

1 Opinion by Holstun.

2 NATURE OF THE DECISION

3 Petitioner seeks review of an ordinance changing the
4 comprehensive plan designation for a 43-acre parcel from
5 Industrial to Residential. The ordinance also changes the zone
6 from Industrial-General (M-G) to Residential-Medium Density
7 (R-MD).

8 FACTS

9 A similar appeal of plan and zoning map changes affecting
10 the property at issue in this appeal was decided in Hummel v.
11 City of Brookings, 13 Or LUBA 25 (1985) (Hummel I). Following
12 our remand in that case, the applicant (Agnew Company)
13 submitted a new application in November 1986 for rezoning a
14 43-acre parcel from Industrial-General (M-G) to
15 Residential-Medium Density (R-MD).¹ The plan designation was
16 to be changed from Industrial to Residential. Agnew Company
17 plans to build a 250 unit retirement housing complex. Record
18 135.

19 The property is located in the City of Brookings and within
20 the city's acknowledged urban growth boundary (UGB).² The
21 property is bounded by the Brookings Plywood Mill on the north;
22 industrially and residentially zoned land on the east;
23 residentially zoned land on the west; and the Pacific Ocean to
24 the south. Along its southern boundary, the property adjoins
25 the Brookings sewage treatment plant.

26 The Brookings Planning Commission held hearings concerning

1 the proposal on December 2, 1986. By order dated January 6,
2 1987, the planning commission recommended the application be
3 approved. The city council held a public hearing on
4 February 9, 1987, and at its March 16, 1987 meeting, adopted
5 Ordinance 411 approving the application. This appeal followed.

6 FIRST ASSIGNMENT OF ERROR

7 "Ordinance No. 411 violates Goal 9 because it reduces
8 the city's industrial land space without
9 justification, leaves the city without comparable
alternative industrial sites, and establishes
incompatible zoning."

10 Petitioner contends that Ordinance No. 411 violates
11 Statewide Planning Goal 9 which is "to diversify and improve
12 the economy of the state." In addition, petitioner contends
13 the ordinance violates Goal 9 of the city's comprehensive
14 plan. Implementation Measure 2 of the city's Goal 9 states:

15 "The City will utilize its zoning ordinance to provide
16 commercial and industrial lands for development."

17 The petitioner argues the city's comprehensive plan
18 "recognizes a need for 116 additional acres of industrial land
19 by the year 2000."³ Petitioner says only 30 vacant acres of
20 industrially zoned land is located within the City of Brookings
21 and available to meet this need. According to petitioner the
22 city's decision eliminates 27 vacant acres of industrially
23 zoned land.⁴ Petitioner argues the city's action will make
24 it impossible for the city to meet its year 2000 industrial
25 land needs.

26 Petitioner also recognizes there are more than 116 vacant

1 industrially zoned acres within the urban growth area (UGA),
2 outside the Brookings City Limits, but inside the Brookings
3 UGB.⁵ Petitioner contends, however, that all industrially
4 zoned sites other than the Agnew Company site

5 "present jurisdictional, topographical, zoning, access
6 and utility problems which must be addressed before
7 the sites can be considered a realistic alternative to
8 the Agnew property." Petitioner's Brief at 11.

9 Respondent city does not deny its duty to provide
10 sufficient industrially zoned land under Statewide Planning
11 Goal 9 and Goal 9 of its comprehensive plan. Respondent
12 contends, however, that the relevant planning area for purposes
13 of the supply of industrially zoned land required by Goal 9 is
14 the UGA.⁶ Respondent further contends the UGA indisputably
15 includes sufficient acres of industrially zoned land.

16 Respondents argue that petitioner may not challenge the
17 appropriateness of the industrially planned and zoned lands
18 within the UGA since the city's plan has been acknowledged,
19 citing Phillipi v. City of Sublimity, 59 Or 295, 650 P2d 1038
20 (1982), and Urquhart v. Lane Council of Governments, 80 Or App
21 176, 721 P2d 870 (1986).

