



October 30, 2007

To: Metropolitan Policy Committee
From: Paul Thompson
Subject: Item 4.b: Adopt 2031 Regional Transportation Plan (RTP)

Action Recommended: Approve Resolution 2007-09 adopting the Central Lane Metropolitan Planning Organization 2007-2031 Regional Transportation Plan.

Background

The Central Lane Metropolitan Planning Organization's (MPO) Regional Transportation Plan (RTP) was last adopted in December, 2004. The RTP provides the policy and planning framework for long-term regional transportation planning and contains the financially-constrained long-term transportation priorities over a twenty-plus-year planning horizon. Under Federal law, the RTP must be updated at least every four years, and must contain at least a 20-year planning horizon.

The current update of the RTP extends the planning horizon to 2031, updating the Roadway, Transit and Bicycle/Pedestrian project lists, financial forecasts and other elements.

In March 2007, MPC reviewed the draft RTP financially constrained and illustrative project lists for all of the Oregon Department of Transportation (ODOT) projects contained in the RTP. At that time, MPC provided input on the ODOT project lists, which were incorporated into the draft lists and presented again to MPC in April.

At the April 2007 MPC meeting, MPC discussed the RTP's updated 2031 plan horizon in light of local plan horizons. As was discussed at that and subsequent meetings, the 2031 RTP reflects anticipated growth in the MPO area through 2031 under current planning assumptions, and, as local policy and planning direction is updated beyond the current local plan horizons, subsequent RTP updates will reflect those new directions.

At the June 2007 MPC meeting, all of the draft 2031 RTP project lists were presented for review. This review included a summary of all of the new, changed and deleted projects since the 2005 RTP. In addition, at the June meeting the RTP environmental consultation materials were presented for review.

The August 2007 MPC meeting included a review of the complete Preliminary Draft RTP.

The September 2007 MPC meeting presented the Final Draft 2031 RTP and included a public hearing on the Final Draft at which two citizens testified. MPC engaged in extensive discussion of the Final Draft, continued the public hearing to the October 11 MPC meeting and extended the public comment period through November 5, 2007.

The October 2007 MPC meeting included a second public hearing on the Final Draft 2031 RTP, at which five citizens testified. Written citizen comments were also distributed at that meeting. MPC continued discussion of the Final Draft RTP.

Subsequent to the October MPC meeting, two additional written comments have been submitted, one from Robert Cortright of the Oregon Department of Land Conservation and Development (DLCDD), and one from Ed Moore, ODOT Region 2, Area 5 Region Planner. Both of these written submissions are included as part of Attachment 2 to this memo.

Discussion

The Final Draft 2031 Regional Transportation Plan, included with this memo as Exhibit A to Attachment 1, fully meets all federal U.S. Department of Transportation requirements and is ready to be adopted as the Central Lane MPO's SAFETEA-LU compliant long range transportation plan.

The Final Draft RTP included as Exhibit A is unchanged from the Final Draft included in the September 2007 MPC packet, with the exception of the updated/expanded RTP Appendix C (List of Supporting Documents), which was included in the October 2007 MPC packet. The Final Draft RTP has been reviewed by staff from all of the MPO member jurisdictions, and the MPO has consulted with the Federal Highway Administration (FHWA) on the readiness of the RTP update for adoption. FHWA has indicated that the MPO's planning processes, and the resulting Final Draft RTP, have met all federal requirements and are compliant with the provisions of SAFETEA-LU (the current governing federal transportation law), and that the Final Draft RTP is thus ready for adoption.

