

1 petitioner Department of Land Conservation and Development
2 (DLCD). With her on the brief was Theodore R. Kulongoski,
3 Attorney General; Thomas A. Balmer, Deputy Attorney General;
4 and Virginia L. Linder, Solicitor General.

5
6 Lucinda Moyano, Assistant Attorney General, Salem,
7 filed a petition for review and argued on behalf of
8 petitioner Oregon Department of Transportation (ODOT). With
9 her on the brief was Theodore R. Kulongoski, Attorney
10 General; Thomas A. Balmer, Deputy Attorney General; and
11 Virginia L. Linder, Solicitor General.

12
13 James M. Coleman, Portland, filed the response brief
14 and argued on behalf of respondent. With him on the brief
15 was O'Donnell, Ramis, Crew & Corrigan.

16
17 KELLINGTON, Chief Referee; HOLSTUN, Referee; SHERTON,
18 Referee, participated in the decision.

19
20 REMANDED 06/23/94

21
22 You are entitled to judicial review of this Order.
23 Judicial review is governed by the provisions of ORS
24 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city ordinance approving a
4 comprehensive plan text amendment revising plan urbanization
5 policies, approving a plan map amendment expanding the
6 city's urban growth boundary (UGB) to add 306 acres, and
7 amending the city's Urban Planning Area Agreement with
8 Washington County.

9 **FACTS**

10 The petition for review of 1000 Friends of Oregon sets
11 out the relevant facts as follows:

12 "This is a proposal to almost double the size of
13 the North Plains [UGB], by adding 306 acres to its
14 existing 418 acres. The 306 acres consists of
15 farmland located west of the existing UGB.
16 Currently, this land is designated Rural Resource
17 Land in the Washington County Plan and is zoned
18 for exclusive farm use (EFU). It consists
19 primarily of Class I and II soils, is irrigated,
20 and is presently in agricultural production.
21 Crops grown on the land include wheat, corn, hay,
22 clover, beans and vetch. There is one
23 farm-related dwelling.

24 "The [challenged] decision does not change the
25 existing county plan and zone designations on the
26 property; rather, re-designation will be made as
27 the city annexes the land.

28 "The subject property is generally surrounded by
29 other EFU lands. The land is bordered on the
30 south by State Highway 26, and on a portion of its
31 eastern border by the existing North Plains UGB.

32 "The city's * * * comprehensive land use plan * *
33 * was updated through the periodic review process
34 in 1988. It anticipated a year 1990 population of
35 1,110 and a year 2000 population of 1,720, using

1 an annual growth rate of 4.5%. In fact, in 1990,
2 the population of North Plains had reached only
3 972.

4 "The city's plan finds that the current UGB can
5 accommodate a population of 4197, meaning the city
6 has sufficient residential capacity until the year
7 2025. The plan also finds that there is enough
8 land zoned commercial, and unconstrained by flood
9 plain, to accommodate the 20 year planning period.

10 "In the periodic review process, the city also
11 concluded that it lacked sufficient industrial
12 land for the planning period; it could expect a
13 shortfall of about 9.5 acres. Therefore, as part
14 of periodic review, the city expanded its UGB to
15 add 70 acres east of the city for industrial use.
16 However, as the plan states, '[d]ue to an
17 inadequate [water] storage and distribution
18 system, industrial development will be somewhat
19 restricted within the city limits.' This 70 acre
20 parcel does not now have water or sewer services.
21 The parcel has not yet been annexed to the city.

22 "Currently, not including this proposed UGB
23 expansion, North Plains has more undeveloped land
24 inside its UGB, in all use categories, than
25 developed land.

26 "North Plains is not within the [Metropolitan
27 Service District] regional urban growth boundary,
28 but rather has its own UGB.

29 "The North Plains Planning Commission and City
30 Council held hearings on this proposal, and
31 adopted [the challenged decision] on September 7,
32 1993. * * * (Record citations omitted.)
33 Petition for Review (1000 Friends) 3-5.

34 **PRELIMINARY ISSUE**

35 Petitioners contend, among other things, that the
36 challenged decision is subject to reversal or remand because
37 it is not supported by substantial evidence in the whole
38 record. The city argues the proposal is a legislative

1 planning action and, therefore, need not be supported by
2 substantial evidence. We resolve this scope of review issue
3 before addressing the merits of petitioners' claims.

4 ORS 197.835(7) makes no distinction between legislative
5 and quasi-judicial land use decisions.¹ However, the Oregon
6 Court of Appeals has held that the predecessor to ORS
7 197.835(7), written in substantially identical terms, does
8 not, in itself, impose a substantive requirement that
9 legislative decisions be supported by substantial evidence.
10 Lima v. Jackson County, 56 Or App 619, 625, 643 P2d 355
11 (1982). Specifically, in Lima, the court determined that in
12 the absence of an independent requirement that a legislative
13 decision be supported by substantial evidence in the record,
14 legislative planning and zoning decisions affecting numerous
15 individual parcels are not subject to review for substantial
16 evidence.

17 However, Lima says nothing about the independent
18 requirement of Statewide Planning Goal 2 (Land Use
19 Planning)² that planning actions have an adequate factual

¹ORS 197.835(7)(a)(C) authorizes the Board to reverse or remand a land use decision if the local government:

"Made a decision not supported by substantial evidence in the whole record[.]"

²The purpose of Goal 2 is:

"To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to assure an adequate factual base for such decisions and actions."

1 base.³ The Goal 2 requirement for an adequate factual base
2 applies regardless of the legislative or quasi-judicial
3 nature of the challenged decision. Oregon Electric Sign
4 Association v. Beaverton, 7 Or LUBA 68 (1982), rev'd on
5 other grounds 66 Or App 436, rev den 296 Or 829 (1984). In
6 addition, in League of Women Voters v. Klamath County, 16 Or
7 LUBA 909, 914 (1988), this Board determined the Goal 2
8 requirement for an adequate factual base requires a
9 legislative land use decision to be supported by substantial
10 evidence:

11 "We do not agree with respondent's claim that
12 there is no requirement that the [challenged
13 legislative plan amendment decision] be supported
14 by substantial evidence. [G]oal 2 * * * requires
15 that there be an 'adequate factual base' for any
16 land use decision. Arguably, this adequate
17 factual base may be different than substantial
18 evidence. However, the parties do not argue that
19 there is any such difference, and we do not see
20 much point in making any such distinction. We
21 conclude for the purposes of this review
22 proceeding, that our responsibility is to review
23 the decision for substantial evidence."

24 Here, as in League of Women Voters v. Klamath County,
25 supra, the city does not explain the difference between a
26 determination that the challenged decision is supported by
27 an adequate factual base or that it is supported by
28 substantial evidence in the whole record. Further, we find
29 no principled basis upon which to distinguish these two

³Apparently, in Lima, the parties did not raise an issue concerning the adequate factual base requirement of Goal 2.

1 concepts. Substantial evidence is evidence a reasonable
2 decision maker would rely upon to support a conclusion.
3 Younger v. City of Portland, 305 Or 346, 752 P2d 262
4 (1988). We see no reason to conclude that the Goal 2
5 requirement for an adequate factual base requires any less.
6 We conclude the legislative or quasi-judicial nature of the
7 challenged decision has no particular bearing on our review
8 of the evidentiary support for the challenged decision.⁴

9 **FIRST ASSIGNMENT OF ERROR (1000 FRIENDS)**

10 "The city misconstrued the applicable law, failed
11 to make adequate findings, and made a decision not
12 supported by substantial evidence in determining
13 that the expansion of the urban growth boundary
14 satisfies factors 1 and 2 of Goal 14
15 [Urbanization]."

16 **SECOND ASSIGNMENT OF ERROR (1000 FRIENDS)**

17 "The city misconstrued the applicable law, failed
18 to make adequate findings, and made a decision not
19 supported by substantial evidence in the whole
20 record in determining that the expansion of the
21 urban growth boundary satisfies factors 3-7 of
22 Goal 14."

23 **FOURTH ASSIGNMENT OF ERROR (ODOT)**

24 "The city failed to comply with the requirements
25 of Goal 14 as it relates to transportation
26 impacts."

⁴We have stated in other cases that legislative land use decisions need not be supported by findings or substantial evidence in the whole record. See Alexiou v. Curry County, 22 Or LUBA 639 (1992). The independent Goal 2 requirement was not raised in those cases, and the point of those cases was there must be some basis independent of our scope of review statute for requiring legislative land use decisions to be subject to a requirement that they be supported by substantial evidence.

1 **SEVENTH ASSIGNMENT OF ERROR (DLCD)**

2 "The city misconstrued the applicable law and
3 failed to comply with the requirements and
4 criteria of Goal 14 in expanding its urban growth
5 boundary by 306 acres."

6 Petitioners contend the proposal to expand the city's
7 UGB violates Goal 14 (Urbanization). To establish or change
8 a UGB, Goal 14 requires consideration of seven factors.⁵
9 The first two of those factors are called "need" factors.
10 The remaining five factors are called "locational" factors.
11 We address the "need" and "locational" factors separately
12 below.

