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## I. STANDING OF PETITIONER

Respondents City of Springfield and Lane County accept the statement of standing of petitioner for purposes of review by the Oregon Land Use Board of Appeals.

## II. STATEMENT OF THE CASE

### A. Nature of the Land Use Decisions and Relief Sought.

The decisions challenged in this appeal are the ordinances enacted by the City of Springfield City Council (Ordinance No. 6279) and the Lane County Board of Commissioners (Ordinance No. PA 1288 and Ordinance No. 3-12) to adopt Metro Plan diagram changes, Glenwood Refinement Plan text changes, zoning map and related development code changes for Phase 1 of the refinement planning effort in a portion of the Glenwood area both within the city limits and the urban growth boundary. Petition Volume II Appendix: Local Decision Under Appeal (App); App 34-509; Record 1173-1646. The city ordinance and the two county ordinances took essentially the same substantive actions to amend the Metro Plan, Glenwood Refinement Plan, zoning and development code. The county took the plan designation, text and zoning actions in Ordinance No. PA 1288. Record 9665-10034. The development code changes were enacted and applied through Ordinance No. 3-12. Record 10035-10140. The decisions properly construed applicable law, made adequate findings supported by substantial evidence in the whole record and should be affirmed.

### B. Summary of Arguments.

Petitioner's disagreements with the decisions lack a sound basis in fact or law. Petitioner's fundamental disagreement stems from a desire to have the Glenwood Refinement Plan, Phase I amendments exclude property owned by petitioner that is currently developed with a mobile home park. An effort by petitioner to engage the elected officials at the last hour included many of the same goal violation assertions raised here. After reviewing the

1 arguments and staff responses, the Springfield City Council and Lane County Board of  
2 Commissioners were not persuaded and adopted the Glenwood Refinement Plan, Phase I  
3 amendments.

4 The Metro Plan, Glenwood Refinement Plan and Springfield Development Code  
5 amendments under review comply with Statewide Planning Goals 2, 5, 8, 9, 10, 11, 12 and  
6 15, as well as applicable statutes and administrative rules related to those goals and any local  
7 requirements regarding internal consistency with existing provisions of the acknowledged  
8 comprehensive plans and land use regulations.  
9

10 The decisions adequately address **Goal 2** and are based on an adequate factual basis,  
11 adequate findings, adequate evaluation of alternatives and statements of ultimate policy  
12 choices based on substantial evidence in the whole record. Sufficient citizen involvement  
13 and coordination occurred and the decisions establish consistency with the substantive  
14 requirements of each applicable goal.  
15

16 The decisions adequately address **Goal 5** and sufficiently explain how relatively  
17 minor changes to the acknowledged riparian resource protections allow less intensive uses  
18 and enhanced riparian protection measures in the water quality protection code provisions.  
19 The decisions establish consistency with the substantive requirements of Goal 5.

20 The decisions adequately address **Goal 8** by providing for sufficient park and open  
21 spaces consistent with applicable acknowledged comprehensive plans, including the  
22 Springfield 2030 Plan identified need for park and open spaces serving the high-density  
23 residential areas in the Glenwood area. The decisions establish consistency with the  
24 applicable substantive requirements of Goal 8.  
25

26 The decisions adequately address **Goal 9** by relying on an adequate factual basis  
27 using the best available information adopted as part of ongoing comprehensive plan revisions  
28

1 and sufficiently determining an adequate inventory of commercial and industrial employment  
2 lands remain available under non-discretionary site design standards, clear limited minimum  
3 development area requirements and have sufficient public facility plans for an adequate  
4 short-term supply of industrial and other employment uses. The decisions address and  
5 establish consistency with the applicable substantive requirements of Goal 9.

6 The decisions adequately address **Goal 10** by preserving and protecting the existing  
7 manufactured dwelling parks and other forms of affordable housing, as well as including  
8 clear and objective site design standards that do not subject needed housing to unreasonable  
9 costs or delay. The decisions establish consistency with the applicable substantive  
10 requirements of Goal 10.

11 The decisions adequately address **Goal 11** by describing how the acknowledged  
12 public facilities and services plans provide the framework for the capacity of transportation,  
13 wastewater and stormwater needs to serve future development. Extensive coordination and  
14 additional planning efforts, including identified financing assure the timely, orderly and  
15 efficient arrangement of necessary public facilities and services. The decisions establish  
16 consistency with the substantive requirements of Goal 11.

17 The decisions adequately address **Goal 12** by relying on reasonable assumptions, data  
18 and methodologies to conclude the changes in zoning would not significantly affect planned  
19 transportation facilities, consistent with the Goal 12 Rule requirements. The findings also  
20 describe the differences in “nodal” designations and are supported by substantial evidence in  
21 the whole record. The decisions establish consistency with the applicable substantive  
22 requirements of Goal 12.

23 The decisions adequately address **Goal 15** by refining the acknowledged Willamette  
24 Greenway regulations to more specifically define the setback area and continue assuring only  
25  
26  
27  
28

1 water-dependent or water-related uses are allowed within the setback in the larger previously  
2 established and acknowledged Greenway Boundary. The decisions establish consistency  
3 with the substantive requirements of Goal 15.

4 While petitioner only points to compliance with the goals under ORS 197.835(6) and  
5 (7) as the standard of review, the decisions also adequately address applicable statutes  
6 governing fees and provision of needed housing. The approval standards in the Engineering  
7 and Design Standards and Procedures Manual (EDSPM) were previously adopted and  
8 incorporated into the acknowledged land use regulations in the Springfield Development  
9 Code. The limited “peer review” for major modifications to the design standards will not  
10 delay the provision of needed housing and the cost of that review is not a fee established or  
11 charged for processing permits.  
12

### 13 C. Summary of Material Facts.

14 The summary of facts provided by petitioner omits certain material facts, including  
15 several relevant findings and conclusions in the decisions of the Respondents.<sup>1</sup> Respondents  
16 provide the following additional facts.  
17

18 Extensive refinement planning efforts in the Glenwood area have occurred over  
19 several years. App 44. Initially under the joint jurisdiction of Eugene and Lane County, the  
20 first refinement plan was adopted in 1986 as the Glenwood Refinement Plan, Phase I. A few  
21 years later, the second phase of the Glenwood Refinement Plan was adopted in 1989. In  
22 1999, jurisdiction was transferred from Eugene to the City of Springfield and the existing  
23 Glenwood Refinement Plan was adopted without policy changes and zoning was revised to  
24 reflect the City of Springfield zones. In 2005, amendments to the Glenwood Refinement  
25  
26

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27 <sup>1</sup> While much of the summary describes several aspects of the planning effort leading up to the decisions,  
28 petitioner fails to connect his ultimate goal of retaining the *status quo* to any of the specific assignments of error  
or provide a basis for this Board to require that result.

1 Plan were adopted to provide for mixed-use nodal development possibilities in a small part of  
2 the Glenwood Riverfront close to the intersection of the major transportation facilities and  
3 the bridge across the Willamette River to downtown Springfield. App 41, 44, 45. The most  
4 recent efforts officially started on February 25, 2008, when the Springfield City Council  
5 directed staff to begin a project that would update the Glenwood Refinement Plan in phases.  
6 App 34, 38, 45; Record 8753-8764, 8765-8771. That project included the extensive efforts  
7 expended in the process that included significant citizen involvement, outreach, technical  
8 studies, peer review and the formal public notice, hearings and review leading to the  
9 decisions of respondents under review by this Board. App 34, 38-43.

11 The formal process included joint hearings before the Springfield and Lane County  
12 planning commissions and joint work sessions and public hearing before the Springfield City  
13 Council and the Lane County Board of Commissioners. The initial joint hearing before the  
14 planning commissions took place on October 18, 2011, and it was continued to December 20,  
15 2011, when each body made recommendations on the proposal to their respective elected  
16 officials. Record 3480-3481, 3482, 3482, 3488-3498, 3499-3512, 3540-3719, 3766-4286,  
17 10328-10341, 10342-10360, 10370-10371. (The county relied mostly on the city staff efforts  
18 and many of those materials were not duplicated in the county record contained in Volume  
19 XIV). A joint hearing process before the City Council and Board of Commissioners began  
20 on January 23, 2012 with a joint work session, leading to the first reading of the county  
21 ordinances March 14, and the second reading and a joint hearing on April 2, 2012. Record  
22 2316-2872, 3164-3473, 10259-10278, 10290-10291, 10303-10304. Subsequent readings of  
23 the ordinances by the Board of Commissioners took place on June 20, July 11, August 15 and  
24 September 5, 2012, and were based on information from meetings of the City Council taking  
25 place in a simultaneous fashion on May 14, 21, June 4 and 18, 2012. Record 1059-1079,  
26  
27  
28

1 1089-1099, 1136-1159, 1647-2143, 2148-2154, 2160-2190, 2195-2223, 2234-2270, 2316-  
2 2872, 3164-3473, 10154-10174, 10193-10194, 10216-10217, 10218-10224, 10240-10244,  
3 10252-10253.

4         The extensive planning effort leading to the decisions significantly expanded the prior  
5 “Nodal Development” strategy steps taken in the Glenwood area. App 41, 42, 44, 45. The  
6 changes to the Metro Plan and Glenwood Refinement Plan expanded upon the foundation of  
7 the earlier planning efforts to guide and facilitate transition of the Glenwood Riverfront  
8 corridor into a multi-modal, pedestrian-friendly, mixed-use neighborhood. The  
9 amendments reflect more recent planning efforts and steps taken by previously adopted  
10 refinement plans that highlight the Glenwood area and a key element in the growth  
11 management strategy of respondents for the 2010-2030 planning period. App 38, 43, 45.  
12 Redevelopment of urbanizeable areas in Glenwood represents a very high priority goal for  
13 the City of Springfield and Lane County, as described in both the findings and the revised  
14 Glenwood Refinement Plan and reflected in the extensive citizen involvement and outreach  
15 efforts. App 45.  
16

17  
18         The Springfield Planning Commission met three times as the Committee for Citizen  
19 Involvement and approved the Citizen Involvement Plan for Glenwood Phase I on October 7,  
20 2008, which included appointment of the Citizen Advisory Committee and convening the  
21 Technical Advisory Committee. App 38, 51-53. The extensive efforts began with  
22 assessment of the existing conditions and overall policy issues to consider as necessary  
23 information was gathered to develop overall visions, goals and draft plan provisions. By  
24 March 11, 2009, the CAC began meetings to review Existing Conditions and Goal  
25 Statements, continue discussion on land use, traffic circulation, infrastructure, natural  
26 resources, stormwater, transportation, open spaces, housing, economic development, public  
27  
28

1 facilities, financing public improvements, urban transition, annexation, historic and cultural  
2 resources and the land use type, mix and location for the Glenwood Area. App 52-53. With  
3 18 CAC meetings and numerous subcommittee meetings, the committee reviewed all aspects  
4 of the draft Glenwood Refinement Plan and Springfield Development Code before making  
5 recommendations to the Planning Commission. App 51-53. That information, assessments  
6 and draft plan provisions were reviewed by the Glenwood CAC, TAC, various development,  
7 transportation and housing experts, several other interested parties and agencies, as well as  
8 group meetings with the Housing Policy Board, the Willamalane Park and Recreation  
9 District Board, the Springfield Chamber of Commerce, Economic Development Committee  
10 and outreach to the public and peer groups before the formal review by the Springfield and  
11 Lane County Planning Commissions, the Springfield City Council and the Lane County  
12 Board of Commissioners. App 51-53; Record 4469-4484, 4485-4569, 4705-4778, 5115-  
13 5412, 5413-5425, 5427-5429, 5846, 6228-6357, 6358-6364, 6366-6373, 6374-6503, 6507-  
14 6511, 6513-6603, 6604-6694, 6695-6785, 6786-6876, 6877-7196, 7206-7237, 7238-7327,  
15 7372-7376, 7380-7407, 7413-7457, 7461-7466, 7683-7746, 7747-7748 (Vol. IX), 7488-7490  
16 (Vol. X), 7908.43-7908.44, 7908.64-7908.100, 8503, 8523-8541, 8753-8764, 8765-8771,  
17 8773-8778, 8779-8784. At the same time, the Springfield Planning Commission and City  
18 Council monitored the progress and development of the draft plan. The Springfield City  
19 Council held four work sessions on the Glenwood Phase I effort between May 9, 2011, and  
20 September 26, 2011. App 41.

21  
22  
23  
24 The early shape and future vision for the Glenwood Refinement Plan, Phase I  
25 amendments was expressed in the project goals of the Citizen Advisory Committee as  
26 follows:

- 27 • Improve public connections to the Willamette River.
- 28 • Establish inviting public spaces, including parks, plazas, and multi-use paths.

- 1 • Encourage aesthetically pleasing, sustainable buildings and sites that are context-sensitive and oriented to human activity.
- 2 • Provide opportunities for the installation, display, and creation of public art.
- 3 • Allow for a mix of uses suitable to the unique development opportunities in Glenwood.
- 4 • Provide opportunities for the development of a variety of housing types to meet the needs of a range of households.
- 5 • Facilitate opportunities for businesses to provide goods and services to local, regional, statewide, national, and international markets.
- 6 • Restore, enhance, and protect the ecological function of natural resources, and increase public awareness of these resources.
- 7 • Protect the public from potential natural and manmade hazards.
- 8 • Celebrate Glenwood's contributions to the region's historic development.
- 9 • Enhance the transportation system to improve safety, convenience, and movement for all modes of travel, including vehicles, trains, public transit, bicycles, and pedestrians.
- 10 • Provide a full range of urban public facilities and services for redevelopment and new development.
- 11 • Facilitate redevelopment while addressing the consequences of change to existing residents and businesses.
- 12

13 Those represent the extensive review and effort of the CAC to explore the past,  
14 present and future aspirations for the Glenwood area and the larger Springfield community.

15 The planning effort included consideration of the various pieces of the planning puzzle,  
16 including infrastructure, natural resources, housing and the spectrum of commercial and  
17 industrial employment uses that converge in the unique area bordered by the Willamette  
18 River on the north and east side of the Glenwood area and described in the community vision  
19 portion of the plan. App 219-223. That convergence of unique area and opportunity for  
20 redevelopment was reflected in strategies identified in the Springfield 2030 Refinement Plan  
21 to provide for sufficient buildable lands for high-density housing needs and related park  
22 lands. App 39-40.

24 Following completion of the CAC efforts and recommendation of the Glenwood  
25 Refinement Plan amendments, the Springfield Planning Commission and Lane County  
26 Planning Commission held work sessions and public hearings on October 18, 2011 and  
27 December 20, 2011. App 34, 41; Record 3540-3719, 3766-4286, 10328-10360, 10370-  
28

1 10371. In those meetings the proposed plan amendments and staff report addressing the  
2 applicable criteria, findings, recommendations and the testimony or submittals received at the  
3 public hearing or in writing that generated some 30 text modifications were considered. App  
4 34, 41.

5         The Springfield Planning Commission voted 5 to 0 and the Lane County Planning  
6 Commission voted 6 to 0 to recommend adoption of the Glenwood Refinement Plan Phase I  
7 amendments, as modified, to the Springfield City Council and Lane County Board of  
8 Commissioners. App 34, 41. The Council and Board of Commissioners held a work session  
9 on January 23, 2012, to discuss the proposal and conducted a joint public hearing on April 2,  
10 2012, to receive staff responses to questions raised in the work session and public testimony  
11 on the amendments. App 34, 41; Record 2316-2872, 10259-10278. The Council closed the  
12 record and directed staff to conduct a work session on drive-through facilities, peer review,  
13 parking on Subarea D, park block width, and access to the river, while the Board of  
14 Commissioners left the record open until its next reading of the ordinances scheduled for  
15 June 20, 2012. App 41. On May 14 and 21, 2012, the Council held work sessions and  
16 provided staff direction on the previously identified issues and an additional topic of student  
17 housing in Subarea C. App 41-42; Record 2195-2223, 2234-2270. The Council reopened  
18 the hearing on June 4, 2012, to consider testimony on provision of student housing in  
19 Subarea C, after which the hearing and record was closed and the final meeting to consider  
20 the ordinance was set for June 18, 2012. App 42; Record 2148-2154. At that meeting, the  
21 Council deliberated and enacted Ordinance No. 6279, unanimously. App 42-43; Record  
22 1647-2143. The Lane County Board of Commissioners considered the record of testimony  
23 and evidence received by the Council, as well as additional submittals by petitioner and  
24 others made after the record before the Council was closed. Record 10154-10174, 10193-  
25  
26  
27  
28

1 10194, 10218-10224, 10216-10277. The last minute submittal of petitioner requested the  
2 status quo for his property and made no mention of affordable housing and only asserted the  
3 proposal would “leave the City short of the high-density residential land it needs.” Record  
4 2144-2147. The staff response provided to the Board of Commissioners addressed the  
5 request, noted how the premise was wrong and it would not be consistent with the extensive  
6 planning effort and mix of uses in the Glenwood Phase I proposal, and also addressed the  
7 vague, unrelated goal issues included in the late submittal. Record 1103-1111, 10163-10171.  
8 After reviewing all the evidence, testimony and materials in the record, the Board of  
9 Commissioners enacted the 2 County ordinances that included the package of Glenwood  
10 Phase I amendments on September 5, 2012. App 34-37; Record 9665-10034, 10035-10140.

### 12 III. JURISDICTION

13 Respondents accept petitioner’s statement of jurisdiction.

### 14 IV. RESPONSES TO ASSIGNMENTS OF ERROR

#### 15 A. Standard of Review.

16 The decisions being appealed are legislative post-acknowledgment amendments.  
17 While petitioner only identifies compliance with the goals as the applicable standard of  
18 review, the following additional considerations may also assist in the review of this Board.  
19

20 Legislative decisions often address a large number of topics and properties and affect  
21 large numbers of individuals. The fundamental differences between quasi-judicial and  
22 legislative land use proceedings and decisions are an important consideration in deciding  
23 whether the findings a legislative decision maker adopts are adequate. *See Witham Parts and*  
24 *Equipment Company, Inc. v. Oregon Department of Transportation*, 42 Or LUBA 435, 453  
25 (2002), *aff’d without opinion*, 185 Or App 408 (2002). When a legislative land use decision  
26 is not supported by findings, that is not sufficient a basis, in itself, for reversal or remand of  
27  
28

1 the enactment, because no applicable legal standard requires that all legislative land use  
2 decisions be supported by findings. *Riverbend Landfill Company v. Yamhill County*, 24 Or  
3 LUBA 466, 472 (1993); *Von Lubken v. Hood River County*, 22 Or LUBA 307, 313 (1991).

4 This Board has previously stated that to perform its legislative review function, it is  
5 generally necessary either (1) that a challenged legislative land use decision be supported by  
6 findings demonstrating compliance with applicable legal standards, or (2) that respondents  
7 provide in their briefs argument and citations to facts in the record adequate to demonstrate  
8 that the challenged legislative decision complies with applicable legal standards. *Id.* at 314;  
9 *see Gruber v. Lincoln County*, 2 Or LUBA 180, 187 (1981).

11 To the extent petitioner argues that respondents improperly interpreted their  
12 comprehensive plan and land use regulations, LUBA is required to apply a limited and  
13 deferential standard of review and cannot substitute its judgment unless the local  
14 governments' interpretation is "inconsistent with express language of the ordinance or its  
15 apparent purpose or policy." *Clark v. Jackson County*, 313 Or 508, 515, 836 P.2d 710; *see*  
16 *also* ORS 197.829(1).

18 As clarified in *Church v. Grant County*, 187 Or App 518, 524 (2003), where the local  
19 governments' interpretation of its own land use legislation is consistent with the principles  
20 set forth in *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 859 P2d 1143 (1993), the  
21 local governments' interpretation is entitled to deference. LUBA cannot substitute its  
22 judgment for the judgment of the local governments where, as here, the local governments'  
23 interpretation is plausible and not inconsistent with the express language or the policies and  
24 purpose of the applicable acknowledged land use legislation. *Siporen v. City of Medford*,  
25 349 Or 247, 266, 243 P3d 776 (2010); ORS 197.829.  
26  
27  
28

1 Goal 2 does require that legislative land use decisions have "an adequate factual  
2 base." *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 377 (1994). The  
3 Goal 2 requirement for an adequate factual base requires a legislative land use decision to be  
4 supported by substantial evidence. *Id.* The substantial evidence standard requires evidence  
5 that a reasonable person would rely on in reaching a decision. (See ORS 197.835(7)(a)(c)).  
6 Where LUBA concludes that a reasonable person could reach the decision made by the local  
7 government, in view of all the evidence in the record, LUBA defers to the local  
8 government's choice between conflicting evidence. *Reynolds v. City of Sweet Home*, 38 Or  
9 LUBA 507, 515 (2000); *Angel v. City of Portland*, 22 Or LUBA 649, 659 (1992); *Younger v.*  
10 *City of Portland*, 305 Or 346, 360 (1988). LUBA will not reweigh the evidence in the  
11 record. *ODOT v. Clackamas County*, 27 Or LUBA 141, 146 (1994).

13 With regard to providing an explanation of the basis for a challenged legislative  
14 decision, local governments may provide that basis either with legislative findings or with  
15 citation to facts in the record in Respondent's Brief. *Redmonds/Viola/Fischers Mill*  
16 *Community Planning Organization v. Clackamas County*, 27 Or LUBA 560 (1994).

