

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

REPORT ON THE CITY OF PORTLAND PERIODIC REVIEW TASKS 4 AND 5

DLCD Order 001892

December 5, 2017

I. SUMMARY OF DECISION

The Department of Land Conservation and Development (department) finds that the actions of the city of Portland (city) to complete tasks 4 and 5 of the city's periodic review work program comply with the statewide planning goals, related statutes, and implementing administrative rules, based on the findings and conclusions contained in this report. These tasks are approved.

II. REVIEW PROCEDURES AND CRITERIA

A. Director Review

OAR 660-025-0150(1) provides that, in response to a periodic review task submittal, the director may take action as follows:

- (a) Issue an order approving the completed work task;
- (b) Issue an order remanding the work task to the local government including a date for resubmittal;
- (c) Refer the work task to the [Land Conservation and Development Commission (commission)] for review and action; or
- (d) The director may issue an order approving portions of the completed work task provided these portions are not affected by an order remanding or referring the completed work task.

OAR 660-025-0150(9) provides that the director's standard of review is the same as that for the commission, which is expressed in ORS 197.633(3) and OAR 660-025-0160(2):

- (a) For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government's decision.
- (b) For procedural issues, whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.
- (c) For issues concerning compliance with applicable laws, whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The

commission shall defer to a local government’s interpretation of its comprehensive plan or land use regulation in the manner provided in ORS 197.829[.] * * * For purposes of this subsection, “complies” has the meaning given the term “compliance” in the phrase “compliance with the goals” in ORS 197.747.

A director’s decision approving or partially approving the submittal may be appealed to the commission only by a person who filed a valid objection. OAR 660-025-0150(6)(a). Appeals of a director’s decision must be filed with the department’s Salem office within 21 days of the date the director’s action was mailed. OAR 660-025-0150(6)(c).

B. Review Criteria

The substantive criteria for these periodic review tasks 4 and 5 include: Goal 1 (Citizen Involvement) and Goal 2 (Land Use Planning); those aspects of Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and Goal 7 (Areas Subject to Natural Hazards) to the extent that they relate to policy and implementation; Goal 9 (Economic Development) as it relates to policy and implementation of economic needs; Goal 10 (Housing) as it relates to policy and implementation of housing needs; Goal 11 (Public Facilities and Services) as it relates to policy and implementation of infrastructure needs; Goal 12 (Transportation) as it relates to policy and implementation of transportation needs; Goal 14 (Urbanization) as it relates to coordination with Metro; and all of the applicable Oregon administrative rules. Some of these provisions include other goals and rules by reference.

III. BACKGROUND AND DESCRIPTION OF SUBMITTAL

A. Background

The city organized its periodic review work program to carry out the comprehensive plan update in three procedural phases: inventory, alternatives analysis, and policy choices and implementation. The work program includes the following tasks:

Task 1, Community Involvement. This task includes appointment of a citizen involvement committee (complete) and reliance on the committee to assist the city with completion of subsequent tasks. This task is also the subject of this decision as the task includes an evaluation of community involvement leading up to the adoption of each Task 2, 3, 4, and 5 products. The contents of this task submittal are listed in the next subsection of this report.

Task 2, Inventory and Analysis. Task 2 includes inventories and analyses establishing the factual basis for later tasks. The commission approved this task in LCDC order 14-WKTSK-001850 on June 11, 2014.

Task 3, Consideration of Alternatives. This task includes updates of the inventories completed in task 2, adoption of an economic opportunities analysis (EOA), and identification of the consequences of alternative patterns of development. The department director approved this task in DLCD Order 001882 on April 25, 2017.

Task 4, Policy Choices. Task 4 is a subject of this review. This task includes decisions related to the city’s economic, housing, public facilities and transportation elements of the comprehensive plan and the plan map. These decisions are informed by preliminary work in tasks 2 and 3.

Task 5, Implementation. Task 5 is the also a subject of this review. This task is intended to carry out the policy decisions made in previous tasks.

B. Procedural History

The submittals before the department for review includes task 4, Ordinance No. 187831, adopted June 15, 2016, and task 5, Ordinance No. 188177, adopted December 21, 2016.

1. On April 28, 2017, pursuant to OAR 660-025-0130(1), the city submitted task 4 to the department.
2. On May 18, 2017, pursuant to OAR 660-025-0150(3), the city waived the 120-day deadline for a department decision on task 4.
3. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the task 4 submittal was May 19, 2017. The department received a total of 11 written objections.
4. On August 7, 2017, pursuant to OAR 660-025-0130(1), the city submitted task 5 to the department.
5. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the task 5 submittal was August 28, 2017. The department received six written objections.

C. Description of Submittal

The city made a final decision regarding adoption of its task 4 submittal on June 15, 2016, and its Task 5 submittal on December 21, 2016. In reaching this decision, the city adopted the following documents, reports, and maps as part of the city’s comprehensive plan:

1. Task 4

1. Community Involvement Report for Task 4 (submitted with Task 3)
2. 2035 comprehensive plan map
3. Goals and policies comprising the economic and housing elements of the 2035 comprehensive plan
4. Public Facilities Plan – Citywide System Plan (submitted with Task 3)

5. List of infrastructure projects: water, sewer and drainage
6. Policies addressing Portland International Airport expansion, Portland Heliport and coordination with school facilities plans
7. Goals and policies of the Transportation System Plan and list of transportation projects

2. Task 5

1. Community Involvement Report for Task 5
2. Zoning map amendments to implement the adopted 2035 Comprehensive Plan
3. Zoning code amendments to implement the adopted 2035 Comprehensive Plan
4. Task 4 transportation system plan amendments to add additional policies and update street classifications
5. Task 4 comprehensive plan amendments to incorporate major public trails into the land use map, and corrections to policy language

The department performed a completeness determination of the task 4 and task 5 submittals as required by OAR 660-025-0130(2).

OAR 660-025-0130(3) provides:

For a periodic review task to be complete, a submittal must be a final decision containing all required elements identified for that task in the work program. The department may accept a portion of a task or subtask as a complete submittal if the work program identified that portion of the task or subtask as a separate item for adoption by the local government.

* * *

The department finds the task 4 and 5 submittals to be complete.

