

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 HOME BUILDERS ASSOCIATION  
5 OF LANE COUNTY and HOME BUILDERS  
6 CONSTRUCTION COMPANY,  
7 *Petitioners,*

8  
9 vs.

10  
11 CITY OF EUGENE,  
12 *Respondent.*

13  
14 LUBA Nos. 2006-023 and 2006-024

15  
16 FINAL OPINION  
17 AND ORDER

18  
19 Appeal from City of Eugene.

20  
21 Bill Kloos, Eugene, filed the petition for review and argued on behalf of petitioners.  
22 With him on the brief was the Law Office of Bill Kloos, PC.

23  
24 Kathryn P. Brotherton and Emily N. Jerome, Eugene, filed the response brief and  
25 argued on behalf of respondent. With them on the brief was Harrang Long Gary Rudnick  
26 PC.

27  
28 HOLSTUN, Board Member; BASSHAM, Board Chair, participated in the decision.

29  
30 REMANDED (LUBA No. 2006-023)  
31 DISMISSED (LUBA No. 2006-024)

08/09/2006

32  
33 You are entitled to judicial review of this Order. Judicial review is governed by the  
34 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal city decisions that repeal an existing parks and recreation plan and replace that plan with a new parks, recreation and open space plan.

**FACTS**

The City of Eugene, the City of Springfield and Lane County have jointly adopted a comprehensive plan for the Eugene/Springfield urban area. That comprehensive plan is made up of many different plan documents. However, a single plan document, the Eugene-Springfield Metropolitan Area General Plan (Metro Plan), is the framework plan around which those jurisdictions’ multi-volume comprehensive plan is built. The controlling Metro Plan document includes seven different chapters. One of those chapters is the “Specific Elements” chapter. There are specific elements in that chapter addressing Housing, Environmental Resources, Transportation, and a number of other planning areas of concern. The relevant Metro Plan element for purposes of this appeal is the Parks and Recreation Facilities Element.<sup>1</sup> It operates at the highest or most general level as the cities’ and county’s comprehensive plan for parks and recreation in the Eugene/Springfield urban area.

The Introduction chapter of the Metro Plan explains the relationship of the hierarchically superior Metro Plan document to the many other planning documents that combine to make up the regional comprehensive plan:

“Where the [*Metro*] *Plan* is the basic guiding land use policy document, it is not the only such document. As indicated in the Purpose section above, the [*Metro*] *Plan* is a framework plan, and it is important that it be supplemented by more detailed refinement plans, programs, and policies. [<sup>2</sup>] Due to budget

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<sup>1</sup> We discuss the Metro Plan Parks and Recreation Facilities Element in more detail later in this opinion.

<sup>2</sup> The Metro Plan Glossary includes the following definition of “refinement plan:”

“Refinement plan: A detailed examination of the service needs and land use issues of a specific area, topic, or public facility. Refinement plans of the Metro Plan can include

1 limits and other responsibilities, all such plans, programs, and policies cannot  
2 be pursued simultaneously. \* \* \*

3 “Refinements to the [Metro] Plan can include: 1) city-wide comprehensive  
4 policy documents, such as the 1984 Eugene Community Goals and Policies;  
5 2) functional plans and policies addressing single subjects throughout the  
6 area, such as water, sewer, or transportation plans; and 3) neighborhood plans  
7 or special area studies that address those issues that are unique to a specific  
8 geographical area. In all cases, the [Metro] Plan is the guiding document, and  
9 refinement plans and policies must be consistent with the [Metro] Plan.  
10 Should inconsistencies occur, the [Metro] Plan is the prevailing policy  
11 document. The process for reviewing and adopting refinement plans is  
12 outlined in Chapter IV.” Metro Plan I-5.

13 In 1989, the city adopted the City of Eugene Parks and Recreation Plan (1989 Plan)  
14 as a Metro Plan refinement plan.<sup>3</sup> On February 13, 2006, the city council adopted an  
15 ordinance that repealed the 1989 Plan. That ordinance also amended City of Eugene Code

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specific neighborhood plans, special area plans, or functional plans (such as TransPlan) that address a specific Metro Plan element or sub-element on a city-wide or regional basis.” Metro Plan V-5.

<sup>3</sup> Section 1 of the resolution that adopted the 1989 Plan explained:

“[The 1989 Plan] is adopted in the following ways:

- “a. Those policies of the Parks and Recreation Plan which directly implement policies of the [Metro Plan] regulating the development and use of land are adopted as policies to be used in making land use decisions;
- “b. The other policies and goals of the Parks and Recreation Plan are adopted as guidelines for the City Council, City Manager, and other decisionmakers to be considered in making administrative and budgetary decisions about parks and recreation acquisitions, development and management;
- “c. The proposed actions set out in the Parks and Recreation Plan are recognized as valuable ways to implement the goals and policies of the Plan. They are adopted as a list of public facility project and program opportunities and are not intended to be the exclusive means of implementing Parks and Recreation Plan policies and goals. It is intended that this list will be evaluated on an annual basis. The adoption of this list is not intended to preclude projects not included on the list, require plan amendment for project specification and location decisions or administrative or technical changes to projects, or convert administrative or budgetary decisions into land use decisions.
- “d. The Parks and Recreation Plan is part of the region’s recreation plan under Statewide Planning Goal 8.”

1 (EC) 9.8010 to delete the 1989 Plan from the EC’s “List of Adopted Plans” and repealed EC  
2 9.9550, which listed a number of “Eugene Parks and Recreation Policies.”

3 On February 13, 2006, the city also adopted a resolution in which it adopted the City  
4 of Eugene Parks, Recreation and Open Space Comprehensive Plan (PROS Plan or PROS  
5 Comprehensive Plan) to replace the 1989 Plan that it repealed by ordinance on the same day.  
6 Preparation and adoption of the PROS Plan was a multi-year planning effort with an  
7 extensive public outreach component. There were two events during that planning process  
8 that bear directly on petitioners’ arguments in this appeal.

9 The first event concerned tables that prioritized proposed park, open space and  
10 recreation facility actions and tables that set out the estimated costs of the proposed facilities.  
11 Those tables were included in the November 2004 draft PROS Plan. Record Oversized  
12 Exhibit J 59-68, 97-106. However, these specific project and priority tables were removed  
13 from the November 2004 draft of the PROS Plan, before the planning commission  
14 considered the plan. These tables were placed in a separate document entitled PROS  
15 Projects and Priorities Plan, which was later adopted by a separate resolution that was signed  
16 and became final on May 22, 2006. Petitioners filed a separate LUBA appeal to challenge  
17 that resolution (LUBA No. 2006-099). LUBA No. 2006-099 was not consolidated with  
18 LUBA Nos. 2006-023 and 2006-024 for LUBA review. Record objections are pending in  
19 LUBA No. 2006-099, and petitioners’ appeal of the resolution that adopted the PROS  
20 Projects and Priorities Plan will be decided separately from this decision.

21 The second key event during preparation and adoption of the PROS Plan concerns  
22 planning staff’s original proposal to adopt the PROS Plan as a Metro Plan refinement plan.  
23 The city ultimately decided that it would not adopt the PROS Plan as a Metro Plan  
24 refinement plan:

25 “\* \* \* While the PROS Comprehensive Plan will take the place of the 1989  
26 Eugene Parks and Recreation Plan, it will not be a refinement to the Metro  
27 Plan. Instead, the PROS Comprehensive Plan will be a stand-alone plan

1 serving as an aspirational and guiding document for the City as it conducts  
2 long-range planning for parks, recreation and open space.” Record 10.

