

SEP 28 4 24 PM '84

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

1  
2  
3 EUGENEANS FOR A LIVEABLE )  
 4 FUTURE, NENA B. LOVINGER, )  
 5 RON LOVINGER, and ALAN )  
 6 STEIN, )  
 7 )  
 8 Petitioners, )  
 9 )  
 10 vs. )  
 11 OREGON DEPARTMENT OF )  
 12 TRANSPORTATION, )  
 13 )  
 14 Respondent, )  
 15 )  
 16 and )  
 17 )  
 18 CITY OF EUGENE, )  
 19 )  
 20 Respondent. )

LUBA No. 84-054  
FINAL OPINION  
AND ORDER

Appeal from the Oregon Department of Transportation.

Douglas M. DuPriest, Eugene, filed the Petition for Review and argued the cause on behalf of petitioners. With him on the brief were Hutchinson, Anderson, Cox & Teising.

Michael B. Huston, Salem, filed a response brief and argued the cause on behalf of Respondent Oregon Department of Transportation.

Timothy J. Sercombe, Eugene, filed a response brief and argued the cause on behalf of Respondent-Intervenor City of Eugene.

DUBAY, Referee; BAGG, Chief Referee; KRESSEL, Referee; participated in this decision.

AFFIRMED 09/28/84

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

1 Opinion by DuBay.

2 NATURE OF THE DECISION

3 This is an appeal of the decision of Oregon Department of  
4 Transportation (ODOT) approving a statement of Environmental  
5 Assessment regarding a state highway improvement project in the  
6 City of Eugene.<sup>1</sup> Under ODOT procedures an Environmental  
7 Assessment serves as design/location approval for the project  
8 when accompanied by a determination of the Federal Highway  
9 Administration that the project will have no significant impact  
10 on the human environment.<sup>2</sup>

11 FACTS

12 Oregon State Highway No. 99 splits to become the  
13 Sixth-Seventh Avenue couplet, the major east-west route  
14 through the City of Eugene. The two streets each have one way  
15 traffic in opposing directions. The improvement project  
16 includes road bed reconstruction and widening from three to  
17 four lanes along 21 blocks of the couplet. The project is  
18 divided into three units. The westernmost unit, Unit 1, is  
19 scheduled for construction in 1984 with the remainder to be  
20 constructed when funds become available. Record 257, 296.

21 The widening of Sixth and Seventh Avenues by 12 feet, 6  
22 feet on each side of the street, to accommodate an additional  
23 traffic lane will be done within the existing right-of-way.  
24 The original plans called for removal of 137 trees, including  
25 45 trees from Unit 1. During the proceedings, ODOT proposed  
26 alignment changes which reduced to 22 the number of trees to be

1 removed in Unit 1. ODOT also made a special report to evaluate  
2 the historic importance of the trees and to determine their  
3 eligibility for inclusion in the National Register of Historic  
4 Places. Record 131. The report concluded the trees were not  
5 eligible for the National Register, and the State Historic  
6 Preservation Officer concurred. Record 123.

7 JURISDICTION

8 Respondents assert the challenged action is not a  
9 reviewable land use decision. The Board has "exclusive  
10 jurisdiction to review any land use decision of...a state  
11 agency...." ORS 197.825(1). A state agency land use decision  
12 is:

13 "A final decision or determination of a state agency  
14 other than the (Land Conservation and Development)  
15 Commission with respect to which the agency is required  
16 to apply the goals." ORS 197.015(10) (a) (B).<sup>3</sup>

17 Whether an agency is required to apply statewide land use  
18 planning goals to a decision is, therefore, the critical  
19 jurisdictional inquiry.

20 ORS 197.180(1) imposes certain land use responsibilities on  
21 state agencies:

22 "... (S) tate agencies shall carry out their planning  
23 duties, powers and responsibilities and take actions  
24 that are authorized by law with respect to programs  
25 affecting land use:

26 "(a) In accordance with goals adopted or amended  
27 pursuant to ORS 197.005 to 197.430 and  
28 197.610 to 197.850; and

29 "(b) ...in a manner compatible with:

30 (A) Comprehensive plans and land use

1 regulations initially acknowledged  
2 under ORS 197.251...."

3 As Judge Schwab noted in Housing Council v. City of Lake  
4 Oswego, 48 Or App 525, 617 P2d 655 (1980), pet rev disp. 291 Or  
5 878, 635 P2d 647 (1981), the former version of this statute  
6 meant a state agency must comply with the goals when, but only  
7 when, exercising land use planning responsibilities. Housing  
8 Council, supra, at 530.<sup>4</sup> Since planning responsibilities are  
9 not specifically defined by statute, the courts have decided  
10 which governmental actions are an exercise in planning  
11 responsibility on a case by case basis.