IV. DEPARTMENT REVIEW & RESPONSE TO OBJECTIONS

A. Objections Received

The department received objections from the following parties. The department's responses to objections uses the numbering displayed for identification only; the numbers have no other significance:

1. Task 4 Objections

- 4-1 James Harries
- 4-2 Enda Kenny
- 4-3 Rose City Park Neighborhood Association #1
- 4-4 Margaret Davis
- 4-5 Daniel Root
- 4-6 Multnomah Neighborhood Association #1
- 4-7 Multnomah Neighborhood Association #2
- 4-8 Dave Malcolm
- 4-9 Goose Hollow Foothills League and Sustasis Foundation, Michael Mehaffy
- 4-10 Multnomah Neighborhood Association #3
- 4-11. James Peterson

2. Task 5 Objections

- 5-1 Mascott LLC, Eitan Ovadia, Kin Properties, Inc.
- 5-2 Rod Ramsour
- 5-3 Garlynn Woodsong #1
- 5-4 Garlynn Woodsong #2
- 5-5 Multnomah Neighborhood Association #4
- 5-6 Multnomah Neighborhood Association #5
- 5-7 Rose City Park Neighborhood Association #2

B. Validity of Objections

OAR 660-025-0140(2) provides that in order for an objection to be valid, it must:

- (a) Be in writing and filed no later than 21 days from the date the city mailed the notice;
- (b) Clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated;
- (c) Suggest specific revisions that would resolve the objection; and
- (d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

Except for Mr. Peterson's objection (4-11), all of the objections received for tasks 4 and 5 were filed within the required 21-day period. As noted in section III.B above, the task 4 deadline to file objections was May 19, 2017. Mr. Peterson's objection was received on

May 22, 2017. Therefore, this objection did not comply with OAR 660-025-0140(2)(b) and is invalid.

The Rose City Park Neighborhood Association's identical objections (4-3) and (5-7) on behalf of 59 individuals for both plan and zone designations, does not demonstrate that the individuals participated orally or in writing at the local level and during the local process. The validity of these objections is further addressed in subsection C.3.

The remaining letters of objection were timely and demonstrated that the objectors participated during the city's hearings process. Therefore, OAR 660-025-0140(2)(a) and (d) have been satisfied with the exception of the Peterson objection (4-11) and the Rose City Park objections (4-3 and 5-7). The department found that objections 4-2 (Kenny), 4-4b (Davis), 4-5 (Root), 4-8 (Malcomb), 4-9 (Goose Hollow, *et al.*), 5-1 (Mascott LLC, *et al.*), 5-2 (Ramsour), and 5-6b and c (Multnomah Neighborhood Association) did not satisfy OAR 660-025-0140(2)(b) because they did not clearly identify an alleged deficiency in the submittal either by providing adequate detail regarding the portion of submittal alleged to be deficient of identifying what relevant law was violated.

C. Objections and Department Responses – Tasks 4 and 5

1. Objection 4-1 – James Harries

The department understands Mr. Harries' objection to be that the city ignored his requests to apply an R-10 zone to his properties at 10500 and 10614 SW 25th Ave., Portland. Attachment A at 1. He indicates that adjacent and nearby properties are either R-10 or R-7 and that there are no distinguishing features on the properties that would preclude development.

The alleged deficiency is that local and statewide land use goals call for increasing density within city limits. The proposed remedy is for the city to rezone the property.

Department Response: The department rejects this objection. Tasks 4 and 5 require the city to, among other things, adopt long-term policies and shorter-term strategies for meeting identified housing needs, and to implement these policy decisions. The results of those tasks must comply with applicable statewide planning goals, administrative rules, and statutes. The city must zone individual residential properties in a manner that is consistent with the comprehensive plan. The plan for and zoning of residential land must comply with Statewide Planning Goal 10 (Housing). Goal 10 and its applicable implementing rule, OAR chapter 660, division 7, the metropolitan housing rule, require the city to develop a projection of future housing need, provide a supply of residential land sufficient to meet identified housing needs, and to adopt maps and policies to accommodate needed housing to meet minimum housing mix and density requirements at price ranges commensurate with the financial capabilities of the projected population. As summarized in the comprehensive plan findings (Task 4 Record at 29-42), the city completed some of this analysis in periodic review task 2, which the department approved, and the remaining analysis is in this task 4 where the city determined that the

projected and mapped housing capacity exceeds the projected need for new housing. Task 4 Record at 39.

Because the city has provided for its identified need for residential housing, the objection has not established a basis for the department to reject the submittal. The department reviews the submittal for compliance with relevant requirements. The fact that the city could have applied a different zone to a property that is also consistent with applicable goals and rules is not a basis to sustain an objection.

2. Objection 4-2 – Enda Kenny

Ms. Kenny notes that senior citizens have unique needs and must be included in the planning process. Attachment A at 2. One of the specific needs identified is to “age in place” within their own neighborhood, and another to build more therapy swimming pools and/or to maintain the existing swimming pools.

Department Response: The department determined that the objection is invalid under OAR 660-025-0140(2)(b). The concerns raised are beyond the scope of tasks 4 and 5; therefore they provide no basis for the department to remand the submittal. The objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

3. Objections 4-3 and 5-7 – Rose City Park Neighborhood Association

The department jointly considers these objections because they are essentially identical. The objection was submitted for both the task 4 plan designation and the task 5 zone designation. Attachment A at 3 and Attachment B at 41. The Rose City Park Neighborhood Association (RCPNA) established standing in the city’s comprehensive plan update by participating in testimony submitted to the city on November 13, 2015. This testimony was in support of rezoning three properties (from R-2 to mixed-use commercial) located at the southeast corner of the intersection of NE Fremont and 50th Ave.

The objection states that, on March 21, 2017, after the city had adopted tasks 4 and 5, a special association board meeting was held for concerned property owners in opposition to the rezone. The board agreed to the following:

“Since our original recommendation to rezone the Peterson Properties from R2 to Mixed Use Commercial in 2015 we have heard additional concerns from neighbors to this property as well as additional testimony from Jim Peterson, Property owner. We firmly believe that all of these neighbors, in the attached Objection and Proponent testimony, should be heard by DLCDC and the City of Portland.” Attachment B at 43.

The objection from the RCPNA provides both a letter from the property owner and proponent of the proposed rezone, and a letter from a group of 59 neighbors in opposition to the rezone so that it would be heard by the department and the city.

None of the 59 individuals who signed the letter of opposition included by RCPNA participated orally or in writing in the local proceedings.

Department Response: The department determined that the objection is invalid. RCPNA has not objected to the submittal, only transmitting the concerns of persons who have not participated orally or in writing in any task 4 or 5 proceeding. To be valid, the objection must allege a deficiency in the submittal and suggest specific revisions to resolve the objection. An objection that merely purports to advance the views of proponents and opponents of a particular aspect of a submittal does not comply with OAR 660-025-0140(2).

4. Objection 4-4 – Margaret Davis

Ms. Davis filed a two-part objection to a comprehensive plan policy adopted by the city. Attachment A at 39.

Objection 4-4a. Ms. Davis first objects that the city introduced the middle housing policy, Policy 5.6, on March 18, 2016, in a large document less than three months before the city council adopted the comprehensive plan on June 15, 2016. Policy 5.6 provides:

Enable and encourage development of middle housing. This includes multi-unit or clustered residential buildings that provide relatively smaller, less expensive units; more units; and a scale transition between the core of the mixed use center and surrounding single family areas. Where appropriate, apply zoning that would allow this within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City.

