



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: July 18, 2005

TO: Craig Greenleaf
ODOT, Deputy Director

FROM: Bonnie Heitsch *BH*
Assistant Attorney General
Government Services Section

SUBJECT: Discussion of issues associated with blending the federal regional planning process with the state regional planning process

Question asked: What are the advantages and disadvantages of combining the federal regional transportation planning process for MPOS with the regional transportation system planning processes required by the state?

Background:

Currently, federal regulations require regional transportation planning for MPO areas. The regional transportation plans (RTPs) must comply with specific federal environmental regulations including the Clean Air Act.

The geographic area for the RTP is defined by federal population density standards derived from the federal census. The planning horizon for an RTP is 25 years, 5 more years than what is required in the state regional transportation planning process. The MPO must approve the plan and it must be certified by FHWA triennially. Failure to approve in a timely manner will cause federal funds to be withdrawn.

The state Transportation Planning Rule, OAR 660 division 12 also requires the preparation of Regional Transportation *System* Plans, (TSPs). Those regional TSPs must be prepared by MPOs and shall establish a system of transportation facilities and services adequate to meet identified regional transportation needs in the MPO area and shall be consistent with adopted elements of the state TSP and show that they comply with applicable statewide planning goals, acknowledged comprehensive plan policies and land use regulations. OAR 660-012-0015(2). Unlike the federal RTPs, land use considerations are a component of a regional TSP. These regional TSP plans are adopted by the local governments as part of their local comprehensive planning process.

Currently the MPOs adopt a plan to meet the federal regional planning requirements and a separate plan to meet the state regional transportation system planning requirements. Besides METRO there are four other MPOs in Oregon. Each of these MPOs handle the RTP/TSP process in similar ways.

Discussion:

There appears to be universal agreement among FHWA¹, MPOs² and the DLCD that having two regional transportation plans (one to meet federal purposes and one to meet state purposes) is *not* ideal. The two-plan approach creates redundancy, (at least 50% of the plans are the same or similar), confusion (which plan is applicable) and potential conflicts among plans, (different planning horizons, planning boundaries and standards). It also costs more to prepare two documents.

However, there is no agreement as to how to combine the federal and state regional transportation planning requirements into one planning process. The MPOs are suggesting that regional transportation planning should occur under the federal rules only and eliminate the state requirement to develop a regional transportation system plan. Some of the MPOs assert that each individual jurisdiction can adequately address the land use components and coordination portions underpinning a state regional transportation system plan.

The DLCD advocates that both the federal and state regional planning rules should be adhered to in the development of a single regional transportation plan. This approach is similar to how Lane County addressed its initial *TransPlan*. There are no legal impediments which prevent the development and approval of a single document that meets both the federal and state regional transportation planning requirements.³ However, the Lane County MPO has subsequently abandoned the "single plan" approach and has developed and approved a separate regional transportation plan to address the federal requirements. I have attempted to identify the policy considerations for the separation of the federal regional plan from the state regional TSP.

1. The federal regional plan must be recertified every *three* years. The state regional TSP need only be updated at periodic review. Periodic review is no longer required by the DLCD unless it offers to pay for the review process. ORS 197.628(7). Local jurisdictions can with the permission of the DLCD engage in periodic review. Accordingly, it is likely that comprehensive updates to the regional transportation system plans will occur less frequently.

2. The consequences of not meeting the federal certification deadline will result in the loss of federal funds for the MPO area. This is a substantial sum of money and can affect ODOT project development in the area. There are no consequences for failing to meet the state planning deadlines.

3. The federal regional plans are prepared by and approved by the MPO. The MPO is made up of representatives from the jurisdictions. In contrast, adoption of the regional TSP is a land use decision made by each of the member jurisdictions. For example, adoption of state requirements in *TransPlan* required adoption by Lane County Board of Commissioners, the Eugene City Council, Springfield City Council and the Lane Transit Authority.

¹ See letter from Fred Patron of FHWA to Robert Cortright of DLCD dated September 22, 2004 as attached.

² See email string attached.

³ The initial *TransPlan* went through a two stepped approval process. It was adopted for state purposes by each of the local jurisdictions and it was approved for federal purposes by the MPO.

4. The federal RTPs can be approved by the MPO by merely giving meeting notice and by taking action. This type of action can occur in less than 14 days. In contrast, the state TSP adoption process requires at least 45 days notice to the DLCD prior to the hearing. As a land use decision, it may also require notification to affected property owners pursuant to ORS 215.503. (Ballot Measure 56.) In addition to the more lengthy notification requirements, the adoption process is subject to the local hearings process. Typically this involves at least one hearing at the planning commission and at again at the governing body level.

5. Approval of the federal regional transportation plan is a federal decision. Ultimately, the certification of that approval can be challenged in federal district court. In contrast, the adoption of a regional TSP is a land use decision and appeals thereof are subject to the jurisdiction of LUBA.

6. The boundaries of the MPO area for federal RTPs are based upon population and density derived from the census information. The boundaries for regional TSPs align with existing political boundaries. For example, in Lane County, the federal MPO boundaries were expanded to include the City of Coberg and county areas outside of the city limits and UGB for Eugene and Springfield. The state TSP boundaries of *TransPlan* are currently limited to the Cities of Eugene and Springfield and those portions of Lane County that are within the UGB. Lane County maintains its own TSP.

7. The planning horizon for federal RTPs is 25 years. The planning horizon for regional TSPs is at least 20 years. (OAR 660-012-0030(3)(a)).

8. The time to develop and approve a federal plan is moved along by deadlines with significant financial consequences. Traditionally the time to develop and adopt a regional TSP is much longer. For example, *TransPlan* took over nine years to develop and adopt.

Conclusion:

While there seems to be consensus and sound reasons to develop only one regional transportation plan, there is not consensus as to how the state and federal planning requirements should be combined. As the federal requirements are not requirements that can be changed, the focus of the inquiry should be directed at how the state planning requirements can best be combined within the federal planning framework. Adding the state requirements to the federal process may bog down the planning process and could cause critical funding deadlines to be missed. Alternatively, one may want to examine the state regional transportation system planning requirements and determine if these requirements can be streamlined or addressed in other plans to assure consistency and coordination with statewide planning goals and objectives. Attached is a matrix prepared by Tom Schwetz which begins to unravel the components of the federal and state plans. While I don't have not fully reviewed the analysis, it may be a good place to begin.