13 **A. Goal 14, Factors 1 and 2 (Need Factors)**

14 The Goal 14 need factors require the city to base a UGB

⁵The Goal 14 "establishment" factors are as follows:

- "(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- "(2) Need for housing, employment opportunities, and livability;
- "(3) Orderly and economic provision for public facilities and services;
- "(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- "(5) Environmental, energy, economic and social consequences;
- "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- "(7) Compatibility of the proposed urban uses with nearby agricultural activities."

1 amendment upon consideration of the following:

2 "(1) Demonstrated need to accommodate long-range
3 urban population growth requirements
4 consistent with [Land Conservation and
5 Development (LCDC)] goals[.]

6 "(2) Need for housing, employment opportunities,
7 and livability[.]"

8 The challenged decision determines that under the
9 Goal 14 need factors, the proposed UGB amendment is required
10 to enable the city to provide housing and employment
11 opportunities for anticipated growth, to improve the
12 livability of the community and to increase the city's tax
13 base. Specifically, the challenged decision determines:

14 "[T]he proposed UGB expansion is necessary in
15 order to improve the availability of housing and
16 employment opportunities and improve the overall
17 livability in North Plains. The reason is simple:
18 the existing supply of land within the [North
19 Plains] UGB is not sufficient, nor configured in
20 large enough parcels, nor located to attract the
21 new business and industry required to improve
22 livability in North Plains." Record 32.

23 The determinations concerning anticipated growth relied
24 on in the challenged decision are based on (1) projections
25 of enhanced city growth assuming the proposed enlarged UGB
26 will attract commerce and industry to the city, and (2)
27 undisputed population growth projections for the
28 Metropolitan Service District (Metro) UGB. Although the
29 city is not located within the Metro UGB, the decision
30 nevertheless relies upon the city's close proximity to the
31 Metro UGB to justify the conclusion in the challenged

1 decision that some of the anticipated Metro UGB growth can
2 be captured by the city.⁶

3 Petitioners argue it is improper for the city to plan
4 to capture growth otherwise planned to occur within the
5 Metro UGB. Petitioners contend the city must establish it
6 has a specific need for the proposed additional urbanizable
7 land, at the proposed expansion site. Petitioners argue it
8 is improper for the city to justify the proposed UGB
9 amendment based on the theory that if the city has large
10 blocks of undeveloped land, industry and people will move to
11 the city.

12 The challenged decision determines:

13 "Opponents have said that the expansion creates
14 the demand for more urban land, that without the
15 expansion, there would be no need for more urban
16 land. Opponents have said the City's experts say
17 there is enough land already to serve the North
18 Plains future needs.

19 "The [City] Council finds these arguments miss the
20 point: the demand exists, without UGB expansion
21 the City's status quo will be maintained and the
22 status quo is not acceptable. Because of its
23 prime location on a high capacity transportation
24 corridor and just outside the Metro UGB, North
25 Plains is going to grow along with the Metro
26 region if urban land is available in the City UGB,
27 but how the City grows up is up to the City. The
28 City has the same obligation to plan for the
29 future as Metro. The people of North Plains have
30 problems. Solutions to those problems take public
31 money. One piece of the solution is through a

⁶The challenged decision specifically states the proposal is to attempt to capture .2% of the anticipated Metro UGB growth.

1 growth strategy that includes an expanded urban
2 area with more and larger commercial and
3 industrial sites to provide employment and
4 services. The changes also include more
5 residential property for more diverse housing
6 opportunities. This addition to the City's land
7 base will lead to a higher per capita tax base
8 resulting from the larger urban land base. After
9 the change, North Plains will be in a better
10 position to compete with other communities in the
11 Portland Metropolitan area for its fair share of
12 economic opportunities that can translate into
13 jobs, expanded commercial and retail services and
14 a wider mix of housing; leading to enhanced
15 livability." (Emphasis in original.) Record 31.

16 The city further explains in its brief:

17 "[T]he record shows a need for more urbanizable
18 land in order to provide housing and employment
19 opportunities necessary to enhance the City's
20 livability. * * *

21 "* * * The city's property values are low. More
22 important from a planning standpoint, they are
23 stagnant even with the City's high growth. * * *

24 "The implications of this for the City's finances
25 are clear. Depressed property values give the
26 city a lower tax capacity than other governments
27 in the region. This puts the City on a vicious
28 cycle; having to overcome greater social problems
29 with fewer resources. * * *" Respondent's Brief
30 35-36.

31 Reduced to its essentials, the parties' dispute under
32 these assignments of error centers on two things. First,
33 the dispute concerns whether the city may attempt to enhance
34 its livability by expanding its UGB to create large blocks
35 of land to attract commerce and industry to the city.
36 Second, the dispute concerns whether the city may justify
37 expanding its UGB by relying on growth planned to occur

1 within the Metro UGB.⁷

2 Clearly, as a general proposition, a need to improve
3 the livability of the city may provide a reason for adding
4 land to the city's UGB. 1000 Friends of Oregon v. Metro
5 Service Dist., 18 Or LUBA 311 (1989). Further, increased
6 city population projections are not the only basis upon
7 which the city may expand its UGB. Rather, we have stated:

8 "We find nothing in Goal 14 to suggest that
9 enlargement of the acknowledged UGB necessarily
10 must be preceded by an increase in projected
11 population. We are cited to no authority holding
12 otherwise. We believe that [a need consistent
13 with Goal 14 factors 1 and 2] could be
14 demonstrated by (1) increasing population
15 projections; (2) amending the economic, employment
16 and other assumptions [the local government]
17 applied to those population figures in originally
18 justifying the UGB, or (3) doing both." (Footnote
19 and citation omitted.) BenjFran Development v.
20 Metro Service Dist., 17 Or LUBA 30, 41-42, aff'd
21 95 Or App 22 (1988).

22 Here, the city undertook the third alternative identified by
23 the above quoted portion of our decision in BenjFran to
24 establish a need to enlarge the city's UGB.

25 The proper application of the livability element of the
26 Goal 14 need analysis:

27 " * * * requires, in addition to identification of

⁷The challenged decision determines the city's supply of commercially and industrially zoned land is 73.5 acres short, based on existing demographic projections in the city's comprehensive plan. Record 40-41. Petitioners do not challenge this determination or that the city may expand its UGB to accommodate some growth. The issue here has to do with the scope of the proposed expansion -- to nearly double the size of the city's existing UGB, based in large part on projected growth within the Metro UGB.

1 a significant livability problem, an evaluation of
2 probable positive and negative livability impacts
3 that may occur if the UGB is amended to solve the
4 identified livability problem. Once the probable
5 positive and negative livability impacts are
6 identified [the local government] would be in a
7 position to explain why the probable livability
8 benefits of the UGB amendment outweigh any
9 negative impacts on livability that could be
10 expected if the amendment were approved."
11 (Footnote omitted.) 1000 Friends of Oregon v.
12 Metro Service Dist., 18 Or LUBA 311, 320 (1989).

13 The city identifies a number of socio-economic problems
14 it hopes will be solved by the proposed UGB amendment.
15 These problems include high unemployment of, and low job
16 market participation by, city residents. The city
17 essentially determines it must increase employment
18 opportunities and its tax base to improve the quality of
19 life enjoyed by city residents and its ability to deliver
20 city services to residents.⁸ The challenged decision
21 reflects the city considered both the benefits of the
22 proposed UGB expansion and the negative impacts associated
23 with the proposal. Negative impacts are identified in the
24 city decision as loss of resource land and "loss of small
25 town feeling." Record 39-40. After balancing the benefits
26 and burdens of the proposal, the challenged decision
27 concludes that converting the subject rural land to

⁸The city did not single out increasing its tax base as the reason for the proposed UGB expansion, as petitioners suggest. Rather, enhancing the city's tax base was identified as one important beneficial aspect of the proposal. There is nothing wrong with the city considering an improved tax base as one of the reasons justifying the expansion of its UGB.

1 urbanizable land outweighs the identified negative impacts
2 associated with the proposal.

3 While the challenged decision follows the analytical
4 mechanics required under 1000 Friends of Oregon v. Metro.
5 Service Dist., supra, the factual base for the challenged
6 decision is inadequate to support the city's analysis. The
7 city decision relies in large part upon a study assuming a
8 particular combination of land uses within the proposed UGB
9 expansion area -- housing (52 acres), commercial uses (150
10 acres) and industrial uses (104 acres).⁹ Record 54. The
11 city decision justifies the proposed UGB expansion based on
12 the subject land becoming available for commercial and
13 industrial development and, to a lesser extent, residential
14 development. However, the challenged decision does nothing
15 to ensure the planning designations and zoning districts
16 applied to the land within the proposed UGB expansion area
17 will accommodate those uses.¹⁰ Instead, the challenged
18 decision simply includes the following "condition":

19 * * * The land use for the UGB area shall be a

⁹This mix of uses is identified in a study supporting use of an employment center development model after the city UGB is enlarged as proposed. However, the challenged decision also appears to rely upon different development models to justify the challenged decision.