3 Petitioners filed two appeals, one appeal challenges the February 13, 2006 resolution  
4 that adopts the PROS Plan (LUBA No. 2006-023) and the other appeal challenges the  
5 ordinance that repealed the 1989 Plan and the related EC provisions (LUBA No. 2006-024).  
6 LUBA Nos. 2006-023 and 2006-024 were consolidated for LUBA review.

7 **PRELIMINARY MATTERS**

8 **A. Motion To Dismiss**

9 In their petition for review, petitioners withdrew their appeal of the ordinance that  
10 repealed the 1989 Plan and related EC provisions. Petition for Review 2. Based on that  
11 withdrawal, respondent moves to dismiss LUBA No. 2006-024. Respondent’s motion to  
12 dismiss is granted.

13 **B. Motion to Allow Reply Brief**

14 Petitioners move for permission to file a reply brief to respond to new issues raised  
15 for the first time in respondent’s brief.<sup>4</sup> According to petitioners, those new issues include  
16 respondent’s contention in response to petitioners’ fourth assignment of error that any error  
17 the city may have committed by adopting the PROS Plan by resolution rather than by  
18 ordinance is a harmless procedural error. The other allegedly new issue is respondent’s  
19 argument about the version of the Metro Plan that was in effect when the appealed resolution  
20 was adopted, which in turn depends on the effective date of certain Metro Plan housekeeping  
21 amendments noted below.

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<sup>4</sup> OAR 661-010-0039 provides:

“A reply brief may not be filed unless permission is obtained from the Board. A request to file a reply brief shall be filed with the proposed reply brief together with four copies as soon as possible after respondent’s brief is filed. A reply brief shall be confined solely to new matters raised in the respondent’s brief. \* \* \*”

1 Respondent does not dispute that its argument concerning which version of the Metro  
2 Plan applies is a new issue. Therefore the part of the reply brief that addresses that issue is  
3 allowed. Regardless of whether the city's response to the fourth assignment of error raises a  
4 new issue, we decide this appeal in a way that makes it unnecessary to decide the fourth  
5 assignment of error. We therefore allow that part of the reply brief as well. Petitioners'  
6 motion to allow a reply brief is granted.

7 **C. Motion to Take Official Notice**

8 Petitioners request that we take official notice of several documents: (1) Ordinance  
9 20319, which was adopted by the Eugene City Council on April 21, 2004, and adopts  
10 "housekeeping" amendments to the Metro Plan pursuant to a periodic review work task; (2)  
11 a May 3, 2005 letter from the Department of Land Conservation and Development to the city  
12 advising the city that the housekeeping amendments adopted by the April 21, 2004 ordinance  
13 had been approved by the Land Conservation and Development Commission (LCDC); (3)  
14 the May 3, 2005 LCDC Order approving the housekeeping amendments and finding that the  
15 housekeeping amendments comply with the statewide planning goals; (4) the Court of  
16 Appeals' December 22, 2005 appellate judgment dismissing petitioners' appeal of LCDC's  
17 May 3, 2005 order; and (5) LUBA's February 7, 2006 final opinion that dismissed  
18 petitioners' separate LUBA appeal of the same housekeeping amendments.

19 Respondent does not object to the motion to take official notice, and the motion is  
20 granted.

21 **D. Effective Date of Metro Plan Housekeeping Amendments**

22 The parties dispute whether the above-mentioned housekeeping amendments to the  
23 Metro Plan that the city adopted in its April 21, 2004 ordinance took effect prior to February  
24 13, 2006, the date the city adopted the disputed resolution in LUBA No. 2006-023. The  
25 issue is of marginal importance, but the post-housekeeping amendments version of the Metro

1 Plan does lend some additional support to petitioners’ arguments under the second and third  
2 assignments of error.<sup>5</sup>

3 The city argues that the housekeeping amendments did not take effect until the  
4 enacting ordinances of all three Metro jurisdictions took effect. The May 17, 2004 City of  
5 Springfield ordinance that adopted the housekeeping amendments specified that the City of  
6 Springfield Ordinance would not take effect until the housekeeping amendments were  
7 acknowledged. City’s Response to Petitioners’ Motion and Proposed Reply Brief, Exhibit  
8 A 2 (Section 5). The city contends the housekeeping amendments therefore did not take  
9 effect until they were “considered acknowledged” under ORS 197.625(2). The city argues  
10 that because petitioners appealed the housekeeping amendments to LUBA, the Metro Plan  
11 housekeeping amendments were not acknowledged until the 21-day deadline for appealing  
12 LUBA’s February 7, 2006 final opinion dismissing that appeal expired. That deadline  
13 expired on February 28, 2006, 15 days after the city adopted its February 13, 2006  
14 resolution.<sup>6</sup>

15 If the housekeeping amendments had been a run-of-the-mill post-acknowledgment  
16 plan amendment, the city might be correct. But the housekeeping amendments were adopted  
17 in response to a periodic review work task, not as a run-of-the-mill post-acknowledgment  
18 plan amendment. Those amendments were submitted to LCDC for review, to determine if  
19 they could be acknowledged as complying with the statewide planning goals. ORS 197.633;  
20 OAR 660-025-0130. Under the statutes in effect until January 1, 2006, LCDC and LUBA

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<sup>5</sup> We identify the relevant new Metro Plan language that was added by the housekeeping amendments later in this opinion.

<sup>6</sup> For purposes of this opinion, we assume the 21-day deadline for filing an appeal of LUBA’s February 7, 2006 final opinion to the Court of Appeals would have to expire before the housekeeping amendments would have been considered acknowledged *under ORS 197.625(2)*. We note, however, that the statute is somewhat ambiguous regarding whether ORS 197.625(2) operates that way.

1 had shared jurisdiction over such comprehensive plan amendments. As we explained  
2 recently in *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691, 696-97 (2005):

3 “Under [the 1993 version of Oregon Revised S]tatutes, LCDC and LUBA  
4 have shared jurisdiction to review land use decisions that are adopted to  
5 comply with periodic review. ORS 197.628 to 197.650 set out statutory  
6 provisions that govern LCDC periodic review. ORS 197.644(2) provides:

7 ““[LCDC] shall have exclusive jurisdiction for review of the  
8 evaluation, work program and completed work program tasks  
9 as set forth in ORS 197.628 to 197.650. The commission shall  
10 adopt rules governing standing, the provision of notice,  
11 conduct of hearings, adoption of stays, extension of time  
12 periods and other matters related to the administration of ORS  
13 \* \* \* 197.628 to 197.650 \* \* \*.

14 “LCDC also has adopted administrative rules that elaborate on its periodic  
15 review process, OAR chapter 660, division 25. OAR 660-025-0040 provides:

16 ““(1) [LCDC], pursuant to ORS 197.644(2), has exclusive jurisdiction  
17 to review the [periodic review] evaluation, work program, and  
18 all work program tasks *for compliance with the statewide*  
19 *planning goals*.

20 ““(2) [LUBA] shall have exclusive jurisdiction over land use  
21 decisions described in section (1) of this rule for *issues that do*  
22 *not involve compliance with the statewide planning goals*, and  
23 over all other land use decisions as provided in ORS 197.825.’  
24 (Emphases added.)

