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

JEAN MELTON, F. ROBERT WILKIE, )  
and C.P. BROWN, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
CITY OF COTTAGE GROVE, )  
 )  
Respondent, )  
 )  
and )  
 )  
WAL-MART STORES, INC., )  
 )  
Intervenor-Respondent. )

LUBA No. 94-055

)  
FINAL OPINION  
AND ORDER

\_\_\_\_\_)  
DEPARTMENT OF LAND CONSERVATION )  
AND DEVELOPMENT, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
CITY OF COTTAGE GROVE, )  
 )  
Respondent, )  
 )  
and )  
 )  
WAL-MART STORES, INC., )  
 )  
Intervenor-Respondent. )

LUBA No. 94-061

Appeal from City of Cottage Grove.

Douglas M. DuPriest, Eugene, filed a petition for  
review and argued on behalf of petitioners Melton et al.  
With him on the brief was Hutchinson, Anderson, Cox & Coons.



1 Jane Ard, Assistant Attorney General, Salem, filed a  
2 petition for review and argued on behalf of petitioner  
3 Department of Land Conservation and Development. With her  
4 on the brief were Theodore R. Kulongoski, Attorney General;  
5 Thomas A. Balmer, Deputy Attorney General; and Virginia L.  
6 Linder, Solicitor General.

7  
8 Gary R. Ackley, Cottage Grove, filed a response brief  
9 and argued on behalf of respondent.

10  
11 Allen L. Johnson, Eugene, filed a response brief and  
12 argued on behalf of intervenor-respondent. With him on the  
13 brief was Johnson & Kloos.

14  
15 SHERTON, Referee; HOLSTUN, Referee, participated in the  
16 decision.

17  
18 REMANDED 09/01/94

19  
20 You are entitled to judicial review of this Order.  
21 Judicial review is governed by the provisions of ORS  
22 197.850.



1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal an ordinance amending the City of  
4 Cottage Grove Zoning Ordinance (CGZO) by adding, with  
5 certain limitations, "interstate-oriented major retail  
6 facility" to the list of uses permitted in the Commercial  
7 Tourist (CT) zone. CGZO 18.28.020(U).

8 **MOTION TO INTERVENE**

9 Wal-Mart Stores, Inc., moves to intervene in this  
10 proceeding on the side of respondent. There is no  
11 opposition to the motion, and it is allowed.

12 **FACTS**

13 CGZO 18.28.020 lists the "[p]ermitted buildings and  
14 uses" in the CT zone. These uses include various types of  
15 shops; motels and hotels; bus and railroad stations;  
16 restaurants, taverns and bars; museums; recreation clubs;  
17 legitimate theaters and studios; and travel agencies.  
18 CGZO 18.28.020(A) through (T). Prior to the challenged  
19 decision, the final entry on the list of uses permitted in  
20 the CT zone was:

21 "Tourist and highway oriented services similar to  
22 the above." CGZO 18.28.020(U).

23 In Loud v. City of Cottage Grove, 26 Or LUBA 152 (1993), we  
24 remanded a city decision interpreting the above quoted  
25 version of CGZO 18.28.020(U), and certain other CGZO  
26 provisions, as permitting general retail shopping centers in



1 the CT zone.

2 Shortly after our decision in Loud, the city council  
3 received a petition with some 700 signatures requesting that  
4 CGZO 18.28.020(U) be amended to permit an  
5 interstate-oriented major retail facility, subject to  
6 certain limitations on the size and location of such  
7 facility. The city council thereafter initiated a CGZO text  
8 amendment proceeding.

9 After a public hearing, the planning commission  
10 recommended adoption of an amendment to CGZO 18.28.020(U)  
11 similar, but not identical to, the amendment proposed by  
12 petition. After additional public hearings, the city  
13 council adopted an ordinance amending CGZO 18.28.020(U) to  
14 include the following on the list of uses permitted in the  
15 CT zone:

16 "Tourist and highway oriented services similar to  
17 the above, including not more than one  
18 interstate-oriented major retail facility  
19 consisting of a retail or discount retail center  
20 located on a site of 10 to 20 acres zoned CT and  
21 not CT/L<sup>[1]</sup> within 1/4 mile of the North I-5  
22 interchange, subject to special conditions upon  
23 site review and occupancy as set forth in the  
24 findings adopted in support of [this ordinance]."<sup>2</sup>

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<sup>1</sup>The Limited Commercial Tourist (CT/L) district is a separate zoning district. CGZO Chapter 18.29.

