H. Transportation Planning

Several objections raise issues related to whether the transportation planning component of UGB planning complied with relevant requirements. The legal criteria for this portion of the submittal are primarily found in Statewide Planning Goal 12 and OAR 660, division 12 (the "Transportation Planning Rule" or "TPR").

1. Did the amendments to the transportation plan violate Goal 12 or OAR 660, division 12 and related portions of Goal 14 and OAR 660-024-060?

Several objections allege the amendments to the City of Bend's urban-area transportation plan violate Goal 12 and the TPR and related portions of Goal 14 and OAR 660-024-060, which require consideration of cost and feasibility of providing transportation facilities needed to serve planned urban development. The department submitted comments to the city prior to adoption of the amendments, and these comments along with the objections raise issues with whether the evaluation of transportation facility improvement needs (i.e., major road and highway improvements) provide a complete and accurate evaluation and comparison of the costs, advantages, and disadvantages of alternative UGB expansion areas.

a. Legal Standard

OAR 660-024-0060(8) sets forth how cities must evaluate and compare public facility costs of alternative boundary expansion areas:

> The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:
>
> * * *
>
> (c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

b. Summary of Local Actions

The city has adopted findings that reflect a transportation analysis of UGB alternatives conducted in 2007 by DKS (Bend UGB Expansion: Transportation Analysis), which has been incorporated into amendments to the city's transportation system plan (TSP), and the transportation element of the general plan. [R. at 2184-2303] The city's evaluation and comparison of transportation costs, advantages and disadvantages follows the city's overall approach to evaluation of alternatives, which combines multiple individual areas into a few composite options for UGB expansion.

The major findings of the city's transportation analysis are as follows:

- Overall impacts, needed mitigation measures, and costs are similar under any of the alternatives analyzed.

- State highways will be severely congested..... The most severe congestion would be on US 97 north of Colorado Avenue to the city limits. Significant system expansion, new facilities or new management measures would be needed to comply with state mobility standards."

- The four land use scenarios for UGB expansions have very similar relative impacts on the Capacity Street network. ....The location, function and scale of needed additional improvements on the state and city street network had very many common elements among the scenarios. That means that the total expected investment will be very similar no matter which combination of areas within the planning area is selected for UGB expansion.

- Development in the Juniper Ridge area does have several unique roadway elements associated with the state highway that do not occur with the other land use scenarios considered. These potentially could include upgraded junctions with US 97 at Cooley Road, US 97 at Deschutes Market Road and a potential additional connection in between. The scale of these projects would require additional review and approvals with ODOT.

- The total cost estimated for mitigations to the transportation system resulting from UGB expansion ranges from $154 million to $232 million .... A major element of this cost range is targeted for improvements at the US 97 / US 20 junction area which is under study by ODOT for a preferred alternative solution (cost estimated at $125 million to $185 million in 2006 Refinement Plan.)

- Further study is required to select the best options on state facilities in the US 97 and Cooley Road areas that were identified for the Juniper Ridge development scenario. Recommendations made in this study are preliminary only. Specifically the concept of upgrades at Cooley Road and Deschutes Market Road require further study in conjunction with the Juniper Ridge Master Plan to understand the best combination of

investments on the state highway system. (Findings in Support of UGB Expansion, page 150-151; [R. at 1202-1203]

c. Objections and DLCD Comments

The department and the Oregon Department of Transportation (ODOT) expressed concerns about the city's evaluation and comparison of transportation costs of different UGB expansion alternatives prior to adoption. The department raised this issue in its comment letters in July 2007 and October 2008.

In November 2007, the department advised that the city needed to do more work and coordination with ODOT to compare costs, advantages and disadvantages of expanding UGB to the north. [R. at 10378] In October 2008, the department again expressed concern that the city's process for evaluating transportation costs was not complete or detailed enough to comply with requirements in OAR 660, division 24. The department's comments questioned the city's decision to assign costs of major roadway improvements in the north area of Bend to the entire city, and the city's overall conclusion that the extent of needed transportation improvements was essentially the same regardless which lands were included in the UGB.

ODOT expressed significant concern about the proposal to extend commercial and other intensive zoning along both ends of Highways 20 and 97. Of particular concern was the northerly portion of Highway 97 and 20. Intensifying land use in this area will further complicate the process of identifying transportation solutions and, given that it will likely be 15-20 years before a long-term solution could be constructed, these more intensive uses will exacerbate the existing congestion and safety issues. (ODOT Preliminary Comments on City of Bend UGB Expansion, October 27, 2008) [R. at 4392]

ODOT also commented on the April 2007 DKS Traffic Report: "It is unclear to what extent this analysis reflects the impacts and needed mitigation for the currently proposed "Alternative 4." We are currently comparing this report to the Alternative 4 proposal but it is clear that the preferred alternative has not been sufficiently analyzed to determine what the transportation investment costs will be." (ODOT Preliminary Comments on City of Bend UGB Expansion, October 27, 2008) [R. at 4392]

Five objectors challenged whether the city has adequately evaluated and compared transportation costs, advantages and disadvantages of alternative UGB expansion areas:

- Swalley Irrigation District
- Rose and Associates
- Central Oregon LandWatch
- Newland Communities
- Department of State Lands

Each of these objectors made objections to the city's analysis that can be characterized as follows:

- The city failed to analyze relative costs of serving individual areas and instead assigned the cost of major improvements to the city or UGB as a whole, when in fact, these improvements are primarily needed to serve a particular area. Several objectors referred to comments provided by ODOT expressing concern about improvements proposed to in the North area, to Highway 20 and 97.

- The analysis of roadway improvements needs did not use a consistent or accurate method to evaluate transportation of roads needed to serve development in different areas of the city.

Individual objectors provided additional specific objections to the city's analysis, as follows.

