



1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the city's adoption of an ordinance regulating the development of  
4 manufactured home parks (MHPs).

5 **MOTION TO INTERVENE**

6 Oregon Manufactured Home Association (OMHA) moves to intervene on the side of  
7 petitioners. There is no opposition to the motion, and it is allowed.

8 **MOTION TO FILE REPLY BRIEF**

9 OMHA moves for permission to file a reply brief pursuant to OAR 661-10-039.  
10 Attached to the motion is the reply brief. The motion explains that the city's response brief  
11 raises a new matter regarding application of the waiver doctrine in appeals involving  
12 legislative land use decisions.

13 We agree with OMHA that the response brief raises a new matter and that the reply  
14 brief, confined to the new issue raised in the response brief, is permissible.

15 OMHA's motion to file a reply brief is granted.

16 **MOTION TO FILE STATE AGENCY BRIEF**

17 The Department of Land Conservation and Development (DLCD) moves for  
18 permission to file a state agency brief, pursuant to ORS 197.830(7) and OAR 661-10-038.  
19 Those provisions allow a state agency that is not a party to the appeal to file a brief with  
20 LUBA as if it were a party, where the agency has an order, rule, ruling, policy or other action  
21 at issue in an appeal before LUBA. DLCD explains in its motion and brief that the petition  
22 for review assigns error to the city's failure to comply with Goal 10, including the Goal 10-  
23 driven requirement that the city coordinate with affected jurisdictions in developing housing  
24 regulations that implicate needed housing. DLCD argues that the petition for review thus  
25 places at issue one of its rules, OAR 660-008-0030, which implements Goal 10 in requiring  
26 local governments to consider regional housing needs and coordinate with the local

1 coordinating body in making decisions allocating housing types and densities. DLCD argues  
2 that the city violated OAR 660-008-0030 and, for that reason, the challenged decision should  
3 be remanded.

4 The petition for review does not mention OAR 660-008-0030, but it cites the subject  
5 matter of OAR 660-008-0030, the Goal 10-driven coordination requirement, as a basis for  
6 reversal or remand. We agree with DLCD that OAR 660-008-0030 is thus "at issue" for  
7 purposes of ORS 197.830(7), because any judicial resolution of the assignment of error  
8 regarding Goal 10 might constrain or affect application of OAR 660-008-0030 in other cases.

9 However, ORS 197.830(7) requires the agency to file its brief within the time allowed  
10 for the respondent's brief. DLCD filed its motion and brief ten days after the respondent's  
11 brief was due and approximately 14 days before oral argument.<sup>1</sup> The city opposes the filing  
12 of DLCD's agency brief, arguing that its substantial rights will be prejudiced if DLCD's  
13 motion is granted. The city states that DLCD's late filing deprives it of opportunity to file an  
14 amended response brief addressing DLCD's arguments, and that without an amended  
15 response brief, the city will have no opportunity to challenge DLCD's arguments.

16 Violations of our rules that do not interfere with our review of a land use decision or  
17 prejudice the substantial rights of the parties are not a basis to deny a motion to file a  
18 pleading in LUBA review proceedings. OAR 661-10-005. The parties' substantial rights  
19 include rights to (1) the speediest practicable review, (2) a reasonable opportunity to prepare  
20 and submit argument, and (3) a full and fair hearing. Broetje-McLaughlin v. Clackamas  
21 County, 21 Or LUBA 604 (1991). The city has not demonstrated that its substantial rights  
22 have been prejudiced by DLCD's failure to timely file its agency brief. The city does not  
23 explain why it could not have moved to file an amended response brief, accompanied by that

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<sup>1</sup>DLCD has not sought permission to participate in oral argument.

1 amended brief, within the 14 days before oral argument, nor why oral argument does not  
2 provide it ample opportunity to rebut DLCD's arguments.

