

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

3
4 RICHARD HOLCOMBE,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF FLORENCE,
10 *Respondent,*

11
12 and

13
14 JAMES GENEREAUX
15 and SUSAN GENEREAUX,
16 *Intervenors-Respondent.*

17
18 LUBA No. 2003-026/027

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from City of Florence.

24
25 William H. Sherlock, Eugene, filed the petition for review and argued on behalf of
26 petitioner. With him on the brief was Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock,
27 PC.

28
29 No appearance by City of Florence.

30
31 Allen L. Johnson, Portland, filed the response brief and argued on behalf of
32 intervenors-respondent. With him on the brief was Johnson & Sherton, PC.

33
34 BRIGGS, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,
35 participated in the decision.

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37 AFFIRMED

07/16/2003

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

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NATURE OF THE DECISION

Petitioner appeals city decisions that amend the comprehensive plan map designation for a 32-acre parcel from Limited Industrial to Medium Density Residential and Open Space and rezones that parcel from Limited Industrial to Single Family Residential for 27.3 acres and to Open Space for 4.7 acres.

MOTION TO INTERVENE

James Genereaux and Susan Genereaux (intervenors), the applicants below, move to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

FACTS

The subject property is located immediately to the west of the Florence Municipal Airport. It is bordered on the south and west by residentially designated land. The property to the west is developed for residential use. Undeveloped land designated Airport Development lies to the north of the subject property. Most of the property is subject to an Airport Noise Corridor Overlay designation, which limits the types of uses that may be established to those uses that do not interfere with airport operations and are not affected by the level of noise generated by arriving and departing aircraft.

The subject property is undeveloped. In July 2002, intervenors submitted applications for (1) a comprehensive plan map amendment from Limited Industrial to Medium Density Residential; (2) zoning map amendments from Limited Industrial to Open Space and Medium Density Residential; and (3) preliminary subdivision approval for a 106-lot residential subdivision. The applications were presented to the planning commission and, according to procedures set out in the Florence City Code (FCC), the planning commission held hearings on those applications. On October 8, 2002, the planning commission recommended to the city council that the plan map and zoning map amendments be approved. At that same meeting, the planning commission approved the residential

1 subdivision. The preliminary approval of the subdivision was not appealed and became final
2 shortly thereafter.

3 Petitioner, a pilot who uses the Florence Municipal Airport, appeared before the city
4 planning commission and city council, arguing that the proposed amendments violated local
5 code provisions adopted to protect airport uses. In addition, petitioner argued that the
6 redesignation of the property for uses other than industrial use violated Goal 9 (Economic
7 Development), because it reduced the inventory of available industrial land.

8 The city council adopted two ordinances to effect the comprehensive plan map
9 amendment and zone changes. Ordinance No. 1, Series 2003 approved the comprehensive
10 plan map amendment. Ordinance No. 2, Series 2003 approved the zone changes. LUBA No.
11 2003-026 is petitioner's appeal of the zone change decision; LUBA No. 2003-027 is
12 petitioner's appeal of the plan map amendment.

13 **FIRST ASSIGNMENT OF ERROR**

14 The subject property is located within the city's Airport Noise Corridor District
15 Overlay (Noise District Overlay).¹ All or part of 33 lots lie within the airport's LDN 60-65

¹ FCC 10-21-2 sets out the standards for the Noise District:

"10-21-2-1 **PURPOSE:** The [Noise District] is intended to reduce land use conflicts resulting from air traffic noise generated by the rural operation of the Florence Municipal Airport.

"10-21-2-2 **BUILDINGS AND USES PERMITTED WITHIN LDN 60-65 NOISE CONTOUR:**

"Light industrial.

"* * * * *

"Parks and open space.

"10-21-2-3 **DEVELOPMENT STANDARDS FOR RESIDENTIAL USES WITHIN LDN 55-60 NOISE CONTOUR:** At such time as the Planning Commission may adopt noise insulation standards for residential uses, such standards will be applied within the LDN 55-60 Noise Contour.

