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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

OPUS DEVELOPMENT CORPORATION,)
THOMAS R. SLOCUM, CHARLES F.)
LARSON, JR., DOWNTOWN MINI-STORAGE,)
LYNN KLINGENSMITH, DONALD C. McRAE,)
SAYLOR PAINTING CO., RONALD D.)
SAYLOR, JOHN P. HAMMER, BELL)
HARDWARE, RODNEY L. BELL, JERRY)
DAVIS, SCHARPF's TWIN OAKS BUILDERS)
SUPPLY CO., TAD SCHARPF, BUILDERS)
ELECTRIC, FREDERICK WITTKOP,)
STARWOOD PRODUCTS, GARY KAYSER,)
IVY HI-LIFT, and RONALD J. HOWARD,)
Petitioners,)
vs.)
CITY OF EUGENE,)
Respondent,)
and)
JESSE SPRINGER, LAURIE McCLAIN,)
DOUG EBBITT, JUDITH GRANATSTEIN,)
CHERYLE HAWKINS, RAIMON FRANCK,)
JANET GICKER, and RANDALL GICKER,)
Intervenors-Respondent.)

LUBA No. 94-158
FINAL OPINION
AND ORDER

Appeal from City of Eugene.

Allen L. Johnson, Eugene, filed the petition for review and argued on behalf of petitioners. With him on the brief was Johnson & Kloos.

Glenn Klein and Anne C. Davies, Eugene, filed a response brief on behalf of respondent. With them on the brief was Harrang Long Gary & Rudnick. Glenn Klein argued on behalf of respondent.

1 Jesse Springer, Eugene, filed a response brief on his
2 own behalf.

3

4 Raimon Franck, Eugene, filed a response brief on his
5 own behalf.

6

1 Laurie McClain, Doug Ebbitt, Cheryle Hawkins, Janet
2 Gicker and Randall Gicker, Eugene, represented themselves.

3
4 SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON,
5 Referee, participated in the decision.

6
7 AFFIRMED in part; 02/23/95

8 REMANDED in part

9
10 You are entitled to judicial review of this Order.
11 Judicial review is governed by the provisions of ORS
12 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISIONS**

3 Petitioners challenge five ordinances and thirteen
4 orders adopted by the Eugene City Council on August 1 or 3,
5 1994. Ordinance No. 19975 adds a new Historic (H) district
6 for a particular area to the Eugene Code (EC). Ordinance
7 No. 19976 amends provisions of the EC related to rescue
8 missions. Ordinance No. 19977 adopts five amendments to the
9 Whiteaker neighborhood portion of the Eugene-Springfield
10 Metropolitan Area General Plan Diagram (Metro Plan Diagram).
11 Ordinance No. 19978 adopts an updated version of the
12 Whiteaker Plan, which is a neighborhood refinement plan.
13 Ordinance No. 19979 adds a new Mixed-Use Whiteaker (MU-W)
14 district to the EC. Twelve of the thirteen challenged
15 orders rezone various portions of the Whiteaker
16 neighborhood, including changes to base zoning districts and
17 application or deletion of the Site Review (SR)
18 subdistrict.¹ The remaining order challenged by petitioners
19 determines the existing Metro Plan Diagram designation for
20 the West Butte portion of the Whiteaker neighborhood is
21 Medium-Density Residential and denies a change of that
22 designation to High-Density Residential.

¹The site review trigger and approval criteria adopted by the twelve orders are identical. The site review trigger section establishes when site review approval is required for property to which the SR subdistrict is applied.

1 **MOTIONS TO INTERVENE**

2 Jesse Springer, Laurie McClain, Doug Ebbitt, Cheryle
3 Hawkins, Raimon Franck, Janet Gicker and Randall Gicker move
4 to intervene in this proceeding on the side of respondent.
5 There is no objection to the motions, and they are allowed.

6 **FACTS**

7 The Whiteaker neighborhood encompasses approximately
8 720 acres, bordered by the Willamette River on the north,
9 the Ferry Street Bridge on the east, 4th to 7th Avenues on
10 the south and the Chambers connector on the west. Whiteaker
11 is Eugene's oldest neighborhood, dating back to the
12 mid-1800s. Whiteaker contains significant geographical
13 features, such as Skinner Butte; a number of historic
14 resources, including two historic districts; and major
15 transportation corridors, such as the Washington/Jefferson
16 Overpass and the Southern Pacific Railroad. Whiteaker began
17 as a residential neighborhood, but by the time of the first
18 comprehensive zoning of the city in 1948, had evolved into a
19 mix of commercial, industrial and residential uses.

20 In 1972, the City of Eugene adopted its first
21 comprehensive plan, the Eugene-Springfield Area 1990 General
22 Plan (1990 Plan). In 1978, the city adopted a refinement
23 plan for the Whiteaker neighborhood (1978 Whiteaker Plan).
24 In 1980, the city adopted the Metro Plan, replacing the 1990

1 Plan.² In 1982, the city's comprehensive plan and land use
2 regulations were acknowledged by the Land Conservation and
3 Development Commission (LCDC) pursuant to ORS 197.251. The
4 city adopted a comprehensive update of the Metro Plan in
5 1987.

6 In 1992, the city initiated a comprehensive update of
7 the 1978 Whiteaker Plan. The city council appointed a nine
8 member citizen group, known as the Whiteaker Planning Team,
9 to serve as a special advisory committee. The Whiteaker
10 Planning Team members lived, worked and/or owned property in
11 the Whiteaker neighborhood. The city conducted a citizen
12 survey and community workshops to involve citizens in the
13 issue identification and plan update process. The Whiteaker
14 Planning Team evaluated the 1978 Whiteaker Plan, and based
15 on input from the citizen survey, community workshops, and
16 discussions with the Historic Review Board and planning
17 commission, developed a draft plan and related
18 implementation measures. After public hearings before the
19 planning commission and city council, the challenged
20 decisions were adopted.

21 **SCOPE OF LUBA REVIEW**

22 **A. Whiteaker Plan**

23 Petitioners contend the 1978 Whiteaker Plan is part of

²The effect of the 1980 adoption of the Metro Plan on the previously adopted 1978 Whiteaker Plan is at issue under the sixth assignment of error, infra.

1 the city's acknowledged comprehensive plan. Therefore,
2 according to petitioners, the adoption of the updated
3 Whiteaker Plan is a comprehensive plan amendment subject to
4 review for compliance with the Statewide Planning Goals and
5 the administrative rules implementing those goals.
6 ORS 197.175(2)(a), 197.835(4); Graville Properties, Ltd. v.
7 City of Eugene, 27 Or LUBA 583, 585 (1994) (amendment to
8 refinement plan is a comprehensive plan amendment).

9 The city asks us to reconsider our conclusions in
10 Graville that a refinement plan is part of the city's
11 comprehensive plan and that an amendment to a refinement
12 plan is, therefore, a comprehensive plan amendment.³ The
13 city argues that in Neste Resins Corp. v. City of Eugene, 23
14 Or LUBA 55, 58-60 (1992), this Board correctly determined
15 that the Metro Plan does not include refinement plans, and
16 that refinement plans are required to be consistent with the
17 Metro Plan. The city also argues that its adoption of a
18 refinement plan, pursuant to procedures and criteria
19 established in its acknowledged comprehensive plan and land
20 use regulations, is akin to the exercise of a "refinement
21 clause" in an acknowledged comprehensive plan which the
22 Supreme Court concluded was not a comprehensive plan
23 amendment. Foland v. Jackson County, 311 Or 167, 807 P2d

³The city contends refinement plans are "more in the nature of 'land use regulations' as that term is defined [in ORS 197.015(11)]." Respondent's Brief 22.

