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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

OREGON DEPARTMENT OF)
TRANSPORTATION,)
)
Petitioner,)
)
vs.)
)
DOUGLAS COUNTY,)
)
Respondent.)

LUBA No. 97-178

_____)
)
DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
)
Petitioner,)
)
vs.)
)
DOUGLAS COUNTY,)
)
Respondent.)

FINAL OPINION
AND ORDER

LUBA No. 97-181

Appeal from Douglas County.

Lucinda D. Moyano and Celeste Doyle, Salem, filed the petition for review and argued on behalf of petitioners.

Paul E. Meyer, Roseburg, filed the response brief and argued on behalf of respondent.

HANNA, Board Member; GUSTAFSON, Board Chair, participated in the decision.

REMANDED 07/08/98

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

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 In this consolidated appeal, petitioners appeal the
4 county's adoption of amendments to its comprehensive plan and
5 zoning ordinance.

6 **MOTION TO FILE SUPPLEMENTAL BRIEF**

7 On June 2, 1998, Douglas County moved for permission to
8 file a supplemental brief, arguing that, in the county's
9 opinion, an amendment to OAR 660-12-045(3) proposed by
10 petitioner Department of Land Conservation and Development
11 (DLCD) concedes an issue with respect to the fifth assignment
12 of error.

13 While our rules provide for reply briefs, limited to new
14 issues raised in opposing briefs, the county has not attempted
15 to establish that the supplemental brief responds to new
16 issues raised in opposing briefs, or suggested any other basis
17 under our rules to allow what appears to be additional
18 argument. OAR 661-10-039. The county's motion is denied.

19 **FACTS**

20 The state Transportation Planning Rule (TPR), codified at
21 OAR chapter 660, division 12, requires affected local
22 governments to adopt local transportation plans, provides
23 standards for development of those local transportation plans,
24 and requires conformance with those standards. On August 13,
25 1997, the county legislatively amended its Transportation

1 System Plan (TSP), its comprehensive plan and its land use
2 ordinance to comply with the TPR.

3 Several authorities control transportation planning in
4 Oregon. The Oregon Transportation Commission (OTC), the
5 governing body for the Oregon Department of Transportation
6 (ODOT), is responsible for developing state transportation
7 policies and a comprehensive, long-range plan for a state
8 multimodal transportation system. ORS 184.618; ORS 366.220.
9 In 1992, the OTC adopted the Oregon Transportation Plan (OTP)
10 which includes the Oregon Highway Plan (OHP). The TPR,
11 developed by DLCD, requires conformance with the OTP and hence
12 the OHP. OAR 660-12-015(2)(a).

13 Petitioners appeal several of the county's TPR amendments
14 to its comprehensive plan and zoning ordinances.

15 **FIRST ASSIGNMENT OF ERROR**

16 Petitioners argue that the challenged decision does not
17 comply with OAR 660-12-045(2)(a), which requires adoption of
18 regulations regarding access control measures to protect
19 transportation facilities (i.e. roads and highways) and
20 related sites for their identified functions.¹

¹OAR 660-12-045(2) states:

"Local governments shall adopt land use or subdivision ordinance regulations, consistent with applicable federal and state requirements, to protect transportation facilities, corridors and sites for their identified functions. Such regulations shall include:

"(a) Access control measures, for example, driveway and public road spacing, median control and signal spacing standards, which are consistent with the functional

1 Pursuant to the OTP and OHP, ODOT regulates access to a
2 facility in order to maintain the planned function and level
3 of service of the facility. Petitioners explain that OAR 660-
4 12-015(2)(a) requires that the county's TSP be consistent with
5 the state OTP, which includes the OHP. Thus, petitioners
6 reason, a county may not adopt a regional TSP that is
7 inconsistent with the state highway portion of the OHP.²

8 Petitioners identify three county amendments that they
9 argue are inconsistent with the OHP in that they appear to
10 compel ODOT to grant access to state highways, and do not have
11 a mechanism that assures application of the access standards
12 as approval criteria to individual land use applications.

13 The first involves an amendment to comprehensive plan
14 Transportation Policy B: Policy 3 that states:

15 "[ODOT] will provide access to any unit of land
16 which enjoys legal right of access and is developing
17 per the comprehensive plan and zoning ordinance in
18 effect at the time of adoption of the 1997
19 Transportation System Plan."

