

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

3
4 HOME BUILDERS ASSOCIATION OF LANE COUNTY,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF EUGENE,
10 *Respondent.*

11
12 LUBA No. 2017-078

01/10/18 PM 1:16 LUBA

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of Eugene.

18
19 Bill Kloos, Eugene, filed the petition for review and argued on behalf of
20 petitioner. With him on the brief was Law Office of Bill Kloos, P.C.

21
22 Emily N. Jerome, City Attorney's Office, Eugene, filed the response
23 brief and argued on behalf of respondent.

24
25 RYAN, Board Chair; BASSHAM, Board Member; HOLSTUN Board
26 Member, participated in the decision.

27
28 AFFIRMED

01/10/2018

29
30 You are entitled to judicial review of this Order. Judicial review is
31 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a city Ordinance, Ordinance 20585, adopting a Residential Lands Supply Study as part of the city's comprehensive plan.

MOTION TO TAKE OFFICIAL NOTICE

Petitioner moves for LUBA to take official notice of two documents: (1) the 1982 Metro Area General Plan (Metro Plan), and (2) an Agreement Regarding the Transfer of Building and Land Use Responsibilities dated May 7, 1987, between the city and Lane County. The city does not oppose the motion, and it is allowed.

BACKGROUND

ORS 197.296(2) requires cities such as Eugene, with a population over 25,000, to demonstrate that its comprehensive plan provides sufficient buildable lands within its urban growth boundary (UGB) to accommodate estimated housing needs for 20 years. Between 2008 and 2017, the city engaged in a multi-year process to inventory the city's supply of buildable lands and study the city's future residential land needs. That process culminated in the city's adoption of Ordinance 20585, which as relevant here adopts a Residential Lands Supply Study (RLSS) as part of the Envision Eugene Comprehensive Plan (ECP).¹ The RLSS includes an analysis of the

¹ ORS 197.304 (2007) requires the cities of Eugene and Springfield to each establish a UGB and demonstrate that it includes sufficient buildable lands to

1 existing supply of and future demand for residential land within the city's UGB
2 for the 2012-2032 planning period. The RLSS includes five parts. Part V is the
3 Residential Buildable Lands Inventory (BLI). The BLI includes 42 maps that
4 show the location of vacant and partially vacant residential land in the city's
5 UGB. After Ordinance 20585 was adopted, petitioner appealed it to LUBA.

6 **FIRST ASSIGNMENT OF ERROR**

7 **A. Introduction**

8 ORS 197.296(2) through (7) require cities such as Eugene to provide for
9 a supply of buildable land that is sufficient to meet the projected housing needs
10 for the relevant 20-year planning period.² Statewide Planning Goal 10
11 (Housing) also requires the city to inventory buildable lands for residential
12 use.³ Local governments that are subject to these requirements must (1)

accommodate housing for twenty years. A previous ordinance adopted by the city, the city of Springfield and Lane County in 2011 established distinct city UGBs for the cities of Eugene and Springfield for the first time, rather than a regional UGB shared between the two cities.

Section 1 of Ordinance 20585 amends the Residential Land Use and Housing Element of the Metro Plan, the regional comprehensive plan adopted jointly by the cities of Eugene and Springfield, to make the residential findings in the Metro Plan's Residential Land Use and Housing Element inapplicable to land within the city of Eugene.

² ORS 197.295 defines "buildable lands" as "lands in urban and urbanizable areas that are suitable, available and necessary for residential uses. 'Buildable lands' includes both vacant land and developed land likely to be redeveloped."

³ LCDC's rule that implements Goal 10 at OAR 660-008-0005(2) similarly defines "buildable land" as:

1 inventory the existing supply of buildable lands within the UGB; (2) project
2 housing need for the relevant planning period based on population growth and
3 other factors; and then (3) if the existing inventory is inadequate to
4 accommodate housing needs, take specified actions necessary to ensure there is
5 an adequate supply of buildable land within the UGB during that planning
6 period. We discuss those requirements and potential actions in more detail
7 below before turning to petitioner’s assignments of error.

8 **B. ORS 197.296**

9 ORS 197.296(3) provides:

10 “In performing the duties under subsection (2) of this section, a
11 local government shall:

“residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered ‘suitable and available’ unless it:

“(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

“(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;

“(c) Has slopes of 25 percent or greater;

“(d) Is within the 100-year flood plain; or

“(e) Cannot be provided with public facilities.”

