BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DEPARTMENT OF LAND
CONSERVATION AND DEVELOPMENT,
Petitioner,

vs.

CITY OF WARRENTON,
Respondent.

LUBA No. 99-152

OREGON DEPARTMENT OF
TRANSPORTATION,
Petitioner,

vs.

CITY OF WARRENTON,
Respondent,

and

WARRENTON LAND AND
INVESTMENT COMPANY, LLC,
Intervenor-Respondent.

LUBA No. 99-153

FINAL OPINION
AND ORDER

Appeal from City of Warrenton.

Lynne A. Perry, Assistant Attorney General, Salem, and Katherine A. Dreyfus, Assistant Attorney General, Salem, filed the petition for review and argued on behalf of petitioners. With them on the brief were Hardy Myers, Attorney General, and Michael D. Reynolds, Solicitor General.

No appearance by respondent.

Michael C. Robinson, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Stoel Rives, LLP.

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

REMANDED 4/21/2000

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

Opinion by Briggs.

NATURE OF THE DECISION

Petitioners appeal the city's decision to rezone property from Intermediate Density Residential (R-10) to General Commercial (C-1).

MOTION TO INTERVENE

Warrenton Land and Investment Company, LLC (intervenor), the applicant below, moves to intervene on the side of respondent with regard to LUBA No. 99-153. There is no opposition to the motion and it is allowed.

FACTS

The subject property is a 41-acre parcel located to the west of and adjacent to Oregon State Highway 101 (Highway 101). The property is comprised of five tax lots, and is bisected by Dolphin Avenue (also known as Rodney Acres Road).[1] A majority of the property is zoned R-10; however, a portion of tax lot 8-10-28-1900 is zoned Aquatic Conservation (A5). In March 1999, intervenor applied for a zone change from R-10 to C-1, proposing to lease or sell the property for retail development.

Dolphin Avenue will be the primary access to the property. Dolphin Avenue intersects with Highway 101, and traffic is controlled by a stop sign on Dolphin Avenue. Traffic on this segment of Highway 101 is uncontrolled, with a general speed limit of 45-55 miles per hour.

The traffic impact study submitted by the applicant to support the zone change indicates that several improvements to the Dolphin Avenue/Highway 101 intersection will be necessary to lessen the impact the proposed commercial uses will have on Highway 101. The improvements include acceleration/deceleration lanes, turning refuges and traffic signals. The traffic impact study assumes similar improvements will be made to seven other nearby

[1]Tax Lots 8-10-27-2800, 8-10-27-2802, 8-10-27-2900, 8-10-27BC-800, and 8-10-28-1900.

intersections, including five intersections on Highway 101. The traffic impact study also assumes that the relevant segment of Highway 101 will be improved to five lanes within the 20-year study period.

The city council approved the application, adopting conditions of approval that include two conditions addressing traffic improvements.

This appeal followed.

MOTIONS TO STRIKE

In footnotes 2 and 3 of intervenor's response brief, intervenor moves to strike (1) a letter attached to the petition for review, and (2) evidence contained in footnote 15 on page 33 of the petition for review. The parties agree that the document and evidence were not part of the record before the city, and therefore are not properly before us. The motions to strike are allowed.

MOTION TO TAKE OFFICIAL NOTICE

A week after oral argument, intervenor moved for LUBA to take official notice of a copy of a Land Conservation and Development Commission (LCDC) January 11, 1983 acknowledgment continuance order addressing the City of Warrenton's then-draft comprehensive plan (1983 continuance order). The 1983 continuance order indicates that, at that time, the city had chosen to adopt a combined comprehensive plan and zoning map. Intervenor argues that the 1983 continuance order is an official act by LCDC and, therefore, we have the authority pursuant to OEC 202 to recognize the order and its contents.

We have taken official notice of LCDC orders in other cases. *See McCrystal v. Polk County*, 1 Or LUBA 196, 197 (1980) (taking official notice of an LCDC enforcement order). Intervenor's motion to take official notice of the 1983 continuance order is allowed.

SIXTH ASSIGNMENT OF ERROR

Petitioners argue that the city's decision must be remanded because the decision rezones land without adopting a corresponding amendment to the city's comprehensive plan

map. According to petitioners, the city's comprehensive plan designations are different from the zoning map designations. Therefore, petitioners argue, to retain consistency between the comprehensive plan and the zoning map, the city should have amended its comprehensive plan designations as well.

Intervenor responds that it is not clear from the record or the city's plan that there is any difference between the city's comprehensive plan and zoning map. Intervenor postulates that the city has a unified mapping system, and that an amendment to the zoning map effects a corresponding amendment to the comprehensive plan designation. Intervenor relies on the 1983 continuance order to support its theory that there is only one map, but conceded at oral argument that it could be inferred from the current comprehensive plan maps and text that there are, in actuality, two separate maps. Intervenor argues that even if there are two different maps, the failure to amend the comprehensive plan map is harmless error.

Our difficulty with intervenor's argument is that the 1983 continuance order does not necessarily demonstrate that the city *now* has a unified mapping system. The comprehensive plan was significantly amended in 1993. The current comprehensive plan contains maps that may or may not be considered by the city to be comprehensive plan maps that must be amended in the course of approving a zoning map amendment.[2]

We also disagree with intervenor's argument that, if there are two maps, the failure to adopt an amendment to the comprehensive plan map is necessarily harmless error. Warrenton Comprehensive Plan (WCP) 20.320(3) requires provisions of the zoning ordinance and other land use controls to be consistent with the plan. Further, Warrenton Zoning Ordinance (WZO) 14.080(1)(a) requires that, at the time an application for a zone change is considered, findings be adopted to determine whether proposed amendments to the zoning ordinance are

[2]Intervenor's argument may be supported by the city's finding that the city's zoning ordinance is part of the city's comprehensive plan. *See* Record 22. ("This amendment is an amendment of the City's Zoning Map, which is a part of the Comprehensive Plan.") However, we have some difficulty reading into this finding that the zoning map *is* the comprehensive plan map.