20 Petitioners' second concern is the county's amendment of
21 the application procedures of Land Use and Development
22 Ordinance (LUDO) 3.35.050. New subsection (8) states:

23 "For any development which will access directly on
24 to a State Highway, where the State of Oregon has
25 responsibility for the issuance of access permits,

classification of roads and consistent with limiting
development on rural lands to rural uses and densities;

"* * * * *"

²In this assignment of error, petitioners do not identify any particular provisions of the OHP with which the county does not comply.

1 the requirements of the State Of Oregon, Department
2 of Transportation will apply."

3 The third objection is to the adoption of LUDO 3.35.065:

4 "ODOT has responsibility and authority in managing
5 access to State Highways. This section is designed
6 to coordinate ODOT's participation when an ODOT
7 access permit, for direct access, to a State Highway
8 is required. Douglas County will:

9 "1. Provide applicants with information related to
10 the need for a State access permit; and

11 "2. Refer land use permits, including those which
12 result from actions listed in Section 3.35.060,
13 with direct access to State Highways to ODOT."

14 Petitioners argue that the county has no authority to
15 compel ODOT to exercise its authority in a particular way, and
16 that the LUDO standards do not assure application of the
17 access standards as approval criteria to individual land use
18 applications.

19 With respect to petitioners' first challenge to the
20 county's plan amendments, the county responds that OAR 660-12-
21 045(2)(a), by its terms, requires only consistency between
22 state requirements and county codes, not between state
23 requirements and a county's plan. We agree with the county
24 that OAR 660-12-045(2)(a) is not directly applicable to plan
25 provisions. Petitioners have not established that the plan
26 provision violates the terms of OAR 660-12-045(2)(a) or that
27 OAR 660-12-045(2)(a) somehow incorporates provisions of the
28 OHP that the county has violated.

29 With respect to petitioners' second and third challenges
30 to the LUDO amendments at LUDO 3.35.050.8 and 3.35.065, the

1 county contends that:

2 "The issue then is whether the key language in OAR
3 660-012-045(2), 'to protect' transportation
4 facilities, requires a local government to
5 essentially regurgitate in its land use ordinance
6 ODOT's Access Management Policy as approval criteria
7 that the local government would then be required to
8 administer, or whether a local government can comply
9 with the rule by simply making compliance with
10 ODOT's requirements a post-approval performance
11 requirement, or a condition of approval."
12 Respondent's Brief 6 (emphasis in original).

13 The county argues that its procedures are adequate to
14 protect transportation facilities because, if a landowner
15 fails to apply to ODOT for an access permit after the county
16 has granted approval of a land use application, that failure
17 would constitute a violation of the LUDO, which the county
18 could enforce in post-approval proceedings.

19 We disagree with the county's formulation of the issue.
20 Petitioners do not argue that OAR 660-12-045(2) requires the
21 county to implement ODOT's access standards. Rather,
22 petitioners argue, and we agree, that nothing in the county's
23 land use ordinance requires compliance with ODOT access
24 standards, or requires that an applicant obtain an access
25 permit from ODOT as a condition of approval. OAR 660-12-
26 045(2) requires that local land use regulations be consistent
27 with applicable state requirements, including access
28 standards, in order to protect transportation facilities for
29 their identified function and level of service. The county's
30 amendments to the LUDO frustrate that purpose, because they
31 fail to provide any linkage between approval and compliance

1 with ODOT access standards, and thus fail to protect
2 transportation facilities, as required by OAR 660-12-045(2).

3 The first assignment of error is sustained, in part.

4 **SECOND ASSIGNMENT OF ERROR**

5 Petitioners argue that the county failed to adopt
6 regulations that assure that amendments to land use
7 designations, densities and design standards are consistent
8 with the functions, capacities and levels of service of
9 facilities identified in the TSP, as required by OAR 660-12-
10 045(2)(g).³

11 The challenged decision addresses the requirements of OAR
12 660-12-045(2)(g) by amending LUDO 6.500.2 to provide, in
13 relevant part:

14 "The application shall address the following
15 requirements which shall be the standard for
16 Amendment:

17 "a. That the Amendment complies with the Statewide
18 Planning goals and applicable administrative
19 rules adopted by the Land Conservation and
20 Development Commission pursuant to ORS 197.240
21 or as revised pursuant to ORS 197.245."

22 Petitioners identify three problems with the county's
23 approach: (1) it is limited to quasi-judicial plan
24 amendments, and thus excludes legislative plan amendments; (2)

³OAR 660-12-045(2) requires that local governments shall adopt regulations to protect transportation facilities, corridors and sites for their identified functions, including:

"(g) 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."