1 801 (1991).

2 In Foland, the county's acknowledged comprehensive plan
3 established a process for siting destination resorts,
4 including a map of areas excluded from destination resort
5 siting because of soil types, as required by
6 ORS 197.455(1)(b) and (c) and Statewide Planning Goal 8
7 (Recreational Needs). However, the text of the acknowledged
8 plan included a provision stating the adopted map is a
9 generalized representation of U.S. Soil Conservation Service
10 (SCS) soils inventories and that more precise SCS soils
11 mapping may be used to interpret the location of particular
12 sites. The Supreme Court noted this provision "is referred
13 to as the 'refinement clause' because it allows the county
14 to refine its map in relation to specific excluded sites
15 based on more precise maps provided by SCS." Foland, supra,
16 311 Or at 176. The court held the county's decision to
17 modify or refine its map in the context of acting on a
18 particular destination resort siting application was not an
19 amendment to the acknowledged comprehensive plan, but rather
20 "the county's exercise of its power under the refinement
21 clause," and therefore not reviewable for Goal 8 compliance.
22 Id. at 180.

23 Aside from the word "refinement," we see little
24 similarity between the county's exercise of its "refinement
25 clause" in Foland and the city's use of "refinement plans"
26 as part of the city's comprehensive planning process. The

1 "refinement clause" allowed the county to refine a single,
2 generalized plan map in response to more detailed
3 information generated during the process of applying that
4 map to a particular site. The Metro Plan, at I-5, describes
5 itself as a "framework plan" that is "supplemented by more
6 detailed refinement plans." EC 9.138(2) defines "refinement
7 plan" as "a comprehensive land use plan for a discrete part
8 of the geographic area regulated by the [Metro Plan]." The
9 adoption of a refinement plan is the culmination of a
10 legislative comprehensive planning process. Metro Plan IV-3
11 to IV-6. Consequently, Foland does not support a conclusion
12 that the adoption of the Whiteaker Plan is not a
13 comprehensive plan amendment.

14 Further, our decision in Neste Resins is not
15 inconsistent with Graville in this regard. In Neste Resins,
16 23 Or LUBA at 60, we explained:

17 "[T]he Metro Plan together with refinement plans
18 * * * establish a two part comprehensive plan
19 document for the cities of Eugene and Springfield
20 and Lane County. The Metro Plan is the
21 hierarchically superior part of that comprehensive
22 plan. * * *"

23 We adhere to our determinations in Neste Resins and Graville
24 that refinement plans are part of the city's comprehensive
25 plan.⁴ This means the challenged ordinance adopting the

⁴We note that, as was the case with regard to the refinement plan amendment at issue in Graville, the notice submitted by the city to the Department of Land Conservation and Development (DLCD) concerning the adoption of the Whiteaker Plan checked the box on that notice indicating

1 Whiteaker Plan is a comprehensive plan amendment and is
2 reviewable for compliance with applicable provisions of the
3 Statewide Planning Goals and their implementing rules.⁵

4 **B. Zone Change Orders**

5 Petitioners and the city also disagree with regard to
6 whether the 12 zone change orders challenged in this appeal
7 are required to comply with the Statewide Planning Goals and
8 their implementing rules.

9 The zone change orders are land use regulation
10 amendments. ORS 197.835(5) provides, in relevant part:

11 "[LUBA] shall reverse or remand an amendment to a
12 land use regulation * * * if:

13 * * * * *

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

19 In 1000 Friends of Oregon v. Marion County, 27 Or LUBA
20 303, 305-06 (1994), we explained:

the challenged decision is a comprehensive plan amendment, although the city did add "(Refinement)." Record 18.

⁵If refinement plans are not part of the city's comprehensive plan, they would be, as the city concedes, "land use regulations" as defined in ORS 197.015(11). As explained in the following section, under ORS 197.835(5)(b), amendments to land use regulations or the adoption of new land use regulations are reviewable for goal compliance if the "comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation." The city does not contend that "specific policies or other provisions" in the Metro Plan provide the basis for the Whiteaker Plan or identify any such provisions. Therefore, even if the Whiteaker Plan is properly termed a land use regulation, rather than a part of the city's comprehensive plan, it would be subject to review for goal compliance.

1 "Where petitioners contend challenged land use
2 regulation amendments fail to comply with the
3 statewide planning goals and implementing rules,
4 we rely on respondents to identify any specific
5 provisions in the local government comprehensive
6 plan they contend provide the basis for the
7 challenged amendment.^[6] If respondents fail to do
8 so, we will not search the plan for such
9 provisions, but rather will assume no such
10 provisions exist, and that we have authority under
11 ORS 197.835(5)(b) to reverse or remand the
12 amendment to the local government land use
13 regulation if it does not comply with the
14 statewide planning goals or the administrative
15 rules adopted by LCDC to implement those goals."

16 Respondents here do not identify specific provisions in the
17 Metro Plan or Whiteaker Plan which they contend provide the
18 basis for the challenged zone change orders. Consequently,
19 we are required to reverse or remand the zone change orders
20 if they do not comply with applicable provisions of the
21 Statewide Planning Goals or their implementing rules.

22 **FIRST ASSIGNMENT OF ERROR**

23 Petitioners contend the Whiteaker Plan and the Metro
24 Plan Diagram amendments violate Goal 12 (Transportation) and
25 OAR Chapter 660, Division 12 (Transportation Planning Rule).

⁶Further, to satisfy ORS 197.835(5)(b), the identified plan provisions must call for the specific land use regulation amendments adopted by the challenged decision. If a number of different land use regulation amendments could be consistent with the identified plan provisions, the plan provisions do not "provide the basis for" the regulation, as required by ORS 195.835(5)(b). Melton v. City of Cottage Grove, ___ Or LUBA ___ (LUBA Nos. 94-055 and 94-061, September 1, 1995), slip op 5, aff'd 131 Or App 626 (1994); see Ramsey v. City of Portland, 23 Or LUBA 291, 299-300, aff'd 115 Or App 20 (1992).