Specifically, the MPO has demonstrated that the Final Draft RTP, among other things:

- Establishes a new long range MPO transportation planning horizon of at least 20 years
- Contains projects identified in state and local plans, as well as through the MPO planning process, as necessary to serve the transportation needs of the existing community and the growth anticipated over the planning horizon
- Was developed as part of a coordinated regional planning effort involving the local and state jurisdictions
- Is based "on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity" (U.S. Code of Federal Regulations: 23 CFR 450.322(e))

- “Includes a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities . . . developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.” (U.S. Code of Federal Regulations: 23 CFR 450.322 (f)(7))
- Utilized a public involvement process that met or exceeded all of the requirements of the MPO’s adopted Public Participation Plan

While the above is not a comprehensive list of the federal requirements met by the development, and pending adoption, of the 2031 RTP, it includes a significant subset of the considerations that the U.S. Department of Transportation takes into account when considering an MPO’s planning processes compliance with SAFETEA-LU.

Several of the public comments on the draft RTP submitted to date have questioned whether the MPO process, and the resulting draft RTP, have been consistent with, or *complied* with, one state regulation or another (including Oregon’s Goal 1 and Goal 6, the Oregon Transportation Planning Rule, and more). It must, however, be noted that the federal standard the MPO must meet is one of “considering” and “consistency.” In consultation with FHWA, this standard has been expanded upon in the following way:

- The MPO’s processes and resulting products must include consideration of “the latest available” adopted state and local information, and must be consistent with adopted state and local regulations.
- With regards to “Consideration,” FHWA has stated that “consideration” does not necessarily predetermine an outcome – that the MPO/local decisions are not under scrutiny by FHWA, merely the process used to arrive at those decisions, and it is that *process* that must consider the adopted state and local information.
- Similarly, “consistent with” does not mean “the same as.” Furthermore, for the MPO’s processes and products to be consistent with adopted state and local regulations, plans, etc. does not mean that the MPO must *apply* or fulfill those regulations. The MPO does not apply the Oregon land use regulations in its processes or resulting products, but it must not do anything that is *inconsistent* with those regulations. This is the standard that must be met, the MPO must not conduct a process or produce a product that is in any way inconsistent with adopted state, regional or local guidance.

The written comment submitted by Robert Cortright of the DLCD dated October 26, 2007 (included as part of Attachment 2) raises the following specific points, which are individually addressed here:

- “Under federal and state law, as well as the region’s adopted TSP, the RTP update is to be used simultaneously as the process to guide update of local plans.”
- and-
- “Procedurally, we are concerned that the proposed plan has not been coordinated with a scheduled update of the region’s transportation system plan – TransPlan – as required by TransPlan itself and the Transportation Planning Rule (TPR). TransPlan and the Transportation Planning Rule (TPR) anticipate

that the process used to update the CLMPO plan will be simultaneously used to update TransPlan.”

Nothing in federal law in any way addresses the Regional Transportation Plan, nor the process used to develop it, as the *process* to guide an update of local plans. While an adopted RTP may indeed provide guidance to the development of local plans, it is not the MPO’s *process* that should be guiding updates of local plans, much less is it the case that “under federal . . . law . . . the RTP update is to be used simultaneously as the process to guide update [sic] of local plans.”

State law (the TPR) is even more explicit, and does not “require” that the RTP and TSP update processes should be conducted “simultaneously.” The attachment included with Mr. Cortright’s letter correctly cites the TPR:

“TPR requirements are set forth in OAR 660-012-0016:

‘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 coordinated process that complies with the applicable requirements of federal law and this division.’(emphasis in Mr. Cortright’s original attachment)

Setting a standard of “insofar as possible” is not establishing a “requirement.” Given the MPC direction to differentiate between the federal RTP and the Eugene-Springfield-Lane County TSP, the diversity of jurisdictions and TSPs within the MPO area, and other practical considerations such as Oregon House Bill 3337, a single coordinated process is not feasible within the Central Lane MPO boundary.

- "Federal law and regulations include . . . requirements to consider and reflect adopted state and local plans . . . "

As stated above, FHWA has stated the MPO is fully compliant with the federal requirements to consider and be consistent with adopted state and local plans. (*see two bullet points down for more on this*)

- "TransPlan requires reporting and response to performance measures at plan updates."