1 it merely incorporates by reference the Statewide Planning
2 Goals and rules, rather than adopting regulations specific to
3 the county's transportation system that provide a mechanism
4 for addressing impacts resulting from amendments to land use
5 standards and making those amendments consistent with TPR
6 standards; and (3) it is not clear that the Statewide Planning
7 Goals and rules incorporated into the plan by reference would
8 continue to apply following acknowledgement of the amendments.

9 With respect to petitioners' first contention, the county
10 concedes that LUDO 6.500.2.a, by its terms, does not apply to
11 legislative amendments. Notwithstanding, the county points to
12 a new provision of its comprehensive plan, part of the
13 challenged decision, that requires all amendments to the plan
14 be consistent with the provisions of state law and
15 administrative rules, including the TPR.⁴ The county argues
16 that the plan provision covers legislative as well as quasi-
17 judicial plan amendments, and thus obviates petitioners' first
18 argument.

19 The county also argues that the plan provision answers
20 petitioners' second objection, which the county characterizes
21 as an argument that LUDO 6.500.2.a must refer to the TPR

⁴The new provision states:

"Amendments to the comprehensive plan shall be consistent with the provisions of ORS and OAR. The OARs now provide that amendments which significantly affect a transportation facility shall assure that allowed uses are consistent with the identified function, capacity and level of service of the facility." Record 34.

1 specifically rather than just generally to the administrative
2 rules. Because the new plan provision refers to the TPR, the
3 county contends, the alleged defect in LUDO 6.500.2.a provides
4 no basis to reverse or remand that provision.

5 We disagree with the county that the amended plan
6 provision cited satisfies petitioners' first and second
7 objections, and OAR 660-12-045(2)(g). The plan provision does
8 not refer to the TPR by name or number, but merely restates a
9 TPR standard that is not responsive to the requirements of OAR
10 660-12-045(2)(g). By its terms, the plan provision applies
11 only to amendments that "significantly affect a transportation
12 facility," which is a different, and higher, threshold than
13 the standard required by OAR 660-12-045(2)(g).⁵

14 With respect to petitioners' third concern, we do not
15 agree with petitioners that the county's incorporation of the

⁵In anticipation of this objection, the county argues in its brief that the county intends to amend both the plan provision and LUDO 6.500.2.a to refer specifically to the TPR and to state the correct requirements of OAR 660-12-045(2)(g). The county argues that the anticipated amendments will render petitioners' objections moot.

However, we foreclosed that argument in an earlier order in this case. Petitioners moved for a stay precluding the county from adopting those amendments, arguing that LUBA has exclusive jurisdiction over the subject matter of the appeal and the county could not defeat that jurisdiction by subsequent amendments to the challenged decision. We disagreed, holding that our jurisdiction extends only to the challenged decision, and that we had no authority under ORS 197.845(1) to prevent the county from making another land use decision. ODOT/DLCD v. Douglas County, Or LUBA _____ (LUBA No. 97-178/181, Order on Motion for Stay, February 13, 1998), slip op. 3. In a footnote, we expressed skepticism that the county's amendments could moot part of the current appeal, because it appeared that the county could put the amendments before us only by means of official notice. We commented that our authority to take official notice of legislative enactments does not extend to documents that were not in existence when the challenged decision was made. Id. slip op. 4, n6. For the reasons expressed in our order, we reject the county's suggestion that the anticipated amendments moot aspects of the current appeal.

1 goals and rules into its plan may be ineffective after
2 acknowledgment. If a local government adopts a standard by
3 reference, regardless of whether that standard is a goal or
4 rule, the incorporated material is part of the local
5 government's plan or code and directly applicable,
6 notwithstanding the general rule that provisions of
7 acknowledged plans and land use regulations are not subject to
8 review for compliance with the goals. See Central Eastside
9 Industrial Council v. City of Portland, 29 Or LUBA 429, 431-32
10 (stating principle), aff'd 137 Or App 554 (1995).

11 The second assignment of error is sustained, in part.

12 **THIRD ASSIGNMENT OF ERROR**

13 Petitioners identify five provisions of the challenged
14 amendments that they contend are not consistent with the state
15 TSP and OHP, as required by OAR 660-12-015(2)(a).⁶

16 Two of petitioners' objections relate to language that
17 petitioners insist the county should have included in its
18 amendments in order to comply with OAR 660-12-015(2)(a).

