

NATURE OF THE DECISION

Petitioner appeals city approval of a conditional use masterplan for Powell Butte Park.

FACTS

Powell Butte (the butte) rises 400 feet above the terrain of east Portland, with steep forested side slopes and an open meadow at the summit. In 1925, the city bought 556 acres on the butte, and later expanded its ownership to 600 acres, to preserve a site for future water reservoirs. The Powell Valley Road Water District constructed two small above-ground reservoirs on the butte in the 1960s and 1970s. In 1980, the city constructed a 50 million gallon underground reservoir near the summit, which receives and stores water from the city's Bull Run reservoir through three large underground pipelines. A 66-inch pipeline from the Butte supplies water to portions of Portland and Washington County. In 1983, the city built concrete stormwater drainage channels to alleviate landslide hazards on the steep northern slope. Those channels direct stormwater to the city's storm sewer system. Other drainage swales on the butte direct stormwater south to Johnson Creek.

In 1987, the city established the butte as a nature park, managed by the city Bureau of Parks and Recreation (Parks Bureau). The Parks Bureau prepared a facilities plan that contemplates development and use of the butte for park and recreational use as well as continued use by the Water Bureau. The park formally opened in 1990, and currently includes two gravel parking lots, a small building housing restrooms and park information, a manufactured dwelling that serves as a caretaker's dwelling, and a number of official and unofficial trails for pedestrians, equestrians and bicyclists. Most of the park is zoned Open Space (OS), with Conservation and Protection environmental overlays.

In 2002, the Parks Bureau filed for approval of a conditional use master plan that contemplates various water and park-related developments, in two phases. Phase I projects

1 would commence construction within 10 years of approval, and include the following water-
2 related projects: (1) seismic upgrades to the existing underground reservoir; (2) construction
3 of two new underground reservoirs; (3) construction of three new pipelines, one to feed the
4 new reservoirs from Bull Run, one to link the new reservoirs to an existing emergency
5 overflow pipe that discharges into Johnson Creek, and a third to supply water from the new
6 reservoirs to the regional water supply system to the south; (4) construction of a 30 by 100-
7 foot pump station on the east side of the butte, to be used to pump water when gravity feed
8 from Bull Run is not available due to low water conditions; and (5) construction of a 175-
9 foot radio tower, to relay information to other Water Bureau facilities. The park-related
10 projects contemplated in Phase I include: (1) trail improvements; (2) replacement of the
11 existing manufactured dwelling with a wood-frame single family caretaker dwelling; (3)
12 construction of a 10,000 square foot maintenance building and 80,000 square foot storage
13 area, later reduced to a 5,000 square foot building and 40,000 square foot storage area; and
14 (4) paving the existing gravel parking lots. The contemplated Phase I projects require
15 environmental review and an adjustment to allow removal of trees greater than six inches in
16 diameter.

17 The proposed conditional use master plan also discusses several Phase II projects,
18 that may be constructed after 10 years, following additional city approvals. These projects
19 include two additional underground reservoirs and pipelines, a water treatment plant, and a
20 second paved parking lot, if warranted by future studies.

21 In addition to the foregoing, the Parks Bureau also sought approval for certain
22 improvements intended to mitigate a previous environmental violation. The proposed
23 improvements include removal of non-native vegetation from certain areas of the park and
24 replanting with native species.

25 A city hearings officer conducted a hearing July 12, 2002, and approved with
26 conditions the conditional use master plan, environmental reviews and the proposed

1 adjustment, but denied the proposed radio tower. Two neighborhood groups appealed the
2 hearings officer’s decision to the city council. After conducting a hearing on the appeal, the
3 city council affirmed the hearings officer’s decision. This appeal followed.