3 DLCD's motion for leave to file a state agency brief is granted.

4 **FACTS**

5 Creswell is a small city located in close proximity to the Eugene-Springfield  
6 metropolitan area. The city's current population is 3,575, and is projected to increase to  
7 5,400 by the year 2015. Approximately 67 percent of the city's population falls within the  
8 low to moderate income range. Approximately 16 percent of existing housing consists of  
9 manufactured homes in MHPs. The city projects that economic growth in the city will cause  
10 the proportion of low to moderate income residents to fall from 67 percent to 40 percent by  
11 the year 2015.

12 In recent years, the city has experienced residential development pressure, including  
13 proposals to develop MHPs. In mid-1997, the city enacted a moratorium on development of  
14 new MHPs, multi-family dwellings or recreational vehicle parks, in order to allow the  
15 planning commission time to develop an ordinance to adopt standards for these types of  
16 development. The planning commission conducted a series of meetings and hearings, and as  
17 a result concluded that there were enough MHPs in the city to meet the city's needs for the  
18 next 20 years. Accordingly, the planning commission drafted, and the city council adopted,  
19 Ordinance 383, which in relevant part deletes provisions in the city's zoning code allowing  
20 MHPs as a conditional use in residential zones, creates a floating "subzone" for MHPs that is  
21 not currently applied to any land within the city, and allows the MHP subzone to be applied  
22 to any residentially-zoned land where the area is deemed "appropriate" for MHPs. Under  
23 Ordinance 383, an applicant seeking to develop a new MHP in the city must apply to rezone  
24 land to the MHP designation. As part of the rezoning application, the applicant must provide  
25 to the city a buildable lands inventory demonstrating that the MHP designation will not  
26 create an "imbalance" in the city's housing types, and demonstrating a current or anticipated

1 need for MHP housing. The MHP subzone may only be applied to lots or parcels less than  
2 five acres in size that are already zoned residential, with slopes not exceeding 10 percent,  
3 that abut and take access from an arterial or major collector street, and that are not  
4 contiguous or directly across the street from an existing MHP. Ordinance 383 also classifies  
5 manufactured homes by age, size and number of sections, and allows or restricts different  
6 classes of manufactured homes in different areas of the city.

7 Petitioners appeal the city's adoption of Ordinance 383.

8 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

9 Petitioners<sup>2</sup> argue that the challenged ordinance violates ORS 197.480<sup>3</sup> and

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<sup>2</sup>Petitioners and OMHA filed a combined petition for review. We follow the city in referring to both petitioners and OMHA as "petitioners" where separate reference is unnecessary.

<sup>3</sup>ORS 197.480 provides in relevant part:

- "(1) Each city and county governing body shall provide, in accordance with urban growth management agreements, for mobile home or manufactured dwelling parks as an allowed use, by July 1, 1990, or by the next periodic review after January 1, 1988, whichever comes first:
  - "(a) By zoning ordinance and by comprehensive plan designation on buildable lands within urban growth boundaries; and
  - "(b) In areas planned and zoned for a residential density of six to 12 units per acre sufficient to accommodate the need established pursuant to subsections (2) and (3) of this section.
- "(2) A city or county shall establish a projection of need for mobile home or manufactured dwelling parks based on:
  - "(a) Population projections;
  - "(b) Household income levels;
  - "(c) Housing market trends of the region; and
  - "(d) An inventory of mobile home or manufactured dwelling parks sited in areas planned and zoned or generally used for commercial, industrial or high density residential development.

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1 197.307(3).<sup>4</sup> Petitioners explain that ORS 197.480 requires the city to provide for MHPs as  
2 an allowed use on buildable lands within its urban growth boundary, subject only to  
3 objective criteria and standards, sufficient to accommodate the need established by the city's  
4 projection of need for MHPs. That projection is to be based on population forecasts, income  
5 levels, market trends in the region, and an inventory of existing MHPs within the city. In  
6 addition, petitioners argue that ORS 197.307(3) requires the city to permit MHPs in one or  
7 more zoning districts with sufficient buildable land to satisfy the need for MHPs and apply  
8 that zoning district to buildable land in the city.