19 The challenged decision amends the following provision of

⁶OAR 660-12-015(2)(a) states:

"(2) MPOs and counties shall prepare and amend regional TSPs in compliance with this division. MPOs shall prepare regional TSPs for facilities of regional significance within their jurisdiction. Counties shall prepare regional TSPs for all other areas and facilities:

"(a) Regional TSPs shall establish a system of transportation facilities and services adequate to meet identified regional transportation needs and shall be consistent with adopted elements of the state TSP[.]"

1 the transportation element of the county's plan:

2 "Principal Highways are major urban and rural
3 Highways connecting regions, communities, towns, and
4 cities. The Principal Highway provides through
5 traffic movement and its distribution to lower order
6 classifications of roadways. Access control and
7 onstreet parking are a function of the number of
8 lanes, lane and shoulder width, design, speed,
9 traffic volumes and land use. These roadways fall
10 [primarily] under state jurisdiction and the
11 management of these facilities is outlined in the
12 Oregon Highway Plan." (Bracketed material deleted,
13 underlined material added by the amendments.)

14 Petitioners argue that the third sentence of this
15 provision is inaccurate, in that access control is determined
16 pursuant to OHP policies, not as a function of the number of
17 lanes, etc. Because this provision is not consistent with the
18 state TSP/OHP, petitioners contend, it does not comply with
19 OAR 660-12-015(2)(a).

20 However, it appears that the sentence petitioners object
21 to was not amended or affected by any of the amendments in the
22 challenged decision, but is language from the prior
23 acknowledged version of the comprehensive plan. Petitioners
24 do not explain why the county's amendment of other sentences
25 in the comprehensive plan allows this Board to review the
26 sentence at issue for compliance with the state TSP/OHP. Our
27 jurisdiction extends only to the challenged decision; we have
28 no authority to review the comprehensive plan for compliance
29 with state law provisions that are not part of the challenged
30 decision or affected by the challenged decision. See Urquhart
31 v. Lane Council of Governments, 80 Or App 176, 180, 721 P2d

1 870 (1986); 1000 Friends of Oregon v. Jackson County, 79 Or
2 App 93, 98, 718 P2d 753 (1986) (where plan amendments affect
3 existing unamended provisions in ways that could bring those
4 provisions out of compliance with the statewide planning
5 goals, LUBA may review both the amendments and the unamended
6 provisions for compliance with the goals).

7 Petitioners do not argue that the provisions objected to
8 were amended by the challenged decision or affected by the
9 challenged decision in any way. Instead, petitioners appear
10 to presume that the county has an obligation, enforceable by
11 this Board, to bring specific provisions of its acknowledged
12 comprehensive plan and land use ordinance into compliance with
13 the TPR, i.e. make it consistent with the state TSP, as part
14 of this decision. However useful that exercise might be,
15 petitioners have not identified and we are not aware of the
16 source of the presumed obligation. Absent that obligation, we
17 conclude that the focus of our review is not whether the
18 county's plan and land use ordinance are consistent with the
19 TPR and state TSP, but rather whether the challenged decision
20 amends the county's plan or land use ordinance in a manner
21 that violates the TPR and state TSP as identified by
22 petitioners. Petitioners have not established that the
23 county's failure to amend the sentence that petitioners object
24 to is a basis for reversal or remand.

25 Next, petitioners dispute that the county erred in
26 writing Transportation Policy Objective B to state:

1 "Direct access to non-interstate Principal Highways
2 should be provided within unincorporated communities
3 at levels which are consistent with land use
4 classifications and facility operations." (Emphasis
5 added.)

6 Petitioners contend that use of the mandatory term
7 "should" suggests that ODOT is compelled to provide access,
8 contrary to its established policy and practice. The county
9 responds that petitioners' concern is obviated because the
10 county board of commissioners (commissioners) implicitly
11 adopted staff interpretations contained in an August 13, 1997
12 memorandum, including an interpretation of the term "should"
13 as merely encouraging ODOT to provide access. Record 425-26;
14 Supp. Record 48. The county contends that it has interpreted
15 Transportation Policy Objective B as not imposing mandatory
16 requirements on ODOT, and that that interpretation is entitled
17 to deference pursuant to ORS 197.829(1).

18 We disagree with the county that the commissioners
19 implicitly adopted the interpretations cited at Record 425-26
20 in the planning staff's memorandum. The terms of the
21 ordinance adopting the challenged amendments nowhere mentions
22 the planning staff's memorandum. The planning staff's
23 "understanding" that the commissioners had adopted their
24 definitions is insufficient evidence of the purported
25 adoption. We conclude that the challenged decision does not
26 contain an interpretation of Objective B adequate for our
27 review.