18 To the extent that any assignments of error argue that the legislation does not comply  
19 with the "adequate factual basis" requirement of Statewide Planning Goal 2, the analysis of  
20 *Clark* deference found in *Gage v. City of Portland*, 319 Or 308, 315-17 (1994) is instructive.  
21 Where respondents interpret legislation not of its own making, such as state law, the rules of  
22 statutory interpretation set forth in *PGE, supra* should govern. *See id.*

23  
24 **RESPONSE TO FIRST ASSIGNMENT OF ERROR**  
25 **The Metro Plan and Glenwood Refinement Plan amendments comply with Statewide**  
26 **Planning Goals 2 and 5.**

27  
28 **A. Standard of Review.**

1 The requirements of Goal 5 for riparian resources are set forth in the Goal and  
2 Oregon Administrative Rules (OAR) 660-023-0250 (Goal 5 Rule). Petitioner's arguments  
3 based on Goal 5 include only citations to the applicability text of the Goal 5 Rule and contain  
4 no specific analysis of how any specific program to protect Goal 5 riparian resources was  
5 substantively affected by changes detrimental to the protected Goal 5 resource. Petitioner  
6 fails to make any specific connection to Goal 2. To the extent necessary, the standards of  
7 review described previously and the responses to other assignments of error are incorporated  
8 here.  
9

10 **B. Respondents complied with Goals 2 and 5, as well as the Goal 5 Rule, in**  
11 **making adequate findings of compliance with Goal 5 in connection with this post**  
12 **acknowledgment plan amendment that does not affect a Goal 5 resource within**  
13 **the meaning of the Goal and OAR 660-0023-0250(3) and only enhances the**  
14 **previously acknowledged Goal 5 riparian resource protections.**

15 The decisions contain an adequate basis in fact, adequate findings, evaluation of the  
16 impacts and the ultimate policy choice to allow less intensive uses and enhance riparian  
17 protection measures with amendments to the Glenwood Refinement Plan Phase 1 and minor  
18 revisions to the water quality protection provisions of the Springfield Development Code  
19 (SDC). App 59-65. The Goal 5 findings address the overall effects of the GRP and SDC  
20 changes on riparian resources by initially stating:

21 "All new development/ redevelopment in Glenwood Phase 1, as well as the rest of  
22 Glenwood will require compliance with the riparian policies and implementation  
23 strategies in the updated Glenwood Refinement Plan and the existing and amended  
24 standards contained in the SDC." App 60.

25 After addressing several other Goal 5 resources, the ultimate findings and conclusion on  
26 applicability and Goal 5 compliance state:

27 "Springfield's riparian and wetland inventories, as discussed above, were amended  
28 under a separate PAPA, LRP2010-00002.

"While the proposed Glenwood Refinement Plan and the proposed Glenwood  
Riverfront Mixed-Use Plan District do discuss new uses along the Glenwood  
Riverfront they will not conflict with significant Goal 5 resources because these uses  
will be less intense than the existing industrial and commercial uses and the proposed

1 Glenwood Refinement Plan Open Space Chapter, Natural Resource Section states:  
2 ‘Provide ample opportunities for people to access and enjoy the Willamette River and  
3 the natural environment while complying with State and Federal regulation and  
4 providing stable riverbanks and conserving, protecting, restoring, and establishing a  
5 diversity of riparian habitats and wetlands in order to retain their properly functioning  
6 condition related to fish and wildlife habitat, riverine flood control, sediment and  
7 erosion control, water quality, and groundwater pollution,’ [emphasis original].

8  
9 **“Conclusion**

10 “Glenwood Phase 1 is consistent with Goal 5 because all applicable OARs  
11 implementing the Goal have been addressed and riparian and wetland  
12 inventories within the Glenwood Phase 1 boundaries have been updated.” App  
13 64-65.

14 The specific analysis of compliance concludes there will be no new conflicting use  
15 because the riparian inventories were previously updated and enhanced standards provide for  
16 new or replacement riparian landscaping and new uses will be less intense than those  
17 previously allowed within the Glenwood Phase 1 areas. In addition, all new and replacement  
18 uses in Glenwood will require compliance with the riparian policies and implementation  
19 strategies, including previously acknowledged standards contained in the Springfield  
20 Development Code. Those include the permitted use qualification provision of SDC 4.3-  
21 115B that allows the listed uses “as long as they do not diminish riparian functions[.]” App  
22 459. Taken as a whole, the changes do not trigger the obligation to apply the Goal 5 Rule  
23 any further and petitioner fails to specify how the amendments conflict with or “affect” a  
24 Goal 5 resource. *Cox v. Polk County*, 49 Or LUBA 78 (2005).

25 Unlike *Rest-Haven Memorial Park v. City of Eugene*, 39 Or LUBA 282, 299, *aff’d*  
26 175 Or App 419, 28 P3d 1229 (2001), the findings identify and rely on the previous  
27 acknowledged Goal 5 inventory and planning efforts undertaken to establish the significant  
28 riparian resources, the setbacks designed to regulate uses and activities that could conflict  
with that resource and the program for protection of the resources. In the planning effort for

1 the Glenwood area, the findings conclude the effect of changes in the uses or standards  
2 would be less intense and could actually enhance existing riparian resource protections.

3 The findings adequately address Goal 5 and applicable provisions of the Goal 5 Rule,  
4 specifically OAR 660-0023-0250(3). App 59-65, 157-159. The findings and conclusions  
5 focus on the overall effect of the changes and point to the extensive previous planning effort  
6 that addressed Goal 5. App 59-60. The revised regulations and references in the new  
7 Glenwood Riverfront Mixed-Use Plan District do not trigger full application of the Goal 5  
8 Rule. Petitioner fails to develop specifics on how any change conflicts with or “affects a  
9 Goal 5 resource.” The findings refer to the previous work on the inventory and riparian  
10 protections to conclude there will be no new conflicts with those acknowledged Goal 5  
11 resources. The Water Quality Limited Watercourse protections initially developed under  
12 Goal 6 are the primary foundation for the setbacks and provide the principle basis for the  
13 Goal 5 riparian resource protections. Under the amendments to the Springfield Development  
14 Code adopted with the Glenwood Refinement Plan, public stormwater facilities along the  
15 Willamette River continue to be subject to the regulations in SDC 4.3-115. SDC 3.4-270.I;  
16 App 395, 422, 457. Those water quality standards continue to apply to development adjacent  
17 to the Willamette River and are protective of Goal 5 riparian resources. Although some  
18 standards were changed, the specific subsections described by petitioner fail to establish  
19 conflicts or an “affect” on the Goal 5 riparian resources in a manner that requires revisiting  
20 the entire inventory and analysis required by Goal 5. The new protections in SDC 4.3-  
21 115.A.1 and 4.3-115.B.1 are new beneficial vegetation requirements to maintain the status  
22 quo, especially existing native vegetative ground cover and trees, as well as provide for  
23 expanded reasons for clustering of trees. Petitioner fails to explain how that substantively  
24 affects the acknowledged Goal 5 riparian resource inventory or significantly changes the  
25  
26  
27  
28

1 protections in a manner that amounts to an “affect” on the Goal 5 resource. For that reason  
2 alone, this assignment of error should be denied.

3 The argument about “Stormwater management systems and outfalls” as provided for  
4 in the Springfield Engineering Design Standards and Procedures Manual (EDSPM), rather  
5 than merely at the discretion of the Public Works Director fails for a variety of reasons. SDC  
6 4.3-115.B.5, App-459. First, the EDSPM is part of acknowledged land use regulations, as  
7 discussed in the response to the eighth assignment of error and incorporated herein by this  
8 reference. The EDSPM references in the Glenwood Refinement Plan amendments continue  
9 the previous adoption of the EDSPM by reference in SDC Subsection 4.1-110, enacted in  
10 Ordinance No. 6206 by Springfield on September 17, 2007, and by Lane County in  
11 Ordinance No. 16-07, enacted December 5, 2007. Finally, petitioner fails to articulate how  
12 moving from PW Director discretion to the clear and objective standards of EDSPM might  
13 “affect” the Goal 5 riparian resource.  
14

15 The arguments about trails and bikeways fail to identify with specificity the changes,  
16 fail to describe any substantive distinction between the uses, fail to recognize the context for  
17 those uses and subsections of the Springfield Development Code (SDC 5.3-115.B.6 and 5.3-  
18 115.B.7) that were not changed. To the extent the argument about bikeways was meant to  
19 address SDC 4.3-115.B.7, that provision has nothing to do with bikeways. The bold-faced  
20 assertion of a difference in pedestrian paths and mixed use paths ignores the similarities of  
21 those uses. The full description of the multi-use path allowed in riparian areas as long as  
22 they do not diminish the riparian functions indicates a number of limitations on the drainage  
23 and location of the path to minimize impacts to the riparian resource under SDC 4.3-115.B.6,  
24 as follows:  
25

26  
27 “Multi-use paths for pedestrian and/or bicycle use shall be permitted, provided  
28 that the multi-use path drains away from the watercourse. Multi-use paths shall

1 be located along the outer edge of the required riparian areas and away from the  
 2 watercourse. The multi-use path shall be located as the outermost edge of the  
 3 75 foot-wide Greenway Setback Line/Riparian Setback to the maximum extent  
 4 practicable.” App 459.

5 In addition, the provisions of SDC 6.1-110 make clear that both pedestrian and multi-use  
 6 paths may be surfaced in a manner that “includes impervious pavement” (emphasis  
 7 supplied). Likewise, the existing definition of “pedestrian trail” and “shared use path” in  
 8 SDC 6.1-110 continue.

9 The changes to the riparian regulations described by petitioner are not sufficient to  
 10 trigger the application of Goal 5, as explained in *Rest-Haven* and above. The types of  
 11 amendments described by petitioner fail to rise to a level that “affects” the Goal 5 riparian  
 12 resource sufficiently to require any new or additional Goal 5 inventory and analysis.

13 Petitioner fails to explain how the amendments are inconsistent with Goals 2 or 5. For those  
 14 reasons, this assignment of error should be denied.

#### 15 **RESPONSE TO SECOND ASSIGNMENT OF ERROR**

16 **The Metro Plan and Glenwood Refinement Plan amendments comply with Goals 2 and**  
 17 **8, as well as local requirements regarding internal consistency with existing provisions**  
 18 **of the comprehensive plan.**

##### 19 **A. Standard of Review.**

20 The requirements of Goal 8 are set forth in the Goal and Oregon Administrative Rules  
 21 (OAR) 660-034-0000 to 666-034-0040 (Goal 8 Rule). Petitioner’s arguments based on Goal  
 22 8 contain no specific analysis of how Goal 8 compliance was substantively affected by the  
 23 changes and instead focuses on consistency with applicable comprehensive plans, apparently  
 24 under Goal 2. To the extent necessary, standards of review described previously and in the  
 25 responses to other assignments of error are incorporated here.

26 **B. The challenged decisions are consistent with Goals 2 and 8, as well as**  
 27 **applicable comprehensive plan policies and studies addressing the need for**  
 28 **parks and open space and the need for high-density residential uses.**

1 The decisions provide for adequate parks and open space consistent with identified  
2 needs and policies in the acknowledged comprehensive plans. The Glenwood Refinement  
3 Plan amendments implement and remain consistent with findings and policies of the  
4 previously adopted Springfield 2030 Refinement Plan Residential Land Use and Housing  
5 Element (Springfield 2030 Plan) and the supporting Residential Lands Housing Needs  
6 Analysis (RLHNA).<sup>2</sup> Petitioner argues the decisions violate Goal 8, but then focuses on  
7 assertions that only address Goal 2 and do not articulate any specific Goal 8 violation.  
8 (Petition 15-17). Petitioner ignores specific findings, applicable policies and other  
9 refinement plans or discussions addressing the need for parks and open space in both the  
10 Metro Plan and, more specifically, the Glenwood area. App 69-72; 135-136; 180. For those  
11 reasons, the arguments of petitioner fail in all respects.  
12

13 Without citation, petitioner asserts the Springfield 2030 Plan includes policies  
14 directing 21 acres of land in Glenwood must be designated for high-density residential uses  
15 (“HDR-designated land”) and 7 additional acres of HDR-designated land must be available  
16 for public open space intended to serve the needs of the 21 acres of residential uses. Petition  
17 15. The argument ignores Policy H.2 in the Springfield 2030 Plan, which only addresses  
18 high-density residential needs, does not mention any requirement of land to be designated for  
19 parks and open spaces, and reads as follows:  
20

21 “To meet identified high-density, multiple-family housing needs, the City shall re-  
22 designate at least 28 gross buildable acres in Glenwood Refinement Plan Subarea 8  
23 and the eastern portion of Subarea 6 to Residential Mixed-Use by December 31, 2012.  
24 The residential mixed use district shall accommodate a minimum of 411 dwelling  
25 units in the high density category and shall increase the required net minimum density  
26 to at least 28 dwelling units per acre. Establishment of higher minimum and  
27 maximum densities is encouraged to support neighborhood commercial uses and  
28 employment uses envisioned in the Glenwood Refinement Plan. District boundaries  
and density ranges shall be established through the Glenwood Refinement Plan  
amendment process by December 31, 2012.” App 135.

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<sup>2</sup> Adopted by the City of Springfield as part of Ordinance No. 6268 (June 20, 2011). Adopted by Lane County as part of Ordinance No. PA 1274 (July 6, 2011).

1 Petitioner only cites several findings and statements in both the Springfield 2030 Plan and the  
2 Glenwood Refinement Plan to establish an “obligation” to designate at least 28 acres of high-  
3 density residential land that would include at least 7 acres available for parks and open space.  
4  
5 Petition 15-17. What petitioner fails to mention is that the Glenwood Refinement Plan  
6 ultimately designates 33.26 gross acres to provide for high-density residential needs,  
7 including the necessary public open spaces and supporting public facilities identified in the  
8 Metro Plan. The Springfield 2030 Plan and RLHNA also contemplated meeting the need  
9 through redevelopment strategies in the Downtown and Glenwood areas and directed  
10 development of high-density residential uses adjacent to commercial or employment areas.  
11 App 224-252, especially 239-242, 313-314. The Glenwood Refinement Plan amendments  
12 adequately address and remain consistent with the Metro Plan, the Springfield 2030 Plan and  
13 the RLHNA provisions on the need for high-density residential and parks or open space uses.  
14

15 The findings supporting the amendments establish compliance with the Springfield  
16 2030 Refinement Plan Residential Land Use and Housing Element Policies, including  
17 specific findings on Policy H.2, which mandates designation of at least 28 acres of land for  
18 high-density residential development but does not specify any part of that must be only for  
19 parks and open space. App 134-136, especially 135. The amendments satisfy that policy  
20 requirement with designation and rezoning of more than 33 acres for Residential Mixed Use  
21 to allow for development of housing that meets the high-density residential needs and  
22 provides for related auxiliary uses.<sup>3</sup> App 135. In addition, the more intensive redevelopment  
23 contemplated by the Glenwood Refinement Plan amendments will assure the requisite  
24 Springfield 2030 Plan high-density residential needs will be met. The Glenwood Refinement  
25  
26

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27  
28 <sup>3</sup> Redesignating property of petitioner has no effect on the high-density supply, since it was designated medium-  
density and zoned for low-density residential.

1 Plan provides for a minimum density threshold of 50 dwelling units per net acre with  
2 potential for a minimum of 1,100 new dwelling units compared to the prior nodal threshold  
3 of 12 dwelling units per net acre and the Springfield 2030 Plan requirement for  
4 accommodation of a minimum of 411 dwelling units and a minimum density of at least 28  
5 dwelling units per net acre in the high density category. App 133-136. In addition to  
6 utilizing faulty math, petitioner fails to indicate why over 12 acres more than the specified 21  
7 acres of high-density residential need required by the RLHNA is not sufficient to meet the  
8 need for parks and public facilities described in the quoted findings and statements of the  
9 Springfield 2030 Plan and the Glenwood Refinement Plan.  
10

11 In addition, findings under Goal 8 refer to specific analysis in the Springfield 2030  
12 Plan that identified alternative approaches to the need for public and semi-public uses,  
13 including parks. Springfield 2030 Plan, Needs Analysis, pages 65-72. Those findings  
14 address the arguments of petitioner in two ways. First, by including 33.26 acres, the  
15 amendments provide over 12 acres more than the 21 acres asserted by petitioner as necessary  
16 to meet the findings cited. Second, the alternative to designating seven acres high-density  
17 residential identified in the Needs Analysis included “ensuring that land designated park and  
18 open space is provided adjacent to high density residential developments.” Springfield 2030  
19 Plan, Needs Analysis, page 71. The park blocks and linear park approach provides for those  
20 park needs in and immediately adjacent to the high-density residential areas and provides for  
21 connecting those areas to the adjacent commercial, office, or employment mixed use areas  
22 and more significant regional park facilities located in both Springfield and Eugene. App 70-  
23 72, 298-307. The park blocks (3.5 acres) and a portion of the linear park (2.69 acres) are in  
24  
25  
26  
27  
28

1 Subarea A, the area designated for high-density residential uses.<sup>4</sup> While many of the planned  
2 areas may not have been designated and zoned specifically for parks and open spaces, all the  
3 zoning in the Glenwood Riverfront Mixed-Use District will permit and implement park  
4 development. All of this planning effort was coordinated with the Willamalane Park District  
5 and is reflected in the 20-year Park and Recreation Comprehensive Plan. App 69-72.  
6 Petitioner fails to specifically identify how the Glenwood Refinement Plan and related Metro  
7 Plan amendments make these parks less accessible to the residential areas they are intended  
8 to serve or how the amendments are otherwise inconsistent with Goal 8 or the policies,  
9 findings and additional analysis of the Metro Plan, the Springfield 2030 Plan, the RLHNA  
10 and the Glenwood Refinement Plan addressing both the need for high-density residential  
11 lands and the need for parks and open spaces.  
12

13 The most recent Metro Plan and Glenwood Refinement Plan amendments are  
14 consistent with the statements and commitments made in the Springfield 2030 Plan and  
15 satisfy the high-density residential and parks or open space needs identified there and in the  
16 RLHNA. Both plans contemplate at least 28 acres designated for high-density residential  
17 uses; at least seven acres of land available for open space and supporting public facilities in  
18 order to serve the needed 21 acres of high-density residential uses; and for alternative ways  
19 to accommodate the need for public and semi-public uses, including providing parks  
20 immediately adjacent to high-density residential developments. The refinement plans are  
21 mutually consistent and adequately address the concerns of petitioner raised here and in  
22 previous submittals to respondents while the amendments were being considered for  
23  
24  
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28 <sup>4</sup> In addition, the riverfront linear park is planned for in Subarea B (2.779 acres), Subarea C (4.41 acres) and Subarea D (32.27 acres). App 301, 303-307.

1 adoption.<sup>5</sup> *South of Sunnyside Neighborhood League v. Bd. of Comr's of Clackamas County*,  
 2 280 Or 3, 13 (1977); ORS 197.015(5). With these amendments, the comprehensive plan  
 3 remains internally consistent. *NWDA v. City of Portland*, 47 Or LUBA 533, 550 (2004).  
 4 Petitioner fails to establish error and any violation of Goals 2 or 8. For those reasons, this  
 5 assignment of error should be denied.

6 **RESPONSE TO THIRD ASSIGNMENT OF ERROR**

7 **The Metro Plan and Glenwood Refinement Plan amendments have an adequate factual**  
 8 **basis and do not violate Goals 2, 9 or the Goal 9 Rule.**

9 **A. Standard of Review.**

10 The requirements of Goal 9 are set forth in the Goal and Oregon Administrative Rules  
 11 (OAR) 660-009-0000 to 660-009-0030 (Goal 9 Rule). Petitioner's arguments based on Goal  
 12 9 contain some analysis of Goal 9 compliance in specific areas after introducing the  
 13 importance of compliance with Goal 2. Petitioner fails to make a specific connection to Goal  
 14 2 with the arguments. To the extent necessary, standards of review described previously and  
 15 in the responses to other assignments of error are incorporated here.  
 16

17 **B. The decisions comply with Goals 2, 9 and the Goal 9 Rule based on**  
 18 **ultimate policy choices, with adequate findings and the record provides an**  
 19 **adequate factual basis for the decisions.**

20 The decisions under review establish Goal 2 compliance with an adequate factual  
 21 basis, adequate findings, evaluation of alternative courses of action, and a statement of  
 22 ultimate policy choices complying with the substantive requirements of the other goals,  
 23 including Goal 9. Petitioner fails to establish a basis for remand with the concerns over the  
 24 misunderstood status of the economic opportunities analysis, the role of the mischaracterized  
 25 site design review standards, the five-acre minimum development area requirements and the  
 26

27 <sup>5</sup> Staff responses to the more general issues raised on behalf of petitioner adequately identified the substance of  
 28 the consistency between the Glenwood Refinement Plan and the Springfield 2030 Plan and RLHNA. Record  
 1103-1111, 1138-1146, 10163-10171.

1 “short-term supply” requirements of the Goal 9 Rule. The findings and other relevant  
2 portions of the Glenwood Refinement Plan adequately establish compliance with Goals 2, 9  
3 and the Goal 9 Rule.

4 The economic opportunity analysis was developed as part of the Springfield urban  
5 growth boundary inventory and analysis effort, reviewed by the Council and adopted using  
6 post-acknowledgment plan amendment procedures in January 2010. That process included  
7 extensive citizen involvement and public noticed hearings before the Planning Commission  
8 and Council. The study was also considered in the adoption of portions of the Springfield  
9 2030 Refinement Plan establishing a separate urban growth boundary for the City of  
10 Springfield under HB 3337 (2007) and utilized in the analysis and development of the  
11 adopted Glenwood Refinement Plan under review now. The time for challenging either the  
12 initial adoption or as part of the Springfield 2030 Plan and UGB establishment has passed.  
13 The findings also establish how the earlier industrial and commercial land studies included  
14 most of the Eugene-Springfield metropolitan area and were reflected in the Economic  
15 Element of the Metro Plan through findings, policies and implementation strategies. App 72-  
16 74. Ultimately, the areas in the Metro Plan were designated and zoned for appropriate  
17 industrial or commercial uses consistent with those studies. App 74.

18 Because of the need for separate urban growth boundaries driven by HB 3337 (2007),  
19 these planning efforts included developing both residential land and commercial/industrial  
20 land studies simultaneously to determine land needs. These studies were then utilized to  
21 prepare and adopt revisions to the Metro Plan and portions of the Springfield 2030  
22 Refinement Plan necessary to establish a separate Springfield urban growth boundary. That  
23 planning action was acknowledged in September, 2011. Both studies were utilized and  
24 reflected in those planning actions and in the present action under review. For those and the  
25  
26  
27  
28

1 reasons that follow, the decisions under review establish compliance with Goal 2 by  
2 providing an adequate factual basis, adequate findings, evaluation of alternative courses of  
3 action, and a statement of ultimate policy choices that comply with the substantive  
4 requirements of Goal 9 and this assignment of error should be denied. To the extent this  
5 Board concludes the economic opportunity analysis has not been sufficiently adopted or  
6 incorporated into applicable comprehensive plans, the substantive challenges to compliance  
7 with Goal 9 and the Goal 9 Rule are not ripe for review.

