BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

MARINE STREET LLC, CARMICHAEL OIL COMPANY and TOM CARMICHAEL,
Petitioners,

and

EDMONDE ROACH and GERILYN CASAVERDE,
Intervenors-Petitioner,

vs.

CITY OF ASTORIA,
Respondent,

and

NO. 10 SIXTH STREET LTD. and CHESTER TRABBUCO,
Intervenors-Respondent.

LUBA No. 99-068

FINAL OPINION
AND ORDER

Appeal from City of Astoria.

David E. Filippi, Portland, filed a petition for review and argued on behalf of petitioner. With him on the brief was Stoel Rives LLP.

Edmonde Roach and Gerilyn Casaverde, intervenors-petitioner, Astoria, represented themselves. Edmonde Roach filed a petition for review.

No appearance by respondent.

Steve C. Morasch, Portland, filed a response brief and argued on behalf of intervenors-respondent. With him on the brief was Schwabe, Williamson & Wyatt, P.C.

HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member, participated in the decision.

AFFIRMED 01/28/2000

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a decision by the City of Astoria (city) that amends the text of the Astoria Development Code (ADC).

MOTION TO INTERVENE

Edmonde Roach and Gerilyn Casaverde move to intervene on the side of petitioners.[1] The applicants, No. 10 Sixth Street Ltd. and Chester Trabbuco, move to intervene on the side of the city. There is no objection to these motions, and they are allowed. In this opinion we refer to intervenor-petitioner as intervenor and we refer to intervenors-respondent No. 10 Sixth Street Ltd. and Chester Trabbuco as the applicants.

MOTION TO FILE A REPLY BRIEF

Petitioners move to file a reply brief pursuant to OAR 661-010-0039. Petitioners wish to reply to the applicants' contention that petitioners waived certain arguments in their first assignment of error by failing to raise the issues below. There is no objection to this motion, and petitioners' reply brief is confined to a response to the waiver argument. Petitioners' motion to file a reply brief is allowed. *Donnelly v. Curry County*, 33 Or LUBA 624, 626 (1997).

FACTS

The subject property is within the city's Aquatic Two Development Zone (A-2) and is currently developed with two restaurants and a small office that are located on pilings over the Columbia River. The subject property is the site of the former Marshall J. Kinney Cannery, constructed on the existing pilings in 1895. The Columbia River is to the north of the subject property. To the south across the former Burlington Northern right-of-way is

[1] Intervenor-petitioner Casaverde did not file a petition for review. All references to "intervenor" in this opinion are to intervenor Roach who filed a petition for review.

property zoned C-3, General Commercial Zone. The C-3 zoned property is developed with an automobile service station, commercial bulk fueling station, and a mini-mart. The C-3 zone allows a maximum building height of 45 feet. To the southwest is property zoned Tourist Commercial Zone (C-2), developed with an office building occupied by the State of Oregon Department of Human Resources. The C-2 zone allows a maximum building height of 45 feet. To the southeast is a paved parking lot, zoned Tourist-Oriented Shorelands (S-2A). To the east of the subject property within the A-2 zone is a two-story building that houses professional and business offices and some tourist-oriented uses. To the west of the subject property is land zoned A-2 with a 45 foot building height limitation.

The applicants, who own the subject property, initiated an ADC text amendment in October 1998. The amendment to ADC 2.540(5) extends the area with a 45 foot building height limitation in the A-2 zone from 5th Street east one block to 6th Street. Prior to the text amendment, the A-2 zone allowed structures to be built to a height of 45 feet only in the area extending from the Astoria-Megler Bridge east to 5th Street and between 15th and 21st Streets. Outside these areas, the building height in the A-2 zone is limited to 28 feet. The effect of the text amendment is to raise the height limitation on the subject property from 28 feet to 45 feet.

On November 17, 1998, the community development director issued a staff report and findings of fact. The staff report recommended that the planning commission recommend to the city council that the proposed amendment be adopted. On November 24, 1998, the planning commission held a public hearing on the proposed amendment. The planning commission received testimony and continued the hearing to its January 26, 1999 meeting. After receiving further testimony, the planning commission adopted (1) the findings and conclusions contained in the staff report, (2) the proposed findings of fact submitted on behalf of the applicants, (3) a transportation study submitted on behalf of the applicants, and (4) a letter from counsel for the applicants. The planning commission

recommended that the city council approve the proposed amendment with the following condition:

> "If the property is developed with a building that exceeds 28 feet in height (up to the maximum of 45 feet), uses on all floors above the first floor are limited to residential uses, accessory parking, and other accessory uses. No retail or office uses shall be allowed above the first floor." Record 196.

Residential uses as part of a mixed-use project are a conditional use in the A-2 zone. ADC 2.535(16); 2.540(10).

On March 1, 1999, the city council held a public hearing on the proposed amendment. After receiving testimony, the council closed the public hearing, deliberated, and voted to continue the matter until its next meeting. On March 5, 1999, the applicants submitted a letter to the city council suggesting that another condition be added to the proposed amendment to limit the maximum number of residential units that may be built to 20 units. On March 15, 1999, the council resumed its deliberations and voted to adopt the recommendation of the planning commission to amend ADC 2.540(5) to extend the area with a 45-foot building height limitation. On April 5, 1999, the council formally modified the proposed text amendment by adding the condition suggested in the applicants' March 5, 1999 letter. The council conducted a second reading and adopted the proposed text amendment. This appeal followed.

RECORD

The record filed by the city in this appeal identifies a number of oversize exhibits that were to be retained by the city until the time of oral argument. Record 357. None of those exhibits have been provided to LUBA.

PETITIONERS' FIRST ASSIGNMENT OF ERROR

OAR 660-012-0060(1) (1998) of the Transportation Planning Rule requires that

> "Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility."

The city determined that the text amendment "will not have a significant impact on the transportation system[.]"[2] Record 60. Petitioners contend that the city's decision misconstrues and misapplies OAR 660-012-0060(1) (1998). First, petitioners argue that the city's decision that the proposed text amendment will not significantly affect a transportation facility is not supported by substantial evidence. Second, petitioners argue that the city failed to account for the challenged decision's secondary effects on other waterfront development in analyzing whether the proposed text amendment will significantly affect a transportation facility. Finally, petitioners contend that the city failed to coordinate its decision as required by OAR 660-012-0060(3) (1998).

