BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

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| SALEM GOLF CLUB, MIKE O'NEILL, and JERRY HOGEVOLL, dba SAFE STOR,<br><br>Petitioners,<br><br>vs.<br><br>CITY OF SALEM,<br><br>Respondent,<br><br>and<br><br>DAVE SIMONSON, DONNA SIMONSON, and COMMERCIAL REDI-MIX CO.,<br><br>Intervenors-Respondent. | LUBA No. 92-239<br><br>FINAL OPINION AND ORDER |

Appeal from City of Salem.

Terrence Kay, Salem, filed the petition for review and reply brief and argued on behalf of petitioners.

Paul A. Lee, Assistant City Attorney, filed a response brief on behalf of respondent.

Paul R. Hribernick, Portland, filed a response brief and argued on behalf of intervenors-respondent. With him on the brief was Black Helterline.

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

REMANDED 01/25/95

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

Opinion by Sherton.

**NATURE OF THE DECISION**

Petitioners appeal a city ordinance approving a comprehensive plan map amendment, zone change, conditional use permit and variance, to allow the replacement and relocation of a concrete batch plant.

**MOTION TO INTERVENE**

Dave Simonson, Donna Simonson and Commercial Redi-Mix Co., the applicants below, move to intervene in this proceeding on the side of respondent. There is no objection to the motion, and it is allowed.

**FACTS**

Intervenors own and operate a business that includes the mining and processing of aggregate materials (sand and gravel) and the production of concrete. The aggregate mining and processing portions of the business are located on parcels outside Salem city limits, under the jurisdiction of Marion County, in the Eola Bend area between South River Road and the Willamette River. The subject parcel is approximately 1.5 acres in size and is bisected by South River Road. It is designated Industrial Commercial on the city comprehensive plan map and zoned Industrial Commercial (IC).

The approximately 0.95 acre, triangular portion of the subject parcel on the northwest side of South River Road is used for intervenors' offices and truck garage, which are

located near the northeastern apex of the triangle. Aggregate stockpiles are located near the southwestern base of the triangle. Between these two areas is an area used for parking intervenors' trucks. The approximately 0.5 acre portion of the parcel on the southeast side of South River Road contains an aging concrete batch plant that is a nonconforming use. Access to this batch plant from South River Road by intervenors' supply trucks and product trucks is difficult and creates traffic problems on South River Road.

The triangular portion of the subject parcel is bordered by Burlington Northern Railroad tracks on the northwest, across from which is land zoned Public Amusement (PA), containing the city's Minto-Brown Island Park (Minto Brown Park) and two dwellings. The park access road adjoins the apex of the triangle. The base of the triangle borders an unnamed public right-of-way providing access to the two dwellings. Across the right-of-way, on IC-zoned land, is a self-storage facility. The portion of the subject parcel adjoining South River Road to the southeast is surrounded on its other three sides by land which is zoned Multiple Family Residential (RM) and developed for residential use.

On July 6, 1992, intervenors filed an application with the city for (1) a comprehensive plan map amendment for the 0.95 acre triangular area (hereafter subject property) from Industrial Commercial to Industrial; (2) a zone change for

the subject property from IC to General Industrial (IG); (3) a conditional use permit for a concrete batch plant on the subject property; and (4) a variance to allow paving within the special 62-foot setback from South River Road established by Salem Revised Code (SRC) 130.180. Approval of this application would allow intervenors to relocate their concrete operation to the southwestern, "base" portion of the subject triangular property, replacing the aging concrete batch plant with a modern portable concrete batch plant.[1]

On September 15, 1992, after holding a public hearing, the city planning commission approved intervenors' application. Petitioner Salem Golf Club appealed the planning commission's decision to the city council. On November 2, 1992, the city council held a public hearing on the application. On December 15, 1992, the city council adopted an ordinance approving the subject application.[2] This appeal followed.

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[1]Marion County had previously denied two applications by intervenors to allow placement of a concrete batch plant at intervenors' aggregate extraction or stockpiling site, respectively. See Simonson v. Marion County, 21 Or LUBA 313 (1991) (affirming county denial of conditional use permit application to place asphalt and concrete batch plants at the extraction site).

[2]The city council's decision imposes 11 conditions on the zone change to IG. Condition 7 requires that the existing concrete batch plant be removed when all appeals of the challenged decision are exhausted. Conditions 8 and 9 provide the zone change will remain in effect only if intervenors' current DOGAMI extraction permit is not revoked or abandoned and operation of intervenors' proposed new concrete batch plant is not discontinued for more than one year. Record 4.

**MOTION TO SUPPLEMENT RECORD**

At oral argument, petitioners submitted a Motion to Supplement Record. This motion asks us to take official notice of a complaint filed by Marion County in Marion County Circuit Court on June 15, 1993.[3] The complaint alleges that intervenors Simonson violated a conditional use permit approved by the county for an aggregate mining operation at the Eola Bend extraction site and seeks to enjoin intervenors from continuing such violations. Petitioners argue the complaint bears directly on the question of whether the subject concrete batch plant could be relocated to intervenors' extraction site, an issue that was before the city during its proceedings. Petitioners contend this Board should remand the challenged decision to the city to establish the true availability of the extraction site as an alternative site for the concrete batch plant.

Although LUBA has authority to take official notice of judicially cognizable law, as set out in OEC Rule 202, because LUBA's review is limited by ORS 197.830(13)(a) to the record of the proceeding below, LUBA lacks authority to

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[3]Petitioners' motion is entitled "Motion to Supplement Record." However, we do not understand petitioners to ask that the complaint be made part of the city's record, but rather that it be considered by LUBA and, therefore, become part of LUBA's record. In any case, the complaint could not possibly be part of the city's record, as it postdates the challenged decision by some six months. Sunburst II Homeowners v. City of West Linn, 18 Or LUBA 695, 698, aff'd 101 Or App 458, rev den 310 Or 243 (1990).

take official notice of adjudicative facts. Murray v. Clackamas County, 22 Or LUBA 247, 252 (1991); Blatt v. City of Portland, 21 Or LUBA 337, 341-42, aff'd 109 Or App 259 (1991), rev den 314 Or 727 (1992). Petitioners do not contend the complaint in question constitutes a local government enactment that is judicially cognizable under OEC Rule 202(7), and we do not see that it is.

Petitioners' motion to supplement the record is denied.