1 “(a) Inventory the supply of buildable lands within the urban
2 growth boundary and determine the housing capacity of the
3 buildable lands; and

4 “(b) Conduct an analysis of housing need by type and density
5 range, in accordance with ORS 197.303 and statewide
6 planning goals and rules relating to housing, to determine
7 the number of units and amount of land needed for each
8 needed housing type for the next 20 years.”

9 ORS 197.296(4) requires the local government to include vacant and partially
10 vacant land planned or zoned for residential use in the buildable lands
11 inventory. ORS 197.296(4)(b)(A) requires that for purposes of the inventory
12 and determination of housing capacity set out in ORS 197.296(3)(a), the local
13 government must consider “the extent that residential development is
14 prohibited or restricted by local regulations and ordinance, state law and rule or
15 federal statute and regulation[.]”

16 ORS 197.296(5) contains requirements for complying with ORS
17 197.296(3):

18 “(a) Except as provided in paragraphs (b) and (c) of this
19 subsection, the determination of housing capacity and need
20 pursuant to subsection (3) of this section must be based on
21 data relating to land within the urban growth boundary that
22 has been collected since the last periodic review or five
23 years, whichever is greater. The data shall include:

24 “(A) The number, density and average mix of housing
25 types of urban residential development that have
26 actually occurred;

27 “(B) Trends in density and average mix of housing types
28 of urban residential development;

- 1 “(C) Demographic and population trends;
- 2 “(D) Economic trends and cycles; and
- 3 “(E) The number, density and average mix of housing
- 4 types that have occurred on the buildable lands
- 5 described in subsection (4)(a) of this section.

6 “* * * * *

7 “(c) A local government shall use data from a wider geographic

8 area or use a time period for economic cycles and trends

9 longer than the time period described in paragraph (a) of

10 this subsection if the analysis of a wider geographic area or

11 the use of a longer time period will provide more accurate,

12 complete and reliable data relating to trends affecting

13 housing need than an analysis performed pursuant to

14 paragraph (a) of this subsection. The local government must

15 clearly describe the geographic area, time frame and source

16 of data used in a determination performed under this

17 paragraph.”⁴

18 ORS 197.296(6) specifies the actions that the local government must take if the

19 local government determines that the projected housing need is greater than the

20 existing housing capacity. Those actions include amending its UGB and

21 amending the comprehensive plan and land use regulations to increase density.

⁴ Subsection (c) allows a wider geographic area or a longer period under certain conditions. The city used data collected since the adoption of the city’s current land use code in 2001, explaining that doing so provided more “accurate, complete and reliable data[.]” Record 316.

1 **C. The “Needed Housing” Statutes⁵**

2 ORS 197.303 sets out the definition for “needed housing.”⁶ The
3 buildable lands inventory and housing capacity analysis required by ORS
4 197.296(3)(a) must include a determination of the number of units and amount
5 of land needed for each “needed housing” type listed in ORS 197.303(1)(a)–
6 (e). ORS 197.296(3)(b). ORS 197.307(3) requires that local governments must

⁵ Some provisions of the needed housing statutes at ORS 197.303-197.307 were amended by the 2017 legislature. Oregon Laws 2017, Chapter 745, Sections 4-5. Petitioner does not argue that the statutory amendments either apply to the decision on appeal or are relevant to our disposition of its assignments of error.

⁶ ORS 197.303 provides, in relevant part:

“(1) As used in ORS 197.307, ‘needed housing’ means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

“(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

“(b) Government assisted housing;

“(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

“(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

“(e) Housing for farmworkers.”

1 allow needed housing “in one or more zoning districts or in zones described by
2 some comprehensive plans as overlay zones with sufficient buildable land to
3 satisfy that need.”

4 Development applications for “needed housing” on “buildable land” may
5 not be subjected to standards, conditions, and procedures that are not “clear and
6 objective.” ORS 197.307(4). However, ORS 197.307(6) allows a local
7 government to adopt an alternative approval process for applications for
8 needed housing, if the alternative approval process authorizes a density that is
9 greater than the density authorized under the “clear and objective standards”
10 described in ORS 197.307(4). In other words, a local government may adopt an
11 alternative approval process that includes discretionary standards and that
12 allows for greater density than would otherwise be allowed if only “clear and
13 objective” standards applied to a development application, as long as
14 development continues to be allowed under clear and objective standards.

