Appendix 9
Case Law

Selected Oregon LUBA and Court of Appeals Cases - Land Use and Transportation

Jaqua and 1000 Friends of Oregon, and Lane County v. City of Springfield and Peacehealth, LUBA 2003-072, 2003-073, 2003-077, 2003-078; (January5, 2004) Affirmed by the Court of Appeals, A 123624, June 9, 2004

- OAR 660-012-0060 must be read to prohibit a plan amendment or zone change that would allow even a temporary failure of a facility, within the planning period. The local government has other tools to mitigate a failure, if the transportation facility will not be provided by the time the facility is failing.

- LUBA noted the ambiguity in the TPR, subsection -060 (p. 45). LUBA's interpretation of the intent of the rule, at p. 46, is that the purpose is to correct the pattern of decision making by the local government. LUBA concludes that city must make findings that there will be no failure of the facility during the planning period. Ruling upheld by the Court of Appeals.

Ramsey et al v. City of Philomath and ODOT, 46 Or. LUBA 241 (2004)

- In a legislative hearing, city can use quasi-judicial procedures. However doing so does not turn the decision into a quasi-judicial decision. City can vary its procedures from the quasi-judicial form, even if it begins by using quasi-judicial procedures.

- The city's TSP contained several alternatives for a couplet route through the city. Even though city's decision about which alternative to use may ultimately be driven in part by timing or financing questions, when it decides that the preferred alternative chosen is consistent with the alternative in the TSP, it is interpreting its TSP, and that is a land use decision.

- The city can construct the preferred alternative, which is a phase, or part, of the option that the TSP recommended. Even though the preferred alternative is only a portion of the larger improvement that the TSP envisions, it is located within the alignment. By constructing this portion, the city has not precluded the possibility of constructing the rest of the alignment at a later date.

- If the city ultimately decides to abandon the remaining portion of the couplet as described in its TSP, it would have to amend the TSP at that time.

Friends of Eugene et al v. City of Eugene, Lane County, City of Springfield and Lane Transit District, (WEP) 44 Or LUBA 239, (2003)

- This is the West Eugene Parkway case, defended on appeal by ODOT and a coalition of city and county. LUBA remanded on four counts, generally requesting further examination of the findings in the record, and more clearly explaining the evidence that supported the findings.

- The WEP involved a modification of a portion of the proposed highway corridor that had previously been adopted into the comprehensive plans of Eugene, Lane County, Springfield, and Lane County Transit District. ODOT argued that LUBA need only look at the modified portion of the project, and whether it had been properly adopted, and not re-look at the justification for the entire corridor that had already been adopted. LUBA agreed.

- In another interpretation of 660-012-0060(2), ("significant affect"), petitioners said that the proposed modification of the WEP would cause a particular intersection in the city to fall below acceptable standards. Under the previous WEP version, that intersection would have been improved before the end of the planning period. Under the new WEP version, that improvement had to be postponed, because the money to build it would be paying for other intersection improvements involved with the new WEP project. Petitioners said that caused a "significant affect" to that particular intersection. However, even though that intersection was negatively affected by the new highway, several other intersections would be improved. ODOT argued, and LUBA agreed, that a plan amendment that *improves* the performance of 13 intersections over the performance that is expected under the un-amended plan does not "significantly affect a transportation facility". "Amendments to the TSP itself are not necessarily amendments that significantly affect transportation facilities". p. 50-51.

Citizens for Protection of Neighborhoods, LLC vs. City of Salem and Sustainable Fairview Associates, LLC, LUBA No. 2003-201, 2004.

- City of Salem adopted a plan amendment allowing a mixed use comprehensive plan designation, and a second ordinance that applied the mixed use designation to the former Fairview property, a multi-acre development. Developer planned to develop only 20

acres originally, and the rest at a later date. The traffic information applied only to the currently planned 20 acres. The ordinance required that any further development was subject to additional review to ensure that traffic impacts would be consistent with the function, capacity and performance standards of affected transportation facilities. A portion of the new zoning ordinance required the further review, and was substantially identical to the requirements of the TPR.

- LUBA said that it is permissible to find that a proposed amendment complies with 660-012-0060 based on conditions or restrictions to development that limit allowed uses on the subject property to levels consistent with the function, capacity and performance standards of affected transportation facilities. No further development would be allowed until a master plan was approved, and the necessary transportation standards applied.

