

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

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3
4 OPUS DEVELOPMENT CORPORATION,)
5 THOMAS R. SLOCUM, CHARLES F.)
6 LARSON, JR., DOWNTOWN MINI-STORAGE,)
7 LYNN KLINGENSMITH, DONALD C. McRAE,)
8 SAYLOR PAINTING, CO., RONALD D.)
9 SAYLOR, JOHN P. HAMMER, BELL)
10 HARDWARE, RODNEY L. BELL, JERRY)
11 DAVIS, SCHARPF'S TWIN OAKS BUILDERS)
12 SUPPLY CO., TAD SCHARPF, BUILDERS)
13 ELECTRIC, FREDERICK WITTKOP,)
14 STARWOOD PRODUCTS, GARY KAYSER, IVY)
15 HI-LIFT, RONALD J. HOWARD,)
16) LUBA No. 95-104
17 Petitioners,)
18) FINAL OPINION
19 vs.) AND ORDER
20)
21 CITY OF EUGENE,)
22)
23 Respondent,)
24)
25 and)
26)
27 JESSE SPRINGER and RAIMON FRANCK,)
28)
29 Intervenors-Respondent.)
30
31

32 Appeal from City of Eugene.
33

34 Allen L. Johnson, Eugene, filed the petition for review
35 and argued on behalf of petitioners. With him on the brief
36 was Johnson & Kloos.
37

38 Anne C. Davies and Glenn Klein, City Attorneys, Eugene,
39 filed the response brief and argued on behalf of respondent.
40 With them on the brief was Harrang Long Gary Rudnick P.C.
41

42 No appearance by intervenors-respondent.
43

44 LIVINGSTON, Chief Referee; HANNA, Referee, participated
45 in the decision.

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REMANDED

02/06/96

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

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the adoption by the city council of
4 supplemental findings in response to this Board's remand
5 order in Opus Development v. City of Eugene, 28 Or LUBA 670
6 (1995) (Opus I).

7 **MOTIONS TO INTERVENE**

8 Raimon Franck moves to intervene on the side of the
9 respondent. There is no objection to the motion, and it is
10 allowed.

11 Jesse Springer moves to intervene on the side of the
12 respondent. There is no objection to the motion, and it is
13 allowed.

14 **FACTS**

15 In Opus I we outlined the history of comprehensive
16 planning in the Eugene-Springfield metropolitan area,
17 including the adoption of the Eugene-Springfield
18 Metropolitan Area General Plan (Metro Plan), which was
19 updated in 1978, and the adoption in 1978 of the Whiteaker
20 Plan. See 28 Or LUBA at 674. The comprehensive update to
21 the 1978 Whiteaker Plan was the subject of the appeal in
22 Opus I and is the subject of this appeal.

23 We described petitioners' first appeal as follows:

24 "Petitioners challenge five ordinances and
25 thirteen orders adopted by the Eugene City Council
26 on August 1 or 3, 1994. Ordinance No. 19975 adds
27 a new Historic (H) district for a particular area
28 to the Eugene Code (EC). Ordinance No. 19976

1 amends provision of the EC related to rescue
2 missions. Ordinance No. 19977 adopts five
3 amendments to the Whiteaker neighborhood portion
4 of the Eugene-Springfield Metropolitan Area
5 General Plan Diagram (Metro Plan Diagram).
6 Ordinance No. 19978 adopts an updated version of
7 the Whiteaker Plan, which is a neighborhood
8 refinement plan. Ordinance No. 19979 adds a new
9 Mixed-Use Whiteaker (MU-W) district to the EC.
10 Twelve of the thirteen challenged orders rezone
11 various portions of the Whiteaker neighborhood,
12 including changes to base zoning districts and
13 applications or deletion of the Site Review (SR)
14 subdistrict. The remaining order challenged by
15 petitioners determines the existing Metro Plan
16 Diagram designation for the West [Skinner] Butte
17 portion of the Whiteaker neighborhood is Medium
18 Density Residential and denies a change of that
19 designation to High-Density Residential. 28 Or
20 LUBA at 673.

21 We rejected most of petitioners' assignments of error,
22 but remanded to the city for additional findings on the
23 following: (1) compliance of Whiteaker Transportation
24 Policies 1 and 2 with OAR 660-12-060; (2) compliance of the
25 Whiteaker Plan update with Statewide Planning Goal 9,
26 paragraph 3; (3) compliance of the Whiteaker Plan update
27 with Goal 10; and (4) the basis for the city's conclusion
28 that the existing Metro Plan Diagram designation for the
29 West Skinner Butte area is Medium-Density Residential,
30 rather than High-Density Residential. On May 8, 1995, the
31 city council adopted supplemental findings.¹ This appeal

¹The city's actions are described as follows in the Notice of Council
Land Use Actions:

1 followed.