4 **FIRST, FOURTH, FIFTH, AND EIGHTH THROUGH FOURTEENTH**
5 **ASSIGNMENTS OF ERROR**

6 The proposed Phase I projects require environmental review and approval under
7 Portland City Code (PCC) 33.430.210 to .280. PCC 33.430.240 sets out the “Supplemental
8 Application Requirements” for environmental review.¹ PCC 33.430.240(B) requires the

¹ PCC 33.430.240 provides, in relevant part:

“In addition to the application requirements of Section 33.730.060, the following information is required for an environmental review application:

“A. **Supplemental site plan requirements.** * * * Site plans must show existing conditions, conditions existing prior to a violation, proposed development, and construction management. A mitigation site plan is required whenever the proposed development will result in unavoidable significant detrimental impact on the identified resources and functional values. * * *

“* * * * *

“3. [Site plans must include a] mitigation or remediation site plan including: * * * Dams, weirs, or other in-water structures; Distribution outline, species composition, and percent cover of ground covers to be seeded or planted; Distribution outline, species composition, size, and spacing of shrubs to be planted; Location, species, and size of each tree to be planted; Stormwater management features, including retention, infiltration, detention, discharges, and outfalls; Water bodies to be created, including depth; Water sources to be used, including volumes; and Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings.

“B. **Supplemental narrative.** The following is required:

“1. Impact evaluation. An impact evaluation is required to determine compliance with the approval criteria and to evaluate development alternatives for a particular site. The alternatives must be evaluated on the basis of their impact on the resources and functional values of the site. In the case of a violation, the impact evaluation is used to determine the nature and scope of the significant detrimental impacts. To the extent that the site resources and functional values are part of a larger natural system such as a watershed, the evaluation must also consider the cumulative impacts on that system. The impact evaluation is based on the resources and functional values identified as significant in the reports listed in section 33.430.020;

1 applicant to conduct and submit an “impact evaluation” that in relevant part serves to identify
2 unavoidable “significant detrimental impacts.” PCC 33.430.240(B)(1)(a)(1); *see* n 1. If the
3 impact evaluation shows that the proposed development will result in unavoidable significant
4 detrimental impacts on the site’s natural resources, the applicant must submit a “mitigation
5 site plan,” containing specified information. PCC 33.430.240(B)(3).

6 To gain environmental review approval, the applicant must demonstrate compliance
7 with the standards at PCC 33.430.250. For utilities such as the proposed water-related Phase
8 I projects, PCC 33.430.250(A)(1) requires a finding that the proposed development locations,
9 designs and construction methods “have the least significant detrimental impact to identified
10 resources” compared to other practicable alternatives, and that there will be “no significant

“a. An impact evaluation includes:

- “(1) Identification, by characteristics and quantity, of the resources and their functional values found on the site;
- “(2) Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the identified resources and functional values of the site; and
- “(3) Determination of the alternative that best meets the applicable approval criteria and identify significant detrimental impacts that are unavoidable.

“* * * * *

“* * * * *

“3. Mitigation or remediation plan. The purpose of a mitigation or remediation plan is to compensate for unavoidable significant detrimental impacts that result from the chosen development alternative or violation as identified in the impact evaluation. A mitigation or remediation plan includes: Resources and functional values to be restored, created, or enhanced on the mitigation or remediation site; Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies; Construction timetables; Operations and maintenance practices; Monitoring and evaluation procedures; Remedial actions for unsuccessful mitigation; and Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings.”

1 detrimental impact on resources and functional values in areas designated to be left
2 undisturbed.² Similar findings are required for the other proposed Phase I projects.
3 PCC 33.430.250(C), (E), and (F).

4 In the present case, the Parks Bureau submitted an impact evaluation that concluded
5 that the proposed Phase I development would not result in “unavoidable significant
6 detrimental impacts” on the natural resources of the park. The hearings officer agreed, and
7 did not require the Bureau to submit a formal “mitigation site plan” pursuant to
8 PCC 33.430.240(B)(3).³ That conclusion was based on the nature of each project and, in
9 some cases, proposed mitigation.⁴

² PCC 33.430.250(A)(1) provides, in relevant part:

“General criteria for public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, and Planned Developments[:]

- “a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;
- “b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;
- “c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for[.]”