A. Substantial Evidence

Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). The city adopted the traffic report provided by the applicants. The report analyzes the effects of the amendment by first examining the traffic that would be generated by development of the subject property with conditional uses under the existing zoning. The report then analyzes the amount of traffic generated by a three-story building that is limited to residential uses on the second and third floors. The report concludes that a three-story building so restricted would generate less traffic than would be

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[2]OAR 660-012-0060(2) (1998) provides that a text amendment "significantly affects a transportation facility" where it:

> "(a) Changes the functional classification of an existing or planned transportation facility;
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> "(b) Changes standards implementing a functional classification system;
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> "(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or
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> "(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the [Transportation System Plan]."

generated by a two-story retail office building under the existing 28-foot building height limit. The city imposed conditions on the text amendment approval to restrict the uses above the first floor and to limit development of the upper floors to no more than 20 residential units. Based on the traffic report, the city concluded that the text amendment as conditioned would result in less traffic than development under existing regulations. Therefore, the city concluded, the text amendment does not significantly affect a transportation facility within the meaning of OAR 660-012-0060 (1998).

Petitioners note that the traffic report assumed that the first floor retail space would include 15,725 square feet. Petitioners argue that without express restrictions in the text amendment limiting any three-story development to 15,725 square feet of retail space on the lower level, the traffic report fails to provide substantial evidence to conclude that the text amendment will not significantly affect a transportation facility.

The applicants respond that retail space on the first floor can be developed under both the prior regulations and the amended regulations. According to the applicants, "[t]he amendment did not affect the allowable floor area of the first floor or what uses could be built on the first floor, so any increase in traffic resulting from an increase in the first floor footprint does not and could not result from the amendment." Intervenors-respondent's Brief 5. We agree with the applicants. A reasonable person could rely on the traffic report to support a conclusion that the amended regulations will not significantly affect a transportation facility. OAR 660-012-0060(2) (1998) specifies the circumstances where a land use regulation text amendment "significantly affects a transportation facility." *See* n 2. Petitioners have not demonstrated how a text amendment that, as conditioned, will not increase potential traffic impacts on the transportation system will "significantly affect a transportation system," within the meaning of OAR 660-012-0060(2) (1998).

This subassignment of error is denied.

B. Secondary Effects

Petitioners argue that the traffic report failed to "take into account the potential impact that the proposed amendment will have on other waterfront development" and thus the city's decision is not supported by substantial evidence. Petition for Review 8. Petitioners argue that the city found that the text amendment "is likely to encourage higher density, more compact, urban development forms." Record 8. Therefore, petitioners contend, the city cannot also take the position that such effects are too speculative to have any meaning in the transportation context.

The applicants respond that petitioners have not pointed out which properties or transportation facilities would be subject to the alleged secondary effects, and the applicants argue that there is no evidence in the record of such effects. The city's findings, the applicants argue, are directed at the subject property, not the downtown area in general. The applicants also argue that the city adopted the following finding to address Statewide Planning Goal 12 (Transportation):

> "The proposed condition will also further the goal of the state transportation planning rule (TPR) and the state transportation goal (Goal 12) of encouraging alternative modes of transportation because the existence of residential units in a mixed use building in the downtown area will encourage people to walk, bike or ride the new trolley to work and shopping rather than relying on single occupant vehicles." Record 73.

We do not agree that the city erred in failing to consider the challenged decision's secondary effects. OAR 660-012-0060 (1998) does not require that local governments address whether proposed amendments will in some general way encourage development on nearby properties. Even if the rule did impose that requirement, petitioners do not identify other development that might be attributable to secondary effects of the challenged decision that petitioners believe the city should have considered. Neither do petitioners identify a transportation facility that would be significantly impacted by the claimed secondary effects of this text amendment.

This subassignment of error is denied.

C. Coordination

Under this subassignment of error, petitioners' entire argument is:

> "* * * OAR 660-012-0060(3) requires that '[d]eterminations under subsections (1) and (2) of this section shall be coordinated with affected transportation facility and service providers and other affected local governments.' The record reveals no such effort at coordination."

Petitioners do not allege that there are either affected transportation facility and service providers or other affected local governments, and petitioners do not identify any such providers or governments.[3] Petitioners' argument is insufficiently developed, and we do not consider it. *See Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982) (petitioner has the responsibility not only to allege the facts which support his claim but also to tell the Board the basis upon which to grant relief).

This subassignment of error is denied.

Petitioners' first assignment of error is denied.

PETITIONERS' SECOND ASSIGNMENT OF ERROR

The applicants proposed two conditions to the text amendment. The first, proposed on January 19, 1999, states that:

> "If the property is developed with a building that exceeds 28 feet in height (up to the maximum of 45 feet), uses on all floors above the first floor are limited to residential uses, accessory parking, and other accessory uses. No retail or office uses shall be allowed above the first floor." Record 12, 196, 214.

The applicants proposed a second condition on March 5, 1999, following the close of the evidentiary record on March 1, 1999. The second condition states that "[a] maximum of 20 residential units may be built." Record 2, 12, and 80.

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[3] The applicants note that Department of Land Conservation and Development (DLCD) was properly notified of the proposal and of the decision. Supp. Record 1, 4. Applicants argue that DLCD routinely forwards copies of such notices to the Department of Transportation. Neither state agency participated in the text amendment proceedings.

Petitioners contend that "the proposal of the second condition by the applicants and its incorporation into the text amendment by the [city] was error." Petition for Review 10. Petitioners do not explain how any error *by the applicants* in proposing the second condition to the text amendment provides this Board a basis to reverse or remand the *city's* decision. As to the city, petitioners argue that the second condition, "along with the developer's willingness to have the condition imposed, amounted to the introduction of new evidence into the record in direct contravention of ORS 197.763(6)(e)."[4] Petition for Review 11. Petitioners do not provide any authority for their assertion that the second condition constitutes "new evidence" under ORS 197.763(6)(e). ORS 197.763(9)(b) defines "evidence" for purposes of ORS 197.763:

> "'Evidence' means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision."