25 “Under the above authorities, it is clear that although both LCDC and LUBA  
26 have jurisdiction over land use decisions that are adopted in whole or in part  
27 to comply with period review requirements, LCDC’s and LUBA’s scope of  
28 review concerning such decisions is different. LCDC reviews such decisions  
29 to ensure, among other things, that the local government’s plans and land use  
30 regulations are ‘achieving the statewide planning goals.’ ORS 197.628(3)(d);  
31 OAR 660-025-0070(4). Under current statutes and LCDC rules, periodic  
32 review proceeds by development of a work program and work tasks, and  
33 LCDC review of those work tasks for compliance with the statewide planning  
34 goals. OAR 660-025-0040(1).

35 “LUBA’s scope of review over periodic review land use decisions extends to  
36 all other legal issues that are properly within LUBA’s scope of review, but it  
37 does not include review for compliance with statewide planning goals. OAR  
38 660-025-0040(2). *Williams v. Clackamas County*, 25 Or LUBA 812, 814

1 (1993); *1000 Friends of Oregon v. City of Troutdale*, 23 Or LUBA 219, 221  
2 (1992). \* \* \*

3 If LCDC's May 3, 2005 order approving work task 17 had not been appealed by  
4 petitioners to the Court of Appeals, the housekeeping amendments would have been  
5 acknowledged when that appeal deadline expired on May 24, 2005.<sup>7</sup> Because the order was  
6 appealed to the Court of Appeals, that acknowledgment was delayed until December 22,  
7 2005, the date of the Court of Appeals' appellate judgment dismissing petitioners' appeal.  
8 That acknowledgment was not delayed further by the pending LUBA appeal. LUBA had no  
9 jurisdiction to review those housekeeping amendments to determine if they comply with the  
10 statewide planning goals, and the cities and county did not rely on ORS 197.625 for the  
11 housekeeping amendments to be deemed acknowledged, because they had already been  
12 acknowledged by LCDC.

13 For the reasons set out above, we conclude the housekeeping amendments were  
14 deemed acknowledged on December 22, 2005 and took effect on that date. Those  
15 housekeeping amendments were in effect when the city adopted its resolution in this matter  
16 on February 13, 2006.

17 **FIRST ASSIGNMENT OF ERROR**

18 In their first assignment of error petitioners contend "[t]he adopting resolution and  
19 related findings are conflicting and unclear as to what the city intends the PROS Plan to be."  
20 Petition for Review 15. Specifically, petitioners contend it is not clear whether the city  
21 adopted the PROS Plan as a refinement plan or in some other way as part of the Metro Plan.

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<sup>7</sup> OAR 660-025-0160(7) provides:

"If the commission approves the work task under subsection \* \* \* and no appeal to the Court of Appeals is filed within the [21-day period] provided in ORS 183.482, the work task shall be deemed acknowledged. \* \* \*"

1           There is some ambiguity about what the city thinks the PROS Plan is. However, the  
2 city’s adopting resolution is clear that the PROS Plan was not adopted as a refinement plan  
3 or as any part of the Metro Plan. As we have already noted, the city found:

4           “\* \* \* While the PROS Comprehensive Plan will take the place of the 1989  
5 \* \* \* Plan, *it will not be a refinement to the Metro Plan.* Instead, the PROS  
6 Comprehensive Plan will be a stand-alone plan serving as an aspirational and  
7 guiding document for the City as it conducts long-range planning for parks,  
8 recreation and open space.” Record 10 (emphasis added).<sup>8</sup>

9           The city argues that “[b]y adopting the PROS Plan as a stand-alone, aspirational, long-range  
10 planning document (and not as a refinement plan) the City made it very clear that it was not  
11 adopting the PROS Plan as an ‘element’ of the Metro Plan.” Respondent’s Brief 7.

12           We agree with the city. The first assignment of error is denied.

### 13 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

14           In their second assignment of error, petitioners argue that the Metro Plan requires that  
15 Metro jurisdictions adopt local parks and recreation plans as “a *land use plan* within the  
16 framework of the Metro Plan.” Petition for Review 17 (emphasis added.). More precisely,  
17 we understand petitioners to argue that the PROS Plan must be adopted as a Metro Plan  
18 *refinement plan* or adopted in some other way that makes it part of the Metro Plan and  
19 therefore part of the comprehensive plan for the region. In their third assignment of error,  
20 petitioners argue that to the extent the city has not adopted the PROS Plan as a Metro Plan  
21 refinement plan, it has adopted “a *de facto* amendment of the Metro Plan that fails to comply  
22 with the Metro Plan standards for amending that plan.” Petition for Review 18.

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<sup>8</sup> In a December 6, 2005 memorandum to the city council, the city’s attorney referred to the PROS Plan as “aspirational and not binding on anyone but the city.” Record 326. We question whether a plan that is binding on the city is accurately described as “aspirational.” But the challenged decision does not appear to take the position that any part of the PROS Plan is binding on the city. Although the challenged decision is less than clear, we understand the city to take the position that nothing in the PROS Plan is mandatory, in the sense the city or anyone else would be required to amend the PROS Plan before taking any action that is not consistent with the PROS Plan.

1 We first consider the key provisions of the Metro Plan Parks and Recreation Facilities  
2 Element. The Metro Plan Parks and Recreation Facilities Element first discusses the types of  
3 parks that have been developed in the city, citing specific examples of different types of  
4 parks by name. That discussion is followed by a one-sentence Goal: “Provide a variety of  
5 parks and recreation facilities to serve the diverse needs of the community’s citizens.” Metro  
6 Plan III-H-2. That Goal is followed by a number of findings. Finding No. 2 notes the  
7 difficulty of securing the financial resources needed to provide wanted parks. Finding No. 3  
8 is as follows:

9 “3. The level of service for parks and recreation facilities in the  
10 metropolitan area was last evaluated in 1989. At that time, regional  
11 figures were compared to standards of the National Recreation and  
12 Park Association (NRPA). When compared to NRPA standards, there  
13 was a gap between community needs for parks and open space and the  
14 available supply of parkland. In 2003, the City of Eugene and  
15 Willamalane Park & Recreation District are preparing Parks,  
16 Recreation & Open Space Comprehensive Plans. *These plans will*  
17 *update the regional parkland inventory and make comparisons to*  
18 *regional standards, which will provide a more detailed analysis of*  
19 *regional park supply and demand.” Metro Plan III-H-3. (Emphasis*  
20 *added.)*

21 Finding No. 4 provides in part:

22 “4. Providing adequate parks and recreation facilities is made more  
23 difficult by the lack of a detailed metropolitan-wide parks and  
24 recreation analysis and plan that incorporates a methodology reflecting  
25 demand characteristics of this local area. Such an analysis and plan  
26 would serve a number of essential functions[.]”

27 The remaining findings state that private facilities can help meet the demand for recreational  
28 facilities (finding 5) and that Lane County has adopted a recreation refinement plan.

29 The Metro Plan Parks and Recreation Facilities Element then lists six Objectives and  
30 seven Policies.<sup>9</sup> We set out one of those objectives and two of the policies below:

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<sup>9</sup> The Metro Plan Glossary provides the following definitions of those terms:

1 “Develop local standards, measures, and implementation techniques to  
2 determine the level and types of park and recreation facilities necessary to  
3 serve the needs of the residents of each jurisdiction.” Metro Plan III-H-4  
4 (Objective 3).

5 “Develop a system of regional-metropolitan recreational activity areas based  
6 on a facilities plan for the metropolitan area that includes acquisition,  
7 development, and management programs. The *Metro Plan* and system should  
8 include reservoir and hill parks, the Willamette River Greenway, and other  
9 river corridors. Metro Plan III-H-5 (Policy H.1).