12 In Peterson v. Klamath Falls, 279 Or 249, 566 P2d 1193  
13 (1977) the court rejected the notion a decision must have an  
14 immediate land use effect to qualify as an exercise of planning  
15 responsibility. Annexation to a city was at issue in  
16 Peterson. The court said:

17 "...the exercise of 'planning and zoning  
18 responsibilities' must be read to refer not only to  
19 the preparation of comprehensive plans and the  
20 enactment of zoning ordinances to implement those  
21 plans but also to other local planning activities  
22 which will have a significant impact on present or  
23 future land uses, such as the decision to extend the  
24 city boundaries by annexation." Peterson, supra at  
25 254.<sup>5</sup>

26 The most recent Supreme Court decision on the question  
reaffirmed the "significant impact" standard announced in  
Peterson. City of Pendleton v. Kerns, 294 Or 126, 653 P2d 992  
(1982). In Kerns a city ordinance authorized the improvement  
of a dedicated street and set up a local improvement district

1 to finance construction. The street right-of-way was occupied  
2 by a neighborhood park, apparently built by neighbors and  
3 maintained by sufferance of the city. The street improvement  
4 would have opened up additional undeveloped areas for  
5 residential uses. The court said that turning a neighborhood  
6 park in a quiet residential area on the outskirts of town into  
7 a major thoroughfare would effect a significant change in the  
8 land use status quo of the area. In its analysis the court  
9 said:

10 "Admittedly, 'significant impacts on present or future  
11 land uses' is a nebulous standard, particularly in the  
12 context of a city's decision to undertake street  
13 improvement work. Whereas some decisions, such as to  
14 resurface a street or repair potholes, have only  
15 de minimis impact on land use, and some, such as to  
16 construct a major arterial road or a bridge, have a  
17 substantial impact, a large number of a city's  
18 day-to-day decisions regarding public works and roads  
19 fall in between. Public works and road projects are  
20 an aspect of a city's 'planning and zoning  
21 responsibilities' and as such must be in compliance  
22 with the applicable goals and comprehensive plan  
23 provisions. A city's final decision authorizing a  
24 significant project of this nature is, as a result,  
25 reviewable by LUBA for goal and plan compliance. We  
26 do not believe, however, that the legislature intended  
the myriad of prosaic administrative decisions  
regarding routine maintenance and minor public works  
and road projects be subject to LUBA and judicial  
review for compliance. Consequently, we reiterate the  
standards set forth in Peterson and hold that  
Ordinance No. 3141 is subject to LUBA review if, but  
only if, it can be said that the street improvement  
work will have a significant impact on present or  
future land uses' in the area." (footnote omitted).  
City of Pendleton v. Kerns, 294 Or at 133.<sup>6</sup>

24 Most recently the Court of Appeals, in Billington v. Polk  
25 County, \_\_\_ Or App \_\_\_, \_\_\_ P2d \_\_\_ (1984) (Slip Op. June 27,  
26 1984) considered a proposal to vacate a 10 foot wide portion of

1 a road right-of-way. The portion of the right-of-way had never  
2 been used as a road, and the road as used served only farm land  
3 zoned for exclusive farm use. The court adopted the view that  
4 the road as used was adequate for farm purposes, and, in light  
5 of exclusive farm use zoning in the area, the land use status  
6 quo would not be significantly affected by the vacation.<sup>7</sup>

7 Therefore, the task now before us is to determine if the  
8 Sixth-Seventh Avenue Couplet project will have, now or in the  
9 future, a significant impact on land use in the area. If it  
10 does, it (1) constitutes the exercise of the agency's planning  
11 responsibility, (2) must conform to statewide goals and  
12 acknowledged plans, and (3) is therefore subject to our review.

13 Petitioners assert the project will have a significant  
14 impact in several respects.<sup>8</sup> They are: (1) the capacity of  
15 the street will be increased 33%; (2) numerous large maple and  
16 walnut trees will be removed; (3) access to the West Eugene  
17 Industrial Area will be improved; (4) crossing the street will  
18 be more difficult; and (5) traffic levels and noise will  
19 increase.

20 Respondents, on the other hand, contend the project will  
21 have no significant impact on land use. They say all  
22 construction will take place on existing right-of-way, and no  
23 new land need be acquired. They say the Sixth-Seventh Avenue  
24 couplet is a major arterial and will carry the same predicted  
25 increase in traffic, with or without the additional lanes.  
26 They add the adjacent properties will continue to be used for

1 commercial, governmental and residential use.