- Although the master plan process did not involve a plan or zone amendment to which OAR 660-012-0060 is directly applicable, LUBA found no reason why the standards of the similar city ordinance would not be sufficient to ensure compliance with the performance standards of affected facilities.

Church v. Grant County, 187 Or App 518, 2003. Appeal of *Church v. Grant County* 37 Or LUBA 646 (2000).

- Further interpretation of ORS 197.829(1), regarding LUBA's deference to the local government's interpretation of its ordinances. Review court is not required to defer to local interpretation if it is inconsistent with the terms, context, purpose or policy behind the local provision. This is a less strict standard than the former "clearly wrong" standard. Instead, look at the text and context of the local ordinance, much like interpreting statutes under *PGE v. Bureau of Labor and Industries, 317 Or 606, 859 P. 2d 1143(1993)*.

Friends of Marion County v. City of Keizer, Confederated Tribes of the Grand Ronde Community of Oregon etc. LUBA No. 2003-036.

- The City of Keizer is reviewing plans for development around the Chemawa interchange with I-5. Keizer approved an amendment to a previously adopted master plan for the area. The amendment changed the zoning designation, and rearranged the commercial/industrial/office/sports portions of the whole area. The traffic study that the city relied upon indicated that the new zoning designations would not produce anymore traffic than the previous

plan, and therefore there was no "significant effect" under TPR. Petitioner's said the city did not consider the most intensive uses that would be allowed with the new zoning. LUBA said the city did not consider the most intensive uses allowed under the old zoning, either, so the two traffic studies were consistent. As long as the two studies used the same assumptions, they made a valid comparison. LUBA did not comment one way or the other about whether the traffic studies SHOULD have compared most intensive uses allowed.

No Tram to OHSU, Inc. v. City of Portland and Oregon Health & Science University, 44 Or. LUBA 647, 2003.

- City approved an overhead tram to carry traffic up the hill to OHSU. Petitioners argued that the Tram would have a "significant affect" on the street below the tram, and on the character of the neighborhood in the district. LUBA said no. To the extent the tram may permit an additional transportation option from the Marquam Hill Plan District to the South Waterfront, the standard is not the number of persons that will be transported during any given time period. Rather, the standards are based on the number of vehicles that will use the transportation facilities. LUBA said that use of the Tram will not affect existing land based transportation facilities negatively.

- In addition, LUBA said that OAR 660-012-0060(2) is concerned with amendments that will result in land uses that are inconsistent with transportation systems, not at transportation systems that are alleged to be inconsistent with nearby land uses. The decision does not change the functional classification of any transportation facility.

Excelsior Investment Co. v. City of Medford and Jackson County Airport Authority, 44 Or. LUBA 553, (2003)

- City of Medford switched the zoning on two parcels, at the request of a developer who wanted to build a hotel. The city found that there was no affect on the local traffic facilities caused by the switch. Petitioners said that the switch would encourage a hotel to be built, because the newly up-zoned property had better frontage, and was better located for a hotel. Therefore, it was more likely to be built upon than if the zone change were not made. LUBA said that fact is not sufficient to undermine the city's conclusion that exchanging zoning designations between the two parcels would have no net increase in traffic impacts.

ODOT v. City of Klamath Falls, 177 Or App 1,(2001).

- Affirms the LUBA decision that an amendment significantly affects a transportation facility if it will cause the facility to fail sooner than it would without the amendment. This is based on v/c ratios rather than the LOS standard used in Coos County where the court reached a different result.

- Denying a permit for an amendment after finding the amendment would cause the transportation facility to fail sooner rather than later does not create a moratorium because the effect can be mitigated under OAR 660-012-0060(1)(a) through (d) and because this situation is excluded from the definition of moratorium.

ODOT v. City of Klamath Falls, 39 Or LUBA 641 (2001).

- For an amendment to significantly affect a transportation facility under OAR 660-012-0060, the amendment must play a causative role in reducing the applicable performance standards below the minimum acceptable level. The focus of the inquiry is on the transportation impacts allowed by the amendment, not on impacts from uses already allowed by the existing plan or zoning.

- Although a local government may rely on improvements identified in its transportation system plan to mitigate the significant affects of a development, a local government may not avoid the requirements of OAR 660-012-0060(1) by assuming the existence of unplanned future transportation improvements.

- Even if a transportation facility would fall below the applicable performance standard without the proposed amendment, a proposed plan amendment significantly affects the transportation facility if it would reduce the performance standard below the applicable performance standard sooner than would otherwise occur.