22 Our review of the plan shows that the Agnew Company
23 property and other industrial sites are rated for several
24 factors including availability, water, sewer, power and
25 access. Plan I 9-9. However, the plan does not indicate that
26 land with particular characteristics is required or that the
27 industrial sites were selected because they have particular

1 configurations of available services. The city views its
2 obligation under Goal 9 to be met because the plan identifies a
3 need for 116 acres of industrially planned and zoned land, and
4 more than 116 acres are so planned and zoned.

5 The decision at issue in this appeal does not reduce the
6 supply of industrially planned and zoned land below 116 acres.
7 In the respondents' view, therefore, the very general charge
8 expressed in Goal 9 is met. We do not agree with the city's
9 apparent view of its supply of industrially zoned land as
10 fungible. As we noted in Hummel I,

11 "Under ORS 197.712(2)(c), plans and regulations must
12 provide for adequate supply of sites of suitable size,
13 type, location and service levels for industrial and
14 commercial uses consistent with plan policies.
15 Although compliance with this statute is not required
16 until the first periodic review of the city's plan,
17 ORS 197.712(3), the statute supports our
18 interpretation of the existing Goal." Hummel I,
19 supra, at 32, note 8.

20 Goal 9 is generally worded: "diversify and improve the
21 economy of the state." The city's Goal 9 Implementation
22 Measure No. 2 similarly is general and non-specific:
23 "utilize...zoning ordinance to provide industrial and
24 commercial land for development".⁷ Notwithstanding the
25 general wording, we believe Goal 9 requires that the city plan
26 and zone sufficient suitable industrial sites. Although the
suitability requirement is general, ORS 197.712(2)(c) discussed
supra, identifies relevant considerations. We cannot assume
all of the city's industrial land is sized, located and
serviced so that it is suitable. The city must demonstrate

1 that the acknowledged need for 116 acres for industrial land
2 can be met by the sites within its remaining inventory.

3 Petitioner contends that some of the remaining industrial
4 sites, particularly the 119 acres adjacent to the South Coast
5 Lumber Company, have physical limitations that will inhibit
6 industrial development. Respondents point out these properties
7 were planned and zoned for industrial use to comply with Goal
8 9, and the comprehensive plan has been acknowledged. As
9 Respondent Agnew Company notes, physical limitations such as
10 steep slopes may preclude some industrial uses but need not
11 rule out all industrial uses. Respondent's Brief at 4-5.
12 Respondent also notes one of the remaining industrial
13 sites--the 14 acre Port site--was rated more highly in the plan
14 for industrial use than the Agnew Company property.

15 We do not find respondent's arguments in its brief
16 sufficient to conclude the remaining industrial land inventory
17 is adequate for Goal 9 purposes. The city must explain in its
18 decision why the remaining industrially zoned acreage will
19 provide suitable industrial sites, notwithstanding any physical
20 limitations that may exist on those sites.

21 Petitioner also argues that Goal 9 is violated because the
22 residential development allowed by the plan and zone change
23 will result in uses of land that are incompatible with
24 industrial uses adjacent to the Agnew Company property.
25 Petitioner is particularly concerned with the inhibiting effect
26 adjoining residential development may have on the Brookings

1 Plywood Mill. Petitioner's Brief 11. Petitioner relies on
2 ORS 197.712(2)(d) which states:

3 "Comprehensive plans and land use regulations shall
4 provide for compatible uses on or near sites zoned for
specific industrial and commercial uses."

5 Petitioner made the same argument in Hummel I and we
6 concluded that, while the quoted statute is to be applied at
7 periodic review under ORS 197.712(3), we read it as an
8 interpretive aid for Goal 9. Hummel I at 33, note 9.

9 Respondent city answers that the entire City of Brookings
10 was built around the plywood mill and the mill is already
11 almost surrounded by residentially zoned property.
12 Respondent's Brief 21. The city also argues residential and
13 industrial zoning are not, per se, incompatible. Respondent
14 notes the applicant proposes clustering, which would minimize
15 conflicts with adjoining industrial uses. In addition,
16 conflicts will be minimized by landscaping along the property
17 adjoining the plywood mill and sewage treatment plant. Record
18 118. The city further notes that clustering would require
19 planned unit development approval. In view of the requirements
20 for detailed planned unit development approval, the city argues
21 that its general discussion in the record, regarding
22 compatibility, should be sufficient in this case for purposes
23 of Goal 9 and ORS 197.712(2)(d).

