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11

1 I. PETITIONER’S STANDING TO APPEAL

2 Petitioner Ted M. Coopman (“Petitioner”) submitted written comments in  
3 opposition to the proposed code amendments that were adopted as Ordinance No.  
4 20667 on numerous occasions. *See* Record (R) 867-70 (May 19, 2022); R 1473-74  
5 (May 13, 2022); R 1477 (May 13, 2022); R 2181 (Apr. 20, 2022); R 2662-67 (Apr.  
6 17, 2022); R 2191-92 (Apr. 11, 2022); R 2995-96 (Apr. 11, 2022); R 3323-26  
7 (Mar. 26, 2022); R 5155-56 (Nov. 22, 2021); R 6203 (Nov. 10, 2021). Therefore,  
8 Petitioner has standing to appeal this land use decision under ORS 197.830(2).

9 II. STATEMENT OF THE CASE

10 A. NATURE OF THE LAND USE DECISION AND RELIEF SOUGHT

11 Petitioner seeks review of the decision of the land use decision (Land Use  
12 File Numbers: CA 21-1 and MA 21-1) that is City of Eugene (the “City”)  
13 Ordinance No. 20667 (“Ordinance”), which adopts legislative text amendments to  
14 the City’s local land use regulations, found in the Eugene Code, and  
15 comprehensive plan policies, specifically from the Metro Plan,<sup>1</sup> that apply to  
16 housing standards. The Ordinance attempted to bring the City’s land use code into  
17 conformance with ORS 197.758, Development of Middle Housing, and OAR 660-  
18 046 Middle Housing in Middle and Large Cities. Petitioner seeks remand of the

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<sup>1</sup> Eugene-Springfield Metropolitan Area General Plan.

1 Ordinance so that the City can address the errors and omissions in the Code  
2 amendments and findings.

3 B. SUMMARY OF ARGUMENTS

4 1. FIRST ASSIGNMENT OF ERROR

5 Because the City of Eugene failed to review the intensification of impacts on  
6 the Goal 11 facilities and services allowed by Ordinance No. 20667's Middle  
7 Housing Code Amendments and the Metro Plan Amendments, the Ordinance fails  
8 to base the findings of compliance with the Metro Plan and statewide planning  
9 goals on substantial evidence. The City misconstrued applicable law by finding  
10 compliance without the comparison of the amendment's predicted impacts to the  
11 existing Goal 11 facilities and the current Public Facilities and Services Plan  
12 ("PFSP"). Therefore, the City erred in finding that the Ordinance complied with  
13 Statewide Planning Goal 11 and Metro Plan Policy A.12.

14 C. SUMMARY OF MATERIAL FACTS

15 From the Notice of City Council Decision:

16 "On May 24, 2022, the Eugene City Council approved Ordinance No.  
17 20667, an ordinance adopting amendments to the Eugene Code and  
18 the Eugene-Springfield Metropolitan Area General Plan (Metro Plan)  
19 that implement Oregon House Bill 2001 (2019), codified as ORS  
20 197.758, which requires Oregon's large cities, including Eugene, to  
21 allow duplexes, triplexes, quadplexes, townhouses and cottage  
22 clusters (collectively referred to as middle housing) in more places  
23 across the City, in order to increase housing choice and supply. The  
24 ordinance was signed by the Mayor on May 25, 2022 and will take



1 effect on June 30, 2022. The ordinance implements the following  
2 Land Use Code Amendment and Metro Plan Amendment:

3  
4 • **Land Use Code Amendment (CA 21-1):** Changes to the City's land  
5 use code to: comply with state law; create more opportunities for  
6 middle housing in Eugene's residential zones; and create development  
7 standards for middle housing. The land use code amendments also  
8 incorporate new rules and procedures for Middle Housing Land  
9 Divisions as required by Senate Bill 458 (2021). This new form of  
10 land division will allow the creation of small lots that each contain an  
11 individual unit of middle housing and are intended to promote home  
12 ownership opportunities. Finally, consistent with the requirements of  
13 HB 2538 (2021), the code amendments remove language from the  
14 land use code that ties maximum occupancy limits for residential  
15 dwellings to familial or nonfamilial relationships among occupants.