¹⁰We note that while the city is not required to identify specific development proposals for the proposed UGB expansion area, a decision to expand the UGB must include some limitation on the uses to be made of the expansion area for the city to have a reasonable basis to conclude the proposal will do what the city adopts the proposal to accomplish. Johnson v. Tillamook County, 16 Or LUBA 855 (1988).

1 mixed use designed to implement the employment
2 center concept. Land use shall be allocated for
3 multi-family residential, industrial, and all
4 types of commercial uses. The zoning for the area
5 shall be fixed at annexation. * * *" Record 103.

6 This condition is inadequate. As stated above, the
7 city's livability analysis is dependent upon a particular
8 mix of uses. If it is contemplated that the proposed UGB
9 expansion will provide large blocks of land for new
10 commercial and industrial uses (employment center model),
11 then the decision must limit the subject land to those
12 uses.¹¹ If, on the other hand, the idea is to provide land
13 for new housing developments and commercial uses (other than
14 proposed under the employment center model), then the
15 decision must limit the subject land to those uses.
16 However, it is not possible for the city to justify a need
17 to nearly double its UGB to solve a particular set of
18 livability problems, when the decision provides no basis to
19 conclude the UGB expansion area will actually be used to
20 address those livability problems.¹² See Johnson v.

¹¹In particular, we note petitioners cite evidence in the record that based on recent planning and zoning actions (other than the challenged decision), the city has ten acres of "surplus" industrial land. We understand the challenged decision to take the position that ten acres is not a large enough block of industrial land to solve the city's need for such land. However, if this is the case, the city must take some action in the challenged decision to ensure that large block(s) of industrial land will result. Otherwise, the city fails to ensure implementation of its Goal 14 need analysis with regard to land needed and available for industrial use.

¹²The city answers this issue in its brief, in part, as follows:

1 Tillamook County, supra.

2 On a related issue, as indicated above, the challenged
3 decision states the proposed UGB expansion is needed, in
4 part, to provide more housing for city residents. However,
5 there is no dispute there is currently a surplus of
6 residentially zoned land within the city. The challenged
7 decision fails to explain why the existing residentially
8 zoned land located within the city's existing UGB cannot
9 satisfy the need for housing that the challenged decision
10 identifies.

11 Further, the challenged decision's Goal 14 need
12 analysis is flawed because it relies, in large part, upon
13 growth otherwise planned to occur within the Metro UGB, of
14 which the city is not a part. It is impermissible for one
15 local government, such as the city, unilaterally to decide
16 to capture growth otherwise planned to occur within another
17 planning jurisdiction. If the city wishes to plan to
18 capture growth currently anticipated to occur within the

"Employment center mixed use development could occur under either scenario. The City is not required nor is it ready to pin down the exact square footages of particular use types as a part of this UGB amendment process. * * *" Respondent's Brief 45.

While the city is correct that it is not required to "pin down exact square footages of particular use types," it must determine in the challenged decision the general uses to be made of the proposed UGB expansion area, and provide a means to ensure those uses occur there. In other words, the city must choose and justify a city development model or plan, and limit permissible development within the UGB expansion area to uses consistent with the model chosen.

1 Metro UGB, it must specifically coordinate that desire with
2 the affected units of government within the Metro UGB. See
3 City of Portland v. City of Beaverton, ___ Or LUBA ___ (LUBA
4 No. 92-225, May 6, 1994); City of Portland v. Washington
5 County, ___ Or LUBA ___ (LUBA No. 93-195, May 6, 1994);
6 Washington County v. City of Portland, ___ Or LUBA _____
7 (LUBA No. 93-142, May 6, 1994). Such coordination is
8 particularly important within the Metro UGB, as the Metro
9 UGB is based on a complex comprehensive planning scheme for
10 three counties, as well as various cities and special
11 districts, based upon a set of assumptions which may or may
12 not include planned growth being captured by local
13 governments located outside of the Metro UGB.¹³ Because the
14 city's proposed UGB amendment erroneously relies upon
15 capturing growth otherwise planned for the Metro UGB, the
16 city's decision must be remanded to allow the city either to
17 coordinate its expanded UGB plan with Metro and other
18 affected units of government or to attempt to justify the
19 enlargement of its UGB without relying upon growth
20 anticipated to occur within the Metro UGB.

21 We conclude the city's Goal 14 need analysis is

¹³We address below petitioners' allegations concerning the city's failure to satisfy its coordination obligations in adopting the challenged decision.

1 inadequate.¹⁴

2 This subassignment of error is sustained.

3 **B. Goal 14, Factors 3-7 (Locational Factors)**

4 **1. Preliminary Issue -- Effect of Urban Planning**
5 **Area Agreement (UPAA)**

6 The challenged decision determines the proposed UGB
7 amendment is consistent with UGB expansion criteria
8 contained in the acknowledged UPAA between the city and
9 Washington County. Record 30-31. The property to be added
10 to the UGB under the challenged decision is identified as an
11 "area of interest" under the UPAA.¹⁵ Respondent's brief
12 assigns special significance to the fact that the subject
13 property is included within an area of interest under the
14 UPAA. We resolve what bearing, if any, the subject
15 property's designation as an "area of interest" under the
16 UPAA has on the application of the Goal 14 locational
17 factors to the proposed UGB amendment.

18 Section III of the UPAA agreement includes policies and
19 definitions governing city UGB amendments as follows:

20 "Special Policies

¹⁴We determine the city erroneously applied the Goal 14 need analysis. Therefore, we do not consider petitioners' remaining allegations concerning the evidentiary support for that analysis.

¹⁵In addition to the disputed UGB amendment, the challenged decision amends the UPAA to include land other than the proposed UGB expansion area, as an "area of interest." No challenge is made to the city's decision to designate this additional land as an "area of interest" under the UPAA. The dispute here centers on the significance of the subject property's inclusion in the existing "area of interest" is established under the UPAA.

1 "A. Definitions

2 "1. Urban Growth Boundary means the area
3 within which urban development will
4 occur as represented in the City of
5 North Plains' Comprehensive Plan. The
6 CITY is responsible for comprehensive
7 planning within the Urban Growth
8 Boundary.

9 "2. Area of Interest means the area adjacent
10 to but outside of the existing Urban
11 Growth Boundary which is not currently
12 identified as needed for urban
13 development by the CITY but is the most
14 logical area for urban expansion should
15 a future need be demonstrated. The
16 COUNTY is responsible for comprehensive
17 planning and development actions within
18 the area of interest until such time as
19 the CITY Urban Growth Boundary is
20 expanded and the area annexed to the
21 CITY.

22 "3. Urban Planning Area means the combined
23 area of the Urban Growth Boundary and
24 the Area of Interest. The CITY and the
25 COUNTY shall notify one another of
26 proposed comprehensive planning and
27 development actions within the Urban
28 Planning Area according to the
29 provisions of this Agreement.

30 "B. Approval of any annexations outside the
31 CITY's Urban Growth Boundary must be preceded
32 by or in conjunction with a comprehensive
33 plan amendment to the CITY's Urban Growth
34 Boundary. Such amendments shall be subject
35 to the major amendment provisions of the CITY
36 Comprehensive Plan and shall adequately
37 address all applicable LCDC Statewide
38 Planning Goals.

39 "C. Amendments to the CITY Urban Growth Boundary
40 within the identified Area of Interest shall
41 not require an amendment to Exhibit 'A' of
42 this Agreement. Amendments to the Urban

1 Growth Boundary outside of the identified
2 Area of Interest shall require an amendment
3 to Exhibit 'A' as outlined in Section IV of
4 this Agreement." (Emphases supplied.)

5 In its brief, the city contends the acknowledged UPAA
6 creates a presumption that once a need is shown to exist for
7 a UGB amendment, areas within an "area of interest" are
8 proper locations for that UGB amendment. As we understand
9 it, the city contends this alleged presumption means the
10 Goal 14 locational factors are applied only to determine
11 whether the Goal 14 factors undermine this presumption
12 created by the UPAA.

13 In League of Women Voters v. Metro Service Dist., 17 Or
14 LUBA 949, 965-68, aff'd 99 Or App 333 (1989), rev den 310
15 Or 70 (1990) (League), we determined that where a local
16 government has an acknowledged process intended to implement
17 the requirements of Goal 14 for certain UGB amendments, it
18 is appropriate for the local government to apply that
19 process in determining whether the UGB amendment complies
20 with Goal 14, rather than to apply the Goal 14 factors
21 directly to the proposal. Specifically, we stated:

22 "LCDC acknowledged the local adjustment ordinance
23 as the chosen mechanism to carry out the goals for
24 small locational adjustments of the Metro UGB.
25 The ordinance does not apply factors 1 and 2 of
26 Goal 14, does not require an exception pursuant to
27 Goal 2, Part II and ORS 197.732 and does not apply
28 the exact text of factors 3-7 of Goal 14.
29 However, LCDC specifically concluded in the
30 findings supporting its * * * order acknowledging
31 the locational adjustment ordinance that '[t]he
32 Metropolitan Service District complies with Goal

1 14, Factors 1-7, * * * and Goal 2: Part II(C).'
2 * * *

3 "The time for appealing LCDC's determination of
4 the goal compliance of the locational adjustment
5 ordinance has passed. ORS 197.650, ORS 183.482.
6 If acknowledgment is to have any function it must
7 mean that application of unamended and
8 acknowledged plan or land use regulation criteria
9 continues to 'comply with the goals' until
10 periodic review or some other event changes the
11 acknowledged provisions. * * *" League, supra,
12 17 Or LUBA at 967-68.