24 We agree that the city's findings has adequately respond to
25 the requirement for compatible uses near sites zoned for
26 industrial uses.

1 Petitioner's other Goal 9 objections regarding orderly
2 provision of services and urbanization are addressed below under
3 the second and third assignments of error. We note, however,
4 those issues are a legitimate and required consideration under
5 Goal 9, as well. In other words, it is appropriate to ask
6 under Goal 9 whether the remaining land planned and zoned for
7 industrial uses includes at least some land that can be
8 serviced and developed consistent with the plan's public
9 facilities and urbanization policies. Until the city can
10 answer that question affirmatively, we do not believe it has
11 fulfilled Goal 9's requirement to provide an adequate supply of
12 suitable industrially zoned sites.

13 We sustain portions of the first assignment of error as
14 explained above.

15 SECOND ASSIGNMENT OF ERROR

16 "Ordinance No. 411 violates Goal 11 because it fails
17 to assure timely, orderly and efficient arrangement of
18 public facilities and services to serve the city's
19 remaining sites designated for industrial development."

20 Petitioner makes the following Goal 11 objections:

21 "the Agnew property is the city's only sizable parcel
22 of vacant land zoned for industrial use. All the
23 public facilities and services necessary for immediate
24 industrial development are in place. In contrast, the
25 city's alternative vacant sites designated for
26 industrial development, with the exception of the Port
27 of Brookings which is destined for tourism related
28 development, each lack adequate facilities and
29 services." Petitioner's Brief at 14.

30 The requirement of Goal 11, as pertinent, is as follows:

31 "To plan and develop a timely, orderly and efficient
32 arrangement of public facilities and services to serve

1 as a framework for urban and rural development.

2 "Urban and rural development shall be guided and
3 supported by types and levels of urban and rural
4 public facilities and services appropriate for, but
5 limited to, the needs and requirements of the urban,
6 urbanizable and rural areas to be served. A provision
7 for key facilities shall be included in each plan....

8 "A TIMELY, ORDERLY AND EFFICIENT ARRANGEMENT--Refers
9 to a system or plan that coordinates the type,
10 location and delivery of public facilities and
11 services in a manner that best supports the existing
12 and proposed land uses."

13 According to petitioner, the property rezoned by the city
14 for residential use is well serviced and located for industrial
15 development. Petitioner asserts the industrial sites that
16 remain have serious physical, facility and services
17 problems.⁸ According to petitioner,

18 "there is no evidence in the record that the water,
19 sewer and storm drainage facilities required to serve
20 industrial development in the alternative sites can be
21 put in place in a timely, orderly and efficient
22 manner...."

23 Respondents contend that petitioner is requesting the
24 Board, improperly, to review the city's acknowledged
25 comprehensive plan for compliance with Goal 11.

26 Respondents are correct that in some instances acknowledged
comprehensive plan provisions are immune from challenge during
appeals of plan amendments. Urquhart v. Lane Council of
Governments, supra, at 180-181. However, the Court of Appeals
has made it clear that plan amendments are subject to review
for goal compliance. Ludwick v. Yamhill County, 72 Or App 224,
696 P2d 536, rev den, 299 Or 443 (1985); 1000 Friends of Oregon

1 v. Jackson County, 79 Or App 93, 718 P2d 753 (1986). In 1000
2 Friends of Oregon v. Jackson County, the Court of Appeals
3 explained

4 "comprehensive plans are coordinated and --
5 axiomatically, if not tautologically -- comprehensive
6 documents. ORS 197.015(5). An amendment to one
7 provision can affect the way in which another
8 provision operates or affect the land uses upon which
9 it operates, and a new or changed operation of the
10 unamended provision may be inconsistent with the
11 goals. Those 'secondary' affects are goal compliance
12 problems, and they are as much the product of the plan
13 amendment as are any goal violation that the amendment
14 introduces into the provision which it changes
15 directly. We therefore do not agree that LUBA's
16 review of plan amendments for goal compliance under
17 ORS 197.835(4) is limited to the provisions that the
18 amendments directly correct or alter." (Emphasis in
19 original). 79 Or App at 98.

