

LAND USE  
BOARD OF APPEALS

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

Nov 2 6 09 PM '89

HOLLADAY INVESTORS, LTD., )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
CITY OF PORTLAND, )  
 )  
Respondent, )  
 )  
and )  
 )  
PORTLAND DEVELOPMENT COMMISSION, )  
 )  
Intervenor-Respondent. )

LUBA No. 89-064

FINAL OPINION  
AND ORDER

Appeal from City of Portland.

Mary Kyle McCurdy, Portland, filed the petition for review and argued on behalf of petitioner. With her on the brief was Mitchell, Lang & Smith.

Kathryn Beaumont Imperati, Portland, filed a response brief and argued on behalf of respondent.

Jeannette M. Launer, Portland, filed a response brief and argued on behalf of intervenor-respondent.

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

REMANDED 11/02/89

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

1 Opinion by Kellington.

2 NATURE OF THE DECISION

3 Petitioner appeals City of Portland Ordinance No. 161925  
4 which adopts the Oregon Convention Center Urban Renewal Plan.

5 MOTION TO INTERVENE

6 The Portland Development Commission (PDC) moves to  
7 intervene on the side of respondent. There is no opposition to  
8 the motion, and it is granted.

9 INTRODUCTION

10 The following four documents are at issue in his appeal:

- 11 1. Ordinance No. 161925 (ordinance).
- 12 2. Oregon Convention Center Urban Renewal Plan (UR  
13 plan).
- 14 3. Oregon Convention Center Urban Renewal Report  
15 (UR report).
- 16 4. Portland City Planning Commission Report to the  
17 City Council on the Oregon Convention Center  
18 Urban Renewal Plan, as amended by the Portland  
19 City Council, May 18, 1989 (UR Findings).<sup>1</sup>

20 FACTS

21 Intervenor-respondent PDC prepared an urban renewal plan  
22 and urban renewal report for the Oregon Convention Center area  
23 and forwarded both to the city planning commission for review.  
24

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25 <sup>1</sup>The UR plan is both adopted by the ordinance and incorporated by  
26 reference into the ordinance as exhibit "A"; the UR report is incorporated  
by reference into the ordinance as exhibit "B"; the UR findings are  
incorporated by reference into the ordinance as exhibit "C". ORS 457.095  
establishes procedural and substantive requirements for the ordinance.  
ORS 457.085(2) sets out requirements for the contents of the UR plan.  
ORS 457.085(3) sets out requirements for the contents of the UR report.  
The UR findings comprise the planning commission recommendation to the city  
council required by ORS 457.095.

1 The planning commission held a hearing on PDC's proposal,  
2 prepared a report and made a recommendation to the city council  
3 concerning PDC's urban renewal plan and urban renewal report.  
4 The urban renewal plan recommended by the planning commission is  
5 slightly different than the one proposed by PDC. The urban  
6 renewal plan recommended by the planning commission covers  
7 approximately a 509 acre area, which contains a variety of  
8 commercial, industrial and public uses and has approximately 695  
9 residents. Petitioner has an interest in several parcels of  
10 land within the urban renewal area.

11 Over petitioner's objections, and after a public hearing,  
12 the city council adopted the urban renewal plan, urban renewal  
13 report and urban renewal findings recommended by the planning  
14 commission, with additional amendments. This appeal followed.

15 FIRST ASSIGNMENT OF ERROR.

16 "Ordinance No. 161925 and the Urban Renewal Plan  
17 violate ORS 457.095(3) because they fail to include  
18 findings that the plan conforms to Portland's  
19 Comprehensive plan and they fail to provide an outline  
for accomplishing the urban renewal projects the plan  
proposes."

19 FOURTH ASSIGNMENT OF ERROR

20 "Ordinance No. 161925 and Section 601 of the Plan  
21 violate ORS 457.085(2)(b)."

22 Petitioner argues that the ordinance does not comply with  
23 the requirement of ORS 457.095(3) that it include findings that  
24 the UR plan complies with the city's comprehensive plan.  
25 Petitioner also argues that the ordinance and UR plan do not  
26 comply with the requirements of ORS 457.095(3) and 457.085(2)(b)

1 requiring an outline for urban renewal projects.

2 We address petitioner's arguments regarding findings of  
3 conformity with the comprehensive plan and provision of an urban  
4 renewal project outline separately below.

5 A. Findings of Conformity with the Comprehensive Plan

6 ORS 457.095 provides in relevant part:

7 "\* \* \* The ordinance shall include determinations and  
8 findings by the governing body that:

9 "\* \* \* \* \*

10 "(3) The urban renewal plan conforms to the  
11 comprehensive plan \* \* \* of the municipality as  
12 a whole \* \* \*

13 "\* \* \* \* \*"

14 Petitioner argues that ORS 457.095(3) requires the city to  
15 make certain findings, in the ordinance, that the UR plan is in  
16 conformity with the city's comprehensive plan. Petitioner  
17 reasons that if the ordinance itself does not contain detailed  
18 findings demonstrating comprehensive plan conformity of the  
19 UR plan, then the ordinance violates ORS 457.095. According to  
20 petitioner, findings in the UR plan, in the UR report, or in the  
21 UR findings cannot be used to satisfy the requirements of  
22 ORS 457.095.<sup>2</sup>

23 The city and PDC (respondents) contend that because the

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24 <sup>2</sup>We understand petitioner to contend that the findings in the ordinance  
25 must stand on their own, without relying upon findings in the UR plan.  
26 However, we also understand petitioner to make an alternative argument that  
even if findings in the UR plan could be used to support the ordinance,  
those findings are inadequate.

1 ordinance adopts and incorporates by reference the UR plan, the  
2 UR plan findings are properly a part of the ordinance.  
3 Respondents also argue that the ordinance incorporates by  
4 reference the UR report and UR findings. Respondents contend  
5 that to the extent the findings contained in the ordinance  
6 itself are inadequate, the findings within any of the documents  
7 incorporated by reference into the ordinance should be reviewed  
8 as support for the ordinance. According to respondents, even if  
9 the UR plan, UR report and UR findings were not a part of the  
10 ordinance, these documents are still a part of the record.  
11 Respondents state that under ORS 197.835(9)(b)<sup>3</sup>, the UR plan,  
12 UR report and UR findings are evidence "clearly supporting" the  
13 city's decision because these documents contain findings  
14 adequate to demonstrate that the UR plan is consistent with the  
15 city's comprehensive plan.

16 ORS 457.095(3) requires that the ordinance include findings  
17 and determinations of the governing body (city council) that the  
18 UR plan conforms to the city's comprehensive plan. We are  
19

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20 <sup>3</sup>ORS 197.837(9)(b) provides in relevant part:

21 "Whenever the findings are defective because of failure to  
22 recite adequate facts or legal conclusions or failure to  
23 adequately identify the standards or their relation to the  
24 facts, but the parties identify relevant evidence in the record  
which clearly supports the decision or a part of the decision,  
the board shall affirm the decision or the part of the decision  
supported by the record \* \* \*."

25 Prior to amendments to other portions of ORS 197.835 by Oregon Laws  
26 1989, chapter 761, section 13, this provision was codified at  
ORS 197.835(10)(b).