13 We believe League is distinguishable from this case.
14 In League, it was clear the Metro UGB adjustment process was
15 acknowledged as the methodology for establishing the Goal 14
16 compliance of certain kinds of UGB amendments. Further, the
17 UGB amendment provisions at issue in League made it clear
18 they were intended to replace direct application of Goal 14
19 to certain Metro UGB amendments. In contrast, we are aware
20 of nothing in the UPAA, or in any other document,
21 establishing that the designation of a particular area as an
22 "area of interest" is intended to replace the direct
23 application of Goal 14 to a proposed UGB amendment, or to
24 create any sort of presumption, as the city alleges in its
25 brief. As far as we can tell, the UPAA does not clearly
26 establish any standards other than Goal 14 to govern the
27 addition of land, within an "area of interest, to the city's
28 UGB."

29 In addition, the challenged decision directly applies
30 the Goal 14 locational factors to the proposed UGB
31 amendment. The challenged decision gives no indication the

1 city interprets the UPAA to replace the direct application
2 of any of the Goal 14 factors to the proposed UGB amendment,
3 or to create a particular presumption concerning how those
4 factors are to be applied.¹⁶ Rather, the challenged
5 decision specifically discusses the UPAA area of interest
6 designation and directly applies the Goal 14 locational
7 factors. This strongly suggests the city determined in the
8 challenged decision that the UPAA area of interest
9 designation creates neither a presumption concerning the
10 manner in which the Goal 14 locational factors are to be
11 applied, nor replaces the direct application of the Goal 14
12 locational factors to the proposed UGB amendment.

13 Even if the challenged decision does support the
14 arguments advanced by the city in its brief, the argument
15 that designation of land under the UPAA as an area of
16 interest means the land is presumptively appropriate for a
17 proposed UGB amendment under the Goal 14 locational factors,
18 is unpersuasive. The city simply provides no legal basis
19 for determining such a presumption is created by the UPAA
20 "area of interest" designation, and we do not see any basis

¹⁶The challenged decision is 79 pages long and includes a number of appendices. It is possible that some findings to this effect may be buried somewhere in the decision. However, no party cites any such determination in the decision, and a cursory review by this Board reveals no such findings. We do not believe that we are required to search a lengthy decision, without assistance, to find material supporting a party's argument. See Eckis v. Linn County, 110 Or App 309, 313, 821 P2d 1127 (1991) (LUBA is not required to search the record to find evidence to support a challenged decision.)

1 in the UPAA for such a conclusion.

2 Therefore, as relevant here, we determine no particular
3 significance is attached to land being designated an "area
4 of interest" under the UPAA.

5 **2. Factor 3**

6 Petitioners contend the challenged decision erroneously
7 applies Goal 14, factor 3, requiring orderly and economic
8 provision for public facilities and services, because the
9 nature and intensity of the uses ultimately to be made of
10 the subject land are uncertain. Specifically, petitioners
11 contend the city cannot claim it is currently able, or in
12 the future will become able, to provide public facilities
13 and services to the UGB expansion area in an orderly and
14 economic fashion. Petitioners contend this is so because
15 the challenged decision provides no limitation on the
16 planning designations and zoning districts that can
17 ultimately be applied to the subject property. Petitioners
18 contend the city's ability to provide public facilities and
19 services depends upon it specifying the type and intensity
20 of uses which may occur within the UGB expansion area. We
21 agree with petitioners. Johnson v. Tillamook County, supra.

22 Petitioners also suggest the city is required to
23 establish it currently has adequate capacity to serve uses
24 to be made of the proposed UGB expansion area in the future.
25 We are aware of no such requirement. Rather, we stated in
26 City of La Grande v. Union County, supra, 25 Or LUBA at 60,

1 that to justify a UGB amendment under Goal 14, factor 3, a
2 local government must show its public facilities will have
3 adequate capacity to serve the uses contemplated within a
4 UGB expansion area over the local government's planning
5 period. In addition, we stated a local government must
6 establish that:

7 "* * * providing water and sewerage service to the
8 subject property will not leave the [local
9 government] unable to provide water and sewerage
10 service to the land already included within the
11 UGB." Id.

12 Thus, the city need only establish an adequate factual basis
13 to conclude that public facilities and services can
14 reasonably be provided to the UGB expansion area over the
15 planning period, without leaving the area already included
16 within the UGB with inadequate facilities and services.

17 The challenged decision includes findings that existing
18 public facilities are adequate to "reasonably accommodate
19 future development of the site." Record 43. Conversely,
20 other findings state the existing capacity of public
21 facilities and services will likely require enhancement to
22 enable adequate service to accommodate development of the
23 UGB expansion area. This apparent inconsistency between the
24 findings may be attributable to the lack of specificity in
25 the challenged decision (discussed above) concerning the
26 type and intensity of development proposed for the subject
27 UGB expansion area. On remand, consistent with our
28 discussion above, the city must identify and limit the type

1 and intensity of development allowable within the proposed
2 UGB amendment area. Once the city takes that step, then it
3 may be in a position to determine whether public facilities
4 and services can be provided to serve those uses in an
5 orderly and economic fashion, while maintaining adequate
6 public facilities and services for the land already included
7 within the existing UGB.

8 This subassignment of error is sustained.

9 **3. Factor 4**

10 Goal 14, factor 4 requires the city to establish the
11 proposed UGB amendment maximizes the efficiency of land uses
12 within, and on the fringe of, the existing urban area. We
13 have previously determined this requires "the encouragement
14 of development within urban areas before the conversion of
15 urbanizable areas." Turner v. Washington County, 8 Or LUBA
16 234, 258 (1982).

17 The city concedes that 44% of its "developable property
18 is currently available for development."¹⁷ Further, an area
19 recently added to the city's UGB (referred to by the parties
20 as the eastside UGB), is not now currently developed or
21 served with public facilities. As we explain above, the
22 proposal does not specify the type or intensity of uses to
23 be made of the subject land. Under these circumstances, we

¹⁷Petitioners characterize the situation a little differently. Petitioners contend that over half of the land within all use categories inside the existing UGB is vacant.

1 do not understand how the city can establish the proposed
2 UGB amendment encourages development in urban areas of the
3 city and will not result in the premature conversion of
4 urbanizable areas to urban uses that Goal 14, factor 4 seeks
5 to avoid.

6 This subassignment of error is sustained.

7 This subassignment of error is sustained.

8 **4. Factor 5**

9 Petitioners contend the challenged decision fails to
10 include an adequate analysis of the proposal's
11 environmental, social, energy, and economic (ESEE)
12 consequences under Goal 14, factor 5. Petitioners contend
13 the city's ESEE analysis is inadequate because the
14 challenged decision does not limit the type of uses or
15 identify the nature or intensity of the uses to be made of
16 the subject land. We agree. Halvorson v. Lincoln County,
17 14 Or LUBA 730, 738, aff'd 82 Or App 302 (1986).

18 This subassignment of error is sustained.

19 **5. Factor 6**

20 Goal 14, factor 6 requires a determination that the
21 proposal provides for retention of high priority
22 agricultural land. There is no dispute the subject land
23 consists of 20% U.S. Soil Conservation Survey Class I soils
24 and 70% Class II soils, and that class I and II soils are
25 the highest priority agricultural land.

26 The findings do not address whether there may be other

1 less valuable agricultural land available elsewhere to
2 accommodate the proposed UGB amendment. Instead, the
3 findings simply determine UGB expansion must occur within
4 the UPAA area of interest. However, we state above the fact
5 that the subject land is included within the UPAA area of
6 interest does not replace the necessity of the city
7 determining the proposal is consistent with the Goal 14
8 factors. Simply put, the UPAA area of interest designation
9 covering the subject land is not the equivalent of a
10 determination that the proposal retains high priority
11 agricultural land as required by Goal 14, factor 6.

12 We conclude the challenged decision fails to determine
13 that other sites with less impact on high priority resource
14 land are unavailable or unsuited to satisfy a particular
15 need which justifies the proposed UGB amendment.

16 This subassignment of error is sustained.

17 **6. Factor 7**

18 This factor requires a determination concerning the
19 proposed UGB expansion's compatibility with nearby farming
20 activities. We agree with petitioners that a determination
21 cannot be made under this factor regarding compatibility
22 between the proposed UGB expansion and nearby farming
23 activities until the city identifies and limits the type and
24 intensity of uses allowed in the UGB expansion area.

25 This subassignment of error is sustained.

26 These assignments of error are sustained.

1 **FIRST ASSIGNMENT OF ERROR (DLCD)**

2 "The City did not comply with the requirements of
3 Goal 2 in that it * * * misconstrued the Goal 2
4 exceptions criteria."

