualatin (part)	972
Wilsonville (part)	1,195
Unincorporated	n/a
<b>Washington County</b>	<b>961</b>

Source: 2008-2012 ACS

**TABLE 3-74 2014 HOME Program Monthly Rent Limits for Washington County (inclusive of utilities)**

Monthly Rent (\$)	Efficiency (no bedroom)	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Fair Market Rent	659	766	912	1,344	1,615
High HOME Rent	666	774	922	1,200	1,319
Low HOME Rent	638	684	821	949	1,058

Source: HUD FMR and HOME Rents

**TABLE 3-75 Housing Affordability**

<b>% Units affordable to Households earning</b>	<b>Renter</b>	<b>Owner</b>
30% HAMFI	1,691	No Data
50% HAMFI	7,994	2,080
80% HAMFI	39,810	5,973
100% HAMFI	No Data	17,398
Total	49,495	25,451

Source: 2007-2011 CHAS

**Home Ownership Costs:** In 2012, median monthly homeownership costs (for homeowners with a mortgage) were \$1,888 for Washington County. In 2000, the median costs were \$1,358, which represents an increase of 3.2% per year. This increase outpaced inflation during that time.

**TABLE 3-76 Median Homeownership Costs, Washington County (2012)**

<b>Name of Area</b>	<b>Median Selected Monthly Owner Costs With A Mortgage (\$)</b>
Banks	1,765
Beaverton	1,868
Cornelius	1,654
Durham	2,184
Forest Grove	1,562
Gaston	1,769
Hillsboro	1,820
King City	1,148
Lake Oswego (part)	0
North Plains	1,629
Portland (part)	2,756
Rivergrove (part)	3,250
Sherwood	2,083
Tigard	1,948
Tualatin (part)	1,909
Wilsonville (part)	0
Unincorporated	n/a
<b>Washington County</b>	<b>1,888</b>

Source: 2008-2012 ACS

In 2012, ownership costs (with a mortgage) were highest in Rivergrove (partial) at \$2,076 and lowest in King City (\$1,148). Similar to rental costs, owner costs were also relatively lower in several smaller outlying communities (e.g., North Plains, Gaston, Cornelius and Forest Grove).



METRO

November 28, 2007

TO: Mayors and County Commission Chairs  
City and County Administrators  
Planning Directors

FROM: Michael Jordan, Chief Operating Officer

RE: Integrating Urban Growth Management Functional Plan Compliance and  
Performance Measures

The Urban Growth Management Functional Plan, originally adopted unanimously by the Metro Policy Advisory Committee and the Metro Council in 1996, regulates how local governments implement the 2040 Growth Concept. Local governments in the region are required to comply with the Plan's provisions and each year Metro is required to submit a compliance report to the Metro Council detailing each local government's compliance with the Functional Plan.

Elected officials and staff from throughout the region have identified several issues with the current approach to compliance.

- Compliance requirements tend to be focused more on reporting rather than a more substantive evaluation of whether and how 2040 is being implemented.
- Many of the requirements in the Functional Plan are prescriptive. Local governments want more flexibility to meet regional goals.
- Local governments in the region have limited staff resources.

With the New Look at Regional Choices/Making the Greatest Place and Performance Measures projects underway at Metro, now is an appropriate time to revisit how Metro approaches compliance. During the next two years, Metro will be working with you through the Metro Policy Advisory Committee and with your staff through the Metro Technical Advisory Committee to integrate compliance with performance standards. The goal of this endeavor is to develop and use performance standards to evaluate progress in implementing the 2040 Growth Concept.

As a result, Metro will suspend certain Functional Plan reporting requirements, revise Functional Plan titles as needed, continue current compliance requirements for the most recent changes including Title 4 (Industrial and Employment Areas) and Title 13 (Nature in Neighborhoods), and change the annual compliance report. These changes and what local jurisdictions need to do are detailed in the attached sheet.

I believe that integrating compliance with performance measures will result in a more meaningful evaluation and assessment of how the region as a whole is achieving the goals set out in the 2040 Growth Concept. I look forward to continuing our work together.

### Attachment 1 – Urban Growth Management Functional Plan Compliance Changes

Functional Plan Title	Requirement	Action
Title 1 Housing and Employment Accommodation	Annual dwelling unit and job capacity report -- Metro Code 3.07.120(D)	Temporarily suspend report -- local governments do not need to send in annual report  Local governments must continue to submit proposed zone changes to Metro for review
Title 1 Housing and Employment Accommodation	Biennial report on actual density of new residential density per net developed acre -- Metro Code 3.07.140(D)	Temporarily suspend report -- local governments do not need to send in biennial report
Title 2 Regional Parking Policy	Annual report on number and location of new parking spaces -- Metro Code 3.07.220(D)	Temporarily suspend report -- local governments do not need to send in annual report
Title 3 Water Quality and Flood Management		Metro staff will continue to work with the three jurisdictions that are not in compliance with the Water Quality Performance Standards
Title 4 Industrial and other Employment Areas	Protection of Regionally Significant Industrial Areas -- limit size and location of retail commercial uses -- Metro Code 3.07.420	Deadline for action was July 22, 2007 for jurisdictions that have Regionally Significant Industrial Areas. Those jurisdictions must either submit information showing they have met requirement or submit a request to extend the deadline to Metro
Title 4 Industrial and other Employment Areas	Protection of Industrial Areas -- limit new buildings for retail commercial uses -- Metro Code 3.07.430	Deadline for action was July 22, 2007 for jurisdictions that have Industrial Areas. Those jurisdictions must either submit information showing they have met requirement or submit a request to extend the deadline to Metro
Title 4 Industrial and other Employment Areas	Map Amendment Process -- Metro Code 3.07.450	Continue requiring amendments to the Title 4 Employment and Industrial Areas map
Title 6 Central City, Regional Centers, Town Centers and Station Communities	Development strategy -- Metro Code 3.07.620	Eliminate December 31, 2007 deadline -- Metro staff will be working with local government staff to assist and evaluate development strategies
Title 6 Central City, Regional Centers, Town Centers and Station Communities	Biennial progress report -- Metro Code 3.07.650	Suspend reporting requirement -- Metro staff will be working with local government staff to evaluate centers progress
Title 7 Housing Choice	Affordable Housing Supply -- Metro Code, 3.07.740(B)	Temporarily suspend reporting requirement
Title 11 Planning for New Urban Areas	Concept planning -- Metro Code 3.07.1120	Continue concept planning for all areas brought into the UGB since 2002
Title 13 Nature in Neighborhoods	Application to Riparian Habitat and Upland Wildlife Areas and Comprehensive Plan Amendments -- Metro Code 3.07.1330	Maintain compliance deadlines of March 13, 2007 for Tualatin Basin Natural Resources Coordinating Committee (TBNRCC) members and January 5, 2009 for non-TBNRCC members
Title 13 Nature in Neighborhoods	Report on progress in using voluntary and incentive based education, acquisition, and restoration habitat protection -- 3.07.1360(C)	Move deadline to March 15, 2008 to correspond with DEQ TMDL deadline