1 unaware of any reason why the city could not include the  
2 UR report and UR findings as a part of the ordinance by  
3 incorporating them by reference. See DLCD v. Klamath County,  
4 \_\_\_ Or LUBA \_\_\_ (LUBA No. 88-025, July 22, 1988), slip op 12;  
5 Astoria Thunderbird v. City of Astoria, 13 Or LUBA 154, 162  
6 (1985). It appears to us, that the city included the required  
7 determinations and findings in the ordinance, in part, by  
8 adopting and incorporating by reference other documents.

9 While petitioner presents argument that particular findings  
10 in the UR plan and ordinance are inadequate, the city points to  
11 findings contained in the UR report and UR findings which the  
12 city contends show in detail how the UR plan is consistent with  
13 the city's comprehensive plan. Other than by contending that  
14 the UR report and UR findings cannot be used to satisfy  
15 ORS 457.095(3), petitioners do not explain why these findings  
16 cited by the city are inadequate to demonstrate that the UR plan  
17 is consistent with the city's comprehensive plan. It is  
18 petitioner's responsibility to explain in what way these  
19 additional findings are deficient. Petitioner has not done so.<sup>4</sup>

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21 <sup>4</sup>The nature of the city's decision is an issue which the parties contend  
22 controls our review in this case. According to petitioner, the city's  
23 decision is quasi-judicial, and thus the city's findings must be more  
24 specific than if the city's decision were legislative in nature.  
25 Respondents argue that the city's decision is legislative in nature, and  
26 that the city's findings need not be detailed so long as the record  
provides a factual basis for the city's decision. See Gruber v. Lincoln  
County, 2 Or LUBA 180, 186-187 (1981). The city also argues, however, that  
even if its decision were quasi-judicial, that it made findings adequate to  
support a quasi-judicial decision. We do not view the distinction between  
a legislative and quasi-judicial decision as being significant in this  
case. ORS 457.095(3) requires findings, addressing specified factors. In

1 Rogers v. Douglas County, \_\_\_ Or LUBA \_\_\_ (88-059,  
2 Nov. 10, 1988) slip op 8-9.

3 This subassignment of error is denied.

4 B. Outline For Urban Renewal Projects

5 ORS 457.095 provides in relevant part:

6 "\* \* \* The ordinance shall include determinations and  
7 findings by the governing body that:

8 "\* \* \* \* \*

9 "(3) The urban renewal plan \* \* \* provides an outline  
10 for accomplishing the urban renewal projects the  
11 urban renewal plan proposes."

12 ORS 457.085(2)(b) provides:

13 "(2) An urban renewal plan proposed by an urban  
14 renewal agency shall:

15 "\* \* \* \* \*

16 "(b) Provide an outline for development,  
17 redevelopment, improvements, land  
18 acquisition, demolition, and removal of  
19 structures, clearance, rehabilitation or  
20 conservation of the urban renewal areas of  
21 the plan \* \* \*"

22  
23 Petitioner argues that the ordinance violates  
24 ORS 457.095(3) because it does not contain a finding that the  
25 UR plan "provides an outline for accomplishing the urban renewal  
26

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order for us to perform our review function, the city must adopt findings adequate for us to determine whether the city complied with the requirements of ORS 457.085 and 457.095. ORS 197.835(9)(a). Accordingly, the city must make findings explaining how the statutory standards are met, not because the city's decision is quasi-judicial, but rather because our review depends upon sufficient findings to allow review. See Sunnyside v. Clackamas County, 280 Or 3, 20-21, 569 P2d 1063 (1977); Gruber v. Lincoln County, *supra*.

1 projects the urban renewal plan proposes."<sup>5</sup> Petitioner also  
2 argues that the UR plan provides no such outline. Petitioner  
3 contends that there is nothing in the UR plan adequate to  
4 satisfy the urban renewal project outline requirements of  
5 ORS 457.095(3) or ORS 457.085(2)(b). Petitioner maintains that  
6 any outline derived from piecing together the various parts of  
7 the UR plan would necessarily be inadequate because the UR plan  
8 does not include the list of intended projects, priorities among  
9 projects and estimated costs and completion dates contemplated  
10 by ORS 457.095(3). See Tide Unit Owners Assoc. v. City of  
11 Seaside, 11 Or LUBA 84, 97 (1984) (Tide Unit Owners).  
12 Petitioner acknowledges that the UR plan describes several  
13 public improvement activities that "may" occur, but petitioner  
14 contends that there is nothing in the plan which contains the  
15 level of specificity required by our decision in Tide Unit  
16 Owners, supra, because nothing in the UR plan:

17       "\* \* \* commit[s] the city or PDC to any of the  
18       projects, nor does it describe how or when the City or  
19       the PDC would decide which, if any, of these possible  
20       projects to pursue. Moreover, these projects are not  
21       even specific; they are generic activities such as  
22       'parking facilities.'\* \* \*

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22       <sup>5</sup>Petitioner suggested at oral argument that the ordinance finding  
23       regarding the UR plan providing an outline, if made, is inadequate because  
24       no explanation is offered, and no outline in the UR plan is identified, to  
25       support the ordinance's conclusion that the required outline is provided by  
26       the UR plan. Petitioner also suggests that the ordinance must not only  
27       contain a finding that the UR plan contains an outline, but also that the  
28       ordinance must contain the same outline required to be prepared as a part  
29       of the UR plan under ORS 457.085(2)(b). We disagree. As we state, infra,  
30       at n 7, nothing in ORS 457.085 or ORS 457.095 indicates that the city must  
31       duplicate effort in this way to satisfy its statutory duties.

1           \*\* \* \* [T]he [UR] Plan does not list and prioritize  
2 properties to acquire. \* \* \* The [UR] Plan does not  
3 provide a mechanism for how the PDC is to conclude  
4 that it is necessary to acquire land, nor does it  
5 explain how PDC would prioritize among several  
6 possible land acquisitions. Finally, the [UR] Plan  
7 does not provide any cost estimates or completion  
8 dates for land acquisition.\* \* \*" Petition for  
9 Review 9-10.

10           Petitioner specifically argues that UR plan sections 601 and 602  
11 are inadequate to satisfy the requirements of ORS 457.085(2)(b).

12           Respondents argue that the ordinance does include a finding  
13 that the UR plan provides an outline for accomplishing the  
14 proposed urban renewal projects, and that even if the ordinance  
15 finding regarding the UR plan outline is inadequate, the UR plan  
16 provides an adequate outline which "clearly supports" the city's  
17 ordinance finding under ORS 197.835(9)(b). Respondents do not,  
18 however, identify a specific outline within the UR plan.  
19 Rather, respondents suggest that the entire UR plan provides the  
20 required outline.<sup>6</sup> Respondents assert

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21           <sup>6</sup>Respondents contend:

22           "[r]ead as a whole, the Convention Center Plan constitutes the  
23 outline required by ORS 457.085(2)(b). Section 44 [sic 400] of  
24 the Plan states the goals and objectives for the Plan area.  
25 Section 601 of the Plan identifies three general categories of  
26 urban renewal project activities which will be used to achieve  
those objectives: public improvements (with an illustrative  
list of anticipated projects), redevelopment through new  
construction and redevelopment through rehabilitation.  
Sections 602 and 1002 describe when property acquisition may  
take place with and without an amendment of the Plan. Section  
603 authorizes PDC to dispose of property it has acquired and  
restricts the use of such property to carrying out the purposes  
and projects identified in the plan. Section 603B imposes a  
variety of obligations on persons redeveloping properties  
acquired from PDC, including compliance with all applicable  
federal, state and city permit requirements and compliance with

1           \*\* \* \* the language of [ORS 457.095(3)] does not mean  
2           that the plan must contain a discrete outline  
3           identifying specific projects that will be implemented  
4           by specific means and by specific dates. It means  
          that the plan as a whole must provide a general  
          framework for implementing the projects proposed in  
          the urban renewal plan." Respondent's Brief 13.