10 “Local parks and recreation plans and analyses shall be prepared by each  
11 jurisdiction and coordinated on a metropolitan level. *The park standards*  
12 *adopted by the applicable city and incorporated into the city’s development*  
13 *code shall be used in local development processes.” Metro Plan III-H-5*  
14 (Policy H.2). (Emphasis added.)<sup>10</sup>

15 Summarizing the important parts of the Metro Plan Parks and Recreation Facilities  
16 Element, they express a general goal of providing recreation facilities to meet community  
17 needs, find that funding such facilities is challenging and that more detailed local analysis of  
18 metropolitan park needs and demand is needed, and then set out some objectives and  
19 policies. One of those objectives is to develop the means to assess the need for recreation  
20 facilities. Objective 3. One of those policies is to develop a regional facilities plan that  
21 includes “acquisition, development, and management programs.” Policy H.1. A second  
22 policy directs (1) preparation of “[l]ocal parks and recreation plans and analyses,” (2)  
23 coordination of those local plans on a metropolitan level, and (3) incorporation of any “park  
24 standards” in those plans into the applicable “city’s development code.” Policy H.2.

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“31. Objective. An attainable target that the community attempts to reach in striving to meet a goal. An objective may also be considered as an intermediate point that will help fulfill the overall goal.” Metro Plan V-4.

“35. Policy. A statement adopted as part of the *Metro Plan* or other plans to provide a specific course of action moving the community towards attainment of its goals.”  
*Id.*

<sup>10</sup> The emphasized language in Policy H.2 was adopted by the Metro Plan housekeeping amendments noted earlier in this opinion, and that language took effect shortly before the disputed resolution was adopted on February 13, 2006.

1           With the above summary of the Metro Plan Parks and Recreation Facilities Element  
2 we turn to the city’s arguments. The decision finds and the city concedes that the PROS Plan  
3 was adopted to replace the 1989 Plan, which had been adopted as a refinement plan. The  
4 decision also finds, and the city concedes, that the PROS Plan was adopted to comply with  
5 the Policy H.2 requirement that the city adopt and coordinate a local parks and recreation  
6 plan and analysis. The city argues, however that the Metro Plan does not clearly or expressly  
7 dictate that the “[l]ocal parks and recreation plans and analyses,” referenced in Policy H.2  
8 must be adopted as a Metro Plan refinement plan. We agree with the city.

9           However it is not unusual for planning documents to lack express or clear statements  
10 of their requirements. The question we must answer is whether the city’s view that the  
11 Metro Plan Parks and Recreation Facilities Element is correctly read to allow the city to  
12 adopt the required local park and recreation plan as a “stand alone” plan that is purely  
13 aspirational, apparently in the sense that it can be ignored by the city or anyone else if they  
14 choose, is sustainable. We conclude that the city’s interpretation simply cannot be squared  
15 with the text of the Metro Plan Parks and Recreation Facilities Element.<sup>11</sup>

16           We begin with the lack of any suggestion in Policy H.2 or elsewhere in the Metro  
17 Plan that the required local park and recreation plan could be a purely aspirational “stand-  
18 alone” plan. Both the Court of Appeals and LUBA have pointed out many times that  
19 comprehensive plans and land use regulations often include some provisions that are  
20 aspirational or nonregulatory in nature. *Bennett v. City of Dallas*, 96 Or App 645, 648-49,  
21 773 P2d 1340 (1989); *Downtown Comm. Assoc. v. City of Portland*, 80 Or App 336, 722 P2d  
22 1258 (1986); *Eskandarian v. City of Portland*, 26 Or LUBA 98, 103 (1993); *McCoy v.*

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<sup>11</sup> It is not entirely clear whether the city’s interpretation of the Metro Plan is entitled to deference under ORS 197.829(1). See *Jaqua v. City of Springfield*, 193 Or App 573, 580 n3, 91 P3d 817 (2004) (questioning “whether ORS 197.829 requires deference to an interpretation by only one participant when land use regulations are promulgated by multiple land use planning bodies”). While it makes our ultimate conclusion a closer call, we have assumed that the city is entitled to the deference described in *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003).

1 *Tillamook County*, 14 Or LUBA 108, 110-111 (1985). But we seriously question whether a  
2 document that is entirely aspirational, in the sense it can be followed or ignored by anyone  
3 and every one, can be called a comprehensive plan or land use regulation of any type. Of  
4 course that does not mean that the planning statutes, statewide planning goals, LCDC rules or  
5 the Metro Plan preclude purely aspirational documents or “white papers” that are intended  
6 purely as brainstorming exercises that may or may not lead to subsequent adoption of  
7 comprehensive plans or land use regulations that carry some legal significance. Again, the  
8 question in this appeal is whether such a purely aspirational document is sufficient to comply  
9 with Policy H.2 and related provisions of the Metro Plan Parks and Recreation Facilities  
10 Element.

11 As we noted above, Metro Plan findings 3 and 4 seem to say the regional plan for  
12 parks and recreation is a work in progress and that the member jurisdictions are to provide  
13 the study and analysis that will be necessary to further analyze park and recreation needs and  
14 develop a strategy for meeting those needs. Objective 3 states that the authors of the Metro  
15 Plan are expecting the cities and county to adopt “local standards, measures, and  
16 implementation techniques” to meet identified recreational needs. Policy H.1 states a policy  
17 of developing “a system of regional-metropolitan recreational activity areas based on a  
18 facilities plan for the metropolitan area that includes acquisition, development, and  
19 management programs.” It is against that backdrop that Policy H.2 directs that the cities and  
20 county develop “local parks and recreation plans and analyses.” Viewed against that  
21 backdrop, we do not believe the plan that Policy H.2 requires can be a purely aspirational  
22 stand-alone plan of the type that the city adopted. It is difficult to see why the authors of  
23 Policy H.2 would have bothered to require that the plan that the policy calls for be  
24 “coordinated,” if it can be purely aspirational and include no provisions that are binding on  
25 anyone. We also believe that the Policy H.2 requirement that “[t]he park standards adopted  
26 by the applicable city and incorporated into the city’s development code shall be used in

1 local development processes,” seems to envision that the “[l]ocal parks and recreation plans  
2 and analyses” mentioned in the first sentence of Policy H.2 will either include such standards  
3 or provide the legal basis for adopting such standards as part of the cities’ development code.  
4 In either event, they would seem most logically to be refinements of the Metro Plan Parks  
5 and Recreation Facilities Element.

6 In summary, we agree with petitioners that a PROS Plan that is a purely aspirational  
7 document, which is binding on no one, is not sufficient to comply with Metro Plan Parks and  
8 Recreation Facilities Element Policy H.2 and related provisions in the Metro Plan Parks and  
9 Recreation Facilities Element. We also agree with petitioners that at least some parts of the  
10 PROS Plan must be adopted as a Metro Plan refinement plan.<sup>12</sup> However, that begs the  
11 answer to a much a more difficult question. If the city is determined to adopt a document  
12 that is *in part* the bare minimum refinement plan that Metro Plan Parks and Recreation  
13 Facilities Element Policy H.2 and related provisions require and *in part* a nonbinding or  
14 aspirational document, what part must be adopted as a Metro Plan refinement plan? That  
15 question is for the city to answer in the first instance on remand. The answer to that question  
16 turns in large part on the meaning of the Metro Plan Parks and Recreation Element language  
17 that we set out and discuss above. The answer to that question may also depend in part on

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<sup>12</sup> Because we conclude that at least parts of the PROS Plan must be adopted as a Metro Plan refinement plan, we need not attempt to sort out and resolve the parties’ contentions about whether it is possible to adopt refinements to the Metro Plan, which are not a “Refinement Plan,” as the Metro Plan defines that term. *See* n 2. As we noted earlier, the Metro Plan introduction explains that the Metro Plan will “be supplemented by more detailed refinement plans, programs, and policies.” Metro Plan I-5. The city points out that the Metro Plan also directs that local governments “[p]ursue strategies that encourage rehabilitation of existing housing and neighborhoods.” Metro Plan III-A-11. The city suggests that it must be possible to adopt such programs, policies and strategies as something other than a refinement plan.