15 The city has adopted as part of the Eugene Code (EC) such an alternative
16 approval process that is sometimes referred to as the city’s “discretionary
17 track.” *See, e.g.*, EC 9.8320, Planned Unit Development – Tentative Plan –
18 General. The city has also adopted an approval track for applications for
19 development of needed housing that includes only “clear and objective
20 standards,” and that is sometimes referred to as the city’s “needed housing
21 track.” *See, e.g.*, EC 9.8325, Planned Unit Development – Tentative Plan –

1 Needed Housing. The relationship of these two tracks to the city’s BLI is
2 somewhat central to petitioner’s first assignment of error.

3 **D. First Assignment of Error**

4 Petitioner’s first assignment of error is that the city’s BLI improperly
5 includes lands that petitioner argues are not “buildable lands” within the
6 meaning of ORS 197.295(1). Citing ORS 197.307(4), which requires
7 development applications for needed housing to be subjected “only [to] clear
8 and objective standards, conditions and procedures,” petitioner argues that the
9 ORS 197.296(2) requirement to adopt a buildable lands inventory requires the
10 city’s BLI to include only acreage that is “truly” developable under clear and
11 objective standards. Petition for Review 13-14. Citing ORS 197.296(4)(b)(A),
12 petitioner also argues that the city did not adequately consider “[t]he extent that
13 residential development is prohibited or restricted” by specific approval criteria
14 in its clear and objective regulations for PUDs and subdivisions in determining
15 whether to include land on the BLI. Petition for Review 6, 14. We understand
16 petitioner to argue that the BLI improperly includes land that petitioner argues
17 is not developable under clear and objective standards.⁷ Petitioner maintains
18 that some lands included in the BLI should not be included in the BLI, because
19 the city improperly assumes that those lands will be developed. According to

⁷ The city excluded nine categories of land that the city determined were unbuildable because they were subject to protective regulations that prohibit development, and six categories of land that the city determined were “committed” and also unbuildable. Record 31, 32, 41.

1 petitioner, that assumption is faulty because development of those lands under
2 the discretionary track is too difficult and development under the needed
3 housing track is unprofitable due to density limitations, such that land owners
4 will not develop those lands at all. Accordingly, we understand petitioner to
5 argue, that land is not “available * * * for residential development” within the
6 meaning of the definition of “buildable lands” in ORS 197.295(1).

7 Then, in various subsections of the first assignment of error, petitioner
8 cites specific examples of areas of the city or types of regulations in the EC’s
9 needed housing track that petitioner argues make land unlikely to be developed
10 under the needed housing track, and argues that that land should be excluded
11 from the BLI altogether. Those areas and types of regulations are, generally, (1)
12 lands in the South Hills area of the city over 900 feet in elevation; (2) lands
13 with slopes greater than 20%; and (3) lands subject to buffer area, setbacks
14 from ridgelines, cluster requirements, and proximity to open space
15 requirements in the EC. Petition for Review 14-24.

16 The city responds first that the plain language of the statutes that require
17 the city to inventory residential buildable lands and that specify the
18 methodology for developing that inventory, at ORS 197.296(2) – (7), does not
19 support petitioner’s interpretation. The city responds that nothing in the
20 definition of buildable lands at ORS 197.295(1), in ORS 197.296 or Goal 10 or
21 its implementing rules refer to “clear and objective standards,” or includes any
22 reference to ORS 197.307(4)’s mandate that “development of needed housing

1 of buildable land” may occur only under “clear and objective standards,
2 conditions, and procedures.” In fact, the city maintains, the definition of
3 “buildable land” broadly requires the city to include lands that are “suitable,
4 available and necessary for residential uses,” and OAR 660-008-0005
5 establishes a rebuttable presumption that land is generally “available” for
6 development unless it falls within one of the five categories listed in the rule.
7 As the city explains it, ORS 197.296 and ORS 197.307(4) “serve different
8 purposes” and are “related but [] not co-dependent as [petitioner] suggests.”
9 Response Brief 26-27.

10 The city also responds that even assuming petitioner’s interpretation of
11 the phrase “buildable lands” is correct, petitioner’s premise is faulty. That is so,
12 the city argues, because the city’s BLI does not include any land that cannot be
13 developed at all for residential uses. Whether that land is developed at a lower
14 density under the needed housing track, or whether that land is developed at a
15 higher density under the discretionary track, the land is “available * * * for
16 residential uses” within the meaning of ORS 197.295(1) and OAR 660-008-
17 0005. In fact, the city argues, ORS 197.296(5)(a)(A) *requires* that, if data
18 demonstrates that land in the city has been developed under the discretionary
19 track within the last five years (or the longer period the city used), the city must
20 base its determination of housing capacity and need on that data (data must
21 include “[t]he number, density and average mix of housing types of urban
22 residential development that have actually occurred”).