1 noise contour.² A small area in the property’s southeast corner is within the LDN 65+ noise
2 contour. Open space and park uses are conditional uses in the LDN 65+ noise contour. FCC
3 10-21-1-3(B). As proposed, the portion of the subject property within the LDN 65+ noise
4 contour will be designated Open Space and used for a linear trail.

5 FCC 10-21-2-2 prohibits residential uses within the LDN 60-65 noise contour. As
6 proposed, the portion of the property within the LDN 60-65 noise contour will be designated
7 for residential use, subject to conditions of approval that require that the residences be
8 constructed with noise muffling materials.

9 According to petitioner, redesignating land within the LDN 60-65 noise contour to
10 allow residential uses is not consistent with FCC 10-21-2-2, which expressly prohibits
11 residential use within that area. Petitioner contends that this demonstrates that the challenged
12 decisions are not consistent with Statewide Planning Goal 2 (Land Use Planning) and do not
13 satisfy FCC 10-1-3.³ According to petitioner, the challenged decisions do not satisfy FCC

“10-21-2-4 **DISTRICT DESIGNATION:** The area designated as the [Noise District] is shown on the Future Land Use Map, Figure 10, in the Florence Airport Master Plan, dated August 1979, * * *.”

² We note that there may be a discrepancy in the noise level standard identified by the parties. FCC 10-21-2 and the 1996 Airport Master Plan use the acronym “LDN” as the applicable measurement for noise. Neither the FCC nor the 1996 Airport Master Plan defines LDN. Ldn is defined in the Department of Environmental Quality’s Noise Rule as “the Equivalent Noise Level produced by airport/aircraft operations during a 24-hour time period, with a 10 decibel penalty applied to the level measured during the nighttime hours of 10 p.m. to 7 a.m.” OAR 340-035-0015(11) (definitions applicable to noise control regulations included in OAR chapter 340, division 35). The map at Record 948 that intervenors produced to depict noise level contours on the subject property refers to “DNL” levels of 50-65+. OAR chapter 660, division 13, Exhibit 5 (Exhibits to Airport Planning Rule) defines “DNL” as the “Average Day-Night Sound Level.” The parties assume that DNL and LDN refer to the same noise measurement. We do the same, but use the acronym LDN consistently throughout this opinion to avoid more confusion.

³ Goal 2 requires that land use actions taken by the city must be consistent with the city’s comprehensive plan. *Jackson County v. Bear Creek Authority*, 293 Or 121, 128, 645 P2d 532 (1982). FCC 10-1-3(B)(4) sets out the standards the planning commission uses to evaluate quasi-judicial applications for combined plan amendments and zone changes. It provides, in relevant part:

“* * * The Planning Commission shall review the application for quasi-judicial changes and shall receive pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. *The applicant shall*

1 10-1-3 in that they allow uses that are expressly discouraged by the city’s 1996 Airport
2 Master Plan, and do not comply with comprehensive plan policy directives that require the
3 city to “control land use in the [Noise District Overlay] to avoid conflicts, according to the
4 Florence Airport Master Plan.” 1988 Florence Comprehensive Plan, Section XI-B, Policy 7
5 (Policy 7).

6 Intervenor’s argue that the residential zoning and comprehensive map designations are
7 consistent with the Noise District Overlay because the challenged decisions do not allow for
8 residential use on that portion of the property subject to the residential prohibition.
9 Intervenor’s acknowledge that at some point in the future, the Noise District Overlay may be
10 amended to allow for residential uses in certain circumstances or that the Noise District
11 Overlay regulations may be repealed altogether. However, intervenors argue that nothing in
12 the challenged decisions will allow residential uses of the property while the existing Noise
13 District Overlay is in place.

