

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 FRIENDS OF EUGENE and COALITION
5 FOR HEALTH OPTIONS IN
6 CENTRAL EUGENE-SPRINGFIELD,
7 *Petitioners,*

8
9 vs.

10
11 CITY OF EUGENE,
12 *Respondent,*

13
14 and

15
16 PEACEHEALTH,
17 *Intervenor-Respondent.*

18
19 LUBA No. 2003-188

20
21 FINAL OPINION
22 AND ORDER

23
24 Appeal from City of Eugene.

25
26 Jannett Wilson, Eugene, filed the petition for review and argued on behalf of petitioners.

27
28 Emily N. Jerome, Eugene, filed a response brief and argued on behalf of respondent. With
29 her on the brief was Harrang Long Gary Rudnick, PC.

30
31 Steven P. Hultberg, Portland, filed a response brief and argued on behalf of intervenor-
32 respondent. With him on the brief was Steven L. Pfeiffer and Perkins Coie, LLP.

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

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37 AFFIRMED

04/20/2004

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

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NATURE OF THE DECISION

Petitioners appeal a city decision amending its zoning code.

FACTS

The Eugene City Council adopted an ordinance concerning hospitals that makes it easier to site hospitals in certain residential and industrial zones.

STANDING

The city and intervenor, a proponent of the city’s zoning amendment (respondents), challenge the standing of petitioner Friends of Eugene. They do not challenge the standing of petitioner Coalition for Health Options in Central Eugene-Springfield (CHOICES). According to respondents, the record does not establish that Friends of Eugene appeared at the local level or that any of the participants identified themselves as a member of Friends of Eugene. At oral argument, petitioners’ attorney conceded that there was nothing in the record supporting Friends of Eugene’s standing and that the portion of an audiotape of a local hearing that might establish Friends of Eugene’s standing is inaudible.¹ The burden is on a petitioner to establish standing, and petitioner Friends of Eugene has not met that burden. Petitioner Friends of Eugene is dismissed from this appeal.

ASSIGNMENT OF ERROR

We understand petitioner to challenge the city’s interpretation of its comprehensive plan that concludes that the amended land use provisions are consistent with the comprehensive plan. The city’s comprehensive plan includes the Eugene/Springfield Metro Area General Plan (Metro Plan) and various other plans that are not at issue in this appeal.²

¹ Petitioners’ attorney did not argue that had the audiotape been audible that it would have established petitioner Friends of Eugene’s standing, merely that she did not know one way or the other.

² The Metro Plan is a regional comprehensive plan adopted by the Cities of Eugene and Springfield and Lane County.

1 **A. Failure to Adopt Findings to Respond to Relevant Issues**

2 On page 5 of the petition for review, petitioner initially argues the city’s decision must be
3 remanded because the city did not adopt findings that respond to relevant issues that were raised
4 during the local proceedings. A fundamental problem with this argument is that petitioner makes no
5 attempt to identify the relevant issues it believes warrant a specific response from the city in its
6 findings. That failure leaves petitioner’s initial findings argument insufficiently developed for review.
7 *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982). That problem aside,
8 as the city correctly notes, we have held on many occasions that there is no specific, generally
9 applicable legal requirement that cities adopt findings to support legislative land use decisions.
10 *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435, 451 (2002);
11 *Redland/Viola/Fischer’s Mill CPO v. Clackamas County*, 27 Or LUBA 560, 563-64 (1994);
12 *Von Lubken v. Hood River County*, 22 Or LUBA 307, 313-14 (1991). The Court of Appeals
13 has recently noted that LUBA might be required to remand a legislative land use decision in the
14 absence of supporting findings where findings are necessary to determine if relevant approval criteria
15 are met. *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956
16 (2002). However, petitioner makes no attempt to argue that such is the case here.

17 This subassignment of error is denied.

18 **B. Inconsistency with Metro Plan Guidelines**

19 Eugene Code (EC) 9.8065(2) requires that amendments to the code must be consistent the
20 Metro Plan.³ The city found that its amendments to the EC are consistent with the Metro Plan. In

³ EC 9.8065 provides:

“If the city council elects to act, it may, by ordinance, adopt an amendment to this land use code that:

“* * * * *

“(2) Is consistent with applicable provisions of the *Metro Plan* and applicable adopted refinement plans.”