Swalley Irrigation District – The city assigned costs of major roadway projects that appear to be needed primarily to serve UGB expansion to the NW to the entire city. These include a proposed new bridge crossing the Deschutes River and improvements to state highways 97 and 20. The city fails to provide a detailed cost estimate for the Deschutes River bridge construction. [Swalley, May 6, 2009, page 75]

Department of State Lands – The city excluded transportation infrastructure improvement costs directly associated with specific alternative UGB expansion areas, leading to flawed conclusions and decisions. The city excluded from its analysis expensive transportation improvements at Cooley Road that are required to serve the Juniper Ridge expansion area. The city also excluded the expensive bridge over the Deschutes River that is necessary to serve select northwest UGB candidate expansion areas. These projects are by far the largest improvements in the city's transportation infrastructure list, yet those improvements are not applied to the UGB expansion areas they uniquely serve. If the candidate UGB expansion areas served by these infrastructure improvements were not included in the UGB, then these expensive projects would not be needed or built to the same extent, and the extraordinary costs of the projects would not be incurred to the same degree. [DSL, May 7, 2009, page 5 of 6]

Rose and Associates, LLC – North end highway and bridge improvements are estimated at $300-$500 million with no clue as to where funding might come from. Rather than analyze the direct impacts of adjacent properties upon development, the city spread these costs evenly through out the system. This same methodology was not employed at the south end interchange, for example. There is not consistency in the methodology creating an unfair advantage for the north and west properties in terms of cost per acre to develop. [Rose and Associates, May 1, 2009, Exhibit 2]

The city used different local roadway spacing standards (arterials and collectors) for the north and west areas than they did for the southeast area. Due to steep slopes, the Deschutes River and other natural features, it would not be practical to build a standard grid system as is required in the southeast. Therefore, in the city's analysis, the cost to serve the southeast area is higher than serving the north and west areas. What they didn't

take into account was the extraordinary cost of building roadways on steep terrain. They also didn't take into account the extraordinary cost of building a bridge across the river and the north end interchange. The relative cost comparison is fundamentally flawed. [Rose and Associates, May 1, 2009 Exhibit 2]

Newland Communities – The city did not properly consider costs and advantages of its property (and others) in the southeast area that will rely on the existing collector and arterial street system and not require trips on the heavily impacted Highway 97 and 20 for access to employment and other local trips. [Newland Communities, May 7, 2008, pages 21-22]

Central Oregon LandWatch – The city did not provide a detailed transportation analysis for the UGB expansion that it ultimately adopted. The analysis the city relied upon covers earlier proposals that are significantly different than the one ultimately adopted by the city and county.

Expansion in the northwest area would require widening of Newport and Galveston Streets from three to five lanes, which would violate a city plan policy that restricts widening of these streets (Street System Policy 21 of the Bend Area General Plan). [LandWatch, May 7, 2009, page 16]

d. Analysis

The city's evaluation of transportation costs of serving different areas is improper and incomplete. By bundling combinations of different areas into UGB expansion alternatives, the city has not properly conducted the evaluation of "alternative areas" called for in OAR 660-012-0060(8) because the analysis does not disclose unique costs associated with serving individual areas.

The city has not justified assignment of cost for key major highway improvements in Highway 97/20 area to all of the possible UGB expansion areas. State highway and related improvements in the north Highway 97/20 area are the single largest transportation cost identified in the city's evaluation. The city's estimate, based on a 2006 refinement plan is that facilities will cost $125 million to $185 million. These improvements makes up roughly 80 percent of the total cost of transportation improvements needed to serve the proposed UGB expansion areas. The city's findings assert that these improvements will be needed for any of the possible UGB expansion areas the city is considering. The city's position is not supported by the findings provided and is contrary to the information that is in the record and as a result does not have an adequate factual base.

The city's findings, summarized above, state that Juniper Ridge has unique additional costs, but does not itemize or otherwise identify these costs, and indicates that the further study of appropriate solutions is needed, and that this would need to be done "in conjunction with the Juniper Ridge Master Plan." By contrast, the city has provided a

detailed estimate of individual street improvements needed to serve most of the other proposed expansion areas.

Also, as Central Oregon LandWatch notes, the city's analysis does not appear to have considered existing plan policies that that restrict widening of Newport and Galveston.

The DKS analysis that the city relies on was conducted prior to the development of the city's adopted UGB amendment, Alternative 4A. Alternative 4A is significantly different from the UGB expansion alternatives analyzed by DKS and as a result the city's analysis does not comply with OAR 660-024-0060.

e. Conclusion

The director remands the evaluation of transportation costs of UGB expansion alternatives for further work consistent with the requirements of OAR 660-024-0060(8). The findings and analysis need to be revised to:

1. Identify and assign costs of individual UGB expansion areas, rather than combinations of different areas;
2. Provide additional information regarding the costs of providing transportation facilities to serve individual areas, including any extraordinary costs related to overcoming topographic barriers or rights of way;
3. Provide more detailed analysis of the extent to which the costs of improvements for major roadway improvements in north area (including proposed improvements to Highways 20 and 97) are a result of and should be assigned to development in the north area rather than the city as a whole. (That is, the city's analysis and evaluation should assess whether the extent of improvements in north area might be avoided or reduced in scale or cost if the UGB was not expanded in this area, or if the extent of the UGB expansion was reduced.); and
4. Provide comparable estimates for providing needed roadway capacity for areas that, because of topographic constraints, may need to be served by different types of road networks. For example, growth on the east side can apparently be served by a fairly complete grid of streets, while topographic barriers limit potential for a full street grid in this area.