2 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

3 Our remand order in Opus I required the city to
4 demonstrate that its adoption of the challenged ordinances
5 and orders is consistent with the Goal 9 requirement for an
6 adequate inventory of commercial and industrial sites.² We

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- "• **Adoption of interpretation explaining the denial of the Metro Plan Diagram amendment affecting the West Skinner Butte Residential Area (MA 94-4).** Essentially the council affirmed its August 1994 decision to retain the Metro Plan Diagram designation in this area as Medium-Density Residential. The council adopted an interpretation explaining its conclusion that the current designation is Medium-Density Residential and its denial of a Metro Plan Diagram amendment to High-Density Residential.
 - "• **Adoption of supplemental findings supporting approval of the Whiteaker Plan, approval of the Metro Plan Diagram amendments and adoption of all zoning orders except those affecting the Rose Garden Residential Area (Z 93-21, Z 93-22 and Z 93-23).** The council affirmed its August, 1994 decisions concerning the adoption of the Whiteaker Plan, related amendments to the Metro Plan (except the one for West Skinner Butte Residential Area), and the related zoning orders (except the one affecting the Rose Garden Residential Area). The supplemental findings address compliance with the Transportation Planning Rule (OAR 660-12-060), Goal 9 (Economy) and Goal 10 (Housing).
 - "• **Adoption of supplemental findings supporting adoption of the zoning order affecting the Rose Garden Residential Area (Z 93-21, Z 93-22 and Z 93-23).** The council affirmed its August, 1994 decision to adopt a zoning order affecting the Rose Garden Residential Area. The supplemental findings address compliance with the Transportation Planning Rule (OAR 660-12-060), Goal 9 (Economy) and Goal 10 (Housing)." Record 10010-10011. (Emphasis in original.)

²Goal 9 provides, in relevant part:

"Comprehensive plans for urban areas shall:

1 explained:

2 "The city does not identify, either in the
3 decision or its argument, what land in the
4 Whiteaker neighborhood is on the city's Goal 9
5 inventory of commercial and industrial sites or
6 explain how it believes industrial and commercial
7 use of such land will be affected by the Whiteaker
8 Plan and zone change orders. The city essentially
9 argues the Whiteaker Plan and zone change orders
10 can be presumed to comply with Goal 9, paragraph 3
11 because the city's inventories of commercial and
12 industrial land contain large surplus acreages
13 above what is needed. However, Goal 9, paragraph
14 3 requires that the city's inventory of suitable
15 commercial and industrial sites be adequate not
16 just with regard to total acreage, but also with
17 regard to size, type, location and service levels,
18 to provide for a 'variety of industrial and
19 commercial uses consistent with plan policies.'
20 The city must demonstrate that in view of the
21 limitations and changes imposed by the challenged
22 decisions, it still has an inventory of commercial
23 and industrial sites that is adequate with regard
24 to size, type, location and service levels,
25 considering its plan policies for use of the
26 Whiteaker neighborhood." 28 Or LUBA at 691.

27 Both the first and second assignments of error
28 challenge the city's compliance with Goal 9. Petitioners
29 contend the city's supplemental findings, which rely in part
30 on the Metro Plan, violate both Goal 9 and the Metro Plan,

"* * * * *

"3. Provide for at least an adequate supply of sites of
suitable sizes, types, locations, and service levels for
a variety of industrial and commercial uses consistent
with plan policies."

"* * * * *"

The same language is found at ORS 197.712(2)(c).

1 and fail to satisfy our remand order. Petitioners challenge
2 the city's determinations that (1) the affected commercial
3 properties are not part of the city's Goal 9 inventory; (2)
4 the affected industrial properties are not part of the
5 city's Goal 9 inventory; and (3) the imposition of site
6 review and the redesignation of certain property as mixed
7 use do not effectively remove these properties from the
8 Metro Plan's commercial and industrial land inventories.

9 **A. Commercial Lands**

10 The city made the following findings with respect to
11 commercial lands:

12 "Buildable lands for purposes of the commercial
13 buildable lands inventory includes 'undeveloped or
14 partially developed land either in a commercial
15 zoning district or designated in the Metropolitan
16 Area Plan as commercial or mixed use.' Eugene
17 Commercial Lands Study, Supply and Demand
18 Analysis, p. 3. The Commercial Lands Study
19 examined the supply and demand for commercial land
20 in Eugene by subarea. The Whiteaker neighborhood
21 fell within the Central/University Region.