**MOTION FOR EVIDENTIARY HEARING**

After oral argument in this appeal, petitioners filed a motion for an evidentiary hearing pursuant to ORS 197.830(13)(b) and OAR 661-10-045.[4] Petitioners contend there were procedural irregularities below that are not reflected in the record. Specifically, petitioners allege intervenors withheld evidence from the city that petitioners

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[4]ORS 197.830(13)(b) provides:

> "In the case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, [LUBA] may take evidence and make findings of fact on those allegations. [LUBA] shall be bound by any finding of fact of the local government * * * for which there is substantial evidence in the whole record."

OAR 661-10-045(1) provides, in relevant part:

> "Grounds for [Evidentiary] Hearing: The Board may, upon written motion, conduct an evidentiary hearing in the case of disputed allegations in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. * * *"

believe intervenors were required to disclose under SRC 114.160(b) and 110.210(a) and (b).[5]

Petitioners further argue the challenged city council decision is premised on the unavailability of an alternative site for the proposed concrete batch plant, especially intervenors' existing extraction site in Marion County. Petitioners contend they will present evidence, not known to them at the time this matter was before the city, establishing (1) the batch plant could be sited at the extraction site, and (2) this evidence (concerning siting

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[5]With regard to quasi-judicial land use actions, SRC 114.160(b) provides:

> "The proposal must be supported by proof that it conforms to all applicable criteria imposed [by the SRC,] all standards imposed by applicable goals and policies of [the SACP, and] all applicable land use standards imposed by state law or administrative regulation. * * * The burden rests ultimately on the proponent to bring forward testimony or other evidence sufficient to prove compliance with these standards. At a minimum, the proponent's case should identify and evaluate the proposal in the context of all applicable standards."

SRC 110.210 (Application Forms) provides:

> "(a) * * * Application forms shall require at least the following information[:]
>
> "* * * * *
>
> "(6) Such other information as may be required for particular actions or permits elsewhere in [the SRC].
>
> "(b) All applications for land use actions * * * shall be complete as to all factual information required to be stated on or furnished with the application.
>
> "* * * * *"

the plant at the extraction site) would have resulted in denial of intervenors' application.

Petitioners allege the evidence they will present at an evidentiary hearing will include:

(1) A complaint filed by Marion County in Marion County Circuit Court on June 15, 1993, concerning intervenors' alleged violation of their 1979 aggregate extraction conditional use permit.

(2) Evidence that Marion County has a policy of not granting new permit approvals until existing land use disputes are settled and that the existence of the dispute concerning the 1979 conditional use permit was the primary reason intervenors' application to use the extraction site for the batch plant was denied.

(3) Testimony by two persons, members of the city council at the time the challenged decision was made, that neither they nor a majority of the city council would have voted to approve intervenors' application if they had known the extraction site was an available alternative.

(4) Testimony and documents from city staff establishing (i) intervenors have failed to comply with a condition of approval in the challenged decision requiring improvement of a section of the unnamed road adjoining the subject property to a 22-foot wide turnpike pavement, and (ii) trucks entering the subject property from the unnamed road, as required by the challenged decision, veer out of their lane and into the path of oncoming traffic on the unnamed road.

ORS 197.830(13)(b) and OAR 661-10-045(1) and (2) require that a motion for evidentiary hearing not only explain with particularity what facts the moving party would present at an evidentiary hearing, but also explain how those facts, if proved, would warrant reversal or remand of

the challenged decision. Petitioners' motion for evidentiary hearing fails to establish that the facts they seek to present, if proved, would result in reversal or remand of the challenged decision, for at least two reasons.

First, OAR 661-10-030(3)(d) requires that petitioners' assignments of error be set forth in their petition for review. Petitioners cannot raise a new basis for reversing or remanding a challenged decision for the first time in a post oral argument motion for evidentiary hearing unless they demonstrate that they seek to present facts unknown to them at the time the petition for review was filed. Cf DLCD v. Douglas County, ___ Or LUBA ___ (LUBA No. 94-045, November 9, 1994), slip op 12 (petitioner may not raise a basis for reversal or remand for the first time at oral argument or in a post oral argument memorandum).

In this case, the "procedural irregularit[y] not shown in the record" alleged as the basis for petitioners' request for an evidentiary hearing is violation of SRC 114.060(b) and 110.210(a) and (b). However, the petition for review contains no assignment of error concerning alleged violation of SRC 114.060(b) or 110.210(a) and (b).[6] In addition, petitioners do not contend that at the time they filed their petition for review, they were unaware of the evidence they now seek to introduce through a motion for evidentiary

[6]As far as we can tell, SRC 114.160(b) and 110.210(a) and (b) are not referred to in the petition for review at all.

hearing. Therefore, petitioners cannot raise this basis for reversal or remand for the first time in their motion for evidentiary hearing.

Second, we do not agree that the facts alleged by petitioners, if proved, would constitute a violation of SRC 114.160(b) and 110.210(a) and (b).[7] Petitioners' argument is premised on a belief that SRC 114.160(b) and 110.210(a) and (b) required intervenors to disclose to the city council, during its 1992 proceedings, facts relating to intervenors' dispute with Marion County concerning the 1979 extraction conditional use permit.[8] However, SRC 114.160(b) and 110.210(a) and (b) (quoted in n 5) simply require a land use application to contain certain information, and explain

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[7]The facts petitioners seek to introduce through their motion for evidentiary hearing include facts concerning intervenors' alleged noncompliance with a condition of approval in the challenged decision requiring certain street improvements. These facts appear unrelated to petitioners' claim of a procedural irregularity in the alleged violation of SRC 114.160(b) and 110.210(a) and (b). However, petitioners advance no legal theory as to how an alleged failure to comply with a condition imposed by a challenged decision, while that decision is on appeal, constitutes a basis for reversal or remand of that decision. Consequently, we do not consider this issue further.

Petitioners also seek to introduce facts concerning impacts of the approved proposal on use of the unnamed road adjacent to the subject property which have occured while the challenged decision has been on appeal. That evidence relevant to a substantive approval standard may have come into existence since the challenged decision was made does not provide a basis for an evidentiary hearing under ORS 197.830(13)(b) or OAR 661-10-045(1).

[8]We note that petitioners do not specify what facts they contend intervenors should have disclosed during the city proceedings. The circuit court complaint petitioners seek to introduce through an evidentiary hearing was not filed until some six months after the challenged decision was made.

that the burden is on the applicant to establish compliance with relevant approval criteria. We see nothing in these SRC provisions imposing a requirement on intervenors to disclose, during the city proceedings on the subject application, the substance of any dispute intervenors may have had with the county concerning the terms of intervenors' 1979 extraction conditional use permit.