"consistent with the Comprehensive Plan." If a zoning map amendment authorizes uses on property that are not allowed under the comprehensive plan map designation, the zoning map amendment necessarily fails to be "consistent with the Comprehensive Plan." Therefore, remand is necessary for the city to identify whether there is a separate comprehensive plan map and, if so, whether the proposed zoning amendment is consistent with it.

The sixth assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that the city's findings that the traffic-related impacts caused by commercial development are mitigated by the proposed conditions of approval are not supported by substantial evidence. According to petitioners, the traffic impact study is based on an assumption of commercial development on 20.7 acres of land. However, petitioners contend the findings establish that up to 25 acres could be developed—20 percent more than accounted for in the traffic impact study. In addition, petitioners argue that the city's decision does not limit its approval to 20.7 acres. Thus, if more than 20.7 acres are developed for commercial uses, petitioners contend, there is not substantial evidence in the record to support a conclusion that the proposed traffic mitigation measures are sufficient to address the impacts of the development.

Intervenor responds that the findings actually state that between 20 and 25 acres could be developed, and that the traffic analysis' conclusions based on a development on 20.7 acres are consistent with those findings. Intervenor also argues that only that portion of the subject property that was designated R-10 is rezoned to C-1 and, therefore, the portion of tax lot 8-10-28-1900 that is zoned A5 should not be included in any estimation of developable land. Intervenor contends that the city adopted a condition of approval that required the delineation of the A5 area and that, as a result, the amount of land rezoned is likely to be closer to 20.7 acres than 25 acres. Intervenor also argues that, to the extent the

decision may allow more development than is accounted for in the traffic impact study, the difference is *de minimus.*

The relevant condition of approval states:

> "A wetland delineation must be completed to confirm the location of the boundary line between [the] A5 zone and the [C-1] zone on tax lot 8-10-28-1900. This delineation will be accepted by the City as describing the A5/General Commercial boundary line only if the Oregon Division of State Lands and the US Army Corps of Engineers concur with the delineation. * * *" Record 44.

From this finding, it is clear that the city considers the boundaries of the wetlands to be the demarcation between the A5 zone and the C-1 zone. Therefore, the city's zoning maps identifying the boundaries of the A5 zone may not be reliable. It may be that the developable area is less than 25 acres or, if the delineation establishes a smaller wetland area, it could be more than 25 acres. Thus, we agree with petitioners that the city's decision does not establish the amount of acreage to be rezoned and, to the extent the city relies on the acreage estimate in the traffic study to establish the relevant traffic impacts, that reliance is not supported by substantial evidence.

The second assignment of error is sustained.

FIRST ASSIGNMENT OF ERROR

The Transportation Planning Rule (TPR) requires that local governments adopt transportation system plans to comprehensively address transportation issues.[3] OAR 660-012-0060(1) (1998) provides:

> "Amendments to * * * 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 performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. * * *"

[3]The TPR was amended on October 30, 1998, and amended again in September 1999. In this opinion, we refer to and rely on the provisions of the 1998 rule, as that version of the TPR was applicable at the time the application that is the subject of this appeal was filed. ORS 227.178(3).

OAR 660-012-0060(2) provides that an amendment to a comprehensive plan or land use regulation "significantly affects" a transportation facility if it:

> "(a) Changes the functional classification of an existing or planned transportation facility;
>
> "(b) Changes standards implementing a functional classification system;
>
> "(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
>
> *"(d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP."* (Emphasis added.)

A. "Significantly Affects"

Petitioners contend that the city misconstrued OAR 660-012-0060(1) and (2) by determining that the proposed use will not "significantly affect" transportation facilities, here seven intersections on Highway 101 and Fort Stevens Highway. The city concluded that, as mitigated, the proposed use would not reduce the performance standards for the identified transportation facilities below the minimum acceptable level. According to petitioners, the traffic impact study the city relied upon assumes improvements to Highway 101 that have not been planned for. Further, petitioners argue that the city cannot rely on improvements to mitigate the impact of development in determining whether that development "significantly affects" a transportation facility.[4] Petitioners also contend the anticipated deterioration of transportation facilities will be exacerbated by the proposed rezoning and, therefore, the city's conclusion that the proposed development will not significantly affect a transportation facility is not supported by substantial evidence.

[4]Petitioners refer specifically to the traffic impact study's reliance upon widening Highway 101 to five lanes throughout the study area during the 20-year planning period, and installing signals and turning lanes at certain intersections, to determine that the proposed development will not significantly affect transportation facilities.