<sup>2</sup>The challenged decision finds, and the parties do not dispute, that there is currently only one CT-zoned site in the city that could satisfy the requirements of the challenged amendment for siting an interstate-oriented major retail center (Woodard site). Record 53. A Wal-Mart store has been proposed for this site in the past. Some of the



1           Record 17.

2           This appeal followed.

3   **FIRST ASSIGNMENT OF ERROR (DLCD)**

4   **THIRD ASSIGNMENT OF ERROR (MELTON)**

5           Petitioners contend the challenged decision fails to  
6   comply with various provisions of the Transportation  
7   Planning Rule (TPR), OAR Chapter 660, Division 12, which  
8   implements statewide Planning Goal 12 (Transportation).<sup>3</sup>

9           **A.    Scope of Review**

10          The challenged decision is a postacknowledgment land  
11   use regulation amendment. ORS 197.835(5)(b) provides LUBA  
12   shall reverse or remand an amendment to a land use  
13   regulation if:

14           "The comprehensive plan does not contain specific  
15   policies or other provisions which provide the  
16   basis for the regulation, and the regulation is  
17   not in compliance with the statewide planning  
18   goals."

19          The city and intervenor-respondent (respondents) argue  
20   that the city's obligation to comply with the TPR derives  
21   from its obligation under ORS 197.175(2)(a) and Goal 2 (Land  
22   Use Planning) to comply with the statewide planning goals  
23   (goals) in amending its land use regulations. Respondents

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parties' arguments concerning the adequacy of the city's findings and  
evidentiary support relate specifically to the Woodard site.

<sup>3</sup>Petitioners Melton's third assignment of error also alleges a violation  
of Goal 12 itself. However, the argument under this assignment does not  
allege any separate basis for finding a Goal 12 violation, other than  
violations of the TPR. Therefore, we do not consider petitioners'  
allegation of a Goal 12 violation further.



1 therefore contend that under the above quoted statutory  
2 provision, this Board may reverse or remand the challenged  
3 decision for failure to comply with the TPR only if the City  
4 of Cottage Grove Comprehensive Plan (plan) does not contain  
5 specific provisions which provide the basis for the  
6 challenged amendment. Respondents argue the following plan  
7 provisions provide such a basis:

8 (1) A Community Development Economy Goal to  
9 "continue to provide for tourist-oriented  
10 development." Record 1403.

11 (2) A table indicating the CT zone implements the  
12 Tourist Commercial plan designation.  
13 Record 1453.

14 (3) A statement in the introduction to the plan  
15 that the plan map is "a graphic  
16 representation of the goals, objectives and  
17 recommendations applied to current and  
18 projected land use needs." Record 1400.

19 (4) The plan map's designation of certain lands  
20 as Tourist Commercial.

21 In this case, the plan provisions cited by respondents  
22 do not specifically refer to "interstate-oriented major  
23 retail facilities," or any type of retail facilities.  
24 Further, a large number of different CGZO amendments could  
25 be consistent with the plan provisions cited by respondents.  
26 The provisions cited by respondents are not the type of  
27 "specific" provisions, providing a basis for the specific  
28 land use regulation amendment appealed here, to which  
29 ORS 197.835(5)(b) refers. See Ramsey v. City of Portland,  
30 23 Or LUBA 291, 299-300, aff'd 115 Or App 20 (1992).



1 Consequently, we are required to reverse or remand the  
2 challenged decision if it fails to comply with applicable  
3 provisions of the TPR.

4 **B. OAR 660-12-045(2) and (3)**

5 Petitioners Melton contend the challenged amendment  
6 does not comply with the requirements for land use  
7 regulations set out in OAR 660-12-045(2) and (3).

8 Under the TPR, transportation planning is divided into  
9 two phases -- (1) adoption of transportation system plans  
10 (TSPs), and (2) transportation project development. Bicycle  
11 Transportation Alliance v. Washington Co., 26 Or LUBA 265,  
12 274 (1993), rev'd on other grounds 127 Or App 312, on  
13 reconsideration 129 Or App 98 (1994). Under OAR 660-12-015,  
14 coordinated state, regional and local TSPs, as specified in  
15 OAR 660-12-020, are required. In addition,  
16 OAR 660-12-045(1) requires local governments to amend their  
17 land use regulations to implement the applicable TSPs. The  
18 requirements for such local implementing regulations are set  
19 out in OAR 660-12-045(2) to (6).

20 The deadlines for adoption of regional and local TSPs  
21 have not yet passed. OAR 660-12-055(1) and (2). Further,  
22 there is no dispute that the city has not yet adopted a TSP.  
23 Record 29. Consequently the requirements of  
24 OAR 660-12-045(2) and (3) for regulations implementing TSPs  
25 are applicable here only if some other provision of the TPR  
26 made those sections applicable to the city on March 14,



1 1994, when the challenged decision was adopted. The parties  
2 do not identify any such provision, and we are aware of  
3 none.<sup>4</sup> We therefore conclude OAR 660-12-045(2) and (3) are  
4 inapplicable to the challenged decision.

5 This subassignment of error is denied.

6 **C. OAR 660-12-060(1) and (2)**

7 OAR 660-12-060(1) provides that amendments to  
8 acknowledged land use regulations "which significantly  
9 affect a transportation facility" must meet certain  
10 standards set out in that section. OAR 660-12-060(2) states  
11 a land use regulation "significantly affects a  
12 transportation facility" if it:

13 "(a) Changes the functional classification of an  
14 existing or planned transportation facility.