³ The city’s findings state, in relevant part:

“* * * The code requires a mitigation plan only for developments that have significant detrimental impacts. ([PCC] 33.430.240(B)(3) states that ‘the purpose of a mitigation or remediation plan is to compensate for unavoidable significant detrimental impacts that result from the chosen development alternative or violation as identified in the impact violation.’) Later in this decision, we conclude that the proposed phase 1 developments do not result in any significant detrimental impacts; therefore, no mitigation plan is required of this master plan.” Record 136.

⁴ For example, with respect to the proposed underground reservoirs, the city found:

“The largely undeveloped 600-acre nature park provides open meadows and tree-covered slopes that serve important stormwater management and water quality protection functions to the Johnson Creek Basin. The butte consists of two major types of habitat: an open grassland (approximately 400 acres) and a mid-serial state forest (approximately 200 acres). Existing impervious surfaces are extremely limited. They include only the access road, the park center

1 In these assignments of error, petitioner challenges the city’s finding that the
2 proposed development, in particular the buried reservoirs, pipelines and pump house, will not
3 result in unavoidable significant detrimental impacts on the butte’s natural functions.⁵
4 Petitioner first notes that PCC 33.910.030 defines the term “significant detrimental impact”
5 as

6 “[a]n impact that affects the natural environment to the point where existing
7 ecological systems are disrupted or destroyed. It is an impact that results in
8 the loss of vegetation, land, water, food, cover, or nesting sites. These
9 elements are considered vital or important for the continued use of the area by
10 wildlife, fish, and plants, or the enjoyment of the area’s scenic qualities.”

11 Petitioner contends that the proposed development will result in loss of vegetation,
12 water, food, cover and nesting sites on the butte, and will thus cause a significant detrimental
13 impact to existing ecological systems. Specifically, petitioner argues that the impact
14 evaluation fails to consider the impact of the proposed 12 acres of new impervious surfaces
15 on groundwater recharge rates and stormwater runoff, and the consequences of that impact
16 on Johnson Creek. According to petitioner, the proposed new impervious surfaces will
17 increase runoff into the creek during the wet months, while diminished groundwater recharge
18 will reduce flows to the creek during dry months. In addition, petitioner argues that the city

building, the caretaker’s residence, and the existing Water Bureau reservoir. The large
pervious area provides extensive [re]charge opportunities. This minimizes uncontrolled
surface flows, which can be erosive and carry sediment and other contaminants to Johnson
Creek. * * *

“**Impact:** The water quality and pollution removal functions of the butte will not experience
significant detrimental impacts due to master plan developments. The proposed master plan
developments will increase impervious surfaces of the butte by approximately 12 acres, or
2% of the 600-acre park area. The impacts of that development are minor and will be
mitigated. Most of the development area (approximately 8 acres) consists of buried
reservoirs and pipelines; the surfaces above those facilities will be restored to natural
contours and revegetated with native grasses to retain the sediment-trapping and erosion
control functions. A storm water management plan has been prepared to collect and detain
stormwater runoff from all of the facilities, to allow contaminants to be filtered out of the
water before it is discharged to Johnson Creek and to manage the temperature of the
discharge.” Record 139-140.

⁵ These assignments of error also contain several inchoate arguments regarding other alleged impacts, such
as scenic views, that we reject without discussion.

1 failed to consider the impacts of the proposed emergency outfall into the creek. Petitioner
2 also challenges the finding that the proposed pump building, which will require removal of
3 50 trees, will not cause significant detrimental impacts.⁶

4 Finally, a persistent theme throughout these assignments of error is that the city erred
5 in approving environmental review without consideration of the mitigation site plan required
6 by PCC 33.430.240(B)(3). According to petitioner, the city partially relies on proposed
7 mitigation to conclude that proposed development does not cause significant detrimental
8 impacts. Given the acknowledged need for mitigation, petitioner argues, the city should have
9 required the applicant to submit a mitigation site plan.