As stated by Ms. Davis, the policy is now being implemented and will allow more than doubling of the residential density in most of the residential neighborhoods in Portland. In addition, the objection incorporates Multnomah Neighborhood Association's concerns that the city's implementation of this middle housing policy results in allowing a significant increase in density in single-family residential neighborhoods without the appropriate planning process including: a failure to meet Goal 1 and Goal 2; a failure to justify actions with objective evidence; a failure to adequately inform the public about potential impacts; and a failure to plan in a comprehensive manner, including planning for greatly increased growth capacity without appropriate infrastructure planning to support that growth. The objector's proposed remedy is to void the middle housing policy.

Department Response: The department rejects this objection. The Goal 1 and Goal 2 portion is addressed in the department's response to objection 4-6 below (Multnomah Neighborhood Association #1).

Policy 5.6 does not accomplish what the objection claims. It is not self-executing; it therefore does not rezone large areas of the city that are currently zoned for single-family detached residential development. It commits the city to a process of studying whether the specified areas “within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City” should be rezoned “where appropriate” to allow development of middle housing. Any subsequent rezones to implement this policy will require additional notice and action by the city, and will be subject to requirements for public notice and subject to appeal.

Objection 4-4b. The second objection is to the rezoning of a segment of NE Fremont from CM1 to CM2. The objector indicates that the Beaumont-Wilshire Neighborhood Association filed comments in favor of zoning the area the lower density zone of CM1 on the basis of lack of street connectivity, lack of frequent transit service and other factors that are not identified in the objection. The objector adds that these “...last minute reversals such as this, void the public input/accountability elements of comprehensive planning.” The objector’s proposed remedy is to void the rezone.

Department Response: The department determined that the objection is invalid. Although the objection presents a basis for CM1 zoning, the objection does not clearly identify an alleged deficiency with CM2 zoning that allows the department to identify the relevant statute, goal, or administrative rule the task submittal has violated as required by OAR 660-025-0140(2)(b).

5. Objection 4-5 – Daniel Root

Mr. Root objects to the rezone of property at 6141 SW Canyon Court from R20 to R5 (objection referred to R20,000 to R5,000). Attachment A at 41. The objection does not clearly identify an alleged deficiency, although it is stated that the site has a number of challenges related to the distance to public transit, location on a steep slope and in a landslide hazard area, in addition to limited road access and future traffic concerns. The objector also alleges that the normal public process was bypassed and that the predominance of the data was ignored when the proposal came to a final vote at city council.

Department Response: The department determined that the objection is invalid. The objection states a disagreement to the submittal, but it does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

6. Objection 4-6 – Multnomah Neighborhood Association #1

The Multnomah Neighborhood Association objects to the process leading to, and the final result of, Middle Housing Policy 5.6. The policy is quoted in subsection 4, “Objection 4-4 – Margaret Davis.” The objection can be divided into two sub-objections.

Objection 4-6a. This sub-objection faults the city’s public involvement process relating to the introduction and adoption of Policy 5.6, contending that the submittal threatens to undermine public confidence in the integrity of Goal 1 and Goal 2, requiring coordinated comprehensive planning. Attachment A at 45-53. Although the objector concedes that the middle housing maybe a legitimate policy, because city staff introduced it towards the end of the six-year periodic review task process, along with a large group of proposed amendments, and with no maps of the areas affected by this policy (the quarter-mile area around various centers and corridors) until after the city council’s adoption, the objection argues that the decision was simply too rushed.

The objection contends that the process by which this policy was considered and adopted violated the city’s Community Involvement Work Program to guide community involvement for periodic review, which states:

Decisions will be open, transparent, and accessible. Reports containing the facts and reasons necessary to make particular decisions will be available at least 21 days before any Planning and Sustainability Commission or City Council hearing.

The objection alleges that no such reports were ever released by the city in conjunction with adoption of Policy 5.6. Additionally, the objection alleges that a 30-day minimum public notice is required by City Code 3.96.050(C) for the type of planning action the city proposed, which led to adoption of Policy 5.6. The objection alleges the city issued the proposed amendments for the first time on March 18, 2016, only 27 days before the city council’s first public hearing on the topic on April 14, 2016.

To correct the deficiencies identified in this objection, the objectors request that the department partially remand task 4 to allow for proper public involvement for consideration of Policy 5.6. The objection contends that, if the policy leads directly or indirectly to zone changes, notification of all affected owners and renters should be required.

Department Response: The department rejects this sub-objection. To demonstrate a Goal 1 violation, the objector must establish a failure to comply with the acknowledged citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995). The department finds that the city complied with its acknowledged citizen involvement program regarding the adoption of Policy 5.6, as described below.

The city’s adopted Community Involvement Work Program states that the city would provide “reports containing the facts and reasons necessary to make particular decisions” at least 21 days prior to a public hearing on the matter. Portland August 6, 2008 Resolution 36626. City staff issued a staff report on March 18, 2016 for a city council hearing on the matter on April 14, 2016, a 27-day difference. Task 4 Record at 11530. While the city revised the report as late as March 29, 2016, such revisions in response to initial review and comment by the public are common, and such revision is a sign of city

responsiveness to comments. Task 4 Record at 11530. While the objectors are correct that the first inkling of what became Policy 5.6 did not occur until February 2016, this in itself is not a violation of the city's Community Involvement Work Program standards, and therefore the provisions of Goal 1. Task 4 Record at 11727.

City Code 3.96.050(C) states, in its entirety:

Notice of pending policy decisions affecting neighborhood livability shall be given to the Neighborhood Association(s) affected at least 30 days prior to final action on the decision by a City agency. If said 30 day period may injure or harm the public health, safety, welfare, or result in a significant financial burden to the City, this notice provision shall not apply.

The record indicates that city staff issued a report on this matter, with notification to neighborhood associations, on March 18, 2016. Task 4 Record at 11551. While the city council held its first hearing in response to the report on April 14, 2016, only 27 days after issuance of the staff report, the council did not make a *final* decision adopting the policy until June 15, 2016, almost 90 days after the issuance of the staff report, considerably more than the 30 days required by the relevant code provision. Therefore, the objection does not establish that the city violated City Code 3.96.050(C) regarding notice to neighborhood associations.

Regarding the assertion that Portland violated Goal 2 provisions requiring coordinated comprehensive planning, Goal 2 defines "coordinated" in reference to ORS 197.015(5). This statutory provision defines "coordinated" as "when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." The objection states that the first introduction of the "vague, generalized concept" of middle housing occurred in a February 2, 2016 memo from city staff to Mayor Hales. Attachment A at 48. However, a summary discussion presented to the Portland City Council at the February 2, 2016 work session where this memo was introduced states that the middle housing memo and presentation of policy options was written "in response to interest from several council offices, and recent hearing testimony." Task 4 Record at 11710. Furthermore, the topic of middle housing had actually been raised at an October 8, 2015, city council work session on housing issues, and a staff analysis presented at that work session highlighted the need for, and lack of supply, for middle housing options. Task 4 Record at 11906 and 11916.