14 Intervenor’s also argue that because the 2000/2020 FCP has been adopted, Policy 7 no
15 longer applies. To the extent Policy 7 and the 1996 Airport Master Plan are applicable and
16 identify residential uses as incompatible with airport uses, intervenors argue that the city
17 interpreted Policy 7 to require that potentially conflicting uses be *controlled*, not prohibited.
18 Intervenor’s argue that with the noise reduction construction requirements imposed as a
19 condition of approval, the noise impact will be controlled within the meaning of the Policy 7
20 and the 1996 Airport Master Plan.

21 Petitioner does not quote any authority other than Goal 2 that would require the city
22 to remove the Noise District Overlay from the subject property, at the same time it amends
23 the comprehensive plan and zoning map designations to allow residential uses that are not
24 allowed by the Noise District overlay. As the Court of Appeals explained in *Marracci v. City*

demonstrate that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest.” (Emphasis added.)

1 of *Scappoose*, 26 Or App 131, 134, 552 P2d 552 (1976), “[t]he present use of land may, by
2 zoning ordinance, continue to be more limited than the future use contemplated by the
3 comprehensive plan.” The differences between the uses allowed by comprehensive plan and
4 zoning map designations and the Noise District Overlay do not necessarily violate Goal 2
5 consistency requirements or FCC 10-1-3(B)(4). The Noise District Overlay prohibition may
6 currently prevent residential development on a portion of the subject property. However, that
7 does not mean that the comprehensive plan and zoning map designations may not
8 contemplate the ultimate residential use of the property. *Washington Co. Farm Bureau v.*
9 *Washington Co.*, 17 Or LUBA 861, 883 (1989).

10 In addition, we agree with intervenors that to the extent Policy 7 is an applicable
11 approval standard, the city’s findings are adequate to explain why the city believes that the
12 challenged decisions are consistent with the policy, and the city’s interpretation is not
13 contrary to the express language of the policy or the purpose for the policy.⁴ ORS
14 197.829(1).

⁴ The city’s findings state in relevant part:

“The application is consistent with [Policy 7]. * * *

“The City will control land use in the [Noise District Overlay] to avoid conflicts, according to the [1996] Florence Airport Master Plan. Additional noise insulation standards may be applied to residential development within the LDN 55+ noise contour as provided in the Airport Master Plan. The [1996] Florence Airport Master Plan uses the EPA and FAA standard for measuring noise called the day-night average sound ([LDN]) noise contour method as the primary measure for defining noise around an airport.

“* * * The airport noise criterion is designed to provide adequate protection of noise sensitive uses based upon out-of-doors airport noise levels.

“The FAA established [the] 55 [LDN] as a study boundary for planning and zoning measures and recommends specific mitigation for those areas with noise impacts greater than 65 [LDN]. Portions of [the subject] property are located in [the Noise District]. Based on [the noise contour map included in the 1996 Airport Master Plan], the proposed residential area does not have a noise level above 65 [LDN].

“The [1996] Florence [A]irport [Master] [P]lan states that “[w]hile 55 [LDN] establishes the parameters of the study area, noise sensitive land uses (such as residences, schools and hospitals) located in areas with impact below 65 [LDN] are considered compatible with

1 The first assignment of error is denied.

2 **SECOND ASSIGNMENT OF ERROR**

3 OAR chapter 660, division 13, the Airport Planning Rule (APR), provides the
4 regulatory framework to be used by local governments to protect and regulate airport uses.
5 Its purpose is set out at OAR 660-013-0010:

6 “(1) * * * The policy of the State of Oregon is to encourage and support the
7 continued operation and vitality of Oregon’s airports. These rules are
8 intended to promote a convenient and economic system of airports in
9 the state and for land use planning to reduce risks to aircraft operations
10 and nearby land uses.

11 “(2) Ensuring the vitality and continued operation of Oregon’s system of
12 airports is linked to the vitality of the local economy where the airports
13 are located. This division recognizes the interdependence between
14 transportation systems and the communities on which they depend.”