28 Pursuant to ORS 197.829(2), where the local government

1 fails to make a necessary interpretation of local provisions,
2 we may, but are not required to, make our own determination of
3 whether the challenged decision is correct. Opp v. City of
4 Portland, 153 Or App 10, ___ P2d ___ (1998). However, because
5 the challenged decision is a legislative enactment rather than
6 a quasi-judicial decision where Objective B is applied to a
7 specific set of facts, any construction on our part would be
8 advisory. We conclude that this case does not present an
9 appropriate occasion to make our own interpretation of
10 Objective B, and that remand on this point is appropriate to
11 allow the county to interpret Objective B in the first
12 instance.

13 Next, petitioners' object on similar grounds to the
14 following amendment to the county's comprehensive plan, item
15 3.xx:

16 "Oregon Department of Transportation will provide
17 access to any unit of land which enjoys legal right
18 of access and is developing per the comprehensive
19 plan and zoning ordinance in effect at the time of
20 adoption of the 1997 Transportation System Plan."

21 That is, petitioners contend item 3.xx purports to compel
22 ODOT to provide access under circumstances inconsistent with
23 ODOT policies. The county's limited response merely cites to
24 the first assignment of error, where the county argued that
25 OAR 660-12-045(2) did not apply to comprehensive plan
26 amendments. However, petitioners rely here on OAR 660-12-
27 015(2)(a), which by its terms requires that the county
28 transportation system plan, which is part of the county's

1 comprehensive plan, be consistent with the state TSP. We
2 therefore reach the merits of petitioners' argument directed
3 at this provision, and agree with petitioners that it is in
4 conflict with access policies in the state TSP/OHP.

5 Petitioners object next to a statement in a supporting
6 document that declares the county's plan to be consistent with
7 the state TSP. Petitioners argue that declaration is
8 premature, but make no effort to show that it is inconsistent
9 with any requirements of the TPR. Whether the challenged
10 decision is consistent with the state TSP is the general
11 subject of this appeal. Accordingly, we agree with the county
12 that petitioners' objection to this declaration is itself
13 premature.

14 Finally, petitioners object to the county's failure to
15 add a notation to the list of unfunded improvements in the
16 Support Document to the transportation element of the county
17 plan. The notation clarifies that the list is not to be
18 relied upon to satisfy the requirements of OAR 660-12-
19 060(1)(b).⁷ Petitioners express concern that, without such

⁷OAR 660-12-060(1) provides, in relevant part:

"Amendments to functional plan, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified functions, capacity, and level of service of the facility. This shall be accomplished by either:

"* * * * *

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

1 clarification, the county might approve future amendments
2 affecting transportation facilities by relying on conceptual,
3 unfunded improvements to mitigate the impact on those
4 transportation facilities, and thus effectively nullify the
5 protection afforded by OAR 660-12-060(1).

6 However, as we explained above, our scope of review is
7 limited to whether identified local provisions amended or
8 affected by the challenged decision are consistent with the
9 TPR and state TSP. We have no authority to require the county
10 to insert specific language into its TSP, even if doing so
11 would, as petitioners contend, help prevent future county
12 actions inconsistent with the TPR. Petitioners' remedy in
13 that circumstance is to appeal those future decisions.
14 Petitioners' speculations regarding future county actions do
15 not provide a basis to reverse or remand the decision before
16 us.

17 The third assignment of error is sustained, in part.

18 **FOURTH ASSIGNMENT OF ERROR**

19 Petitioners argue that the challenged decision does not
20 meet the requirements of OAR 660-12-020, which requires a
21 determination of "transportation needs," an inventory and
22 general assessment of existing transportation facilities,
23 including bicycle and pedestrian facilities, and a bicycle and

"* * * * *"

1 pedestrian plan.⁸ Petitioners contend that the challenged

⁸OAR 660-12-020 states, in relevant part:

"(2) The TSP shall include the following elements:

"(a) A determination of transportation needs as provided in OAR 660-12-030;

"* * * * *

"(d) A bicycle and pedestrian plan for a network of bicycle and pedestrian routes throughout the planning area. The network and list of facility improvements shall be consistent with the requirements of ORS 366.514;

"* * * * *

"(3) Each element identified in subsections (2)(b)-(d) of this rule shall contain:

"(a) An inventory and general assessment of existing and committed transportation facilities and services by function, type capacity and condition:

"* * * * *

"(b) A system of planned transportation facilities, services and major improvements. The system shall include a description of the type or functional classification of planned facilities and services and their planned capacities and levels of service;

"(c) A description of the location of planned facilities, services and major improvements, establishing the general corridor within which the facilities, services or improvements may be sited. This shall include a map showing the general location of proposed transportation improvements, a description of facility parameters such as minimum and maximum road right of way width and the number and size of lanes, and any other additional description that is appropriate;

"(d) Identification of the provider of each transportation facility or service."