22 "The study identified only one commercial parcel
23 within the Whiteaker Neighborhood that satisfied
24 the definition of commercial buildable land. That
25 parcel was .55 acres in size and was zoned C-1
26 (Neighborhood Commercial), and the Whiteaker plan
27 designated it as part of a mixed use district.
28 The actions taken last August by the city council
29 rezoned the property from C-1 to MU-W, mixed use.
30 Because the mixed use district allows commercial
31 uses and because commercial buildable lands
32 include those properties designated mixed use, the
33 property was not eliminated from the buildable
34 lands inventory. The actions, therefore, had no
35 impact on the commercial buildable lands inventory
36 for the City of Eugene. Moreover, the Commercial
37 Lands Study indicates the city has an excess of

1 approximately 170 acres of commercial land. The
2 inventory continues to adequately provide for
3 commercial sites with regard to size, type,
4 location and service levels." Record 10028-10029.

5 Petitioners argue the city's reliance on the July, 1989
6 Eugene Commercial Lands Study--Supply and Demand Analysis
7 (Supply Analysis) is misplaced, since the Supply Analysis is
8 only a background document to the October, 1992 Eugene
9 Commercial Lands Study (1992 Commercial Lands Study).
10 Petitioners maintain that the city's reliance on the Supply
11 Analysis has caused it to limit improperly its evaluation of
12 commercial land to vacant commercial land, to the exclusion
13 of redevelopable commercial land.

14 The 1992 Commercial Lands Study is a refinement plan to
15 the Metro Plan. See Graville Properties, Ltd. v. City of
16 Eugene, 27 Or LUBA 583, 588 (1994). The 1992 Commercial
17 Lands Study describes the Supply Analysis as follows:

18 "Published in July 1989 with minor revisions in
19 January 1990, the report examines the supply of
20 the vacant commercial land as of January 1989 and
21 the demand for commercial land in the next 20
22 years for the Eugene portion of the metropolitan
23 area." 1992 Commercial Lands Study I-3.
24 (Emphasis added.)

25 The Supply Analysis was but one of several background
26 documents used in preparing the 1992 Commercial Lands Study.
27 Id. The exclusive focus of the Supply Analysis on vacant
28 commercial land does not, of itself, similarly limit the
29 scope of the 1992 Commercial Lands Study.

30 The 1992 Commercial Lands Study states:

1 "For purposes of this study, commercial land is
2 defined as parcels that are shown on the Metro
3 Plan Diagram as appropriate for commercial
4 development (designated commercial) or are
5 regulated by the City of Eugene so as to allow
6 commercial uses (zoned commercially). * * * [Any
7 tax lot or portion of a tax lot that was vacant
8 and zoned or designated for commercial use was
9 considered part of the commercial buildable land
10 inventory." 1992 Commercial Lands Study II-1.

11 The city argues, based on the emphasized language, that
12 the challenged decision properly limits its consideration to
13 vacant land zoned or designated for commercial use. We
14 disagree. We understand the 1992 Commercial Lands Study to
15 distinguish between "commercial land" and "commercial
16 buildable land." The inventory of commercial buildable
17 (i.e. vacant, commercially zoned or designated) land is a
18 subset of the totality of commercial land.

19 The city may be correct that in the subject area, there
20 is just 0.55 acre of vacant, commercially zoned or
21 designated land. However, our remand order in Opus I
22 required the city to consider its inventory of all
23 commercial sites, not just its inventory of vacant,
24 buildable commercial sites. Goal 9, paragraph 3, upon which
25 we relied, refers to "an adequate supply of sites of
26 suitable sizes, types, locations, and service levels." It
27 is not limited to vacant, buildable commercial sites.

28 The city argues that OAR 660-09-015(3) implements Goal
29 9, paragraph 3, and forces the opposite conclusion.
30 OAR-660-09-015(3) states, in relevant part:

1 "Inventory of Industrial and Commercial Lands.
2 Comprehensive plans for all areas within urban
3 growth boundaries shall include an inventory of
4 vacant and significantly underutilized lands
5 within the planning area which are designated for
6 industrial or commercial use."