5           Respondents contend that our decision in Tide Unit Owners,  
6           supra, was incorrectly decided to the extent it interprets ORS  
7           457.095(3) as requiring the level of detail in an urban renewal  
8           plan outline that petitioner maintains is necessary.  
9           Respondents argue that the level of detail petitioner claims is  
10          required for the UR plan outline is not possible to provide.  
11          Specifically, respondents argue:

12           "It is impossible for the Plan to identify specific  
13           timelines or priorities for these construction and  
14           rehabilitation activities, because the initiative for  
15           these activities must come from private property  
16           owners and depends on a host of economic and market  
17           factors that are beyond PDC's control. While PDC can  
18           attempt to stimulate new construction and  
19           rehabilitation by making low interest loans available  
20           to property owners, it cannot predict with any level  
21           of detail precisely when, where or in what amounts  
          property owners may take advantage of this assistance.  
          For similar reasons, the precise cost of each new  
          construction or rehabilitation project cannot be  
          identified. The [UR plan] and the [UR report] do the  
          maximum possible at this time by describing the  
          anticipated kinds of project activities and total  
          dollars to be allocated to new construction and  
          rehabilitation activities." Respondents' Brief 15-16.

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22           the City's zoning code. Section 700 commits persons receiving  
23           development assistance from PDC to participating in a jobs  
24           development program. Section 800 identifies anticipated  
25           funding sources for the redevelopment activities described in  
26           the Plan and, in part, Section 803 identifies PDC's annual  
          budgeting process as a mechanism for prioritizing urban renewal  
          activities in the Plan area. Section 801 of the plan targets  
          fiscal year 2004-5 as the termination date for all tax  
          increment debt." (Record citations omitted.)  
          Respondents' Brief 17-18.

1 Respondents maintain that ORS 457.095(3) and 457.085(2)(b),  
2 together, require only an outline of the manner in which the UR  
3 plan is to be accomplished. According to respondents, under  
4 ORS 457.085(3), it is the UR report which must provide specific  
5 and detailed information regarding the proposed urban renewal  
6 projects. Respondents maintain that by using the term  
7 "outline," the legislature intended application of the ordinary  
8 meaning of that term. Respondents state that the ordinary  
9 understanding of the term "outline" is:

10 "an undetailed general plan." Respondents' Brief 13,  
11 citing Webster's New World Dictionary, 2d ed. (1984),  
1010.

12 Respondents argue that applying this dictionary definition of  
13 the term "outline" is consistent with a statutory scheme which  
14 envisions an outline for urban renewal projects that provides a  
15 general framework for carrying out the UR plan and an  
16 accompanying report which specifies the mechanics of carrying  
17 out the UR plan.

18 Under ORS 457.085(2)(b), the UR plan must provide an  
19 outline for the following:

20 "\* \* \* the development, redevelopment, improvements,  
21 land acquisition, demolition and removal of  
22 structures, clearance, rehabilitation or conservation  
of the urban renewal areas of the plan."

23 Under ORS 457.095(3), the city must find that the UR plan  
24 provides an outline of the proposed urban renewal projects and  
25  
26

1 of how they are to be accomplished.<sup>7</sup>

2 The ordinance does contain a statement that the UR plan  
3 "provides an outline for accomplishing the urban renewal  
4 projects the plan proposes," as required by ORS 457.095(3).  
5 Record 4. However, we agree with petitioner that this finding  
6 is conclusory. It does not identify where in the UR plan the  
7 outline exists or explain how the outline shows the proposed  
8 urban renewal projects will be accomplished. However, under  
9 ORS 197.835(9)(b), we must nevertheless affirm this aspect of  
10 the city's decision if the evidence identified in the record  
11 "clearly supports" the city's determination that the UR plan  
12 provides an outline for accomplishing the proposed projects. In  
13 other words, if the UR plan does provide an outline which  
14 clearly satisfies the requirements of ORS 457.095(3) and  
15 ORS 457.085(2)(b), then we must affirm the city's determination  
16 of compliance with ORS 457.095(3).

17 While ORS 457.085(2)(b) states that an urban renewal plan  
18

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19  
20 <sup>7</sup>We agree with respondents that details such as anticipated project  
21 costs and completion dates are details required to be provided as a part of  
22 the UR report, under ORS 457.085(3)(d), (e), (g) and (h). However, we do  
23 not read Tide Unit Owners, supra, as requiring otherwise. In that case,  
24 the urban renewal plan at issue had no accompanying urban renewal report  
25 and nothing in the urban renewal plan satisfied the statutory requirement  
26 for the missing urban renewal report elements. In short, while the  
discussion in Tide Unit Owners, supra, of the statutory requirements for an  
outline in an urban renewal report is not entirely clear, we do not read  
that opinion as determining that ORS 457.085(2)(b) or ORS 457.095(3)  
requires the UR plan outline to duplicate the information required to be in  
the urban renewal report by ORS 457.085(3). Rather, we read that case as  
determining that a certain level of detail is required by ORS 457.085 and  
457.095, and the city failed to provide that detail in any of its urban  
renewal documents.

1 must "provide" an outline of urban renewal projects, ORS 457.085  
2 (2) (a) states that the plan must "describe" each urban renewal  
3 project; ORS 457.085(2) (c) requires that the plan "contain" a  
4 map and legal description of the project area; ORS 457.085(2) (d)  
5 states that the plan must "explain" its relationship to definite  
6 local objectives; ORS 457.085(2) (e) requires the plan to  
7 "indicate" proposed land uses; ORS 457.085(2) (f) requires that  
8 the plan "describe" relocation methodology; ORS 457.085(2) (g)  
9 requires that the plan "indicate" real property acquisition and  
10 disposition; and ORS 457.085(2) (h) requires that the plan  
11 "describe" "possible future" substantial urban renewal plan  
12 amendments.

13 We believe it is significant that an urban renewal plan  
14 must "provide" an outline, rather than "contain", "explain,"  
15 "describe" or "indicate" one. We agree with respondents that  
16 ORS 457.085(2) (b) contemplates that the entire urban renewal  
17 plan "provide[s]" the required outline of plan projects.  
18 Accordingly, we conclude that the outline requirement of  
19 ORS 457.085(2) (b) is properly interpreted as meaning the city  
20 must "outline" or list urban renewal projects contemplated by  
21 the plan ("development, redevelopment, improvements, land  
22 acquisition, demolition and removal of structures, clearance,  
23 rehabilitation or conservation of the urban renewal area of the  
24 plan") and that other aspects of the UR plan provide an outline  
25 of the mechanisms for accomplishing the projects specified in  
26 the UR plan.