8  
9 **1. Respondents complied with Goals 2, 9, the Goal 9 Rule and related Metro**  
10 **Plan policies by basing the conclusion of compliance with Goal 9 inventory**  
11 **requirements on an adopted economic opportunities analysis.**

12 Respondents demonstrated consistency with both the earlier acknowledged economic  
13 opportunities analysis (EOA) and resultant Metro Plan provisions, as well as the most recent  
14 analysis adopted and utilized to develop the separate Springfield urban growth boundary and  
15 the most recent revisions to the Metro Plan and Glenwood Refinement Plan currently under  
16 review. The decisions are consistent with the Goal 9 Rule and use the best available  
17 information. The economic opportunity analysis includes documentation of a “short-term  
18 supply of land” and the Glenwood Refinement Plan states policies for economic development  
19 that are consistent with the Metro Plan. Petitioner fails to substantively address the nature of  
20 changes to industrial lands or make any assertion of a net reduction in buildable industrial or  
21 commercial lands under the new plan and zoning designation. App 43, 44, 47-49. The  
22 Glenwood Refinement Plan policies are consistent with acknowledged economic  
23 opportunities analysis and Metro Plan provisions.

24  
25 In turn, the decisions have included analysis and implementing measures in both the  
26 Glenwood Refinement Plan and Springfield Development Code to reflect the plan policies  
27 described above. Needed sites are identified; serviceable land to meet those needs are  
28

1 identified; a short-term supply of land is identified; and uses that are incompatible with  
2 industrial and employment uses are managed to limit negative impacts. In findings under  
3 Goal 9 and the Goal 9 Rule, the decisions explain the status of the 2009 Commercial  
4 Industrial Buildable Lands Inventory, Economic Opportunities Analysis and Economic  
5 Development Objectives and Strategies, adopted by Resolution 10-03 (January 19, 2010)  
6 (“2009 CIBL/EOA”) and utilized as part of the Springfield 2030 Refinement Plan adopted to  
7 establish a separate urban growth boundary, which was acknowledged in September, 2011.  
8 The findings on the Goal 9 issues are at App 72-83, 146-157.

9  
10 The findings describe the 30 year history of planning for Goal 9 uses under the Metro  
11 Plan it shares with Eugene, including the most recent statutory mandate that it adopt its own  
12 UGB. App 72-74. Following that review, the findings explain that the 2009 CIBL/EOA was  
13 adopted in January, 2010, continues to be reviewed as additional work continues on the  
14 larger urban growth boundary and that it contains the most current and best Goal 9 data  
15 utilized for development that was coordinated with and reflected in the adopted Glenwood  
16 Refinement Plan, as follows:  
17

18 “Springfield locally adopted the Springfield Commercial and Industrial Buildable  
19 Lands Inventory, Economic Opportunities Analysis and Economic Development  
20 Objectives and Implementation Strategies in January 2010. The final decision on  
21 adoption of the Springfield Commercial and Industrial Buildable Lands Inventory  
22 and Economic Opportunities Analysis shall be made by the Springfield City Council  
23 and the Lane County Board of Commissioners as this document is incorporated into  
24 the Springfield 2030 Refinement Plan, a refinement plan of the Eugene-Springfield  
25 Metro Plan.

26 “The Springfield Commercial and Industrial Buildable Lands Inventory and  
27 Economic Opportunities Analysis contains the most current and best data available to  
28 inform the update of the Glenwood Refinement Plan as it addresses land needed for  
employment for the planning period 2010-2030.

“The proposed Glenwood Refinement Plan Housing and Economic Development  
Chapter states:

“*Springfield is a business-oriented city. The City is undergoing revitalization, with  
on-going redevelopment efforts in Downtown and Glenwood, and the recent opening  
of the hospital at RiverBend. The City’s vision for economic growth over the next 20*

1 years, as articulated in the adopted Springfield Commercial and Industrial Buildable  
 2 Lands Inventory, Economic Opportunities Analysis, and the Economic Development  
 3 Objectives and Implementation Strategies (CIBL), combines sustaining existing  
 businesses and helping them expand and embracing a broad variety of new  
 opportunities for growth.'

4 "The CIBL, which is intended to guide planning studies and land use actions in  
 5 Springfield, including the Glenwood Refinement Plan, summarizes Springfield's  
 economic development strategy as follows:

- 6 • "Facilitate the redevelopment of Downtown Springfield and Glenwood  
 7 through strategic infrastructure and other investments from programs such  
 as urban renewal and planning for redevelopment.
- 8 • Provide sites with a variety of site characteristics to meet both commercial  
 and industrial economic opportunities, including providing sites that are  
 9 available for relatively fast development. This includes providing large sites  
 for major employers.
- 10 • Use land within the existing urban growth boundary efficiently, through  
 promoting redevelopment, infill development, and dense development in  
 11 nodal areas. The study assumes that 52% of new employment during the  
 planning period will locate on lands that are already developed.
- 12 • Provide infrastructure efficiently and fairly by coordinating capital  
 improvement planning with economic development planning.
- 13 • Support and assist existing businesses within Springfield by assessing what  
 help businesses need and developing programs to respond to business needs.
- 14 • Attract and develop new businesses, especially those related to regional  
 business clusters. The City would like to build on the developing health care  
 15 cluster, promote development of high-tech businesses, and attract  
 sustainable businesses.
- 16 • Maintain flexibility in planning through providing efficient planning services  
 and developing flexible planning policies to respond to the changing needs of  
 17 businesses.'

18 "The proposed Glenwood Refinement Plan Housing and Economic Development  
 19 Chapter states:

20 "CIBL also articulates the types of industries that Springfield wants to attract as  
 21 having the following attributes: high-wage, stable jobs with benefits' jobs requiring  
 22 skilled and unskilled labor; employers in a range of industries that will contribute to  
 a diverse economy; and industries that are comparable with Springfield's community  
 23 values. Springfield's 'target industries' include: medical services; services for  
 seniors; small scale manufacturing; call centers; back-office functions; tourism;  
 24 specialty food processing; high-tech; professional and technical services; green  
 businesses; corporate headquarters; and services for residents. Springfield's  
 25 attributes that may attract these types of firms are: proximity to interstate-5, high  
 quality of life, proximity to the University of Oregon, the presence of the RiverBend  
 campus, positive business climate, availability of skilled and semi-skilled labor, and  
 26 proximity to indoor and outdoor recreational opportunities.'

27 "The CIBL added 'consistent with City Council policies, the areas that are expected  
 28 to have the most redevelopment in the plan period are in Glenwood, specially along

1       the Willamette Riverfront and Franklin/McVay corridor, and the Downtown Urban  
2       Renewal District.'

3       “‘The proposed Employment Mixed-Use, Office Mixed-Use, and Commercial Mixed-  
4       use refinement plan designations and zoning described in the Land use Chapter  
5       respond accordingly. However, meeting Statewide Planning Goal 9, Economic  
6       Development, requires not only providing an adequate land supply to provide for an  
7       adequate 20-year supply of sites of suitable sizes, types, locations, and service levels  
8       for a variety of industrial uses, but also policies regarding opportunities for a variety  
9       of economic activities vital to the health, welfare, and prosperity of citizens.’

10       “The proposed Glenwood Riverfront Mixed-Use Plan District will implement the  
11       CIBL economic development policies and implementation strategies in Glenwood  
12       Phase 1.” (footnote omitted) App 73-75.

13       With adoption of the 2009 CIBL/EOA and its subsequent incorporation and  
14       utilization in the acknowledged Metro Plan/Springfield 2030 Refinement Plan urban growth  
15       boundary actions, continued incorporation and utilization of that study in this Metro  
16       Plan/Glenwood Refinement Plan action now provides an adequate basis for evaluating  
17       compliance with the Goal 9 Rule. The decisions conclude the changes comply with Goal 9  
18       and the Goal 9 Rule based on, among other things, the findings and analysis in the 2009  
19       CIBL/EOA that was coordinated with and incorporated throughout the Glenwood  
20       Refinement Plan, tantamount to adoption of those findings, analysis, principles and policies  
21       into the comprehensive plan as it informs the action taken to adopt the amendments. App 72-  
22       83, 146-157, 225-252.

23       The situation presented here is different than the situations presented in the cases  
24       cited by petitioner. See, e.g., *Gunderson, LLC v. City of Portland*, \_\_ Or LUBA \_\_ (LUBA  
25       No. 2010-039/040/041, Jan. 21, 2011), *rev'd in part and remanded*, 243 Or App 612, 259  
26       P3d 1007 (2011), *affirmed* \_\_ Or \_\_ (June 12, 2012); *1000 Friends of Oregon v. City of*  
27       *Dundee*, 203 Or App 207, 124 P3d 1249 (2005); *DS Parklane, Inc. v. Metro*, 165 Or App 1,  
28       22, 994 P2d 1205 (2000). The decisions here are not based entirely on draft plan documents  
and instead do what is directed by the *Gunderson* line of cases. The progression of steps

1 taken to adopt the 2009 CIBL/EOA, establish a separate urban growth boundary in 2011  
2 under HB 3337 (2007) and establish a more robust mixed-use plan for the Glenwood area  
3 provides the alternative action described in *Gunderson* where this Board stated:

4 “If the city relies on the 2009 EOA as the primary basis for its determination that  
5 the challenged amendments are consistent with the city’s Goal 9 obligations, under  
6 *Dundee* it has little choice but to amend its comprehensive plan to adopt the 2009  
7 EOA or take other appropriate action to amend the plan so that it will provide an  
adequate basis for the required Goal 9 determination.” *Gunderson*, LUBA No.  
2010-039/040/041, Slip Op at 15.

8 Incorporation of the analysis into the Glenwood Refinement Plan amendments and utilization  
9 of the adopted 2009 CIBL/EOA constitutes another “appropriate action” to amend the  
10 applicable comprehensive plan that provides an adequate basis for addressing Goal 9 or Goal  
11 9 Rule compliance and reliance on the analysis is not fatal to the decisions in this  
12 circumstance. The most recent economic opportunity analysis has been sequentially  
13 incorporated into the applicable comprehensive plan through adoption of the study,  
14 consideration of it in adoption of amendments to the Metro Plan to establish a separate UGB  
15 and updated refinement plans, including the Glenwood Refinement Plan amendments, that  
16 utilize and incorporate the 2009 CIBL/EOA into the appropriate planning documents while  
17 explaining the analysis is subject to change as the citywide UGB expansion studies continue.  
18 Simply asserting the analysis “is a draft not incorporated into the acknowledged plan” fails to  
19 adequately address all of the circumstances of this case. For those reasons, this  
20 subassignment of error should be denied.  
21

22  
23 **2. All of the Goal 9 lands in the Glenwood area are subject to review**  
24 **standards focused on design and location of uses and those standards do not**  
25 **disqualify those lands from being counted toward the buildable land need**  
26 **established in the economic opportunities analysis.**

27 For some time under the acknowledged provisions of the Springfield Development  
28 Code, Site Plan Review has been required for any multifamily, commercial or industrial  
development prior to issuance of any development permit. SDC 5.17-105. The Site Plan

1 Review does not determine if a proposed use is permitted or determine whether zoning is  
2 consistent with the plan. Plan policies establish the appropriate zoning districts and the  
3 district lists of permitted uses establish which uses may be allowed. The Site Plan Review  
4 determines how the proposed development may occupy the site through compliance with  
5 quantitative standards.

6 The Glenwood Refinement Plan states, “[A]ll development in the Glenwood  
7 Riverfront will require Site Plan Review.” App 100, 112. The plan is implemented by the  
8 Glenwood Riverfront Mixed-Use Plan District, which was applied to all of the Phase I area.  
9 While Site Plan Review is a Type II process, it does not determine what land uses are  
10 permitted. SDC 5.17-110.B. Among other objectives, Site Plan Review provides a  
11 consistent means to review proposed development that requires a building permit, other than  
12 single-family, and most duplex residential structures, to ensure that the development meets  
13 all applicable development and building design standards. Examples of issues reviewed as  
14 part of Site Plan Review include: zoning densities, parking lot layout and landscaping,  
15 pedestrian connectivity, landscaped buffer yards, and transportation and utility infrastructure  
16 improvements. The review constitutes more of a “site design” review than a “use review”  
17 under applicable jurisdiction provisions of this Board. ORS 197.015(12)(a)(B); See  
18 *McPhillips Farm, Inc. v. Yamhill County*, \_\_\_ Or App \_\_\_, (CA 152964, April 24, 2013), slip  
19 opinion, page 13, footnote 8.

20 None of the cited Site Review Permit requirements applied in the Glenwood area  
21 disqualify the Goal 9 lands from being counted in the economic opportunity analysis. They  
22 do not qualify as “Development Constraints” under the Goal 9 Rule and comparison to the  
23 decision in *Opus I* provides little support for petitioner. See OAR 660-009-0005(2). The  
24 Glenwood Refinement Plan amendments and implementing regulations make it clear Site  
25  
26  
27  
28

1 Plan Review provisions are not of the same character as those reviewed in *Opus I* and found  
2 to be limitations on future uses. App 249-252. Petitioner fails to challenge any of the  
3 specific findings or plan provisions that address the inventory of lands and analysis of  
4 development constraints. App 72-83; 320-329. In addition, petitioner fails to make clear  
5 how reductions in the inventory for the Glenwood area will negatively affect the citywide  
6 Goal 9 inventory that is still under review.

7  
8 Many of the Site Plan Review provisions petitioner identifies are not standards or  
9 criteria that call for discretionary use approval decisions, they are examples of possible  
10 conditions that might become necessary in the event a development is otherwise unable to  
11 comply with the quantitative site review standards. Addressing those standards and criteria  
12 will provide landowners the benefit of knowing with certainty what uses they can develop.  
13 The subareas are all planned for mixed uses that provide the greatest flexibility to developers  
14 to design developments that make sense to the developer. Instead of including rigid  
15 permitted use code provisions to ensure that adjacent uses will be appropriate neighbors, the  
16 site review process allows for this determination when the development proposal is received  
17 and evaluated. Site Plan Review only gives the Director conditioning authority to “mitigate  
18 identified negative impacts to surrounding properties” consistent with the purposes of Site  
19 Plan Review. SDC 5.17-130. The Site Plan Review process means that owners of Goal 9  
20 land can propose development that meets the standards and be certain they can develop their  
21 land in the manner that makes sense to them.  
22

23  
24 In addition, the Glenwood Riverfront Mixed-Use Plan District has provided specific  
25 standards to implement the Glenwood Refinement Plan for the Phase I area. The actual  
26 language says that it is substituting “development and design standards” in the new SDC 3.4-  
27 215.B.1 for the information requirements in the standard Site Plan Review Process described  
28

1 in SDC 3.4-270. App 378. The list of “development and design standards” covers several  
2 topics described in the policies and text of the Glenwood Refinement Plan. App 249-252,  
3 395-427.

4 The Site Plan Review process results in a “limited land use decision,” defined in ORS  
5 197.015(12) as follows:

6 “(a) Means a final decision or determination made by a local government  
7 pertaining to a site within an urban growth boundary that concerns:

8 “\* \* \*

9 “(B) The approval or denial of an application based on discretionary standards  
10 designed to regulate the physical characteristics of a use permitted outright,  
11 including but not limited to site review and design review.”

12 The ability to condition approval to meet the design standards provides an avenue for  
13 approval of a proposed development that initially chooses to not follow the development and  
14 design standards for mixed-use development as established by the policies and provisions of  
15 the Glenwood Refinement Plan. Given the undeveloped assertion of discretionary standards  
16 provided by petitioner, the Site Plan Review decisions are closer to the outright permitted use  
17 portion of the spectrum than the type of process and decision that would be considered a  
18 statutory “permit” decision under the provisions of ORS 227.160(2). Without more,  
19 petitioner fails to establish how the Site Plan Review process could be considered a statutory  
20 “permit” or anything other than a “limited land use decision” excluded from that term in  
21 ORS 227.160.

22 Unlike in *Opus I*, the Glenwood Riverfront Mixed-Use Plan District does not  
23 encumber Goal 9 lands with the kinds of limitations and discretionary standards that would  
24 disqualify or significantly limit the inventory. To the contrary, the Glenwood Refinement  
25 Plan and the findings adopted with that plan demonstrate an adequate inventory of Goal 9  
26 land within the Glenwood area with implementing regulation that encourages more intensive  
27 utilization of sites. The new mixed-use plan designation and zoning provide an ample  
28

1 number of sites to meet the economic development objectives for redevelopment of  
2 Glenwood while meeting the nodal development objectives in TransPlan. The requirements  
3 in the Springfield Development Code differ significantly from the standards and allegations  
4 involved in the *Opus I* decision. When compared to the Eugene Site Review standards at  
5 issue in *Opus I*, the Site Plan Review process in the Glenwood area allows very little true  
6 discretion in the review of uses proposed on Goal 9 land, and petitioner fails to describe any  
7 true discretionary use approval standards. In addition, petitioner merely speculates on the  
8 application of the standards and the list of possible conditions without connecting any of it to  
9 truly discretionary use approval standards. The actual standards cited by petitioner, SDC  
10 5.17-125.D; 3.4-270.F.5; 270.J4.a; 280.L.2 and L.3, fail to rise to the level of a limitation on  
11 the use of the property. The transportation related standard relies on several clear provisions  
12 in the SDC; the retention of existing vegetation and other Greenway related requirements  
13 utilize an “extent practicable” qualifier that provides a measure of reason to the application of  
14 those standards.<sup>6</sup> The same is true of the possible conditions identified by petitioner, which  
15 depend on specific design standards for any authority to impose those conditions or deny the  
16 proposal. See, *Baker v. Lane County*, 43 Or LUBA 493 (2003); *Neighbors for Livability v.*  
17 *City of Beaverton*, 37 Or LUBA 408 (1999); *Carter v. Umatilla County*, 29 Or LUBA 181  
18 (1995). Speculation by petitioner does not make it happen or even make it possible to  
19 impose limitations on uses under the plan policies and implementation land use regulations  
20 adopted for the Glenwood area. For those reasons, this subassignment of error should be  
21 denied.  
22  
23  
24

25 **3. The “Minimum Development Area” does not violate Goal 9 or the Goal 9**  
26 **Rule, encourages orderly urban development and supports the adopted**  
27 **preliminary Economic Opportunities Analysis.**

28 <sup>6</sup> The term “maximum extent practicable” used in the Greenway context also means “without precluding the requested use.” SDC 3.4-280.C.

1           The newly developed Glenwood Riverfront Mixed-Use Plan District establishes some  
2 “Base Zone Development Standards” in subsection 3.4-265 of the Springfield Development  
3 Code. App 394-395. In each zone there is a five-acre Minimum Development Area, made  
4 necessary for different reasons explained in a note that also describes the simple steps  
5 developers may take to exempt property from that standard. The reasons include the number  
6 of small lots or parcels in the entire area, the need to establish the local street grid and park  
7 blocks in the Franklin Riverfront area and “to prevent piecemeal development of a number of  
8 large lots/parcels for compliance with Springfield Commercial and Industrial Buildable  
9 Lands Inventory, Economic Opportunities Analysis, and Economic Development Objectives  
10 and Implementation Strategies findings” for the McVay Riverfront area. It continues  
11 existing Metro Plan and earlier Glenwood Refinement Plan policies that encouraged  
12 consolidation of parcels into cohesive development sites. Metro Plan, Policy B.16, page III-  
13 B-5; App 151-152; Glenwood Refinement Plan, Subarea 8, Policy 5, adopted by Springfield  
14 Ordinance No. 6137, enacted July 18, 2005. Regardless of the acknowledgment status of the  
15 2009 CIBL/EOA, the reasons provided for in the standard establish ample justification for  
16 the minimum development area requirements. In addition, previously acknowledged plan  
17 and development regulations addressing Master Plan require more than a simple five-acre  
18 minimum and provide for exemptions in certain circumstances. Petitioner fails to establish  
19 any violation of Goal 9 or the Goal 9 Rule.  
20  
21  
22

23           The provisions in SDC 3.4-265 make it clear that a potential developer unable to  
24 assemble at least five acres or with a property that cannot meet the standard can easily  
25 become exempt. Small parcel owners should be able to develop if they cannot assemble at  
26 least five acres, whether due to neighbor unwillingness or other factors making assembly  
27 difficult. Note 1 to the Development Standards Table explains the standard and exemption  
28

1 clearly and does not support the strained logic in the assertions of petitioner. App 394;  
2 Petition 26-28. It makes clear all of the properties south of Franklin Boulevard and west of  
3 McVay Highway are exempt. Without authority or evidentiary support, petitioner assumes  
4 all small lots must be assembled into at least five acres and speculates the Master Plan  
5 requirements make it harder to put together smaller parcels that may need to include portions  
6 of a larger unit of land. Petitioner fails to develop the argument sufficiently and it is unclear  
7 how the Minimum Development Area standards can be interpreted to require the  
8 machinations described by petitioner. A Master Plan is only required for development on  
9 more than five acres that will be phased over a 3 to 7 year period. SDC 3.4-240; 5.13-100. If  
10 such a step as Master Plan approval must be included in the effort to assemble, it does not  
11 preclude or otherwise complicate development planning. In addition, exceptions and  
12 exemptions to the Minimum Development Area standards and Master Plan requirements  
13 make the assertions of petitioner simple speculation without any foundation.  
14

15       After an interesting analogy to “Goldilocks and the Three Bears,” R. Southey (1837),  
16 that provides little substance, petitioner embarks on an analysis of tax lot sizes without regard  
17 to ownership or location to assert the five-acre minimum development area mandates a  
18 massive makeover of property control, whether through ownership changes or development  
19 agreements. Petition 27-28. On its face, the analysis of petitioner ignores the exception or  
20 exemption areas, assumes separate ownership of every tax lot and uses averages to assert a  
21 massive “mandated makeover” that has no support in the Glenwood Refinement Plan or  
22 implementation regulations. The attempt to portray the Master Plan and minimum  
23 development area requirements as compelling assembly and Master Plan approval for every  
24 property in the Glenwood area distorts the policies and standards. There is no factual or legal  
25  
26  
27  
28

1 basis to conclude the rules “distort the property market to the benefit of would-be sellers,” as  
2 asserted by petitioner. Petition 28.