15 The APR requires that local governments with planning authority over airports adopt
16 comprehensive plan and land use regulations that are consistent with the APR. OAR 660-
17 013-0030(2). The rule sets out the threshold elements of airport planning and land use
18 regulatory schemes and requires that the local government address uses that may not be
19 compatible with airport uses in ways that will minimize the incompatibility and will result in
20 the continued operation and vitality of the airport. OAR 660-013-0040(6). OAR 660-013-
21 0080 requires that local governments adopt land use regulations that prohibit residential uses
22 in certain areas, such as areas designated as runway protection zones. In addition, except for
23 the regulation of water impoundments, local governments may adopt regulations that are
24 more stringent than provided for in the APR. OAR 660-013-0080(2).

25 OAR 660-013-0160(1) requires that amendments to update local plans to conform to
26 the APR must be completed no later than the first periodic review following the adoption of
27 rules regarding public use airports. However, OAR 660-013-0160(5) requires that

aviation activity.’ Like the FAA, the DEQ recommends noise mitigation measures for land uses lying in areas with impacts exceeding 65 [LDN]. This amendment and zone change is a compatible land use based on the standards of the Florence Airport Plan.” Record 50-51.

1 “* * * amendments to acknowledged comprehensive plans and land use
2 regulations, including map amendments and zone changes, require full
3 compliance with the provisions of [OAR chapter 660, division 13], except
4 where the requirements of the new regulation or designation are the same as
5 the requirements they replace.”

6 According to petitioner, OAR 660-013-0160(5) requires that plan and zoning map
7 amendments, like the amendments at issue here, must comply with the APR. Petitioner
8 argues that the city erred in failing to adopt findings either demonstrating compliance with
9 the rule or explaining why compliance is unnecessary.

10 Intervenors respond that the city adopted findings explaining that, for two reasons,
11 the APR is inapplicable to the challenged amendments. Record 114-115. Intervenors argue
12 that petitioner fails to challenge or even acknowledge those findings. In addition, intervenors
13 argue that petitioner fails to identify any APR standards that the challenged amendments
14 violate.

15 We agree with intervenors that petitioner’s arguments under this assignment of error
16 do not demonstrate a basis for reversal or remand. Petitioner does not challenge the city’s
17 finding that the APR is not applicable, or either of the two reasons supporting that finding.
18 Neither does petitioner identify any particular APR standard or provide an argument that the
19 challenged decision is not consistent with those standards.

20 Petitioner’s second assignment of error is denied.

21 **THIRD ASSIGNMENT OF ERROR**

22 Amendments to a local comprehensive plan must be consistent with statewide
23 planning goals. ORS 197.175(2)(a). In addition, FCC 10-1-3(B)(4) requires that amendments
24 to the city comprehensive plan, including plan maps, must be “consistent with the
25 Comprehensive Plan and Zoning Ordinance and [must not be] contrary to the public
26 interest.” Petitioner argues that the challenged decisions are not consistent with Statewide
27 Planning Goals 2 (Land Use Planning), 10 (Housing); 14 (Urbanization) and 2000/2020 FCP
28 Land Use Policies 1 and 4.

1 **A. Goal 2**

2 The city relied on a housing analysis provided by intervenors to find that there is a
3 need for moderately priced, stick built, single family residential developments within close
4 proximity of the developed areas of the city. Petitioner argues that the city cannot rely on that
5 analysis to support its conclusion, because the city adopted a 1997 buildable lands analysis as
6 part of the 2000/2020 FCP, and that buildable lands analysis concluded that there is
7 sufficient land within the city’s urban growth boundary to meet the needs for residential
8 housing over the next 15 years. Petitioner cites *D.S. Parklane Development, Inc. v. Metro*,
9 165 Or App 1, 22, 994 P2d 1205 (2000) for the proposition that Goal 2 requires that the need
10 for residential development be based on the buildable lands inventory, and not on other
11 evidence that is inconsistent with the buildable lands inventory, if that buildable lands
12 inventory is incorporated into the local comprehensive plan.