20 We understand petitioner's argument to be that the city
21 must explain why its Goal 11 obligations are still met after an
22 admittedly well serviced parcel of industrially zoned property
23 is removed from the inventory of available industrially zoned
24 land. In other words, since the 43 acre parcel is no longer
25 available, other industrially zoned parcels will be used to
26 satisfy the demand for industrially zoned land. According to
petitioners, Goal 11 requires the city to explain why, based on
this changed circumstance, "timely, orderly and efficient
arrangement of public facilities and services" will still be
possible. We believe this is the kind of secondary effect the
Court of Appeals indentified in 1000 Friends of Oregon v.
Jackson County, supra. We therefore will examine the city's
findings to determine whether Goal 11 is satisfied.

1 The respondents cite to numerous places in the record where
2 Goal 11 is addressed. Record 111, 116-117, 134, 142, 146-147.
3 However, the cited portions of the record simply address the
4 adequacy of services at Agnew Company's property. The adequacy
5 of Goal 11 services and facilities at this site is not in
6 dispute. The issue is the adequacy of the facilities and
7 services covered by Goal 11 at the remaining industrial sites.
8 Respondent Agnew Company does note that the plan shows existing
9 water, sewer, power, and access at the Brookings Plywood and
10 Port sites. Plan I-9-9. It may be possible to develop
11 findings to explain why Goal 11 remains satisfied even though
12 the Agnew Company site is no longer available for industrial
13 use. However, without findings addressing this issue we are
14 unable to determine that the action taken complies with Goal
15 11. See Hoffman v. DuPont, 49 Or App 699, 621 P2d 63 (1980).

16 The second assignment of error is sustained.⁹

17 THIRD ASSIGNMENT OF ERROR

18 "Ordinance No. 411 violates Goals 2 and 14 of the
19 city's comprehensive plan."

20 Under this assignment of error petitioner alleges that Goal
21 14 of the Brookings Comprehensive Plan is violated because
22 Ordinance 411 discourages orderly outward growth of the
23 community. Petitioner also alleges respondent violated Goal 2
24 by failing to address adequately the applicable criteria.

25 Goal 14 Objections

26 Policies 2, 3, and 4 of Goal 14 of the city's comprehensive

1 plan are as follows:

2 "2. City shall encourage the orderly outward growth
3 of the community in order to maintain costs of
4 construction, maintenance, and extension of
streets, utilities and public facilities at the
lowest level possible.

5 "3. City shall annex lands that are contiguous to the
6 City limits and continue to extend City services
7 only to areas within the corporate limits. City
8 shall continue to honor present agreement for
provision of public services in areas presently
outside the corporate limits.

9 "4. City shall encourage the development of
10 industrial and commercial lands in such a way as
to insure a proper diversification of the local
and regional economy."

11 Petitioner contends the Port site is "destined for tourism
12 related development." Petitioner then notes the two remaining
13 potential industrial sites identified in the plan, i.e., the
14 airport and South Coast Lumber sites, are located "against the
15 outer boundary of the city's urban growth area." Therefore,
16 according to petitioner, Policies 2 and 3 of Goal 14 are
17 violated because industry will be forced to "leapfrog parts of
18 the city's urban growth area that are under the jurisdiction of
19 Curry County." Petitioner's Brief at 17. Petitioner says
20 annexation of these areas will be difficult, and industrial
21 development will be inhibited, rather than encouraged as Policy
22 4 requires.

23 Petitioner contends Policy 4 is violated because (1) the
24 Agnew Company property is the only "sizable, vacant and well
25 serviced parcel of industrially designated land," and (2)
26 designating the property as "residential" will adversely affect

1 new or expanded industrial development on adjoining industrial
2 land.

3 Respondents offer two answers to petitioner's Goal 14
4 objections. First, Respondent Agnew Company argues the
5 policies are merely guidelines and therefore even if the plan
6 and zone change violates the plan policies, that is not grounds
7 for remand. Downtown Comm. Assoc. v. City of Portland, 80 Or
8 App 336, 722 P2d 1258 (1986). Second, citing Philippi v. City
9 of Sublimity, 59 Or App 295, 650 P2d 1038 (1982) and Hummel v.
10 City of Brookings, supra, respondents contend petitioner is
11 improperly attacking plan and zoning decisions that have been
12 acknowledged.