16  
17 • **Metro Plan Amendment (MA 21-1):** A text amendment to the  
18 density ranges in the residential element of the Eugene-Springfield  
19 Metropolitan General Plan (Metro Plan) to comply with the  
20 requirements of HB 2001 (2019). The amendments do not change any  
21 of the land use designations shown on the Metro Plan's land use  
22 diagram.”

23  
24 R 45.

25 The Ordinance included Middle Housing Code Amendment Findings  
26 (“MHCA Findings”) and Metro Plan Amendment Findings (“MPA Findings”) that  
27 were attached as Exhibit B. R 165-217.

### 28 III. JURISDICTION

29 LUBA has jurisdiction under ORS 197.015(10)(a)(A)(iii) and  
30 ORS 197.825(1).

1 IV. ARGUMENT

2 A. FIRST ASSIGNMENT OF ERROR – The City of Eugene  
 3 misconstrued applicable law by finding compliance without the comparison of the  
 4 amendment’s predicted impacts to the existing Goal 11 facilities and the current  
 5 PFSP, thereby failing to base the findings of compliance with the Metro Plan and  
 6 statewide planning goals on substantial evidence.

7 1. Preservation of Assignment of Error

8 The challenged decision is a legislative decision that amends the City’s land  
 9 use regulations, therefore the principles of preservation do not apply. *Columbia v.*  
 10 *City of Portland*, 76 Or LUBA (2017).

11 2. Standard of Review

12 Under ORS 197.835(7), LUBA “shall reverse or remand an amendment to a  
 13 land use regulation or the adoption of a new land use regulation if:

- 14 “(a) The regulation is not in compliance with the comprehensive plan; or  
 15 (b) The comprehensive plan does not contain specific policies or other  
 16 provisions which provide the basis for the regulation, and the  
 17 regulation is not in compliance with the statewide planning goals.”

18  
 19 *See also, Neuharth v. City of Salem*, 25 Or LUBA 267 (1993) (comprehensive plan  
 20 amendments must comply with the statewide planning goals). Additionally, ORS  
 21 197.835(9) provides that LUBA shall reverse or remand the land use decision  
 22 under review if:

23 “(a) the local government or special district:

- 24 ...  
 25 (C) Made a decision not supported by substantial evidence in  
 26 the whole records;

1 (D) Improperly construed the applicable law...”  
2 Additionally, because the Ordinance implements statewide planning goals,  
3 LUBA’s review of the City’s interpretation of state law provides no deference to  
4 the City’s interpretation. *LandWatch Lane County v. Lane County*, LUBA No.  
5 2019-024 (2019) (citing *Kenagy v. Benton County*, 115 Or App 131, 838 P2d 1076,  
6 *rev den*, 315 Or 271 (1992)).

7 Although a local government is not required to adopt findings supporting a  
8 legislative decision, the record on appeal must be sufficient to demonstrate that  
9 “required considerations were indeed considered.” *Deumling v. City of Salem*, 76  
10 Or LUBA 99 (2017) (citing *Citizens Against Irresponsible Growth v. Metro*, 179  
11 Or App 12, 16 n 6, 38 P 3d 956 (2002)).

12 Under *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143,  
13 1146 (1993), *modified by State v. Gaines*, 346 Or 160, 171-172, 206 P3d 1042  
14 (2009), “[i]n interpreting a statute, the court’s task is to discern the intent of the  
15 legislature.” Courts examine both the text and context of a particular statute,  
16 including ordinances, as well as legislative history. LUBA is required to interpret  
17 the legislature’s intent regardless of the parties’ arguments. *Weldon v. Bd. of Lic.*  
18 *Pro. Counselors and Therapists*, 353 Or 85, 91, 293 P3d 1023 (2012).