Intervenor responds that the city correctly determined that the proposed development does not "significantly affect" a transportation facility, because the city's decision recognizes that, assuming certain transportation improvements are implemented, the development will not violate the performance standards of the impacted transportation facilities over the relevant planning period. Consistent with that determination, intervenor argues, the city adopted conditions of approval to require that certain improvements needed to address the immediate impact of the proposed development be completed prior to or at the time the development is established.[5] For intersections that currently violate the identified performance standards, intervenor argues the city correctly concluded that the rezoning will not cause those facilities to violate the relevant performance standards.[6]

Read together, OAR 660-012-0060(1) and (2) require a local government to establish whether an amendment will "significantly affect" a transportation facility, as defined by the rule, without considering potential improvements affecting that facility. If land uses allowed by an amendment would reduce the performance standards of a facility below the minimum acceptable level, then the amendment significantly affects that facility, and the local government can adopt the amendment only if it ensures that those land uses are consistent with the facility's function, capacity and performance standards, by exercising one or more of the options described at OAR 660-012-0060(1). Those options describe what are essentially mitigatory acts designed to reduce impacts on transportation facilities, or improve those facilities, or both. In other words, OAR 660-012-0060(1) and (2) contemplate that mitigation necessary to ensure that land uses allowed by amendments remain consistent with

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[5]Intervenor also argues that, to the extent the findings rely upon 20-year projections to determine whether the proposed development will continue to conform to the relevant performance standards over a 20-year period, those findings are surplusage, because the TPR requires only that *current* performance standards be maintained. However, petitioners do not challenge and intervenor did not file a cross-petition assigning error to the city's use of a 20-year projection analysis. Nor does the city take the position that findings regarding the 20-year planning period were not necessary to comply with the TPR. Therefore, we do not address this argument.

[6]We address the relevant performance standards later in this opinion.

a facility's function, capacity and performance standards are considered once the local government has determined that the amendment significantly affects that facility. It is inconsistent with that scheme to consider such mitigation as a means of avoiding the conclusion that an amendment significantly affects a transportation facility.

Consequently, we agree with petitioners that the city erred in concluding that, as mitigated by various potential improvements, the retail uses allowed by the amendment will not "significantly affect" the relevant transportation facilities. Remand is necessary for the city to consider whether those uses, considered without potential mitigation, significantly affect any transportation facility. If so, then the city must consider which mitigations under OAR 660-012-0060(1) are necessary to ensure that the allowed uses are consistent with the function, capacity and performance standards of affected facilities.[7]

Petitioners' first subassignment of error is sustained.

B. Conditions of Approval

Petitioners argue that the conditions of approval that the city adopted to address transportation impacts are unenforceable and so vague that they are insufficient to ensure that those impacts are ameliorated.

The city adopted the following conditions of approval to address transportation issues:

> "Condition 4: The following improvements may be needed at the intersection of Dolphin Avenue and Highway 101:
>
> "A five-phase traffic signal;
>
> "A right-turn lane on Highway 101 serving south-bound traffic turning onto Dolphin Avenue; and
>
> "A protected left-turn lane on Dolphin Avenue adjacent to the site.

[7]We express no opinion regarding whether the city can consider types of mitigations other than those listed in the version of OAR 660-012-0060(1) in effect when intervenor's application was filed.

"These improvements shall be made either prior to commercial development on the subject property; or at the same time as the subject property is developed; or after commercial development of the subject property subject to traffic monitoring and a development agreement between the City, ODOT and the developer. Alternatively, a revised traffic impact study may be prepared and submitted to the City demonstrating that some or all of the improvements listed above are not warranted. The City may coordinate its evaluation of a revised traffic impact study with ODOT. The City may waive or modify this condition if a revised traffic impact study demonstrates that some or all of the improvements mentioned above are not warranted.

"Condition 5: A traffic signal must be installed at the intersection of Fort Stevens Highway and Highway 101. This improvement shall be made either prior to commercial development on the subject property; or at the same time as the subject property is developed; or after commercial development of the subject property subject to traffic monitoring and a development agreement between the City, ODOT and the developer. Alternatively, a revised traffic impact study may be prepared and submitted to the City demonstrating that a traffic signal at this intersection is not warranted. The City may coordinate its evaluation of a revised traffic impact study with ODOT. The City may waive or modify this condition if a revised traffic impact study demonstrates that this improvement is not warranted.

"Condition 6: If the improvements listed in Conditions 4 and 5 are not to be made until after development and subject to a traffic monitoring agreement between the City, ODOT and the Developer, the City shall require a bond, letter of credit or other security device or instrument deemed adequate by the City, prior to commercial development, to assure that such improvements will be made unless subsequently waived or modified.

"Condition 7: The City shall not waive or modify the improvements listed in Conditions 4 and 5 without first holding a public hearing and following procedures of public notice and opportunity to be heard of the same dignity as this quasi-judicial proceeding for a zone change. Such proceeding shall be pursuant to an application to modify or eliminate a condition of this Order and shall be subject to the usual appeal rights to LUBA and to the Oregon Court of Appeals and Oregon Supreme Court." Record 44-46.

We understand these conditions of approval to require that transportation system improvements be made prior to or concurrently with the proposed development and that, if the applicant wishes to modify those conditions of approval, the city will review the request through a land use decision making process. With that understanding, we believe that the

conditions of approval are sufficient to establish what the applicants must do to comply with them.

The second subassignment of error is denied.

C. Applicable Performance Standards

The parties agree that the relevant OAR 660-012-0060(2)(d) performance standards for Highway 101 are found in the Oregon Highway Plan (OHP), and that the OHP expresses performance standards in terms of volume to capacity ratio (V/C ratio). Petitioners argue the city's decision misconstrues OAR 660-012-0060(2)(d), by adopting findings that relate to levels of service (LOS) rather than V/C ratios. Petitioners further argue that the findings are inadequate because they fail to address OHP Action 1F.6, which petitioners contend is a relevant performance standard for the purposes of OAR 660-012-0060(1) and (2).

