

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision by a city code analyst to
4 issue a building permit.

5 **MOTION TO INTERVENE**

6 Hyundai Electronics America (intervenor) moves to
7 intervene on the side of the respondent. There is no
8 opposition to the motion, and it is allowed.

9 **FACTS**

10 On July 7, 1995, intervenor applied for a partial
11 building permit for site preparation on the subject
12 property, which is zoned Special Industrial District (I-1).
13 The project was described as "[p]reliminary rough grading
14 for erosion control and sedimentation." Record 258. A city
15 code analyst approved the application on December 21, 1995,
16 and this appeal followed.

17 **JURISDICTION**

18 Subject to certain exceptions, this Board has exclusive
19 jurisdiction to review local government land use decisions
20 and limited land use decisions.¹ ORS 197.825. Intervenor

¹ORS 197.015(10) provides, in relevant part:

"'Land use decision':

"(a) Includes:

"(A) A final decision or determination made by a local
government or special district that concerns the
adoption, amendment or application of:

1 argues the challenged decision is neither, and contends we
2 do not have jurisdiction.

3 **A. Statutory Land Use Decision**

4 Petitioner contends the challenged decision is a
5 statutory land use decision because the issuance of a
6 permit must be done in compliance with both the Eugene-
7 Springfield Metropolitan Area General Plan (Metro Plan) and
8 all applicable land use regulations. Petitioner maintains
9 that the project giving rise to the permit cannot comply
10 with Eugene Code (EC) 9.442 and 9.445.

11 Intervenor responds that the decision approves a
12 building permit issued under clear and objective land use
13 standards, and is therefore expressly excluded from the

"(i) The goals;

"(ii) A comprehensive plan provision;

"(iii) A land use regulation; or

"(iv) A new land use regulation; or

"(B) * * * ; and

"(b) Does not include a decision of a local government:

"(A) Which is made under land use standards which do not
require interpretation or the exercise of policy or
legal judgment;

"(B) Which approves or denies a building permit issued
under clear and objective land use standards;

"(C) Which is a limited land use decision; or

"* * * * *"

1 definition of "land use decision" by ORS 197.015(10)(b)(B).²

2 The issuance or denial of a building permit can be a
3 land use decision if it involves the application of the
4 Statewide Planning Goals, a comprehensive plan, a zoning
5 ordinance or other ordinance implementing a comprehensive
6 plan. Bell v. Klamath County, 77 Or App 131, 134-35, 711
7 P2d 209 (1985). See also Wright v. KECH-TV, 300 Or 139,
8 147, 707 P2d 1232, cert den 476 US 1117 (1986). However, if
9 the land use standard that is applied is "clear and
10 objective," ORS 197.015(10)(b)(B) precludes our
11 jurisdiction. We have interpreted "made under clear and
12 objective land use standards" to mean "not requiring the
13 exercise of significant factual or legal judgment." Heceta
14 Water District v. Lane County, 24 Or LUBA 402, 408 (1993).
15 See also Doughton v. Douglas County, 82 Or App 444, 728 P2d
16 887 (1986), rev den 303 Or 74 (1987).

17 Intervenor's contention that the building permit was
18 issued pursuant to clear and objective standards is based on
19 EC 9.443. Under EC 9.443, the manufacturing and assembly of
20 "electronic components and accessories" is a permitted use
21 in the I-1 zone. Since intervenor proposes to build a
22 facility for the manufacture of semiconductors, which are
23 indisputably electronic components and accessories, we agree

²Intervenor does not address whether the challenged decision is a limited land use decision. However, it clearly is not. See ORS 197.015(12).

1 with intervenor that if only EC 9.443 applies, the
2 determination of compliance with the city's land use
3 regulations does not require the exercise of significant
4 factual or legal judgment.

5 Petitioner's contention that the building permit is not
6 issued pursuant to clear and objective standards is based on
7 its contention that EC 9.442 and EC 9.445(c) also apply. We
8 have already determined that EC 9.442 was "adopted to guide
9 the city in determining which uses should be allowed
10 outright in the I-1 district" and "does not contain
11 mandatory approval standards applicable to individual
12 development applications for the outright uses listed in
13 EC 9.443."³ Friends of Eugene v. City of Eugene, ___ Or
14 LUBA ___ (LUBA No. 95-255, Order on Motion for Stay,
15 December 26, 1995) (Friends I), slip op 4.

16 If, as petitioner contends, EC 9.445(c) applies, the
17 city must apply site review criteria that require the

³EC 9.442 ("Description and Purpose") provides, in relevant part:

"The purpose of the I-1 Special Industrial District is to protect and enhance the sites identified as Special Light Industrial in the Metropolitan Area General Plan in order to efficiently accommodate large concentrations of specialized light industrial and related uses. These uses:

"* * * * *

"(b) Do not generate offensive external impacts or tolerate noise, pollution, or substantial emissions.

