BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JAMES JUST,
*Petitioner*,

vs.

CITY OF LEBANON,
*Respondent*,

and

MID-VALLEY HEALTHCARE,
*Intervenor-Respondent*.

LUBA No. 2003-106

FINAL OPINION
AND ORDER

Appeal from City of Lebanon.

James P. Just, Lebanon, filed the petition for review and argued on his own behalf.

No appearance by the City of Lebanon.

Edward F. Schultz and Andrew J. Bean, Albany, filed the response brief and Edward F. Schultz argued on behalf of intervenor-respondent. With them on the brief was Weatherford, Thompson, Cowgill, Black and Schultz, P.C.

HOLSTUN, Board Chair; BASSHAM, Board Member; DAVIES, Board Member, participated in the decision.

REMANDED 04/12/2005

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

Opinion by Holstun.

## NATURE OF THE DECISION

Petitioner appeals a city decision that annexes property and replaces county zoning with city zoning for that property.

## FACTS

The subject property includes 53 acres and is bounded on the east by Santiam Highway (Highway 20). Reeves Parkway adjoins the subject property on its north side and intersects with Highway 20 at the northeastern corner of the subject property. A short east-west section of Twin Oaks Drive is located at the southeast corner of the property and intersects with Highway 20. Prior to its annexation, the subject property was located at the northern edge of the City of Lebanon, outside the city limits but inside the city's urban growth boundary. Property within the unincorporated Urban Growth Area that lies outside existing city limits and inside the city's urban growth boundary is given a *city* comprehensive plan designation, but such property retains a *county* zoning designation until the property is annexed.

Prior to the disputed decision, the subject property was designated Special Development District by the City of Lebanon Comprehensive Plan (LCP).[1] Prior to its annexation by the city, the subject property was zoned Urban Growth Area-Urban Growth Management-10 (UGA-UGM-10) by Linn County.[2] According to documents in the record, the Special Development District is

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[1] If the copy of the LCP on file with LUBA includes a description of the Special Development District, we cannot find it.

[2] There are four UGA-UGM zoning districts, which are distinguished by minimum parcel size requirements that range from 2½ acres to 20 acres. Linn County Land Development Code (LCLD) 930.700 explains the purpose of the UGA-UGM zoning districts as follows:

> "(A) The [UGA–UGM] zoning districts are designated zoning district[s] within an urban growth area (UGA).
>
> "(B) The intention of the zoning district is to protect the UGA land for future urban density development.

implemented by a single city zoning district, the Mixed Use (MU) zoning district. Upon annexation, under City of Lebanon Zoning Ordinance (LZO) 3.050, annexed property is assigned one of the zoning classifications that is required by the existing LCP map designation. Record 82. Alternatively, if a different zoning is to be applied, the LCP map must first be amended so that the zoning and comprehensive plan designation will be consistent. In this case, the city simply approved the MU zoning that is dictated by the LCP map Special Development District designation when it approved the annexation. Record 82, 279.

**FIRST ASSIGNMENT OF ERROR**

Petitioner contends the city's decision inadequately addresses OAR Chapter 660 division 12, the transportation planning rule (TPR), and that the city erroneously determined that the TPR does not apply to the challenged decision. The key provisions of the TPR for purposes of this appeal are OAR 660-012-0060 and OAR 660-012-0055(4)(b). We discuss those rules before turning to the issues raised by petitioner's arguments and the city's and intervenor's response to those arguments.

**A. The TPR**

OAR 660-012-0060(1) requires that where an amendment "to functional plans, acknowledged comprehensive plans and land use regulations" will "significantly affect a transportation facility," one or more actions specified in the rule must be taken to ensure that the "identified function, capacity, and performance standards" of the facility are preserved.[3]

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"(C) UGA–UGM zoning allows limited low-density and moderate-scale uses until more intensive urban-scale land use activity occurs in conjunction with city annexation or delayed annexation.

"* * * * *."

[3] OAR 660-012-0060(1) provides:

"Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g.