The motion for evidentiary hearing is denied.

**NINTH ASSIGNMENT OF ERROR**

**A. Denial of Continuance/Incorporation into Record**

Petitioners contend the city erred by "refusing to continue the hearing to review the items stated in the Salem Golf Club 'request for continuance of hearing.'"[9] Petition for Review 28. Petitioners argue such continuance was "appropriate and necessary * * * to research the alternative sites, and the true availability of an application [sic] from the [county] to move the batch plant from River Road to the extraction site." Petition for Review 28. Petitioners also argue they were prejudiced by the city's failure to incorporate into its record, the record of "the Marion County Commissioners, which would establish or indicate the availability of a preferred and available site at the

[9]Petitioners do not identify, by citation to the record or otherwise, the "request for continuance of hearing" to which they refer. We will assume, as do intervenors in their response brief, that petitioners refer to the document at Record 190, dated November 2, 1992, entitled "Salem Golf Club Request for Incorporation or [sic] Materials into the Record by Council Order."

extraction site * * *." Id.

Apparently, at the November 2, 1992 city council hearing, petitioner Salem Golf Club submitted a request that the city council order certain listed items to be incorporated into the record of the proceeding or, in the alternative, that the city council "continue [the] hearing, or at least leave the record open for ten days or the time necessary, for the [listed] materials to be made part of the record."[10] Record 190. The city council declined to continue the hearing or leave the record open. The city council also declined to take official notice of the various documents, transcripts and files listed by petitioner Salem Golf Club, and noted that petitioner had not presented these items to the city council. Record 2.

Petitioners do not identify any legal standard which they contend entitled them to a continuance of the city council's November 2, 1992 hearing, or to have the record of that hearing left open. Petitioners do not explain why they believe the procedures followed by the county denied them an adequate opportunity to present or rebut evidence on the alternative sites issue. LUBA can grant relief only if

[10]The items listed were (1) transcripts of certain hearings and deliberations by the planning commission and the Salem Parks Board; (2) city files concerning code violations, enforcement issues or South River Road closure permits related to the existing batch plant site; (3) city planning files concerning any applications during the past five years where the city considered public need and alternative sites; and (4) a "GLADS" report listing industrially zoned land within the city. Record 190.

petitioners demonstrate that an applicable legal standard is violated. Frankton Neigh. Assoc. v. Hood River County, 25 Or LUBA 386, 389 (1993); Lane School Dist. 71 v. Lane County, 15 Or LUBA 150, 153 (1986).

With regard to the city's refusal to incorporate the items requested by petitioner Salem Golf Club into the record, petitioners do not contend they actually placed the items in question before the city council. Neither do petitioners identify any SRC provision or other applicable statute or regulation requiring the city to allow parties in land use proceedings to incorporate items into the record by reference.[11] Absent such a requirement, the city's refusal to incorporate these items into the record is not error. See Salem Golf Club v. City of Salem, 25 Or LUBA 768, 770 (1993).

This subassignment of error is denied.

**B. Refusal to Impose Conditions**

Petitioners contend the city exceeded its authority by refusing to impose on the proposed use certain conditions requested below by petitioner Salem Golf Club. Petitioners argue the city did not have a "substantial or reasonable basis" for refusing to impose the requested conditions.

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[11]We also note that although petitioners contend they were prejudiced by the city's failure to incorporate certain county files or documents into the record, the request for incorporation at Record 190 lists only city files and documents, and petitioners do not cite anything in the record establishing that petitioners ever requested incorporation of county documents into the record.

Petition for Review 28. According to petitioners, the city's refusal to impose the requested conditions "prejudices the Petitioners and the reasonable use of their land, and fails to comply with applicable standards to consider conditions in the context of [intervenors'] application." Id.

Petitioners do not identify, and we are not aware of, any legal standard that requires a local government to have a "substantial or reasonable basis" for declining to impose a condition suggested by a party to a local government land use proceeding. Neither do petitioners argue that one or more of the requested conditions are essential to the proposal's compliance with an applicable approval standard. Consequently, petitioners' arguments provide no basis for reversal or remand.

This subassignment of error is denied.

The ninth assignment of error is denied.

**FIRST AND SECOND ASSIGNMENTS OF ERROR**

There is no dispute that the proposed comprehensive plan map amendment is a "minor plan change," as defined by the SRC. SRC 64.090(b)(1) requires a minor comprehensive plan change to satisfy the following criterion:

> "[There is a] lack of appropriately designated suitable alternative sites within the vicinity of [the] proposed use. Factors in determining the suitability of the alternative sites are limited to one or both of the following:
>
> "(A) Size: Suitability of the size of the

alternative sites to accommodate the proposed use; or

"(B) Location: Suitability of the location of the alternative sites to permit the proposed use[.]" (Emphasis added.)

Petitioners argue that Roden Properties v. City of Salem, 17 Or LUBA 1249 (1989), establishes that the "vicinity" in which to determine the existence of suitable alternative sites under SRC 64.090(b)(1) must be "the same area used to determine the present plan does not already accommodate a public need [for the proposed use,] unless there is adequate justification to use a different area." Petition for Review 12. According to petitioners, intervenors admit their concrete is needed throughout the entire Salem area. Consequently, petitioners contend the city erred in the challenged decision by interpreting "vicinity," as used in SRC 64.090(b)(1), to mean "a reasonable area around the area that is proposed for the use." Record 12.

Petitioners also argue the city improperly concluded that IG-zoned sites identified by petitioners are unsuitable alternatives because they were located too far from the Eola Bend extraction site and would necessitate transport of the raw material (aggregate) through the central portion of the city. Finally, petitioners contend the city's determination that there are no suitable alternative sites in the vicinity of the proposed use is not supported by substantial evidence

in the whole record.

**A. Interpretation of SRC 64.090(b)(1)**

Roden Properties, supra, dealt with the interpretation and application of former SRC 64.090(b)(2) and (3), which established the following approval criteria for minor plan changes:

> "(2) There is an overriding public need which is best served by the proposed change.
>
> "(3) The plan does not otherwise make adequate provision to accommodate the public need[.]"

Sometime subsequent to our decision in Roden Properties, SRC 64.090(b) was amended. SRC 64.090(b) no longer contains the provisions concerning "public need" that were at issue in Roden Properties. Further, Roden Properties does not address the interpretation of any provision equivalent to current SRC 64.090(b)(1), or of the term "vicinity" in general. Therefore, Roden Properties has no bearing on this case.

