

LAND USE
BOARD OF APPEALS

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

Oct 10 4 13 PM '89

1
2
3 DAN STOTTER,)
4 Petitioner,)
5 and)
6 ALVIN W. URQUHART and)
7 RANDY L. PRINCE,)
8 Intervenors-Petitioner,)
9 vs.)
10 CITY OF EUGENE,)
11 Respondent,)
12 and)
13 STATE OF OREGON, by and through)
14 the State Board of Higher)
15 Education,)
 Intervenor-Respondent.)

LUBA No. 89-037

FINAL OPINION
AND ORDER

16 Appeal from the City of Eugene.

17 Dan Stotter, Eugene, filed a petition for review and argued
18 on his own behalf.

19 Randy L. Prince, Eugene, filed a petition for review and
20 argued on his own behalf.

21 Alvin W. Urquhart, Eugene, filed a petition for review on
22 his own behalf.

23 Timothy J. Sercombe, Eugene, filed a response brief and
24 argued on behalf of respondent. With him on the brief was
25 Harrang, Long, Watkinson and Arnold.

26 James M. Mattis, Eugene, filed a response brief and argued
on behalf of intervenor-respondent.

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

AFFIRMED

10/10/89

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

1 Opinion by Holstun.

2 NATURE OF THE DECISION

3 Petitioner and intervenors-petitioner (petitioners) appeal
4 a City of Eugene Planning Commission (commission) decision. The
5 commission's decision upholds the city hearings official's
6 decision approving a conditional use permit for the master site
7 plan for a private research park (the Riverfront Research Park)
8 near the Willamette River in the City of Eugene.

9 MOTIONS TO INTERVENE

10 Alvin W. Urquhart and Randy L. Prince move to intervene on
11 the side of petitioner. There is no opposition to the motions,
12 and they are allowed.

13 The Oregon State Board of Higher Education moves to
14 intervene on the side of respondent. There is no opposition to
15 the motion, and it is allowed.

16 FACTS

17 The history of local actions and appeals to this Board
18 regarding the Riverfront Research Park is set out in the
19 response brief filed by intervenor-respondent State Board of
20 Higher Education as follows:

21 "The decision of the Eugene Planning Commission * * *
22 reviewed [in this appeal proceeding] is the result of
23 an * * * extensive public process that began in
24 1984.* * *

25 "** * * The Eugene City Council appointed a nine-member
26 committee in 1984 to review the feasibility of
establishing a research park in conjunction with the
University of Oregon on property involved in this
conditional use permit application. The committee
* * * released a draft of the Riverfront Park Study in
April, 1985. * * * The final version of the

1 Riverfront Park Study and amendments to the
2 Metropolitan Plan were adopted on September 9, 1985 by
3 the Eugene City Council. The amendment to the
4 Metropolitan Plan was ratified by the Lane Council of
5 Governments Board of Directors on September 26, 1985.¹

6 " * * * The City's adoption of the Riverfront Park
7 Study and the associated amendment to the Metropolitan
8 Plan was appealed to LUBA [and ultimately affirmed.
9 Urquhart v LCOG and City of Eugene, 14 Or LUBA 335,
10 rev'd in part 80 Or App 176 (1986)].

11 " * * * A special zoning district to guide development
12 of the research park and implement the provisions of
13 the Riverfront Park Study was developed by the
14 City. * * * The Riverfront Park Special [Development]
15 District was adopted on May 11, 1987 * * *.

16 " * * * Adoption of the Riverfront Park Special
17 [Development] District was appealed to [and affirmed
18 by] LUBA. [Urquhart v. City of Eugene, ___ Or LUBA
19 ___ (LUBA No. 87-040, September 14, 1987)]."
20 Intervenor-Respondent's Brief 6-8.

21 Following adoption of the Riverfront Park Special
22 Development District (RPSDD), the city hearings official and the
23 commission applied the criteria established by the RPSDD and
24 approved a conditional use permit approving the Riverfront
25 Research Park Master Plan and Design Guidelines (Master Plan).
26 Intervenor-respondent explains the nature of the proposal as
follows:

21 ¹Respondent city explains:

22 "The Metro [or Metropolitan] Plan is the general comprehensive
23 plan for Eugene, Springfield, and the adjacent urbanizable
24 portions of Lane County. It was acknowledged in August, 1982.
25 Amendments to the Metro Plan require the consent of Eugene,
26 Springfield and Lane County. The Metro Plan is general in
scope. More specific application of plan policies occur
through neighborhood plans and special area studies which
address issues unique to a specific geographic area. * * * The
Riverfront Park Study is a special area study." Respondent's
Brief 20, n 6.

1 "The Riverfront Research Park is a cooperative effort
2 of the University of Oregon, the City of Eugene, and
3 one or more private developers to develop a
4 university-related research park on 67 acres of
5 property owned by the Oregon State Board of Higher
6 Education. The 67 acres is located on the north side
7 of the University campus and extends from Franklin
8 Boulevard to the south bank of the Willamette River.

9 "The site of the proposed research park is bisected by
10 the Southern Pacific railroad line which runs in a
11 east-west direction. The area between Franklin
12 Boulevard and the railroad is further divided by the
13 Millrace which runs in an east-west direction until it
14 reaches the western portion of the site and turns
15 north to flow to the Willamette River. All of the
16 site north of the Millrace (and north of the railroad
17 for that portion of the site located west of the
18 Millrace) * * * is within the boundary of the
19 Willamette River Greenway.

20 "The majority of the site north of the railroad is
21 vacant. This portion of the property was acquired by
22 the University in 1968; prior to that time it was the
23 location of a sand and gravel extraction and crushing
24 operation. The western portion of the area north of
25 the railroad is occupied by an open storage area
26 leased to the Eugene Water & Electric Board. A soccer
field is located near the eastern end of this part of
the site. The only other improvements in this area
consist of a bicycle trail along the river and the
Autzen Footbridge crossing the Willamette River.

17 "The area south of the railroad tracks is more
18 intensively developed at the present time.
19 Improvements in the area include the University steam
20 plant and related hogged fuel storage, Physical Plant,
21 portions of the School of Architecture and Allied Arts
22 (AAA) complex, and other miscellaneous University
23 buildings. The Master Plan for the Riverfront
24 Research Park anticipates that certain existing
25 facilities such as the steam plant and AAA complex
26 will be retained. Other University buildings and uses
will be relocated as income generated from the
research park development makes this possible.

24 "* * * * *

25 "Because of the length of time anticipated for
26 development of the Riverfront Research Park, the
Master Plan * * * consists of several elements. It

1 includes a parcel plan which defines parcels within
2 which development may occur.* * * [T]he total square
3 footage that may be developed is limited to 1.2
4 million square feet under the conditional use permit
5 approval granted * * *. The parcel plan also
6 establishes height restrictions for development
7 parcels located between the railroad tracks and the
8 Willamette River * * *. In addition to the parcel
9 plan, the Master Plan includes plans for access
10 improvements and other infrastructure requirements
11 * * *. This element of the Master Plan includes
12 provisions for improvements to the pedestrian and
13 bicycle trail system to and along the Millrace and
14 Willamette River * * *.

8 " * * * * *

9 "Of the 67-acre site for the Riverfront Research Park,
10 29.5 acres is allocated for development or parking
11 parcels. The remainder of the site is maintained as
12 open space, except for that area required for public
13 streets. Nine development or parking parcels
14 containing 13.7 acres are located south of the
15 railroad tracks; eight development or parking parcels
16 containing 15.8 acres are located north of the
17 railroad tracks. All of the development and parking
18 parcels are within the boundaries of the Willamette
19 River Greenway." Intervenor-Respondent's Brief 4-6.

15 A number of different planning documents are important in
16 this appeal, and their acronyms and shorthand references can be
17 confusing. The more important documents are as follows:

- 18 1. The Metro or Metropolitan Plan is the general
19 comprehensive plan. See n 1, supra. The Metro
20 Plan includes a number of separate elements with
21 goals, objectives and policies included in each
22 element.
- 23 2. The Riverfront Park Study (RPS) is a refinement
24 plan/study to the Metro Plan for the Riverfront
25 Park area and is part of the city's
26 comprehensive plan.
- 27 3. The TransPlan is the Eugene-Springfield area's
28 long range transportation plan. TransPlan is a
29 functional plan and is part of the city's
30 comprehensive plan.
- 31 4. The Riverfront Park Special Development District

1 (RPSDD) is a special zoning district, created by
2 city ordinance 19470. The RPSDD sets forth
3 standards for approval of master site plans for
4 development within the RPSDD.