1 making this decision, the city was required to interpret the Metro Plan. Petitioner apparently argues
2 that the city’s interpretation of the Metro Plan misconstrued the applicable law. We review a local
3 governing body’s interpretation of its comprehensive plan under the standard set out at ORS
4 197.829(1) and the Court of Appeals’ decision in *Church v. Grant County*, 187 Or App 518,
5 524, 69 P3d 759 (2003).⁴ Thus, we must affirm the city’s interpretation unless we determine that
6 the interpretation is inconsistent with the express language of the Metro Plan.⁵ Even though the
7 Metro Plan is jointly adopted by more than one local government, the city is nonetheless entitled to
8 the above-described deference. *Jaqua v. City of Springfield*, ___ Or LUBA ___ (LUBA Nos.
9 2003-072, 2003-073, 2003-077, 2003-078, January 5, 2004) (*appeal pending*) slip op 13.⁶

10 1. Residential Zones

11 Prior to the challenged decision, hospitals were allowed in the city’s R-3 and R-4 (high
12 density) residential zones, subject to a conditional use permit (CUP). The challenged decision

⁴ ORS 197.829(1) provides:

“[LUBA] 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:

- “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- “(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.”

⁵ Although at oral argument petitioner’s counsel indicated that it was challenging the interpretation under ORS 197.829(1)(a) *through* (d), the petition for review does not discuss any “purpose for the comprehensive plan” or “underlying policy” that the interpretation is allegedly inconsistent with or provide any state statute, land use goal or rule that is implemented by local regulations. We understand petitioner to argue that the interpretation violates the Metro Plan, which roughly corresponds with an argument under ORS 197.829(1)(a).

⁶ After oral argument, petitioner moved the board to delay ruling on this appeal because some of the same Metro Plan policies that petitioner cites and relies on are at issue on appeal to the Court of Appeals in *Jaqua*. We may delay our ruling if “the ends of justice served by granting the continuance outweigh the best interests of the public and the parties” in issuing a timely decision. ORS 197.840(1)(d). We do not see that this would be the case, and we deny petitioner’s motion.

1 adopts compatibility standards for hospitals in all residential zones and, so long as a proposed
2 hospital complies with all applicable development standards, allows hospitals without a CUP in R-3
3 and R-4 zones. The challenged decision also allows hospitals on major collector or arterial streets
4 within the city’s other residential zones, subject to a CUP. Record 44-45.

5 The Metro Plan includes a land use diagram that displays various land use designations
6 within the Metro area. The pages that precede the land use diagram set out basic guidelines for
7 each land use designation that appears on the diagram.⁷ The Metro Plan text introducing these
8 guidelines states that they are “intended to *provide minimum guidelines* to local jurisdictions in
9 determining appropriate new and expanded sites and locations for such uses in urban areas.”

10 (Emphasis added.) Metro Plan II-E-2. The residential guideline provides in pertinent part:

11 “This category is expressed in gross acre density ranges. Using gross acres,
12 approximately 32 percent of the area is available for auxiliary uses, such as streets,
13 elementary and junior high schools, neighborhood parks, other public facilities,
14 neighborhood commercial services, and churches not actually shown on the
15 diagram. Such auxiliary uses shall be allowed within residential designations if
16 compatible with refinement plans, zoning ordinances, and other local controls for
17 allowed uses in residential neighborhoods.”

18 The city interpreted the Metro Plan residential guidelines to allow hospitals as “auxiliary
19 uses” in residential zones, as that term is used in the guidelines. The city’s decision provides the
20 following interpretation:

21 “The area’s acknowledged inventory of residential lands * * * includes an
22 assumption that 32 percent of residential lands will be used for nonresidential
23 auxiliary uses. In discussing this 32 percent, the inventory document states at page
24 47:

25 “There are numerous nonresidential uses that locate on residential land such
26 as churches, day care centers, neighborhood commercial, etc. In addition,
27 public facilities such as streets, schools, and parks are necessary to serve
28 residential land.”