This applies to TransPlan, the Eugene-Springfield-Lane County local Transportation System Plan (TSP), and does not apply to the federal RTP. The May 8, 2001 Land Conservation and Development Commission (LCDC) Order 01-LCDC-024 “Approving Alternative Plan Performance Measures” states as a conclusion of law that “Based on its review, the Commission approved the alternative standard proposed by the Eugene-

Springfield metropolitan area with the following conditions, that are to be complied with by incorporation of the approved standard into TransPlan when it is adopted locally . . . ” and further stated that “the Commission also adopted the following recommendations to provide guidance to Eugene-Springfield Metropolitan area local governments as they prepare and implement the regional transportation system plan, TransPlan . . . ”

The Oregon Land Use Board of Appeals (LUBA) July 27, 2005 Final Order No. 2004-223 stated that “In 2001, the city councils of Eugene and Springfield, the Lane Transit District Board and the Lane County Board of Commissioners adopted TransPlan to serve as the state-mandated Transportation System Plan (TSP), and the MPO adopted the same document to serve as the federally-mandated Regional Transportation Plan (RTP).” This clearly differentiates between the two documents, and establishes that the plan that was “adopted locally” is the “state-mandated Transportation System Plan (TSP)” and not the “federally-mandated Regional Transportation Plan (RTP)” that is currently the focus of discussion. Further differentiating the two documents is the fact that since 2001/2002, the federal RTP has become a completely separate document from the local TSP/TransPlan.

The LUBA Order additionally states that “In 1992 the Oregon Transportation Commission adopted the Oregon Highway Plan and in 1995 the Land Conservation and Development Commission (LCD) adopted the Transportation Planning Rule (TPR), OAR 660-012 et seq., to implement Goal 12 of the statewide planning goals. Both of these state actions required additional transportation planning and coordination by local jurisdictions to meet state planning requirements, different than the planning and coordination actions already required by federal law.” (emphasis added)

- “Virtually identical provisions of TransPlan and the adopted RTP establish the performance measures and benchmarks . . . (Chapter 4 Plan Implementation and Monitoring)”

While Part Three of Chapter 4 in the Preliminary Draft 2031 RTP addressed the TPR Alternative Performance Measures, upon direction received from MPC at their August, 2007 meeting, Part Three of Chapter 4 was removed from the Final Draft 2031 RTP, along with Appendices E and F, which also addressed the TPR Alternative Performance Measures. This direction was given in recognition of the fact that responsibility for addressing the state TPR requirements falls to the local jurisdictions in the development and updating of their TSPs, and was not appropriately addressed within the federal RTP.

- Finally, Mr. Cortright cites the U.S. Code of Federal Regulations (CFR) in both his letter and the attachment to the letter.
 - “They [performance measures] are also significant for federal purposes because the MPO plan is required to “reflect, to the extent that they exist” the area’s comprehensive long-range land use plan and metropolitan development objectives...” (CFR 450.322 (9))”

-and-

- “Federal law and regulations include comparable requirements to consider and reflect adopted state and local plans:
 - 450.322 Metropolitan transportation planning process: Transportation plan.
 - (b) In addition, the plan shall:...
 - (9) Reflect, to the extent that they exist, consideration of: the area’s comprehensive long-range land use plan and metropolitan development objectives; national, State, and local housing goals and strategies, community development and employment plans and strategies, and environmental resource plans; local, State, and national goals and objectives such as linking low income households with employment opportunities; and the area’s overall social, economic, environmental, and energy conservation goals and objectives”

Both of these instances incorrectly cite the federal code. As noted earlier in this memo, the current 23 CFR 450.322 (e) states that:

“In updating the transportation plan, the MPO shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity.”

(See <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=7f5985b5d2fe301f3fd5a6f537e6bfb8&rqn=div5&view=text&node=23:1.0.1.5.11&idno=23#23:1.0.1.5.11.3.1.12>, the U.S. Government Printing Office official Electronic Code of Federal Regulations web site.)