The challenged decision rejects petitioners' contention that "vicinity" in SRC 64.090(b)(1) should be interpreted to mean the entire market area in which intervenors deliver their concrete products. The decision finds that "vicinity" means "a reasonable area around the area that is proposed for the use" and that "a reasonable area in this case is limited by the need to transport the raw materials from [intervenors'] Eola Bend extraction site to the proposed [batch plant] site." Record 12. Based on this

interpretation, the city found alternative sites located on the north and east sides of the city, which would require transport of raw aggregate material through residential, commercial and downtown streets, "to be both outside the vicinity for the proposed use and to be unsuitable for the proposed use." Id. The city council's interpretation of "vicinity" in SRC 64.090(b)(1) to mean within a "reasonable area" of the proposed concrete batch plant site, and that such reasonable area does not include sites on opposite sides of the city from the existing extraction site, is within its discretion under ORS 197.829 and Clark v. Jackson County, 313 Or 508, 514-15, 836 P2d 710 (1992).

This subassignment of error is denied.

**B. Evidentiary Support**

The city first found that, based on a review of its plan and zoning maps, most land designated Industrial and zoned IG is located on the north and east sides of the city, and that transport of raw aggregate from intervenors' extraction site to a site on the north or east side of the city would require routing truck traffic through heavily-populated downtown or residential areas. Record 11. These findings are supported by comprehensive plan and zoning maps which allow a reasonable decision maker to conclude, as did the city council, that industrially designated and zoned sites on the north and east sides of the city either are not "suitable" alternative sites or are

not within the "vicinity" of the proposed site.

The city next found that an IG-zoned site between the Boise Cascade paper plant and Minto Brown Park is not a suitable alternative site because it is in the floodplain, has no developed access, and would require that trucks carrying raw aggregate travel through the park or the downtown core. Record 11. This determination is supported by testimony of intervenors' attorney. Tr. 124.[12]

The city found a site suggested by petitioners on Homestead Road is presently zoned Residential Agricultural (RA) and, therefore, is not "appropriately designated" for the proposed use, as required by SRC 64.090(b)(1). Record 12. The city also found the Homestead Road site is not "suitable," in terms of location, because there is no buffer, such as the Burlington Northern Railroad tracks, separating it from Minto Brown Park and because the availability of this alternative site depends on an exchange of properties with greatly disparate value. Id. These findings are supported by the testimony of intervenors' land use consultant. Tr. 159-60.

Finally, the city found that intervenors' extraction and stockpiling sites in Marion County are not available alternative sites because the county has twice denied

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[12]Transcripts of the planning commission and city council public hearings in this matter are attached to the petition for review and shall be cited as "Tr. ___."

intervenors' applications for the necessary land use approvals to site a concrete batch plant at these sites. Record 12. These findings are supported by the staff report and the applicants' statement. Record 76, 94. Based on the evidence in the record, a reasonable person could conclude, as did the city, that these sites are neither suitable nor appropriately designated.

Petitioners contend "there is ample evidence in the record from which to conclude * * * there are alternative sites of adequate size available in the Salem area with an appropriate zone and suitable to accommodate the operation of a concrete batch plant" (Record 147-59, 216-273). Petition for Review 14. However, the evidence cited by petitioners consists of a 1988 survey entitled "Industrial Parcels for Sale or Lease" and a 13-page 1992 computer printout listing vacant industrial land. Both documents list parcels by street address and give their zoning and acreage. The inventory also lists ownership, tax account numbers and information on service availability.

As explained above, there is adequate evidentiary support for the city's determination that industrial sites on the north and east sides of the city are not "suitable alternatives in the vicinity of the proposed site" under SRC 64.090(b)(1). We also find evidence in the record supporting the city's determinations that four sites in the vicinity of the subject property are not appropriately

designated or are not suitable for the proposed use. Petitioners claim the mere existence of the 1988 survey and the computer printout refutes the evidence relied on by the city. However, petitioners do not identify any survey or computer printout listings which they contend represent available, industrially-zoned sites, in the same part of the city as the proposed site, that the city failed to consider. In the absence of such assistance from petitioners, we see no reason to conclude a reasonable person would find the evidence relied on by the city refuted by the evidence cited by petitioners. See Younger v. City of Portland, 305 Or 346, 358-60, 752 P2d 262 (1988).

This subassignment of error is denied.

The first and second assignments of error are denied.

**EIGHTH ASSIGNMENT OF ERROR**

SRC 64.090(b)(5) requires that a minor comprehensive plan change "conforms to all criteria imposed by applicable goals and policies of the comprehensive plan in light of its intent statements." Petitioners contend the challenged decision is not supported by substantial evidence in the record establishing compliance with four Salem Area Comprehensive Plan (SACP) Industrial Development policies.[13]

[13]In October 1992, the city adopted a comprehensive revision of the SACP. That revision included changes to the wording of the intent statement for the Industrial plan map designation and two of the policies at issue under this assignment of error. Although the challenged decision was not approved until December 15, 1992, and comprehensive plan amendments are not subject to the requirement of ORS 227.178(3) that an application be

**A. Industrial Development Policy 1**

Industrial Development Policy 1 provides:

> "Sufficient land in large parcels should be zoned industrial to ensure a competitive market for industrial sites."

Further, the SACP intent statement for the Industrial plan map designation states:

> "The intent is to provide a variety of industrial sites for all types of industrial uses throughout the Salem urban area.
>
> "Many of the areas designated Industrial contain large parcels suitable for the type of industries which Salem seeks to attract. These parcels are typically 20, 40, 70 acres or greater. * * *" Plan, p. 13.

Petitioners argue the record lacks substantial evidence to support a conclusion that changing the plan map designation of the subject 0.95 acres to Industrial will provide sufficient large parcels of industrially zoned lands or ensure a competitive market for industrial sites.

The challenged decision states the proposed redesignation of the subject property from Industrial Commercial to Industrial conforms to the Industrial intent statement and Industrial Development Policy 1, as follows:

> "[A] variety of industrial sites is achieved in the city by having large block parcels maintained

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governed by the standards in effect when the application was first filed, the city applied the pre-October 1992 version of the SACP in making the challenged decision. However, no party assigns this as error or contends the October 1992 amendments had a significant effect on the SACP provisions at issue in this appeal. Therefore, we review the challenged decision as though the pre-October 1992 SACP continues to apply.