The first question under OAR 660-012-0060(1) is whether the challenged decision is an amendment to a functional plan, a comprehensive plan or a land use regulation. The challenged decision does not amend a functional plan or an acknowledged comprehensive plan. However, the challenged decision does amend the city's zoning map, which is a land use regulation.[4] *Adams v. City of Medford*, 39 Or LUBA 464, 475 (2001). We reject intervenor's and the city's contrary argument later in this opinion.[5]

The next question under OAR 660-012-0060(1) is whether the city's zoning map amendment "significantly affects a transportation facility," within the meaning of OAR 660-012-0060(1). The analysis that is required to answer that question is set out at OAR 660-012-0060(2).[6] As relevant in this appeal, the zoning map amendment will significantly affect a

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level of service, volume to capacity ratio, etc.) of the facility. This shall be accomplished by either:

"(a) Limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility;

"(b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;

"(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or

"(d) Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided."

[4] ORS 197.015(11) provides the following definition:

"'Land use regulation' means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan."

[5] To avoid any misunderstanding on this point, we would likely agree with the city that if its decision only annexed the subject property and left its zoning unaffected, such a decision probably would not implicate the TPR. It is the application of city zoning in place of county zoning that requires the city to consider the TPR.

[6] OAR 660-012-0060(2) provides:

"A plan or land use regulation amendment significantly affects a transportation facility if it:

"(a) Changes the functional classification of an existing or planned transportation facility;

transportation facility if it will reduce the performance level of a transportation "facility below the minimum acceptable level identified in the TSP."

The City of Lebanon has not prepared a Transportation System Plan (TSP) as required by the TPR. OAR 660-012-0055(4)(b) provides:

> "Affected cities and counties that do not have acknowledged plans and land use regulations as provided in subsection (a) of this section, shall apply relevant sections of this rule to land use decisions and limited land use decisions until land use regulations complying with this amended rule have been adopted."

Petitioner argues that because the city has not adopted a TSP in accordance with the TPR, OAR 660-012-0055(4)(b) requires that the city apply the TPR directly in this case.

**B. Petitioner's Arguments**

During the proceedings below, petitioner took the position that OAR 660-012-0060 applies to the disputed zoning map amendment. Petitioner contends that the public works director's statements that Reeves Parkway and Highway 20 currently have capacity for the anticipated development of the property is not sufficient to demonstrate compliance with OAR 660-012-0060, which requires consideration of the effect the amendment will have on the capacity of affected transportation facilities throughout the planning period in the relevant TSP. Record 135. Petitioner presented the following additional argument:

> "No information is presented addressing the current performance of transportation facilities, including the Hwy 20/Reeves Parkway-Cemetery Rd. intersection; the Hwy 20/James Place intersection; the Hwy 20/Twin Oaks intersection; the Hwy 20/Main St.-Industrial Way intersection; the Hwy 20 Wheeler St. intersection; the intersections of Olive St. with Main, 2nd, 3rd, and 5th, and the intersections of

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> "(b) Changes standards implementing a functional classification system;
>
> "(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or
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> "(d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP."

Tangent-Morton St. with Main, 2nd, and 5th.[7] Projections of additional traffic resulting from allowed development are not provided, nor is performance of these facilities projected, compared to the applicable performance standards. No finding is made or can be made that the capacity of these transportation facilities will not be exceeded as a result of the allowed land uses. None of the actions required by OAR 660-012-0060(1)(a)-(d) have been proposed." *Id*.

Petitioner went on to argue that even if the anticipated improvements to Highway 20 and Reeves Parkway are constructed and would result in intersections along Highway 20 operating at acceptable levels of service, there is nothing in the city's decision that would preclude development of the subject property before those improvements are constructed.

**C. The City's Findings**

We set out the city's lengthy reasoning for why it believes the TPR either does not apply in this case or is satisfied if it does apply:

"Improvements planned for Reeves Parkway and Highway 20, abutting the subject property, will be able to accommodate the transportation demands from the annexation and the subsequent development. In July of 2002, the Oregon Department of Transportation ('ODOT') approved, and the City of Lebanon later signed, an agreement to make improvements to Highway 20 between Reeves Parkway [on the north side of the property] and the railroad tracks near Industrial Way.[8] * * * Highway 20 and Reeves Parkway are major roadways that abut the property to the east and north respectively. These improvements are slated to occur in 2006.

