

Opinion by Sherton.

NATURE OF THE DECISION

Petitioner appeals two interrelated ordinances adopted by the City of Portland which amend the city's comprehensive plan and zoning map designations for property within the Columbia Corridor.

FACTS

The Columbia Corridor is an area of approximately 14,300 acres extending along the southern shore of the Columbia River from the Willamette River to N.E. 185th Avenue. The Columbia Corridor contains large acreages of industrial and institutional uses, as well as some commercial and residential uses. It also contains both the largest amount of vacant industrially designated land remaining in the city and significant natural resource areas, including wildlife habitat, wetlands, lakes and the Columbia Slough. Record 27, 347.

Petitioner and intervenor-petitioner (petitioners) own property in the Columbia Corridor, adjacent to the south shore of the Columbia Slough, south of Smith Lake. Prior to the adoption of the challenged ordinances, petitioners' properties were zoned General Manufacturing (M2). Since 1962, petitioner has operated a foundry on its property. Record 128. Petitioner imports raw materials in bulk and exports large castings. Petitioner has already "filled in some areas of the side channels on the South side of the

Slough" and, in 1984, was granted a conditional use permit by the city for "a fill out to the South bank of the main channel." Record 128. It is not clear from the record what intervenor-petitioner's property is used for.

In 1988, the city initiated the "Industrial/Environmental Mapping Project," concerning proposed legislative comprehensive plan and zoning map amendments for property in the Columbia Corridor. The proposed amendments included replacing the city's old industrial map designations with the new industrial plan and zoning map designations initially adopted by the city in 1985 (a process which is being carried out throughout the city). Record 60-61. The proposed amendments also included replacing interim environmental protection measures applied to the Columbia Corridor in 1987 with application of the Environmental Concern zone to significant natural resources in the Columbia Corridor, in compliance with Statewide Planning Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) and OAR Chapter 660, Division 16 (Requirements and Application Procedures for Complying with Statewide Goal 5).¹

The city planning department held informational

¹The city's comprehensive plan and implementing regulations were acknowledged by the Land Conservation and Development Commission (LCDC) on May 15, 1981. The city was not required to comply with OAR Division 660, Chapter 16, adopted by LCDC on May 8, 1981, prior to its acknowledgment. However, the city is required to comply with these administrative rules by the time of its first periodic review, pursuant to ORS 197.640(3).

meetings and solicited comments on a public review draft of the proposed amendments (Record 676-727), before preparing a proposal for planning commission review. Record 13, 66. The planning commission held a public hearing on the proposed amendments on November 15, 1988. The planning commission adopted the planning department's proposal, with amendments. The planning commission recommendation was forwarded to the city council in the form of a five volume study entitled Industrial/Environmental Mapping Project (January 1989).

The city council held public hearings on the proposed amendments on March 8 and April 6, 1989. On May 4, 1989, the city council adopted the challenged ordinances, together with four of the Industrial/Environmental Mapping Project (Mapping Project) volumes.²

Both ordinances adopt the plan and zoning map changes shown in Mapping Project Volume 3. Record 29, 73. Ordinance No. 161895 addresses the industrial map changes and adopts as supporting findings Mapping Project Volume 1. Record 73. Ordinance No. 161896 addresses the application of the Environmental Concern Zone and adopts as supporting

²The four volumes are entitled "1-Industrial Mapping and Annexation Rezoning for the Columbia Corridor;" "2-Inventory and Analysis of Wetlands, Water Bodies and Wildlife Habitat Areas for the Columbia Corridor;" "3-Mapping for the Columbia Corridor;" and "4-Appendix to Inventory of Wetlands, Water Bodies, and Wildlife Habitat Areas for the Columbia Corridor." The city council adopted amendments to Mapping Project Volumes 1-3 before adopting those volumes.

findings Mapping Project Volumes 2 and 4. Record 29. Both ordinances change the zoning of petitioners' property from M2 to General Industrial (GI-2),³ and apply the Environmental Conservation (ec) overlay zone to portions of petitioners' property adjacent to the Columbia Slough.⁴ The portions of petitioners' property to which the ec zone is applied are a small fraction of the 1,867 acre area delineated in the Mapping Project as Site 55. Site 55 includes Smith and Bybee Lakes and the stretch of the

³The GI zone has two sets of site development regulations, one for older, developed areas and the other for newer, less developed areas. The suffix 2 indicates that the site development regulations for less developed areas apply.