3 Finally, references to the 2009 CIBL/EOA as partial justification for the five-acre  
4 minimum development area requirement are not fatal to the standard. As previously noted,  
5 the 2009 CIBL/EOA has been adopted, and incorporated into previous refinement plan  
6 efforts, including the Glenwood Refinement Plan analysis as the citywide urban growth  
7 boundary continues to be studied. The justification for the amendments includes more than  
8 the 2009 CIBL/EOA and has been adequately described and incorporated into the plans and  
9 decisions. The Minimum Development Area standard has been explained in relation to both  
10 the acknowledged Metro Plan EOA, general and specific policies that encourage cohesive  
11 development sites and the more recently adopted “inventory of commercial and industrial  
12 sites that is adequate with regard to size, type, location and service levels.” *Opus I*, 28 Or  
13 LUBA at 691. For those reasons, this subassignment of error should be denied.  
14

15  
16 **4. The decisions demonstrate that much more than 25% of the Goal 9 land**  
17 **supply in the urban growth boundary qualifies as “short-term supply,” as**  
18 **required by the Goal 9 Rule, OAR 660-009-0025(3).**

19 The findings of compliance with this standard make clear that the previously adopted  
20 2009 CIBL/EOA analysis done in coordination with the Glenwood Refinement Plan, Phase I,  
21 and utilized in adopting a separate urban growth boundary assures there is sufficient “short-  
22 term supply” of land consistent with OAR 660-009-0025(3). First, only the alternative for  
23 those jurisdictions unable to meet the 25% supply target seems to be connected directly to the  
24 economic opportunity analysis. OAR 660-009-0025(3)(b). Second, utilizing city-wide  
25 studies appear adequate to address the findings of supply in smaller areas without some  
26 particular indication of different circumstances in the smaller area. *Opus I* at 27-28. Without  
27 more, petitioner fails to adequately develop the arguments or provide a basis for remand.  
28

1 In this subassignment, petitioner only asserts the unacknowledged 2009 CIBL/EOA  
2 alone demonstrates compliance and fails to identify any distinguishing characteristic in the  
3 Glenwood area that would make the analysis different than the citywide study. While the  
4 findings and plan incorporate and recite to parts of the 2009 CIBL/EOA, petitioner fails to  
5 articulate how the principles and assumptions used are not applicable to the Glenwood area  
6 for purposes of the Goal 9 Rule. In addition, speculation about problems with provision of  
7 public facilities in some of the Glenwood area ignores the extensive planning and funding  
8 efforts described elsewhere in the policies and findings of the Glenwood Refinement Plan. If  
9 funding is the concern raised by petitioner, that concern is not developed and falls outside of  
10 the purview of the Goal 9 Rule which focuses on engineering feasibility. OAR 660-009-  
11 0005(10). Petitioner fails to explain what limitations actually exist and which land within the  
12 Glenwood area should not be considered part of the short-term supply. Given the extensive  
13 percentage of short-term supply identified in Glenwood and city wide, it is difficult to  
14 comprehend how the loss of some acreage would result in a supply of less than 25% in the  
15 Glenwood area. For those reasons, this subassignment of error should be denied.  
16  
17

#### 18 **RESPONSE TO FOURTH ASSIGNMENT OF ERROR**

19 **The Metro Plan and Glenwood Refinement Plan amendments include ultimate policy**  
20 **choices, evaluation of alternative courses of action, are based on adequate findings with**  
21 **an adequate factual basis and do not violate Goals 2, 10 or the Goal 10 Rule.**

##### 22 **A. Standard of Review.**

23 The requirements of Goal 10 are set forth in the Goal and Oregon Administrative  
24 Rules (OAR) 660-008-0000 to 660-008-0040 (Goal 10 Rule). Petitioner's arguments based  
25 on Goal 10 contain some analysis of how Goal 10 compliance was affected by the changes  
26 and also focuses on consistency with applicable comprehensive plans, apparently under Goal  
27 2. To the extent necessary, standards of review described previously and in the responses to  
28 other assignments of error are incorporated here.

1  
2 **B. The decisions comply with Goal 10, the Goal 10 Rule, and comprehensive**  
3 **plan policies related to housing, “conserve” affordable housing and the buildable**  
4 **land in the Glenwood area is developable under clear and objective standards**  
5 **without unreasonable cost and delay in the development process.**

6 The discussion of Goal 2 requirements in the context of the response to the Goal 8  
7 and Goal 9 assignments of error are incorporated here by this reference. While Goal 2  
8 imposes the same findings, evidence and policy choice requirements with respect to the  
9 substantive standards of Goal 10, petitioner fails to establish any violation of Goal 2 either  
10 separately or with the unsupported assertions of noncompliance with Goal 10. The Metro  
11 Plan, Residential Land Use and Housing Element, Policy A.25 and description of what  
12 petitioner thinks it means, to conserve the six mobile home parks in Subarea D as affordable  
13 housing and to increase their stability, misreads the policy, the findings and the Glenwood  
14 Refinement Plan. The amendments make the ultimate policy choice to preserve and protect  
15 the existing mobile home parks, assure that this affordable housing alternative can remain at  
16 least until property owners seek redevelopment and continue existing assistance programs for  
17 residents in the event the properties are redeveloped.<sup>7</sup> The amendments also include clear  
18 and objective development or building design standards that apply to development of the  
19 inventory of needed housing without unreasonable cost or delay.  
20

21 **1. The decisions are consistent with Metro Plan Housing Policy A.25,**  
22 **which requires conserving existing affordable housing.**

23 The Glenwood Refinement Plan amendments preserve and protect the existing mobile  
24 home parks, assure that this affordable housing alternative can remain and continue to  
25 provide assistance to those residents in the event the properties are redeveloped or annexed.  
26

27  
28 <sup>7</sup> Petitioner indicated longstanding redevelopment plans that included high density residential uses. Record  
1124-1126; 2144-2147, 10159-10162, 10245-10248.

1 Leaving the previous plan designations and zoning in place for petitioner would not put those  
 2 or any other existing low income mobile home park residents in any better position.

3 **a. Redesignating developed mobile home park areas in**  
 4 **Subarea D for Mixed-Use Employment is consistent with Metro**  
 5 **Plan Housing Policy A.25 and A.30, which requires the city to**  
 6 **“conserve” the supply of existing affordable housing and “increase**  
 7 **the stability and quality” of older residential neighborhoods while**  
 8 **balancing those needs with the need to maintain a compact urban**  
 9 **area.**

10 The amendments to the Glenwood Refinement Plan reflect broad policy choices in  
 11 implementing Metro Plan, Policy A.25 and do not have the effect of eliminating any of the  
 12 existing mobile home parks. As described throughout the process, several factors combine to  
 13 make the continued existence of those parks difficult and market pressures may eventually  
 14 push many of them to redevelopment in much the same manner as requested by petitioner at  
 15 the last hour. Record 1124-1126, 2144-2147, 10159-10162, 10245-10248. Many of them  
 16 would face the same difficulties facing petitioner, plan/zone conflicts and the need for a zone  
 17 change to obtain the ability to redevelop for multi-family units or any more significantly  
 18 intensive use than currently exists. It is unclear on the face of the Metro Plan, Residential  
 19 Land Use and Housing Element, Policy A.25 if it could be interpreted or applied in the  
 20 manner alleged by petitioner. The choice of interpretation ultimately rests with the  
 21 governing bodies that adopted the Metro Plan, including respondents. The policy says:

22 “A.25 Conserve the metropolitan area’s supply of existing affordable housing and  
 23 increase the stability and quality of older residential neighborhoods, through  
 24 measures such as revitalization; code enforcement; appropriate zoning; rehabilitation  
 25 programs; relocation of existing structures; traffic calming; parking requirements; or  
 26 public safety considerations. These actions should support planned densities in these  
 27 areas.” (Ref. P. III-A-9)” Metro Plan, page III-A-10; App-144.

28 Several concepts are included in the policy. The findings make it clear there is a distinction  
 between conserving the existing mobile home parks that might represent some of the  
 affordable housing in the metropolitan area and increasing stability of the “older residential

1 neighborhoods” that are located south of Franklin Boulevard in the area to be addressed as  
2 part of Phase II. App 144-146. It is not clear that those two concepts are necessarily  
3 connected or involve the same housing supply. The ultimate choice and determination of  
4 what that policy means in this case was left to respondents and the decisions include  
5 reasonable policy choices based on adequate findings and evidence.

6 Extensive discussions and development of information addressing the housing stock  
7 and affordable housing in Springfield and the Glenwood area make it clear the approach is  
8 not “to simply sweep the existing affordable housing” out of the Glenwood area. Petition 29.  
9 The background information, refinement plan provisions and findings explain all of the  
10 challenges facing mobile home parks, options for assistance with improving the conditions of  
11 existing mobile home parks, limitations on all the existing mobile home parks (especially the  
12 one owned by petitioner) in trying to improve the property to provide for multi-family  
13 dwellings and the lack of any certainty that these properties could be improved to construct  
14 affordable housing under the previous Glenwood Refinement Plan provisions prior to the  
15 amendments. App 144-146; 313-320. Record 8392; Existing Conditions Report, August  
16 2009, 20-21, 26-27, 31-39. (The Existing Conditions Report, August 2009, was incorporated  
17 into and adopted by the Springfield Ordinance No. 6279. It is still available on the  
18 Glenwood project website at [www.ci.springfield.or.us/dsd/Planning/Glenwood%20-  
19 %20Markarian/ProjectBackgroundDocuments/Existing%20Conditions%20Report.pdf](http://www.ci.springfield.or.us/dsd/Planning/Glenwood%20-%20Markarian/ProjectBackgroundDocuments/Existing%20Conditions%20Report.pdf)). The  
20 amendments include mention of continuing programs available to existing mobile home park  
21 residents and those available in the event of annexation. The extensive description includes  
22 several programs of the sort called for in Metro Plan, Policy A.25, including relocation  
23 assistance and other low income housing programs. App 145. As pointed out in the  
24 findings, leaving the previous plan designations and zoning in place would not put the  
25  
26  
27  
28

1 existing low income mobile home park residents in any better position. This is particularly  
2 true of the property owned by petitioner, which has been annexed. Given all of these various  
3 considerations, the decisions of the City Council and Board of Commissioners concluded the  
4 amendments were consistent with this policy, particularly in light of the balancing called for  
5 in Policy A.30 in the same section of the Metro Plan. Metro Plan, page III-A-12.<sup>8</sup>

6 While Policy A.25 was considered applicable based on its plain language, the import  
7 and instruction of *Northgreen Property LLC v. City of Eugene*, \_\_ Or LUBA \_\_ (LUBA No.  
8 2011-099, March 5, 2012) is of marginal utility. What is critical is understanding the  
9 meaning and intent of the policy as it relates to the decisions and the Glenwood Refinement  
10 Plan amendments. Respondents ultimately decided what Policy A.25 means in the context of  
11 affordable housing generally and how it relates to mobile home parks specifically, as well as  
12 balancing those needs with the more intensive, centrally located multi-family housing and  
13 employment opportunities located in close proximity to each other to maintain a compact  
14 urban growth area as called for in Policy A.30. In this case, “conserve” has been interpreted  
15 reasonably consistent with the text, context, and policies of the Metro Plan and implemented  
16 in the reasonable manner reflected by the adopted Metro Plan and Glenwood Refinement  
17 Plan amendments. The interpretations made are plausible and “not inconsistent with the  
18 ‘express language’ of the provisions at issue or the purposes or policies underpinning them.”  
19 *Siporen*, supra at 266.

22 Nothing in the decisions change the existing mobile home parks and the ability of  
23 those properties to continue providing affordable housing in the manner currently provided.  
24 App 318-320. In addition, the programs previously established to address affordable housing  
25

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27  
28 <sup>8</sup> Policy A.30 states: “Balance the need to provide a sufficient amount of land to accommodate affordable housing with the community’s goal to maintain a compact urban form.”

1 as called for in Policy A.25 remain in place and are available to low income residents. App  
2 317-319. The dynamics and pressures on those existing mobile home park properties in the  
3 areas redesignated for employment remain essentially the same. Petitioner, in a last minute  
4 plea for leaving the previous designation on most of the property, expressed his vision for  
5 redevelopment of the property with multi-family housing. Record 1124-1126; 2144-2147,  
6 10159-12142, 10245-10248. As pointed out by staff, that would have required resolution of  
7 plan and zone conflicts. Record 1103-1111; 1138-1146, 10163-10171. There is no  
8 indication such redevelopment would have included or preserved affordable housing.  
9 Finally, the planning for Phase 2 will address the existing Glenwood residential core and  
10 older residential neighborhood. App 146.  
11

12 While petitioner accurately describes the status of Shamrock Homes, LLC as an  
13 existing, fully developed mobile home park in Subarea D, the assertions of the effect and  
14 basis for the action taken by respondents fail to recognize nothing in the Glenwood  
15 Refinement Plan amendments has eliminated any existing affordable housing stock. The  
16 policies and findings explain how continuation of the “programs in place to conserve the  
17 metropolitan area’s supply of existing affordable housing as long as possible and support  
18 State regulations and provide local programs to aid residents of the existing non-conforming  
19 mobile home parks” maintains the previous actions taken to “conserve” existing affordable  
20 housing through such measures. App 146. All the efforts by petitioner to characterize the  
21 amendments as a recipe for changing the supply and “housecleaning” mobile home parks  
22 lack any real substance. They reflect nothing more than speculation on changes that might  
23 occur regardless of the amendments. There is no evidence that leaving the property of  
24 petitioner alone would result in any different outcome for that existing affordable housing in  
25 the Glenwood area.  
26  
27  
28

1 Read individually and as a whole, the findings adequately support the conclusion that  
2 the Glenwood Refinement Plan amendments are consistent with Policy A.25 of the Metro  
3 Plan. *South of Sunnyside*, 280 Or 3, 13 (1977); ORS 197.015(5); ORS 197(2)(b); ORS  
4 197.835(7)(a); OAR 660-015-0000(2). The selective recitation of findings provided by  
5 petitioner fail to establish inconsistency or address the extensive steps already taken that  
6 remain in place to address affordable housing in the Glenwood area and all of Springfield.

7 Both the Glenwood Refinement Plan and the findings recognize the existing  
8 affordable housing (***Para 1; App-144***), including projects like Shamrock, and address the  
9 “conundrum” of balancing the affordable housing needs with the community goal of  
10 maintaining a compact urban form, consistent with Metro Plan, Policy A.30, while  
11 recognizing the programs available to assist in construction of housing units for those with  
12 low and moderate incomes (***Para 2; App-144***). Petitioner fails to recognize some of those  
13 housing units could be placed in Subarea A, regardless of whether the existing mobile home  
14 park developments there or in Subarea D decide to remain or redevelop (***Para 3; App-144***  
15 ***and Para 4; App144***). In addition, petitioner fails to recognize the relevance of significantly  
16 increased density to potential affordable housing projects (***Para 5; App-145***) and the various  
17 programs already in place to assist the existing mobile home park residents in many different  
18 ways, regardless of the choices the owners might make to close or redevelop the existing  
19 parks and regardless of the changes adopted by the Glenwood Refinement Plan amendments  
20 which do not expedite any change to the existing affordable housing (***Para 6; App-145 and***  
21 ***Para 7; App-145***). With unsupported complaints about the status of the adopted 2009  
22 CIBL/EOA and the need for large employment parcels (***Para 8; App-145***), petitioner fails to  
23 recognize the role that study and large parcels plays in the balancing of concerns under Metro  
24 Plan, Policy A.30, as reflected by the recitation of Objectives, Policies and Implementation  
25  
26  
27  
28

1 Strategies in the Glenwood Refinement Plan (*Para 9; App-145-46*) and the programs  
 2 available to conserve the existing affordable housing (*Para 10; App-146*). The long-range  
 3 plan for the Glenwood area does not support the assertion of petitioner that Metro Plan,  
 4 Policy A.25 has been violated. To the contrary, the amendments and findings demonstrate  
 5 consistency with all applicable Metro Plan policies addressing affordable housing. For those  
 6 reasons, this subassignment of error should be denied.

7  
 8 **b. Eliminating a previous Glenwood Refinement Plan policy**  
 9 **on mobile home parks in Low Density Residential zones did not**  
 10 **affect ongoing use of existing mobile home parks or affect**  
 11 **compliance with applicable Metro Plan policies, including Policy**  
 12 **A.25.**

13 As describe previously, the Glenwood Refinement Plan amendments do not have the  
 14 effect of eliminating any of the existing mobile home parks. The background information,  
 15 refinement plan provisions and findings explain challenges facing mobile home parks,  
 16 options for assistance with improving the conditions of existing mobile home parks,  
 17 limitations on existing mobile home parks in trying to improve the property to provide for  
 18 multi-family dwellings and the lack of any certainty that these properties could be improved  
 19 to construct more affordable housing under the previous Glenwood Refinement Plan  
 20 provisions prior to the amendments. App 144-146; 313-320. Record 8392; Existing  
 21 Conditions Report 20-21, 31-39. Petitioner fails to describe how the previous policies  
 22 provided more stability to the existing mobile home parks. There also has been no  
 23 description of how the desire of petitioner to redevelop the property under the old plan would  
 24 serve to conserve the existing affordable housing or address the plan/zone/policy conflicts.<sup>9</sup>  
 25 The Glenwood Refinement Plan policies, implementation measures and findings reflect the  
 26

27 <sup>9</sup> In addition to the plan/zone conflict, a policy conflict under the old plan allows mobile home parks in low-  
 28 density residential zones (Policy 2.2), but only west of McVay Highway (Policy 1). 1999 Glenwood  
 Refinement Plan, pages 33-34; Existing Condition Report, August 2009, pages 26-27.

1 policy choices and adequately explain how continuation of the “programs in place to  
2 conserve the metropolitan area’s supply of existing affordable housing as long as possible  
3 and support State regulations and provide local programs to aid residents of the existing non-  
4 conforming mobile home parks” maintains the actions previously taken to “conserve”  
5 existing affordable housing through such measures. App 146. The amendments demonstrate  
6 consistency with the applicable Metro Plan policies, including Policy A.25. Petitioner fails  
7 to adequately challenge those findings and the policy choice inherent in the decisions. For  
8 those reasons, this subassignment of error should be denied.  
9

10 **2. The decisions contain no shortage in high density residential**  
11 **acreage and the residential land is developable under clear and objective**  
12 **standards. ORS 197.307(4); OAR 660-008-015(1).**

12 As described in the response to the Goal 8 assignment of error, the Glenwood  
13 Refinement Plan provides for more high density residential land than called for in the  
14 Springfield 2030 Plan. That response and explanation is incorporated here by this reference.  
15 In addition, the residential buildable lands inventory in the Glenwood area is developable  
16 under clear and objective standards. App 87-88, 249-252; Record 1103-1111; 1138-1146,  
17 10163-10171. Finally, the provisions detailed by petitioner in the Goal 9 assignment of error  
18 failed to show any standards that are not clear or objective and the response to that  
19 assignment of error is incorporated here by this reference.  
20

21 Previous concerns about the Springfield Development Code standards expressed  
22 while the Springfield 2030 Plan was being adopted were utilized to provide for an alternative  
23 discretionary review in the event a developer chooses to seek an exemption or use alternative  
24 development or building design standards. SDC 3.4-235A. In addition, some standards cited  
25 by petitioner are related to regulation of “appearance or aesthetics.” For example, of the  
26 three cited concerns by petitioner that are not based on possible condition provisions, two  
27  
28

1 address retention of existing mature vegetation and trees or landscaping. SDC 3.4-270F.5  
2 and 3.4-280L.2. Petitioner fails to connect most of the provisions described as discretionary  
3 to actual use approval criteria, so analysis of that part of the argument is not developed well  
4 enough for review. Both the development and building design standards in the Glenwood  
5 Riverfront Mixed-Use Plan District contain specific numeric standards, refer to other sections  
6 of the Springfield Development Code with similar standards, or rely on industry references or  
7 standards, including the Engineering Design Standards and Procedures Manual (public and  
8 private infrastructure improvements), the Illuminating Engineering Society of North America  
9 (private lighting) and the American Standards for Nursery Stock (Private landscaping).  
10

11 Applicants are offered an optional, discretionary track, under the Springfield  
12 Development Code if they want an exemption or propose to use alternative design or  
13 development standards. Petitioner relies on the mere mention of Site Plan Review to assert  
14 the standards are not clear and objective and fails to address the findings contained in the  
15 decisions. As described in the findings and record, the standards for approval of needed  
16 housing are clear and objective within the meaning of the statute and the rule and they do not  
17 impose “subjective, value-laden analyses that are designed to balance or mitigate impacts of  
18 the development.” *Rogue Valley Association of Realtors v. City of Ashland*, LUBA No. 97-  
19 260, 35 Or LUBA 139, 155 (1998), *aff’d* 158 Or App 1 (1999). Contrary to the assertion of  
20 petitioner, the Site Plan Review process in Springfield is not the same as the Site Review  
21 process that this Board found in the *Opus* litigation to be too discretionary to allow counting  
22 the land as being truly “available” for development. Petitioner fails to establish any  
23 similarity or a basis for such a conclusion in this case. The high density residential acreage  
24 in the Glenwood Refinement Plan may be counted toward the Goal 10 inventory (to meet the  
25 20-year supply as anticipated by the Springfield 2030 Plan and ORS 197.296) because that  
26  
27  
28

1 acreage is subject to development standards that are clear and objective. For those reasons,  
2 this subassignment of error should be denied.