OAR 660-12-030(3) states:

"Within urban growth boundaries, the determination of local and regional transportation needs shall be based upon:

"(a) Population and employment forecasts and distributions which are consistent with the acknowledged comprehensive

1 decision fails to properly determine "transportation needs" as
2 defined by OAR 660-12-005(25), and fails to properly inventory
3 bicycle and pedestrian facilities.⁹ Without an adequate
4 determination of bicycle and pedestrian needs, or an adequate
5 inventory and assessment of existing facilities, petitioners
6 argue, the county cannot develop a bicycle and pedestrian plan
7 that meets the requirements of OAR 660-12-045(6).¹⁰

8 Petitioners identify at Record 48-54 the set of findings
9 responsive to the inventory and assessment requirements of OAR
10 660-12-020(2) and (3). Petitioners argue that each and all of
11 the identified findings are inadequate to satisfy the
12 inventory and assessment requirements.

plan, including those policies which implement Goal 14,
including Goal 14's requirement to encourage urban
development on urban lands prior to conversion of
urbanizable lands. Forecasts and distributions shall be
for 20 years and, if desired, for longer periods;

"(b) Measures adopted pursuant to OAR 660-12-045 to encourage
reduced reliance on the automobile."

⁹OAR 660-12-005(25) states:

"'Transportation Needs' means estimates of the movement of
people and goods consistent with acknowledged comprehensive
plan and the requirements of [the TPR]. Needs are typically
based on projections of future travel demands resulting from a
continuation of current trends as modified by policy
objectives, including those expressed in Goal 12 and [the TPR],
especially those for avoiding principle reliance on any one
mode of transportation."

¹⁰OAR 660-12-045(6) states:

"In developing a bicycle and pedestrian circulation plan as
required by OAR 660-12-020(2)(d), local governments shall
identify improvements to facilitate bicycle and pedestrian
trips to meet local travel needs in developed areas.
Appropriate improvements should provide for more direct,
convenient and safer bicycle or pedestrian travel within and
between residential areas and neighborhood activity centers
(i.e., schools, shopping, transit stops). * * *"

1 The challenged amendments at Record 48-54 amend
2 comprehensive plan text regarding bicycle and pedestrian
3 transportation. Most of the amendments merely update existing
4 text with more recent figures or citations. If we understand
5 petitioners correctly, they do not object to any of the
6 amendments per se, but contend that the county was required to
7 do a much more extensive inventory and assessment.
8 Petitioners argue that

9 "[a] primary premise and objective of Goal 12 and
10 the TPR is that current travel demand trends can,
11 and in many cases should be modified by planning for
12 and providing opportunities to use alternative modes
13 of transportation to reduce reliance on the
14 automobile, and to reduce vehicle miles traveled[.]
15 * * * The point of the inventory and assessment,
16 therefore, is to paint a picture of the type,
17 function, capacity and condition of existing
18 facilities, OAR 660-12-020(3)(a), which provides the
19 basis for identifying, planning for and providing
20 facilities to address the identified need."
21 Petition for Review 12.

22 However, it appears to us that petitioners' arguments are
23 directed at the adequacy of the county's existing text and the
24 county's failure to conform that text with what petitioners
25 understand the TPR to require. As we noted above, the scope
26 of our review does not extend to reviewing acknowledged
27 provisions of the county's plan unaffected by the challenged
28 decision, nor assuring that the county's TSP conforms with the
29 proactive requirements of the TPR. Our review is limited to
30 whether the county's amendments violate the TPR or other
31 authority in a manner identified by petitioners. As we
32 understand petitioners' arguments, they have not identified

1 any manner in which the county's amendments violate the
2 express requirements of the TPR.