2. Does the UGB amendment violate Goal 12 because the urban-area Transportation System Plan has not been acknowledged to be in compliance with the Transportation Planning Rule?

a. Legal Standard

The TPR requires that cities and counties adopt TSPs establishing a system of planned transportation facilities and services to adequate to support planned land uses.

b. Summary of Local Actions

The city's findings note that the city adopted a TSP that was approved in periodic review. [R. at page 1202]

c. Objections

Swalley Irrigation District contends that the city's UGB amendment does not comply with various portions of the TPR that require the city to adopt a TSP, which sets forth a system of planned facilities and services to meet identified transportation needs.

d. Analysis

The Bend TSP, adopted in 2000, was *partially* approved by the commission in periodic review. The commission's approval of the TSP itemized a number of relevant TPR requirements with which the city had not fully complied**.** However, the department believes that, notwithstanding this remaining work, the existing TSP is partially acknowledged and the city may rely upon it. The TSP complies with Goal 12 and the TPR except for those provisions where the periodic review order specifically indicated additional work remains to be done. The objector does not indicate how the UGB amendment is inconsistent with specific provisions of the TPR where the city has additional work to do.[37]

e. Conclusion

The city has a substantially complete, commission-approved TSP. Because the objector has not identified specific TPR provisions that require additional work by the city that affect the UGB decision, the department disagrees that the TPR requirement that the city have an adopted TSP has been violated.

3. Does the UGB amendment violate Goal 12 and the Transportation Planning Rule because findings do not demonstrate there are adequate planned transportation facilities to serve the planned land uses?

a. Legal standard

OAR 660, division 24 requires that UGB amendments comply with all statewide planning goals and rules, including Goal 12 and the TPR. OAR 660-012- 0020(1)(d) allows cities to defer addressing requirements of OAR 660-012-0060 (to demonstrate that there are adequate planned transportation facilities) until property is re-designated or rezoned to allow urban development.[38]

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[37] The department has separately identified outstanding work related to TPR planning requirements for metropolitan areas that the city has not completed. These are discussed below, but were not raised by Swalley and so are not considered here.

[38] OAR 660-024-0020(1)(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;

b. Summary of Local Actions

The findings indicate that the city has elected to defer addressing OAR 660-012-0060 to subsequent plan amendments and zone changes as provided for in OAR 660-024-0020. The findings supporting the UGB amendment indicate that adopted zoning for UGB expansion areas put in place interim plan and zone designations that are intended to restrict development to levels that would not result in more traffic generation than allowed by existing zoning. [R. at 1202]

c. Objection

Swalley Irrigation District contends that the UGB amendment fails to comply with provisions of OAR 660-012-0060, applicable to plan amendments and zone changes, which require that the city plan for adequate transportation facilities and services to accommodate planned land uses.

d. Analysis

The city is required to address OAR 660-012-0060 requirements as part of its UGB decision *only* if it that decision also authorizes more intense use of the land (in terms of trip generation) than allowed under current zoning. In this case, the UGB decision defers addressing OAR 660-012-0060 to a separate process that would involve a plan amendment and zone change. In short, while the city has the option to address and comply with the OAR 660-012-0060 now, it has chosen instead to defer compliance with the TPR to a subsequent plan amendment or zone change, which it is allowed to do if its interim zoning does not allow development that would generate more vehicle trips than the prior zoning.

As noted in section III.E.4 of this report, however, the interim zoning applied by the city and the county includes provisions that *may* allow for development that would generate more vehicle trips. The director is unable to determine whether the city and county have complied with this provision because their findings do not address it and there does not appear to be a comparison of prior and current zoning of the expansion area for Alternative 4A in the record.

e. Conclusion

The objection is sustained. OAR 660, division 24 specifically allows local governments to address OAR 660-012-0060 in a subsequent plan amendment or zone change, but only if they show that the interim zoning adopted for the UGB expansion area will not generate more traffic than the prior zoning. The expansion area includes a significant amount of land that had prior resource zoning (mainly EFU), that now is zoned UAR-10, as a result, the director concludes that the city and county have failed to show that they are entitled to defer the application of OAR 660-012-0060.

The director remands with direction to either retain current zoning within the expansion area or evaluate and adopt findings and measures to address OAR 660-012-0060.

4. Planning Status of the Proposed Deschutes River Bridge Crossing

a. Legal Standard

OAR 660-012-0025 describes how local governments are to comply with the statewide planning goals in preparing TSPs. This rule includes three major requirements:

- It directs that TSPs are to include land use decisions regarding planned transportation facilities (OAR 660-012-0025)(1));
- It directs that TSPs include findings showing that planned facilities are consistent with applicable goal requirements (OAR 660-012-0025)(2)); and
- It allows, under certain conditions, that local governments may defer required planning decisions to a subsequent refinement plan. (OAR 660-012-0025(3))[39]

b. Summary of Local Actions

The TSP indicates that the city "contemplates" a new bridge over the Deschutes River in northwest Bend. The TSP also includes two new minor arterial street segments that would extend from existing roadways to either side of the Deschutes River to the location where the proposed bridge is contemplated:

> The transportation circulation plan for the greater Bend urban area also contemplates a new bridge over the Deschutes River. This new bridge would join an extension of Skyline Ranch Road on the west to an extension of Cooley Road on the eastside. *Arterial street connections are included in the plan to accommodate that facility.*
>
> The exact location and alignment of the affected roadways and bridge crossing is the subject of further study and evaluation. Also, the *final* determination of need, evaluation of state land use Goal 5 and other impacts is being deferred to a refinement study. Findings of need and impact will be incorporated into the TSP once that study has been completed. [R. at 1472, emphasis added]

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[39] (3) A local government or MPO may defer decisions regarding function, general location and mode of a refinement plan if findings are adopted that:

(a) Identify the transportation need for which decisions regarding function, general location or mode are being deferred;

(b) Demonstrate why information required to make final determinations regarding function, general location, or mode cannot reasonably be made available within the time allowed for preparation of the TSP;

(c) Explain how deferral does not invalidate the assumptions upon which the TSP is based or preclude implementation of the remainder of the TSP;

(d) Describe the nature of the findings which will be needed to resolve issues deferred to a refinement plan; and

(e) Set a deadline for adoption of a refinement plan prior to initiation of the periodic review following adoption of the TSP.