1 LUBA is required to reverse the Decision if the local government  
2 improperly construed applicable law, including applicable statutes and case law.  
3 ORS 197.835(9)(a)(D).

4 3. Legal Background and Relevant Findings

5 Eugene Code (“EC”) 9.8065(1) requires that amendments are “consistent  
6 with applicable statewide planning goals adopted by the Land Conservation and  
7 Development Commission.” Statewide Planning Goal 11 (“Goal 11”) is codified  
8 in the Oregon Administrative Rules (“OAR”) as OAR 660-015-0000(11), which  
9 provides:

10 “To plan and develop a timely, orderly and efficient arrangement of  
11 public facilities and services to serve as a framework for urban and  
12 rural development.

13 Urban and rural development shall be guided and supported by types  
14 and levels of urban and rural public facilities and services appropriate  
15 for, but limited to, the needs and requirements of the urban,  
16 urbanizable, and rural areas to be served. . . To meet current and long-  
17 range needs, a provision for solid waste disposal sites, including sites  
18 for inert waste, shall be included in each plan.

19 ...

20 A Timely, Orderly, and Efficient Arrangement – refers to a system or  
21 plan that coordinates the type, locations and delivery of public  
22 facilities and services in a manner that best supports the existing and  
23 proposed land uses.

24 ...

25 Urban Facilities and Services – Refers to key facilities and to  
26 appropriate types and levels of at least the following: police  
27 protection; sanitary facilities; storm drainage facilities; planning,  
28 zoning and subdivision control; health services; recreation facilities  
29 and services; energy and communication services; and community  
30 governmental services.

1 Public Facilities Plan – A public facility plan is a support document or  
2 documents to a comprehensive plan. The facility plan describes the  
3 water, sewer and transportation facilities which are to support the land  
4 uses designated in the appropriate acknowledged comprehensive plan  
5 or plans within an urban growth boundary containing a population  
6 greater than 2,500.

7 ...

8 Water system – means a system for the provision of piped water for  
9 human consumption subject to regulation under ORS 448.119 to  
10 448.285.”

11 The MHCA Findings contain the City’s analysis of the middle housing code  
12 amendments’ compliance with Goal 11, stating:

13  
14 “The Middle Housing Code Amendments do not make changes to the City’s  
15 provision of public facilities and services or to the currently adopted  
16 Eugene/Springfield Public Facilities and Services Plan (PFSP). Consistent  
17 with the PFSP, the City will continue to plan and develop public facilities to  
18 support the land uses designated in the City’s acknowledged comprehensive  
19 plan, including public facility projects that support the development of  
20 middle housing. Therefore, the amendments are consistent with Statewide  
21 Planning Goal 11.

22  
23 The City of Eugene updated the PFSP during the adoption of Eugene Urban  
24 Growth Boundary in 2017 to ensure that all residential lands could be  
25 served.<sup>2</sup> More recently, the City of Eugene and City of Springfield received  
26 a grant from the Department of Land Conservation and Development on  
27 October 6, 2021 to update the PFSP, including updates specifically focused  
28 on supporting housing development. Consistent with OAR 660-046-  
29 0010(3)(e), following adoption of the Middle Housing Code Amendments,  
30 the City will work to ensure that the infrastructure serving areas where  
31 middle housing is allowed, including any undeveloped or underdeveloped  
32 areas as defined in OAR 660-046-0320(8), is appropriately designed and  
33 sized to serve the land uses allowed by the City’s comprehensive plan and  
34 land use regulations, including middle housing uses.”  
35

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<sup>2</sup> “Served” at the allowed density at that time.