9 Petitioners contend that Ordinance 383 is inconsistent with the statutory requirements  
10 of ORS 197.480 and 197.307(3). Petitioners characterize the terms and effect of Ordinance  
11 383 as prohibiting new MHPs from all land within the city, without any analysis of need  
12 based on population, income and market trends. Further, Ordinance 383 subjects any future  
13 applications to rezone land to the MHP designation to standards and criteria that, petitioners  
14 contend, are not clear or objective and which the city's analysis assumes will be impossible to  
15 satisfy for the next 20 years. Petitioners particularly find offensive the burden imposed on  
16 the applicant by Ordinance 383 to submit a buildable lands inventory that demonstrates a

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- "(5) (a) A city or county may establish clear and objective criteria and standards for the placement and design of mobile home or manufactured dwelling parks.
- "(b) If a city or county requires a hearing before approval of a mobile home or manufactured dwelling park, application of the criteria and standards adopted pursuant to paragraph (a) of this subsection shall be the sole issue to be determined at the hearing.
- "(c) No criteria or standards established under paragraph (a) of this subsection shall be adopted which would preclude the development of mobile home or manufactured dwelling parks within the intent of ORS 197.295 and 197.475 to 197.490."

<sup>4</sup>ORS 197.307(3)(a) provides:

"When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for seasonal and year-round farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need."

1 current or anticipated need for MHPs, a need the city has declared does not and will not exist  
2 for at least 20 years. Petitioners argue that Ordinance 383 improperly shifts to applicants a  
3 burden that is imposed by statute on the city, and, along with other restrictions in Ordinance  
4 383, makes it virtually impossible to develop MHPs in the city for the next 20 years. Finally,  
5 petitioners argue that the city seeks to shift the burden of supplying needed housing to other  
6 jurisdictions by using Ordinance 383 as an improper means to reduce the proportion of low  
7 and moderate income residents in the city.

8 The city responds that petitioners misunderstand the purpose and effect of Ordinance  
9 383, and that Ordinance 383, properly understood, fully complies with ORS 197.480 and  
10 197.307.<sup>5</sup> The city contends that it conducted the housing survey and needs analysis  
11 required by ORS 197.480(2). The city explains that it currently has 1,375 housing units, 934  
12 of them needed for low to moderate income residents. The city projects that it will need a  
13 total of 2,204 units by the year 2015, of which 937 units will be needed for low to moderate  
14 income residents, for a net increase in needed housing of three units.

15 The city further explains that it has embarked on a series of unspecified economic

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<sup>5</sup>The city makes one common response to each of the assignments of error, arguing that petitioners failed to raise in proceedings below many of the issues raised in the assignments of error and thus those issues have been waived. The city recognizes that the challenged decision is a legislative decision and thus, under long-established precedent, the raise it or waive it provisions of ORS 197.763(1) do not bar petitioners from raising issues on appeal that were not raised in the local proceeding. Opus Development Corp. v. City of Eugene, 28 Or LUBA 670, 678 (1995) (the raise it or waive it principle applies only to quasi-judicial decisions). However, the city argues that recent statutory changes to ORS 197.830(10) and 197.835(2) have had the effect of extending the raise it or waive principle to legislative decisions. The city points out that 1995 statutory amendments moved language relied upon in Opus and similar cases from ORS 197.830(10) to 197.830(3), and from ORS 197.835(2) to 197.835(3). Further, the city notes that ORS 197.835(4) allows petitioners to raise new issues on review of quasi-judicial decisions where the local government failed to list the applicable criteria governing a quasi-judicial decision. The city argues that ORS 197.835(4) impliedly limits review of all land use decisions, including legislative decisions, to issues raised in the proceedings below.