The proposed bridge is also shown on the adopted roadway system map.[40]

While the TSP appears to be deferring key planning decisions about the bridge to a refinement study, the adopted findings addressing OAR 660-012-0025(3)[41] say:

> [The city is] not proposing to defer decisions regarding function, general location and mode of a refinement plan to a later date. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, pages 15 and 41 of 55]

In the process of conducting its review, the department has learned that the city may have adopted the wrong findings.[42]

c. Objection and DLCD Comments

Swalley Irrigation District contends that the UGB amendment violates several provisions of the TPR, including OAR 660-012-0025. [Swalley Irrigation District, May 6, 2009, page 56] As discussed in detail in objections related to Goals 5, 11, and 14, Swalley argues that the sewer plan assumes a crossing of the Deschutes River—in the form of either a bridge or tunnel under the river—but does not incorporate the cost of this crossing in its cost estimates, or address relevant goal requirements that would apply to this decision.

DLCD's October 24, 2008 letter asked that the city clarify the planning status of the proposed bridge:

> While this improvement is included in the plan's list of "outstanding issues" the text of the plan suggests that the city has made key land use decisions about need, mode, function and general location of this planned improvement [in]…. Section 9.6.3 (quoted above)
>
> If the city is making a decision that this roadway and bridge are planned facilities subject only to subsequent decisions about selecting a precise alignment, the plan

[40] The river crossing is highlighted with a large asterisk with this note: "Bridge subject to further study of need and location (see TSP Chapter 9)" [R. at 1476]

[41] The city's adopted Goal 12 and TPR findings are referenced in the record at page 1220. The referenced exhibit, Exhibit D, was included in the city's 2007 notice to the department, but was not included in the adopted record.

[42] In response to a request from the department to confirm the contents of the city's record and findings, city staff advised the department that the wrong set of TPR findings were adopted. [Bend letter, December 7, 2009, page 8 of 9] The adopted findings are a draft version dating from June 2007. The record includes "replacement" findings developed in 2008 that are somewhat different than the 2007 findings, but these were not adopted by the city or county as their official findings. In addition, the city advises that it has posted a *third* set of TPR findings on its website that were not part of the city's record. Due to time constraints in preparing this report, the department has not been able to analyze these findings in detail. And, in any event, the director must base his decision on the city's adopted findings.

needs to (1) address the relevant goals, including Goal 5, (2) establish an overall corridor within which the roadway may be located; and (3) specify the process and standards by which a subsequent decision selecting an alignment for the roadway and bridge will be made. [R. at 4735]

d. Analysis

OAR 660-012-0025 directs that TSPs clearly make or defer decisions about proposed transportation improvements. In this case, the plan is ambiguous. It neither clearly authorizes the proposed bridge, with findings demonstrating that the bridge is consistent with relevant goals, nor clearly defers specific planning decisions about the bridge to a subsequent process.

It appears that the city may have intended to defer a decision on a possible bridge in the northwest area to some point in the future. However, the TSP does not accomplish deferral consistent with OAR 660-012-0025. The TSP does not include findings and provisions required to properly accomplish deferral consistent with the OAR 660-012-0025(3). In addition, parts of the TSP and other parts of the UGB submittal suggest a decision to plan a bridge at this location (i.e., the statement that the bridge is contemplated, and decision to plan for minor arterial roadways extending to either side of the river at to the proposed bridge location).

In short, further work is needed to either authorize the bridge as a planned facility, or defer decisions to a subsequent refinement plan consistent with OAR 660-012-0025. Also, whichever path the city chooses to take in addressing OAR 660-012-0025, its work should be conducted in concert with work addressing two other requirements: OAR 660-024-0060(8) evaluating and comparing costs of different UGB expansion alternatives and evaluating whether widening of Newport and Galveston streets is consistent with the city's adopted plan policies for these streets.

e. Conclusion

The objection is sustained. The plan policy language does not comply with OAR 660-012-0025. As described above, OAR 660-012-0025 requires specific findings and actions when a local government acts to defer required planning decisions to a refinement plan. The city's findings and policies do not fulfill requirements of OAR 660-012-0025(3). The director remands the decision with instructions to either revise the TSP to include planning decisions required to comply with the TPR and applicable goals or properly accomplish deferral consistent with OAR 660-012-0025(3).

Because the bridge is an expensive improvement and appears intended to serve a specific area, the city should, as part of its Goal 14 work, consider whether the bridge improvement is needed to serve a specific areas proposed for UGB expansion, and consider the costs of such an improvement as part of its evaluation of expansion alternatives consistent with OAR 660-024-0060(8).

5. Is the city obligated to complete overdue requirements to reduce reliance on the automobile?

This subsection addresses several issues related to TPR requirements that apply specifically to city's within metropolitan planning areas (MPOS), and whether these requirements must be satisfied prior to significantly amending its UGB. The TPR establishes planning requirements for cities within MPO areas to develop a strategy to reduce reliance on the automobile through the adoption of transportation and land use measures. This section of the report addresses three related issues:

1. Whether the metropolitan planning requirements of the TPR are applicable to Bend at this time;

2. Whether Bend's plan is in compliance with provisions applicable to metropolitan areas for adoption of standards and benchmarks to reduce reliance on the automobile; and

3. Whether the planning requirements in the TPR must be met prior to a significant amendment of the UGB.

Goal 12 and the TPR apply to the UGB expansion decision. Bend is subject to TPR requirements for metropolitan areas, and is well past deadlines for completing the required work. The outstanding work is significant because it is likely to require that the city take additional steps to promote mixed-use land use patterns that support multiple modes of transportion. This work relates directly to requirements in Goal 14 that the city maximize efficiency of urban land uses, and demonstrate that lands within the UGB cannot reasonably accommodate anticipated housing, employment and other land needs.