It may well be that such programs, policies and strategies could be adopted as “land use regulations,” as ORS 197.015(12) defines that term, or as something else. But the Metro Plan does not expressly state that “programs and policies” or “strategies” for that matter should not be adopted as refinements of the Metro Plan and become part of the Metro Plan. Although we need not and do not decide the question here, we see no reason why the concept of a “Refinement plan,” as defined at Metro Plan V-5 (*see* n 2) necessarily is limited to documents than can be characterized as “plans,” as opposed to plans, programs, policies, strategies or other documents that are being adopted as refinements of the Metro Plan, because the Metro Plan requires them to be adopted as refinements or the city or county elect to do so for other reasons.

1 statutes, statewide planning goal and administrative rule requirements that petitioners cite in  
2 their remaining assignments of error.

3 The second and third assignments of error are sustained.

4 **FOURTH ASSIGNMENT OF ERROR**

5 ORS 227.186(2) requires:

6 “All legislative acts relating to comprehensive plans, land use planning or  
7 zoning adopted by a city shall be by ordinance.”

8 Petitioners’ entire argument under the fourth assignment of error is as follows:

9 “The PROS Plan resolution was a legislative act within the scope of this  
10 statute. It was required to be adopted by ordinance, not by resolution.”  
11 Petition for Review 20.

12 The city responds that it followed the same procedure in adopting the disputed  
13 resolution that it follows when it adopts legislation. The city contends that any error it may  
14 have committed by acting by resolution rather than by ordinance was harmless.

15 We have already concluded at least some parts of the PROS Plan must be adopted as  
16 a Metro Plan refinement plan. That conclusion requires that we remand the city’s decision  
17 without regard to the merits of the fourth assignment of error. We therefore do not consider  
18 the fourth assignment of error. Because the city will be required to readopt the PROS Plan as  
19 a refinement plan, at least in part, the city can decide whether that action is subject to ORS  
20 227.186(2) and whether any decision to adopt other parts as something other than a  
21 refinement plan might qualify as a legislative act that is subject to ORS 227.186(2).

22 We do not consider the fourth assignment of error further.

23 **FIFTH ASSIGNMENT OF ERROR**

24 ORS 195.120 to 195.125 address parks and require rulemaking by LCDC. LCDC  
25 adopted an administrative rule—OAR chapter 660, division 034—in response to ORS  
26 195.120 to 195.125. Petitioners contend that OAR chapter 660, division 034 imposes  
27 requirements that are lacking in the PROS Plan. The city reads OAR chapter 660, division

1 034 to make parks planning entirely optional. We conclude that both petitioners and the city  
2 misread OAR chapter 660, division 034.

3 **A. ORS 195.120 and 195.125**

4 ORS 195.120 is directed primarily at state parks, although ORS 195.120 does  
5 mention “local parks that have adopted master plans.”<sup>13</sup> However, beyond the statutory  
6 direction that LCDC adopt rules, these statutes are directed almost entirely at state park  
7 planning and local actions that may be required to construct and operate state parks. LCDC  
8 has adopted an administrative rule in response to ORS 195.120(2). We discuss that  
9 administrative rule below. However, as far as ORS 195.120 and 195.125 go, they impose no  
10 discernable obligation on the city to engage in local parks and recreation planning.

11 **B. OAR Chapter 660, Division 034**

12 OAR chapter 660, division 034 is entitled “State and Local Park Planning.” The bulk  
13 of division 034 is devoted to establishing a process for developing state park master plans  
14 and incorporating those individual state park master plans into local comprehensive plans.<sup>14</sup>  
15 OAR 660-034-0015(2) sets out the required content for state park master plans. OAR 660-

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<sup>13</sup> As relevant, ORS 195.120(2) provides:

“The Land Conservation and Development Commission, in cooperation with the State Parks and Recreation Commission and representatives of local government, shall adopt rules and land use planning goal amendments as necessary to provide for:

“(a) Allowable uses in state and *local parks that have adopted master plans*;

“(b) Local government planning necessary to implement state park master plans; and

“(c) Coordination and dispute resolution among state and local agencies regarding planning and activities in state parks.” (Emphasis added.)

<sup>14</sup> OAR 660-034-0015(1) explains:

“OPRD [the Oregon Parks and Recreation Department] adopts state park master plans as administrative rules pursuant to OAR chapter 736, division 18 and ORS 390.180. In order to facilitate the implementation of state park master plans through local government land use plans, this division provides procedures and criteria for park master planning and coordination.”

1 034-0020, 660-034-0025, and 660-034-0035 set out how the Oregon Parks and Recreation  
2 Department (OPRD) goes about coordinating its state park master plans with local  
3 governments, how any disputes between OPRD and local governments are resolved and how  
4 the state park master plans are adopted as part of comprehensive plans. Those provisions  
5 provide context for OAR 660-034-0040, which provides in part:

6 (1) Local park providers *may prepare local park master plans*, and local  
7 governments may *amend acknowledged comprehensive plans* and  
8 zoning ordinances pursuant to the requirements and procedures of  
9 ORS 197.610 to 197.625 in order to implement such local park plans.  
10 Local governments are not required to adopt a local park master plan  
11 in order to approve a land use decision allowing parks or park uses on  
12 agricultural lands under provisions of ORS 215.213 or 215.283 or on  
13 forestlands under provisions of OAR 660-006-0025(4), as further  
14 addressed in sections (3) and (4) of this rule. *If a local government*  
15 *decides to adopt a local park plan as part of the local comprehensive*  
16 *plan, the adoption shall include:*

17 “(a) A *plan map designation*, as necessary, to indicate the location  
18 and boundaries of the local park; and

19 “(b) *Appropriate zoning categories and map designations* (a ‘local  
20 park’ zone or overlay zone is recommended), including  
21 objective land use and siting review criteria, in order to  
22 authorize the existing and planned park uses described in local  
23 park master plan.” (Emphases added.)

24 **C The Parties’ Arguments**

25 As we noted earlier, petitioners contend the PROS Plan runs afoul of OAR 660-034-  
26 0040(1)(a) and (b) because it lacks the required plan map designation, zoning categories and  
27 map designations. The city, on the other hand, focuses on the permissive rule language “may  
28 prepare local park master plans,” “may amend acknowledged comprehensive plans” and “[i]f  
29 a local government decides to adopt a local park plan as part of the local comprehensive  
30 plan” and argues that OAR 660-034-0040(1) makes all comprehensive planning for parks  
31 and recreation optional.