Policy 1F of the OHP establishes Highway Mobility Standards for state roads. The Highway Mobility Standards are intended to "provide an adequate operating life for highway improvements." OHP 72. The Highway Mobility Standards are expressed in V/C ratios, which are defined as "the peak hour traffic volume (vehicles/hour) on a highway section divided by the maximum volume that the highway section can handle."[8] *Id.* The closer the V/C ratio is to 1.0, the more congested traffic is. The V/C ratio performance standard for this segment of Highway 101 is .75, *i.e.*, the performance standard is met if the V/C ratio is below .75.

In the OHP, action items implement the broader policies. Action 1F.6 provides:

> "For purposes of evaluating amendments to * * * acknowledged comprehensive plans and land use regulations subject to OAR 660-012-0060, in situations where the [V/C ratio] for a highway segment, intersection or interchange is above the standards [established in the OHP] and transportation

[8]V/C ratios replace the LOS performance standard contained in the 1991 OHP. According to the 1999 OHP, LOS was defined by letter grades A-F, with each grade representing a range of V/C ratios. The OHP explains that V/C ratios are similar in concept, but represents LOS by specific V/C ratios to improve clarity and ease of implementation. OHP 72.

> improvements are not planned within the planning horizon to bring performance to standard, the performance standard is to avoid further degradation. If an amendment * * * to [an] acknowledged comprehensive plan or land use regulation increases the [V/C ratio] further, it will significantly affect the facility." OHP 79.

Intervenor concedes that the OHP provides the relevant performance standards for Highway 101. However, intervenor argues that the LOS analysis contained in the city's decision is equivalent to a range of V/C ratios and, therefore, if the V/C ratio for Highway 101 after commercial uses are established remains in the same LOS range as prior to the zone change, the performance standard is not violated. Intervenor also argues that OHP Action 1F.6 does not apply to this zone change, because it improperly changes the definition of "significantly affects" found in OAR 660-012-0060(2). Intervenor contends that the TPR defines the universe of possible ways a particular development may "significantly affect" a transportation facility and, therefore, the OHP cannot establish a different, more restrictive definition. Intervenor contends that LCDC, not the Oregon Transportation Commission, is the entity that may adopt rules to amend the TPR. According to intervenor, Action 1F.6 is the Oregon Transportation Commission's improper attempt to overrule the Court of Appeals' holding in *Dept. of Transportation v. Coos County*, 158 Or App 568, 572, 976 P2d 68 (1999).

In *Dept. of Transportation v. Coos County*, the Court of Appeals held that, where a proposed development would further degrade an already failing intersection, the development would not "significantly affect" a transportation facility as that term was used in OAR 660-012-0060(2)(d). *Id.* At the time that case was decided, the rule provided that a proposed amendment to a comprehensive plan and land use regulation would "significantly affect" a transportation facility if it "reduce[d] the level of service of the facility below the minimum acceptable level identified in the TSP."

In this case, both the definition of "significantly affects" in OAR 660-012-0060(2)(d) and the corresponding performance standards in the OHP have changed since the decision at

issue in *Dept. of Transportation v. Coos County*. We agree with petitioners that the OHP requires that the city adopt findings addressing the relevant performance standards contained in the OHP, and that the city erred by adopting findings using LOS standards rather than the V/C ratio. We also agree with petitioners that the established V/C ratio, and not a range of V/C ratios that correspond to a LOS determination, is the relevant performance standard. And, while the question is a close one, we agree with petitioners that one of the applicable "performance standards" the city must apply is a requirement that a proposed amendment not "further degrade" an already failing transportation facility. While intervenor is correct that the Oregon Transportation Commission cannot amend the TPR, intervenor concedes that the Oregon Transportation Commission can amend the relevant performance standards for Highway 101. Nothing in the TPR or in *Dept. of Transportation v. Coos County*, to the extent that case is relevant to the current rule, restricts the Oregon Transportation Commission's ability to define the relevant performance standard as one of no further degradation. Therefore, the city erred by not addressing this standard in its decision.

The third and fourth subassignments of error are sustained.

The first assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

Statewide Land Use Planning Goal 10 (Housing) is to "provide for the housing needs of citizens of the state." The goal requires that "buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density." Goal 10 is implemented by ORS 197.303 through ORS 197.307 and OAR chapter 660, division 8.[9]

[9]OAR chapter 660, division 8 applies to acknowledged plans only during periodic review.

Petitioners argue that the city's decision misconstrues the applicable law and fails to make adequate findings supported by substantial evidence in determining that the decision complies with Goal 10. Specifically, petitioners argue that the city could not adopt a zoning amendment to reduce the available inventory of intermediate density residential land by 41 acres without adopting findings that demonstrate either (1) that the city's acknowledged Goal 10 inventory shows that there is a surplus of at least 41 acres of intermediate residential housing over the relevant planning period, or (2) that the evidence the city relied upon to determine that the rezoning will not affect the city's housing inventory is the equivalent of a Goal 10 inventory.