1 Respondents point to several sections of the UR plan which  
2 do list the proposed urban renewal projects. See n 6. We  
3 conclude that the sections of the UR plan referenced in n 6  
4 "provide" an outline of proposed urban renewal projects which  
5 satisfies ORS 457.085(2)(b).

6 With respect to the requirement of ORS 457.095(3), that the  
7 city find, in the ordinance, that the urban renewal plan  
8 "provides an outline of for accomplishing the urban renewal  
9 projects the urban renewal plan proposes," the city must  
10 determine that the UR plan provides an outline for the urban  
11 renewal projects and both an outline for accomplishing those  
12 projects. We already determined that the UR plan itself  
13 "provides" an outline of urban renewal projects. The question  
14 under ORS 457.095(3) is whether the UR plan also provides an  
15 outline for accomplishing these urban renewal projects. We  
16 believe that the UR plan does outline how the urban renewal  
17 projects are to be accomplished. Sections 600-605 specify the  
18 activities contemplated to achieve the goals and objectives of  
19 UR plan section 400. We believe that this is an adequate  
20 outline for accomplishing the UR plan objectives and that the  
21 city may rely upon the findings contained in the UR plan to  
22 satisfy the requirements of ORS 457.095(3).<sup>8</sup>

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23  
24 <sup>8</sup>In addition, we note that the manner in which these projects are to be  
25 accomplished is specified in the UR report, incorporated by reference into  
26 the ordinance, particularly at sections 400, 500, 600, 700 and 800.

1           The UR plan provides the outline required by  
2           ORS 457.085(2)(b). Accordingly, we deny this subassignment of  
3           error.

4           There are adequate findings in the UR plan to satisfy the  
5           requirements in ORS 457.095(3) regarding an outline for  
6           accomplishing the UR plan projects.

7           Accordingly, we deny this subassignment of error.

8           The first and fourth assignments of error are denied.

9           SECOND ASSIGNMENT OF ERROR

10           "Ordinance No. 161925 and Section 500 of the Plan  
11           violate ORS 457.085(2)(h), (a), and (b) because they  
12           allow for automatic amendment of the plan, whether or  
13           not the amendment is substantial."

14           ORS 457.085(2)(h) requires that an urban renewal plan

15           "[d]escribe what types of possible future amendments  
16           to the plan are so substantial as to require the same  
17           notice, hearing and approval procedure required of the  
18           original plan under ORS 457.095 as provided in  
19           ORS 457.220."

20           Petitioner argues that UR plan section 500 violates  
21           ORS 457.085(2)(h).<sup>9</sup> UR plan section 500 states, in part:

22           "\* \* \* \* \*

23           "Any Comprehensive Plan, Planning and Zoning Code  
24           Amendments, or additions shall automatically amend

---

25           <sup>9</sup>Petitioner also asserts that UR plan section 500 violates  
26           ORS 457.835(2)(a) and (b). Petitioner states only "[i]t violates subsection  
          (2)(a) in that automatic amendment of the Plan subverts the requirement  
          that the Plan describe each urban renewal project to be undertaken. It  
          violates subsection (2)(b) in that it allows amendment of the Plan outside  
          of the outline required by this subsection." Petition for Review 11-12.  
          We do not understand how an automatic amendment necessarily "subverts" the  
          requirement that each project be described or what is improper about  
          automatically amending the outline. Petitioner must explain the basis upon  
          which we may grant relief and has not done so.

1 Section 500 of this Urban Renewal Plan, as applicable,  
without the necessity of a formal amendment \* \* \*

2 Petitioner contends that under ORS 457.085(2)(h), the city  
3 may not make all UR plan amendments automatic and thereby avoid  
4 requirements for public notice and hearing. Petitioner reasons  
5 that ORS 457.085(2)(h) requires the city to identify certain  
6 UR plan amendments which would be of sufficient importance to  
7 justify the procedural protections imposed for initial adoption  
8 of the UR plan.

9 Respondents argue that ORS 457.085(2)(h) does not establish  
10 requirements for the ordinance, but rather, only for the  
11 UR plan. Respondents maintain that UR plan section 500 requires  
12 only that the UR plan remain consistent with the city's  
13 comprehensive plan and zoning code. Respondents contend that it  
14 is UR plan sections 1001 and 1002 which determine whether an  
15 amendment to the UR plan is substantial or not.<sup>10</sup>

16 \_\_\_\_\_  
17 <sup>10</sup>UR plan section 1001 states:

18 "Minor changes or amendments such as clarification of language,  
19 graphic exhibits, procedures or minor modifications in the  
20 scope or location of project improvements authorized by this  
21 Plan resulting from detailed architectural, engineering, or  
planning analysis which will not change the basic planning or  
engineering, or planning principles of this plan, may be  
approved by the Development Commission in resolution form."

22 "Amendments to the City's Comprehensive Plan or to the codes,  
23 policies, procedures or ordinances which are established to  
24 implement such Comprehensive Plan and which affect the  
provisions of this Urban Renewal Plan, shall become a part of  
the Plan as if such amendments, modifications or approvals were  
herein stated in full."

25 UR plan section 1002 states in relevant part:

26 "Substantial changes or amendments shall include but are not

1           ORS 457.085(2)(h) requires that the city identify "\* \* \*  
2 what type of possible future amendments to the plan are so  
3 substantial as to require the same notice, hearing and approval  
4 procedure required of the original plan \* \* \*."

5           We disagree with petitioner's claim that section 500 of the  
6 UR plan violates ORS 457.085(2)(h). UR plan section 500 states:

7           "The Land Use Plan consists of the Land Use Plan Map  
8 (Exhibit Two), the Zoning Map (Exhibit Three), and the  
9 descriptive material and regulatory provisions  
contained in this Section (both those directly stated  
and those herein included by reference.)

10          "This Plan shall be in accordance with the approved  
11 Comprehensive Plan of the City of Portland and with  
its implementing ordinances and policies.

12          "Any Comprehensive Plan, Planning and Zoning Code  
13 Amendments, or additions shall automatically amend  
14 Section 500 of this Urban Renewal Plan, as applicable,  
15 without the necessity of a formal amendment. This  
16 Section 500 and Exhibits Two and Three of this Plan  
17 document shall thereafter incorporate the relevant  
amendments, additions or deletions. To the extent  
that Section 500 and Exhibits Two and Three of this  
Plan conflict with the Comprehensive Plan or Zoning  
Code, the Comprehensive Plan and Zoning Code shall  
govern."

18 UR plan section 500 relates only to changes to Exhibits 2 and 3,  
19 which are maps depicting the present city comprehensive plan and  
20 zone designations for the urban renewal area. The effect of  
21 section 500 is that once the city's comprehensive plan or zone  
22 map is amended, the UR plan maps in Exhibit 2 or 3 are also

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23           limited to revisions of the project boundaries, acquisitions of  
24 real property not specifically authorized by this Plan, and  
25 other elements which will change the basic planning principles  
26 of this plan. Such substantial changes, if any, shall be  
approved by the City Council in the same manner as approval of  
the original Plan and in compliance with the provisions of ORS  
457.095 and ORS 457.220."