Contrary to the assertions of the objectors, the topic of middle housing and the need for such housing had already been raised by February 2016, in part as a response to public input. The city had determined that a need for a particular type of housing (middle housing) was present, and was working to address that need, in the context of overall housing need and the entire comprehensive plan. This constitutes the coordinated planning required by Goal 2.

Objection 4-6b. This sub-objection argues that the city has no demonstrated need for housing that requires adoption of Policy 5.6. Attachment A at 53-57. According to the objection, the city’s adopted housing needs analysis shows a capacity of 141,000 to 189,000 dwelling units, depending upon whether the assumptions of the city or Metro are used. Both of these capacity figures are well above the projected 20-year housing need, which ranges from 105,000 to 136,000 dwelling units. Additionally, the objection states that the city found no additional need for the types of housing enabled and encourages by Policy 5.6 so the policy was not founded on objective, factual evidence.

This sub-objection also makes the following contentions:

- Policy 5.6 works in contradiction to Policy 5.5 (Housing in Centers). Policy 5.5 supports a diversity of housing adjacent to centers that includes “family-friendly” housing. Rezoning large areas of the city to allow smaller rental units in place of larger detached dwelling units works to reduce the amount of “family-friendly” housing around centers.
- Policy 5.6 works to reduce the amount of affordable housing in Portland, as older, less-expensive detached dwellings in areas subject to the policy are replaced with newer, more expensive dwellings.

To summarize, the sub-objection contends that the city adopted Policy 5.6 with an inadequate factual basis, violated its work program, and failed to maintain plan consistency and coordination, as required by Goal 2.

To correct the deficiencies identified in this sub-objection, the objectors request that the department partially remand Task 4 to allow for proper comprehensive planning and public involvement for Policy 5.6. The public information would include all the evidence and factual information from Task 3 that bear on the need, or lack of need, for such a policy, including the existing available development capacity and mix of housing types.

Department Response. The department rejects this sub-objection. The city has provided findings and conclusions based on substantial evidence regarding reasons the city adopted Policy 5.6. The reasons for adoption of this policy, which received significant public input both for and against, are succinctly summarized as follows:

The 2035 Comprehensive Plan provides enough zoned capacity to meet expected housing needs over the next 20 years. However, the 2035 Comprehensive Plan also highlights and addresses the need for more housing in the range between the single-family houses and units in larger multi-family or mixed-use buildings. There is growing demand for greater housing supply and choice in terms of price, size, location, tenure options and accessibility.

- Less expensive. Creating more middle housing opportunities with the plan may help relieve some price pressure. Generally, these

forms of housing can be built using wood frame construction methods. They are less expensive to build than 4-6 story mixed use buildings, and are more land-efficient than detached single family homes. Middle housing can also serve as a transition between denser mixed-use development and abutting single dwelling neighborhoods.

- Home ownership. Although home ownership is generally beyond the reach of the lowest income groups, there is also a challenge in supplying enough entry-level homes to meet expected demand. Most of the City's single-family supply is single-family lots in the 5,000-7,000 square foot range, while most of the expected demand over the next 20 years is for more affordable lots in the 1,600 to 4,000 square foot range. Much of the available land for additional single-family construction is in East Portland and outer Southwest Portland, while demand is highest in the inner most neighborhoods. Construction of more attached homes could help meet this demand.
- Access to complete communities. The 2035 Comprehensive Plan promotes compact development within walking distance of neighborhood and town center locations. To achieve our "complete neighborhood" goals, we want to be able to have about 3,500 to 7,000 households within a walkable ½-mile distance of our commercial main streets. Many centers are not yet to this level of density. Zoning for more attached housing options near the edges of the identified centers could be a way to help achieve that goal.
- Choice. There is demand for greater range of housing types that are adaptable to different life stages, and multigenerational living. Surveys have also suggested that many apartment dwellers would prefer to live in their own home, if they can afford it. While it is prudent to supply enough multifamily housing to meet rising demand for that housing type, it may also be desirable to provide other options.

Task 4 Record at 45-46.

Goal 2 requires the city "[t]o establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions." Goal 2 further provides that "[a]ll land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs." The summary provided above, and the additional material in

the record upon which it is based,¹ demonstrates that the city adopted Policy 5.6 with an adequate factual base, and made an “ultimate policy choice” based upon: (1) the need for more housing with higher densities than single-family houses and lower densities than larger multi-family or mixed use buildings, and (2) the positive impacts on housing expense, home ownership, access to complete communities and housing choice provided by the policy.

While the objectors do not agree with the city’s decision, the department’s review of the submittal for Goal 2 compliance is not whether the city made the “correct” decision, but rather whether the city’s decision is supported by an adequate factual base, which is the equivalent of the requirement in ORS 197.633(3)(a) that the decision is based upon substantial evidence in the record as a whole. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994).

The department also does not agree that the objection has established that Policy 5.6 and Policy 5.5, Housing Centers, are in conflict regarding the provision of “family-friendly” housing. The term “family-friendly” is not defined in the Portland Comprehensive Plan, and could mean many different things to different people. The objection does not provide any evidence, nor does anything in the record provide any indication, that a “family” is less likely to live in a smaller housing unit, or a rental unit, than it is likely to live in a larger housing unit, or a unit owned by its occupant.

The department also finds the argument proffered in the objection that allowing greater densities in some neighborhoods will result in the demolition of less expensive housing, resulting in a loss of affordability is not supported by any evidence in the record or provided in the objection. The two footnoted sources provided in the objection, from Professor Emeritus Lutzenhiser and Johnson Economics (Attachment A at 12) do not appear in the record provided by the city. In any case, the city’s findings on this topic address this issue generally as follows:

State planning law requires that housing needs be analyzed and identified by affordability, and requires that land be made available in sufficient supply to accommodate the amount of affordable housing needed. Allowing for a robust supply of inherently more affordable housing types (small studio apartments, ADUs, small-lot single family, etc.) does not mean that these housing units will actually be affordable in practice. In a market economy, housing is allocated to the highest bidder. If supply is limited, the price of even the more affordable housing types can be bid up. In addition, new housing is typically more expensive than older housing. Not all new households will occupy new housing units. Higher income households will often occupy new housing units, leaving older units to lower income households. If housing supply is tight, the price of older housing units can also be bid up. In light of these market dynamics, the primary impact of zoning on affordability will be the extent to which it

¹ Task 4 Record at 11527-11530

allows for an adequate overall supply, and allows for a diverse mix of housing. The facts described above show that the Zoning Map adopted with this ordinance does this. Based on the facts and reasons stated above, the requirement to allow a diverse range of housing choices has been met. Task 5 Record at 45.