5 **THIRD ASSIGNMENT OF ERROR (1000 FRIENDS)**

6 "The city misconstrued the applicable law, failed
7 to make adequate findings, and made a decision not
8 supported by the whole record in determining that
9 the UGB amendment satisfied the requirements of
10 Goal 2, Part II(c), ORS 197.732(1), and
11 OAR 660-04-010(1)(c)(B)."

12 Goal 14 includes a requirement that to approve an
13 amendment to an acknowledged UGB, a local government must
14 follow the procedures and requirements for a statewide
15 planning goal exception. Those procedures and requirements
16 are set out at ORS 197.732, Goal 2, Part II, and OAR 660-04-
17 000 through 660-04-035. Among the requirements for a
18 statewide planning goal exception of the type adopted here,
19 is the requirement that the county determine that "[a]reas
20 within the existing UGB cannot reasonably accommodate the
21 use[.]" OAR 660-04-010(1)(c)(B)(ii); ORS 197.732(1)(c)(B);
22 Goal 2, Part II(c)(2).

23 We pointed out in BenjFran Development v. Metro Service
24 Dist., supra, 17 Or LUBA at 48, that consideration of
25 alternative sites is largely "meaningless unless a need has
26 already been shown under [Goal 14, factors 1 and 2]." We
27 determine above the city's demonstration of need under
28 Goal 14, factors 1 and 2 is erroneous. Nevertheless, we
29 address some of petitioners' remaining arguments as we

1 believe it will assist the parties on remand to do so.

2 The challenged decision reflects a city determination
3 it was not required to address alternative sites for the
4 proposed UGB expansion because the subject land is
5 designated an "area of interest" under the UPAA. However,
6 as we state above with regard to Goal 14 requirements, the
7 fact that the subject land is designated as an area of
8 interest does not relieve the city of its obligation under
9 the statutory, goal and administrative rule requirements for
10 exceptions to examine alternative sites for the proposed UGB
11 amendment.

12 In BenjFran Development v. Metro Service Dist., supra,
13 we concluded a local government should consider the
14 potential of using lands already located within its UGB to
15 satisfy an identified need for urbanizable land. Further,
16 in BenjFran Development, we accepted an argument that a
17 decision approving an expansion of a UGB to include more
18 land for a large proposed industrial use must address the
19 potential of consolidating existing industrially planned
20 parcels within the UGB, even though such parcels by
21 themselves might be smaller than needed for the particular
22 proposed industrial use.¹⁸ In addition, we concluded that
23 under the circumstances presented in BenjFran Development,
24 the local government was required to consider the

¹⁸The industrial use at issue in BenjFran Development required 500 acres.

1 possibility of redesignating lands already within the UGB,
2 but planned for other than industrial uses.

3 On remand, the city should conduct an alternatives
4 analysis consistent with the direction provided in BenjFran
5 Development and this opinion.

6 These assignments of error are sustained.

7 **FIRST ASSIGNMENT OF ERROR (DLCD)**

8 "The city did not comply with the requirements of
9 Goal 2 in that it (A) failed to carry out its land
10 use planning obligation, (B) failed to coordinated
11 [sic] its actions with other affected governmental
12 units * * *."

13 Goal 2 requires that a county's comprehensive plan "and
14 related implementing measures shall be coordinated with the
15 plans of affected governmental units." (Emphasis added.)
16 In Rajneesh v. Wasco County, 13 Or LUBA 202, 209-11 (1985),
17 we explained that under Goal 2 and the statutory definition
18 of "coordinated," the obligation to coordinate involves
19 essentially two steps:

20 "1. The makers of the [comprehensive] plan [must
21 engage] in an exchange of information between
22 the planning jurisdiction and affected
23 governmental units, or at least invite such
24 an exchange.

25 "2. The jurisdiction [must use] the information
26 to balance the needs of all governmental
27 units as well as the needs of citizens in the
28 plan formulation or revision."

29 Coordination is achieved by balancing the needs of all
30 affected governmental units and selecting a particular
31 course of action from among the competing proposed courses

1 of action. Clearly, the city may not, consistent with Goal
2 2, unilaterally take action to amend its acknowledged
3 comprehensive plan to adopt a provision that is inconsistent
4 with the provisions of the acknowledged comprehensive plan
5 of an affected jurisdiction. City of Portland v. Washington
6 County, supra. Thus, to maintain such consistency, affected
7 local governments must be notified of the details of a
8 proposed plan amendment so that they may provide comments
9 concerning it. See Davenport v. City of Tigard, 23 Or LUBA
10 565 (1992).

11 Under these assignments of error, petitioners argue the
12 city failed to coordinate the proposed UGB amendment with
13 the Oregon Department of Environmental Quality (DEQ),
14 Tri-Met, Unified Sewerage Agency (USA) and three school
15 districts affected by the challenged decision.¹⁹

16 The city contends its coordination obligations were
17 satisfied when it provided notice of the proposed UGB
18 amendment to DLCD pursuant to ORS 197.610(1). Further, it
19 contends it did coordinate with USA, by sending letters to
20 it concerning the proposal. In addition, the city argues it
21 was not required to specifically coordinate with DEQ,
22 alleging DEQ's interests were effectively represented by
23 petitioner 1000 Friends of Oregon during the local
24 proceedings. The city also contends it is not required to

¹⁹There is no dispute ODOT, Washington County and Metro are "affected governmental units" within the meaning of Goal 2.

1 coordinate the challenged decision with Tri-Met because the
2 city is not within Tri-Met's jurisdictional boundaries.
3 Finally, the city maintains it is premature to coordinate
4 the challenged decision with the school districts, because
5 coordination with the school districts will occur when the
6 subject land is annexed to the city. According to the city,
7 the school districts are only affected when the land is
8 annexed.

9 Providing notice to DLCD under ORS 197.610(1) is
10 inadequate to satisfy a local government's coordination
11 obligations. See Twin Rocks Water Dist. v. Rockaway Beach,
12 2 Or LUBA 36, 45-46 (1980). Further, the city is required
13 to coordinate with affected units of government regardless
14 of the fact that some of the persons appearing during the
15 local proceedings may have interests aligned with those of a
16 unit of government.

17 With regard to coordination with Tri-Met, the
18 challenged decision states:

19 "[A]uto use can be limited through effective
20 transportation planning and coordination of public
21 transportation facilities and services with
22 Tri-Met." Record 50.

23 Clearly, the above quoted finding from the challenged
24 decision contemplates Tri-Met will likely be affected by the
25 challenged decision. Therefore, Tri-Met is an "affected
26 unit of government" and the city is required to coordinate
27 the proposal with Tri-Met.

1 The findings also explain the subject land is within
2 the boundaries of three different school districts. The
3 challenged UGB decision articulates (1) a need for a UGB
4 amendment, and (2) the means chosen to satisfy that need.
5 By identifying a need to be satisfied by particular planning
6 actions that will result in changes to the acknowledged plan
7 designations and zoning districts applied to the subject
8 land, the city necessarily affects the school districts'
9 planning efforts for providing service to the subject land.
10 Therefore, the school districts are affected units of
11 government with which the proposed UGB amendment must be
12 coordinated.²⁰

13 Finally, regarding whether the city adequately
14 coordinated the proposed UGB amendment with USA, the city
15 did submit a request to USA for specific information
16 regarding current sewer flow and capacity at the Hillsboro
17 Sewerage Treatment Plant. However, as far as we can tell,
18 the city never provided USA with notice clearly explaining
19 the nature of the proposal and soliciting comments
20 concerning the proposal. Therefore, the city failed to
21 coordinate the proposed UGB amendment with USA. See
22 Davenport v. City of Tigard, supra, 23 Or LUBA at 576.

23 This assignment of error is sustained.

²⁰If the subject land is eventually annexed, that annexation decision must also be coordinated with the affected school districts.

1 **FIRST ASSIGNMENT OF ERROR (ODOT)**

2 "The city failed to comply with the requirements
3 of Goal 12 and OAR 660-12-060(1) and (2)."

4 **SECOND ASSIGNMENT OF ERROR (ODOT)**

5 "The city failed to comply with Goal 12 and the
6 interpretative provisions of the Transportation
7 Planning Rule (TPR) by not undertaking the
8 necessary planning to make its transportation plan
9 consistent with the county and state plans."

10 **THIRD ASSIGNMENT OF ERROR (ODOT)**

11 "The city justified the expansion of the UGB on
12 the existence of a transportation facility which
13 is in violation of OAR 660-12-060(4)."

14 **FOURTH ASSIGNMENT OF ERROR (1000 FRIENDS)**

15 "The city erred in finding that the amendment to
16 its urban growth boundary was consistent with the
17 identified function, capacity, and level of
18 service of the surrounding transportation
19 facilities, as required by OAR 660-12-060."

20 **SIXTH ASSIGNMENT OF ERROR (DLCD)**

21 "The city failed to comply with the requirements
22 of Goal 12 and the Goal 12 Implementing Rule."