The city's findings rely upon the *Land Use Inventory and Analysis for the City of Warrenton*, (Columbia River Estuary Study Taskforce, May 1998) (CREST report), and a draft wetlands conservation plan, to conclude that the city has an excess of residential lands and, therefore, the loss of up to 41 acres of R-10 zoned land will not affect the city's housing inventory.[10] Petitioners argue that the city's findings that the CREST report provided a

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[10]The relevant city findings state:

> "Testimony was presented at the Planning Commission hearing to the effect that the City doesn't really know how much commercial or residential land is available for development. A report prepared in 1998 by CREST * * * provides Warrenton with reliable and recent buildable lands data. The data from the CREST report confirm data and conclusions in the *Warrenton Wetland Conservation Plan* indicating that the City lacks sufficient buildable commercial land to meet projected demand. These documents are in the record, and the City finds them both credible and unrefuted." Record 18.
>
> "The subject property was in a residential zone prior to this amendment, and thus available to meet the City's housing needs. A report prepared by CREST (*Land Use Inventory and Analysis for the City of Warrenton*, 4 May 1998) indicates that the City has a surplus of buildable residentially-zoned land relative to its projected housing needs. The subject property covers about 40 acres, of which 20 to 25 acres are potentially buildable for residential use. The inventory information and analysis in the CREST report indicate that the subject property could be removed from the City's inventory of buildable residential lands without harming the City's ability to meet its housing needs under Statewide Planning Goal 10. The City finds the information in the CREST report credible and unrefuted.
>
> "The City has not received any credible testimony suggesting that the amendment violates Statewide Planning Goal 10, or that the City's Goal 10 element would require amendment to accommodate the zone change.

satisfactory basis for determining that there is an excess of residential lands within the city are inadequate because they do not explain how the CREST report complies with the Goal 10 rule requirements that a buildable lands inventory reflect the present and future needs of residents over the relevant planning period.[11]

We agree with petitioners that the city's findings are inadequate to establish that the city's acknowledged Goal 10 inventory is unaffected by the loss of 41 acres of R-10 zoned property. The findings do not discuss the city's acknowledged Goal 10 element or explain why the relied-upon reports are consistent with that element and the city's acknowledged housing inventory. Absent some explanation of the relationship between the reports and the city's acknowledged Goal 10 inventory, the fact that the reports show a surplus of land is not sufficient to show that the city's housing inventory continues to comply with Goal 10 after the loss of 41 acres of residentially-zoned land.

Because we sustain petitioners' findings challenge, we do not address petitioners' substantial evidence arguments. *McNulty v. City of Lake Oswego*, 14 Or LUBA 366, 373 (1986).

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

Petitioners argue that the city's decision fails to comply with certain applicable comprehensive plan policies.

> "For these reasons, the City finds the amendment consistent with Statewide Planning Goal 10 and with the City's Goal 10 element." Record 32.

[11]OAR 660-008-0010 requires that, as part of their comprehensive plans, local governments must adopt housing needs projections that determine the mix of housing types and densities that will be (1) commensurate with the financial capabilities of present and future residents of all income levels during the planning period; (2) consistent with any adopted regional housing standards, state statutes and LCDC administrative rules; and (3) consistent with Goal 14. In addition, the local buildable lands inventory must document the amount of buildable land in each residential plan designation.

A. WCP Policy 3.320(2)

Petitioners argue that the city's decision improperly concluded that the proposed amendment is consistent with WCP Policy 3.320(2). Petitioners also contend that the city's finding of compliance with Policy 3.320(2) is not supported by substantial evidence in the record. Policy 3.320(2) provides:

> "Precautions will be taken to minimize traffic congestion associated with nearby commercial uses, particularly on U.S. Highway 101 * * *, East Harbor Drive, Neptune Drive and Marlin Avenue. Groupings of businesses, common access points and other appropriate techniques will be encouraged. Sufficient parking on either jointly-used lots or individual business sites will be required for new commercial developments."

The city adopted the following finding regarding Policy 3.320(2):

> "Although the site has frontage on Highway 101, motor vehicle access will be via Dolphin Avenue. Entering traffic from Dolphin Avenue is controlled by a stop sign. Traffic entering Dolphin Avenue from Highway 101 uses a left turn refuge and a right turn deceleration lane.
>
> "[ODOT] has indicated that the Dolphin Avenue/Highway 101 intersection may be improved in the near future, though these plans are still preliminary. The applicant, Warrenton Land & Investment, LLC, has stated that they will cooperate with and support efforts to provide needed improvements on Dolphin [Avenue] and at its intersection with Highway 101. The applicant has also indicated that they will not object to any legal mechanism for financing these improvements, including a Local Improvement District (LID) or System Development Charges (SDCs), that fairly allocate improvement costs among benefiting parties.
>
> "The site has approximately 1,200 linear feet of frontage on the east side of Dolphin Avenue, and about 1,000 linear feet on the west side. Access to the site can be from two or more shared driveways. This access arrangement can be implemented administratively by way of site plan review when a development permit is sought.
>
> "On-site parking will need to meet or exceed applicable standards in the City's zoning ordinance. Parking standards can be enforced administratively by way of site plan review when a development permit is sought.
>
> "A traffic impact study completed by Lancaster Engineering on behalf of the applicant suggests several ways that traffic congestion could be minimized. The City finds that these are appropriate in light of the policy's requirement that precautions be taken to minimize traffic congestion.

> "The City finds that this amendment is consistent with policy 3.320(2), or can be made consistent with the policy through the enforcement of development standards in the City's code, and through enforcement of certain conditions based on recommendations in the report by Lancaster Engineering." Record 6.

Petitioners fault the city for not being explicit as to whether the amendment currently is consistent with the policy, or what development standards or conditions of approval the city relies upon to determine that the amendment could be made consistent. Petitioners argue that to the extent the city's finding relies on the recommendations contained in the Lancaster Engineering report, that reliance is flawed, first because it is dependent on a factually-unsupported assumption of development on only 20.7 acres, and second because it relies on improvements to intersections that are neither planned for nor imposed as conditions of approval.