"* * * * *"

1 exercise of significant legal and factual judgment.⁴
2 EC 9.445(c) applies only if the subject property is located
3 in an industrial park. In Friends I we concluded,
4 based on statements made by the attorneys at oral argument
5 on an urgent motion for stay, that the subject property is
6 not in an industrial park.

7 "The proposed use is a single manufacturing
8 facility, not 'a variety of industrial and
9 industrially related activities having a
10 comprehensive development plan.' Petitioner does
11 not seriously contend that the subject property is
12 within an industrial park." Friends I, slip op 3.

13 Petitioner now renews its contention the property is in an
14 industrial park.

15 That cannot be determined from the record filed in this
16 appeal, which contains little more than engineering data
17 related to the challenged fill permit. However, both
18 petitioner and intervenor attach exhibits to their briefs

⁴EC 9.445(c)(2) provides that

"Buildings and uses within an industrial park as provided for in the I-1 district shall be approved in accordance with site review criteria set forth in Chapter 9 of this code, except that written affirmative findings * * * shall be required in lieu of the site review criteria in Chapter 9 of this code."

"Industrial park" is defined by EC 9.015 as:

"Any planned industrial development designed as a coordinated environment for a variety of industrial and industrially related activities, having a comprehensive development plan that ensures compatibility among planned uses as well as compatibility of those uses with adjacent properties, which occurs on a parcel or adjacent parcels under single ownership or development control."

1 intended to provide a factual context to supplement the
2 record. To the extent these exhibits cast light on whether
3 the property is in an industrial park and thus whether we
4 have jurisdiction, we consider them. See Mazeski v. Wasco
5 County, ___ Or LUBA ___ (LUBA No. 95-021, April 29, 1996),
6 slip op 4-5; Hemstreet v. Seaside Improvement Comm., 16 Or
7 LUBA 630, 631-33 (1988) (where both parties submit documents
8 outside the record related to LUBA's jurisdiction, LUBA will
9 consider the documents).

10 Petitioner contends that the proposed site itself is
11 part of a larger subdivision, designated as an industrial
12 park in the Metro Plan. Petitioner relies on the
13 Metropolitan Industrial Lands Policy Report (Industrial
14 Lands Report), which states, in what appears to be an
15 inventory of sites available for industrial and business
16 development:

17 "Site 2-84: A 215 acre Special Light site with
18 one owner, this is the Willow Creek Industrial
19 Park site considered appropriate for campus
20 industrial use.^[5] A portion of the site is
21 considered available in the short-term and the
22 remainder available over a longer time frame due
23 to the cost of extending the sewer across such a
24 large area. A large user could also make use of
25 more of the site in the short term. A small
26 portion of the site is affected by soil
27 constraints." Industrial Lands Report at 45,
28 Petition for Review, Exhibit K.

⁵The parties agree that a site including the subject property was once designated the "Willow Creek Industrial Park" and also the "Madrona Hills Business Park."

1 Notwithstanding the indication that when the Industrial
2 Lands Report was prepared in 1993, the Willow Creek
3 Industrial Park site was "considered appropriate" for campus
4 industrial use, nothing submitted by petitioner indicates
5 the entire site was limited to that use. The zoning itself
6 imposes no such limitation.

7 Petitioner also relies on the filing of an industrial
8 park plat by a developer in 1983. Petition for Review,
9 Exhibit E. At most, the plat shows that at one time a
10 developer hoped to develop the property as an industrial
11 park. It does not limit future uses of the property.

12 Finally, petitioner relies on a number of industrial
13 park proposals involving small areas within the 1983 Willow
14 Creek Industrial Park plat. See Petition for Review,
15 Exhibits F-J. These proposals do not involve the subject
16 property and do not limit its use.

17 The materials attached to petitioner's brief do not
18 show the subject property to be part of an existing
19 industrial park, although the property has been considered
20 for an industrial park at various times. Intervenor's
21 proposal, the most recent, is for a single use. Since the
22 subject property is not part of an existing industrial park,
23 and since intervenor has not proposed the development of an
24 industrial park, we conclude EC 9.445(c) does not apply. An
25 industrial park review would be meaningless if applied to a
26 single use proposed by a single developer.

1 The proposed use is allowed outright in the I-1 zone
2 under EC 9.443. Therefore, the city's decision to issue a
3 fill permit is not a statutory land use decision over which
4 we have jurisdiction.

5 **B. Significant Impact Land Use Decision**

6 Petitioner also argues the challenged decision is a
7 significant impact land use decision, because it will have a
8 significant impact on present and future land uses. See
9 Billington v. Polk County, 299 Or 471, 703 P2d 232 (1985);
10 City of Pendleton v. Kerns, 294 Or 126, 653 P2d 992 (1982).
11 Intervenor responds the significant impact test does not
12 apply to types of land use decisions, such as this,
13 specifically excluded from our jurisdiction by statute.

14 We agree with intervenor. See Parmenter v. Wallowa
15 County, 19 Or LUBA 271, 275 n5 (1990); Oregonians in Action
16 v. LCDC, 19 Or LUBA 107, aff'd 103 Or App 35 (1990).

17 This appeal is dismissed.