"The proposed project will include turn lanes, sidewalks, and highway shoulders suitable for bicycle use on both Highway 20 and Reeves Parkway. It also will improve potential traffic congestion along Highway 20 and Reeves Parkway and improve safety conditions, including safety for pedestrian and bicycle uses.

"* * * * *

[7] The Highway 20 intersections with James Place, Reeves Parkway-Cemetery Road, Twin Oaks and Main Street-Industrial Way, either adjoin or appear to be within approximately 500 feet of the subject property. The four Olive Street intersections appear to be approximately 1200 feet south of the subject property. The Highway 20/Wheeler Street intersection and the three Tangent-Morton Street intersections appear to be approximately 1500 feet south of the subject property.

[8] Industrial Way appears to be approximately 500 feet south of the subject property.

"The ODOT project will require Applicant to dedicate additional right of way along the west side of Highway 20 to allow room for improvements. Applicant has indicated a willingness to make such a dedication. ODOT has made it clear, via a letter that is in the record, that this annexation will not have a significant impact on Highway 20 capacity and that the improvement project will be adequate for any additional burden. In fact, ODOT states that the annexation will facilitate coordinated development of the subject property and the Highway 20 improvement project. ODOT's determination was specifically based on a review of applicant's specific development proposal.

"The City engineer submitted transportation information and testimony into the record. That evidence, submitted by a certified, qualified professional, shows that City streets will be adequate to meet increased demand. The evidence shows specific traffic projections for 5th Street and Reeves Parkway, which show peak traffic at well below capacity.[9] In addition, no consideration was given to the reduction in traffic on other burdened roads that may result form the location of this potential development and resulting services that may now be provided on the north side of the city.

"No evidence was submitted that contradicted the expert testimony and documentary evidence that was submitted into the record. * * *

"The state [TPR] does not apply to a project identified by ODOT, which shall occur in a manner pursuant to ODOT statutes. OAR 660-012-0050. The Highway 20 project is already being planned and takes into consideration the proposed annexation and potential development. Therefore, there are no issues for the City to determine with regard to state transportation as it [a]ffects this annexation, because any such issues have been addressed by ODOT.

"Further, the TPR must be addressed only if the City makes amendments to functional plans, its Comprehensive Plan, or land use regulations which significantly

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[9] The referenced evidence is a map that shows the subject property and Reeves Parkway, 5th Street and Highway 20 in the vicinity of the property. The map includes the following notations which we understand to estimate that each of the identified roads has sufficient existing capacity to accommodate expected traffic from the subject property with MU zoning, if it were developed today:

> "Santiam Highway * * * Capacity PM Peak Traffic = 1,400 * * * Existing 870 + Development = 98 = 968.
>
> "Reeves Parkway * * * Capacity PM Peak Traffic = 1,400 * * * Existing 30 + Development 96 = 126.
>
> "5th Street * * * Capacity PM Peak Traffic = 2,000 * * * Existing 20 + Development 196 = 216." Record 120.

affect a transportation facility. OAR 660-012-0060. Such amendments shall assure that the allowed land uses are consistent with identified function, capacity, and performance standards. This annexation is not making any amendments to the City's functional plans, Comprehensive Plan, or land use regulations. In addition, this annexation will have no significant effect on any transportation facility. There can be no such effect until there is an application for development permits. Nowhere do the administrative rules mention annexation as implicating the transportation planning rule. In fact, the TPR clearly encourages the type of mixed use, pedestrian friendly development shown in the [Applicant's] development plan. OAR 660-012-0060(5). Because the TPR dos not apply to this annexation, there is no purpose in setting conditions on the annexation that will ensure compliance with the rule, despite the unqualified urgings of [petitioner].

"Even were [petitioner] correct that the TPR must be addressed for an annexation, the expert testimony clearly indicates that the annexation of the subject property will have no significant effect on the community's traffic burden. Based on this evidence, no further analysis is required under the TPR. Taking the analysis of significant effect one step further, the City has repeatedly made clear that approval of any development on the subject property will be granted only upon finding at that time that transportation facilities are adequate or will be made adequate in a timely manner. Any allowed development must be consistent with the function, capacity and performance standards of the [a]ffected transportation facilities. Land use case law has made it clear that restricting development that will impact a transportation facility until the facility is improved is sufficient to ensure compliance with the TPR. Again, there can be no development on the property, even after annexation, until the impacts of the specific development are addressed." Record 11-13.