2 The Environmental Assessment does not reflect there will be  
3 any significant difficulty crossing the street after widening.  
4 Record 54, 72. The prospect of increased traffic resulting  
5 from the improvements is also specifically refuted. A 30 to  
6 160 percent increase in traffic volume is predicted by the year  
7 2000, but the increase is expected with or without the  
8 project. Record 53. Noise increases will occur as a  
9 consequence of increased traffic volumes, but noise will not  
10 increase merely because the road is widened. Record 60.  
11 Petitioners' claims of substantial impact in these respects are  
12 not supported by the record.

13 On the other hand, the record does support petitioners'  
14 claims of increased street capacity, Record 72, the removal of  
15 several large trees, Record 48, and the improvement of access  
16 to the West Eugene Industrial Area, Record 52. The question  
17 remains whether these circumstances or impacts effect a  
18 significant change in the land use status quo of the area.

19 Petitioners do not state how the increase in street  
20 capacity will affect a change in land use in the neighborhood.  
21 An increase in capacity will no doubt affect traffic flow, but  
22 how any change in traffic flow will affect land use is not  
23 specified. For example, petitioners do not contend there will  
24 be a change in the kinds or types of occupancies in the  
25 neighborhood attributable to a change in traffic flows.  
26 Neither do petitioners point out how improved access to the

1 West Eugene Industrial Area will affect land use along the  
2 improved couplet or elsewhere.<sup>9</sup>

3       Petitioners focus most strongly on the removal of large  
4 trees along both Sixth and Seventh Avenues as evidence of  
5 significant impact. Indeed, the record shows both the large  
6 number of opposing witnesses and the depth of their concern  
7 surrounding the removal of the trees. The impacts are voiced  
8 in terms of injury to aesthetic sensibilities and the loss to  
9 the community's character.

10       We believe some objects or activities on land, either  
11 natural or placed by man, may have special significance or  
12 value. See e.g., Statewide Planning Goal 5. Burial grounds,  
13 landmarks and historical buildings are examples. Their value  
14 is often inextricably tied to particular land, and to maintain  
15 the land use status quo requires maintaining such objects or  
16 activities in a particular place. Conversely, the destruction  
17 or substantial alteration of these objects or the land on which  
18 they occupy affects the status quo in significant ways.

19       Even where the object or activity has no intrinsic value as  
20 a land use, their association with the character of the area  
21 may be so interwoven with nearby land uses that substantial  
22 change of one will work a corresponding change in the other.  
23 For example, the de facto neighborhood park in Kerns was not  
24 protected by land use or other laws, nor was it shown to have  
25 an intrinsic value as a park. However, the change in character  
26 of the neighborhood by destruction of the park and construction

1 of a busy street was held to be a substantial change in land  
2 use.

3 The record shows the neighborhood along these streets is  
4 fully developed for both residential and commercial uses. The  
5 removal of the trees is not expected to affect or change those  
6 uses. Record 50. The couplet will remain a principal  
7 thoroughfare of the city.

8 Whether the trees have some intrinsic worth tied to the  
9 land is a more difficult question.

10 The Special Cultural Resources Supplementary Report by ODOT  
11 describes the probable origination of the trees and their  
12 condition and status today. Record 131-178. The report shows  
13 five of the largest trees in the project area were probably  
14 planted before 1907. Thirty-five other large trees were  
15 planted later at various times when the streets were paved,  
16 probably before 1920. Most of the trees, about 100, were  
17 planted later to fill in empty areas. There are generally more  
18 young than old trees. At least one block, however, (between  
19 Lincoln and Lawrence Streets on Sixth Avenue) includes large  
20 trees that arch across the street, forming a "gateway arch."  
21 Record 124. The larger trees are Big Leaf Maples with some  
22 walnut trees.

23 The Supplementary Report states trees in parking strips  
24 were common between 1900-1920 as part of two national  
25 movements, the City Beautiful movement and the Progressive  
26 movement. The planting of trees in Eugene is generally

1 associated with an early and popular political figure, F. M.  
2 Wilkins. The record does not clearly show the trees on Sixth  
3 and Seventh Avenues to have been associated with him, however.  
4 The report concludes the trees do not meet eligibility  
5 requirements of the National Register of Historic Places  
6 because:

- 7 1) Losses over the years have created so many  
8 openings, some with newer trees and some left  
9 unplanted, that the trees do not display  
consistency or integrity of design or plant  
materials.
- 10 2) The trees along Sixth-Seventh Avenues do not  
11 display a distinctive planting representative of  
12 the City Beautiful movement or the common  
planting practices of the period.
- 13 3) The trees do not, along the length of Sixth and  
14 Seventh Avenues, convey the original character of  
the area.
- 15 4) The trees have no strong association with the  
16 national movement or F. M. Wilkins. Other areas  
in the city display better examples of the  
association with this movement and Mr. Wilkins'  
work.