- 5 5. The Riverfront Research Park Master Plan and
6 Design Guidelines (Master Plan) is the master
7 plan prepared by intervenor-respondent and
8 approved by the city conditional use permit
9 decision challenged in this appeal.

10 INTRODUCTION

11 A. Issues Properly Presented

12 Respondent argues our review is limited in three ways and
13 that certain issues raised by petitioners are not properly
14 presented in this appeal.

- 15 1. Eugene Code 9.714--Issues limited to Issues
16 Specified in Appeal Statements

17 Respondent contends Eugene Code 9.714 limits commission
18 review to issues specified in the appeal statement required by
19 that section.² Citing ORS 197.805 (land use decisions to be
20 reviewed following "sound principles governing judicial review)
21 and 197.825(2)(a) (requiring exhaustion of "all remedies
22 available by right before petitioning the board for review
23 * * *"), respondent contends our review is limited to issues
24 petitioners properly raised in their appeal statements to the

25 ²Eugene Code 9.714 provides as relevant:

26 "Appeals. Within ten days of the hearings official's
decision, it may be appealed to the planning commission by the
applicant, an adversely affected person, or a party entitled to
notice. The appeal shall be * * * based on the record, and
shall state specifically how the hearings official failed to
properly evaluate the proposed conditional use permit
application or make a decision consistent with the applicable
criteria."

1 commission. Respondent argues that we should refuse to consider
2 issues that could have been, but were not, specified in the
3 appeal statements. Respondent's Brief 4.

4 ORS 197.805 and 197.825(2)(a) notwithstanding, petitioners'
5 failure to raise an issue in the appeal statements filed with
6 the commission does not preclude our review of the issue in this
7 appeal proceeding. ORS 197.825(3) explicitly provides the
8 requirement for exhaustion of remedies does "not affect the
9 authority of the board to decide issues not raised in the local
10 government proceedings." McNulty v. City of Lake Oswego, 14 Or
11 LUBA 366, 370 (1986); See Lane County v. City of Eugene, 54 Or
12 App 26, 32-33, 633 P2d 1306 (1981). Therefore, even if
13 respondent is correct that the issues it identifies were not
14 properly raised in the appeal statements, that failure, alone,
15 does not preclude our review of those issues.³ 197.825(3).

16 2. ORS 197.762 - Issues Limited to Issues Raised
17 Before the Hearings Official

18 ORS 197.762 provides in part:

19 "The following shall apply to land use hearings on
20 applications for development of property entirely
21 within an urban growth boundary to be conducted by a
22 local governing body:

23 "(1) An appeal procedure shall:

24 "(a) Require an applicant or appellant to raise
25 any issue before the local governing body

26 ³For a discussion of the problems that scope of review provisions such
as the one in Eugene Code 9.714 may cause, see Smith v. Douglas County, ___
Or LUBA ___ (LUBA No. 88-016, July 15, 1988), slip op 21, n 5, aff'd in
part, rev'd in part 93 Or App 503, aff'd 308 Or 191 (1989).

1 with sufficient specificity so as to have
2 afforded the governing body, and applicant,
3 if appropriate, adequate opportunity to
4 respond to and resolve each issue.

5 "(b) Provide notice of the provisions of this
6 section * * *

7 * * * * *

8 "(c) The notice shall:

9 * * * * *

10 "(D) State that failure to raise an issue
11 in person or by letter precludes
12 appeal and that failure to specify to
13 which criterion the comment is
14 directed precludes appeal based on
15 that criterion * * *

16 * * * * *

17 "(2) At the commencement of a hearing a statement
18 shall be made to those in attendance that:

19 * * * * *

20 "(c) Failure to address a criterion precludes
21 appeal based on that criterion." (Emphasis
22 added.)⁴

23 Respondent claims that under ORS 197.762, petitioners were
24 required to raise, at the hearing before the hearings official,
25 all issues for which petitioners seek LUBA review in this
26 proceeding.⁵ Respondent argues that failure to raise an issue

27 ⁴ORS 197.762 was extensively revised in 1989. See Oregon Laws 1989, ch
28 761, sec 10.

29 ⁵The public notice provided before the public hearing conducted by the
30 hearings official stated:

31 "The public hearing is your only opportunity to submit
32 testimony on the application. In order to assist you in
33 preparing testimony, Eugene Code approval requirements for this
34 type of application are enclosed. If the decision is appealed,

1 before the hearings official precludes our review of that issue.

2 We explained in McConnell v. City of West Linn, ___ Or LUBA
3 ___ (LUBA No. 88-111, March 13, 1989) slip op 7-10, that
4 ORS 197.762 prescribes notice requirements for hearings by the
5 governing body; and, provided the required notice is given, our
6 review of the governing body's decision is limited to issues and
7 criteria raised before the governing body. ORS 197.762 does not
8 apply to proceedings before lower level local decision making
9 bodies, such as hearings officials and planning commissions.
10 Therefore, ORS 197.762 does not apply in the circumstances
11 presented by this case and does not foreclose petitioners from
12 raising issues at LUBA that were not raised before the hearings
13 official.

14 3. Issues Limited to Issues Raised by Petitioner

15 Respondent contends that although intervenors-petitioner
16 Prince and Urquhart are parties to this appeal, petitioner
17 Stotter's petition for review frames the totality of the issues
18 which intervenors-petitioner may properly raise. As we
19 understand it, respondent argues that intervenors-petitioner are
20 limited to arguments in support of issues identified by the
21 petitioner and may not assert issues other than those raised in

22 only those issues raised at the original hearing may be raised
23 at the appeal hearing. If an approval requirement is not
24 addressed in testimony at the original hearing, it cannot be
discussed in an appeal hearing." Record 505.

25 For purposes of discussion, we assume the above notice meets the
26 substantive requirements of ORS 197.762(1)(D) quoted supra, and the
hearings official made the statement described in ORS 197.762(2), as
respondent claims.

1 the petitioner's petition for review.

2 Our rules governing intervention are adopted pursuant to
3 ORS 197.830(5) (allowing persons to intervene in appeal
4 proceedings before this Board if certain requirements are met)
5 and ORS 197.805 (expressing a policy of expeditious appeals
6 subject to sound principles of judicial review).
7 OAR 661-10-050(3)(a) provides that an intervenor-petitioner's
8 brief must be filed "within the time limit for filing the
9 petition for review and shall satisfy the requirements for a
10 petition for review." To limit intervenors-petitioner's ability
11 to argue before this Board in the way respondent suggests would
12 serve neither statutory purpose. Such a limit would place
13 intervenors-petitioner in the awkward position of determining
14 (or guessing) in advance what issues petitioner will raise in
15 his brief. We believe the above cited statutes and our rule
16 governing intervention are intended to allow persons to
17 intervene and raise all appropriate issues in a single appeal
18 proceeding, thereby avoiding multiple appeals concerning a
19 single land use decision. Intervenors-petitioner may raise in
20 this appeal any issue which they could properly raise had they
21 filed separate notices of intent to appeal and pursued separate
22 appeals.

23 B. Applicable Criteria

24 The RPSDD establishes the applicable approval criteria for
25 the challenged conditional use permit. RPSDD section 7 provides
26 that the conditional use permit process in chapter 9 of the

1 Eugene Code applies, but establishes criteria which apply in
2 lieu of the general conditional use criteria in Eugene Code
3 9.702 and 9.260.⁶
4

5 ⁶RPSDD section 7 establishes separate criteria for (1) all development
6 within the RPSDD, and (2) development within the RPSDD that is also within
the Willamette River Greenway. These criteria are as follows:

7 "7.1 Criteria for All Development

- 8 "a. The proposed development shall be consistent with
9 the Metropolitan Area General Plan, Riverfront Park
10 Study, and other applicable policy documents or
11 functional plans.
12 "b. Based on technical analysis (particularly with
respect to transportation facilities), planned
13 public facilities shall be shown to accommodate the
14 requirements of the proposed development.
"c. The proposed development shall protect visual
15 access from main entry points from Franklin
16 Boulevard to the river/riparian vegetation.