The second condition is not evidence, but rather a restriction on the approved text amendment. Conditions of approval are routinely applied as part of the decision making process to address issues that are raised during the evidentiary phase of land use proceedings. *See Simonson v. Marion County*, 21 Or LUBA 313, 325 (1991) (county may impose conditions and rely on those conditions in determining that a permit application, as conditioned, meets applicable approval criteria). In an appeal to LUBA, petitioners are free to challenge the efficacy of any conditions that are attached to the challenged decision to ensure compliance with approval criteria. However, petitioners point to no legal requirement that petitioners must be provided with an opportunity to rebut a proposed condition during

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[4]ORS 197.763(6)(e) provides:

> "Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, *but shall not include any new evidence*. This seven-day period shall not be subject to the limitations of ORS 215.428 or 227.178." (Emphasis added).

the evidentiary phase of the local proceedings that lead to a land use decision. Accordingly, petitioners' argument in this regard provides no basis for reversal or remand of the challenged decision.

Petitioners contend that because the condition was added at the April 5, 1999 meeting that the city approved the condition and adopted the text amendment, petitioners were prevented from testifying or submitting evidence on the newly proposed condition, "thereby ignoring the notice and hearing procedures contained in ORS 197.763 and prejudicing [petitioners'] substantial rights." Petition for Review 11.

This less specific ORS 197.763 argument, like petitioners' more specific argument concerning ORS 197.763(6)(e) that we rejected above, rests on petitioners' erroneous assumption that the disputed condition is "evidence." For that reason, the argument is rejected.

Finally, petitioners argue that imposition of the condition changes the nature of the challenged decision and that the "findings of fact required by ADC 10.070(A) should have taken into account the residential and accessory uses mandated by the proposed text amendment as conditioned." Petition for Review 12. Again, all the challenged decision does is raise the maximum height limitation that is imposed on the subject property by the ADC. If the property is developed to maximum height allowed under the new height limitation, such development above the first floor must be residential. However, residential uses are allowed under the present and previous code as a conditional use in the A-2 zone. ADC 2.535(16); 2.540(10). The challenged decision does not mandate residential development.

Petitioners' second assignment of error is denied.

PETITIONERS' THIRD ASSIGNMENT OF ERROR

Petitioners argue that the record does not include substantial evidence to support the city's finding that the text amendment will promote and protect scenic views along the waterfront as required by the City of Astoria Comprehensive Plan (CP). ADC 10.070(A)(1)

requires that the city make findings that an amendment to the text of the ADC "is consistent with the Comprehensive Plan." CP.015(5) provides:

> "The special qualities that make downtown Astoria a desirable place to visit or work should be promoted and protected through the city plan and land use ordinances. These include shorelands suitable for water-dependent uses, the scenic views and water access areas along the waterfront, the commercial fishing and sports fishing industry and other activities that attract residents and tourist to the city."

The city adopted the following findings regarding CP.015(5):

> "The proposed amendment will continue to promote Astoria as a place to visit or work by the application of the policies and standards outlined in the [CP and ADC] for development within the aquatic zone. Both the [CP and ADC] promote development in the aquatic zones. The proposed amendment will not adversely affect scenic views and water access along the waterfront.
>
> "Providing a higher building height for this area would stimulate the type of mixed use development that would be capable of attracting residents and tourist to waterfront area, as the [CP] encourages, while protecting scenic views and vistas. The area immediately south (landward) of the proposed amendment is occupied by a gasoline station and mini-mart which would not be significantly affected by an increase in building height from 28 feet to 45 feet. The gasoline station is oriented to the south, facing Marine Drive, and does not take advantage of water views. No other properties in the vicinity will have their views blocked by the construction of a 45 foot high building on the proposed site. The incremental difference between 28 feet and 45 feet would be insignificant when viewed from residential areas up slope from Marine Drive. Most of the property south of Marine Drive to Duane Street, a three block area, is flat or gently sloping, and cannot obtain views of the water. As the topography of the City rises to the south, views open up and the impact of the proposed change becomes relatively insignificant. The Morrison state office building would not be affected significantly, since its views are due north across the oil fueling dock. Views to the east from this building across the subject property would be affected equally by a building of 28 feet or 45 feet in height." Record 52.

Petitioners first argue that CP.015(5) requires that scenic views be "promoted and protected." Petitioners complain that it is not possible to promote and protect scenic views by raising the maximum building height. Petitioners argue that the city only found that views will be equally affected by a building 28 feet tall or 45 feet tall, and that finding is not sufficient to show compliance with CP.015(5).

The applicants argue that the city interpreted ADC 10.070(A)(1) and CP.015(5) to mean that the text amendment was "consistent with" with CP.015(5) as long as the amendment would not significantly affect scenic views. The applicants argue that the city's interpretation of its comprehensive plan and land use regulations is due deference under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992).[5]

We agree with the applicants that the challenged decision includes an implied interpretation that the proposal is consistent with CP.015(5) because any impacts on scenic views of the water will be "relatively insignificant." The city's findings point out that the view of the water across the subject property from properties to the south and west will not be significantly affected by raising the maximum building height from 28 feet to 45 feet due to (1) the relatively small incremental increase in allowable building height, (2) the existing 45 foot building height limit on those adjoining properties, and (3) the nature of the existing development on those properties. The findings also note that the impact on views from higher properties located at a greater distance to the south will be insignificant. Petitioners apparently read CP.015(5) to be violated if the challenged decision does not have the result of promoting or protecting views of the water from every possible perspective. The city interpreted CP.015(5) to impose a much less onerous standard. We may not disturb that

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[5] ORS 197.829(1) provides:

> "The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
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> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
>
> "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

interpretation unless we conclude it is "clearly wrong." *Huntzicker v. Washington County*, 141 Or App 257, 261, 917 P2d 1051, *rev den* 324 Or 322 (1996); *Zippel v. Josephine County*, 128 Or App 458, 461, 876 P2d 854, *rev den* 320 Or 272 (1994); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992). Recognizing that CP.015(5) only directs that scenic views "should be promoted and protected" and that ADC 10.070(A)(1) simply requires that the challenged decision be "consistent with" this general charge, we cannot say the city's interpretation of CP.015(5) is inconsistent with the "express language," "purpose," or "underlying policy" of ADC 10.070(A)(1) and CP.015(5).