Finally, Policy 5.6 does not necessarily accomplish what the objection claims. The objection appears to recognize that any given home is only “potentially affected” and that potential only occurs “if [Policy 5.6] is implemented” by the city. Attachment A at 46. To be clear, the department does not understand the submittal to rezone large areas of the city that are currently zoned for single-family detached residential development. Instead, Policy 5.6 commits the city to a process of studying whether the specified areas, “within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City” should be rezoned “where appropriate” to allow development of middle housing. Any subsequent rezones to implement this policy will require additional notice and action by the city, and will be subject to requirements for public notice and subject to appeal.

7. Objection 4-7 – Multnomah Neighborhood Association #2

The Multnomah Neighborhood Association objects to the designation of Multnomah Village, a community in Southwest Portland, as a neighborhood center. The Multnomah Neighborhood Association, throughout the process that led to the completion of this task, requested that Multnomah Village be designated as a neighborhood corridor, instead of a neighborhood center, on the city’s comprehensive plan map. The department considers the objection in four sub-objections.

Objection 4-7a. This sub-objection alleges that the city failed to adequately consider the weight of evidence and public testimony in making its designation, thus failing to comply with Goal 1. Attachment A at 65-68. The objection expounds that the city failed to provide adequate and timely public information about the meaning and implications of the center designation and failed to provide adequate mapping of center boundaries in violation of Goal 1 and Goal 2 and the city’s Community Involvement Work Program. The objector contends the city failed to adequately justify and support the expansion of center boundaries with factual evidence, as required by Goal 2.

Department Response. The department rejects this objection. While the statewide planning goals require the city to have an open, fair, and transparent process for considering community involvement and input on amendments to its comprehensive plan, the objector has not established that the goals require decision-makers only to legislate a comprehensive plan that accords with all of the input received. The objection itself documents the large amount of input provided by the Multnomah Neighborhood Association and its members to the city. Establishing that there may have been support for a different submittal does not provide the department a basis for rejecting the submittal under review. The department must review what was submitted for compliance with applicable law. Goal 1 requires a program for consideration of citizen input and a

fair process – it does not dictate a particular result. Regarding the allegation of inaccurate information, please see the discussion under sub-objection 4-7c, below.

Objection 4-7b. This sub-objection alleges that the city adopted confusing and uncoordinated policies regarding the Multnomah Village Town Center. Attachment A at 68-71. According to the objection, Policy 5.5 (Housing in Centers) provides a generalized policy statement typical of comprehensive plans, but this policy was supplemented late in the process with Policy 5.6 (Middle Housing), which, when taken in combination with Policy 5.5, creates a large-scale re-designation, and eventual up-zoning, of the residential areas in and around neighborhoods designated as centers. While Policy 5.6 sets a study area of one-quarter mile around neighborhood centers for rezoning, another, separate policy, Policy 3.15 (Housing in Centers), further expands the centers designation by implicitly allowing up-designation and up-zoning of residential areas within one-half mile of centers.

The objection contends that the result of combining two disparate policies in different chapters of the comp plan (Policies 3.15 and 5.5) with a new policy (Policy 5.6) is a major policy change to a large, overlapping area affecting a large portion of the single-family residential land in the city. Such a sweeping overhaul of residential areas, impacting so many people, could not be reasonably anticipated. The objection states that this constitutes a failure to adequately inform and engage the public in the land use planning process, as required by Goal 1 and the city's Community Involvement Work Program.

Department Response. The department rejects this objection. As discussed above, the policies do not accomplish what the objection claims they do. They do not rezone large areas of the city that are currently zoned for single-family detached residential development. These policies commit the city to a process of studying whether the specified areas should be rezoned. Task 4 Record at 45. Any subsequent rezones to implement these policies will require additional notice and action by the city, and will be subject to requirements for public notice and subject to appeal.

Objection 4-7c. This sub-objection alleges that the city inadequately mapped neighborhood centers. Attachment A at 71-76. The city allegedly provided inaccurate information about the ultimate boundaries of proposed centers and the inclusion of single-family neighborhoods that objector found misleading. A map showing the Multnomah Village center provided in January 2014 near the beginning of the planning process was supplemented by information from the city indicating that the neighborhood center boundaries were generally fixed and were going to be the location of more intensive land uses, but not to the point of making existing low-density commercial uses non-conforming. However, a map provided to the Multnomah Neighborhood Association in June 2016 shows a different and expanded neighborhood center designation.

The objection contends that this sequence of events does not comply with Goal 1 and is in violation of the 21-day notice requirement found in the city's Community Involvement Work Program. The objection also alleges that this also violates ORS 197.010(1)(c),

which requires that comprehensive plans “be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans,” because the vague and overly flexible nature of the plan policies and map designations related to centers does not sufficiently define and guide implementation through the zoning code in a manner that is clear, understandable, and predictable to the public. Similarly, it violates Goal 2, which provides that “the various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.”

Department Response. The department rejects this objection. The city has adopted plan policies that may result in future changes to zoning in the vicinity of neighborhood centers. Task 4 Record at 277. Such future changes would only occur as a result of subsequent study and analysis to determine where the adopted middle housing policy is best applied in candidate areas. The Multnomah Neighborhood Association, and other individuals and groups, will have an opportunity to provide input into that process, and potentially object to or appeal any city actions to implement Policy 5.6.

Regarding the two maps described in the objection, the department found the first in materials for a January 27, 2015 (not 2014) Planning and Sustainability Commission workshop, among a group of all Portland neighborhood center maps. Task 4 Record at 20098. The map grouping is prefaced with the statement: “The following maps reflect adopted local plans, and are in effect today. All other center boundaries are provisional for planning and analysis purposes, and are pending further future refinement planning.” The subsequent list of centers with adopted local plans does not include Multnomah Village. Task 4 Record at 20077. The second map referenced by the objector does not appear to be in the record, but in any event is illustrating a different idea – the areas within one-quarter mile of the preliminary neighborhood center boundaries that could be potentially affected by adoption of Policy 5.6.² In any event, the department concludes that any discrepancy is not relevant because the two maps are intended to show two different concepts.

Objection 4-7d. This sub-objection alleges that, in designating Multnomah Village as a neighborhood center, the city failed to comply with prior regional planning, including the Metro Code and the Metro 2040 Growth Concept Map. Attachment A at 76-78. The Metro 2040 Growth Concept Map shows that Multnomah Village is not designated as a center, but that the main streets in the neighborhood have been designated as “main streets.”

Department Response. The department rejects this objection. The “neighborhood center” designation on the comprehensive plan map does not implement a Metro Town Center designation, it implements a Metro “main street” designation. Task 4 Record at 85. The city recognizes that Multnomah Village is not a Metro “Town Center” designation. Task 4 Record at 103.

² The fact that this latter map does not appear to be in the local record renders the map outside the department’s scope of review under ORS 197.633(3).