13 Petitioner also argues that the city’s determination that additional residential land is
14 needed is not supported by an adequate factual base, because it erroneously (1) assumes that
15 the 2000 Census population figures are considerably higher than the population estimates for
16 2000 through 2005 included in the 1988 Comprehensive Plan; (2) considers only vacant
17 residentially designated land and not land that may be redeveloped; and (3) assumes that the
18 existing vacant residentially designated land will be developed at low density. Petitioner
19 contends that the 1988 Comprehensive Plan was based on extremely optimistic population
20 projections and resulted in the designation of far more residential land than was actually
21 needed from between 1988 and 2002, and that the 1997 buildable lands analysis concluded
22 that if existing lands are developed according to the same ratio of low, medium and high
23 density housing as currently exists within the city, there will be enough residentially
24 designated land within the UGB to satisfy the city’s need until 2015. Petitioner explains that
25 the 2000/2020 FCP designates three different residential density levels and argues that, even

1 if that land is developed at the rate anticipated in intervenors' housing analysis, there is
2 enough residentially designated land within the UGB to meet the city's housing needs.

3 We might agree with petitioner that the city erred in adopting a decision inconsistent
4 with its comprehensive plan buildable lands inventory and hence contrary to Goal 2, if the
5 city's comprehensive plan concluded that the buildable lands inventory accurately reflected
6 the anticipated need during the planning period. However, the 2000/2020 FCP explicitly
7 acknowledges that the 1997 buildable lands inventory does not account for an extremely high
8 population increase from between 1999 and 2001 (average annual increase of 6.9 percent)
9 and an accelerated consumption of the residential land base to accommodate that increase.

10 The 2000/2020 FCP states, in relevant part:

11 "The 20-year Land Use Plan Map designates lands as residential which are
12 appropriate for residential land uses and development within the UGB. The
13 July 1997 Residential Land Use Analysis * * * concluded that those lands so
14 designated comprise a sufficient supply of buildable lands to accommodate all
15 expected types of housing and all anticipated income levels for the 2000-2020
16 planning period * * *.

17 "However, by 2000 it was becoming apparent that the high growth rate in
18 Florence was utilizing residential lands at an accelerated rate. The City
19 debated whether to prepare an updated Residential Lands Analysis at that time
20 or to continue with a much-delayed completion of periodic review. It was
21 decided to complete periodic review and to deal with the need for expanded
22 residential lands as a post-acknowledgement Plan amendment." 2000/2020
23 FCP 15-16.

24 The city's findings cite to this background statement, and the evidence presented by
25 intervenors and others, and conclude that, notwithstanding the buildable lands inventory,
26 there is evidence that additional land is needed for single family residential housing and that
27 the subject property is the most appropriate place to locate that housing. In this instance, the
28 comprehensive plan itself indicates that the buildable lands inventory is outdated and not an
29 accurate reflection of the city's actual needs for residential land. We believe that the Goal 2
30 consistency requirement is not violated by adopting a decision that is arguably inconsistent
31 with the buildable lands inventory, or that is based on evidence of need for additional

1 residential lands that is arguably inconsistent with the need for residential land identified in
2 the buildable lands inventory where, as here, the comprehensive plan itself acknowledges its
3 shortcomings, and identifies interim measures, such as post-acknowledgment plan
4 amendments, that will be used to address the residential lands shortfall until a revised
5 buildable lands inventory is completed.

6 **B. Goals 10 and 14**

7 Petitioner argues that Goals 10 and 14, when read together, require that new
8 residential land be approved only when that land is needed and will ensure the maximum
9 efficiency of land uses within and on the fringe of the existing urban area. *See Craig Realty*
10 *Group v. City of Woodburn*, 39 Or LUBA 384 (2001) (city is required to rely on estimated
11 housing need included in its comprehensive plan when considering whether Goal 10 is
12 satisfied).