There are important distinctions between the old and current codes. The FHWA has stated that the MPO has fully complied with the current requirements under 23 CFR 450.322 (e) in the development of the 2031 RTP.

The memo submitted by Ed Moore (ODOT) dated October 25, 2007 (included as part of Attachment 2) requests the inclusion of “disclaimer” language in the RTP. The proposed disclaimer language presents several problems, such that FHWA has stated that if the proposed language is included in the adopted RTP, FHWA will not be able to approve the Air Quality Conformity Determination (AQCD) for the RTP, therefore leaving the MPO without a conformed RTP or MTIP. (Procedurally, it should be noted here that the only formal adopting/approval action on the RTP is taken by the MPO/MPC. The RTP is then provided to the state and to the U.S. DOT for information

purposes, but there is no further formal federal action on the RTP itself. However, the U.S. DOT *does* have formal approval authority over the AQCD for the RTP, and that formal FHWA AQCD approval is required to have an RTP in effect.

Specifically, ODOT's proposed disclaimer language states in part:

- “Certified for Federal Planning Purposes and Compliance with SAFETEA-LU – Shall not be used or relied upon for the purpose of determining consistency with local and state land use and transportation plans, rules, regulations or programs.”

FHWA has stated that the RTP can not, by definition, at once comply with SAFETEA-LU yet not be determined to be consistent with local and state plans, rules, regulations or programs (which is one of many SAFETEA-LU requirements). Furthermore, FHWA has stated that they find that the Central Lane MPO planning processes, and the resulting Final Draft 2031 RTP are consistent in all elements required by the federal regulations and SAFETEA-LU.

- “The 2031 RTP shall not be relied upon for land use decision making or support of land use decisions, nor shall it be used to find consistency with the Transportation Planning Rule (OAR 660-012), the newly adopted Oregon Transportation Plan, or the Oregon Highway Plan.”

An RTP is not in itself a land use action or decision. However, State of Oregon laws do give some standing to an RTP when making other land use decisions. ODOT's proposed language would circumvent any case-by-case application of those laws, and set a precedent for all related actions under the 2031 RTP. Initial reaction by several of the local jurisdictions' Planning Directors is that this would be unacceptable – in effect signing away the ability to rely on the RTP for land use decisions (as allowed in Oregon law) in any and all cases, when it should be considered on a case-by-case basis.

- “Until such a time as a comprehensive update of the TransPlan . . . constrained projects list that is consistent with and based on a legally adopted 20-year land use forecast is fully adopted and acknowledged, ODOT will determine MPO area project compliance with OAR 660-012-0060(4) on a case-by-case basis.”

Similar to the above concern, this makes a blanket statement about how ODOT will treat all decisions.

Furthermore, this statement is referring to a requirement of TransPlan and, as such, would be mis-placed in the RTP.

Several public comments have suggested that the public involvement process for the 2031 update of the RTP has been inadequate. As stated above, the MPO has fully met all federal requirements in this area as contained in the MPO's adopted Public Participation Plan (PPP).

Specifically, the public participation process for the 2031 update of the RTP has included all of the following elements, exceeding the requirements of the PPP:

- A public comment period (which, in this case, was open more than 93 days)
- MPC public hearing (2, in this case)
- Legal Notice (July 13, 2007)
- Newspaper Display Ad (July 14, 2007)
- Open House (July 30, 2007)
- Media Notices (multiple notices – not required by PPP)
- Notice to Interested Parties (more than 800 addressees, multiple notices)
- Web Notices and Materials Postings (multiple postings over more than a year)
- Interior Bus Poster (in English and Spanish, roughly entire month of September)

Another public comment submitted by Rob Zako specifically called for the removal of five projects from the proposed financially constrained roadway projects list in the RTP. While this specific comment was addressed in the cover memo for the October MPC meeting (available here <http://www.lcog.org/meetings/mpc/1007/MPC4b-CoverMemo-FinalDraftRTP.pdf>), an additional response with further information is summarized in the table on the following page.