OMHA replies, and we agree, that the statutory changes the city cites were merely housekeeping and organizational changes that did not delete any of the provisions relied upon in Opus and similar cases. None of the statutory amendments the city points to can be construed as having the intent or effect of imposing the raise or waive it principle on review of legislative decisions. Further, we disagree with the city that ORS 197.835(4), which expands the range of issues a petitioner can raise in review of quasi-judicial decisions, impliedly restricts the range of issues reviewable in legislative decisions. The city's pervasive argument to the contrary is incorrect.

1 plans and policies<sup>6</sup> that will cause the income levels of all existing and future residents to  
2 rise, with the projected result that the percentage of low to moderate income residents will  
3 decline from 67 percent to 40 percent by the year 2015. The city states that nearly all of the  
4 future population increase is projected to consist of middle or upper income residents, and  
5 based on that projection, it determined that the housing need for low to moderate income  
6 housing will remain unchanged over the 20 year planning period, with the result that the city  
7 currently possesses all the housing it will need for low to moderate income residents over the  
8 next 20 years.

9 Further, the city states that its inventory determined that the city has proportionately  
10 far more MHP spaces than any other city in the region, as well as proportionately more low  
11 to moderate income residents than the county average. The city explains that it determined,  
12 based on the "experience" of the city's policymakers, that MHPs provide housing  
13 opportunities primarily for low income residents, specifically that 99 percent of the  
14 occupants of MHP spaces are low income. Based on the inventory, and the city's projected  
15 needs, the city decided that restricting the opportunity for developing new MHPs was an  
16 appropriate means to reach the desired housing and income mix.

17 Finally, the city disputes petitioners' contention that it failed to consider regional  
18 housing needs. The city argues that had it not acted to restrict new MHPs in the city, more  
19 MHPs would have been developed, leading to a disproportionate concentration of such  
20 housing, as well as low to moderate income residents, in the city, and thus depriving other  
21 cities of the opportunity to provide needed housing.

22 We agree with petitioners that Ordinance 383 is inconsistent with ORS 197.480 and  
23 197.307(3). ORS 197.480(2) requires the city to establish a projection of need for MHPs

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<sup>6</sup>The economic plans and policies are not described and do not appear in the record. The city explains that there was no need for planning staff to elaborate on these policies because they were "well known to the City Council." Respondent's Brief 13.

1 based on population and income projections, market trends, and current inventory. ORS  
2 197.480(1) requires that each city provide for MHPs as "an allowed use" on buildable lands  
3 and in areas planned and zoned for residential density of six to 12 units per acre "sufficient to  
4 accommodate the need established" pursuant to ORS 197.480(2). The fundamental flaw in  
5 the city's projected need for MHPs is its unexplained and inexplicable conclusion that the  
6 entirety of its projected population increase over the next 20 years will consist of persons in  
7 upper income levels, resulting in the city's need for low to moderate income housing will  
8 remaining unchanged. The city provides no factual basis for that conclusion.

9 Further, the means by which the city provides for needed housing conflicts with ORS  
10 197.480(1), which requires that specific lands be designated and zoned to allow for MHP  
11 development, commensurate with the need established in the city's needs analysis. The city's  
12 floating "subzone" that if found to be "appropriate" may be applied to property as part of a  
13 rezoning process is not consistent with the requirements of ORS 197.480(1).

14 Finally, we agree with petitioners that the standards under which Ordinance 383  
15 allows new MHP development place an impermissible burden on applicants to submit a  
16 buildable lands inventory that demonstrates a current or projected need for the proposed  
17 MHP.

18 The first and second assignments of error are sustained.

19 **THIRD ASSIGNMENT OF ERROR**

20 Petitioners argue that Ordinance 383 violates ORS 197.307, which requires that any  
21 approval standards respecting needed housing, including manufactured dwellings, be clear  
22 and objective and not have the effect, in themselves or cumulatively, of discouraging needed  
23 housing through unreasonable cost or delay. Petitioners incorporate their argument in the  
24 first and second assignments of error, emphasizing that the burden Ordinance 383 places on  
25 applicants, to apply for a zone change and a site review approval and demonstrate a need for

1 a MHP, has the effect of discouraging needed housing through both unreasonable cost and  
2 delay.