⁴The city's Environmental Concern zone consists of two overlay zones with different requirements:

"The regulations of the Environmental Conservation [ec] zone are intended to allow development in situations where any adverse impacts from the development can be mitigated. The regulations of the Environmental Natural [en] zone are intended to limit development in areas that are determined to be of such significant value that most development would have a detrimental impact." Portland City Code (PCC) 33.635.010.

The record indicates that the planning commission considered a request by petitioner to reflect its approved fills by eliminating the ec zone along the Columbia Slough on petitioner's property. Environmental Mapping Issues Heard by the Planning Commission 3. The recommendation adopted by the planning commission was to "[c]hange the [ec] boundary to reflect [existing] development, and reduce the area of review from 75' to 25'." Id. The planning department used the information submitted by petitioner "to delineate the edge of the resource more accurately on this and other nearby property." City Council Voting Document on Requested Environmental Mapping Changes for the Columbia Corridor (Voting Document) 10. The city council also considered petitioner's request, but declined to amend the recommendation of the planning commission. Id.; Record 91-92.

Columbia Slough adjacent to these lakes.⁵ Mapping Project Volume 2, pages 105-107; Volume 3, pages 41-42.

STANDING OF INTERVENOR-PETITIONER

On March 9, 1990, we issued an order granting intervenor-petitioner's (intervenor's) motion to intervene in this appeal. In that order, we concluded that an affidavit by a member of intervenor's Board of Directors, stating that he appeared before the city council at its March 8, 1989, hearing and attempted to give testimony, but was denied that opportunity by the mayor, was sufficient proof to support intervenor's allegation that it appeared before the city.⁶ On that basis, we concluded that intervenor satisfied the "appeared before the local government * * * orally or in writing" requirement of ORS 197.830(6)(b) for intervention.

Respondent now challenges the statement of standing in intervenor's petition for review. Respondent argues again that intervenor does not satisfy the requirement of ORS 197.830(6)(b) that an intervenor be either the applicant or someone who appeared before the local government. Respondent argues that it "paid for transcripts of the

⁵The west end of the Columbia Slough and the Smith/Bybee Lake complex are also designated in the Mapping Project as Water Features 40 and 41, respectively.

⁶Respondent opposed intervenor's motion to intervene and challenged the legal sufficiency, but not the contents, of intervenor's affidavit.

hearings before the [City] Council," and such "transcripts do not indicate testimony by anyone on behalf of the intervenor." Respondent's Brief 1.

The gist of intervenor's director's affidavit is that he was present at the city council's March 8, 1989 hearing and attempted to give testimony, but was prevented from doing so. Respondent does not deny these allegations, or challenge the affidavit. Assuming the allegations in the affidavit are true, it is understandable that no testimony on intervenor's behalf might appear in the transcripts of the city council's hearing.⁷ We adhere to our previous ruling that the facts stated in the affidavit are sufficient to constitute an appearance before the city council.

Respondent's challenge to intervenor-petitioner's standing is denied.

MOTION TO STRIKE

On May 16, 1990, one day after the oral argument in this appeal, respondent filed a Memorandum of Responses Raised During Oral Argument (memorandum). The memorandum addresses (1) the application of Panner v. Deschutes County, 14 Or LUBA 1, aff'd 76 Or App 59 (1985) (Panner) to this

⁷These transcripts were not submitted to the Board by respondent, either as part of the record of its proceedings below, or at a later stage of this appeal proceeding. Rather, respondent attached excerpts of the transcripts to its response brief. The status of these excerpts is addressed in our discussion of petitioner's Motion to File Reply Brief, infra.

appeal;⁸ and (2) whether the testimony in the excerpts of the transcripts of the city council's hearing attached to respondent's brief are part of the record which may be considered by the Board.