**D. Issues**

We now turn to each of the issues raised by petitioner, intervenor and the city.

**1. ODOT's Position that the TPR does not Apply**

In a March 11, 2003 letter, ODOT advised the city that because the proposed zoning map amendment would allow increased development density the amendment might significantly impact area transportation facilities and for that reason be subject to the TPR. ODOT advised the city that it should "require a traffic impact study to evaluate traffic generation and the potential impacts and mitigation measures needed for eventual development build-out of the site." Record 97. In a subsequent letter, dated March 17, 2003, ODOT stated:

"Subsequent to my March 11, 2003 letter, the City of Lebanon provided additional information regarding the zone designation associated with this annexation. Based

> on a re-evaluation of the information, we have determined that the Transportation Planning Rule reference in the previous letter does not apply to this situation. Please remove my previous letter from the record, and replace it with this letter." Record 85.

ODOT's March 17, 2003 letter does not explain what the cited "additional information" was or why it led ODOT to conclude that a land use regulation amendment that will undisputedly increase the traffic generation potential of the subject property is not subject to the TPR. We therefore have no way of knowing why ODOT changed its position. ODOT's change of position may go a long way toward explaining why the city has adopted the position that the TPR does not apply. However, we conclude below that under any plausible reading of the TPR, the city must at a minimum require that the applicant provide the traffic impact analysis to determine whether the additional traffic that the MU zoning may produce will "significantly affect a transportation facility," within the meaning of OAR 660-012-0060(1) and (2).

**2. OAR 660-012-0050**

Intervenor argues:

> "OAR 660-012-0050[(1)] specifically exempts projects identified by ODOT pursuant to [OAR] Chapter 731, Division 15, from the TPR because those projects must occur in the manner set forth in [OAR] Chapter 731. The March 17, 2003 letter from [ODOT] confirms that the TPR does not apply in this situation." Intervenor-Respondent's Brief 13-14.

The March 17, 2003 letter does not cite either OAR 660-012-0050(1) or OAR Chapter 731, Division 15. As we have already noted, the letter includes no explanation for ODOT's change in position concerning the applicability of the TPR. OAR Chapter 731, Division 15 is ODOT's state agency coordination rule; it does not exempt the city from showing that its annexation/rezoning decision is consistent with the TPR.[10] The improvements that ODOT plans to construct along

[10] OAR 731-015-0005 provides:

> "The purpose of this division is to establish the procedures used by the Department of Transportation to implement the provisions of its State Agency Coordination Program which assure that Department land use programs are carried out in compliance with the statewide

Highway 20 may well provide a basis for the city to adopt findings that explain that the transportation facilities that will be affected by the development the rezoning allows will not be "significantly affected'" within the meaning of OAR 660-012-0060(1) and (2). However, nothing in OAR Chapter 731, Division 15 excuses the city from adopting such findings in support of its annexation/rezoning decision.

**3. Delay Consideration of the TPR Until the Property is Developed**

The city finds that until the subject property is developed, there can be no actual significant effect on a transportation facility. That finding is facially correct, but it appears to be based on a misunderstanding of the city's obligations under the TPR. The TPR is a *planning* requirement. Among other things, OAR 660-012-0060(1) asks whether a land use regulation "*[a]llows* types or levels of land uses which *would* result in levels of travel or access which are inconsistent with the functional classification of a transportation facility," or "*[w]ould* reduce the performance standards of the facility below the minimum acceptable level identified in the TSP." (Emphases added). In other words, under the TPR, when a land use regulation is amended in a way that will allow more intense development in the future, the city must contemporaneously adopt any required planning measures that may be needed to "assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the [affected facilities]." OAR 660-012-0060(1); *see* n 3.