7 The city contends that the "inventory of vacant and
8 significantly underutilized lands" is the same as the
9 "inventory of commercial * * * sites" to which we referred
10 in our remand order. However, OAR 660-09-015(2), which also
11 implements Goal 9, paragraph 3, has a broader focus than OAR
12 660-09-015(3).³ Our remand order was not limited to the
13 "inventory of vacant and significantly underutilized lands"
14 mentioned in OAR 660-09-015(3). The use of the word
15 "inventory" in different contexts, with different meanings,
16 is initially confusing, but it provides no support for the
17 city's position.

18 Moreover, the city's position ignores the fundamental
19 relationship between developed and undeveloped land and the
20 contribution each makes to satisfying the overall need for

³OAR 660-09-015(2) states:

"Site Requirements. The economic opportunities analysis shall identify the types of sites that are likely to be needed by industrial and commercial uses which might expand or locate in the planning area. Types of sites shall be identified based on the site requirements of expected uses. Local governments should survey existing firms in the planning area to identify the types of sites which may be needed for expansion. Industrial and commercial uses with compatible site requirements should be grouped together into common site categories to simplify identification of site needs and subsequent planning."

1 commercial (and industrial) land. Developed land was
2 considered at the time the city determined its inventory of
3 vacant, buildable commercial land was adequate. If
4 developed land is now left out of the equation, the pressure
5 on vacant, buildable commercial land will increase. In its
6 demonstration, required by our remand order in Opus I, that
7 its inventory of commercial sites is adequate with regard to
8 size, type, location and service levels, the city cannot
9 ignore the connection between restricting uses on existing
10 commercial lands and the pressure that places on its
11 inventory of vacant, buildable commercial land.

12 As a final point, we note that the 1992 Commercial
13 Lands Study specifically addresses downtown commercial land.
14 It states:

15 "To encourage downtown development, the Commercial
16 Lands Study recommends maintaining a relatively
17 close match between the supply of and demand for
18 commercial land. * * * ([The 1992 Commercial Lands
19 Study] assumes that 25 acres will be available
20 through redevelopment and infill in the
21 downtown.)" Id. at II-14

22 Policies 6.0, 6.1 and 6.2 of the 1992 Commercial Lands Study
23 encourage redevelopment of existing commercial areas within
24 the city generally and discourage "identification of new
25 large vacant commercial sites."⁴ Id. at III-7. Policies

⁴These policies state:

"6.0 Promote redevelopment of existing commercial areas and compact, dense growth by encouraging businesses to revitalize and reuse existing commercial sites.

1 17.0 and 17.1 specifically encourage redevelopment of
2 existing commercial sites in the downtown area.⁵ Id. at
3 III-15. The city's decision to limit its consideration of
4 impacts on commercial land to vacant, buildable commercial
5 land is inconsistent with the emphasis in the 1992
6 Commercial Lands Study on redevelopment and the policies
7 that encourage redevelopment.

8 **B. Industrial Lands**

9 The city made the following findings with respect to
10 industrial lands:

11 "The Metropolitan Industrial Lands Inventory
12 Report provides the inventory on which the
13 Metropolitan Industrial Lands Policy Report was
14 based. Under that inventory report, 'vacant
15 industrial lands', which are defined as vacant and
16 underdeveloped lands, are parcels one acre or
17 larger that are zoned or designated in the Metro
18 Plan for industrial use. The mixed use district
19 is a zoning district that allows industrial use,
20 and mixed use properties are included in the

"6.1 Limit identification of new large vacant commercial sites as one method to encourage redevelopment and reuse of existing sites. Prohibit creation of a new regional retail center or a regional large-scale office center.

"6.2 Identify and remove disincentives to the relocation or expansion of businesses in the downtown."

⁵These policies state:

"17.0 Recognize that additional commercial development will occur primarily through redevelopment of existing commercial sites.

"17.1 Continue existing City programs aimed at encouraging redevelopment of existing commercial areas, especially those in the downtown area."

1 inventory.

2 "As with the Commercial Lands Study, the
3 Industrial Lands Policy Report examined the
4 inventoried lands by subarea. Again, the
5 Whiteaker Neighborhood is located within the
6 Central/University of Oregon Region. This region,
7 prior to the actions taken in August, had 48 acres
8 of vacant industrial land on two sites, which
9 provides only 1 percent of the metro area's vacant
10 industrial land inventory. One of the sites, the
11 Riverfront Research Park, contains 46 of the 48
12 total acres in the Central/University region.