1 **A. Waiver**

2 The city contends petitioners may not raise any issue
3 of compliance with OAR 660-12-060 in this appeal, because
4 this issue was not raised during the city proceedings. The
5 city concedes that general transportation issues were raised
6 below, but argues that nowhere in the record was
7 OAR 660-12-060 specifically raised.⁷

8 There is no dispute that the challenged decisions are
9 legislative in nature, rather than quasi-judicial. In DLCD
10 v. Columbia County, 24 Or LUBA 32, 36 (1992), we explained
11 that ORS 197.763(1), 197.830(10) and 197.835(2) do not limit
12 the issues which may be raised before LUBA in an appeal of a
13 local government legislative land use decision:

14 "The requirements of ORS 197.763, both with regard
15 to procedures for local proceedings and raising
16 issues in such proceedings, apply only to local
17 government quasi-judicial land use proceedings,
18 not to local government legislative land use
19 proceedings. Parmenter v. Wallowa County, 21
20 Or LUBA 490, 492 (1991). Therefore,
21 ORS 197.763(1) imposes no limitation on the issues
22 which may be raised before this Board in an appeal
23 of a local government legislative land use
24 decision. Both ORS 197.830(10) and 197.835(2)
25 provide that issues raised before LUBA shall be
26 limited to those raised below 'as provided in
27 ORS 197.763.' Consequently, these provisions also
28 do not limit the issues which may be raised before

⁷The city does not identify a source for the alleged requirement that compliance with OAR 660-12-060 must have been specifically raised below, other than by citing ODOT v. Clackamas County, 23 Or LUBA 370, 375 (1992), wherein ORS 197.763(1), 197.830(10) and 197.835(2) are cited as the source of such a requirement. We therefore assume the city's argument relies on those statutory provisions.

1 this Board in an appeal of a local government
2 legislative land use decision."

3 Consequently, we may review the issues raised by petitioners
4 in this assignment of error, regardless of whether those
5 issues were raised in the city proceedings.

6 **B. Whiteaker Plan**

7 **1. Transportation Policies 1 and 2**

8 OAR 660-12-060(1) requires postacknowledgment
9 amendments to comprehensive plans and land use regulations
10 which "significantly affect a transportation facility" to
11 "assure that allowed land uses are consistent with the
12 identified function, capacity, and level of service of the
13 facility." OAR 660-12-060(1)(a) through (c) specify three
14 ways this may be accomplished. OAR 660-12-060(2) provides a
15 plan or land use regulation amendment "significantly affects
16 a transportation facility" if it:

17 "(a) Changes the functional classification of an
18 existing or planned transportation facility;

19 "(b) Changes standards implementing a functional
20 classification system;

21 "(c) Allows types or levels of land uses which
22 would result in levels of travel or access
23 which are inconsistent with the functional
24 classification of a transportation facility;
25 or

26 "(d) Would reduce the level of service of the
27 facility below the minimum acceptable level
28 identified in the TSP [(Transportation System
29 Plan)]."

30 OAR 660-12-060(3) requires that determinations made under

1 sections (1) and (2) of the rule "be coordinated with
2 affected transportation facility and service providers and
3 other affected local governments."

4 Whiteaker Plan Transportation Policies 1 and 2 provide:

5 "1. Any new bridges or streets which function as
6 arterials will be located only on edges of
7 the Whiteaker community.

8 "2. Design any new arterial/bridge or major
9 reconstruction of an existing arterial/bridge
10 to minimize noise pollution, appropriately
11 screen the facility from abutting properties,
12 and minimize the negative impacts to nearby
13 properties."⁸ Whiteaker Plan, p. 56.

14 Petitioners contend the adoption of the above policies
15 is supported by neither a coordinated determination that
16 these policies will not significantly affect a
17 transportation facility, as required under OAR 660-12-060(2)
18 and (3), nor the coordinated adoption of mitigation
19 measures, as required under OAR 660-12-060(1) and (3).
20 Petitioners argue Transportation Policy 1 categorically
21 excludes future arterial streets and bridges, and the
22 reclassification of existing streets and bridges to arterial
23 status, from all but the edges of a mixed-use urban center.
24 According to petitioners, this means Transportation Policy 1
25 is likely to result in arterial levels of travel or access
26 on collector streets and collector levels of travel or

⁸Transportation Policy 2 is a new policy. The 1978 Whiteaker Plan contained a policy identical to Transportation Policy 1 except that the policy in the 1978 Whiteaker Plan included the phrase "if at all possible."

1 access on local streets. Petitioners also argue that
2 Transportation Policy 1, by foreclosing large classes of
3 changes and improvements to the street and bridge system in
4 the Whiteaker neighborhood, effectively "changes the
5 functional classification of an existing or planned
6 transportation facility." OAR 660-12-060(2)(a).
7 Additionally, petitioners contend that by adding a plan
8 locational standard for arterials, Transportation Policy 1
9 "changes standards implementing a functional classification
10 system." OAR 660-12-060(2)(b). Finally, petitioners argue
11 Transportation Policy 2 turns OAR 660-12-060(1) on its head
12 by requiring that future arterials and bridges be made
13 consistent with existing and permitted land uses, rather
14 than assuring that "allowed land uses" will be consistent
15 with the transportation facility.

16 The adoption of the Whiteaker Plan is a
17 postacknowledgment comprehensive plan amendment to which
18 OAR 660-12-060 applies. Transportation Policies 1 and 2 are
19 arguably relevant to the issues addressed by OAR 660-12-060.
20 The challenged decision includes no findings concerning the
21 compliance of Transportation Policies 1 and 2 with
22 OAR 660-12-060. Neither do respondents demonstrate, through
23 argument in their briefs and citation to provisions of the
24 city's comprehensive plan, land use regulations or the
25 record, that the challenged transportation policies comply

1 with OAR 660-12-060.⁹

2 Consequently, this subassignment of error is sustained.

3 **2. Green Street Classification**

4 The Whiteaker Plan Glossary includes definitions for
5 the four functional street classifications used by the city
6 -- major arterial, minor arterial, collector street, local
7 street. The glossary also includes a new functional street
8 classification:

9 **"Green street:** Streets which are limited to, or
10 give preference to, alternative modes of
11 transportation (bikes, pedestrian, transit, and
12 electric vehicles). However, these alternate mode
13 vehicles share the street right-of-way with
14 residents and other motorists driving on the
15 street. Green streets are located within existing
16 street right-of-way and are assigned to local
17 residential streets. Green streets enhance the
18 adjacent neighborhood by reducing auto traffic and
19 encouraging slower, quieter, and safer forms of
20 transportation along the street. * * *

21 " * * * * " Whiteaker Plan, p. 87.

⁹We have consistently held there is no statutory or administrative law requirement that all legislative decisions be supported by findings. Redland/Viola/Fischer's Mill v. Clackamas County, 27 Or LUBA 560, 563 (1994); Riverbend Landfill Company v. Yamhill County, 24 Or LUBA 466, 472 (1993); Von Lubken v. Hood River County, 22 Or LUBA 307, 313 (1991). However, where a specific challenge is made to a legislative decision, findings may nevertheless be necessary to enable LUBA to perform its review function or to satisfy the requirement of Goal 2 (Land Use Planning) for an adequate factual base. See 1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372, 377, aff'd 130 Or App 406 (1994); League of Women Voters v. Klamath County, 16 Or LUBA 909, 913 (1988). It is also possible that where a specific challenge to a legislative decision is made, respondents may be able to defend against such a challenge through argument in their briefs and citations to plan provisions, code provisions and evidence in the record. Redland/Viola/Fischer's Mill v. Clackamas County, supra, 27 Or LUBA at 564; see Gruber v. Lincoln County, 2 Or LUBA 180, 187 (1981).