> for future development and at the same time, having other smaller parcels dedicated to industrial uses throughout the Salem urban area. [T]o the north and to the east of the proposed site are substantial industrial parcels which are typically large in acreage. [T]his proposed use will not deter the maintenance or use of these large parcels for industrial development nor will it require or encourage the division of large-sized industrial parcels. * * *
>
> "[The proposed redesignation] does not affect the competitive market for large [parcels of] industrial land nor affect in any way the present zoning or future zoning of large parcels for industrial purposes. [T]his is a small parcel that has an existing industrial use and has specific advantages in terms of size and location and access to raw materials, which make it appropriate for the proposed use. * * *" Record 21.

This subassignment is premised on petitioners' assumptions that Industrial Development Policy 1 (1) prohibits application of the Industrial plan map designation to a small parcel; and (2) requires that the subject plan map change be supported by a demonstration that the city has sufficient large parcels of industrially zoned land. On the other hand, in the above quoted findings, the city interprets Industrial Development Policy 1 to allow application of the Industrial designation to small parcels, so long as the city has sufficient large parcels designated and zoned for industrial use. This interpretation is well within the city council's discretion under ORS 197.829 and Clark v. Jackson County, supra.

The above findings also assume the city can rely on its

acknowledged plan and regulations as providing a sufficient amount of industrially designated and zoned large parcels to comply with Industrial Development Policy 1, where the subject plan map amendment does not affect the inventory or use of such parcels. We agree. See Urquhart v. Lane Council of Governments, 80 Or App 176, 721 P2d 870 (1986).

This subassignment of error is denied.

**B. Industrial Development Policy 4**

Industrial Development Policy 4 provides:

> "Industrial land bordered by residential or rural lands shall be subject to industrial development standards which ensure that development design and operation is compatible with surrounding land use."

Petitioners' argument, in its entirety, is that "[t]here is not substantial evidence in the whole record that the [proposed] industrial use on the subject property * * * is consistent with the surrounding high density residential, commercial recreational, and park uses." Petition for Review 26.

The challenged decision finds the development standards of the IG zone will ensure development design compatibility with surrounding uses, and finds compliance with those standards. Record 22, 37-39. The decision also finds the 11 conditions imposed by the city on the zone change will ensure the design and operation of the proposed use is compatible with the surrounding uses. Record 22. The decision goes on to explain why the city believes the

proposed use, as conditioned, will be compatible with surrounding park, recreational and residential uses. Id. We have reviewed the evidence in the record cited by the parties and agree that, based on this evidence, a reasonable person could conclude that the design and operation of the proposed use will be compatible with surrounding uses. Younger v. City of Portland, supra, 305 Or at 360; City of Portland v. Bureau of Labor and industries, 298 Or 104, 119, 690 P2d 475 (1984).

This subassignment of error is denied.

**C. Industrial Development Policy 7**

Industrial Development Policy 7 provides:

> "Traffic generated by industrial uses should be diverted away from residential areas, and should have convenient access to arterial or collector streets."

Petitioners' argument concerning this policy, in its entirety, is:

> "There is not substantial evidence in the whole record that the traffic caused by operation of a concrete batch plant on the subject property will divert the traffic from aggregate and concrete trucks away from River Road South and the high density [residential] and commercial recreational areas which have been and are being developed near the subject property." Petition for Review 26-27.

The challenged decision explains the city's determination of compliance with the above policy:

> "[T]he proposed uses are directly adjacent to South River Road, an arterial street. [T]he truck traffic that presently travels to the top of the existing batch plant to provide the raw aggregate

> material for concrete, approaches within a few feet of houses in the adjoining residential area. [G]ravel delivery trucks will now make deliveries across the street at the new location and will no longer be required to travel immediately adjacent to residential areas. [T]his is a diversion of traffic away from residential areas. [T]raffic generated by this use will travel on South River Road and will, therefore, avoid residential areas to the southwest of South River Road. * * *" Record 23.

The Salem Transportation Plan (STP), of which we take official notice, designates South River Road as a minor arterial. STP, Map 12. Condition 3 and the approved site plan indicate the proposed industrial use of the subject property will have two direct access points onto South River Road. Record 3, 90, 161. Therefore, the city's determination that the proposed use will have convenient access onto an arterial is supported by substantial evidence. The city also determines the challenged decision will have the effect of diverting industrial traffic away from the residentially zoned and developed areas to the south of South River Road A reasonable person could make this determination based on the evidence in the record cited by the parties.

This subassignment of error is denied.

**D. Industrial Development Policy 14**

Industrial Development Policy 14 provides:

> "Industries shall be encouraged to locate in industrial areas, but those industrial uses which place few demands on public services and cause no significant environmental impacts may be located

in other areas."

The city finds compliance with the above quoted policy for two reasons. First, the city determines that because the subject property is currently designated Industrial Commercial and is used as part of intervenors' industrial operation, it is an "industrial area," as that term is used in Industrial Development Policy 14. Record 24. In the alternative, the city finds the proposed use may be located outside an industrial area, because it will place no new demands on existing public services and will not have significant environmental impacts. Id.

Petitioners contend the record does not contain substantial evidence that the proposed use will not place significant demands on public services or that it will not have significant environmental impacts. Petitioners do not, however, challenge the city's determination that the subject property is an "industrial area," as that term is used in Industrial Development Policy 14. This interpretation is within the discretion afforded the city council by ORS 197.829 and Clark v. Jackson County, supra. Accordingly, the city's alternative findings on public services and environmental impacts are surplusage, and whether they are supported by substantial evidence is of no consequence.

This subassignment of error is denied.

The eighth assignment of error is denied.

**THIRD ASSIGNMENT OF ERROR**

SRC 115.020(a) sets out the following approval criterion for a variance from an SRC development standard:

> "There are special conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings or uses in the same district, and which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance. Nonconforming land, uses, or structures in the vicinity shall not in themselves constitute such special conditions, nor shall the purely economic interests of the applicant. The potential for economic development of the subject property itself, may, however, be considered among the factors specified in this subsection." (Emphasis added.)

Petitioners contend the challenged decision misinterprets the above emphasized requirement of SRC 115.020(a) for "unreasonable hardships or practical difficulties." Petitioners argue this Board has frequently held that a "traditional" variance standard requiring "unreasonable hardships or practical difficulties" creates very limited authority to deviate from applicable ordinance standards, and does not allow such deviation simply to maximize the permissible use of the subject property. Harris v. Polk County, 23 Or LUBA 152, 156 (1992). According to petitioners, an "unreasonable hardships or practical difficulties" variance standard cannot be satisfied if there is a reasonable use of the property without the variance. Roberts v. City of Lake Oswego, 23

Or LUBA 302, 303-04 (1992). Petitioners further argue the record does not contain substantial evidence that the requested variance from the special South River Road setback is required for intervenors to put the subject property to a reasonable use.