3 **3. The decisions adequately identify planning for the public facilities**  
4 **necessary to support development of the acreage during the 20-year**  
5 **planning period.**

6 The Glenwood Refinement Plan amendments included reference to and relied upon  
7 facilities needed for the high density residential land as reflected in in the acknowledged  
8 comprehensive plan and public facilities plan as required by ORS 197.296(2). The response  
9 to the Goal 11 assignment of error demonstrates this with regard to stormwater, wastewater  
10 and transportation and those arguments are incorporated here by this reference. The  
11 amendment and findings describe the planned public facilities and further identifies steps  
12 taken to provide for those significant facilities that will be needed to allow for development.  
13 In addition, the Springfield 2030 Plan established the citywide need for facilities and it was  
14 acknowledged to be consistent with Goal 14 and the Goal 14 Rule, including OAR 660-024-  
15 0040(1). It contemplated the need for additional acreage of high density residential lands,  
16 without identifying any additional facility planning that might be required by addition of that  
17 acreage. Petitioner fails to establish any basis for requiring any changes to the acknowledged  
18 public facility plans. The needed housing inventory is supported by acknowledged public  
19 facilities plans. As explained more fully in the response to the Goal 11 assignment of error,  
20 public facility planning is adequate and steps have been taken or are underway to make sure  
21 public facilities are available to support the proposed high density residential acreage in the  
22 Glenwood area. For those reasons, this subassignment of error should be denied.  
23  
24

25 **4. The standard requiring a five-acre Minimum Development Area**  
26 **does not violate the prohibition against “discouraging needed housing**  
27 **through unreasonable cost or delay.” ORS 197.307(4); OAR 660-008-**  
28 **0015(2).**

1           The response to the Goal 9 assignment of error addressing the mechanics of the  
2 Minimum Development Area (“MDA”) standard is incorporated here by this reference.  
3 While petitioner asserts the standard is objectionable under Goal 10 for different reasons, the  
4 responses in the context of Goal 9 have equal validity here. The standard will not delay or  
5 increase the cost of needed housing. In addition, petitioner fails to substantiate the claimed  
6 delay or increased cost with the same faulty focus on tax lots rather than ownership. Finally,  
7 petitioner ignores the limited applicability of the standard, the availability of exemptions and  
8 provides no basis for the bold-faced assertion that “no applicant will be able to get into an as  
9 applied situation without meeting the MDA.” Petition 40. Finally, a facial challenge to the  
10 standard is inappropriate. *Home Builders Assn. of Lane County v. City of Eugene*, 41 Or  
11 LUBA 370, 422 (2002)(“In our view, the question of whether approval standards or  
12 procedures discourage needed housing through *unreasonable* cost or delay cannot, in most  
13 cases, be resolved in the abstract, in a challenge to a legislative decision that adopts such  
14 standards or procedures.”). For those reasons, this subassignment of error should be denied.  
15  
16

17           **The MDA will not delay needed housing:** Petitioner uses faulty logic to assert the  
18 MDA standard will delay development of land inventoried for Needed Housing and provides  
19 no basis for that conclusion. It ignores the options available to an applicant with small  
20 ownerships, particularly in areas exempted by the standard. Using faulty math does not help  
21 the case and amounts to speculation about paths that might be taken by small parcel owners  
22 and the causes of any delay. Without more, this portion of the subassignment of error should  
23 be denied.  
24

25           **The MDA will not increase the cost of needed housing:** Again, petitioner uses  
26 faulty logic and unsubstantiated statements to assert the MDA will increase the cost of land  
27 assembly and increase the cost of needed housing. The MDA will not increase the value of  
28

1 land adjacent to undersized parcels. An owner of an undersized lot need only explore the  
2 willingness of neighbors to sell and could get an exemption to the MDA if the price is too  
3 high. More likely, the owner of the smaller parcel holds the key to the applicability of the  
4 MDA standard. Without more, this portion of the subassignment of error should be denied.

5 **The decisions establish a reasonable basis for the MDA standard.** As described  
6 in the response to the Goal 9 assignment of error, the 5-acre MDA does not have the effect  
7 described by petitioner of reducing the number of potential development sites in the  
8 Glenwood area from 189 to 42. The analysis uses tax lots rather than ownership. In  
9 addition, assembling smaller units of land continues policy direction of the Metro Plan and  
10 the previous Glenwood Refinement Plan, Subarea 8, Policy 5 which stated “The City shall  
11 encourage development proposals that consolidate parcels into cohesive development sites”  
12 and was established by Ordinance No. 6137, enacted July 18, 2005. Petitioner fails to  
13 establish a basis for this facial challenge to the MDA standard. *Home Builders Assn. of Lane*  
14 *County v. City of Eugene*, 41 Or LUBA 370, 422 (2002). Without more, this portion and the  
15 whole subassignment error should be denied.  
16  
17

#### 18 **RESPONSE TO FIFTH ASSIGNMENT OF ERROR**

19 **The Metro Plan and Glenwood Refinement Plan amendments include ultimate policy**  
20 **choices, evaluation of alternative courses of action and are based on adequate findings**  
21 **with an adequate factual basis and do not violate Goals 2, 11 or the Goal 11 Rule.**

#### 22 **A. Standard of Review.**

23 The relevant requirements of Goal 11 are set forth in the Goal and Oregon  
24 Administrative Rules (OAR) 660-011-0000 to 660-011-0050 (Goal 11 Rule). Petitioner’s  
25 arguments based on Goal 11 contain analysis on Goal 11 compliance and also address  
26 consistency with applicable comprehensive plans under Goal 2. To the extent necessary,  
27 standards of review described previously and in the responses to other assignments of error  
28 are incorporated here.

1       **B.       The decisions of respondents comply with Goals 2, 11 and the Goal 11**  
2       **Rule based on ultimate policy choices, with adequate findings and the record**  
3       **provides an adequate factual basis for the decisions based on coordination and**  
4       **consistency with the Metro Plan and other relevant refinement plans addressing**  
5       **public facilities and services.**

6               The discussion of Goal 2 requirements in the context of the response to the Goal 9  
7       assignment of error are incorporated here by this reference. While Goal 2 imposes the same  
8       requirements for findings, evidence and policy choice with respect to the substantive  
9       standards of Goal 11, petitioner fails to establish any violation of Goal 2 with unsupported  
10      assertions of noncompliance with Goal 11. In addition, petitioner fails to address extensive  
11      findings and evidence of the coordination and consistency of the amendments with the  
12      acknowledged Metro Plan and related public facility and transportations plans.

13              Petitioner attempts to make the Goal 11 and Goal 11 Rule provisions designed for  
14      public facility and services planning directly applicable to a planning effort that did not  
15      amend any of the acknowledged public facility and services plans in effect within the Metro  
16      Plan area. Petitioner fails to describe how the Metro Plan and Glenwood Refinement Plan  
17      amendments require changes to the Eugene-Springfield Metropolitan Area Public Facilities  
18      and Services Plan (2001) (“PFSP”), as amended most recently by Springfield and Lane  
19      County in 2008 and 2011, respectively, and TransPlan: Eugene/Springfield Transportation  
20      System Plan (“TransPlan”), the combined acknowledged area public facilities and services  
21      plans adopted to meet the requirements of Goals 11 and 12 in the Eugene-Springfield  
22      metropolitan area. The sufficiency of the descriptions of facilities and financing in those  
23      plans is not an issue that should attract the attention of this Board when nothing in those  
24      plans has been changed as part of the Glenwood Refinement Plan actions. The findings and  
25      provisions of the Glenwood Refinement Plan, Phase 1 more than adequately establish  
26      

27  
28

1 compliance with Goals 2, 11 and the Goal 11 Rule. Without more, this assignment of error  
2 should be denied.

3         The Glenwood Refinement Plan amendments are adequate to comply with Goal 11  
4 and the Goal 11 Rule, OAR chapter 660, division 11. The amendments describe the public  
5 facility needs of the entire riverfront area in Glenwood by including findings addressing both  
6 Goals 11 and 12 and relevant Metro Plan policies. App 91-116, 125-134. Among other  
7 things, they envision much higher density residential and commercial development to be  
8 served by redevelopment of the arterials running through the neighborhood as planned for in  
9 TransPlan. App 92-93. They also describe how redevelopment of Glenwood will be made  
10 possible by improving the sanitary sewer trunk line through the entire neighborhood in the  
11 redeveloped arterial and by improving the public site specific stormwater collection systems.  
12 App 93. Extensive findings also discuss the relationship of the Glenwood Refinement Plan  
13 Phase 1 and other local, regional, state and federal planning efforts, as well as addressing  
14 other requirements of the Metro Plan. App 94-116, 125-134. Other parts of the record  
15 include discussion of the effort to keep public facility planning current and steps taken by  
16 Springfield to include the necessary improvements in the appropriate implementation master  
17 plans, with funding identified in appropriate capital improvement plans. App 91-93, 94-116,  
18 125-134. The Glenwood Refinement Plan provides extensive insight into the efforts to  
19 coordinate with other agencies that have public facility or service responsibilities for  
20 transportation, wastewater and stormwater, as well as addressing various financing options  
21 that might be available for infrastructure needs in the area. App 254-282, 330-356, 358-360.  
22  
23  
24

25         Petitioner fails to describe how Goal 11 requires additional public facility planning at  
26 this time to support the Glenwood area refinement land use planning efforts in this case.  
27 Efforts to describe shortcomings of the PFSP and TransPlan under the Goal 11 Rule fail to  
28

1 indicate how the acknowledged public facility plans must be revised when they were not  
2 amended by these decisions. The decisions in this action include sufficient information about  
3 the timely, orderly and efficient arrangement of public facilities and services in the  
4 Glenwood area to comply with Goals 2, 11 and the Goal 11 Rule.

5 The specific findings regarding Goal 11 list several separate documents, most of  
6 which are acknowledged or implement acknowledged refinements to the Metro Plan related  
7 to public facilities planning. App 91-92. The findings then discuss compliance with the  
8 Goal 11 Rule, with reference to the Glenwood Refinement Plan and the other facilities  
9 documents. App 92. The findings conclude, with respect to Goal 11:  
10

11 “Glenwood Phase 1 complies with Goal 11 because existing public facilities and  
12 services either have the capacity to serve future development in Glenwood Phase 1 or  
13 future public facilities can be provided in a timely, orderly, and efficient manner.”  
14 App 93.

15 This conclusion and the related findings support compliance with the Goal 11 planning  
16 requirements by describing the facilities already planned for in the acknowledged public  
17 facility and service plans, including the applicable transportations plans. Where additional  
18 planning is under way or contemplated, the decisions describe those steps and the process  
19 that will be followed to accomplish any necessary changes that might be required by the  
20 larger planning efforts under way in the Eugene-Springfield metropolitan area. Petitioner  
21 fails to describe how Goal 11 or the Goal 11 Rule requires anything more when the  
22 acknowledged public facility and services plans were not amended by the decisions under  
23 review. For those reasons, this subassignment of error should be denied.

24 **1. The decisions comply with the Goal 11 Rule (OAR 660-011),**  
25 **provide sufficient information required by the rule and do not trigger a**  
26 **requirement to revise the acknowledged public facilities and services plan**  
**or Metro Plan elements that were not changed.**

27 **a. Transportation planning under the Goal 11 Rule.**  
28

1           Petitioner fails to address the extensive coordinated transportation planning efforts  
2 undertaken in connection with the Glenwood Refinement Plan, Phase 1 amendments, as  
3 described in the Goal 11 findings (App 91-93) and the Glenwood Refinement Plan,  
4 Transportation chapter (App 254-282). The findings rely on the refinement plan to describe  
5 that both Franklin Blvd. and McVay Highway are to be redesigned and reconstructed as  
6 multimodal transportation facilities to support the redevelopment of Glenwood and to  
7 improve arterial connections between Eugene, Springfield and I-5. App 92, 93. The findings  
8 also describe the refinement plan description of a multi-use path along the whole Glenwood  
9 portion of the Willamette River that “strengthens physical and visual connections to the river  
10 and supports recreational uses and bicycle/pedestrian commuters along the riverfront.” App  
11 93.  
12

13           More details about the redevelopment plan for the Franklin and McVay arterials, the  
14 riverfront multi-use path and other transportation improvements appear in the Transportation  
15 chapter of the Glenwood Refinement Plan. App 254-284. Notwithstanding the assertions of  
16 petitioner, the planning efforts for transportation are adequately reflected in the  
17 acknowledged public facilities plans and various implementation master plan efforts  
18 undertaken in coordination with the various agencies involved in providing for transportation  
19 needs in the area. The Metro Plan goals, policies and project lists for transportation are  
20 incorporated from TransPlan.<sup>10</sup> As noted above, the PFSP also incorporates TransPlan for  
21 those facilities. Thus, the touchstone for Goal 11 compliance for transportation is the  
22 acknowledged Metro Plan, PFSP and TransPlan. Where none of those plan elements were  
23  
24  
25  
26

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27 <sup>10</sup> The Metro Plan says, at III-F-1: “Goals and policies in *TransPlan* are contained in this Transportation  
28 Element and are part of the adopted *Metro Plan*. *TransPlan* project lists and project maps are also adopted as  
part of the *Metro Plan*.” In addition, the entire *TransPlan* was adopted as a functional plan of the *Metro Plan*.  
See I-5.

1 amended in the decisions under review in this case, there is no basis for comparing the  
2 projects in TransPlan to find all the essential elements currently required by the Goal 11 Rule  
3 for both the public facilities plan (OAR 660-011-0010(1)) and the comprehensive plan (OAR  
4 660-011-0045). Planning and implementation for the most essential transportation projects  
5 that support the ultimate policy choices have kept pace with the land use planning in the  
6 Glenwood area.

7  
8 The Eugene-Springfield Metropolitan Area Public Facilities and Services Plan  
9 (PFSP) is considered a refinement plan of the Eugene-Springfield Metropolitan Area General  
10 Plan (Metro Plan). The purpose of the regional PFSP is to ensure that key urban facilities and  
11 services are provided in a timely, orderly, and efficient manner to existing and new  
12 population and land uses within the metropolitan urban growth boundary. The PFSP is  
13 updated by amending the Metro Plan by the legislative bodies of Springfield, Eugene, and  
14 Lane County. Springfield initiated an amendment of the PFSP when it updated its  
15 Wastewater Facility Master Plan and Stormwater Facility Master Plan in 2008. That  
16 amendment to the PFSP was ultimately co-adopted when Lane County enacted Ordinance  
17 No. PA 1260 on May 12, 2011.  
18

19 In Oregon, cities and counties are required to have a Transportation System Plan  
20 (TSP). Every TSP needs to coordinate with the other TSPs of nearby cities and counties, as  
21 well as the State's. Historically, long-range transportation system plans for Eugene and  
22 Springfield were developed as part of a regional planning effort. The last update to the  
23 Eugene-Springfield metropolitan area transportation system plan (TransPlan) was adopted in  
24 2002. TransPlan is considered a refinement of the Metro Plan and the transportation  
25 component of the PFSP. The Regional Transportation Plan (RTP), most recently updated in  
26 2011, guides planning and development of the transportation system within the Central Lane  
27  
28

1 Transportation Management Area (boundary of Metropolitan Planning Organization), of  
2 which Springfield is a part – TSP satisfies State law while RTP satisfies Federal law.

3 Both TransPlan and the RTP list two sets of future transportation projects: a  
4 Financially Constrained set and a Future or Illustrative set. The Financially Constrained set  
5 are those projects that can be built with the expected level of funding available over the  
6 20-year planning period. Future Projects are those that are not planned for construction  
7 during the 20-year planning period but can be constructed earlier if additional funding is  
8 secured. As long-range plans, TransPlan and the RTP identify future projects in very general  
9 terms. Projects are defined in more detail when they are selected for inclusion in short-range  
10 capital improvement plans. Regardless, the descriptions of projects in the acknowledged  
11 transportation plans were not changed, nor were they required to be changed as part of the  
12 Glenwood Refinement Plan amendments. None of the acknowledged elements of the Metro  
13 area public facility or transportation plans were affected by the Metro Plan or Glenwood  
14 Refinement Plan amendments in the decisions under review now.  
15

16  
17 TransPlan lists Franklin Boulevard as Future Project #839 and describes it as an  
18 upgrade to an urban facility. The McVay Highway project is listed in TransPlan as Future  
19 Project #833 and described as an upgrade to a 3-lane urban facility with intersection  
20 improvements at I-5 and Franklin Boulevard. The RTP lists Franklin Boulevard as Future  
21 Projects #802 and #839, a study and urban standards project, respectively. Record 8392;  
22 Existing Conditions Report pp. 97-99. Improving Franklin and McVay to “urban standards”  
23 appears on a map in TransPlan as “Future Roadway Projects.” See TransPlan, Appendix A –  
24 “TransPlan Maps; Future Roadway Projects.” The map legend says: “This map illustrates  
25 the roadway projects not planned for construction during the 20-year planning period.” The  
26 same is true for the Riverfront Multi-Use Path. It appears on a map in TransPlan as “Future  
27  
28

1 Bikeway Projects.” See TransPlan, Appendix A – “TransPlan Maps; Future Bikeway  
2 Projects.” Since the projects appear in the acknowledged transportation facility plan, they  
3 can be further studied, refined and constructed if funding is made available.

4 While both TransPlan and the RTP identify future projects in very general terms, the  
5 projects are defined in more detail when they are selected for inclusion in the more short-  
6 term capital improvement plans. The City of Springfield Capital Improvement Plan 2012-  
7 2016 listed the Franklin Boulevard Planning (NEPA analysis) project as funding secured.  
8 App 97-98. As stated in the Existing Conditions Report, “Glenwood’s lack of urban  
9 standards during its early development has created transportation challenges for the area . . .  
10 sidewalks on Franklin Boulevard are narrow, non-continuous, and abut the heavily-trafficked  
11 roadway. On the north side of Franklin, the right-of-way extends only to the curb, with the  
12 sidewalk on private property.” Record 8392; Existing Conditions Report p. 88. The  
13 extensive coordinated planning efforts to address those challenges have been undertaken by  
14 the partners involved in providing for transportation facilities and are described in the  
15 Glenwood Refinement Plan. App 102, 254-282. Petitioner fails to acknowledge those steps  
16 and, more importantly, fails to provide any basis to conclude the amendments adopted in the  
17 decisions under review compel revisions to the acknowledged public facility and services  
18 plans, including TransPlan.  
19  
20

21 In 2005, the Glenwood Refinement Plan, Subarea 8, was amended by Ordinance 6137  
22 to establish a 48 acre mixed-use nodal development area. Specifically, Subarea 8, Policies  
23 13 and 14 refer to a conceptual Franklin Boulevard design and alignment. In 2007, the  
24 Southwest Oregon Chapter of the American Institute of Architects hosted two design  
25 workshops that brought together design professionals, university students, and community  
26 residents in an effort to re-envision the Franklin Corridor from the Springfield bridges in  
27  
28

1 Glenwood to the Ferry Street Bridge in Eugene. Record 8392; Existing Conditions Report  
2 pp. 13-14.

3 From 2007-2008, Springfield worked with its transportation partners, stakeholders,  
4 and consultants on a Franklin Boulevard Study. The project team analyzed an array of  
5 possible improvements to Franklin Boulevard to support redevelopment and new investment  
6 in the Glenwood Riverfront. In 2008, the City Council endorsed a hybrid multi-way  
7 boulevard conceptual design and directed staff to refine the concept and integrate it into the  
8 updated Glenwood Refinement Plan. The Phase I Glenwood Refinement Plan establishes a  
9 corridor envelope within which the hybrid multi-way boulevard will be designed and  
10 provides policy guidance regarding design elements. Since the Council endorsement of the  
11 hybrid multi-way boulevard concept in 2008, Springfield sought project funding through  
12 several grants and other local and Federal funding sources. Springfield has successfully  
13 secured funding for NEPA analysis and has initiated a NEPA documentation process with  
14 consultant services. The funding for the NEPA analysis was programmed in the Statewide  
15 Transportation Improvement Program 2010-2013 (Key 17217) and comes from a  
16 combination of federal, state, regional and local funds. The conceptual design will be further  
17 refined through the NEPA process, as described in the Glenwood Refinement Plan. App  
18 258-262.

21 The extensive coordinated transportation planning efforts undertaken in connection  
22 with the Glenwood Refinement Plan, Phase 1 amendments, as described in the Goal 11  
23 findings (App 91-93) and the Glenwood Refinement Plan, Transportation chapter (App 254-  
24 282) adequately explain the basis for concluding the amendments comply with the Goal 11  
25 Rule. For those reasons, this subassignment of error should be denied.

27 **b. Planning for Sanitary Sewers under the Goal 11 Rule.**  
28

1           Petitioner fails to address the limited scope of wastewater facilities and services  
2 covered by the acknowledged Metro Plan and PFSP. The findings and the Glenwood  
3 Refinement plan address the major concerns and resources to address wastewater system  
4 limitations with a brief finding and more extensive discussion that highlights the need for  
5 extending the main line the length of the McVay Highway part of the Glenwood riverfront  
6 neighborhood. App 93, 333-339.

7           While the project does not appear in the PFSP, the Glenwood Refinement Plan and  
8 related information developed as part of that planning effort make it clear the facilities can be  
9 provided. The Metro Plan and PFSP identify the limits of what are included as part of the  
10 regional wastewater public facility projects as: "Pump stations and wastewater lines 24  
11 inches or larger." Metro Plan, Glossary, page V-4; PFSP, page 25. Consequently, the actual  
12 planning and financing for smaller facilities are left to the cities.