The city's point may be that it would be easier to estimate the traffic impacts that will result from this annexation/rezoning decision if that estimate is delayed until an application for development of the property is submitted for review, and that such a delayed estimate would likely be far more accurate. In *Citizens for Protection of Neighborhoods v. City of Salem*, 47 Or LUBA 111 (2004), we held that a rezoning decision that will allow more intense development but is properly conditioned so that it would not "significantly affect" nearby transportation facilities need not address

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planning goals and in a manner compatible with acknowledged comprehensive plans, as required by ORS 197.180 and OAR 660, Divisions 30 and 31."

the TPR at the time of rezoning. However, in that case the rezoning was conditioned in such a way that the property could not be developed in a manner that would generate more traffic than the prior zoning until a master plan was reviewed and approved under approval criteria that duplicated the TPR's requirements for imposition of measures to assure a continuation of "the function, capacity and performance standards of affected transportation facilities." 47 Or LUBA at 120. There is language in the city's decision that suggests the city is relying on the principle we discussed in *Citizens for Protection of Neighborhoods v. City of Salem*. There are at least two problems with any such reliance in this case. First, the city expressly did not condition the development in a way that will assure that development of the property under MU zoning will not generate more traffic than would development of the property under the county's UGA-UGM-10 zoning. Second, although the city asserts that the applicant will be required to demonstrate at the time of development approval that the traffic that would be generated by that development will not result in a failure of performance standards on affected transportation facilities, the city does not assert that the applicable city land use regulations that will govern review of that development will require such a demonstration. It does not appear that they would require such a demonstration. The city has not imposed a condition like the one that was imposed in *Citizens for Protection of Neighborhoods v. City of Salem*, and that case provides no support for the city's position that the TPR does not apply to its annexation and rezoning decision.

**4. Amendment of a Land Use Regulation**

The city, in its decision, and intervenor, in its brief, contend that the challenged annexation decision does not amend a plan or land use regulation and for that reason the city need not consider the TPR. As we have already explained the city's zoning map falls within the statutory definition of "land use regulation" and the challenged decision amends that zoning map. Therefore the city must consider whether the new zoning will "significantly affect a transportation facility," within the meaning of OAR 660-012-0060(2). If it will, the city must apply one or more of the measures set out in OAR 660-012-0060(1).

Intervenor's attempts to distinguish *Adams* are not convincing. Like the decision in *Adams*, the decision in the current appeal is the city decision that amends the city's zoning ordinance. The fact that the city in this case annexed and rezoned in a single decision while the city in *Adams* did so sequentially in separate decisions is immaterial. Before the city annexed and applied the MU zone to the property, it carried the county's UGA-UGM-10 zoning. There does not appear to be any serious dispute that the city's MU zoning allows far more intense development of the property than the county zoning would allow and that development under the city's MU zoning will almost certainly generate more traffic.

Notwithstanding the above, it might be a simple and straightforward matter to demonstrate that the disputed zoning map amendment could have no effect on transportation facilities that has not already been anticipated and planned for, without requiring a complete transportation impact analysis. *See Mason v. City of Corvallis*, ___ Or LUBA ___ (LUBA No. 2004-152, April 12, 2005), slip op 16-18 (holding that were a city's existing TSP assumes that existing plan and zoning designations will generate more traffic than would be generated under the proposed new plan and zoning designations, a city may assume that the proposed new planning and zoning designations will not significantly affect transportation facilities within the meaning of the TPR). The purpose of OAR 660-012-0060(1) and (2) is to ensure that the assumptions that underlie the city's TSP are not rendered invalid and obsolete by subsequent plan and land use regulation amendments that allow more traffic than the TSP was adopted to accommodate. The county's UGA-UGM-10 zoning designation specifically recognizes that it is temporary zoning that will only apply until the property is annexed. The property is already designated SPD by the city's comprehensive plan, and the SPD plan designation dictates MU zoning. If the city had a TSP that was prepared based on an assumption that the subject property would be developed under MU zoning, the rezoning would have no effect on the assumptions that underlie the TSP and we see no reason why the city could not assume in that circumstance that the zone change will have no significant impact on transportation facilities, within the meaning of OAR 660-012-0060(1) and (2). However, there are

at least two problems with such an assumption in this case. First, although the deadlines at OAR 660-012-0055 for adopting a TSP expired years ago, as we have already noted the city has not adopted a TSP. Therefore, it cannot be assumed that a city TSP already anticipates that the subject property will be developed with MU zoning. Second, although the city adopted a Transportation Master Plan in 1991, it predates the TPR, and neither the city nor intervenor argue that the 1991 Transportation Plan anticipated that the subject property would be developed with MU zoning.