1 We review petitioner’s challenges to Ordinance 20585, which amends
2 the ECP, to determine whether the ordinance is “in compliance with [Goal
3 10],” and to determine whether the city “[i]mproperly construed the applicable
4 law.” ORS 197.835(6) and 197.835(9)(a)(D). We agree with the city that
5 including land on its BLI that is developable under either the needed housing
6 track or the discretionary track is consistent with ORS 197.295(1), ORS
7 197.296(2) – (5) and Goal 10. The statutes at ORS 197.296 and Goal 10 require
8 the city to inventory its supply of buildable land and to estimate the capacity of
9 that land for residential development. In estimating the development capacity
10 of that land, the statutes require the city to (1) consider local regulations that
11 prohibit or restrict development (ORS 197.296(4)(b)(A)), and (2) rely on
12 development that has “actually occurred.” ORS 197.296(5)(a)(A).
13 Consideration of such regulations may result in an estimate of a lower
14 development capacity than would otherwise exist if the regulations did not
15 exist. But nothing in ORS 197.296 requires that the city omit from the
16 inventory altogether land that is developable with residential uses. ORS
17 197.307(4) specifies regulations that cities may apply to *development of* needed
18 housing on land included in the UGB and on the BLI. It does not apply to the
19 city’s initial determination of what land is included in a city’s inventory.

20 Petitioner has not established that the BLI includes any lands that are not
21 “suitable, available and necessary for residential uses,” or pointed to any data,
22 or “trends,” either economic, population, or otherwise, within the meaning of

1 ORS 197.296(5)(a)(B)-(D), that calls into question the city’s inclusion of land
2 on the BLI that is subject to some development constraints or regulations that
3 limit the density of development. Petitioner does not dispute the city’s capacity
4 estimates or argue that the city improperly overestimated the development
5 capacity of any of the lands that are included on the BLI.⁸ For that reason, we
6 reject petitioner’s argument.

7 Finally, in an argument under the first assignment of error, petitioner
8 argues that the EC regulations under the needed housing track that are
9 identified at Petition for Review 14-24 “violate[] ORS 197.307(6) because
10 [they] document[] land that may be developable under discretionary standards
11 but for which the owner does not have the ‘option of proceeding’ to develop
12 under clear and objective standards. ORS 197.307(6)(a).” Petition for Review
13 14. However, ORS 197.307(6) is the statute quoted above that allows a city to

⁸ The city maintains that it properly estimated the development capacity of lands that petitioner focuses on in subsections under the first assignment of error, to be developed at a lower density than would be available under the discretionary track. For example, the RLSS includes “Table 6,” which sets out capacity assumptions for land above 900 feet in elevation (mostly in the South Hills), with capacity assumed to be one dwelling per lot for lots less than one acre; 2.5 dwellings per lot for lots of one to five acres; and 2.5 dwellings per lot for lots of five or more acres. Record 262.

For land greater than 20% slope, the record includes a study of residential development in the city between 2001 and 2008 that demonstrates that during the study period, 92 housing units were established on 23 acres of land with slopes between 25% and 30%. Record 392. The city estimates the development capacity of land with slopes between 5% and 25% in the same way as land above 900 feet in elevation. Record 262.

1 adopt an alternative approval process for needed housing if that alternative
2 process allows greater density than would otherwise be allowed by applying
3 only clear and objective standards. The city adopted its needed housing track
4 into the EC many years ago. *Homebuilders Assoc. v. City of Eugene*, 41 Or
5 LUBA 370 (2002). We fail to see, and petitioner does not explain, how ORS
6 197.307(6) is relevant to petitioner’s challenge to the city’s adoption of a BLI.
7 Petitioner appears to have issues with the process and criteria that the city has
8 adopted into the EC under the discretionary track and under the needed housing
9 track, but an appeal of the city’s adoption of a BLI is not the appropriate place
10 to challenge those adopted provisions. *Volny v. City of Bend*, 37 Or LUBA 493,
11 *aff’d* 168 Or App 516, 4 P3d 768 (2000) (petitioners may not challenge
12 unamended site review standards in an appeal of a decision amending the city’s
13 comprehensive plan to adopt a new forecast of housing needs).