Issue 1: Whether Bend is Subject to Metropolitan Transportation Planning Requirements at this time.

a. Legal standard

OAR 660-012-0016 and -0055 require that each MPO prepare a regional transportation system plan (RTSP) in coordination with adoption of the federally-required regional transportation plan (RTP). Under both provisions, MPO plans and the city's conforming amendments to its TSP must be adopted no later than one year after the federally required RTP.[43]

[43] OAR 660-012-0016: (1) In metropolitan areas, local governments shall prepare, adopt, amend and update transportation system plans required by this division in coordination with regional transportation plans (RTPs) prepared by MPOs required by federal law. Insofar as possible, regional transportation system plans for metropolitan areas shall be accomplished through a single coordinated process that complies with the applicable requirements of federal law and this division. * * *

(2) When an MPO adopts or amends a regional transportation plan that relates to compliance with this division, the affected local governments shall review the adopted plan or amendment and either:

b. Summary of Local Actions

The city asserts that obligations in OAR 660-012- 0016 and -0055 to conduct metropolitan planning are not applicable at this time:

> OAR 660-012-0016…[and]…OAR 660-012-0055(1)…[do] not apply to the City of Bend because at the time the 2000 Bend Urban Area Transportation System Plan was prepared and adopted on October 11, 2000, the city of Bend was not part of an MPO. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, pp. 15 and 41 of 55]

However, the city's findings, prepared in 2007 and adopted by reference in its submittal, indicate that the city understood the one-year deadline for adoption of an RTSP:

> An RTP that meets federal requirements is expected by the end of June 2007 and an RTP that meets the requirements of this division is expected by the end of December 2007. The City of Bend is committed to amending the City's TSP to be consistent with the adopted RTP within one year of the adoption of the RTP. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 42 of 55]

c. DLCD Comments

The department advised the city that the metropolitan transportation planning requirements in the TPR are applicable to Bend at this time. The department raised this issue in its comment letters in July 2007 and October and November 2008:

> The Transportation Planning Rule (TPR) requires that metropolitan areas adopt transportation and land use plans and measures that significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. Bend is past due in completing this work. The City of

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(a) Make a finding that the proposed regional transportation plan amendment or update is consistent with applicable provisions of adopted regional and local transportation system plan and comprehensive plan and compliant with the applicable provisions of this division; or,

(b) Adopt amendments to the relevant regional or local transportation system plan that make the regional transportation plan and the applicable transportation system plans consistent with one another and compliant with the applicable provisions of this division. Necessary plan amendments or updates shall be prepared and adopted in coordination with the federally-required plan update or amendment. Such amendments shall be initiated no later than 30 days from the adoption of the RTP amendment or updated and shall be adopted no later than one year from the adoption of the RTP amendment or update or according to a work plan approved by the commission. * * *

OAR 660-012-0055(1)(b): When an area is designated as an MPO or is added to an existing MPO, the affected local governments shall, within one year of adoption of the regional transportation plan, adopt a regional TSP in compliance with applicable requirements of this division and amend local transportation system plans to be consistent with the regional TSP.

> Bend is currently obligated to work with department to prepare a work plan and schedule for completing the required work. (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

The metropolitan transportation planning requirements were applicable at the time the city adopted its amended UGB and amended its TSP. As outlined above, the TPR includes two separate but essentially equivalent requirements for adoption and update of transportation system plans in metropolitan areas.

OAR 660-012-0016 was adopted in 2006 and specifically addresses the relationship of state and federally required transportation plans. This was intended to minimize duplication of effort in meeting state and federal transportation planning requirements. As noted above, the rule specifically directs that TPR required planning "…be accomplished through a single coordinated process" and allows up to one year for local governments to adopt conforming amendments when a federally adopted plan is adopted or amended. (OAR 660-012-0016 also allows local governments to request an extension to the one year deadline, but the city has not requested an extension.)

OAR 660-012-0055, adopted in 1991, requires local governments in a newly designated or expanded MPO to adopt a TSP within one year of adoption of a federally required RTP.

The Bend MPO was designated in 2002, and the MPO adopted an RTP on June 27, 2007. Consequently, the city was obligated to adopt amendments to its TSP meeting relevant TPR requirements no later than June 27, 2008.[44]

The fact that the city was not part of an MPO in 2000 when it adopted its TSP does not affect the applicability of the metropolitan planning requirements. OAR 660-012-0016 clearly directs that metropolitan planning requirements be addressed *at the same time* and *through the same process* that is used to develop the RTP.

The MPO has been working on preparation of an RTP since the area was designated as a metropolitan area in 2002. The city's proposed UGB expansion proposal, TSP, and the RTP have been developed at the same time (2006-2007), and all three plans cover the same planning period: through 2030. Under the terms of the TPR, the city's TSP is subject to metropolitan planning requirements and must include these in its transportation plan.

e. Conclusion

The TPR requirements for metropolitan areas are applicable to Bend at this time.

[44] The city could also have requested that the commission approve a work program extending the date for completion of the required plan as provided in OAR 660-012- 0016, but it has not done so.