15 "7.2 Criteria for Development Within Greenway Boundaries

- 16 "a. Criteria 7.1.a, 7.1.b and 7.1.c above.
17 "b. The height and bulk of the proposed development
18 shall be designed to consider the impacts on public
19 open space, especially the buffer strips along the
20 Willamette River and Millrace, and to adhere to the
21 the height limitations specified along the
Willamette River. Building setbacks shall be
22 varied to avoid the effect of a continuous wall
23 along the minimum setback line and to adhere to the
24 requirement for protection of designated features
(i.e., Millrace and pedestrian linkage to the
Autzen Stadium footbridge).
"c. To the greatest possible degree, the
25 intensification, change of use, or development will
26 provide the maximum possible landscaped area, open
space, or vegetation between the activity and the
river.
"d. To the maximum extent practicable, the proposed
development shall provide for protection and
enhancement of the natural vegetative fringe along
the the Willamette River. This means protection

1 RPSDD 7.1.a and 7.2.a impose a requirement that "proposed
2 development shall be consistent with the Metropolitan Area
3 General Plan, Riverfront Park Study, and * * * functional
4 plans." In assignments of error one through four and seven,
5 petitioners argue that specific goals, objectives and policies
6 in the Metro Plan and TransPlan are violated. Assignments of
7 error five and six allege violations of RPSDD 7.1.c and 7.1.d.

8 Respondent generally contends that Metro Plan policies are
9 not independently applicable as approval criteria for the city
10 decision challenged in this appeal.⁷ According to respondent,
11 Metro Plan policies "were considered and applied to the area
12 through the RPS and the [RPSDD]." Respondent's Brief 46. We
13 understand respondent to argue that the RPS and RPSDD constitute

14
15 and enhancement of trees and understory
16 characteristic of native vegetation within the
17 riparian strip along the Willamette River. It also
18 means removal, and active management to prevent
19 reintroduction of, disturbance vegetation such as
20 Himalayan blackberries and English ivy. As used
21 here, the riparian strip means the area between the
22 top of the river bank and the water's edge.

19 "e. To the greatest possible degree, necessary and
20 adequate public access will be provided to and
21 along the river by appropriate legal means.

21 "As used in this section, the words 'greatest possible degree'
22 are drawn from Statewide Planning Goal 15 (F.3.b) and are
23 intended to require a balancing of factors so that each of the
24 identified Greenway criteria is protected to the greatest
25 extent possible without precluding the requested use.* * *.

26 "** * * * **"

24 ⁷Respondent's arguments about the general inapplicability of Metro Plan
25 policies as approval criteria are presented in its response to the first
26 assignment of error, but are repeated explicitly and implicitly under other
assignments of error. We address respondent's arguments generally before
turning to the individual assignments of error.

1 a substantive and geographically specific refinement of the
2 Metro Plan; and, therefore, the policies and criteria in the RPS
3 and RPSDD take the place of Metro Plan policies as approval
4 criteria. If respondent is correct in this contention,
5 petitioners' claims that the city erroneously interpreted and
6 applied Metro Plan policies to its decision would provide no
7 basis for reversal or remand, even if petitioners' claims were
8 well founded.

9 Although we do not question the logic and practicality of
10 replacing highly general and jurisdiction-wide policies with
11 geographically discrete and more specific policies, we are
12 unable to agree with respondent that the RPS and RPSDD
13 necessarily render all Metro Plan standards inapplicable as
14 approval criteria for individual land use decisions controlled
15 by the RPS and RPSDD.

16 Prior to acknowledgment, local government land use
17 decisions are required to comply with the statewide planning
18 goals. ORS 197.175(2)(c); 197.835(2); Panner v. Deschutes Co.,
19 14 Or LUBA 1, 7 (1985). After acknowledgment of a local
20 government's comprehensive plan and land use regulations, the
21 acknowledged plan and land use regulations, rather than the
22 statewide planning goals, establish the relevant approval
23 criteria for land use decisions (other than amendments to the
24 acknowledged plans and land use regulations and adoption of new
25 plans and land use regulations). ORS 197.175(2)(d); 197.835(3)
26 and (4). Byrd v. Stringer, 295 Or 311, 316-317, 666 P2d 1332

1 (1983).

2 Determining the intended relationship between, and
3 applicability of, standards in the comprehensive plan, subparts
4 of the plan and implementing regulations is problematic when, as
5 is usually the case, the local government does not explicitly
6 identify how standards and criteria in the plan, subparts of the
7 plan, and implementing regulations apply to individual land use
8 decisions. See Bennett v. City of Dallas, ___ Or LUBA ___ (LUBA
9 No. 88-078, February 7, 1989), slip op 8, aff'd 96 Or App 645
10 (1989). See also Pardee v. City of Astoria, ___ Or LUBA ___
11 (LUBA Nos. 88-049/88-050/88-051, December 14, 1988); Hummel v.
12 City of Brookings, 13 Or LUBA 25, 35 (1985); McCoy v. Tillamook
13 County, 14 Or LUBA 108, 110-111 (1985); compare Miller v. City
14 of Ashland ___ Or LUBA ___ (LUBA No. 88-038, November 22, 1988),
15 slip op 23.

16 Although ORS 197.835(3)⁸ requires that land use decisions
17 comply with both the acknowledged plan and land use regulations,
18 plan provisions may be aspirational or guidelines rather than
19 mandatory approval criteria.⁹ Downtown Comm. Assoc. v. City of
20 Portland, 80 Or App 336, 722 P2d 1258, rev den 302 Or 86 (1986).
21 Even when a plan provision is a mandatory standard, it may

22 _____
23 ⁸ORS 197.835(3) was amended in 1989. See Oregon Laws 1989, ch 761, sec
24 13.

25 ⁹In Bennett v. City of Dallas, supra, we explained that in the absence
26 of explicit direction from the local government concerning the nature of
plan standards, we determine whether the plan standards are mandatory
approval criteria based on the wording and context of the standards.

1 provide a standard for adoption and amendment of land use
2 regulations, not for individual permits or other types of land
3 use decisions. Moorefield v. City of Corvallis, ___ Or LUBA ___
4 (LUBA No. 89-045, September 28, 1989), slip op 7; Miller v. City
5 of Ashland, supra, slip op at 22-25. Finally, we see no reason
6 why a refinement plan or a land use regulation could not
7 establish mandatory approval standards which supersede more
8 general mandatory approval standards in the overall
9 comprehensive plan in specific situations or specific geographic
10 areas, if the intent to substitute the standards in the
11 refinement plan or implementing regulations for the approval
12 criteria in the comprehensive plan is expressed in the
13 acknowledged plan and land use regulations.

14 We turn to the text of the Metro Plan, RPS and RPSDD to
15 determine whether, as respondent suggests, the RPS and RPSDD
16 apply in lieu of the Metro Plan. The Metro Plan provides in
17 pertinent part:

18 "E. Relationship to Other Plans and Policies

19 "Where the Metropolitan Area General Plan is the basic
20 guiding land use policy document, it is not the only
21 such document. As indicated in the Purpose section
22 above * * * the General Plan is a framework plan, and
23 it is important that it be supplemented by more
24 detailed refinement plans, programs and policies. Due
25 to budget limits and other responsibilities, all such
26 plans, programs, and policies cannot be pursued
simultaneously. * * *

"Refinements to the Metropolitan Plan can include:
1) city-wide comprehensive policy documents, such as
the 1984 Eugene Community Goals and Policies;
2) functional plans and policies addressing single
subjects throughout the area, such as * * *

1 transportation plans; and 3) neighborhood plans or
2 special area studies that address those issues that
3 are unique to a specific geographical area. In all
4 cases, the Metropolitan Plan is the guiding document,
5 and refinement plans and policies must be consistent
6 with the Metropolitan Plan. Should inconsistencies
7 occur, the Metropolitan Plan is the prevailing policy
8 document. * * *

9 " * * * * " Metro Plan I-5.

10 The RPS similarly provides:

11 "Eugene's planning program is based on ongoing
12 development and refinement of a series of policy
13 statements. The foundation for those policies is
14 found within the * * * Metropolitan Area General Plan
15 acknowledged by the Land Conservation and Development
16 Commission * * * to comply with the Statewide Goals
17 * * *.

18 "Like other similar refinement plans and studies
19 conducted by the City of Eugene, the Riverfront Park
20 Study is a geographic refinement of the broad
21 direction established for the Eugene-Springfield area
22 through the Metropolitan Plan. * * * " RPS 2

23 The RPS includes a policy that a special development
24 district be applied to the property and includes a recommended
25 special development district for the Riverfront Park. RPS
26 Appendix B. The RPSDD adopted by the city and challenged in
27 Urquhart v. City of Eugene, supra, establishes approval criteria
28 for development within the RPSD, including the requirement that
29 development "shall be consistent with the Metropolitan Area
30 General Plan, Riverfront Park Study, and other applicable policy
31 documents or functional plans." (Emphasis added.) RPSDD 7.1.a;
32 7.2.a; see n 6, supra.