⁷ Petitioner incorrectly refers to the guidelines as “definitions” throughout their brief. The Metro Plan’s definitions are located in its glossary. Metro Plan, Chapter V.

1 “This 32 percent auxiliary area of residential land is also discussed in the [Metro
2 Plan].

3 “The types of uses (hospitals and related clinics and labs) that this ordinance would
4 permit in residentially designated areas are the type of auxiliary uses that were
5 assumed for the 32 percent. As such, no analysis is needed to determine whether
6 the ordinance would reduce the supply of residential lands. It falls within the 32
7 percent auxiliary area that has been set aside for such uses.” Record 24.

8 In essence, petitioner argues that a hospital cannot be an “auxiliary” use as described by the
9 Metro Plan. We faced a related issue in *Jaqua*, where we considered whether the City of
10 Springfield’s authorization of a future zone change to allow a hospital on residentially zoned land
11 was consistent with the Metro Plan’s guidelines for residential designations, the same guidelines at
12 issue in this appeal. In *Jaqua*, we stated:

13 “If the relevant interpretive question were whether the above-described Metro Plan
14 provisions, viewed alone, can be interpreted to permit locating a regional hospital
15 and supporting uses on 66 acres of a 180-acre MDR-designated area as an
16 ‘auxiliary’ use to the residential uses that the MDR designation envisions, we would
17 have little trouble agreeing with petitioners that the Metro Plan would not permit
18 such a hospital development on MDR-designated land.

19 “* * * * *

20 “However, the relevant question is not whether the above-described Metro Plan
21 provisions, viewed alone, can be construed to permit locating the proposed hospital
22 on 66 acres of MDR-designated land. The above-quoted Metro Plan Residential
23 designation language expressly provides ‘auxiliary uses shall be allowed within
24 residential designations if compatible with *refinement plans, zoning ordinances,*
25 *and other local controls for allowed uses in residential neighborhoods.*’ * * *
26 That language delegates to the individual cities and county authority to further
27 elaborate on the kinds of auxiliary uses that may be allowed on lands that the Metro
28 Plan designates for residential use.” Slip op at 13-14. (Emphasis in original,
29 footnote omitted.)

30 We held in *Jaqua* that the City of Springfield’s Medical Services (MS) zone was the kind
31 of elaboration that the Metro Plan delegated to individual local governments to allow additional uses
32 in residential zones. *Id.* at 19. We also noted that the City of Eugene exercised its authority to
33 define allowable auxiliary uses by allowing hospitals as conditional uses in R-3 and R-4 zones. *Id.*
34 at 14 n 11. Petitioner argues that under *Jaqua*, by allowing hospitals in other residential zones and

1 changing the approval criteria in R-3 and R-4 zones to no longer require CUP approval, the city
2 runs afoul of the Metro Plan residential guideline. Petitioner misconstrues our decision in *Jaqua*.

3 While we did say that *standing alone* the residential guidelines likely would not
4 independently authorize a hospital in a residential zone, we also said that the Metro Plan specifically
5 anticipates and allows for constituent Metro local governments to further define the range of
6 allowable auxiliary uses in their residential zones. In fact, we noted that the City of Eugene had
7 already authorized hospitals as auxiliary uses. Not only does our decision in *Jaqua* not support
8 petitioner’s argument that hospitals cannot be auxiliary uses in Eugene’s residential zones, it
9 specifically recognizes that in at least two cities hospitals *are* auxiliary uses under the Metro Plan.

10 The city’s interpretation is also consistent with other Metro Plan Policies. Metro Plan
11 Economic Element, Policy 22 requires that local governments “[r]eview local ordinances and revise
12 them to promote greater flexibility for promoting appropriate commercial development in residential
13 neighborhoods.”⁸ The city’s interpretation that hospitals can be auxiliary uses under the Metro Plan
14 is not contrary to the express language of the Metro Plan.