3 The fourth assignment of error is denied.

4 **FIFTH ASSIGNMENT OF ERROR**

5 Petitioners argue that the challenged decision does not
6 satisfy the requirements of OAR 660-12-045(3) for land use
7 regulations that ensure that new developments provide
8 reasonably direct routes for bicycle and pedestrian travel in
9 "urban areas and rural communities."¹¹ Petitioners make two
10 related contentions: (1) the county adopted an overly narrow
11 geographic scope essentially limited to urbanized areas, and
12 as a result failed to adopt regulations providing for safe and
13 convenient bicycle and pedestrian traffic in rural "developed
14 areas"; and (2) its regulations for sidewalks are insufficient
15 to meet the requirements for pedestrian access and travel to
16 and from new development.

17 The initial point of contention between the parties is
18 the meaning of "rural communities" as used in OAR 660-12-
19 045(3). OAR chapter 660 division 12 defines "urban area" as

¹¹OAR 660-12-045(3) states:

"Local governments shall adopt land use or subdivision regulations for urban areas and rural communities as set forth below. The purposes of this section are to provide for safe and convenient pedestrian, bicycle and vehicular circulation consistent with access management standards and the function of affected streets, to ensure that new development provides on-site streets and accessways that provide reasonably direct routes for pedestrian and bicycle travel in areas where pedestrian and bicycle travel is likely if connections are provided, and which avoids wherever possible levels of automobile traffic which might interfere with or discourage pedestrian or bicycle travel." (Emphasis added.)

1 an area within an urban growth boundary, but does not contain
2 a definition of "rural communities." Petitioners argue that
3 for purposes of division 12 a rural community includes all
4 "developed areas" outside urban growth boundaries, not limited
5 to "rural communities" as that term is defined in the context
6 of Goal 14 (Urbanization) and the definition found at OAR 660-
7 22-010(6), the unincorporated communities division rules.¹²

8 The county argues for a much narrower definition of
9 "rural communities" that is limited to rural communities
10 designated under OAR 660-22-010(6), and then only to those
11 that are sufficiently urbanized and developed so that
12 pedestrian and bicycle travel would be "likely" to occur if
13 connections were provided. According to the county, none of
14 its 25 rural communities designated under OAR 660-22-010(6)
15 fall within these criteria, because none are sufficiently
16 urbanized and developed so that pedestrian and bicycle travel
17 is likely if connections are provided.¹³ As the county
18 construes OAR 660-12-045(3), that provision does not apply to
19 any rural area in the county.

20

¹²OAR 660-22-010(6) states:

"'Rural Community' is an unincorporated community which consists primarily of residential uses but also has at least two other land uses that provide commercial, industrial, or public uses (including but not limited to schools, churches, grange halls, post offices) to the community, the surrounding rural area, or to persons travelling through the area."

¹³The county notes that under the LUDO, multi-family developments, planned developments or commercial districts are not permitted in rural communities, new subdivisions are limited to densities of two to five acre minimum parcel sizes, and shopping centers are limited to 4000 square feet.

1 We agree with petitioners that the term "rural
2 communities" as used in OAR 660-12-045(3) is not limited to
3 the definition at OAR 660-22-010(6), and certainly not limited
4 to "urbanized" rural communities, as the county posits. The
5 definitions at OAR 660-22-010 apply, by their terms, only to
6 that division. Further, OAR 660-12-020(2)(d) requires a
7 network of bicycle routes throughout "the planning area," i.e.
8 the area subject to the county's jurisdiction in this case,
9 suggesting a broad scope for terms used in division 12.
10 Finally, OAR 660-12-045(6) speaks of developing a bicycle and
11 pedestrian plan to facilitate local travel needs in "developed
12 areas." A rural area can be significantly developed without
13 meeting the definition of "rural community" as that term is
14 used in OAR 660-22-010(6). See OAR 660-22-010(5) to (9)
15 (defining five types and degrees of rural development).¹⁴ We
16 conclude that "rural community" as used in OAR 660-12-045(3)
17 has a broader denotation than the similar term used in OAR
18 660-22-010(6).¹⁵ Accordingly, we agree with petitioners that
19 the county erred in adopting an overly narrow geographical

¹⁴The five types or degrees of rural development are "resort community," "rural community," "rural service center," "urban unincorporated community," and "unincorporated community." OAR 660-22-010(5)-(9).

¹⁵The county argues in the alternative that, even if OAR 660-12-045(3) applies to developed rural areas, the county made an implicit finding of fact that only in urban portions of the county is pedestrian and bicycle travel going to be likely if connections are provided. The county states that it intends to adopt additional findings in order to make its implicit finding explicit, thus rendering petitioners' argument moot. In resolving the first assignment of error, we rejected the county's similar offer to remedy defects in the challenged decision by means of post-hoc amendments. For similar reasons, we now reject the county's offer to make post-hoc findings.