8. Objection 4-8 - David Malcolm

Mr. Malcom also objects to the rezone of property at 6141 SW Canyon Court from R20,000 to R5,000 and is essentially identical in form to objection 4-5 from Dan Root. Attachment A at 86.

Department Response: Please refer to the 4-5 Dan Root response in subsection 5. The objection is invalid.

9. Objection 4-9 – Goose Hollow Foothills League, Sustasis Foundation, and Michael Mehaffy

This objection requests multiple changes to the draft Central City 2035 (CC2035) plan. Attachment A at 88.

Department Response: The department finds this objection invalid. The Central City 2035 Plan is not the subject of the city’s periodic review task 4 or 5 submittal. Therefore, any such questions or challenges are not before the department.

10. Objection 4-10 - Multnomah Neighborhood Association #3

This is a three-part objection to chapter 2 of the city’s comprehensive plan (Community Involvement) alleging non-compliance with Goal 1.

1. The first part asserts that the term “citizen” is not mentioned in the text, even though Goal 1 requires that “citizens” have a role in all phases of the planning process. It is also stated that the objector does not advocate to exclude non-citizens, but are advocating that citizen rights and responsibilities in the planning process be recognized in the comprehensive plan. Attachment A at 126.
2. The second part asserts that the city, by not defining the process it uses to recognize a community, there is the potential for citizens to be excluded from the planning process as required by Goal 1, Part 3. Attachment A at 127.
3. The third part alleges that Policy 2.14 of the comprehensive plan³ limits community, and thus citizen, ability to influence elements of the planning process at each stage of the planning process, in violation of Goal 1, Part 3. Attachment A at 127.

The proposed remedy is a remand of Task 4 with instructions to the city to revise chapter 2 to “to recognize the citizen’s role in the planning process,” to define a process requiring public meetings and official status for all groups participating in the planning process, and to remove Policy 2.14.

³ Policy 2.14 provides: “At each stage of the process, identify which elements of a planning and investment process can be influenced or changed through community involvement. Clarify the extent to which those elements can be influenced or changed.” Task 4 Record at 214.

Department Response: The department rejects this objection. If the city engages communities in the planning process, citizens will be provided the opportunity to participate; broadening the city’s program to involve “communities” does not exclude citizens. The objection does not establish that Goal 1 requires that the city involve the public in land use decision-making exclusively through formally recognized groups or associations that comply with open meetings and public records laws.

Policy 2.14 commits the city to identifying actions that could be affected by public involvement. The objection appears to assume that the city is unable or unwilling to correctly identify those actions, resulting in lost opportunities for public involvement. Policy 2.14 resides in a section of chapter 2 that includes four policies implementing comprehensive plan goal 2.D, “Transparency and accountability,” related to improving the quality of communication during the planning process. The plan also includes six other goals with implementing policies, and considering this larger context, Policy 2.14 refines and informs, and does not limit, the city’s plan to involve the public in the planning process. *See*, especially, goal 2.E.⁴ The objection does not demonstrate that the city’s citizen involvement program fails to comply with Goal 1.

11. Objection 4-11 - Peterson

This objection (Attachment A at 129) is invalid due to filing of objection after the end of the 21-day objection period. See section III.B.

12. Objection 5-1 – Mascot LLC, Eitan Ovadia, Kin Properties, Inc.

This objection was submitted by the managing agent for Mascot LLC, the owner of property located at 2720 NW 35th Avenue, Portland. Attachment B at 1. It expresses objection to the establishment of the Industrial (I) Overlay and/or any reclassification or modification to the property’s base zone of Heavy Industrial (IH). The objection further states that any modification to the current base zone may depreciate the value of the property. In addition, the objection demands that the tenant’s operations at the property be “grandfathered in” to allow the tenant’s continued operation.

Department Response: The department determined that the objection is invalid. The objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

13. Objection 5-2 – Rod Ramsour

Mr. Ramsour disagrees with a proposed change to his property located at 10000 SW Riverside Dr., Portland. Attachment B at 13. The objection contends that the city is trying

⁴ Portland 2035 Comprehensive Plan goal 2.E provides: “Community members have meaningful opportunities to participate in and influence all stages of planning and decision making. Public processes engage the full diversity of affected community members, including under-served and under-represented individuals and communities. The City will seek and facilitate the involvement of those potentially affected by planning and decision making.” Task 4 Record at 209.

to incorporate an area between his garage and house for a trail, resulting in a division of his property that would allow public access to his property.

Department Response: The department determined that the objection is invalid. The objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

14. Objection 5-3 – Garlynn Woodsong #1

This objection asserts that the comprehensive plan transportation element performance fails to meet the goals for that performance. Attachment B at 14-16. More specifically, the transportation system plan sets a 25 percent bicycle commute rate and the comprehensive plan projects achievement of a 3.6 percent overall bicycle mode share. Therefore, the objection asserts, the plan does not comply with Goal 12 because it does not minimize adverse social, economic and environmental impacts and costs; and because it does not conform to local and regional comprehensive land use plans.⁵ The proposed remedy is for the city to “re-zone existing single-family neighborhoods within bicycling distance of employment areas to allow for the construction of more Missing Middle housing units.”

Department Response: The department rejects this objection. The objection based on Goal 12, section (5) contends the comprehensive plan, which may not meet the goal of 25 percent bicycle commute mode share, will not “minimize adverse social, economic, and environmental impacts and costs” as much as a plan that met the target would. As noted below, it is not clear that the proposed comprehensive plan would fail to meet the target. The city has authority to interpret this provision of the goal to determine what is reasonable, and fully minimizing the transportation system’s social, economic, and environmental impacts and costs would require a near-zero auto mode share. This is unreasonable during the 2035 planning timeframe. The proposed comprehensive plan is a strong advancement toward that direction, and is planned to make substantial increases in bicycle mode share and other non-auto mode shares.

The objection based on Goal 12, section (9) contends the comprehensive plan, which may not meet the goal of 25 percent bicycle commute mode share, does not “conform with local and regional comprehensive land use plans.” The city amended the transportation plan to include a compound objective, including objective 9.26g, which includes a target for 11 miles traveled per-day-per-capita by car; a target for non-single-occupancy auto

⁵ Goal 12 provides: “A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) *minimize adverse social, economic and environmental impacts and costs*; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) *conform with local and regional comprehensive land use plans*. Each plan shall include a provision for transportation as a key facility.” (Italics added.)

commutes of 70 percent; and approximate targets for the distribution of the non-single-occupancy auto commute mode shares, with bicycling set at 25 percent. Task 5 Record at 882.

The objection notes that the modelling for the results of the comprehensive plan in 2035 shows a 3.6 percent mode share for bicycling. Task 5 Record at 59. However, these rates cannot be directly compared as the 25 percent target is for a *commute* mode share, and the 3.6 percent model rate is for *all trips*.