3 The city repeats its responses in the first and second assignments of error, adding  
4 only an argument that petitioners have failed to demonstrate that Ordinance 383 imposes an  
5 unreasonable cost or delay in the approval of needed housing in the city.

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1           We concluded in the first and second assignments of error that the city erred in its  
2 needed housing analysis. The city’s flawed analysis renders discussion of the third  
3 assignment of error somewhat theoretical, as it is difficult to determine whether particular  
4 criteria discourage needed housing when the city has not adequately determined what its  
5 housing needs are. Nonetheless, even assuming the city had made an adequate housing  
6 needs analysis, we agree with petitioners that the means by which the city regulates MHPs  
7 violates ORS 197.307(6). ORS 197.480(1) requires each city to provide for MHPs as an  
8 allowed use within its urban growth boundary. Imposing on applicants the evidentiary  
9 burden of proving a need for new MHPs and the procedural burden of applying for a  
10 rezoning and site review for what is supposed to be an allowed use violates ORS 197.480(1)  
11 and is inconsistent with the ORS 197.307(6) requirement for clear and objective approval  
12 standards and procedures.<sup>7</sup>

13           The third assignment of error is sustained.

14           **FOURTH ASSIGNMENT OF ERROR**

15           Petitioners argue that Ordinance 383 violates ORS 197.485 in prohibiting placement  
16 of mobile homes built prior to June 15, 1976. ORS 197.485 bars a jurisdiction from  
17 prohibiting placement of manufactured dwellings due solely to the age of the dwelling “in a  
18 zone with a residential density of eight to 12 units per acre.”

19           The city responds, dispositively, that all residential zoning in the city permits a  
20 maximum of 7.26 units per acre, and thus that ORS 197.485 does not, by its terms, apply to  
21 prevent the city from prohibiting placement of mobile homes on the basis of their age.

22           The fourth assignment of error is denied.

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<sup>7</sup> While the evidentiary and procedural burdens imposed by the city could, in particular cases, have the effect of discouraging MHPs through unreasonable cost and delay in violation of ORS 197.307(6), we do not agree with petitioners that those burdens would necessarily have that effect has a matter of law. Rogue Valley Assoc. of Realtors v. City of Ashland, \_\_\_ Or LUBA \_\_\_ (LUBA No. 97-260, September 24, 1998 ) slip op 28.

1 **FIFTH ASSIGNMENT OF ERROR**

2 Petitioners argue that the Creswell Comprehensive Plan (CCP) provides no basis for  
3 Ordinance 383. Petitioners argue that Ordinance 383 eliminates the housing choice of new  
4 MHPs and is thus inconsistent with CCP provisions that requires the city to accommodate  
5 housing needs and offer housing choices and development flexibility, and that requires the  
6 city to “continue to integrate mobile home and/or factory housing into the local housing  
7 inventory[.]” CCP 87. Petitioners contend that the city council ignored pertinent  
8 comprehensive plan language and simply found in a conclusory fashion that Ordinance 383  
9 complied with the city’s plan.

10 The challenged decision states:

11 “The proposed amendments to the Creswell Zoning Code are in conformity  
12 with the Creswell Comprehensive Plan and the Statewide Planning Goals.  
13 The amendments conserve recognized open spaces and protect scenic  
14 resources, enhance the protection of life and property from natural hazards,  
15 assure that there will be an adequate and balanced supply of housing for the  
16 residents of Creswell and assure an orderly, safe and convenient development  
17 of public facilities and services.” Record 4 (emphasis added).