**5. Significantly Affect a Transportation Facility**

We have rejected the city's and intervenor's arguments that the city need not consider the TPR in annexing the subject property and amending its zoning. The next question is whether the rezoning decision will "significantly affect" a transportation facility, within the meaning of OAR 660-012-0060(1). The evidence provided by the city engineer that we noted earlier in this opinion strongly suggests that Highway 20, with anticipated improvements, has sufficient capacity to accommodate any additional traffic that may be attributable to the rezoning. However, the question under the TPR is broader than whether there is sufficient unused capacity on Highway 20, Reeves Parkway and Fifth Street where they adjoin the property, to accommodate immediate development of the subject property under MU zoning.

Petitioner has identified a number of intersections on nearby streets that he contends may be significantly affected by the new zoning. *See* n 7. The relevant question under the TPR is whether the increase in projected traffic that is reasonably attributable to the new zoning, when added to other traffic that is reasonably expected under current planning and zoning of other nearby properties, will cause those intersections to fail to perform at the adopted minimum acceptable level of service at any point in the relevant planning period. Under OAR 660-012-0060(2)(d), if the additional trips that can be attributed to the new zoning would cause the performance of any of those facilities to fall "below the minimum acceptable level identified in the TSP," then the rezoning

will "significantly affect" those transportation facilities.[11] We summarized the analysis that is required under OAR 660-012-0060 in our decision in *Craig Realty Group v. City of Woodburn*, 39 Or LUBA 384, 389-90 (2001):

> "In the present case, the relevant inquiry under OAR 660-012-0060(2) is whether the proposed amendment 'would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.' The city must first determine whether the city's existing transportation facilities are adequate to handle, throughout the relevant planning period, any additional traffic that the proposed amendment will generate. If the answer to that question is yes, then the proposed amendment will not significantly affect a transportation facility for the purposes of OAR 660-012-0060(1), and no further analysis is necessary. If the answer is no, then the city must consider whether any new and improved facilities anticipated by the TSP will generate sufficient additional capacity, and will be built or improved on a schedule that will accommodate the additional traffic that will be generated by the proposed amendment. If the answer to that question is yes, then, again, the proposal will not significantly affect a transportation facility. If, however, the answer is no, then the city must adopt one or more of the strategies set out in OAR 660-012-0060(1) to make the proposed amendment consistent with 'the identified function, capacity and level of service of the [affected] facility.'"

Because we conclude that the city's obligation on remand will be different for state-owned transportation facilities and for city-owned transportation facilities we discuss them separately below.

**a. City-Owned Facilities**

The four Olive Street intersections identified by petitioner appear to be intersections that involve city-owned streets only.[12] As we have already pointed out, the city has no TSP. Where a

[11] We understand petitioner's argument that the rezoning may "significantly affect" the cited facilities to rely entirely on OAR 660-012-0060(2)(d). OAR 660-012-0060(2)(a)-(b) do not appear to be applicable. *See* n 6. The subject property adjoins Highway 20 and Reeves Parkway, which are described as arterials. We do not understand petitioner to contend that the rezoning is "inconsistent with the functional classification of a transportation facility," within the meaning of OAR 660-012-0060(2)(c).

[12] This assumption on our part is based on our understanding from petitioner's arguments that Highway 20 is a state-owned facility and Highway 34 is a state-owned facility. We do not understand petitioner to contend that any of the other streets he identified below are state-owned facilities. We assume that where Highway 43 becomes Tangent and Morton Streets it remains a state-owned facility. If our assumptions are wrong, our conclusions about how the city must consider state-owned and city-owned facilities on remand should be applied according to the actual ownership of the facilities.

city does not have a TSP, it is not clear to us how the city could apply OAR 660-012-0060(2)(d) to determine whether a zoning amendment will significantly affect a transportation facility. As we have noted several times, under that rule, a zone change would significantly affect a transportation facility if it would cause the performance of those facilities to fall "below the minimum acceptable level *identified in the TSP*." (Emphasis added.) The rule assumes that there is a TSP that establishes minimum acceptable levels for the performance of those facilities. Without a TSP there is no minimum acceptable performance level to violate.