17 The report concludes the trees are historic and part of  
18 Eugene's heritage, but do not meet the criteria for the  
19 National Register. Record 145.

20 The Supplementary Report's conclusion the trees are  
21 historic and part of Eugene's heritage echoes the testimony of  
22 residents of the city who claim the trees are part of the  
23 city's historical heritage and are living monuments  
24 representing the character of the city. Record 96, 327.  
25 Citizen comments also claim the trees to be cultural, aesthetic  
26

1 and historical assets to the city. Record 290-294. These  
2 comments in the record indicate pride in the trees and in the  
3 character their presence is deemed to establish for the area.  
4 Such intangible values can be, and often are, easily claimed to  
5 exist. They are, however, difficult to assess because they are  
6 subjective and often personal. In this case, however, ODOT's  
7 Supplementary Report gives a measure of credence to these  
8 claims. Even though the trees do not meet the criteria for  
9 listing in the National Register of Historic Places, we believe  
10 the record shows the trees have a special significance to the  
11 community, and to remove them would significantly impact land  
12 use in the area of the project.

13 It follows the Sixth-Seventh Avenue project is an exercise  
14 of ODOT's planning responsibility. As such, it must comply  
15 with statewide planning goals and acknowledged plans pursuant  
16 to ORS 197.180(1). Because the agency must apply the goals and  
17 acknowledged plans, the approval of the project through ODOT's  
18 procedures is a land use decision as defined in ORS  
19 197.015(10)(a)(B). It is subject to our review under ORS  
20 197.825(1).

21 ASSIGNMENT OF ERROR NO. 1

22 Petitioners' first attack is that the decision to widen and  
23 reconstruct the Sixth and Seventh Avenue couplet violates the  
24 transportation element of the "Metro Area General Plan" (the  
25 Metro Plan). The plan has been acknowledged by LCDC as in  
26 compliance with statewide planning goals. The transportation

1 element of the plan is entitled Eugene-Springfield Area 2000  
2 Transportation Plan (T-2000 Plan). Petitioners say the project  
3 violates four policies of the T-2000 Plan.<sup>10</sup>

4 First, petitioners say the Environmental Assessment and  
5 study report do not show a need for street widening. System  
6 Policy 6 of the T-2000 Plan states:

7 "Although advanced plans for street and highway and  
8 transit improvements in newly developing or  
9 redeveloping areas shall be developed, actual  
10 construction or implementation shall not take place  
until a definite need is shown, in order to control  
the stimulation of growth in these areas." System  
Policy 6, T-2000 Plan at 31.

11 The Environmental Assessment does not address specific  
12 comprehensive plan policies. Since ODOT made the threshold  
13 conclusion the project has no significant impact on land use,  
14 it did not apply plan policies in its analysis. However, the  
15 Environmental Assessment does discuss in some detail the same  
16 subjects covered by the plan policies. Rather than remand this  
17 matter for findings addressing specific plan provisions, we  
18 consider the Environmental Assessment discussion of these  
19 subjects to be sufficient for our review of the decision for  
20 compliance with the plan.

21 Findings in the Environmental Assessment regarding traffic  
22 problems are faulted by petitioners as inadequate to show need  
23 on three bases.

24 1) Traffic flow problems are shown to exist on only  
25 a small number of intersections in the project  
26 area;

- 1        2)    Traffic flow increase projections are based on  
2            wrong assumptions, and traffic flows are not  
          related to congestion levels on the streets; and
- 3        3)    Accident figures do not justify constructing Unit  
4            1 first.

5        Respondents answer these claims first by arguing System  
6 Policy 6 does not apply to this project because it is not a  
7 newly developing or redeveloping area. The policy, as is made  
8 apparent by the discussion following it in the plan, is framed  
9 to prevent premature public investment until private  
10 development is imminent and an actual demand has been  
11 demonstrated. Respondents go on to say the project is in a  
12 part of a city already developed, and Policy 6 does not apply  
13 here. We agree.

14        The record shows the Sixth-Seventh Avenue project is in a  
15 fully developed neighborhood of both residential and commercial  
16 uses. Although petitioners claim downtown Eugene is  
17 redeveloping, they have not pointed to evidence in the record  
18 supporting this assertion. Petitioners also claim the West  
19 Eugene Industrial Area is newly developing. This claim, too, is  
20 not substantiated by the record.<sup>11</sup> The applicability of  
21 Policy 6 is therefore not clearly established by petitioners.