18 The city responds that in the quoted passage the city council interpreted the  
19 comprehensive plan as requiring a balance of housing types, a balance that, according to the  
20 city, was in danger of being destabilized by increasing pressure to develop housing in MHPs.  
21 The city contends that the council’s interpretation is not “clearly wrong,” or inconsistent with  
22 any text, purpose or policy in the plan, and thus we must defer to that interpretation. ORS  
23 197.829(1); Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992).

24 The quoted passage does not address any particular provision of the comprehensive  
25 plan, nor does it expressly or implicitly narrow the range of possible meanings for any  
26 provision to one discernible meaning. Thus, to the extent it contains an interpretation at all,  
27 that interpretation is inadequate for our review. ORS 197.829(2).<sup>8</sup> Accordingly, we may,

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<sup>8</sup>ORS 197.829(2) provides:

1 but need not, make our own determination whether the city’s decision is consistent with its  
2 comprehensive plan. Id.; Opp v. City of Portland, 153 Or App 10, 13-14, 955 P2d 768  
3 (1998).

4 However, for the following reasons, we conclude that it is not appropriate to exercise  
5 our discretion under ORS 197.829(2). Policies stated in the comprehensive plan are  
6 mandatory requirements. CCP 70-71. Both parties cite to the following comprehensive plan  
7 policies:

8 “[The purpose of the residential land use designation is to] provide for,  
9 encourage, promote and protect the character of community residential areas  
10 having a suitable environment for a range of housing choices in support of  
11 small city urban and suburban family life.” CCP 80.

12 “Through land use policies of the Comprehensive Plan, the City shall provide  
13 an adequate inventory of residential lands to accommodate anticipated  
14 housing needs which offer housing choices and development flexibility.”  
15 CCP 87.

16 “The City shall meet its needs for mobile homes by allowing mobile home  
17 subdivisions as a permitted use in the residential zone.” CCP 82.

18 “The City shall continue to integrate mobile home and/or factory housing into  
19 the local housing inventory through development guidance and zoning  
20 administration.” CPP 87.

21 The cited policies recognize the need to accommodate anticipated housing demands,  
22 including mobile homes, and the desire to encourage or maintain a range of housing choices,  
23 which may be plausibly construed as prohibiting restraints on particular types of housing as  
24 well as authorizing such restraints or imposing a particular mix of housing types. Because  
25 the purpose of these provisions is unclear and the cited policies support radically conflicting  
26 interpretations, exercise of our discretion under ORS 197.829(2) is unwarranted. Bradbury  
27 v. City of Bandon, \_\_\_ Or LUBA \_\_\_ (LUBA No. 97-033, November 25, 1997), slip op 6.

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“If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct.”

1 Remand is necessary for the city to provide an explanation, supported by any necessary  
2 interpretation of the cited policies, of why its decision is consistent with those policies.

3 Under this assignment of error, petitioners also make what appear to be two  
4 subassignments of error, arguing that (1) the city failed to coordinate its decision with other  
5 affected agencies and local governments as required by the CCP; and (2) Ordinance 383  
6 effects such substantive changes that the city should be required to amend its comprehensive  
7 plan to provide a specific basis for Ordinance 383. However, petitioners fail to cite any  
8 provision of the CCP that can plausibly be read to require coordination with other affected  
9 agencies or local governments. Nor do petitioners cite any authority requiring the city to  
10 amend its comprehensive plan in order to provide a basis for the challenged land use  
11 regulation. To the extent petitioners argue under the second subassignment of error that the  
12 challenged land use regulations are inconsistent with plan provisions and therefore those  
13 provisions must be amended to allow the regulations, we address those arguments above.

14 The fifth assignment of error is sustained, in part.

15 **SIXTH ASSIGNMENT OF ERROR**

16 Petitioners argue that the city's decision does not comply with Goal 10 (Housing)  
17 because it is not based on a buildable lands inventory, housing needs projection, or any other  
18 fact-based assessment of housing needs.