13 Intervenor contend that neither Goal 10 nor Goal 14 require that redesignations of
14 land within UGBs be subject to the same type of needs analysis required by Goal 14, factors
15 1 and 2, or that a city may not provide more land than is absolutely necessary to
16 accommodate residential uses.⁵

17 We agree with intervenors that neither Goal 10 nor Goal 14 require a finding of
18 “demonstrated need” for additional residential land within the meaning of Goal 2, Part II or
19 Goal 14, factors 1 and 2 before the city may amend its comprehensive plan map to allow
20 residential rather than industrial uses on the subject property. Goal 10 is not violated by

⁵ Goal 14 provides, in relevant part:

“* * * Establishment and change of [urban growth] boundaries shall be based upon considerations of the following factors:

- “1. Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals; [and]
- “2. Need for housing, employment opportunities, and livability[.]”

1 adding residential lands to the city’s inventory, and the Goal 14 need factors cited by
2 petitioner relate to expansions of the UGB, not to comprehensive plan map amendments.
3 Therefore, unless local code provisions require that applicants for residential amendments
4 establish a “demonstrated need” for housing similar to Goal 14, factors 1 and 2, the city did
5 not violate Goals 2, 10, or 14 by approving the rezoning proposal.

6 **C. 2000/2020 Land Use Policy 1**

7 Petitioner asserts that 2000/2020 Land Use Policy 1 requires an “analysis of
8 documented need” for residential land before land may be rezoned for that use.⁶ Petitioner
9 further argues that even if the city can rely on intervenors’ housing analysis rather than on
10 the adopted buildable lands inventory, that analysis does not constitute substantial evidence
11 that there is a *need* for the type of residential uses that will be provided by intervenors’
12 proposed development. Petitioner cites to evidence that there is an abundance of residential
13 lands within the city that may be developed or redeveloped for residential use.

14 Intervenors respond that the city interpreted 2000/2020 Land Use Policy 1 as
15 requiring the city to analyze and consider need as one of several factors including the
16 physical suitability of the land for the proposed use, the adequacy of public facilities in the
17 vicinity that would serve the proposed use, and the potential impact on the environment of
18 the proposed use in relation to the existing plan and zoning designations.

19 Intervenors provided evidence, including a housing analysis, that found a demand for
20 moderately priced single-family residential dwellings within the Florence city limits. That
21 analysis was relied upon by the city to conclude that (1) there is a shortage of land available

⁶ 2000/2020 FCP Land Use Policy 1 provides:

“Designation and location of land uses shall be made based on an analysis of documented need for land uses of various types, physical suitability of the lands for the uses proposed, adequacy of existing or planned public facilities and the existing or planned transportation network to serve the proposed land use, and potential impacts on environmental, economic, social and energy factors.” 2000/2020 FCP 10.

1 to satisfy the need for affordable new single-family dwellings; and (2) intervenors’ proposal
2 will meet that need. That evidence is substantial evidence supporting the city’s finding of
3 compliance with Policy 1, particularly given the city’s interpretation of that policy, which
4 petitioner does not challenge, that it requires only a balancing of need, land suitability,
5 availability of public infrastructure, and impacts to determine whether the proposed
6 designation should be approved.

7 **D. 2000/2020 FCP Land Use Policy 4**

8 In addition, petitioner argues that the challenged amendments are not consistent with
9 2000/2020 FCP Land Use Policy 4, which requires that “[l]andowner requests for Plan
10 amendments” meet certain timing criteria in order to be approved.⁷ Petitioner argues that the
11 city erred in considering the proposed amendments because they do not satisfy those timing
12 requirements. Petitioner contends that the policy clearly requires that each element be
13 satisfied before an amendment to the comprehensive plan may be approved. Petitioner argues
14 that there have been no changes in development patterns or other factors that were
15 overlooked or unavailable at the time the 2000/2020 FCP was adopted. Therefore, petitioner
16 argues, the city erred in concluding that the proposed amendments are consistent with
17 2000/2020 FCP Land Use Policy 4(a).