15 "(b) Changes standards implementing a functional  
16 classification system;

17 "(c) Allows types or levels of land uses which  
18 would result in levels of travel or access  
19 which are inconsistent with the functional  
20 classification of a transportation facility;  
21 or

22 "(d) Would reduce the level of service of [a  
23 transportation] facility below the minimum  
24 acceptable level identified in the TSP."  
25 (Emphases added.)

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<sup>4</sup>OAR 660-12-055(3) requires cities in non-Metropolitan Planning Organization (non-MPO) urban areas with populations of 25,000 or more to adopt the land use regulation amendments required by OAR 660-12-045(3) by November 8, 1993. We have no knowledge of whether the city is within a non-MPO urban area. However, it appears from the population section of the plan that the population within the city's UGB is well under 25,000 and, therefore, this provision of OAR 660-12-055(3) does not apply here.



1           OAR 660-12-060 became applicable to land use regulation  
2 amendments upon its adoption.       Thus, OAR 660-12-060(1)  
3 applies here if the challenged amendment "significantly  
4 affects a transportation facility." A land use regulation  
5 "significantly affects a transportation facility" if it does  
6 any one of the four things set out in OAR 660-12-060(2)(a)  
7 to (d). The challenged decision includes findings that the  
8 proposed amendment does not do any of these four things.  
9 Petitioners challenge the city's findings only with regard  
10 to OAR 660-12-060(2)(c).

11           The Woodard site, the only CT-zoned site which might  
12 satisfy the requirements of the challenged amendment, is  
13 located southeast of the interchange between I-5 and Row  
14 River Road (the only I-5 interchange within city limits), on  
15 the south side of Row River Road. The challenged decision  
16 includes the following findings addressing the requirements  
17 of OAR 660-12-060(2)(c) with regard to Row River Road and  
18 I-5:

19           "Row River Road \* \* \* is classified as a 'Minor  
20 Arterial,' with a planned right-of-way of 80 feet.  
21 \* \* \*       The definitions section of the Roads  
22 Chapter of the Lane County Code (LC 15.010(3))  
23 defines a 'Minor Arterial' as

24                   "'A road which provides for  
25 intracommunity traffic and serves as a  
26 direct connection from communities to  
27 principal arterials.'

28           "Under the Lane Code, I-5 is a 'principal  
29 arterial,' defined at LC 15.010(3) as



1           ''A road which provides for through  
2           traffic between major centers of  
3           activity in the urban, suburban, and  
4           rural areas.'

5           "Row River Road provides for intracommunity  
6           traffic circulation within the Cottage Grove urban  
7           area. It serves as a direct connection from the  
8           community to [I-5]. I-5 in turn provides for  
9           through traffic between urban areas (major centers  
10          of activity) in the urban, suburban, and rural  
11          areas of the West Coast of the United States.

12          "Row River Road provides for through traffic to  
13          and from the commercial and tourist-commercial  
14          areas east of I-5, including car dealerships, a  
15          golf course, the airport, the Village Green  
16          restaurant and residential complex, and the  
17          tourist-commercial site next to the Village Green  
18          which is the probable site of any proposed retail  
19          center authorized by [this] amendment.

20          "The use authorized by [this] amendment will be  
21          fully consistent with the designated uses of these  
22          transportation facilities. Tourists, the motoring  
23          public, and other travelers will use Row River  
24          Road to get to and from the site from I-5 and  
25          other parts of the community. The type and level  
26          of uses authorized will thus be consistent with  
27          the functional classification of these facilities.

28          "\* \* \* \* \*

29          "\* \* \*       Although the studies recognize the  
30          potential for a drop in level of service at the  
31          North [I-5 interchange] ramp unless a traffic  
32          signal and eastbound turn lane [are] installed,  
33          neither study predicts that the usage generated by  
34          [an interstate-oriented major retail facility] at  
35          the Woodard site would result in usage of or  
36          impact upon Row River Road inconsistent with its  
37          status as a collector, in usage of or impact on  
38          I-5 inconsistent with its status as an interstate  
39          highway, or in usage of or impact on any other  
40          transportation facility inconsistent with that  
41          facility's functional classification. \* \* \* The  
42          record amply shows that the impacts of the



1 authorized uses alone, as limited, are not  
2 significant, and that, even if they were  
3 significant, the necessary mitigating safeguards  
4 are in place." (Emphasis added.) Record 30-31.