15 Petitioner suggests that by making the siting of hospitals easier in the city’s residential zones
16 and expanding the types of residential zones in which hospitals are allowed, the city misconstrues the
17 Metro Plan. As we have explained, however, hospitals are already allowed in the acknowledged
18 EC as “auxiliary uses” in two residential zones. Amending the manner in which such “auxiliary uses”
19 are allowed does not change the fact that they are already recognized “auxiliary uses.” All of the
20 arguments made by petitioner may be excellent reasons for why the city should not amend how such

⁸ The city’s findings under this policy state:

“The amendments include changes that make the establishment of a hospital development an outright permitted use in R-3 and R-4 zones. The amendments also include changes making it possible for a hospital development to locate in R-1, R-1.5 and R-2 zones with an approved conditional use permit. These amendments are consistent with Policy 22 because they allow hospital developments (that can include ancillary medical labs and offices) to locate in residential zones, thereby promoting greater flexibility for appropriate commercial development in residential neighborhoods.” Record 28.

1 “auxiliary uses” may be permitted, but they do not support petitioner’s ultimate conclusion that
2 hospitals cannot be “auxiliary uses” in residential zones.

3 Finally, petitioner argues that the city’s interpretation is both “quantitatively and qualitatively”
4 wrong. Quantitatively, petitioner argues that the Metro Plan restricts auxiliary uses to 32 percent of
5 residential zones and that the new amendments do not restrict hospitals to 32 percent of a site or 32
6 percent of the city’s residential zones.

7 We reject petitioner’s argument that the Metro Plan restricts auxiliary uses to 32 percent of
8 a *site*. The Metro Plan specifically mentions auxiliary uses such as roads, parks, schools, and
9 churches. But the Metro Plan does not require that such uses occupy no more than 32 percent of
10 an individual site. Secondly, petitioner is incorrect that the code amendments authorize hospitals to
11 occupy more than 32 percent of available residential lands. As the city explained:

12 “It is reasonable for the City to assume that no more than one new hospital site will
13 locate under the provisions of this ordinance. The ordinance defines ‘hospital’ and
14 ‘hospital development site’ in a way that will include only those hospitals that have a
15 ‘certificate of need’ from the Oregon Health Division. To obtain a certificate of
16 need, a hospital must show, among numerous other things, that the area population
17 needs the services to be provided. The requirement for a certificate of need greatly
18 limits the size of any hospital that receives a certificate of need. Considering the
19 needs of this area, it is reasonable for the city to assume that no more than one
20 hospital will locate in Eugene in the next 20 years.

21 “It is also reasonable to assume that a hospital development located under the
22 provisions of this ordinance would occupy a site of no more than 40 acres. The
23 Sacred Heart Medical Center on Hilyard Street in Eugene occupies approximately
24 12 acres, a four block area including uses associated with the hospital. The tax lot
25 that was recently proposed for the location of a hospital and related uses for
26 PeaceHealth in Eugene’s Crescent area was approximately 38 acres. The
27 McKenzie-Willamette Hospital site in Springfield is approximately 15 acres,
28 including related uses. The proposed hospital site at Riverbend in Springfield,
29 planned for a hospital and numerous hospital-related uses, encompasses
30 approximately 40 acres. Based on these facts, the City of Eugene can reasonabl[y]
31 assume that any hospital site that is located under the provisions of this ordinance
32 would be no larger than 40 acres.” Record 22-23.

1 The city’s findings make it clear that hospitals, as auxiliary uses, are unlikely to significantly diminish
2 the 32 percent of available residential lands that are devoted to auxiliary uses.⁹

3 Qualitatively, petitioner argues that the language of the Metro Plan residential guidelines
4 restricts auxiliary uses to only those auxiliary uses that are listed in the residential guidelines. Those
5 guidelines were quoted earlier in this decision and are set out below:

6 “This category is expressed in gross acre density ranges. Using gross acres,
7 approximately 32 percent of the area is available for auxiliary uses, such as streets,
8 elementary and junior high schools, neighborhood parks, other public facilities,
9 neighborhood commercial services, and churches not actually shown on the
10 diagram. *Such auxiliary uses shall be allowed within residential designations if
11 compatible with refinement plans, zoning ordinances, and other local controls
12 for allowed uses in residential neighborhoods.*” (Emphasis added).