13           In 2004, Springfield constructed a 30-inch Trunk Sewer along Franklin Boulevard to  
14 the intersection with McVay Highway (Long-Term Project 202 in the PFSP). The extension  
15 of this line further to the south has yet to be constructed. To accommodate projected growth  
16 in Glenwood, the 2008 Springfield Wastewater Facilities Master Plan (2008 Wastewater  
17 Plan) addressed extension of the existing Glenwood Trunk Sewer by identifying the existing  
18 and future capacity constraints, determining the capacity requirements, and identifying  
19 system improvements necessary to meet projected population and employment growth  
20 through the 2025 planning year. 2008 Wastewater Plan, Page 8, Table ES-1. There are 3,868  
21 feet of 15-inch and 2,411 feet of 8-inch diameter pipe planned to service the parcels  
22 identified for future development along the southern portion of McVay Highway. These new  
23 pipes will connect to the existing 30-inch Trunk Sewer near the intersection of McVay  
24  
25  
26  
27  
28

1 Highway and Franklin Boulevard. The Glenwood Refinement Plan adequately addresses the  
2 provision of facilities and financing options. App 358-362.

3 The smaller diameter pipe sizes associated with the McVay extension do not rise to  
4 the level of regional significance described by the Metro Plan and the PFSP for inclusion in  
5 the acknowledged public facilities and services plan. As stated above, the extension of  
6 wastewater facilities along McVay Highway project is listed in the 2008 Wastewater  
7 Facilities Master Plan and in the City of Springfield, Oregon, Capital Improvement Plan,  
8 which is updated annually. The 2008 Wastewater Facilities Master Plan with the Capitol  
9 Improvement Project listing included in Table ES-1 was adopted by Springfield City Council  
10 Resolution 08-30 on June 16, 2008. This wastewater facilities discussion and the updated  
11 Glenwood Refinement Plan explanation of the wastewater facilities topic that begins on page  
12 131 of the Glenwood Refinement Plan establish consistency with Goal 11 and the Goal 11  
13 Rule. App 333. For those reasons, this subassignment of error should be denied.  
14

15 **c. Planning for Stormwater under the Goal 11 Rule.**  
16

17 Petitioner fails to address the limited scope of stormwater facilities and services  
18 covered by the acknowledged Metro Plan and PFSP. The decision findings and the  
19 Glenwood Refinement Plan address the major concerns and resources available to address  
20 stormwater system requirements with a brief finding and more extensive discussion that  
21 highlights the plan for stormwater management in the Glenwood riverfront neighborhood.  
22 App 93, 339-343.  
23

24 The findings utilized text from the Glenwood Refinement Plan that focused on public  
25 stormwater systems, but the plan itself included discussion of stormwater management on  
26 both private and public property. Regarding stormwater management on private property,  
27 the Glenwood Refinement Plan states:  
28

1 “Most of the existing private development in the Glenwood Riverfront does not have  
2 access to a public stormwater management system. Consequently, each individual  
3 site has developed a way to dispose of its runoff either onsite or as a direct discharge  
4 to the river. The existing private stormwater systems in the Glenwood Riverfront  
5 take advantage of the naturally pervious ground conditions to infiltrate the runoff on-  
6 site. Infiltration at these sites is provided by either a drywell system or surface sheet  
7 flows that pond in low areas. In these areas, flows are somewhat filtered before  
8 entering and recharging the groundwater and making their way to the river. For  
9 systems that discharge directly by way of a piped system to the rivers, the runoff  
10 currently may be untreated and unfiltered.

11 “As properties in the Glenwood Riverfront develop and redevelop, they will need to  
12 follow the current City policy that requires management of stormwater runoff on-site  
13 to provide for water quality treatment and groundwater recharge to the maximum  
14 extent practicable. This can be accomplished through a variety of ways that can be  
15 adapted to match the conditions found for each development, based on the natural  
16 and urban surrounding and Low Impact Development application. Where available,  
17 a publicly owned conveyance channel may have additional capacity and be utilized to  
18 accept excess flows during large storm events.” App 340.

19 The Glenwood Refinement Plan had this to say about the public stormwater facilities:

20 “The Springfield Stormwater Facility Master Plan adopted in 2008, identifies  
21 Glenwood as the highest priority area for stormwater infrastructure improvements.  
22 The construction of a stormwater system to serve the public infrastructure in  
23 Glenwood will facilitate high-density urban development of the Glenwood Riverfront  
24 area. It will also help improve water quality along the Willamette River with  
25 stormwater quality treatment facilities that will be constructed as part of the public  
26 infrastructure.

27 “The existing public stormwater facility serving Franklin Boulevard is an undersized  
28 system. Current plans call for replacement with a minimally-sized system for the  
future Multi-Way Boulevard that utilizes LID [Low Impact Development] to  
minimize and infiltrate most runoff. Where capacity is available, Springfield will  
utilize this system to accept treated stormwater overflows from adjacent development  
for large rainfall events, but not runoff from regularly occurring rainfall events that  
should be addressed on each development site.

“A portion of the park blocks will be utilized to convey, treat and infiltrate most  
runoff from the adjacent sites. Similar areas will be utilized in the Riverfront Linear  
Park for treatment and conveyance from public roads.” App 341-342.

While the project does not appear in the PFSP, the Glenwood Refinement Plan and  
related information developed as part of that planning effort make it clear the facilities can be  
provided. The Metro Plan and PFSP identify the limits of what are included as part of the  
regional stormwater public facility projects as: “Drainage/channel improvements and/or  
piping systems 36 inches or larger; proposed detention ponds; outfalls; water quality projects;

1 and waterways and open system.” Metro Plan, Glossary, page V-5; PFSP, page 25.

2 Consequently, the actual planning and financing for smaller facilities are left to the cities.

3 Although many of the stormwater improvements do not rise to the level of regional  
4 significance described by the Metro Plan and the PFSP for inclusion in the acknowledged  
5 public facilities and services plan, the natural watercourses in Glenwood serve an important  
6 function in conveying stormwater throughout all of Glenwood area. Aside from areas  
7 directly fronting the river, all drainage in Glenwood is or will eventually be directed to the  
8 Glenwood Slough on the north side of and parallel to the Union Pacific Railroad tracks,  
9 which crosses under the I-5 Bridge towards the river. The PFSP Short Term Project #112  
10 identifies Glenwood Channel and Pipe Improvements in Glenwood<sup>11</sup> and the 2008  
11 Stormwater Facilities Master Plan also identifies capital improvement projects for the  
12 Glenwood Slough area and a new piped system flowing from the central area of Glenwood.  
13 A general ‘Glenwood’ project is listed in the current Springfield Capital Improvement Plan.  
14 The 2008 Stormwater Master Plan and the CIP are adopted by Springfield City Council  
15 Resolution. This stormwater facilities discussion and the updated Glenwood Refinement  
16 Plan explanation of the stormwater facilities topic that begins on page 137 of the Glenwood  
17 Refinement Plan establish consistency with Goal 11. App 339. For those reasons, this  
18 subassignment of error should be denied.  
19  
20

21 **2. The decisions comply with the language of Goal 11 itself and**  
22 **provide sufficient information required by the Goal 11 rule in the**  
23 **acknowledged public facilities and services plan and the Metro Plan.**

24 As stated previously, the Glenwood Refinement Plan amendments are adequate to  
25 comply with Goal 11 and the Goal 11 Rule, OAR chapter 660, division 11. The amendments  
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<sup>11</sup> It is listed in the PFSP, Table 6, page 33; shown on Map 3, page 43; and in Table 18, page 114, with an estimated cost of \$4.6 million and completion date of 2008-2013.

1 describe the public facility needs of the entire riverfront area in Glenwood by including  
2 findings addressing both Goals 11 and 12. App 91-116. Among other things, they envision  
3 much higher density residential and commercial development to be served by redevelopment  
4 of arterials running through the neighborhood as planned for in TransPlan and other related  
5 planning and financing documents. App 92-93. They also describe how redevelopment of  
6 Glenwood will be made possible by improving the sanitary sewer trunk line through the  
7 entire neighborhood and by improving the public site specific stormwater collection systems.  
8 App 93. Extensive findings also discuss the relationship of the Glenwood Refinement Plan  
9 Phase 1 and other local, regional, state and federal planning efforts, as well as addressing  
10 other requirements of the Metro Plan. App 94-116. Other parts of the record include  
11 discussion of the effort to keep public facility planning current and steps taken by Springfield  
12 include the necessary improvements in the appropriate implementation master plans, with  
13 funding identified in appropriate capital improvement plans and ultimately programmed in  
14 the appropriate capital improvement budgets. App 91-98. The Glenwood Refinement Plan  
15 provides extensive insight into the efforts to coordinate with other agencies that have public  
16 facility or service responsibilities for transportation, wastewater and stormwater, as well as  
17 addressing various financing options that might be available for infrastructure needs in the  
18 area. App 129-130, 254-282, 330-356, 358-360; Record 7653, 7655-7675; 7676-7682, 7683,  
19 7697-7719, 7720-7746.

22 While Goal 2 imposes the same requirements for findings, evidence and policy choice  
23 with respect to the substantive standards of Goal 11, petitioner attempts to make the Goal 11  
24 and Goal 11 Rule provisions designed for public facility and services planning directly  
25 applicable to a planning effort that did not amend any of the acknowledged public facility  
26  
27  
28

1 and services plans in effect within the Metro Plan area. Petitioner fails to describe how the  
2 Metro Plan and Glenwood Refinement Plan amendments require changes to the PFSP and  
3 TransPlan, the combined acknowledged area public facilities and services plans adopted to  
4 meet the requirements of Goals 11 and 12 in the Eugene-Springfield metropolitan area. The  
5 descriptions of facilities and financing were not changed as part of the Glenwood Refinement  
6 Plan actions. The findings and provisions of the Glenwood Refinement Plan, Phase 1 more  
7 than adequately establish compliance with Goals 2, 11 and the Goal 11 Rule. For those  
8 reasons, this subassignment of error should be denied.  
9

### 10 3. Summary of Goal 11 arguments.

11 The Board should refuse to engage in the review requested by petitioner and deny this  
12 portion of the assignment of error. The decisions demonstrate compliance with Goals 2, 11  
13 and the Goal 11 Rule. The decisions provide an adequate factual basis and adequate findings  
14 that demonstrate the timely, orderly and efficient arrangement of transportation, wastewater,  
15 and stormwater facilities and services to support the types and levels of urban development  
16 prescribed in the amended Metro Plan and Glenwood Refinement Plan. The decisions  
17 establish compliance with the Goal 11 planning requirements by describing the facilities  
18 already planned for in the acknowledged public facility and service plans, including the  
19 applicable transportations plans. Where additional planning is under way or contemplated,  
20 the decisions describe those steps and the process that will be followed to accomplish any  
21 necessary changes that might be required by the larger planning efforts under way in the  
22 Eugene-Springfield metropolitan area. Petitioner fails to describe how Goal 11 or the Goal  
23 11 Rule requires anything more when the acknowledged public facility and services plans  
24 were not amended by the decisions now under review. For those reasons, this subassignment  
25 of error should be denied.  
26  
27  
28

1       **C.       The decisions comply with Goal 2 because they prescribe land uses for the**  
2       **Glenwood area that are adequately supported by functional systems (including**  
3       **transportation, wastewater and storm water facilities) consistent with the Metro**  
4       **Plan and other relevant refinement plans addressing public facilities and**  
5       **services.**

6           For the same reasons described in the responses above, petitioner fails to establish  
7       any basis for remand under Goal 2. The decisions demonstrate compliance with Goals 2, 11  
8       and the Goal 11 Rule. The decisions provide an adequate factual basis and adequate findings  
9       that demonstrate the timely, orderly and efficient arrangement of transportation, wastewater,  
10      and stormwater facilities and services to support the types and levels of urban development  
11      prescribed in the amended Metro Plan and Glenwood Refinement Plan. Petitioner fails to  
12      describe how the Metro Plan and Glenwood Refinement Plan amendments require changes to  
13      the PFSP and TransPlan, the combined acknowledged area public facilities and services  
14      plans adopted to meet the requirements of Goals 11 and 12 in the Eugene-Springfield  
15      metropolitan area.

16           The descriptions of facilities and financing in TransPlan and the PFSP were not  
17      changed as part of the Glenwood Refinement Plan actions and petitioner fails to indicate how  
18      any of the anticipated improvements must be included in the either TransPlan or the PFSP.  
19      Petitioner fails to show any inconsistency like that described in *Central Oregon Landwatch v.*  
20      *City of Bend*, \_\_ Or LUBA \_\_ (No.2012-043, Nov. 29, 2012). Boldface assertions that the  
21      comprehensive plan (the Metro Plan), the PFSP (which is both a refinement plan of the  
22      Metro Plan and the public facilities plan) and TransPlan (which is a refinement plan and the  
23      public facilities plan for transportation) must show certain public facility projects as being  
24      provided in the planning period does not make it so. The decisions include sufficient  
25      information about coordination, consistency with acknowledged comprehensive plans and  
26      the timely, orderly and efficient arrangement of public facilities and services in the  
27

1 Glenwood area to comply with Goals 2, 11 and the Goal 11 Rule. For those reasons, this  
2 subassignment of error should be denied.

### 3 **RESPONSE TO SIXTH ASSIGNMENT OF ERROR**

4 **The Metro Plan and Glenwood Refinement Plan amendments include ultimate policy**  
5 **choices, evaluation of alternative courses of action and are based on adequate findings**  
6 **with an adequate factual basis and do not violate Goals 2, 12 or the Goal 12 Rule.**

#### 7 **A. Standard of Review.**

8 The relevant requirements of Goal 12 are set forth in the Goal and Oregon  
9 Administrative Rules (OAR) 660-012-0000 to 660-012-0060 (Goal 12 Rule). Petitioner's  
10 arguments based on Goal 12 contain some analysis of Goal 12 compliance with minimal  
11 mention of requirements under Goal 2. To the extent necessary, standards of review  
12 described previously and in the responses to other assignments of error are incorporated here.

#### 13 **B. The decisions comply with Goals 2 and 12, and the Goal 12 Rule based on** 14 **ultimate policy choices, an adequate factual basis and adequate findings** 15 **addressing the Goal 12 Rule.**

16 The discussions of Goal 2 requirements in the context of the responses to the Goal 9  
17 and 11 assignments of error are incorporated here by this reference. While Goal 2 imposes  
18 the same requirements for findings, evidence and policy choice requirements with respect to  
19 the substantive standards of Goal 12, petitioner fails to assert or establish any violations of  
20 Goal 2 through a broad brush approach to the conclusions that the actions would not  
21 significantly affect an existing or planned transportation facility.

22 The assertions of Goal 12 violations without benefit of any expert testimony,  
23 evidence or analysis also fails to address the extensive coordination and evaluation of  
24 significant studies undertaken to address Goal 12 and the Goal 12 Rule reflected in the  
25 findings, evidence and the Glenwood Refinement Plan, Phase 1. App 94-116, 245-248, 254-  
26 282. That effort, evidence and findings support the conclusion that development of the  
27 Glenwood Refinement Plan, Phase I areas under the new plan designations and implementing  
28

1 regulations would generate less traffic than was planned for under the previously  
2 acknowledged Metro Plan, Glenwood Refinement Plan designations and implementing  
3 regulations, as well as the acknowledged public facility plans, including TransPlan. *Mason*  
4 *v. City of Corvallis*, 49 Or LUBA 199 (2005) (no significant effect when amended plan and  
5 zoning would generate less traffic from the subject property than the traffic generated by uses  
6 allowed under the existing plan and zoning).

7  
8 In addressing the Goal 12 findings, petitioner attempts to explain the math  
9 calculations included in tables and asserts the conclusions are not supported by evidence in  
10 the record or adopted plans. Petitioner also asserts faulty methodology and other legal errors.  
11 The reality is, petitioner relies on faulty assumptions, fails to address the specific analysis  
12 and coordination reflected in the transportation studies, ignores the differences between  
13 existing designations and the planned multimodal redevelopment focus of the Glenwood  
14 Refinement Plan, Phase 1, and continues with a generalized Goal 11 assertion that the area  
15 does not have and is not planned to have, facilities needed to develop under either the old or  
16 the new zoning, without citing any evidence or authority. Petitioner fails to address the  
17 extensive discussion of significant changes in the new planning approach to the Glenwood  
18 area and the efforts currently underway to address improvements to the major public  
19 facilities, all of which support the findings of compliance with Goal 12 and the Goal 12  
20 Rule.<sup>12</sup> For those and the reasons that follow, this assignment of error should be denied.

21  
22  
23 **1. The decisions rely on reasonable assumptions and methodology when**  
24 **using full buildout during the planning period under existing zoning and partial**  
25 **buildout under the new zoning.**  
26

27  
28 <sup>12</sup> Petitioner's oblique reference to the TPR changes fails to identify any meaningful difference between the new rule and the provisions addressed in the findings adopted as part of the decisions under review. In fact, under the new TPR provisions, this amendment would not require any analysis of significant affect to facilities.

1 The analysis under the TPR leading up to adoption of the Metro Plan, the Glenwood  
2 Refinement Plan, Phase 1, and implementing regulations relied on extensive coordination  
3 and review of the applicable state, regional and local plans and regulations. App 94-98;  
4 Existing Conditions Report, pages 83-121, 123-158. The calculations, build-out assumptions  
5 and methodologies were coordinated with affected transportation facility and service  
6 providers and other affected local governments, including the Oregon Department of  
7 Transportation (ODOT), Department of Land Conservation and Development (DLCD), Lane  
8 County and other public agencies with interests in transportation matters in the Eugene-  
9 Springfield metropolitan area. Record 4676-4704. The calculations were based on Institute  
10 of Transportation Engineers (ITE) Trip Generation Manual, the industry standard for  
11 performing trip generation studies accepted for TPR analysis. The assumptions, trip  
12 generation rates and calculations using those rates were vetted under peer review to ensure  
13 accuracy and proper application. Record 7120-7123. In addition, the information relied  
14 upon to develop the amendments were incorporated into the draft plan and implementing  
15 regulations reviewed by the Glenwood CAC, various development, transportation and  
16 housing experts, the Springfield and Lane County Planning Commissions, and reviewed  
17 periodically by the Springfield City Council prior to the joint formal review and adoption  
18 hearing process. App 51-53; Record 4469-4484, 4485-4569, 4705-4778, 5115-5412, 5413-  
19 5425, 5427-5429, 5846, 6228-6357, 6358-6364, 6366-6373, 6374-6503, 6507-6511, 6513-  
20 6603, 6604-6694, 6695-6785, 6786-6876, 6877-7196, 7206-7237, 7238-7327, 7372-7376,  
21 7380-7407, 7413-7457, 7461-7466; 7683-7746, 7747-7748 (Vol. IX); 7488-7490 (Vol X),  
22 7908.43-7908.44, 7908.64-7908.100, 8503, 8523-8541, 8753-8764, 8765-8771, 8773-8778,  
23 8779-8784.  
24  
25  
26  
27  
28

1           Petitioner uses selective assumptions in describing the difference between the  
2 estimations of trips under the existing zoning and estimations of trips under the new zoning.  
3 In a confusing statement, petitioner asserts an error “in assuming full build out during the  
4 planning period under the new zoning, but less than full build out under the old zoning” and  
5 then argues the opposite. Petition 55-56. In any event, by focusing on perceived public  
6 facility limitations as the reason for different build out assumptions, petitioner fails to  
7 acknowledge very real differences between the types and limitations on development under  
8 the existing zoning and other factors that lead to reduced build out assumptions for the new  
9 zoning. Those included current economic conditions, tenuous recovery forecasts, and the  
10 various challenges of redevelopment in Glenwood, such as lending practices for mixed-use  
11 projects, significantly higher residential densities, and other areas that will seek allocation of  
12 the future populations and employment. It would be unreasonable to assume one hundred  
13 percent (100%) development in Glenwood and all other areas of Springfield. Under the old  
14 zoning, such an assumption makes sense given the simplified steps for development with less  
15 mixed-use and lower residential densities, even in the smaller nodal area. Nothing compels  
16 use of identical assumptions on potential development and only the calculation of change  
17 must comply with the steps set in the Goal 12 Rule. Through coordination of the  
18 methodology, rates and calculations, the transportation experts agreed there was a reasonable  
19 basis for the baseline worst case assumption that the old zoning designations would fully  
20 develop, but the new designations will only partly redevelop within the planning period.  
21 Petitioner fails to establish error and any violation of Goal 12 or the Goal 12 Rule. For those  
22 reasons, this subassignment of error should be denied.  
23  
24  
25

26           **2. The decisions adequately demonstrate the new zoning qualifies for the**  
27           **10% trip reduction offered in OAR 660-012-0060(6)(a) because the zones**  
28           **preclude the prohibited uses which rely “solely on auto uses.”**

1 The findings of compliance with OAR 660-012-0060(6)(a) make it clear that the  
2 Glenwood Refinement Plan, Phase 1, and implementing zoning “meet the requirements and  
3 definitions set forth within the TPR for mixed use pedestrian-friendly centers or  
4 neighborhoods” as described in the TPR. App 110. Contrary to the assertions of petitioner,  
5 the Glenwood Refinement Plan and associated zoning, as well as the TPR and supporting  
6 manuals used for trip generations recognize a difference between motels and hotels.  
7  
8 Petitioner fails to provide any authority for connecting the two uses under the TPR.