13 "The remaining 2-acre site falls within the
14 Whiteaker Neighborhood and is constraint-free.
15 Prior to last August, this site was zoned MU-
16 IC/SR, Mixed Use Industrial Commercial with Site
17 Review, and was designated medium density
18 residential. In August, the property was rezoned
19 MU-W/SR, Mixed Use Whiteaker District with Site
20 Review. This new mixed use zone continues to
21 allow all industrial uses allowed in the I-2 zone.
22 Because mixed use properties are part of the
23 industrial lands inventory, the land was not
24 eliminated from the inventory. And because the
25 only property in the Whiteaker neighborhood that
26 was part of the inventory has not been removed
27 from the inventory, the inventory remains
28 unaffected. Moreover, the inventory of industrial
29 lands in the City of Eugene indicates an excess of
30 approximately 2500 acres.

31 "The actions taken by the city council did nothing
32 that affected the city's industrial buildable
33 lands inventory. The inventory, therefore,
34 continues to adequately provide for industrial
35 sites with regard to size, type, location and
36 service levels." Record 10029.

37 Petitioners argue that the city has improperly limited
38 its consideration to its inventory of vacant, buildable
39 land. Petitioners contend the city must consider all
40 industrial land, not just vacant industrial land.

1 We agree. The impact of the challenged site review
2 requirements and mixed use zoning is not limited to just
3 vacant industrial sites. The refinement plans related to
4 industrial land, including the 1993 Metropolitan Industrial
5 Lands Inventory Report, cited in the challenged decision,
6 and the 1993 Metropolitan Industrial Lands Policy Report,
7 acknowledge the importance of existing, developed industrial
8 sites. For example, the 1993 Metropolitan Industrial Lands
9 Inventory Report states at page 44 that while land that is
10 available for redevelopment and vacant industrial parcels
11 under one acre are not included in the "supply inventory,"
12 they do provide "alternative development opportunities."
13 Reference is made on page 18 to Metro Plan, page III-B-5,
14 policy 5 (to "[p]rovide existing industrial activities
15 sufficient land for future expansion").

16 In addition, as explained above in connection with
17 commercial lands, Goal 9, paragraph 3 and our remand order
18 require the city to consider all industrial land within the
19 affected area.

20 **C. Impacts of New Regulations**

21 With respect to the impact of the challenged site
22 review requirements on commercial and industrial properties
23 within the Whiteaker neighborhood, the city made the
24 following finding:

25 "The application of site review criteria does
26 impose some limitations on the future development
27 of some industrial and commercial properties in

1 the Whiteaker neighborhood. However, those
2 limitations do not rise to the level of
3 eliminating those affected properties from the
4 commercial or industrial lands inventory. Site
5 review cannot eliminate a right to develop a
6 commercial or industrial site for uses that are
7 otherwise allowed on the property; it can only
8 affect the manner in which that property is
9 developed. The re-designation of a property as
10 mixed use also does not eliminate the property
11 from the commercial or industrial lands inventory
12 if it is already part of that inventory." Record
13 10028.

14 In Opus I we stated:

15 "Petitioners have demonstrated the challenged
16 decisions include zone changes from an industrial
17 zone to a mixed use zone allowing a variety of
18 residential uses. Petitioners have also
19 demonstrated the site review requirements imposed
20 by the challenged decisions on numerous
21 industrial, commercial and mixed use zoned
22 properties may impose limitations on future
23 industrial and commercial use of those properties.
24 This is sufficient to require the city to
25 demonstrate that it remains in compliance with the
26 Goal 9 requirement for an adequate inventory of
27 commercial and industrial sites." 28 Or LUBA at
28 691.

29 We agree with petitioners that the challenged decision
30 provides a conclusory finding, not the demonstration
31 required by our remand order in Opus I that it remains in
32 compliance with Goal 9.

33 The city has two options. First, it may demonstrate
34 that, notwithstanding the possible limitations demonstrated
35 by petitioners that result from the new ordinances and
36 orders, including limitations on expansion, the commercial
37 and industrial lands in the Whiteaker neighborhood are not

1 negatively impacted to such an extent that they effectively
2 become unavailable or impractical for the full range of
3 commercial and industrial uses allowed by existing
4 regulations. Second, it may demonstrate that it still has
5 an inventory of commercial and industrial sites outside the
6 Whiteaker neighborhood that is adequate with regard to size,
7 type, location and service levels. If it chooses the second
8 option, the city must also demonstrate continuing compliance
9 with the policies of the applicable planning documents,
10 including the Metro Plan, the 1992 Commercial Lands Study,
11 the 1993 Metropolitan Industrial Lands Policy Report and the
12 1993 Metropolitan Industrial Lands Inventory Report.