22        Even if newly developing or redeveloping areas are served  
23 by Sixth and Seventh Avenues, respondents correctly claim the  
24 T-2000 Plan describes this project as necessary. Given the  
25 plan's express recognition of the need for the project,<sup>12</sup> we  
26 do not construe Policy 6 to require additional findings of

1 need. Further, even if a showing of need is required, the  
2 Environmental Assessment includes ample facts showing need for  
3 the project.<sup>13</sup>

4 We deny petitioners' claim that additional findings of need  
5 are required.

6 Petitioners next allege System Policy Nos. 1 and 3 of the  
7 T-2000 Plan were improperly ignored.<sup>14</sup> These policies  
8 encourage use of non-structural methods to alleviate traffic  
9 problems before undertaking construction to improve streets.  
10 Traffic management techniques are required to be investigated  
11 and implemented if found to be effective.

12 The Environmental Assessment discusses alternative traffic  
13 management techniques in two ways. First, the extent of the  
14 existing signal system is described. Along the 21 blocks of  
15 the project there are 16 signals on Sixth Avenue and 14 on  
16 Seventh. Second, other non-structural alternatives are  
17 discussed as responses to citizen comments. The responses  
18 discuss improved ramps and junctions to Ferry and Washington  
19 Street bridges, proposed changes to the signal system, changes  
20 in speed limits, use of fringe parking, high occupancy vehicle  
21 lanes and signal timing optimization, Record 71, and lane  
22 changes, Record 76.

23 Our reading of these responses indicate several  
24 non-construction alternatives were considered but rejected as  
25 not adequate to resolve the problems. The plan does not  
26 require the implementation of ineffective non-construction

1 alternatives. Neither does the plan mandate investigation of  
2 particular traffic techniques. Petitioners do not contend any  
3 rejected technique would alleviate the existing and projected  
4 traffic problems, only that several techniques were not  
5 considered at all. In light of the fact ODOT reviewed and  
6 rejected several standard traffic management techniques and  
7 control mechanisms, we do not consider petitioners' claims  
8 sufficient to establish Policies 1 and 3 were ignored or  
9 violated.

10 For their last claim in this assignment of error,  
11 petitioners allege the project is inconsistent with Financial  
12 Policy No. 30:

13 "The setting of transportation improvement priorities  
14 and the funding of individual transportation  
15 improvements shall be done in the context of overall  
16 regional needs and community goals."

17 Petitioners say this policy refers to community goals as  
18 contained in other elements of the comprehensive plan.  
19 Petitioners' second assignment of error alleges violation of  
20 the Metropolitan Plan in more detail, and this subassignment of  
21 error will be considered in that context.

22 For the above reasons, we deny this assignment of error.

23 SECOND ASSIGNMENT OF ERROR

24 Petitioners' second assignment of error charges violation  
25 of other policies in the Metro Plan. Policies relevant to  
26 these claims are in the Environmental Design element and the  
Historic Preservation element of the Metro Plan. Policies in

1 the Environmental Design element said by petitioners to control  
2 this decision include the following:

3 "2. Natural vegetation, natural water features, and  
4 drainage ways shall be protected and retained to  
5 the maximum extent practicable, considering the  
6 economic, social, environmental and energy  
consequences in the design and construction of  
urban developments and landscaping shall be  
utilized to enhance those natural features.

7 "3. The planting of street trees shall be encouraged.

8 "4. Public and private facilities shall be designed  
9 and located in a manner that preserves and  
10 enhances desirable features of local and  
neighborhood areas and promotes their sense of  
identity.

11 "5. Carefully develop sites that provide visual  
12 diversity to the urban area and optimize their  
visual and personal accessibility to residents."

13 These generally-worded policies emphasize the place of  
14 vegetation and landscaping to preserve and enhance a pleasing  
15 environment in the city. The Environmental Assessment includes  
16 a discussion of aesthetic impacts on the the visual environment  
17 along Sixth and Seventh Avenues. The discussion describes new  
18 tree planting strips to be installed on both sides of the full  
19 length of Sixth and Seventh Avenues in the project.

20 The Cultural Resource Supplementary Report includes the  
21 following:

22 "The proposed planting of a continuous row of trees  
23 extending from High to Garfield would help to  
24 reconcile the difference between original design and  
25 current use. It would be consistent with and  
commemorative of the intent of the City Beautiful  
movement by creating a park-like atmosphere along  
major arterials.