Petitioners move to strike respondent's memorandum. Petitioners argue that under the Board's rules, respondent's opportunity to present argument ends at the conclusion of oral argument. Petitioners contend respondent had opportunities both to brief and to present oral argument on the two issues addressed in its memorandum. Petitioners also submit, in the alternative, written responses to the argument presented in respondent's memorandum.

Petitioners concede that respondent had a right to submit a written response to the motion to file a reply brief filed by petitioner on May 14, 1990 and discussed below. The second section of respondent's memorandum, concerning the transcript excerpts, constitutes respondent's reply to petitioner's motion to file a reply brief and is properly before the Board. Petitioner's motion to strike is denied with regard to section 2 of the memorandum.

With regard to the first section of respondent's memorandum, concerning the application of Panner, we agree with petitioners that respondent should have presented this

⁸Respondent explains that although Panner was cited in intervenor's petition for review, respondent did not address the case in its response brief because it does not believe that intervenor has standing.

argument in its response brief or at oral argument. Petitioner's motion to strike is, therefore, granted with regard to section 1 of the memorandum.

MOTION TO FILE REPLY BRIEF

Pursuant to OAR 661-10-039, petitioner requests permission to file a reply brief to address new matters raised in the respondent's brief. In its reply brief, petitioner argues that excerpts from transcripts of the city council's March 8, 1989 hearing attached to, and quoted in, respondent's brief are improperly submitted, mischaracterized or irrelevant. Petitioner argues that these excerpts cannot be considered by the Board because they are outside the record. Indian Creek v. City of Lake Oswego, 14 Or LUBA 519, 521 (1985).

Respondent requests that petitioner's motion to file a reply brief be denied because the transcript excerpts objected to by petitioner were "unquestionably before the City [and are] a part of the Record." Memorandum 8. Respondent points out that petitioner does not challenge the accuracy of the transcribed material.

The disputed transcript excerpts appeared in this appeal proceeding for the first time as attachments to, and quotes in, respondent's brief. Therefore, they constitute "new matters raised in the respondent's brief." OAR 661-10-039. Whether such transcript excerpts may be considered by the Board, and their relevance to the issues

in this appeal, could not have been addressed by petitioner in its petition for review.

Petitioner's motion to file a reply brief is granted.⁹

PETITIONER'S FIRST ASSIGNMENT OF ERROR

"The imposition of the Environmental Concern zone on petitioner's property fails to follow the requirements of Statewide Land Use Goal 5 and thus must be reversed."

PETITIONER'S SECOND ASSIGNMENT OF ERROR

"The resource site size selected by the city causes an erroneous result when an ESEE analysis

⁹Petitioner does not move to strike the transcript excerpts attached to respondent's brief, but does argue in its reply brief that they cannot be considered by the Board because they are not part of the local government record.

We disagree. In Hammack & Associates, Inc. v. Washington County, 16 Or LUBA 75, 99 n 2, aff'd 89 Or App 40 (1987), we stated:

"It has been this Board's view that even though the tapes or a transcript are not submitted as part of the record, as required under [OAR] 661-10-025, the words that are spoken at a local hearing are part of the record. Where the tapes are retained locally, they are available to the parties. The Board has permitted parties * * * to transcribe portions of the taped record and attach the transcripts to their briefs. The other parties, of course, are free to contest the accuracy of such transcripts in their opening brief or in a reply brief submitted pursuant to OAR [661-10-039]. This practice frequently eliminates the need to delay appeals to resolve record disputes."

Accord Priest v. Marion County, ___ Or LUBA ___ (LUBA No. 90-023, May 31, 1990), slip op 4 n 1; Sunburst II Homeowners Assoc. v. City of West Linn, ___ Or LUBA ___ (LUBA No. 89-130, January 26, 1990), aff'd 101 Or App 458 (1990). As explained above, we view the excerpts of the transcripts of the city council's hearing as part of the record and, therefore, properly considered by the Board. Petitioner does not contest the accuracy of those excerpts. However, the Board will consider, where relevant to resolving petitioners' assignments of error, the arguments in petitioner's reply brief concerning respondent's characterization and the relevancy of those excerpts.

is made since its size causes a bias in favor of the environmental element to the detriment of the economic element."