23 The subject land is adjacent to state Highway 26,
24 Dersham Road and the Dersham Road interchange with Highway
25 26. These transportation facilities are considered "rural"
26 facilities and are not planned to carry an urban level of
27 traffic. Record 443-44, 543-44. We do not understand these
28 facts to be in dispute in this appeal proceeding.

29 Petitioners allege that changing the character of the
30 subject land from rural to urban or urbanizable land is
31 inconsistent with the functional capacity of these

1 transportation facilities. Petitioners argue the city must
2 comply with TPR standards concerning these transportation
3 facilities in adopting a decision to amend the UGB in the
4 manner proposed.

5 The parties' disagreement under these assignments of
6 error primarily centers on whether a decision to amend the
7 UGB is the time at which the city must address TPR
8 requirements concerning impacts on Highway 26, Dersham Road
9 and the Dersham Road interchange and, if so, what must be
10 done to establish compliance with such TPR requirements. We
11 first address whether and to what extent the TPR applies to
12 the proposal and second, whether the decision demonstrates
13 compliance with applicable TPR requirements.

14 **A. Applicability of the TPR**

15 The TPR was adopted by LCDC in 1991. The TPR purpose
16 statement, OAR 660-12-000, explains the TPR serves the
17 following purposes:

- 18 1. To implement Statewide Planning Goal 12
19 (Transportation).
- 20 2. To explain how local and state transportation
21 planners may demonstrate compliance with the
22 statewide planning goals.
- 23 3. To identify how transportation facilities may
24 be provided on rural lands, consistent with
25 the statewide planning goals.
- 26 4. To set "requirements for coordination among
27 affected levels of government for
28 preparation, adoption, refinement,
29 implementation and amendment of
30 transportation system plans."

1 5. To establish that transportation system plans
2 adopted under the TPR "fulfill the
3 requirements for public facilities planning
4 required under ORS 197.712(2)(e), Goal 11 and
5 OAR Chapter 660, Division 11, as they relate
6 to transportation facilities.

7 Transportation planning under the TPR is divided into
8 three parts: (1) preparation of transportation system plans,
9 (2) transportation project development and, as relevant
10 here, (3) comprehensive plan and land use regulation
11 amendments which "significantly affect a transportation
12 facility." Specifically, OAR 660-12-060(1) requires:

13 "Amendments to functional plans, acknowledged
14 comprehensive plans, and land use regulations
15 which significantly affect a transportation
16 facility shall assure that allowed land uses are
17 consistent with the identified function, capacity
18 and level of service of the facility. * * *

19 "* * * * *

20 OAR 660-12-060(2) provides:

21 "A plan or land use regulation amendment
22 significantly affects a transportation facility if
23 it:

24 "* * * * *

25 "(c) allows types or levels of land uses which are
26 inconsistent with the functional
27 classification of a transportation facility[.]

28 "* * * * *

29 As relevant here, under OAR 660-12-060(1)(a), an amendment
30 significantly affecting a transportation facility is
31 permissible so long as the decision affecting such facility:

32 "Limit[s] allowed land uses to be consistent with

1 the planned function, capacity and level of
2 service of the transportation facility[.]"

3 The city adopted alternative findings concerning the
4 proposed UGB amendments' compliance with the TPR. The city
5 first determined the proposal does not significantly affect
6 a transportation facility. Second, the city determined that
7 if the proposal does significantly affect a transportation
8 facility, the proposal satisfies the TPR. We address these
9 issues separately below.

10 **B. Significant Effect on a Transportation Facility**

11 The challenged decision determines:

12 "This plan amendment designates land in an area to
13 be included within the North Plains UGB. The
14 comprehensive plan amendment in and of itself will
15 not significantly affect transportation
16 facilities. Until annexation County resources
17 designations will apply and the land remains
18 urbanizable not urban land. At annexation,
19 specific use types will be assigned to each parcel
20 and the land is reclassified as urban. The UGB
21 amendment is conditioned to ensure full compliance
22 with the [TPR]. Moreover, the full impact of the
23 plan amendment can only be measured through the
24 build out period. This decision establishes the
25 need for this urban land. The [TPR] must be
26 applied in a manner which helps meet this need. *
27 * *" Record 66.

28 We believe this finding reflects a misapplication of
29 the TPR requirement specified in OAR 660-12-060(1), quoted
30 supra. The TPR clearly states that plan amendments which
31 significantly affect a transportation facility must be
32 consistent with TPR provisions. The challenged decision is
33 a plan amendment. Although it may be that some aspects of

1 the TPR need not be addressed at this stage and are
2 appropriately deferred to the time of annexation, the city
3 does not explain why compliance with the TPR need not be
4 addressed at all at the time the UGB is amended.

5 To comply with the Goal 14 need and locational factors,
6 a decision amending the UGB must include limitations on the
7 plan designations and zoning districts to be applied to the
8 subject property to ensure that the property satisfies the
9 identified need. We determine above that the challenged
10 decision fails to establish such limitations. Once those
11 limitations have been adopted, the city must consider
12 whether amending its UGB will significantly affect Highway
13 26, Dersham Road and the Dersham Road interchange and, if
14 so, must comply with applicable requirements of the TPR.

15 This subassignment of error is sustained.

16 **C. Compliance with the TPR**

17 **1. OAR 660-12-060(1)(a)**

18 Alternatively, the city determined the proposal
19 significantly affects a transportation facility, but that
20 application of the following limitations on development
21 establishes compliance with OAR 660-12-060(1)(a):

22 "1. Urban zoning/land use designations for the
23 UGB area shall be fixed by plan amendment at
24 the time of annexation to the City. Until
25 that time, the affected area shall retain the
26 existing County land use designations unless
27 changed pursuant to county process. In
28 approving an annexation, the City shall make
29 findings which demonstrate that: 1) the
30 proposed land uses are consistent with the

1 state's [TPR] (OAR 660-12-060), and 2) that
2 adequate public facilities are assured. If
3 annexation of the UGB area occurs
4 incrementally, the estimated cumulative
5 impacts of likely uses in the entire UGB
6 annexation shall be considered. The land use
7 for the UGB area shall be a mixed use
8 designed to implement the employment center
9 concept. Land shall be allocated for multi-
10 family residential, industrial, and all types
11 of commercial uses. The zoning for the area
12 shall be fixed at the time of annexation.
13 The allocation of mixed use urban
14 designations to implement the employment
15 center concept shall be consistent with the
16 provisions of the [TPR] (OAR 660-12-060).
17 The zoning actions may include conditions
18 which are intended to mitigate the impacts of
19 development allowed by the City zone and to
20 ensure the provision of adequate public
21 facilities and services.

22 "2. No development of land may be allowed on land
23 within the UGB amendment area until
24 annexation occurs and specific development
25 impacts are assessed and mitigated.
26 Development review of this area shall address
27 impacts to state and County transportation
28 facilities.

29 "3. No development of land may be allowed on land
30 within the UGB amendment area unless a
31 finding is made that allowed land uses are
32 consistent with the identified function,
33 capacity, and level of service of
34 transportation facilities significantly
35 affected by the development." Record 103.

36 We determine above that in adopting the challenged
37 decision, the city must provide specific limitations on the
38 plan designations and zoning districts ultimately applied to
39 the subject property, in order to satisfy the Goal 14 need
40 and locational factors. Conversely, to be consistent with

1 OAR 660-12-060(1)(a), the adoption of such a limitation on
2 allowable uses in the UGB amendment area must be consistent
3 with the planned function and level of service of Highway
4 26, Dersham Road and the Dersham Road interchange.

5 This subassignment of error is sustained.

6 **2. OAR 660-12-060(1)(b) and (c)**

7 OAR 660-12-060(1)(b) and (c) provide the following
8 alternative means for local governments to establish
9 compliance with the requirement of OAR 660-12-060(1) for
10 consistency with the identified function, capacity and level
11 of service of an affected transportation facility:

12 "(b) Amending the [Transportation System Plan] to
13 provide transportation facilities adequate to
14 support the proposed land uses consistent
15 with the requirements of [the TPR]; or,

16 "(c) Altering the land use designations,
17 densities, or design requirements to reduce
18 demand for automobile travel needs and meet
19 travel needs through other modes."

20 Petitioner ODOT argues as follows:

21 "* * * The city finds that it is 'premature and
22 unreasonable' to amend the various transportation
23 plans since the development pattern [of the UGB
24 amendment expansion area] is unknown. To support
25 this finding, the city relies on the evidence that
26 at least one potential scenario, [the Land Use
27 Transportation Air Quality Connection (LUTRAQ)]
28 model of development, would have no impact on the
29 transportation facilities. The revised traffic
30 impact study reviewed the use of the LUTRAQ model
31 of development. [However, t]hroughout the UGB
32 amendment, the city relies on the 'employment
33 center' scenario as justification for the
34 [proposed UGB expansion]. [T]his scenario, which
35 calls for 52 acres of residential property,

1 104 acres of light industrial property and 150
2 acres of commercial property, is, according to the
3 city, the 'worst case' scenario from a traffic
4 analysis viewpoint. As a result, the city
5 denounces the use of such a development pattern in
6 determining whether there will be impacts on the
7 transportation system while relying on this
8 pattern to justify the need for the UGB expansion.
9 The city cannot have it both ways. If the UGB
10 extension is needed based on the 'employment
11 center' scenario, then the impacts to the
12 surrounding transportation facilities that result
13 from this development scenario must be analyzed
14 and appropriately planned for." Petition for
15 Review (ODOT) 7-8. (Record citations and
16 footnotes omitted.)

