

To: Metropolitan Policy Committee

From: Stephen Vorhes, Assistant Lane County Counsel
Emily Jerome, Eugene City Attorney
Meg Kieran, Springfield City Attorney

Date: February 5, 2004

Re: **TPR – Integrated Land Use and Transportation Plan Requirements**

Introduction

We understand the Metropolitan Policy Committee (“MPC”) took action at its January 8, 2004 meeting to request a legal opinion on the requirements for an “integrated land use and transportation plan.” In certain circumstances, such a plan is required by the administrative rules implementing Statewide Planning Goal 12. Your question requires analysis of Goal 12 and the Transportation Planning Rule (“TPR”) in OAR 660-012-0000 through 660-012-0070. It also requires analysis of the current adopted and acknowledged version of TransPlan along with the findings that the Oregon Land Conservation and Development Commission (“LCDC”) made when it supported the most recent action on the TransPlan update. This opinion provides much of our analysis and our conclusion.

Question: Does the Transportation Planning Rule (“TPR”) require adoption of an “integrated land use and transportation plan” by Lane County and the cities of Eugene and Springfield in coordination with LCOG, the Metropolitan Planning Organization (“MPO”) for the Eugene-Springfield metropolitan area?

Answer: Although it is not without doubt, we believe that the TPR does not require an “integrated land use and transportation plan.” Our conclusion is based upon the fact that the Eugene-Springfield metropolitan area has alternative standards established and approved pursuant to the TPR and upon the fact that the regional transportation system plan (“TSP”), also known as TransPlan, with those alternative standards is not expected to result in an increase in vehicle miles of travel per capita (“VMT”).

Discussion

Petitioners in the LUBA appeal of the West Eugene Parkway (“WEP”) actions argued that the local governments needed to provide findings showing that the challenged actions were consistent with TransPlan policies implementing OAR 660-012-0035(5)(c)(D). In the remand proceedings, the local governments clarified that TransPlan did not have such policies and that the local governments were not required to have such policies when the current version of TransPlan was adopted in 2001. Though the remand did not necessitate that the local governments address the question as part of the WEP remand, that remand has raised the question of whether the local governments will be required to adopt such policies.

The principle applicable TPR provisions are OAR 660-012-055(1)(a) and 660-012-0035(5)(c), which read as follows:

OAR 660-012-0055(1)(a)

“(a) If by May 8, 2000, a Metropolitan Planning Organization (MPO) has not adopted a regional transportation system plan that meets the VMT reduction standard in 0035(4) and the metropolitan area *does not have an approved alternative standard established pursuant to 0035(5)*, then the cities and counties within the metropolitan area shall prepare and adopt an integrated land use and transportation plan as outlined in 0035(5)(c)(A)–(E). Such a plan shall be prepared in coordination with the MPO and shall be adopted within three years[.]” (Emphasis added.)

OAR 660-012-0035(5)(c):

“(5) The Commission may authorize metropolitan areas to use alternative standards in place of the VMT reduction standard in 0035(4) to demonstrate progress towards achieving reduced automobile reliance as provided for in this section:

“* * * *

“(c) If a plan using an alternative standard, approved pursuant to this rule, *is expected to result in an increase in VMT per capita*, then the cities and counties in the metropolitan area shall prepare and adopt an integrated land use and transportation system plan including the elements listed in (A) – (E) below. Such a plan shall be prepared in coordination with the MPO and shall be adopted within three years of the approval of the alternative standard[.]” (Emphasis added.)

Court Interpretations

Neither LUBA nor the Courts have addressed the precise question you have asked us to address. However, in response to the Petitioners’ arguments, LUBA made the following observation when remanding the local government actions approving modifications to the WEP:

“OAR 660-012-0035(5)(c) sets out detailed requirements for ‘an integrated land use and transportation plan,’ * * * .

“We have some question whether [the state’s administrative rules] require adoption of the plan described in OAR 660-012-0035(5)(c), since respondents apparently have an approved alternative VMT reduction standard.” *Friends of Eugene v. City of Eugene*, 44 Or LUBA 239, 268-269 (2003).

LCDC

When LCDC approved the alternative standards for the metropolitan area under OAR 660-012-0035(5), it imposed certain conditions and also made certain “recommendations.” Based on the assumption that there is a requirement for an integrated land use and transportation plan, LCDC recommended that the local governments implement a schedule for meeting the requirements of an “integrated land use and transportation plan.” TransPlan, Appendix G: LCDC Order Approving Alternative Plan Performance Measures. However, LCDC did not make this a condition of approval. The adoption of TransPlan by the local governments was not appealed and TransPlan remains in compliance with Statewide Goal 12 and the TPR.