⁷ 2000/2020 FCP Land Use Policy 4 provides:

“Landowner requests for Plan amendments shall meet the following criteria in order for action to be initiated:

- “(a) Be based on new information that was either unavailable or overlooked at the time of Comprehensive Plan adoption;
- “(b) Include any changes necessary to maintain consistency with City, County, and regional goals, objectives, and functional plans; and
- “(c) Be of such a nature that action is required prior to the next scheduled major revision of the Plan.” 2000/2020 FCP 10.

1 In addition, petitioner argues that because there is no demonstrated need for the type
2 of residential uses proposed by intervenors, the city could not conclude that the amendments
3 are necessary to ensure that enough land is available to satisfy the housing needs projected
4 through the planning period. In particular, petitioner takes issue with the city’s reliance on
5 population projections based on 2000 census data. Petitioner argues that the city’s current
6 residential lands inventory is based on inflated population projections that estimated a
7 population for 2000 that is more than 1250 persons higher than the actual 2000 population of
8 7,985. Because the existing residential lands inventory is based on a population that has yet
9 to materialize, petitioner argues that there is more than enough residential land within the
10 city’s UGB to satisfy residential land needs even if intervenors’ overly optimistic population
11 projections based on the 2000 U.S. Census prove to be correct.

12 Intervenors argue that in making its decision to approve intervenors’ proposal, the
13 city relied on a wide range of new information that was not available at the time of the
14 drafting of the 2000/2020 FCP, including the results of the 2000 census pertaining to
15 population and housing, and studies that show that there is a shortage of available,
16 moderately priced new housing in the city and more than enough property designated light
17 industrial. Therefore, intervenors argue, the challenged decisions are consistent with
18 2000/2020 FCP Land Use Policy 4(a) in that they are based on new information.

19 Intervenors also argue that petitioner has not challenged findings the city adopted
20 regarding 2000/2020 FCP Land Use Policy 4. In those findings, the city concluded that,
21 based on range of new information that was unavailable or overlooked at the time the
22 2000/2020 FCP was adopted, that the amendments were appropriate. Intervenors also argue
23 that petitioner does not specifically challenge the city’s decision with respect to 2000/2020
24 FCP Land Use Policy 4(b) or 4(c).⁸

⁸ The city’s findings state, in relevant part:

1 We agree with intervenors that the city’s findings are adequate to explain why the
2 new information that was provided is consistent with 2000/2020 FCP Land Use Policy 4.
3 Petitioner may well be correct that the amount of residential land within the UGB is based on
4 an inflated population projection. However 2000/2020 FCP Land Use Policy 4 does not
5 require a demonstration that additional population demands result in a need for the type of
6 residential development proposed by intervenors. As the policy is interpreted by the city, the
7 question is whether an applicant has demonstrated that there is “new or overlooked
8 information” that was not considered by the city when it adopted its comprehensive plan. If
9 the applicant identifies “new or overlooked information” that justifies the city’s
10 consideration of the plan amendment, then that threshold is met, and the application may
11 proceed. As intervenors point out, the city agreed with intervenors that they provided
12 sufficient “new information” to support their contention that the city should consider their
13 landowner request for a plan amendment. The fact that the “new information” may not
14 provide substantial evidence to show a “need” for the proposed residential land is irrelevant.

15 The third assignment of error is denied.

16 **FOURTH ASSIGNMENT OF ERROR**

17 2000/2020 FCP Industrial Lands Policy 4 provides:

18 “The City shall maintain lands planned and zoned for industrial uses within
19 Industrial zones free from the encroachment of incompatible land uses such as
20 residential * * * [or] active parks * * *.” 2000/2020 FCP 26.