- A local government may proceed under an assumption that a plan amendment significantly affects a transportation facility without making a specific determination under OAR 660-012-0060(2)(c) that the amendment is inconsistent with the functional classification of the facility. Although such a course creates difficulty in determining what level of mitigation is necessary under OAR 660-012-0060(1)(a) through (d), a condition that prevents the amendment from affecting the facility at all until necessary improvements are made overcomes that difficulty and complies with OAR 660-012-0060(1)(a).

Citizens Against Irresponsible Growth v. Metro, 39 Or LUBA 539 (2001).

- The transportation planning rule does not apply to the amendment of the Metro UGB where the amendment only converts rural land to urbanizable land, and does not alter the types or intensity of allowed land uses, reduce the performance standards of transportation facilities, or otherwise "significantly affect" a transportation facility within the meaning of OAR 660-012-0060.

Friends of Yamhill County v. Yamhill County, 39 Or LUBA 478 (2001).

- The requirement under OAR 660-012-0065(3)(o) that the travel capacity and level of service of transportation facilities sited on rural EFU-zoned land must "be limited to that necessary to support rural land uses identified in the acknowledged comprehensive plan" is satisfied where the proposed facility would serve seven lot of record dwellings, the comprehensive plan authorizes rural dwellings and the EFU zoning statutes specifically authorize lot of record dwellings in EFU zones.

- An existing road cannot be rejected as an alternative under OAR 660-012-0065(5)(a) because it is (1) unsafe, (2) does not meet "applicable standards," or (3) has not previously been "approved by a registered professional engineer." Under the rule, the county must also establish that the existing road cannot be improved to be "safe," meet "applicable standards," and be "approved by a registered professional engineer" "at a reasonable cost, not considering raw land costs, with available technology.

- A decision that an existing road need not be considered as an alternative under OAR 660-012-0065(5)(a) is not supported by substantial evidence where there is no attempt to identify how costly it would be to address safety problems and bring the road up to applicable standards so that it could be approved by a registered engineer.

- OAR 660-012-0065(5)(a) prohibits consideration of "land costs," in determining whether the cost of an alternative is reasonable. "Land costs" are not limited to purchase of the fee title and include purchase of an easement.

Adams v. City of Medford, 39 Or LUBA 464 (2001).

- Where a zoning map is part of the city's zoning ordinance, an amendment of the zoning map constitutes a land use regulation amendment, within the meaning of OAR 660-012-0060, and must meet the requirements of OAR 660-012-0060(1) if the zoning map amendment will significantly affect a transportation facility.

- Where a city's finding that a zoning map amendment will not significantly affect transportation facilities is based on a lengthy transportation impact study, and petitioner attacks that finding based on other evidence of questionable relevance without developing any arguments challenging the transportation impact study, petitioner provides no basis for reversal or remand.

Craig Realty Group v. City of Woodburn, 39 Or LUBA 384 (2001).

- A local government may rely on existing or planned facilities to determine whether its transportation facilities are adequate to handle additional traffic that will be generated by a proposed amendment.

- If a local government relies on planned-for facilities to accommodate additional vehicle trips that will be generated by a proposed plan amendment, then the local government must find that those planned-for facilities will be built or improved on a schedule that will accommodate those additional trips.

- If a proposed amendment will generate additional trips that cannot be absorbed by existing or planned-for facilities, then a local government must adopt one or more of the strategies set out in OAR 660-012-0060(1) to make the proposal consistent with "the identified function, capacity and level of service of the [affected] facility," as is required by OAR 660-012-0060(1).

- A determination by a local government that a proposed amendment will not currently significantly affect a transportation facility is insufficient to satisfy OAR 660-012-0060(1), because the rule requires a demonstration of no significant effect over the entire relevant planning period.

- A local government may rely on a transportation facility improvement that is not fully set out in the local transportation systems plan, where that improvement has been identified and deferred to a future refinement plan pursuant to OAR 660-012-0025.

Mekkers v. Yamhill County, 39 Or LUBA 367 (2001).

- OAR 660-012-0060 has no applicability to a decision vacating a county road, where the decision does not amend a functional plan, comprehensive plan or land use regulation.

DLCD v. Klamath County, 38 Or LUBA 769 (2000).