TransPlan

The acknowledged TransPlan refers to some requirements of OAR 660-012-0035(5)(c) in Chapter 3, Part Four: Planning and Program Actions. That section of TransPlan specifically provides that the “Planning and Program Actions represent a range of regionally significant planning, administrative, and support actions that might be used to implement *TransPlan* policies. Local jurisdictions will use their discretion to evaluate and prioritize Planning and Program Action implementation. The Planning and Program Actions are not adopted, meaning they are not binding or limiting to any implementing jurisdiction.” TransPlan, Chapter 3, Page 76 (December 2001).

Chapter 3, Part Four of TransPlan contains a listing of Land Use Planning and Program Actions that includes some actions related to the TPR provisions for an “integrated land use and transportation plan.” In a subsection entitled “Nodal Development Implementation Schedule,” a reference is made to the LCDC recommendation discussed above. TransPlan, Chapter 3, Pages 79-80 (December 2001). This part of TransPlan then sets out elements of OAR 660-012-0035(5)(c). It asserts that portions of those elements are already addressed by components of TransPlan and that other elements either are or will be addressed in subsequent implementation of the nodal development strategy.

While it is unclear what elements of the TPR are addressed by what components of TransPlan, there are policies that appear to satisfy some requirements of an integrated land use and transportation plan (addressing transportation demand management and public transit). There does not appear to be policies in TransPlan that directly address other requirements for such a plan (e.g. OAR 660-012-0035(5)(c)(D)). A reference to such policies is included in the implementation schedule that provides a “September 2004” date for their development.

This language in TransPlan has been the focus of debate over the TPR requirements for an “integrated land use and transportation plan.” Some concerns have also been raised around the transportation demand management and transit plans. However, as stated above, the provisions in this part of TransPlan are not mandatory.

State Law

State law does not appear to require that TransPlan contain policies that implement OAR 660-012-0035(5)(c)(A)-(E). As stated in the rules quoted above, there appear to be two circumstantial categories in which an area must adopt policies that implement OAR 660-012-0035(5)(c)(A)-(E):

- 1) if the MPO has not adopted a regional transportation system plan that meets the VMT reduction standard in 0035(4) and the metropolitan area does not have an approved alternative standard established pursuant to OAR 660-012-0035(5) [OAR 660-012-0055(1)(a)]; or
- 2) if the MPO has adopted an alternative VMT standard that is “expected to result in an increase in VMT per capita.” [OAR 660-012-0035(5)(c)].

Neither of the above circumstances exists for the TransPlan jurisdictions. TransPlan is a regional transportation system plan that includes an approved alternative VMT reduction standard established pursuant to OAR 660-012-0055(1)(a). Although TransPlan was adopted after May 8, 2000, LCDC did approve an alternative standard and did not make development of an “integrated land use and transportation plan” a condition of that approval. Even the “recommendation” to develop a schedule did not express any timeline for the action and the schedule included in TransPlan is not mandatory or binding.

Even if the May 8, 2000 deadline did apply, OAR 660-012-0055(1)(a) only sends a government on to the next step. That step is set out in OAR 660-012-0035(5)(c) which, by its express terms, seems to eliminate the need for an “integrated land use and transportation plan” if TransPlan’s alternative VMT reduction standard is not expected to result in an increase in VMT per capita. Since TransPlan’s alternative standard is not expected to result in an increase in VMT per capita it is not required to include the OAR 660-012-0035(5)(c)(A)-(E) policies under the second category, either. Taken even further, if the provisions of the TPR *should have* required an “integrated land use and transportation plan,” the LCDC actions on TransPlan did not require inclusion of those policies as part of the alternative standard approval.

Conclusion

The local governments have an approved alternative VMT reduction standard established pursuant to OAR 660-012-0035(5). Therefore, TransPlan is not required by OAR 660-012-0055(1)(a) to include policies addressing OAR 660-012-0035(5)(c). Further, the TransPlan provisions discussed above show that the adopted alternative standard is not “expected to result in an increase in VMT per capita.” Therefore, TransPlan is not required by the express language of OAR 660-012-0035(5)(c) to include policies addressing OAR 660-012-0035(5)(c)(A)-(E) even if OAR 660-012-0055(1)(a) could be interpreted to require actions addressing OAR 660-012-0035(5)(c). Neither the TPR nor TransPlan compel a different conclusion. Expressions of interest in having the local governments develop an “integrated land use and transportation plan” by both DLCD and TransPlan itself do not make those TPR requirements applicable to present or future action on TransPlan.