INTERVENOR'S ASSIGNMENT OF ERROR

"The respondent's determination, that conflicting uses must be limited on Inventory Site 55, including the private industrial property of petitioner and intervenor-petitioner, was based on inadequate findings, was unsupported by substantial evidence in the record as a whole, and violated Goal 5 and OAR 660 Division 16 by being based on an ESEE analysis of that Site that failed to adequately discuss the impacts of protecting the resource values on the conflicting industrial uses."

Both petitioner's and intervenor's assignments of error challenge the city's application of the ec zone to petitioners' properties on the grounds that the city failed to comply with Goal 5 and OAR Chapter 660, Division 16. We consider separately petitioners' challenges to the city's compliance with different aspects of the Goal 5 planning process.

A. Inventory of Resources

Petitioners contend the city erred by inventorying the 1,867 acre Site 55, which includes portions of their properties, as a single site. Petitioners argue that OAR 660-16-000(1) and (2) contemplate the identification of specific, individual resource sites, not site groupings. According to petitioners, the fact the city has designated different portions of Site 55 for different levels of protection, indicates that more refined, specific sites

within Site 55 should have been selected for inventorying.

Petitioners also argue the city's identification of Site 55 is inadequate because its findings do not demonstrate that it is a single site which includes the south shore of the Columbia Slough. According to intervenor, the city's findings fail "to delineate how the south shore of the Columbia Slough is part of the same ecological system as the two lakes to the north."¹⁰ Intervenor-Petitioner's Brief 5.

Finally, intervenor argues that there is no evidence in the record supporting the city's delineation of the boundaries of Site 55. Intervenor contends that "a decision that a given resource warrants protection under Goal 5 must be supported by substantial evidence in the form of inventory data * * *." Panner, 14 Or LUBA at 11.

The city explains that the process used in inventorying resource sites is described in its findings. Mapping Project Volume 2, pages 17-19. According to the city, the findings provide that "only areas with a high probability of containing valuable natural features" were inventoried. Id.

¹⁰Intervenor contends the only portions of the city's findings conceivably addressing why the south bank of the slough should be part of Site 55 are in the inventory of that site, at Mapping Project Volume 2, pages 105-107. Intervenor notes that a footnote to a list of the classifications of wetlands present at the site provides that "[i]n addition, uplands may be present." Id. at 107. Intervenor also notes the "Observations and Comments" section of the inventory includes a statement that "[e]xtensive amounts of edge habitat (ecotone) is found at this wetland, and is one of the site's most significant and basic natural resources for wildlife." Id.

at 17. The findings also explain that "a technical advisory committee consisting of wildlife experts, conservation groups, private industry, and public agencies suggested the initial list of areas * * * and various City agencies and special interest groups were contacted." (Emphasis added by the city.) Id. Field biologists then visited all sites on the list, and the list was modified to reflect their observations. Id. at 18. Where appropriate, resource sites are identified as contiguous units because wildlife often depend on more than one site. Id.

The city further states that the findings indicate that the sites remaining on the list were evaluated in detail by biologists, with five field visits being made to Site 55. Id. at 18-19. The sites were rated numerically for wildlife habitat value, using a system "originally developed by the City of Beaverton, a number of state and federal agencies, and the Audubon Society of Portland." Id. at 18. Site 55 received 106 points, the highest score of any site studied. Id. at 19, 107. Respondent argues the findings show that petitioner's property on the edge of Site 55 abuts the Columbia Slough, which is hydrologically connected with Smith and Bybee Lakes. Id. at 105. The city further argues that its inventory of water features in the Columbia Corridor explains "the connection between events in the slough and impacts on wildlife." Respondent's Brief 16.