Issue 2: Whether the adopted TSP complies with TPR requirements for metropolitan areas.

a. Legal Standard

OAR 660-012-0035 includes requirements regarding planning for transportation choices, and reduced reliance on the automobile. The rule includes a specific target for reduction in vehicle miles traveled (VMT) and provides timeframes for completion and review procedures.[45]

b. Summary of Local Actions

The submittal includes conflicting findings on its compliance with metropolitan transportation planning requirements. As noted above, city argues that provisions of the TPR for metropolitan areas do not apply to Bend at this time. However, the city's findings also say that the city has adopted performance measures and benchmarks as required by 0035 and that it can demonstrate that it has planned for a five percent reduction in vehicle miles travelled (VMT) per capita, as required by the rule:

> * * * the TSP includes benchmarks to assure satisfactory progress towards meeting the approved standard or standards adopted pursuant to this rule at

[45] OAR 660-012-0035: (4) In MPO areas, regional and local TSPs shall be designed to achieve adopted standards for increasing transportation choices and reducing reliance on the automobile. Adopted standards are intended as means of measuring progress of metropolitan areas towards developing and implementing transportation systems and land use plans that increase transportation choices and reduce reliance on the automobile. It is anticipated that metropolitan areas will accomplish reduced reliance by changing land use patterns and transportation systems so that walking, cycling, and use of transit are highly convenient and so that, on balance, people need to and are likely to drive less than they do today.
OAR 660-012-0035(5) *MPO areas shall adopt standards to demonstrate progress towards increasing transportation choices and reducing automobile reliance* as provided for in this rule:

(a) *The commission shall approve standards by order upon demonstration by the metropolitan area* that:

(A) Achieving the standard will result in a reduction in reliance on automobiles;

(B) Achieving the standard will accomplish a significant increase in the availability or convenience of alternative modes of transportation;

(C) Achieving the standard is likely to result in a significant increase in the share of trips made by alternative modes, including walking, bicycling, ridesharing and transit;

(D) VMT per capita is unlikely to increase by more than five percent; and

(E) The standard is measurable and reasonably related to achieving the goal of increasing transportation choices and reducing reliance on the automobile as described in OAR 660-012-0000.

(6) *A metropolitan area may also accomplish compliance with requirements of subsection (3)(e), sections (4) and (5) by demonstrating to the commission that adopted plans and measures are likely to achieve a five percent reduction in VMT per capita over the 20-year planning period*. The commission shall consider and act on metropolitan area requests under this section by order.
(7) *Regional and local TSPs shall include benchmarks* to assure satisfactory progress towards meeting the approved standard or standards adopted pursuant to this rule at regular intervals over the planning period. MPOs and local governments shall evaluate progress in meeting benchmarks at each update of the regional transportation plan. Where benchmarks are not met, the relevant TSP shall be amended to include new or additional efforts adequate to meet the requirements of this rule. [emphasis added]

> regular intervals over the planning period. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 27 of 45]
>
> * * * the City can demonstrate to the commission that adopted plans and measures are likely to achieve a five percent reduction in VMT per capita over the 20-year planning period.[46] In addition, the City has adopted interim benchmarks for VMT reduction and shall evaluate progress in achieving VMT reduction at each update of the TSP. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 27 of 55]

c. DLCD Comments

The Bend metropolitan area does not have commission-approved standards or benchmarks for achieving reduced reliance on the automobile as required by OAR 660-012-0035. The department raised this issue in its comment letters of October 24, 2008 and November 21, 2008:

> We…recommend that the city revise or delete the finding related to TPR Section 0035. This section of the rule relates to adoption of measures to implement an adopted, Commission-approved standard (required of 0035(5)-(6). As noted above, work related to these requirements remains as an outstanding work task. (DLCD, October 24, 2008, page 16.) [R. at 4737]
>
> The key outstanding [TPR] requirement relates to adoption of a plan and measures to significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. This includes development and adoption of specific targets for accomplishing reduced reliance. (TPR Section 035(5)) (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

While the city has adopted several benchmarks for adding bike and pedestrian facilities and transit service, it has not formally proposed or adopted a performance measure as required by provisions of OAR 660-012-0035, and has not obtained or sought commission approval of such a standard as required by OAR 660-012-0035(5)(a).

Further, although the city asserts that it can demonstrate that its TSP is likely to achieve a five percent reduction in VMT—thus meeting relevant requirements of the TPR—nothing in city's TSP or adopting findings provide evidence to support this assertion, or that would provide a basis for a commission order approving this finding as provided under OAR 660-012-0035(6).

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[46] Under terms of OAR 660-012-0035(6), a metropolitan area can meet the requirement to adopt standards for accomplishing reduced reliance on the automobile in sections 0035(4) and (5) "…by demonstrating to the commission that adopted plans and measures are likely to achieve a 5% reduction in VMT per capita over the 20 year planning period."

e. Conclusion

The city's amended TSP does not satisfy TPR requirements for metropolitan planning. The city must develop a standard and benchmarks that show how the city's transportation and land use plans will significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile and obtain commission approval of those measures.

Issue 3: Whether the TPR's requirements for metropolitan area planning must be completed prior to or contemporaneously with the city's UGB amendment

a. Legal standard

OAR 660-024-0020 requires that the city address all of the statewide planning goals in its decision to amend its UGB:

> (1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:
>
> * * *
>
> (d) The transportation planning rule requirements under OAR *660-012-0060* need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary …. OAR 660-024-0020 (emphasis added).[47]

This rules allows deferral of the application of OAR 660-012-0060, but not of other provisions of the TPR. The TPR includes several specific requirements for metropolitan areas that affect or are implemented through changes to land use densities, designations and design standards to meet specific requirements in the TPR to significantly increase transportation options and significantly reduce reliance on the automobile. These include:

- Adoption of local standards, approved by LCDC, that demonstrate the city's TSP will significantly increase transportation options and reduce reliance on the automobile. (OAR 660-012-0035(4)-(6))

- Adoption of a parking plan and a transit plan (OAR 660-012-0020(2)(c) and (g))

- Adoption of ordinance amendments to allow for transit-oriented developments, and transit-supportive uses and densities along transit routes (OAR 660-012-0045(4))

[47] As noted above, the director sustained an objection from Swalley Irrigation District concerning this requirement as it relates to deferring application of OAR 660-012-0060 of the TPR to subsequent plan and zone change decisions.

b. Summary of Local Actions

Table 2 below summarizes the city's actions and findings that relate to planning requirements for metropolitan areas. As noted above, for the most part the city contends that these requirements do not apply to the city at this time. Individual findings appear to suggest that the city has nonetheless adopted actions that comply with metropolitan planning provisions in the TPR.