13 In our decision in *Jaqua*, we concluded that the final sentence of the above-quoted residential
14 guidelines effectively delegates authority to the member jurisdictions of the Metro Plan area to
15 elaborate on the kinds of auxiliary uses that are permissible in areas that are designated residential
16 by the Metro Plan:

17 “However, the relevant question is not whether the above-described Metro Plan
18 provisions, viewed alone, can be construed to permit locating the proposed hospital
19 on 66 acres of MDR-designated land. The above-quoted Metro Plan Residential
20 designation language expressly provides ‘auxiliary uses shall be allowed within
21 residential designations if compatible with refinement plans, zoning ordinances, and
22 other local controls for allowed uses in residential neighborhoods.’ * * * That
23 language delegates to the individual cities and county authority to further elaborate
24 on the kinds of auxiliary uses that may be allowed on lands that the Metro Plan
25 designates for residential use.” Slip op at 14. (Emphasis in original deleted,
26 underscoring added.)

27 The emphasized sentence in the residential guideline quoted above is repeated in the
28 underlined part of our decision in *Jaqua*, but the first word “[s]uch” is omitted in our decision in

⁹ The petition for review states that “the city’s findings on Goal 9 and Goal 10 do not and cannot demonstrate consistency with the Metro Plan.” Petition for Review 5. We do not understand petitioner to assert that the decision violates Goals 9 or 10. If that was petitioner’s intent, that argument is not sufficiently developed for our review. *Deschutes Development*, 5 Or LUBA at 220.

1 *Jaqua*. Petitioner assigns great significance to this omission. According to petitioner, that omission
2 reflects a belief on LUBA’s part that the city has an unqualified right to authorize auxiliary uses in
3 areas the Metro Plan designates residential. If we understand petitioner correctly, the omitted word
4 “such” is important because it makes it clear that the city only has authority in its refinement plans,
5 zoning ordinances and other local controls to allow the same auxiliary uses (*i.e.*, “streets, elementary
6 and junior high schools, neighborhood parks, other public facilities, neighborhood commercial
7 services, and churches”) that are mentioned in the residential guidelines. Petitioner misreads the
8 residential guideline and misunderstands our decision in *Jaqua*.

9 Our intended interpretation of the residential guideline in *Jaqua* did not depend on, and was
10 not affected by, our omission of the word “such.” Petitioner is clearly correct that the “auxiliary
11 uses” mentioned in the third sentence of the Metro Plan residential guidelines, are the same “auxiliary
12 uses” mentioned in the second sentence of the guidelines. However, in neither sentence does the
13 Metro Plan use the term “auxiliary uses” to connote a discrete or fixed list of uses. In *Jaqua*, we
14 construed the third sentence of the residential guidelines to add authority for the city to elaborate on
15 precisely what auxiliary uses are allowed in areas designated residential. That conclusion is based in
16 part on the reference in the third sentence to “refinement plans, zoning ordinances, and other land
17 use regulations,” and partially on the fact that the examples of auxiliary uses provided in the second
18 sentence of the residential guideline are clearly not exclusive. While the uses the city allows as
19 auxiliary uses in residential areas must bear some reasonable relationship to the listed examples, the
20 city is clearly not limited to the non-exclusive list of examples of auxiliary uses in the residential
21 guideline. The relevant question in *Jaqua*, and the relevant question here, is whether in allowing
22 hospitals the city exceeded the scope of its delegated authority to more precisely define the universe
23 of uses that may be allowed as auxiliary uses in areas the Metro Plan designates residential. In
24 *Jaqua* we concluded that the city had not exceeded that scope of delegated authority, and for
25 essentially the same reasons we reach the same conclusion here.

26 This subassignment of error is denied.

1 **2. Industrial Zones**

2 Prior to the adopted amendments, hospitals were not allowed in industrial zones. The
3 amendments make hospitals permitted uses in industrial zones. Due to the brevity of petitioner’s
4 argument, we quote it in its entirety:

5 “* * * the city made no analysis at all of the inconsistency with the Metro Plan’s
6 definition of industrial uses. Heavy industrial lands are reserved for ‘industries that
7 process large volumes of raw materials into refined products and/or have significant
8 external impacts.’ Light-medium industrial lands are reserved for assembly and
9 processing plants, warehouses, and transportation or communication facilities.
10 Campus industrial (special light industrial) lands are reserved for regional distribution
11 centers and research parks. None of these uses is even remotely of the same nature
12 as a hospital.” Petition for Review 5-6 (internal citations omitted).