13 We reject the argument that the plan's policies are
14 guidelines only. The City of Brookings' Plan Goal 2, Policy 5
15 provides as follows:

16 "Planning related decisions of the city will be in
17 accord with the policies of the comprehensive plan."
(Emphasis added).

18 The city's plan, therefore, provides that the policies are
19 mandatory standards rather than mere guidelines. See, Hummel
20 I, supra, at 35, note 12.

21 We do not believe petitioner is improperly attacking the
22 acknowledged plan. It is not sufficient for the city to note
23 that its plan is acknowledged and other sites are planned and
24 zoned for industrial uses. 1000 Friends of Oregon v. Jackson
25 County, supra at 98. (Secondary effects of a plan amendment
26 may raise goal compliance issues.) Under Policy 2 the order of

1 development is the relevant concern. It may be that the policy
2 of "encouraging orderly outward growth" is not violated by
3 rezoning for other uses the only sizable industrially zoned
4 parcel in the city. However, petitioner's argument that the
5 city's action has violated Policy 2 at least has facial merit.
6 Since under the city's own plan its action must be consistent
7 with Policy 2, an explanation of why that policy is not
8 violated is required.¹⁰ We sustain this portion of
9 petitioner's Goal 14 objections.

10 Petitioner's remaining Goal 14 objections regard Policies 3
11 and 4. Policy 3 concerns annexation policy and Policy 4 is a
12 policy favoring industrial and commercial diversification. The
13 annexation Policy 3 is not affected by the city's decision in
14 this case. The policy does not say only contiguous areas will
15 be annexed. We do not believe the city's decision has any
16 current impact on Policy 3. Similarly, while the properties
17 other than the Agnew Company property may be less suited for
18 industrial development and more difficult to service, we do not
19 believe Policy 4 favoring a policy of diversification is
20 offended by the city's action.

21 Goal 2 Objections

22 Petitioner's Goal 2 objections are based on the following
23 provisions in the city's comprehensive plan:

24 "The burden of proving the need for a change in land
25 use shall be born by the proponent of the land use
request." Plan, Goal 2, Policy 2.

26 "Resolution No. 213, as adopted September 19, 1978,

1 will be used by the Planning Commission and the City
2 Council when considering land use planning related
3 decisions." Plan, Goal 2, Implementation Measure 3.

4 Resolution No. 213 provides as follows:

5 "The following criteria and factors are deemed
6 relevant and material and shall be considered by the
7 panel in reaching its decision on a proposal:

8 (1) Conformance with the comprehensive plan and
9 where appropriate, City zoning ordinance;

10 (2) The public need for the proposal;

11 (3) How the public need will be best served by
12 changing the permissible use of the property
13 concerned as compared with other available
14 property;

15 (4) If other areas have been previously
16 designated for a use or development in the
17 proposal then the necessity for introducing the
18 proposal into an area not previously contemplated
19 and why the property owners there should bear the
20 burden, if any, of introducing that proposal into
21 their area." Resolution No. 213.

22 Petitioner contends that the city has confused "market
23 demand" with "public need," citing Still v. Marion County, 42
24 Or App 115, 600 P2d 433 (1979). Petitioner states the plan
25 shows a need for 1,864 housing units by the year 2000.
26 Existing residential zoning can accommodate 1,885 dwelling
units in the UGA.¹¹ Therefore, according to petitioner,
public need for additional residential zoning, as required by
criterion 2 of Resolution 213, supra, cannot be shown.

Petitioner next asserts that the explanation of why the
need is best served at this site is inadequate. Petitioner
notes that under criterion 4 of Resolution 213, a heavy burden
on the applicant is warranted because elimination of this

1 industrial site is a drastic change. Petitioner also argues
2 that the city should have considered lands zoned Residential
3 High Density (R-HD) and Residential Low Density (R-LD) since,
4 according to petitioner, these zones in conjunction with the
5 PUD overlay zone would also allow the proposed use. Petitioner
6 claims there is at least one vacant parcel that could
7 accommodate the use, and it should have been considered as
8 required by criterion 3.