32 We do not read the above rule in the same way the parties do. Specifically, we do not  
33 believe the above rule language is intended to define or limit the city’s general Goal 8

1 recreation planning obligation.<sup>15</sup> It is directed much more specifically at local government  
2 actions to amend their comprehensive plan and zoning ordinances to implement any *local*  
3 *park master plans* that may exist. OAR 660-034-0040(1) states that “local park providers,”  
4 who presumably in some cases will not be a local government that has adopted a  
5 comprehensive plan, may prepare a *local park master plan*. If they do, the city where that  
6 local park is located may, if it wishes, amend the comprehensive plan to implement that park  
7 master plan. OAR 660-034-0040(1)(a) and (b) set out the minimum requirements for such a  
8 comprehensive plan amendment to implement an adopted local park master plan.

9 OAR 660-034-0040(1) uses the term “local park master plan” and “local park plan”  
10 interchangeably. However, given that this part of the rule is clearly implementing ORS  
11 195.120 and given that the statute is concerned with state park master plans, we believe it is  
12 reasonably clear that OAR 660-034-0040(1) is concerned with the local equivalents of state  
13 park master plans, *i.e.* master plans for a particular local park facilities rather than a more  
14 general parks plan for the entire city that is adopted to comply with Goal 8 and is adopted as  
15 an element of the comprehensive plan. Where a local comprehensive plan recreation element  
16 is being adopted or amended in part to implement particular local park master plans, OAR  
17 660-034-0040(1)(a) and (b) would apply. But OAR 660-034-0040(1)(a) and (b) simply do  
18 not apply to other more general comprehensive plan provisions that may have been adopted  
19 to comply with Goal 8, or more general comprehensive plan provisions that may go beyond  
20 the minimum requirement of Goal 8. OAR 660-034-0040(1)(a) and (b) simply do not apply  
21 to comprehensive plan provisions that might establish the city’s policy for how it will decide  
22 how many acres it will devote to parks, what kind of parks it will build and when it will build  
23 them. OAR 660-034-0040(1)(a) and (b) only apply when any existing local park master  
24 plans for particular parks are actually included in the comprehensive plan.

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<sup>15</sup> We discuss Goal 8 further in our discussion of the eighth assignment of error below.

1           Although we agree with the city that petitioners’ fifth assignment of error must be  
2 denied, we do not agree with the city’s expansive reading of OAR 660-034-0040(1). As we  
3 have already explained, the rule is more focused on decisions to amend comprehensive plans  
4 to include any existing park master plans in the comprehensive plan. Those decisions are  
5 optional under OAR 660-034-0040(1), and the requirements in OAR 660-034-0040(1)(a) and  
6 (b) only apply if a local government elects to includes such master plans as part of the  
7 comprehensive plan. OAR 660-034-0040(1) does not make all comprehensive planning for  
8 parks and recreation under Goal 8 optional.

9           The fifth assignment of error is denied.

10   **EIGHTH ASSIGNMENT OF ERROR**

11           Under their eighth assignment of error, petitioners argue it was error to adopt the  
12 PROS Plan without including the tables that prioritize proposed park, open space and  
13 recreation facility actions and tables that set out the estimated costs of the proposed facilities.  
14 As we have already explained, those tables were included in earlier drafts of the PROS Plan  
15 but were removed and placed in a separate document entitled PROS Projects and Priorities  
16 Plan, which was later adopted by a separate resolution that was signed and became final on  
17 May 22, 2006. Petitioners argue:

18           “[T]he city failed to include in the PROS Plan an essential element of the  
19 comprehensive plan for local parks – an identification of park facilities  
20 needed for the planning period. The inclusion of planned park facilities in the  
21 local parks plan is a requirement of state statutes, Goal 2 and the LCDC Park  
22 Planning Rule, and the *Metro Plan*.” Petition for Review 29.

23           Petitioners find a legal requirement for the omitted tables in a number of sources. We  
24 consider each of those sources below.

1           **A.       The Statutory Definition of Comprehensive Plan**

2           All cities in this state are required to adopt a comprehensive plan and land use  
3 regulations in accordance with the statewide planning goal. ORS 197.175(2).<sup>16</sup> As relevant  
4 here, ORS 197.015(6) defines “comprehensive plan” as follows:

5           “‘Comprehensive plan’ means a generalized, coordinated land use map and  
6 policy statement of the governing body of a local government that interrelates  
7 all functional and natural systems and activities relating to the use of lands,  
8 including but not limited to sewer and water systems, transportation systems,  
9 educational facilities, *recreational facilities*, and natural resources and air and  
10 water quality management programs. ‘Comprehensive’ means all-inclusive,  
11 both in terms of the geographic area covered and functional and natural  
12 activities and systems occurring in the area covered by the plan. ‘*General  
13 nature*’ means a summary of policies and proposals in broad categories and  
14 does not necessarily indicate specific locations of any area, activity or use. A  
15 plan is ‘coordinated’ when the needs of all levels of governments, semipublic  
16 and private agencies and the citizens of Oregon have been considered and  
17 accommodated as much as possible. \* \* \*.”

18       To the extent a city parks and recreation planning obligation can be gleaned from the above  
19 definition of “comprehensive plan” and the city’s obligation to adopt a comprehensive plan,  
20 the city’s comprehensive plan must be “coordinated” and interrelate “recreational facilities”  
21 with other “functional and natural systems and activities relating to the use of lands.” That  
22 interrelation may be “generalized” and the city does not necessarily have to “indicate specific  
23 locations of any [recreational] area, activity or use.”

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<sup>16</sup> ORS 197.175(2) provides, in relevant part:

“[E]ach city and county in this state shall:

“(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the [Land Conservation and Development C]ommission;

“(b) Enact land use regulations to implement their comprehensive plans; [and]

“\* \* \* \* \*

“(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations[.]”

1           The ORS 197.015(6) definition of comprehensive plan does not require that the city  
2 include tables that prioritize proposed park, open space and recreation facility actions and  
3 tables that set out the estimated costs of the proposed facilities. The city might do so to make  
4 its parks and recreation planning more objective and precise, but any obligations the city is  
5 under by virtue of ORS 197.015(6) are far more general and could be satisfied in other ways.

6           **B.     Goal 8 (Recreational Needs)**

7           Goal 8 is “[t]o satisfy the recreational needs of the citizens of the state and visitors  
8 and, where appropriate, to provide for the siting of necessary recreational facilities including  
9 destination resorts.” In large part, Goal 8 sets out detailed planning requirements for  
10 destination resorts. However, Goal 8 does impose a general obligation on governmental  
11 agencies that have responsibility for recreation facilities:

12           **“RECREATION PLANNING**

13           “The requirements for meeting such needs, now and in the future, shall be  
14 planned for by governmental agencies having responsibility for recreation  
15 areas, facilities and opportunities: (1) in coordination with private enterprise;  
16 (2) in appropriate proportions; and (3) in such quantity, quality and locations  
17 as is consistent with the availability of the resources to meet such  
18 requirements. State and federal agency recreation plans shall be coordinated  
19 with local and regional recreational needs and plans.”

20           The above is a charge to local government agencies that have responsibility for  
21 recreational facilities to plan for those facilities. The goal does not elaborate very much on  
22 what that planning must look like. While it might be consistent with Goal 8 to do so, Goal 8  
23 does not mandate that comprehensive plans include a list of park, open space and recreation  
24 facilities that will be constructed during the planning period or include an estimate of the  
25 costs of such facilities. Goal 8 clearly does not dictate the more precise and specific  
26 approach that petitioners prefer.

1           **C.     Goal 2 (Land Use Planning)**

2           Goal 2 (Land Use Planning) does not focus specifically on parks and  
3 recreation planning, but it does provide guidance on the structure and detail that is necessary  
4 in comprehensive plans and land use regulations.