- A local government may not explicitly rely on a traffic study to demonstrate compliance with Goal 12 and then ignore a portion of the traffic study that describes anticipated deterioration in level of service.

- Where development will result in a change in the level of service and reduce performance standards of the facility below the minimum acceptable level of service over the relevant planning horizon, the proposed amendment "significantly affects" a transportation facility.

Lentz v. Lane County, 38 Or LUBA 669 (2000).

- The establishment of a new public use airport runway, along with associated road realignment and expansion of the airport boundary, is considered to be part of the "expansion of a public use airport," pursuant to OAR 660-012-0065(3)(n).

- As long as the expansion of the public use airport continues to serve the same class of airplanes pursuant to OAR 660-012-0065, the expansion is considered to be consistent with Goals 3, 4, 11, and 14, and an exception to those goals is not required.

Northwest Aggregates Co. v. City of Scappoose, 38 Or LUBA 291 (2000).

- The "air, rail, water and pipeline transportation plan" required by OAR 660-012-0020(2)(e) to be included in a local government's Transportation System Plan need not include any information other than that specified in the rule; *i.e.*, the location and extent of existing or planned facilities.

- The coordination requirement at OAR 660-012-0015(5) provides that the adopting local government must provide notice and an opportunity to comment to affected local governments. However, the rule does not require that the adopting local government provide additional notice and opportunity to comment each time the proposal is modified.

DLCD v. City of Warrenton, 37 Or LUBA 933 (2000)

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- OAR 660-012-0060(1) and (2) contemplate that any mitigation measures that may be necessary to ensure that land uses allowed by amendments remain consistent with a facility's function, capacity and performance standards are considered after the local

government has determined whether the proposed plan amendment significantly affects a transportation facility within the meaning of OAR 660-012-0060(2). It is inconsistent with that scheme to consider such mitigation measures as a means of avoiding the conclusion that an amendment significantly affects a transportation facility.

- Where an applicable transportation system plan adopts particular performance standards, a local government errs by not using those standards to analyze whether a proposed amendment significantly affects a transportation facility, as defined by OAR 660-012-0060(2).

Douglas v. City of Lake Oswego, 37 Or LUBA 826 (2000).

- OAR 660-012-0045(5)(c) requires local governments to adopt legislation to comply with the rule's parking reduction requirements; it is not an independent decisional criterion applicable to every quasi-judicial application involving parking.

Marine Street LLC v. City of Astoria, 37 Or LUBA 587 (2000).

- A zoning ordinance text amendment that, as conditioned, would not permit development that would add more traffic to the transportation system than could be added under the zoning ordinance before the text amendment does not "significantly affect a transportation system," within the meaning of OAR 660-012-0060(2) (1998).

- OAR 660-012-0060(2) (1998) does not require that a local government consider whether a proposed zoning text amendment to raise the permissible building height on one property will in some general way encourage development in the future on nearby properties that may, in turn, "significantly affect a transportation facility.

Volny v. City of Bend, 37 Or LUBA 493 (2000).

- A local government's failure to adopt a transportation system plan (TSP) by the date required by OAR 660-012-0055 does not preclude the local government from amending the transportation element of its comprehensive plan until it adopts a TSP, where it is clear under the comprehensive plan that the transportation element is a separate policy document than the TSP, and the amendments to the transportation element are not intended to and do not have the effect of adopting a TSP.

- A comprehensive plan amendment that changes a minor arterial to a major arterial changes the functional classification of a transportation facility and thus requires findings of compliance with OAR 660-012-0060.

- The focus of OAR 660-012-0060 is on protecting transportation facilities from impacts inconsistent with their identified function, capacity and level of service, not on protecting adjacent residential land uses from the adverse impacts of transportation facilities.

Mulford v. Town of Lakeview, 36 Or LUBA 715 (1999).

- A local government's decision to rezone land to allow an industrial use generating up to 120 truck trips per day through local streets and a state highway must demonstrate compliance with Goal 12. LUBA will not exercise its authority under ORS 197.835(11)(b) to affirm the decision notwithstanding inadequate findings of compliance with Goal 12, where the parties cannot identify traffic studies or other evidence in the record sufficient to make it "obvious" or "inevitable" that the decision complies with Goal 12's requirement for a safe, convenient and economic transportation system.

Dept. of Transportation v. Douglas County, 36 Or LUBA 686 (1999).