SRC 115.020(a) differs from a traditional strict "unreasonable hardships or practical difficulties" variance standard in at least two respects. First, it requires that unreasonable hardships or practical difficulties be "most effectively" relieved by a variance, not that they can "only" be relieved by a variance. Compare Harris, supra, 23 Or LUBA at 155. Second, SRC 115.020(a) specifically allows the "potential for economic development of the subject property" to be considered in determining whether there are unreasonable hardships or practical difficulties. Additionally, Harris and Roberts, and the opinions cited in those decisions, in which LUBA considered local "unreasonable hardships or practical difficulties" variance standards, were decided before Clark v. Jackson County, supra, and the enactment of ORS 197.829 governing our review of local government interpretations of local enactments. See Thomas v. City of Rockaway Beach, 24 Or LUBA 532, 535 n 1 (1993).

Under ORS 197.829 and Clark v. Jackson County, this Board is required to defer to a local governing body's interpretation of its own enactment, unless that

interpretation is contrary to the express words, purpose or policy of the local enactment.[14] Gage v. City of Portland, 319 Or 308, 316-17, 877 P2d 1187 (1994); Watson v. Clackamas County, 129 Or App 428, 431-32, 879 P2d 1309 (1994). This means we must defer to a local governing body's interpretation of its own enactments, unless that interpretation is "clearly wrong." Goose Hollow Foothills League v. City of Portland, 117 Or App 211, 217, 843 P2d 992 (1992); West v. Clackamas County, 116 Or App 89, 93, 840 P2d 1354 (1992).

The challenged decision includes lengthy findings addressing SRC 115.020(a). Record 33-35. The city found the triangular shape of the northwestern portion of the subject parcel (varying from 32 to 162 feet in depth), that the subject parcel is bisected by an arterial, and the lack of room to expand operations on the subject parcel because of the presence of the Burlington Northern Railroad tracks on the northwest and encroaching residential development on the south and east, constitute special conditions that do not apply to property in the district generally. The city further found these conditions make it "extremely difficult"

[14]Under ORS 197.829(4), we are also authorized to reverse or remand a local governing body's interpretation of its own enactment if the interpretation is contrary to a state statute, statewide planning goal or administrative rule which the local enactment implements. However, petitioners do not contend the city council's interpretation of SRC 115.020(a) is contrary to any statute, goal or administrative rule that this SRC provision implements, and we do not see that it is.

for intervenors to run their concrete production operation, because of conflicts with adjoining residential areas and traffic problems, and that intervenors will best be able to alleviate these difficulties by relocating their concrete batching operation to the northwest portion of the parcel and combining it with their other operations on that site, necessitating the requested variance.[15] Record 34.

The above findings indicate the city council does not interpret the "unreasonable hardships or practical difficulties" provision of SRC 115.020(a) to require that there be no reasonable use of the subject property without the requested variance. Rather, the city council interprets this provision to require that it be "extremely difficult" to continue use of the subject property for intervenors' concrete operation without the requested variance, because of problems such as conflicts with nearby residential uses and with traffic on South River Road This interpretation of the "unreasonable hardships or practical difficulties" provision of SRC 115.020(a) is not clearly wrong and,

[15]The city also finds the "practical difficulties" can "most effectively" be relieved by a variance from the 62-foot South River Road special setback because there is already approximately 30 feet between the property line of the subject property and the existing pavement of South River Road, the existing truck shop building is within the special setback and the city will require an "improvement removal agreement" to guarantee removal of any structures within the special setback in the event South River Road is improved. Id.

therefore, must be affirmed.[16]

The third assignment of error is denied.

**FOURTH ASSIGNMENT OF ERROR**

Statewide Planning Goal 6 (Air, Water and Land Resources Quality) provides:

> "To maintain and improve the quality of the air, water and land resources of the state.
>
> "All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. * * *
>
> "* * * * *"

Petitioners argue that Goal 6 requires the county to adopt findings, supported by substantial evidence, that the proposed use of the subject property will be able to comply with all applicable environmental standards. McCoy v. Linn County, 16 Or LUBA 295, 313-14 (1987); Spalding v. Josephine County, 14 Or LUBA 143, 149 (1985). Petitioners contend the record lacks substantial evidence to establish that the modern concrete batch plant to be operated on the subject property will be able to comply with all applicable

[16]Because the city council is not required to, and does not, interpret the "unreasonable hardships or practical difficulties" provision of SRC 115.020(a) to require that there be no reasonable use of the subject property without the requested variance, there is no requirement that the record contain substantial evidence supporting such a determination. Consequently, we do not consider petitioners' evidentiary challenge further. Petitioners do not contend the record lacks substantial evidence to support a determination of compliance with SRC 115.020(a) under the city's interpretation of that provision.

environmental standards. Petitioners also argue the record lacks substantial evidence that the challenged decision "will maintain, much less improve, the quality of air, water, or other land resources in Salem, as required by Goal 6."[17] Petition for Review 18.

When a property's comprehensive plan and zoning map designations are changed to allow a particular use of that property, Goal 6 requires the local government to adopt findings, supported by substantial evidence, explaining why it is reasonable to expect that applicable state and federal environmental quality standards can be met by the proposed use. Eckis v. Linn County, 19 Or LUBA 15, 35 n 18 (1990); McCoy v. Linn County, supra; Spalding v. Josephine County, supra. This is sufficient to establish compliance with the overall requirement of Goal 6 that the quality of the state's air, water and land resources be maintained and improved. Goal 6 does not require a local government to demonstrate that its decision will not cause any adverse environmental impact on individual properties. Cf. Davenport v. City of Tigard, 22 Or LUBA 577, 590 (1992) (interpreting similar Goal 9 requirement to improve the

[17]SRC 64.090(b)(3) requires that a minor comprehensive plan change "considers and accommodates as much as possible all applicable statewide planning goals." However, ORS 197.175(2)(a) requires that amendments to local government comprehensive plans be adopted "in compliance with" the statewide planning goals. Therefore, if the challenged comprehensive plan amendment complies with a particular statewide planning goal, as required by ORS 197.175(2)(a), it also satisfies SRC 64.090(b)(3).

state's economy).