Petitioners also make a substantial evidence challenge to the city's findings that the "Morrison state office building would not be affected significantly, since its views are due north across the oil fueling dock" and that the 45 foot height limitation will not have a greater effect on the building's view than the prior 28 foot height limitation. Record 52. The applicants respond that the city's choice of conflicting evidence is due deference. In *Mountain Gate Homeowners v. Washington County*, 34 Or LUBA 169 (1998), the Board restated the analysis that is required in considering substantial evidence challenges:

> "As a review body, we are authorized to reverse or remand the challenged decision if it is 'not supported by substantial evidence in the whole record.' ORS 197.835[(9)](a)(C). Substantial evidence is evidence a reasonable person would accept to reach a conclusion, notwithstanding that different reasonable people could draw different conclusions from the same evidence. *Adler v. City of Portland*, 25 Or LUBA 546 (1993); *Reeves v. Washington County*, 24 Or LUBA 483 (1993). Where the evidence is conflicting, if a reasonable person could reach the decision the local government made in view of all the evidence in the record, LUBA will defer to the local government's choice between conflicting evidence. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995); *Bottum v. Union County*, 26 Or LUBA 407, 412 (1994); *McInnis v. City of Portland*, 25 Or LUBA 376, 385 (1993)." 34 Or LUBA at 173.

In the present case, petitioners challenge the city's finding that the 45-foot height limitation will not have a greater effect on the building's view than the prior 28-foot restriction. The record includes evidence that the state office building was built "to a height

well below the [45 foot] maximum," Record 94, and that the zoning to the north and east of the state office building would presently allow buildings of 45 feet in height. Record 6. From that evidence, the city could reasonably conclude that the text amendment will have no greater effect on the state office building's view than is possible under present zoning. Petitioners also challenge the city's finding that the state office building would not be affected significantly, because its views are due north across the oil fueling dock rather than across the subject property. The record does show that the state office building's most direct view of the river is due north across the oil fueling dock. Moreover, petitioners do not point to any conflicting evidence that, to the extent the state office building enjoys views across the subject property, that view would be hampered by the challenged decision in ways that differ from impacts that are possible under the existing height limitation. *See Todd v. Clackamas County*, 24 Or LUBA 289, 292 (1992) (In reviewing an evidentiary challenge, LUBA relies on the parties to identify the evidence in the record that supports their position).

Petitioners' third assignment of error is denied.

INTERVENOR'S FIRST THROUGH FIFTH ASSIGNMENTS OF ERROR

A. Introduction

Under her first five assignments of error, intervenor argues the challenged decision violates a total of 24 CP provisions and one ADC provision.[6] Before specifically addressing intervenor's arguments under these assignments of error we briefly note several problems in intervenor's brief that complicate our review. First, as previously noted, under ORS 197.829(1) and *Clark*, we are required to defer to the city's interpretation of its comprehensive plan and land use regulations. It is clear from intervenor's arguments that she would interpret and apply the CP and ADC differently than the city did in its decision. It is also clear that intervenor would find that those CP and ADC provisions are violated by the

[6]Under her second assignment of error, intervenor argues the challenged decision violates CP 10.070(A)(2). However, the cited provision is contained in the ADC, not the CP.

challenged decision. However, with very few exceptions, intervenor neither acknowledges nor specifically challenges the city's findings that interpret and apply those provisions. We are tempted to deny intervenor's first five assignments of error on that basis alone. Nevertheless, we do not do so because those assignments of error appear to allege the challenged decision violates those CP and ADC provisions as a matter of law.

Intervenor also frequently speculates about adverse impacts that she believes will result from the decision, without recognizing or challenging city findings that address those possible impacts. Where intervenor takes this approach, and simply disagrees with the city's decision without attempting to demonstrate error in the city's findings that interpret and apply the CP and ADC, intervenor fails to provide a basis for reversal or remand. *Just v. Linn County*, 32 Or LUBA 325, 334 (1997); *Mazeski*, 28 Or LUBA at 188-89; *Dougherty v. Tillamook County*, 12 Or LUBA 20, 34 (1984). We deny such arguments below without extensive discussion.

A final error that is repeated throughout these assignments of error is intervenor's mischaracterization of the nature of the challenged decision. Increasing the maximum height of buildings that may be constructed on the subject property from 28 feet to 45 feet obviously means a taller building may be constructed than would have previously been possible. However, the challenged decision *does not* authorize *uses* that were not authorized before the challenged decision was adopted. Specifically, while the challenged decision limits the use of upper floors to residential use if the building exceeds 28 feet in height, residential use of the property was allowable as a conditional use of the property *before* the challenged decision was adopted. Simply stated, the challenged decision does not authorize residential use of the property, the potential for residential use of the property preexisted the challenged decision, and the challenged decision does not authorize or require residential use in the way intervenor's arguments frequently assume is the case.

A. Intervenor's First Assignment of Error

Under this assignment of error intervenor alleges the challenged decision violates certain CP land and water use and transportation goals, and an ADC requirement.

1. CP.015(1)

Intervenor first contends that the challenged decision violates CP.015(1), which provides:

> "It is the primary goal of the [CP] to maintain Astoria's existing character by encouraging a compact urban form, by strengthening the downtown core and waterfront areas, and by protecting the residential and historic character of the city's neighborhoods. It is the intent of the plan to promote Astoria as the commercial, industrial and cultural center of the area."