Intervenor responds that the city's finding implicitly interprets this plan policy to require only that precautions be taken to "minimize traffic congestion" and do not require that any *specific* measures be undertaken to do so. Intervenor further argues that the findings establish that the conditions of approval relating to traffic improvements contained in this decision and requirements imposed during site design review will minimize traffic congestion and will ensure compliance with parking requirements and with that portion of the policy that "encourage[s]" "groupings of businesses" and "common access points." Intervenor argues that this interpretation must be affirmed unless it is "clearly wrong." ORS 197.829(1); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 217, 843 P2d 992 (1992).

However, we cannot discern a reviewable interpretation of Policy 3.320(2), either express or implied, that is entitled to deference under ORS 197.829(1). *Alliance for Responsible Land Use v. Deschutes Cty*., 149 Or App 259, 266-67, 942 P2d 836 (1997), *rev dismissed* 327 Or 555 (1998). This Board is only required to defer to a local government's interpretation where the interpretation is adequate for review. *Weeks v. City of Tillamook*, 117 Or App 449, 452-53 n 3, 844 P2d 914 (1992) (an interpretation is adequate for review if

it "suffices to identify and explain in writing the decisionmaker's understanding of the meaning of the local legislation").

Here, we agree with petitioners that the city's findings fail to explain which conditions of approval the city relies upon to determine that the proposed amendment either presently complies with or will be able to comply with the requirements of Policy 3.320(2). We also agree with petitioners that, to the extent the city relies upon the Lancaster Engineering report to establish the measures "necessary to minimize traffic congestion," that reliance is not supported by substantial evidence, for the same reason expressed in resolving the second assignment of error.

B. WCP Policies 3.320(3) and 3.320(4)

WCP Policies 3.320(3) and 3.320(4) provide:

> "(3) A new regional shopping center or large regional department store may be allowed as a conditional use in the General Commercial district near U.S. Highway 101 or East Harbor Drive, if the development will enhance market choices available to consumers and improve the local economy through retail diversity and attraction of new businesses. Adequate attention must also be given to the size, shape and location of the site; the organization of the shopping center facilities; access points, on-site traffic circulation; parking and loading space; and landscaping and sign installation.
>
> "(4) If the City determines that more land is needed in the General Commercial district, consideration will be given to including an area west of S.E. Marlin Avenue, north of U.S. Highway 101, east of the right-of-way for S.E. King Avenue and South of the right-of-way for S.E. Seventh Street."

With regard to Policy 3.320(3), the city found that the policy referred to another site, and was not applicable to the subject property. With regard to Policy 3.320(4), the city found that the subject property was not located in the described area. The city also specifically interpreted this policy as merely identifying possible areas for commercial expansion, and not precluding the identification and approval of commercial development on other sites

fronting Highway 101. The city further determined that because the policy referred to another, specific site, the policy did not apply to the subject application.

Petitioners contend that the city's interpretation is "patently inconsistent with the purpose of [Policy 3.320(4)]." Petition for Review 26. According to petitioners, the only logical reading of the policy is that, in the event the city wishes to expand its commercial base, it must look first to those areas specifically identified in the plan before choosing an alternative location. Petitioners argue that the city's interpretation obviates Policy 3.320(4) by failing to consider the area identified in the policy before approving the challenged amendment.

We must affirm the city's decision unless it is inconsistent with the express language or the underlying purpose or policy of the city's comprehensive plan or land use regulation. ORS 197.829(1)(a), (b) and (c). While petitioners' argument presents a plausible reading of the language and purpose of the city's regulation, we cannot say that the interpretation contained in the city's finding is plainly inconsistent with the text of the policy or the purpose underlying it.

C. WZO 14.080(2)(b)

WZO 14.080(2) provides, in relevant part:

> "Before an amendment to the Zoning Ordinance map is approved, findings will be made that the following standards have been satisfied:
>
> "* * * * *
>
> "(b) The use permitted by the amendment is compatible with the land use development pattern in the vicinity of the request."

Petitioners argue that the findings that the city adopted to satisfy this requirement are inadequate and not supported by substantial evidence in the record, because they determine that the proposed amendment is compatible or could be made compatible by means of site design or through compliance with relevant federal, state and local standards. In doing so, petitioners argue that it is not clear whether the city concludes that (1) the zone change, as

proposed, is compatible with the adjacent land use pattern; (2) the zone change is compatible as a result of the imposition of conditions of approval; or (3) the zone change will be compatible, provided that certain other requirements are imposed during other proceedings to mitigate the identified impacts.

Petitioners contend that generic references to future design requirements or to standards relating to traffic, noise, stormwater, sewer system, open space and wetland resources are inadequate to establish which particular issues will be addressed prior to or during development. Petitioners argue that by adopting generic findings that the challenged amendment can be made compatible by virtue of compliance with undefined criteria, the city failed to establish that such methods are feasible. In addition, petitioners argue that, without adopting conditions of approval which require compliance with particular siting standards, the city cannot rely on those standards to determine that WZO 14.080(2)(b) is satisfied.

Intervenor contends that the findings first determine that the proposed amendment *is* compatible with the existing land use pattern, and only as an alternative determine that compliance with conditions imposed during site design review or standards imposed by other agencies will ensure compliance. Intervenor argues that petitioners do not challenge the city's findings that the development, as proposed, is compatible with the existing land use pattern.