5 Petitioners do not explain why the above findings fail  
6 to establish the challenged amendment will not result in  
7 "levels of travel or access" inconsistent with the  
8 functional classifications of Row River Road and I-5 as a  
9 minor arterial and principal arterial, respectively.  
10 Rather, petitioners point to findings that the uses allowed  
11 by the amendment might decrease the level of service at the  
12 north ramp of the I-5 interchange unless certain conditions  
13 are imposed, but do not explain why this means that the  
14 "level of travel or access" will be "inconsistent with the  
15 functional classification of" Row River Road or I-5, as  
16 provided in OAR 660-12-060(2)(c).<sup>5</sup> We therefore sustain the  
17 city's determination that the amendment does not allow types  
18 or levels of land uses resulting in "levels of travel or  
19 access \* \* \* inconsistent with the functional classification  
20 of" Row River Road and I-5 and, therefore, does not  
21 "significantly affect" these transportation facilities.<sup>6</sup>

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<sup>5</sup>The only reference to impacts on "levels of service" in OAR 660-12-060(2) is in subsection (d). However, OAR 660-12-060(2)(d) applies only to minimal acceptable levels of service "identified in the TSP." As noted above, the city has not yet adopted a TSP.

<sup>6</sup>Petitioner DLCD goes on to contend that with regard to mitigation of impacts on Row River Road and I-5, the conditions imposed by the city do not satisfy the requirements of OAR 660-12-060(1). However, OAR 660-12-060(1) does not require a local government to "assure the allowed land uses are consistent with the identified function, capacity,



1           However, petitioners Melton also argue the findings  
2   "fail to address the impacts on Thornton Road (to the East),  
3   Whiteaker Avenue or Mosby Road (to the South) or Gateway  
4   Boulevard (to the West)."   Petition for Review (Melton) 22.  
5   Petitioners do not contend they introduced evidence below  
6   concerning the issue of impacts of the proposed amendment on  
7   these roads.   Further, petitioners do not explain in their  
8   brief why the challenged amendment might result in levels of  
9   travel or access inconsistent with these roads' functional  
10   classifications or why these particular roads will be  
11   affected by the amendment.   Petitioners do, however, cite a  
12   map in the record showing the location of these and other  
13   roads, the Woodard site and the I-5 interchange.  
14   Record 1469.   This map indicates the Woodard site has direct  
15   access onto both Row River Road and Thornton Road.

16           That the record shows the Woodard site has direct  
17   access onto Thornton Road is a sufficient basis for  
18   requiring the city's determination under  
19   OAR 660-12-060(2)(c), that the amendment does not allow  
20   types or levels of land uses resulting in "levels of travel  
21   or access \* \* \* inconsistent with the functional  
22   classification of a transportation facility," to include  
23   consideration of impacts on Thornton Road.   However, in the  
24   absence of testimony below focused on the impacts of the

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and level of service of the [transportation] facility" unless the local government determines, pursuant to OAR 660-12-060(2), that the subject amendment will significantly affect that transportation facility.



1 proposed amendment on the "levels of travel or access" onto  
2 the other roads cited by petitioners Melton (Whiteaker  
3 Avenue, Mosby Road, Gateway Boulevard), petitioners fail to  
4 provide a basis for concluding the city is required to  
5 address impacts on these other roads in determining whether  
6 the challenged amendment satisfies OAR 660-12-060(2)(c).

7 Except with regard to Row River Road and I-5, the  
8 findings contain only a conclusory statement that the  
9 amendment will not result in "usage of or impact on any  
10 other transportation facility inconsistent with that  
11 facility's functional classification." Record 31. No party  
12 cites any findings or evidence in the record identifying the  
13 functional classification of Thornton Road or the impacts of  
14 the proposed amendment on the levels of travel or access on  
15 Thornton Road. Therefore, the city must determine on remand  
16 whether the proposed amendment will allow uses that will  
17 result in "levels of travel or access which are inconsistent  
18 with the functional classification of" Thornton Road.<sup>7</sup>

19 This subassignment of error is sustained, in part.

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<sup>7</sup>If the city finds the proposed amendment will not allow uses resulting in levels of travel or access inconsistent with the functional classification of Thornton Road, it will establish the proposed amendment does not significantly affect a transportation facility under OAR 660-12-060(2) and, therefore, OAR 660-12-060(1) does not apply. If the city finds the proposed amendment will allow uses resulting in levels of travel or access inconsistent with the functional classification of Thornton Road, it must demonstrate the amendment satisfies the requirements of OAR 660-12-060(1).



1           **D.     OAR 660-12-060(3)**

2           OAR 660-12-060(3) provides:

3           "Determinations under [OAR 660-12-060(1) and (2)]  
4           shall be coordinated with affected transportation  
5           facility and service providers and other affected  
6           local governments."

7           Petitioners Melton contend the city adopted the  
8           proposed amendment despite a request from the Oregon  
9           Department of Transportation (ODOT) to delay making the  
10          decision pending resolution of road capacity and safety  
11          issues. Record 116. Petitioners argue the city's findings  
12          that it has coordinated with ODOT are not supported by  
13          substantial evidence in the record.