Intervenor argues that "in looking at CP.015(1) as a whole, there appears to be no need to change the height limits and that this development project not only violates the spirit of this section of the Comprehensive Plan, it seems to be just what CP.015(1) hoped to prevent from happening." Petition for Review 11. Intervenor's argument is based on definitions from Webster's 21st Century Dictionary of certain terms that appear in CP.015(1). Based on those definitions, intervenor offers her interpretation of CP.015(1) and questions the city's conclusion that this criterion is met.[7]

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[7]Intervenor's arguments include the following:

> "* * * Let's start with the word *maintain*. *Maintain* according to Webster's 21st Century Dictionary means - keep in good order or assert persistently. *Existing*. What exactly was meant by existing in 1979 when this code was written? In 1979 this site is listed on the maps as a warehouse. In other words it was an industrial site. Existing today means the remains of the warehouse. Since the construction of that site in 1895 existing has never meant a height of over 45'.
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> "*Character*: What could character possibly mean? Historically it would mean a bustling hard working industrial waterfront. At no time in Astoria's waterfront history did character ever mean 45' residential buildings. Unless you want to consider a few houses of ill repute as historical residential character and even they weren't 45'.
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> "*Compact*: Webster's 21st Century Dictionary has several definitions, including occupying minimal space. Are we to believe that this only applies horizontally? Why not occupy minimal space vertically as well? Nowhere in the code are the words dense or intensive

The city adopted the following findings regarding CP.015:

> "The waterfront is characterized by mixed uses. Extending the 45 foot height limitation one additional block to the east to include the area between 5th and 6th Streets, will not alter Astoria's existing character and is likely to encourage higher density, more compact, urban development forms. Allowing greater density and development opportunity will strengthen the waterfront area and will promote Astoria's position as a commercial and tourism center." Record 51.

After noting that under existing zoning, abutting property has a 45-foot height limitation, the findings continue:

> "In the last ten years both the City and the [applicants] have invested heavily to make the area a magnet for tourist and commercial development. * * * All of these private and public investments have been done in an effort to carry out [the policy of CP.015(1)] of 'strengthening the downtown core and waterfront areas.' Increasing building height on this block will allow higher residential density in the downtown area, which in turn will encourage a compact urban form and will encourage residents to walk or bike to the nearby commercial and tourist development that have been so heavily invested in by both the public and private sectors." Record 52.

It is clear that intervenor and the city disagree about whether the challenged decision is consistent with the policies provided in CP.015(1). However, intervenor's disagreement with the city is not sufficient to demonstrate that the city's findings are inadequate to demonstrate compliance with CP.015(1). *Just*, 32 Or LUBA at 334; *Mazeski*, 28 Or LUBA at 188-89; *Dougherty*, 12 Or LUBA at 34. Intervenor's arguments are also inadequate to demonstrate that the challenged decision violates CP.015(1) as a matter of law.

This subassignment of error is denied.

> connected to the word compact, despite Staff's inclusion of the word throughout their original findings. We find their inclusion of these words in their findings of facts as misleading. * * *
>
> "*Downtown core*. The City of Astoria has several different definitions of downtown. For this particular project they have used the one that includes this area as downtown. By City Staff's own admission, in their original findings, 6th street is the 'fringe' of downtown. * * * How can now encouraging vertical growth along our waterfront strengthen our downtown core?" Petition for Review 9-10 (emphases in original deleted; emphases shown are added).

2. CP.015(5)

Intervenor also contends that the challenged decision violates CP.015(5).[8] Intervenor argues that (1) upscale condos are not a water-dependent use, (2) the 45-foot building height will not protect scenic views or water access, and (3) the decision fails to address parking issues. Intervenor also argues that a 45-foot high building is not to scale with the area, because the closest buildings of that size are five blocks away.

Intervenor's argument that upscale condos are not a water-dependent use provides no basis to reverse or remand this decision, because the challenged decision is a text amendment that conditionally changes the building height limitation on the subject property. The challenged decision does not approve any particular use of the subject property. Intervenor makes no attempt to explain why the findings adopted by the city addressing impacts on scenic views of the water are inadequate. Intervenor simply disagrees with the city and, therefore, provides no basis to reverse or remand the decision. Intervenor's argument that the city has not adequately addressed parking is not sufficiently developed for review and simply expresses disagreement with the evidence that was submitted by the applicants. Finally, intervenor argues "how is anyone going to access anything if there is a 45' high private, security condo building in the way[?]" Petition for Review 11. This argument is based on the mistaken understanding of the nature of the challenged decision and makes no attempt to explain why water access would not be equally blocked by a 28-foot high building, which would be allowed on the subject property without the challenged decision.

This subassignment of error is denied.

3. ADC 10.070(A)(2)

Intervenor alleges that the challenged decision violates ADC 10.070(A)(2), which requires findings that an ADC text amendment "will not adversely affect the ability of the

[8]CP.015(5) is quoted in our earlier discussion of petitioners' third assignment of error.

City to satisfy land and water use needs." Intervenor argues that certain adjacent properties are water-dependent commercial uses but are incorrectly referred to in the decision as not being water-dependent. Intervenor also argues that residential uses and uses accessory to residential uses are not allowed in the A-2 zone and city erred by authorizing those uses.

Intervenor does not challenge the lengthy findings the city adopted explaining why increasing the maximum building height from 28 feet to 45 feet will not adversely affect the city's ability to meet land and water use needs. Record 61-63. Intervenor does not explain why any mistaken references concerning whether adjacent uses are water-dependent provides a basis for reversal or remand. As previously noted, intervenor is wrong about whether the A-2 zone allows residential development of the subject property as a conditional use.

This subassignment of error is denied.

4. CP.355(1)

Intervenor argues that the challenged decision violates CP.355(1), which requires the city to work toward the "maintenance of a safe and efficient transportation system." The city found that CP.355(1) was inapplicable to the text amendment, because the decision does not change the zone to allow more or different uses than are currently permitted, nor does it include approval of a specific development. Record 60-61. The city adopted additional findings that the challenged decision would have no significant impact on the transportation system because a three-story building restricted by the conditions imposed would generate less traffic than could be generated by development under the existing zoning. Again, we agree that the finding is supported by substantial evidence in the form of the applicants' traffic report. *See* Petitioners' First Assignment of Error above.

This subassignment of error is denied.

Intervenor's first assignment of error is denied.

B. Intervenor's Second Assignment of Error

Under this assignment of error intervenor alleges the challenged decision violates certain CP Community Growth Strategies. CP.020(1) and (3) pertain to residential growth in the city and multiple use of the waterfront area, respectively.[9] The applicants argue, and we agree, that CP.020(1) is inapplicable because the challenged decision does not allow residential uses of the subject property. The city found that CP.020(3) is not directly applicable, but is satisfied because the text amendment would facilitate more flexible development patterns and facilitate multiple use.[10] Record 53. Intervenor does not challenge the adequacy of this finding. Intervenor contends the city must find that anticipated multiple use of the property must be approved now, but we do not agree that CP.020(3) imposes such a requirement. Intervenor states no basis to reverse or remand the challenged decision pursuant to CP.020(1) or (3).