9 Petitioner also challenges the impact assessment prepared
10 by the applicant to address criterion 4. According to
11 petitioner, the assessment is inadequate because the impact of
12 the residential uses on existing adjoining industrial uses is
13 not adequately addressed.¹²

14 The city argues the criteria in Ordinance 213 are not
15 mandatory approval standards.

16 We agree. The criteria and factors in Ordinance 213 "are
17 deemed relevant and material and shall be considered...."
18 (Emphasis added.) The resolution is not worded to create
19 standards that must be found as a prerequisite to final land
20 use decisions. The criteria in Ordinance 213, by their express
21 terms, are merely advisory and are not mandatory approval
22 standards. In addition, Ordinance 213 is an implementation
23 policy. Plan Goal 2, Implementation Policy 3. We concluded
24 previously in Hummel I, the implementation policies in the
25 city's plan are not binding policies. Hummel I, supra, at 35.

26 Ordinance 213 does not establish mandatory standards as

1 petitioner assumes. Even if the city's decision does not
2 comply with the criteria in Ordinance 213, that would not be
3 grounds for remand or reversal. We conclude the city has
4 complied with its obligation to consider the criteria in
5 Ordinance 213. Record 110-144.¹³

6 The portion of the third assignment of error, in which
7 petitioner asserts that the city has not demonstrated that its
8 decision is consistent with Policy 2 of Goal 14 of the city's
9 comprehensive plan, is sustained. All other portions of the
10 third assignment of error are denied.

11 FOURTH ASSIGNMENT OF ERROR

12 "The City of Brookings' findings are conclusionary and
13 vague, fail to adequately address applicable criteria,
14 and are not supported by substantial evidence in the
record."

15 The petitioner objects to the city's adoption of findings
16 which incorporate and adopt findings prepared by the
17 applicant. Petitioner argues the findings addressing the four
18 criteria in Ordinance 213 are conclusionary and not supported
19 by substantial evidence in the record. Petitioner says the
20 city erred by not addressing contradictory evidence submitted
21 by petitioner.

22 Our conclusion under the third assignment of error that the
23 criteria stated in Ordinance 213 are advisory rather than
24 mandatory standards requires that we deny the fourth assignment
25 of error. The City of Brookings is not required to make
26 findings of fact supported by substantial evidence with regard

1 to advisory criteria. See Atwood v. Portland, 2 Or LUBA 397,
2 409 (1981).

3 It is clear that we may not reverse or remand a land use
4 decision merely because it violates advisory criteria.
5 Downtown Comm. Assoc. v. City of Portland, supra; Gayden v.
6 City of Portland, 1 Or LUBA 313 (1980). In Bonner v. City of
7 Portland, 11 Or LUBA 40 (1984), we concluded that a finding,
8 not supported by substantial evidence, need not result in a
9 remand unless the finding was critical to the decision. Id at
10 52. It is clear from the record that the criteria in Ordinance
11 No. 213 were considered, and the city concluded the criteria
12 were met. Record 110-144. That is all the city was required
13 to do.

14 The fourth assignment of error is denied.

15 FIFTH ASSIGNMENT OF ERROR

16 "The city admitted into the record evidence which
17 petitioner did not have an opportunity to review and
18 rebut for the record and thus prejudiced the
19 substantial rights of the petitioner."

20 Petitioner contends that at the conclusion of the
21 February 9, 1987 hearing documents supporting the application
22 were submitted. Petitioner says the hearing was then closed,
23 and the city council voted to approve the requested plan
24 amendment and zone change without actually reviewing the
25 exhibit. Petitioner contends this procedure prevented rebuttal
26 of the evidence. The city answers that the exhibits were
offered into evidence and received without objection by

1 petitioner or other parties. The city further contends that
2 the documents comprise rebuttal of two points raised by
3 petitioner and others. The city notes that petitioner did not
4 review the documents and did not request additional time in
5 which to present a response to the rebuttal testimony. The
6 city argues that

7 "since there was no objection to the exhibits at the
8 time of their admission to the record, the hearing
9 body did not have a chance to cure the defect, if
10 any. Therefore, the substantial rights of the
petitioner were not violated and this assignment of
error should be denied."