- A local provision that merely recites language from the Transportation Planning Rule, OAR 660-012-0045(2)(g), is not adequate to implement that rule, where the local code does not contain any operative terms actually implementing the rule, and does not ensure that all amendments to land use designations, densities and design standards are consistent with the function, capacity and level of service of transportation facilities, as the rule requires.

Dept. of Transportation v. Douglas County, 36 Or LUBA 131 (1999).

- A county's transportation plan is inconsistent with the Transportation Planning Rule where it fails to inventory existing and committed bicycle and pedestrian facilities in the county, assess the capability and condition of those facilities, develop a system of planned improvements to those facilities, and depict planned improvements on a map, as required by OAR 660-012-0020.

- A letter from an ODOT employee regarding negotiations between ODOT and the county does not constitute an affirmative waiver of

issues related to minimum street width standards under OAR 660-012-0045(7), where it is unclear what was resolved between the parties and whether the county implemented the parties' resolution. Even if petitioner ODOT had waived that issue, such waiver would not apply to petitioner DLCD.

- The requirement at OAR 660-012-0045(7) that the county evaluate whether its street width standards are the minimum consistent with operational needs is not satisfied by a county procedure to consider, on a case-by-case basis, whether certain street widths should be reduced.

Terra v. City of Newport, 36 Or LUBA 582 (1999).

- Findings and conditions that require only external pedestrian improvements, and that require pedestrians in one part of the development to leave the subject property in order to go to another part of the development, are inadequate to demonstrate compliance with the Transportation Planning Rule's requirement for internal pedestrian facilities and clustering of buildings.

Baughman v. City of Portland, 36 Or LUBA 353 (1999).

- Where a plan policy, implementing the Transportation Planning Rule, requires that the parking spaces per capita ratio must be reduced by 10 percent but does not specify how the starting point for computing the reduction must be computed, a city council interpretation that the starting point computation may include approved but not yet constructed parking spaces is within the city's interpretive discretion under ORS 197.829.

Brome v. City of Corvallis, 36 Or LUBA 225 (1999).

- Where a city approves a development plan for a university district as part of a quasi-judicial proceeding, but does not incorporate it into the city's comprehensive plan or land use regulations, the development plan is not a comprehensive plan or land use regulation, and thus amendments to that plan are not subject to review for compliance with statewide planning goals or the Transportation Planning Rule.

Hunt v. City of Ashland, 35 Or LUBA 467 (1999).

- A city does not err by failing to require that a subdivision access road be improved to particular city standards, where the applicable

city criterion merely requires that the subdivision provide "paved" access.

Dept. of Transportation v. Coos County, 35 Or LUBA 285 (1998).

- OAR 660-012-0060 does not require that a local government impose exactions to ensure that impacts from a plan amendment do not violate Transportation Planning Rule Level of Service requirements.

- Compliance with OAR 660-012-0060 does not deprive a property of all beneficial use, where the current comprehensive plan and zoning designations allow a range of uses that may generate any amount of traffic and are not subject to the rule.

Citizens for Florence v. City of Florence, 35 Or LUBA 255 (1998).

- The Transportation Planning Rule, OAR 660-012-0060, requires that when a plan amendment "significantly affects" a transportation facility the local government must either ensure that the amendment is consistent with its transportation plan or amend its plan.

- When a land use allowed by a comprehensive plan amendment would "significantly affect" a transportation facility, a local government may not avoid the requirements of the Transportation Planning Rule, OAR 660-012-0060, by conditioning the amendment on improvements that maintain the facility above the thresholds provided in OAR 660-012-0060(2).

- A local government's reliance on a traffic study using a method not currently preferred but nonetheless required by the state Department of Transportation (ODOT) does not provide a basis for reversal or remand, where traffic analysis under either of two methods recognized by ODOT supports the conclusion reached by the local government.

- A local government fails to satisfy the requirement of the Transportation Planning Rule, OAR 660-012-0060, to coordinate with affected jurisdictions, where it amends its comprehensive plan to allow a shopping mall designed to be a regional destination point, but limits its coordination efforts to ODOT and the surrounding county.

- When a local government has not adopted requirements in the Transportation Planning Rule at OAR 660-012-0045 regarding

pedestrian and bicycle facilities, those requirements apply directly to local government land use decisions.

Northwest Aggregates Co. v. City of Scappoose, 35 Or LUBA 30 (1998).