Intervenor also argues that the challenged decision violates CP.170(E) and (G)(2). CP.170 is the city's downtown subarea plan. CP.170(E) addresses development issues in this subarea and establishes a city policy of encouraging mixed-use development along the waterfront. The city adopted findings that the challenged decision "would carry out this goal by allowing a greater mixture of uses." Record 57. Intervenor argues that "[b]y simply approving a height limit of 45 [feet] you have no guarantee as to what will really be built

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[9] CP.020(1) provides:

> "Directions of future residential growth will be toward the infilling of areas such as Vista Park, Sonora Park, South Slope, and Williamsport where services presently exist or are planned, prior to the development of new areas."

CP.020(3) provides

> "The Columbia River waterfront is considered a multiple use area. The development of this area is to be encouraged in a flexible manner, under the shorelands and estuary section."

[10] The city's findings explain that the taller building will make it easier to absorb the costs of new pilings that will be needed for development of the subject property in the future. Record 53.

there." Petition for Review 14. Intervenor does not explain how the text amendment as conditioned does not advance the CP.170(E) policy of encouraging mixed-use and does not explain why the city must "guarantee" such mixed use development in the challenged decision.

CP.170(G)(2) provides a policy of protecting the historic character of the Kinney Warehouse by "application of the Historic District element of the City of Astoria's zoning ordinance." CP.170(G)(2) appears to state a policy that the Kinney Warehouse should be included in a historic district, and we understand intervenor to complain that this has not yet been done. However, we agree with the applicants that intervenor fails to explain how CP.170(G)(2) has any bearing on the decision challenged in this appeal.

Intervenor's second assignment of error is denied.

C. Intervenor's Third Assignment of Error

Under the third assignment of error, intervenor argues that the challenged decision violates several policies and other provisions that implement the Economic Element and Downtown Area portions of the CP. Throughout this assignment of error, intervenor disagrees with the findings and policy choices made by the city; however, intervenor makes not attempt to explain why the city's findings are inadequate or are not supported by substantial evidence in the record.[11] Intervenor's arguments under this assignment of error

[11]Intervenor's arguments concerning CP.055(3) are representative of the arguments she advances under this assignment of error. CP.055(3) provides:

> "Zoning actions must not detract from the vitality of the downtown as the commercial center of the region. Strip commercial development is generally to be discouraged."

The city's findings explain that raising the building height on this property located within the downtown area will expand "options and opportunity for urban development on the downtown waterfront" with the result that "the vitality of the downtown, as the commercial center of the region, will not be detracted from and likely will be enhanced." Record 54. The city's findings go on to state that facilitating applicants' plan to develop part of the property residentially, "will likely increase demand for downtown services and will provide a 24-hour presence that will in turn enhance security in the area * * * [adding] to overall vitality of the downtown." Id.

simply express disagreement with the city and, thus, provide no basis upon which we might reverse or remand the challenged decision.

Intervenor's third assignment of error is denied.

D. Intervenor's Fourth Assignment of Error

Under the fourth assignment of error, intervenor argues the challenged decision violates CP policies concerning aquatic development.

1. CP.140

CP.140 establishes certain policies concerning aquatic areas. CP.140 explains that for development aquatic areas such as the A-2 zone, the objective is "to ensure optimum utilization of appropriate aquatic areas by providing for intensive development." The applicants argue, incorrectly, that the city found that this criterion does not apply. Rather, the city's findings note the portion of CP.140 that is quoted above and find that CP.140 is met because the increased maximum building height "will allow increased development opportunities along the waterfront in a more compact form, promoting a more efficient utilization of the aquatic area." Record 55. The city's findings go on to point out that any future development on the subject property pursuant to the increased building height will be located on pilings and that there will "be no estuarine impact from the change from 28 feet to 45 feet, since the same aquatic area would be covered with structures on pilings at any height." *Id.*

Intervenor's arguments do not address these findings or provide any basis for reversal or remand.

Intervenor does not challenge the above findings but argues:

"To propose that by building vertically at the foot of 6th Street it will encourage people to renovate the downtown core is naïve. What it will encourage is flight from the core. Allowing residential uses in an A-2 zone, located within the downtown boundaries, with no public debate on the matter, will greatly harm the vitality of not only downtown, but Astoria as a whole." Petition for Review 15-16.

2. CP.150

CP.150 provides, in part:

> "A use which requires * * * in-water structures * * * which could affect the estuary's physical processes or biological resources must be subject to an Impact Assessment."

Intervenor contends that future development on the subject property will require new or reinforced pilings, which are considered "in-water structures." Intervenor argues the city erred by failing to require an impact assessment under CP.150.

The challenged decision does not address the portion of CP.150 quoted above. The reason is obvious; the challenged decision does not approve any in-water structures. Because the city approved no in-water structures, the CP.150 requirement for an impact assessment where the estuary's physical processes or biological resources could be affected does not apply.

This subassignment of error is denied.

3. CP.150(12)

CP.150(12) authorizes uses in Development Aquatic areas that are not water-dependent or water-related where those uses do not require "dredge or fill." Intervenor acknowledges that "[i]t is highly unlikely that any development of this site would need either [dredge or fill]." Petition for Review 18. The challenged decision clearly does not authorize dredge or fill, and petitioner does not show how the challenged decision violates CP.150(12).

This subassignment of error is denied.

4. CP.185(M)(1), CP.185(N)(1) and CP.185(N)(3).

CP.185(M)(1) and CP.185(N)(1) both provide that "new non-water-dependent uses in aquatic areas * * * shall not preclude or pose any significant conflicts with existing, proposed or probable future water-dependent uses on the site or in the vicinity." The city's findings explain that although the increased height limit "will increase the potential for development in the area," no non-water-dependent use is approved by the challenged decision. That

finding is sufficient to explain why CP.185(M)(1) and CP.185(N)(1) are not violated by the challenged decision.

CP.185(N)(3) provides:

> "Piling or dolphin installation, structural shoreline stabilization, and other structures not involving dredge or fill, but which could alter the estuary may be allowed only if [certain specified] criteria are met[.]"