1 R 174.<sup>3</sup>

2 EC 9.8065(2) requires that amendments are “consistent with applicable  
3 provisions of the comprehensive plan and applicable adopted refinement plans.”  
4 The MHCA Findings address Goal 11 compliance in the analysis of the middle  
5 housing code amendments’ compliance with Metro Plan Policy A.12 (“A.12”),  
6 which requires that the City: “Coordinate higher density residential development  
7 with the provision of adequate infrastructure and services, open space, and other  
8 urban amenities.” In the analysis for compliance with A.12, the MHCA Findings  
9 state:

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<sup>3</sup> The Findings refer to “OAR 660-046-0010(30(e),” however this appears to be a typographical error and the intended reference is “OAR 660-046-0010(3)(e),” which provides:

“Pursuant to OAR 660-011-0020 (Public Facility Inventory and Determination of Future Facility Projects) (2), a public facility plan must identify significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. This includes public facility projects to support the development of Middle Housing in areas zoned for residential use that allow for the development of detached single-family dwellings. Following adoption of Middle Housing allowances by a Large City, the Large City shall work to ensure that infrastructure serving undeveloped or underdeveloped areas, as defined in OAR 660-046-0320 (Definitions)(8), where Middle Housing is allowed is appropriately designed and sized to serve Middle Housing.”

1 “As discussed in the findings regarding compliance with Goal 11,  
2 incorporated herein by reference, the Middle Housing Code  
3 Amendments do not change the City’s provision of public facilities  
4 and services or amend the currently adopted Eugene/Springfield  
5 Public Facilities and Services Plan (PFSP). Consistent with the PFSP  
6 and OAR 660-046-0010(3)(e), the City will continue to plan and  
7 develop public facilities to support the land uses designated in the  
8 City’s acknowledged comprehensive plan, including public facility  
9 projects that support the development of middle housing. For all these  
10 reasons, the amendments are consistent with policy A.12.”  
11

12 EC 9.7735(1) requires that the Metro Plan Amendment also complies with  
13 statewide planning Goals, stating: “The proposed amendment[s] [are] consistent  
14 with the relevant Statewide Planning Goals.” The analysis of the metro plan  
15 amendment for compliance with Goal 11 under the Metro Plan utilizes, word for  
16 word, the exact same passages as the middle housing code amendments stated  
17 above, only replacing “The Middle Housing Code Amendments” with “The Metro  
18 Plan Amendment” in the first sentence. R 212.

19 4. FIRST SUBASSIGNMENT OF ERROR - The MHCA and  
20 MPA Findings as to the amendments’ Goal 11 compliance are  
21 conclusory and not based on substantial evidence rendering the  
22 finding of compliance inadequate

23 While the MHCA and MPA Findings (“Goal 11 Findings”) are correct that  
24 the amendments do not make changes to the currently adopted Eugene/Springfield  
25 Public Facilities and Services Plan (PFSP), the assertion that amendments “do not  
26 make changes to the City’s provision of public facilities” is patently false. As a

1 starting point, it is undisputed that the code amendments in the Ordinance will  
2 allow and result in an increase in density for both existing neighborhoods and new  
3 construction within the urban growth boundary.<sup>4</sup> Therefore, the amendments *will*  
4 have an effect on whether the City’s current facilities and services will be adequate  
5 for the resultant increases in density in all zones and the facilities required to  
6 service such increased density.

7 Additionally, the requirement of EC 9.8065(2) is that the proposed  
8 amendments *are* “consistent with applicable provisions of the comprehensive plan  
9 and applicable adopted refinement plans.” Therefore, whether the City will

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<sup>4</sup> Intervenor-Respondent Paul Conte provides the following exposition of the potential density increase under the amendments:

“For example, prior to the MHCA the R-1 Low-Density Residential Zone’s maximum density was 14 dwellings per net acre, and the minimum lot size was 4,500 square feet. (See Rec 3422, Exhibit B.) The R-1 Zone allowed no more than one or two dwellings per lot, by right. These criteria were consistent with the Eugene comprehensive plan’s “Low Density Residential” designation’s density maximum of 14.28 dwellings per net acre.

With adoption of the MHCA, the R-1 Zone no longer has a maximum density for “middle housing” and allows three or more dwellings on lots as small as 2,625 square feet. *Ibid*, Exhibit B. Based on the new minimum lot sizes, the effective density under the MHCA is now as much as five times the prior effective density. Rec 3421-3422

This large increase in allowable intensity is not geographically limited and is allowed on all R-1 zoned property, including in the Willamette River Greenway.”