13 **D. Conclusion**

14 The first and second assignments of error are
15 sustained. We remand to give the city an opportunity to
16 demonstrate, as we stated in Opus I, that "it still has an
17 inventory of commercial and industrial sites [not just
18 vacant commercial and industrial sites] that is adequate
19 with regard to size, type, location and service levels,
20 considering its plan policies for use of the Whiteaker
21 neighborhood." 28 Or LUBA at 691.

22 **THIRD AND FOURTH ASSIGNMENTS OF ERROR**

23 In Opus I petitioners challenged the Metro Plan Diagram
24 amendments and corresponding zone change orders because
25 Medium-Density Residential designations and zones were
26 changed to Low-Density Residential, Mixed Use or non-

1 residential designations and zones and Low-Density
2 Residential designations and zones were changed to Mixed Use
3 or non-residential designations and zones. Petitioners
4 argued the decisions were not supported by findings or
5 evidence showing that after the redesignations, the
6 inventory of buildable lands required by Goal 10 would
7 remain adequate to meet the city's identified housing needs.

8 **A. LUBA's Remand Order**

9 We relied on the definitions of "suitable and available
10 land," found in OAR 660-08-005(13), and "redevelopable
11 land," found in OAR 660-08-005(12), as well as on OAR 660-
12 08-020(1), to find:⁶

⁶OAR 660-08-005(13) states:

"'Suitable and available land' means residentially designated vacant and redevelopable land within an urban growth boundary that is not constrained by natural hazards, or subject to natural resource protection measures, and for which public facilities are planned or to which public facilities can be made available. Publicly owned land generally is not considered available for residential use."

OAR 660-08-005(12) states:

"'Redevelopable land' means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period."

OAR 660-08-020(1) states:

"Residential plan designations shall be assigned to all buildable land, and shall be specific so as to accommodate the varying housing types and densities identified in the local housing needs projection."

1 "[I]t cannot be assumed that already developed
2 residentially designated land is not included on a
3 buildable lands inventory. * * * [L]and which has
4 a Mixed Use plan designation, rather than a
5 residential plan designation, cannot be considered
6 part of a buildable lands inventory. Therefore,
7 the city's reasons for determining that the
8 challenged Metro Plan Diagram amendments do not
9 affect its acknowledged buildable lands inventory
10 are based on incorrect assumptions. Opus I, 20 Or
11 LUBA at 695.

12 In the decision challenged in Opus I, the city
13 concluded that the changes in the Metro Plan designations
14 would not "result in a significant or substantive impact on
15 the overall quantity of land available for low- and medium-
16 density use. Record 49. Our Opus I remand order required
17 the city to make a two-step finding: first, "determine
18 whether the challenged plan amendments and zone changes
19 involve land included in its acknowledged buildable lands
20 inventory"; and, second, if so, "determine whether and
21 explain why its buildable lands inventory remains adequate
22 to satisfy Goal 10." 28 Or LUBA at 670.

23 **B. Technical Supplement to Metro Plan**

24 The challenged decision states that "[t]he Technical
25 Supplement to the Metro Plan contains the buildable lands
26 inventory."⁷ Petitioners contend that the Technical

⁷After oral argument, the city furnished a copy of the city's 1982 Metropolitan Area General Plan Draft Technical Supplement" (Technical Supplement) to LUBA. We understand this is the "Technical Supplement to the Metro Plan" mentioned in the challenged decision and in the Metro Plan at II-E-2.

1 Supplement is not in the record and conflicts with the June,
2 1991, Eugene-Springfield Metropolitan Area Supply and Demand
3 Analysis. The city responds that the Technical Supplement
4 contains the buildable lands inventory for the Metro Plan,
5 and is therefore a part of the city's acknowledged
6 comprehensive plan. See Urquhart v. Lane Council of
7 Governments, 80 Or App 176, 179 n2, 721 P2d 870 (1986).

8 The Metro Plan lists the Technical Supplement as a
9 "major influence" on the Metro Plan Diagram. Metro
10 Plan II-E-1. It states that the Technical Supplement is
11 printed and available under separate cover and that it
12 includes the most significant provisions of working papers
13 (1978 and 1981) used in the Metro Plan update process. Id.
14 at II-E-2. We accept the city's representation that the
15 Technical Supplement contains the buildable lands inventory
16 that was acknowledged as part of the Metro Plan. We also
17 accept the city's representation that the June, 1991,
18 Eugene-Springfield Metropolitan Area Supply and Demand
19 Analysis was never acknowledged. Under Oregon Evidence Code
20 202(7), we take official notice of the Technical
21 Supplement.⁸

⁸Petitioners make a substantial evidence challenge to the city's determination that there is an excess of 38 acres of high density residential land in its acknowledged inventory. That determination is based on demand projections contained in the Technical Supplement. Because we conclude, as discussed below, that the city cannot modify the assumptions underlying the demand projections without considering the actual impact on demand, we do not consider petitioners' substantial evidence challenge to the projections themselves.