33 The above-quoted language from the Metro Plan, RPS and
34 RPSDD is not entirely clear about the relationship between
35 approval standards applicable to conditional use permit
36

1 decisions under the Metro Plan, RPS and RPSDD. The language
2 clearly does not, however, suggest the city intended by adopting
3 the RPS and RPSDD to make the more general Metro Plan (or
4 functional plan) goals, objectives, and policies inapplicable
5 within the RPSDD.¹⁰ See Miller v. City of Ashland, supra, slip
6 op at 15 ("[absent] language in the general plan or the
7 [Southern Oregon State College Plan] establishing that otherwise
8 applicable policies of the general plan are not applicable to
9 [Southern Oregon State College property]" the general plan goals
10 and policies apply). We conclude that Metro Plan and TransPlan
11 provisions are potentially applicable approval standards for the
12 challenged decision.

13 However, our above conclusion does not mean that any
14 particular TransPlan or Metro Plan goal, objective, or policy is
15 a mandatory approval criterion for the challenged conditional
16 use permit. Thus, in addressing petitioners' assignments of
17 error, we must determine whether each cited plan provision is an
18 approval criterion and, if so, whether the challenged city
19 decision or prior decisions concerning this proposal demonstrate
20 that the approved conditional use permit complies with that
21 approval criterion.

22
23
24
25 ¹⁰In fact, the explicit references to the Metro Plan and functional
26 plans in RPSDD 7.1.a support an interpretation that the city did not
intend the standards in the RPS and RPSDD to wholly eliminate the need to
address standards in the Metro Plan and functional plans.

1 FIRST ASSIGNMENT OF ERROR

2 As noted above, RPSDD 7.1.a and 7.2.a require that
3 development proposed within the RPSDD be consistent with the
4 Metro Plan. Petitioners argue the following Metro Plan
5 Willamette River Greenway, River Corridor, and Waterway Element
6 goal, objectives and policies are violated by the city's
7 decision:

8 "Goal

9 "Protect, conserve, and enhance the natural, scenic,
10 environmental, and economic qualities of river and
 waterway corridors.

11 "Objectives

12 "1. Encourage use of river and waterway corridors to
13 fulfill open space, recreation, and resource
 protection needs.

14 "2. Ensure that development occurring within river
15 and waterway corridors is responsive to and
 provides protection of these valuable natural
 assets.

16 "* * * * *

17 "Policies

18 "* * * * *

19 "5. New development that locates along river
20 corridors and waterways shall be limited to uses
21 that are compatible with the natural, scenic,
22 and environmental qualities of those water
 features.

23 "6. New industrial development that locates along
24 the Willamette and McKenzie Rivers shall enhance
 natural, scenic, and environmental qualities.

25 "* * * * *" Metro Plan III-D 3-5.

26 Petitioners contend the city improperly interpreted and

1 misapplied the above quoted Metro Plan provisions.¹¹
2 Petitioners complain the planning commission applied an
3 incorrect, narrow interpretation of policies 5 and 6 that
4 impermissably circumscribed the substantive and geographic scope
5 of the policies. The bulk of petitioners' arguments are
6 directed at the language in the findings quoted below suggesting
7 policies 5 and 6 are properly limited in scope to the Willamette
8 River, Millrace and Millpond and suggesting that recreational,
9 flora and fauna values protected by those policies are properly
10 limited to those that are river or millrace related:

11 "We reject [intervenor-petitioner Urquhart's]
12 interpretation of the meaning of 'natural, scenic, and
13 environmental qualities.' The natural, scenic and
14 environmental qualities of the Willamette River relate
15 to the river and riparian strip itself and not to the
16 lack of nearby urban activities. Also, the natural
17 scenic and environmental qualities of the Millrace
18 relate to the Millrace itself in the same manner.
19 First, the policies themselves contemplate development
20 near the river and regulate the type of 'new
21 development' and 'new industrial development.'
22 Obviously, some type of new industrial development
23 near the the River enhances its environmental and
24 scenic qualities or else Policy 6 would be
25 meaningless.

19 "Second, previous LUBA appeals found the
20 'University/Research' plan designation and zoning
21 district uses to be consistent with these same plan
22 policies. Some types of development contemplated by

22 ¹¹In addition to petitioner's first assignment of error, we also address
23 under this assignment of error the portion of intervenor-petitioner
24 Urquhart's single assignment of error, subpart D, which appears at pages 11
25 through 22 of his petition for review. Intervenor-petitioner Urquhart's
26 arguments are directed solely at Willamette River Greenway, River
Corridors, and Waterway Element policies 5 and 6 quoted *supra*. Although
petitioner cites the above quoted goal and objectives in addition to
policies 5 and 6, his arguments likewise appear to be directed at the
commission's findings addressing policies 5 and 6.

1 the plan designation and zoning must be consistent
2 with these policies or else the policies would bar
3 adoption of the plan and zoning designations. Such an
4 outright bar was argued and rejected in both previous
land use appeals. Thus, as applied to this Greenway
land, these policies regulate the manner of
development not whether development is allowed or not.

5 "The issue then is whether the type of development
6 proposed by the University is compatible with and
7 enhances the natural, scenic, and environmental
8 qualities of the water features in the area. We read
9 Policy 6 as referring to natural, scenic, and
10 environmental qualities of the Willamette River, and
11 not to the qualities of other features. The policy
exists in the Greenway Element of the Plan and not in
the Environmental Resources or Environmental Design
Elements. Thus, these policies do not regulate the
effect of the development on other environmental
amenities in the area such as the Silva Orchard and
the recreational playing field.

12 "Instead, the policies pertain to the natural, scenic,
13 and environmental quality of the Willamette River,
14 other waterways (which in this case includes the
15 Millrace and Millpond), and some river-dependent
16 vegetation. The particular qualities in this case
17 have been identified in previous acknowledged
18 inventories of natural assets, refinement plans, and
19 public hearings relative to this proposal. In
20 particular, the Wagner assessment * * *, the
21 Riverfront Park Study, the Metropolitan Plan, the
Natural Assets and Constraints Working Paper to the
Metropolitan Plan, and the Parks and Recreation Master
Plan identify important river and river-related
qualities in the area. In addition to the Willamette
River, the Millrace and the Millpond, they are: the
riparian strip or bank area of the Willamette River as
a natural habitat, trees located near the Millrace
outfall, the public's access to the river and river
bank, and visual access to the river from the south
* * *.

22 "The prior planning records and the record in this
23 case support the continued identification of these
24 qualities as the 'natural, scenic, and environmental
25 qualities' referred to in Greenway Element Policies 5
26 and 6. These are areas and qualities directly
associated with the Willamette River, not amenities or
qualities existing on the site without regard to the
nearby river. Thus, we reject the relevance of these
Greenway policies to the preservation of urban open

1 space (although this value is relevant to other
2 decisional criteria), floodplain vegetation not
3 related to flooding conditions, foraging areas for
4 animals that are not water-dependent, and recreational
5 sports areas for activities that are not water-
6 related. We conclude from the evidence in this record
7 that the significant natural areas associated with the
8 Willamette River and the Millrace are the riparian
9 strip and the open space area near the Millrace
10 outfall. There is insufficient evidence that
11 developed and undeveloped areas away from the
12 riverbank have natural qualities relating to the
13 River." Record 6-7.

14 Petitioners contend that because the commission adopted an
15 incorrect interpretation of the geographic coverage and
16 substantive scope of policies 5 and 6, the commission did not
17 consider evidence petitioners submitted identifying a number of
18 values deserving protection under the cited Greenway
19 provisions.¹²

20 Respondent first argues the commission's view of the proper
21 scope of policies 5 and 6 is correct, supported by the language
22 of those policies and the need to construe those policies in
23 concert with other overlapping plan provisions, and consistent
24 with dictum in our decision in Urquhart v. LCOG and City of
25 Eugene, supra.

26 Respondent and intervenor-respondent (respondents) also
offer an alternative explanation for why the city's decision
does not offend policies 5 and 6. Respondents point out the

¹²Petitioners cite testimony in the record stating that open space, recreation, plant and animal habitat and other environmental and ecological values present on the property would be destroyed or impacted by the development. Petition for Review 12-14; Petition for Review (Intervenor Urquhart) 20-22.