1 The Whiteaker Plan, at p. 63, includes a "Street
2 Classifications" map, which indicates streets bearing the
3 designations "major arterial," "minor arterial" and
4 "collector." On this map, Monroe Street has no designation.
5 The Whiteaker Plan also includes a Street Improvements map,
6 on which several streets, including Monroe Street, bear a
7 "Creation of Green Streets" designation. Id. at p. 64.

8 Petitioners contend Monroe Street runs through a heavy
9 industrial and commercial sector from three blocks north of
10 the Southern Pacific railroad corridor to two blocks south
11 of the railroad corridor. We understand petitioners to
12 argue that designating Monroe Street as a "Green Street"
13 severely impacts existing businesses and is inconsistent
14 with Goal 12 and the TPR.

15 The city responds that the Whiteaker Plan does not
16 designate Monroe Street, or any other street, as a "Green
17 Street." The city points out the ordinance adopting the
18 Whiteaker Plan as a refinement of the Metro Plan includes
19 the limitation that the implementation strategies in the
20 Whiteaker Plan "are recognized as potential ideas on how to
21 address the [plan] policies, but are not adopted as City
22 policy." Record 22. The city argues the creation of "Green
23 Streets" is merely suggested as a possible implementation
24 strategy. According to the city, the actual designation of
25 any street as a "Green Street" would require a future
26 amendment to the plan.

1 Whiteaker Plan Transportation Policy 8 simply states:

2 "Examine alternative ways to actively encourage
3 and implement strategies for preserving local
4 streets for local traffic." Whiteaker Plan,
5 p. 58.

6 Implementation Strategy 8.1 provides:

7 "Develop and implement a conceptual plan for
8 'Green Streets' in which the green street
9 [classification] is assigned to parts of the local
10 street system. Candidate streets in Whiteaker
11 might include portions of 4th Avenue, 5th Avenue,
12 Clark Street, Monroe Street, and North Adams.
13 (Refer to the map titled, 'Street Improvements'
14 * * * and definition of 'Green Streets' in the
15 Glossary.)" (Emphases added.) Id.

16 In view of the above emphasized language of
17 Transportation Implementation Strategy 8.1, it is clear that
18 the designation "Creation of Green Street" on the Street
19 Improvements map merely means the street may be considered
20 to receive a "Green Street" classification in the future.
21 Accordingly, we agree with the city that the challenged
22 Whiteaker Plan does not actually designate any street as a
23 "Green Street." Further, future application of the "Green
24 Street" designation to any street in the Whiteaker
25 neighborhood, including Monroe Street, will require, at a
26 minimum, an amendment to the Whiteaker Plan's "Street
27 Classifications" map, at which time Goal 12 and the TPR will
28 apply. Petitioners' challenge to the designation of Monroe
29 Street as a "Green Street" is premature.

30 This subassignment of error is denied.

1 **C. Metro Plan Diagram Amendments**

2 Petitioners' argument includes only one specific
3 reference to the challenged Metro Plan Diagram amendments:

4 "In substance the Metro Plan amendments and the
5 revisions to the [Whiteaker] Plan focus
6 exclusively on the impacts of transportation
7 facilities upon Whiteaker Area residential land
8 uses while ignoring existing and potential adverse
9 impacts upon the neighborhood and regional
10 transportation facilities themselves. The
11 resulting package is a formidable array of
12 exclusionary weapons aimed at regional and
13 nonresidential transportation facilities."
14 Petition for Review 13.

15 The only other reference to amendments to the Metro Plan is
16 in the caption of this assignment of error, where
17 petitioners allege the city "erred in amending the Metro
18 Plan without compliance with the following requirements of
19 Statewide Land Use Goal 12 * * *":

20 "A transportation plan shall * * * (2) be based
21 upon an inventory of local, regional and state
22 transportation needs; * * * (5) minimize adverse
23 social, economic and environmental impacts and
24 costs; * * * (8) facilitate the flow of goods and
25 services so as to strengthen the local and
26 regional economy; and (9) conform with local and
27 regional comprehensive land use plans. * * *"

28 The goal compliance findings adopted by the city in
29 support of the Metro Plan Diagram amendments do not include
30 findings on Goal 12. Record 43-50. The city argues the
31 above quoted provisions of Goal 12 concerning transportation
32 plans do not apply to the challenged Metro Plan Diagram
33 amendments, because the changes to the Metro Plan Diagram
34 "do not amend, add or repeal transportation policies."

1 Respondent's Brief 18 n 12.

2 The challenged Metro Plan Diagram amendments change the
3 designations of five portions of the Whiteaker neighborhood
4 as follows:

5 "1. From Medium-Density Residential to
6 Low-Density Residential or to Parks and Open
7 Space (MA 94-1)

8 "2. From Heavy Industrial or Low-Density
9 Residential to Light-Medium Industrial (MA
10 94-2)

11 "3. From Mixed Use to Light-Medium Industrial
12 (MA 94-3)

13 "* * * * *

14 "5. To add Mixed Use Asterisk (MA 94-5)

15 "6. From Parks and Open Space or Medium-Density
16 Residential to High-Density Residential with
17 a Mixed Use Asterisk (MA 94-6)" Record 51.

18 Petitioners do not explain why they believe the cited
19 requirements of Goal 12 for "transportation plans" apply to
20 the above described use designation changes. We note the
21 city has adopted the Eugene-Springfield Metropolitan Area
22 Transportation Plan (TransPlan) as part of the
23 Transportation Element of the Metro Plan. Metro Plan,
24 p. III-F-1. The challenged Metro Plan Diagram amendments do
25 not alter the TransPlan or the Transportation Element of the
26 Metro Plan. Without additional argument, petitioners fail
27 to establish the cited portions of Goal 12 apply to the
28 challenged Metro Plan Diagram amendments.

29 This subassignment of error is denied.

1 **D. Other Goal Compliance Issues**

2 At the conclusion of this assignment of error,
3 petitioners make the following contention:

4 "In none of the above policies or in the plan^[10]
5 as a whole is there either the fact or the
6 appearance of orderly provision of urban
7 facilities and services as required by Statewide
8 [Planning] Goal 11 (OAR 660-15-000(11)). Nor is
9 there coordinated transportation planning as
10 required by [Statewide Planning] Goal Two
11 (OAR 660-15-000(2)) * * *." Petition for
12 Review 17.

13 Except for the above quote, petitioners make no other
14 mention of Goals 2 and 11 under this assignment of error.
15 Petitioners' arguments regarding these goals are
16 insufficiently developed to merit review. Deschutes
17 Development Co. v. Deschutes County, 5 Or LUBA 218, 220
18 (1982).

19 This subassignment of error is denied.

20 The first assignment of error is sustained, in part.

21 **SECOND THROUGH FIFTH ASSIGNMENTS OF ERROR**

22 **A. Goal 2 (Land Use Planning)**

23 Goal 2 requires "[a]ll land use plans [to] include
24 * * * ultimate policy choices." Petitioners contend the
25 Whiteaker Plan and the 12 zone change orders implementing
26 that plan fail to make such "ultimate policy choices" for

¹⁰It is unclear whether the "plan" petitioners refer to here is the Metro Plan, the Whiteaker Plan, or both.