Adequate findings must identify the facts relied upon, and explain why those facts support a conclusion that applicable criteria are met. *Harcourt v. Marion County*, 33 Or LUBA 400, 407 (1997). A local government may approve a development proposal based on either (1) a finding that an applicable approval criterion is satisfied, or (2) a finding that it is feasible to satisfy an applicable approval standard and the imposition of conditions necessary to ensure that the standard will be satisfied. *DLCD v. Tillamook County*, 33 Or LUBA 163, 171 (1997); *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992). Here, the city established that the existing land use pattern consists of low-density residential uses; public

or semi-public uses such as a high school, a utility maintenance facility and a transportation maintenance facility; a business park; and open space and wetlands.

We read this assignment of error to challenge both the findings of present compatibility and the findings that the proposed rezoning can be made to be compatible. We also understand petitioners to challenge the evidentiary support for all alternatives. We agree with petitioners that it is unclear from the findings whether the city determined that compatibility with the existing land use pattern is based on compliance with particular standards or whether, as proposed, the rezoning is compatible. We therefore analyze each finding to determine (1) whether the finding is adequate to address the policy; (2) whether there is substantial evidence in the record to support a finding that, absent some conditions of approval, the compatibility standard is met; and (3) if conditions of approval are necessary to establish compatibility, whether the city adopted such conditions.

1. Compatibility with Residential Uses

The city findings regarding compatibility with residential uses state:

> "Commercial development allowed in the [C-1] zone is compatible or can be made compatible with nearby residential uses through design features, and through existing local, state or federal regulations controlling wastewater discharges, noise, waste disposal, and related impacts. The residential development pattern in this area is low density relative to other residential areas in Warrenton. Existing residences are subject to significant levels of noise associated with motor vehicle traffic on Highway 101. The additional noise likely to be generated by commercial development is not significant when compared to existing noise levels on Highway 101. The additional traffic load on Dolphin [Avenue] resulting from commercial development of this site may have impacts on existing residents who are accustomed to using this road. The road's capacity can be increased to meet the additional demand by specific improvements. * * * Warrenton Land and Investment LLC will cooperate with and support efforts to provide needed improvements on Dolphin Avenue and at its intersection with Highway 101. * * *
>
> "Design features can be used to ensure compatibility with nearby residential development. Examples of these include the following:
>
> > "Vegetated berms and buffer strips between the development and adjoining noise-sensitive uses;

> "Storm-drainage facilities that direct and manage site runoff to avoid impacts on adjoining property;
>
> "Erosion-control measures (temporary for the construction period and permanent) to assure that adjoining property is not affected by soil erosion;
>
> "Adequate on-site parking to assure that on-street parking is not necessary;
>
> "Appropriately-configured driveways to avoid traffic hazards and inconveniences on Dolphin Ave[nue];
>
> "Necessary improvements to the Highway 101/Dolphin Ave[nue] intersection to avoid safety hazards at this intersection;
>
> "Maintenance of a riparian buffer along the Skipanon River to protect aquatic resources; [and]
>
> "Assur[ances] that exterior lighting and lighted signs do not shine into adjacent residences.
>
> "These and other design features can be incorporated into the site plan at the time a development permit is sought." Record 9-10.

The city's findings are adequate to establish what aspects of the commercial development could be incompatible with residential uses, and to identify the mechanisms the city plans to use to address that incompatibility. The findings adequately conclude that the proposed development can be compatible, provided certain siting standards are applied during design review. However, to the extent the city relies upon the conditions of approval to establish the required transportation improvements, for the reasons explained in the second assignment of error, that reliance is not supported by substantial evidence.

2. Compatibility with Business, Public and Semi-Public Uses

The city identified a Pacific Power maintenance facility, an ODOT maintenance facility, Clatsop County North Coast Business Park, and Warrenton High School as nearby business, public and semi-public uses that could be affected by commercial development on the subject property. The city determined that the proposed commercial designation is or could be compatible with those uses because

> "business and institutional uses * * * can benefit from convenient motor vehicle and truck access; and none of these types of uses require high volumes of pedestrian traffic.
>
> "Although a portion of the site is relatively near Warrenton High School, the Skipanon River separates them. Wetland vegetation along the Skipanon River buffers the high school from potential commercial development on the subject property." Record 9.

The city's finding does not adequately explain how the proposed development will be compatible with other public and semi-public uses unrelated to institutional uses. It could be that the city determined that there are no adverse impacts on public and semi-public uses, or that conditions of approval will address potential conflicts. It is equally likely that the city did not consider what is necessary to insure compatibility with noninstitutional public and semi-public uses. The finding does not show what facts the city relied upon to support its conclusion that the proposed development will be compatible with public and semi-public uses.

Because the finding is inadequate, we do not reach petitioners' substantial evidence argument.

3. Compatibility with Open Space Areas and Wetlands

With regard to the wetlands and open space areas, the city found that

> "Commercial development allowed in the [C-1] zone is or can be made compatible with open space and wetland resources because the amenity value associated with open space and wetland resources; because of the value of wetlands for stormwater management; and because the mix of open space and developed areas is one of the factors making Warrenton a desirable place to live, work and conduct business. Potentially incompatible impacts of commercial development on open space and wetland resources are minimized or eliminated by way of existing local, state or federal regulations controlling wastewater discharges, noise, waste disposal, and related impacts." Record 9.