1 continue to evaluate whether the changes have impacted the provision of adequate  
2 facilities and services in the future is completely irrelevant as to compliance with  
3 the Metro Plan at the time the amendments are being enacted.<sup>5</sup> *See Friends of*  
4 *Yamhill County v. Yamhill County*, 47 Or LUBA 160 (2004) (compliance issues  
5 with statewide planning goals raised by post-acknowledgment plan amendments  
6 must be addressed and resolved at the time the plan amendment is adopted).

7 For example, with respect to the facilities for handling stormwater:

8 “Contrary to the City’s Finding, the proposed amendments increase  
9 density and increase lot coverage, which means that storm water  
10 runoff from the additional roof area will be impacting the City’s storm  
11 water facilities. Furthermore, by eliminating the requirement for off  
12 street parking and by relying on on-street parking, the pollution from  
13 the additional vehicles parked on the streets will need to be treated in  
14 the storm water facilities. Thus, the proposed amendments will be  
15 changing the provision of public facilities and services.”

16  
17 Letter from Charles W. Woodward, IV (dated April 18, 2022) R 2237-38. While  
18 this statement only touches upon the provision of stormwater facilities that will  
19 result from the amendments, the same knock-on effects from the increase in  
20 density will also impact water supply facilities, sanitary sewer facilities, and  
21 transportation facilities, including safe ingress and egress for first responders and  
22 other emergency services.

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<sup>5</sup> HB 2001 required that the local government enact their own code amendments prior to June 30, 2022 or else the government would utilize the Model Code from DLCD.

1           The Goal 11 Findings represent, at best, a non-binding promise that the City  
2 will eventually address Goal 11 compliance when the PFSP is amended, which is  
3 inconsistent with the intent of HB 2001—requiring that all amendments enacted by  
4 June 30, 2022, not pushed out to some more convenient time for the local  
5 government in the future. Until that time, if and when it occurs, there is no  
6 prohibition against development before the update of the PFSP, especially as these  
7 amendments are presently applicable to development in Eugene. This means that  
8 substantial intensification is allowed by the Ordinance in areas of Eugene before  
9 any actual compliance with Goal 11 is predicted to occur. Tellingly, the City did  
10 not even provide an analysis of the current PSFP or even of the relative Goal 11  
11 facilities in comparison to some guessed upon increase in density, tacitly implying  
12 that such an exercise would be futile. To avoid this issue of substantial  
13 intensification that is presently allowed, the City could have updated the PFSP  
14 (they did not), enacted the DLCDC Model Code (which includes a restriction on  
15 development if there is insufficient infrastructure<sup>6</sup>), or undertaken the required  
16 study to predict the increased impacts on the Goal 11 facilities such that  
17 compliance with Goal 11 was assured on the day the Ordinance went into effect.  
18 OAR 660-011-0020(2) provides that a public facility plan must “identify  
19 significant public facility projects which are to support the land uses designated in

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<sup>6</sup> OAR 660-046-0020(16) provides a concise definition of “sufficient infrastructure.”

1 the acknowledged comprehensive plan,” including middle housing levels of  
 2 density in the areas zoned for residential use that allow for the development of  
 3 single-family detached dwellings. And, consistent with the interpretation put forth  
 4 by Petitioner herein, the deadline for identification of those projects is the time of  
 5 adoption of the Ordinance, not some undelineated time in the future.