14          We have said the coordination requirement of Goal 2  
15          requires the jurisdiction developing plan or land use  
16          regulation provisions (1) to exchange information with other  
17          affected governmental units, or at least to invite them to  
18          enter into such an exchange; and (2) to consider and  
19          accommodate the needs of such affected governmental units as  
20          much as possible in formulating or revising the plan or  
21          regulations. Adkins v. Heceta Water District, 23 Or LUBA  
22          207, 217 (1992). We have also said neither the Goal 2  
23          coordination requirement nor similarly worded coordination  
24          requirements imposed by local comprehensive plan policies  
25          require affected units of government to agree with the  
26          decision ultimately adopted by another government. ODOT v.  
27          Clackamas County, 23 Or LUBA 370, 378 (1992). We believe



1 the coordination requirement of OAR 660-12-060(3) should be  
2 interpreted the same as these other, similarly worded  
3 coordination requirements.

4 The decision states the city "actively coordinated"  
5 with ODOT. Record 31. The city cites detailed staff  
6 testimony in the record recounting the city's efforts to  
7 coordinate with ODOT while the challenged amendment was  
8 being developed. Record 85. The city also cites evidence  
9 that it modified the proposed amendment, at least in part to  
10 respond to ODOT's concerns. Record 80-81, 124. The city  
11 further argues it responded to ODOT's concerns by imposing  
12 certain conditions on site review approvals for a major  
13 retail facility at the Woodard site.

14 On the date the city was scheduled to adopt its final  
15 decision, ODOT submitted a letter asking the city to delay  
16 adopting the proposed amendment. However, the evidence in  
17 the record shows the city made extensive efforts to obtain  
18 input from and exchange information with ODOT. It also  
19 shows that the city considered ODOT's input and tried to  
20 accommodate its concerns. This is sufficient to satisfy the  
21 coordination requirement of OAR 660-12-060(3).

22 This subassignment of error is denied.

23 The first assignment of error (DLCD) is denied. The  
24 third assignment of error (Melton) is sustained, in part.

25 **SECOND ASSIGNMENT OF ERROR (DLCD)**

26 The only arguments under this assignment of error



1 sufficiently developed for review are contentions that the  
2 challenged amendment fails to demonstrate compliance with  
3 OAR Chapter 660, Division 9 (Industrial and Commercial  
4 Development).

5 Respondents contend OAR Chapter 660, Division 9, by its  
6 own terms, is applicable only to plan and land use  
7 regulation amendments adopted during periodic review.  
8 OAR 660-09-010(2). Respondents argue the challenged  
9 decision correctly finds that OAR Chapter 660, Division 9 is  
10 inapplicable because the city's periodic review was  
11 completed when DLCD issued Order 93-TERM-899 on  
12 September 15, 1993. Record 26, 1689. We agree with  
13 respondents.

14 The second assignment of error (DLCD) is denied.

15 **FIRST ASSIGNMENT OF ERROR (MELTON)**

16 **A. Compliance With Comprehensive Plan**

17 Petitioners contend the challenged CGZO amendment is  
18 inconsistent with a plan Economy goal, three plan Economic  
19 Development objectives, and the Tourist Commercial plan map  
20 designation.

21 **1. Preliminary Issue**

22 The plan includes an introduction, a section listing  
23 community development "goals," and several individual  
24 elements, each with its own "objectives" and  
25 "recommendations." Intervenor argues the introduction's  
26 "Plan Format" section makes it clear that only



1 "recommendations," not "goals" or "objectives," are binding  
2 policies governing the adoption or amendment of regulations  
3 implementing the plan:

4 "The Comprehensive Plan for the City of Cottage  
5 Grove and surrounding area consists of goals,  
6 objectives and policy recommendations to guide the  
7 growth and development of the City of Cottage  
8 Grove and surrounding area.

9 "The Plan's goals are broad statements of  
10 philosophy which may never be completely  
11 attainable but describe future community  
12 conditions which today's residence [sic] desire to  
13 achieve.

14 "The objectives listed in various elements of the  
15 Plan suggest methods and direction for the City  
16 and its citizens to follow in order to achieve the  
17 broad goals. The objectives do not carry the  
18 weight of policy statements.

19 "The recommendations in the Plan are policy  
20 statements by the City to provide a consistent  
21 course of action to accomplish the community's  
22 goals." (Emphases added.) Record 1400.

23 Intervenor further argues that because petitioners do not  
24 contend the challenged amendment violates any plan  
25 "recommendations," this subassignment of error should be  
26 denied.

27 This Board is required to defer to a local governing  
28 body's interpretation of its own enactment, unless that  
29 interpretation is contrary to the express words, purpose or  
30 policy of the local enactment or to a state statute,  
31 statewide planning goal or administrative rule which the  
32 local enactment implements. ORS 197.829; Gage v. City of  
33 Portland, 319 Or 308, 316-17, \_\_\_ P2d \_\_\_ (1994); Clark v.