The challenged decision finds intervenors' proposal satisfies Goal 6:

> "[The] proposed use will allow [intervenors] to replace an aging batch plant with a more modern portable plant across the street. [W]hile there are letters from the Department of Environmental Quality ('DEQ') in the file, the operator was able to make modifications to the old, aging [batch] plant which brought it into conformance with DEQ standards. [A] more modern plant will not have the problems of the old plant and will be able to maintain compliance with DEQ standards. [W]e have imposed a condition that requires compliance with all state regulations, which include DEQ air and water standards. [T]he existing site has operated for years without an adverse effect on water and [there is] no reason why [use of] the proposed site would have any adverse effect on water resources. [T]he proposed use will not produce any discharges to land or water bodies. [T]he proposed plant will be equipped with dust control devices so that emissions will be maintained within appropriate DEQ air quality standards. [T]he property is served by city sewer, water and storm drainage facilities and stormwater run-off will be collected and removed by the stormwater drainage system. * * *" Record 15.

The above findings conclude the proposed use will be able to satisfy applicable environmental quality standards. Additionally, they adequately explain the basis for that conclusion. We have reviewed the evidence in the record cited by the parties.[18] We agree with intervenors that

[18]Petitioners specifically complain there is no evidence in the record from "the manufacturer of the concrete batch plant or the DEQ or any established expert that the proposed concrete batch plant will comply with DEQ standards." Reply Brief 16. Petitioners argue Eckis v. Linn County, 22 Or LUBA 27, 55-57, aff'd 110 Or App 309 (1991) (statement by

based on this evidence a reasonable person could find, as did the city, that the proposed use will comply with applicable environmental quality standards and, therefore, with Goal 6.

The fourth assignment of error is denied.

**FIFTH ASSIGNMENT OF ERROR**

Statewide Planning Goal 8 (Recreational Needs) provides:

> "To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.
>
> "* * * * *"

The challenged decision finds the proposed plan map amendment and zone change do not involve property planned and zoned to satisfy recreational needs. Record 16. The challenged decision also rejects the local appellant's argument that the proposed use of the subject property for a concrete batch plant violates Goal 8 because it will adversely affect Minto Brown Park or the bicycle path

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intervenor's attorney and testimony by employee of explosives company not substantial evidence to support findings of compliance with DEQ noise standards), supports a requirement that there be evidence from such sources in the record. However, in Eckis, the attorney's testimony was that no testing to determine whether blasting complied with DEQ noise standards had been performed, and the employee's testimony was that testing showed compliance with U.S. Bureau of Mines vibration standards. Thus, our ruling in Eckis was based on the fact that neither person's testimony provided a basis for determining the proposed use could comply with DEQ noise standards, not on a general proposition that testimony by an applicant's attorney, employees or consultants cannot constitute substantial evidence.

recreational facility located along South River Road, as follows:

> "[T]he proposed use is separated from Minto Brown Park by the existing Burlington Northern Railroad line. [T]rees along the northwesterly side of the Burlington Northern Railroad line buffer the site from Minto Brown Park, which is to the northwest. [R]esidences and other nonpark structures are located between the proposed use and Minto Brown Park. [T]he existing concrete batch plant in use on the southeasterly side of South River Road presents potential problems with the bike path, as well as traffic problems. [T]hese problems are greatly mitigated by moving the operation across the street because the concrete trucks will no longer be required to back into the concrete batch plant for loading and potentially interfere with automobile or bike traffic. [T]his improvement alone significantly advances the recreational needs of the City of Salem [as] required by Goal 8. * * *" Id.

Petitioners contend Goal 8 requires that "the activities conducted on the site will not adversely affect recreational activity." Petition for Review 20. Petitioners argue the above quoted findings are not supported by substantial evidence in the record. Petitioners also argue the city has failed to demonstrate compliance with Goal 8 because there is no proof in the record that unsafe conditions caused by intervenors' existing batch plant will be eliminated, or substantially reduced, by allowing intervenors to operate a concrete batch plant with substantially greater capacity on the subject

property.[19] Finally, petitioners contend the findings are inadequate because they do not address the effect the proposed use will have on "other recreational activity nearby, such as the public's use of the Courthouse Athletic Club and the nearby golf courses." Petition for Review 20-21.

Goal 8 requires a local government with responsibility for "recreation areas, facilities and opportunities" to plan for "meeting [its recreational] needs, now and in the future," "in such quantity, quality and locations as is consistent with the availability of the resources to meet such requirements." Sahagian v. Columbia County, 27 Or LUBA 592, 597 (1994). Therefore, when reviewing a postacknowledgment comprehensive plan or land use regulation amendment for compliance with Goal 8, the relevant concerns are whether the amendment has either direct or secondary effects on "recreation areas, facilities and opportunities" inventoried and designated by the acknowledged comprehensive plan to meet the local government's recreational needs. See 1000 Friends of Oregon v. Jackson County, 79 Or App 93, 98, 718 P2d 753 (1986).

In this case, there is no dispute the city properly determined the parcel subject to the proposed plan and zone

[19]According to petitioners, the record shows the proposed new concrete batch plant will have the capacity to increase intervenors' concrete production from approximately 200 cubic yards per day to 200 to 250 cubic yards per hour. Record 306; Tr. 52.

changes is not itself inventoried or designated as a recreational resource by the acknowledged SACP. The city then considered the possible effects of the proposed plan and zone changes on nearby Minto Brown Park and the bicycle path running along South River Road at the subject site, which apparently are recreation areas or facilities recognized by the SACP. The city concluded recreational use of Minto Brown Park will not be adversely affected by the proposal, primarily because of the buffering effect of the railroad tracks, trees, residences and other nonpark structures between the site of the proposed batch plant and the park. The city also concluded the relocation of intervenors' batch plant to the northwest side of South River Road will mitigate current conflicts with recreational use of the bicycle path. We have reviewed the evidence in the record cited by the parties on these issues. Based on this evidence, a reasonable person could find as the city did.

Petitioners' final contention is that Goal 8 requires findings the proposal will not adversely affect recreational activity at an athletic club or nearby golf courses.[20] However, Goal 8 does not require that a postacknowledgment plan amendment be supported by a demonstration that there will be no adverse effects on any recreational activity that

[20]Petitioners do not identify the location of such athletic club or golf courses.

occurs in the vicinity of the proposed amendment. In the absence of argument that the acknowledged SACP inventories any such athletic club or golf courses as recreational resources or relies on them to satisfy the city's recreational needs, petitioners do not establish that Goal 8 requires impacts on these facilities to be addressed.

The fifth assignment of error is denied.