We disagree with petitioners' contention that the

city's inventory of Site 55 is inadequate because its findings do not demonstrate that the Smith and Bybee Lakes/Columbia Slough complex is properly viewed as a single resource site. The inventory findings cited by the parties state that Resource Site 55 is "the most complex and unique natural area within Portland's Urban Growth Boundary." Mapping Project Volume 2, page 107. In addition, the findings include two documents entitled "History of the Lower Columbia Slough and Smith and Bybee Lakes" and "Smith and Bybee Lakes, an Overview." Mapping Project Volume 4, pages 83-112. These documents indicate that Site 55 "represents an ecosystem that was once extensive along the Lower Columbia River," but of which very few examples remain. Id. at 99. According to these documents, most of the water in the Smith and Bybee Lakes system is derived from the Columbia Slough. Id. at 85, 100, 110. The entire complex is a wetland, including the riverine type wetland of the Columbia Slough itself. Id. at 100, 103.

Furthermore, these documents include findings supporting the inclusion of areas along the south bank of the Columbia Slough in this resource site. For instance, the findings provide that the site's "Forested Wetland, Broad-leaved Deciduous, Seasonally Flooded and Saturated" wetland type includes "[a]n example of good quality cottonwood-ash riparian forest * * * along both sides of Columbia Slough, from the east side of St. Johns Landfill to

near North Portland Boulevard."¹¹ Id. at 106. This description appears to include the portions of petitioners' property along the south side of the Columbia Slough. Additionally, the Wetland Classification Map for Resource Site 55 at page 102 of Volume 4 shows portions of petitioner's property adjacent to the Columbia Slough as being undiked wetlands.

Goal 5 and OAR 600-16-000 direct local governments to inventory the resources identified in the goal, including wetlands, water areas and wildlife habitat. There is nothing in the goal or rule which limits the size of an inventoried site. We conclude the city's findings provide an adequate basis for identifying the 1,867 acre Smith and Bybee Lakes/Columbia Slough complex as a single resource site. Furthermore, the findings support the inclusion of land along the south bank of the Columbia Slough in the resource site.

With regard to intervenor's evidentiary challenge, the record indicates Mapping Project Volumes 2 and 4, the city's inventory of wetlands, water bodies and wildlife habitat areas, were prepared by the city planning department staff with the aid of professional biologists. Record 10, Mapping Project Volume 2, page 18; Volume 4, page 97. These

¹¹We note the findings further state "ash and black cottonwood forests provide perch, nesting, and vantage points for hunting raptors such as red-tailed hawk, Cooper's hawk, sharp-shinned hawk, northern harrier, American kestrel, great horned owls, and short-eared owls." Id. at 110.

documents were submitted into evidence before the planning commission and city council. Respondent's Brief Appendices 3 and 4, page 4. These documents are evidence a reasonable person would rely on in deciding to identify Site 55 as a wetland, water area and wildlife habitat resource site and, therefore, constitute substantial evidence in support of the city's decision.¹²

This subassignment of error is denied.

B. Identification of Conflicting Uses

Intervenor asserts that OAR 660-10-005 requires the city "to identify conflicts with inventoried Goal 5 resource sites." Intervenor argues that the city's findings are inadequate to comply with this requirement because they fail to identify specific uses that conflict with Site 55, but rather make a general assessment of conflicting uses for the entire Columbia Corridor.

The city agrees that its findings identify and discuss "Areawide Conflicting Uses," citing Mapping Project Volume 2, page 125. However, the city argues that there is no legal requirement that "the City provide a tax lot by tax lot inventory of uses which might conflict with a resource site." Respondent's Brief 19. The city points out

¹²The record also shows that the city adjusted the boundary of the ec zone and Site 55 along the south bank of the Columbia Slough on petitioner's property by deleting areas which had already been filled and reducing the area of review to 25 feet, based on petitioner's arguments below. See n 4.

OAR 660-16-005 provides that the identification of conflicting uses is to be performed primarily by looking at the uses allowed under the applicable zoning districts.

OAR 660-16-005 provides in relevant part:

"It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. * * *

"* * * * *" (Emphasis added.)