1 commission incorporated the hearings official's findings in its
2 decision. According to respondents, those findings determine
3 compliance with policies 5 and 6 without adopting the narrower
4 interpretation of those policies expressed by the commission.
5 The hearings official found the "natural, scenic and
6 environmental qualities" protected by policies 5 and 6 "to be
7 those identified in the Riverfront Park Study."¹³ Respondent's
8

9 ¹³The RPS provides in part:

10 "The 'Vegetation/Wildlife Working Paper' prepared for the
11 Eugene-Springfield Metropolitan Area General Plan provides a
12 broad inventory of vegetative/wildlife habitat within the study
13 area. That Working Paper shows that the study area is: 1) the
location of the Clouded Salamander, Oregon red Salamander, and
the Western Racer; 2) comprised of wetland-type soils; and 3)
is the site of riparian vegetation.

14 "In order to confirm this analysis, the City of Eugene
15 requested David H. Wagner, Curator of the University of
16 Oregon's Herbarium, to prepare an assessment of environmental
17 considerations regarding the Riverfront Park Study areas. Mr.
Wagner determined that the study area could be divided into two
areas: 1) the floodplain area behind the edge of the Willamette
River; and 2) the riparian strip along the river itself.

18 "a. The floodplain area is dominated by 'disturbance'
19 vegetation. However, a few stands of trees do exist
20 within the floodplain area. With the exception of
21 cottonwood trees, efforts should be made to maintain
22 these trees because they present important natural
23 landscape opportunities for the site, and in some cases
are somewhat unique to Eugene. There is an interrupted
row of cottonwood trees along the railroad tracks, which
act as a noise and visual buffer. These cottonwoods
could be interplanted with evergreens which could
eventually assume the buffer function. Under this
approach, the cottonwoods would not be cut until the
evergreens have matured.

24 "b. The riparian strip along the river serves three
25 functions: 1) preservation of valuable natural
26 environment elements; 2) riverbank stabilization; and 3)
protection of the project area from debris during major
floods (a rare occurrence). This riparian strip is the
most important natural feature within the study area,

1 Brief 52. The hearings official reasoned "[b]ecause the Master
2 Site Plan protected and enhanced those qualities," policies 5
3 and 6 were satisfied. Id. See Record 204-205. In other words,
4 respondents contend the significant natural, scenic and
5 environmental qualities addressed by policies 5 and 6 were
6 identified and addressed in the Riverfront Park Study and,
7 although the hearings official considered the additional

8
9 and its preservation should involve an active management
10 program. A management program should include control or
removal of the Himalayan blackberry plants which cover
much of the understory of the riparian strip." RPS 24.

11 In his 1984 environmental assessment, Dr. Wagner stated in part:

12 * * * * *

13 "The Riverfront Park Study area may be divided into two
14 sections for the purposes of assessment: 1) the flood plain
behind the riparian (water's edge) strip and 2) the riparian
strip itself.

15 * * * * *

16 "The Riverfront Park is to be developed on the flood plain, and
17 here I see no conflict with any area of natural environment.
The area is almost entirely dominated by disturbance
vegetation, primarily weeds.

18 * * * * *

19 "Although the plant life is diverse, its main value as a
20 botanical resource has been as a source of weeds for class use.
There is no shortage of sites to obtain these plants nearby.
21 The open weedy expanse does also serve as a foraging area for
small wildlife and birds. Covering over this area will
22 probably result in a reduction in the number of birds to be
seen along that stretch of the riverbank.

23 * * * * *

24 "* * * Of the whole project area, it is only this riparian
25 strip that bears natural habitats worth caring for. As
mentioned above, caring for this strip means active management
because there are some problems which should be dealt with as a
26 part of the project, both in planning and development."
Record 583-585.

1 testimony presented by petitioners and others concerning those
2 policies, he was entitled to rely on the prior identification in
3 the RPS of the "significant natural, scenic and environmental
4 qualities" that must be protected under policies 5 and 6.¹⁴ See
5 Urquhart v. Lane Council of Governments, 80 Or App at 180 (city
6 need not rejustify acknowledged comprehensive plan inventories
7 when amending its comprehensive plan, if the acknowledged plan
8 inventories are not affected by the amendment).

9 Respondents contend the Wagner assessment relied upon in
10 preparation of the RPS, see n 13 supra, as well as earlier
11 acknowledged inventory documents provide more than adequate
12 evidentiary support for the hearings official's decision to
13 reject petitioners' testimony concerning the presence of various
14 qualities, in addition to those identified in the RPS, which
15 deserve protection under policies 5 and 6.

16 Respondent argues

17 "* * * The Goal 5 [Open Spaces, Scenic and Historic
18 Areas, and Natural Resources] inventories used in
19 preparation of the Metro Plan are contained in the
Natural Assets and Constraints Working Paper of April
12, 1978. * * *

21 ¹⁴Intervenor-respondent points out "the [RPS Environment Policies]
22 mandated preservation of the riparian strip * * * identified as significant
23 and the cluster of trees noted by Dr. Wagner * * * required development of
24 an active management plan to enhance vegetation in the area designated as
25 significant [and] mandated certain setbacks along the Willamette River, and
26 the Millrace outfall, and the vicinity of the Autzen Footbridge.
Intervenor-Respondent's Brief 11. See RPS 9-10. Petitioners do not
contend that if the natural, scenic and environmental qualities that must
be protected under policies 5 and 6 are those identified in the RPS, the
Master Plan challenged in this appeal is inadequate to protect those
values. Rather, petitioners argue values beyond those identified in the
RPS must be protected under policies 5 and 6.

1 "The Natural Assets and Constraints Working Paper is
2 divided into individual working papers, and includes
3 the Vegetation/Wildlife/Wildlife Habitat working paper
4 and the Scenic Areas working paper. The
5 Vegetation/Wildlife/Wildlife Habitat working paper
6 assessed the area's vegetation cover and wildlife
7 habitats and included a survey of endangered or
8 threatened plants and wildlife in the area. 35
9 significant vegetation and wildlife geographic sites
10 were identified based on 9 criteria. Those areas did
11 not include the area along the south bank of the
12 Willamette near the University of Oregon.

13 "Similarly, the Scenic Sites working paper identified
14 criteria for identifying scenic areas (visual
15 prominence, vistas, presence of water, presence of
16 prominent and plentiful vegetation, etc.). The
17 subject site was not identified as meeting any of the
18 criteria.

19 "These working papers, then, were used to identify
20 areas for a Goal 5 ESEE process and protection by
21 designation as 'Natural Resource' in the Metro Plan
22 diagram. As described [in the] Metro Plan, p. II-E-
23 12,

24 "'This designation applies to privately and
25 publicly owned lands where development and
26 conflicting uses shall be prohibited to
27 protect natural resource values. These
28 lands shall be protected and managed [sic]
29 for the primary benefit of values, such as
30 fish and wildlife habitat, soil
31 conservation, watershed conservation,
32 scenic resources, passive recreational
33 opportunities, vegetative cover, and open
34 space.'

35 "The subject area * * * is not designated 'Natural
36 Resource' on the plan diagram or listed as a protected
37 Goal 5 asset in any plan inventory." Respondent's
38 Brief 31-33.

39 The views expressed in the 1984 Wagner assessment are
40 consistent with the city's acknowledged 1976 Greenway Inventory,
41 which does not identify the areas petitioners contend possess
42 significant resources as deserving protection under the cited
43

1 Greenway provisions.¹⁵

2 In these circumstances, we find the hearings official's
3 reliance on the previously adopted inventories and the Wagner
4 assessment to be reasonable. The evidence relied upon by the
5 hearings official in rejecting petitioners' testimony that
6 policies 5 and 6 are inadequately addressed by the proposal is
7 substantial, i.e., it is evidence a reasonable person could rely
8 upon to decide as the hearings official did. See Younger v.
9 City of Portland, 305 Or 346, 360, 752 P2d 262 (1988).

10 The first assignment of error is denied.

11 SECOND ASSIGNMENT OF ERROR

12 Petitioner contends the city's findings fail to show
13 consistency with the Environmental Resources Element of the
14 Metro Plan. Petitioner cites Environmental Resources Element
15 Objective 1 which provides:

16 "Maintain the benefits associated with the
17 environmental resources in an urban setting. Those
18 resources include agricultural lands, clean air and

19 ¹⁵Petitioners contend that the Wagner assessment was misinterpreted by
20 the hearings official. Petitioners note a 1989 letter from Dr. Wagner to
21 the commission in which he states the hearings official misinterpreted his
22 1984 study. Dr. Wagner suggests in his letter that the testimony submitted
by petitioners in this proceeding was more comprehensive in addressing the
qualities of the site deserving protection under policies 5 and 6.