13 Petitioner is referring to the Metro Plan industrial guidelines. Again, these are guidelines
14 rather than a definition and are “intended to *provide minimum guidelines* to local jurisdictions in
15 determining appropriate new and expanded sites and locations for such uses in urban areas.”
16 (Emphasis added.) Metro Plan II-E-2. Secondly, petitioner’s reference to the guidelines for heavy
17 and light-medium industrial zones is largely irrelevant because both the heavy industrial and light-
18 medium industrial guidelines specifically include light (or campus) industrial uses as well.¹⁰
19 Therefore, petitioner’s argument is reduced effectively to an argument that a hospital is not of the
20 “same nature” as campus industrial uses. Petition for Review 6.

21 Turning to the campus industrial guidelines, it is apparent that such lands are not “reserved”
22 for the specific uses petitioner argues. The full text of the campus industrial designation provides:

23 “The *primary objective* of this designation is to provide opportunities for
24 diversification of the local economy through siting of light industrial firms in a
25 campus-like setting. The activities of such firms are enclosed within attractive
26 exteriors and have minimal environmental impacts, such as noise, pollution and
27 vibration, on other users and on surrounding areas. Large-scale light industrial uses,
28 including regional distribution centers and research and development complexes, are

¹⁰ The Heavy Industrial guidelines designation “may also accommodate light and medium industrial uses and supporting offices, local regulations permitting.” The Light-Medium Industrial guidelines designation “may also accommodate supporting offices and light industrial uses, local regulations permitting.” Metro Plan II-E-6.

1 the *primary focus* of this designation. *Provision should also be made for small-*
2 *and medium-scale industrial uses within the context of industrial and business*
3 *parks which will maintain the campus-like setting with minimal environmental*
4 *impacts.* Complementary uses such as corporate office headquarters and
5 supporting commercial establishments serving primary uses may also be sited on a
6 limited basis.” Metro Plan II-E-6 (emphasis added).

7 The guidelines in the Metro Plan provide “minimum guidelines” for establishing the “primary
8 objective” of providing for campus industrial type uses. The guidelines do not, and do not purport
9 to, comprehensively list all allowable uses in industrial zones. That is what the city’s zoning code
10 does. That is what the city did in the challenged amendments. The city interpreted the guidelines as
11 permitting hospitals to be established in industrial zones because a hospital development site,
12 including clinics and laboratories, is the kind of “campus-like setting with minimal environmental
13 impacts” that are envisioned.

14 The city’s interpretation that uses that are compatible with and similar to campus industrial
15 uses, such as hospitals, are allowed is also consistent with other Metro Plan Policies. Economic
16 Element, Policy 23 provides:

17 “Provide for the limited mixing of office, commercial, and industrial uses under
18 procedures which clearly define the conditions under which such uses shall be
19 permitted and which (a) preserve the suitability of the affected areas for their
20 primary uses; (b) assure compatibility; and (c) consider the potential for increased
21 traffic congestion.” Metro Plan III-B-6.

22 The Metro Plan envisions that industrial and non-industrial uses can both be permitted in the same
23 area under certain conditions. The city found that “[h]ospital developments within industrial zones
24 do not disturb the suitability of [industrial zones] for industrial uses and do not cause traffic
25 concerns.” Record 28. Petitioners do not challenge those findings. That such mixing of industrial
26 and non-industrial uses is permitted under the Metro Plan is further illustrated by the myriad, clearly
27 non-industrial uses already allowed in the city’s acknowledged industrial zones. Those uses include:
28 restaurants, dance and martial arts studios, churches, clubs/lodges, libraries, sports clubs, theaters,
29 banks, government uses, homeless shelters, correctional facilities, day care facilities, cemeteries, and
30 kennels. EC Table 9.2450. Under petitioner’s interpretation most if not all of those permitted uses

1 would violate the Metro Plan. Based on petitioner's brief argument, we cannot say that the city's
2 interpretation is inconsistent with the express language of the Metro Plan.

3 This subassignment of error is denied.

4 Petitioner's assignment of error is denied.

5 The city's decision is affirmed.