19 Petitioners contend, first, that we may review the challenged land use regulations for  
20 compliance with Goal 10 and other pertinent statewide planning goals because the city's  
21 comprehensive plan does not contain specific policies or other provisions that provide the  
22 basis for those regulations. ORS 197.835(7).<sup>9</sup> Petitioners argue, and we agree, that the city

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<sup>9</sup>ORS 197.835(7) provides:

"The board shall reverse or remand an amendment to a land use regulation or the adoption of  
a new land use regulation if:

"(a) The regulation is not in compliance with the comprehensive plan; or

1 has not cited any specific comprehensive plan policies or other basis to remove an entire  
2 category of housing types from the city’s future housing stock.

3 Goal 10 requires that local governments

4 “provide for the housing needs of citizens of the state. Buildable lands for  
5 residential use shall be inventoried and plans shall encourage the availability  
6 of adequate numbers of needed housing units at price ranges and rent levels  
7 which are commensurate with the financial capabilities of Oregon households  
8 and allow for flexibility of housing location, type and density.”

9 OAR chapter 660, division 8 implements Goal 10. OAR 660-008-0010 provides that:

10 “The mix and density of needed housing is determined in the housing needs  
11 projection. Sufficient buildable land shall be designated on the comprehensive  
12 plan map to satisfy housing needs by type and density range as determined in  
13 the housing needs projection. The local buildable lands inventory must  
14 document the amount of buildable land in each residential plan designation.”

15 OAR 660-008-0005(5) defines “housing needs projection” as

16 “a local determination, justified in the plan, of the mix of housing types and  
17 densities that will be:

18 “(a) Commensurate with the financial capabilities of present and future  
19 area residents of all income levels during the planning period;

20 “(b) Consistent with any adopted regional housing standards, state statutes  
21 and Land Conservation and Development Commission administrative  
22 rules; and

23 “(c) Consistent with Goal 14 requirements.”

24 Petitioners argue, and we agree, that local governments cannot adopt land use  
25 regulations that restrict or eliminate places that accommodate certain housing types without  
26 basing that regulation on the buildable lands inventory and housing needs projection required  
27 by Goal 10. According to petitioner, the city’s comprehensive plan does not contain a  
28 cognizable Goal 10 buildable lands inventory or housing needs projection, and the facts and

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

1 analyses relied upon in the present decision are insufficient to supply that deficit. Petitioners  
2 argue that those facts and analyses amount to anecdotes regarding the character and impacts  
3 of MHPs and the city's wishful thinking regarding the projected housing needs of the city's  
4 future residents. Petitioners contend that Ordinance 383 is unsupported by reference to or  
5 reliance on the building lands inventory or housing needs projection required by Goal 10.

6 The city responds that it based Ordinance 383 on population projections obtained  
7 from the county, information on housing growth and housing patterns in the city, and the  
8 decision-makers' personal experiences with some of the problems associated with the  
9 development of MHPs in the city. The city explains that its experience with its MHPs led it  
10 to conclude that MHPs were primarily used for low-income housing, and that, despite recent  
11 demand for MHPs, the positive economic forecast for the city indicated that projected  
12 population growth in the city would consist entirely of middle or upper income residents and  
13 thus future demand for new MHPs would fall to zero. Thus, the city projected that of the 829  
14 new housing units needed to house the projected year 2015 population, few or none would  
15 need to be low to moderate income housing. The city suggests that this information is  
16 sufficient to constitute the "housing needs projection" required by Goal 10 and defined by  
17 OAR 660-008-0005, and that the compliance of Ordinance 383 with Goal 10 is demonstrated  
18 by that housing needs projection.

19 We agree with petitioners that Ordinance 383 is not supported by the buildable lands  
20 inventory and housing needs projection required by Goal 10 and is thus inconsistent with  
21 Goal 10. As we discussed under the first and second assignments of error, the city's  
22 assumption that the entirety of its projected future population growth will consist of middle  
23 and upper income residents has no factual basis in the record. That assumption is the  
24 linchpin of the city's "housing needs projection." Goal 10 requires the city to meet its actual  
25 projected needs for needed housing types, not its hoped for projected needs.