1 amended to reflect the changes. We see no impediment in  
2 ORS 457.085(2)(h) to an automatic amendment of the UR plan maps  
3 to maintain consistency between the UR plan and the city's  
4 comprehensive plan and zoning ordinance.<sup>11</sup>

5 The second assignment of error is denied.

6 THIRD ASSIGNMENT OF ERROR

7 "Ordinance No. 161925 and section 601 of the Plan  
8 violate ORS 457.085(2)(a)"

9 ORS 457.085(2)(a) provides:

10 "An urban renewal plan proposed by an urban renewal  
11 agency shall:

12 "(a) Describe each urban renewal project to be  
13 undertaken."

14 Petitioner contends that the UR plan is inadequate to  
15 satisfy the requirements of ORS 457.085(2)(a) because UR plan  
16 section 601, entitled "Project and Improvement Activities," does  
17 not describe urban renewal projects to be undertaken, rather it  
18 only "describes projects which may be undertaken. \* \* \* There  
19 is no guarantee that any of these projects will take place  
20 \* \* \*" (Emphasis in original.) Petition for Review 12.

21 Respondents contend that the UR plan does describe urban  
22 renewal plan projects to be undertaken. Respondents point out

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23 <sup>11</sup>We note that changes to the city's comprehensive plan or zoning map  
24 could result in a need to amend other parts of the UR plan as well. These  
25 further amendments to the UR plan may be substantial. However, these  
26 further amendments are governed by UR plan sections 1001 and 1002. Section  
1002 specifies that substantial amendments are subject to the public review  
procedures applicable to adoption of the original plan. Section 1001  
specifies that certain amendments are considered minor and are not subject  
to these processes. Petitioner does not challenge sections 1001 or 1002.

1 that UR plan section 400 generally describes the urban renewal  
2 plan projects to be undertaken and that UR plan section 600  
3 requires that combinations of the projects set out in UR plan  
4 section 601 be undertaken by the PDC. Respondents contend that  
5 the use of the term "may" in section 601 does not:

6 "mitigate the mandatory language of section 600.  
7 \* \* \* While petitioner interprets the use of the term  
8 'may' as being contrary to the City's commitment to  
9 the projects, the City and PDC submit that the use of  
10 the word 'may' indicates authorization of the  
11 implementation of those projects. In Section 601 of  
12 the [UR plan], the [city] is giving the [PDC]  
13 permission to undertake the described projects using a  
14 variety of methods. In this context, 'may' does not  
15 mean 'maybe.'" Respondents' Brief 23.

16 Respondents maintain that principles of statutory  
17 construction support their interpretation and that their  
18 interpretation is the construction which is reasonable and  
19 correct. McCoy v. Linn County, 90 Or App 271, 275-276,  
20 752 P2d 323 (1988).

21 UR plan section 600 states:

22 "In order to achieve the objectives of this Plan, the  
23 following activities will be undertaken on behalf of  
24 the City by the Development Commission, in accordance  
25 with the applicable Federal, State, County, and City  
26 laws, policies and procedures." (Emphasis supplied.)

UR plan section 601 then lists several public improvement  
projects which "may" be commenced to achieve the objectives of  
the UR plan, including sidewalks, sewer systems, street lights,  
open space and an esplanade, among other things.

UR plan sections 600 and 601 are ambiguous. It is not  
clear whether these sections are intended to require that a

1 combination of the public improvements described in section 602  
2 be undertaken to achieve the UR plan goals set out in section  
3 400, as respondents urge, or whether these sections mean that  
4 the PDC may undertake any or none of the listed public  
5 improvements, as petitioner contends.

6 We believe respondents' interpretation is more reasonable  
7 and is correct. In order to agree with petitioners, we would  
8 have to conclude that the UR plan section 600 mandatory term  
9 "will" has no mandatory effect. However, we construe the  
10 UR plan as a whole, giving meaning to each of its parts. Kenton  
11 Neighborhood Assoc. v. City of Portland, supra, slip op 16. We  
12 cannot presume that the term "will" in section 600 was intended  
13 to be without its ordinary mandatory effect. Accordingly, we  
14 interpret UR plan section 600 to require each urban renewal  
15 project be selected from those described in UR plan section  
16 601.<sup>12</sup> The fact that the city may not actually undertake all of  
17 the projects described in section 601, does not undermine that  
18 these are the projects from among which the city will choose to  
19 accomplish the goals of UR plan section 400. We conclude that  
20 UR plan section 400, together with UR plan sections 600 and 601,  
21 contain an adequate description of each urban renewal project to

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22  
23  
24 <sup>12</sup>UR plan section 400 sets forth several goals for the UR plan,  
25 including recruitment of one "headquarters hotel in the immediate vicinity  
26 of the OCC to capitalize on the convention center's capacity." While the  
goals are general, they do identify the urban renewal projects which will  
be encouraged, recruited and upgraded, and UR plan sections 600 and 601  
require certain implementation measures to achieve these goals.

1 be undertaken, as required by ORS 457.085(2) (a).

2 The third assignment of error is denied.

3 FIFTH ASSIGNMENT OF ERROR

4 "Ordinance No. 161925 and the Plan violate  
5 ORS 457.085[(2)](d) because the Plan does not explain  
6 its relationship to local objectives regarding land  
7 uses and various public improvements."

8 ORS 457.085(2) (d) requires that an urban renewal plan  
9 shall:

10 "Explain its relationship to definite local objectives  
11 regarding appropriate land uses and improved traffic,  
12 public transportation, public utilities, recreational  
13 and community facilities and other public improvements  
14 \* \* \*"

15 Petitioner contends that nothing in the UR plan explains  
16 the relationship between the UR plan and those city objectives  
17 identified in ORS 457.085(2) (d).

18 Respondents argue that UR plan sections 400 and 401  
19 adequately explains the relationship between the UR plan and the  
20 objectives identified in ORS 457.085(2) (d). Respondents claim  
21 that to the extent the findings in the plan are inadequate to  
22 explain this relationship, we should look to other, specific  
23 evidence they identify in the UR report and the UR findings, to  
24 sustain the city's decision. Respondents contend that under  
25 ORS 197.835(9) (b), the evidence they cite "clearly supports" the  
26 city's decision.

27 The UR plan identifies its goals and objectives in section  
28 400. The city explains in UR plan section 401 that the UR plan  
29 is "especially supportive of" certain comprehensive plan goals

1 and policies, and others of the city's policies and plans.  
2 While no section of the UR plan is labeled as an explanation of  
3 the relationship between the UR plan goals and objectives and  
4 the city's objectives, we are satisfied that the relationship  
5 between the UR plan and the city's objectives is adequately  
6 "explained," in this context, by UR plan sections 400 and 401.

7 The fifth assignment of error is denied.

8 SIXTH ASSIGNMENT OF ERROR

9 "Ordinance 161925 and sections 602 and 1002 of the  
10 Plan violate ORS 457.085(2)(g) and (h) and  
11 ORS 457.095(5) concerning acquisition of property and  
12 subsequent amendment of the Plan."

13 Whether the city's decision violates ORS 457.095(5) is an  
14 issue which is distinct from whether the decision violates  
15 ORS 457.085(g) and (h), and we treat these issues separately  
16 below.