Petitioners do not argue that the city failed to identify an existing or allowable use which would conflict with the inventoried Goal 5 resources of Site 55, but rather that the city's identification of those conflicting uses is not specific enough. However, we agree with the city that OAR 660-16-005 does not require a property by property inventory of specific uses which may conflict with an inventoried Goal 5 resource. Rather, the rule language emphasized above explicitly recognizes that the identification of conflicting uses may be performed by reviewing the general types of uses allowed by the zoning districts applied by the local government.¹³

¹³We recognize that there might be circumstances where limiting consideration to uses allowed by the applicable zoning districts may not be sufficient. For example, an existing nonconforming use could conflict with an inventoried Goal 5 resource and yet might not be a use "allowed" by the applicable zoning district. However, such circumstances are not argued to exist in this case. The conflicting uses about which petitioners are

In this case, the city identified as "Areawide Conflicting Uses" the existing industrial, commercial, transportation, agricultural, recreational and open space uses. Mapping Project Volume 2, page 125. The city also found that future conflicting uses likely to occur as urbanization of the Columbia Corridor proceeds are expected to be primarily industrial and some commercial. Id. The city further noted it would discuss more specific existing and potential conflicting development in its ESEE (economic, social, environmental and energy) consequences analyses concerning individual resource sites.¹⁴ Id.

We conclude the city's findings comply with the requirement of OAR 660-16-005 to identify uses conflicting with the inventoried Goal 5 resources of Site 55.

This subassignment of error is denied.

C. Analysis of ESEE Consequences

Petitioners contend the application of the ec zone to portions of their property by the challenged ordinances violates Goal 5, OAR 660-16-005 and OAR 660-16-010 because the city failed to perform the required ESEE consequences analysis of the conflicts between petitioners' industrial

primarily concerned are industrial in nature, and are allowed by the GI-2 zoning applied by the city to petitioners' property.

¹⁴Additional findings addressing conflicts with the environmental and recreational qualities of the Smith and Bybee Lakes/Columbia Slough complex are found in "History of the Lower Columbia Slough and Smith and Bybee Lakes," Mapping Project Volume 4, pages 93-95.

uses and the protection of Site 55.¹⁵ Petitioners argue the required ESEE analysis must be specific to Site 55. Petitioners also argue the analysis must specifically address the impacts of protecting Site 55, through imposition of the ec zone, on petitioners' use of their property. OAR 660-16-005; Panner, 14 Or LUBA at 11. Petitioners maintain the city impermissibly limited its analysis of economic consequences to comparing the overall, regionwide economic impacts of protecting the inventoried resource sites versus using the resource sites for other types of development.

Petitioner also argues that it expressed its concerns regarding imposition of the ec overlay zone on its property below:

"* * * Petitioner described its investment-backed expectations for use of its land including further development of its steel casting operation, and use of the slough as a navigable waterway for its business. [Record 128.] The Petitioner pointed out that 350 people are employed at the facility and the facility has continued to expand on the same site since it was moved there in 1962. [Id.] The Petitioner requires the full amount of its land to continue its operation. Petitioner, through its testimony, requested the site specific analysis required by Goal 5. The City failed to make any analysis." Petition for Review 12-13.

Goal 5 provides that "[w]here conflicting uses have

¹⁵Petitioner also points out that the purpose section of the city's Environmental Concern zone indicates that an ESEE analysis must be performed prior to application of the ec or en overlay district to particular property. PCC 33.635.010.

been identified the economic, social, environmental and energy consequences of the conflicting uses shall be determined * * *." OAR 660-16-005(2) provides in relevant part:

"* * * If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. * * * A determination of the ESEE consequences is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites."

Where conflicting uses are identified, their ESEE consequences must be addressed in the local government's analysis. Panner, 14 Or LUBA at 11-12. Petitioners' basic complaint concerning the city's ESEE analysis, however, is that the findings do not specifically address the consequences of the conflict between protecting the resource values of Site 55 and petitioners' existing or planned industrial uses of their property. Neither the goal nor the above rule pinpoints the level of specificity required in an ESEE analysis. However, the rule does provide that an ESEE analysis is adequate if "it enables a jurisdiction * * * to explain why decisions are made for specific sites."