23 Respondent objects to petitioners' use of Dr. Wagner's 1989 letter to
24 the commission. Respondent argues that portions of Dr. Wagner's letter
25 constituted new evidence and were not included in the record before the
26 commission. Record 23. Even if the Wagner assessment were limited in the
scope of the qualities it addressed, as petitioners and Dr. Wagner claim,
that study, together with the Greenway Inventory and Natural Assets and
Constraints Working Paper, support the hearings official's determination
that the qualities deserving protection under policies 5 and 6 are those
identified in the RPS.

1 water, forest lands, sand and gravel deposits, scenic
2 areas, wildlife and wildlife habitat, and vegetation.
3 Policies directed toward these resources may differ
depending upon whether they are located on urban or
urbanizable land."

4 Petitioner contends the city made no findings about impacts
5 on wildlife, even though there was testimony that the proposed
6 development would cause such impacts.

7 Intervenor-respondent cites evidence it contends shows no
8 "significant" wildlife or habitats will be destroyed.¹⁶
9 Intervenor-Respondent's Brief 15. More importantly, respondents
10 note the hearings official did adopt findings addressing the
11 Metro Plan Environmental Resource Element and concluded policies
12 of that element are satisfied.¹⁷ Petitioner does not explain

13
14 ¹⁶Intervenor-respondent notes the riparian strip is acknowledged to be
valuable wildlife and vegetative habitat and will be protected.
15 Intervenor-respondent contends the evidence shows that where wildlife
habitat will be affected by the development, there is alternative habitat
16 nearby and much of the floodplain is a former gravel extraction site
undergoing "natural succession." Intervenor-Respondent's Brief 15.

17 ¹⁷The hearings official did not adopt findings explicitly addressing the
objective cited by petitioner. However, the hearings official did adopt
18 findings addressing the more specific policies contained in the
Environmental Resources Element, including policy 25, which protects open
19 spaces for wildlife habitat. It is apparent from findings that appear
earlier in the hearings official's decision that he did not agree with
20 petitioners that significant wildlife habitat would be destroyed. Before
concluding that the Wagner assessment and RPS identified the significant
21 resources worthy of protection, the hearings official noted:

22 "The open weedy expanse does also serve as a foraging area for
small wildlife and birds. Covering over this area will
23 probably result in a reduction in the number of birds to be
seen along that stretch of riverbank." Record 204.

24 Nevertheless, the hearings official ultimately concluded the Master Plan
incorporating setbacks from the river and other measures was adequate to
25 protect the significant resources present on the site. This shows the
hearings official did, contrary to petitioner's assertion, consider and
26 adopt findings addressing the planning policy expressed in the objective
petitioner cites and the evidence petitioners offered. The hearings

1 why the findings cited by respondent are inadequate to satisfy
2 the objective. Accordingly, petitioners do not demonstrate a
3 basis for reversal or remand of the city's decision. See
4 Rodgers v. Douglas County, ___ Or LUBA ___ (LUBA No. 88-059,
5 November 10, 1988), slip op 8-9.

6 The second assignment of error is denied.

7 THIRD ASSIGNMENT OF ERROR

8 Petitioner cites Metro Plan Environmental Design Element
9 Goal 3 which provides as follows:

10 "Create and preserve desirable and distinctive
11 qualities in local and neighborhood areas."

12 Petitioner contends the city failed to consider testimony about
13 impacts on the neighborhood that the development will cause.

14 Respondent argues that the generally worded Metro Plan goal
15 cited by petitioner is not an approval criterion applicable to
16 conditional use permits. Urquhart v. LCOG and City of Eugene,
17 14 Or LUBA at 348; Eugeneans for a Liveable Future v. Department
18 of Transportation, 12 Or LUBA 142, 154 (1984).

19 We agree with respondent that the goal cited in this
20 assignment of error is not an approval criterion applicable to
21 the challenged conditional use permit. As we explained in
22 Urquhart v. LCOG and City of Eugene, 14 Or LUBA at 348,
23 "generally-worded goal statements and their introductory
24 comments give direction to land use actions through specific

25 official simply disagreed with petitioners concerning the significance of
26 the portions of the site petitioners believe should be protected for its
wildlife habitat value.

1 policies and standards in the implementing regulations."

2 The third assignment of error is denied.

3 FOURTH ASSIGNMENT OF ERROR

4 Petitioner argues the city's decision violates objective 5
5 in the Metro Plan Parks and Recreation Facilities Element.
6 Objective 5 provides:

7 "Close the gap between the current supply of park and
8 recreation facilities and the projected demand."

9 Petitioner contends there was testimony about a shortage of
10 recreation land within the city. According to petitioner,
11 objective 5 requires the city to show the development will not
12 result in added strain on the city's park and recreation
13 facilities.

14 Respondent contends objective 5 is not an approval
15 criterion applicable to the city's decision in this appeal.
16 respondent notes the hearings official did adopt findings
17 addressing the Parks and Recreation Facilities Element. Record
18 219. In those findings the hearings official addressed more
19 specific policies in the Parks and Recreation Facilities
20 Element. The hearings official described the open space and
21 recreational facilities to be included within and improved by
22 the proposed development. The hearings official included a
23 finding that "[t]here will be no loss of existing recreational
24 facilities due to development of the park." Record 219.

25 We agree with respondent that objective 5 is general and
26 aspirational and is not an approval criterion applicable to the

1 disputed conditional use permit. Even if the objective were an
2 approval criterion, petitioners do not explain why the hearings
3 official's findings are not adequate to demonstrate that the
4 objective is satisfied.¹⁸

5 FIFTH ASSIGNMENT OF ERROR

6 Under this assignment of error, petitioner and intervenor-
7 petitioner Urquhart argue the city failed to properly interpret
8 and apply RPSDD 7.2.c, which provides:

9 "To the greatest possible degree, the intensification,
10 change of use, or development will provide the maximum
11 possible landscaped area, open space, or vegetation
12 between the activity and the river."¹⁹

13 Petitioners contend this standard requires that development
14 be set back "[t]o the greatest possible degree" on the 67 acre
15 site and the city failed to require the applicant do so.
16 Petitioners embrace the interpretation of these words advanced
17 by respondent in Urquhart v. City of Eugene, supra, and accepted
18 by this Board in our decision in that case, where we said:

19 "* * * The following policies are applicable to
20 development within the Greenway:

21 "'c. To the greatest possible degree, the
22 intensification, change of use, or
23 development will provide the maximum

24 ¹⁸Respondents also point out that supplemental findings were adopted by
25 the city and Lane Council of Governments following our decision in Urquhart
26 v. LCOG and City of Eugene, supra. In those supplemental findings, the
27 city and LCOG determined the property was not needed for park or recreation
28 use. Record 766.

29 ¹⁹In addition to petitioner's arguments, we also address under this
30 assignment of error the arguments presented by intervenor-petitioner
31 Urquhart in subsection F of his single assignment of error.

1 possible landscaped area, open space,
2 or vegetation between the activity and
the river.

3 '* * * * *

4 "e. To the greatest possible degree,
5 necessary and adequate public access
6 will be provided to and along the
river by appropriate legal means.
* * *

7 "The plan definition of 'greatest possible degree'
8 simply provides that open space and public access will
9 be required up to the point where further provision of
such amenities would prevent development of an
otherwise allowable use * * *." Slip op at 10-11.

10 In the decision challenged in this proceeding, the
11 commission adopted a somewhat different interpretation of RPSDD
12 7.2.c as follows:

13 "We interpret the meaning of the criterion differently
14 from Appellant Urquhart. This criterion does not
15 limit the location of buildings viz, the River.
16 Building location is controlled by the setback
17 restriction and other requirements of the ordinance.
18 Rather, when a building is constructed, this part of
19 the ordinance requires that, to the greatest extent
20 possible, either open space, landscaping, or
vegetation be provided between the building and the
River. The choice of open space, vegetation, or
landscaping depends upon the condition of the
riverbank at the location in question. The
development scheme for the River View sector, with the
imposition of the additional condition set out below,
does provide the maximum open space, vegetation or
landscaping along the River's edge." Record 8.