21 Petitioner argues that this policy implement’s the city’s industrial lands goal, and
22 must be interpreted consistently with that goal.⁹ According to petitioner, the city places too

“This application is based on a range of new information that was unavailable or overlooked at the time of Comprehensive Plan adoption. It includes but is not limited to data and analysis from [intervenors] and [intervenors’] consultants concerning airport compatibility, traffic impacts, housing needs, supplies, and trends, industrial land needs and storm water systems.” Record 60.

⁹ The city’s Industrial Goal is:

1 much reliance on a background statement included in the 2000/2020 FCP that implies that
2 the subject property should be considered for rezoning for other uses if it is not developed for
3 industrial uses in a timely manner as allowing the city carte blanche to amend its
4 comprehensive plan and zoning maps for the subject property almost immediately after the
5 2000/2020 FCP took effect.¹⁰ In addition, petitioner argues that the background statement
6 allows the possibility that the land be zoned more “appropriately.” Petitioner contends that
7 neither the 2000/2020 FCP nor the challenged decision define what “appropriate”
8 development should be.

9 Intervenor contend that the challenged decisions recognize the incompatible uses
10 that already exist near the property, and if it is developed for industrial uses as planned, the
11 adjacent residential uses will interfere with the industrial use. Intervenor further argue that
12 the 2000/2020 FCP itself recognizes the limitations on the subject property. Because of the
13 residential development to the west, and the lack of available access to the property if it is
14 developed for industrial uses, intervenors contend the proposed residential and open space
15 designation is more “appropriate” than the limited industrial designation. Finally, intervenors
16 assert, the city responded to petitioner’s argument regarding the timeliness of the
17 amendment, that the city did not anticipate that the 2000/2020 FCP would remain static and
18 that it is, even now, outdated in some respects.

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

“To develop industrially planned and zoned land within the Florence area for suitable research and development, manufacturing, processing, assembly, storage and distribution, construction and development-related uses, and airport-related uses.” 2000/2020 FCP 25.

¹⁰ The 2000/2020 FCP Industrial Lands Background statement identifies the subject property, points out limitations to industrial development, including inadequate street access and the existence of a fully developed residential area to the west, and concludes:

“Should [the subject property] not develop industrially as planned, a more appropriate designation should be considered as part of subsequent Plan updates, or the City might consider its public acquisition to serve as a long-term buffer to airport uses.” 2000/2020 FCP 29.

1 “Regarding [2000/2020 FCP Industrial Lands Policy 4] * * * this is exactly
2 why the plan recommends consideration of a more appropriate designation for
3 the [subject property]. * * * The [subject property] is in fact unsuitable for
4 industrial use because it shares a 2700-foot property line with a residential
5 community as well as [an] 800-foot border with multi-family zoned property
6 and because it would require access that either crosses through the airport or
7 through a residential area.” Record 129.

8 “The subject property has not developed industrially and is not likely to, given
9 the ample supply of similar but better-situated property on the east side of the
10 Airport and given the problem with access for industrial uses that are
11 discussed in connection with the Airport and 12th Street * * *. Because the
12 current periodic review is substantially behind schedule, the next general
13 update is not [likely] to occur for up to a decade, In order to finish periodic
14 review without further delays, it will be necessary for the city to do
15 incremental updates through occasional quasi-judicial amendments such as
16 this to keep its plan current.” Record 64.

17 We believe it is relatively clear that the city does not interpret 2000/2020 FCP
18 Industrial Lands Policy 4 to require that all existing industrially zoned land retain its
19 industrial designation and be developed for industrial uses, regardless of its suitability. The
20 decision goes on to explain why the subject property is not needed for light industrial
21 development, why other land is more suitable for airport related light industrial development,
22 and why the city believes that the more appropriate designations for the subject property are
23 residential and open space. Petitioner has not identified why those findings and conclusions
24 are inconsistent with the city’s Industrial Goal, and we do not see that they are inconsistent.

25 The fourth assignment of error is denied.

26 The city’s decision is affirmed.