1 **C. Impacts on Buildable Lands Inventory**

2 After establishing that the city's buildable lands
3 inventory is contained in the Technical Supplement, the
4 challenged decision continues:

5 "LUBA, in its [Opus I] opinion, explained that it
6 cannot be assumed that already developed
7 residentially designated lands are not part of the
8 buildable lands inventory. However, the buildable
9 lands inventory for the Eugene/Springfield area
10 assumed no major redevelopment and listed only
11 vacant properties on the inventory. (An exception
12 to this assumption is the assumption of
13 redevelopment for 2400 multiple family units
14 within a mile of downtown.)" Record 10030.

15 Petitioners contend that almost the entire Whiteaker
16 neighborhood is within a mile of downtown, and argues that
17 the parenthetical language quoted above acknowledges an
18 exception to the assumption in the buildable lands inventory
19 that no major redevelopment would occur.⁹ Petitioners

⁹That assumption is apparently based on the following statement in the Technical Supplement:

"The 230 acres of high density residential designated land closely approximates the 192 acres of demand. The problems associated with allocating demand to quality locations which met locational criteria were greater than problems with medium density allocations. Not only were sites limited but compatability [sic] with surrounding existing residential developments was a problem.

"It was assumed 2,400 multiple-family dwelling units would be constructed within 1 mile of downtown Eugene through in-filling and redevelopment. This redevelopment assumption was the major exception to the general allocation assumption regarding redevelopment. The 2,400 units may occur through a variety of techniques, and it should not be assumed that they will all occur in high rise structures. They may occur at densities less than medium or high (i.e., less than ten dwelling units

1 maintain that the "2400 multiple family units" are included
2 in the buildable lands inventory, and argue that plan
3 amendments that inhibit or block the assumed redevelopment
4 effectively remove land from the inventory.

5 The city responds that the 2,400 multiple family units
6 are not part of the city's Goal 10 inventory. The city
7 acknowledges that the assumption of redevelopment within a
8 mile of downtown was "part of the analysis in determining
9 supply and demand for housing" and "impacted the number of
10 excess acres of available buildable land." Respondent's
11 Brief 15. The city maintains, however, that once the
12 inventory was completed, the change in the underlying
13 assumption "could not impact that final document." Id. The
14 city reasons that while the rezoning may restrict high-
15 density development in the Whiteaker neighborhood, it does
16 not "involve" land included in its acknowledged buildable
17 lands inventory, and therefore, there is no need to consider
18 the rezoning impacts in taking the second step, described in
19 our remand order, of determining whether and explaining why
20 its buildable lands inventory remains adequate to satisfy
21 Goal 10.¹⁰

per acre). For the 23-year planning period, this assumption
would result in an average of about 105 units annually, which
is approximately the annual rate of development which occurred
between 1976 and 1979." Technical Supplement 33.

¹⁰The challenged decision does consider a small number of residentially
designated tax lots, totaling about 10 acres, that were actually rezoned.
It concludes that because the buildable lands inventory includes a large

1 As the challenged decision states and the Technical
2 Supplement confirms, the size of the city's buildable lands
3 inventory was calculated, deemed adequate and acknowledged
4 on the assumption there would be redevelopment that would
5 result in 2,400 multiple family units within a mile of
6 downtown. If that assumption is incorrect, the calculations
7 that resulted in the buildable lands inventory and the
8 acknowledgment process itself are effectively undermined.
9 If the construction of 2,400 multiple family units cannot be
10 achieved through redevelopment downtown, those units will
11 have to go somewhere else. Although the city may be correct
12 that there will be excess land available for high density
13 residential development after the adoption of the challenged
14 ordinances and orders, it cannot make that determination
15 without expressly considering their impact on the number of
16 high-density residential units that can be constructed
17 downtown.

18 The third and fourth assignments of error are
19 sustained.

20 **FIFTH ASSIGNMENT OF ERROR**

21 The fifth assignment of error arises out of a dispute
22 over the existing Metro Plan designation for the 6.84-acre
23 West Skinner Butte area. As we explained in Opus I:

24 "The challenged order entitled 'Denying Metro Plan
25 Amendment for Area #4 (MA-94-4)' (1) determines

excess of land in various residential categories, it remains adequate notwithstanding the impacts of the rezoning. Record 10030-31.