1 any use other than low-density residential.¹¹ Petitioners
2 further contend the Whiteaker Plan and zone change orders
3 subject all land designated for industrial, commercial,
4 high-density residential or medium-density residential use
5 to multiple layers of ambiguous, subjective standards and
6 indeterminate procedures. According to petitioners, such
7 improper burdens include (1) plan policies applicable to
8 individual land use decisions "without specification or
9 other meaningful guidance identifying the specific kinds of
10 decisions for which those standards will be binding;" (2) a
11 special site review (SR) overlay for commercial, industrial
12 and medium/high density residential zones; "subjecting each
13 affected property to vague and discretionary compatibility
14 standards" and the quasi-judicial hearing process; and
15 (3) rezoning to MU-W/SR, which subjects every existing or
16 future "commercial or industrial use to the burden of
17 demonstrating compatibility with newly permitted
18 impact-sensitive uses such as residences and shops."
19 Petition for Review 20.

20 The Goal 2 requirement for "ultimate policy choices"
21 does not mean that local governments cannot adopt ambiguous
22 or subjective development standards or complex development
23 review processes. Where LCDC interprets a particular goal

¹¹Petitioners also mention, at Petition for Review 19, the Goal 2 requirements for an adequate factual base and evaluation of alternative courses of action, but do not include argument explaining how these Goal 2 requirements are allegedly violated.

1 as requiring that certain uses be subject only to clear and
2 objective standards, it says so in an implementing rule.
3 For instance OAR 660-08-015, which implements Goal 10
4 (Housing), requires that "[l]ocal approval standards,
5 special conditions and procedures regulating the development
6 of needed housing must be clear and objective, and must not
7 have the effect, either of themselves or cumulatively, of
8 discouraging needed housing through unreasonable cost or
9 delay."¹² OAR 660-16-010(3), which implements Goal 5 (Open
10 Spaces, Scenic and Historic Areas, and Natural Resources),
11 provides that where a local government has decided to limit
12 uses that conflict with a Goal 5 resource, "[w]hatever
13 mechanisms are used, they must be specific enough so that
14 affected property owners are able to determine what uses
15 * * * are allowed, not allowed, or allowed conditionally and
16 under what clear and objective conditions or standards."

17 This subassignment of error is denied.

18 **B. Goal 9 (Economic Development)**

19 Petitioners contend the Whiteaker Plan policies and
20 zone change orders requiring site review approval for
21 development on commercial and industrial zoned land to
22 protect nearby residential uses, and the zone changes from

¹²Petitioners cite this rule, and the parallel requirement of ORS 197.307(6), at Petition for Review 25, but only in support of their argument that ambiguous and subjective standards can effectively nullify what otherwise might appear to be "ultimate policy choices." Petitioners do not contend the challenged Whiteaker Plan or zone change orders violate OAR 660-08-015 or ORS 197.307(6).

1 commercial or industrial zones to MU-W, violate Goal 9.

2 **1. Introduction**

3 The Whiteaker Plan includes a new Land Use Policy 2,¹³
4 which provides:

5 "Apply Site Review subdistrict zoning to
6 properties that are zoned C-2 General Commercial,
7 GO General Office, or I-2 Light-Medium Industrial
8 that are adjacent, across an alley, or across a
9 street from land zoned low-density residential
10 since the uses on these properties are potentially
11 incompatible[, with one exception]. Also apply
12 Site Review to properties that are adjacent,
13 across an alley, or across a street from land
14 within a historic district[, with certain
15 exceptions]. Also apply Site Review to all
16 properties zoned MU-W Whiteaker Mixed Use and to
17 all properties zoned R-2/20 or any other
18 residential zoning district that allows an equal
19 or higher residential density,^[14] excluding
20 property in a historic district. * * *" Whiteaker
21 Plan, p. 32.

22 Both the above policy and the zone change orders impose

¹³The 1978 Whiteaker Plan contained the following, substantially weaker, policy concerning site review:

"Site review sub-district zoning should be considered for properties that face one another across streets or are adjacent to each other when the uses on these properties are potentially incompatible." 1978 Whiteaker Plan, Land Use Policy 8.

As we understand it, pursuant to the above policy, the SR subdistrict had already been applied to certain properties in the Whiteaker neighborhood, prior to the challenged decisions. However, the challenged zone change orders apply the SR subdistrict to additional properties and establish new site review criteria for development on properties to which the zone change orders apply the SR subdistrict.

¹⁴The R-2 zone is the city's Limited Multiple Family Residential District and apparently allows densities of up to 20 dwelling units per acre. EC 9.336.

1 the following standard (referred to as the "site review
2 trigger" or "triggering threshold") for determining when a
3 proposed development of property to which the zone change
4 orders apply the SR subdistrict requires site review
5 approval:

6 "Site review is required for new development,
7 except for expansion or alteration of
8 single-family structures in residential use. New
9 development is defined as the development of a new
10 structure, excluding single-family structures, or
11 an addition to an existing structure that expands
12 the building footprint." Whiteaker Plan, p. 32;
13 Record 206.

14 As we understand it, there is basically no dispute that
15 the zone change orders apply the SR subdistrict to numerous
16 I-2, C-2, MU-W, R-3/40, R-3 and R-2/20 zoned properties in
17 the Whiteaker neighborhood, and change the base zone of
18 numerous properties to the new MU-W zone. Also, with
19 certain limited exceptions, the zone change orders adopt the
20 following site review criteria:

21 "1. Compatibility with the surroundings
22 (particularly when residential in character),
23 primarily with regard to noise and visual
24 buffering. * * *

25 "2. Efficient, workable, and safe
26 interrelationships among building, parking,
27 circulation, open space, and landscaped
28 areas, as well as related activities and
29 uses. * * *

30 "3. Due consideration to the preservation of
31 attractive and distinctive historical and
32 natural features. * * *

33 "4. Signs and illumination in scale and harmony

1 with the site and area.

2 "* * * * *" Record 206.

3 **2. Affirmative Waiver**

4 The city contends petitioners affirmatively waived any
5 objections to the site review requirements and standards
6 imposed by the Whiteaker Plan and the zone change orders.
7 See Newcomer v. Clackamas County, 92 Or App 174, 186-87, 758
8 P2d 369, modified 94 Or App 33 (1988); Neste Resins, supra,
9 23 Or LUBA at 65-66. According to the city, during the
10 proceedings below, certain petitioners testified in favor of
11 adopting more general site review criteria, similar to those
12 eventually adopted, and requested that the SR subdistrict be
13 applied to a broader range of properties. The city cites
14 evidence in the record of such testimony by two of the
15 petitioners.

16 The city makes no attempt to show that all 20
17 petitioners in this appeal affirmatively waived any
18 complaint concerning the site review requirements imposed by
19 the Whiteaker Plan and the zone change orders. Because the
20 city does not claim or demonstrate that all 20 petitioners
21 affirmatively waived this issue, we do not consider the
22 issue of waiver further and do not determine whether the
23 principle of affirmative waiver applies to a legislative
24 local government proceeding.

25 **3. Merits**

26 Goal 9 requires that comprehensive plans for urban

1 areas:

2 "1. Include an analysis of the community's
3 economic patterns, potentialities, strengths,
4 and deficiencies as they relate to state and
5 national trends;

6 "2. Contain policies concerning the economic
7 employment opportunities in the community;

8 "3. Provide for at least an adequate supply of
9 sites of suitable sizes, types, locations,
10 and service levels for a variety of
11 industrial and commercial uses consistent
12 with plan policies;

13 "4. Limit uses on or near sites zoned for
14 specific industrial and commercial uses to
15 those which are compatible with proposed
16 uses."