Table 2. City findings and actions related to TPR Requirements for Metropolitan Areas

TPR Section	Summary	Goal 14 Related Outcome	City Findings/Status
0035(4)–(7)	Performance standards for increasing trans-portation options and reducing reliance on the automobile	Plan and zoning changes to allow more mixed use higher density residential and employment development; especially in close-in areas, and infill and redevelopment	City has not adopted performance standards. The TSP includes several "benchmarks" for TDM, bike and pedestrian improvements that were adopted as part of city's 2000 TSP that predate Bend's designation as an MPO[48]
0020(2)(g) 0045(5)(c)	Parking Plan to reduce per capita parking by 10% or adopt parking management reforms	Supports increased employment density, multifamily housing density	City findings assert city has met this requirement of the rule. Nothing in TSP or record includes a parking management plan that meets applicable requirements
0020(2)(c)(C)	Transit Plan designating major transit routes and major stops	Supports higher residential and employment densities	TSP includes a map of potential routes and three potential major stops.[49] [50] Policies dating from 2000 TSP direct city to continue work on transit planning
0045(4)–(5)	Ordinances allowing transit-oriented developments and transit supportive uses and densities along transit routes	Increased housing and employment densities along transit routes	City has adopted some changes to ordinances as a result of 2000 TSP work and PR remand. Policies direct city to continue work.[51] No new ordinance provisions as part of this amendment.

c. DLCD Comments

The department raised this issue in its comment letters in October and November 2008:

[48] TPR requires benchmarks that measure progress in implementing adopted, LCDC approved performance standards. Since Bend does not have an adopted, approved performance standard, these benchmarks do not meet -0035 requirements.

[49] At present, the following are proposed as major transit stops: the downtown transit center, St. Charles Medical Center and Central Oregon Community College. Also, as the system grows, evaluation of major transit stops in the northern and southern reaches of the Bend area should be conducted. [R. at 1388]

[50] "The final determination of public transit routes, facilities and amenities within the UGB areas will be subject to further analysis and funding availability. [R. at 1453]

[51] "Major transit corridors shall be opportunity areas within ¼ mile of either side of a corridor shall be a priority for medium to high density residential designations to implement the Framework Plan. [TSP, R. at 1354]

> In our July 2007 comments we recommended that the city clarify the relationship of proposed TSP amendments to the city's obligations to prepare and adopt a regional transportation system plan (RTSP) in compliance with the TPR. Of particular note are TPR requirements to plan for reduced reliance on the automobile. Because land use strategies play an important role in accomplishing this objective, this work should be integrated with the city's consideration of UGB amendments. (DLCD, October 24, 2008) [R. at 4737]

> The key outstanding [TPR] requirement relates to adoption of a plan and measures to significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. This includes development and adoption of specific targets for accomplishing reduced reliance. (OAR 660-012-035(5)) Because urban growth patterns affect reliance on the automobile, the proposal needs to assess how expansion to different areas would affect city's efforts to reduce reliance on the automobile. In general, reduced reliance on the automobile is accomplished by planning for compact, mixed use development, with an emphasis on focusing development in close in areas and along major transit routes. This is especially true for major trip generating uses, including regional commercial development, the proposed university and hospital medical center. For these uses, the proposal should evaluate whether needs can be met through increased infill or redevelopment or more intense development of close in sites. (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

The city is required to address portions of Goal 12 and TPR related to metropolitan planning in its UGB amendment. The UGB expansion adds a significant quantity of land and residential and employment capacity to the Bend urban area that will affect transportation systems and that will have long-term effects on the extent to which area residents must rely on automobiles. Compliance with these provisions of the rule is important now because the work needed to meet these requirements relates to and affects the city's decisions about how to accommodate future urban growth. Generally, this portion TPR is met by changes to land use designations and densities that result by planning and zoning additional areas for compact, mixed use development and higher densities, through increased rates of infill and redevelopment and through development of transit oriented development or mixed use centers or neighborhoods:

> It is anticipated that metropolitan areas will accomplish reduced reliance by changing land use patterns and transportation system so that walking, cycling and use of transit are highly convenient and so that, on balance, people need to and are more likely to drive less than they do today. [OAR 660-012-0035(4)]

In addition, the TPR includes detailed guidance about the kinds of land use actions that metropolitan areas should consider to accomplish this objective.[52]

As the department stated in its comments to the city, this work must be integrated into the city's analysis of future land use needs as part of the UGB amendment process. As discussed above, the Goal 14 rule requires the city to consider and adopt efficiency measures to attempt to accommodate future land use needs on lands that are currently within the UGB. Since city must comply with the TPR as part of its UGB amendment, the city's efficiency measures must also include land use related actions that comply with the TPR.

e. Conclusion

The city's plan does not comply with key portions of the TPR related to planning for reduced reliance on the automobile. The city does not have a commission-approved standard for accomplishing reduced reliance on the automobile; a transit or parking plan; or related implementing measures allowing for transit oriented development.

Compliance with this part of the TPR is likely to require that the city take steps to plan and zone lands to encourage more compact, mixed use development, either through infill and redevelopment in the central area, or more detailed planning for transit oriented development or mixed use centers along transit routes. This work is closely related to work city is otherwise required to complete in order to comply with Goal 14 to adopt "efficiency measures." The city's decision is remanded to address these portions of the TPR, and to coordinate this work with its proposed UGB expansion.