1 Jackson County, 313 Or 508, 514-15, 836 P2d 710 (1992).<sup>8</sup>  
2 This means we must defer to a local government's  
3 interpretation of its own enactments, unless that  
4 interpretation is "clearly wrong." Goose Hollow Foothills  
5 League v. City of Portland, 117 Or App 211, 217, 843 P2d 992  
6 (1992); West v. Clackamas County, 116 Or App 89, 93, 840 P2d  
7 1354 (1992).

8 With regard to plan "objectives," the challenged  
9 decision quotes the above provision from the Plan Format  
10 section, and then states:

11 "[O]bjectives[, ] as used in the comprehensive  
12 plan, are generalized suggestions that may or may  
13 not be used to aid in attempting to achieve the  
14 stated goals. \* \* \* (Emphasis added.)  
15 Record 49.

16 We agree with intervenor that the above plan interpretation  
17 with regard to the role of "objectives" is not clearly  
18 wrong.<sup>9</sup> Under this interpretation, noncompliance with an  
19 "objective" is not a basis for reversal or remand.  
20 Therefore, we do not address petitioners' contentions that  
21 the challenged amendment fails to comply with plan Economic

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<sup>8</sup>ORS 197.829 was enacted to codify Clark, but was not in effect when this Board made the decision reviewed in Gage. Nevertheless, the court of appeals has stated that it will interpret ORS 197.829 to mean what the supreme court, in Gage, interpreted Clark to mean. Watson v. Clackamas County, \_\_\_ Or App \_\_\_, \_\_\_ P2d \_\_\_ (August 10, 1994), slip op 3-4.

<sup>9</sup>There is no contention here that this interpretation of the plan provisions concerning "objectives" is contrary to a state statute, statewide planning goal or administrative rule which the provisions implement. See ORS 197.829(4).



1 Development Objectives 1, 2 and 5.

2       However, the challenged decision does not interpret  
3 plan goals or map designations as being inapplicable to land  
4 use regulation amendments. Rather, as explained more fully  
5 below, the decision explains why the proposed amendment  
6 implements the Economy goals and is consistent with the  
7 Tourist Commercial plan map designation. Thus, it is clear  
8 the city governing body interprets the plan Economy goals  
9 and description of the Tourist Commercial map designation as  
10 applicable to the proposed amendment to the CT zone. This  
11 interpretation is within the discretion afforded the  
12 governing body by Clark and Gage. Accordingly, we address  
13 petitioners' arguments concerning these plan provisions  
14 below.

## 15                   **2. Remaining Issues**

16       Petitioners contend the challenged amendment is  
17 inconsistent with a plan Economy goal "to provide for  
18 tourist-oriented development" and the Tourist Commercial  
19 plan map designation, because it allows Tourist Commercial  
20 designated land to be used for general retail use.<sup>10</sup>  
21 Petitioners concede the word "tourist" and the term  
22 "tourist-oriented development" are not defined by the plan.  
23 However, petitioners point to the following text in the  
24 Economic Development plan element:

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<sup>10</sup>According to the plan Land Use Diagram section, both the CT and CT/L zones implement the plan Tourist Commercial map designation. Record 1453.



1 "There is considerable interest in developing  
2 additional tourist-oriented business. This is  
3 aimed at utilizing the inherent natural features  
4 which exist within the region. By preserving and  
5 enhancing the natural features, increased revenue  
6 can be brought into the area if the services are  
7 offered." Record 1410.

8 Petitioners contend the above text indicates the "plan's  
9 idea of 'tourist-oriented business' is something that  
10 capitalizes on the 'inherent natural features' of the region  
11 and is service oriented," not a major retail or discount  
12 retail center that is part of a national chain. Petition  
13 for Review (Melton) 13. According to petitioners, requiring  
14 that the major retail or discount retail center be  
15 "interstate-oriented" does not remedy this deficiency.

16 The plan includes four Economy goals:

17 "To encourage opportunities to broaden our  
18 economic base \* \* \*.

19 "To take advantage of our location within  
20 commuting distance of the Eugene-Springfield area  
21 by providing for residential development and  
22 commercial services for those desiring  
23 metropolitan employment but a small town living  
24 environment.

25 "To continue to provide for tourist-oriented  
26 development.

27 "To strive to attract industrial development  
28 \* \* \*." (Emphasis added.) Record 1403.

29 The decision addresses these Economy goals as follows:

30 "The proposed text amendment in providing for  
31 major retail facilities to locate within the CT  
32 district, addresses the above [goals] directly in  
33 that, if implemented, the amended CT zone district  
34 will provide increased opportunity to broaden our



1 economic base, including employment. The specific  
2 CT district location immediately adjacent to the  
3 I-5 interchange [(Woodard site)] could then  
4 provide major retail commercial services and  
5 shopping opportunities to local residents,  
6 travelers, and tourists alike." Record 49.