**SIXTH ASSIGNMENT OF ERROR**

Statewide Planning Goal 9 (Economic Development) provides:

> "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.
>
> "* * * * *"

The challenged decision finds intervenors' proposal satisfies Goal 9:

> "[T]he proposed use provides a significant number of jobs and represents a significant payroll in the Salem economy. [T]he use provides cost-competitive concrete products to contractors and helps lower the price of homes in the Salem area. [T]hese are significant benefits which improve the economy of the state. Further, we reject [petitioners'] argument that other concrete suppliers can provide this product to the Salem market. [A] fourth concrete producer diversifies the economy and helps provide lower costs for essential building materials within the City of Salem. * * *" Record 16.

Petitioners contend Goal 9 requires that "the proposed change to the SACP is necessary to provide an adequate supply of concrete in the Salem area, and that such economic

activity is vital to the health, welfare and prosperity of Salem citizens." Petition for Review 21. Petitioners also contend the record does not contain substantial evidence supporting the city's findings that (1) the proposed use will provide a "significant" number of jobs and payroll, (2) the three existing concrete producers cannot supply the Salem market, or (3) having a fourth concrete producer will result in lower costs of essential building materials.

Goal 9 requires that comprehensive plans for urban areas (1) include an analysis of the community's economy; (2) contain policies concerning economic development opportunities; (3) provide an adequate supply of sites of suitable sizes, types, locations and service levels for a variety of industrial and commercial uses; and (4) limit uses on or near sites zoned for specific industrial or commercial uses to uses compatible with the proposed industrial or commercial use. Goal 9 does not require that a postacknowledgment plan amendment changing the designation of urban land from Industrial-Commercial to Industrial be supported by a demonstration that the proposed industrial use of the land is necessary to the local economy or will provide products that existing producers cannot supply. Petitioners' arguments do not contend the challenged decision results in the SACP and its implementing regulations being unable to satisfy any requirement of Goal 9 and, therefore, provide no basis for reversal or

remand.

The sixth assignment of error is denied.

**SEVENTH ASSIGNMENT OF ERROR**

Statewide Planning Goal 12 (Transportation) provides:

> "To provide and encourage safe, convenient and economic transportation systems.
>
> "* * * * *"

The challenged decision finds intervenors' proposal satisfies Goal 12:

> "[A] major purpose of this application is to alleviate traffic problems which are caused by increasing use of traffic on South River Road and the need to maneuver trucks to reach the existing batch plant. [C]oncrete trucks must back-up into the existing concrete plant and this backing truck movement conflicts with traffic on South River Road. [A]llowing [the proposed] concrete plant to be located on the opposite side of the street will provide a drive-through operation, which will alleviate these traffic problems. [W]e reject [petitioners'] argument that the sole reason for moving the plant is to allow increased operations. [T]he demand for concrete is directly related to the market. [W]hile we place no restriction on increased business * * * the move across the road will not directly increase operations [or] increase traffic. [E]ven if traffic increased, the additional safety provided by having the entire operation on one side of the road provides a benefit which greatly outweighs the possibility of additional trucks. * * *" Record 17-18.

Petitioners argue Goal 12 requires that the city adopt findings, supported by substantial evidence, establishing that the transportation system affected by the comprehensive plan amendment for the subject property will be safe and adequate. ODOT v. Clackamas County, 23 Or LUBA 370, 376-77

(1992). Petitioners contend the above findings that moving intervenors' concrete batch plant operation to the subject property will alleviate traffic hazards on South River Road caused by the existing batch plant operation are not supported by substantial evidence in the record, particularly in view of the potential for a several-fold increase in the volume of intervenors' concrete production. Petitioners also contend the findings are inadequate because they fail to address the impacts of the proposed use on the safety and adequacy of the unnamed road adjoining the subject property to the southwest. The unnamed road serves the adjoining self-storage facility and the residences on the other side of the railroad tracts and will be used by the concrete and aggregate trucks entering the subject property.

We agree with petitioners that Goal 12 requires the city to demonstrate the transportation systems affected by the challenged plan and zone changes for the subject property will be safe and adequate. ODOT v. Clackamas County, supra. We understand the above quoted findings to conclude that the challenged decision facilitating location of intervenors' concrete batch plant on the subject property will alleviate existing traffic and safety problems on South River Road caused by the location of the location of the existing batch plant and will result in South River Road being safe and adequate for its intended use, regardless of

any increase in concrete production that may occur because the old batch plant will be replaced with a modern facility. We have reviewed the evidence in the record on this issue cited by the parties. Based on this evidence, a reasonable person could conclude, as did the city, that the challenged decision will alleviate existing traffic and safety problems on South River Road and that South River Road will continue to be a safe and adequate transportation facility.

With regard to the unnamed public road adjoining the subject property to the southwest, the record shows this road provides the sole access to the two dwellings on the other side of the railroad tracks. Record 90; Tr. 138. The record also indicates this road is used for parking and unloading by the customers of the adjoining self-storage facility. Tr. 53. The site plan approved by the challenged decision indicates that all aggregate and concrete trucks entering the subject property to deliver or pick up materials from the new concrete batch plant will use this unnamed road. Record 90, 161. Consequently, we agree with petitioners that Goal 12 requires the city to demonstrate that the challenged decision will result in the use of this unnamed road being safe and adequate.

We are cited to no findings in the challenged decision addressing this issue and are unaware of any. However, intervenors argue the city adequately addressed impacts on the unnamed road because it imposed the following conditions

on the approved zone change:

> "[Intervenors] shall dedicate an additional 6 feet of right-of-way along the unnamed right-of-way adjacent to the subject property and construct a 22-foot wide turnpike pavement section to meet industrial/arterial streets structural cross-section standards."
>
> "* * * * *
>
> "* * * One-way traffic access to the batch plant shall be designated by signing to enter the facility from the unnamed right-of-way and exit via the most southerly proposed access point to South River Road." Record 3.

Imposition of the above conditions is no doubt relevant to an explanation of why the city believes the unnamed road will remain a safe and adequate transportation facility. However, Goal 12 requires the city to provide that explanation in the findings adopted in support of the challenged decision.[21] The city failed to do so.

The seventh assignment of error is sustained, in part.

The city's decision is remanded.

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[21]Under ORS 197.835(9)(b), where findings on a particular issue are inadequate, we are required to affirm that portion of the decision if "the parties identify relevant evidence in the record which clearly supports [that part] of the decision * * *." However, the only evidence cited by the parties with regard to the Goal 12/traffic impacts issue addressing the impacts on or safety and adequacy of the unnamed road is testimony by a member of the family that owns of one of the dwellings having access on the unnamed road and by the owner of the adjoining self-storage facility regarding potential adverse impacts on their uses of the unnamed road.