1 the existing Metro Plan designation for the 6.84
2 'West [Skinner] Butte' area is Medium-Density
3 Residential and (2) denies an amendment of that
4 designation to High-Density Residential.
5 Petitioners challenge on the former aspect of the
6 decision, contending the existing Metro Plan
7 designation for the West [Skinner] Butte area is
8 High-Density Residential

9 "Petitioners' arguments * * * are based on complex
10 interpretations of a 1975 amendment to the [city's
11 initial comprehensive plan, adopted in 1972], the
12 1978 "Whiteaker Plan, the 1980 ordinance initially
13 adopting the Metro Plan, the 1980 Metro Plan text
14 and diagram, and the relationships between the
15 Metro Plan text and diagram and between the Metro
16 Plan and refinement plans, as established by those
17 documents. However, the challenged order simply
18 states the city council's conclusion that 'the
19 existing Metro Plan designation of West [Skinner]
20 Butte [is] medium density residential,' without
21 explanation." 28 Or LUBA at 697. (Footnotes
22 omitted.)

23 We remanded to the city for an interpretation of the plan
24 provisions cited by petitioners.

25 The challenged decision explains that the city's
26 initial comprehensive plan (1990 Plan) and subsequent
27 amendments to it were superseded by adoption of the Metro
28 Plan, including the Metro Plan Diagram. Notwithstanding a
29 1975 amendment to the 1990 Plan that specifically designated
30 the West Skinner Butte area as high-density residential, the
31 Metro Plan Diagram shows it to be medium-density
32 residential. The 1978 Whiteaker Plan designates the West
33 Skinner Butte area for medium-density and high-density use.
34 However, the Metro Plan explicitly provides that it prevails
35 over refinement plans, such as the 1978 Whiteaker Plan, when

1 there are inconsistencies between them.

2 Petitioners point to a statement in the Metro Plan that
3 the Metro Plan Diagram must yield to the Metro Plan text, of
4 which the 1978 Whiteaker Plan is a refinement, and argue
5 that, at the very least, the West Skinner Butte area is
6 zoned for high-density and medium-density residential use.
7 Petitioners also quote a statement in the Metro Plan that
8 the Metro Plan Diagram "is a generalized map which is
9 intended to graphically reflect the broad goals, objectives,
10 and policies." Metro Plan I-4. Petitioners contend the
11 city's interpretation is contrary to Goals 10, 12 and 14,
12 and is owed no deference by LUBA.

13 ORS 197.829(1) requires that LUBA affirm a local
14 government's interpretation of its comprehensive plan and
15 land use regulation unless we determine that its
16 interpretation:

17 "(a) Is inconsistent with the express language of
18 the comprehensive plan or land use
19 regulation;

20 "(b) Is inconsistent with the purpose for the
21 comprehensive plan or land use regulation;

22 "(c) Is inconsistent with the underlying policy
23 that provides the basis for the comprehensive
24 plan or land use regulation; or

25 "(d) Is contrary to a state statute, land use goal
26 or rule that the comprehensive plan provision
27 or land use regulation implements."

28 Under ORS 197.829(1)(d), while the Statewide Planning Goals
29 (goals) do not directly apply to a land use decision that

1 applies acknowledged plan and land use regulation
2 provisions, the goals are relevant to such decisions. A
3 local government may not interpret its plan or regulations
4 in a manner inconsistent with the goals they implement. See
5 DLCD v. City of Donald, 27 Or LUBA 208, 213 (1994); DLCD v.
6 Fargo Interchange Service District, 27 Or LUBA 150, 157
7 (1994). However, petitioners' arguments are not
8 sufficiently developed to establish that the city's
9 interpretation is contrary to the goals.

10 The relationship between the Metro Plan, Metro Plan
11 diagram and 1978 Whiteaker Plan is, at best, confused. Two
12 interpretive rules collide: on the one hand, the Metro Plan
13 Diagram, which is part of the Metro Plan, takes precedence
14 over inconsistent refinement plans; on the other hand, the
15 text of the Whiteaker Plan, which is incorporated into the
16 Metro Plan, takes precedence over inconsistencies in the
17 Metro Plan Diagram. The city's interpretation is within its
18 discretion under ORS 197.829 and Clark v. Jackson County,
19 313 Or 508, 836 P2d 710 (1992).

20 The fifth assignment of error is denied.

21 The city's decision is remanded.