9 A hotel is not the “fungible equivalent” of a motel. Indeed, under the newly adopted  
10 Glenwood Riverfront Mixed-Use Plan District, motels are listed as one of many prohibited  
11 uses. SDC 3.4-255; App 392. In addition, both the Office Mixed-Use Subarea and the  
12 Commercial Mixed-Use Subarea allow “hotels” and the Commercial Mixed-Use Subarea  
13 also allows “Conference/Visitor Centers” that could include “conference hotels.” SDC 3.4-  
14 250, Table; App-391. Use of the term hotels was intentional and conforms to the separate  
15 treatment of those uses in the ITE Trip Generation Manual, among other things. The  
16 distinguishing factor in the manual definitions is that hotels (LU 310) have additional  
17 supporting facilities such as restaurants, cocktail lounges, meeting and banquet halls,  
18 recreation facilities, and service shops. Motels (LU 320) do not have the same suite of  
19 supporting facilities as hotels. The suite of supporting activities make hotels more of a mixed  
20 use development allowing for internal capture and less reliance on the automobile. The same  
21 cannot be said for motels and they are not considered the same in terms of ITE manual trip  
22 generation, the standard for TPR analysis. Petitioner provides no basis for asserting a hotel is  
23 an auto-dependent use that should disqualify those areas from the 10% reduction under OAR  
24 660-012-0060(6)(a) or the additional reduction allowed under OAR 660-012-0060(6)(b).  
25  
26  
27 Petition 56-57; n 2. For those reasons, this subassignment of error should be denied.  
28

1       **3. The decisions adequately demonstrate that the new zoning qualifies for**  
2       **the higher 20% trip reduction that is offered under OAR 660-012-0060(6)(b)**  
3       **based on several trip reduction standards, incentives, prohibited land uses and**  
4       **planned multimodal improvement projects in the acknowledged transportations**  
5       **plans.**

6       As described above, the decisions adequately establish reasonable reliance on the trip  
7       reduction calculations offered in both OAR 660-012-0060(6)(a) and (b). Those allowances  
8       are not sequential or dependent on the other and petitioner provides no authority for asserting  
9       that is the case. The basis for more than a ten percent (10%) reduction allowed in OAR 660-  
10      012-0060(a) is more detailed or local information about the trip reduction benefits of the  
11      proposed mixed-use, pedestrian-friendly development.

12      Petitioner fails to describe how reference to a recent study of trip reduction benefits  
13      for mixed use transit oriented development disqualifies the rest of the information and  
14      analysis utilized in reaching the decision to rely on an additional percentage reduction  
15      beyond that provided in OAR 660-012-0060(6)(a).<sup>13</sup> While the findings describe some  
16      similarities between standards and criteria in the study and those included in the Glenwood  
17      Refinement Plan, Phase 1, they go on to describe additional incentives, policies,  
18      implementation strategies and standards designed to reduce reliance on personal auto use and  
19      vehicle miles traveled included within the Glenwood Refinement Plan and zoning. Using  
20      additional supporting analysis from the ITE Trip Generation Manual, the findings conclude  
21      the Glenwood River front as a whole could ultimately realize a net vehicle trip reduction  
22      between 30 and 50 percent, but a more conservative estimate of 20% was finally used based  
23      on, among other things, the difficulties of redevelopment and full build out within the  
24

25  
26  
27  
28      <sup>13</sup> The National Transit Cooperative Research Program report referenced in various places included data from  
Portland and looked at effects of transit oriented development on housing, parking and travel. App 110.

1 planning period. App 111. For those and the reasons described above, this subassignment of  
2 error should be denied.

3 **4. The decisions adequately demonstrate analysis under OAR 660-0012-**  
4 **0060(6)(a) and (b) that considers the differences between the previous zoning,**  
5 **including those areas in Subareas A, B and C that have already been planned**  
6 **and zoned for “nodal development” and the new zoning included in the**  
7 **Glenwood Refinement Plan.**

8 The decisions include discussion about the differences between the old zoning and  
9 uses allowed, including the areas previously designated with potential for nodal development  
10 previously designed to address the TPR on a Metro Plan areawide basis. App 94-116, 245-  
11 248, 254-282. The prior nodal designation differs significantly from what is included in the  
12 Glenwood Refinement Plan, Phase 1, and those differences were considered in developing  
13 the methodology, assumptions, rates and trip generation analysis that is reflected in the  
14 decisions. The new nodal areas are significantly larger, provide for significantly increased  
15 residential density, provide for more aggressive multi-modal designs with internal  
16 connectivity, include the riverfront path and modernization of Franklin Boulevard. The  
17 Portland data and other discussions in the decisions do address the differences and explain  
18 the higher vehicle trip reduction benefits of the new plan designations and zoning. For  
19 example, the previous nodal designation zoning has a minimum density of 12 dwelling units  
20 per acre and the new plan sets the minimum at 50 dwelling units per acre. The National  
21 Transit Cooperative Research Report with Portland study data indicated that the higher  
22 densities increase the trip reduction benefits, differentiating the proposed potential trip  
23 reduction versus the existing designation. Additional characteristics, such as parking ratios  
24 and added office/employment mixed uses also enhance the vehicle trip reduction (VTR)  
25 potential of the proposed plan versus the existing nodal designation.  
26  
27  
28

1 Other than the additional VTR for the new plan, the nodal designation trip generation  
2 rates and associated assumptions are similar, if not identical. In many ways that petitioner  
3 fails to identify or acknowledge, the analysis of the old and new zoning included many  
4 similar or equal treatments. For example, trip generation potential of the old Community  
5 Commercial (CC) zoning was treated the same as the new commercial by using the ITE land  
6 use with the largest variety of possible land uses. App 104. Likewise, the same non-  
7 buildable areas were removed from the total acreage for both the old and new zoning. App  
8 105-108. In addition, building coverage assumptions for the CC zoning in Subarea D were  
9 the same as the new Employment Mixed-Use zoning. App 105-107. In spite of those  
10 similarities, the decisions also point out the new zones and Glenwood Refinement Plan are  
11 designed for riverfront redevelopment that will “work together and maximize the trip  
12 generation reduction benefits associated with mixed use development” of the riverfront. App  
13 106. Petitioner fails to address the details of the analysis present in the findings and the  
14 significant differences between the old limited area of nodal designation and the more  
15 extensive mixed-use design and traffic generation reduction benefits of the new designations  
16 and zoning. For those and the reasons described above, this subassignment of error should  
17 be denied.  
18  
19

20 **5. The decisions adequately explain the conclusions on entitlement to the**  
21 **trip reduction discounts in OAR 660-009-0060(6) and those findings are**  
22 **supported by substantial evidence in the whole record.**

23 As described above in several different ways, the decisions adequately establish  
24 reasonable reliance on the trip reduction calculations offered in both OAR 660-012-  
25 0060(6)(a) and (b). The Glenwood Refinement Plan, Phase 1, and the findings include  
26 extensive discussion of the methodology, assumptions, sources of trip reduction rates and  
27 detailed explanation of the analysis that support the conclusion that prescribing the right kind  
28

1 of mixed use development ultimately reduces the projected trips under the new zoning to  
2 fewer than those generated by the old zoning. As discussed above, that conclusion is  
3 justified under the law and supported by the findings and substantial evidence in the whole  
4 record. Petitioner fails to adequately address and acknowledge the extensive steps taken to  
5 develop and coordinate the methodology, assumptions, analysis, findings and draft  
6 amendment provisions with affected transportation facility and service providers and other  
7 affected local governments. The analysis as a whole is sufficiently supported and explained  
8 to allow LUBA and all parties to follow the analysis, see that it is based on evidence in the  
9 record, and see that the conclusions are sound and consistent with Goal 2. *Oregon Electric*  
10 *Sign Assn. v City of Beaverton*, 7 Or LUBA 68, 74 (1982), cited with approval in *Davenport*  
11 *v. City of Tigard*, 22 Or LUBA 577, 582 (1992); *Opus Development v. City of Eugene (Opus*  
12 *I)*, 28 Or LUBA 670, 680 (1995). The findings of Goal 12 include citation to the evidence  
13 necessary to determine the decision complies with the applicable standards, as substantiated  
14 in the responses above. For those and the reasons described above, this subassignment of  
15 error should be denied.  
16  
17

18 **6. The decisions do not rely on any “contingent methodology” for**  
19 **demonstrating Goal 12 compliance and include steps to monitor and assure**  
20 **continued compliance with OAR 660-012-0060(6).**

21 The decisions adopting amendments to the Metro Plan, the Glenwood Refinement  
22 Plan, Phase 1, and implementing regulations relied on extensive coordination and review of  
23 the applicable state, regional and local plans and regulations. The decisions conclude the  
24 amendments will not result in change that “significantly affects a transportation facility” as  
25 described in OAR 660-012-0060. As part of that analysis, additional findings were made to  
26 address the requirements of OAR 660-012-0060(6)(c) and assure specific development  
27 proposals are not approved that might affect the estimates of trip reductions provided by the  
28

1 planned mixed-use, pedestrian-friendly approach utilized in the Glenwood area. App 111-  
2 112. The description of those efforts in the findings and Glenwood Refinement Plan simply  
3 reflect a commitment to continued efforts to reduce reliance on the automobile and consider  
4 the effects of specific development proposals when presented. They do not affect the  
5 ultimate determination that the amendments in Glenwood did not significantly affect  
6 transportation facilities in the Metro area.

7  
8 The “safety net” described by petitioner is not precluded by the TPR, it can be a  
9 useful tool for assurance that the high-level planning analysis stands up to the test of time.  
10 What petitioner fails to acknowledge is the difference between site specific development  
11 analysis and large scale planning efforts. The decision found the amendments would not  
12 significantly affect transportation facilities. Monitoring development build out trips within  
13 the planning period shows that the City and county are standing by the coordinated and  
14 vetted analysis assumptions, while recognizing that high level planning analysis is unable to  
15 predict outcome at high accuracy levels on large acreage refinement plans. This is not a  
16 situation where compliance with Goal 12 is put off to another day, it was done at the time of  
17 this plan and zone change and not delayed to a later stage of the development. *Willamette*  
18 *Oaks, LLC v. City of Eugene*, 232 Or App 29, 220 P3d 445 (2009)(OAR 660-012-0060  
19 requires impact evaluation to be done at the time of zone change, not deferred to a later  
20 stage). The approach here is consistent with the requirements of the TPR and petitioner fails  
21 to establish any violation of Goal 12 or the Goal 12 Rule. For those reasons, this  
22 subassignment of error should be denied.  
23  
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**RESPONSE TO SEVENTH ASSIGNMENT OF ERROR****The Metro Plan and Glenwood Refinement Plan amendments comply with Statewide Planning Goal 15.****A. Standard of Review.**

The requirements of Goal 15 are set forth in the Goal and Oregon Administrative Rules (OAR) 660-020-0060 to 660-020-0065 (Goal 15 Rule). Petitioner's arguments based on Goal 15 contain some analysis of how Goal 15 compliance was affected by the changes and fails to make any specific connection to Goal 2. To the extent necessary, standards of review described previously and in the responses to other assignments of error are incorporated here.

**B. The decisions comply with Goal 15: the Greenway setbacks were coordinated and established based on the unchanged inventory of Greenway resources and boundary previously acknowledged in the Metro Plan; the zoning regulations will assure that only water-dependent and water-related uses will be allowed in the setback; and the amendments rely on the acknowledged Greenway boundary and adequately identify lands for possible public acquisition.**

The Metro Plan, Glenwood Refinement Plan and related Glenwood Mixed-Use Riverfront Plan District zoning build on and utilize much of the existing regulatory framework for the Willamette Greenway in Glenwood, including the Greenway Boundary developed early in 1980, depicted on the acknowledged Metro Plan diagram and protected by the Willamette Greenway Overlay District. Incremental revisions over the years progressed from case-by case identification of setback lines within that 150-foot boundary consistent with Goal 15, to a more refined and well defined setback that coincided with other water quality and natural resource protection regulations, including the previously established riparian setbacks. All this setback and use regulation started from the acknowledged inventory and boundary initially established in 1980 by Lane County in Ordinance No. 783, which adopted a Willamette Greenway Plan that described the Greenway Boundary as 150

1 feet from the ordinary low water line. The 1999 Glenwood Refinement Plan established a  
2 setback line that was 20 to 35 feet from the top of the river bank, unless the location of the  
3 floodway boundary required greater separation from the river. No change to the  
4 acknowledged mapped Willamette Greenway Boundary was included in the most recent  
5 amendments.

6 In addition, inclusion and extension of the Greenway regulations to the new  
7 Glenwood Mixed-Use Riverfront Plan District rely on previous regulations that require  
8 review of any change, intensification of use or development within the Willamette Greenway  
9 Overlay District to assure specific concerns with water-dependent or water-related uses  
10 within the boundary and setback can be addressed. Uses allowed under the Willamette  
11 Greenway Development Standards within the Greenway Setback area are limited to water-  
12 dependent or water-related uses. The amendments to the Metro Plan, Glenwood Refinement  
13 Plan and Springfield Development Code adequately address Goal 15, adequately identify  
14 lands for possible public acquisition and made no change to the acknowledged Willamette  
15 Greenway Boundary. For those and the reasons that follow, this assignment of error should  
16 be denied.  
17  
18

19 **1. The decisions rely on the unchanged inventory of Greenway**  
20 **resources and boundary previously established and acknowledged in the**  
21 **Metro Plan.**

22 As described above, the previously acknowledged inventory of Greenway resources,  
23 boundary, uses and rights guided the development of Glenwood Riverfront Greenway  
24 regulations and included considerations such as the protection of certain areas, the allowance  
25 for continuation of pre-existing urban uses, and the planning for public acquisition of specific  
26 properties. With that long history of planning steps already taken and an additional study  
27 specifically to address setbacks in the Glenwood Riverfront area, the Greenway Setback was  
28

1 accurately determined with sufficient information on Greenway resources to be protected.

2 The findings regarding Goal 15 describe the extensive planning efforts, including reference  
3 to the previously acknowledged Metro Plan actions establishing the Greenway boundary,  
4 allowed uses within the Greenway and potential acquisition areas. App 119-125; 159-161.

5 That and all of the planning efforts in Springfield and the more specific steps in the  
6 Glenwood area make it clear the previously acknowledged Greenway inventory, setbacks and  
7 use regulations were included and considered in reaching the decisions. While this was all  
8 pointed out in responses to similar concerns raised before the Glenwood Refinement Plan  
9 amendments were adopted, petitioner continues to ignore that context in constructing the  
10 arguments presented here. For the reasons previously described and those that follow, this  
11 subassignment of error should be denied.  
12

13 The adopted Metro Plan, Glenwood Refinement Plan and Springfield Development  
14 Code amendments make no change to the outer boundary of the Willamette Greenway,  
15 “lands situated within 150 feet from the ordinary low water line” of the Willamette River, as  
16 established by the Metro Plan consistent with Goal 15, ORS 390.318(1) and acknowledged  
17 on September 12, 1982. Implementation of the policies in the Glenwood area included the  
18 utilizing the existing Willamette Greenway Overlay District that applies to “all lands within  
19 the Glenwood Riverfront that are 150 feet from the ordinary low water line of the Willamette  
20 River, also referenced as the WG Overlay District outer boundary.” App 447. No change to  
21 the acknowledged and mapped Willamette Greenway Boundary was included in the most  
22 recent amendments.  
23  
24

25 Review of the previous efforts to establish regulations and building setbacks  
26 addressing the protection and enhancement of the river and its habitats included evaluation of  
27 the several steps taken to protect water quality, natural resources, endangered species and  
28

1 protection of the natural, scenic, historic and recreational qualities of the Willamette River.  
2 App 119-121; Record 1103-1111; 1138-1146, 10163-10171. The Greenway Setback Line  
3 represents a coordinated effort to utilize several planning inventories and studies to establish  
4 the area within which only water-dependent or water-related uses may occur. App 448.  
5 Goal 15 does not require a separate inventory to establish a setback, everything within the  
6 Greenway Boundary has been considered a Greenway resource and considered in the  
7 development of plans, management and acquisition. Contrary to assertions of petitioner,  
8 previous regulations and the 1999 Glenwood Refinement Plan established a setback line that  
9 was 20 to 35 feet from the top of the river bank, unless the location of the floodway boundary  
10 required greater separation from the river. Elsewhere, the Greenway setback was top of  
11 bank. Record 1103-1111; 1138-1146, 10163-10171. In 2005, the 1999 Glenwood  
12 Refinement Plan was amended to include policies that linked Greenway protection and  
13 regulation to the recently adopted riparian regulations. Among those new policies were  
14 Policy 9, designed to assure provision of public access and Policy 11 designed to provide for  
15 more certainty in setbacks by stating:  
16  
17

18 “Development proposals within Subarea 8 shall comply with the setback  
19 requirements for WQLWs in the SDC [Sections 4.3-110 and 115] and as  
20 mapped on the WQLW map contained on file in the Development Services  
21 Department, unless a Willamette Greenway delineation in accordance with SDC  
[Section 3.3-100] identifies areas that warrant additional setback protection.”  
Springfield Ordinance No. 6201.

22 The Water Quality Limited Watercourses setbacks referred to in that policy are the riparian  
23 setback requirements established citywide by Ordinance No. 6021 on July 15, 2002, to  
24 address provisions of the Clean Water Act Endangered Species Act and the Safe Drinking  
25 Water Act. Those regulations also considered the Greenway inventory and protections by  
26 including “water-dependent or water-related uses between the Willamette River and the  
27 Greenway Setback Line as may be permitted in the Willamette Greenway Overlay District”  
28

1 as a permitted uses within the riparian setback, as described in Springfield Development  
2 Code subsection 4.3-115B.7.

3 The 75-foot Greenway Setback Line included in the Glenwood Refinement Plan  
4 amendments presents a logical progression to a coterminous setback supported by numerous  
5 inventory studies that will present a single setback area for development in the Glenwood  
6 area. The relevant findings provide:

7  
8 “Under existing regulations, a Greenway Setback Line must be established for each  
9 proposed development within the WG Overlay District in the Glenwood Riverfront.  
10 This will add additional cost and time to the developer. Since there is an established  
11 75 foot riparian setback along the Willamette River along the Glenwood Riverfront  
12 and since Goal 15 requires the protection of ‘*Significant natural and scenic areas,  
and vegetative cover*’ a concurrent 75 foot Greenway Setback Line is proposed both  
in the Glenwood Refinement Plan Open Space Chapter and in the Glenwood  
Riverfront Mixed-Use Plan District, Section 3.4-280 so that both setbacks can be  
established at the same time.

13 “The proposed Glenwood Refinement Plan Open Space Chapter states: ‘*Statewide  
14 Planning Goal 15, Willamette River Greenway, requires a greenway boundary of 150  
15 feet measured from the ordinary low water line, which allows development to occur  
16 as a discretionary use. Within this boundary, a Greenway Setback Line is also  
17 required to delineate where only water-dependent and water-related development  
18 may occur, such as boat ramps, multi-use paths, and viewing areas. For much of the  
19 Glenwood Riverfront, the location of the Greenway Setback Line has not been  
20 formally established. The Implementation Strategies discussed below include  
21 establishing a standardized 75-foot Greenway Setback Line in the Glenwood  
Riverfront, measured from the top of bank concurrent with the existing riparian  
setback. Formally establishing the Greenway Setback Line in the Glenwood  
Riverfront will reduce uncertainty and provide predictability in achieving Goal 15  
standards for public access to and views of the river, protection of fish and wildlife  
habitat, providing riverine flood hazard protection, restoration and enhancement of  
natural vegetation, and directing development away from the river.*” App 121; 290-  
293.

22 The setback builds on the existing, acknowledged inventories of Greenway and  
23 riparian resources that focus on many of the same considerations. As pointed out in the  
24 Glenwood Refinement Plan, the amendments included consideration of Goal 15 and establish  
25 consistency with those requirements. Petitioner attempts to raise Goal 15 issues in this case  
26 with a misplaced reliance on *Gunderson, LLC, v. City of Portland*, 243 Or App 612, *aff’d*  
27 352 Or 648 (2012). In this case, the inventory, boundary and assessment of the  
28

1 acknowledged program addressing Goal 15 were considered and utilized in establishing a  
2 clear Greenway Setback Line. Nothing in the *Gunderson* decisions cited by petitioner  
3 address the challenges presented in this subassignment of error because the established  
4 Greenway boundary was not changed or affected by the amendments under review here.<sup>14</sup>  
5 Petitioner fails to address the acknowledged boundary, inventory, management and  
6 acquisition considerations included in the decisions. The specific inventory of lands  
7 committed to urban uses was at issue in *Gunderson* and necessary to determine if all the  
8 protections for those uses were being provided. Nothing so specific or understandable is  
9 raised by petitioner in this case. Without more and for the reasons described above, this  
10 subassignment of error should be denied.  
11

12 **2. The new and existing zoning regulations in the Glenwood area will**  
13 **assure that only water-dependent and water-related uses consistent with**  
14 **Goal 15 will be allowed.**

15 As described previously, Springfield Development Code subsection 3.4-280.G. states  
16 that:

17 “Any change, intensification of use, or development, as defined in Subsection 3.4-  
18 280C., within the Glenwood Riverfront portion of the WG Overlay District, shall be  
19 reviewed under Type III Discretionary Use procedure in accordance with criteria  
20 specified in: Subsection 3.4-280L.; the Site Plan Review process as specified in Section  
21 5.17-100; the Land Division process specified in Section 5.12-100, as applicable; any  
22 additional reviews required by this Code; and the standards of this Section.” App 452.

23 A Type III review is a discretionary decision heard at a public hearing before the  
24 Planning Commission, where specific issues regarding water-dependent water-related uses  
25 can be addressed and conditioned. Contrary to the assertion of petitioner, the introduction to  
26 the list of uses says “only water-dependent or water-related uses can be allowed in the area  
27 between the Greenway Setback Line and the river. SDC 3.4-280.D.2.; App 449. The  
28

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<sup>14</sup> Whether changes to regulations require a new inventory remains a question for this Board in the *Gunderson* remands, an issue not clearly raised here by petitioner.

1 regulations assure the listed uses will be evaluated for compliance with the Goal 15  
2 requirements, including the definitions of “water-dependent” or “water-related” uses, which  
3 state:

4 “WATER-DEPENDENT. A use or activity which can be carried out only on, in, or  
5 adjacent to water areas because the use requires access to the water body for water-  
borne transportation, recreation, energy production, or source of water.

6 “WATER-RELATED. Uses which are not directly dependent upon access to a water  
7 body, but which provide goods or services that are directly associated with water-  
8 dependent land or waterway use, and which, if not located adjacent to water, would  
9 result in a public loss of quality in the goods or services offered. Except as necessary  
for water-dependent or water-related uses or facilities, residences, parking lots, spoil  
and dump sites, roads and highways, restaurants, businesses, factories, and trailer  
parks are not generally considered dependent on or related to water location needs.”

10 Those definitions do not categorically exclude bike paths, bridges or even roads and  
11 highways and the Springfield Development Code reflects the Goal 15 definitions closely.