17 A. ORS 457.095(5)

18 ORS 457.095(5) requires that if real property acquisition  
19 "is provided for" in the UR plan, there must be a finding in the  
20 ordinance that such real property acquisition is necessary.

21 Petitioner argues that the ordinance violates  
22 ORS 457.095(5), because it does not contain any such finding.  
23 Petitioner contends that the UR plan, in section 602, does  
24 provide for real property acquisition and authorizes such  
25 acquisition without identifying under what circumstances the  
26 city may determine that the acquisition is necessary.

Respondents state that because no specific real property is

1 identified for acquisition in the UR plan, the requirements of  
2 ORS 457.095(5) do not apply. Respondents maintain that the  
3 UR plan describes only the "circumstances and processes under  
4 which the PDC may acquire real property." Respondents, Brief  
5 26.

6 Respondents argue:

7 "Petitioner is simply mistaken that 'the Plan allows  
8 virtually any land within the urban area to be  
9 acquired without it being described or planned for in  
10 advance, without any formal Plan amendment, and  
11 without any public scrutiny.' \* \* \* Either the City  
12 Council, PDC, or both must make the acquisition  
13 decision and that acquisition decision must be a  
14 public decision, subject to public input and scrutiny  
15 and administrative or judicial review." Respondents'  
16 Brief 27.

17 UR plan section 602(C) provides as follows:

18 "Land Acquisition by Urban Renewal Plan Amendments.  
19 Land acquisition for any purpose other than  
20 specifically listed in subsection 602-D shall be  
21 accomplished only following procedures for amending  
22 this plan as set forth in Section 1002-Substantial  
23 Changes or Amendments.

24 "\* \* \* \* \*"

25 Therefore, under section 602(C), any property acquisitions  
26 not specifically authorized by section 602(D) are substantial  
27 changes or amendments subject to section 1002, which in turn  
28 would make applicable the finding of necessity requirement  
29 imposed by ORS 457.095(5).

30 UR plan 602(D) provides:

31 "Land Acquisition Without Urban Renewal Plan  
32 Amendment. Except where conditions under (3) below  
33 exist, land acquisition not requiring a Plan amendment  
34 will require the prior approval of City Council. The  
35 Development Commission may acquire land without

1 amendment to this Plan where the following conditions  
2 exist:

3 "1. Where it is determined that the property is  
4 needed to provide public improvements and  
5 facilities as follows:

6 "a) Right-of-way acquisition for streets,  
7 alleys or pedestrian ways;

8 "b) Property acquisition for public use.

9 "2. Where such conditions exist as may affect the  
10 health safety and welfare of the Area as  
11 follows:

12 "a) Where existing conditions do not permit  
13 practical or feasible rehabilitation of a  
14 structure and it is determined that  
15 acquisition of such properties and  
16 demolition of the improvements thereon are  
17 necessary to remove substandard and  
18 blighting conditions;

19 "b) Where detrimental land uses or conditions  
20 such as incompatible uses, or adverse  
21 influences from noise, smoke or fumes  
22 exist, or where there exists over-crowding,  
23 excessive dwelling unit density or  
24 conversions to incompatible types of uses,  
25 and it is determined that acquisition of  
26 such properties and the rehabilitation or  
demolition of the improvements are  
necessary to remove blighting influences  
and to achieve the objectives of this Plan.

"3. Where the owner of real property within the  
boundaries of the Area wishes to convey title of  
such property by voluntary sale, donation, or  
any other means, upon approval of the  
Development Commission." (Emphasis supplied.)

Section 602(D), sets out the "circumstances and processes"  
under which real property will be acquired. The UR plan  
accordingly, "provides" for the acquisition of real property  
within the meaning of ORS 457.095(5). Where the UR plan  
identifies no particular real property for acquisition, we

1 believe that in order to satisfy ORS 457.095(5), the ordinance  
2 must include a determination that real property acquisition will  
3 "occur" only when "necessary." In such a case, the ordinance  
4 must include a determination that the UR plan requires real  
5 property acquisition to be "necessary".

6 In this case, the ordinance itself does not contain such a  
7 finding, although other findings incorporated into the ordinance  
8 do provide the "processes and circumstances" under which real  
9 property may be acquired.<sup>13</sup> If these "processes and  
10 circumstances" require, as a prerequisite to acquisition, that  
11 the city determine that the acquisition is "necessary," then we  
12 believe that ORS 457.095(5) is satisfied.

13 We agree with petitioners that UR plan section 602(D)  
14 allows acquisition of virtually any real property without the  
15 necessity of a substantial amendment to the plan. Not requiring  
16 a substantial amendment to the plan is significant in that only  
17 a substantial amendment to the UR plan is subject to the  
18 requirements ORS 457.095, including the requirement of  
19 ORS 457.095(5) for a finding that an acquisition of real  
20 property is necessary. Thus not requiring a substantial plan  
21 amendment is error unless the "processes and circumstances"  
22 themselves require determinations that real property be  
23 necessary to acquire before doing so.

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24  
25  
26 <sup>13</sup>The findings may exist in the UR plan, UR report or the UR findings documents incorporated by reference as a part of the ordinance.

1           UR plan section 602(D)(1) and (2) require that prior to  
2 real property acquisition, it must be determined that the  
3 acquisition is "necessary". We conclude that the acquisitions  
4 contemplated by UR plan section 602(D) (1) and (2) are not  
5 inconsistent with ORS 457.095(5). However, UR plan section  
6 602(D)(3) provides for acquisition of real property without a  
7 determination that such acquisition is "necessary".  
8 Accordingly, UR plan section 602(D)(3) is inconsistent with the  
9 requirement of ORS 457.095(5) that real property acquisitions be  
10 determined to be "necessary".

11           This subassignment of error is sustained in part.

12           B. ORS 457.085(2)(g) and (h)

13           ORS 457.085(2)(g) requires that an urban renewal plan  
14 must:

15           "[i]ndicate which real property may be acquired and  
16 the anticipated disposition of said real property,  
17 whether by retention, resale, lease or other legal  
use, together with an estimated time schedule for such  
acquisition and disposition \* \* \*"

18           ORS 457.085(2)(h) requires the plan to:

19           "Describe what types of possible future amendments to  
20 the plan are so substantial as to require the same  
21 notice, hearing and approval procedure required of the  
original plan under ORS 457.095 as provided in  
ORS 457.220."

22           Petitioner contends that the urban renewal plan must, under  
23 ORS 457.085(2)(g), specify what real property will be acquired  
24 under the plan. Petitioner claims that the city's finding in  
25 UR plan section 602(A) that "[i]t is the intent of the Plan to  
26 acquire property \* \* \* if necessary" is inadequate to satisfy

1 the requirements of ORS 457.085(2)(g). Further, petitioner  
2 maintains that the general grant of authority in UR plan section  
3 602(D) for acquisition of real property without an urban renewal  
4 plan amendment, allows the city to acquire virtually any real  
5 property without any public review of such acquisition, in  
6 violation of ORS 457.085(h).