17 **a. Paragraphs 1 and 2**

18 Petitioners contend paragraph 1 above requires the
19 Whiteaker Plan to include an analysis of the effects upon
20 existing and future businesses of having to comply with the
21 subjective site review requirements imposed by the Whiteaker
22 plan and the zone change orders. Petitioners also argue
23 paragraph 2 is violated because the Whiteaker Plan fails to
24 include "the requisite information and analysis to
25 adequately determine the probable impact of these policies
26 upon a mature and central commercial-industrial area of the
27 community." Petition for Review 27.

28 With regard to paragraph 1, the city contends it has
29 performed an analysis of "economic patterns, potentialities,
30 strengths, and deficiencies" on a city-wide basis, in the
31 Eugene Commercial Lands Study, the Metropolitan Industrial

1 Lands Policy Report (Industrial Policy Report) and the
2 Metropolitan Industrial Lands Inventory Report (Industrial
3 Inventory Report), and is not required by Goal 9 to repeat
4 that analysis in a neighborhood refinement plan. We agree
5 with the city that paragraph 1 refers to carrying out a
6 city-wide analysis of the city's current economic situation,
7 and does not require that neighborhood refinement plans
8 include individual analyses of the economic impacts of
9 particular implementation measures.

10 With regard to paragraph 2, it requires that the city's
11 comprehensive plan "[c]ontain policies concerning the
12 economic employment opportunities in the community."
13 Petitioners do not allege or demonstrate that the city's
14 comprehensive plan lacks such policies.

15 This subassignment of error is denied.

16 **b. Paragraph 3**

17 Petitioners argue the Whiteaker neighborhood includes
18 important, central-city commercial and industrial areas.¹⁵
19 Petitioners argue the imposition of the site review
20 requirements described above adds a new layer of burdensome,
21 subjective and indeterminate regulation to property on the

¹⁵The Whiteaker Plan, at p. 25, states:

"Whiteaker Neighborhood is distinct from many parts of Eugene because of the wide mixture of land uses. Many of the commercial, industrial and public facilities are city-wide or regional in scope providing a strong employment base and need for an efficient transportation system."

1 city's Goal 9 inventory of commercial and industrial sites.
2 Petitioners further argue that by subjecting industrial and
3 commercial uses in the I-2, C-2 and MU-W zones to site
4 review standards requiring that future land uses on such
5 properties be "compatible" with nearby residential uses, the
6 Whiteaker Plan and the zone change orders "effectively
7 removed those lands from the city's inventory of land
8 available for expansion, replacement, and development of new
9 commercial and industrial uses." Petition for Review 29.
10 Petitioners also argue that 105 of the 156 properties
11 rezoned to MU-W by the challenged zone change orders were
12 previously zoned I-2. Petitioners contend these rezonings
13 also remove land from the city's Goal 9 inventory and
14 magnify the effect of the site review requirements, by
15 inviting new residential uses into these areas. Petitioners
16 argue these decisions are not supported by findings or
17 evidence in the record establishing that such rezoning will
18 not negatively impact existing and future commercial and
19 industrial development on lands inventoried by the city
20 under Goal 9, paragraph 3.

21 The city concedes it adopted no findings addressing the
22 impacts of the new site review requirements and zone changes
23 to MU-W on its Goal 9 inventory of commercial and industrial
24 sites. However, the city contends its Commercial Lands
25 Study establishes the city's inventory of available
26 commercial lands contains 170 acres more than is needed.

1 The city also contends the Industrial Policy Report and
2 Industrial Inventory Report establish the inventory of
3 available industrial land in the metropolitan area contains
4 an excess of at least 2,500 acres beyond what is needed.
5 According to the city, this means the site review
6 requirements and zone changes to which petitioners object
7 cannot render the city's inventory of commercial and
8 industrial lands inadequate to comply with Goal 9. The city
9 also argues the zone changes from I-2 to MU-W do not
10 adversely affect the city's inventory of commercial and
11 industrial land because (1) the MU-W zone was applied only
12 to areas which already had a mixed land use pattern
13 (Whiteaker Plan, p. 33); and (2) except for heavy equipment,
14 truck and tractor sales and RV and manufactured dwelling
15 sales, the industrial uses allowed in the MU-W zone are
16 identical to those allowed in the I-2 zone.¹⁶

17 Quasi-judicial changes to acknowledged comprehensive
18 plans or land use regulations that reduce a local
19 government's supply of industrially designated land must be
20 supported by findings demonstrating the remaining
21 industrially designated land is adequate to satisfy the
22 requirements of Goal 9. Neste Resins, supra, 23 Or LUBA

¹⁶However, although the I-2 zone apparently does not allow residential uses other than planned unit developments, the MU-W zone allows all types of dwellings (i.e. attached and detached single-family dwellings, duplexes and multiple-family dwellings) as permitted uses. EC 9.450 to 9.454, Record 167.

1 at 64; Hummel v. City of Brookings, 16 Or LUBA 1, 5 (1987).
2 The same is true for legislative changes, except that Goal 9
3 compliance may be demonstrated either by findings adopted in
4 support of the decision, argument based on plan provisions,
5 code provisions and evidence in the record, or both.
6 Redland/Viola/Fischer's Mill v. Clackamas County, supra; see
7 Gruber v. Lincoln County, supra.

8 Petitioners have demonstrated the challenged decisions
9 include zone changes from an industrial zone to a mixed use
10 zone allowing a variety of residential uses. Petitioners
11 have also demonstrated the site review requirements imposed
12 by the challenged decisions on numerous industrial,
13 commercial and mixed use zoned properties may impose
14 limitations on future industrial and commercial use of those
15 properties. This is sufficient to require the city to
16 demonstrate that it remains in compliance with the Goal 9
17 requirement for an adequate inventory of commercial and
18 industrial sites.

19 The city does not identify, either in the decision or
20 its argument, what land in the Whiteaker neighborhood is on
21 the city's Goal 9 inventory of commercial and industrial
22 sites or explain how it believes industrial and commercial
23 use of such land will be affected by the Whiteaker Plan and
24 zone change orders. The city essentially argues the
25 Whiteaker Plan and zone change orders can be presumed to
26 comply with Goal 9, paragraph 3 because the city's

1 inventories of commercial and industrial land contain large
2 surplus acreages above what is needed. However, Goal 9,
3 paragraph 3 requires that the city's inventory of suitable
4 commercial and industrial sites be adequate not just with
5 regard to total acreage, but also with regard to size, type,
6 location and service levels, to provide for a "variety of
7 industrial and commercial uses consistent with plan
8 policies." The city must demonstrate that in view of the
9 limitations and changes imposed by the challenged decisions,
10 it still has an inventory of commercial and industrial sites
11 that is adequate with regard to size, type, location and
12 service levels, considering its plan policies for use of the
13 Whiteaker neighborhood.