10 The city responds first that PCC 33.430.240 lists required submittal information, but
11 does not provide any approval criteria. According to the city, the only approval criteria
12 applicable to environmental review are at PCC 33.430.250. Therefore, the city argues, the
13 absence of required information is at most a procedural error, which would provide a basis
14 for remand only if petitioner's substantial rights were thereby prejudiced.
15 ORS 197.835(9)(a)(B). The city argues that petitioner's argument under PCC 33.430.240
16 must fail because petitioner does not attempt to demonstrate that the alleged error prejudiced
17 her substantial rights.

⁶ The city's findings state with respect to the proposed pump station, in relevant part:

“* * * Construction of the pump station will require the removal of approximately 50 mature trees (primarily alder and maple, but also including some fir and cherry trees) over 6 [inches] in diameter.

“None of the development will result in significant detrimental impacts on the resources and functional values of the park. Disturbed areas will be re-contoured to match the existing topography to the extent feasible, and re-vegetated with native plants, restoring and improving the habitat. * * * The pump station disturbance area may not have the original contours restored, depending on whether the pump station structure is partially buried. However, that site will be graded to manage surface water so that it drains to the detention pond to be constructed nearby. Although the development of the pump station will result in removal of approximately 50 trees, the disturbance area will remain surrounded by trees, and native plantings will be made at this site and elsewhere in the park to mitigate for the necessary tree removal.” Record 145-146.

1 In any case, the city argues, the record supports the city’s finding that the proposed
2 Phase I developments will not result in unavoidable significant detrimental impacts on the
3 park’s natural resources. With respect to the proposed 12 acres of impervious surfaces, the
4 city cites to evidence that eight acres consist of the underground reservoirs, which will be
5 capped with soil and embedded in gravel in a manner that does not significantly change the
6 underground hydrology. The city argues that there is no evidence supporting petitioner’s
7 speculation that the reservoirs or other proposed development will affect groundwater
8 recharge or Johnson Creek.

9 With respect to the proposed emergency outfall, the city explains that the outfall
10 already exists, and that the proposal simply links the new reservoirs to that existing system.
11 The city also explains that the purpose of the emergency outfall is to channel water from the
12 reservoirs to the Johnson Creek drainage, in the event of a natural disaster such as an
13 earthquake, rather than have the water spill down the slopes into the residential areas below.
14 With respect to the pump station, the city argues that the impact of the necessary tree
15 removal was considered at length and mitigated in several ways, including required
16 replanting of trees elsewhere on the butte.

17 The city also argues that petitioner misunderstands the PCC 33.430.240(B)(3)
18 requirement for a “mitigation site plan.” According to the city, a “mitigation site plan” is
19 required only when the city finds that proposed development will result in unavoidable
20 significant detrimental impacts. The challenged decision concludes that proposed
21 development will not result in unavoidable significant detrimental impacts. The city argues
22 that its findings on this point are supported by substantial evidence and consistent with the
23 code definition of “significant detrimental impact,” which requires a level of disturbance that
24 disrupts or destroys the ecological system. The city argues that under its code the city may
25 require “mitigation” of detrimental impacts, even if those impacts are not “significant.”

1 According to the city, such mitigation has nothing to do with the PCC 33.430.240(B)(3)
2 requirement for a “mitigation site plan.”