It seems strange that a city that has failed to adopt a TSP within the deadlines established by OAR 660-012-0055 should be held to a lower standard when amending its zoning map than a city that has adopted a TSP within those deadlines. However, any such inequity is a function of the way the rule is written, and if it is of a concern to LCDC the rule can be amended to address the circumstance presented in this case.[13]

Petitioner argues that because OAR 660-012-0055(4)(b) mandates that a city "shall apply relevant sections of this rule to land use decisions and limited land use decisions until land use regulations complying with this amended rule have been adopted" the city must apply the TPR directly to these local intersections. We understand petitioner to argue that OAR 660-012-0055(4)(b) requires that the city now prepare a TSP or mini-TSP for those intersections and proceed through the analysis that is required by OAR 660-012-0060(1) and (2). Even if such a reading of OAR 660-012-0055(4)(b) is possible, we do not adopt it. The rule requires application of "relevant" provisions of the TPR. We have interpreted OAR 660-012-0055(4)(b) to require that a city apply OAR 660-012-0045(3) directly to consider requiring pedestrian and bicycle facilities when a city without an adopted TSP amended its comprehensive plan and zoning ordinance to allow a regional shopping center. *Citizens for Florence v. City of Florence*, 35 Or LUBA

[13] We assume that since the deadlines established by OAR 660-012-0055 expired years ago, it is relatively rare for a city not to have a TSP. In addition, given our conclusions about the city's obligation concerning the state-owned facilities that essentially surround the city-owned facilities, the practical impact of not having to address those city street intersections is likely minimal.

255, 271 (1998). However, we have never held that OAR 660-012-0055(4)(b) requires that a city that has not adopted a TSP must first prepare a TSP or prepare an abbreviated or mini-TSP when amending a land use regulation. Even if we could extend our holding in *Citizens for Florence* to impose such a requirement, we decline to do so.[14]

**b. State-Owned Facilities**

Finally, turning to the state-owned facilities, Highways 20 and 34, petitioner identified eight intersections that are sufficiently close to the subject property that it is certainly possible that developing the property under MU zoning would send significantly more daily trips through those intersections than would development under the county's UGA-UGM-10 zoning.[15] Even though the city does not have a TSP, the Oregon Highway Plan (OHP) establishes performance standards for those state-owned facilities that the city would be required to apply even if it had a TSP. *See DLCD v. City of Warrenton*, 37 Or LUBA 933, 946 (2000) (the relevant performance standards for state highways are contained in the OHP). Since those would be the performance standards that would apply in any event, there is no reason why they would not apply here even though the city has not yet adopted them as part of its TSP. The OHP establishes a minimum 15-year planning period and adopts maximum volume to capacity ratios that apply as the applicable performance standards for those intersections under OAR 660-012-0060(2)(d).

On remand, the city must require that the applicant prepare a sufficient transportation impact analysis to allow the city to determine whether the MU zoning that the city has applied to the subject property will allow development that will generate a sufficient number of additional trips to "significantly affect" any of those state-owned facilities, within the meaning of OAR 660-012-

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[14] Requiring that the city prepare a TSP or mini-TSP to establish performance standards for its city street intersections would be a particularly pointless requirement here, because one of the options the city would have under OAR 660-012-0060(1)(d) if the performance standard they established would be violated is to amend the performance standard.

[15] Those intersections include five intersections on Highway 20 and three intersections on Tangent and Morton Streets. *See* n 7.

0060(2). While there is evidence in the record that suggests that the Highway 20 intersections will not be significantly affected, particularly if the subject property is not developed before anticipated improvements are made to Highway 20, the city engineer's computations are not sufficient to make that determination for the relevant planning period. The intersections along Highway 34 are further from the property and presumably will not be as directly or significantly impacted, but without a transportation impact analysis the city is in no position to find that those intersections will not be "significantly affected" within the meaning of OAR 660-010-0060(2)(d).

The city's decision is remanded.