6 The City has made claims that the existing infrastructure is sufficient to  
 7 handle the increase in density and the corresponding impacts on the Goal 11  
 8 facilities. R 1115.<sup>7</sup> *However, such a claim is simply not based on substantial*  
 9 *evidence, as it is undisputed that the City failed to undertake a study to identify the*  
 10 *magnitude or extent of the increase in density and the corresponding impacts on*  
 11 *infrastructure which will result from the amendments.*<sup>8</sup> One simply cannot “plan

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<sup>7</sup> The issues with the City of Eugene Public Works email cited here are compound and multiple. However, at the base of all problems, the lack of actual data to compare with existing or projected capacity is simply insurmountable when attempting to come to conclusion about the sufficiency of existing or presently projected facilities to actually provide Goal 11 facilities at levels such that compliance with Goal 11 can be positively asserted on substantial evidence. The issues of this approach with Metro Plan Policy A.12 are all the more stark as there is no way to “coordinate higher density residential development with the provision of adequate infrastructure” when one lacks projections as to what densities to coordinate with what infrastructure.

<sup>8</sup> Indeed, the failure to provide the density expectations that will result from these amendments violates Section 5 of HB2001 which requires the local government to:

“ . . . adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303(2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in

1 and develop a timely, orderly and efficient provision and accessibility of public  
2 facilities and services to serve as a framework for urban and rural development”  
3 without having some notion of the status of existing Goal 11 facilities and the  
4 extent of impacts these amendments will have on Goal 11 facilities in the future.

5 Another issue with letting the permitting process handle any upgrades to  
6 facilities is the intent of the law the Ordinance is codifying. The amendments are  
7 supposed to be compliant with the statewide goals at a land use level rather than  
8 ascribing the authority, and ultimately the finding of a proposed development’s  
9 compliance with Goal 11, for those decisions to ministerial, quasi-judicial  
10 permitting procedures with the required analysis occurring instead on a case-by-  
11 case basis. Additionally, failure to properly gauge capacity of infrastructure in a  
12 particular neighborhood may result in a ‘first come, first served limit’ on  
13 development. For example, should the first few developments use up the capacity  
14 of a sewer collector for an area, the subsequent developers would be precluded  
15 from constructing middle housing, thereby likely concentrating development in  
16 newer areas and failing to provide infill and the spreading of the resulting density  
17 around all areas of town.<sup>9</sup>

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residential capacity above achieved density by more than three percent without quantifiable validation of such departures.”

<sup>9</sup> The DLCD provided some background on the discussions around the potential for uneven actualization and even gentrification during of the rulemaking process,

1           Given the City’s citation to OAR 660-046-0320(3)(e) in the MHCA Goal 11  
2 Finding, it appears that the City is relying on a misconstrual of the rule to provide  
3 cover for future implementation of a plan that complies with Goal 11. The  
4 provision states that: “Following adoption of Middle Housing allowances by a  
5 Large City, the Large City shall work to ensure that infrastructure serving  
6 undeveloped or underdeveloped areas...”. The unreasonableness of the City’s  
7 interpretation is laid bare upon simple scrutiny. This provision simply provides  
8 that, for instance, the sewer pipes do not need to be replaced prior to enactment of  
9 the amendments, however, *there must be a plan* prior to enactment. Importantly,  
10 how does one “ensure” that the infrastructure will actually be in place before  
11 middle housing intensification? By adopting a new PFSP and prohibiting middle  
12 housing development until the implementation is done according to the adopted  
13 PFSP. Without a new, approved PFSP at the time of enactment there is nothing to  
14 “ensure,” *and* there is no recourse (and thus impetus) if the City approves middle  
15 housing development while “working on” the new, and supposedly compliant,  
16 PFSP. A PFSP has priorities, timelines, and contingencies—all with teeth because  
17 the City must comply with its Plan. Without requiring the PFSP before the code  
18 amendments are approved, there is nothing in the statute that can hold the City’s

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stating: “by allowing middle housing in all areas, the associated benefit of increased housing supply offsets the potential displacement risk.” *HB 2001 Interpretation and Implementation FAQ*,  
<https://www.oregon.gov/lcd/UP/Documents/HB%202001%20FAQ.pdf>.

1 ‘feet to the fire.’ The City’s promise simply does not provide assurance of  
2 compliance as clearly contemplated under the statute and the corresponding OARs.