26 Petitioners also argue that Goal 10 requires the city to coordinate its housing needs

1 projection and related actions with other affected local governments. Further, as DLCD  
2 points out in its state agency brief, OAR 660-008-0030 requires that:

3 “(1) Each local government shall consider the needs of the relevant region  
4 in arriving at a fair allocation of housing types and densities.

5 “(2) The local coordination body shall be responsible for ensuring that the  
6 regional housing impacts of restrictive or expansive local government  
7 programs are considered. The local coordination body shall ensure that  
8 needed housing is provided for on a regional basis through coordinated  
9 comprehensive plans.”

10 The city responds that no coordination effort was required in the present case because  
11 Ordinance 383 has no possible impact on regional housing needs. The city suggests that had  
12 it not adopted Ordinance 383, then regional coordination would have been required, because  
13 then new MHPs would continue to be built in the city, thus depriving other jurisdictions of  
14 their fair share of low-income citizens.

15 The city’s logic is self-refuting. We agree with petitioners and DLCD that the city  
16 failed to coordinate its housing needs projection and related actions with other affected local  
17 governments.

18 The sixth assignment of error is sustained.

19 **SEVENTH ASSIGNMENT OF ERROR**

20 Petitioners argue that the city failed to comply with the Goal 2 requirement for an  
21 “adequate factual basis” for its decision, because the challenged decision is founded on a  
22 series of assumptions unsupported by any facts in the record.

23 As noted earlier, we determined that there is no factual basis to support the city’s  
24 assumption that the entirety of its projected population increase will consist of middle and  
25 upper income citizens. In addition, petitioners argue that there is no support for the city’s  
26 assumption that 99 to 100 percent of MHPs in the city are currently being used for low  
27 income housing. Petitioners note that the city's own compilation of data, which petitioners  
28 do not concede is accurate, shows that the percentage of MHPs occupied by low income

1 residents is 83 percent. The city concedes that the 99 percent figure is an assumption based  
2 solely on the city council's "experience." The city's assumption that MHPs are used almost  
3 exclusively as low-income housing is an essential premise to its Goal 10 needed housing  
4 analysis, and for that reason we agree with petitioners that Ordinance 383 lacks an adequate  
5 factual basis.

6 Petitioners make similar arguments with respect to other findings, based on other  
7 assumptions. However, none of those findings are essential to the decision and thus we need  
8 not evaluate whether the alleged lack of support in the record regarding those findings  
9 violates Goal 2. See Wilson Park Neigh. Assoc. v. City of Portland, 24 Or LUBA 98, 120  
10 (1992) (lack of evidentiary support for a finding provides a basis for reversal or remand only  
11 if the finding is essential to the decision).

12 The seventh assignment of error is sustained, in part.

13 **EIGHTH ASSIGNMENT OF ERROR**

14 Petitioners argue that the city failed to coordinate with affected local governments, as  
15 required by Goal 2.<sup>10</sup>

16 We determined in the sixth assignment of error that the city had failed to comply with  
17 the coordination requirement of Goal 10. Petitioners make essentially the same argument,  
18 and the city makes essentially the same response, with respect to the coordination  
19 requirement of Goal 2. The Goal 10 coordination requirement, as implemented by OAR 660-  
20 008-0030, is a specific instantiation of the Goal 2 coordination requirement. Violation of the  
21 specific Goal 10 coordination requirements in this case also violates the broader Goal 2  
22 requirement.

23 The eighth assignment of error is sustained.

24 The city's decision is remanded.

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<sup>10</sup>Goal 2 requires, in relevant part, that "[e]ach plan and related implementation measure shall be coordinated with the plans of affected governmental units."