- Although Oregon Laws 1997, chapter 859 (HB 2605) repeals two sections of the legislation that directed DLCD to adopt the Airport Planning Rule (APR), the 1997 legislation does not completely supersede the APR or DLCD's authority to adopt rules regarding airport planning.

- Where the TPR and Airport Planning Rule specifically require that a jurisdiction include areas of its airport that extend beyond its corporate limits, a city action doing so does not violate the ORS 221.720 limitation of a city's municipal power to its city limits.

Hannah v. City of Eugene, 35 Or LUBA 1 (1998) (1998).

- Where petitioner adequately raised the issue of whether a street would continue to function as a local street, failure to specify the TPR or comprehensive plan provision that required that the street continue to function as a local street does not result in waiver of the issue.

- Requiring that a street be connected to allow through traffic does not inevitably mean the street will cease to function as a local street, where there are identified measures that can be used to discourage non-local traffic.

- A city's findings are adequate to demonstrate compliance with a criterion requiring that development approval not result in "unreasonable congestion," where the findings acknowledge that the required street connectivity will change the nature of the traffic on the street but also discuss "traffic calming measures" that are incorporated into the design.

Lee v. City of Oregon City, 34 Or LUBA 691 (1998).

- An applicant does not carry his burden to demonstrate compliance with transportation-related criteria, where the findings supporting denial identify a flaw in the applicant's evidence resulting from conducting a traffic study in the summer when school trips would not be reflected in the study.

Barnard Perkins Corp. v. City of Rivergrove, 34 Or LUBA 660 (1998).

- Petitioner's allegations that decreases in potential housing density could affect transportation facilities are insufficient to show the challenged decision will "significantly affect a transportation facility," within the meaning of OAR 660-012-0060(1), where petitioner fails to identify any allegedly affected transportation facilities.

Dept. of Transportation v. Douglas County, 34 Or LUBA 608 (1998).

- The Transportation Planning Rule requirements set forth at OAR 660-012-0045(2) by their terms apply directly to local codes, not local comprehensive plans. Under OAR 660-012-0045(2) local codes must require compliance with ODOT access standards or require that an applicant obtain an access permit from ODOT as a condition of approval. The OAR 660-012-0045(2)(g) requirement that local governments adopt "regulations assuring that amendments to land use designations, densities, and design standards are consistent with the functions, capacities and levels of service of facilities identified in the TSP" is not satisfied by a plan provision that fails to refer to the Transportation Planning Rule by name or number and that imposes a different threshold for application of the rule standard than is required by the rule.

- The requirement of OAR 660-012-0015(2)(a) that regional TSPs be consistent with the state TSP is violated by a comprehensive plan amendment that purports to require that ODOT provide access under circumstances that are not consistent with ODOT policies.

- The term "rural community" as used in OAR 660-012-0045(3) of the Transportation Planning Rule is broader than the term "rural community" as defined in OAR 660-022-0010(7) of the Unincorporated Communities rules.

Fogarty v. City of Gresham, 34 Or LUBA 309 (1998).

- An amendment to a future streets plan does not significantly affect a transportation facility, and the TPR does not apply, where the record demonstrates that the decision does not change a functional classification or any standards relating to functional classifications and traffic levels would not be increased.

Sanders v. Yamhill County, 34 Or LUBA 69 (1998).

- Plan map and zoning amendments that significantly affect a transportation facility must be consistent with the Transportation Planning Rule (TPR). Therefore findings must address Goal 12 and the TPR as they apply to all access to the subject property

unless the local government restricts access by imposing conditions of approval.

Melton v. City of Cottage Grove, 30 Or LUBA 331 (1996).

- When a city finds a proposed development will not result in levels of travel or access inconsistent with the existing functional classification, the development does not "significantly affect a transportation facility" under OAR 660-12-060(2)(c), and OAR 660-12-060(1) does not apply.

- When, prior to an appeal to LUBA, a city satisfies the coordination requirement of OAR 660-12-060(3) by consulting with the county, and the development proposal does not change between LUBA's remand order and a second appeal, the city is not required to consult with the county again during the proceedings on remand. *Melton v. City of Cottage Grove*, 30 Or LUBA 331 (1996).

Marcott Holdings, Inc. v. City of Tigard, 30 Or LUBA 101 (1995).

- Where evidence identified in the city's brief clearly supports a finding that a proposed development will not significantly affect a transportation facility, LUBA will affirm that part of the city's decision under ORS 197.835(9), notwithstanding the city's failure to make the required finding.