Further, the model used was found to not be particularly sensitive to transportation demand management, bicycling, and pedestrian system measures taken in the proposed comprehensive plan. Further review of the model and its deficiencies by the city demonstrated that the actual bicycling rate in 2035 could be as high as 15.7 percent, again for all trips. This is citywide; in some areas, the rate could be as high as 22.5 percent for all trips. Task 4 Record at 11386-11405.

Objective 9.26g importantly also states that the 25 percent target for bicycling commute mode share is *approximate*, presumably to allow the non-single occupancy auto mode shares to fluctuate among each other. Considering the difference between commute trips and all trips, the deficiencies of the model, and the approximate rather than specific mode share goal, the objection does not clearly demonstrate how the transportation plan fails to conform to local and regional land use plans.

15. Objection 5-4 – Garlynn Woodsong #2

Mr. Woodsong’s second objection contends the city failed to provide for adequate supply of affordable housing by income quartile to sufficiently allow for use of bicycles for commuting at the rate identified as the mode share target. Attachment B at 16-19. The proposed remedy is for the city to provide for a “sufficient number of housing units by type to meet demand within a distance of compatible employment types to allow for the use of the bicycle for commute mode trips.”

Department response. The department rejects this objection. This objection is based on Goal 10 guidelines, which are suggested approaches that local governments may use in achieving compliance with the goals; they are not requirements with which local governments must comply. *Churchill v. Tillamook County*, 29 Or LUBA 68, 73 (1995). While the city has not adopted the objector’s suggested remedy in whole, the city has taken action to increase housing supply in areas accessible to alternative modes of transportation such as bicycle. *See, e.g.*, Policy 5.4 Housing Types, Policy 5.5 Housing in Centers, Policy 5.6 Middle Housing. Task 4 Record at 277-278. The city has taken various implementing zoning actions intended to allow for housing development in areas accessible to alternative modes of transportation, such as bicycles. Task 5 Record at 1.

16. Objection 5-5 – Multnomah Neighborhood Association #4

This objection relates to the city’s decision to rezone the Multnomah Village Neighborhood Center area to the CM2 zoning district, which allows densities, intensities, and building heights that the objectors believe are excessive for the Multnomah Village Neighborhood Center area. Attachment B at 20.

More specifically, the objection contends:

1. The city made an inadequate response to public input seeking to protect the character of Multnomah Village. The failure of the city to adequately quantify, synthesize, and report public involvement is a violation of Statewide Goal 1, which requires that “a process for quantifying and synthesizing citizens’ attitudes should be developed and reported to the general public.”
2. The city has failed to perform planning actions in Multnomah Village based on facts and evidence. The stated reasons the city has rezoned central Multnomah Village to the more intensive CM2 district is that changing housing needs require more high-density and multi-family housing in centers and corridors within Portland. The objection contends the city’s analysis of capacity shows that the existing residential buildable lands inventory provides a sufficient 20-year supply of such housing. Therefore, the city has violated Goal 2’s provision that “inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan.”
3. The city has failed to provide the public with adequate information about the lack of adequacy of design review to protect neighborhood character in violation of Goal 1, which requires a citizen involvement program to provide “information that enables citizens to identify and comprehend the issues.”
4. The city failed to direct planning actions in a manner that would achieve local goals and be consistent with past planning efforts. The 2000 Southwest Community Plan (SWCP) planned for a “small-town” atmosphere for Multnomah Village, with height and design of buildings appropriate for the neighborhood, with a mix of residential and neighborhood-scale commercial development. The objection contends the SWCP is not mentioned in the recommended draft for Mixed Use Zoning Districts, which applies the CM2 district to Multnomah Village. The objection contends this action violates the citizen involvement provisions of the SWCP, which state, “use the Southwest Community Plan policies and objectives to create, develop, implement or evaluate new citywide policies, programs, or project proposals to ensure that the concerns of the Southwest community are addressed.” Attachment B at 11.
5. Multnomah Village has been identified in the past as a candidate for a historic district designation, which makes it a Statewide Planning Goal 5 resource, and the CM2 zoning ignores this history, and thus violates Goal 5.

Department Response. The department rejects this objection. While the statewide planning goals require the city to have an open, fair, and transparent process for

considering community involvement and input on amendments to its comprehensive plan, the objector has not established that the goals require decision-makers only to legislate a comprehensive plan that accords with all of the input received. The objection itself documents the large amount of input provided by the Multnomah Neighborhood Association and its members to the city. Establishing that there may have been support for a different submittal does not provide the department a basis for rejecting the submittal under review. The department must review what was submitted for compliance with applicable law. Goal 1 requires a program for consideration of citizen input and a fair process – it does not dictate a particular result.

The objection also seems to minimize the fact that a significant portion of Multnomah Village was, in fact, zoned CM1 by the city decision, in concert with, although not fully in agreement with, the recommendations of the Multnomah Neighborhood Association (which advocated for the entire Multnomah Village neighborhood center area be zoned CM1). Task 5 Record 115.

The Multnomah Neighborhood Association is correct that such design review overlays, if they contain discretionary standards, may be avoided by applicants for residential development standards who insist on review of their projects under clear and objective standards. However, the objector is mistaken in its assumption that Portland’s design review overlay is not implemented with standards that are clear and objective. The city’s submittal indicates that “in keeping with Goal 10, the Community Design Standards offer a clear and objective path to implement this overlay, as an alternative to discretionary review.” Task 5 Record at 45.

The purpose of periodic review is to update and, where appropriate, modify the city’s previously adopted comprehensive plan and implementing land use regulations, including the 2000 Southwest Community Plan. In any case, the city’s decision to mix the CM1 and CM2 districts in Multnomah Village, with the CM1 district being applied to a part of the village core area, is consistent with the excerpts from the 2000 community plan for Multnomah Village provided in the objection. Attachment B at 29-30.

Regarding the Goal 5 issue, the objector has not demonstrated that the city has inventoried Multnomah Village as a significant historic resource in its comprehensive plan. The city is not obligated by the provisions of Goal 5 to protect any particular historic character within an area unless the resource has been found to be significant and the city has decided to protect it under its historic preservation ordinance.

17. Objection 5-6 – Multnomah Neighborhood Association #5

This objection letter contains four separate objections.

Objection 5-6a. This objection asserts that the city’s record index for this task is incomplete because it only provides the name of the submitter/testifier and this level of detail is inadequate, that some testimony was submitted by individuals on behalf of organizations or groups and these groups and organizations are not identified in the index. Attachment B at 37. The objection questions whether the Portland Planning and

Sustainability Commission, city council, and city staff reviewed all of the testimony. The objection asserts that the lack of ability to search for testimony violates OAR 660-025-0130(3)(b)⁶ and Goal 1.