Intervenor identifies testimony during the local proceedings that development that might occur in the future under the increased height limit might require improvements that "could" impact the estuary. The agency offering that observation also pointed out that any such potential impacts could be addressed at the time such future development was approved.

The challenged decision does not approve pilings, dolphin installation, structural shoreline stabilization or other structures. The challenged decision, therefore, does not implicate or violate CP.185(N)(3).

This subassignment of error is denied.

Intervenor's fourth assignment of error is denied.

E. Intervenor's Fifth Assignment of Error

Under the fifth assignment of error, intervenor alleges the challenged decision violates several Downtown Astoria Subarea Plan and Economic Development Policies.

1. CP.170(E)[12]

CP.170(E) provides, in part, that "[t]he Astoria Waterfront Revitalization Plan calls for mixed-use tourist oriented development and increased public access." The city's findings conclude that the increased height limit would not discourage such mixed-use development and may "encourage" such development. Record 56.

[12]Intervenor's arguments concerning CP.170(E) largely repeat the arguments she presented concerning this policy under her second assignment of error.

Intervenor does not challenge the city's findings. Instead, intervenor argues the challenged decision does not "guarantee" such mixed-use tourist oriented development. CP.170(E) does not require that the city "guarantee" end results, as intervenor suggests. Intervenor repeats her objection concerning the condition limiting development of upper floors to residential development. None of the arguments presented under this subassignment of error provide a basis for reversal or remand.

This subassignment of error is denied.

2. CP.170(2).

Intervenor argues the challenged decision violates CP.170(2). As far as we can tell, there is no CP.170(2), and we are unable to determine what CP provision intervenor intended to reference here.

This subassignment of error is denied.

3. CP.185

Intervenor's entire argument concerning CP.185 is as follows:

> "This section of the code is most interesting as it was not listed as applicable in section IV by the city, Findings of Fact B, in the Staff report given to us in November, nor is it listed as applicable in the copy dated January 15th, 1999, and signed by the Planning Commission, though Findings by Staff referring to it are included in the body of the text. CP.185 is apparently very applicable to this issue." Petition for Review 22.

CP.185 includes the city's Regional Estuary and Shoreland Policies. CP.185 is broken down into many subparts and policies and is 22 single-spaced pages long. The city adopted findings addressing CP.185(L), and those findings are discussed below.[13] Intervenor makes no attempt to identify which other parts of CP.185 she believes are "very applicable" or why she thinks CP.185 is violated. Intervenor's argument under CP.185 is not

[13]The city also adopted findings addressing CP.185(N)(1), and those findings are noted under our earlier discussion of intervenor's fourth assignment of error.

sufficiently developed for review and we reject it. *Deschutes Development*, 5 Or LUBA at 220.

This subassignment of error is denied.

4. CP.185(L)

CP.185(L) is a policy favoring public access in the Columbia River Estuary and provides, in part:

> "Policies in this subsection apply to all uses and activities in Columbia River Estuary shoreland and aquatic areas which directly or indirectly affect public access. 'Public access' is used broadly here to include direct physical access to estuary aquatic areas (boat ramps, for example), aesthetic access (viewing opportunities, for example), and other facilities that provide some degree of public access to Columbia River Estuary shorelands and aquatic areas."

The city's findings addressing this policy specifically address CP.185(L)(3) which requires that shoreline development "shall not, individually or cumulatively, exclude the public from shoreline access to areas traditionally used for fishing, hunting or other shoreline activities." The city's findings explain:

> "The proposed amendment will not preclude the ability for the public to access the shoreline. The area of the proposed amendment has historically been developed with industry related to the fishing trade and commerce. The area has not traditionally been used for fishing, hunting or other shoreline activities. The proposed amendment will continue to allow public access to the waterfront at street ends, as has historically been provided. Several street-end parks have been developed along Astoria's waterfront, including one at the foot of 6th Street, which is along the easterly boundary of the applicants' property." Record 57.

Intervenor makes no attempt to challenge the adequacy of the above findings. She does argue that the increased maximum building height will block "aesthetic access to the river of several dozen homes and businesses, in addition to passers-by, including tourists and residents alike." Petition for Review 22. However, the city's unchallenged findings state that the historic access that has been provided at street ends will be continued and street-end parks also provide access as required by CP.185(L). Intervenor's argument concerning

impacts on "aesthetic access," which is made without citation to supporting evidence in the record, is insufficient to establish that the decision violates CP.185(L).

This subassignment of error is denied.

5. CP.200(4)

CP.200(4) provides that the city will "[e]ncourage the broadening of the economy, particularly in areas which help balance the seasonal nature of existing industries."[14] In its findings addressing CP.200(4), the city points out that the city's economy has suffered with the decline of the timber and fishing industry. The findings explain that nonseasonal businesses "broaden the area's economy." Record 59. The findings go on to explain that increasing the maximum building height will "allow more compact urban development" and "a variety of mixed-uses." *Id*.

Intervenor does not specifically challenge the city's findings. Rather intervenor repeats her complaint that residential uses do not belong in the A-2 zone and will do nothing to broaden the city's economy. That argument ignores the city's emphasis of the nonresidential development that it believes will be facilitated by the challenged decision and, therefore, provides no basis for reversal or remand.

This subassignment of error is denied.

6. CP.200(6)

CP.200(6) provides the city will "[e]ncourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry.

Intervenor argues that the increased maximum height limitation will block the upriver views of some historically designated homes in the area. The applicants dispute that argument and contend that the minimal impact on views of the challenged decision, due to

[14]The city's decision and all the parties assume the quoted language appears at CP.200(4). In the copy of the CP provided to LUBA by the city the quoted language appears at CP.200(3).

existing maximum building heights of 45 feet on adjoining properties, is addressed adequately in the city's findings addressing CP.015(3). The applicants also argue that the reason the city did not address CP.200(6) is that the challenged decision increasing the maximum building height on the subject property has nothing to do with "preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location * * *."