3 The city is correct that PCC 33.430.240 appears to set forth the information and
4 analyses required for environmental review approval, while PCC 33.430.250 provides the
5 approval criteria. That does not necessarily mean that the absence of required information or
6 analysis is not a basis for reversal or remand, or that such absence is necessarily viewed as a
7 procedural error. *See Save Oregon’s Cape Kiwanda v. Tillamook Cty.*, 177 Or App 347, 362,
8 34 P3d 745 (2001) (absence of required geologic hazard report would deprive the county of a
9 required element of decision-making). For example, without the impact evaluation required
10 by PCC 33.430.240(B), or its equivalent, the city would lack the information necessary to
11 determine compliance with the criteria at PCC 33.430.250.⁷ That point aside, we agree with
12 the city that petitioner has failed to demonstrate under these assignments of error either that
13 the impact evaluation in the present case was inadequate, or that a mitigation site plan is
14 required under PCC 33.430.240.

15 The code definition of “significant detrimental impact” does not establish a precise
16 threshold of environmental damage. However, it is reasonably clear that in order to be
17 “significant,” the detrimental impact must involve more than a loss of some “vegetation,
18 land, water, food, cover, or nesting sites.” The proposed development must affect the natural
19 environment “to the point where existing ecological systems are disrupted or destroyed.”
20 The city cites to evidence that the proposed reservoirs and other impervious surfaces will not
21 significantly affect the underground hydrology or otherwise result in a significant detrimental
22 impact. Petitioner cites no evidence to the contrary. Similarly, with respect to the
23 emergency outfall, petitioner cites to no evidence that the proposed link to the existing
24 outfall is likely to result in a significant detrimental impact, as defined in the city’s code.

⁷ Indeed, as discussed below, the city cited the impact evaluation at PCC 33.430.240(B) as an approval criterion. Record 94.

1 The proposed removal of 50 trees to site the pump station, and the absence of a
2 mitigation site report, present more difficult questions. As we understand PCC 33.430.240, it
3 requires the city, in its impact evaluation, to consider development alternatives that reduce
4 significant impacts and identify any significant impacts that are unavoidable. If any
5 unavoidable significant impacts are identified, a mitigation site plan must be prepared that
6 identifies how those impacts will be compensated. In the present case, the city’s impact
7 evaluation considered various design and locational alternatives to the proposed pump
8 station, and chose the alternative that the city perceived to have the least impacts, while still
9 meeting the Water Bureau’s needs. Record 143. The chosen alternative requires removal of
10 50 trees over six inches in diameter. The city concluded that the proposed pump station
11 would not result in a significant detrimental impact. However, that conclusion seems to be
12 based in part on proposed compensatory mitigation, specifically replanting trees on the site
13 and elsewhere on the butte. *See* n 6.

14 We understand petitioner to argue that the city cannot avoid a finding of significant
15 detrimental impact, and hence the requirement for a mitigation site plan, by relying on
16 proposed mitigation. An argument can be made that the city’s approach is inconsistent with
17 the scheme set forth PCC 33.430.240 and .250. *See DLCD v. City of Warrenton*, 37 Or
18 LUBA 933, 941-42 (2000) (a local government cannot avoid a finding that a proposal
19 “significantly affects” a transportation facility under OAR 660-012-0060, and hence avoid
20 the particular types of mitigation required under that rule, by considering unplanned
21 transportation improvements intended to mitigate traffic from the proposed development).
22 However, petitioner does not develop such an argument, and we do not see that the city’s
23 approach is necessarily inconsistent with PCC 33.430.240 and .250. Unlike the
24 circumstances in *DLCD v. Warrenton*, the city’s approach does not effectively avoid certain
25 prescribed types of mitigation. Instead, the city avoids requiring a “mitigation site plan” that

1 at best would redundantly describe the mitigation that the applicant proposed elsewhere.
2 Petitioner has not demonstrated that the city’s approach in this case is reversible error.⁸

3 The first, fourth, fifth, and eighth through fourteenth assignments of error are denied.

4 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

5 As noted above, PCC 33.430.240(B)(1) requires an impact evaluation that among
6 other things identifies the resources and functional values on the site, evaluates alternative
7 locations, designs, etc., and determines the alternative that best meets the approval criteria.
8 *See* n 1. In addition, PCC 33.430.240(B)(1) requires that “[t]o the extent that the site
9 resources and functional values are part of a larger natural system such as a watershed, the
10 evaluation must also consider the cumulative impacts on that system.”