26

1 "In a dynamic system, such as a landscape, there is a  
2 continuous element of growth, modification and  
3 development. It is consistent and appropriate for the  
4 Eugene cultural landscape along Sixth and Seventh to  
5 be planted with new trees from High to Garfield. This  
6 will acknowledge their change (since 1936) from  
7 residential to commercial boulevards and will  
8 establish a continuity to the entire length of the  
9 couplet. Where 137 trees once stood (42 of which were  
10 large old shade trees) at irregular intervals planted  
11 between High and Taylor and where none stood before  
12 between Taylor and Garfield, approximately 600 trees  
13 are currently proposed for planting, 16 trees to a  
14 block (8 on each side). They will be planted directly  
15 across from one another and will eventually create a  
16 canopy. The trees will vary in species, but they will  
17 all grow to be 40 to 70 feet tall when mature with a  
18 life expectancy of 75-100 years. Of the 42 old shade  
19 trees that have survived it is estimated that  
20 approximately 50 percent will be taken within 15 years  
21 because of disease or safety requirements leaving only  
22 20 old trees by 2000. The planting of 600 new trees  
23 in the "parking" of the boulevard's three units (only  
24 one is currently funded for construction) with a  
25 single design is a more appropriate plan than the only  
26 partially effective stabilizing maintenance as now  
exists." Record 145-46.

15 As part of their argument, petitioners point out the  
16 gateway arch along one block of Sixth Avenue has unique  
17 significance because the trees are some of the last remaining  
18 trees in the city to have this archway effect. Other than this  
19 instance, however, petitioners' comments are principally  
20 directed to the historical significance of the trees as  
21 reminders of a bygone era rather than their aesthetic effect  
22 today.

23 We believe the proposal to plant trees uniformly along the  
24 length of the project carries out the plan policies quoted  
25 above. The extent and uniformity of planting will particularly  
26 implement the provisions of Policy 4 to design and locate

1 public facilities to promote a sense of identity for the  
2 neighborhood.

3 In addition to petitioners' claim the project violates the  
4 Environmental Design element of the Metro Plan, they also claim  
5 the project violates the Historical Design element of the  
6 plan. The Historical Preservation element of the Metro Plan  
7 has a single goal: "Preserve and restore reminders of our  
8 origin and historic development as links between past, present  
9 and future generations." Petitioners say this goal is relevant  
10 because the trees are said to represent the kind of city  
11 envisioned in the early years of this century. They are said  
12 to be associated with F. M. Wilkins, the former Eugene mayor  
13 and park board chairman from 1908-1938. He is said to have  
14 carried out a considered effort to make Eugene a city of trees  
15 during his tenure on the park board.

16 As we previously noted in the discussion of jurisdiction,  
17 the ODOT Supplementary Report noted little evidence to  
18 associate these particular trees with F. M. Wilkins. The  
19 report also noted other areas of the city with a stronger  
20 identification with his efforts. Although the report states  
21 the trees have some historical value in general terms, there is  
22 little in the record to establish these trees as historical  
23 reminders of specific city development.

24 we do not accept petitioners' view the goal mandates the  
25 trees must be preserved as historical objects. Goals are  
26 defined in the Metro Plan as expressions of philosophy rather

1 than absolute standards to be applied in particular uses.<sup>15</sup>

2 We note the first policy of the Historic Preservation element:

3 "Adopt and implement historic preservation policies,  
4 regulations, and incentive programs that encourage the  
5 inventory, preservation, and restoration structures;  
6 landmarks; sites; and areas of cultural, historic, or  
7 archeological significance, consistent with overall  
8 policies."

9 The city has apparently not carried out this policy. No  
10 historic preservation policies, regulations or incentive  
11 programs have been brought to our attention in this  
12 proceeding. Under these circumstances, the plan policy does  
13 not by itself constitute a standard or criterion to apply in a  
14 particular case.

15 This assignment of error is denied.

16 THIRD ASSIGNMENT OF ERROR

17 The 1974 Eugene Community Goals and Policies Document  
18 includes general policies similar to the policies in the Metro  
19 Plan discussed above.<sup>16</sup> Our comments there are applicable  
20 here. We do not consider these generally-worded policies to  
21 require preservation of the trees in question.

22 The plan does not designate this site as one of historical  
23 or aesthetic significance. We do not read the plan's very  
24 general policies aimed at preserving quality of life as a basis  
25 for remanding or reversing this decision.<sup>17</sup> Therefore, this  
26 assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

This last assignment of error challenges the decision as

1 not supported by substantial evidence in the record or by  
2 adequate findings. Petitioners' claim is based on the same  
3 rationale as the previous claims the decision is in violation  
4 of various comprehensive plan provisions. Petitioners  
5 incorporate their previous assignments of error to make their  
6 argument.