3 Therefore, without any analysis comparing the projected impacts resulting  
4 from these amendments to current facility capacities as established by the PFSP,  
5 the findings of compliance with Goal 11 are not based on substantial evidence  
6 rendering the MHCA and MPA Findings inadequate to support a finding of  
7 compliance with Goal 11. Furthermore, by finding compliance without a  
8 reasonable analysis, the City misconstrued applicable law.

9 5. SECOND SUBASSIGNMENT OF ERROR - The MHCA  
10 Findings as to the amendments’ compliance with Metro Plan  
11 Policy A.12 are not based on substantial evidence rendering the  
12 finding of compliance inadequate

13 The first sentence of the Metro Plan Policy A.12 compliance analysis (“A.12  
14 Finding”) incorporates and repeats the Goal 11 analysis addressed above.  
15 Accordingly, that argument as to the insufficiency of the analysis for supporting a  
16 finding of compliance is incorporated herein by reference.

17 However, the A.12 Finding continues:

18 “...Consistent with the PFSP and OAR 660-046-0010(3)(e), the City  
19 will continue to plan and develop public facilities to support the land  
20 uses designated in the City’s acknowledged comprehensive plan,  
21 including public facility projects that support the development of

1 middle housing. For all these reasons, the amendments are consistent  
2 with policy A.12.”<sup>10</sup>  
3

4 Here, again, OAR 660-046-0010(3)(e) does not absolve the City from  
5 undergoing an analysis of the current Goal 11 facilities and the PFSP for the  
6 capacity to manage the impacts on the facilities from the resulting increase in  
7 density across the City. There is simply no other way to ensure the amendments’  
8 compliance with Metro Plan Policy A.12, and thereby demonstrate by substantial  
9 evidence that the amendments actually “coordinate higher density residential  
10 development with the provision of adequate infrastructure.” In sum, the findings  
11 of compliance with Metro Plan Policy A.12 are not based on substantial evidence  
12 that a reasonable person would rely on rendering the findings inadequate to support  
13 a finding of compliance. Furthermore, by finding compliance without the required  
14 analysis, the City misconstrued applicable law.

#### 15 6. Conclusion to the First Assignment of Error

16 As explained above, the City failed to undertake any study to find the  
17 density that would result from the MHCA and MPA amendments and the impact  
18 that increase in density would have on the Goal 11 facilities. The arguments put  
19 forth by the City in support of the finding of the amendments’ compliance with

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<sup>10</sup> The Metro Plan does not include any consideration of middle housing therefore the statement that implies consistency is irrelevant.

1 both Goal 11 and Metro Plan Policy A.12 rely on hopeful future adaptations rather  
2 than substantial evidence of the adequacy of existing facilities and the PFSP that a  
3 reasonable person would rely on. The City failed to base the findings of  
4 compliance with Goal 11 and Metro Plan Policy A.12 on substantial evidence  
5 rendering the findings inadequate, and thus, the City misconstrued applicable law.

6 V. CONCLUSION

7 For the reasons explained above, Petitioner respectfully requests that LUBA  
8 remand Ordinance No. 20667.

9 Respectfully submitted this 8th day of November, 2022, by:

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*Attorney for Petitioner*



1           **CERTIFICATE OF COMPLIANCE, FILING, AND SERVICE**

2  
3           I certify that (1) this brief complies with the word-count limitation in OAR  
4 661-010-0030(2) and (2) the word count of this brief as described in OAR 661-  
5 010-0030(2) is 4,850 words.

6           I certify that on November 8, 2022, I filed the original of Petitioner's  
7 Petition for Review along with one copy with the Land Use Board of Appeals,  
8 DSL Building, 775 Summer Street NE, Suite 330, Salem OR 97301-1283, by  
9 Certified First Class Mail, Return Receipt Requested.

10          I also certify that on November 8, 2022, I served a true and correct copy of  
11 this Petition for Review by First Class Mail to the following person(s):

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10 Dated: November 8, 2022.

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