11 Under these assignments of error, petitioner argues that the county erred in failing to
12 require or conduct any evaluation of the cumulative impacts of the proposed development on
13 the larger natural system of which the butte is a part. Specifically, petitioner argues that
14 “[c]umulative impacts to the watershed, through ground water recharge, storm water
15 retention, loss of storm water ponds, increase in impervious surfaces above and below
16 ground, have not been addressed through a required impact statement * * *.” Petition for
17 Review 13.⁹

⁸ In addition, although the parties do not discuss it at any length, we note that PCC 33.800.050(C), part of a chapter providing general information on land use reviews, provides:

“When approval criteria refer to the request meeting a specific threshold, such as adequacy of services or no significant detrimental environmental impacts, the review body will consider any proposed improvements, mitigation measures, or limitations proposed as part of the request when reviewing whether the request meets the threshold. All proposed improvements, mitigation measures, and limitations must be submitted for consideration prior to a final decision by a review body.”

PCC 33.800.050(C) supports the city’s position that it may consider proposed mitigation in determining whether the proposed development would result in significant detrimental impacts.

⁹ Petitioner also repeats her argument that the city erred in not requiring a mitigation site plan. We reject that argument for the same reasons expressed above.

1 The city repeats its response that PCC 33.430.240(B) contains only application
2 requirements and does not contain approval criteria. Therefore, the city argues, petitioner's
3 argument is essentially an allegation that the application was incomplete, *i.e.*, the city
4 committed procedural error. If so, the city argues, these assignments of error must be denied
5 because petitioner has failed to demonstrate how the alleged procedural error violated her
6 substantive rights. In addition, the city argues that the allegation is incorrect, and in fact the
7 city found that the application was complete.

8 As noted above, the city listed PCC 33.430.240(B), specifically the impact
9 evaluation, as an approval criterion. Record 94. The city also adopted a number of findings
10 addressing PCC 33.430.240(B) that evaluate the impacts of development and alternatives to
11 development. Record 137-144. We therefore disagree with the city that these assignments
12 of error must be viewed as allegations of procedural error, or that the gravamen of these
13 assignments of error is that the application was incomplete.

14 On the merits, the city does not respond directly to petitioner's argument that
15 PCC 33.430.240(B)(1) requires a cumulative impact analysis and that the required analysis
16 was not done with respect to certain identified impacts of several Phase I proposals. The city
17 does not direct us to any findings or evidence that address *cumulative* impacts, and we can
18 find none. As far as we can tell, the city's findings address the impacts of Phase I proposals
19 separately, without analysis of cumulative impacts. There may be some reason why
20 PCC 33.430.240(B)(1) should not be interpreted to require a cumulative impacts analysis in
21 this case, or some explanation for why the existing findings satisfy that requirement.
22 Nonetheless, absent a city response to petitioner's arguments, we have no basis to reject
23 those arguments. Remand is necessary for the city to address petitioner's arguments and
24 adopt any necessary findings under or interpretations of PCC 33.430.240(B).¹⁰

¹⁰ Given our uncertainty over the meaning and scope of PCC 33.430.240(B), this is not an appropriate case to invoke the Board's authority to interpret local legislation in the first instance. ORS 197.829(2).

1 The second and third assignments of error are sustained.

2 **SIXTH AND FIFTEENTH ASSIGNMENTS OF ERROR**

3 In these assignments of error, petitioner argues that the city erred in evaluating
4 conceptual plans for specific projects proposed in the conditional use master plan, and
5 deferring consideration of specific plans to future reviews, while at the same time finding
6 that such future reviews will not revisit environmental review criteria addressed in the
7 challenged decision.