7 This broadside attack must fail for two reasons. First,  
8 the assignments of error must be more specific for this Board  
9 to respond. The Environmental Assessment included numerous  
10 recitations of data and descriptive material on the various  
11 aspects of this decision. Based on the information reported,  
12 the Environmental Assessment made conclusions of the effects of  
13 the project. We cannot determine from petitioners' broad  
14 charge what statements are claimed to be without supporting  
15 findings and evidence.

16 Second, if petitioners' claim is premised on failure of the  
17 Environmental Assessment to phrase its findings in terms of the  
18 comprehensive plan, it must fail on this basis too. Although  
19 helpful to do so, it is not necessary to phrase findings in  
20 terms of the plan if the criteria are properly addressed. In  
21 Lee v. Portland, 3 Or LUBA 51 (1981), aff'd 57 Or App 798, 646  
22 P2d 662 (1982) we held a decision included findings adequately  
23 addressing Goal 12 criteria without mentioning Goal 12, even  
24 though another portion of the decision concluded Goal 12 did  
25 not apply.

26 This assignment of error is denied.

1 The decision is affirmed.

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FOOTNOTES

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1 The Eugene City Council approved the Environmental Assessment on January 25, 1984. The parties agree the decision for review is the revised Environmental Assessment found by the Federal Highway Administration on June 4, 1984, to have no significant impact on the human environment.

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2 ODOT prepared the environmental assessment under agreement with the Federal Highway Administration. However, the Federal Highway Administration is the agency responsible for issuing the Environmental Assessment and the finding of no significant impact.

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3 The statutory definition of "land use decision" distinguishes between decisions of local governments and those of state agencies. ORS 197.015(10).

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4 Although the language of 197.180(1) is slightly different for local governments, 197.175(1), and special districts, 197.185(1), the language in each of these statutes was deemed conceptually equivalent in Housing Council v. City of Lake Oswego, 48 Or App 525, 617 P2d 655 (1980).

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5 Peterson was followed by two Court of Appeals decisions declaring what is not an exercise of planning responsibility. In Housing Council v. City of Lake Oswego, 48 Or App 525, 617 P2d 655 (1980), the Court of Appeals held the imposition of a systems development charge on new construction to be a fiscal policy decision. The court then reasoned the legislature did not intend fiscal policy decisions to be reviewed for land use law compliance even though fiscal decisions may have some impact on land use. That case was followed by westside Neighborhood v. School District 4J, 58 Or App 154, 647 P2d 962 (1982). There, a school district's decision to close a school, principally for fiscal reasons, was at issue. The court reiterated its view expressed in Housing Council that all governmental decisions having an impact on land use are not necessarily land use decisions, and that the legislature did not intend exercises of basic non-planning responsibilities to

1 be reviewed for goal compliance even though there may be  
2 "substantial secondary effects on land use." Westside  
Neighborhood, supra, at 161.

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5 The use of the significant impact test in Kerns is  
6 different than that expressed in Peterson. Although the court  
7 in Peterson used the significant impact measurement to  
8 determine whether an exercise of planning responsibilities was  
9 involved, the Kerns court used the standard to determine if the  
10 governmental action is subject to review. The Kerns decision  
11 clearly states public works and road projects are an aspect of  
12 the city's planning and zoning responsibilities. Nevertheless,  
13 the court stated a decision regarding a road may not be subject  
14 to review if it does not have a significant impact on the land  
15 use status quo. We understand, therefore, that the significant  
16 impact test may be used to determine if there is an exercise of  
17 planning responsibility involved in the decision, but if an  
18 exercise of planning responsibility is established by other  
19 means - e.g., by statute, goal, plan or ordinance provisions -  
20 then the test may be used to determine if the exercise of  
21 planning responsibility is reviewable.

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15 The Court of Appeals adopted the views expressed in the  
16 dissenting opinion in Billington v. Polk County, \_\_\_ Or  
17 LUBA \_\_\_ (1984) (LUBA No. 83-072, February 15, 1984).

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18 ODOT, through its land use coordination program asserts it  
19 made a finding of no land use impacts by means of the  
20 Environmental Assessment analysis. The agency argues its  
21 determination deserves deference as an interpretation of its  
22 own laws. We believe when jurisdiction of LUBA is a threshold  
23 issue, the question is one for LUBA's determination, and we are  
24 not bound by an agency's conclusion an action is or is not a  
25 land use decision subject to our review.