The only argument intervenor advances in support of its position that the challenged decision violates CP.200(6) is the alleged impact on upriver views of certain unspecified historic homes in the vicinity. The city did not address CP.200(6). In that circumstance we may interpret CP.200(6) to determine whether the city erred by not applying that provision in the challenged decision. ORS 197.829(2); *Miller v. Multnomah County*, 33 Or LUBA 644, 649 n 5 (1997), *aff'd* 153 Or App 30, 956 P2d 209 (1998). CP.200(6) does not expressly require consideration of potential impacts on the views of nearby historic properties. There are other CP policies that require consideration of impacts on scenic views, and the city addressed those policies in its decision. We agree with the applicants that the CP.200(6) does not apply in the manner intervenor argues it does. The city's failure to address CP.200(6), in the manner intervenor argues it should have, provides no basis for reversal or remand.

This subassignment of error is denied.

Intervenor's fifth assignment of error is denied.

INTERVENOR'S SIXTH ASSIGNMENT OF ERROR

Under this assignment of error, intervenor alleges the city's decision violates a number of statewide planning goals.

A. Introduction

The applicants argue that this assignment of error should be dismissed because, while the city adopted findings addressing the statewide planning goals, it was not obligated to do so. The applicants argue that under ORS 197.835(7)(b) the statewide planning goals do not

apply to an amendment to an acknowledged comprehensive plan where the comprehensive plan contains "specific policies or other provisions which provide the basis for the regulation * * *." *Cuddeback v. City of Eugene*, 32 Or LUBA 418, 421 (1997). However, the plan policies the applicants identify are not the kind of "specific policies or other provisions" that under ORS 197.835(7)(b) may obviate the requirement to address the statewide planning goals when amending an acknowledged land use regulation.[15] *Melton v. City of Cottage Grove*, 28 Or LUBA 1, 6, *aff'd* 131 Or App 626, 887 P2d 359 (1994); *Ramsey v. City of Portland*, 23 Or LUBA 291, 299, *aff'd* 115 Or App 20, 836 P2d 772 (1992).

We turn to intervenor's arguments. Before doing so, we note that for each of the statewide planning goals intervenor claims are violated by the challenged decision the city adopted findings in which it concluded the proposal is consistent with the goal. Intervenor does not challenge those findings. We are tempted to deny this assignment of error on that basis alone, without additional discussion. However, as with intervenor's CP and ADC arguments, her arguments under this assignment of error can be read to take the position that the identified statewide planning goals are violated as a matter of law. We therefore address her statewide planning goal arguments below.

B. Goal 1 (Citizen Involvement)

The city adopted findings addressing Goal 1, and intervenor does not challenge those findings. Intervenor's Goal 1 argument is based entirely on her mistaken understanding that the challenged decision authorizes residential use and no notice was given that residential use was to be authorized.

This subassignment of error is denied.

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[15]The applicants cite CP.015(1) and CP.050. CP.015(1) provides a general goal of promoting "Astoria as the commercial, industrial and cultural center of the area." CP.050 discusses the downtown area generally, but makes no reference to maximum building heights.

C. Goal 2 (Land Use Planning)

Goal 2 requires that the city's decision be supported by an adequate factual base. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 377, *aff'd* 130 Or App 406, 882 P2d 1130 (1994); *League of Women Voters v. Klamath County*, 16 Or LUBA 909, 914 (1988). Intervenor argues that certain photographs that were presented to the planning commission were taken from a higher elevation than was stated to the planning commission. Intervenor claims this was "deliberately false and misleading testimony and evidence." Petition for Review 25. The difficulty with this claim is that intervenor does not identify which photographs she is referring to and does not claim they were similarly misrepresented to the city council. The photographs may be included in the photographs that the city failed to provide to LUBA at oral argument, pursuant to OAR 661-010-0025(2). However, intervenor does not provide record citations in support of her argument, so we cannot be sure. In any event, intervenor makes no attempt to explain whether or how any errors in representing the locations from which those photographs were taken is sufficient to show the challenged decision is not supported by an adequate factual base.

Intervenor's remaining arguments under Goal 2 are an undeveloped challenge to the accuracy of the applicants' traffic study. The argument is not sufficient to establish that the challenged decision is not supported by an adequate factual base.

This subassignment of error is denied.

D. Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources)

Intervenor's arguments under Goal 5 do not allege that any inventoried Goal 5 resources are affected by the challenged decision. Intervenor's arguments are not sufficiently developed to provide a basis for reversal or remand under Goal 5. *Deschutes Development*, 5 Or LUBA at 220.

This subassignment of error is denied.

E. Goal 6 (Air, Water and Land Resources Quality)

Intervenor's entire argument under Goal 6 is as follows:

> "Allowing residential use of the downtown waterfront does not maintain or improve the quality of the land resources. This site is better suited to more long range, income generating, job producing, uses." Petition for Review 26.

The above argument is based on the mistaken assumption that the challenged decision authorizes residential use of the subject property. It is also insufficiently developed to provide a basis for reversal or remand. *Deschutes Development*, 5 Or LUBA at 220.

This subassignment of error is denied.

F. Goal 7 (Areas Subject to Natural Disasters and Hazards)

Intervenor argues that the residential development allowed by the challenged decision will result in hazardous situations in the event of certain accidents and disasters she speculates may occur in the future. As has been noted several times in this opinion, intervenor's initial premise is wrong. For that reason alone we reject her arguments concerning Goal 7. We also conclude that the disasters she speculates might happen are insufficient to demonstrate that the challenged decision violates Goal 7, even if it did authorize residential development.

This subassignment of error is denied.

G. Goal 10 (Housing)

Intervenor argues the challenged decision violates Goal 10 because there is a glut of housing in Astoria. That argument is insufficient to establish that the challenged decision violates Goal 10. In any event, the challenged decision does not approve housing and we do not see how approving unnecessary housing necessarily would violate Goal 10.

This subassignment of error is denied.

H. Goal 12 (Transporation)

Intervenor argues the applicants' traffic study "doesn't make sense." Petition for Review 28. That argument is insufficient to demonstrate that the challenged decision violates Goal 12.

This subassignment of error is denied.

Intervenor's sixth assignment of error is denied.

INTERVENOR'S SEVENTH ASSIGNMENT OF ERROR

Intervenor argues the challenged decision "violates Oregon's Public Hearing Process." Petition for Review 28. Once again, her argument is based on her erroneous understanding that the challenged decision authorizes residential use of the subject property.

Intervenor's seventh assignment of error is denied.

The city's decision is affirmed.