7 Petitioner contends that UR plan section 1002 specifies  
8 that only "acquisitions of real property not specifically  
9 authorized by this Plan" are considered as substantial  
10 amendments to the UR plan. Petitioner argues that because under  
11 section 602(D) all real property acquisitions the city deems  
12 necessary are authorized by the UR plan, no real property  
13 acquisition need ever be considered as a "substantial  
14 amendment." Petitioner contends that insulating every real  
15 property acquisition from being considered a "substantial"  
16 UR plan amendment violates ORS 457.085(2)(h).

17 Respondents suggest that nothing in the statute requires  
18 that particular real property be identified in the UR plan as  
19 subject to acquisition. Respondents claim that it is enough  
20 that the "process and circumstances" for such acquisition are  
21 set out in the UR plan. Respondents also suggest that  
22 ORS 457.085(2)(h) gives them the discretion to choose which real  
23 property acquisitions will be subject to the procedures  
24 applicable to a "substantial" amendment to the UR plan.

25 We believe that ORS 457.085(2)(g) requires specific real  
26 property to be (1) identified for acquisition, (2) its

1 anticipated disposition specified, and (3) an estimated time  
2 schedule for such acquisition and disposition provided in the  
3 UR plan at or before the time such acquisition is approved. The  
4 present UR plan does not indicate particular properties to be  
5 acquired and disposed of as required by ORS 457.085(2)(g). The  
6 question is whether the "processes and circumstances" for real  
7 property acquisition provided by the UR plan require that this  
8 information be added to the UR plan by the time that real  
9 property is approved for acquisition.

10 Section 602(D) allows virtually any real property  
11 acquisition to be approved without an amendment to the UR plan.  
12 The failure of the UR plan to particularly identify real  
13 property for acquisition now, combined with the fact that  
14 virtually any real property can be acquired without the UR plan  
15 being amended to include the information which ORS 457.085(2)(g)  
16 requires, violates ORS 457.085(2)(g).

17 With respect to ORS 457.085(2)(h), we agree with  
18 petitioners that virtually any amount or kind of real property  
19 may be acquired and subject to the UR plan, without being added  
20 under the procedures applicable to a substantial amendment to  
21 the UR plan. This is evidenced by UR plan sections 602 and  
22 1002. UR plan section 1002 exempts real property acquisitions  
23 "provided for" by the UR plan from being considered as  
24 "substantial" amendments to the UR plan. Because UR plan  
25 section 602(D) authorizes a broad range of real property  
26 acquisitions, the city has exempted, as a practical matter, all

1 real property acquisitions from the processes applicable to a  
2 substantial amendment to the plan. We find this sweeping  
3 nonspecific exemption of real property acquisitions from the  
4 requirements for substantial UR plan amendments to violate  
5 ORS 457.085(2)(h). Under ORS 457.085(2)(h) the city must  
6 identify under what circumstances acquisitions of real property  
7 would constitute a substantial amendment to the UR plan. The  
8 city has not done so.

9 This subassignment of error is sustained.

10 The sixth assignment of error is sustained.

11 SEVENTH ASSIGNMENT OF ERROR

12 "Ordinance No. 161925 and the Plan violate  
13 [ORS] 457.095(6) because they fail to show that the  
14 plan is economically sound and feasible."

15 ORS 457.095(6) requires that the ordinance contain a  
16 finding that "adoption and carrying out of the urban renewal  
17 plan is economically sound and feasible."

18 Petitioner claims that under our decision in Union Station  
19 Business Community Assoc. v. City of Portland, 15 Or LUBA 4, 8  
20 (1987), the ordinance must contain "\* \* \* an unqualified  
21 determination that the [UR plan] is economically sound and  
22 feasible."

23 Petitioner states that the ordinance finding is inadequate  
24 under Union Station Business Community Assoc v. City of  
25 Portland, supra, in that the finding states only "[a]doption and  
26 carrying out of the Plan is economically sound and feasible."  
Petitioner claims that the findings in the UR plan are equally

1 unsatisfactory in that the UR plan findings at section 800 only  
2 recite powers the city already has and do not commit the city to  
3 any particular financing method or plan. Respondents argue that  
4 there are adequate findings that the UR plan is economically  
5 sound and feasible, included in the UR findings, and the UR  
6 findings are incorporated into the ordinance.

7 We agree with respondents that the UR findings are  
8 incorporated by reference into the ordinance. Record 3.  
9 Petitioner does not challenge the adequacy of the UR findings to  
10 support the city's determination that adopting and carrying out  
11 the UR plan is economically sound and feasible and does not  
12 explain why these findings are not adequate.

13 The seventh assignment of error is denied.

14 EIGHTH ASSIGNMENT OF ERROR

15 "The Report violates ORS 457.085(3)(c) in that it does  
16 not contain a description of each renewal project in  
the Plan and the condition of the renewal area."

17 ORS 457.085(3)(c) provides that a report accompanying an  
18 urban renewal plan shall contain:

19 "The relationship between each project to be  
20 undertaken under the plan and the existing conditions  
in the urban renewal area \* \* \*"

21 Petitioner contends that the UR report contains an  
22 inadequate discussion of the relationship between the UR plan  
23 projects and existing conditions in the urban renewal area.  
24 According to petitioner, because the UR plan itself does not  
25 specifically identify urban renewal projects, the UR report  
26 cannot adequately articulate a relationship between such urban

1 renewal projects and existing conditions in the urban renewal  
2 area.

3 Respondents contend that the findings in section 400 of the  
4 UR report adequately describe the relationship between the urban  
5 renewal area and the UR plan projects.<sup>14</sup> Additionally,  
6 respondents cite evidence in the record (in the UR plan and the  
7 UR report) which they contend provides further discussion of the  
8 relationship between the projects contemplated and the  
9 conditions in the area to the extent that the discussion in  
10 UR report section 400 is inadequate.

11 UR report section 400 specifies:

12 "All public improvements, including improved street  
13 lighting, pedestrian amenities and sewer improvements;  
14 redevelopment financing programs; administrative and  
15 technical support activities; property acquisition and  
16 redevelopment authorization; relocation activities (if  
17 any); property disposition; creation of redeveloper's  
obligations and owner participation programs set forth  
in section 600 of the Plan and Section 500 of the  
Report are intended to correct the deficiencies  
described in section 100 of this Report."

18 Much of petitioner's argument is directed at perceived  
19 inadequacies in the description of the UR plan's proposed urban  
20 renewal projects. However, we already determined, under our  
21 discussion of the third assignment of error, that the UR plan

---

22 <sup>14</sup>Respondents also suggest either that the UR report is not part of the  
23 land use decision subject to our review, or that failure of the UR report  
24 to comply with ORS 457.085(3) would not constitute grounds for reversal or  
25 remand of the ordinance. Although respondents do not develop this  
26 argument, we disagree with the suggestion. The UR report is specifically  
incorporated by reference into the ordinance, and therefore is a part of  
the appealed land use decision. Additionally, the UR report is required by  
ORS 457.085(3) to "accompany" the UR plan the ordinance adopts.  
Accordingly, the UR report is subject to our review.

1 adequately describes the proposed urban renewal projects. We  
2 believe that UR report section 400 adequately describes the  
3 relationship between the projects to be undertaken in the  
4 UR plan and the conditions of the area.