12 The listed uses are only illustrative and remain limited by the qualification that precedes the  
13 list. With that backdrop, a look at the list of uses petitioner seems to assert are inconsistent  
14 with Goal 15 reveals the facial challenge is misplaced.

15  
16 Public multi-use paths: The relevant provisions that address multi-use paths make  
17 clear they should be located at the outermost edge of the 75-foot Greenway Setback  
18 Line/Riparian Setback to the maximum extent possible. Previously, those paths were  
19 required to be located along the outer edge of the riparian area and away from the  
20 watercourse. This use can meet both definitions, depending on the purpose and use of the  
21 path. While they may have a use or purpose anywhere, a multi-use path also can provide  
22 access to the river for both river viewers and users or to enable travel that crosses the river  
23 making them water-dependent or water related. The Metro Plan area currently has multi-use  
24 paths that follow and cross the river. These paths do provide a service that is directly  
25 associated with water-dependent or water-related use; while at the same time providing a  
26 connection to paths designed for getting people from one place to another. While petitioner  
27  
28

1 describes a recent exception to Goal 15 taken by the Metro Plan partners for the I-5  
2 temporary and replacement bridges that included fill and structures for a bit of a bike path in  
3 the Greenway area in Glenwood, petitioner stops short of asserting all multi-use paths in the  
4 Greenway area must get approval of an exception to Goal 15. To the extent that is the  
5 argument, it must fail. The complete record and text of the goal exceptions taken for the I-5  
6 bridge replacement related activities documented in the Metro Plan at Policy III-D-11 make  
7 clear there is no “one-size-fits-all” analysis should be applied to this use.  
8

9 Access ways: This use can be consistent with Goal 15 and is adequately defined.  
10 SDC 6.1-110. The definition makes clear it focuses on connecting bike paths or pedestrian  
11 trails, which can be for water-dependent or water-related uses such as access to the river for  
12 boating or swimming or enjoying the open spaces.

13 Pedestrian trails and walkways; Boardwalks: These can meet either definition, for the  
14 same reasons given in response to “Public multi-use paths” and “Access ways,” above.  
15 These types of facilities may provide necessary access to the river for all types of water users  
16 and enhance the recreational experiences available along the waterway.  
17

18 Picnic area; Interpretive and educational displays; Overlooks and viewpoints,  
19 including benches and outdoor furniture: These can meet either definition, depending on the  
20 relationship of the use to water-dependent or water-related uses. While they can go  
21 anywhere, in some circumstance they can be water-dependent or water-related by allowing  
22 pedestrians or bicyclists the ability to get close to the river to use or enjoy various  
23 recreational opportunities provided by the river. Both the Glenwood Refinement Plan and  
24 implementing regulations make clear these uses can be important to use and enjoyment of the  
25 river. The time for determining whether an actual development proposal is either water-  
26 dependent or water-related is when the proposal gets reviewed under the applicable  
27  
28

1 provisions of the Glenwood Riverfront Mixed-Use Plan District and related Springfield  
2 Development Code sections designed to assure consistency with Goal 15.

3 Docks; Boat shelters; Piers; Boat ramps; As petitioner asserts, all of these uses are  
4 water-dependent or water-related. What is not mentioned or acknowledged by petitioner, is  
5 that all of these uses must also allow those with boats, kayaks, canoes, rafts or other water  
6 conveyance, as well as swimmers, access to the use and the river. The roads, driveways,  
7 multi-use paths or other facilities that will connect and allow access to those types of uses  
8 may also qualify for approval as water-dependent or water-related uses consistent with Goal  
9 15, as well as the amended Glenwood Refinement Plan and other related implementing land  
10 use regulations.  
11

12 Bridges and related appurtenances for pedestrians, bicycles and motor vehicles: These  
13 can meet either definition, as described above. While this use may allow roads and  
14 highways, they are not categorically excluded from the definition of “water-related” in the  
15 Statewide Planning Goals definitions. The Goal 15 definition of “water-related” actually  
16 says:  
17

18 “Except as necessary for water-dependent or water-related uses or facilities,  
19 residences, parking lots, spoil and dump sites, roads and highways, restaurants,  
20 businesses, factories, and trailer parks are not generally considered dependent on or  
21 related to water location needs.”

22 Contrary to the assertions of petitioner, not all of these uses will require an exception to Goal  
23 15 for some of the same reasons that were described earlier. Depending on the specific  
24 proposal and its relationship to water-dependent or water-related uses, as well as the extent of  
25 the improvement in the Greenway or riparian areas, some bridges and related appurtenances  
26 may qualify as an allowed use consistent with Goal 15 and related Springfield Development  
27 Code provisions. While placement of bridge supports within the Greenway Setback area  
28

1 could be unlikely in most cases, most of these facilities would not be necessary if there was  
2 no river for the bridge to cross.

3 As described above, the list of possible water-dependent or water-related uses in the  
4 new land use regulations would not allow development in the Greenway Setback area that is  
5 not allowed by Goal 15. Compliance with Goal 15 does not require revision to the list of  
6 uses that may be allowed in the Greenway Setback area or reducing the setback area. The  
7 decision in *Allen v. City of Portland*, 15 Or LUBA 464 (1987) provides limited assistance for  
8 the assertion of petitioner in this case. At best, it indicates why that proposed road or ramp  
9 was not water-dependent or water-related. It does not support the assertion that roads can  
10 never be considered water-dependent nor water-related or the assertion that the Statewide  
11 Planning Goals expressly exclude all roads and highways from the water-related definition.  
12 For those reasons, this subassignment of error should be denied.  
13

14 **3. The amendments rely on the acknowledged Greenway boundary**  
15 **and adequately identify lands for possible public acquisition.**

16 The amendments to the Metro Plan, Glenwood Refinement Plan and Springfield  
17 Development Code adequately address Goal 15, adequately identify lands for possible public  
18 acquisition and made no change to the acknowledged Willamette Greenway Boundary  
19 depicted on the larger Metro Plan diagram and codified by the Willamette Greenway Overlay  
20 District that continues to apply. While Goal 15, Part E.1. states that the “Boundaries of the  
21 approved Willamette River Greenway shall be shown on every comprehensive plan” and  
22 Goal 15, Part F.1. makes the same statement for zoning maps, use of the term “boundaries”  
23 does not mean both the outer boundary of the Greenway and the Greenway Setback line.  
24 The setback line is not a boundary of the Greenway, it is only the area subject to more  
25 restrictive development protections and limitations. Petitioner provides no other authority  
26 than the bold-faced assertion it is so. The text, context and policies of Goal 15 make it clear  
27  
28

1 there is no basis for the assertion. The Greenway boundary has been established and  
 2 adequately depicted on the acknowledged Metro Plan diagram and in the Willamette  
 3 Greenway Plan that initially established the boundary in the Glenwood area. For those and  
 4 the reasons above, this subassignment and assignment of error should be denied.

5 **RESPONSE TO EIGHTH ASSIGNMENT OF ERROR**

6 **The Metro Plan, Glenwood Refinement Plan and Springfield Development Code**  
 7 **amendments comply with Goal 2 and rely on existing and amended provisions of the**  
 8 **acknowledged comprehensive plan and land use regulations for implementation.**

9 **A. Standard of Review.**

10 The relevant requirements of Goal 2 are set forth in the Goal. Petitioner's arguments  
 11 contain little analysis of goal compliance and instead focus on consistency with  
 12 acknowledged comprehensive plans and a requirement for using acknowledged land use  
 13 regulations, apparently under Goal 2. To the extent necessary, standards of review described  
 14 previously and in the responses to other assignments of error are incorporated here.

15 **B. The challenged decisions are consistent with Goal 2 and rely on**  
 16 **standards previously adopted and incorporated into the acknowledged**  
 17 **Springfield Development Code.**

18 The foundation of this assignment of error is the bold-faced assertion that the  
 19 Engineering Design Standards and Procedures Manual (EDSPM), referenced in the  
 20 Glenwood Refinement Plan and incorporated into the Springfield Development Code  
 21 revisions, is not acknowledged.<sup>15</sup> Petitioner fails to provide any authority for this assertion or  
 22 the rest of the arguments. Most of what petitioner says about the role the EDSPM plays in  
 23 implementing the Glenwood Refinement Plan and the Glenwood Mixed-Use Riverfront Plan  
 24 District is true. What petitioner fails to realize and seems to ignore is that the EDSPM was  
 25 previously incorporated by reference into the acknowledged Springfield Development Code  
 26

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27  
 28 <sup>15</sup> Petitioner cites App-61 for this statement and nothing on that page mentions the EDSPM.

1 and the most recent amendments continue that status with revisions specific to the recent  
2 Glenwood planning effort.

3 Previous actions to incorporate the EDSPM into the Springfield Development Code  
4 were taken by the City of Springfield in Ordinance No. 6206, enacted September 17, 2007,  
5 and by the Board of Commissioners in Ordinance No. 16-07, enacted December 5, 2007.  
6 Contrary to the assertions of petitioner, the EDSPM standards were “elevated” and remain in  
7 the “aura of acknowledgment” today. Even if this was the first time the EDSPM was  
8 incorporated into the Springfield Development Code by reference and used to evaluate  
9 development in the Glenwood area, that action would make those standards part of the  
10 applicable land use regulations implementing the comprehensive plan and would bring  
11 EDSPM into the realm of acknowledged land use regulations. In this case, however, the  
12 references are to the previously acknowledged EDSPM and Glenwood Refinement Plan  
13 simply continued utilization of those standards in the new Glenwood Mixed-Use Riverfront  
14 Plan District zoning. App 376-498. Petitioner fails to explain how incorporating the  
15 EDSPM into the Springfield Development Code in 2007 and continuing to utilize those  
16 standards now through the Glenwood Refinement Plan and the revised Springfield  
17 Development Code makes those standards any less a part of the acknowledged  
18 comprehensive plan and land use regulations for the Glenwood area.  
19  
20

21 The description of references to the EDSPM provided by petitioner provides ample  
22 evidence of the linkage to the acknowledged Springfield Development Code, as well as the  
23 Glenwood Refinement Plan. Petition 72-73. The EDSPM provides significant certainty for  
24 development of both public and private improvements to “ensure safe, efficient, and cost  
25 effective transportation, sanitary sewer, and stormwater management system projects” that  
26 will implement both the Metro Plan and Glenwood Refinement Plan. The EDSPM standards  
27  
28

1 and procedures are clearly described and there is a clear connection to the goals and  
2 Glenwood Refinement Plan policies implemented by the most recent changes to the  
3 Springfield Development Code provisions that make up the Glenwood Mixed-Use Riverfront  
4 Plan District zoning. See *Angius v. Clean Water Services District of Washington County*, 50  
5 Or LUBA 154 (2005); *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 453, 457  
6 (2002).

7           The EDSPM standards and procedures moved away from criteria that relied on the  
8 discretion of the Public Works Director to provide more clear and objective standards for  
9 public improvements. While the EDSPM is defined in subsection 6.1-110, a more specific  
10 description of its function and relative importance is found in subsection 4.1-110 of the  
11 Springfield Development Code, which states:  
12

13           “Construction and design references for public improvements under City jurisdiction.  
14 **Specifications for the design**, construction, reconstruction or repair of streets, alleys,  
15 sidewalks, bus turnouts, accessways, curbs, gutters, street lights, traffic signals, street  
16 signs, sanitary sewers, stormwater management systems, street trees and planter  
17 strips within the public right-of-way, medians, roundabouts and other public  
18 improvements within the city limits and the City’s urbanizable area **are as specified**  
19 **in this Code, the Springfield Municipal Code, 1997, the Stormwater Management**  
20 **Plan, the City’s Engineering Design Standards and Procedures Manual, and the**  
21 **Public Works Standard Construction Specifications. The Public Works Director**  
22 **retains the right to modify their cited references on a case-by-case basis without the**  
23 **need of a Variance when existing conditions make their strict application**  
24 **impractical.”**

25           This provision and the definition cited by petitioner remained unchanged by the package of  
26 Metro Plan, Glenwood Refinement Plan and Springfield Development Code amendments  
27 adopted in the decisions under review. While future changes to EDSPM may be subject to  
28 action by resolution, petitioner fails to articulate why those changes could not be made in the  
same way as any other land use regulation. See *Boom v. Columbia County*, 31 Or LUBA 318  
(1996); *Baker v. City of Milwaukie*, 271 Or 500, 511, 533 P2d 772 (1975).

1           There is no basis in the arguments of petitioner to conclude the EDSPM is not part of  
2 the acknowledged land use regulations applicable in Springfield and the unincorporated  
3 Glenwood area. The EDSPM was adopted twice by ordinance, it has been incorporated and  
4 utilized extensively in the Springfield Development Code at least since 2007 and it remains  
5 part of the acknowledged comprehensive plan and land use regulations enacted in the  
6 Glenwood area. Petitioner fails to provide any explanation for the assertion that the EDSPM  
7 is unacknowledged and has to be run through a separate or different acknowledgment  
8 process. The Springfield Development Code and the EDSPM utilized there remain  
9 consistent with the authorities cited by petitioner and the Goal 2 obligation to make land use  
10 decisions under acknowledged plans and implementing regulations. The EDSPM provides a  
11 compilation of standards and procedures that are part of the acknowledged land use  
12 regulations used to implement the Metro Plan and the Glenwood Refinement Plan through  
13 the Springfield Development Code. Petitioner fails to establish any basis for concluding the  
14 recent amendments violate Goal 2. For those reasons, this assignment of error should be  
15 denied.  
16  
17

#### 18                           **RESPONSE TO NINTH ASSIGNMENT OF ERROR**

19           **The Metro Plan, Glenwood Refinement Plan and Springfield Development Code**  
20           **amendments that provide for limited “peer review” comply with Goals 2 and 10, as well**  
21           **as applicable statutes governing fees and the provision of needed housing.**

##### 22           **A.       Standard of Review.**

23           The relevant requirements of Goal 2 are set forth in the Goal. Petitioner’s arguments  
24 contain no analysis of any Goal 2 compliance and instead focus on consistency with statutory  
25 requirement for fees and needed housing, apparently under Goal 10. To the extent necessary,  
26 standards of review described previously and in the responses to other assignments of error  
27 are incorporated here.  
28

**B. The challenged decisions include “peer review” options for major modifications to development or building design standards that are consistent with the statutes relating to needed housing and fees for permits.**

The approved provisions in the Springfield Development Code that describe “peer review” make clear the very limited circumstances under which it is utilized. Consideration of the peer review option included several discussions and analysis of the provisions before the decisions leading to adoption of the amendments to the Springfield Development Code. Record 1650-1651, 2235-2241, 2254-2270, 2271-2282. Modifications were made to the initial proposals to provide additional clarification of intent and the limited circumstances under which peer review might occur. The relevant text of the adopted Springfield Development Code subsection 3.3-230 reads as follows:

**“C.** The Director may require a Peer Review to assist with the evaluation of proposals that seek major modifications to the Glenwood Riverfront Mixed-Use Plan District Plan development and/or building design standards or a Glenwood Refinement Plan amendment when:

**“1.** Springfield staff does not have the expertise to evaluate a required technical report, including, but not limited to: acoustical analyses; floodplain mapping; transportation demand management and/or geotechnical engineering.

**“2.** The applicant’s findings do not demonstrate compliance with the objective of the applicable development or design standard as required in Subsection 3.4-230B.4.

**“D.** Peer Review is a process used to review work by other professionals in the same field in order to make an impartial evaluation of a required technical report or a proposed alternative development or building design standard submitted by the applicant. The intent is to allow the Planning Commission or other Approval Authority to make an informed decision on technical report methodology or whether a proposed alternative standard can be utilized. Peer Review is performed by firms employing engineers, planners, and other professionals, as necessary. Peer Review shall be at the applicant’s expense. Any required Peer Review shall be submitted at the time of the Pre-Submittal Meeting required in Subsection 5.1-120C.”  
App 381.

While the ultimate decision on the peer review firm rests with the Director, the initial choice to deviate from the applicable development or design standards is up to the developer, as is the choice of possible reviewers and related costs. Even then, peer review may be required

1 only under very limited circumstances which would be determined early in the process  
2 during one of three anticipated pre-development option meetings. SDC 5.1-120. The peer  
3 review is intended to provide technical review in areas that staff does not have expertise, is  
4 required only when the applicant cannot establish an alternative design will comply with the  
5 objective of the applicable development or design standards and must be completed in time  
6 to be submitted at the Pre-Submittal Meeting. SDC 3.4-230.C and D; App 381. For those  
7 and the reasons that follow, this assignment of error should be denied.  
8

9 **1. The peer review process provides an optional method for approval**  
10 **of proposals seeking major modifications to development and building**  
11 **design standards and is not contrary to needed housing requirements in**  
12 **ORS 197.307(4) or OAR 660-008-015.**

13 Only a proposal that seeks a major modification to the Glenwood Riverfront Mixed  
14 Use District development or building design standards must consider utilizing peer review as  
15 an alternative to simply complying with the applicable standards in Springfield Development  
16 Code. In some respects, it may be similar to any requirements for transportation analysis or  
17 other expert design efforts necessary to establish compliance with a particular design or  
18 development standard. The initial decision to engage the possibility of more time and effort  
19 rests with the developer who chooses to deviate from the established standards. Even when a  
20 major modification is proposed, the Director may require peer review only under limited  
21 circumstances when staff does not have expertise to evaluate a required technical report and  
22 when the applicant findings do not demonstrate compliance with the objective of the  
23 applicable development or design standard.

24 Petitioner fails to establish how peer review under these limited circumstances chosen  
25 initially by the applicant actually delays the provision of needed housing. Peer review  
26 provides an extra step prior to the formal application process to address the choice to seek  
27 approval of a major modification to the development and/or building design standards – a  
28

1 step over which the applicant has ultimate control. The utilization of peer review may  
2 actually enhance the chances for an application to gain quicker approval with third party  
3 verifications of the applicant analysis. It assures the modification will remain consistent with  
4 the objectives of the development and building design standards and is not contrary to the  
5 needed housing requirements of ORS 197.307(4) or OAR 660-008-0015(1). The mistaken  
6 characterization of control over the choice to incur the possibility of peer review and vague  
7 assertions of petitioner about possible delay fail to establish any violation of the needed  
8 housing statute or the Goal 10 Rule. For those reasons, this subassignment of error should be  
9 denied.  
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11 **2. The requirement that the applicant pay for the peer review**  
12 **conducted by third party technical consultants is not a fee established by**  
13 **a governing body and remains consistent with ORS 227.175(1).**

14 The statutory standard for charging fees as stated in ORS 227.175(1) is: “The  
15 governing body shall establish fees charged for processing permits at an amount no more  
16 than the actual or average cost of providing that service.” The peer review alternative  
17 process allows the developer to seek approval of major modifications to the development  
18 and/or building design standards of the Glenwood Riverfront Mixed-Use District. The cost  
19 of hiring a private consultant for that review is not part of the fees established or collected by  
20 any governing body for processing the application once it is submitted for approval of the  
21 development. The costs are something an applicant must consider while initially considering  
22 the design of the proposal well before submitting an application for processing and approval.  
23 They are not appropriately considered part of the “fees charged for processing permits”  
24 addressed by the statute under any reasonable interpretation.  
25

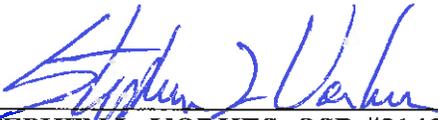
26 As previously described, those costs are no different than other requirements for  
27 expert transportation analysis or other architectural design efforts necessary to establish  
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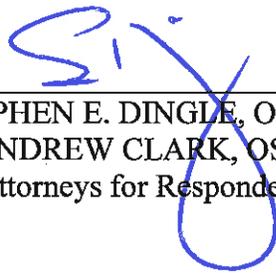
1 compliance with a particular design or development standard. Those costs and the time it  
 2 takes to complete the work are initially up to the applicant to determine and ultimately the  
 3 responsibility of the applicant to prepare and submit a completed application. The local  
 4 government has little control and is not responsible for those charges. A logical extension of  
 5 the argument of petitioner would make all of those expert costs something covered by the  
 6 statute as a fee for processing a permit. An application without those elements and  
 7 information addressing the standards might not be complete, as well, so considering the time  
 8 it takes to prepare such reports subject to the 120-day period under ORS 227.128 strains  
 9 credulity. Nothing in the text or context of the statutes provide support for the conclusion  
 10 that either circumstance leads to the violation that petitioner tries to fashion. The arguments  
 11 and assertions are not well developed and provide no basis for establishing any violation of  
 12 the needed housing, processing timeline or fee statutes. On its face, the arguments of  
 13 petitioner establish compliance with the fee statute, the local government is not providing the  
 14 service nor charging or collecting any fee. For those and the reasons described above, this  
 15 subassignment of error should be denied.  
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 17

#### 18 V. CONCLUSION

19 For all of the reasons stated herein, respondents respectfully request that this Board  
 20 affirm the decisions in their entirety.

21 DATED: May 17, 2013.

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**CERTIFICATE OF FILING**

I certify that on May 17, 2013, I filed this BRIEF OF RESPONDENTS CITY OF SPRINGFIELD AND LANE COUNTY with the Land Use Board of Appeals by mailing the original and four copies of said Brief, by first class mail with the United States Postal Service addressed to the Land Use Board of Appeals, DSL Building, 775 Summer Street NE, Suite 330, Salem, OR 97301-2552.

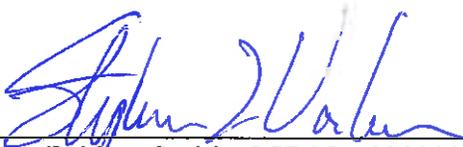
**CERTIFICATE OF SERVICE**

I certify that on May 17, 2013, I served the foregoing BRIEF OF RESPONDENTS CITY OF SPRINGFIELD AND LANE COUNTY on the parties below by depositing in the United States Post Office (First Class Mail) at Springfield, Oregon an exact and complete copy thereof, enclosed in a sealed envelope, with postage prepaid, addressed to the parties, as shown below, at the address shown below:

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