11 We agree. Since the petitioner did not raise a timely
12 objection to closure of the hearing without giving an
13 opportunity for rebuttal, he may not now complain that his
14 substantial rights have been prejudiced. Dobaj v. City of
15 Beaverton, 1 Or LUBA 237 (1980).

16 Based on the foregoing, we dismiss this assignment of error.
17 Remanded.

FOOTNOTES

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4 1
5 The new application omitted some property joining the Agnew
6 Company property that had been included in the prior
7 application reviewed in Hummel I.

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9 2
10 The city's comprehensive plan was acknowledged October 11,
11 1984.

12
13 3
14 Respondents go to great lengths to show the city will need
15 substantially less than 116 acres of industrially zoned land by
16 the year 2000. Record 149-187. However, the city has not
17 amended the comprehensive plan to reflect this reduced demand.
18 Until the city does so, we will assume the need, as stated in
19 the acknowledged comprehensive plan, is for 116 acres.

20
21 4
22 While the property includes 43 acres, apparently only 27
23 acres of the property can be developed due to shoreland
24 boundary constraints.

25
26 5
27 The parties appear to disagree on the exact number of acres
28 located within the UGA (i.e. the area within the urban growth
29 boundary but outside the city limits). We conclude the
30 disagreement is immaterial. It appears that all the parties
31 agree that the following properties are within the UGA.

- | | | | |
|----|----|------------------------------------|---------------------|
| 32 | 1. | The Port of Brookings Harbor site | 14.00 acres |
| 33 | 2. | The Airport property | 44.00 acres |
| 34 | 3. | South Coast Lumber Company site | <u>119.00 acres</u> |
| 35 | | Industrially zoned land within UGA | 177.00 acres |

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37 6
38 OAR 660-09-005(2) defines planning area for purposes of Goal
39 9 as "...the whole area within an urban growth boundary
40 including unincorporated urban and urbanizable land...."

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Also, as we stated in Hummel I, the implementation policies in the City of Brookings plan are advisory rather than binding policy. Hummel I, supra, at 35.

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Petitioner contends the Port property is "geared to serve tourist trade." Petitioner further contends the airport property lacks the infrastructure to serve industrial development. Petitioner finally contends the South Coast Lumber Company property is steeply sloped and gullied, lacks utilities and access and would require enormous capital investment.

9

Under Or Laws 1987, Ch 729, Sec. 2, effective September 27, 1987, we are permitted to affirm local decisions in certain circumstances, even if the findings are inadequate. Even if that statute were in effect, respondents have not clearly pointed out evidence in the record supporting the city's decision, as the statute requires.

10

As we noted earlier, the applicant and city go to some length to show far less than the 116 acres identified as needed in the plan are actually needed for industrial development. Because the plan has not been amended to reflect this position, we do not address petitioner's claim that the statistics that support the reduced industrial land needs are flawed.

11

According to the city, there is a need within the City of Brookings for 1,191 units while the current plan provides for only 819 dwelling units. Petitioner's figures are based on the entire UGA; respondents' figures are based on the portion of the UGA within the city limits.

12

Petiitoner also argues:

"Resolution No. 213, Section 4(C) requires that [sic]:

"Summary of items under burden of proof must be submitted in writing and signed by proponent at the time of the hearing."

"Lacking such a signed summary in the record, and in view

1 of the inadequate responses to Criteria 1 through 4,
2 Ordinance 411 is in violation of Goal 2 of the city's plan
and should be reversed. ORS 197.835(3)." Petitioner's
3 Brief at 24.

4 Petitioner does not assert that he was prejudiced by the
failure to supply summary of items under burden of proof. Nor
5 does it appear he was prejudiced by this procedural error. We
therefore decline to consider the objection.

6

7 13

8 Petitioner does not contend that the city's action violates
Statewide Planning Goal 10, OAR Chapter 660, Division 8, which
9 implements Goal 10, or the housing goal policies in the
comprehensive plan. We therefore do not address whether the
10 city's decision complies with those requirements or whether the
decision to analyze housing need within the city rather than
within the entire urban growth area was inappropriate.

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