21 We understand the commission's interpretation of RPSDD
22 7.2.c to require provision of the "maximum possible landscaped
23 area, open space, or vegetation between the activity and the
24 river," after the location of the activity is established under
25 other controlling locational criteria. According to the
26 commission, criteria other than RPSDD 7.2.c establish how far

1 back from the river development must be set back.

2 Petitioners' argue that the commission's interpretation of
3 RPSDD 7.2.c in this case renders RPSDD 7.2.c a meaningless
4 standard, because RPSDD 5.2.a already prohibits development
5 within 35 feet of the top of the bank.²⁰ Petitioners suggest
6 all a developer need do to avoid RPSDD 7.2.c is locate its
7 buildings at the 35 foot setback line.

8 Respondent concedes the interpretation of RPSDD 7.2.c
9 adopted by the commission in this case is different than the
10 interpretation offered in its brief in the last appeal in this
11 matter and accepted by this Board.²¹ However, respondent argues
12 that the interpretive issue in that appeal was the meaning of
13 "to the greatest possible degree," not whether RPSDD 7.2.c is a
14 setback standard. Respondent argues we should not interpret
15 RPSDD to impose such a subjective overriding setback requirement
16 when the RPSDD already includes a clear and objective setback
17 standard.

18 We turn to related provisions in Statewide Planning Goal 15
19 (Willamette River Greenway) to provide guidance in interpreting
20 RPSDD 7.2.c. Goal 15 section C(3) provides that "[p]lans and
21

22
23 ²⁰RPSDD 5.2.a provides in part:

24 "All structures, parking areas, streets, and access drives
25 shall maintain a minimum setback of 35 feet from the top of the
south bank of the Willamette River."

26 ²¹Respondent points out the interpretation advanced by counsel in that
appeal was not adopted by the commission or city council.

1 implementation measures shall provide for [Use Management
2 Considerations and Requirements]." Two of the required use
3 management considerations and requirements are as follows:

4 * * * * *

5 "j. Development away from river--Developments shall
6 be directed away from the river to the greatest
7 possible degree; provided, however, lands
8 committed to urban uses within the Greenway
9 shall be permitted to continue as urban uses,
including port, industrial, commercial, and
residential uses pertaining to navigational
requirements, water and land access needs and
related facilities;

10 "k. Greenway setback--A setback line will be
11 established to keep structures separated from
12 the river in order to protect, maintain,
13 preserve and enhance the natural, scenic,
14 historic and recreational qualities of the
Willamette River Greenway, as identified in the
Greenway Inventories. The setback line shall
not apply to water-related or water-dependent
uses." Goal 15 section C(3).

15 Goal 15 also requires in section F that cities and counties
16 adopt particular "Implementation Measures." The language in
17 RPSDD 7.2.c is nearly identical to Goal 15 section F(3)(b)(1).²²

18
19 ²²Goal 15 section F(3)(b) specifies the following Greenway compatibility
20 review procedures:

21 "The review of intensification, changes of use and developments
22 as authorized by the Comprehensive Plan and zoning ordinance to
23 insure their compatibility with the Greenway statutes and to
insure that the best possible appearance, landscaping and
public access are provided. Such review shall include the
following findings, that to the greatest possible degree:

24 "(1) The intensification, change of use or development will
25 provide the maximum possible landscaped area, open space
or vegetation between the activity and the river.

26 "(2) Necessary public access will be provided to and along the
river by appropriate legal means;"

1 Metro Plan Willamette River Greenway, River Corridors and
2 Waterways policy 9 provides:

3 "The specific use management considerations and
4 requirements of statewide Goal 15, 'Willamette River
5 Greenway,' shall be applied where they are not
6 specifically addressed in policy or land use
refinement plans and local implementing ordinances."

7 Under the above-quoted policy, the Goal 15 use management
8 considerations and requirements must be applied by the city to
9 development within the Willamette River Greenway in the RPSDD,
10 unless those goal requirements "are specifically addressed in
11 policy or land use designations elsewhere in [the Metro Plan,
RSP or RPSDD]."

12 RPSDD 5.2.a establishes minimum setbacks from the south
13 bank of the Willamette River in the RPSDD. RPSDD 5.2.a
14 apparently implements Goal 15 section F(3)(k), quoted above.
15 RPSDD 7.2.c is nearly identical to, and apparently implements,
16 Goal 15 section F(3)(b)(1). We find no provision in the RPSDD
17 which explicitly addresses the requirement in Goal 15 section
18 C(3)(j) that "development be directed away from the river to the
19 greatest possible degree."

20 Based on the above, it is clear Goal 15 does establish a
21 policy that within the Willamette River Greenway "development
22 shall be directed away from the river to the greatest possible
23 degree." As far as we can tell, the Metro Plan carries out that
24 policy either by requiring that Goal 15 section C(3)(j) be
25 applied directly to development approvals, or by applying other
26

1 provisions in the Metro Plan, refinement plans or implementing
2 ordinances to achieve such a policy. The question under this
3 assignment of error is whether RPSDD 7.2.c is one of the
4 provisions intended to implement this requirement. If so, this
5 assignment of error must be sustained.

6 In our view, the implementation measure provisions of Goal
7 15 section F do not purport to set out all of the measures
8 required to assure proper implementation of the use management
9 considerations and requirements of Goal 15 section C(3). By its
10 terms, the purpose of Goal 15 section F(3)(b) is "to insure that
11 the best possible appearance, landscaping and public access are
12 provided."²³ Goal 15 section F(3)(b)(1) implements the first
13 purpose (appearance and landscaping) and section F(3)(b)(2)
14 implements the second purpose (public access). We do not
15 believe Goal 15 section F(3)(b)(1) or the corresponding RPSDD
16 7.2.c necessarily impose a requirement that development be
17 setback from the river "to the greatest possible degree." Under
18 the Metro Plan, that requirement is implemented by direct
19 application of Goal 15 section C(3)(j) or by application of
20

21
22 ²³Goal 15 section F(3)(b) also provides that its purpose is to insure
23 compatibility with the Greenway statutes. The Greenway statutes do not
24 include a requirement or policy such as Goal 15 section C(3)(j). However
25 the Greenway statutes clearly do emphasize a purpose to preserve and
26 maintain existing vegetation and natural and scenic qualities of lands
within the Willamette River Greenway. Thus the legislative purpose to
protect these values apparently exists independent of any requirement that
"development be directed away from the river to the greatest possible
degree" as provided by Goal 15 section C(3)(j).

1 other plan, refinement plan or ordinance provisions adopted to
2 implement that requirement.

3 It is not at all clear whether the city has adopted
4 specific provisions in its plan, refinement plans or code to
5 implement the requirement of Goal 15 section C(3)(j) or whether,
6 having failed to do so, Goal 15 section C(3)(j) applies directly
7 to development within the RPSDD under policy 9.

8 We do note that RPSDD 7.2.b provides in part:

9 "* * * Building setbacks shall be varied to avoid the
10 effect of a continuous wall along the minimum setback
11 and to adhere to the requirements for protection of
designated features (i.e., Millrace and pedestrian
linkage to the Autzen Stadium footbridge)."

12 RPSDD 7.2.b appears to be comparable, although somewhat less
13 stringent than the standard imposed by Goal 15 section C(3)(j).
14 However, the requirements imposed by RPSDD 7.2.b are consistent
15 with respondent's argument that RPSDD 7.2.c need not be
16 interpreted as imposing a super setback requirement in order for
17 it to have some regulatory effect. Presumably in some
18 instances, RPSDD 7.2.b would preclude development, from being
19 located adjacent to the minimum setback and would, therefore,
20 create areas where the "maximum possible landscaped area, open
21 space or vegetation" standard of RPSDD 7.2.c would apply.²⁴ If,

22
23 ²⁴We also note RPSDD 5.2.b requires buildings to be set back further
24 than the 35 foot setback when "the setback specified [in RPSDD 5.2.b]
25 requires a greater distance than the 35 feet specified under Subsection
26 5.2.a * * *." RPSDD 5.3 imposes a variety of building separation and
profile offsets that could easily result in buildings being located farther
back than the minimum 35 feet, triggering a requirement for the maximum
possible landscaped area, open space or vegetation, under the commission's
construction of RPSDD 7.2.c.

1 as petitioner argues, RPSDD 7.2.c already requires that
2 development be setback "to the greatest possible degree," the
3 standard in RPSDD 7.2.b would appear to be unnecessary.