7 We understand these findings to state the proposed  
8 amendment furthers both the first and third Economy goals  
9 quoted above. With regard to serving tourists, other  
10 findings state shopping is a preferred tourist activity.  
11 Record 50. Other findings explain that the city needs to  
12 capture the purchasing power of motorists of all kinds,  
13 whether tourists, residents or other travelers.  
14 Record 23-24. Finally, the findings explain the Tourist  
15 Commercial plan designation is both a commercial and a  
16 tourist designation and is not intended to preclude general  
17 retail uses. The findings go on to explain the "Cottage  
18 Grove Economic Development Program Summary and Inventory of  
19 Commercial and Industrial Sites," which is part of the plan,  
20 states that Tourist Commercial designated land "encourages  
21 recreation, retail sales, and tourist service/business."<sup>11</sup>  
22 (Emphasis added.) Record 26, 1759.

23 Petitioners do not specifically challenge the findings  
24 discussed above. Rather, petitioners simply express their  
25 view that what constitutes "tourist-oriented development"  
26 under the plan and what is allowed under a Tourist

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<sup>11</sup>The Inventory was adopted as part of the plan by Resolution No. 1130.  
Record 1784.



1 Commercial plan map designation is considerably narrower  
2 than what is allowed by the challenged amendment.  
3 Nevertheless, the city's interpretation of the relevant plan  
4 provisions is well within the discretion afforded by Clark  
5 and Gage. In particular, we agree with the city that  
6 nothing in the plan expressly precludes a retail use which  
7 serves residents and other travelers, as well as tourists,  
8 from being located in the Tourist Commercial plan  
9 designation. Neither does the plan preclude an amendment to  
10 the CT zone that furthers other Economy goals, as well as  
11 providing for tourist-oriented development.

12 This subassignment of error is denied.

13 **B. Consistency With CGZO**

14 Petitioners contend the challenged amendment is  
15 inconsistent with unamended portions of the CGZO.

16 **1. Services Similar to the Above**

17 CGZO 18.04.435 defines "similar uses" as uses whose  
18 "intensity of use and characteristics of operation are more  
19 or less the same as the buildings and uses listed in the  
20 zoning district under consideration." Petitioners contend  
21 the challenged amendment is inconsistent with  
22 CGZO 18.04.435, because none of the uses listed in  
23 CGZO 18.28.020(A) to (T) as permitted in the CT zone  
24 remotely resemble a large retail shopping center, which the  
25 amendment adds to the list as a similar use. Petitioners  
26 also contend the major retail facility added to



1 CGZO 18.28.020(U) by the challenged amendment cannot be a  
2 "service similar to the above," because a major retail  
3 facility is not a "service."

4 Prior to the challenged amendment, CGZO 18.28.020(U)  
5 listed "[t]ourist and highway-oriented services similar to  
6 the above" as a permitted use in the CT zone. The  
7 challenged amendment does not interpret former  
8 CGZO 18.28.020(U), but rather amends CGZO 18.28.020(U) and  
9 redefines the phrase "[t]ourist and highway-oriented  
10 services similar to the above" as specifically including an  
11 "interstate-oriented major retail facility consisting of a  
12 retail or discount retail center," subject to certain size,  
13 location and design limitations.

14 In addition, petitioners provide no legal authority for  
15 their contention that a major retail facility cannot be  
16 described as a "service." The purpose section of the CT  
17 zone states it is intended to "provide facilities primarily  
18 serving tourists." CGZO 18.28.010. We cannot say the  
19 city's description of a major retail facility as a "service"  
20 is clearly wrong under the CGZO. Further, because the  
21 challenged amendment describes the major retail facility as  
22 a similar "service," rather than a similar "use," the  
23 CGZO 18.04.435 definition of "similar uses" would appear to  
24 be inapplicable. However, even if it were applicable, we  
25 would agree with respondents that other uses listed in  
26 CGZO 18.28.020, such as hotels, museums, restaurants and bus



1 or railroad depots may have intensities of use and  
2 characteristics of operation similar to those of a major  
3 retail facility.

4 This subassignment of error is denied.

5 **2. Purpose of the CT Zone**

6 CGZO 18.28.010 sets out the purpose of the CT zone:

7 "The [CT] district is intended to provide  
8 facilities primarily serving tourists, the  
9 motoring public and other travelers in the area.  
10 This district is intended to be utilized only in  
11 those areas where these facilities are necessary  
12 and appropriate, such as freeway interchanges or  
13 adjacent to or within areas of high recreation or  
14 tourist use."

15 Petitioners contend a large retail or discount retail  
16 facility is not a facility "primarily serving tourists, the  
17 motoring public and other travelers." Petitioners contend  
18 such a facility would primarily serve city residents, rather  
19 than attracting residents of other communities to stop and  
20 spend time and money in the city, which is the purpose of  
21 the CT zone. According to petitioners, the challenged  
22 amendment is inconsistent with the purpose of the CT zone to  
23 preserve CT-zoned land for tourist-related uses.