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[52] OAR 660-012-0035(2) lists the types of land use changes that local governments are encouraged to consider to reduce reliance on the automobile:
(a) Increasing residential densities and establishing minimum residential densities within one quarter mile of transit lines, major regional employment areas, and major regional retail shopping areas;
(b) Increasing allowed densities in new commercial office and retail developments in designated community centers;
(c) Designating lands for neighborhood shopping centers within convenient walking and cycling distance of residential areas; and
(d) Designating land uses to provide a better balance between jobs and housing considering:
(A) The total number of jobs and total of number of housing units expected in the area or subarea;
(B) The availability of affordable housing in the area or subarea; and
(C) Provision of housing opportunities in close proximity to employment areas.

6. Did the rezoning of lands within the UGB expansion area violate Goal 2, OAR 660-024-0050(5) and the Transportation Planning Rule?

a. Legal standard

OAR 660-024-0050(5) (2006)[53] provides that at the time a city and county adopt a UGB amendment, they must also adopt comprehensive plan and zoning designations that are consistent with the 20-year land need determinations for all land that is being added to the UGB. This rule codifies long-standing appellate case law.[54] For Bend, this rule applies to revisions to plan and zoning maps to address future urban residential, commercial, industrial, institutional, park, and other uses in the expansion area. There are two ways to zone the land being added to the UGB: (1) retain the existing rural zoning, such as rural residential or exclusive farm use, or (2) apply interim urban holding zones that limit or prohibit land divisions, maintain large parcel sizes, limit uses, and prohibit increased vehicle trip generation.[55] The purpose of this requirement is to maintain the potential of the urbanizable land[56] within the UGB for future planned urban development.

b. Summary of Local Actions

In addition to adopting new interim plan and zoning designations, the city also designated future land uses for the expansion area on the Urban Area Framework Plan Map [R. at

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[53] The text of OAR 660-024-0050(5) (2006):

> When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.

[54] A UGB expansion based on a specific need must be conditioned on zoning and development the subject property to achieve the result of providing for the identified need. *Concerned Citizens vs. Jackson County*, 33 Or LUBA 70 (1997).

[55] *See, e.g.,* ORS 197.752(1): "Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards." *Also see* OAR 660-024-0020(1)(d): "The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary."

[56] The definitions in OAR 660, division 15 define "Urbanizable land" as: "Urban land that, due to the present unavailability of urban facilities and services, or for other reasons:

(a) Retains the zone designations assigned prior to inclusion in the boundary; or
(b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned."

"Urban land" is defined as "land inside an urban growth boundary."

4897]. Part of the expansion area was designated as six master plan areas: four on the west side, one on the south side, and one on the northeast side. The map specifies the approximate gross "available acres" for various urban uses for each master plan area.

c. Objection

Tumalo Creek Development LLC contends Bend violated Goal 2 by assigning future plan designations in the proposed Framework Plan to lands outside its jurisdiction. This would be lawful only if the designations are guidelines. If the map designations are binding, the city must coordinate with Deschutes County and comply with statutes and rules regarding re-zoning, including Goal 2. Objector states that it owns the land designated as Master Plan Area 3. [May 7, 2009 letter, p. 2]

d. Analysis

The city designated future urban land uses on the Urban Area Framework Plan Map. This designation was coordinated with Deschutes County through the county's co-adoption of the UGB amendment, Framework Plan amendments, and plan and zoning map amendments, in compliance with OAR 660-024-0050(5)(2006). However, the city did not apply the *appropriate* plan designations and zoning as required by OAR 660-024-0050(5).[57]

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[57] The proposal does not comply with the OAR 660-024-0050(5) requirement to apply appropriate plan designations and zoning to the expansion area. This rule states:

> When land is added to the UGB, the local government must assign appropriate *urban* plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by *retaining the zoning* that was assigned prior to inclusion in the boundary *or* by applying other *interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses.* The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB. [Emphasis added]

The city applied the following *plan designations* to the expansion area: Urban Reserve Residential, Urban Reserve Commercial, Urban Reserve Industrial, Surface Mining, and Public Facilities. [Bend Urban Area Proposed General Plan Map, R. at 40, 174, 1189, 1055, 1226, 1232] Except for the last two, these are rural, not *urban* plan designations.[57] The city has in the past zoned a large amount of land outside the UGB as "urban reserve"[57] but has not used such zoning inside the UGB.

The proposed *zoning* for the expansion area also does not comply with OAR 660-024-050(5). The county adopted two new zones for the expansion area, the Urban Holding-10 (10-acre minimum parcel size) and the Urban Holding-2½ (2½-acre minimum parcel size), in Title 19 of the Deschutes County Code. [R. at 1852] The code also states that an existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, is an urban holding zone. Please see the detailed discussion in section III.E regarding the department's position that these three zones will not preserve urbanizable land for future urbanization and therefore are not urban holding zones in violation of Goal 14 and OAR 660-0050(5). The "land uses" that appear on the Bend Area Framework Plan Map [R. at 1235] are neither land use designations nor the pre-expansion zoning or interim holding zones; they are the intended future urban uses, only.

e. Conclusion and Decision

The city and county did not violate Goal 2 by adopting future urban plan designations for lands within the proposed UGB expansion area. The city appropriately coordinated with Deschutes County. The director denies this objection.

However, as described in more detail immediately below, the city violated OAR 660-024-0050(5) by applying *rural* plan designations (Urban Reserve Residential, Urban Reserve Commercial, Urban Reserve Industrial) to portions of the expansion area, and by applying zoning designations that fail to maintain the expansion area as urbanizable land either by retaining the zoning that was assigned prior to inclusion in the boundary *or* by applying other interim zoning *that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses.*