Proposed revisions to resolve the objection are to remand the Task 5 submittal to the city for a detailed index of the public record and to revise the staff reports and findings to reference the new index.

Department Response. The department rejects this objection. OAR 660-025-0130(3) requires an index of the entire record partially because the city is not required to submit the contents of the entire record if it exceeds 2,000 pages, and an index enables participants and the department to identify those materials that were not part of the submittal. The index also enables participants and the department to identify where in the submittal relevant materials were included. The rule requires a “detailed” index.

The objection appears to allege that a detailed index should link individual testimony with the specific elements of the staff report and findings to which it is related. For example, if there is testimony regarding the middle housing policy, then the index should link all testimony regarding this topic to the staff report and findings on this same topic. No reasonable reading of OAR 660-025-0130(3)(b) would lead to this conclusion.

OAR 660-025-0130(3)(b) identifies what a submittal must include, one of which is a detailed index listing all items in the local record and indicating whether the item is included in the submittal. The city has provided a master index and a table of contents, both of which provide a detailed list of items in the local record.

The department concludes that the city has submitted the required elements of a record exceeding 2,000 pages, including a detailed index of the items in the local record and the oral and written testimony from the public hearings.

Objection 5-6b. This objection states, in its entirety:

The current Comprehensive Plan Map in Task 5 allows density to differ from the base zone densities defined in the Comprehensive Plan. This is inconsistent with the approved worked order for Task 4 which requires a

⁶ OAR 660-025-0130(3)(b) provides: “If the local record exceeds 2,000 pages, a submittal must include adopted ordinances, resolutions, and orders; any amended comprehensive or regional framework plan provisions or land use regulations; findings; hearings minutes; materials from the record that the local government deems necessary to explain the submittal or cites in its findings; and a detailed index listing all items in the local record and indicating whether or not the item is included in the submittal. All items in the local record must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or commission may require a local government to submit any materials from the local record not included in the initial submittal;”

product of a Land Use Map depicting property-specific locations and intensity of housing.

The city is allowing the base zones to be defined in the zoning code. ORS 197.015 (5) defines the comprehensive plan as coordinating land use with everything associated with it. Thus allowing an exception to base zones to be defined in the zoning code is inconsistent with ORS 197.015 (5). Attachment B at 38.

The proposed remedy is “any exceptions that allows density to differ from the base zone densities defined in the 2035 Comprehensive Plan be removed so that the map depicts property-specific locations and intensity of housing.”

Department Response. OAR 660-025-0140(2) provides, among other things, that for an objection to be valid it must “clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated.” *See* section IV.B. The objection cites the comprehensive plan map as the relevant section of the final decision at issue. The department’s review of the map (Task 5 Record at 113) does not reveal any provision that allows varying of densities. The objection does not identify what portion of task 4 with which the task 5 submittal conflicts. The department finds that this objection fails to satisfy the minimum requirements of a valid objection and is therefore invalid.

Objection 5-6c. This objection asserts that the city’s change to the zoning code to allow mass shelters in the EG (General Employment) zone should not be allowed as it is inconsistent with the comprehensive plan. Attachment B at 39. The remedy indicated is to amend the zoning code Title 22 to not allow mass shelters in the EG zone.

Department Response. The department finds this objection invalid. The city’s zoning code change to allow mass shelters in the EG zone was submitted as a Post Acknowledgement Plan Amendment (DLCD file no. 010-16). The city’s decision was not part of periodic review.

Objection 5-6d. This objection asserts that the city has undertaken a number of implementation projects after the city adopted task 5, and should have been included as part of task 5. The objector’s conclusion is that the task 5 submittal is thus incomplete and limits appeal opportunities, which is inconsistent with provisions of Goal 1. Attachment B at 39. The proposed remedy is to require the city to incorporate a list of plan and code amendments in task 5.

Department Response. The department rejects this objection. The work program for task 5 states, “whatever policy decisions are made, they must be carried out by sufficiently robust implementation measures.” Further, the work program identifies “possible new implementation measures,” and lists those items. The product required is: “Ordinance of City Council adopting regulations, projects, and agreements sufficient to carry out the amended Comprehensive Plan.”

The objection does not establish a connection between the cited list of plan amendments and the plan updates carried out in periodic review. ORS 197 establishes the jurisdiction of the commission and the Land Use Board of Appeals (*see* ORS 197.644 and 197.825). Goal 1 does not provide the department or commission authority to usurp the Land Use Board of Appeals' jurisdiction for the convenience of a potential appellant.

18. Objection 5-7 – Rose City Park Neighborhood Association #2

See subsection 3 regarding objection 4-3 regarding the objection and department response.

V. OVERALL CONCLUSIONS AND DECISION

The city adopted amendments to the Portland 2035 Comprehensive Plan with implementing measures and submitted them to the department for review. The submittal consists of findings of fact and conclusions.

The department finds the actions of the city to amend the Portland 2035 Comprehensive Plan to include: the Community Involvement Report for task 4, the 2035 Comprehensive Plan Map, goals and policies comprising the economic and housing elements of the 2035 Comprehensive Plan, the Citywide Systems Plan, list of infrastructure projects: water, sewage and drainage, policies addressing Portland International Airport expansion, Portland Heliport and coordination with school facilities plans, and goals and policies of the transportation system plan and list of transportation projects, complies with the applicable statewide planning goals, related statutes and implementing administrative rules, based on the findings and conclusions contained in this report. The objections do not demonstrate that the local decisions fail to rely on an adequate factual base or are unreasonable based on the evidence in the whole record.

The department also finds the action of the city to amend the Portland Comprehensive plan to include: the Community Involvement Report for task 5, zoning map amendments to implement the comprehensive plan, zoning code amendments to implement the adopted comprehensive plan, amendments to the transportation system plan to add additional policies and update street classification, and amendments to the comprehensive plan to incorporate major public trails into the land use map, and make corrections to policy language, complies with the applicable statewide planning goals, related statutes and implementing administrative rules, based on the findings and conclusions contained in this report. The objections do not demonstrate that the local decisions fail to rely on an adequate factual base or are unreasonable based on the evidence in the whole record.

All objections to the submittal are determined to be invalid or are rejected. The submittal is approved.

ATTACHMENTS

A. Task 4 Objections

- James Harries
- Enda Kenny
- Rose City Park Neighborhood Association #1
- Margaret Davis
- Daniel Root
- Multnomah Neighborhood Association #1
- Multnomah Neighborhood Association #2
- Dave Malcolm
- Goose Hollow Foothills League, Sustasis Foundation, and Michael Mehaffy
- Multnomah Neighborhood Association #3
- James Peterson

B. Task 5 Objections

- Mascott LLC, Eitan Ovadia, and Kin Properties, Inc.
- Rod Ramsour
- Garlynn Woodsong
- Multnomah Neighborhood Association #4
- Multnomah Neighborhood Association #5
- Rose City Park Neighborhood Association #2