4 It may be that RPSDD 7.2.b, either alone or in concert with
5 other standards in the RPSDD or elsewhere in the city's plan and
6 land use regulations, is intended to implement Goal 15
7 subsection C(3)(j). It also may be Goal 15 subsection C(3)(j)
8 may be directly applicable by virtue of policy 9, quoted supra.
9 In either event, we agree with the city that RPSDD 7.2.c does
10 not impose a requirement that development be set back to the
11 greatest possible degree. Rather, RPSDD 7.2.c requires that
12 once development locations have been determined by applying
13 other applicable standards (including Goal 15 section C(3)(j) or
14 local plan or land use regulation requirements adopted to
15 implement that requirement) "the maximum possible landscaped
16 area, open space or vegetation [must be provided] between the
17 activity and the river."²⁵

18 The fifth assignment of error is denied.

19 SIXTH ASSIGNMENT OF ERROR

20 Intervenor-petitioner Urquhart²⁶ argues under this
21

22
23 ²⁵Our view of the correct interpretation of RPSDD 7.2.c might be
24 different if there were legislative history showing it was intended to
25 implement the requirement in Goal 15 section C(3)(j) that development be
directed away from the river. However, the parties cite no legislative
history.

26 ²⁶Under this assignment of error we address subpart E of intervenor-
petitioner Urquhart's single assignment of error.

1 assignment of error that the city's decision violates
2 RPSDD 7.2.d which provides in part:

3 "To the greatest possible degree, the proposed
4 development shall provide for protection and
5 enhancement of the natural vegetative fringe along the
6 Willamette River. This means protection and
7 enhancement of trees and understory characteristic of
8 native vegetation within the riparian strip along the
9 Willamette River. * * * As used here, the riparian
10 strip means the area between the top of the river bank
11 and the water's edge."

12 Intervenor-petitioner Urquhart contends testimony was presented
13 by a number of persons identifying natural riparian vegetation
14 in the floodway fringe (floodplain area) which is not protected
15 in the Master Plan.

16 Respondent points out that by its terms, RPSDD 7.2.d is
17 limited in application to the "area between the top of the river
18 bank and the water's edge" and is inapplicable to the vegetation
19 petitioner identifies located beyond the top of the bank in the
20 floodplain area. We agree.

21 The sixth assignment of error is denied.

22 SEVENTH ASSIGNMENT OF ERROR

23 Under this assignment of error, intervenor-petitioner
24 Prince argues that the city's decision violates a large number
25 of provisions in the TransPlan.²⁷ TransPlan identifies
26 transportation goals from the Metro Plan and adopts eight
27 objectives followed by a number of policies under each

28 ²⁷Under this assignment of error we address the two assignments of error
29 raised by intervenor-petitioner Prince.

1 objective. TransPlan objectives and policies

2 "* * * are designed to support the goals from the
3 Metropolitan Plan and to help attain the transit and
4 alternative mode assumptions discussed elsewhere in
5 this report.

6 "* * * * *

7 "It should be recognized that some of the policies
8 proposed below must be balanced against policies of
9 other plans within the context of the community's
10 overall needs." TransPlan 4.

11 The objectives included in TransPlan are very general.
12 They are directed at city planning efforts, not at individual
13 land use permit decisions.²⁸ To the extent petitioner argues
14 the city erred by not finding compliance with TransPlan
15 objectives, we reject those arguments. The cited objectives are
16 not approval criteria for conditional use permits, and the city
17 was not required to find compliance with them.

18 Many of the policies that follow the objectives are

19 ²⁸Two objectives cited by petitioner are illustrative:

20 "* * * * *

21 "PLANNING AND COORDINATION

22 "OBJECTIVE: In cooperation with all affected local agencies,
23 coordinate the transportation planning process with the general
24 land use planning process.

25 "* * * * *

26 "ALTERNATIVE MODES

27 "OBJECTIVE: Promote the use of alternatives to the single-
28 occupant automobile to satisfy metropolitan transportation
29 needs."

30 "* * * * *" TransPlan 5-7.

1 similarly general in nature and do not constitute approval
2 criteria applicable to individual permit decisions.²⁹ However,
3 some of the TransPlan policies clearly are intended to be
4 approval criteria.³⁰

5 Petitioner does not explain why the policies he cites
6 constitute approval criteria applicable to the disputed
7 conditional use permit. We first consider the nature of the
8 policies petitioner cites before considering his arguments that
9 the Master Plan and the city's decision inadequately address
10 those policies. The policies cited by petitioner follow the
11 objectives in TransPlan for Land Use and Development Patterns
12 (LU), Planning and Coordination (PC), Implementation (I),
13 Parking (Pk) and Alternative Modes (AM). They are as follows:

14
15
16 ²⁹For example, Implementation policy 2 provides:

17 "Consider the availability of funding from federal, state and
18 local sources in determining the phasing and timing of project
19 implementation." TransPlan 6.

20
21
22 ³⁰For example, the following Land Use and Development Patterns policies
23 would appear to be potentially applicable to individual land use permit
24 applications:

25 " * * * * *

26 "LU6 Provide paved bicycle/pedestrian connections between and
within adjacent developments through capital planning,
refinement planning and local development review
processes.

"LU7 Provide paved bicycle/pedestrian paths along the
Willamette River within the Willamette River Greenway
through capital planning, refinement planning and local
development review processes.

" * * * * *" (Emphasis added.) TransPlan 4.

1 "* * * * *

2 "LU3 Obtain sufficient right-of-way or building
3 setbacks to provide for future capacity in
4 transportation corridors.

5 "* * * * *

6 "PC1 Establish and maintain a coordinated, metrowide
7 program for monitoring transportation activity
8 including counts of automobile and truck
9 traffic, automobile occupancy, transit
10 passengers, and bicycle traffic.

11 "PC6 Study methods of increasing transit ridership
12 and alternative mode use.

13 "* * * * *

14 "I9 Provide for bus turnouts, passenger shelters and
15 passenger loading improvements in construction
16 or reconstruction of all collector or arterial
17 streets, unless they are determined to be
18 unnecessary.

19 "* * * * *

20 "Pk3 Investigate the possibility of changing the
21 building and parking codes to promote
22 alternative modes and transit usage by reducing
23 the minimum number of parking spaces.

24 "* * * * *

25 "Pk6 Develop parking programs for congested, high
26 employment areas which promote transit and
27 alternative modes by discouraging long-term
28 employee parking. * * *

29 "AM6 Provide financial support for a metropolitan
30 carpool/ridesharing program, * * *
31 TransPlan 4-8.

32 Respondent contends that, with the exception of policy I9,
33 the policies cited by petitioner are all policies directed to
34 governments and their planning activities (i.e. their plan and
35 land use regulation adoption and amendment activities), not to
36

1 conditional use permit decisions such as the one challenged in
2 this appeal. We agree. See Moorefield v. City of Corvallis,
3 supra, slip op at 7; Miller v. City of Ashland, supra, slip op
4 at 22-25; Urquhart v. City of Eugene, 14 Or LUBA at 348.

5 Respondent cites findings addressing the transportation
6 facilities identified in policy I9.³¹ Respondent notes the
7 Master Plan provides "it is too early in the planning process to
8 provide the exact location of bus turnouts, transit stations,
9 and passenger shelters." Master Plan 12, 40. We understand the
10 city to have found that the required transportation facilities
11 will be provided, but that it is not possible at this time to
12 determine the appropriate locations. Petitioner does not
13 explain why the Master Plan and findings adopted by the city are
14 inadequate to address policy I9.³²

15 _____
16 ³¹Findings addressing transportation issues include the following:

17 "The city has worked with the Lane Transit District [LTD]
18 during initial planning for the Riverfront Research Park,
19 recognizing that [Metro Plan Transportation Element policy 2]
20 describes an ongoing condition that will have to be monitored
21 and addressed throughout the development of the project.
22 Initially, mass transit service will be provided from routes
23 along Franklin Boulevard. As the east-west collector streets
24 are constructed and the level of development increases within
25 the Research Park, LTD will evaluate the feasibility of
26 extending routes within the Research Park itself. Completion
of at least one of the collector streets will be a prerequisite
for internal route service so that a complete loop can be
provided. The right-of-way of the collector streets is
sufficiently wide to accommodate bus pullouts and passenger
shelters, where appropriate." Record 555.

³²Policy I9 does not explicitly state that the facilities it lists must
be provided for in the Master Plan, as opposed to some later stage in the
development approval process as, for example, when petitioners are issued
permits for construction of collectors or arterials. We also note the
policy does not make the provision of such facilities mandatory if "they

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The seventh assignment of error is denied.

The city's decision is affirmed.

are determined to be unnecessary."