17 We agree with petitioner that the city's findings concerning
18 the proposal's compliance with OAR 660-12-060(1)(b) and (c)
19 are inconsistent with the findings relied on to establish a
20 need for the proposed UGB amendment.

21 This subassignment of error is sustained.

22 **3. OAR 660-12-060(3)**

23 Under OAR 660-12-015, coordinated state, regional and
24 local Transportation System Plans are required.²¹ OAR
25 660-12-060(3) requires that plan amendments which
26 significantly affect a transportation facility be
27 "coordinated with transportation facility and service
28 providers and other affected local governments." Because
29 the city determined it was not required to establish current

²¹The state Transportation System Plan is prepared by ODOT. As relevant here, the regional Transportation System Plan is prepared by the Metropolitan Service District. Washington County is responsible for preparing a local Transportation System Plan covering the subject property.

1 compliance with the TPR at this plan amendment stage, the
2 city erroneously failed to address the coordination
3 requirement of OAR 660-12-060(3). On remand, the city must
4 do so.

5 This subassignment of error is sustained.

6 **4. OAR 660-12-060(4)**

7 OAR 660-12-060(4) provides as follows:

8 "The presence of a transportation facility or
9 improvement shall not be a basis for an exception
10 to allow residential, commercial, institutional or
11 industrial development on rural lands under this
12 division or OAR 660-04-022 and [660-04-]028."

13 Petitioners contend the challenged decision relies to a
14 great degree on the subject property's location adjacent to
15 Highway 26 and nearby Dersham Road and the Dersham Road
16 interchange. Petitioners argue the city improperly uses
17 proximity of the subject property to these transportation
18 facilities as a basis for rejecting consideration of
19 alternative sites for a UGB amendment.

20 Petitioners cite the following findings to illustrate
21 their point:

22 "* * * If North Plains is to improve its
23 livability, there must be additional large parcels
24 of commercial and industrial land within the UGB,
25 with good access to and good visibility from
26 Highway 26. If adequate sites were made
27 available, the City would have an excellent
28 opportunity to attract retailers who prefer to
29 locate on the periphery of a metropolitan area.
30 * * *" Record 60.

31 "The expansion area is ideally located adjacent to
32 the Sunset Highway [Hwy. 26], with high visibility

1 and access through the Dersham Road interchange.
2 The industrial/commercial property in the existing
3 inventory lacks these characteristics." Record
4 61.

5 OAR 660-12-060(4) prohibits using the existence of
6 transportation facilities as a basis for approving certain
7 kinds of exceptions. This would appear to mean OAR
8 660-12-060(4) prohibits justifying certain exceptions to
9 allow particular uses on the basis of actual or proposed
10 transportation facilities being near the exception area, or
11 justifying certain exceptions on the basis that the area is
12 located away from such transportation facilities.

13 We have never interpreted the scope or meaning of
14 OAR 660-12-060(4). However, we believe it is relatively
15 clear that OAR 660-12-060(4) applies to (1) exceptions to
16 the requirements of OAR 660-12-065 adopted under
17 OAR 660-12-070, and (2) exceptions to statewide planning
18 goals adopted under OAR 660-04-022 (reasons exceptions) or
19 OAR 660-04-028 (committed exceptions). The challenged
20 decision, on the other hand, approves an exception for a
21 change to an established UGB under OAR 660-04-010.
22 OAR 660-12-060(4) does not list exceptions adopted under
23 OAR 660-04-010 as being within its prohibition against the
24 consideration of transportation facilities. We conclude the
25 exception approved in the challenged decision is not within
26 the scope of OAR 660-12-060(4) and, therefore, that rule is
27 not applicable to the challenged decision.

28 This subassignment of error is denied.

1 These assignments of error are sustained.

2 **FIFTH ASSIGNMENT OF ERROR (ODOT)**

3 "The city failed to comply with Goal 6 and make
4 findings not supported by substantial evidence in
5 the record when it concluded that the proposed
6 development of the expanded UGB would have no
7 significant impacts on air or water quality."

8 **SECOND ASSIGNMENT OF ERROR (DLCD)**

9 "The city failed to comply with Goal 6 and made
10 findings not supported by substantial evidence in
11 the record when it concluded that the proposed
12 development of the expanded UGB would have no
13 significant impacts on air or water quality."

14 Goal 6 (Air, Water and Land Resources Quality) is:

15 "To maintain and improve the quality of the air,
16 water and land resources of the state."

17 Goal 6 requires that

18 "All waste and process discharges from future
19 development, when combined with such discharges
20 from existing developments shall not threaten to
21 violate, or violate applicable state or federal
22 environmental quality statutes, rules and
23 standards. With respect to the air, water and
24 land resources of the applicable air sheds and
25 river basins described or included in state
26 environmental quality statutes, rule, standards
27 and implementation plans, such discharges shall
28 not (1) exceed the carrying capacity of such
29 resources, considering long-range needs; (2)
30 degrade such resources; or (3) threaten the
31 availability of such resources.

32 "Waste and Process Discharges -- refers to solid
33 waste, thermal, noise, atmospheric or water
34 pollutants, contaminants or products therefrom.
35 Included here also are indirect sources of air
36 pollution which result in emissions of air
37 contaminants for which the state has established
38 standards."

1 Petitioners argue the challenged decision violates
2 Goal 6 because it fails to adequately establish the proposed
3 UGB amendment will not adversely affect air and water
4 quality. We address petitioners' arguments concerning air
5 and water quality separately below.

6 **A. Clean Air**

7 Petitioners advance different arguments concerning the
8 proposed UGB amendment's effect on air quality. Petitioners
9 argue (1) the challenged decision fails to establish
10 compliance with the Clean Air Act, and (2) the record lacks
11 substantial evidence to support the determination in the
12 challenged decision that the proposal will not have an
13 adverse impact on air quality.

14 **1. Compliance With Clean Air Act**

15 Petitioners argue the city erroneously failed to apply
16 the requirements of the Clean Air Act, 42 USC §§7401 et
17 seq., to the challenged decision.²² Petitioners contend the
18 Clean Air Act is applicable to the challenged decision
19 through the requirement of Goal 6 that waste or process
20 discharges not violate federal statutes, and through a

²²Petitioners also suggest the city erroneously failed to comply with the State Implementation Plan adopted under the federal Clean Air Act. See OAR 660-12-035(3)(b), quoted infra, at n 23. However, petitioners acknowledge the State Implementation Plan was not yet adopted at the time the challenged decision was made. We do not understand how the challenged decision can be erroneous for failing to comply with standards not in effect at the time the decision was adopted.

1 provision of the TPR, OAR 660-12-035(3)(b).²³

2 We do not understand the city to dispute the
3 applicability of the Clean Air Act to the challenged
4 decision.²⁴ Rather, the challenged decision expresses
5 uncertainty as to how the Clean Air Act should be applied to
6 the proposal. Specifically, the challenged decision
7 determines:

8 " * * * The ODOT memo states that North Plains is
9 within 'the Air Quality Management Area.' Without
10 more specific guidance from ODOT, the City does
11 not understand how to apply the Clean Air Act to
12 this UGB [amendment] proposal. * * *" Record 72.

13 The city also contends until there are specific development
14 proposals, it cannot establish the UGB amendment complies
15 with the Clean Air Act requirements of Goal 6.

16 We determine above that the city must coordinate the
17 challenged decision with DEQ. After coordinating with DEQ,
18 the city will become aware of at least DEQ's view of the
19 applicable requirements of the Clean Air Act. However, it
20 is ultimately the city's responsibility to correctly apply

²³OAR 660-12-035(3)(b) provides:

"The transportation system shall be consistent with state and federal standards for protection of air, land and water quality including the State Implementation Plan under the Federal Clean Air Act and the State Water Quality Management Plan[.]"

²⁴The city does contend that it need not establish compliance with state clear air regulations that are not yet in place. While this may well be accurate, it does not answer petitioners' allegation that the city must, and did not here, establish the challenged decision is in compliance with Goal 6.

1 the Clean Air Act under Goal 6. It is inadequate for the
2 city to take the position that it does not know what it must
3 do to establish such compliance.

4 Further, we state above that the city must provide
5 limits on the uses to be made of the subject land, as a part
6 of its decision to amend the UGB. Once the city does so, it
7 will be in a better position to determine compliance with
8 the Clean Air Act, as it will then have a better idea of the
9 potential air quality impacts associated with those uses.

10 This subassignment of error is sustained.

11 **2. Adverse Impact on Air Quality**

12 The challenged decision determines the following:

13 "[T]he city has hired Chester Environmental and
14 Peter Patterson (Professional Engineering
15 Geologist) to provide a preliminary analysis of
16 the impacts on air and water quality,
17 respectively, that may be caused by development of
18 the subject site. Both consultants conclude that
19 the proposed development of the subject site will
20 have no significant adverse impact on the air and
21 water quality for the North Plains area or the
22 region. * * *" Record 63.