As petitioners contend, the city's findings include an "Area-Wide Economic Consequences" analysis of the conflicts between protecting inventoried Columbia Corridor Goal 5 resources and industrial use of the corridor. Mapping

Project Volume 2, pages 127-134. This analysis states:

"From an overall and regional perspective, there should be no adverse economic impact from the preservation of any significant Goal 5 resource in the Columbia Corridor. The regional need for industrial land has been estimated to be about 5,192 acres. About 19,070 acres of vacant land suitable for industrial land exist within the Urban Growth Boundary, 10,483 of these are vacant and uncommitted with no constraints. This provides a present market ratio of over 2:1 for the 20-year estimated need for presently unconstrained land, and a ratio of almost 4:1 for all vacant industrial land." Mapping Project Volume 2, page 133.

However, the county's area-wide findings do recognize the type of conflict which petitioners argue exists concerning their industrial use of their property:

"Industries which are locationally-dependent, however, may face shortages if constraints are not removed from certain lands. * * *

* * * * *

"In summary, adverse economic impact will result when insufficient lands are available for a needed industrial or commercial activity. * * *" Id. at 133-134.

In addition, the county's findings include a section entitled "Wetland, Water Body, and Wildlife Habitat Resources," the purpose of which is:

* * * to identify and analyze the [ESEE] consequences of fully protecting the identified wetland areas in the Columbia Corridor, or to allow in whole or in part, conflicting commercial

and industrial development."¹⁶ Id. at 141.

Under economic consequences, this analysis provides:

"The location of some identified wetlands could result in difficult and awkward development situations if full retention in their present location is required. Usable parcel size may be reduced, thwarting a major reason for encouraging industrial development in the Columbia Corridor -- the existence of large tracts of land.

"* * * * *

"* * * Retention of existing wetlands may, in certain cases, reduce the size of potential parcels, thereby losing some of the advantage of the South Shore area in comparison to other areas outside the City of Portland and Multnomah County.

"* * * * *

"Historic Comprehensive Plan and zoning designations for much of the land within the Columbia Corridor have consistently indicated the area is suitable for immediate or future urban development, primarily industrial or commercial in nature. * * * [L]and use actions have been consistent with this pattern. * * * Some approvals, however, were made without consideration of existing wetlands * * *. Retention of existing wetlands may jeopardize the usability of platted lots for their intended purposes. Mitigation, either on-[site] or off-site, could allow full development in these instances while, at the same time, retaining wetlands and their related values." Id. at 143-145.

Additionally, the findings on the social and environmental consequences of protecting identified wetland

¹⁶The entire Smith and Bybee Lakes/Columbia Slough complex (Site 55) is a wetland. Mapping Project Volume 4, page 100.

areas versus allowing conflicting industrial development specifically address the Smith and Bybee Lakes complex (i.e. Site 55):

"The Smith and Bybee Lakes area * * * represents another educational and recreational opportunity. Due to sheer size (about 2,000 acres), diversity of wetland habitat, and proximity to North Portland, it is a natural resource of great value to Portland. * * *

"* * * * *

"* * * [T]he natural resource area located at the Smith/Bybee Lakes complex represents large resources unique to the City of Portland. They are of high cultural and historic value, and at a location which allows visual, if not physical, accessibility to the public." Id. at 147-148.

Although the above quoted findings do not specifically address petitioners' use of their property, they do indicate the city considered the adverse economic consequences of resource protection on existing location-dependent industrial uses and that past land use actions were approved without consideration of existing wetlands. They further indicate that the city determined there would be highly beneficial social and environmental consequences from the protection of Site 55. We conclude the city's findings on ESEE consequences provide an adequate basis for the city's decision to protect Site 55 through the application of its en and ec overlay districts, including the application of the ec district to portions of petitioners' property.

This subassignment of error is denied.

Petitioner's first and second assignments of error and intervenor's assignment of error are denied.

The city's decision is affirmed.