14 This subassignment of error is sustained.

15 **c. Paragraph 4**

16 Petitioners argue Goal 9, paragraph 4 requires the city
17 to limit the uses on or near commercial or industrial zoned
18 property to those which are compatible with the allowed
19 commercial and industrial uses. Petitioners contend the new
20 site review requirements do just the opposite, by requiring
21 new commercial and industrial development on commercial or
22 industrial zoned property to be compatible with nearby
23 residential uses.

24 Goal 9, paragraph 4 requires uses "on or near sites
25 zoned for specific industrial and commercial uses" to be
26 limited to those which are "compatible with proposed uses."

1 (Emphases added.) We have not previously interpreted
2 paragraph 4. We turn for interpretive guidance to
3 OAR Chapter 660, Division 9, the rules adopted by LCDC to
4 implement Goal 9.¹⁷ OAR 660-09-015 (Economic Opportunities
5 Analysis) establishes standards for the economic analysis
6 required by Goal 9, paragraph 1. OAR 660-09-020 (Industrial
7 and Commercial Development Policies) establishes
8 requirements for the policies required by paragraph 2.
9 OAR 660-09-025 (Designation of Lands for Industrial and
10 Commercial Uses) implements the requirements of paragraphs 3
11 and 4. OAR 660-09-025(4) (Sites for Uses with Special
12 Siting Requirements) explains what paragraph 4 requires:

13 "Jurisdictions which adopt objectives or policies
14 to provide for specific uses with special site
15 requirements shall adopt policies and land use
16 regulations to provide for the needs of those
17 uses. * * * Plans and land use regulations for
18 these uses shall:

19 "(a) Identify sites suitable for the proposed use;

20 "(b) Protect sites suitable for the proposed use
21 by limiting land divisions and permissible
22 uses and activities to those which would not
23 interfere with development of the site for
24 the intended use; and

25 "(c) Where necessary to protect the site for the
26 intended industrial or commercial use,
27 include measures which either prevent or
28 appropriately restrict incompatible uses on

¹⁷This division is directly applicable to city plan and land use regulation amendments only at the time of periodic review. OAR 660-09-010(2); Melton v. City of Cottage Grove, ___ Or LUBA ___ (LUBA Nos. 94-055 and 94-061, September 1, 1994), slip op 14.

1 adjacent and nearby lands." (Emphases
2 added.)

3 It can be seen from the above that paragraph 4 does not
4 impose a requirement that uses near all lands zoned for
5 commercial or industrial use be limited to those compatible
6 with commercial and industrial uses in general. Rather,
7 paragraph 4 applies only where the local government has
8 designated certain commercial or industrial zoned land for
9 specific commercial or industrial uses with special site
10 requirements. That is not the case here.

11 This subassignment of error is denied.

12 **C. Goal 10 (Housing)**

13 Goal 10 states:

14 "Buildable lands for residential use shall be
15 inventoried and plans shall encourage the
16 availability of adequate numbers of needed housing
17 units * * *."

18 Petitioners argue the challenged decisions mean less
19 residential density will be allowed in the Whiteaker
20 neighborhood. We understand petitioners to challenge the
21 Metro Plan Diagram amendments and corresponding zone change
22 orders because Medium-Density Residential designations and
23 zones are changed to Low-Density Residential, Mixed Use or
24 non-residential designations and zones and Low-Density
25 Residential designations and zones are changed to Mixed Use

1 or non-residential designations and zones.¹⁸ Petitioners
2 argue the decisions are not supported by findings or
3 evidence showing that after such designation changes, the
4 inventory of buildable lands required by Goal 10 remains
5 adequate to meet the city's identified housing needs.

6 The challenged zone change orders are not supported by
7 findings on Goal 10. However, the challenged ordinance
8 adopting the Metro Plan Diagram amendments includes the
9 following findings addressing Goal 10:

10 "Except for [MA 94-3],[¹⁹] all of the proposed
11 amendments are relevant to Goal 10 and will
12 encourage conservation of existing residential
13 dwellings and/or stimulate new development that
14 will increase the overall housing quality * * * in
15 the neighborhood. [MA 94-1 and MA 94-2] will
16 amend the Metro Plan Diagram to reflect existing
17 development patterns. While it may appear there
18 is a loss in land available for medium-[density]
19 and low-density residential development, the
20 subject propert[ies] in these two amendments are
21 fully developed and committed to other urban uses.
22 The change[s] in the Metro Plan designation will
23 not result in a significant or substantive impact
24 on the overall quantity of land available for
25 low-[density] and medium-density residential use.

26 "[MA 94-5 and 94-6] will amend the Metro Plan
27 Diagram to identify the two areas as appropriate

¹⁸Petitioners include complaints regarding the citizen participation process used in developing the Whiteaker Plan and associated Metro Plan Diagram amendments and zone changes. Petition for Review 34-35. However, petitioners do not allege or explain why this violates Goal 1 (Citizen Involvement) or the city's acknowledged Citizen Involvement Plan. Therefore, we do not consider this issue further.

¹⁹MA 94-3 changes the designation of an area from Mixed Use to Light-Medium Industrial.

1 for mixed use. The [Whiteaker Plan] will further
2 describe the mixed use areas as ones that
3 encourage new medium-[density] and high-density
4 residential developments. The mixed use
5 designation will allow a variety of types of
6 housing units in areas or within structures that
7 contain non-residential development. Encouraging
8 housing in these areas will improve the housing
9 quantity and variety and provide needed options
10 for Whiteaker residents." (Emphases added.)
11 Record 49-50.

12 The city does not identify, either in its findings or
13 its brief, which properties affected by the challenged Metro
14 Plan Diagram and zone changes are included in the buildable
15 lands inventory required by Goal 10. However, the above
16 emphasized findings indicate the city believes MA 94-1,
17 which changes Medium-Density Residential designations to
18 Low-Density Residential or non-residential designations, and
19 MA 94-2, which changes Low-Density Residential designations
20 to non-residential designations, do not affect its
21 acknowledged buildable lands inventory because these
22 properties are developed and committed to other uses. The
23 findings also indicate the city believes MA 94-5 and 94-6,
24 which change residential designations to Mixed Use
25 designations, do not affect its acknowledged buildable lands
26 inventory because the Mixed Use designation allows a variety
27 of housing types.

28 When adopting postacknowledgment plan and zone map
29 amendments affecting residentially designated land within an
30 urban growth boundary, a local government must demonstrate
31 that it continues to satisfy its Goal 10 obligation to

1 maintain an adequate inventory of buildable lands. Goal 10
2 states that "Buildable Lands * * * refers to lands in urban
3 and urbanizable areas that are suitable, available and
4 necessary for residential use." OAR 660-08-005(13) defines
5 "suitable and available land" as:

6 "[R]esidentially designated vacant and
7 redevelopable land within an urban growth boundary
8 that is not constrained by natural hazards, or
9 subject to natural resource protection measures,
10 and for which public facilities are planned or to
11 which public facilities can be made available.
12 * * *" (Emphases added.)

13 OAR 660-08-005(12) defines "redevelopable land" as:

14 "[L]and zoned for residential use on which
15 development has already occurred but on which, due
16 to present or expected market forces, there exists
17 the strong likelihood that existing development
18 will be converted to more intensive residential
19 uses during the planning period."