We believe the finding is adequate to explain why the proposed commercial development can be made compatible with open space and wetlands through compliance with applicable regulations addressing those impacts, including design review. That finding is supported by substantial evidence in the record. The city adopted conditions of approval

requiring a wetlands delineation, compliance with state and federal wetland fill requirements in the event that wetlands are to be filled, and compliance with erosion control regulations administered by the Oregon Department of Environmental Quality. The city's zoning ordinance also imposes setback requirements from the A5 wetland areas. These conditions and additional standards are sufficient to establish that the proposed commercial uses can be made compatible with adjacent open space and wetland uses.

D. WZO 14.080(2)(d)

WZO 14.080(2)(d) requires that the city must find that

> "Public facilities, services and streets are available to accommodate the uses to be provided by the proposed zone designation."

The city's finding addressing this criterion states:

> "The site is served by two existing public streets: Highway 101 and Dolphin Avenue. Highway 101 at this site is access-controlled. The highway right-of-way is between 225 and 240 feet wide. The site has approximately 2,640 feet of highway frontage. The applicants do not anticipate direct access onto Highway [101] at this time. Dolphin Avenue is a paved two-lane city street in a 60-foot right-of-way. The site has about 1,200 feet of frontage on the east side of Dolphin Avenue, and about 1,000 feet of frontage on the west side.
>
> "[A] city sanitary sewer line was recently installed in the Dolphin Avenue right-of-way past the site. A portion of this new line is pressurized, but the subject property has access to the non-pressurized part of the line. The City received conflicting testimony concerning access to the sanitary sewer; however we find the testimony of the applicant, confirmed by City staff, to be more credible.
>
> "* * * * *
>
> "The City finds that [the] existing public infrastructure serving this site is sufficient to accommodate uses allowed in the General Commercial zone." Record 11-12.

Petitioners argue that the findings are inadequate to demonstrate that streets and sanitary sewer facilities can accommodate the proposed commercial uses. Petitioners contend that implicit in the word "accommodate" is a requirement that public infrastructure have the capacity to serve the proposed uses. Petitioners cite to evidence in the record that the current

street capacity is inadequate to handle the expected amount of traffic to be generated by the proposed commercial uses. Petitioners argue that the findings only point to the existence of streets, and do not respond to issues raised as to whether the streets in their current configuration are structurally "available to accommodate" commercial uses. Petitioners also repeat their argument that the city's reliance on the fourth and fifth conditions of approval is misplaced, because those conditions are based on an erroneous assumption that only 20.7 acres of the property will be developed for commercial uses. In addition, petitioners argue that the city's findings fail to demonstrate that the city's sanitary sewer system has the necessary capacity to serve commercial development on the subject property.

Intervenor responds that the comments petitioners made below regarding street capacity are related to state roads, and not city streets. Intervenor contends that the issues regarding capacity on state roads are addressed in the findings related to Goal 12 and the TPR and that WZO 14.080(2)(d) does not require the city to evaluate the capacity of city streets. Intervenor argues that the city correctly determined that impacts on state roads are addressed by the imposition of conditions of approval addressing improvements at intersections with state roads. With regard to sanitary sewer capacity, intervenor argues that while an issue of the *existence* of a sanitary sewer to serve the property was raised below, no issue was raised with regard to sewer *capacity*. Intervenor contends that petitioners waived the sewer capacity issue by not raising it below. ORS 197.763(1).

We disagree with intervenor that the city's findings of compliance with WZO 14.080(2)(d) need not consider whether city streets are available to accommodate the proposed commercial uses. WZO 1.030(173) defines "street" as:

> "a. Public: A public right of way for vehicles and pedestrian traffic.
>
> "b. Private: A private right of way meeting City Construction, fire and emergency protection standards, and used for vehicular and pedestrian traffic."

Neither the zoning ordinance's definition, WZO 14.080(2)(d), nor the city's findings differentiate between city streets and state roads; therefore, intervenor's argument that relies on such a distinction is misplaced. While the city may believe that "available" means only that the relevant public infrastructure exists regardless of capacity, that interpretation, if implicit in the city's findings, is not adequately developed for our review. *Alliance for Responsible Land Use,* 149 Or App at 266-67. We agree with petitioners that the city's findings are inadequate to address issues raised regarding street capacity and compliance with WZO 14.080(2)(d).

With respect to sewer capacity, petitioners have not cited to evidence in the record to demonstrate that the issue of sewer capacity was raised below. Therefore, it is waived.

The fourth assignment of error is sustained, in part.

FIFTH ASSIGNMENT OF ERROR

Petitioners argue that the city failed to establish that the proposed amendment complies with Statewide Planning Goal 9 (Economic Development) and the OAR chapter 660, division 9 rule implementing the goal. According to petitioners, the goal applies because this amendment adds to the city's inventory of commercial lands, and the rule applies because (1) it implements the goal and (2) the city is currently undergoing periodic review. Petitioners argue that, during the pendency of periodic review, *all* amendments that may affect Goal 9 must comply with the Goal 9 rule.

Goal 9 requires the city to "provide adequate opportunities * * * for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens." The city adopted findings concluding that the additional commercial land will comply with Goal 9 and the city's comprehensive plan policies implementing it, but did not adopt findings addressing the Goal 9 rule. Intervenor argues, and we agree, that the Goal 9 rule is applicable only in the context of a periodic review work task; therefore, it is not necessary for the city to

adopt findings regarding the rule in the context of an individual quasi-judicial application. *Melton v. City of Cottage Grove*, 28 Or LUBA 1, 12 (1994).

We have trouble understanding how an *addition* of commercial land could violate Goal 9. Be that as it may, we agree with intervenor that the city's findings are sufficient to demonstrate that the decision is consistent with Goal 9.

The fifth assignment of error is denied.

The city's decision is remanded.