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24 Although the Kerns decision emphasizes the impact on land  
25 adjacent to the proposed street improvement, an argument could  
26 be made in the appropriate case that the impact of a street  
improvement may occur in more remote areas. Here, the  
Environmental Assessment notes the project could spur  
development of vacant lands in the West Eugene Industrial  
Area. Record 52. However, neither the Environmental  
Assessment nor petitioners disclose the exact location or the

1 amount of land affected. Therefore, we have no facts on which  
2 to evaluate the contention that the West Eugene Industrial Area  
3 would be significantly impacted by the project.

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4 T-2000 Plan has seven elements, the second of which  
5 includes all policies in the T-2000 Plan. The policies are of  
6 two types. The first type includes general local government  
7 policies recommended for adoption by local government but not  
8 part of the T-2000 Plan. The second type are the  
9 transportation plan policies. These policies are further  
10 broken down into three categories: System, Financial and  
11 Future Planning policies. In addition to the policies element  
12 of the plan, other elements include "recommendations" which are  
13 more specific than policies and pinpoint particular activities  
14 to be undertaken or utilized in the planning.

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11 As we have noted, the Environmental Assessment states  
12 access to the West Eugene Industrial Area will be improved.  
13 Record 52. However, the relationship of the project to the  
14 West Eugene Industrial Area is sketchy at best, with no  
15 description of its location, size or status of development.

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15 The T-2000 Plan describes two widening projects for Sixth  
16 and Seventh Avenues. A plan policy states projects listed in  
17 the plan shall serve as a basis for future street projects.  
18 System Policy 2, T-2000 Plan. Comments following the policy  
19 state "projects included in the Street and Highway element  
20 should be recognized as necessary in addition to the proper  
21 application of "traffic management techniques."

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20 One section of the couplet has unstable traffic flows with  
21 congestion reducing average travel speed to 15 miles per hour.  
22 Two portions of the couplet are classified as approaching  
23 unstable flow. The T-2000 Plan predicts traffic flows will  
24 increase 30 to 160 percent by year 2000 on Sixth and Seventh  
25 Avenues. This will cause traffic conditions to deteriorate  
26 further. Record 53. The accident rate for 1980-1982 on Sixth  
27 and Seventh Avenues averaged 7.08 accidents per million vehicle  
28 miles. This rate is compared to the statewide average for  
29 non-freeway accidents of 4.83 per million vehicle miles.  
30 According to the Environmental Assessment, accident rates will  
31 increase with anticipated traffic increases.

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2 "1. Traffic management techniques shall routinely be  
3 investigated and/or implemented as a first  
4 additional capacity on existing streets.

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6 "3. Strategies directed at reducing peak demand by  
7 spreading that demand over a longer time period  
8 shall be investigated and, if potentially  
9 effective, implemented." T-2000 Plan 29, 30.

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9 A goal is defined in the Metro Plan as a:

10 "Broad statement of philosophy that describes the  
11 hopes of the people of the community for the future of  
12 the community. A goal may never be completely  
13 attainable but is used as a point to strive for."

14 The plan defines Objectives as attainable targets the community  
15 attempts to reach in striving to meet a goal. We note  
16 Objective No. 2 in the Historical Preservation element does not  
17 require the preservation of all historical sites:

18 "2. Encourage preservation and restoration of sites,  
19 structures, objects and areas of cultural,  
20 historic and archeological significance for the  
21 enjoyment and knowledge of present and future  
22 generations."

23 No other Objective or Policy in the Historical Preservation  
24 element mandates action to preserve historical sites or objects.

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21 For example, the policies in the 1974 Eugene Community  
22 Goals and Policies document cited by petitioners include the  
23 following:

24 "The city should: 1. Create an environment of beauty  
25 for its people, not merely by a program of  
26 prettification, but by following plans which emphasize  
our natural resources of beauty and which prevent the  
destruction of those resources by disorganized  
development, clutter, sprawl, and other enemies of  
beauty. We should strive for the beauty that is

1 provided in the harmonious relationship of parts....'  
2 (Policy, at page 20)

3 "3. Make an effort to preserve those remaining  
4 buildings, landmarks, sites and vegetation which  
5 are the visible reminders of our past.  
6 (Policies, at page 20)

7 "1.C. The City should aim to develop plans to reflect  
8 the reasonable needs of motorists but that do not  
9 subvert all other aspects of city living to the  
10 demands of the automobile. (Policy, at page 23)"

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13 We do not consider our views regarding compliance with  
14 the historic preservation element of the comprehensive  
15 plan inconsistent with the view expressed in this opinion  
16 regarding the jurisdictional issue. Where there is  
17 evidence trees or other objects have historical or other  
18 special significance, the removal has a significant impact  
19 on the status quo of land use. However, whether they are  
20 protected in some way by terms of a land use plan or  
21 regulation must be tested in the terms of the plan or  
22 regulation.  
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