14 For the reasons set forth above, the first assignment of error is denied.

15 **SECOND AND FOURTH ASSIGNMENTS OF ERROR**

16 In its second assignment of error, petitioner argues that EC 9.8670(2)
17 and 9.8680(1) are not “clear and objective standards” within the meaning of
18 ORS 197.307(4). In its fourth assignment of error, petitioner argues that EC
19 9.8505 and 9.8415(6) violate the requirement in ORS 197.307(4) that the
20 “standards, conditions and procedures [regulating the development of needed
21 housing on buildable land] may not have the effect, either in themselves or
22 cumulatively, of discouraging needed housing through unreasonable cost or

1 delay.” ORS 197.307(4). The city responds that the challenged decision does
2 not amend the EC in any way and therefore, petitioner’s challenges to
3 provisions of the EC are not subject to review in an appeal of the adoption of
4 the BLI. We agree. *Shamrock Homes, LLC v. City of Springfield*, 68 Or LUBA
5 1, 14 (2013) (petitioner may not challenge unamended site design review
6 standards in an appeal of the city’s adoption of a refinement plan and
7 associated code provisions that neither amend or apply the challenged site
8 design review standards); *NWDA v. City of Portland*, 47 Or LUBA 533, 544-45
9 (2004) (it is not within LUBA’s scope of review to address whether existing
10 code design review standards comply with the ORS 197.307(3)(b)(1997)
11 requirement for “clear and objective” approval standards, in the context of a
12 post-acknowledgment plan amendment that rezones property to allow uses that
13 will be subject to approval under the existing design review standards, where
14 the challenged decision does not amend the design review standards or attempt
15 to bring any part of the city’s code into compliance with ORS
16 197.307(3)(b)(1997)); *Volny*, 37 Or LUBA at 514 (a decision amending an
17 acknowledged comprehensive plan housing inventory without amending
18 existing approval standards that are applied to needed housing is not required
19 to demonstrate that those existing approval standards are “clear and objective,”
20 as required by ORS 197.307(6)).

21 The second assignment of error and the fourth assignment of error are
22 denied.

1 **THIRD ASSIGNMENT OF ERROR**

2 ORS 197.296(4)(c) requires the city to “create a map or document that
3 may be used to verify and identify specific lots or parcels that have been
4 determined to be buildable lands.” ORS 197.296(4)(a)(A) specifies that
5 “buildable lands” includes lands “planned or zoned for residential use[.]” As
6 noted, the challenged decision incorporates 42 area-specific maps that identify
7 parcels of vacant and partially vacant residential land included on the BLI.
8 Each map identifies the residential designation of a parcel (Low Density
9 Residential, Medium Density Residential, or High Density Residential).
10 Petition for Review Appendix A 100-142.

11 A map that is large scale, known as the “Metro Plan Diagram,” is the
12 land use map that assigns general land use designations to all land within the
13 city’s UGB. The Metro Plan as modified by refinement plans is parcel-specific
14 for most parcels within the UGB, but for some parcels, the large scale and lack
15 of parcel lines create difficulty in determining assigned land use designations.
16 Record 384-86.

17 In its third assignment of error, we understand petitioner to argue that
18 there is not substantial evidence in the record to demonstrate that all of the land
19 included on the BLI is “planned or zoned for residential use,” due to the large
20 scale and lack of parcel specificity of the Metro Plan Diagram. ORS
21 197.296(4)(a)(A). We understand petitioner to argue that the 42 maps that
22 identify the residential designation of each parcel included on the BLI do not

1 substitute for or amend the Metro Plan Diagram, or otherwise designate land as
2 residential that is not so designated on the Metro Plan. According to petitioner,
3 the city must either adopt an ordinance clarifying that all lands on the BLI are
4 designated as residential in the Metro Plan Diagram, and/or amend the Metro
5 Plan Diagram to clarify the designations of the parcels included on the BLI.
6 Petition for Review 37. Based on that premise, petitioner argues, the city’s BLI
7 lacks specificity about the residential designations of property included on the
8 BLI and that lack of specificity “violates the entitlement of owners to clear and
9 objective standards. ORS 197.307(4); OAR 660-008-0015(2).” Petition for
10 Review 37.