24 Respondents contend petitioners erroneously presume the  
25 phrase "tourists, the motoring public and other travelers"  
26 used in CGZO 18.28.010 refers only to people passing through  
27 the area. Respondents point out the decision interprets  
28 "tourist," "motoring public," and "other travelers" as  
29 having distinct meanings. Record 23-24. For instance, the



1 term "motoring public" is interpreted as including city  
2 residents making local trips. Record 24. Respondents argue  
3 the decision also explains that the use of all three terms  
4 in CGZO 18.28.010 reflects a conscious determination that  
5 the city needs to capture the purchasing power of all kinds  
6 of motorists. Id.

7       Petitioners' argument is based on an erroneous premise  
8 that CGZO 18.28.010 requires all uses in the CT zone to  
9 serve primarily tourists. As pointed out by respondents,  
10 CGZO 18.28.010 also refers to uses in the CT zone as  
11 primarily serving the "motoring public" and "other  
12 travelers." The city's interpretation of these latter terms  
13 as including local residents is within its interpretive  
14 discretion under Clark and Gage. We therefore see nothing  
15 wrong with the city's conclusion that an interstate-oriented  
16 major retail or discount retail facility is consistent with  
17 the purpose of the CT zone.

18       This subassignment of error is denied.

### 19               **3. Structure of the City's Commercial Zones**

20       Petitioners contend the amendment improperly alters the  
21 structure of the city's commercial zones. Petitioners argue  
22 that because a major retail facility would be permitted  
23 under the city's Central Business District (C-2) or  
24 Community Commercial District (C-2P), the city does not need  
25 to add the use to its CT zone.

26       Regardless of whether one or more zoning districts



1 already allow a particular use, the city may choose to amend  
2 its zoning ordinance to allow that use in another zoning  
3 district, so long as it complies with applicable legal  
4 standards in doing so. Petitioners' argument provides no  
5 basis for reversal or remand.

6 This subassignment of error is denied.

7 **C. Consistency With Prior City Actions**

8 Petitioners contend the challenged decision is  
9 inconsistent with past city actions concerning the  
10 application of the Tourist Commercial plan designation and  
11 CT zone to the Woodard site and its 1989 urban growth  
12 boundary (UGB) amendment to bring certain property to the  
13 west of the I-5 interchange into the UGB because the city  
14 needed more land for tourist commercial purposes.

15 This Board can grant relief only if petitioners  
16 demonstrate that an applicable legal standard is violated by  
17 the challenged decision. Frankton Neigh. Assoc. v. Hood  
18 River County, 25 Or LUBA 386, 389 (1993); Lane School  
19 District 71 v. Lane County, 15 Or LUBA 150, 153 (1986).  
20 Petitioners fail to explain how the previous land use  
21 actions discussed under this subassignment establish any  
22 standard applicable to the challenged CGZO text amendment.

23 This subassignment of error is denied.

24 The first assignment of error (Melton) is denied.



1     **SECOND ASSIGNMENT OF ERROR (MELTON)**

2             **A.     Incorporated Conditions**

3             Petitioners object that the amended version of  
4     CGZO 18.28.020(U) incorporates by reference "special  
5     conditions upon site review and occupancy as set forth in  
6     the findings adopted in support of [this ordinance]."  
7     Record 17.     Petitioners do not contend there is any  
8     uncertainty with regard to the identity of the conditions  
9     referred to.     The six conditions in question are attached to  
10    the ordinance, at Record 21.     However, petitioners do argue  
11    the conditions improperly refer only to "the discount-retail  
12    facility," without any explanation by the city concerning  
13    why the conditions should not be applied to a "retail  
14    facility" as well.

15            Petitioners cite no authority for the proposition that  
16    the city cannot incorporate provisions by reference into the  
17    challenged amendment, and we are aware of none.     Further, we  
18    agree with respondents that although the conditions  
19    themselves are phrased in the terms "the discount-retail  
20    facility shall \* \* \*," the amended language of  
21    CGZO 18.28.020(U) itself clearly requires that the  
22    conditions be applied to both retail centers and discount  
23    retail centers.

24            This subassignment of error is denied.

25             **B.     Identification of Conflicting Evidence**

26            Petitioners contend the city's findings are inadequate



1 because they fail to address relevant evidence that  
2 conflicts with the evidence relied on by the city.

3 While a local government is required to identify in its  
4 findings the facts it relied upon in reaching its decision,  
5 it is not required to explain why it chose to balance  
6 conflicting evidence in a particular way, or to identify  
7 evidence it chose not to rely on. Angel v. City of  
8 Portland, 22 Or LUBA 649, 656-57, aff'd 113 Or App 169  
9 (1992); Ash Creek Neighborhood Ass'n v. City of Portland, 12  
10 Or LUBA 230, 236-38 (1984).

11 This subassignment of error is denied.

12 The second assignment of error (Melton) is denied.

13 The city's decision is remanded.