20 In addition, OAR 660-08-020(1) provides that "[r]esidential
21 plan designations shall be assigned to all buildable land
22 * * *." (Emphasis added.)

23 The above rule provisions demonstrate it cannot be
24 assumed that already developed residentially designated land
25 is not included on a buildable lands inventory. They also
26 demonstrate that land which has a Mixed Use plan
27 designation, rather than a residential plan designation,
28 cannot be considered part of a buildable lands inventory.
29 Therefore, the city's reasons for determining that the
30 challenged Metro Plan Diagram amendments do not affect its
31 acknowledged buildable lands inventory are based on

1 incorrect assumptions. The city must determine whether the
2 challenged plan amendments and zone changes involve land
3 included in its acknowledged buildable lands inventory and,
4 if so, determine whether and explain why its buildable lands
5 inventory remains adequate to satisfy Goal 10.

6 This subassignment of error is sustained.

7 **D. Goals 11 (Public Facilities and Services) and 14**
8 **(Urbanization)**

9 The only reference made by petitioners to these goals
10 is a statement that the challenged Metro Plan Diagram
11 amendments "failed to show compliance with the compact urban
12 growth requirements of Goals 11 and 14." Petition for
13 Review 36. No issue of compliance with Goal 11 or 14 is
14 sufficiently developed for review.

15 This subassignment of error is denied.

16 The second through fifth assignments of error are
17 sustained, in part.

18 **SIXTH ASSIGNMENT OF ERROR**

19 The challenged order entitled "Denying Metro Plan
20 Amendment for Area #4 (MA 94-4)" (1) determines the existing
21 Metro Plan designation for the 6.84-acre "West Butte" area
22 is Medium-Density Residential, and (2) denies an amendment
23 of that designation to High-Density Residential.²⁰
24 Petitioners challenge only the former aspect of the

²⁰Under the Metro Plan, Medium-Density Residential is 10-20 units per gross acre and High-Density Residential is over 20 units per gross acre.

1 decision, contending the existing Metro Plan designation for
2 the West Butte area is High-Density Residential.

3 Petitioners' arguments, which were raised during the
4 city proceedings, are based on complex interpretations of a
5 1975 amendment to the 1990 Plan text and map,²¹ the 1978
6 Whiteaker Plan, the 1980 ordinance initially adopting the
7 Metro Plan, the 1980 Metro Plan text and diagram, and the
8 relationships between the Metro Plan text and diagram and
9 between the Metro Plan and refinement plans, as established
10 by those documents. However, the challenged order simply
11 states the city council's conclusion that "the existing
12 Metro Plan designation of West Butte [is] medium density
13 residential," without explanation Record 156.

14 This Board is required to defer to a local governing
15 body's interpretation of its own enactment, unless that
16 interpretation is contrary to the express words, purpose or
17 policy of the local enactment or to a state statute,
18 statewide planning goal or administrative rule which the
19 local enactment implements. ORS 197.829; Gage v. City of
20 Portland, 319 Or 308, 316-17, 877 P2d 1187 (1994); Clark v.
21 Jackson County, 313 Or 508, 514-15, 836 P2d 710 (1992).
22 This means we must defer to a local government's
23 interpretation of its own enactments, unless that
24 interpretation is "clearly wrong." Goose Hollow Foothills

²¹As explained, supra, the 1990 Plan was the city's initial comprehensive plan, adopted in 1972.

1 League v. City of Portland, 117 Or App 211, 217, 843 P2d 992
2 (1992); West v. Clackamas County, 116 Or App 89, 93, 840 P2d
3 1354 (1992). Additionally, under Gage v. City of Portland,
4 123 Or App 269, 860 P2d 282, on reconsideration 125 Or App
5 119 (1993), rev'd on other grounds 319 Or 308 (1994), and
6 Weeks v. City of Tillamook, 117 Or App 449, 453, 844 P2d 914
7 (1992), we are required to review the governing body's
8 interpretation of its enactment, as expressed in the
9 challenged decision, and may not interpret the local
10 enactment ourselves in the first instance. In this case,
11 this would appear to mean that we must remand the challenged
12 order for the city council to explain the basis for its
13 conclusion that the existing Metro Plan designation for the
14 West Butte area is Medium-Density Residential. Larson v.
15 Wallowa County, 116 Or App 96, 103, 840 P2d 1350 (1992).

16 However, petitioners contend the principles of Gage,
17 supra, and Weeks, supra, preventing this Board from
18 interpreting the plan provisions at issue here in the first
19 instance are not applicable, because the Metro Plan
20 provisions in question are not truly the Eugene City
21 Council's "own" enactment. Petitioners argue the Metro Plan
22 was not adopted by one governing body, but rather by three
23 governing bodies, as it was also adopted by the governing
24 bodies of the City of Springfield and Lane County.
25 According to petitioners, an interpretation of the Metro
26 Plan by just one of the three governing bodies required to

1 adopt it is not an interpretation of the governing body
2 whose enactment it is. Petitioners contend that to hold
3 otherwise would mean "the Metro Plan will rapidly
4 disintegrate into three very different policy documents
5 embodied in interpretations that are 'not clearly wrong.'"
6 Petition for Review 45.

7 We disagree. Gage and Clark require us to defer to a
8 local governing body's interpretation of any enactment which
9 the governing body of that jurisdiction adopted. This
10 principle is not affected by the fact that the governing
11 body of another jurisdiction may have also adopted the same
12 enactment. See Mazeski v. Wasco County, ___ Or LUBA ___
13 (LUBA No. 94-091, October 20, 1994) (where a county
14 governing body adopts a city's comprehensive plan as the
15 county's comprehensive plan for unincorporated land within
16 the city's urban growth boundary, LUBA must extend the
17 deference required by Clark to the county governing body's
18 interpretation of city comprehensive plan provisions).
19 Because we must defer to the governing body's
20 interpretation, there must be an adequate interpretation in
21 the challenged decision. Weeks, supra; Larson, supra.

22 The sixth assignment of error is sustained.

23 **CONCLUSION**

24 We sustain assignments of error specifically
25 challenging the Metro Plan Diagram amendments, the Whiteaker
26 Plan, the 12 zone change orders and the order denying Metro

1 Plan Diagram amendment MA 94-4. None of petitioners'
2 assignments of error challenge Ordinance No. 19975, which
3 adds a new Historic (H) district for a particular area to
4 the EC, or Ordinance No. 19976, which amends provisions of
5 the EC related to rescue missions. The parties agree these
6 ordinances may be affirmed. The parties also agree that
7 Ordinance No. 19979, which adds the new Mixed-Use Whiteaker
8 (MU-W) district to the EC, may be affirmed. However,
9 because the sustained assignments of error include
10 challenges to the orders applying the MU-W district to
11 properties in the Whiteaker neighborhood, we believe that
12 ordinance should be remanded as well.²²

13 Ordinance Nos. 19975 and 19976 are affirmed. Ordinance
14 Nos. 19977, 19978 and 19979, the 12 zone change orders and
15 the order denying Metro Plan Diagram amendment MA 94-4 are
16 remanded.

²²It is possible that, on remand, the city may wish to include, in its response to the remanded issues, changes to the text of the MU-W district.