RTP Project	Project	Category/Description	RTP and TransPlan (Eugene/Springfield TSP)				RTP Only	
			1986 (May)	2001 (Dec)	2002 (July)	2004 (Dec)		
27	Eugene-Springfield Hwy (SR 126) @ Main Street	Construct Interchange	#306, long range Level of Service; Safety	#27 Capital Investment Actions: Beyond 20 years	#27 Capital Investment Actions: Beyond 20 years	#27 Capital Investment Actions: Beyond 20 years	#27 Illustrative	
30	Eugene-Springfield Hwy (SR 126) @ 52nd Street	Construct Interchange	#305, long range Level of Service; Safety	#30 Capital Investment Actions: Beyond 20 years	#30 Capital Investment Actions: Beyond 20 years	#30 Capital Investment Actions: Beyond 20 years	#30 Illustrative	
506	North Eugene Transportation Improvements: River Rd to Delta Hwy	Improve capacity across the Willametter River within North Eugene Area		#506 20 year Capital Investment Actions	#506 Capital Investment Actions: Beyond 20 years	#506 Capital Investment Actions: Beyond 20 years	#506 Illustrative	
333	W. 11th Avenue: Greenhill Rd to Terry St	Upgrade to 5-lane urban facility	#320, long range Improve Access, Safety, Urban Standards	#333 20 year Capital Investment Actions	#333 Capital Investment Actions: Beyond 20 years	#333 Capital Investment Actions: Beyond 20 years	#333 Illustrative	
			Coburg TSP					
				1999 (Sept)				
1003	I-5 @ City of Coburg (Phase 1)	Interchange improvements		#1 Medium Range			#1003 Illustrative; amended to Financially Constrained Aug '05	

The table demonstrates that all five of the projects have been in a local TSP since 1986 (three projects), 1999 (one project) or 2001 (one project). Similarly, three of the five projects have been in the RTP since 1986, the other two were added to the RTP in 2001. It is important to clarify the difference noted in the table between the designations of “20 Year Capital Investment Actions” (now referred to as the financially constrained project list) and “Capital Investment Actions: Beyond 20 Years” (now referred to as the illustrative project list). All of the projects in the RTP have been identified as needed to serve the planning geography over the planning horizon, either due to existing need, or need resulting from future growth, or both. The critical distinction in the RTP between the two designations is not one of planning or need, it is merely one of financial constraint. The U.S. Code of Federal Regulations refers to illustrative projects as “additional projects that would be included in the adopted [constrained] transportation plan if additional resources beyond those identified in the financial plan were to become available.” (23 CFR 450.322 (10) (vii)) Again, all of the projects under either designation/list have been planned for and identified as needed to the same extent as required under federal regulations for inclusion in the MPO’s RTP. It is only a matter of a financial distinction between the two.

In response to the sum of the public comments received on the draft RTP, and at the request of the MPO to clarify the federal deadlines and requirements facing the MPO, and the implications of not adopting the 2031 RTP, FHWA has provided the following written response:

“For conformity purposes your clocks start with action taken on “new” documents. . . in this case when you first adopted the 2025 RTP, your RTP conformity clock started. If you do another conformity determination on the 2025 RTP, your clock does not change. As you also point out, the 2025 RTP no longer has the minimum 20-year horizon.

If LCOG does not adopt the SAFETEA-LU compliant 2031 RTP, LCOG will not have an underlying SAFETEA-LU compliant process. This could greatly affect your area’s ability to obligate funds for federal-aid projects. If LCOG does not adopt a 2008-2011 TIP (based upon your 2031 SAFETEA-LU compliant plan), projects in your area would have to be excluded from the USDOT 2008-2011 STIP approval. Once the 2008-2011 STIP is approved by USDOT, your area’s ability to obligate federal funds could be greatly diminished if you do not have a SAFETEA-LU compliant planning process and products (Plan and TIP) in place.