8 Petitioner’s point is not clear to us. The criteria for conditional use master plan
9 approval at PCC 33.820.050 provide in relevant part that “if the plan does not contain
10 adequate details for [proposed] uses to be allowed without [future] conditional use review,”
11 the plan “must state the procedures for review of possible future uses[.]”
12 PCC 33.820.050(K). The city’s code appears to contemplate conceptual approval of projects
13 in a conditional use master plan, as long as the plan provides for future reviews and specifies
14 the appropriate procedures. As the city’s findings explain:

15 “Because of the large scale of the plan and relatively long term for
16 implementation * * *, it is not possible to accurately determine full design
17 details and impacts at this time. As the various Plan elements are financed
18 and designed, alterations from the Plan (including expansion of Plan
19 boundaries) may be necessary. To accommodate both minor and major
20 unanticipated events, additional reviews are proposed for virtually all future
21 development. The Plan identifies review levels for a variety of uses and
22 activities, but does not include any criteria for granting approval of the
23 proposed uses and activities. Review approval criteria must be included to
24 ensure that the appropriate Code approval criteria continue to be met with the
25 specific design as they were with the Master Plan and more conceptual
26 proposal. For development and uses approved under the Master Plan this
27 requires enough additional information to show that the size, location, and
28 method of development of the use will meet the purpose of the Open Space
29 zone, protect significant scenic views, result in no loss of resource values, and
30 not overburden City services (especially traffic). Those reviews, however,
31 should not revisit issues that have been resolved through the Master Plan
32 itself. For example, a development that is no more than 110% of the size and
33 is at the location approved in the master plan, the appropriateness of the basic
34 use, its intensity and general location, and compliance with environmental

1 review criteria have already been demonstrated and cannot be revisited.”
2 Record 128-129.

3 Petitioner objects to the conclusion that, in any future reviews, matters decided by the
4 conditional use master plan will not be revisited. However, petitioner does not explain why
5 matters already decided must be revisited in later reviews. It is difficult to see the point of
6 obtaining conditional use master plan approval, if that decision resolves nothing. Petitioner’s
7 point may be that, in conducting future reviews, it may be unclear exactly what the city
8 resolved in its earlier decision, and if so it is possible some projects will be approved without
9 a determination that the project complies with applicable criteria. However, that argument
10 can and should be made in the course of the future reviews required by the challenged
11 decision. Petitioner’s speculations are insufficient to demonstrate error in the decision before
12 us.

13 The sixth and fifteenth assignments of error are denied.

14 **SEVENTH ASSIGNMENT OF ERROR**

15 Petitioner contends that the city erred in granting conditional use master plan
16 approval without considering all possible future uses, specifically, the water treatment
17 facility contemplated as Phase II project. According to petitioner, the city failed to submit a
18 conceptual plan for the proposed water treatment plant, or explain how the plant complies
19 with applicable approval criteria.

20 The city responds, and we agree, that the Water Bureau did not seek approval of the
21 contemplated water treatment facility, and nothing in the criteria applicable to a conditional
22 use master plan require the city to consider and approve that facility. As petitioner notes,
23 PCC 33.820.060 provides that a conditional use master plan “must include proposed uses and
24 possible future uses that might be proposed for at least 3 years and up to 10 years.” The city
25 did not seek approval of Phase II projects, including the contemplated water treatment
26 facility, because the possibility of that project was too speculative and was not proposed
27 within ten years.

1 The seventh assignment of error is denied.

2 **SIXTEENTH ASSIGNMENT OF ERROR**

3 Petitioner argues that the city failed to address whether “[c]ity-designated
4 environmental resources, such as views, landmarks, or habitat areas, are protected or
5 enhanced,” as required by PCC 33.815.100(A)(3), which governs approval of conditional
6 uses in an OS zone.

7 The city points to findings addressing PCC 33.815.100(A)(3), at Record 105. We
8 agree with the city that petitioner has not explained why those findings are inadequate.

9 The sixteenth assignment of error is denied.

10 The city’s decision is remanded.