23 Petitioners allege the record lacks evidentiary support
24 for the above quoted city findings because:

25 "* * * (1) the Chester report addresses potential
26 air quality impacts from automobile traffic only,
27 disregarding the impacts from stationary sources
28 and the fact that the City is within a
29 non-attainment area for ozone; (2) the report
30 considers impacts on ambient [carbon monoxide]
31 concentrations only, and fails to address or
32 consider other regulated air pollutants; (3) the
33 report considers potential impacts only in the UGB
34 expansion area; and (4) the report assumes that

1 certain unspecified roadway improvements * * *
2 will be made, even though such improvements are
3 not planned or made a condition of development in
4 the [UGB] expansion area. * * *" Petition for
5 Review (DLCD) 18.

6 Petitioners do not contend the evidence relied upon by
7 the city is inaccurate. Rather, petitioners argue the
8 evidence supporting the city's Goal 6 findings is
9 incomplete, and the Goal 6 analysis is, therefore,
10 inadequate. Petitioners are correct that the city failed to
11 consider (1) pollutant sources other than those associated
12 with automobile emissions, and (2) the cumulative impacts of
13 waste and process discharges from the uses to be established
14 in the subject UGB amendment area and the existing
15 discharges from existing sources. Therefore, although the
16 existing findings are supported by substantial evidence, the
17 record lacks an adequate factual base for determining the
18 proposal complies with Goal 6 with regard to impacts on air
19 quality.

20 This subassignment of error is sustained.

21 **B. Clean Water**

22 Petitioners argue the proposed UGB amendment has
23 impermissible negative water quality consequences in two
24 respects. First, petitioners allege that storm water runoff
25 will be inadequately controlled. Petitioners contend the
26 city misconstrued applicable law by concluding storm water
27 runoff could be controlled by certain treatment
28 methodologies. However, petitioners do not explain how the

1 city misconstrued the law or why they believe the proposed
2 storm water runoff will be inadequately controlled. We can
3 see no violation of law, and it is not our function to make
4 petitioners' arguments for them. Deschutes Development
5 Corp. v. Deschutes County, 5 Or LUBA 218, 220 (1982).
6 Petitioners' allegations regarding storm water runoff
7 provide no basis for reversal or remand of the challenged
8 decision.

9 Second, separate from their contentions concerning
10 storm water runoff, petitioners contend the challenged
11 decision does not determine the proposed UGB amendment will
12 or could feasibly comply with various applicable state and
13 federal water quality standards. We agree.

14 This subassignment of error is sustained, in part.

15 These assignments of error are sustained, in part.

16 **THIRD ASSIGNMENT OF ERROR (DLCD)**

17 "The city misconstrued the applicable law and
18 failed to comply with the requirements of Goal 9
19 and the Goal 9 Rule * * *."

20 Petitioner DLCD offers a number of reasons why the
21 challenged decision fails to comply with Goal 9 (Economy of
22 the State). At the outset, we note we agree with petitioner
23 DLCD that the city's Goal 9 analysis must be revised based
24 on the kinds of uses to be made of the subject property to
25 satisfy a specific need identified by the city.
26 Accordingly, on remand, if the city establishes a need under
27 the Goal 14 need factors and limits the kinds of uses that

1 may be established on the subject property, the city will
2 also be required to adjust its Goal 9 analysis. However,
3 petitioner DLCD makes other points that we address below.

4 Petitioner DLCD argues the city failed to comply with
5 OAR 660-09-025, which requires the city to adopt:

6 " * * * measures to implement policies adopted
7 pursuant to [OAR] 660-09-020. * * * Appropriate
8 implementing measures include amendments to plan
9 and zone map designations, land use regulations
10 and public facilities plans."

11 We understand petitioner DLCD to argue the city is required
12 to plan and zone the proposed UGB area for its ultimate uses
13 as part of the UGB decision. We disagree. Although the
14 city is required to limit the uses allowable in the area to
15 be included within the UGB consistent with the city's needs
16 analysis, we do not agree the only way this may be
17 accomplished is by contemporaneously applying the ultimate
18 plan and zoning required to allow those uses. Further, we
19 do not read OAR 660-09-025 to require the adoption of the
20 specific implementing plan designations and zoning
21 districts, concurrent with the adoption of a UGB amendment,
22 in all instances. OAR 660-09-020 simply establishes certain
23 Goal 9 driven requirements that are applicable at the time
24 the city adopts measures implementing a UGB amendment.

25 This assignment of error is sustained, in part.

26 **FOURTH ASSIGNMENT OF ERROR (DLCD)**

27 "The city did not comply with the requirements of
28 Goal 10 in that it did not demonstrate a need for
29 additional land within its urban growth boundary

1 for housing."

2 Petitioner DLCD contends the challenged decision fails
3 to comply with Goal 10 (Housing). As we understand it,
4 petitioner DLCD contends the city may not justify expanding
5 its UGB on the basis of a need for more housing, because the
6 "needed housing" policies of Goal 10 do not apply to cities
7 (such as the City of North Plains) having a population of
8 less than 2,500.

9 We disagree. That the city is not required to apply
10 the "needed housing" provisions of Goal 10, does not mean
11 the city may not justify a UGB expansion to accommodate a
12 mix of needed housing types within the city, so long as it
13 provides an adequate factual basis for determining the city
14 requires additional housing.

15 In the alternative, petitioner DLCD argues the city
16 failed to establish a need for additional housing.
17 Specifically, petitioner DLCD argues:

18 "* * * The City ignores its pre-UGB expansion
19 inventory of lands for housing, which contains
20 capacity for dwellings for approximately 3,000 new
21 people. That inventory and capacity is well above
22 the [year] 2010 population projection [for the
23 UGB] of 1796 [people].

24 "The City's position that it has only 24 acres of
25 land buildable for housing, and thus not enough to
26 accommodate the projected [year] 2010 population,
27 is unsupported. Although some of the City's land
28 that is zoned for housing and currently
29 undeveloped is in a flood plain and therefore not
30 buildable, the city has a 'density transfer'
31 clause in its acknowledged plan. By that clause,
32 the City can increase the density in another area

1 of buildable land to make up for the planned for,
2 but unbuildable housing in the floodplain area.
3 The City did not analyze the impact of that
4 clause. The City cannot justify a UGB expansion
5 based on a need for housing when it has not
6 analyzed its options to accommodate additional
7 housing within its current boundaries." Petition
8 for Review (DLCD) 30.

9 We agree with petitioner DLCD.

10 This assignment of error is sustained, in part.

11 **FIFTH ASSIGNMENT OF ERROR (DLCD)**

12 "The city failed to comply with Goal 11 by not
13 adequately inventorying current public facilities
14 and services and by not adequately demonstrating
15 that the UGB expansion area could be adequately
16 served."

17 Petitioner DLCD argues the proposal fails to comply
18 with Goal 11 (Public Facilities and Services).

19 We believe that because the challenged decision fails
20 to provide adequate limitations on the kinds of planning
21 designations and zoning districts to be applied to the
22 subject land, the city has an inadequate factual basis for
23 concluding that any particular level of public facilities
24 can be provided. See Johnson v. Tillamook County, supra.
25 Specifically, at this point, the city is not in a position
26 to determine what public facilities and services will be
27 required to serve the UGB expansion area or whether that
28 level of service can be provided to that area.

29 Until the city establishes meaningful limitations on
30 the planning designations and zoning districts potentially
31 applicable to the subject property, it will not likely be

1 able to establish compliance with Goal 11. Finally, we note
2 that we agree with petitioner DLCD that in establishing
3 compliance with Goal 11, the city must determine the
4 adequacy of all public facilities and services, including
5 elementary and secondary schools.

6 This assignment of error is sustained.

7 **EIGHTH ASSIGNMENT OF ERROR (DLCD)**

8 "The city's revised Annexation/Urbanization Policy
9 is in violation of state law, ORS 222.111."

10 During the oral argument for this appeal, petitioner
11 DLCD specifically withdrew this assignment of error.
12 Therefore, we need not consider it further.

13 **NINTH ASSIGNMENT OF ERROR (DLCD)**

14 "The city has adopted an unenforceable condition
15 on the challenged urban growth boundary
16 expansion."

17 Petitioner DLCD challenges the three conditions adopted
18 by the city generally requiring that no development of the
19 UGB expansion area be allowed prior to annexation and that
20 urban planning and zoning designations be applied to the
21 subject land at the time of annexation.²⁵ We determine
22 above that these conditions fail to provide an adequate
23 limitation on possible uses that could be established on the
24 subject property. Petitioner DLCD is correct that these
25 conditions provide no enforceable limitation on the planning

²⁵These conditions are quoted in full in the text, supra.

1 and zoning designations eventually applied to govern the mix
2 of uses allowed on the subject property.

3 This assignment of error is sustained.

4 The city's decision is remanded.

5