Leathers v. Washington County, 29 Or LUBA 343 (1995).

- Where petitioners claim a local government decision authorizing improvements to a public right-of-way violates the Transportation Planning Rule (TPR), but fail to establish how the TPR applies to the challenged decision or how the proposed road improvements will frustrate compliance with the TPR, LUBA will deny petitioners' assignment of error.

Common Ground v. City of Gresham, 29 Or LUBA 164 (1995).

- OAR 660-12-045(4)(b) establishes minimum standards for preferential access to transit that local government regulations must meet, not maximum limitations beyond which local government regulation is prohibited.

- The requirements of OAR 660-12-045(4)(b)(B) and (C), for "clustering" buildings around transit stops and locating buildings "as close as possible" to transit stops, are not satisfied by requiring that

buildings on designated transit streets abut sidewalks and that no more than 50 percent of the frontage on transit streets be occupied by auto parking and maneuvering areas. Local government prohibitions against auto parking and maneuvering areas between a building and a transit street, and limitation of such areas to no more than 50 percent of the frontage along a transit street, are not inconsistent with or prohibited by OAR 660-12-045(4)(b).

- The requirements of OAR 660-12-045(3)(b) for facilities providing safe and convenient pedestrian and bicycle access are *minimum* requirements. Nothing in OAR 660-12-045(3)(b) or any other provision of the TPR prohibits local government adoption of architectural standards "to provide street safety and a comfortable pedestrian environment," even if they are not required by the TPR.

ONRC v. City of Seaside, 29 Or LUBA 39 (1995).

- In adopting a quasi-judicial comprehensive plan and land use regulation amendment, a local government is obligated either to demonstrate compliance with the Transportation Planning Rule (TPR) or, alternatively, establish that the TPR does not apply.

Opus Development Corp. v. City of Eugene, 28 Or LUBA 670 (1995).

- Where a comprehensive plan amendment adopts a map indicating a street may be considered to receive a "Green Street" classification in the future, and future application of the "Green Street" classification will itself require a plan amendment, petitioners' challenge to the plan amendment based on Goal 12 and the Transportation Planning Rule is premature.

Salem Golf Club v. City of Salem, 28 Or LUBA 561 (1995).

- Where a comprehensive plan map amendment to allow a proposed concrete batch plant will result in all aggregate and concrete trucks entering the subject property via a road that provides the sole access to certain existing dwellings, Goal 12 requires the local government to demonstrate the amendment will result in use of the road being safe and adequate.

Friends of Cedar Mill v. Washington County, 28 Or LUBA 477 (1995).

- Where a local government finds that a proposed road alignment is consistent with plan policies calling for a balanced transportation system designed to minimize energy impacts because it will shorten travel distance to a light rail station, that the facility will also

shorten travel distance to a major arterial does not, of itself, mean the plan policies are violated.

- Realigning a proposed minor arterial to run along an adjoining right of way does not "significantly affect a transportation facility" by changing "the functional classification of an existing or planned transportation facility," as those concepts are used in OAR 660-12-060(2).

- Where petitioner alleges a realigned minor arterial will in fact operate as a major arterial, but fails to challenge the local government's findings explaining why it believes the realigned roadway is properly classified as a minor arterial, petitioner provides no basis for reversal or remand.

Sensible Transportation v. Washington County, 28 Or LUBA 375 (1994).

- Nothing in the Transportation Planning Rule authorizes local governments to exempt any type of retail, office or institutional buildings from the building orientation and location requirements of OAR 660-12-045(4)(b).

- The building orientation and location requirements of OAR 660-12-045(4)(b) apply to new buildings located near transit stops, regardless of whether such buildings are located on a transit street.

- The OAR 660-12-045(4)(b)(C) requirement that certain new buildings be located "as close as possible" to transit stops is not satisfied by code setback limitations that (1) allow a new building on a small lot fronting on a transit street to be situated 100 feet away from the transit street, or (2) require only that half of a new building on a large lot fronting on a transit street be located on the front half of such lot.

Melton v. City of Cottage Grove, 28 Or LUBA 1 (1994).

- Where the deadlines established by OAR 660-12-055(1) and (2) for adoption of regional and local transportation system plans (TSPs) have not yet passed, and the local government has not yet adopted a TSP, the requirements of OAR 660-12-045(2) and (3) for regulations implementing TSPs are inapplicable to a decision amending the local code.