If the area suspects that you will not have a SAFETEA-LU compliant plan and TIP in place when the 2008-2011 STIP is approved, we strongly encourage that you coordinate closely with all affected parties, so that they understand the implications and possible project delays that may be associated with that decision.” (emphasis in original)

Based on this FHWA language, and extensive further discussions with FHWA and other sources, MPO staff has laid out the following points (this has been fully confirmed, point-by-point, with FHWA):

1. By doing nothing, the 2025 RTP will continue to Dec 13, 2008.
2. The issue of the mismatch between the state air quality conformity cycle and the federal cycle has not been resolved by U.S. DOT. Until confirmed otherwise, MPO staff strongly recommends recognizing the state cycle, requiring conformity by December 13, 2007. Without confirmation to the contrary, ignoring the state conformity rule requirement could lead to litigation.
3. A conformity determination made on the 2025 RTP without a trigger from a federal standpoint would not be recognized by U.S. DOT as resetting the conformity clock. An AQCD would still be required on a new plan prior to Dec 13, 2008.
4. Since the 2025 RTP is not SAFETEA-LU compliant, an AQCD can not be made on this plan. A new SAFETEA-LU compliant plan is required.
5. If the 2025 RTP remains in place, the MPO will not have an underlying SAFETEA-LU compliant process or a SAFETEA-LU compliant RTP.
6. U.S. DOT will not act until a request is made for federal action on a program or project within the area.
7. This means that no amendment could be made to the 2025 RTP that requires a federal decision on a NEPA review or air quality conformity determination. Removing the West Eugene Parkway would require such an AQCD. Thus, the 2025 RTP can only remain with the WEP in its constrained project list.
8. Since the 2025 RTP is not SAFETEA-LU compliant, the FY08-11 MTIP (adopted after July 1, 2007 – the SAFETEA-LU deadline for actions on TEA-21 plans/programs) cannot be based on the 2025 RTP. It was prepared using the 2031 RTP, and the FY08-11 MTIP cannot be amended to be consistent with the 2025 RTP due to the SAFETEA-LU deadline.
9. The FY08-11 MTIP could not therefore be added to the pending FY08-11 STIP. Thus projects in this area would be excluded from the 2008-2011 STIP approval by U.S. DOT.
10. This approval is fully expected by 2 December. At that time, the 2006-2009 STIP and the 2006-2009 MTIP are no longer in force. FY06-09 MTIP project phases that have not been authorized by FHWA/FTA at that time will be affected.
11. Without adoption of the SAFETEA-LU compliant RTP, the SAFETEA-LU compliant AQCD, and thus the ability to include the MPO's FY08-11 MTIP projects in the FY08-11 STIP, NO projects that are in the current FY06-09 MTIP and that have not yet been authorized can be carried forward into the FY08-11 STIP. Period.
12. Therefore, without the actions mentioned in the preceding item, the MPO would have NO projects in effect in either the MTIP or the STIP. Period.

Staff Recommendation

- The MPO's Transportation Planning Committee (TPC) voted 7-1 to recommend adoption of the 2031 RTP as attached. This vote followed extensive discussion of ODOT's proposal to include the additional "disclaimer" language in the RTP. The resulting vote was to recommend adoption of the RTP without the addition of the ODOT language – the single dissenting vote was cast by ODOT.

Action Requested

- Approve Resolution 2007-09 adopting the Central Lane Metropolitan Planning Organization 2007-2031 Regional Transportation Plan

Attachments:

Attachment 1: Resolution 2007-09

Exhibit A to Resolution 2007-09: Central Lane MPO Regional
Transportation Plan

Attachment 2: Comments received from July 30, 2007 through October 30, 2007
during RTP public comment period