1 scope focusing on urbanized areas, and thus failed to adopt
2 regulations regarding bicycle and pedestrian access and travel
3 applicable to rural "developed areas."

4 With respect to petitioners' third contention that the
5 Pedestrian Circulation Plan (PCP) in the challenged decision
6 is deficient, petitioners argue that the PCP fails to require
7 sidewalks on local streets within all urban areas and rural
8 "developed areas." Instead, the county applies the PCP only
9 to one urban area, the unincorporated urban area of Green.
10 Further, petitioners contend that the PCP requires sidewalks
11 only if new development has direct access to an arterial or
12 collector, which, according to petitioners, is too high a
13 threshold to comply with the requirements of OAR 660-12-
14 045(3).

15 OAR 660-12-045(3)(b)(B) states that "[s]idewalks shall be
16 required along arterials, collectors and most local streets in
17 urban areas * * *" (Emphasis added.) OAR 660-12-045(3)(b)
18 requires that "[o]n-site facilities shall be provided which
19 accommodate safe and convenient pedestrian and bicycle access"
20 from within new development to adjacent residential areas and
21 neighborhood centers within one-half mile from the
22 development. Petitioners argue that, read together, these
23 provisions require sidewalks or other facilities associated
24 with new development in all urban and developed areas, in
25 order to meet the bicycle and pedestrian circulation
26 requirements of division 12.

1 The county responds that only one urban area (the Green
2 area) in the county is subject to the requirements of OAR 660-
3 12-045(3)(b)(B), but that it did not require sidewalks on
4 local streets within Green because most of the local streets
5 in that area are gravel roads and hence sidewalks are not
6 likely to enhance pedestrian travel. However, the county made
7 no findings to this effect, and points to no evidence
8 supporting the explanation in its brief. It is not obvious
9 what bearing the surface of existing roads has on whether
10 sidewalks associated with new development will enhance
11 pedestrian travel.

12 The county responds to petitioners' remaining contentions
13 by repeating its argument that division 12 imposes no bicycle
14 or pedestrian requirements, including sidewalks, in rural
15 communities and other developed areas. Our resolution of that
16 dispute adversely to the county's position also resolves the
17 present dispute. We agree with petitioners that OAR 660-12-
18 045 requires the county to adopt regulations respecting
19 bicycle and pedestrian travel in all urban and developed
20 areas, and that the county erred in failing to do so. We also
21 agree that the threshold at which the sidewalk requirements
22 are triggered under the challenged decision is higher than is
23 consistent with OAR 660-12-045(3)(b). The county's approach
24 is contrary to the terms of OAR 660-12-045(3)(b)(B).

25 The fifth assignment of error is sustained.

1 **SIXTH ASSIGNMENT OF ERROR**

2 Petitioners argue that the county failed to comply with
3 OAR 660-12-045(7), which requires standards for local streets
4 and accessways that minimize paved width and total right-of-
5 way.¹⁶

6 The county's existing standards for "urban roadways"
7 require a 56' minimum right-of way, and 32' pavement width for
8 local streets. Petitioners assert that the county did not
9 re-evaluate these standards, and did not justify them as
10 appropriate or sufficient to meet the requirements of OAR 660-
11 12-045(7). Without proper justification, petitioners contend,
12 the county's previously existing standards cannot be found to
13 comply with the TPR.

14 The gravamen of petitioners' argument is that the county
15 failed to review its existing street standards and conform
16 them to the requirements of OAR 660-12-045(7). However, as we
17 held with respect to the third and fourth assignments of
18 error, nothing identified to us in the TPR or elsewhere allows
19 this Board to review previously acknowledged provisions of the
20 county's plan or land use regulations that are not part of or

¹⁶OAR 660-12-045(7) requires that local governments

"establish standards for local streets and accessways that minimize pavement width and total right-of-way consistent with the operational needs of the facility. The intent of this requirement is that local governments consider and reduce excessive standards in order to reduce the cost of construction, provide for more efficient use of urban land, provide for emergency vehicle access while discouraging inappropriate traffic volumes and speeds, and which accommodate convenient pedestrian and bicycle circulation."

1 affected by the challenged decision. As petitioners frame
2 this assignment of error, it appears that petitioners are
3 asking us to review the county's alleged inaction. For the
4 reasons expressed above, we conclude that we lack jurisdiction
5 to conduct that review.

6 The sixth assignment of error is denied.

7 The county's decision is remanded.