- That an amendment to an acknowledged local code may result in decreasing the level of service at an interchange does not, of itself, mean the amendment "significantly affects a transportation facility" under OAR 660-12-060(2).

- That the record shows a code amendment will affect a site that has direct access onto a particular road is a sufficient basis for requiring the local government's determination under OAR 660-12-060(2)(c), that the amendment does not allow land uses resulting in "levels of travel or access * * * inconsistent with the functional classification of a transportation facility," to include consideration of impacts on that road.

- The coordination requirement of OAR 660-12-060(3) should be interpreted the same as the coordination provision in Goal 2, which requires the jurisdiction developing plan or land use regulation provisions (1) to exchange information with other affected governmental units; and (2) to consider and accommodate the needs of such governmental units as much as possible in formulating or revising the plan or regulations.

1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372 (1994).

- OAR 660-12-060(1) is applicable to comprehensive plan amendments which significantly affect a transportation facility. Compliance with this rule provision must be addressed when a UGB amendment is adopted; it cannot be deferred to future annexation decisions within the UGB expansion area.

- OAR 660-12-060(4) prohibits using the existence of transportation facilities as a basis for approving (1) exceptions to the requirements of OAR 660-12-065, adopted under OAR 660-12-070; or (2) exceptions to statewide planning goals, adopted under OAR 660-04-022 (reasons exceptions) or OAR 660-04-028 (committed exceptions). OAR 660-12-060(4) does not apply to an exception for a change to an established UGB, adopted under OAR 660-04-010(1)(c)(B).

ODOT v. Clackamas County, 27 Or LUBA 141 (1994).

- A local government can show an amendment to its acknowledged comprehensive plan and zoning maps complies with Goal 12 (Transportation) by establishing either (1) there is a safe and adequate transportation system to serve development under the proposed map designations, or (2) development of the property under the proposed designations will not create greater or different transportation demands and impacts than development under the existing, acknowledged designations.

Federal and Oregon "Takings" Cases

Palazzolo v. Rhode Island, 121 S.Ct. 2448 (2001).

- Court applied the Penn Central test for regulatory takings which looks at 3 factors to determine if there is a regulatory taking.
- The first factor is the economic effect of the regulation on the landowner.
- The second factor is the extent to which the regulation interferes with reasonable expectation back expectations.
- The third factor is the character of the governmental act.
- The majority of the court stated that justice and fairness are the purposes of the takings clause.
- Questions remain as to whether when looking at a taking claims the court will look at the parcel as a whole to determine loss and use or whether it will look at the section of the property specifically at issue.

McClure v. City of Springfield, 175 Or App 425 (2001).

- Affirms LUBA's decision that certain exactions imposed by the city did not meet the Dolan test.
- Found that for some exactions there was an absence of findings explaining how the proposed exactions furthered the governmental interest and were proportional to the effects of the proposes partitioning.
- Found that for one exaction the city properly addressed the essential nexus test of Dolan through a conflict point study provided by the city's traffic engineer. This study was a "quantified description" of the safety effects of the proposed project.
- Denied the McClures challenge that a highly detailed and precise explanation of each effect and an equally highly detailed and precise correlation between the effects and the exactions was required. The Court reminded the McClures that Dolan specifically stated that no precise mathematical calculation is required.

Clark v. City of Albany, 138 Or App 293 (1995).

- Extends the *Dolan* rough proportionality test so that it may apply where developers retain title to the land they are required to improve and make available to the public

- Traffic regulations are not exactions and therefore exempt from *Dolan* analysis.

Dolan v. City of Tigard, 512 US 374 (1994).

- Expands the test developed in *Nollan v. California Coastal Commission* 483 US 825 (1987) to a two part test.

- Court's first task is to determine if there is some nexus between the development and the exaction.

- The second task is to determine whether there are the required degrees of connection between the two.

- The degree of connection is "rough proportionality."

- The court required that there be individualized findings as to the degree of connection. Although there does not need to be "precise mathematical calculation," the fact finder "must make some effort to quantify its findings."
- *Dolan* added the second step of the analysis because it was not needed in *Nollan*. In *Nollan*, the court found there was no nexus between the development and the exaction so it did not proceed to the second step.

- For application at the state level see, *McClure v. City of Springfield*, *Clark v. City of Alba*ny. For application and changes to this analysis at the federal level see *Palazzolo v. Rhode Island*.