5 The eighth assignment of error is denied.

6 NINTH ASSIGNMENT OF ERROR

7 "The Report violates ORS 457.085(3)(d), (e), and (g)  
8 in that it does not include the total cost of each  
9 project, the source of money to pay the costs, the  
anticipated completion dates of each project, and a  
financial analysis of feasibility."

10 ORS 457.085(3)(d), (e) and (g) require that an urban  
11 renewal report contain:

12 "(d) The estimated total cost of each project and the  
13 sources of moneys to pay such costs.

14 "(e) The anticipated completion date for each  
15 project.

16 "\* \* \* \* \*

17 "(g) A financial analysis of the plan with sufficient  
18 information to determine feasibility \* \* \*"

19 Petitioner argues that the UR report does not contain  
20 adequate financial information or analysis to satisfy these  
21 statutory standards. Petitioner contends that the UR report  
22 cannot contain adequate financial information or analysis where  
23 the urban renewal projects proposed by the UR plan are not  
24 definite. Petitioner argues that UR report section 500, "The  
25 Estimated Total Cost of Each Project and the Source of Money to  
26 Pay Such Costs, and the Anticipated Competition Date for Each  
Project or Activity," states only the costs of "examples" of

1 UR plan projects and does not estimate the total cost of each  
2 UR plan project, as is required by ORS 457.085(3)(d). According  
3 to petitioner, UR report section 700 addresses financial  
4 feasibility, and is inadequate because it relies upon UR report  
5 section 500 and UR plan section 600, both of which are too vague  
6 to satisfy ORS 457.085(3)(g).

7 Petitioner also argues that no completion dates are stated  
8 for each of the:

9 "speculative projects other than to say that all  
10 projects should be completed 'during or before fiscal  
11 year 2005-06, a 17 year period.' \* \* \* This is about  
12 the life of the urban renewal district itself, and  
13 says nothing about when 'each' project will be  
14 completed, as required by ORS 457.085(3)(e)."  
15 Petition for Review 21.

16 Respondents argue that ORS 457.085(3)(d) calls only for  
17 estimates of project cost and respondents claim that estimates  
18 are precisely what the UR report contains. Respondents also  
19 contend that ORS 457.085(3)(e) is satisfied by both the  
20 seventeen year UR plan project schedule as well as the project  
21 schedules set out in two tables attached to the UR report as  
22 exhibits. Finally, respondents maintain that in UR report  
23 section 500 and in the two exhibit tables to the UR report  
24 referenced supra, the UR report does contain a financial  
25 analysis containing sufficient information to determine UR plan  
26 feasibility.

27 We determined under the third assignment of error that the  
28 UR plan adequately describes the urban renewal projects proposed  
29 by the UR plan. Accordingly, the UR report must base its

1 analysis and information upon the plan projects which are  
2 contemplated, although admittedly imprecisely, by the UR plan.

3 Our review of the list of UR plan projects contained in  
4 UR plan section 601 suggests that each of the UR plan listed  
5 improvement projects has a total cost estimate in UR report  
6 section 500-509 and in UR report tables 8A and 8B, with  
7 corresponding estimated funding sources in these sections and  
8 tables and in the UR report sections 600-700 and UR report  
9 tables 9 and 10. This is all ORS 457.085(3)(d) requires.  
10 Accordingly, we conclude that UR report, particularly section  
11 500, adequately states an estimate of the total cost of each of  
12 the urban renewal projects proposed by the UR plan and the  
13 source of the money to pay those costs and, therefore, satisfies  
14 ORS 457.085(3)(d).

15 UR report section 500 and tables 8A and 8B state the  
16 anticipated completion dates for the urban renewal projects.  
17 Specifically, UR report section 500 states, in relevant part:

18 "The completion date of each project will depend on  
19 the actual flow of tax increment proceeds and other  
20 funding sources. Table 8 illustrates that all  
21 projects are expected to be completed during or before  
22 fiscal year 2005-06, a 17 year period, but actual  
23 revenue collections and project costs may alter this  
24 schedule."

25 Table 8A connects various projects to a seven year time  
26 schedule. Table 8B connects various projects to a ten year time  
27 schedule. All other projects are anticipated to be completed  
28 within the life of the UR plan. We believe that the UR report  
29 adequately states the anticipated completion date for each

1 UR plan project and, therefore, satisfies ORS 457.085(3)(e).

2 Next, we turn to whether the UR report contains a  
3 "financial analysis of the plan with sufficient information to  
4 determine feasibility," as required by ORS 457.085(3)(g).

5 UR report section 700 is entitled "Financial Analysis of  
6 the Plan With Sufficient Information to Determine Feasibility."

7 It provides:

8 "Section 500 of this Report estimates the costs  
9 required and the funding sources (including tax  
10 increment proceeds) expected to implement the  
11 [UR] Plan. Section 600 of this Report discusses the  
12 amount of tax increment proceeds required and the time  
13 period estimated to collect such proceeds.

14 "Table 10 in the Appendix describes the estimated  
15 annual tax increment flow and the resulting borrowing  
16 and tax increment debt retirement capacity of the  
17 Urban Renewal program. The estimated tax increment  
18 income available to the Development Commission, when  
19 combined with the other funding sources discussed in  
20 section 500 of this Report, illustrates that the  
21 proposed projects are feasible and capable of adequate  
22 funding.

23 "Table 11 in the Appendix examines the impact the tax  
24 increment financing process will have on the tax rates  
25 of the several affected taxing bodies. Table 11 is  
26 based on projections of growth in assessed value  
within the Area over a seventeen year period  
established in Table 9. All new known development  
which is expected to be added to the tax rolls within  
the immediate future is included and recent trends in  
value growth within the area are projected forward."

27 We believe that this analysis is "sufficient to determine"  
28 the financial feasibility of the UR plan and satisfies the  
29 requirements of ORS 457.085(3)(g).

30 The ninth assignment of error is denied.

1        TENTH ASSIGNMENT OF ERROR

2            "Ordinance No. 161925 and the Plan violate ORS 457.095  
3            in that notice of adoption was not published within  
4            four days of the date of adoption."

5            ORS 457.095 states in relevant part:

6            "\*\* \* \* Notice of adoption of the ordinance approving  
7            the urban renewal plan, and the provisions of  
8            ORS 457.135, shall be published by the governing body  
9            of the municipality in accordance with ORS 457.115 no  
10           later than four days following the ordinance adoption.  
11           \* \* \*"

12           Petitioner claims simply that the required notice was not  
13           published.

14           Petitioner alleges a procedural error by the city. Even if  
15           petitioner's contention is correct, this Board is not authorized  
16           to reverse or remand a decision because of a procedural error  
17           unless such error caused prejudice to petitioner's substantial  
18           rights. ORS 197.835(7)(a)(B).<sup>15</sup> Petitioner has not, however,  
19           claimed or demonstrated that prejudice to any of its rights  
20           occurred due to the alleged error.

21           The tenth assignment of error is denied.

22           The city's decision is remanded.

23  
24  
25           <sup>15</sup>This statute was renumbered from ORS 197.835(8)(a)(B) to  
26           197.835(7)(a)(B) pursuant to 1989 legislative changes. There was no  
             change, however, in the relevant statutory language.