11 The city responds that in order to develop the maps that are required by
12 ORS 197.296(4)(c) and to determine the designation of each parcel included on
13 the BLI, the city used a copy of a GIS layer that was used to create the Metro
14 Plan Diagram. Record 3893. According to the city, using that GIS layer
15 resulted in parcel-specific designations for residential land and accounted for
16 designation boundary uncertainties. *Id.* The city argues that, therefore, the maps
17 included as part of the BLI are supported by substantial evidence in the record,
18 and that petitioner’s challenges are really to the Metro Plan Diagram, which is
19 outside of the scope of review of the challenged decision that adopts a BLI.⁹

⁹ The city takes the position that:

“Adoption of the BLI improves [the lack of specificity for some parcels] by providing a clear City interpretation of the Metro Plan

1 Petitioner does not identify any errors in the method the city used to
2 develop the BLI maps. More importantly, petitioner does not identify any land
3 included on the BLI that petitioner believes is not designated residential by the
4 Metro Plan Diagram. To the extent petitioner challenges the Metro Plan
5 Diagram as failing to comply with the statutes that require the city to adopt a
6 BLI and maps, or with statutes that require development applications to be
7 subject only to “clear and objective standards,” *i.e.*, ORS 197.307(4), the
8 challenged decision does not amend the Metro Plan Diagram, and challenges to
9 the Metro Plan Diagram are not within our scope of review. Accordingly,
10 petitioner’s arguments provide no basis for reversal or remand of the decision.

11 The third assignment of error is denied.

12 **FIFTH ASSIGNMENT OF ERROR**

13 Petitioner’s fifth assignment of error is:

14 “The city lacks a local process to afford applicants relief under the
15 Needed Housing Statute and Goal 10 Rule when local regulations
16 conflict with the state law. This failure violates the state
17 prohibition against procedures that cause ‘unreasonable cost and
18 delay’ and is otherwise contrary to law. ORS 197.307(4); OAR
19 660-008-0015(1); ORS 197.835(9)(a)(D).” Petition for Review 48.

[D]iagram’s residential designations (the BLI). In addition, acknowledgement of the Eugene-only BLI will allow the City to take the next steps in the Envision Eugene process, which will include numerous actions to address the issues raised by petitioner.” Response Brief 72 (footnote omitted).

According to the city, those actions include updating the Metro Plan Diagram to make it parcel-specific and adopting that Eugene-only diagram into the ECP.

1 The city responds that no statute or other law obligates the city to amend the
2 EC or conform its existing EC standards to ORS 197.307(4), and therefore
3 petitioner’s assignment of error is outside the scope of review of the challenged
4 decision, which adopts a BLI. We agree. Petitioner has not pointed to any
5 authority that obligates the city to amend the EC or conform its existing code
6 standards to ORS 197.307(4) as part of its adoption of the BLI, and we are
7 aware of none.

8 The fifth assignment of error is denied.

9 **SIXTH ASSIGNMENT OF ERROR**

10 Petitioner’s sixth assignment of error is:

11 “The [EC] illegally subjects BLI land in the South Hills to
12 standards[,] processes and conditions that appear in the South
13 Hills Study, an area refinement plan adopted in 1974. The lawful
14 footprint for that study is the city limits as they exist[ed] in 1974,
15 when the South Hills Study was adopted, not the area outside the
16 1974 city limits but inside the current UGB.” Petition for Review
17 52.

18 Petitioner further describes the sixth assignment of error as:

19 “Here [petitioner] makes a broader challenge to the applicability of
20 standards in the South Hills Study to South Hills land that is in the
21 BLI. [Petitioner] asserts that the city plan and code illegally
22 extends the South Hills plan policies and development standards
23 to more land than the South Hills Study legally applies to.”
24 Petition for Review 54.

25 As far as we can tell, the crux of the sixth assignment of error challenges the
26 city’s prior application of standards in the EC that petitioner argues do not
27 apply to land in the South Hills area of the city that was not included in the

1 South Hills Study, adopted in 1974. We reject petitioner's challenge for several
2 reasons. First, petitioner's challenge is not a challenge to the city's adoption of
3 the BLI, but appears to be a challenge to the city's previous application in
4 quasi-judicial proceedings of EC standards that petitioner thinks should not
5 apply. Second, if there is some error in adopting a BLI that takes into account
6 land within the UGB that is subject to the South Hills Study refinement plan,
7 petitioner does not sufficiently develop its assignment of error to allow LUBA
8 to consider it. *Deschutes Development v. Deschutes County*, 5 Or LUBA 218,
9 220 (1982).

10 The sixth assignment of error is denied.

11 The city's decision is affirmed.