5           “All *land use plans* shall include *identification of issues and problems,*  
6 *inventories* and other factual information for each applicable statewide  
7 planning goal, *evaluation of alternative courses of action* and *ultimate policy*  
8 *choices*, taking into consideration social, economic, energy and environmental  
9 needs. The required information shall be contained in the plan document or in  
10 supporting documents. The plans, supporting documents and implementation  
11 ordinances shall be filed in a public office or other place easily accessible to  
12 the public. *The plans shall be the basis for specific implementation measures.*  
13 These measures shall be consistent with and adequate to carry out the plans.  
14 Each plan and related implementation measure shall be coordinated with the  
15 plans of affected governmental units.” (Emphases added.)

16           Although the first sentence in the above Goal 2 language refers to “land use plans”  
17 rather than “comprehensive plans,” we believe that sentence describes the general approach  
18 that is required for developing and amending comprehensive plans. The above Goal 2  
19 language also refers to implementing ordinances and implementing measures. That language  
20 makes it reasonably clear that some of a local governments planning effort will occur in  
21 documents that implement the comprehensive plan, but are not part of the comprehensive  
22 plan itself.<sup>17</sup> A Goal 2 requirement, to which petitioners assign particular significance, is the  
23 requirement that “ultimate policy choices” be included in the comprehensive plan. We note  
24 that Goal 2 does not dictate the manner in which a local government must make its ultimate  
25 policy choices or the form in which the city must express ultimate policy choices. For  
26 example, the Goal 2 requirement that the comprehensive plan include ultimate policy choices  
27 does not necessarily mean that the comprehensive plan must include a list of planned

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<sup>17</sup> Those implementing measures or ordinances frequently will be land use regulations. As defined by ORS 197.015(12), a land use regulation is “any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.”

1 recreation facilities, when those facilities will be built, who will build them, and how they  
2 will be paid for. We see no reason why a local government's ultimate policy choice  
3 regarding recreational needs could not just as easily take the form of mandatory and perhaps  
4 nonmandatory considerations by which the local government will make individual decisions  
5 about whether to acquire, approve or construct particular recreational and open space  
6 facilities and projects in the future.

7 **D. OAR 660-034-0040(1)**

8 As we have already explained in our discussion of the sixth assignment of error, OAR  
9 660-034-0040(1) does not apply as broadly as the parties argue. OAR 660-034-0040(1) does  
10 not require that the city identify the specific sites where parks, recreation and open space  
11 facilities may be constructed in the future and does not require that the city include the tables  
12 that prioritize proposed park, open space and recreation facility actions and tables that set out  
13 the estimated costs of the proposed facilities.

14 **E. Metro Plan Parks, Recreation and Open Space Facilities Element**

15 The issue of whether the Metro Plan Parks, Recreation and Open Space Facilities  
16 Element requires the kind of detailed parks, recreation and open space facility planning that  
17 is now included in the PROS Projects and Priorities Plan, or something like it, presents a  
18 closer question. The tables that prioritize proposed park, open space and recreation facility  
19 actions and tables that set out the estimated costs of the proposed facilities are now included  
20 in the PROS Projects and Priorities Plan, which was later adopted by a separate resolution  
21 and is before us in a separate appeal in LUBA No. 2006-099. Because the issue of whether  
22 the planning detail that now resides in the PROS Projects and Priorities Plan must be adopted  
23 as a Metro Plan refinement plan is likely to be before us in LUBA No. 2006-099 and because  
24 the city may be required to address that issue in determining what parts of the PROS Plan  
25 must be adopted as a refinement plan, we do not attempt to resolve that issue in this appeal.

26 Petitioners' eighth assignment of error is denied.

1 **SIXTH ASSIGNMENT OF ERROR**

2 The Metro Plan uses the year 2015 as its planning period. The PROS Plan uses the  
3 year 2025. The Metro Plan projects that the population for the entire Metro area, which  
4 includes the cities of Springfield and Eugene and the urban area of Lane County, will be  
5 286,000 in 2015. The PROS Plan estimates that the population of the City of Eugene alone  
6 will be 210,900 in the year 2025. Petitioners contend the PROS Plan artificially inflated the  
7 population in the City of Eugene, without coordinating with the City of Springfield and Lane  
8 County, with the result that the city has identified an inflated need for parks, recreation and  
9 open space facilities.

10 We rejected a similar argument in *Home Builders Assoc. v. City of Springfield*, 50 Or  
11 LUBA 134, 151 (2005), and we reject the argument here as well. We remain of the view that  
12 nothing we are aware of mandates that jurisdictions use the same planning period for all  
13 planning purposes. To the contrary, as respondent points out in its brief, state law effectively  
14 requires different planning periods in some circumstances. ORS 197.296(2) (Residential  
15 Lands); OAR 660-012-0005(22) (Transportation Planning Rule); 660-009-0025(2)  
16 (Industrial Lands).

17 While Goal 2 generally requires that the plans of neighboring jurisdictions must be  
18 consistent, we cannot tell whether assuming the City of Eugene will have a population of  
19 210,900 in the year 2025 is inconsistent with the Metro Plan assumption that the  
20 Eugene/Springfield urban area will have a combined population of 286,000 in 2015. In  
21 response to petitioners' contention that the challenged decision is not coordinated, as Goal 2  
22 requires, the city cites the following:

23 “[I]n an effort to educate neighboring jurisdictions about the PROS  
24 Comprehensive Plan, the City took steps to provide neighboring jurisdictions  
25 an opportunity to comment on the proposed PROS Comprehensive Plan.  
26 Specifically, in accordance with the Metro Plan, notice and a copy of the  
27 proposed PROS Comprehensive Plan was mailed to the Planning Directors of  
28 Springfield and Lane County. Additionally, on September 27, 2005, City  
29 Staff met with the lane County Board of Commissioners to provide the Board

1 information regarding the PROS Comprehensive Plan. In response to  
2 concerns raised by some of the Commissioners, the City made a number of  
3 revisions to the PROS Comprehensive Plan. On November 1, 2005, City  
4 Staff met with the Lane County Planning Commission to provide the  
5 Commissioners with information regarding the PROS Comprehensive Plan.  
6 Record 13.

7 The city contends that petitioners make no attempt to explain why the city's  
8 coordination efforts were insufficient to comply with Goal 2 and petitioners' argument that  
9 the city failed to coordinate should be rejected. We agree with the city.

10 The sixth assignment of error is denied.

11 **SEVENTH ASSIGNMENT OF ERROR**

12 Metro Plan Park, Recreation and Open Space Facilities Element Policy H.4 states that  
13 the city should "[e]ncourage the development of private recreational facilities." Petitioners  
14 argue that the PROS Plan fails to include consideration of private recreational facilities in  
15 meeting demand for parks, recreation and open space facilities.

16 In response the city cites a number of strategies to encourage development of various  
17 kinds of private facilities. Respondent's Brief 23. The city contends that these strategies are  
18 sufficient to comply with Metro Plan Park, Recreation and Open Space Facilities Element  
19 Policy H.4.

20 With the caveat that the city may need to adopt some or all of these strategies as part  
21 of a Metro Plan refinement plan, to respond to our resolution of the second and third  
22 assignments of error, we agree with the city that petitioners do not explain why these  
23 strategies are inadequate to comply with Metro Plan Park, Recreation and Open Space  
24 Facilities Element Policy H.4.

25 The seventh assignment of error is denied.

1 **TENTH ASSIGNMENT OF ERROR<sup>18</sup>**

2 The parties' disagreement over what the PROS Plan is and what relevant law requires  
3 it to be continues in their arguments under the tenth assignment of error. Although the  
4 parties disagree regarding the precise number of acres, the PROS Plan anticipates that a  
5 significant number of acres of land will be needed to meet the city's needs for park,  
6 recreation and open space. Petitioners are concerned that parks are an allowed use in all of  
7 the city's residential zones. Petitioners argue:

8 “\* \* \* With the PROS Plan in place, the city expects to approve its [Systems  
9 Development Charge ORS 223.309] Project List and begin acquiring property  
10 for its park expansion program. It will not need any zone changes to do this  
11 thereby [taking] vast acreages of land off the market for housing. There need  
12 not be any further opportunities for land use decision making with regard to  
13 parks before the conversion of residential inventory land to park begins on a  
14 large scale. The PROS decision reflects the point in time when the ultimate  
15 policy choice (between parks and housing) is made; this is when the housing  
16 standards must be applied.” Petition for Review 36.

17 The city responds as follows:

18 “\* \* \* The PROS Plan does not impose any restrictions on residential lands.  
19 Petitioners are incorrect in their assertion that the City was required to  
20 somehow account for the PROS Plan's impact on residential lands; there is  
21 nothing to account for.” Respondent's Brief 28.

22 The details and level of precision that will be required in the portion of the PROS  
23 Plan that the city will be required to adopt as a refinement plan remain to be determined on  
24 remand. Even if the portion of the PROS Plan that the city determines must be adopted as a  
25 refinement plan does not include a precise estimate of the number of acres of land that will  
26 be required for parks, recreation and open space facilities, it seems unlikely to us that the city  
27 will be able to justify a Metro Plan Parks, Recreation and Open Space Facilities Element  
28 refinement plan that fails to include any mandatory standards that govern how the city will  
29 go about selecting and improving individual park sites in the future. We see no reason why

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<sup>18</sup> There was no ninth assignment of error.

1 the city should not be able to estimate what the impact of future decision making under those  
2 standards will be on the city’s residential land inventory. In view of the steps the city must  
3 take to respond to our resolution of the second and third assignments of error, we do not  
4 further consider petitioner’s tenth assignment of error.

5 The city suggested at oral argument that the way to correct any shortfall in residential  
6 lands that might result from conversion of land in the residential lands inventory to parks,  
7 recreation and open space use under the PROS Plan is simply to add more residential land if  
8 that comes to pass. While we do not foreclose the possibility that the city can demonstrate  
9 that such a purely reactive approach to planning for residential lands needs can be justified  
10 under the Metro Plan, Statewide Planning Goal 10 (Housing) and related housing statutes,  
11 we are skeptical.

12 We do not consider petitioners’ tenth assignment of error.

13 **ELEVENTH ASSIGNMENT OF ERROR**

14 The Metro Plan applies to the Eugene/Springfield urban area.<sup>19</sup> Metro Plan Section  
15 IV, Policy 5(a) provides that all three Metro Plan jurisdictions must approve Metro Plan  
16 boundary changes.<sup>20</sup> Pointing to a “Planning Area Index Map” that appears as an appendix  
17 to the PROS Plan (Record 134), petitioners argue the PROS Plan adopts a planning area that

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<sup>19</sup> Section F of the Introduction Chapter of the Metro Plan explains:

“The boundaries of the [*Metro*] *Plan* are adjacent to the boundaries of the *Lane County General Plan* that surround the Eugene-Springfield metropolitan area. There is no overlap between the boundaries of the [*Metro*] *Plan* and that of the *Lane County General Plan*.

“Adjustments to boundaries may occur in the future so that areas previously a part of one plan are covered under another plan. These adjustments may occur using the Plan review and amendment procedures described in Chapter IV.” Metro Plan I-6.

<sup>20</sup> Metro Plan, Section IV, Policy 5(a) provides:

“All three governing bodies must approve \* \* \* site-specific diagram amendments that involve a UGB or *Plan* boundary change that crosses the Willamette or McKenzie Rivers or that crosses over a ridge into a new basin \* \* \*.” Metro Plan IV-2.

1 takes in substantial areas outside both the city’s municipal limits and the urban growth  
2 boundary, areas that cross the Willamette and McKenzie Rivers and cross into a new basin.  
3 Petitioners contend that application of the PROS Plan outside the boundaries of the Metro  
4 Plan area constitutes a violation or *de facto* amendment of the Metro Plan diagram.

5 The city responds that while the scope of the PROS Plan extends beyond the urban  
6 growth boundary in some respects, the PROS Plan asserts no governmental authority outside  
7 city limits or the urban growth boundary. The PROS Plan includes the following relevant  
8 language:

9 “The parks, recreation and open space planning area for the Eugene PROS  
10 Comprehensive Plan extends beyond the City limits to include all areas within  
11 the urban growth boundary (UGB), including unincorporated areas. In  
12 addition, several recommendations for future park and open space areas  
13 involve land beyond the UGB.

14 “When identifying parcels for park acquisition, the preference is on obtaining  
15 properties that are in close proximity to residents, and therefore within  
16 Eugene’s UGB. However, there are some instances when it may become  
17 necessary to look outside the UGB. For example it is a goal of the PROS  
18 Comprehensive Plan to provide a variety of outdoor experiences for Eugene  
19 residents, including the rural, natural qualities that one encounters in the  
20 Ridgeline Park system. Additionally, there may be times when the type and  
21 size of parcels which are sought to provide specific park services are not  
22 available within the UGB because of previous development. For these  
23 reasons, several opportunities exist for the City and County to partner in an  
24 effort to obtain the best outdoor experience for all stakeholders.

25 “Adoption of the PROS Comprehensive Plan does not amount to the City  
26 exercising any governmental authority outside of the UGB or outside of the  
27 City’s limits. The PROS Comprehensive Plan does not have any legal or  
28 regulatory effect on land located outside City limits. It is a strategy/planning  
29 document that is intended as a guide for the City as it moves forward to meet  
30 the recreational and park needs of the City’s residents.” Record 43.

31 The city points to a number of PROS Plan strategies that encourage connectivity between  
32 city parks, recreation and open spaces and such spaces in surrounding jurisdictions. The city  
33 contends that such non-regulatory expressions of interest in developing a city parks,  
34 recreation and open space system that is integrated with the parks, recreation and open space

1 systems of surrounding jurisdictions is not improper and does not constitute either a violation  
2 of or a *de facto* amendment of the Metro Plan. With regard to petitioners' claim that the city  
3 failed to coordinate with Lane County, the city cites to the same findings that we set out in  
4 our discussion of the sixth assignment of error that explain how the city coordinated with the  
5 county.

6 We agree with the city that the non-regulatory PROS Plan provisions that look  
7 beyond the Metro Plan Diagram boundary do not violate or constitute a *de facto* amendment  
8 of the PROS Plan. To the extent the PROS Plan sets the groundwork for city acquisition of  
9 lands outside the Metro Plan area for parks, recreation or open space, the PROS Plan makes  
10 it clear that the county's comprehensive plan is the controlling planning document. We also  
11 agree with the city that the cited findings show that the city coordinated preparation of the  
12 PROS Plan with the county.

13 The eleventh assignment of error is denied.

14 The city's decision in LUBA No. 2006-023 is remanded. LUBA No. 2006-024 is  
15 dismissed.